Hotels Wanted: Effect of Renewed Diplomatic Relations Between the United States and Cuba on the Hospitality Industry

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HOTELS WANTED: EFFECT OF RENEWED DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES AND CUBA ON THE HOSPITALITY INDUSTRY

By

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I. INTRODUCTION

The United States held major interests in Cuba pre-1960, but with the emergence of the Cold War, Red Scare, and general disregard for all things communist, the relationship between the United States and Cuba declined drastically, eventually leading to the trade embargo. Cuba’s alliance with Russia and other communist countries, including the Cuban Missile Crisis, which is all too well known to anyone who has taken high school American history, helped to spur the embargo and isolation between the two countries. The two countries, which are not even separated by ninety miles, have largely remained in isolation ever since. Under the expert tutelage of President Barak Obama and Cuban President Raul Castro, the United States and Cuba have recently re-opened diplomatic relations. While major restrictions still lie in the way of free, political, economic, and cultural interaction, this is a massive leap forward for the two countries.

“What was once one of the wealthiest cities in Latin America, left to the elements, left to collapse, were frozen gloriously in time...” Looking at Cuba now verses Cuba in 1950, before the embargo and trade restrictions, there would not be much to point out as differences absent the inevitable decay from a lackluster economy. Most of its major cities still look as if they were frozen in time from when the embargo started; it’s a common site to see the old architecture and 1950s Studebakers roaming the streets. “Cuba is literally a rolling car museum.” While this may be an enjoyable throwback to the past for some, Cuba is finally ready to move forward because 50 years in the 50s has finally run its course.

The decrepitude of Cuba has not been limited to its old timey style, in fact decay has ravaged all areas of the country. While America has maintained a blockade with Cuba for the last 50 years the whole world has not followed suit, but yet the once vivacious hospitality

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2 President Kennedy signed proclamation 3447 on February 3, 1962 which established the embargo to reduce “the threat posed by [Cuba’s] alignment with the communist powers.” Should the United States maintain its embargo against Cuba?, ProCon, http://cuba-embargo.procon.org/, (Last updated Dec. 19, 2016).

3 See Suddath, Supra at note 1.


5 Anthony Bourdain Parts Unknown: Cuba (CNN Dec 21, 2015).

6 Caitlin Moran, Why does Cuba have so many classic cars?, The News Wheel (Jul. 20, 2015) http://thenewswheel.com/why-does-cuba-have-so-many-classic-cars/.

7 Id.
industry crumbled. The hospitality industry is probably the most compelling area of industry in Cuba, which has the largest upside for private sector companies trying to break into the relatively untapped source of business. Determining the major challenges that the hospitality industry faces and providing a reasonable solution satisfying all parties involved is key to opening Cuba up for the economic benefit of America and Cuba, in addition to the international market. Contrasting standard negotiations, a corporation cannot directly communicate with Cuba while maintaining complete autonomy. The challenges are deeply ingrained in a tumultuous history between the two countries. While many roadblocks and obstacles stand in the way of free trade between the two countries, they are not insurmountable.

American hotel chains face a multitude of obstacles in their efforts to expand business to Cuba. This note has targeted a number of key issues and hurdles which are both general, to foreign investors, and specific, to the hospitality industry. First, this note will analyze the restrictions facing the Hospitality industry and foreign investors stemming from both the laws and operation of Cuba. There are several matters in question on the Cuban side concerning the building and operating of hotels. The issues cover a variety of areas, but all largely stem from governmental issues that need to be resolved. The next section will discuss the numerous restrictions and sanctions the US had and have currently in place for American persons looking to do business in Cuba. The various codes, regulations, and laws that make up the American embargo is a network of everchanging restrictions that are at times quite confusing and voluminous. The third section will examine two American hotel chains that have been given special permission to operate in Cuba, the legal issues they faced and how each were granted permission. The fourth section will explain the opportunities available to American corporations in Cuban and the legal ramifications of lifting the embargo. Finally, the note will propose a solution to most effectively move past the embargo and years of isolationism between the two countries in the most effective and fruitful manner for both America and Cuba.

II. CONCERNS IN CUBA

Cuba’s hospitality industry has been increasing substantially over the last decade, however it still remains a widely untapped source of economic opportunity. America’s hospitality industry and corporations are positioned to gain the most from Cuba’s hospitality industry. However, Cuba presents five major obstacles for American corporations seeking to do business in Cuba: (1) the dual currency system, (2) government regulations, (3) corruption

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10 To date there is virtually a complete ban on American hospitality corporations from conducting business in Cuba. Only three corporations have been granted access so far: Airbnb, Marriott, and Starwood (Starwood is a wholly-owned subsidiary of Marriott). Deanna Ting, Marriott Enters the Cuban Market Like Starwood and Airbnb Before It, Skift (Mar. 20, 2016) https://skift.com/2016/03/20/marriott-enters-the-cuban-market-like-starwood-and-airbnb-before-it/.
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among Cuban government officials, (4) Cuba’s credit situation, and (5) infrastructure. Additionally, American corporations are hindered by Cuba’s Foreign Investment Law No. 118, which is closely related to all five challenges within the Cuban business industry. The following subsections will further discuss and analyze the major impediments stemming from Cuba that will affect American investments in Cuba, in addition to other required changes in order for the investments to prosper and bear fruit, which is the ultimate goal.

A. Dual Currency System

Currently, the Cuban monetary system operates on two different types of currency; the Cuban Convertible peso (CUC) and the Cuban peso (CUP or Peso). The system is generally regarded as inefficient and divisive. The CUC, which is designed to mimic the American dollar, is available to tourists in Cuba, however it is generally unavailable to Cuban citizens, who are paid in CUP. One CUP is worth only four percent of one CUC, but when converting the currency from CUC to CUP, or the CUP to CUC, the government makes the exchange at a one-to-one rate. For the sake of simplicity, one CUC is equivalent to one U.S. dollar, and one CUP only converts to four cents U.S.

