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## FEATURED Q&A

# Will Title III Suits Freeze Out Foreign Investment in Cuba?



Cuban leader Miguel Díaz-Canel (R) last year became the first non-Castro to run the communist island in half a century. // File Photo: Granma.

**Q** The United States earlier this month backed away from a threat to allow Cuban exiles to file suit in U.S. courts against foreign companies operating in Cuba under the Title III clause of the Helms-Burton Act, opting for a narrower change in policy that is limited to Cuban enterprises controlled at least in part by the military, the intelligence services or security forces. What do the new changes related to Title III mean for Cuba and international investors? How likely is the Trump administration to become more aggressive in expanding the scope of the law? What sort of political ramifications would a major policy shift on Title III have?

**A** Javier García-Bengochea, chairman of the Baptist Neurological Institute in Florida and a certified claimant as owner of the Port of Santiago de Cuba: "Title III, liability for trafficking, has been in effect since Aug. 1, 1996. However, presidents have suspended the right to sue in U.S. courts against traffickers every six months since. The recent suspension modification signals a new era of accountability for those opportunistically exploiting stolen Cuban property. The suspension was intended to allow a grace period for traffickers to cease or obtain consent from the legitimate owners. Unfortunately, the perpetual suspension has become the legal underpinning for trafficking. Criticism that Title III is 'extra-territorial' is disingenuous—it's no more extraterritorial than a foreigner's claim their enterprise in Cuba using stolen property is legitimate. They want globalism without risk or responsibility. Title III faithfully represents the intent of international law prohibiting expropriation without compensation. The Cuban dictatorship

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## TODAY'S NEWS

### ECONOMIC

## Brazil's Bolsonaro Arrives in United States for Talks

"For the first time in a while, a pro-America Brazilian President arrives in DC," Bolsonaro said on Twitter shortly after he landed at Andrews Air Force Base in Maryland.

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### POLITICAL

## Guaidó Kicks Off 'New Phase' of Campaign

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### POLITICAL

## Nicaragua Protests Erupt, More Than 160 Arrested

Protesters targeting Nicaraguan President Daniel Ortega took to the streets on Saturday demanding the release of all political prisoners. More than 160 were arrested, and some were beaten by police.

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Ortega // File Photo: Nicaraguan Government.

## ECONOMIC NEWS

## Bolsonaro Arrives U.S. for Meetings on Trade, Cooperation

Brazilian President Jair Bolsonaro arrived in Washington on Sunday for a three-day visit, Agence France-Presse reported. "For the first time in a while, a pro-America Brazilian President arrives in DC," Bolsonaro said on Twitter shortly after he landed at Andrews Air Force Base in Maryland. The far-right leader, who took office in January, is accompanied by Foreign Minister Ernesto Araújo, Economy



Bolsonaro // Photo: Brazilian Government.

Minister Paulo Guedes and Justice Minister Sérgio Moro, among other high-level officials. During his first dinner of the trip, hosted by Brazilian Ambassador Sérgio Amaral, Bolsonaro warned of the region's growing dependency on China and said U.S. cooperation on agriculture could provide a counterweight to the Asian country's power. The United States is Brazil's second-biggest trade partner, after China. He also criticized leftist ideologies in countries such as Venezuela and Cuba, saying that "old communism can no longer dominate," *Folha de S.Paulo* reported. After the dinner, former Trump advisor Steve Bannon told reporters the dinner had been "a good opening night for the president." Outside the White House on Sunday afternoon, dozens of demonstrators gathered to protest Bolsonaro's visit, holding signs including one that accused the president of being a "murderer" over apparent links to suspects in the killing of LGBT rights activist Marielle Franco. Bolsonaro has been invited by U.S. President Donald Trump to stay at Blair

House, a private complex next to the White House reserved for honored guests of the president. Bolsonaro will meet with Trump in the White House on Tuesday. During the trip, Brazil could seek the status of "major non-NATO ally," which gives a country preferential access to the purchase of U.S. military equipment, AFP reported. Brazil is also considering granting an import quota of 750,000 metric tons of U.S. wheat per year without tariffs, which could amount to hundreds of millions of dollars in sales for struggling U.S. farmers, Reuters reported. In return, Brazil is hoping to see movement toward the reopening of the U.S. market to fresh beef imports from Brazil, as well as now-blocked lime exports, and better terms for ethanol trade. Brazil, the world's eighth-largest economy, is also seeking U.S. support for its application to join the Paris-based Organization for Economic Cooperation and Development.

