

# Client Alert

February 2020

## Trump Administration Prohibits US Travel for Executive Whose Company Trafficked in Property Confiscated by the Cuban Government

**What Happened:** The Trump administration has acted on its previous decision to actively enforce Title IV of the Helms-Burton Act by preventing the CEO of a Spanish hotel chain from entering the United States based on his company's alleged trafficking in confiscated Cuban property.

**The Bottom Line:** Executives of foreign and US companies, who "traffic" in "confiscated" property, and their family members may be prevented from traveling to or entering the United States on a long-term basis. Multinationals doing business with or in Cuba should analyze whether steps are necessary to mitigate the threat of penalization under Title IV.

### The Full Story

On February 5, 2020, Spanish hotel chain Meliá Hotels International, S.A. revealed that its CEO, Gabriel Escarrer, had been barred from entering the United States. According to the company, the US Department of State cited the Helms-Burton Act, which was passed in 1996 to "protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime." Meliá said the notification referred to two hotels affiliated with the company that are on a plot of land claimed by a Cuban-American family.

Title IV of the Helms-Burton Act grants the US government the authority to deny visas and exclude from the United States "aliens who have confiscated property of United States Nationals or who traffic in such property." Under Title IV, these aliens may include the corporate officers, principals or even shareholders with a controlling interest of an entity that has been involved in the trafficking of confiscated property—and the spouses, minor children and agents of those aliens.

Meliá, whose website offers 38 hotels in Cuba, has previously said that it does not actually own any assets in Cuba but, rather, manages the hotels. Under the Helms-Burton Act, however, the definition of "trafficking" includes purchasing, receiving, using, transferring or otherwise acquiring confiscated property, as well as engaging in commercial activity using or otherwise benefiting from confiscated property.

Pursuant to the Bureau of Inter-American Affairs' Guidelines Implementing Title IV of the Cuban Liberty and Democratic Solidarity Act, individuals deemed excludable or ineligible for a visa will receive a written notice by registered mail and will have 45 days to respond before their names are entered into the consular lookout and port of entry exclusion systems. These databases are the exclusive means by which consular officers and the INS will verify that the individual has been excluded. The guidelines specify that State Department records pertaining to the issuance or denial of a visa, including records relating to the determination of ineligibility or excludability, are confidential; however, the government of the individual's country of nationality "may" be notified of the determination in confidence. It is important to note that just because a person has not been notified of such a determination, does not mean that he or she cannot be stopped, questioned, detained or denied admission by Customs and Border Patrol, which has final discretion on admissions decisions.

Although every President since the Clinton administration has declined to enforce portions of the Helms-Burton Act, even suspending certain provisions, the Trump administration has now acted on its April 2019 announcement that it would begin enforcing Title IV. The sanctions against Meliá's CEO, fourteen board members and their families represent the first widely publicized exercise of Title IV authority since the instances regarding Canada's Sherritt International and Mexico's Grupo Domos in 1996. In a February 6 press release, Congressman Mario Diaz-Balart of Florida commended the Trump administration's "commitment to protecting Americans whose properties have been confiscated and upholding the rule of law," adding, "[t]his is only the beginning of Title IV enforcement."

Companies doing business with or in Cuba should analyze whether steps are necessary to mitigate the effect of Title IV. This analysis includes, for example, an understanding of the limitations of Title IV's potential application, identification of commercial relationships that could be considered "trafficking" and diligence of relationships in connection with any business with or in Cuba.

The Latin America practice group and the Immigration practice at Hunton Andrews Kurth LLP will continue to closely monitor related developments on this issue and the broader US sanctions regime for Cuba. In the meantime, please contact us if you have any questions or would like further information.

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