This process is unnecessarily confusing and frustrating to both foreign tourists and corporations, and is likely to trouble corporations looking to invest. The current state of affairs of Cuba’s monetary system means that a foreign corporation will not be able to pay its Cuban employees directly; the money will have to be paid to the government, which then converts money from CUC to CUP, and then disperses the funds to the employees. Besides the unnecessary inconvenience of this process the Cuban government has been taking a cut of the employees pay as a service fee. This is an important concern to the already poorly treated Cuban citizen, who is receiving less of the money he or she has worked hard for. Undoubtedly, the government would argue that it is using the money for the greater good of the Cuban people, but who would be better at determining the best use of the money than the citizens who have earned it? Conversely, foreign corporations trying to do the right thing and pay the Cuban workers what they are worth will have to increase the pay of each workers to counter act the fee the government takes, which is an added cost on top of the taxes the

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12 American corporations face other challenges created domestically, which will be examined later in this note. (Hereinafter Fox).
15 Id.
16 Id.
18 Id. A group of American students were escorted to a secret room to pay in CUC when trying to buy ice cream at the government run, La Coppelia.
19 See Fox, supra note 11. See Contra Marc Frank, Cuba Likely to End Dual Currency System, Financial Times (Jun. 15, 2015) https://www.ft.com/content/b34fd7b8-fb12-11e4-9aed-00144feab7de. (hereinafter Frank).
20 See Fox, supra note 11.
corporation is already required to pay. This process amounts to no more than corruption and greed by the Cuban government. In a move towards progress the Cuban government has stated it will abandon the dual currency system, but they have made these claims as far back as 2013 with no actual change as a result.20

B. Government regulations and Foreign Investment Law 118

The Cuban government has made diligent efforts to expand the opportunity for international corporations to invest in Cuba through the passage of Foreign Investment Law 118 (hereinafter Law 118).21 Though Cuba has taken steps to enter into the modern international market, major roadblocks still remain; which are evident in the hospitality industry, more so than anywhere else. The Cuban government’s imbedded authority within the private sector is particularly onerous and troublesome.22 Currently a Cuban citizen cannot start a corporation, which leaves a foreign investor the only choice to deal almost exclusively with the government.23 Three types of business models are allowed under Law 118: (1) joint ventures,24 (2) international economic association agreements,25 or (3) totally foreign capital companies.26

While the law does not explicitly state that the only option a hotel will have is to enter into an international economic association agreement, it is the only one of the three business models that explicitly uses the term “Hotel” and “Service Management.”27 The goal of these international economic association agreements is to improve the quality of the service industry with the aid of internationally renowned foreign institutions, with the purpose of expanding Cuban markets and creating a name in the international hospitality industry.28 The foreign investor shall represent the national investor according to the management agreement.29 Pursuant to Law 118, profits shall not be shared; rather, the manner/method in

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20 See contra Frank, supra note 18.
22 See Fox, supra note 11.
23 Id.
24 The joint venture agreement is between national and foreign investors and creates a jurisdictional person in the form of a corporation with authorization from the Business register. Aspects of governance and control are similar to the American system of partnership, i.e. capital contributions, shared profits and liabilities, dissolution, and winding-up. Foreign Investment Act Ch. 5 Sec. 1 Art. 14.1 (Law No. 118/2014). (Hereinafter Investment Act).
25 An international economic association agreement will not create a legal person outside of the individuals’ party to the contract. Typically, the agreement would create shares that each party would own per the agreement but this does not apply to international economic association agreements whose purpose would be hotel, production or service management, or professional services. Id. at Ch. 5 Sec. 1 Art. 15.1.
26 Foreign Investors shall manage and be responsible for all the rights, obligations, and liabilities of the company. Id. at Ch. 5 Sec. 1 Art. 16.1 (Law No. 118/2014).
27 The fact that the international economic association agreement is the only business model that uses the terms “hotels” and other “service management industries” leads one to believe that this is the preferred model that foreign investors use. See Ernst, supra note 21.
28 See Investment Act note 24 at Ch. 5 Art. 15 Sec 3.
29 See Investment Act note 24 at Ch. 5 Art. 15 Sec 3(a).

https://scholarlycommons.law.hofstra.edu/jibl/vol17/iss1/9
which foreign investors are paid is conditioned upon their performance.\(^{30}\) When considering all of the terms included in the management agreement, it would seem that a principle-agent relationship is created between the national investor and foreign investor, respectively.\(^{31}\) This is not the ideal business structure for foreign investors, who ideally want to run/control/operate/manage their own business.\(^{32}\) Though this business model has a lot of drawbacks it seems to be the preferred choice for foreign investors to operate under in Cuba, which is evident by the multiple tax exemptions afforded to investors that choose this model, as opposed to the totally foreign capital company.\(^{33}\) However, Cubans greatly fear the repercussions of Americans entering the Cuban business industries because the Cuban people want to preserve their country’s rich culture.\(^{34}\)

Another challenge that foreign investors face is the strong Cuban labor force and the government control of labor.\(^{35}\) Along with the dual currency issue previously discussed above, an American hotel would not be in control the hiring and firing employees in addition to the compensation problem.\(^{36}\) This system essentially prevents any employer-employee relationship from being created.\(^{37}\) American corporations will be dealing with a unionized work force inconceivable in the United States; the percentage of Cuban workers in a union largely outweighs American unionized workers.\(^{38}\) Essentially it will not be feasible for American hotel corporations to hire large numbers of American employees to work in Cuba for at least two reasons. The first reason is the shear cost and unappealing nature of the job.\(^{39}\) Second and more importantly, Cuban law requires an immediate and direct positive effect on Cuba and its citizens by foreign businesses.\(^{40}\)

30 See Investment Act note 24 at Ch. 5 Art. 15 Sec. 3(b) & (c).
31 Restatement (Third) of Agency § 1.0.1 c Elements of agency (2006) ("[Agency is a] consensual relationship in which one person... acts as a representative of or otherwise acts on behalf of another person with power to affect the legal rights and duties of the other person").
34 Anthony Bourdain Parts Unknown: Cuba (CNN Dec 21, 2015).
35 See Fox, supra note 11.
36 Employees are picked from a pre-approved governmental agency pool and salaries are negotiated through the Ministry of Foreign Trade and Foreign Investment. A corporation pays a per worker fee to the state run agency who then pays the worker. Generally, productivity incentives and grants are allowed, but they are not permissible in the hotel industry and other service industries. See Ernst, supra note 27.
37 Adele Halsall, The Essentials of a Healthy Employer-Employee Relationship, ERE Media (May 23, 2014), https://www.eremedia.com/tln/the-essentials-of-a-healthy-employer-employee-relationship/. (It has long been noted that strong employer-employee relationships often lead to greater employee happiness and significantly improved productivity).
38 Estimates have up to 90 percent of Cuban workers are in a union. Cheryl LaBash, The truth about unions in Cuba, Worker’s World (Jan. 22, 2015), http://www.workers.org/2015/01/22/truth-unions-cuba/#.WcTyFhrKRM8. In 2015 only 11.1 percent of American workers are unionized, no change from 2014. U.S. Dep’t of Labor, Union Members Summary, USDL-16-0158 (Jan. 28, 2016).
39 Foreign persons can be hired in upper management positions at the hotel, but have to go through various governmental regulations in regards to working and residency and are subject to Cuban legislation dealing with personal income tax. See Supra Ernst note 27.
40 See Fox, supra note 11.
the only, nor efficient way to create a positive effect on the Cuban people, it is probably plays an integral part in the acceptance and approval of foreign investors.41

