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## **Will Trump Administration Cite Cuba “Tourist Card” As Defense For Travel Changes? Was Travel Lawful? What Defines “Meaningful Interaction” Obama Administration Elasticity Trump Administration Constraint**

Might the Trump Administration accept the “*REPUBLIC DE CUBA VISA – TARJETA DEL TURISTA*” (Tourist Card) as proof that individuals subject to United States jurisdiction are engaging in unlawful activities when visiting the Republic of Cuba? Or, is it only a trope?

If visas issued by the Republic of Cuba indicate individuals subject to United States jurisdiction arriving to the Republic of Cuba by regularly-scheduled airline flights from the United States and other countries and by cruise ships from the United States and other countries are “tourists,” then why should the United States government dispute that definition?

United States travelers who obtain “tourist” visas are acknowledging their status, so is it logical for the Trump Administration to accept that acknowledgement? Travelers would counter that regardless of how their travel is characterized by the Republic of Cuba, they would never accept that that constitutes an admission of unlawful activities.

Since travel to the Republic of Cuba for the purpose of tourism is illegal under provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 (**TSREEA**), the Trump Administration may argue it is enforcing the statute- and certain travelers subject to United States jurisdiction seeking and receiving visas from the Republic of Cuba which reflect a tourist status are in violation of United States law.

There would seem, then, to be a remedy- the Republic of Cuba creates a Visitor Card for use by individuals subject to United States law. The Visitor Card would include check-off options for one of the twelve (12) authorized categories of travel to the Republic of Cuba. Unknown whether the cruise lines and the airlines and the tour operators have sought a such a change.

For the Trump Administration: If an individual subject to United States law seeks a Tourist Card, makes payment for a Tourist Card, receives a Tourist Card, uses a Tourist Card for entry to the Republic of Cuba, is permitted to enter the Republic of Cuba using a Tourist Card, and departs the Republic of Cuba using a Tourist Card, then logic to believe that the individual subject to United States jurisdiction has engaged in unlawful activity.

A question to be resolved: What matters- how the Republic of Cuba designates a traveler or what the traveler does while in the Republic of Cuba?

The Trump Administration believes that group activity itineraries created by cruise lines and tour operators are not in compliance with the TSREEA and activity itineraries created by individuals are not in compliance with the TSREEA.

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For the Trump Administration, both the designation by the Republic of Cuba and the activities by travelers while in the Republic of Cuba may be used to further restrict who can travel to the Republic of Cuba.

The Obama Administration was not intent upon enforcing who could not travel to the Republic of Cuba because it did not support the statute which prohibited travel relating to tourism. The Obama Administration permitted an elasticizing of the definitions as to who could visit the Republic of Cuba. The Trump Administration seeks to constrict travel to the Republic of Cuba.

Important for travelers to note that the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury may reach back five years to seek documentary evidence of compliance.

## 12 Categories Of Permitted Travel

There are twelve (12) categories of travel authorized by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury; the categories were codified into law by the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSREEA).

The authorized categories are: 1) family visits 2) official business of the U.S. government, foreign governments, and certain intergovernmental organizations 3) journalistic activity 4) professional research and professional meetings 5) educational activities 6) religious activities 7) public performances, clinics, workshops, athletic and other competitions, and exhibitions 8) support for the Cuban people 9) humanitarian projects 10) activities of private foundations or research or educational institutes 11) exportation, importation, or transmission of information or information materials and 12) certain authorized export transactions.

Travel to the Republic of Cuba for the purpose of tourism by individuals subject to United States law is prohibited by United States law- not by regulation and not by policy.

The statute within the TSREEA: “(b) Prohibition on travel relating to tourist activities (1) In general Notwithstanding any other provision of law or regulation, the Secretary of the Treasury, or any other Federal official, may not authorize the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities. (2) Definition. In this subsection, the term “tourist activities” means any activity with respect to travel to, from, or within Cuba that is not expressly authorized in subsection (a) of this section, in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000). (Pub. L. 106–387, § 1(a) [title IX, § 910], Oct. 28, 2000, 114 Stat. 1549, 1549A–71.)”

## From The OFAC (2017):

“What is *individual* people-to-people travel, and how does the President’s announcement impact this travel authorization?

Individual people-to-people travel is educational travel that: (i) does not involve academic study pursuant to a degree program; and (ii) does not take place under the auspices of an organization that is subject to U.S. jurisdiction that sponsors such exchanges to promote people-to-people contact. The President instructed Treasury to issue regulations that will end individual people-to-

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people travel. The announced changes do not take effect until the new regulations are issued.

Will *group* people-to-people travel still be authorized?

Yes. Group people-to-people travel is educational travel not involving academic study pursuant to a degree program that takes place under the auspices of an organization that is subject to U.S. jurisdiction that sponsors such exchanges to promote people-to-people contact. Travelers utilizing this travel authorization **must**: (i) maintain a full-time schedule of educational exchange activities that are intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities, and that will result in meaningful interaction between the traveler and individuals in Cuba; and (ii) be accompanied by an employee, consultant, or agent of the sponsoring organization, who will ensure that each traveler maintains a full-time schedule of educational exchange activities. In addition, the predominant portion of the activities engaged in by individual travelers must not be with prohibited officials of the Government of Cuba or prohibited members of the Cuban Communist Party (as defined in the regulations). Once OFAC issues the new regulations, new *individual* people-to-people travel will not be authorized.

Will organizations subject to U.S. jurisdiction that sponsor exchanges to promote people-to-people contact be required to apply to OFAC for a specific license?

No. To the extent that proposed travel falls within the scope of an existing general license, *including* group people-to-people educational travel, persons subject to U.S. jurisdiction may proceed with sponsoring such travel without applying to OFAC for a specific license. It is OFAC's policy not to grant applications for a specific license authorizing transactions where a general license is applicable."

20. What constitutes "support for the Cuban people" for generally authorized travel and other transactions? This general license authorizes, subject to conditions, travel-related transactions and other transactions that are intended to provide support for the Cuban people, which include activities of recognized human rights organizations; independent organizations designed to promote a rapid, peaceful transition to democracy; and individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba. In accordance with the NSPM, OFAC is amending this general license to require that each traveler utilizing this authorization engage in a full-time schedule of activities that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities and that result in meaningful interactions with individuals in Cuba. OFAC is also amending this general license to exclude from the authorization certain direct financial transactions with entities and subsidiaries identified on the State Department's Cuba Restricted List. The traveler's schedule of activities must not include free time or recreation in excess of that consistent with a full-time schedule in Cuba. For a complete description of what this general license authorizes and the restrictions that apply, see 31 CFR §515.574