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## FEATURED Q&A

# Would Trump's Cuba Reversal Spark a Legal Firestorm?



The administration of U.S. President Donald Trump may allow lawsuits to proceed against companies profiting from properties confiscated by Cuba's government. // File Photo: White House.

**Q** The administration of U.S. President Donald Trump is weighing what could become the most serious tightening of the U.S. trade embargo on Cuba in more than two decades, the Associated Press reported last month. Under the 1996 Helms-Burton Act, Americans have the right to sue companies profiting from properties confiscated by Cuba's government after its 1959 socialist revolution. While every U.S. president since the law's enactment has suspended the key clause, known as Title III, the Trump administration is getting closer to reversing that practice, according to media reports. What would be the ramifications of allowing the lawsuits to proceed? Why have previous presidents suspended the clause, and why is Trump's team now changing course? How might international businesses be affected by a change to Title III?

**A** Carlos Saladrigas, member of the Inter-American Dialogue, chairman of Regis HR Group and chairman of the Cuba Study Group: "It is no wonder that every president since Helms-Burton's enactment has consistently waived the implementation of Title III, as enforcement would lead to numerous conflicts with other nations, cripple lawful trade and business with Cuba and be strategically obtuse. Enforcing Title III would allow U.S. nationals the right to sue in U.S. courts for properties owned in Cuba, confiscated during the Cuban Revolution. This provision would extend that right to U.S. nationals who were Cuban nationals at the time of the seizures. This could increase the number of claimants from the current 5,913 certified claims to a potential flood of more than 200,000. Accordingly, all these claimants could sue

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## TODAY'S NEWS

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## Global Powers Take Sides on Venezuela

The majority of European countries, including Germany, Spain and the United Kingdom, on Sunday officially recognized opposition leader Juan Guaidó as the legitimate president of Venezuela, while Russia, China and others continue to back the regime of President Nicolás Maduro.

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## Remittances to Mexico Set Record

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## El Salvador Picks Outsider as Next President

Nayib Bukele, running on an anti-corruption platform against the two traditional parties that have dominated politics for decades, won El Salvador's presidency on Sunday in a landslide victory.

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Bukele // Photo: Via Twitter @ nayibbukele.

## POLITICAL NEWS

## Global Powers Take Sides Over Venezuela

Some of Europe's biggest countries, including Germany, Spain and the United Kingdom, on Sunday officially recognized opposition leader Juan Guaidó as the legitimate president of Venezuela, BBC News reported. The declarations rolled out quickly during the day after President Nicolás Maduro dismissed the European Union's deadline to hold new elections. German Chancellor Angela Merkel, who is on a two-day visit to Japan, said at a news conference that "we recognize Juan Guaidó as interim president of Venezuela, tasked with starting the political transition and leading the country to free, transparent and credible elections," Deutsche Welle reported. Guaidó declared himself interim president under constitutional law last month with the support of the United States and numerous countries in the Americas. Maduro, who told The Guardian in an interview that he would rather see a civil war than give in to international pressure, has retained the backing of Russia, China, Syria, Turkey, Bolivia, Uruguay and Cuba, among others. The Kremlin today described Europe's support for Guaidó as foreign "meddling" and repeated its stance that domestic issues should be solved by Venezuela and its people. "Attempts to legitimize usurped power" constituted "interference in Venezuela's internal affairs," said President Vladimir Putin's spokesman, Dmitry Peskov. Mexico and several other countries have said they will remain neutral. Italy also sounded a warning. Vice President Luigi Di Maio, of the populist 5 Star movement, said Sunday the situation reminded him of "interventions of western states in other countries." "The greatest interest we have is to avoid a war in Venezuela. We mustn't make the same mistake that was made in Libya and that everyone now recognizes. We have to avoid the same thing happening in Venezuela," Di Maio said. On Saturday, a Venezuelan air force general openly defied Maduro's rule. Gen. Francisco Yáñez is the first high-ranking officer to publicly reject Maduro's government since protests broke out last month, the Associated

Press reported. "The transition to democracy is imminent," Yáñez said. Venezuela's ambassador to Iraq also reportedly defected on Sunday. Canada's Foreign Minister, Chrystia Freeland, is scheduled to host counterparts from across the hemisphere today as the so-called Lima Group meets in Ottawa in an effort to coordinate strategies for Maduro to leave power and Venezuela to hold legitimate election, CBC reported. On Sunday, Canadian Prime Minister Justin Trudeau spoke with Guaidó by phone to offer support. Meanwhile, tens of thousands of Venezuelans took to the streets Saturday to protest Maduro's government in marches that were matched by smaller demonstrations held by Maduro supporters. Guaidó told a rally Saturday that much-needed international aid destined for Venezuela will be stockpiled at centers in Colombia, Brazil and the Caribbean until its entry can be negotiated, CNN reported. Maduro has been blocking efforts to deliver some international aid.

