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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (AUGUST 12, 2022)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

HEREDEROS DE ROBERTO
GOMEZ CABRERA, LLC,

Plaintiff-Appellant,

v.

TECK RESOURCES LIMITED,

Defendant-Appellee.

No. 21-12834

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-21630-RNS

Before: NEWSOM, MARCUS, Circuit Judges,
and COVINGTON,* District Judge.

NEWSOM, Circuit Judge:

In 1996, in response to the Cuban government's decades-old program of confiscating private property,

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* Honorable Virginia M. Hernandez Covington, Senior United States District Judge for the Middle District of Florida, sitting by designation.

Congress enacted the Cuban Liberty and Democratic Solidarity Act—commonly called the Helms-Burton Act. That statute broadly imposes liability on anyone who "traffics" in confiscated Cuban property to which a U.S. national has a claim. The plaintiff in this case, a Florida LLC called Herederos de Roberto Gomez Cabrera, sued a Canadian company, Teck Resources Limited, alleging that it had illegally trafficked in property to which Herederos says it has a claim. We hold that the federal courts don't have personal jurisdiction over Teck, and we therefore affirm the dismissal of Herederos's complaint.

I

In 1960, the revolutionary Cuban government confiscated Roberto Gomez Cabrera's mineral mines. Cabrera's children, who inherited his claim to the mines, allege that Teck, a Canadian corporation, managed the mines and thereby "traffic[ked]" in them in violation of the Helms-Burton Act.

Cabrera's children assigned their claims to a Florida LLC, Herederos de Roberto Gomez Cabrera, and Herederos sued Teck under the Helms-Burton Act in the U.S. District Court for the Southern District of Florida. Broadly speaking, the Act imposes liability on "any person" who "traffics in property which was confiscated by the Cuban Government on or after January 1, 1959." 22 U.S.C. § 6082. Teck moved to dismiss for lack of personal jurisdiction. The district court granted Teck's motion, holding that Florida's long-arm statute didn't provide jurisdiction over Teck and, additionally, that Teck lacked the necessary connection to the United States to establish personal jurisdiction under Federal Rule of Civil Pro-

cedure 4(k)(2). For the reasons explained below, we agree with the district court.[1]

II

As relevant here, the Federal Rules of Civil Procedure, which govern suits brought in federal court, explain that a district court may exercise personal jurisdiction over a defendant if "(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(2). The parties here agree that Rule 4(k)(2)'s first condition applies—Teck isn't "subject to jurisdiction in any state's courts of general jurisdiction." Accordingly, we must decide whether exercising personal jurisdiction here would be "consistent with the . . . Constitution." For purposes of this case, the relevant constitutional provision—and we flag this issue because it gets to the nub of the parties' dispute—is the Fifth Amendment's Due

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[1] We review the district court's dismissal for lack of personal jurisdiction de novo, accepting the allegations in the complaint as true. *See Don't Look Media LLC v. Fly Victor Ltd.*, 999 F.3d 1284, 1292 (11th Cir. 2021). "When a defendant submits nonconclusory affidavits to controvert the allegations in the complaint, the burden shifts back to the plaintiff to produce evidence to support personal jurisdiction." *Id.*

Teck separately contends that Herederos lacks Article III standing to sue. Because "there is no mandatory sequencing of jurisdictional issues," and because "in appropriate circumstances . . . [we] may dismiss for lack of personal jurisdiction without first establishing subject-matter jurisdiction," we resolve this case without addressing Herederos's standing. *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (citation and quotation marks omitted).

Process Clause, which applies to the federal government and its courts, not the Fourteenth's, which applies to the states.[2]

Despite their agreement that the Fifth Amendment governs the personal-jurisdiction inquiry here, Herederos and Teck advance competing jurisdictional analyses. For its part, Teck contends that we should analyze personal jurisdiction under the Fifth Amendment the same way we would under the Fourteenth Amendment—*i.e.*, ask whether the defendant has sufficient "minimum contacts" with the forum and whether "maintenance of the suit [would] offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945). Herederos, by contrast, urges us to apply a more lenient "arbitrary or fundamentally unfair" standard that we have sometimes used in what it calls "extraterritorial jurisdiction" cases. *See* Br. of Appellant at 15–16; Reply Br. of Appellant at 4. Although the language and logic of the "extraterritorial jurisdiction" cases can be a little confusing, those decisions, as we'll explain, aren't really about personal jurisdiction at all. Accordingly, we hold that courts should analyze

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[2] In the more usual case, we would assess whether jurisdiction would be proper under the Fourteenth Amendment because Rule 4(k)(1) authorizes personal jurisdiction in federal court over a person who "is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(k)(1)(A). Because state courts are limited by the Fourteenth Amendment, federal courts look through (in a manner of speaking) to that provision to determine whether a state court could exercise personal jurisdiction. *See Walden v. Fiore*, 571 U.S. 277, 283 (2014). Because the parties agree that no state court would have jurisdiction over Teck here, they ask us to assess jurisdiction under Rule 4(k)(2) instead.

personal jurisdiction under the Fifth Amendment using the same basic standards and tests that apply under the Fourteenth Amendment.

A

We conclude that the personal-jurisdiction analysis under the Fifth Amendment is the same as that under the Fourteenth for three principal reasons.

First, and most importantly, the operative language of the Fifth and Fourteenth Amendments is materially identical, and it would be incongruous for the same words to generate markedly different doctrinal analyses. *Compare* U.S. Const. amend. V ("No person shall be . . . deprived of life, liberty, or property, without due process of law."), *with* U.S. Const. amend. XIV, § 1 ("No State shall . . . deprive any person of life, liberty, or property, without due process of law.").

Second, this Court has all but held already that the Fifth Amendment's personal-jurisdiction analysis should track the Fourteenth's. *See Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1219 n.25 (11th Cir. 2009) ("As the language and policy considerations of the Due Process Clauses of the Fifth and Fourteenth Amendments are virtually identical, decisions interpreting the Fourteenth Amendment's Due Process Clause guide us in determining what due process requires in the Fifth Amendment jurisdictional context."); *see also SEC v. Marin*, 982 F.3d 1341, 1349 (11th Cir. 2020) (conducting "minimum contacts" analysis in case assessing personal jurisdiction under the Fifth Amendment); *Fraser v. Smith*, 594 F.3d 842, 850 (11th Cir. 2010) (same).

Third, adopting Herederos's preferred "arbitrary or fundamentally unfair" standard for Fifth Amendment cases—rather than the traditional minimum-contacts test—would create unnecessary tension with personal-jurisdiction precedents more generally. Fourteenth Amendment decisions have repeatedly emphasized the heavy burden faced by foreign defendants forced to litigate in U.S. courts, and there's no reason to think that those burdens are any lighter in cases governed by the Fifth Amendment. *See, e.g.*, *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 116 (1987) (finding no jurisdiction over Japanese corporation partly because of "the international context [and] the heavy burden on the alien defendant"); *Oldfield*, 558 F.3d at 1221 ("[I]n cases involving international defendants, courts should consider '[t]he unique burdens placed upon one who must defend oneself in a foreign legal system.'" (quoting *Asahi*, 480 U.S. at 114)).

For these fairly straightforward reasons, we think it makes eminent sense to apply the same basic personal-jurisdiction standards in cases arising under the Fifth Amendment as in those arising under the Fourteenth Amendment.

B

What, though, of the "extraterritorial jurisdiction" cases that Herederos cites? In those decisions, Herederos notes, we have said that "the extraterritorial application of the law must comport with due process, meaning that the application of the law must not be arbitrary or fundamentally unfair," *United States v. Noel*, 893 F.3d 1294, 1301 (11th Cir. 2018), and that the "Due Process Clause prohibits the exercise of

extraterritorial jurisdiction over a defendant when it would be 'arbitrary or fundamentally unfair,'" *United States v. Baston*, 818 F.3d 651, 669 (11th Cir. 2016). But a close review of those cases shows that, in fact, they aren't really about *personal* jurisdiction at all; rather, at their core, they address what is sometimes called "legislative jurisdiction"—*i.e.*, the power of Congress (or another lawmaking body, as the case may be) to regulate conduct extraterritorially.

For instance, in *United States v. Ibarguen-Mosquera*, we looked to international law to determine whether Congress had constitutional authority to criminalize drug trafficking in international waters. *See* 634 F.3d 1370, 1378–79 (11th Cir. 2011). We held, in particular, that "the *enactment* of the [Drug Trafficking Vessel Interdiction Act] d[id] not offend the Due Process Clause" of the Fifth Amendment. *Id.* at 1379 (emphasis added). Similarly, in *Noel*, we examined an international treaty to determine whether Congress could criminalize a foreign defendant's actions under the federal Hostage Taking Act. *See* 893 F.3d at 1304. So too, in an earlier "extraterritorial jurisdiction" case, we held that defendants could be charged with a "general understanding of international law" and, consequently, that it didn't violate due process for Congress to criminalize drug offenses involving stateless vessels on the high seas. *See United States v. Marino-Garcia*, 679 F.2d 1373, 1384 n.19 (11th Cir. 1982).

To be sure, in some of the "extraterritorial jurisdiction" cases, we have analogized to personal-jurisdiction precedents or used language reminiscent of personal-jurisdiction analysis. *American Charities for Reasonable Fundraising Regulation, Inc. v. Pinel-*

las County, 221 F.3d 1211 (11th Cir. 2000) (per curiam), is illustrative. The question there was whether a Florida county could apply a charitable-solicitation regulation to individuals and entities who claimed that they engaged in little, if any, activity in the jurisdiction. We began by framing the question presented as one involving "legislative jurisdiction": "A state's legislative jurisdiction is circumscribed by the Due Process Clause." *Id.* at 1216. In addressing that question, we noted, as relevant here, that "[t]he inquiry into whether sufficient legislative jurisdiction exists is similar to that explored in determining sufficient minimum contacts for the purposes of assessing whether a court can exercise personal jurisdiction consistent with due process." *Id.* (analogizing to concepts of "minimum contacts," "traditional notions of fair play and substantial justice," and "purposeful[] avail[ment]"); *see also, e.g.*, *Gerling Glob. Reinsurance Corp. of Am. v. Gallagher*, 267 F.3d 1228, 1236 (11th Cir. 2001) (applying a personal-jurisdiction-like test to determine whether Florida could regulate a German company's conduct consistent with due process).

Be that as it may, the fact remains, as the Supreme Court has emphasized, that the "type of 'jurisdiction' relevant to determining the extraterritorial reach of a statute . . . is known as legislative jurisdiction, . . . *and is quite a separate matter from jurisdiction to adjudicate*." *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813 (1993) (quotation marks omitted) (emphasis added). Indeed, the Court observed in *Hartford* that the "extraterritorial reach of [a statute] has nothing to do with the jurisdiction of the courts" but, rather, "is a question of substantive law turning on whether, in enacting the [statute], Congress

asserted regulatory power over the challenged conduct." *Id.*

The bottom line, then: The "extraterritorial jurisdiction" cases that Herederos cites are overwhelmingly (if not exclusively) concerned with legislative jurisdiction. None are personal-jurisdiction cases in the traditional sense. Herederos, it seems, asks us to decide the question of personal jurisdiction in this case by reference to the legislative-jurisdiction cases—thereby bringing to bear what it takes to be the more permissive "arbitrary or fundamentally unfair" standard. But we don't need to reason, in essence, by analogy to another body of law. We can and should just go straight to the source: the personal-jurisdiction cases themselves.

Accordingly, we conclude that the "arbitrary or fundamentally unfair" standard does not apply here. We hold instead, to reiterate what we said in *Marin*—which, like this case, arose under the Fifth Amendment—that "[t]he exercise of personal jurisdiction comports with due process when (1) the nonresident defendant has purposefully established minimum contacts with the forum and (2) the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice." 982 F.3d at 1349 (quotation marks omitted). The lone difference between the Fifth and Fourteenth Amendments' due-process analyses is that "[w]here, as here, the Fifth Amendment applies . . . the applicable forum for minimum contacts purposes is the United States, not the state in which the district court sits." *Id.* at 1349–50 (quotation marks omitted); *see also Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 619 (1992) (assessing whether Argentina purposefully availed itself of the "United

States"); *Fraser*, 594 F.3d at 850 (assessing contacts with the United States).

III

Applying the minimum-contacts test here is relatively straightforward. We hold that Teck doesn't have contacts with the United States sufficient to establish either specific or general personal jurisdiction over it.

A

We start with specific personal jurisdiction. To establish a non-resident defendant's minimum contacts with a forum for specific-jurisdiction purposes, (1) the plaintiff's claim must "arise out of or relate to" one of the defendant's contacts in the forum, (2) the defendant must have "purposefully availed" itself of the privilege of conducting activities within the forum, and (3) jurisdiction must comport with "traditional notions of fair play and substantial justice." *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1355 (11th Cir. 2013).

Under the first prong, Herederos alleges that its claim arises out of Teck's contacts with the United States because Teck committed a tort that harmed Herederos in this country. To determine whether a defendant's conduct arose out of its contacts with the forum, "we look to the affiliation between the forum and the underlying controversy, *focusing on any activity or occurrence that took place in the forum*." *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1314 (11th Cir. 2018) (cleaned up) (emphasis added); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021) ("[T]here must be an affiliation

between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." (quotation marks omitted)). Herederos alleged only that the *effects* of Teck's actions were felt in the United States—not that Teck engaged in any "activity or occurrence" in the United States. The incidental effects of a defendant's actions are not by themselves sufficient to justify jurisdiction over the defendant in the forum. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295–96 (1980) (finding no jurisdiction where the only contact was injury in the forum).[3]

For these reasons, Herederos's suit doesn't arise out of or relate to any of Teck's ties with the United

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[3] Consider two hypotheticals. If Brian throws a baseball from Pennsylvania into Maryland and hits Clay in the head, some occurrence attributable to Brian—the baseball's movement—occurs in Maryland, and the effect—Clay's resulting injury—is likewise felt in Maryland. In that case, Brian would be subject to jurisdiction in Maryland. *See Ford*, 141 S. Ct. at 1025, 1027–29 (indicating that Ford's attempt to serve the Montana market by aggressively advertising there constituted an "activity or an occurrence" in Montana regardless of the fact that Ford wasn't itself physically present in the state); *Mosseri*, 736 F.3d at 1356 (holding due process satisfied where a defendant advertised, sold, and distributed trademark-infringing goods to Floridians from New York). By contrast, if Connor sells Sakina a faulty rock-climbing harness in Virginia, and Sakina takes it with her to climb in the Red River Gorge in Kentucky and falls while using it there, no part of Connor's activity—selling the harness—occurs in Kentucky, even if the effect—Sakina's fall—occurs there. In that case, Connor wouldn't be subject to jurisdiction in Kentucky. *See Woodson*, 444 U.S. at 295–96. This case is like the second hypo: The harm might have been felt in the United States, but Teck didn't take any action in this country related to that harm.

States. And because a relationship between the defendant's conduct within the forum and the cause of action is necessary to exercise specific jurisdiction, the lack of any such relationship here dooms Herederos's effort to establish specific personal jurisdiction over Teck. *See Mosseri*, 736 F.3d at 1356; *Fraser*, 594 F.3d at 850 (noting, for purposes of a Rule 4(k)(2) specific-jurisdiction analysis, that "our inquiry must focus on the direct causal relationship among the defendant, the forum, and the litigation" (quotation marks omitted)). Because Herederos hasn't shown that its claim arose out of Teck's contacts with the United States, we needn't go on to address the secondary and tertiary questions whether Teck "purposefully availed" itself of the United States or whether exercising jurisdiction over it would offend "traditional notions of fair play and substantial justice."

B

As for general jurisdiction, a "court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quotation marks omitted). Traditionally, a corporation is "at home" in "its place of incorporation and principal place of business." *Ford*, 141 S. Ct. at 1024. Teck's principal place of business isn't in the United States, and it isn't incorporated here. Nor, we conclude, are its other contacts sufficient to render it "at home" in the United States.

