

September 17, 2019

## Cuba Sanctions Update

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### **United States Refreshes and Enhances Cuba Sanctions – Developments Include Allowing Suits for Trafficking in Confiscated Cuban Property and Reimposing Previously Lifted Restrictions**

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#### **SUMMARY**

Over the last six months, the Trump administration has demonstrated a renewed focus on efforts to pressure the Cuban government to change its domestic and foreign policies, in particular its support for the Maduro regime in Venezuela. Then-national security adviser John Bolton laid out the administration's approach, including a number of concrete policy changes, in an April 17, 2019 speech to veterans of the Bay of Pigs invasion. These changes will be fully effective by October 9, 2019. Potentially the most significant of these changes is the Trump administration's decision to cease issuing waivers under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (often referred to as the "Helms-Burton Act"), thereby allowing suits by U.S. nationals against persons who "traffic" in property confiscated by the Cuban government following the 1959 Cuban Revolution to proceed, effective May 2, 2019. In addition, in a series of actions, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") have amended their regulations to re-impose restrictions on certain non-family travel to Cuba, impose new requirements and limitations on remittances to Cuba, and eliminate the authorization for banking institutions subject to U.S. jurisdiction to process certain kinds of financial transactions involving or related to Cuba. Separately, in June, OFAC announced three enforcement actions in one day against travel services providers for violations of its Cuba regulations. In light of the recent regulatory changes and the administration's renewed focus on pressuring the Cuban government, both U.S. and non-U.S. firms should consider existing and future business involving or related to Cuba with the understanding that recent changes in U.S. policy likely have increased the sanctions risk associated with such relationships.

## BACKGROUND

On June 16, 2017, President Trump issued National Security Presidential Memorandum-5 (“NSPM-5”), which outlined the policy of the Trump administration toward Cuba.<sup>1</sup> Among other things, NSPM-5 directed the executive branch to “support the economic embargo of Cuba” and “ensure adherence to the statutory ban on tourism.” Since the release of NSPM-5, OFAC and BIS have taken a number of actions to restrict the ability of U.S. persons to transact with or in Cuba. These actions included a November 9, 2017 OFAC final rule (1) prohibiting direct financial transactions with any person identified on the State Department’s List of Restricted Entities and Subentities Associated with Cuba (the “Cuba Restricted List”) and (2) requiring that people-to-people educational travel be conducted entirely through organizations subject to U.S. jurisdiction.<sup>2</sup> The Cuba Restricted List, which identifies entities and subentities under the control of, or acting for or on behalf of, Cuban military, intelligence, or security services or personnel, includes more than 200 entities, including dozens of hotels, stores, and other businesses in the travel and hospitality sector.<sup>3</sup>

In an April 17, 2019 address to the Bay of Pigs Veterans Association, Ambassador Bolton announced that the administration planned to take additional steps aimed at strengthening U.S. sanctions vis-à-vis Cuba.<sup>4</sup> The measures outlined by Ambassador Bolton included:

- (i) declining to provide further waivers under Title III of the Helms-Burton Act;
- (ii) actions to implement Title IV of the Helms-Burton Act;
- (iii) the addition of five entities to the Cuba Restricted List, including the Cuban military-owned airline Aerogaviota;<sup>5</sup>
- (iv) regulatory changes that would restrict “non-family travel to Cuba,” which Ambassador Bolton described as “veiled tourism” to Cuba by persons subject to U.S. jurisdiction;
- (v) the removal of the “U-turn” general license, which authorizes U.S. financial institutions to process Cuba- or Cuban national-related financial transactions originating and terminating outside the United States, provided neither the originator nor the beneficiary is a person subject to U.S. jurisdiction;<sup>6</sup> and
- (vi) lowering the level of authorized personal remittances to family members in Cuba to \$1,000 per person, per quarter.<sup>7</sup>

Over the past several months, the Trump administration has taken a number of steps to implement these measures, the most significant of which are discussed below.