C. Cuban Corruption

Cuba’s government holds a strong and widely encompassing grasp on all industries in the country, which will create a general sense of unease among investors.42 Brazil, Russia, India, and China (BRIC)43, similar to Cuba, are countries that have a large number of state owned enterprises (SOE) and comprise some of the world’s largest economies.44 Along with being large economic powers, the BRIC countries are also among the most corrupt countries in the world.45 Bribery through kickback schemes or protection money payments have repeatedly been issues for Cuba in the past.46 The bribery and corruption runs rampant throughout the entire government, including both high-ranking and low-ranking officials.47 Although this seems troublesome the hope is that the government will be open and conducive to foreign investors because the alternative of avoiding doing business with SOEs, and the government itself, is basically impossible.48 Working with the SOEs would severely frustrate the investment opportunities for Americans, especially in the hospitality industry, and counter any desired positive effect on Cuba that the government may be seeking.49

41 Starwood hotels’ Santa Isabel and Hotel Inglaterra both reside in a preservation neighborhood where Cuban citizens live. Starwood has stipulated that it will contribute small portions of revenue to support various school and projects in the community. Steven Mufson, Starwood signs historic deals in Cuba for three Havana hotels, The Washington Post (Mar. 19, 2016), https://www.washingtonpost.com/business/economy/starwood-signs-deals-in-cuba-for-three-havana-hotels/2016/03/19/4eb2e9c6-ee1e-11e5-b08d-073d5930a7b7_story.html. (Hereinafter Mufson).
43 Brazil, Russia, India, and China. See Narine, supra note 12.
44 The Brazilian government owns 750 billion of the country’s 2.3 trillion GDP, The Kremlin (Russian government) controls over 50% of the countries total GDP, the Chinese government owns the 12 largest firms in China, and 20% of the Mumbai Stock Exchange is comprised of 41 SOEs. Narina, supra note 12.
46 Two Canadian businessman, Sarkis Yacobian and Cy Yacobian, were charged with corruption, had all their assets ceased and were sentenced to seven and nine years imprisoned respectively. Jeff Gray, How a Canadian businessman lost everything in Cuba, The Globe and Mail (Mar. 22, 2015), http://www.theglobeandmail.com/report-on-business/international-business/latin-american-business/canadian-businessman-accused-of-spying-lost-everything-in-cuba/article23569652/.
47 Id.
48 See Mufson, supra note 41.
49 Id. The Grupo Hotelero Gaviota is a partner with Starwood Hotels and the largest stakeholder of the Gaviota Group, and most of the Hospitality industry, is the Cuban Military.
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D. Cuba’s Credit Crisis

As a result of the embargo Cuba is currently banned from the International Monetary Fund (IMF), World Bank, and Inter-America Bank, which consequentially, has given Cuba a very poor credit and loan system.\(^{50}\) Due to the poorly structured credit system almost all transactions that take place in Cuba are cash based.\(^{51}\) Having to conduct cash-only transactions is greatly detrimental to the comfort level of foreign visitors, and makes it nearly impossible for a foreign corporation to start a business, for example a hotel.\(^{52}\) As part of the détente with Cuba, President Obama has lifted restrictions on Cuban government transactions, however almost all banks have declined to process those transactions because of liabilities that may result from the embargo.\(^{53}\) The lack of security within the international banking market is a major deterrent to foreign investors and has caused the Cuban government to impose a ten percent exchange penalty for visitors.\(^{54}\)

Recently in the United States' 2015 Trafficking in Persons report, Cuba was moved from Tier 3 (accomplices) to Tier 2 (special watch).\(^{55}\) The change in classification makes it easier for Cuba to enter into the IMF and World Bank because of a U.S. law that allows a president to order U.S. executives of international institutions to reject loans to tier 3 human traffickers, but does not apply to tier 2 countries.\(^{56}\) Tier 2 countries are defined as Countries that do not fully meet the minimum standards but are making significant efforts to attain at least those standards.\(^{57}\) This may not seem significant at first because a tier two country still has serious human trafficking violations.\(^{58}\) What this upgrade in classification does show is the cooperation between America and Cuba, plus the willingness of the Cuban government to make improvements important to America.\(^{59}\)


\(^{51}\) Fox, supra note 11.


\(^{53}\) One Florida bank, Stonegate, has announced that they will issue a US credit card that’s intended use is for travelers and companies in Cuba. The government says that the card has access to over 10,000 point-of-sale locations, but cashiers in state-owned stores often say that their machines are out of service. Michael Weissenstein, Florida bank issues first US credit card for use in Cuba, The Big Story, (June 14, 2016) http://bigstory.ap.org/article/b325b8b31f8640bb9e0e350d6f438e5e/florida-bank-issues-first-us-credit-card-use-cuba.

\(^{54}\) The Cuban government has stated that they will lift the ten percent exchange penalty permanently once they are allowed to carry out international transactions. Id.

\(^{55}\) See Sosin, supra note 50.

\(^{56}\) Id.


\(^{59}\) Id.
E. Infrastructure

A strong infrastructure is important to the success of any hospitality industry, if for nothing else than being able to effectively transport people to and from the hotels. It is also important to spreading the wealth throughout Cuba and to heal the years of isolation. The Cuban infrastructure is not only dated and decaying, but requires serious improvements in order for both investments and tourism to expand beyond the costal all-inclusive resorts. This is important for Cuba in order to effectively spread the wealth throughout the country. The roads in Cuba are poorly maintained, with over twenty thousand miles of unpaved roads. Additionally, most buildings are not up to acceptable standards and codes. The most important upgrade to the Cuban infrastructure should be to the airports. The current airports are small and outdated and need to be greatly improved to withstand the exponential increase in foreign travelers who will be coming to the island, as a result of a booming tourism industry.

Another important aspect of infrastructure for foreign corporations, and Cuban businesses, to be successful, both within Cuba and internationally, is telecommunications and internet access. Frankly, the telecommunications and Internet access within Cuba is not up to the standards that it needs to be for economic success. Recently, restrictions have been lifted to allow American telecommunication companies to begin conducting business in Cuba. The installation of telecommunication networks throughout the island of Cuba will not only promote country wide communication, but will link the country of Cuba with the rest of the world.