Herederos asserts that Teck is "at home" in the United States because it has subsidiaries that are U.S. corporations. In *Daimler*, the Supreme Court held that a foreign defendant's subsidiary's contacts with the forum were insufficient to establish the defendant's "at home" status. Herederos contends, though, that unlike in *Daimler*, where the subsidiary was not incorporated in the relevant forum and didn't have its principal place of business there, Teck's subsidiaries *are* incorporated in the United States and *do* have their principal places of business here. *See Daimler*, 571 U.S. at 139. Thus, Herederos says, Teck is "at home" in the United States.

We've recently held that a subsidiary's contacts can be attributed to its parent company for personal-jurisdiction purposes when "the subsidiary is merely an agent through which the parent company conducts business in a particular jurisdiction or its separate corporate status is formal only and without *any semblance of individual identity*." *United States ex rel. v. Mortgage Invs. Corp.*, 987 F.3d 1340, 1355 (11th Cir. 2021) (quotation marks and citation omitted) (emphasis added). In other words, a subsidiary's contacts can justify jurisdiction over the parent when the subsidiary is a mere "alter ego" of the parent company. *See Daimler*, 571 U.S. at 134; *MIC*, 987 F.3d at 1354; *see also Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1272 (11th Cir. 2002).

Teck's subsidiaries can't fairly be described as its mere alter egos. "[T]here is no litmus test for determining whether a subsidiary is the alter ego of its parent. Instead, we must look to the totality of the circumstances. Resolution of the *alter ego* issue is heavily fact-specific and, as such, is peculiarly within

the province of the trial court." *United Steelworkers of Am., AFL-CIO-CLC v. Connors Steel Co.*, 855 F.2d 1499, 1506 (11th Cir. 1988). Herederos points out that "[s]ome of Teck's corporate officers or leadership are also officers of Teck's U.S.-based subsidiaries," and that Teck "consolidates its financial statements with those of its US-subsidiaries." Br. of Appellant at 4–5. To be sure, those *are* factors courts use when assessing whether a subsidiary is an alter ego, *see Connors Steel Co.*, 855 F.2d at 1505, but they are not by themselves sufficient to establish a subsidiary's alter-ego status, *see Consolidated Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1293 (11th Cir. 2000) ("Where the 'subsidiary's presence in the state is primarily for the purpose of carrying on its own business and the subsidiary has preserved some semblance of independence from the parent, jurisdiction over the parent may not be acquired on the basis of the local activities of the subsidiary.'"). Here, the district court found that Teck's subsidiaries are independent of Teck, and the evidence supports that finding. Teck's subsidiaries are legally distinct entities and observe all corporate formalities: Each subsidiary has its own board of directors, officers, books of account, and separate taxes. Based on the totality of the circumstances, Teck's subsidiaries can't be used to justify general jurisdiction over Teck.[4]

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[4] Herederos also argues that the district court abused its discretion by refusing to allow Herederos to conduct jurisdictional discovery. We disagree. "[P]arties have a qualified right to jurisdictional discovery, meaning that a district court abuses its discretion if it completely denies a party jurisdictional discovery unless that party unduly delayed in propounding discovery or seeking leave to initiate discovery." *ACLU of Fla., Inc. v. City of Sarasota*, 859 F.3d 1337, 1341 (11th Cir. 2017) (quotation

* * *

Herederos hasn't alleged facts sufficient to allow the United States courts to exercise either specific or general personal jurisdiction over Teck.[5] Accordingly, we AFFIRM.

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marks and citations omitted). Here, as the district court found, Herederos knew that jurisdiction over the defendant would be challenged, and it previously considered the need for jurisdictional discovery, yet it never moved for jurisdictional discovery. Thus, Herederos "unduly delayed in . . . seeking leave to initiate discovery." Furthermore, Herederos concedes that it "did not file a distinct and entirely independent motion to take jurisdictional discovery" as it was required to. Br. of Appellant at 36; *see also* Fed R. Civ. P. 7(b)(1)(A) ("A request for a court order must be made by motion. The motion must be in writing unless made during a hearing or trial.").

[5] Teck also contends that Herederos failed to state a claim, but because we hold that the court lacked personal jurisdiction, we don't address the merits. *See In re Breland*, 989 F.3d 919, 923 (11th Cir. 2021).

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DENYING MOTION FOR RECONSIDERATION (JULY 20, 2021)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.

Civil Action No. 20-21630-Civ-Scola

Before: Robert N. SCOLA, JR., District Judge.

ROBERT N. SCOLA, JR., District Judge.

This matter is before the Court upon Plaintiff Herederos de Roberto Gomez Cabrera, LLC's ("HRGC") motion for reconsideration of this Court's order dismissing the case without leave to amend. (ECF No. 40.) In its motion, the Plaintiff seeks reconsideration of the Court's dismissal without leave to amend and denial of jurisdictional discovery, and alternatively, leave to amend. Defendant Teck Resources

Limited ("Teck") opposes the motion, arguing that the Plaintiff rehashes the arguments already denied by the Court and that even if reconsideration were appropriate, leave to amend would be futile. (ECF No. 41.) HRGC timely replied. (ECF No. 44.) For the reasons set forth below, the motion is denied.

1. Background

The Plaintiff Herederos de Roberto Gomez Cabrera, LLC filed this action against the Defendant Teck pursuant to Title III of the Cuban Liberty and Democratic Solidarity Act (the "Helms-Burton Act," or the "Act"). HRGC is a Florida company owned by the heirs of Robert Gomez Cabrera. (ECF No. 7 ¶ 8.) In July 1956, Gomez Cabrera, through his company Rogoca Minera, S.A., purchased twenty-one mines spanning over 624.91 acres of land in the town of El Cobre in Cuba. (*Id.* ¶ 6.) The mines were confiscated by the Cuban government at some point in time. In September 1969, Cabrera's children inherited all rights, title, and interests held by Cabrera in Rogoca Minera, S.A., including the twenty-one mines, mining equipment, and installations. (*Id.* ¶¶ 7,8.) Cabrera's children incorporated HRGC, a Florida limited liability company and assigned it their claims to the confiscated property (*Id.* ¶ 11.) The Plaintiff is the holder of all interests inherited by Cabrera's children who were citizens of the United States on March 12, 1996. (*Id.*) The amended complaint claims that Teck, a Canadian corporation, trafficked on the confiscated property.

In its one-count amended complaint, HRGC alleges that Teck violated Title III of the Helms-Burton Act. (*Id.* ¶ 41.) Teck moved to dismiss the amended complaint in its entirety because the Court

lacked personal jurisdiction over Teck. Additionally, Teck claimed, that even if the Court had jurisdiction over the case, the amended complaint failed to state a claim for relief.

After careful consideration, the Court granted Teck's motion to dismiss on several grounds. The Court found that HRGC had failed to allege sufficient facts to establish personal jurisdiction over Teck. The Court also denied the Plaintiff's argument that jurisdiction could be established under the federal long-arm statute because Teck's contacts with the United States through its mining subsidiaries are too attenuated to support jurisdiction under Rule 4(k)(2). The Court further explained that even if the subsidiaries' mining activities could be attributed to Teck, they cannot be said to be related to the unlawful trafficking in the confiscated property in Cuba and thus did not establish jurisdiction. The Court also denied HRGC's claim for jurisdictional discovery because it did not file a motion requesting same despite indicating its intent to seek jurisdictional discovery as early as September 2020.

The Court went a step further and granted the motion to dismiss on its merits. The Court found that even if jurisdiction had been established, the amended complaint was due to be dismissed for failure to state a claim. The amended complaint did not sufficiently allege that HRGC had an actionable ownership interest because it did not allege that it obtained the interest prior to March 12, 1996. Lastly, the Court determined that HRGC had not sufficiently alleged that Teck knowingly and intentionally trafficked in the confiscated property. Instead, the amended complaint offered conclusory allegations based on unidentified

laws and records, and at best attempted to establish notice through that a separate entity knew. The Court denied the Plaintiff's request for leave to amend because it was embedded in its response in opposition to the motion and was therefore, improper. The Court granted the motion to dismiss, dismissed the claims without prejudice, and closed the case.

HRGC filed a motion to reconsider the Court's order granting the motion to dismiss. (ECF No. 40.) HRGC requests that the Court reconsider its findings regarding jurisdictional discovery. (*Id.* at 2.) HRGC argues that it had timely served jurisdictional discovery on Teck, had requested the ability to take jurisdictional discovery in other Court filings, and that jurisdictional discovery should be permitted in the interests of due process and judicial economy. (*Id.*) HRGC also seeks reconsideration of the Court's decision to dismiss the complaint without leave to amend and requests leave to file a second amended complaint. (ECF No. 40 at 1.) HRGC attached the proposed second amended complaint to its motion. (ECF No. 40-1.)

Teck opposes the motion arguing that HRGC's motion simply rehashes the arguments previously raised and rejected and improperly seeks to amend the complaint for a second time based on facts that could have been alleged in the first amended complaint. (ECF No. 41 at 1.) Teck further argues that even if the motion to reconsider were procedurally proper, it still fails to set forth good cause for amendment after the Court-ordered date to amend had passed and that amendment would be futile. (*Id.* at 2.)

2. Legal Standard

"[I]n the interests of finality and conservation of scarce judicial resources, reconsideration of an order is an extraordinary remedy that is employed sparingly." *Gipson v. Mattox,* 511 F.Supp.2d 1182, 1185 (S.D. Ala. 2007). A motion to reconsider is "appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Z.K. Marine Inc. v. M/V Archigetis,* 808 F.Supp. 1561, 1563 (S.D. Fla. 1992) (Hoeveler, J.) (citation omitted). "Simply put, a party may move for reconsideration only when one of the following has occurred: an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice." *Longcrier v. HL-A Co.,* 595 F.Supp.2d 1218, 1247 (S.D. Ala. 2008) (quoting *Vidinliev v. Carey Int'l, Inc.,* No. CIV.A. 107CV762-TWT, 2008 WL 5459335, at *1 (N.D. Ga. Dec. 15, 2008)). However, "[s]uch problems rarely arise and the motion to reconsider should be equally rare." *Z.K. Marine Inc.,* 808 F.Supp. at 1563 (citation omitted). Certainly, if any of these situations arise, a court has broad discretion to reconsider a previously issued order. Absent any of these conditions, however, a motion to reconsider is not ordinarily warranted.

3. Analysis

HRGC requests that the Court reconsider its findings regarding jurisdictional discovery and reasoning for denying leave to amend the amended complaint. The Court turns to each argument in turn.

A. Jurisdiction Under Rule 4(k)(2) and Jurisdictional Discovery

HRGC seeks reconsideration of the Court's ruling on jurisdiction under Rule 4(k)(2) and its denial of jurisdictional discovery. It relies on the clear-error and new evidence prongs of the reconsideration analysis. HRGC avers that the Court misapprehended its argument as to jurisdiction under Rule 4(k)(2), because the Florida long-arm statute is irrelevant, the Court did not consider the "effects doctrine," and there is new evidence regarding Teck's subsidiaries in the United States. These arguments are unavailing.

The Court conducted a complete jurisdictional analysis including whether jurisdiction could be established under both the Florida and federal long arm-statute. Moreover, contrary to HRGC's assertion that "the Court recognized that . . . Rule 4(k)(2) is appropriate to establish jurisdiction over Defendant," the Court found that the amended complaint satisfied only one of the two required elements to establish jurisdiction under Rule 4(k)(2). *Thompson v. Carnival Corp.,* 174 F.Supp.3d 1327, 1337 (S.D. Fla. 2016) (Moore, J.) ("Rule 4(k)(2)—the so-called federal long-arm statute—permits a federal court to aggregate a foreign defendant's nationwide contacts to allow for personal jurisdiction provided that two essential conditions are met: '(1) plaintiff's claims must arise under federal law; and (2) the exercise of jurisdiction must be consistent with the Constitution and laws of the United States.'"). Critically, the Court found that although HRGC's claims arose under federal law, the amended complaint failed to tie Teck to the actions of its subsidiaries in the United States. This analysis is consistent with the effects test. *In re Takata Airbag*

Prod. Liab. Litig., 396 F.Supp.3d 1101, 1150 (S.D. Fla. 2019) (Moreno, J.) (finding the plaintiffs did not establish jurisdiction over foreign defendants because the "Plaintiffs set forth no allegations establishing the nature of the corporate relationship between the subsidiary Domestic Defendants and their parents.")

The Court also denies HRGC's argument that the Court erred in denying its request for jurisdictional discovery. HRGC concedes that it did not formally file a motion for leave to take jurisdictional discovery. (ECF No. 40 at 6.) Notwithstanding, HRGC argues that it should be permitted to do so despite not formally requesting such relief because it notified the Court that it intended to seek jurisdictional discovery and it served jurisdictional discovery on Teck during the time the motion to dismiss was pending.

HRGC is "foreclosed from pursuing jurisdictional discovery in an attempt to marshal facts that [it] should have had—but did not—before coming through the courthouse doors." *Auf v. Howard Univ.,* No. 19-22065-CIV, 2020 WL 1452350, at *10 (S.D. Fla. Mar. 25, 2020) (Smith, J.) (citing *Thompson v. Carnival Corp.,* 174 F.Supp.3d 1327, 1333 (S.D. Fla. 2016)). Put differently, "the purpose of jurisdictional discovery is to ascertain the truth of the allegations or facts underlying the assertion of personal jurisdiction. It is *not* a vehicle for a 'fishing expedition' in hopes that discovery will sustain the exercise of personal jurisdiction." *Id.* As explained in the Court's order granting the motion to dismiss, the amended complaint did not allege any facts supporting personal jurisdiction over Teck based on its domestic subsidiaries.

Additionally, upon review of HRGC's request for production, attached to the subject motion, the Court

finds that HRGC has not made a showing that it served jurisdictional discovery while the motion to dismiss was pending. The requests for production do not seek jurisdictional information. On the contrary, the discovery requests seek information regarding Teck's corporate relationship with a non-subsidiary company Joutel Resources Limited. (ECF No. 40-2.) The requests also seek documents relating Teck's relationship with Cuban businesses and different government entities. Critically, *none* of the requests seek information specific to Teck's relationships with its subsidiaries in the United States. Thus, the discovery that was pending while the motion to dismiss was pending would not have changed the Court's determination on jurisdiction. *Compare RMS Titanic, Inc. v. Kingsmen Creatives, Ltd.,* 579 F. App'x 779, 791 (11th Cir. 2014) ("Because the facts [plaintiff] sought would not have affected the district court's jurisdiction, it was not an abuse of discretion for the district court to deny the motion for jurisdictional discovery."); *with Eaton v. Dorchester Dev., Inc.,* 692 F.2d 727, 729-31 (11th Cir. 1982) (remanding because dismissal was "premature" where plaintiff's requests for production of documents bearing on jurisdiction remained outstanding) and *Rd. Space Media, LLC v. Miami-Dade Cty.,* No. 19-21971-CIV, 2020 WL 2988424, at *1 (S.D. Fla. Apr. 24, 2020) (Scola, J.).

Moreover, as explained in this Court's order on the motion to dismiss, HRGC's request for jurisdictional discovery is untimely. HRGC argues that it previously raised the issue of jurisdictional discovery: (1) the parties' joint scheduling report (ECF No. 17), (2) its response in opposition to the motion to dismiss (ECF No. 23), (3) the parties status report; and (4) opposition

to Teck's motion to stay discovery. To be clear, the subject motion is HRGC's first motion for jurisdictional discovery, filed after the Court dismissed the complaint and closed this case. HRGC has been on notice that the parties disagreed on whether jurisdictional discovery was appropriate since October 13, 2020 or six months before the Court ruled on the motion to dismiss. (ECF No. 17 at 2.) At that point, the onus was on HRGC to properly seek jurisdictional discovery. *Howard Univ.,* 2020 WL 1452350, at *10 (citing *United Techs. Corp. v. Mazer,* 556 F.3d 1260, 1280 (11th Cir. 2009)). In *Mazer,* the plaintiff argued that rather than dismissing the case for lack of personal jurisdiction over defendant, the district court should have deferred a ruling on the motion to dismiss and granted plaintiff's "requests" for jurisdictional discovery. *Id.* Rejecting that argument, the Eleventh Circuit noted that, despite recognizing the potential utility of jurisdictional discovery months in advance, the plaintiff "never formally moved the district court for jurisdictional discovery but, instead, buried such requests in its briefs as a proposed alternative to dismissing . . . [the claims]." *Id.* The court also noted that plaintiff delayed by several months before serving deposition notices and "failed to take any formal action to compel discovery or properly issue an . . . effective subpoena. . . . " *Id.* As a result, the Eleventh Circuit concluded that the district court did not err in dismissing the case because "[a]ll in all, [the plaintiff] should have taken every step possible to signal to the district court its immediate need for such discovery . . . [and yet] failed to take any of these reasonable steps to seek discovery." *Id.* (citation omitted). Here, HRGC did not serve discovery requests that would aid in determining whether jurisdiction exists

nor did HRGC move for leave to take jurisdictional discovery, or to compel outstanding discovery.