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## ACTIVATION OF TITLES III AND IV OF THE HELMS-BURTON ACT

### A. TITLE III SUITS

On the same day as Ambassador Bolton’s speech, Secretary of State Mike Pompeo announced that he would no longer issue waivers under Title III of the Helms-Burton Act and that lawsuits could proceed effective May 2, 2019.<sup>8</sup>

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Under Title III of the Helms-Burton Act, U.S. nationals whose property was “confiscated by the Cuban government on or after January 1, 1959” may bring suits for money damages in U.S. federal courts against anyone who “traffics” in such property.<sup>9</sup> “Trafficking” is defined broadly by the statute and encompasses most commercial transactions involving the subject property.<sup>10</sup> The statute authorizes recovery of damages totaling the greater of (i) an amount certified by the Department of Justice’s Foreign Claims Settlement Commission (“FCSC”), (ii) an amount determined by a court-appointed special master, or (iii) the fair market value of the property, in each case plus interest accrued from the date of expropriation. The statute also authorizes recovery of court costs and attorneys’ fees. Damages computed under clause (i) are trebled in cases where the liability for trafficking is incurred with respect to property that is already the subject of an FCSC-certified claim by a U.S. national, as well as for non-certified claims if the alleged trafficker continues to traffic in the confiscated property more than 30 days after receiving a written notice of the claimant’s intent to file an action under this statute.<sup>11</sup> While Title III does not require that claims be certified by the FCSC, FCSC-certified claims are accorded preferential treatment under the statute, including a requirement that courts treat the FCSC’s certification of a claim to ownership as conclusive proof of such claim, and a rebuttable presumption that the amount certified by the FCSC is the amount for which a trafficker is liable.<sup>12</sup> Should claims be pooled by judicial order, for instance in the event of a broader Cuba-U.S. settlement, FCSC-certified claims will be satisfied before any non-certified claims.<sup>13</sup>

The president may suspend the right to bring any actions under Title III of the Helms-Burton Act for six-month periods.<sup>14</sup> Since the act’s passage in 1996, Presidents Clinton, Bush, Obama and—until May 2, 2019—Trump exercised this authority to suspend the ability to bring such suits. In light of 22 consecutive years of waivers by successive administrations, courts have not yet had the opportunity to interpret the substantive provisions of Title III, and assessing the viability of claims is therefore a difficult endeavor.

A number of Title III suits have been filed against entities accused of trafficking in expropriated property since the right to bring suit was activated on May 2, 2019, primarily entities in the travel and hospitality sector. Immediately upon expiration of the last Title III waiver, two suits were filed in the U.S. District Court for the Southern District of Florida against Carnival Corporation, the parent of Carnival Cruise Line, by plaintiffs claiming that the company trafficked in confiscated property by embarking and disembarking passengers at port terminals in Havana and Santiago de Cuba that were confiscated by the Cuban government after the 1959 revolution.<sup>15</sup> In August, federal judges denied Carnival Corporation’s motions to dismiss, and the plaintiffs have filed additional suits against Norwegian Cruise Line Holdings Ltd., Royal Caribbean International, and MSC Cruises relating to their use of the same Cuban port facilities.<sup>16</sup> Since May, suits have also been filed against a number of hospitality companies and hotel operators, including the large Spanish hotel chain Meliá Hotels International SA, as well as travel arranging and booking companies such as Expedia, Inc. and its subsidiaries Trivago, Hotels.com, Orbitz, and Travelocity.com, and Booking Holdings, Inc., and its subsidiary Booking.com.<sup>17</sup> Title III actions filed thus far outside of the travel and hospitality sector include a suit by Exxon Mobil Corp. against state-owned Cuba-Petroleo and

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CIMEX Corp. regarding expropriated oil refineries and service stations, and a suit by the heirs of the owner of an expropriated Cuban bank against Société Générale alleging \$792 million in damages.<sup>18</sup> The number of Title III suits filed could continue to grow; a senior State Department official noted on April 17, 2019 that the FCSC has certified over 6,000 claims, and further estimated that there could be as many as 200,000 outstanding unverified claims valued in the tens of billions of dollars.<sup>19</sup>

### **B. TITLE IV DENIALS OF ENTRY INTO THE UNITED STATES**

Title IV of the Helms-Burton Act authorizes the State Department to prohibit entry into the United States of non-U.S. persons who traffic in confiscated property, as well as their agents, spouses, and minor children.<sup>20</sup> Where the “trafficker” is a corporation, this prohibition extends to the corporate officers, principals, and controlling shareholders of the company, and their agents, spouses, and minor children (but not to other employees). The State Department has used this authority sparingly, but it has denied visas to non-executive directors of a corporation that it claims is trafficking in confiscated property. The definition of “trafficking” for purposes of Title IV, while still broad, is narrower than the definition in Title III. For example, to ensure that Title IV does not deter disinvestment with respect to Cuba, the sale or abandonment of confiscated property is excluded from the definition of trafficking under Title IV.<sup>21</sup>