Cuba has long ranked as one of the world’s most repressive environments for information and communication technologies (ICTs). High prices, exceptionally slow connectivity, and extensive government regulation have resulted in a pronounced lack of access to applications and services other than email. Most users can access only a government-controlled intranet rather than the global internet, with hourly connection costs amounting to 10 percent of the minimum monthly wage.

Once a better telecommunications system is in place, it will provide more opportunities for a stronger credit system, which is an important issue for foreign travelers.

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60 See Fox, supra note 11.
62 Id.
64 Id.
65 31 C.F.R. § 515 (2016) Cuban Asset Control Regulations (CACR); The Federal Communications Commission has removed Cuba from the “exclusion list” which will allow American telecommunication companies to begin to work in Cuba without special permission. Roger Yu, FCC to allow U.S. telecom services to Cuba, USA Today (Jan. 15, 2016) http://www.usatoday.com/story/money/2016/01/15/fcc-allows-us-telecom-companies-provide-services-cuba-without-agency-approval/78866114/.
67 See Fox, supra note 11.
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Some travelers have put bottled water and free internet connectivity on the same level as important features they want in a hotel.68

III. UNITED STATES RESTRICTIONS ON CUBAN INVESTMENT

The history between Cuba and America has been tumultuous at best and the network of sanctions have a history of their own. Prior to the revolution that brought Fidel Castro and the communist party into power the United States was the largest investor and trading partner with Cuba.69 President Kennedy issued proclamation 3447 to establish the embargo and the Office of Foreign Asset Control issued the Cuban Assets Control Regulations (CACR) to implement the embargo. The CACR are still in use today in an amended form. The Ford and Carter administrations saw relaxed tensions and removal of some sanctions, but Castro’s support of communist regimes in Ethiopia, Nicaragua, and Grenada brought back all of the original tension ending in Cuba being designated as a state sponsor of terrorism in 1982.71

The current limitations on conducting business with Cuba does not rest solely on Cuban shoulder, there are numerous restrictions that the United States also maintain over trade relations with Cuba.72 Currently there are twelve categories of interaction that the U.S. will grant general licenses to a person or persons to go to Cuba, whereas specific licenses were originally required.73 The embargo was first issued under president John F. Kennedy in 1960, but was not codified into law until much later.74 The Helms-Burton Act, Cuban Asset Control Regulations and the Trading with the Enemy Act have created greater hurdles in bypassing or removing the trade embargo.75

69 see, e.g., Susan Kaufman Purcell, Cuba, in Economic Sanctions and America diplomacy 40.
71 Purcell, supra note 69; See Stephen F. Propst, Presidential Authority To Modify Economic Sanctions Against Cuba, HOGAN LOVELLS US LLP 3 (Feb. 15, 2011).
72 31 C.F.R. § 515.
73 Id. The twelve categories include family visits; official business of the U.S. government, foreign governments, and certain intergovernmental organizations; journalistic activity; professional research and professional meetings; educational activities; religious activities; public performances, clinics, workshops, athletic and other competitions, and exhibitions; support for the Cuban people; humanitarian projects; activities of private foundations or research or educational institutes; exportation, importation, or transmission of information or information materials; and certain authorized export transactions.
74 Jeslyn A. Everitt, Resolving the Past and Inventing the Future: U.S. Relations with Cuba, 41 San Francisco Att’y 16.
75 The codification of the embargo through these legislative acts have created a constitutional issue with regards to bypassing the embargo. once codified into law the only way to repeal the embargo is through the proper constitutional channels of bicameralism and presentment. See John O’Brien, COMMENT, Political Balk: Opening the Door For U.S.-Cuba Policy Reform Via Diplomatic Blunder at the World Baseball Classic, 15 Vill. Sports & Ent. L.J. 135, (2008); See Andrew Jose Rosell, Comment, The Future of U.S.-Cuba Relations, a Policy Shift from the Helms-Burton Act, 7 Law & Bus. Rev. Am. 235; See 31 C.F.R. § 515 (2016) Cuban Asset Control Regulations (CACR).
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A. The Helms-Burton Act

Prior to the Helms-Burton Act the basis of the embargo lay within three major statutes, the Trading with the Enemy Act of 1917 (TWEA), the Foreign Assistance Act of 1961 (FAA), and the Cuban Democracy Act of 1992 (CDA) and is implemented through the Cuban Assets Control Regulations. The president had the full authority to remove the embargo under the FAA and the TWEA, but does not have the sole power of removal under the CDA. The CDA allows the president to lift the embargo if certain requirements were met, but still allowed Congress to override the president’s decision to lift the embargo. The largest hurdle the embargo has to face is the Helms-Burton act.

1. History of the Act

In 1996 President Clinton codifies the Cuban economic embargo with the Cuban Liberty and Democratic Solidarity Act, also known as the Helms-Burton Act. Before the official codification of the embargo the restrictions and sanctions was a collection of executive orders from President Kennedy to Clinton. The legislation was passed largely because of an incident where four Cuban-Americans were shot down by Cuban fighter jets. The largest barrier in the way of relaxed or repealed sanctions, post Helms-Burton, is the legislation itself because the previous executive orders would have been much easier to change than the legislation due to constitutional constraints. The ability to make and remove executive orders is given to the president alone and are directed at the executive branch. To the contrary, legislation is passed through bicameralism, in congress, and presentment, to the president which cannot be removed unilaterally by congress or the

77 Id. Regardless of the sole power of the president to remove the embargo under the FAA and TWEA, it is unlikely that it will be done without working closely with congress due to the political pressure the would result.
78 Id.
81 The public outcry from the incident and the possibility that Clinton was searching for the Cuban-American vote in the highly touted Florida swing state in the upcoming 1996 election, have been speculated as reasons why Clinton administration changed its stance on the legislation. Christine L. Quickenden, Note and Comment, Helms-Burton and Canadian-American Relations at the Crossroads: The Need for an Effective, Bilateral Cuban Policy, 12 AM. U.J. INT’L L. & POL’Y 733, 746 (1997).
president.84 Though it has been asserted that president with the proper reports to congress may be able to lift the embargo.85

2. Findings and Purpose

As part of the Helms-Burton Act Congress made a laundry list of findings regarding the conditions Cuba and its people were facing under the Castro government.86 Among the most important findings is the idea that the Castro regime will not partake in any political reforms that would lead to the institution of a democratic political system, market economy, or economic recovery.87 Included in the findings is the idea that free elections are needed in order to improve the conditions of the country and its people, significantly and permanently.88

The purpose of the act was to give the Cuban people their freedom back and bring Cuba into the international community (which includes the establishment of free democratic elections), strengthen sanctions against the Castro regime, to protect Americans from terrorism and the trafficking of confiscated lands, and provide a framework of support for the Cuban people when a democratic government or transition government is put in place.89