Lastly, HRGC's argues that "new evidence" warrants reconsideration of the Court's denial for jurisdictional discovery. HRGC recently discovered materials from a "Global Basic Materials," in which Teck acknowledges its Alaskan mine as one of its operations. (ECF No. 44-1.) HRGC also obtained financial disclosures that consolidated the revenues for Teck subsidiaries and identified several legal contingencies. (ECF No. 44-2). HRGC also submitted financial statement identifying several subsidiaries within the United States and in Chile (ECF No. 44-3.) The financial statement includes boilerplate language that "All subsidiaries are entities that [we] control, either directly or indirectly," by owning 50% or more of the voting rights, or potential voting rights."

HRGC's argument is unavailing for several reasons. The Court is not convinced that Teck's financial disclosures, indisputably public documents, were unavailable to HRGC prior to the filing of this action. Additionally, even accepting the evidence is new, the information is vague as to the amount of control Teck has over its subsidiaries. Indeed, none of the new evidence is incorporated into the allegations of the proposed second amended complaint for purposes of establishing jurisdiction. Additionally, the new evidence does not overcome Amanda Robinson's, corporate secretary of Teck, affidavit. Robinson states that Teck a Canadian corporation and that its subsidiaries are totally independent from Teck in that they have different boards of directors and officers, as well as separate accounting. (ECF No. 14-

2.) *Peruyero v. Airbus S.A.S.,* 83 F.Supp.3d 1283, 1290 (S.D. Fla. 2014) (Cooke, J.) (denying request to take jurisdictional discovery because the request was buried in the response in opposition to motion to dismiss and because the plaintiff had not any evidence to rebut the defendant's evidence against jurisdiction).

B. Motion for Leave to Amend First Amended Complaint

HRGC also seeks leave to amend its complaint to include jurisdictional allegations, add the individual heirs as the Plaintiffs, and allege facts regarding Teck's knowing and intentional trafficking. (ECF No. 40 at 11.) HRGC argues that a denial of its request would result in manifest injustice against the Plaintiff because if it has to file a new action it will be running against a statute of limitations and be subject to additional fees. (*Id.* at 10.)

HRGC requested leave to amend the amended complaint in its response in opposition to the motion to dismiss, which is improper. *See Newton v. Duke Energy Florida, LLC,* 895 F.3d 1270, 1277 (11th Cir.) ("[W]here a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly."). Teck's motion to dismiss put HRGC on notice of the deficiencies of its complaint. While the motion was pending, HRGC had a choice: stand on its pleading and oppose the motion to dismiss or review the merits of the motion and request leave to amend the operative complaint. *Sanlu Zhang v. Royal Caribbean Cruises, Ltd.,* No. 19-20773-CIV, 2020 WL 1472302, at *2 (S.D. Fla. Mar. 26, 2020) (Scola, J.). HRGC made the strategic decision to oppose the motion to dismiss

and lost. The Court will not afford it a second bite of the apple, particularly, where it declined to "follow the well-trodden procedural path toward amendment." *Eiber Radiology, Inc. v. Toshiba Am. Med. Sys., Inc.,* 673 Fed. App'x 925, 930 (11th Cir. 2016) (also noting the propriety of dismissal with prejudice "where a counseled plaintiff has failed to cure a deficient pleading after having been offered ample opportunity to do so"). While it is certainly true that our legal system favors the resolution of cases on their merits, that rule is not without limits. Especially where, as here, HRGC's own strategic decisions dictated the course of litigation.

Further, HRGC's argument that amendment should be allowed under Rule 15(a)(2) is misplaced. HRGC relies on Federal Rule 15(a)(2) which provides "[t]he court should freely give leave" to amend "when justice so requires." When leave to amend, however, is sought *after* the deadline to amend the pleadings has passed, as here, the movant must do more than argue leave is due under Federal Rule of Civil Procedure 15(a). That is, the movant must also show "good cause" under Federal Rule of Civil 16(b) in order to obtain the right to amend. *See Sosa v. Air Print Sys., Inc.,* 133 F.3d 1417, 1418 (11th Cir. 1998); Fed. R. Civ. P. 16(b)(4) ("A schedule may be modified only for good cause and with the judge's consent."). The standard set forth in Rule 16(b) "precludes modification [of the scheduling order] unless the schedule cannot 'be met despite the diligence of the party seeking the extension.'" *See Sosa,* 133 F.3d at 1418. Thus, "diligence is the key to satisfying the good cause requirement." *De Varona v. Discount Auto Parts, LLC,* 285 F.R.D. 671, 672-73 (S.D. Fla. 2012) (Ungaro, J.). Only

if "good cause" for an untimely amendment is shown under Rule 16(b), does Rule 15(a)'s instruction, that leave should be freely given when justice so requires, come into play. *See* Fed. R. Civ. P. 15(a)(2). While the standard under Rule 15(a) is lenient, still, "a motion to amend may be denied on numerous grounds such as undue delay, undue prejudice to the [opposing party], and futility of the amendment." *See Maynard v. Bd. of Regents,* 342 F.3d 1281, 1287 (11th Cir. 2003) (citations omitted).

HRGC's motion to reconsider does not even cite to Rule 16(b) and fails to set forth the necessary showing of good cause. Upon review of the proposed second amended complaint, the Court finds that HRGC attempts to supplement its complaint with facts that have been known to it since the inception of this action (and likely before that). The proposed complaint seeks to add the individual heirs as plaintiffs because they allegedly obtained their interests in the mining properties before March 12, 1996, which was known prior to the filing of this complaint. However, even if the Court allowed substitution of the plaintiffs, amendment is not warranted under the circumstances. For example, the proposed complaint seeks to add additional facts regarding Teck's notice that it was trafficking by relying on public records that have been available since as early as 1960. Teck also intends to add jurisdictional facts such as two Teck officers serving as officers in some of the national subsidiaries. However, the subject motion fails to explain why this information was not previously alleged despite being available.

HRGC also argues that it should be permitted to amend the complaint because "litigation relating to

Article III of the Helms Burton-Act is very new." (ECF No. 44 at 8.) This argument is unpersuasive because the parties both cited to recent cases reviewing similar claims under the Helms-Burton cases, such that the underlying legal theories are not so new that HRGC cannot be expected to make a determination whether it should amend its complaint after the filing of a motion to dismiss.

Even if the Court applied Rule 15(a)(2), the Court finds that amendment would be futile. "[D]enial of leave to amend is justified by futility when the 'complaint as amended is still subject to dismissal.'" *Burger King Corp. v. Weaver,* 169 F.3d 1310, 1320 (11th Cir. 1999); *see Dysart v. BankTrust,* 516 F. App'x 861, 865 (11th Cir. 2013) (same); *St. Charles Foods, Inc. v. America's Favorite Chicken Co.,* 198 F.3d 815, 822-23 (11th Cir. 1999) ("When a district court denies the plaintiff leave to amend a complaint due to futility, the court is making the legal conclusion that the complaint, as amended, would necessarily fail."); *Christman v. Walsh,* 416 F. App'x 841, 844 (11th Cir. 2011) ("A district court may deny leave to amend a complaint if it concludes that the proposed amendment would be futile, meaning that the amended complaint would not survive a motion to dismiss."). The proposed amended complaint fails to set forth a basis for jurisdiction over Teck. Accepting its allegations as true, Teck has mining subsidiaries in the United States, which it is "directly or indirectly owns, operates, controls, manages, and/or supervises . . . " (ECF No. 40-1 at ¶ 14.) Teck's activities in the United States include sharing two corporate officers with three domestic subsidiaries (out of the eight subsidiaries alleged), "offer[ing]" employment in the

United States, owning seemingly unrelated trademarks, and being publicly traded in the United States. (*Id.* at ¶¶ 16-20.) However, sharing two corporate officers with some subsidiaries and *offering* employment in the United States (as opposed to actually employing), without more, does not establish jurisdiction under the effects test or Rule 4(k)(2) (HRGC's primary basis for jurisdiction). Moreover, the proposed amended complaint alleges that "Teck's U.S.-based operations alone have yielded hundreds of millions of dollars in revenue and gross profit," but does not allege if the subsidiaries share bank accounts with Teck such that the subsidiary would not be independent from the parent. *Consol.,* 216 F.3d at 1294 (noting a parent corporation "is not subject to the jurisdiction of a forum state merely because a subsidiary is doing business there," and holding that a subsidiary was not a mere agent because it had its own officers and board of directors, determined its own pricing schemes, and maintained its own bank accounts and employees.).

4. Conclusion

For these reasons, the HRGC's motion for reconsideration is denied. (ECF No. 40.)

Done and ordered.

/s/ Robert N. Scola, Jr.
District Judge

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA GRANTING MOTION TO DISMISS (APRIL 27, 2021)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.

Civil Action No. 20-21630-Civ-Scola

Before: Robert N. SCOLA, JR., District Judge.

ROBERT N. SCOLA, JR., District Judge.

This matter is before the Court upon Defendant Teck Resources Limited's ("Teck") motion to dismiss (ECF No. 14.) For the reasons set forth below, the motion is granted.

1. Background

The Plaintiff Herederos de Roberto Gomez Cabrera, LLC ("HRGC") filed this action against the Defendant Teck pursuant to Title III of the Cuban

Liberty and Democratic Solidarity Act (the "Helms-Burton Act," or the "Act"). The Act creates a private right of action against any person who traffics in confiscated property in Cuba. *See* 22 U.S.C. § 6082(a)(1)(A). The Helms-Burton Act serves to "protect United States nationals against confiscatory takings and wrongful trafficking in property confiscated by the Castro regime." 22 U.S.C. § 6022(6).

The Plaintiff HRGC company is owned by the heirs of Robert Gomez Cabrera. (ECF No. 7 ¶ 8.) In July 1956, Gomez Cabrera, through his company Rogoca Minera, S.A., purchased twenty-one mines spanning over 624.91 acres of land in the town of El Cobre in Cuba. (*Id.* ¶ 6.) Gomez Cabrera operated the mines until the property was confiscated by the Cuban government (the date of which is unidentified). (*Id.* ¶ 7.) In September 1969, Cabrera's children inherited all rights, title, and interests held by Cabrera in Rogoca Minera, S.A., including the twenty-one mines, mining equipment, and installations. (*Id.* ¶¶ 7,8.) Cabrera's children incorporated Plaintiff HRGC, a Florida limited liability company and assigned it their claims to the confiscated property (*Id.* ¶ 11.) The Plaintiff is the holder of all interests inherited by Cabrera's children who were citizens of the United States on March 12, 1996. (*Id.*)

In February 1994, Defendant Teck, a Canadian corporation with its principal place of business in Canada, and Joutel Resources Limited ("Joutel"), a Canadian corporation, engaged in a joint venture to explore and develop land holdings in Cuba. (*Id.* ¶ 25.) At the time, Joutel held exclusive mineral exploration and development rights over 2485 miles of land in Cuba, including the confiscated mines. (*Id.* ¶ 26.) In

January 1996, Teck and Joutel entered into a written contract giving Teck a 50% ownership in all of Joutel's holdings in Cuba. (*Id.* ¶ 27.) Teck was charged with operating the mines developed on Joutel's concessions from the Cuban government. (*Id.* ¶ 30.) One month later, Teck and Joutel entered into a written agreement with Geominers, S.A. ("Geominers"), a Cuban government-owned company, to explore and extract minerals from "mining lands in Cuba." (*Id.* ¶ 24.). Teck continued managing the mining operations through 2009. (*Id.* ¶ 32.) Today, Teck owns seven subsidiaries in Washington and operates a zinc mine in Alaska (*Id.* ¶ 25.)

In its one-count amended complaint, the Plaintiff alleges that Teck violated Title III of the Helms-Burton Act. (*Id.* ¶ 41.) The Plaintiff claims that Teck knowingly and intentionally trafficked on confiscated property. (*Id.* ¶¶ 31, 34.)

Teck moves to dismiss the amended complaint in its entirety on several grounds. Teck argues that the Court lacks personal jurisdiction over Teck and even if the Court did have jurisdiction, the complaint has failed to state a claim. (ECF No. 14 at 1.) In support of its motion to dismiss, Teck attached the affidavit of Amanda Robinson, corporate secretary of Teck, in which she represents that Teck is not licensed to conduct business in Florida and that its subsidiaries are totally independent from Teck in that they have wholly different boards of directors and officers, as well as separate accounting. (ECF No. 14-2.) Teck also moved to stay discovery until the Court ruled on the motion to dismiss. (ECF No. 28.) The Plaintiff opposed such relief. (ECF No. 34.)

2. Legal Standard

A court considering a motion to dismiss, filed under Federal Rule of Civil Procedure 12(b)(6), must accept all the complaint's allegations as true, construing them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). Although a pleading need only contain a short and plain statement of the claim showing that the pleader is entitled to relief, a plaintiff must nevertheless articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (quoting Fed. R. Civ. P. 8(a)(2)) (internal punctuation omitted). A court must dismiss a plaintiff's claims if she fails to nudge her "claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

3. Analysis

In its motion to dismiss, Teck argues that the amended complaint should be dismissed because the Court lacks personal jurisdiction over it, the complaint fails to allege that HRGC has an actionable ownership interest or that Teck intentionally trafficked on the confiscated property. In response, the Plaintiff argues that the Court has jurisdiction over Teck under the federal long-arm statute and that the amended complaint has sufficiently stated a claim for relief under Title III of the Act.

A. Jurisdiction Over Foreign Defendant

1. Principles of Jurisdiction

Where a plaintiff meets its initial burden to make out a prima facie case for a court's exercise of personal jurisdiction over a defendant by providing sufficient evidence in the complaint to withstand a motion for to dismiss, courts may then consider affidavits, documents, or other testimony provided by the defendant challenging the allegations supporting personal jurisdiction. *Stubbs v. Wyndham Nassau Resort and Crystal Palace Casino*, 447 F.3d 1357, 1360 (11th Cir. 2006); *see also Internet Solutions Corp. v. Marshall*, 557 F.3d 1293, 1295 (11th Cir. 2009). Should a defendant provide such material, the burden then shifts back to the plaintiff to produce evidence supporting personal jurisdiction. *Stubbs*, 447 F.3d at 1360. All reasonable inferences must be construed in favor of the plaintiff. *Id.* Before courts may consider materials provided by a defendant and plaintiff the court must first decide if the plaintiff has made out a *prima facie* case supporting the court's exercise of personal jurisdiction.

To determine whether a party has adequately alleged personal jurisdiction over a foreign defendant, the Court first asks whether there is jurisdiction under Florida's long-arm statute and next determines whether the exercise of jurisdiction comports with the Due Process Clause of the Fourteenth Amendment. *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1312 (11th Cir. 2018). Florida's long-arm statute provides two means for subjecting a foreign defendant to the jurisdiction of Florida courts: 1) "a defendant is subject to *general* personal jurisdiction—that is, jurisdiction

over any claims against a defendant, whether or not they involve the defendant's activities in Florida—if the defendant engages in substantial and not isolated activity in Florida." *Id.* (internal quotations omitted) (emphasis in original) (discussing Fla. Stat. § 48.193); and 2) "a defendant is subject to *specific* personal jurisdiction—that is, jurisdiction over suits that arise out of or related to a defendant's contacts with Florida—for conduct specifically enumerated in the statute." Under either form of personal jurisdiction, the defendant must have "'certain minimum contacts with [the state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Id.* (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). The inquiry focuses on the defendant's contacts with the state, and not the "random, fortuitous, or attenuated" contacts it has by interacting with other persons affiliated with the state. *Walden v. Fiore*, 571 U.S. 277, 284 (2014).

