

Cuba Series, Part 4: Helms–Burton & Readers Respond



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David R. Kotok(<https://Kotokreport.Com/Author/Christopher/>) • Reading Time: 11 Minutes



We thank readers for their many comments about our Cuba series. The three parts are available here:

“Cuba Series, Part 1: The Bay of Pigs,” <https://www.cumber.com/market-commentary/cuba-series-part-1-bay-pigs> (<https://www.cumber.com/market-commentary/cuba-series-part-1-bay-pigsd=0>)

“Cuba Series, Part 2: US Sanctions on Cuba?” <https://www.cumber.com/market-commentary/cuba-series-part-2-us-sanctions-cuba> (<https://www.cumber.com/market-commentary/cuba-series-part-2-us-sanctions-cuba>)

“Cuba Series, Part 3: Healthcare,” <https://www.cumber.com/market-commentary/cuba-series-part-3-healthcare>

Let's get to the Helms–Burton Act of 1996, which strengthened the US embargo against Cuba.

For expertise on this we consulted with David Adler, an accomplished lawyer and partner in the firm of McCarter & English. He was part of our special GIC delegation to Havana. On our return, I did some research into the Helms–Burton Act's impact. Hat tip to David Adler for helping me with the legal searches and citations. Now to the impact and how this relic law of the distant past is hurting American firms and suppressing business opportunities for American companies and investors. In my opinion, it is time to get past Helms–Burton and stop fighting the Bay of Pigs. And it is time for those with a business interest to have their opportunities in Cuba realized, because the entrepreneurial trajectory is already underway.

Here's the story.



The Helms–Burton Act (full title: The Cuban Liberty and Democratic Solidarity [Libertad] Act of 1996) was passed by Congress on March 6, 1996, and enacted into law by President Clinton six days later, on March 12. The act continued the US embargo against Cuba and extended it to apply to foreign nationals (non-US companies) trading with Cuba. Title III of the act authorizes US citizens (or Cubans who have since become US citizens) with claims to confiscated property in Cuba to file suit in US courts against persons that may be “trafficking” in that property. (The complete text of the act is available in PDF form here: <https://www.govinfo.gov/content/pkg/STATUTE-110/pdf/STATUTE-110-Pg785.pdf> (<https://www.govinfo.gov/content/pkg/STATUTE-110/pdf/STATUTE-110-Pg785.pdf>).

However, Title III also grants the President the authority to suspend the lawsuit provision if it is “necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.” Presidents Clinton, Bush, and Obama all suspended that provision, in part because there was nearly universal outcry against the act, with the European Union, the United Kingdom, Mexico, and Canada all passing legislation to counter Helms–Burton. (In Canada, the legislature proposed [but didn't pass] a tongue-in-cheek measure that mirrored Helms–Burton, replacing the Cuban Revolution with the American Revolution. It demanded recompense for British Empire loyalists and proposed travel restrictions on those trafficking in property confiscated during the American Revolution.)

(Wikipedia, https://en.wikipedia.org/wiki/Helms%E2%80%93Burton_Act (https://en.wikipedia.org/wiki/Helms%E2%80%93Burton_Act))

In April 2019, though, President Trump allowed Title III to come into effect for the first time since the bill's passage (and President Biden has not suspended Title III, so it remains in effect today.) On May 2, 2019, the very day the suspension lapsed, a company called Havana Docks filed a Title III action against Carnival Cruise Lines in the US District Court for the Southern District of Florida. Then, in August 2019, Havana Docks filed further actions against Royal Caribbean Cruises, Norwegian Cruise Lines, and MSC Cruises, for “trafficking” in its confiscated property. (“Analysis of US court's decision on Cuba cruises to Havana,” <https://www.seatrade-cruise.com/people-opinions/analysis-us-courts-decision-cuba-cruises-havana> (<https://www.seatrade-cruise.com/people-opinions/analysis-us-courts-decision-cuba-cruises-havana>))