The major linchpin to removing the Embargo, specifically concerning the Helms-Burton act, is the establishment of either a democratically elected government or a transition government.90 The law provides that certain steps can be taken to start the removal of the embargo when the president determines that a transition to a democratically elected government has begun.91 This is only the beginning of the process and there are many more steps to be taken before the embargo can be lifted.92 Once the president determines a transition government is in power he will send a report to the proper subcommittee for congressional consideration.93 A cavalcade of different sanctions and restrictions can be either suspended or repealed under the president’s authority.94 All of these actions that the president

84 See U.S. Const. Art. 1 Sec. 1.
86 Cuban Liberty and Democratic Solidarity Act of 1996 § 2 Findings.
87 Id. at (3); Supra trafficking report note 59. While the government is making improvements evident in its drop from tier 3 to tier 2 human trafficking rating, it is still unclear exactly how much it is willing to give in especially while Raul Castro is still in power.
88 Id. at (5) (“As long as free elections are not held in Cuba, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.”)
89 Id. at § 3 Purposes. Though some parties do not see the act leading to fruitful change See contra Helms-Burton Act: resurrecting the Iron Curtain, Council on Hemispheric Affairs, (Jun, 10, 2011) http://www.coha.org/helms-burton-act-resurrecting-the-iron-curtain/ (“On March 12, 1996, the United States Congress passed one of the most regressive and draconic foreign policy initiatives in recent memory with the Cuban Liberty and Democratic Solidarity Act (LIBERTAD), also known as the Helms-Burton Act... Helms-Burton proved to be a costly policy both in terms of the resources it consumed as well as the negative impact it had on Washington’s reputation.”).
90 See id. at Title II § 201.
91 Id.
92 Id. at § 204 Termination of the Economic Embargo of Cuba.
93 Id. at § 204(a).
94 Id. at § 204(b) Sections of the foreign Assistance Act of 1961, Cuban Democracy Act, the Food Security Act of 1985 and sections of the Code of Federal Regulations are all subject to suspension or repeal on the authority of the president.
could take up to this point do not need the approval of congress, but there is a codified review process established in the act. Upon the suspension of the economic embargo the president has to notify congress and make reports to congress regarding the progress at least every six months or until it is determined, according to 203(c)(3) of the act, that a democratically elected government in is in place.

3. Requirements for transitional government

In determining if a transitional government has been established the president must follow certain requirements and factors from the act. The transition government must legalize all political activity, release political prisoners, make a commitment to securing free and fair elections and stop any interference with the public radio and television broadcasts. It also requires the dissolution of the current Department of State, which includes the Committees for the Defense of the Revolution and the Rapid Response Brigades. The act asks for a commitment to progress in establishing an independent judicial, human rights and assurances that speedy and efficient distribution of assistance will be available to the Cuban people. The final requirement, which relates back to the unwillingness of the Castro regime to implement a free democratic government, is that the government does not include Fidel or Raul Castro. This at one time may have seemed like a high hurdle but as I write this note in 2017, this requirement may not be far off.

95 Id. at § 204(e).
96 Id.
97 Id. at § 205.
98 Id. at § 205 (a)(1), (2), (4), (5).
99 Id. at § 205 (a)(3); The rapid response brigade is a term coined for groups of tough men that work in a semi-official capacity to quell any opposition to the communist Castro regime. The government is quick to call them "committed socialists" but the reality is not so kind to that interpretation. One dissident, as he would be called in Cuba if not something worse, Guillermo Farinas was publicly beaten in the street in his hometown of Santa Clara, Cuba after expressing his dissatisfaction with the Castro regime, Shouting "down with Fidel." See Frances Robles, Mob attacks on Castro's critics are increasing (Rapid Response Brigades), Miami Herald (Jan. 22, 2006) http://www.freerepublic.com/focus/f-news/1562669/posts; The committee for the Defense of the Revolution works a type of big brother system that hears and sees everything. The police have pitted neighbor against neighbor to be on the look-out for any anti-Castro sentiment. See Manuel Roig-Franzia, Cuba's System of Block-Watchers, Washington Post (Oct. 30, 2007) http://www.washingtonpost.com/wp-dyn/content/article/2007/10/29/AR2007102901934.html.
100 Helms-Burton supra, note 94 at (6) & (8); Cuba is a signatory to the Universal Declaration of Human Rights and these are the standards the act hopes Cuba will comply with.
101 Id. at § 205 (7).
4. Requirements for a democratically elected government.

As with determining whether there is a transitional government in place there are requirements to determine if a democratic government was elected. The main requirements concern the election and the free and fair process of which they are held. The elections must be supervised by an internationally recognized observer and all political candidates and parties must all be given ample time to organize and access to the media. The government must show a commitment to constitutional changes in order to assure that there will be free and fair future elections. The rest of the mandated changes are similar to the requirements under the transitional government, but instituted standards that show a continuing progression of particular matters such as the independent judiciary, open market, and human rights.

5. Confiscated lands

Outside of codifying the embargo the Helms-Burton act also created another problem for lifting the embargo. During the revolution as Castro was garnering more power, his organization started confiscating lands for their own use. Since the United States was the largest investor in Cuba prior to the revolution, a lot of Americans and American corporations held property in Cuba, which the Castro regime eventually seized after all the Americans fled the country. The Helms-Burton Act codified the American claims to their property confiscated by Castro. The act gave the affected citizens the power to file judicial claims in American court for the confiscated land. This creates a problem in lifting the embargo because, by law, the embargo cannot be lifted until the claims of confiscated property are settled in some way. Ideally the affected parties would want their land bank or full compensation, but that seems unlikely when estimates have put the total cost around $7 billion. The Boston Globe, Apr. 18, 2014 https://www.bostonglobe.com/ideas/2014/04/18/cuba-you-owe-billion/jHAuffifQJ9Bx24TuzQyBNO/story.html.

