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5 South Florida Attorneys Address Litigation Implications of Biden Administration on Cuban Relations

*By Michael A. Mora
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Javier Lopez, Kozyak, Tropin & Thorckmorton. Courtesy photo

South Florida attorneys and academics said that actions by President-elect Biden's administration might have significant legal implications on American-Cuban relations.

They largely posited that the new administration is likely to implement some

immediate economic moves with Cuba, subject to legal challenges. And some questioned the immediacy of those moves, given the larger issues confronting the new administration, like the coronavirus.

Raquel A. Rodriguez, a shareholder at Buchanan Ingersoll & Rooney in Miami, said that President-elect Biden had made no secret about wanting to completely reverse his predecessor's policies toward Cuba. This would mean that the U.S. will move to restore former President Barack Obama's policies with the island nation.

Rodriguez said the litigation with the most immediate implications involves claims made under the 1996 Helms-Burton Act, which enshrined an embargo on Cuba into statute largely due to its human rights violations.

"When President Trump removed the suspension of Title III of the Helms-Burton Act, a lot of people filed lawsuits on their certified claims against companies they alleged were trafficking on expropriated Cuban-owned properties," Rodriguez said. "Even if President-elect Biden were to suspend [Trump's action], he could not change the existing claims filed under Helms-Burton."

David Abraham, professor emeritus at the University of Miami School of Law, said that the Biden administration would want to see restoration and expansion of U.S. tourism in Cuba because of the impact of the coronavirus on the U.S. tourism industry.

Abraham, who also taught European history at Princeton University, pointed to the *Immigration and Naturalization Service v. Chadha* decision by the Supreme Court, which will enable the president-elect, after he is sworn in as president, to execute those actions through issuing executive orders if he encounters resistance from Congress.

"The Trump administration has done so much damage with the relations with our European allies," Abraham opined, "that I'm sure the Biden administration would want to see that no European companies are being sued in court for allegedly benefiting from the seizure of private property."

Javier Lopez, a managing partner at Kozyak Tropin & Throckmorton in Coral Gables, is among the [lawyers closely watching Helms-Burton](#).

Lopez said U.S. nationals who asserted claims against property that was

confiscated by the Cuban government after 1959, which are made before the effective date of the Biden administration's potential suspension of Title III of the Helms-Burton Act, would still be allowed to move forward with their claims. And the legal implications of the new administration's potential suspension are only starting to reveal themselves.

"The only bank case that we had, last week, was fully briefed in New York," Lopez said. "We should have a decision in the next couple of months. We have been waiting to see how the court will rule on this because I have multiple banking clients."

Lopez also pointed to how the embargo could be lifted as a whole.

"In Helms-Burton, in the law, it tells the Cuban government exactly how to get rid of it," Lopez said. "There are three things you have to do: freedom of speech, freedom of the press and free and fair elections. Once you have those three, Helms-Burton self-destructs."

And Stephen N. Zack, partner at Boies Schiller Flexner in Miami, agreed with Lopez, by identifying human rights as the most fundamental issue preventing cooperation between the two countries. Until those issues are dealt with, Zack said further action beyond Helms-Burton and the release of restrictions on the tourism industry, are unlikely to happen.

Kendall Coffey, a partner at Coffey Burlington in Miami, noted challenges that a Biden administration will face.

"Biden will try to negotiate with the regime and propose further concessions on human rights through a negotiation process," Coffey said, including with respect to Cuba's relations with Venezuela. "Whether they agree to anything meaningful and they keep their word is a giant question."

Coffey also does not expect any action to take place anytime soon.

"How soon Cuba becomes a major priority is hard to say," Coffey said. "Biden is getting in with a lot of immediate priorities that may come ahead of this."