Havana Docks Corp. was the owner of the Havana Cruise Port Terminal before the Cuban revolution. The company was incorporated in 1917 by Sosthenes Behn, founder of International Telephone & Telegraph, who purchased the Havana land and built docks there in 1920. He passed the property on to his son, William Behn,

in the 1940s, and it was nationalized on Nov. 21, 1960. ("The federal government says this man rightfully owns Havana's cruise port," https://www.tampabay.com/news/business/tourism/The-federal-government-says-this-man-rightfully-owns-Havana-s-cruise-port_169234241/ (https://www.tampabay.com/news/business/tourism/The-federal-government-says-this-man-rightfully-owns-Havana-s-cruise-port_169234241/))



(<https://i0.wp.com/kotokreport.com/wp-content/uploads/2024/05/Kotok-Report-Bay-of-Pigs-4.jpeg?ssl=1>)

(https://www.tampabay.com/news/business/tourism/The-federal-government-says-this-man-rightfully-owns-Havana-s-cruise-port_169234241/)

William Behn shares a Coke with revolutionaries who explain the new arrangement to him.

(Source: Tampa Bay Times (https://www.tampabay.com/news/business/tourism/The-federal-government-says-this-man-rightfully-owns-Havana-s-cruise-port_169234241/))


Today, Havana Docks is owned by William Behn's daughter Aphra Behn and her son Mickael Behn; and on March 21, 2022, their suit against the cruise lines was decided in their favor when US District Court Judge Beth Bloom ordered the companies to pay Havana Docks \$440 million in damages (\$110 million each). ("Cruise Lines Ordered to Pay \$440M in Damages for Use of Havana Pier," <https://maritime-executive.com/article/cruise-lines-ordered-to-pay-440m-in-damages-for-use-of-havana-pier>) (<https://maritime-executive.com/article/cruise-lines-ordered-to-pay-440m-in-damages-for-use-of-havana-pier>))

The decision is under appeal by the cruise lines, and David Adler likes their chances. In his remarks to me, David said,

I think their strongest argument is on the interpretation of the verb "trafficking". Havana Docks is completely outgunned by the combo of Clement/Shanmugam [the cruise lines' lead attorneys], and I think that the cruise lines will win on the trafficking argument. In addition, it does not appear that there would be much of a chance

for review by the Supreme Court if the judgment were affirmed because there is no conflict among the circuits. Of course, these guys are 50 steps ahead of everyone and may be attempting to get the 11th circuit to issue a ruling that will then conflict with another circuit so that they can seek Supreme Court review....

The cruise lines went all in on this appeal – Shanmugam is probably in the top 10 appellate litigators in the country and has argued before the Supreme Court 36 times. Clement has argued more than 100 cases before the Supreme Court. This case has now been fully briefed before the 11th Circuit.... The Court is asking the parties for dates for oral argument.

In a related case, *Garcia-Bengochea v. Carnival Corp.*, the US Court of Appeals, Eleventh Circuit, ruled that Dr. Garcia-Bengochea had standing to assert his Title III claim to the waterfront property in Santiago de Cuba that he alleged the cruise lines had used, but the court further decided that his claim failed on the merits. Specifically, the court said, Garcia-Bengochea violated the terms of Title III of Helms–Burton because he did not acquire his claim prior to March 12, 1996, when Helms–Burton was signed into law. Instead, he inherited his claim after that date. 

This detail pertaining to the timing of the acquisition of claims is proving to be a stumbling block for most Title III plaintiffs, since, as time has moved on, nearly all of them have inherited their claims, whether from deceased family members or through corporate acquisitions. In fact, aside from the Havana Dock judgment, plaintiffs have lost every major judicially resolved case. (“Four Years Since the Triggering of Title III of Helms–Burton>: The Plaintiffs Have Not Done Well,” <https://horizontecubano.law.columbia.edu/news/four-years-triggering-title-iii-helms-burton-plaintiffs-have-not-done-well> (<https://horizontecubano.law.columbia.edu/news/four-years-triggering-title-iii-helms-burton-plaintiffs-have-not-done-well>))

Here is another significant example: In *Glen v. American Airlines, Inc.*, the lawsuit brought by Robert Glen concerned four hotels located on the beach in Varadero, Cuba, property confiscated by the Cuban government. At the time of the confiscation, the hotels were owned by Glen’s mother and aunt, both Cuban citizens. Glen argued that American Airlines had been marketing rooms at these hotels for two years through its website (“*Glen v. American Airlines, Inc.*, No. 20-10903 (5th Cir. 2021),” <https://law.justia.com/cases/federal/appellate-courts/ca5/20-10903/20-10903-2021-08-02.html> (<https://law.justia.com/cases/federal/appellate-courts/ca5/20-10903/20-10903-2021-08-02.html>)). The suit was dismissed on appeal because Glen didn’t inherit his claims until 1999 and 2011 (“*Glen v. Am. Airlines*,” <https://casetext.com/case/glen-v-am-airlines> (<https://casetext.com/case/glen-v-am-airlines>)).