2. General Jurisdiction

Regarding general jurisdiction under Florida's long-arm statute, "[a] defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity." Fla. Stat. § 48.193(2) (2020). Under the U.S. Constitution, a "court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop*

Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)). A corporation's place of incorporation and its principal place of business are generally the only "limited set of affiliations with a forum [that] will render a defendant amenable to all-purpose jurisdiction there." *Id.* at 137 (citation omitted). Here, it is undisputed that Teck is not a Florida resident as it is incorporated in Canada and has its principle place of business there. Accordingly, the Court finds that Teck is not subject to the Court's general personal jurisdiction. *Scanz Techs., Inc. v. JewMon Enterprises, LLC*, No. 20-22957-CIV, 2021 WL 65466, at *3 (S.D. Fla. Jan. 7, 2021) (Scola, J.)

3. Specific Jurisdiction

Because the Court does not have general personal jurisdiction over Defendant Teck, the Court must determine if Plaintiff HRGC has prima facie plead that the Court has specific personal jurisdiction over Teck.

"[A] Florida court can exercise specific personal jurisdiction—that is, jurisdiction over suits that arise out of or relate to a defendant's contacts with Florida—if the claim asserted against the defendant arises from the defendant's contacts with Florida, and those contacts fall within one of the enumerated categories set forth in section 48.193(1)(a)." *Thompson v. Carnival Corp.*, 174 F.Supp.3d 1327, 1337 (S.D. Fla. 2016) (Moore, J.) (citing *Schulman*, 624 F. App'x at 1004-05). The Plaintiff fails to explain how its claim for unlawful trafficking in Cuba is related to Teck's activities in Florida, which at this point appear to be nonexistent. Indeed, the amended complaint alleges that Teck is a Canadian corporation with its principle

place of business in Canada, with subsidiaries in Washington and Alaska, and is otherwise silent as to whether Teck has *any* contacts with Florida. For these reasons, HRGC has failed to plead specific personal jurisdiction over Teck.

4. Rule 4(k)(2)

HRGC dedicates most of its response to argue that the Court has jurisdiction over Teck under Federal Rule of Civil Procedure 4(k)(2) or the federal long-arm statute. This is argument is likewise unavailing.

"Rule 4(k)(2)—the so-called federal long-arm statute—permits a federal court to aggregate a foreign defendant's nationwide contacts to allow for personal jurisdiction provided that two essential conditions are met: '(1) plaintiff's claims must arise under federal law; and (2) the exercise of jurisdiction must be consistent with the Constitution and laws of the United States.'" *Thompson*, 174 F.Supp.3d at 1337. The rule is neither applicable nor relevant until a court finds that a defendant is not subject to personal jurisdiction in the courts of any state. *Storm v. Carnival Corp.*, No. 20-22227-CIV, 2020 WL 7415835, at *11 (S.D. Fla. Dec. 18, 2020) (Torres, MJ). Once it becomes clear that there is no specific or general jurisdiction under Florida's long-arm statute, the analysis on whether there is personal jurisdiction under Rule 4(k)(2) turns on whether there are enough minimum contacts with the United States as a whole. *Id*.

As discussed above, there is no specific or general jurisdiction under the state long-arm statute over Teck, nor has Teck identified any other forum where

it is amenable to jurisdiction. Accordingly, the Court could use Rule 4(k)(2) to establish jurisdiction over Teck if: (1) the exercise of jurisdiction must be consistent with the Constitution and the laws of the United States; and (2) the claim must arise under federal law. *In re Takata*, 396 F.Supp.3d at 1150-51. Because there is no dispute that the Plaintiff's claims arise under federal law, the Helms-Burton Act, the Court must determine whether the exercise of federal jurisdiction over Teck would comport with the Constitution and the laws of the United States, in other words, comports with due process. The answer is a resounding no.

"Rule 4(k)(2) was implemented to fill a lacuna in the enforcement of federal law in international cases." *Id.* at 1337 (internal quotations omitted). However, courts rarely invoke jurisdiction under the rule. *Id.* Indeed, "[i]n the wake of the Supreme Court's decision in *Daimler*, it appears unlikely that general jurisdiction over a foreign defendant could ever be available under 4(k)(2)." *Id.* at 1338 n.9 (citing *Daimler*, 571 U.S. at 138 (rejecting as "unacceptably grasping" the plaintiffs' position that the Court should "approve the exercise of general jurisdiction in every State in which a corporation "engages in a substantial, continuous, and systematic course of business.")).

This is not one of those uncommon cases. Teck's contacts with the United States through its subsidiaries are too attenuated to support jurisdiction under Rule 4(k)(2). The Plaintiff advances several ambiguous allegations that do not demonstrate specific conduct by Teck in the United States. The amended complaint vaguely alleges Teck "directly or indirectly, owns, operates, controls, manages, and/or supervises at

least seven U.S.-based subsidiaries in the State of Washington," and "Teck directly or indirectly, owns, operates, controls, manages, and/or supervises one of the world's largest zinc mines" in Alaska and Washington. (ECF No. 7 ¶¶ 14, 15.) These allegations are not sufficient to establish jurisdiction under Rule 4(k)(2) because there is no alleged connection between Teck and the alleged subsidiaries. *See Schulman v. Inst. for Shipboard Educ.*, 624 F. App'x 1002, 1006 (11th Cir. 2015) (holding that a French manufacturer of catamarans that had distribution agreements with dealers in Florida, marketed its vessels in Florida, attended a trade show in Florida, and had an agreement with a Maryland-based financing company to help buyers and dealers in the United States satisfied *neither* Florida's long-arm statute for general jurisdiction *nor* Rule 4(k)(2)); *see also In re Takata*, 396 F.Supp.3d at 1151-52. (finding that the plaintiffs had not established jurisdiction under the federal long-arm statute because the plaintiff had ambiguously alleged that the foreign defendant was in the business of designing, developing, manufacturing, marketing, and selling the class vehicles); *GolTV, Inc. v. Fox Sports Latin Am. Ltd.*, 277 F.Supp.3d 1301, 1318 (S.D. Fla. 2017) (Altonaga, J.)(finding that the Court did not have jurisdiction over the defendant under Rule 4(k)(2) because the alleged activity in the United States involved other entities not named in the amended complaint).

Moreover, even if the subsidiaries' mining activities could be attributed to Teck, they cannot be said to be related to the unlawful trafficking in the confiscated property in Cuba. *GolTV, Inc.*, 277 F.Supp.3d at 1318 (finding that the Court did not have jurisdiction over

defendant under the federal long-arm statute because the defendant's contacts with the United States did not give rise to the claims raised in the amended complaint).

B. Jurisdictional Discovery

In its response in opposition, the Plaintiff argues that "[a]t a minimum, it is appropriate for this Court to exercise its discretion to order jurisdictional discovery [on] . . . Defendant's continuous and systemic contacts within the United States, which information is in Defendant's exclusive control and is disputed by Defendant." (ECF No. 23 at 11.) The request is denied on several grounds.

To begin with, the Eleventh Circuit has explained that in certain cases district courts should not "reserve ruling on [a pending] motion to dismiss in order to allow the plaintiff to look for what the plaintiff should have had—but did not before coming through the courthouse doors, even though the court would have the inherent power to do so." *Dorchester Dev., Inc.*, 692 F.2d 727, 729 (11th Cir. 1982). Here, the Plaintiff was well-aware of the fact-intensive analysis that federal courts apply when deciding issues of personal jurisdiction over nonresident defendants. In this case, the Plaintiff has known that Teck would argue that this Court lacks personal jurisdiction over the matter since the filing of the subject motion to dismiss in September 2020. Indeed, in the joint scheduling report filed the next month, the parties indicated that they had considered the need for jurisdictional discovery. (ECF No. 17.) Nonetheless, HRGC has not moved for such relief.

Additionally, the Plaintiff's request is procedurally improper. *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1280 (11th Cir. 2009) (denying jurisdictional discovery where the plaintiff recognized the potential utility of jurisdictional discovery by the time it filed its response to motion to dismiss but never formally moved the district court for jurisdictional discovery and instead, buried the request for such relief in its briefs); *see also Thompson*, 174 F.Supp.3d at 1339 (denying request for leave to take jurisdictional discovery because the plaintiff did not move for such relief, rather, couched the request as an alternative argument in their response in opposition to a motion to dismiss). Moreover, even if the Plaintiff had properly moved for jurisdictional discovery, there exists no genuine dispute on a material jurisdictional fact to warrant jurisdictional discovery. *Thompson*, 174 F.Supp.3d at 1339. Indeed, the Plaintiff has not set forth *any* evidence to establish jurisdiction or rebut Teck's evidence that its subsidiaries in the United States are totally independent from it or that their activities relate to any mining in the confiscated properties. *Peruyero v. Airbus S.A.S.*, 83 F.Supp.3d 1283, 1290 (S.D. Fla. 2014) (Cooke, J.) (denying request to take jurisdictional discovery because the request was buried in the response in opposition to motion to dismiss and because the plaintiff had not any evidence to rebut the defendant's evidence against jurisdiction).

C. The Plaintiff Fails to State a Claim

Even if the Court had jurisdiction to hear this dispute, the amended complaint is due to be dismissed on its merits. Teck argues that the amended complaint should be dismissed because HRGC failed to allege it

has an actionable ownership interest that was acquired prior to March 12, 1996 and that it did not sufficiently allege that Teck knowingly and intentionally trafficked in confiscated property.

The Court agrees that HRGC did not sufficiently allege that it had an actionable ownership interest because it did not allege that it obtained the interest prior to March 12, 1996. The relevant provision of the Helms-Burton Act provides:

> In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996.

22 U.S.C. § 6082(a)(4)(B).

HRGC does not dispute that the subject properties were confiscated before March 12, 1996 (although the Court notes the complaint fails to identify the date of confiscation) and that it obtained ownership of its claim to the subject properties after March 12, 1996. Indeed, in its response in opposition, HRGC indicates that "in 2019, the heirs [of Robert Gomez Cabrera] pooled their respective causes of action together by forming Herederos De Roberto Gomez Cabrera, LLC ["HRGC"]; which is presently seeking relief in this action . . . " (ECF No. 23 at 18.) HRGC contends that the statute does not bar this action because it obtained the ownership of the claim to the confiscated property by way of assignment in 2019. This argument is unavailing.

The Act expressly requires that actionable claims must be acquired before March 12, 1996. Thus, while

the individual heirs may have acquired an ownership interest before that date, the statute is clear: no United States national may bring an action unless he acquired ownership of the claim before March 12, 1996. *See Gonzalez v. Amazon.com, Inc.*, No. 19-23988-CIV, 2020 WL 1169125, at *2 (S.D. Fla. Mar. 11, 2020) (Scola, J.), *affirmed by Gonzalez v. Amazon.com, Inc.*, 835 F. App'x 1011, 1012 (11th Cir. 2021); *see also Garcia-Bengochea v. Royal Caribbean Cruises, Ltd.*, No. 1:19-CV-23592-JLK, 2020 WL 6081658, at *2 (S.D. Fla. Oct. 15, 2020) (King, J.) The statute makes no distinctions with respect to the method of acquiring the claim. *Glen v. Trip Advisor LLC*, No. CV 19-1809-LPS, 2021 WL 1200577, at *7 (D. Del. Mar. 30, 2021) (Stark, J.).

The Court also agrees that HRGC has not sufficiently alleged that Teck knowingly and intentionally trafficked in the confiscated property. Under the Act, "a person 'traffics' in confiscated property if that person knowingly and intentionally . . . engages in a commercial activity using or otherwise benefiting from confiscated property." 22 U.S.C. § 6023(13). "[T]he only companies that will run afoul of this new law are those that are knowingly and intentionally trafficking in the stolen property of U.S. citizens." 142 Cong. Rec. H1724-04, at H1737 (Mar. 6, 1996). The amended complaint primarily offers conclusory allegations that Teck knowingly and intentionally trafficked in the confiscated property. (ECF No. 7 ¶¶ 32, 33, 34). *Gonzalez*, 2020 WL 1169125, at *2. The amended complaint also claims that Teck had "actual or constructive knowledge" that it was trafficking in confiscated property by virtue of the Cuban constitution, laws, and public records, and notice given to

Joutel by the heirs. (*Id.* ¶ 31.) The first half of this paragraph is conclusory as it relies on unidentified laws and records and likewise is insufficient to state a claim. While the second half is a closer call, it is insufficient to state a claim as it relies on notice given to *another* entity that went into business with Teck sometime after the property was confiscated. Because the Court finds that the amended complaint is due to be dismissed for lack of jurisdiction and as a matter of law, the Court need not address remaining grounds for dismissal.

4. Conclusion

For the reasons set forth above, the Court grants Teck's motion to dismiss (ECF No. 14) and dismisses HRGC claims without prejudice. HRGC alternatively seeks permission to file a second amended complaint. (ECF No. 23 at 23.) This request is improper and is therefore denied. *See Newton v. Duke Energy Florida, LLC,* 895 F.3d 1270, 1277 (11th Cir. 2018) ("[W]here a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly."); *Avena v. Imperial Salon & Spa, Inc.*, 740 Fed. App'x 679, 683 (11th Cir. 2018) ("[W]e've rejected the idea that a party can await a ruling on a motion to dismiss before filing a motion for leave to amend.") (noting also that "a motion for leave to amend should either set forth the substance of the proposed amendment or attach a copy of the proposed amendment") (quotations omitted). The Court thus dismisses the amended complaint without leave to amend.

The Clerk is directed to close this case. Any pending motions are denied as moot. (ECF Nos. 26, 36, 38.)

Done and ordered.

/s/ Robert N. Scola, Jr.
District Judge

CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1996

ONE HUNDRED FOURTH CONGRESS OF
THE UNITED STATES OF AMERICA

An Act

To seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title; Table of Contents.

(a) Short Title.—This Act may be cited as the "Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996".

(b) Table of Contents.—The table of contents of this Act is as follows:

Title I—Strengthening International Sanctions Against the Castro Government

Sec. 2. Findings.

The Congress makes the following findings:

(1) The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of—

(A) the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually;

(B) 36 years of communist tyranny and economic mismanagement by the Castro government; the extreme decline in trade between Cuba and the countries of the former Soviet bloc; and the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.

(2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of this economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba.

(3) The Castro regime has made it abundantly clear that it will not engage in any substantive political reforms that would lead to democracy, a market economy, or an economic recovery.

(4) The repression of the Cuban people, including a ban on free and fair democratic elections, and continuing violations of fundamental human rights, have isolated the Cuban regime as the only completely nondemocratic government in the Western Hemisphere.

(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.

(6) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.

(7) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the people of Cuba living under tyranny.

(8) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

(9) The United States has shown a deep commitment, and considers it a moral obligation, to promote and protect human rights and fundamental freedoms as expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights.

(10) The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people.

(11) The Cuban Democracy Act of 1992 calls upon the President to encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(12) Amendments to the Foreign Assistance Act of 1961 made by the FREEDOM Support Act require that the President, in providing economic assistance to Russia and the emerging Eurasian democracies, take into account the extent to which they are acting to "terminate support for the communist regime in Cuba, including removal of troops, closing military facilities, and ceasing trade subsidies and economic, nuclear, and other assistance".

(13) The Cuban Government engages in the illegal international narcotics trade and harbors fugitives from justice in the United States.

(14) The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence.

(15) The Castro government has utilized from its inception and continues to utilize torture in various forms (including by psychiatry), as well as execution, exile, confiscation, political imprisonment, and other forms of terror and repression, as means of retaining power.

(16) Fidel Castro has defined democratic pluralism as "pluralistic garbage" and continues to make clear that he has no intention of tolerating the democratization of Cuban society.

(17) The Castro government holds innocent Cubans hostage in Cuba by no fault of the hostages themselves solely because relatives have escaped the country.

(18) Although a signatory state to the 1928 Inter-American Convention on Asylum and the International Covenant on Civil and Political Rights (which protects the right to leave one's own country), Cuba nevertheless surrounds embassies in its capital by armed forces to thwart the right of its citizens to seek asylum and systematically denies that right to the Cuban people, punishing them by imprisonment for seeking to leave the country and killing them for attempting to do so (as demonstrated in the case of the confirmed murder of over 40 men, women, and children who were seeking to leave Cuba on July 13, 1994).