While Title IV of Helms-Burton has been in effect since its enactment in 1996, the Congressional Research Service reports that the State Department has taken action under Title IV against the executives of only three corporations and their family members, and that the action against at least one of these companies was reversed after it divested from U.S.-claimed property in Cuba.<sup>22</sup> However, Ambassador Bolton announced in his April 17 remarks that, “for the first time in many years, [the U.S. government] will be taking action to implement Title IV of Helms-Burton.” He further stated that “[a]nyone who traffics in property stolen from Americans will not be issued a visa to the United States,” and that such persons “are not welcome here.”

Unlike Title III suits, Title IV actions are within the control of the executive branch. It nevertheless remains to be seen how aggressively the Trump administration will use the Title IV authority. In the years following the enactment of Helms-Burton, the State Department reportedly investigated a number of companies for potential Title IV action, which led some of the targets of those investigations to divest from Cuba.<sup>23</sup> Given the Trump administration’s broader efforts to tighten the Cuba sanctions regime, as well recent statements by senior officials, it is possible that the administration will take a more aggressive Title IV enforcement posture going forward.

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### **RESTRICTIONS ON NON-FAMILY TRAVEL TO CUBA**

On June 4, 2019, OFAC announced that, effective June 5, 2019, it would be curtailing the ability of U.S. persons to travel to Cuba under the auspices of group people-to-people educational exchanges (the “June Amendments”). Prior to June 5, 2019, the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (“CACR”)

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authorized U.S. persons to engage in travel-related transactions directly incident to educational exchanges with the Cuban people, provided that such exchanges were conducted through an organization subject to U.S. jurisdiction, among other conditions. This general license, issued in 2015, represented one of the most significant elements of the Obama administration's relaxation of the Cuban embargo, and had allowed tour operators to greatly expand their Cuba offerings. A number of cruise lines began sailing regularly between the United States and Cuba.<sup>24</sup>

The June Amendments eliminated this general license and put in its place a "grandfathering" provision allowing for the completion of previously authorized group people-to-people educational exchanges where the traveler had completed at least one associated travel-related transaction (such as purchasing a flight or reserving accommodation) prior to June 5, 2019. As a result of the June Amendments, travelers who booked group people-to-people educational travel to Cuba prior to June 5, 2019 may proceed with their travel and related transactions, while new group people-to-people educational travel is prohibited. Other general licenses authorizing persons subject to U.S. jurisdiction to travel to Cuba, including for, among other purposes, family visits and journalistic activities, remain in effect.<sup>25</sup>

Concurrently with the June Amendments, BIS imposed new restrictions on the temporary export or reexport to Cuba of non-commercial aircraft, as well as passenger and recreational vessels, which had previously been authorized pursuant to License Exception Aircraft, Vessels, and Spacecraft ("AVS").<sup>26</sup> Specifically, BIS amended the Export Administration Regulations, 15 C.F.R. parts 730-774 ("EAR"), to render private and corporate aircraft and passenger and recreational vessels traveling to Cuba ineligible for License Exception AVS.<sup>27</sup> In addition, BIS established a new general policy of denial for license applications requesting authorization for the temporary exportation or reexportation of most aircraft or vessels to Cuba, including corporate aircraft, cruise ships, sailboats, fishing vessels, and other similar aircraft and vessels.<sup>28</sup> As a result of these amendments, OFAC-authorized travelers will generally only be able to reach Cuba via commercial airline flights.

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### **ELIMINATION OF U-TURN GENERAL LICENSE AND IMPOSITION OF RESTRICTIONS ON REMITTANCES**

On September 6, 2019, OFAC announced amendments to the CACR (the "September Amendments") that complete the last of the actions previewed by Ambassador Bolton in his April 17 remarks: the elimination of the "U-turn" general license and the imposition of certain requirements and limitations on remittances to Cuba.<sup>29</sup> In a departure from its normal practice of making its regulations effective upon publication, OFAC provided a 30-day period to allow for technical implementation of the new restrictions. As a result, the September Amendments do not take effect until October 9, 2019.