## POLITICAL NEWS

## Guaidó Kicks Off National Campaign Tour to Oust Maduro

Venezuelan opposition leader Juan Guaidó on Saturday kicked off a national tour that he described as a "new phase" of his campaign to unseat President Nicolás Maduro, the Associated Press reported. Speaking to large crowds in the northern city of Valencia, Guaidó said he would deliver a better life for Venezuelans. "We're stronger than ever," he said, speaking from a podium draped with a Venezuelan flag. "We will go to Miraflores and reclaim what belongs to the Venezuelan people," he said, referring to the presidential palace. On Saturday, the Maduro government organized its own rally in Caracas, following a now familiar tit-for-tat pattern. "We won't surrender," prominent politician Diosdado Cabello told the demonstrators, *Deutsche Welle* reported. Maduro is planning a "deep restructuring" of his government and has asked his entire cabinet to "put their roles up for review," Vice President Delcy Rodríguez said on Sunday, Reuters reported. The reshuffling

## NEWS BRIEFS

## Guatemala Campaign Season Starts With 24 Presidential Candidates

Guatemala's electoral campaign officially kicks off today with 24 presidential candidates and nearly eight million registered voters, including 62,000 Guatemalans who for the first time will be able to vote from abroad, *Prensa Latina* reported today. Following a five-day trip through Central America in February, several Democratic lawmakers on Friday called for the electoral tribunal to "allow all qualified candidates to run" in the upcoming June election, amid concerns the body would disqualify leading contenders under pressure from political rivals.

## Brazil Firm Agrees to Plea Deal With Peru Officials

Brazilian construction firm OAS on Friday entered a plea deal with Peruvian prosecutors to provide evidence on corruption cases in the same way rival Odebrecht has done, Reuters reported. The company has been under investigation for alleged bribes to win infrastructure projects in Lima, including contributions to the campaign of former Mayor Susana Villarán in exchange for work contracts.

## Foreign Companies Win Auctions to Operate Brazilian Airports

Spain's Aena SME and Switzerland's Flughafen Zürich on Friday won the right to operate two key Brazilian airport groups, Reuters reported. Aena offered 1.9 billion reais (\$496 million) to operate six airports in northeastern Brazil, including the busy hub in Recife. A unit of Flughafen Zürich won an uncontested bid of 437 million reais to operate two airports in southeastern Brazil, including the airport serving Vitória, the capital of the Espírito Santo state. Brazilian President Jair Bolsonaro celebrated the results, saying it was a "great victory" and a sign that "Brazil is growing again."

comes on the heels of a nearly weeklong nationwide blackout that paralyzed the OPEC nation, which Maduro blamed on a U.S.-led cyber attack while the opposition cited a lack of maintenance and incompetence resulting from an exodus of skilled workers. Guaidó invoked the Constitution in January to assume an interim presidency, arguing that Maduro's May 2018 re-election was illegitimate and new elections must be held. The Washington-based Inter-American Development Bank on Friday officially recognized the representative named by Guaidó to represent the country at the bank, the first multilateral institution to take that step, Agence France-Presse reported. Ricardo Hausmann, a harsh critic of the Maduro regime who 20 years ago served as the IDB's chief economist, reportedly will be working with the lender to plot a recovery plan for Venezuela's shattered economy should Maduro leave office.

## Nicaragua Protests Erupt, More Than 160 Arrested

Protesters targeting Nicaraguan President Daniel Ortega took to the streets on Saturday demanding the release of all political prisoners, La Prensa reported. More than 160 were arrested. Some were beaten by police, including journalists and a priest, and many had their cameras and phones confiscated. The national police defended the arrests in a statement, citing a ban on street protests in force since November. Those detained participated in protests that "were not authorized and that interrupted public order and local business," the statement read. The show of force came just one day after Ortega released 50 political prisoners amid mounting international pressure and calls to restart stalled peace talks with opposition groups. Last April, street protests against Ortega's long rule broke out nationally, resulting in more than 300 killed, hundreds imprisoned and an economic recession. The police said those arrested on Saturday were being released following a request from a Vatican representative in Nicaragua. The next presidential election is scheduled in 2021.

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has failed to compensate Americans and refuses to compensate Cubans, despite such requirements in the confiscatory fiats (and in the Constitution). Incrementally, Title III will be fully implemented since damages are accruing. American corporations should be next. As U.S. law never contemplated American traffickers, it's unconscionable to shield them with the waiver. American tourism, which occurs under the ruse of licensed travel, has created a premium travel sector funding the Cuban military, which funds Cuba's apartheid and destabilizes the hemisphere (see Venezuela and Nicaragua). President Trump's national security council team fully recognizes Title III will strangle Cuba's military dictatorship. What's occurring in Cuba is politically sanctioned organized crime underwritten by Cuba's dictatorship and, ironically, the waiver. Justice, Title III, for claimants is long overdue."