(19) The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions

of sovereign states in the Western Hemisphere in violation of the Charter of the Organization of American States and other international agreements and international law.

(20) The United Nations Commission on Human Rights has repeatedly reported on the unacceptable human rights situation in Cuba and has taken the extraordinary step of appointing a Special Rapporteur.

(21) The Cuban Government has consistently refused access to the Special Rapporteur and formally expressed its decision not to "implement so much as one comma" of the United Nations Resolutions appointing the Rapporteur.

(22) The United Nations General Assembly passed Resolution 47-139 on December 18, 1992, Resolution 48-142 on December 20, 1993, and Resolution 49-200 on December 23, 1994, referencing the Special Rapporteur's reports to the United Nations and condemning violations of human rights and fundamental freedoms in Cuba.

(23) Article 39 of Chapter VII of the United Nations Charter provides that the United Nations Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . , to maintain or restore international peace and security.".

(24) The United Nations has determined that massive and systematic violations of human rights may constitute a "threat to peace" under Article 39

and has imposed sanctions due to such violations of human rights in the cases of Rhodesia, South Africa, Iraq, and the former Yugoslavia.

(25) In the case of Haiti, a neighbor of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.

(26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorized the use of "all necessary means" to restore the "democratically elected government of Haiti", and the democratically elected government of Haiti was restored to power on October 15, 1994.

(27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years, and the continued failure to do so constitutes ethically improper conduct by the international community.

(28) For the past 36 years, the Cuban Government has posed and continues to pose a national security threat to the United States.

Sec. 3. Purposes.

The purposes of this Act are—

(1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;

(2) to strengthen international sanctions against the Castro government;

(3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;

(4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;

(5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and

(6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

Sec. 4. Definitions.

As used in this Act, the following terms have the following meanings:

(1) Agency or instrumentality of a foreign state.—The term "agency or instrumentality of a foreign state" has the meaning given that term in section 1603(b) of title 28, United States Code.

(2) Appropriate congressional committees.—The term "appropriate congressional committees" means the Committee on International Relations and the Committee on Appropriations of the House

of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(3) Commercial activity.—The term "commercial activity" has the meaning given that term in section 1603(d) of title 28, United States Code.

(4) Confiscated.—As used in titles I and III, the term "confiscated" refers to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(5) Cuban government.—

(A) The term "Cuban Government" includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term "agency or instrumentality of the Government of Cuba" means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to "a foreign state" deemed to be a reference to "Cuba".

(6) Democratically elected government in Cuba.—The term "democratically elected government in Cuba" means a government determined by the President to have met the requirements of section 206.

(7) Economic embargo of Cuba.—The term "economic embargo of Cuba" refers to—

(A) the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest) that was imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the Cuban

Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law; and

(B) the restrictions imposed by section 902(c) of the Food Security Act of 1985.

(8) Foreign national.—The term "foreign national" means—

(A) an alien; or

(B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(9) Knowingly.—The term "knowingly" means with knowledge or having reason to know.

(10) Official of the Cuban government or the ruling political party in Cuba.—The term "official of the Cuban Government or the ruling political party in Cuba" refers to any member of the Council of Ministers, Council of State, central committee of the Communist Party of Cuba, or the Politburo of Cuba, or their equivalents.

(11) Person.—The term "person" means any person or entity, including any agency or instrumentality of a foreign state.

(12) Property.—

(A) The term "property" means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any

present, future, or contingent right, security, or other interest therein, including any leasehold interest.

(B) For purposes of title III of this Act, the term "property" does not include real property used for residential purposes unless, as of the date of the enactment of this Act—

(i) the claim to the property is held by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949; or

(ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

(13) Traffics.—

(A) As used in title III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include—

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(14) Transition government in Cuba.—The term "transition government in Cuba" means a government that the President determines is a transition government consistent with the requirements and factors set forth in section 205.

(15) United states national.—The term "United States national" means—

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

Sec. 5. Severability.

If any provision of this Act or the amendments made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, the amendments made by this Act, or the application thereof to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

Title I—Strengthening International Sanctions Against the Castro Government

Sec. 101. Statement of Policy.

It is the sense of the Congress that—

(1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;

(2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council, a mandatory international

embargo against the totalitarian Cuban Government pursuant to chapter VII of the Charter of the United Nations, employing efforts similar to consultations conducted by United States representatives with respect to Haiti;

(3) any resumption of efforts by any independent state of the former Soviet Union to make operational any nuclear facilities in Cuba, and any continuation of intelligence activities by such a state from Cuba that are targeted at the United States and its citizens will have a detrimental impact on United States assistance to such state; and

(4) in view of the threat to the national security posed by the operation of any nuclear facility, and the Castro government's continuing blackmail to unleash another wave of Cuban refugees fleeing from Castro's oppression, most of whom find their way to United States shores, further depleting limited humanitarian and other resources of the United States, the President should do all in his power to make it clear to the Cuban Government that—

(A) the completion and operation of any nuclear power facility, or

(B) any further political manipulation of the desire of Cubans to escape that results in mass migration to the United States, will be considered an act of aggression which will be met with an appropriate response in order to maintain the security of the national borders of the United States and the health and safety of the American people.

Sec. 102. Enforcement of the Economic Embargo of Cuba.

(a) Policy.—

(1) Restrictions by other countries.—The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states that the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(2) Sanctions on other countries.—The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of that Act against countries assisting Cuba.

(b) Diplomatic Efforts.—

The Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic embargo of Cuba, and are urging foreign governments to cooperate more effectively with the embargo.

(c) Existing Regulations.—

The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) Trading with the Enemy Act.—

(1) Civil penalties.—Subsection (b) of section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16(b)), as added by Public Law 102-484, is amended to read as follows:

"(b)(1) A civil penalty of not to exceed $50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

"(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the direction of the Secretary of the Treasury, be forfeited to the United States Government.

"(3) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

"(4) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.".

(2) Conforming amendment; criminal forfeiture. —Section 16 of the Trading with the Enemy Act is further amended by striking subsection (b), as added by Public Law 102-393.

(3) Clerical amendments.—Section 16 of the Trading with the Enemy Act is further amended—

(A) by inserting "Sec. 16." before "(a)"; and

(B) in subsection (a) by striking "participants" and inserting "participates".

(e) Denial of Visas to Certain Cuban Nationals.—

It is the sense of the Congress that the President should instruct the Secretary of State and the Attorney General to enforce fully existing regulations to deny visas to Cuban nationals considered by the Secretary of State to be officers or employees of the Cuban Government or of the Communist Party of Cuba.

(f) Coverage of Debt-for-Equity Swaps by Economic Embargo of Cuba.—Section 1704(b)(2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of

Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and"; and

(4) by adding at the end the following flush sentence:

"As used in this paragraph, the term 'agency or instrumentality of the Government of Cuba' means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to 'a foreign state' deemed to be a reference to 'Cuba'.".

(g) Telecommunications Services.—Section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)) is amended by adding at the end the following new paragraphs:

"(5) Prohibition on investment in domestic telecommunications services.—Nothing in this subsection shall be construed to authorize the investment by any United States person in the domestic telecommunications network within Cuba. For purposes of this paragraph, an 'investment' in the domestic telecommunications network within Cuba includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network.

"(6) Reports to congress.—The President shall submit to the Congress on a semiannual basis a report detailing payments made

to Cuba by any United States person as a result of the provision of telecommunications services authorized by this subsection.".

(h) Codification of Economic Embargo.—

The economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act.

Sec. 103. Prohibition Against Indirect Financing of Cuba.

(a) Prohibition.—

Notwithstanding any other provision of law, no loan, credit, or other financing may be extended knowingly by a United States national, a permanent resident alien, or a United States agency to any person for the purpose of financing transactions involving any confiscated property the claim to which is owned by a United States national as of the date of the enactment of this Act, except for financing by the United States national owning such claim for a transaction permitted under United States law.

(b) Suspension and Termination of Prohibition.—

(1) Suspension.—The President is authorized to suspend the prohibition contained in subsection (a) upon a determination made under section 203(c)(1) that a transition government in Cuba is in power.

(2) Termination.—The prohibition contained in subsection (a) shall cease to apply on the date on which the economic embargo of Cuba terminates as provided in section 204.

(c) Penalties.—Violations of subsection (a) shall be punishable by such civil penalties as are applicable to violations of the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) Definitions.—As used in this section—

(1) the term "permanent resident alien" means an alien lawfully admitted for permanent residence into the United States; and

(2) the term "United States agency" has the meaning given the term "agency" in section 551(1) of title 5, United States Code.

Sec. 104. United States Opposition to Cuban Membership in International Financial Institutions.

(a) Continued Opposition to Cuban Membership in International Financial Institutions.—

(1) In general.—Except as provided in paragraph (2), the Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution until the President submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) Transition government.—Once the President submits a determination under section 203(c)(1) that a transition government in Cuba is in power—

(A) the President is encouraged to take steps to support the processing of Cuba's application for membership in any international financial institution, subject to the membership taking effect after a democratically elected government in Cuba is in power, and

(B) the Secretary of the Treasury is authorized to instruct the United States executive director of each international financial institution to support loans or other assistance to Cuba only to the extent that such loans or assistance contribute to a stable foundation for a democratically elected government in Cuba.

(b) Reduction in United States Payments to International Financial Institutions.—If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance, with respect to either of the following types of payment:

(1) The paid-in portion of the increase in capital stock of the institution.

(2) The callable portion of the increase in capital stock of the institution.

(c) Definition.—For purposes of this section, the term "international financial institution" means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

Sec. 105. United States Opposition to Termination of the Suspension of the Cuban Government from Participation in the Organization of American States.

The President should instruct the United States Permanent Representative to the Organization of American States to oppose and vote against any termination of the suspension of the Cuban Government from participation in the Organization until the President determines under section 203(c)(3) that a democratically elected government in Cuba is in power.

Sec. 106. Assistance by the Independent States of the Former Soviet Union for the Cuban Government.

(a) Reporting Requirement.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report detailing progress toward the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of section 3 of the

FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.

(b) Criteria for Assistance.—Section 498A(a)(11) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(a)(11)) is amended by striking "of military facilities" and inserting "military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos".

(c) Ineligibility for Assistance.—

(1) In general.—Section 498A(b) of that Act (22 U.S.C. 2295a(b)) is amended—

(A) by striking "or" at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following new paragraph:

"(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within that 30-day period) that such government is providing assistance for, or engaging in nonmarket based trade (as defined in section 498B

(k)(3)) with, the Cuban Government; or"

(2) Definition.—Subsection (k) of section 498B of that Act (22 U.S.C. 2295b(k)) is amended by adding at the end the following new paragraph:

"(3) Nonmarket based trade.—As used in section 498A(b)(5), the term 'nonmarket based trade' includes exports, imports, exchanges, or other arrangements that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including—

"(A) exports to the Cuban Government on terms that involve a grant, concessional price, guaranty, insurance, or subsidy;

"(B) imports from the Cuban Government at preferential tariff rates;

"(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Cuban Government is not held accountable for unfulfilled exchange contracts, and arrangements under which Cuba does not pay appropriate transportation, insurance, or finance costs; and

"(D) the exchange, reduction, or forgiveness of debt of the Cuban Government in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

"(4) Cuban government.—(A) The term 'Cuban Government' includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

"(B) For purposes of subparagraph (A), the term 'agency or instrumentality of the Government of Cuba' means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to 'a foreign state' deemed to be a reference to 'Cuba'.".

(3) Exception.—Section 498A(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295A(c)) is amended by inserting after paragraph (3) the following new paragraph:

"(4) The assistance is provided under the secondary school exchange program administered by the United States Information Agency.".

(d) Facilities at Lourdes, Cuba.—

(1) Disapproval of credits.—The Congress expresses its strong disapproval of the

extension by Russia of credits equivalent to $200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.

(2) Reduction in assistance.—Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended by adding at the end the following new subsection:

"(d) Reduction in Assistance for Support of Intelligence Facilities in Cuba.—

"(1) Reduction in assistance.—Notwithstanding any other provision of law, the President shall withhold from assistance provided, on or after the date of the enactment of this subsection, for an independent state of the former Soviet Union under this Act an amount equal to the sum of assistance and credits, if any, provided on or after such date by such state in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba.

"(2) Waiver.—(A) The President may waive the requirement of paragraph (1) to withhold assistance if the President certifies to the appropriate congressional committees that the provision of such assistance is important to the national security of the United States, and, in the case of such a certification made with respect to Russia, if the

President certifies that the Russian Government has assured the United States Government that the Russian Government is not sharing intelligence data collected at the Lourdes facility with officials or agents of the Cuban Government.

"(B) At the time of a certification made with respect to Russia under subparagraph (A), the President shall also submit to the appropriate congressional committees a report describing the intelligence activities of Russia in Cuba, including the purposes for which the Lourdes facility is used by the Russian Government and the extent to which the Russian Government provides payment or government credits to the Cuban Government for the continued use of the Lourdes facility.

"(C) The report required by subparagraph (B) may be submitted in classified form.

"(D) For purposes of this paragraph, the term 'appropriate congressional committees' includes the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(3) Exceptions to reductions in assistance.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

"(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

"(B) democratic political reform or rule of law activities;

"(C) technical assistance for safety upgrades of civilian nuclear power plants;

"(D) the creation of private sector or nongovernmental organizations that are independent of government control;

"(E) the development of a free market economic system;

"(F) assistance under the secondary school exchange program administered by the United States Information Agency; or

"(G) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160).".

Sec. 107. Television Broadcasting to Cuba.

(a) Conversion to UHF.—The Director of the United States Information Agency shall implement a conversion of television broadcasting

to Cuba under the Television Marti Service to ultra high frequency (UHF) broadcasting.

(b) Periodic Reports.—Not later than 45 days after the date of the enactment of this Act, and every three months thereafter until the conversion described in subsection (a) is fully implemented, the Director of the United States Information Agency shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).

(c) Termination of Broadcasting Authorities.—Upon transmittal of a determination under section 203(c)(3), the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa and following) and the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 and following) are repealed.

Sec. 108. Reports on Commerce with, and Assistance to, Cuba from Other Foreign Countries.

(a) Reports Required.—Not later than 90 days after the date of the enactment of this Act, and by January 1 of each year thereafter until the President submits a determination under section 203(c)(1), the President shall submit a report to the appropriate congressional committees on commerce with, and assistance to, Cuba from other foreign countries during the preceding 12-month period.

(b) Contents of Reports.—Each report required by subsection (a) shall, for the period covered

by the report, contain the following, to the extent such information is available:

(1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.

(2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.

(3) A description of the joint ventures completed, or under consideration, by foreign nationals and business firms involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved.

(4) A determination as to whether or not any of the facilities described in paragraph (3) is the subject of a claim against Cuba by a United States national.

(5) A determination of the amount of debt of the Cuban Government that is owed to each foreign country, including—

(A) the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and

(B) the amount of debt owed the foreign country that has been exchanged, forgiven, or reduced in return for a grant by the Cuban Government of an equity

interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

(6) A description of the steps taken to assure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.

(7) An identification of countries that purchase, or have purchased, arms or military supplies from Cuba or that otherwise have entered into agreements with Cuba that have a military application, including—

(A) a description of the military supplies, equipment, or other material sold, bartered, or exchanged between Cuba and such countries,

(B) a listing of the goods, services, credits, or other consideration received by Cuba in exchange for military supplies, equipment, or material, and

(C) the terms or conditions of any such agreement.

Sec. 109. Authorization of Support for Democratic and Human Rights Groups and International Observers.

(a) Authorization.—Notwithstanding any other provision of law (including section 102 of this Act), except for section 634A of the Foreign Assistance Act of 1961 (22 U.S.C.

2394-1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba, including the following:

(1) Published and informational matter, such as books, videos, and cassettes, on transitions to democracy, human rights, and market economies, to be made available to independent democratic groups in Cuba.

(2) Humanitarian assistance to victims of political repression, and their families.