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### A. ELIMINATION OF THE U-TURN GENERAL LICENSE

As a general matter, the CACR prohibit persons (including banking institutions) subject to U.S. jurisdiction from participating in transfers of credit or payments by, on behalf of, or at the direction of, the Cuban government or a Cuban national.<sup>30</sup> Until the September Amendments take effect, the so-called “U-turn” general license authorizes banking institutions that are subject to U.S. jurisdiction to process funds transfers otherwise prohibited by the CACR that originate and terminate outside the United States, provided that neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.<sup>31</sup> The September Amendments eliminate this authorization and replace it with an authorization for banking institutions that are subject to U.S. jurisdiction to reject (rather than block) such transactions.<sup>32</sup>

### B. RESTRICTIONS AND LIMITATIONS ON REMITTANCES

Prior to the September Amendments taking effect, the CACR authorize certain types of remittances to Cuban nationals, including, among others, family and donative remittances, provided that the recipient is not a prohibited official of the government of Cuba or a prohibited member of the Cuban Communist Party.<sup>33</sup> After the September Amendments take effect, the CACR will cap at \$1,000 the amount one remitter can send to one Cuban national as a family remittance in any consecutive three-month period, and add a proviso that such remittances may not be made to any close relative of a prohibited official of the government of Cuba or a prohibited member of the Cuban Communist Party.<sup>34</sup> In furtherance of the new U.S. policy to limit remittances, the September Amendments also eliminate the authorization for donative remittances to Cuban nationals by persons subject to U.S. jurisdiction. At the same time, in light of NSPM-5’s policy of encouraging the growth of the Cuban private sector, the September Amendments add a new authorization for unlimited remittances to support the development of private businesses and operation of economic activity in the non-state sector by self-employed individuals, along with a corresponding definition of the term “self-employed individual.”<sup>35</sup>

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## RECENT OFAC ENFORCEMENT ACTIONS

On June 13, 2019, OFAC published a trio of settlements that may signal a renewed focus on enforcement of travel-related Cuba sanctions.<sup>36</sup>

First, Expedia Group (“Expedia”) agreed to a \$325,406 settlement arising from the provision of travel-related services by Expedia’s foreign subsidiaries to non-U.S. persons traveling within Cuba or between Cuba and non-U.S. locations.<sup>37</sup> OFAC found that Expedia failed to adequately train its foreign subsidiaries in the requirements of U.S. sanctions laws, which resulted in the booking of Cuba-related travel using the company’s platforms.<sup>38</sup> In at least one case, for 15 months after the acquisition, Expedia failed to inform one of its foreign subsidiaries that the subsidiary was subject to U.S. jurisdiction for the purposes of Cuba sanctions compliance. OFAC determined that Expedia voluntarily self-disclosed the apparent violations to OFAC. OFAC’s release cautioned that the Expedia case illustrates the importance of implementing

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corporate-wide compliance measures commensurate with its sanctions risks for persons subject to U.S. jurisdiction—including entities owned or controlled by U.S. persons—and reinforced that foreign acquisitions can pose unique sanctions risks to which a U.S. person parent company should be alert at all stages of its relationship with the target/subsidiary.

Second, Hotelbeds USA, a Florida-based subsidiary of a Spanish company, settled with OFAC for \$222,705 for violations arising out of its sale of hotel accommodations to non-U.S. persons.<sup>39</sup> Hotelbeds USA was apparently operating under a misunderstanding of the CACR, believing that the company was allowed to facilitate Cuba-related travel as long as the customer was not a U.S. person and related payments were made only to non-U.S. bank accounts. Hotelbeds USA employees were involved in issuing invoices for Cuba-related travel that explicitly directed payments to Hotelbeds USA's Spanish parent company, which would subsequently credit Hotelbeds USA's account. OFAC determined that Hotelbeds USA's violations were not voluntarily self-disclosed, but that the apparent violations occurred prior to agency notice. According to OFAC's statement, the Hotelbeds USA enforcement action highlights the importance for both U.S. companies and foreign parents of U.S. subsidiaries to evaluate, verify, and audit existing compliance measures and for U.S. companies and foreign parents of U.S. subsidiaries engaging in Cuba travel-related transactions to take note of and respond appropriately to sanctions-related warning signs, such as payments that are blocked or rejected by financial institutions for compliance or economic and trade sanctions purposes.