103 Helms-Burton Act § 206.
104 Id.
105 Id.
106 Id.
107 Compare id. at § 205 (a)(6)(A) (“makes public commitments to and is making demonstrable progress in establishing an independent judiciary;”), with id. at §206 (5) (“has made demonstrable progress in establishing an independent judiciary;”) [emphasis added]; compare id. at § 205 (a)(6)(C) (“... commitments to and is making demonstrable progress in ... allowing the establishment of independent social, economic, and political associations;”), with id. at 206 (3) (“ is substantially moving toward a market-oriented economic system based on the right to own and enjoy property.”); compare id. at § 205 (b)(2)(D) (“... taking appropriate steps to return to United States citizens property taken by the Cuban government...”), with id. at § 206 (6) (“has made demonstrable progress in returning to United States citizens property taken by the Cuban Government...”).
109 This was no more evident than in the confiscation of the Havana Hilton Hotel, which was run by the American Hilton Hotel corporation, to be used as Fidel Castro’s headquarters. History, Hotel Habana Libre, http://www.hotelhabanalibre.com/en/history.html; Neyfakh, supra note 108.
110 22 U.S.C.S. § 6081
111 Id.
seven billion dollars. Section 206 of the Act, which is the section of requirements to determine if a democratically elected government was elected, states that there must be demonstrable progress in returning the unlawfully confiscated lands. On the contrary the act does provide some barriers and safeguards against these claims. The filing fee for actions brought under the Helms-Burton Act are set at $6,548 in an effort to deter all but the legitimate claims. Further, Title III of the act grants the president the power to suspend any such causes of action for up to six months, if it is of national interest and if it will expedite the transition to a democracy in Cuba.

B. Cuban Asset Control Regulations

The Cuban Asset Control Regulations, which was formed under the TWEA, is the main mechanism in enforcing the embargo. The regulations have been consistently altered and in recent time have been altered for the benefit of normalization. Even as this note is being written the Office of Foreign Assets Control, which works under the authority of the United States Treasury, has removed names from the Specially Designated National and Blocked Persons List.

The United States treasury department maintains the federal regulations and sanctions concerning persons, subject to U.S. jurisdiction, interactions with Cuba. Regarding the Cuba regulations, the term person is defined as "an individual, partnership, association, corporation, or other organization." Section 515.573 of the CACR establishes the authorizations for persons to have a physical or business presence in Cuba. Currently the U.S. allows properly authorized telecommunication services, internet-based services, exporters, mail or parcel transmission services, and travel and carrier services to establish a business and physical presence in Cuba.

In the most recent form of the CACR, in a note for clarification, it explains that persons authorized to establish physical and business presence are not allowed to do so for the purpose of "lodging services." Seemingly this note places a prohibition on the ability of U.S. hotel corporations to open a hotel in Cuba, but there are still exceptions because the treasury department still has the right to grant licenses to corporations to establish a physical

113 Leon, supra note 108.
114 Helms Burton supra note 94 at §206.
116 Helms-Burton Supra note 94 at §306 (b)(1); President Barack Obama use of this power on January 31, 2013 is the last time it was used. Presidential Memorandum – Delegation of Authority to suspend the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Jan. 31, 2013) https://obamawhitehouse.archives.gov/the-press-office/2013/01/31/presidential-memorandum-delegation-authority-suspend-provisions-title-ii.
118 Id.
120 Id. .
121 Id. Other categories of travel are allowed besides just establishing a physical presence.
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and business presence outside of the CACR.\textsuperscript{123} While the ability for American corporations to establish a presence is not technically grounded in any law or regulations yet, the groundwork has been laid out for when the time comes. The ability for American citizens to domicile in Cuba, while working there, and the ability to acquire health, travel, and life insurance, and Cuban laws that allow Americans to use Cuban national banks are all examples of imperative parts of normal life needed before Americans can begin to operate effectively in Cuba.\textsuperscript{124}

IV. WHAT THE UNITED STATES IS MISSING OUT ON WHILE WE WAIT

Since the embargo was put in place and America completely withdrew from interactions with Cuba, the effects on Cuba have been quite clear, but the effect of losing Cuba as an ally is not often thought of and more severe than most people would think.\textsuperscript{125} Studies have shown the estimated cost of the Cuban embargo annually is anywhere between $1.2 and $4.84 billion dollars.\textsuperscript{126} A study done in 2010 by Texas A&M University indicated easing restrictions on agricultural exports and imports with Cuba could create over six thousand American jobs and increase the agricultural market by $365 million.\textsuperscript{127} In an industry like hospitality where the annual revenue is almost $190 billion, in the U.S. alone, and employees such a large number of workers, the expectation of growth is astronomical.\textsuperscript{128}

A. The Starwood Marriot Saga

The Starwood and Marriot\textsuperscript{129} are two hotel companies that have been granted a license to run hotels in Cuba.\textsuperscript{130} Unfortunately, the details of how Starwood and Marriot received the license have not been provide with specifics, leaving other companies without a roadmap of how to get a foothold in Cuba. This may be a clever business tactic in order to keep out other companies for the time being or just a lack of material to actually provide, but never the less Marriot has not said very much. One thing that they have mention is that they

\textsuperscript{123} If fact two hotel chains have been given licenses to start working in Cuba. See Jena Tesse Fox, How to get permission to do business in Cuba, Hotel Management, http://www.hotelmanagement.net/development/how-to-get-permission-to-do-business-cuba. (Apr. 14, 2016). (Hereinafter Fox).

\textsuperscript{124} 31 C.F.R. § 515.560 (2016).


\textsuperscript{129} At the time, Starwood and Marriot received their special licenses, from the Office of Foreign assistance, to operate in Cuba they were separate companies. Since that time, Marriot has acquired Starwood. Marriot News Center, Marriott International Completes Acquisition of Starwood Hotels & Resorts Worldwide, Creating World's Largest and Best Hotel Company While Providing Unparalleled Guest Experience, (Sept. 23, 2016) http://news.marriott.com/2016/09/marriotts-acquisition-of-starwood-complete/.

\textsuperscript{130} Fox, supra note 123

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had to find creative ways to help the Cuban people. For example, Marriot offered training in the hospitality industry and provided a career for the local residents as well as provide revenue for local communities. Doreen Edelman, Co-leader of Baker Donelson’s global business team, said American hotel companies looking to break into the Cuban market need to “think outside the box... [to] take what exists and get creative.” As seen already, and with Marriot as reinforcement, finding ways to help the Cuban people is an important part of allowing American companies to build, develop, and run businesses in Cuba from both the American and Cuban sides.

The structure of the hotel operation deals is important to note. While the way these deals are structured will probably change after the embargo is lifted for now they are run a certain way and that includes both Starwood and Marriot. While the exact details of the agreement are not public it is largely believed that the two companies are working under an asset light model, which leaves the building and land in the control of the Cuban government. Starwood has a deal with the Cuban military owned hotel company, Grupo de Turismo Gaviota, to refurbish, rebrand and operate already existing hotels.

B. Airbnb

Airbnb a quasi-hotel company, has been operating in Cuba recently with the permission of the Office of Foreign Asset control. Airbnb is a website and mobile app that allows travelers to rent out both private and public homes, apartments, hotel rooms etc. The company connects travelers with people willing to rent out their homes or companies that have extra room. This aspect of the company makes it very different from any other hotel company because they do not have a physical presence or stake, minus the service fee, in any of the room listings on their site. Since the company does not need to be in Cuba to operate the business they have less restrictions to follow than an ordinary hotel chain.