In another case involving American Airlines, *Lopez Regueiro v. American Airlines Inc.*, the plaintiff asserted that he inherited a claim to the José Martí International Airport in Havana, which the Cuban government confiscated from his father in 1959. He further alleged that American Airlines unlawfully trafficked in the confiscated property by using the airport for its flights to Cuba. The case was dismissed because (1) the José Martí International Airport was not confiscated from a United States national, and (2) Lopez Regueiro was not a United States national when he acquired his claim to the airport. (“American Airlines wins dismissal of Helms–Burton Act lawsuit alleging unlawful use of Havana’s international airport,” <https://www.jonesday.com/en/practices/experience/2019/09/major-us-airline-defends-against-trafficking-claim-under-the-helmsburton-act> (<https://www.jonesday.com/en/practices/experience/2019/09/major-us-airline-defends-against-trafficking-claim-under-the-helmsburton-act>))

Thus, it appears that time is running out on Helms–Burton and those whose property rights it sought to protect in a changing world. Life isn't always fair, but it can certainly be argued that the overall socioeconomic benefit to the US will be greater if US businesses are allowed to engage with and operate in Cuba than if these vestigial Title III claims are satisfied.



(<https://i0.wp.com/mcusercontent.com/d6f020f3bd6a1e2c4eb254e6c/images/3aece70b-c4f2-7fb0-2975-224b78214c13.jpg?ssl=1>)

(<https://mcusercontent.com/d6f020f3bd6a1e2c4eb254e6c/images/3aece70b-c4f2-7fb0-2975-224b78214c13.jpg>)

Additional resources

Havana Docks Corp. v. Carnival Corp. casetext: <https://casetext.com/case/havana-docks-corp-v-carnival-corp-16>
(<https://casetext.com/case/havana-docks-corp-v-carnival-corp-16>)

Garcia-Bengochea v. Carnival Corp. casetext: <https://casetext.com/case/garcia-bengochea-v-carnival-corp-1>
(<https://casetext.com/case/garcia-bengochea-v-carnival-corp-1>)

Now, some more reader responses.

Please note that not a single response supported the continuation of the existing sanctions system imposed by President Trump just six days before he left office. In addition to the responses appended to Part 3 of our Cuba series, we are adding more, since they encompass so many thoughtful views. Here goes.

Peter sent the following.

Thank you for investing the time in your Cuba series. I have recently been to Cuba. If you would like, I can prepare a summary of what I learned and send it to you.

Paul wrote:

I totally agree with your assessment of the Cuban sanctions situation. Have you seen the multi-part documentary “Cuba Libre”? Although there are many differences, the limited power of sanctions also has been manifest in the case of Iran. They are too often wrongly seen as a quick, reliable, low-risk, high-return tool by politicians. Surely that was the case in the Ukraine War. May the Year of the Dragon bring pearls of wisdom and elixirs for good health.

Fred wrote:

At this point, too many Cuban Americans have monetary stakes in the perpetuation of sanctions to resolve them with their political support, I fear. A meeting was arranged while I and my 3 sons went to Cuba to discuss development prospects with a Havana expert. I ended the meeting reflecting on the problems in Germany, sorting out competing claims in East Germany relating to pre-1945 Nazi and post-WW II Soviet disputes. To successfully develop, one needs “clean” title to land to allow responsible financing. The efforts to “clean” land titles in East Germany are legendary among the actual residents (we have an exchange student “daughter” from there who has helped us on that for 31 years). One needs international tribunals if parties do not agree, and it can take more than a decade because claimants have scattered and many are dead. For Cuba, there may be no credible records. The resulting problems have led to at least one apartment building in Havana collapsing each month, we were told. They cannot be rebuilt, because no lenders are available and the fair market value risk makes equity discounts unmarketable. I see no responsible solution. Cuban Americans see the ultimate as a US takeover with US guarantees for them to supercede claims – an absurd result.

