
NLG IC Condemns Trump Administration Threat to Unleash Unprecedented Lawsuits against Companies Doing Business with Cuba

08/02/2019



The National Lawyers Guild (NLG) [International Committee](#) (IC) condemns the Trump administration's [threat](#) on January 16, 2019 to consider breaking with decades of precedent by activating Title III of the 1996 Helms-Burton Act. This provision is so extreme and problematic that no US president has so far authorized thousands of private suits to be brought against US and foreign entities for allegedly "trafficking" in property confiscated in Cuba since 1959. "The practical effect of activating Title III is that it in essence creates a second embargo, and one that would be very difficult to dismantle in the future," stated Natasha Lycia Ora Bannan, NLG immediate past President.

The announcement that this is being considered, during a 45-day review period ending March 17, 2019, threatens to tie up US and foreign firms in litigation which do business with Cuba, including in the fields of agriculture and medicine, if the entity allegedly has benefited from confiscated properties. The consequences of such ill-informed legal action are expansive, possibly affecting anything from a warehouse used to store US food legally sold to Cuba, to legally supplied internet applications using nationalized telephone lines in Cuba.

Breaking with US precedent, which holds that a sovereign's nationalizing the property of its own nationals does not violate international law, Title III could authorize over 75,000 persons – who were not U.S. citizens at the time – to soon file such claims based on alleged "trafficking" in the property they once held in Cuba when they were citizens of Cuba, not the U.S. This vastly outnumbers the less than 6,000 claims by U.S. parties at the time their property was

nationalized. Cuba has offered repeatedly to negotiate compensation of those claims, as it has done successfully with confiscation claims from all other nations. This action threatens to intensify even further the continuing US policy towards Cuba “to bring about hunger, desperation and overthrow of government,” as stated by Lester D. Mallory, Deputy Assistant Secretary of State for Inter-American Affairs, in a 1960 State Department [memo](#). The use of such extraterritorial action to seek a change in government in a sovereign state is in violation of all norms of international law, and coincides with threatened US military [intervention in Venezuela](#).

The [US Supreme Court held](#) an 8-1 decision in 1964 that US courts should not determine the legality of taking property within Cuba’s jurisdiction, and that state-to-state negotiations is the best way resolve such issues. Title III attempts to reverse that precedent, placing the long-term future of US-Cuban relations into innumerable private hands and holding hostage the ability to normalize relations for decades.

While the prospects of such unwieldy litigation may well deter foreign businesses from either trading with or operating in Cuba, the reality is that US-based entities would be the most vulnerable to such suits, and this threatened action would put them at a great disadvantage internationally. The ultimate victims of such unpredictable legal entanglements will be the Cuban people, putting at risk their supply of food and other essentials for living, for many years to come.

The NLG and the IC’s [Cuba Subcommittee](#) have supported the right of the Cuban people to self-determination, and to determine their own social and economic systems without foreign interference since 1959. From counselling individuals rights to litigation at the Supreme Court, our members have defended the right to travel, both for Cubans to come and speak in the U.S. and for U.S. citizens to see Cuba firsthand.

The [National Lawyers Guild \(NLG\)](#), whose membership includes lawyers, legal workers, jailhouse lawyers, and law students, was formed in 1937 as the United States’ first racially-integrated bar association to advocate for the protection of constitutional, human and civil rights.

The [NLG International Committee](#) seeks to change U.S. foreign policy that threatens, rather than engages, or is based on a model of domination rather than respect. The Guild provides assistance and solidarity to movements in the United States and abroad that work for social justice in this increasingly interconnected world.