131 Fox, supra note 123; Jena Tesse Fox, U.S. Based Hotel companies check into an open Cuba, Hotel Management (Mar. 21, 2016) http://www.hotelmanagement.net/development/u-s-based-hotel-companies-check-into-an-open-cuba (“Marriott’s objectives in Cuba include entering the hospitality sector with Marriott brands, providing hospitality training for Cuban nationals, helping to generate new economic opportunities for businesses supplying the hospitality industry, and as a corporate citizen, supporting opportunities for youth, women and other communities in Cuba,” the company said in a statement.

132 Id.


135 Fox, supra note 123.


137 About Us, Airbnb https://www.airbnb.com/about/about-us. (hereinafter Airbnb).

138 Id.
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Currently Airbnb has over 4,000 locations in Cuba listed on its website, with over 13,000 rooms booked by Americans.140 In Cuba only citizens that are already registered with the ‘Casa Particular’ program are allowed to list their homes on Airbnb, which is significantly different from the operations of Airbnb in other parts of the world.141 The ‘Casa Particular’ program was created in 1997 as a way for private citizens to rent out their homes as a bed and breakfast, which for the first time allowed the Cuba citizens to take a small part in the hospitality industry.142 Airbnb has been granted a special license by the treasury department to operate in Cuba, for the benefit of U.S. and non-U.S. travelers.143 Since the citizens are living in the homes and communities of Cuban citizens, rather than government owed hotels they are satisfying the requirements of the U.S.’s “people-to-people” educational travel visa, even if the sum and substance of the trip really only amounts to tourism.144 Airbnb CEO Brian Chesky has described the interactions as “person-to-person diplomacy.”145

As previously noted there is a requirement to aid the citizens of Cuba in order to get permission to operate.146 While there is not much talk about exactly how Airbnb satisfied this requirement, it can be inferred. One of Airbnb’s missions is to culture people by immersing the traveler in the community of the country, city, or town they chose to visit.147 The financial opportunity for Cuban citizens to work in a transplanted American market is incredibly fruitful. The average salary in Cuba is somewhere from $25 to $50 a month, while the average cost of one booking on Airbnb cost $250.148 Since the requirement of helping the Cuban citizens is not a strict black letter rule there is no actually bar to measure it against, but comparing what Airbnb has done with what Marriot and Starwood have done they results seem to add up.149

The embargo has obviously led to lost opportunities in Cuba for American businesses, but often not realized is that American corporations’ have been affected in other countries besides Cuba because of the embargo, specifically in terms of international legal disputes. Legal troubles have emerged over a situation involving American Hotel chains and

140 Airbnb, supra note 140; Airbnb, supra note 138.
141 After the dissolution of the USSR Cuba was going through economic hardships and as a why to help citizens get by the government allowed them to rent out there rooms, which many had been doing illegally for years before. See Carlos Rodriguez, History of Casas Particulares, Casa Particular Cuba Blog, (Oct. 10, 2002) http://casaparticularcuba.org/blog/2002/10/the-history-of-casas-particulares-in-cuba/.
142 Airbnb, supra note 140.
143 C.F.R 31 § 515.565 (b); Griffith, supra note 140.
144 Griffith, supra note 140.
145 Griffith, supra note 140.
146 Fox, supra note 123.
147 Griffith, supra note 140, (“We’re about allowing you to feel like you live in a community, even if it’s just for a few days,” [Brian Chesky CEO and co-founder of Airbnb]).
148 See Mimi Whitefield, Study: Cubans don’t make much, but it’s more than state salaries indicate, Miami Herald (July 12, 2016) http://www.miamiherald.com/news/nation-world/world/americas/cuba/article89133407.html; Griffith, supra note 140.
149 See Mufson, supra note 41.
Cuban visitors internationally. Specifically, a group of Cubans were kicked out of a Hilton Hotel in Oslo, Norway because Hilton, an American company, was fearful of sanctions. This led to an international issue because it violated Norwegian anti-discrimination laws. Embargos in general will restrict the trade and opportunities of all parties involved, which in this case is quite a few due to the allegiances of America.

V. SOLUTION

To be clear the United States embargo on Cuba was codified into law in 1996 with the Cuban Liberty and Democratic Solidarity Act, also known as the Helms-Burton Act, and cannot be repealed with congressional action. So clearly the easiest way to repeal the embargo is for congress to say it so, but as we all know that actually is not all that easy or likely. So where do we stand? The best option left is a combination of clever diplomacy and use of executive orders to the fullest extent of the president’s powers. Possibly a federal committee designed specifically to negotiate with Cuba in order to get past some of the larger and most obstructive impediments.

On the executive order side, the president will need use his executive power to bring the restrictions and sanctions concerning Cuba down to the lowest level possible. Ideally this would lead to an exponential increase in business and foster some concessions by both sides in order to unlock the full potential of the two countries. The issues for the hospitality industry can largely be separated into two categories the Cuban restrictions and the American restrictions.

A. Cuban Restrictions

Obviously, Cuba cannot be forced to change their laws and freezing them out with an embargo, for the most part, has not worked out so well to make them change their ways. One thing that can be done, and very well may need to be done, in order to progress the relationship between the two countries is wait, approximately two years. This may seem counter intuitive considering the current relationship and all the work former president Barack

151 Id.
152 The Hilton in Oslo was the subject of litigation and boycotts. See Doug Mellgren, Hilton Slammed in Oslo for Cuba Embargo, Washington Post (Jan. 5, 2007) http://www.washingtonpost.com/wp-dyn/content/article/2007/01/05/AR2007010500543.html.
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Obama and Raul Castro has done so far. Waiting is a reasonable idea for a few reasons, the first being the impending retirement of Raul Castro. The current Cuban "president" has publicly announced that he will retire in 2018, whether it is true is yet to be seen. This in itself is important for a couple of reasons first being how will the new president react. The supposed heir is the vice president Miguel Diaz-Canal, but there is a lot of speculation as to whether he will actually be the president, considering he does not have the support of the communist party and military like some other candidates. Another reason why the retirement of Raul is important is the requirement, set forth in the Helms-Burton act, that a transitioning and/or democratically elected government cannot involve Fidel or Raul Castro. No, this may not work perfectly, considering the new president could be a staunch communist as much as Fidel was, but the hope is that a new, possibly younger, president that did not get his start in the revolution may be more enticed by the wealth American hotel companies can bring into the Cuba and therefore be willing to provide more leeway in negotiations over the embargo. This is especially important since the biggest economic boom will come when the tourism booms, which will be a direct result of American hotel companies being able to run a resort like they would anywhere else.

