

U.S.-Cuba Trade and Economic Council, Inc.

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TO: The Honorable
Lt. General H.R. McMaster
Assistant to the President for National Security Affairs
The White House
Washington, DC

DATE: 11 July 2017

RE: **Decision Soon For Suspension Of Title III Of The Cuban Liberty And Democratic Solidarity Act of 1996**

This week, the Trump Administration will determine whether to continue a suspension of Title III of the Cuban Liberty and Democratic Solidarity Act of 1996 (“*Libertad*” or “*Helms-Burton*”). Codified in Title 22, Sections 6021-6091 of the U.S. Code. P.L. 104-114.

What is Title III? A provision that permits lawsuits to be filed in United States Federal Courts by individuals and companies who have claims against the government of the Republic of Cuba, and specifically against those deemed to be “trafficking” or making use of the asset upon which there is a claim. However, the filings would not be limited to the 5,913 certified claimants- filings could be made by almost anyone including individuals who are Cuban but unborn when their parents or grandparents’ assets were expropriated by the government of the Republic of Cuba. Stated simply, what was focused upon 5,913 could quickly become hundreds of thousands or millions.

From the text of the statute: “(2) *Additional suspensions.--The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.*”

On 5 January 2017, The Honorable John F. Kerry, then-United States Secretary of State, signed the most recent suspension. The next suspension would be implemented in August 2017. Since the inception of the statute in 1996, each occupant of the Oval Office has signed a suspension. The President may rescind a suspension at any time.

There are four (4) principal reasons to advise The Honorable Donald J. Trump, President of the United States, to suspend Title III of the Cuban Liberty and Democratic Solidarity Act of 1996:

First, the *Trump Administration Initiatives* announced on 16 June 2017 are not operational, thus their impact, positive or negative, may not yet be assessed. The regulations and lists to be issued by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, the Bureau of Industry and Security (BIS) of the United States Department of Commerce, and the United States Department of State are not complete and are not to be activated until 15 September 2017.

Second, the continuing suspension of Title III can provide both focus and pressure upon the United States and the Republic of Cuba to reach a settlement to compensate the 5,913 claims certified by the United States Foreign Claims Settlement Commission (USFCSC) under the auspice of the United States Department of Justice. The certified claims are valued without interest at US\$1,902,202,284.95 and with interest at approximately US\$8 billion. Of the 5,913 claims certified by the USFCSC, **thirty** (30)

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companies account for approximately **57%** of the value without interest. An important point of history: the foundation of “*the embargo*” rests upon the seizure without compensation by the government of the Republic of Cuba of an oil refinery owned by a United States company.

As you know, the Obama Administration deemed a resolution of the certified claims as a “**top priority**,” but had only two (2) discussions (not negotiations) with representatives of the government of the Republic of Cuba in 2,923 days (766 days if calculated from 17 December 2014); this was woefully inadequate. President Trump can correct this failure of leadership.

Third, the continuing suspension of Title III will preserve for President Trump his ability to negotiate a settlement on behalf of the 5,913 certified claimants- United States citizens and United States companies. Any effort to constrain the President from directly or indirectly guiding his negotiating team erodes the unique powers of the Executive Branch to conduct foreign policy. And, negotiating a settlement based upon US\$1.9 billion or US\$8 billion is far less complicated than attempting to bridge restitution for what could approach US\$100 billion or more by those who do not have certified claims if Title III is enabled.

Fourth, if Title III is not suspended there would not only be a disruption to the ability of President Trump to negotiate a settlement on behalf of the certified claimants during his first term, but the disruption would extend through his second term and through the terms of his successors. The reason would be potentially *hundreds of thousands* of claims that would become eligible to be heard by United States Federal Courts. Most impactful, is Title III prohibits the dismissal of claims proceedings in United States Federal Courts once they are filed. As most of the proceedings would be filed in the State of Florida, the impact upon the judicial process would be substantial, crippling; and would result in more non-related significant cases being delayed from adjudication.

Those who support the use of Title III have a singular goal- prevent, potentially in perpetuity, a resolution on behalf of the certified claimants. They would prohibit President Trump from engaging his DNA- to negotiate a deal. And, this prohibition would not solely be for the remaining 1,289 days of President Trump’s first term, nor the 1,460 days of this second term... it would likely be in perpetuity as the current and future government of the Republic of Cuba would never have the financial capacity to absorb the judgements issued by United States Federal Courts- even if they were inclined to do so.

Recommendation:

Unlike his predecessors, President Trump should issue a sharply-worded conditional signing statement in conjunction with a further six-month suspension of Title III.

The signing statement should create a twelve-month “*window of opportunity*” within which National Security Council (NSC) staff would engage directly with representatives of the thirty (30) certified claimants with the largest values of assets expropriated without compensation. Potentially, a third-party United States-based negotiator could be retained to represent the interests of the certified claimants to the government of the Republic of Cuba.

If an agreement with the government of the Republic of Cuba is concluded by the end of the twelve-month period, the Trump Administration would remove remaining financial regulations under the auspice of the OFAC and BIS which impact the government of the Republic of Cuba.

Blog Post Links:

<http://kavulich-john.squarespace.com/blog/2017/2/6/update-on-title-three-suspension-of-libertad-act-helms-burton>

<http://www.cubatrade.org/blog/2017/1/12/h2uudthnn6be8hfgxifqsrdo4aqpb0?rq=claims>