Finally, OFAC settled violations of the CACR with U.S.-based travel service provider Cubasphere and its president for \$40,320.<sup>40</sup> Cubasphere functioned as a full-service tour operator for religious groups traveling to Cuba in reliance on a general license authorizing travel to Cuba for the purpose of engaging "in a full-time schedule of religious activities."<sup>41</sup> According to OFAC, Cubasphere's tours did not conform with the general license, as the company's Cuba trips involved primarily sightseeing and tourism activities. Cubasphere and its president also took steps to urge clients to conceal their unauthorized activities in Cuba. Furthermore, even after OFAC warned Cubasphere that its actions likely constituted violations of the CACR, the company continued its activities for more than a year. OFAC determined that the apparent violations by Cubasphere and its president were not voluntarily self-disclosed to OFAC, and that the apparent violations occurred subsequent to agency notice. OFAC stated that the Cubasphere enforcement action highlights the importance of compliance with the CACR for all travelers and travel service providers subject to the jurisdiction of the United States and emphasized that travel-related transactions to, from, or involving Cuba, that do not meet the full criteria and conditions of an OFAC specific or general license, are prohibited.

While the violative conduct at issue in all three of these cases occurred prior to the Obama administration's expansion of the scope of authorized travel to Cuba, their simultaneous publication and the lessons that OFAC chose to highlight in each case suggest that the Trump administration is seeking to send a signal to firms continuing to provide travel-related services under the remaining general licenses that OFAC intends

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to closely monitor these programs for potential violations. Additionally, the Cubasphere settlement demonstrates that, consistent with statements in the May 2, 2019 [Framework for OFAC Compliance Commitments](#), Treasury will not shy away from holding individual employees (in that case, the company president) responsible for violations.<sup>42</sup>

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### IMPLICATIONS

The actions taken by the Trump administration since mid-April represent a significant tightening of U.S. sanctions with respect to Cuba. The recent Cuba-related OFAC enforcement actions suggest the administration is focused on ensuring that transactions nominally covered by various general licenses fully comport with the terms of those authorizations. While the June 13 settlements all dealt with travel services, it is likely that OFAC and other U.S. authorities will be closely scrutinizing authorized transactions (including payment processing by financial institutions) across an array of sectors. Relatedly, the relatively restrained pace of Title III claim filings so far, which contrasts with early predictions of a run on the courts following the expiration of the final Title III waiver, may prompt the Trump administration to accelerate its efforts to increase pressure on third-country firms doing business in or with Cuba, perhaps through investigations and actions under Title IV of the Helms-Burton Act. Finally, OFAC and BIS regulatory actions suggest a desire to more tightly restrict interactions between U.S. persons and Cuban nationals, as well as Cuba's and Cuban nationals' access to the U.S. financial system.

When viewed collectively, these actions indicate a renewed focus on Cuba sanctions enforcement and an increased risk profile for both U.S. persons and foreign entities doing business in Cuba. Firms that maintain business relationships with Cuba are encouraged to review their operations in order to assess potential risks under Titles III and IV of the Helms-Burton Act, as well as to confirm that any activities undertaken pursuant to OFAC or BIS authorizations fully comport with all relevant terms and conditions. In particular, with the elimination of the U-turn general license, banking institutions that are subject to U.S. jurisdiction should ensure that their sanctions screening filters and processes are updated accordingly, and that sanctions compliance and other relevant personnel are informed of the change and its practical impact prior to October 9, 2019. Any changes to relevant processes should take account of the May 2, 2019 [Framework for OFAC Compliance Commitments](#) and the [June 21, 2019 amendments](#) to OFAC's Reporting, Procedures and Penalties Regulations, 31 C.F.R. Part 501, which—among other things—expanded reporting obligations for transactions rejected by persons subject to U.S. jurisdiction.