B. The Executive Power

As we have seen above the president has a substantial amount of latitude in the execution and enforcement of the Helms-Burton Act and subsequently the restrictions and sanctions on Cuba. We see this latitude in a few ways. As we have seen already former President Obama has worked tirelessly with President Raul Castro to improve relations and that included the removal of some economic sanctions on products like rum and cigars. So

156 See Isabela Cocoli, Obama Moves aggressively to restore relations with Cuba, VOA News (Nov. 26, 2016) http://www.voanews.com/a/obama-restored-relations-with-cuba/3612438.html (Hereinafter Cocoli). Obama and Raul Castro have restored diplomatic relations, by way of reopening the embassy’s in Washington and Havana. Obama as also moved to restore economic relations by lifting bans on Cuban products like rum and cigars. The plans even involved ideas on ways to increase human rights and a joint medical research initiative between the two countries.


158 Id. ("Somebody who is 65 or 70 is useful for important activities, but not the activities of an important leader.") While Fidel may have been a different story, Raul seem as though he will keep his word on retirement, especially considering his stance on term limits for Cuban leaders. See contra, Roberto Alvarez Quinones, Who will succeed Raul Castro, Diario De Cuba, http://www.diariodecuba.com/cuba/1452510088_19391.html. (Hereinafter Roberto) Though there is some concern about what exactly Raul Castro is refeereing to when he says retire. Is it all together, head-of-state and leader the PCC (which the author argues is where he gets his power as a dictator from), or just the Government.

159 See Mimi Whitefield, Who will succeed the Castro brothers one day? An apparent successor rises, Miami Herald, (Nov. 26, 2016) http://www.miamiherald.com/news/nation-world/world/americas/fidel-castro-en/article117215268.html (Casting doubt on who will lead after Raul); See Marcy Kreiter, Who Will Succeed The Castro in Cuba? Miguel Diaz-Canel Is The Immediate Heir Apparent But There’s A Younger Generation In The Wings, IB Times (Nov. 27, 2016) http://www.ibtimes.com/who-will-succeed-castro-cuba-miguel-diaz-canel-immediate-heir-apparent-theres-2451357 (Speculating on a younger more connected president); Roberto, supra note 162 ("Who could that successor be? Nobody knows, but we can say that it will not be Miguel Diaz-Canel, as he does not form part of the political-military elite holding power.")

160 Helms-Burton § 205 (7).

161 Cocoli, supra note 156.
as we have seen the embargo is a collection of restrictions and sanctions that have been mix in and removed throughout its history and removing of those sanctions largely lie with the president and his executive office.\textsuperscript{162} The idea here is that the embargo is a container and as more and more restrictions are removed from the embargo we will be left with “a proverbial Easter egg – it’s going to be hollow.”\textsuperscript{163} Even though the embargo will still be in effect there will basically be no real restrictions against a hotel company starting up in Cuba, at least on the American side. Once the hospitality and other sectors are allowed into Cuba, with the wealth and opportunity they bring, the congress will find no need to continue this fruitless embargo.

Since this a foreign affairs issue the president has a specific set of powers when executing his constitutional authority. As we have seen in \textit{United States v. Curtiss-Wright Export Corp.} the courts will generally not question the president’s authority to act when it concerns foreign affairs.\textsuperscript{164} This is a matter with a foreign nation and the power to deal with a foreign nations is vested in the national government, for which the president is the sole representative\textsuperscript{165}. As for a challenge against his power concerning the Helms-Burton Act, which seem to be a direct answer from congress against his actions we look to Justice Jackson’s three concurrence in \textit{Youngstown}.\textsuperscript{166} Here Justice Jackson laid out three circumstances and the type of authority the president will be provided. Here the president would be in the third category “when the president takes measures incompatible with the expressed or implied will of Congress…”\textsuperscript{167} While the president authority would be at its lowest ebb in this circumstance his still has some power. The authority must be strictly scrutinized, but he is not powerless.\textsuperscript{168}

\textbf{VI. CONCLUSION}

The relationship between Cuba and America has been interesting to say the least. The two countries separated by less than 90 miles, who once upon a time were great allies have been stuck in a childish feud for the last 50 years. Clearly, both countries will be better off when the embargo is lifted and free trade and relations are welcomed. Tourism opportunities are crucial to the development of Cuba and its relationship with America. The hospitality industry is the most crucial sector in bringing Cuba back into the international community and improving the country. America has long waited for Cuba to change its ways before lifting the embargo, but waiting hasn’t worked. As Cuba sat isolated from most of the

\textsuperscript{162} See generally, Julie Hirschfeld Davis and Michael R. Gordon, \textit{Obama Intends to lift several Restrictions against Cuba on his own}, The New York Times, (Dec. 18, 2014) https://www.nytimes.com/2014/12/19/us/politics/obama-intends-to-lift-several-restrictions-against-cuba-on-his-own.html. (“[The process to restore full diplomatic relations] is a relatively straightforward, frankly, from a legal perspective […] we can do that via an exchange of letter or of notes. It doesn’t require a formal sort of legal treaty or agreement.”).

\textsuperscript{163} \textit{Id.} (“The embargo is a container – it’s been that way since President Eisenhower – that’s has regulations and laws put into in and taken out of it and mixed about […] President Obama is saying ‘I’m going to leave a shell, but it’s going to be a proverbial Easter egg – it’s going to be hollow.’") (quoting John Kavulich).

\textsuperscript{164} \textit{See United Stated v. Curtiss-Wright Export Corp.}, 299 U.S. 304

\textsuperscript{165} \textit{Id.}

\textsuperscript{166} \textit{Youngstown Sheet & Tube Co. v. Sawyer}, 343 U.S. 579.

\textsuperscript{167} \textit{Id} at 637.

\textsuperscript{168} \textit{Id.}
world and the largest economic power source for the last 50 years they have only changed gradually. This is most likely a result of the leftover hatred for the western world that the Castro brothers harbored, but more likely the easiest way to keep power. With the death of Fidel and the retirement of Raul, Cuba, now, has the best opportunity to change its ways in the last 50 years, but they will need the help of America.

There are a lot of restrictions that will hamper the hospitality industry from reaching their full potential in Cuba. America needs to take the first step or another step in renewing the relationship and allowing the hotel companies the ability to work in Cuba. Relax as many restrictions and sanctions as possible through executive order and do not wait for congress to repeal the embargo, if left up to them it would never get done. As Jon Stewart once said “[The Senate] couldn’t even pass ice cream appreciation day…”1

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