(3) Support for democratic and human rights groups in Cuba.

(4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.

(b) OAS Emergency Fund.—

(1) For support of human rights and elections.—The President shall take the necessary steps to encourage the Organization of American States to create a special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba.

(2) Action of other member states.—The President should instruct the United States Permanent Representative to the Organization of American States to encourage other member states of the Organization to join in calling for the Cuban Government to allow the immediate deployment of independent human rights monitors of the Organization throughout Cuba and on-site visits to Cuba by the Inter-American Commission on Human Rights.

(3) Voluntary contributions for fund.—Notwithstanding section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) or any other provision of law limiting the United States proportionate share of assistance to Cuba by any international organization, the President should provide not less than $5,000,000 of the voluntary contributions of the United States to the Organization of American States solely for the purposes of the special fund referred to in paragraph (1).

(c) Denial of Funds to the Cuban Government.—In implementing this section, the President shall take all necessary steps to ensure that no funds or other assistance is provided to the Cuban Government.

Sec. 110. Importation Safeguard Against Certain Cuban Products.

(a) Prohibition on Import of and Dealings in Cuban Products.—The Congress notes that section 515.204 of title 31, Code of Federal Regulations, prohibits the entry of, and dealings outside the United States in, merchandise that—

(1) is of Cuban origin;

(2) is or has been located in or transported from or through Cuba; or

(3) is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.

(b) Effect of NAFTA.—The Congress notes that United States accession to the North American Free Trade Agreement does not modify or alter the United States sanctions against Cuba. The statement of administrative action accompanying that trade agreement specifically states the following:

(1) "The NAFTA rules of origin will not in any way diminish the Cuban sanctions program. . . . Nothing in the NAFTA would operate to override this prohibition.".

(2) "Article 309(3) [of the NAFTA] permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that United States products are

not exported to Cuba through those countries.".

(c) Restriction of Sugar Imports.—The Congress notes that section 902(c) of the Food Security Act of 1985 (Public Law 99-198) requires the President not to allocate any of the sugar import quota to a country that is a net importer of sugar unless appropriate officials of that country verify to the President that the country does not import for reexport to the United States any sugar produced in Cuba.

(d) Assurances Regarding Sugar Products.—Protection of essential security interests of the United States requires assurances that sugar products that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States are not products of Cuba.

Sec. 111. Withholding of Foreign Assistance from Countries Supporting Juragua Nuclear Plant in Cuba.

(a) Findings.—The Congress makes the following findings:

(1) President Clinton stated in April 1993 that the United States opposed the construction of the Juragua nuclear power plant because of the concerns of the United States about Cuba's ability to ensure the safe operation of the facility and because of Cuba's refusal to

sign the Nuclear Non-Proliferation Treaty or ratify the Treaty of Tlatelolco.

(2) Cuba has not signed the Treaty on the Non-Proliferation of Nuclear Weapons or ratified the Treaty of Tlatelolco, the latter of which establishes Latin America and the Caribbean as a nuclear weapons-free zone.

(3) The State Department, the Nuclear Regulatory Commission, and the Department of Energy have expressed concerns about the construction and operation of Cuba's nuclear reactors.

(4) In a September 1992 report to the Congress, the General Accounting Office outlined concerns among nuclear energy experts about deficiencies in the nuclear plant project in Juragua, near Cienfuegos, Cuba, including—

(A) a lack in Cuba of a nuclear regulatory structure;

(B) the absence in Cuba of an adequate infrastructure to ensure the plant's safe operation and requisite maintenance;

(C) the inadequacy of training of plant operators;

(D) reports by a former technician from Cuba who, by examining with x-rays weld sites believed to be part of the auxiliary plumbing system

for the plant, found that 10 to 15 percent of those sites were defective;

(E) since September 5, 1992, when construction on the plant was halted, the prolonged exposure to the elements, including corrosive salt water vapor, of the primary reactor components; and

(F) the possible inadequacy of the upper portion of the reactors' dome retention capability to withstand only 7 pounds of pressure per square inch, given that normal atmospheric pressure is 32 pounds per square inch and United States reactors are designed to accommodate pressures of 50 pounds per square inch.

(5) The United States Geological Survey claims that it had difficulty determining answers to specific questions regarding earthquake activity in the area near Cienfuegos because the Cuban Government was not forthcoming with information.

(6) The Geological Survey has indicated that the Caribbean plate, a geological formation near the south coast of Cuba, may pose seismic risks to Cuba and the site of the power plant, and may produce large to moderate earthquakes.

(7) On May 25, 1992, the Caribbean plate produced an earthquake numbering 7.0 on the Richter scale.

(8) According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the coast of the Gulf of Mexico as far as Texas, and northern winds could carry the pollutants as far northeast as Virginia and Washington, D.C.

(9) The Cuban Government, under dictator Fidel Castro, in 1962 advocated the Soviets' launching of nuclear missiles to the United States, which represented a direct and dangerous provocation of the United States and brought the world to the brink of a nuclear conflict.

(10) Fidel Castro over the years has consistently issued threats against the United States Government, most recently that he would unleash another perilous mass migration from Cuba upon the enactment of this Act.

(11) Despite the various concerns about the plant's safety and operational problems, a feasibility study is being conducted that would establish a support group to include Russia, Cuba, and third countries with the objective of completing and operating the plant.

(b) Withholding of Foreign Assistance.—

(1) In general.—Notwithstanding any other provision of law, the President shall

withhold from assistance allocated, on or after the date of the enactment of this Act, for any country an amount equal to the sum of assistance and credits, if any, provided on or after such date of enactment by that country or any entity in that country in support of the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.

(2) Exceptions.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

(B) democratic political reform or rule of law activities;

(C) the creation of private sector or nongovernmental organizations that are independent of government control;

(D) the development of a free market economic system;

(E) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160); or

(F) assistance under the secondary school exchange program administered by the United States Information Agency.

(3) Definition.—As used in paragraph (1), the term "assistance" means assistance under the Foreign Assistance Act of 1961, credits, sales, guarantees of extensions of credit, and other assistance under the Arms Export Control Act, assistance under titles I and III of the Agricultural Trade Development and Assistance Act of 1954, assistance under the FREEDOM Support Act, and any other program of assistance or credits provided by the United States to other countries under other provisions of law.

Sec. 112. Reinstitution of Family Remittances and Travel to Cuba.

It is the sense of the Congress that the President should—

(1)

(A) before considering the reinstitution of general licenses for family remittances to Cuba, insist that, prior to such reinstitution, the Cuban Government permit the unfettered operation of small businesses fully empowered with the right to hire others to whom they may pay wages and to buy materials necessary in the operation of the businesses, and with such other authority and freedom as are required to foster the operation of small businesses throughout Cuba; and

(B) if licenses described in subparagraph (A) are reinstituted, require a specific license for remittances described in subparagraph (A) in amounts of more than $500; and

(2) before considering the reinstitution of general licenses for travel to Cuba by individuals resident in the United States who are family members of Cuban nationals who are resident in Cuba, insist on such actions by the Cuban Government as abrogation of the sanction for departure from Cuba by refugees, release of political prisoners, recognition of the right of association, and other fundamental freedoms.

Sec. 113. Expulsion of Criminals from Cuba.

The President shall instruct all United States Government officials who engage in official contacts with the Cuban Government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.

Sec. 114. News Bureaus in Cuba.

(a) Establishment of News Bureaus.—The President is authorized to establish and implement an exchange of news bureaus between the United States and Cuba, if the exchange meets the following conditions:

(1) The exchange is fully reciprocal.

(2) The Cuban Government agrees not to interfere with the establishment of news bureaus or with the movement in Cuba of journalists of any United States-based news organizations, including Radio Marti and Television Marti.

(3) The Cuban Government agrees not to interfere with decisions of United States-based news organizations with respect to individuals assigned to work as journalists in their news bureaus in Cuba.

(4) The Department of the Treasury is able to ensure that only accredited journalists regularly employed with a news gathering organization travel to Cuba under this subsection.

(5) The Cuban Government agrees not to interfere with the transmission of telecommunications signals of news bureaus or with the distribution within Cuba of publications of any United States-based news organization that has a news bureau in Cuba.

(b) Assurance Against Espionage.—In implementing this section, the President shall take all necessary steps to ensure the safety and security of the United States against espionage by Cuban journalists it believes to be working for the intelligence agencies of the Cuban Government.

(c) Fully Reciprocal.—As used in subsection (a)(1), the term "fully reciprocal" means

that all news services, news organizations, and broadcasting services, including such services or organizations that receive financing, assistance, or other support from a governmental or official source, are permitted to establish and operate a news bureau in the United States and Cuba.

Sec. 115. Effect of Act on Lawful United States Government Activities.

Nothing in this Act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency, or of an intelligence agency, of the United States.

Sec. 116. Condemnation of Cuban Attack on American Aircraft.

(a) Findings.—The Congress makes the following findings:

(1) Brothers to the Rescue is a Miami-based humanitarian organization engaged in searching for and aiding Cuban refugees in the Straits of Florida, and was engaged in such a mission on Saturday, February 24, 1996.

(2) The members of Brothers to the Rescue were flying unarmed and defenseless planes in a mission identical to hundreds they have flown since 1991 and posed no threat whatsoever to the Cuban Government, the Cuban military, or the Cuban people.

(3) Statements by the Cuban Government that Brothers to the Rescue has engaged in covert operations, bombing campaigns, and commando operations against the Government of Cuba have no basis in fact.

(4) The Brothers to the Rescue aircraft notified air traffic controllers as to their flight plans, which would take them south of the 24th parallel and close to Cuban airspace.

(5) International law provides a nation with airspace over the 12-mile territorial sea.

(6) The response of Fidel Castro's dictatorship to Saturday's afternoon flight was to scramble 2 fighter jets from a Havana airfield.

(7) At approximately 3:24 p.m., the pilot of one of the Cuban MiGs received permission and proceeded to shoot down one Brothers to the Rescue airplane more than 6 miles north of the Cuban exclusion zone, or 18 miles from the Cuban coast.

(8) Approximately 7 minutes later, the pilot of the Cuban fighter jet received permission and proceeded to shoot down the second Brothers to the Rescue airplane almost 18.5 miles north of the Cuban exclusion zone, or 30.5 miles from the Cuban coast.

(9) The Cuban dictatorship, if it truly felt threatened by the flight of these unarmed aircraft, could have and should have pursued other peaceful options as required by international law.

(10) The response chosen by Fidel Castro, the use of lethal force, was completely inappropriate to the situation presented to the Cuban Government, making such actions a blatant and barbaric violation of international law and tant-amount to cold-blooded murder.

(11) There were no survivors of the attack on these aircraft, and the crew of a third aircraft managed to escape this criminal attack by Castro's Air Force.

(12) The crew members of the destroyed planes, Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandre, were United States citizens from Miami flying with Brothers to the Rescue on a voluntary basis.

(13) It is incumbent upon the United States Government to protect the lives and livelihoods of United States citizens as well as the rights of free passage and humanitarian missions.

(14) This premeditated act took place after a week-long wave of repression by the Cuban Government against Concilio Cubano, an umbrella organization of human rights activists, dissidents,

independent economists, and independent journalists, among others.

(15) The wave of repression against Concilio Cubano, whose membership is committed to peaceful democratic change in Cuba, included arrests, strip searches, house arrests, and in some cases sentences to more than 1 year in jail.

(b) Statements by the Congress.—

(1) The Congress strongly condemns the act of terrorism by the Castro regime in shooting down the Brothers to the Rescue aircraft on February 24, 1996.

(2) The Congress extends its condolences to the families of Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandre, the victims of the attack.

(3) The Congress urges the President to seek, in the International Court of Justice, indictment for this act of terrorism by Fidel Castro.

Title II—Assistance to a Free and Independent Cuba

Sec. 201. Policy Toward a Transition Government and a Democratically Elected Government in Cuba.

The policy of the United States is as follows:

(1) To support the self-determination of the Cuban people.

(2) To recognize that the self-determination of the Cuban people is a sovereign and national right of the citizens of Cuba which must be exercised free of interference by the government of any other country.

(3) To encourage the Cuban people to empower themselves with a government which reflects the self-determination of the Cuban people.

(4) To recognize the potential for a difficult transition from the current regime in Cuba that may result from the initiatives taken by the Cuban people for self-determination in response to the intransigence of the Castro regime in not allowing any substantive political or economic reforms, and to be prepared to provide the Cuban people with humanitarian, developmental, and other economic assistance.

(5) In solidarity with the Cuban people, to provide appropriate forms of assistance—

(A) to a transition government in Cuba;

(B) to facilitate the rapid movement from such a transition government to a democratically elected government in Cuba that results from an expression of the self-determination of the Cuban people; and

(C) to support such a democratically elected government.

(6) Through such assistance, to facilitate a peaceful transition to representative demo-

cracy and a market economy in Cuba and to consolidate democracy in Cuba.

(7) To deliver such assistance to the Cuban people only through a transition government in Cuba, through a democratically elected government in Cuba, through United States Government organizations, or through United States, international, or indigenous nongovernmental organizations.

(8) To encourage other countries and multilateral organizations to provide similar assistance, and to work cooperatively with such countries and organizations to coordinate such assistance.

(9) To ensure that appropriate assistance is rapidly provided and distributed to the people of Cuba upon the institution of a transition government in Cuba.

(10) Not to provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government.

(11) To assist a transition government in Cuba and a democratically elected government in Cuba to prepare the Cuban military forces for an appropriate role in a democracy.

(12) To be prepared to enter into negotiations with a democratically elected government in Cuba either to return the United States Naval Base at Guantanamo to Cuba or to renegotiate the present agreement under mutually agreeable terms.

(13) To consider the restoration of diplomatic recognition and support the reintegration of the Cuban Government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba.

(14) To take steps to remove the economic embargo of Cuba when the President determines that a transition to a democratically elected government in Cuba has begun.

(15) To assist a democratically elected government in Cuba to strengthen and stabilize its national currency.

(16) To pursue trade relations with a free, democratic, and independent Cuba.

Sec. 202. Assistance for the Cuban People.

(a) Authorization.—

(1) In general.—The President shall develop a plan for providing economic assistance to Cuba at such time as the President determines that a transition government or a democratically elected government in Cuba (as determined under section 203(c)) is in power.

(2) Effect on other laws.—Assistance may be provided under this section subject to an authorization of appropriations and subject to the availability of appropriations.

(b) Plan for Assistance.—

(1) Development of plan.—The President shall develop a plan for providing assistance under this section—

(A) to Cuba when a transition government in Cuba is in power; and

(B) to Cuba when a democratically elected government in Cuba is in power.

(2) Types of assistance.—Assistance under the plan developed under paragraph (1) may, subject to an authorization of appropriations and subject to the availability of appropriations, include the following:

(A) Transition government.—(i) Except as provided in clause (ii), assistance to Cuba under a transition government shall, subject to an authorization of appropriations and subject to the availability of appropriations, be limited to—

(I) such food, medicine, medical supplies and equipment, and assistance to meet emergency energy needs, as is necessary to meet the basic human needs of the Cuban people; and

(II) assistance described in subparagraph (C).

(ii) Assistance in addition to assistance under clause (i) may be provided, but only after the President certifies to the appropriate congressional committees, in accordance with procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, that such assistance is essential to the successful completion of the transition to democracy.

(iii) Only after a transition government in Cuba is in power, freedom of individuals to travel to visit their relatives without any restrictions shall be permitted.

(B) Democratically elected government.—Assistance to a democratically elected government in Cuba may, subject to an authorization of appropriations and subject to the availability of appropriations, consist of economic assistance in addition to assistance available under subparagraph (A), together with assistance described in subparagraph (C). Such economic assistance may include—

(i) assistance under chapter 1 of part I (relating to development assistance), and chapter 4 of part II (relating to the economic support fund), of the Foreign Assistance Act of 1961;

(ii) assistance under the Agricultural Trade Development and Assistance Act of 1954;

(iii) financing, guarantees, and other forms of assistance provided by the Export-Import Bank of the United States;

(iv) financial support provided by the Overseas Private Investment Corporation for investment projects in Cuba;

(v) assistance provided by the Trade and Development Agency;

(vi) Peace Corps programs; and

(vii) other appropriate assistance to carry out the policy of section 201.

