

U.S. PROPERTY CLAIMS AGAINST CUBA

Statement by David Bradley

Before the House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere

“The Future of Property Rights in Cuba,” Thursday, June 18, 2015

I am David Bradley. I retired from Federal service in 2008 after twenty years as Chief Counsel of the Foreign Claims Settlement Commission, a small independent component of the Department of Justice. I am pleased to have been invited here today to say some words about the Commission’s evaluation and certification of U.S. citizens’ claims for expropriation and other taking of property by the Castro regime in Cuba.

Following the overthrow of the Batista regime in Cuba and Fidel Castro's takeover on January 1, 1959, the Castro regime began a comprehensive drive to seize business enterprises, assets and other private property on the island. Given the extensive American involvement in Cuba's economy at the time, American companies and individuals were particularly affected by these actions.

Some of these takings were overt, such as the outright nationalization of certain industries under Law 1076 of December 5, 1962, and the expropriations under Law 851 of July, 6, 1960, which were directed toward Cuban concerns in which Americans held majority interests. In addition, all properties of persons who had left Cuba were confiscated under Law 989 of December 6, 1961. Other takings were more subtle, such as the administrative requirements placed upon mining and oil concession holders to reregister their concessions under circumstances that made

compliance impossible. Pending applications for further exploration were cancelled arbitrarily and new applications were ignored or refused under Law No. 635 of November 23, 1959.

Another method of effecting takings was through Cuba's foreign exchange laws. While foreign exchange regulations are recognized as being within a state's sovereign power to impose, Cuba's requirements for the export of currency were so restrictive that they effectively prevented any payments from being made to creditors outside Cuba.

One of the first U.S. responses to these actions was an effort by Senator Bourke Hickenlooper to amend the Foreign Assistance Act of 1961 to impose a trade embargo on Cuba and to prohibit the furnishing of foreign assistance to the "present government of Cuba." However, the amendment was not enacted, and the Department of the Treasury did not move to block, or freeze, Cuban assets in the United States until July 1963. Consequently, most of those assets--possibly as much as \$500 million--had already been transferred out of the country, primarily to Canada, by the time the blocking took place.

In October 1964, Congress passed House of Representatives bill H.R. 12259, which became Public Law 88-666 and is codified as Title V of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1643). The statute authorized and directed the Foreign Claims Settlement Commission to determine the validity and amount of U.S. nationals' claims against Cuba for expropriation and other taking of American property and other assets effected on or after January 1, 1959,

and to certify its findings of the amounts of the losses sustained by claimants to the Secretary of State. In addition, the Commission was authorized and directed to determine the validity and amounts of claims against Cuba for disability or death of U.S. citizens resulting from actions taken by or under the authority of the Cuban government. The purpose of the adjudication process was to compile a record of the claims which could eventually serve as the basis for a lump-sum settlement agreement with a future Cuban government.

As I mentioned earlier, the Foreign Claims Settlement Commission is a small, independent agency within the U.S. Department of Justice. The Commission consists of its Chairman and two Commissioners, who are appointed by the President and confirmed by the Senate, and it also has a legal staff who advise and make recommendations to the Chairman and Commissioners on how the claims should be evaluated and determined.

The Commission has been in existence since 1954, when it took over the functions of two predecessor agencies, the War Claims Commission and the International Claims Commission. In the years since then the Foreign Claims Settlement Commission has conducted claims adjudication programs involving Bulgaria, Rumania, Hungary, Yugoslavia, the Soviet Union, Czechoslovakia, Poland, China, the German Democratic Republic (East Germany), Vietnam, Ethiopia, Iran, the Federal Republic of Germany, Albania, Libya, and Iraq.

Returning to the subject of claims against Cuba, the period for filing claims with the Commission officially commenced on November 1, 1965, and was to end

on May 1, 1967. By law the program was to be completed as of May 1, 1970.

However, due to budget cuts for fiscal year 1969, the program could not be completed by the statutory time, and further legislation was finally obtained which extended it to July 6, 1972.

A total of 8,816 claims were evaluated in the course of the program. Of those, 5,911 were certified as valid, with a total value of over \$1.8 billion, not including interest. If one adds the interest component, which the Commission fixed at six percent per annum, the total comes to over \$7.6 billion.

The claims cover a wide spectrum of losses, ranging from small bank accounts, household personal property, and disability or death of individuals, to Cuban branches of U.S. banks, mining and oil concessions, and other corporate assets with values in the millions of dollars. Of the \$1.8 billion certified amount, over \$1.6 billion was certified in the names of 898 American corporations, and 5,013 claims totaling over \$221 million were certified in the names of individuals. There were 131 certifications in excess of \$1 million, with the largest single certification in favor of the Cuban Electric Company in the amount of over \$267.5 million. Other large certifications were in the names of companies including International, Telephone & Telegraph, North American Sugar, Standard Oil, and Texaco.

This concludes my statement. I will do my best to answer any questions you may have.