**Thornton “Tip” Parker wrote:**

David, your reports from Cuba are an important contribution. Here is a minor factoid that may interest you. In 1979, while in OMB, I helped lead and wrote the report to Congress of the first, and maybe only, comprehensive study of federal assistance programs. At the time, there were 1,100 [such] programs. Most offered a narrow band of assistance and were directed to narrow groups of recipients. (Think shipbuilding subsidies and beekeeper indemnity.) I made a matrix chart with the full array of services that might be offered to those needing occupational assistance as column headings. The possible assistance categories included health and medical services, counseling, vocational training, housing and living stipends, relocation – and the list went on. On the left side of the chart were the different classes of recipients. The chart showed that the only recipients who were entitled to the full array of services were Native Americans living off reservations and Cuban refugees in Miami.

Dr. Frank wrote:

Bob and I were roommates in Foerderer when the Missile Crisis happened and the Kennedy doctrine was promulgated, and the sense of foreboding and imminent threat of danger was a hard in our face thing to forget.

We heard it on the radio. (Remember radio?) I wonder if that is the incident, buried in the backs of our American brains, that caused sanctions to be put back in place and fear of Cuba to still exist today. I wonder how the missile crisis is approached in high school history courses. It could be used, along with the number of Cubans fleeing Cuba, to whip up fear in young folks, so important apparently in the process of growing up Republican.... It is totally irrational now, I think, especially when reading what you write, but then, who and what is rational these days? (Besides us, of course).

Basil wrote:

My family moved to Miami in 1945. I was in Miami when Cubans began moving to Miami to flee the Batista regime. When Castro came to power on January 1, 1960, many returned home, but in six months they almost all came back and flocks of new refugees began flooding into Miami. My former partner Jim Holyfield (now deceased) married a Cuba-born refugee. His widow continues to be a great friend. Her baby sister came to the US after Castro but before the family was able to flee. She came under the Pedro Pan initiative. She currently is the receptionist of our firm. I agree with most of what you say, especially on working to eliminate the sanctions. However, it takes two to tango. The Castro regime has decided that because they are aligned with the communist world, we are their enemies. It is the same type of animosity that has developed between Venezuela and the US. The second problem is that the Cuban community in Miami, who could help bridge the differences, prefer, as long as the Castro regime is in control, to treat Cuba as enemies. They have significant political influence on our relations with Cuba.

Dr. Al wrote from California:

I'm delighted to hear that you were able to visit Cuba again and learn a bit about their healthcare system. I was in Cuba for a couple of weeks about 3 years ago. It has one of the largest medical schools in the world and the quality of the graduates rank high. UCSF has accepted new interns to its highly competitive internship program. The US doesn't actively promote this free program, but nevertheless word has gotten to qualified students who live mostly in the deep south and are too poor to attend an American medical program. Here is the Wikipedia link to the Cuban medical school: https://en.wikipedia.org/wiki/Latin_American_School_of_Medicine_in_Cuba (https://en.wikipedia.org/wiki/Latin_American_School_of_Medicine_in_Cuba).

Jack sent this note on a serious medical issue here in the US:

Thanks, David. Very interesting. We seem to be losing a lot of docs in the US as well. I can't believe the number of docs I know personally who are hanging it up, have done so or plan to do so soon. Paperwork for gov't and private insurance are driving them crazy. One friend-urologist, when I asked how much longer he planned to practice, replied, "I am mostly not practicing now. I am 70% clerk, 30% physician." Another friend, in internal medicine, told me that she spends about an hour or so per patient filling out the annual form Medicare requires for annual-physical reimbursement. (Number of patients seen times one hour equals a lot of weekends and nights doing "paperwork" and/or hiring more staff.) One of my wife's doc's NP told me that the amount of information that they have to input into the computer information and billing system was taking more and more