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## ENDNOTES

- <sup>1</sup> Strengthening the Policy of the United States Toward Cuba, 82 Fed. Reg. 48875 (October 20, 2017), available at <https://www.federalregister.gov/documents/2017/10/20/2017-22928/strengthening-the-policy-of-the-united-states-toward-cuba>.
- <sup>2</sup> See 82 Fed. Reg. 51998 (November 9, 2017), available at <https://www.federalregister.gov/documents/2017/11/09/2017-24447/cuban-assets-control-regulations>.
- <sup>3</sup> See United States Dep't of State, Cuba Restricted List, available at <https://www.state.gov/cuba-sanctions/cuba-restricted-list>.
- <sup>4</sup> See John R. Bolton, Nat'l Security Adviser, Remarks to the Bay of Pigs Veterans Association (April 17, 2019) available at <https://cu.usembassy.gov/ambassador-bolton-bay-of-pigs-veterans-association-brigade-2506/>.
- <sup>5</sup> On April 24, 2019, the U.S. Department of State ("State Department") added the five entities Ambassador Bolton mentioned in his April 17 remarks to the Cuba Restricted List. See Updating the State Department's List of Entities and Subentities Associated with Cuba (Cuba Restricted List), 84 Fed. Reg. 17228 (April 24, 2019) available at <https://www.federalregister.gov/documents/2019/04/24/2019-08256/updating-the-state-departments-list-of-entities-and-subentities-associated-with-cuba-cuba-restricted>.
- <sup>6</sup> 31 C.F.R. § 515.584(d).
- <sup>7</sup> See 31 C.F.R. § 515.570(a).
- <sup>8</sup> See Michael R. Pompeo, Sec'y of State, United States Dep't of State, Remarks to the Press (April 17, 2019), available at <https://www.state.gov/remarks-to-the-press-11/>.
- <sup>9</sup> 22 U.S.C. § 6082(a)(1)(A).
- <sup>10</sup> 22 U.S.C. § 6023(13) states that, with certain exceptions, a person "traffics" in confiscated property if that person knowingly and intentionally "sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property," "engages in a commercial activity using or otherwise benefiting from confiscated property," or "causes, directs, participates in, or profits from" trafficking by another person.
- <sup>11</sup> See 22 U.S.C. § 6082(a)(3).
- <sup>12</sup> 22 U.S.C. §§ 6082(a)(2), 6083(a)(1).
- <sup>13</sup> See 22 U.S.C. § 6082(f)(2).
- <sup>14</sup> See 22 U.S.C. § 6085(b).
- <sup>15</sup> See *Havana Docks Corp. v. Carnival Corp.*, No. 1:19-CV-21724 (S.D. Fla., filed May 2, 2019) (hereinafter, *Havana Docks*); *Garcia-Bengochea v. Carnival Corp.*, No. 1:19-CV-21725 (S.D. Fla., filed May 2, 2019) (hereinafter, *Garcia-Bengochea*).
- <sup>16</sup> See Taylor Dolven, "Federal judge's ruling against Carnival on Cuba cruises leads to rash of similar lawsuits," *Miami Herald* (August 27, 2019), available at <https://www.miamiherald.com/news/business/tourism-cruises/article234431917.html>. Carnival Corporation had argued, among other things, that the activities plaintiffs alleged as improper trafficking were conducted under an OFAC general license for the provision of travel services in connection with authorized Cuba travel, and therefore fell within the "lawful travel" exception under the Helms-Burton Act. The judges did not address the scope of the lawful travel exception, but held that the lawful travel exception is an affirmative defense to trafficking that must be established by the defendant, rather than negated by the plaintiff in the initial complaint. See Order Denying