**A** **Angela Mariana Freyre, principal at Squire Patton Boggs and former special advisor for Cuba Policy in the National Security**

**Council:** "The new changes are intended to have a chilling effect on both current and future U.S. and foreign investment in Cuba. The allowance of lawsuits against the Cuban entities on the restricted list, coupled with the 30-day waiver and stated further consideration of the allowance of other lawsuits, could mean that the next set of allowed lawsuits may be against the foreign joint venture partners of such Cuban entities. Also, this administration's possible continuous short-term waivers create uncertainty, which will have a very negative effect on the investment environment. The likelihood of allowing other lawsuits to proceed will depend on various factors, including how many lawsuits are filed against Cuban entities on the restricted list, whether foreign joint venture partners are included in the lawsuits (even though it's not allowed), how the lawsuits affect foreign joint venture partners, public demand for expansion of

the scope of lawsuits allowed under Title III, pressure on the administration from the U.S. private sector and allies to stay its hand and go no further, the effect of measures taken by the Cuban government (it has been said that the Cuban government is considering ceasing imports of U.S. agricultural products) and how the situation in Venezuela evolves, among others. A major shift, such as allowing all lawsuits under Title III to proceed, would have a serious adverse effect on U.S. and foreign investment in and engagement with Cuba, with a resulting serious adverse effect on the continued development of Cuba's nascent private sector, which depends on U.S. and foreign investment and engagement. Additionally, it would adversely affect our relationship with allies and, once lawsuits are allowed and filed, the administration would no longer control the process of compensation for claims and would not be able to modify or reverse its decision. Finally, the adverse effect on U.S.-Cuba relations should not be underestimated. As anyone who engages with Cuba knows, and as it has been documented, U.S. investment in and engagement with Cuba has had a very positive effect on the Cuban people. Further action under Title III will compromise such benefits."

**A** **Vicki Huddleston, retired U.S. ambassador and former chief of the U.S. Interests Section in Havana:** "National Security Advisor John Bolton and his allies—President Trump, Secretary Pompeo and Senator Rubio—are determined to rid the hemisphere of what Bolton referred to as a 'Troika of Tyranny' in a November speech at Miami's Freedom Tower. Allowing Americans to sue Cuban companies sets the stage for additional punitive measures against Cuba. Within a few months, the administration will likely take the unprecedented measure of allowing Cuban Americans—who were Cuban nationals subject to Cuban laws at the time of the taking—to also sue for lost properties.

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The impact of this action and the prospect of more to come will have a chilling impact on current and future foreign investment in Cuba. The measures will benefit wealthy American companies—which long ago wrote off their losses—at the expense of the Cuban people, who already are suffering from lack of food and medicines. The Trump administration claims to be concerned about human rights on the island, but their actions prove the contrary. It appears that their principal concern is neither human rights nor democracy in Cuba but catering to a domestic constituency that they hope will support Trump should he run for a second term.”

**A** **Anya Landau French, senior policy advisor with the Cuba practice group at Akin Gump:** “The Trump administration’s move to allow American citizens and companies to sue certain Cuban entities in U.S. courts may have increased uncertainty for Cuba and its investors, but it had little direct effect for investors or U.S. claimholders. Though U.S. citizens and companies may now sue certain Cuban entities, there is little way to collect on any judgments against those entities, which likely do not have attachable assets in the United States. The full impact would be felt if the Trump administration were to implement Title III completely, a decision that would set aside the interests of U.S. businesses that are engaging in lawful commercial activities in Cuba—which the administration previously assured would not be affected by a harder line on Cuba—and of allies who have been engaged in Cuba for decades. If the administration were to authorize Title III lawsuits against U.S. and foreign companies, which it has not ruled out, the European Union would likely re-open its WTO dispute against the United States regarding this law, which it withdrew when the United States agreed to suspend Title III. Additionally, if any U.S. claimants undertake the expensive and time-consuming process to sue and succeed in winning damages from firms based in the European Union,

Mexico and Canada, these firms could also potentially countersue for damages under blocking statutes enacted in their jurisdictions when the Helms-Burton Act originally passed. U.S. businesses will once again be on the outside looking in while Russian, Chinese and other companies without attachable U.S. assets move in. Either way, government-to-government negotiation of the thousands of U.S. claims against Cuba, which are unlikely to gain anything from this or any further activation of Title III, is now off the table.”

**A** **David Abraham, professor at the University of Miami School of Law:** “The Helms-Burton Act has always violated a core principle of U.S. law, namely the prohibition on secondary boycotting. Were a labor union, for example, to attempt to press unfair labor claims against Coca-Cola by picketing or boycotting Safeway or any supermarket where Coca-Cola is sold, it would be ordered to desist and would be fined quite heavily, and its leaders possibly charged with crimes. Knowing of its possible illegality, previous administrations have largely stayed away from these kinds of actions, not allowing suits here against European companies because we have a gripe with Cuba, where they are operating. But as in so many other matters, Cuba is an exception, and U.S. claims to be able in its courts to punish third parties owning or using previously nationalized property in Cuba are strikingly anomalous. Jurisdiction lies only with the courts in Cuba or possibly, depending on their own laws, in the countries where those corporations are headquartered. The fact that the plaintiffs might be Cuban expats changes nothing about this. The ‘concession’ of suing only Cuban state agency owners of nationalized property (but not foreign companies) is no more defensible legally but obviously would not impact private foreign corporations. The originally-planned action is consistent with the Trump administration’s preference for attacking allies.”

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