## El Salvador Chooses Outsider Candidate as Next President

Nayib Bukele, running as an outsider candidate against the two traditional parties that have dominated national politics for decades, won El Salvador's presidency on Sunday in a landslide victory, The New York Times reported. A media-savvy former mayor of the nation's capital city, Bukele, 37, garnered 54 percent of the vote in preliminary results, defeating Carlos Calleja, a wealthy businessman with the conservative Arena Party, and Hugo Martínez, a former foreign minister who ran for the leftist governing Farabundo Martí National Liberation Front, or FMLN. "Today we have turned the page on the postwar period," Bukele said. With 90 percent of the votes counted, Central American presidents congratulated Bukele on his victory, CNN reported. Panama's president, Juan Carlos Varela, wrote he will "work hand in hand with this sister nation" and praised Bukele's win as a "democratic and peaceful electoral feat." Bukele ran on an anti-corruption ticket. Along with the goal of modernizing

## NEWS BRIEFS

## Mexico Ratings May Not Suffer From Pemex Woes

Mexico is "not necessarily" facing a credit rating downgrade if the rating for state oil company is cut again, a senior analyst with Fitch said Friday, Reuters reported. Fitch last week downgraded Pemex's debt to BBB- from BBB+, citing insufficient investment to restore falling output. The move weakened the Mexican peso and prompted fear that further downgrades could increase Pemex's financing costs, squeezing the government's budget. Another downgrade of Pemex "doesn't spell a sovereign downgrade necessarily," said Charles Seville, co-head of sovereign ratings at Fitch.

## Remittances to Mexico Reach New Record in 2018

Remittances to Mexico set a new record last year reaching \$33.5 billion, according to data released by the central bank on Friday, Expansión reported. The figure represents a 10.53 percent increase compared to the \$30.3 billion registered in 2017. Mexicans living in the United States last year increased the amount of money they sent home to their families with average transfers of \$322, up from \$309 a year earlier. The number of transactions also grew, rising to 104 million, up from 98 million in 2017.

## Chile Moves to Lower Mobile Phone Rates

Chilean President Sebastián Piñera on Friday announced plans to reduce the tariffs that mobile phone operators charge for interconnection services by 80 percent, The Santiago Times reported. The move will eliminate competitive barriers that blocked new operators and innovative billing options from gaining ground, according to the government. Under existing rules, Chile ranks in the top ten most expensive mobile phone markets among industrialized countries, according to the report.

government, he has proposed creating an international anti-corruption commission with the support of the United Nations, CBC reported. "The corrupt can't hide where they always hide, instead they'll have to give back what they stole," Bukele said while campaigning. Though he describes himself as from the left, he was expelled from the FMLN and has formed a coalition including a right-wing party that together has just 11 seats in the legislature. Arena holds the largest bloc in the legislature, with 37 seats, followed by the FMLN, which has 23. Bukele, who takes office in June, will need to address the country's longstanding problems with crime and violence, as well as undertake difficult talks with the United States over migration and aid.

## Brazilian Senate Elects Pro-Business Newcomer as Chief

Brazilian senators on Saturday chose a pro-government lawmaker as their chief by a single vote, Bloomberg News reported. Davi Alcolumbre, 41, a little-known legislator from the pro-business DEM party, could help advance President Jair Bolsonaro's reform agenda, according to the report. After a contentious debate over whether the vote should be secret or open that lasted more than 24 hours, front-runner Renan Calheiros of the MDB party, the Senate's biggest bloc, dropped out of the vote. Bolsonaro congratulated Alcolumbre, saying his challenge is to act on Brazilian voters' desire for change. However, analysts speculated that it remains to be seen whether Alcolumbre has the experience and sway to manage passage of Bolsonaro's difficult financial reforms. With his PSL party holding four of 81 Senate seats, his immediate challenge is to forge a working majority in a Congress with some two dozen parties. Meanwhile, in the lower house, the DEM party's Rodrigo Maia of Rio de Janeiro won a third consecutive term as speaker on Friday, putting both houses of Brazil's congress under control of the same party. Maia told Folha de S.Paulo Sunday that pension reforms could be addressed by July.

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foreign companies that are doing business in Cuba, creating havoc in international trade and commerce. Many legal scholars believe that Title III is contrary to international laws. Numerous nations would fiercely oppose Title III's extraterritoriality, damaging trade and relations between these countries and the United States. Such a move would certainly result in international court fights, as well as possible retaliatory measures by affected countries, which are mostly U.S. allies. It could also have a devastating effect on U.S. companies that currently do business with Cuba, many of which—such as Airbnb and telephone and internet providers—provide enormously important services that strengthen civil society and Cuba's struggling entrepreneurial sector. Far from helping to bring democracy to Cuba, such a move would further damage international cooperation in pressuring for change in Cuba, would force the Cuban government to further tighten down and ultimately disproportionately hurt the Cuban people, rather than the government."