of their time. Moreover, she said, much of the information that patients have to provide on those long, multipage forms, which all of us have to complete for new visit or when we haven't seen a doc for over a year, is completely unnecessary for their practice, which is a specialty. (Has anyone ever thought of one personal medical information/background/history form that can be used and shared by all of one's physicians??) As a consequence, we are already seeing longer and longer waits for specialists, fewer and fewer specialists available and, worse, fewer medical students wanting to go into the tougher parts of the profession. Had good friend who is a general surgeon tell me that they were having a very difficult time finding a new partner for their practice due to retirement and increasing demands. As he put it, General Surgery, even with robotics, is a physically intensive area of medicine. Why go into GS when you can make more money and never be on call by being a dermatologist? We lost our neurologist/stroke specialist about a decade ago and have never been able to replace him. The course of study needed to be a neurologist vs. pay received just does not reward new physicians going into neurology, as more than one neurologist has told me. Couple all of this with lower reimbursements by both private insurance and the government (Medicare, Medicaid), coupled with a rising elderly population, and we have the recipe for a medical crisis even for those who can afford it and otherwise have had no problem getting medical care in the past. (Doesn't look like Cuba is going to be able to continue to "rent out" physicians to other parts of the world. We could use some!) How to fix? Cut down on all the unnecessary paperwork. The ACA promised to streamline medical records. Instead it has made it worse from what I hear and clearly not improved medical recordkeeping. If it had, then how does one explain a patient having to provide the same information over and over again, all of which will be manually entered into a computer recordkeeping system, either by the treating physician, a medical scribe or other staff member. We need to provide incentives for new physicians to enter the areas of medicine where we have the largest shortages. Normally a free market would take care of this problem, but medical care is definitely not a free market. Fee/procedure reimbursement is the product of what a government committee, or an individual, decides a procedure is worth and how creative a physician can be in embellishing the reporting of that procedure or adding additional procedures to the process. A third area that cries out for help is the cost of a medical education. Wealthy individuals have stepped in, like Ken Langone, contributing to the education of medical students at NYU, but that is a drop in the bucket nationally. We clearly need to make medical school more affordable so that new physicians don't start their medical practice life hundreds of thousands of dollars in debt. David, didn't mean to get on a tangent but your experience with Cuban medicine triggered me writing about a subject and concern that has been increasingly on my mind. Sorry you had such a rough bout with Covid but glad you recovered without hospitalization.



Finally, David Adler reminded me to include the following points.

I might mention that a) the guy that we met within Havana asked us to send him textbooks on business – that's how bad things are; and b) the Helms–Burton Act is tying up American business (Carnival/Royal Caribbean) and has been taken over by plaintiffs' lawyer and is having no effect on changing the government of Cuba. Also, I don't know if there is any way to make the point that Cuba has become a pawn in US politics. Finally, I might also mention that Cuba is on the list of state sponsor lists of terrorists, an honor shared with only North Korea, Iran and Syria (even Yemen doesn't share that honor).

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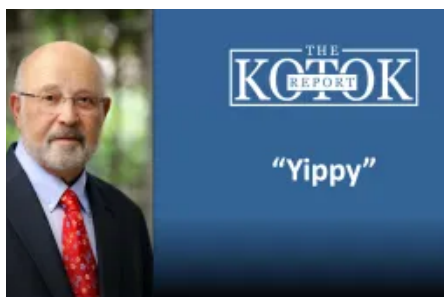
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Did Trump pause tariffs announced on April 4 because people were “getting a little bit yippy” or because miscalculations spelled disaster?



(<https://kotokreport.com/tariffs-damn-the-torpedoes/>)

Tariffs — Damn The Torpedoes! (<https://Kotokreport.Com/Tariffs-Damn-The-Torpedoes/>)

On April 4, Jack Farley and I discussed the Trump 2.0 tariffs in depth, and I held nothing back.



(<https://kotokreport.com/trump-tariff-outcome/>)

Trump Tariff Outcome? (<https://Kotokreport.Com/Trump-Tariff-Outcome/>)

Does the Trump bear market bring the S&P 500 Index down to 4000? Does it result in a drop of S&P earnings (2025–2026) down to the \$200–\$220 range?



(<https://kotokreport.com/dt-2-0-tariffs/>)

DT 2.0 Tariffs (<https://Kotokreport.Com/Dt-2-0-Tariffs/>)

I asked expert David Blond why Trump and Co. selected a bizarre and discredited approach to create its trade deficit formula.

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