## ENDNOTES (CONTINUED)

- Carnival Corporation's Motion to Dismiss, *Garcia-Bengochea* (Aug. 26, 2019); Order, *Havana Docks* (Aug. 28, 2019).
- 17 See, e.g. *Mata et al. v. Grupo Hotelero Gran Caribe et al.*, No. 1:19-CV-22025 (S.D. Fla., filed May 20, 2019); *Mata v. Trivago GmbH*, No. 1:19-CV-22529 (S.D. Fla., filed June 18, 2019); *Echevarria v. Trivago GmbH*, No. 1:19-CV-22620 (S.D. Fla., filed June 24, 2019); see also Dylan Jackson, "Meliá's Cuban Hotels Hit With Helms-Burton Class Action," *Law.com* (September 11, 2019), available at <https://www.law.com/dailybusinessreview/2019/09/11/melias-cuban-hotels-hit-with-helms-burton-class-action/?slreturn=20190813144832>.
- 18 See *Exxon Mobil Corp. v. Corporacion CIMEX*, No. 19-CV-1277 (D.D.C., filed May 2, 2019); *Nuñez v. Société Générale, S.A.*, No. 1:19-cv-22842 (S.D. Fla., filed July 10, 2019).
- 19 Press Briefing with Senior State Department Official on the U.S. Policy Toward Cuba (April 17, 2019), available at <https://www.state.gov/press-briefing-with-senior-state-department-official-on-the-u-s-policy-towards-cuba/>.
- 20 See 22 U.S.C. 6091(a).
- 21 Published State Department guidelines on the implementation of Title IV require notice prior to exclusion, and indicate that divestment from the trafficking arrangement within a limited period of time following the date of the notice will prevent the exclusion. See Guidelines Implementing Title IV of the Cuban Liberty and Democratic Solidarity Act, 61 Fed. Reg. 30655 (June 17, 1996), available at <https://www.federalregister.gov/documents/1996/06/17/96-15406/guidelines-implementing-title-iv-of-the-cuban-liberty-and-democratic-solidarity-act>.
- 22 Cong. Research Serv., RL32730, Cuba: Issues for the 109th Congress 17 (2006).
- 23 *Id.*
- 24 Hannah Sampson, "With U.S. approval, Carnival Corp. is bound for Cuba," *Miami Herald* (July 7, 2015), available at <https://www.miamiherald.com/news/business/tourism-cruises/article26631376.html>.
- 25 See 31 C.F.R. §§ 515.561–63.
- 26 See Restricting the Temporary Sojourn of Aircraft and Vessels to Cuba, 84 Fed. Reg. 25986 (June 5, 2019), available at <https://www.federalregister.gov/documents/2019/06/05/2019-11777/restricting-the-temporary-sojourn-of-aircraft-and-vessels-to-cuba>.
- 27 15 C.F.R. § 740.15(a)(2)(ii); 15 C.F.R. § 740.15(d)(6). BIS also amended 15 C.F.R. § 740.15(a)(2)(i) to ensure that air ambulances flying on temporary sojourn to Cuba were eligible for License Exception AVS.
- 28 See 15 C.F.R. § 746.2(b).
- 29 See United States Dep't of Treasury, Office of Foreign Assets Control, Publication of Updated Cuban Assets Control Regulations (CACR) and Frequently Asked Questions, available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190906.aspx>; see also 84 Fed. Reg. 47121 (Sept. 9, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-09-09/pdf/2019-19411.pdf>.
- 30 31 C.F.R. § 515.201(a)(1).
- 31 31 C.F.R. § 515.584(d).
- 32 See 84 Fed. Reg. 47123.
- 33 31 C.F.R. § 515.570.
- 34 See 84 Fed. Reg. 47123. The term "close relative" with respect to any person is defined to include any individual related to that person by blood, marriage, or adoption who is no more than three generations removed from that person or from a common ancestor with that person. 31 C.F.R. § 515.339.

ENDNOTES (CONTINUED)

- 35 See 84 Fed. Reg. 47122-3. A “self-employed” individual is defined as a Cuban national who is: (a) an owner or employee of a small private business or a sole proprietorship; (b) an independent contractor or consultant; (c) a small farmer who owns his or her own land; or (d) a small usufruct farmer who cultivates state-owned land to sell products on the open market. 31 C.F.R. § 515.340 (effective October 9, 2019).
- 36 See United States Dep’t of Treasury, Office of Foreign Assets Control, Settlement Agreements between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Expedia Group, Inc.; Hotelbeds USA, Inc.; and Cubasphere, Inc. and an Individual (June 13, 2019), available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190613.aspx>.
- 37 United States Dep’t of Treasury, Office of Foreign Assets Control, Expedia Group, Inc. (“Expedia”) Settles Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations (June 13, 2019), available at [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612\\_expedia.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612_expedia.pdf).
- 38 Under 31 C.F.R. § 515.329(d), any entity, wherever organized or doing business, which is owned or controlled by a U.S. individual or entity is subject to the jurisdiction of the United States for the purposes of the CACR.
- 39 United States Dep’t of Treasury, Office of Foreign Assets Control, Hotelbeds USA, Inc. Settles Potential Civil Liability for Apparent Violations of the Cuba Assets Control Regulations, 31 C.F.R. part 515 (June 13, 2019), available at [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612\\_hotelbeds.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612_hotelbeds.pdf).
- 40 United States Dep’t of Treasury, Office of Foreign Assets Control, An Individual and Cubasphere Inc. Settle Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations (June 13, 2019), available at [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612\\_cubasphere.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612_cubasphere.pdf).
- 41 See 31 C.F.R. § 515.566.
- 42 U.S. Dep’t of Treasury, Office of Foreign Assets Control, “A Framework for OFAC Compliance Commitments” 12 (May 2, 2019), [https://www.treasury.gov/resourcecenter/sanctions/Documents/framework\\_ofac\\_cc.pdf](https://www.treasury.gov/resourcecenter/sanctions/Documents/framework_ofac_cc.pdf).

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