

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

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## Why Can A Company Be Targeted By Title III, But Its Executives Not Be Targeted By Title IV?

### Definition Of “Shall” Becomes Important

### Why Won’t State Department Release List Of Title IV Targets?

### Who Can File, Who Can’t File, Who Gets Sued, Who Escapes

### Will Venezuela Intervene And Be Basis For Further Inaction?

A central tenant of the Cuban Liberty and Democratic Solidarity Act of 1996 (known as “*Libertad Act*”) is to deny financial resources to the government of the Republic of Cuba.

The Libertad Act is known widely as “*Helms-Burton*” for its authors: The Honorable **Jesse Helms** (R-North Carolina) of the United States Senate and The Honorable **Dan Burton** (R- Indiana) of the United States House of Representatives. Senator Helms retired in 2003 and died in 2008 and Representative Burton retired in 2013.

Whatever decision(s) are implemented by the Trump Administration using one or more provisions of the Libertad Act, likely will a judge or judges who will determine the legality and constitutionality of who can file a lawsuit, who can’t file a lawsuit, who is sued and who isn’t sued.

The now 80-year-old Mr. Burton is quite likely to be shuttling between courts in Florida, New Jersey, New York and Washington DC while serving as an expert witness to define the intent of provisions of the Libertad Act.

At the request of The White House, the United States Department of State is expected to submit a letter to the United States Congress by Monday, **4 March 2019**, with its decision relating to the implementation of Title III of the Cuban Liberty and Democratic Solidarity Act of 1996 (known as “*Libertad Act*”).

On 17/18 March 2019, the Trump Administration is planning to permit Title III and further implement Title IV of the Cuban Liberty and Democratic Solidarity Act of 1996 (known as “*Libertad Act*”).

Title III authorizes lawsuits in United States District Courts against companies and individuals who are using a certified claim where the owner of the certified claim has not received compensation from the Republic of Cuba or from a third-party who is using the asset.

Title IV restricts entry into the United States by individuals who have connectivity to unresolved certified claims. One company is currently subject to this provision.

## Questions Trump Administration Needs To Answer

*Should all claimants (certified and non-certified) be permitted to sue? Only Americans? Only Cuban-Americans? Both Americans and Cuban-Americans?* If the central tenant of the Libertad Act is to deny financial resources to the government of the Republic of Cuba, and the largest number (perhaps 90% or more) of potential claimants are individuals of Cuban descent, how would the Trump Administration defend itself against likely charges of a denial of due process and equal protection? Or, worse, of wimping-out.

*If the Trump Administration exempts the government of the Republic of Cuba (and Republic of Cuba government-operated entities) from being a defendant in lawsuits, then the remaining defendants would be non-Republic of Cuba-based companies.* The value of assets by those companies pales in comparison with the value of assets of the government of the Republic of Cuba (and Republic of Cuba government-operated companies). So, if the goal is to obtain restitution, lawsuits against the government of the Republic of Cuba (and Republic of Cuba government-operated companies) must be permitted.

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

*If the Trump Administration excludes United States-based companies (hotel, cruise line, airline, etc.) from being defendants, likely will be a lawsuit challenging the exemption. The exemption would be based upon an argument that the activities of the travel-related companies are licensed (general or specific) by the Office of Foreign Assets Control (OFAC) as incident to authorized travel and thus not subject to a lawsuit. Arguments in opposition would be based upon the belief that the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000 specifically listed twelve (12) categories of authorized travel; and travel for the purpose of tourism was not among them and, as such, is illegal. And, that the Obama Administration changes to definitions as to who is eligible to travel was in itself an illegal act. Thus, the use of regularly-scheduled cruise ships and aircraft and hotel management contracts are, by definition, by activity, implements for tourism.*

*Undermining any decision by the Trump Administration relating to Title III and Title IV is during the last twenty-three (23) years, only one (1) company remains subject to provisions of Title IV. The company has chosen to remain in the Republic of Cuba despite actions of the United States government designed to curtail that presence- which was in place and operational prior to the enactment of the Libertad Act.*

From Media Reports on 10/11 July 1996: Under the measures announced today (10 July 1996) by the State Department, the director of the Toronto-based company, **Sherritt International Corp.**, will be barred from entering the United States, along with eight of his top officers and their immediate families. The ban will take effect in six weeks, after a waiting period designed to allow the company time to terminate its investments in Cuba. At a briefing in Washington announcing the notification of the company executives affected, State Department spokesman Nicholas Burns defended the provision affecting families as “*likely to enhance . . . the threat that is contained very clearly in Helms-Burton.*” Burns said company executives were notified in letters dated Tuesday that after 45 days, they will not be allowed to enter the United States. The period is supposed to allow the company time to reconsider its investments in Cuba. “*It is unconventional,*” Burns said. “*It is a very tough action that we are taking today.*”

There have reportedly been fewer than ten (10) non-United States-based companies (tourism, agriculture, real estate, telecommunications, etc.) since 1996 who were informed by the United States Department of State that they would be subject to provisions of Title IV unless activities were curtailed; the activities were reportedly curtailed.

NOTE: The United States Department of State refuses to publish a list of those who receive letters relating to Title IV.

**Since 1996, during the last twenty-three (23) years, during four (4) presidencies: Clinton Administration (5+ years), Bush Administration (8 years), Obama Administration (8 years), Trump Administration (2+ years) there remains only one (1) non-United States company who is deemed by the United States Department of State to be subject to provisions of Title IV? Only one.**

**Can a company or individual located outside of the United States be identified by a certified claimant and/or non-certified claimant as a target of a potential lawsuit using Title III, but not be subject to a Title IV action by the United States Department of State?**

We may know in less than one-hundred (100) hours...

## **TITLE IV--SEC. 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.**

(a) Grounds for Exclusion.--The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act-- (1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national; (2) traffics in confiscated

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

property, a claim to which is owned by a United States national; (3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or (4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

## **TITLE III--SEC. 302. LIABILITY FOR TRAFFICKING IN CONFISCATED PROPERTY CLAIMED BY UNITED STATES NATIONALS.**

(a) Civil Remedy.-- (1) Liability for trafficking.--(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of-- (i) the amount which is the greater of-- (I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest; (II) the amount determined under section 303(a)(2), plus interest; or (III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and (ii) court costs and reasonable attorneys' fees. (B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of confiscation of the property involved to the date on which the action is brought under this subsection.

(2) Presumption in favor of the certified claims.--There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) Increased liability.--(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to-- (i) a person against whom the action is to be initiated, or (ii) a person who is to be joined as a defendant in the action, at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of-- (i) the amount determined under paragraph (1)(A)(ii), and (ii) 3 times the amount determined applicable under paragraph (1)(A)(i). (D) Notice to a person under subparagraph (B)-- (i) shall be in writing; (ii) shall be posted by certified mail or personally delivered to the person; and (iii) shall contain-- (I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor; (II) a demand that the unlawful trafficking in the claimant's property cease immediately; and (III) a copy of the summary statement published under paragraph (8). (4) Applicability.--(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before such date of enactment. (C) In the case of property confiscated on or after the date of the enactment of this Act, a United States national who, after the property is confiscated,

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

acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) Treatment of certain actions.--(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section. (B) In the case of any action brought under this section by a United States national whose underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified. (6) Inapplicability of act of state doctrine.--No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1) .

(7) Licenses not required.--(A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 5(b) of the Trading with the Enemy Act that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act.