**A Matthew Aho, special advisor on Cuba at Akerman, LLP:** "Whereas the future of bilateral relations seemed uncertain in the aftermath of the 2016 elections, the Trump administration has clearly broken with normalization and returned to policies designed to isolate and destabilize the Cuban government. Key White House and State Department posts are occupied by longtime foes of détente, and Cuban-American lawmakers from South Florida are playing an outsized role in Latin America foreign policy formulation. Title III has been a ticking time bomb in U.S.-Cuba relations since Helms-Burton was signed in 1996. On its surface, the provision purports to create a mechanism for claimants to seek recompense for confiscated property. However, its real intent is to discourage foreign investment by creating new legal exposure for foreign companies in the United States. If the

provision takes effect, thousands of lawsuits will flood U.S. courts. Many defendants will be companies from allied countries, such as Canada, Mexico and Spain. But there is no blanket immunity for American companies. Past administrations have prudently chosen to suspend Title III to avoid needlessly provoking allies. Another concern is that Title III would be struck down by the courts on the grounds that such a broad extraterritorial application of U.S. law violates key precepts governing the application of American foreign relations laws. There is also no guarantee that Title III would even discourage investment, as many companies would simply limit their legal exposure in the United States through the use of creative corporate structures and subsidiaries. In short, past administrations have understood that the ends simply don't justify the means. Hopefully, this one too will see the light."

**A Jordi Cabarrocas, general director of 1898, Compañía de Recuperaciones Patrimoniales en Cuba:** "The weak economic and geopolitical situation right now favors this move by the Trump administration, which sees this action as an efficient tool to abate the operatives of numerous foreign companies in Cuba amid fear that things will get worse. Cuba's tourism sector has been slowly deteriorating since the Obama era, as has its economy. For this reason, debt payments tend to lengthen. In short, it seems like the perfect storm to efficiently press for a change in Cuba."

**A Emily Mendrala, executive director of the Center for Democracy in the Americas:** "Since the enactment of Helms-Burton, each U.S. administration has elected to waive implementation of Title III because entry into force would be detrimental to U.S. national interests and fail to achieve the intent of the provision: to resolve property claims in Cuba. Implementation of Title

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III would harm U.S. businesses, alienate U.S. allies, reignite old trade disputes with some of our top trading partners and create obstacles to the final resolution of property claims via diplomatic channels. Those proposing Title III's enactment seek to sew discord in U.S.-Cuba bilateral relations, scare off foreign investment in Cuba, and, as stated in a Department of State media note, 'expedite a transition to democracy in Cuba.' However, the most likely impact of Title III enactment is to clog U.S. courts and pad lawyers' pockets. Unfortunately, enactment would severely complicate future diplomatic negotiations on the resolution of property claims. Such bilateral talks, such as those successfully concluded with Iran and Nicaragua, though they proceed slowly, have the greatest likelihood of success. Canada, Mexico and several European countries are home to companies with significant investments in Cuba. Some have enacted laws prohibiting companies from complying with Title III suits, and, upon implementation, the European Union would likely revive a WTO dispute that has been on hold since 1996. At a time when the United States deeply values multilateralism in Venezuela, it's hard to understand why it would choose to alienate those same foreign partners with its Cuba policy, especially with such slim prospects of achieving the stated goals."

**A Robert Muse, Washington-based attorney involved in U.S. laws relating to Cuba:**

"The Trump administration is seriously considering activating Title III of the Helms-Burton Act, which has been suspended every six months for more than 20 years by four presidents. Title III would permit lawsuits against 'traffickers' (commercial users, developers, etc.) of 'confiscated' (nationalized) properties in Cuba to which a litigant 'owns the claim.' Among such traffickers is the Cuban government, which took into state ownership every commercial property of consequence on the

island in the early years of the revolution. Nationalized properties were taken in the agricultural, manufacturing, mining, retail and services industries, among many others. The nationalizations were so comprehensive that I once estimated in congressional testimony that 400,000 properties could be subject to Title III actions filed against the Cuban government. Such a tidal wave of litigation would swamp the U.S. federal court system. Therefore, it seems the Trump administration is considering a partial activation of Title III, limited to suits against non-governmental traffickers. Only foreign corporations active in Cuba would be subject to suits in U.S. courts. Because such corporations are heavily clustered in the only significant hard-currency component of Cuba's economy—international tourism—we may expect to see Spanish hotel developers and operators become first-tier targets of Title III lawsuits for their involvements in properties to which Cuban-Americans 'own the claims.' Such suits will serve the Trump administration's goal of kicking the prop out from under a vital segment of the Cuban economy and perhaps mortally destabilizing the generational power transfer underway in Cuba today. How will holders of claims against Cuba for properties not subject to foreign corporate involvement react to their relegation to a second-class status by the Trump administration? Predictably, not well. It appears the State Department—anticipating a claim of unequal treatment—is attempting to create a national interest argument for a partial activation of Title III. Secretary Pompeo recently linked the move to Cuba's 'indefensible support for increasingly authoritarian and corrupt regimes in Venezuela and Nicaragua.' In making such a claim, he is building an argument for judicial deference to a favored group of plaintiffs under the Helms-Burton Act."

*The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at [gene.kuleta@thedialogue.org](mailto:gene.kuleta@thedialogue.org).*

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