



New decision by the Southern District Court of Florida recognises the Helms Burton Act's definition of "trafficking" as constitutional

On March 23, 2022, a judge of the Southern District Court of Florida issued a new ruling recognising that the definition of "traffic" included in the Helms Burton Act (HBL) is constitutional. The decision results from motions filed by Crowley Latin America Services, LLC, and Crowley Logistics, Inc. (collectively the "Defendants"), seeking dismissal of the Second Amended Complaint ("SAC"), filed by Odette Blanco Roseell and her siblings (collectively the "Plaintiffs"), for allegedly trafficking in the container terminal at the Mariel Special Development Zone (MSDZ). This SAC sought to claim damages under the HBA.

According to the SAC, the Claimants owned Marítima Mariel S.A., a Cuban company established in 1954, which, in 1955, was granted a 70-year concession by the Cuban Government to develop docks, warehouses and port facilities in Mariel Bay, Cuba. The concession also included several "exceptional" rights, such as the right to occupy and use the land and waters to carry out projects, the right of compulsory expropriation, the right to impose easements and the right to evict tenants. The Blanco Rosell brothers claim to have also been owners of other companies, including Compañía Azucarera Mariel S.A. ("Azucarera Mariel"), and

approximately 11,000 acres of land around Mariel Bay. They held all these assets and rights until they were confiscated by the Cuban government on 29th September 1960. Subsequently, this land was incorporated into the MSDZ.

The Defendants are engaged in the business of transporting cargo between the United States and foreign ports, including the Port of Mariel in Mariel Bay. Therefore, their container vessels from Florida routinely call at the MSDZ container terminal for loading and unloading operations.

The Defendants had moved to dismiss the SAC: (1) for lack of standing as required by Title III of the HBA; and (2) for lack of proper foundation, inter alia, because they did not adequately establish that (i) the Claimants had a claim to the container terminal or the concession, or that (ii) the Defendants' alleged conduct qualified as "traffic" under the HBA.

The judge dismissed in part the Respondents' allegations, including the allegation of non-recognition of "traffic", but accepted the Respondents' allegation of lack of standing. On the latter point, the judge considered the Claimants' arguments that the Claimants, as heirs, do not have a legitimate procedural interest in the confiscated assets because they acquired their alleged rights after 12th March 1996. The

HBA provides that "in the case of property seized before 12th March 1996, a national of the United States may not bring an action under this section on a claim to the seized property unless such national acquires title to the claim before 12th March 1996", and that, "the national of the United States who acquired title to the claim must be the same national of the United States bringing the action under Title III". In this case, as the Claimants have failed to prove this particular point, it is not for them to maintain an action under Title III of the HBA. In other words, jurisprudence is already beginning to form on this requirement of the HBA, which can be relied upon by many of the corporate defendants.

In relation to the damages claimed, the judge acknowledges that the Claimants were affected when the confiscated assets were used without their consent and without payment of adequate compensation. He considers that this harm is closely related to unjust enrichment, which has indisputable roots in the common law, and that, in fact, Congress passed the HBA largely because it considered the legal remedies available to claim unjust enrichment for the use of unjustly confiscated property by private entities at the expense of the rightful owners of the property to be insufficient. Moreover, it considered that it is entirely possible that a Title III plaintiff could seek damages in an amount close to the profits generated by the defendant's traffic.

The Defendants focused much of their argument on the fact that the Claimants do not "own a right" to the container terminal because the ports, docks, warehouses and MSDZ facilities did not exist until 2009. However, the judge found this argument to be without merit because the Cuban government incorporated the confiscated property into the MSDZ without the Claimants' authorisation, and because the container terminal incorporates the right of the 70-year concession.

The Tribunal also found that the Claimants sufficiently alleged traffic under the HBA, because they demonstrated that the Respondents use the container terminal, which is sufficient to allege that the Respondents are engaged in a commercial activity, using or benefiting from the confiscated property. This is sufficient to establish a prima facie case that the Defendants benefit from the traffic on behalf of another person. Moreover, the judge does not find the term "trafficking" to be unconstitutionally vague, as that court, and the many other courts interpreting the HBA, have had no difficulty in understanding the meaning of the term "trafficking".

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