(C) Military adjustment assistance.—Assistance to a transition government in Cuba and to a democratically elected government in Cuba shall also include assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy.

(c) Strategy for Distribution.—The plan developed under subsection (b) shall include a strategy for distributing assistance under the plan.

(d) Distribution.—Assistance under the plan developed under subsection (b) shall be provided through United States Government organizations and nongovernmental organizations and private and voluntary organizations, whether within or outside the United States, including humanitarian, educational, labor, and private sector organizations.

(e) International Efforts.—The President shall take the necessary steps—

(1) to seek to obtain the agreement of other countries and of international financial institutions and multilateral organizations to provide to a transition government in Cuba, and to a democratically elected government in Cuba, assistance comparable to that provided by the United States under this Act; and

(2) to work with such countries, institutions, and organizations to coordinate all such assistance programs.

(f) Communication With the Cuban People.—The President shall take the necessary steps to communicate to the Cuban people the plan for assistance developed under this section.

(g) Report to Congress.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.

(h) Report on Trade and Investment Relations.—

(1) Report to congress.—The President, following the transmittal to the Congress of a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees a report that describes—

(A) acts, policies, and practices which constitute significant barriers to, or distortions of, United States trade in goods or services or foreign direct investment with respect to Cuba;

(B) policy objectives of the United States regarding trade relations with a democratically elected government in Cuba, and the reasons therefor, including possible—

(i) reciprocal extension of nondiscriminatory trade treatment (most-favored-nation treatment);

(ii) designation of Cuba as a beneficiary developing country under title V of the Trade Act of 1974 (relating to the Generalized System of Preferences) or as a beneficiary country under the Caribbean Basin Economic Recovery Act, and the implications of such designation with respect to trade with any other country that is such a beneficiary developing country or beneficiary country or is a party to the North American Free Trade Agreement; and

(iii) negotiations regarding free trade, including the accession of Cuba to the North American Free Trade Agreement;

(C) specific trade negotiating objectives of the United States with respect to Cuba, including the objectives described in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)); and

(D) actions proposed or anticipated to be undertaken, and any proposed legislation necessary or appropriate, to achieve any of such policy and negotiating objectives.

(2) Consultation.—The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees and shall seek advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974 regarding the policy and negotiating objectives and the legislative proposals described in paragraph (1).

Sec. 203. Coordination of Assistance Program; Implementation and Reports to Congress; Reprogramming.

(a) Coordinating Official.—The President shall designate a coordinating official who shall be responsible for—

(1) implementing the strategy for distributing assistance described in section 202(b);

(2) ensuring the speedy and efficient distribution of such assistance; and

(3) ensuring coordination among, and appropriate oversight by, the agencies of the United States that provide assistance described in section 202(b), including resolving any disputes among such agencies.

(b) United States-Cuba Council.—Upon making a determination under subsection (c)(3) that a democratically elected government in Cuba is in power, the President, after consultation with the coordinating official, is authorized to designate a United States-Cuba council—

(1) to ensure coordination between the United States Government and the private sector in responding to change in Cuba, and in promoting market-based development in Cuba; and

(2) to establish periodic meetings between representatives of the United States and Cuban private sectors for the purpose of facilitating bilateral trade.

(c) Implementation of Plan; Reports to Congress.—

(1) Implementation with respect to transition government.—Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 202(b).

(2) Reports to congress.—(A) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section 202(b)(2) (A) and (C) to the transition government in Cuba under the plan of assistance developed under section 202(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(B) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(3) Implementation with respect to democratically elected government.—The President shall, upon determining that a democratically elected government in Cuba is in power, submit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such democratically elected government under the plan developed under section 202(b).

(4) Annual reports to congress.—Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report on the assistance provided under the plan developed under section 202(b), including a description of each type of assistance, the amounts expended for such assistance, and a description of the assistance to be provided under the plan in the current fiscal year.

(d) Reprogramming.—Any changes in the assistance to be provided under the plan developed under section 202(b) may not be made unless the President notifies the appropriate congressional committees at least 15 days in advance in

accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

Sec. 204. Termination of the Economic Embargo of Cuba.

(a) Presidential Actions.—Upon submitting a determination to the appropriate congressional committees under section 203(c)(1) that a transition government in Cuba is in power, the President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba and to suspend the right of action created in section 302 with respect to actions thereafter filed against the Cuban Government, to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba.

(b) Suspension of Certain Provisions of Law.—In carrying out subsection (a), the President may suspend the enforcement of—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with respect to the "Republic of Cuba";

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005);

(4) section 902(c) of the Food Security Act of 1985; and

(5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

(c) Additional Presidential Actions.—Upon submitting a determination to the appropriate congressional committees under section 203(c)(3) that a democratically elected government in Cuba is in power, the President shall take steps to terminate the economic embargo of Cuba, including the restrictions under part 515 of title 31, Code of Federal Regulations.

(d) Conforming Amendments.—On the date on which the President submits a determination under section 203(c)(3)—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking "Republic of Cuba";

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005) are repealed; and

(4) section 902(c) of the Food Security Act of 1985 is repealed.

(e) Review of Suspension of Economic Embargo.—

(1) Review.—If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months

thereafter, until he submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) Joint resolutions.—For purposes of this subsection, the term "joint resolution" means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress disapproves the action of the President under section 204(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to suspend the economic embargo of Cuba, notice of which was submitted to the Congress on __.", with the blank space being filled with the appropriate date.

(3) Referral to committees.—Joint resolutions introduced in the House of Representatives shall be referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) Procedures.—(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

Sec. 205. Requirements and Factors for Determining a Transition Government.

(a) Requirements.—For the purposes of this Act, a transition government in Cuba is a government that—

(1) has legalized all political activity;

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; and

(4) has made public commitments to organizing free and fair elections for a new government—

(A) to be held in a timely manner within a period not to exceed 18 months after the transition government assumes power;

(B) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(C) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other election monitors;

(5) has ceased any interference with Radio Marti or Television Marti broadcasts;

(6) makes public commitments to and is making demonstrable progress in—establishing an independent judiciary; respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation; allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;

(7) does not include Fidel Castro or Raul Castro; and

(8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.

(b) Additional Factors.—In addition to the requirements in subsection (a), in determining whether a transition government in Cuba is in power, the President shall take into account the extent to which that government—

(1) is demonstrably in transition from a communist totalitarian dictatorship to representative democracy;

(2) has made public commitments to, and is making demonstrable progress in—

(A) effectively guaranteeing the rights of free speech and freedom of the press, including granting permits to privately owned media and telecommunications companies to operate in Cuba;

(B) permitting the reinstatement of citizenship to Cuban-born persons returning to Cuba;

(C) assuring the right to private property; and

(D) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after

January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(3) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States; and

(4) has permitted the deployment throughout Cuba of independent and unfettered international human rights monitors.

Sec. 206. Requirements for Determining a Democratically Elected Government.

For purposes of this Act, a democratically elected government in Cuba, in addition to meeting the requirements of section 205(a), is a government which–

(1) results from free and fair elections—

(A) conducted under the supervision of internationally recognized observers; and

(B) in which—

(i) opposition parties were permitted ample time to organize and campaign for such elections; and all candidates were permitted full access to the media;

(2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(3) is substantially moving toward a market-oriented economic system based on the right to own and enjoy property;

(4) is committed to making constitutional changes that would ensure regular free and fair elections and the full enjoyment of basic civil liberties and human rights by the citizens of Cuba;

(5) has made demonstrable progress in establishing an independent judiciary; and

(6) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

Sec. 207. Settlement of Outstanding United States Claims to Confiscated Property in Cuba.

(a) Report to Congress.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall provide a report to the appropriate congressional committees containing an assessment of the property dispute question in Cuba, including—

(1) an estimate of the number and amount of claims to property confiscated by the Cuban Government that are held by United States nationals in addition to those claims certified under section 507 of the International Claims Settlement Act of 1949;

(2) an assessment of the significance of promptly resolving confiscated property claims to the revitalization of the Cuban economy;

(3) a review and evaluation of technical and other assistance that the United States could provide to help either a transition government in Cuba or a democratically elected government in Cuba establish mechanisms to resolve property questions;

(4) an assessment of the role and types of support the United States could provide to help resolve claims to property confiscated by the Cuban Government that are held by United States nationals who did not receive or qualify for certification under section 507 of the International Claims Settlement Act of 1949; and

(5) an assessment of any areas requiring legislative review or action regarding the resolution of property claims in Cuba prior to a change of government in Cuba.

(d) Sense of Congress.—It is the sense of the Congress that the satisfactory resolution of property claims by a Cuban Government recognized by the United States remains an essential condition for the full resumption of economic and diplomatic relations between the United States and Cuba.

Title III—Protection of Property Rights of United States Nationals Sec. 301. Findings.

The Congress makes the following findings:

(1) Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution.

(2) The wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development.

(3) Since Fidel Castro seized power in Cuba in 1959—

(A) he has trampled on the fundamental rights of the Cuban people; and

(B) through his personal despotism, he has confiscated the property of—

(i) millions of his own citizens;

(ii) thousands of United States nationals; and

(iii) thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States.

(4) It is in the interest of the Cuban people that the Cuban Government respect equally the property rights of Cuban nationals and nationals of other countries.

(5) The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals.

(6) This "trafficking" in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and

expertise, to the current Cuban Government and thus undermines the foreign policy of the United States—

(A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure; and

(B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.

(7) The United States Department of State has notified other governments that the transfer to third parties of properties confiscated by the Cuban Government "would complicate any attempt to return them to their original owners".

(8) The international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property.

(9) International law recognizes that a nation has the ability to provide for rules of law with respect to conduct outside its territory that has or is intended to have substantial effect within its territory.

(10) The United States Government has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.

(11) To deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures.

Sec. 302. Liability for Trafficking in Confiscated Property Claimed by United States Nationals.

(a) Civil Remedy.—

(1) Liability for trafficking.—(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest;

(II) the amount determined under section 303(a)(2), plus interest; or

(III) the fair market value of that property, calculated as being either the current value of the property, or the value of

the property when confiscated plus interest, whichever is greater; and

(ii) court costs and reasonable attorneys' fees.

(B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of confiscation of the property involved to the date on which the action is brought under this subsection.

(2) Presumption in favor of the certified claims.—There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) Increased liability.—(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to—

(i) a person against whom the action is to be initiated, or

(ii) a person who is to be joined as a defendant in the action, at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of—

(i) the amount determined under paragraph (1)(A)(ii), and

(ii) 3 times the amount determined applicable under paragraph (1)(A)(i).

(D) Notice to a person under subparagraph (B)—

(i) shall be in writing;

(ii) shall be posted by certified mail or personally delivered to the person; and

(iii) shall contain—

(I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons

therefor; a demand that the unlawful trafficking in the claimant's property cease immediately; and a copy of the summary statement published under paragraph (8).

(4) Applicability.—(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before such date of enactment.

(C) In the case of property confiscated on or after the date of the enactment of this Act, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) Treatment of certain actions.—(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section.

(B) In the case of any action brought under this section by a United States national whose

underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

(6) Inapplicability of act of state doctrine.—No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1) .

(7) Licenses not required.—(A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 5(b) of the Trading with the Enemy Act that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act.

(B) Notwithstanding any other provision of law, and for purposes of this title only, any claim against the Cuban Government shall not be deemed to be an interest in property the transfer of which to a United States national required before the enactment of this Act, or requires after the enactment of this Act, a license issued by, or the permission of, any agency of the United States.

(8) Publication by attorney general.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall prepare and publish in the Federal Register a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title.

(b) Amount in Controversy.—

An action may be brought under this section by a United States national only where the amount in controversy exceeds the sum or value of $50,000, exclusive of interest, costs, and attorneys' fees. In calculating $50,000 for purposes of the preceding sentence, the applicable amount under subclause (I), (II), or (III) of subsection (a)(1)(A)(i) may not be tripled as provided in subsection (a)(3).

(c) Procedural Requirements.—

(1) In general.—

Except as provided in this title, the provisions of title 28, United States Code, and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of title 28, United States Code.

(2) Service of process.—

In an action under this section, service of process on an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law, shall be made in accordance with section 1608 of title 28, United States Code.

(d) Enforceability of Judgments Against Cuban Government.—

In an action brought under this section, any judgment against an agency or instrumentality

of the Cuban Government shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(e) Certain Property Immune From Execution.—

Section 1611 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.".

(f) Election of Remedies.—

(1) Election.—Subject to paragraph (2)—

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) Treatment of certified claimants.—

(A) In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949—

(i) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;

(ii) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment under a claims agreement described in clause (i) but only to the extent of the difference between the

amount of the recovery and the amount of the certified claim; and

(iii) if there is no recovery in the action, the United States national may receive payment on the certified claim under a claims agreement described in clause (i) to the same extent as any certified claimant who does not bring an action under this section.

(B) In the event some or all actions brought under this section are consolidated by judicial or other action in such manner as to create a pool of assets available to satisfy the claims in such actions, including a pool of assets in a proceeding in bankruptcy, every claimant whose claim in an action so consolidated was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 shall be entitled to payment in full of its claim from the assets in such pool before any payment is made from the assets in such pool with respect to any claim not so certified.

(g) Deposit of Excess Payments by Cuba Under Claims Agreement.—

Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 that are in excess of the payments made on such certified claims after the application of subsection

(f) shall be deposited into the United States Treasury.

(h) Termination of Rights.—

(1) In general.—

All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government—

(A) may be suspended under section 204(a); and

(B) shall cease upon transmittal to the Congress of a determination of the President under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) Pending suits.—

The suspension or termination of rights under paragraph (1) shall not affect suits commenced before the date of such suspension or termination (as the case may be), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension or termination had not occurred.

(i) Imposition of Filing Fees.—The Judicial Conference of the United States shall establish a uniform fee that shall be imposed upon the plaintiff or plaintiffs in each action brought under this section. The fee should be established at a level sufficient to recover the costs to the courts of actions brought under this section. The fee under this

subsection is in addition to any other fees imposed under title 28, United States Code.

Sec. 303. Proof of Ownership of Claims to Confiscated Property.

(a) Evidence of Ownership.—

(1) Conclusiveness of certified claims.—

In any action brought under this title, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) Claims not certified.—

If in an action under this title a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this title and do not constitute certifications under title V of the International Claims Settlement Act of 1949.

(3) Effect of determinations of foreign or international entities.—

In determining the amount or ownership of a claim in an action under this title, the court

shall not accept as conclusive evidence any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Amendment of the International Claims Settlement Act of 1949.—

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following) is amended by adding at the end the following new section:

"Determination of Ownership of Claims Referred by District Courts of the United States

"Sec. 514. Notwithstanding any other provision of this Act and only for purposes of section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, a United State district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996), resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in

section 502(1)) at the time of the action by the Government of Cuba.".

(c) Rule of Construction.—Nothing in this Act or in section 514 of the International Claims Settlement Act of 1949, as added by subsection (b), shall be construed—

(1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or

(2) as superseding, amending, or otherwise altering certifications that have been made under title V of the International Claims Settlement Act of 1949 before the date of the enactment of this Act.

Sec. 304. Exclusivity of Foreign Claims Settlement Commission Certification Procedure.

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following), as amended by section 303, is further amended by adding at the end the following new section:

"Exclusivity of Foreign Claims Settlement Commission Certification Procedure

"Sec. 515. (a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under section 503 but did not timely file such claim under that section, nor any person who was ineligible to file a claim under section 503, nor any national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under section 507, nor shall any district court of the United States have jurisdiction to adjudicate any such claim.

"(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of capital stock of nationals of the United States owning claims certified by the Commission under section 507.".

Sec. 305. Limitation of Actions.

An action under section 302 may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.

Sec. 306. Effective Date.

(a) In General.—

Subject to subsections (b) and (c), this title and the amendments made by this title shall take effect on August 1, 1996.

