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LADB Staff

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President Bush's First Helms-burton Waiver

by LADB Staff

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President George W. Bush suspended a key article of the Helms-Burton Act that has deep support within the Cuban exile community. But exile leaders generally accepted the waiver since it was accompanied by promises to toughen US sanctions against Cuba.

On July 16, Bush issued his first six-month waiver of Title III of the Helms-Burton Act, continuing a practice established by his predecessor. Before leaving office in January, President Bill Clinton issued his tenth and final waiver of Title III, which permits US citizens to sue foreign companies who invest in or use properties in Cuba that were confiscated by the revolutionary government of President Fidel Castro (see NotiCen, 2001-04-12).

Since Helms-Burton's passage in 1996, Title III has never been implemented. Now that both the Democrat Clinton and the Republican Bush have waived Title III, the obvious question is, what purpose does Title III serve?

Philip Peters, vice president of the Lexington Institute, told The New York Times that Title III was now "basically a dead letter." In his statement announcing the waiver, Bush cited wording in the law that permits waivers when the president believes it is in the "national interest of the United States." But he also declared that the waiver would "expedite the transition to democracy in Cuba." Critics of Helms-Burton have long maintained that if Title III were aimed at democratizing Cuba, suspending it could not accomplish the same thing. Three days earlier, Bush paved the way for the waiver by coupling it with a show of force against Castro, announcing a toughening of the US embargo and the ban on travel to Cuba.

The US "will oppose any attempt to weaken sanctions against the Castro regime," said a White House statement, entitled *Toward a Democratic Cuba*. In the announcement, Bush said the US sanctions were "not just a policy tool, but a moral statement" by which the US proclaims its stance against tyranny. To strengthen the sanctions, Bush ordered the Treasury Department's Office of Foreign Assets Control (OFAC) to crack down on "unlicensed and excessive travel" to Cuba. OFAC is also to enforce limits on the amount of dollar remittances that can be sent to Cuba under a Clinton policy reform in 1998 (see EcoCentral, 1998-03-26), and to ensure that "humanitarian and cultural exchanges actually reach pro-democracy activists in Cuba." Bush also reiterated his support for direct funding of dissident activities in Cuba.

A bill to do that

The Solidarity Act of 2001 has already been introduced in Congress (see NotiCen, 2001-07-12). At the same time, Bush announced the appointment of Salvador Lew as director of the Office of Cuba Broadcasting, which runs Radio and TV Marti. Bush said he ordered Lew to make additional efforts to defeat Cuban jamming of the radio and television signals. "Once we open the flow of information,

the demands for freedom will ring stronger than ever," Bush said. Commenting on the waiver, Bush referred to "real differences" between the US and its allies on how to bring about change in Cuba.

The European Union (EU), as well as Canada, Mexico, and other allies and trading partners have steadfastly opposed Helms-Burton and especially Title III, which they regard as an unwarranted US claim of extraterritorial jurisdiction. In 1998, Clinton got the EU to back away from pursuing a complaint against Helms-Burton before the World Trade Organization (WTO) with an agreement by which the US would suspend Title III and the EU would join in opposing investment in properties located in countries with an established record of illegal expropriations (see 1998-06-04). Clinton, and now Bush, have clearly indicated that implementation of Title III is not worth the inevitable strains that enforcement would cause in US trade relations. Bush issued the waiver just before embarking on a European trip.

The Clinton waivers were usually met with denunciations from the exile community and its supporters in Congress. This time, however, there was no backlash except from Rep. Bob Menendez (D-NJ), who called Bush "dishonest and weak," and from Hermanos al Rescate president Jose Basulto, who said the waiver was "a new treason against the Cuban exiles." By contrast, the usually acerbic Rep. Lincoln Diaz-Balart (R-FL) issued a statement sympathetic to Bush's need to placate the EU.

Rep. Ileana Ros-Lehtinen (R-FL) agreed with Bush's view that a waiver was again necessary. She pointed to "positive work" Bush did in his first months in office that offset the decision. Dennis Hays, executive vice president of the Cuban American National Foundation (CANF), said the organization understood that Bush had a "bigger picture in mind." Sen. Jesse Helms (R-NC), a fierce critic of Clinton's approach to Cuba policy, said, "The president is, in fact, taking a very tough line, which is certain to make Fidel Castro squirm."

Bush's bigger picture

Bush has maintained a rhetorical commitment to his campaign promise to strengthen US sanctions against Cuba. "The positive work" in Bush's "bigger picture" includes his nomination of anti-Castro hard-liners to top government jobs. The most controversial is that of Otto Reich to become assistant secretary of state for Western Hemisphere affairs (see NotiCen, 2001-04-12). The Reich nomination has great support in the exile community and is seen as Bush's most visible reward to the community for backing his presidential bid. But the appointment appears moribund. With the Democratic takeover of the Senate in May, the Reich nomination has to get past Sen. Joseph R. Biden Jr. (D-DE), chair of the Senate Foreign Relations Committee. Biden has indicated he will not call for a hearing on the nomination. Sen. Christopher J. Dodd (D-CT), who chairs the Western Hemisphere subcommittee, also opposes Reich's confirmation.

Bush's promise to increase enforcement of the sanctions was couched in vague language that would allow him to ignore it. As for the restrictions on travel and dollar remittances, enforcement would anger his Cuban-exile supporters who pour up to US\$900 million into the Cuban economy through legal and illegal remittances. Bush did not say whether the Treasury Department would also crack down on the growing numbers of US business executives who travel to Cuba. Nor did

he say whether he would try to lift the exemption Congress recently passed for itself that permits members to bring cigars from Cuba with a value in excess of the current US\$100 limit imposed on all other licensed travelers.

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