(b) Suspension Authority.—

(1) Suspension authority.—The President may suspend the effective date under subsection (a) for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before such effective date that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) Additional suspensions.—The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(c) Other Authorities.—

(1) Suspension.—After this title and the amendments of this title have taken effect—

(A) no person shall acquire a property interest in any potential or pending action under this title; and

(B) the President may suspend the right to bring an action under this title with respect to confiscated property for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) Additional suspensions.—The President may suspend the right to bring an action under this title for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(3) Pending suits.—The suspensions of actions under paragraph (1) shall not affect suits commenced before the date of such suspension, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension had not occurred.

(d) Rescission of Suspension.—

The President may rescind any suspension made under subsection (b) or (c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

Title Iv—Exclusion of Certain Aliens

Sec. 401. Exclusion from the United States of Aliens Who Have Confiscated Property of United States Nationals or Who Traffic in Such Property.

(a) Grounds for Exclusion.—The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act—

(1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;

(2) traffics in confiscated property, a claim to which is owned by a United States national;

(3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or

(4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) Definitions.—As used in this section, the following terms have the following meanings:

(1) Confiscated; confiscation.—The terms "confiscated" and "confiscation" refer to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(2) Traffics.—(A) Except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—

(ii)

(I) transfers, distributes, dispenses, brokers, or otherwise disposes of confiscated property,

(II) purchases, receives, obtains control of, or otherwise acquires confiscated property, or

(III) improves (other than for routine maintenance), invests in (by contribution of funds or anything of value, other than for routine maintenance), or begins after the date of the enactment of this Act to manage, lease, possess, use, or hold an interest in confiscated property,

(ii) enters into a commercial arrangement using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include—

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(c) Exemption.—This section shall not apply where the Secretary of State finds, on a case by case basis, that the entry into the United States of the person who would otherwise be excluded under this section is necessary for medical reasons or for purposes of litigation of an action under title III.

(d) Effective Date.—

(1) In general.—This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.

(2) Trafficking.—This section applies only with respect to acts within the meaning of "traffics" that occur on or after the date of the enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Signed by the President of the United States, March 12, 1996.

AMENDED[1] COMPLAINT AND DEMAND FOR JURY TRIAL (JULY 8, 2020)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.

Case No.: 20-cv-21630-RNS

1) Plaintiff, HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC, a United States citizen, sues Defendant TECK RESOURCES LIMITED ("TECK"), a Canadian corporation, and alleges as follows:

1 This Amended Complaint is made solely for the purpose of correcting a minor scrivener's error (watermark) contained in the originally filed pleading.

GENERAL ALLEGATIONS

NATURE OF ACTION

1) This is an action brought against pursuant to Title III of the Cuban Libertad and Democratic Solidarity (LIBERTAD) Act of 1996 (the "Libertad Act" or the "Act"), 22 U.S.C. § 6082, for the unlawful trafficking in property that was confiscated by the communist Cuban Government during the regime of Fidel Castro.

2) Specifically, Plaintiff seeks monetary damages to properly compensate for the unlawful and unauthorized mining activities and extraction of valuable minerals from the rich ore and mineral mines in the Sierra Maestra region of Cuba, in and around the town of El Cobre, Province of Oriente.

3) Prior to being confiscated by the communist Cuban Government, Roberto Gomez Cabrera, through his company Rogoca Minera, S.A., was the rightful owner and claimant to the following twenty-one mines located in or around the town of El Cobre, Province of Oriente, Republic of Cuba:

a) Mina Grande;

b) Demasia Mina Grande;

c) Roberston;

d) Jueves Santo;

e) Gitanilla

f) Lizzie;

g) Demasia de la mina Lizzie;

h) Estrella;

i) Capitana;

j) Maria Luisa;

k) Cristina;

l) Cobrera;

m) Trewinse;

n) Santa Rita;

o) Demasia de la Mina Maria Luisa;

p) Perla;

q) Resurrecion;

r) Preferencia;

s) Demasia de la mina Preferencia;

t) Ruinas Grandes; and

u) Reconstruccion.

4) The above-identified mining concessions total in size of approximately 253 Hectares or 624.91 Acres.

5) From 1950 to 1956, Minera Rogoca S.A. explored and mined the above-identified mining concessions pursuant to an agreement with the then-owner International Minerals and Metals Corporation, a New York company.

6) On or around July 1956, Minera Rogoca S.A. purchased the above-identified mining concessions from a New York company named "International Minerals and Metals Corporation."

7) Minera Rogoca S.A. continued to explore and mine the above-identified mining concessions using its own industrial mining equipment and installations until its real and personal property (collectively referred

to as the "Confiscated Property") were taken without compensation by the communist Cuban government.

8) All right, title, and interest held by Roberto Gomez Cabrera in Minera Rogoca S.A. and the Confiscated Property were inherited by his children on or about September, 1969.

9) Title HI of the Libertad Act has been suspended for over twenty years by Presidential Orders until just recently, which prevented Plaintiffs predecessors in interest from bringing the instant action in the first instance.

PARTIES, JURISDICTION, AND VENUE

10) This Court has specific and general jurisdiction over the parties to this action.

11) Plaintiff, Herederos de Roberto Gomez Cabrera, LLC, is a Florida limited liability company organized and existing under the laws of the State of Florida. Plaintiff is the holder of all right, title to, and interest in the claims brought in the instant lawsuit via an assignment of claims made by the heirs of Roberto Gomez Cabrera, whom owned the claims and were United States citizens on March 12, 1996.

12) Defendant, Teck Resources Limited ("TECK") is a Canadian corporation with its headquarters in Canada.

13) TECK maintains continuous and systematic affiliations within the United States, specifically in, inter alia, the States of Washington and Alaska.

14) TECK, directly or indirectly, owns, operates, controls, manages, and/or supervises at least seven

U.S.-based subsidiaries in the State of Washington, such as:

a) Teck American Incorporated;

b) Teck Advanced Materials Incorporated;

c) Teck Alaska Maritime Incorporated;

d) Teck American Energy Sales Incorporated;

e) Teck American Metal Sales Incorporated;

f) Teck Washington Incorporated; and

g) TCAI Incorporated.

15) TECK, directly or indirectly, owns, operates, controls, manages, and/or supervises one of the world's largest zinc mines known as "Red Dog" in Alaska, United States and an underground zinc and lead mine known as the "Pend Oreille" in Washington State, United States.

16) TECK offers employment and employing persons to work in the United States.

17) TECK is publicly traded on the New York Stock Exchange.

18) TECKS U.S. based operations alone have yielded hundreds of millions of dollars in revenue and gross profit. For instance, Teck's Red Dog mine operations yielded a $990 million gross profit before depreciation and amortization in 2018, compared with $971 million in 2017 and $749 million in 2016.

19) Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 because this action arises under the laws of the United States, specifically Title III of the Libertad Act, codified at 22 U.S.C. § 6021 *et seq*.

20) The amount in controversy exceeds $50,000 .00 in damages as required by 22 U.S.C. § 6082(b).

21) Contemporaneous with this filing, Plaintiff will pay the special fee for filing an action under Title III of the Libertad, which is $6,548 pursuant to the fee schedule adopted by the Judicial Conference in September 2018.

22) Venue is proper in this judicial district under, *inter alia,* 28 U.S.C. § 1391(b)(3).

CONFISCATION AND TRAFFICKING OF EL COBRE MINES

23) In October 1960, the communist Cuban Government wrongfully and forcefully nationalized, expropriated, and seized ownership and control of the Confiscated Property by the adoption of Cuba's Gazette Law 890, which applied the Marxist-Leninist ideology of abolishing private ownership over the means of production and provides for the forceful taking of all right, title, and interest in all privately-held commercial and industrial businesses in Cuba.

24) From as early as 1994 through 2009, TECK, together with Joutel Resources Limited, a Canadian corporation, and directly or indirectly with Geominera S.A, a Cuban government-owned and operated entity, exploited the Confiscated Property and extracted significant valuable minerals and other geological materials from the Confiscated Property.

25) In February 1994, TECK and Joutel engaged in a strategic joint venture alliance together to explore and develop significant land holdings in Cuba.

26) At all times material hereto, Joutel held exclusive mineral exploration and development rights to 4,000 sq. km. in Cuba, including El Cobre mines located in the Sierra Maestra regions of Cuba.

27) In January 1996, TECK and Joutel entered into a written agreement giving TECK the right to earn a 50% interest in all of Joutel's holdings in Cuba by completing a formal feasibility study and provide mine financing for Joutel's share of development costs to place deposits into production.

28) On or about February 6, 1996, TECK and Joutel reached an agreement to jointly engage in exploration and mining activity in lands in Cuba under an agreement with Geominera S.A.

29) Upon information and belief, in accordance with the above agreement, TECK purchased 1.5 million subordinate voting shares of Joutel for a total investment of $1 million with the option to buy a further 3 million of Joutel shares over three years, representing a investment of $4.5 million. In addition, TECK has the right to participate in future financings to retain its pro rata interest in Joutel. The share purchase allows TECK to earn half of Joutel Resource Limited's interest in all of Joutel's land holdings in Cuba. Joutel holds exclusive mineral exploration and development rights to 4,660 sq. km of land in Cuba. Development and exploitation of a deposit will be shared 50-50 between Joutel and Georninera S.A., a Cuban government entity.

30) In addition, TECK agreed, and did in fact, complete a formal feasibility study and financed Joutel's share of development costs of bringing the properties to the commercial production stage. As a

result, TECK operated the mines developed on the Joutel's concessions.

31) TECK had actual and constructive knowledge of the fact that they were trafficking in property that was confiscated by the Cuban government belonging to US citizens. TECK's knowledge is obtained by virtue of, without limitation, the Cuban constitution and laws, public records, and through notice given to Joutel by the Roberto Gomez Cabrera's children via letter dated June 25, 1997.

32) On information and belief, beginning on or about February 6, 1994 and continuing for at least 15 years thereafter, TECK knowingly and intentionally commenced, conducted, and used the Confiscated Property for commercial purposes without the authorization of Plaintiff or any U.S. national who holds a claim to the Confiscated Property.

33) On information and belief, beginning on or about February 6, 1994 and continuing for at least 15 years thereafter, TECK also knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Confiscated Property without the authorization of Plaintiff or any U.S. national who holds a claim to the Confiscated Property.

34) TECK is knowingly and intentionally trafficking confiscated property as defined in 22 U.S.C. § 6023(13)(A).

35) As a result of TECK's trafficking of Plaintiffs Confiscated Property, TECK is liable to Plaintiff for all monetary damages allowable under 22 U.S.C. § 6082(a).

36) The communist Cuban Government maintains possession of the Confiscated Property and has not paid compensation to Plaintiff for its seizure. Further, the claim to the Confiscated Property has not been settled pursuant to an international claim settlement agreement or other settlement procedure.

37) Plaintiff never abandoned his legitimate interest in the Confiscated Property; nor have any of Plaintiffs predecessors in interest ever abandoned their legitimate interest in the Confiscated Property.

CONDITIONS PRECEDENT

38) All conditions precedent to the institution of this action have been waived, performed, or have occurred.

ATTORNEYS' FEES AND COSTS

39) Plaintiff has retained the undersigned counsel to represent it in this action and is obligated to pay counsel a reasonable fee for its services. Plaintiff seeks to recover its reasonable attorney's fees and costs from TECK pursuant to applicable law.

COUNT I — VIOLATION OF TITLE III OF THE LIBERTAD ACT

40) Plaintiff incorporates by reference, re-alleges, or adopts paragraphs one (1) through thirty-five (35) of this Complaint as though fully stated herein.

41) This is an action for violation of Title III of the Libertad Act, 22 U.S.C. § 6082.

42) Title III of the Libertad Act ("Title III") establishes a private right of action for money damages

against any person who "traffics" in such property as defined by 22 U.S.C. § 6023(13). *See* 22 U.S.C. § 6082.

43) Section 302 of the Libertad Act provides, in pertinent part, the following civil remedy:

> any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages . . .

44) The Libertad Act's purpose is to "protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro Regime." 22 U.S.C. § 6022(6).

45) As set forth in Title III and alleged above, beginning on or around January 15, 1997, TECK did traffic, as that term is defined in 22 U.S.C. § 6023 (13)(A), in the Confiscated Property, which was confiscated by the communist Cuban Government on or after January 1, 1959 and is therefore liable to Plaintiff, who owns the claim to the Confiscated Property, for money damages.

46) As of the date of filing this Complaint, the United States Government has ceased suspending the right to bring an action under Title III, 22 U.S.C. § 6085, which therefore permits Plaintiff to seek the relief requested herein.

47) Plaintiff is entitled to all money damages allowable under 22 U.S.C. § 6082(a), including, but not limited to, those equal to the sum of:

a) The amount greater of: (i) the amount determined by a special master pursuant to 22 U.S.C. § 6083(a)(2) or (iii) the "fair market value" of the Confiscated Property, plus interest; *and*

b) Three times the amount determined above (treble damages); *and c*) Court costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter a judgment in his favor and against TECK for:

A) all recoverable compensatory, statutory, and other damages sustained by Plaintiff;

B) both pre-judgment and post-judgment interest on any amounts awarded;

C) attorneys' fees, costs, and expenses;

D) treble and/or punitive damages as may be allowable under applicable law;

E) equitable relief; and

F) such other relief as the Court may deem be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable, and a trial pursuant to Rule 39(c), Federal Rules of Civil Procedure, as to all matters not triable as of right by a jury to the extent permitted by law.

Respectfully submitted,

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Co-Counsel for Plaintiff

Dated: July 8, 2020
Miami, FL

DECLARATION OF SUMMON SERVICE
(JULY 15, 2020)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.

Case No.: 20-cv-21630-RNS

I Declare:

1. I am over the age of 18 years, and I am not a party to this action.

2. I served TECK RESOURCES LIMITED, the following document(s):

☒ Summons In A Civil Action

☒ Amended Complaint and Demand for Jury Trail

3. The date, time and place of service:

Date: 07-10-2020 Time: 9:32 PM

Address: 2011 N. Sedge Ln, Liberty Lake, WA 99019.

4. Service was made:

☒ Drop Service – I attempted service on the above-mentioned Defendant on July 10th, 2020. I attempted via Registered Agent Trevor Hall at the service address of 2011 N. Sedge Ln, Liberty Lake, WA 99019. Upon arriving at the service address, I came into contact Trevor Hall and he stated he could not except service because the Defendant named is Teck Resources Limited. He did confirm that he is the Registered Agent for Teck American Incorporated also listed on the Summons. Stating Teck American Incorporated is a separate entity than Teck Resources Limited. Trevor went on to say that Teck Resources Limited is a Canadian company with no registered agent in the United States. Given the confusion and circumstance I announced drop service and Trevor Hall stated he understood. Drop service was completed by leaving said documents at the foot of Trevor Hall and taking a photo.

I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct.

Signed at Spokane, WA on 07-15-2020

Fees:	$2.20
Service:	$45.00
Total	$47.20

/s/ Ron Uzeta
Process Server Registered #1730
Business Principal License #2385
Private Investigator License #4642

DEFENDANT TECK RESOURCES LIMITED'S MOTION TO STAY DISCOVERY (FEBRUARY 17, 2021)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.

Case No. 1:20-cv-21630-RNS-EGT

Defendant Teck Resources Limited ("Defendant" or "Teck"), by and through its undersigned counsel, pursuant to Federal Rule of Civil Procedure 26(c), respectfully requests that the Court stay discovery pending a ruling on Defendant's Motion to Dismiss the Amended Complaint ("Motion to Dismiss") filed by HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC ("HRGC"), which was brought pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6).[1] The Motion to Dismiss is fully submitted and is case dispositive.

[1] The original Complaint was filed on April 17, 2020, but never served. On July 8, 2020, Plaintiff filed an Amended Complain

INTRODUCTION

A stay of discovery is appropriate here because, as more fully detailed in the Motion to Dismiss, the Amended Complaint filed by Plaintiff Herederos de Roberto Gomez Cabrera, LLC ("Plaintiff" or "HRGC"), is fatally flawed. Specifically, this Court lacks personal jurisdiction over Teck, Plaintiff fails to state a claim upon which relief can be granted and the deficiencies outlined in the motion cannot be cured through amendment or through discovery. The Motion to Dismiss, if granted, will be case dispositive and has been fully briefed since November 2020, and is awaiting decision.

The action purports to bring claims under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. § 6021, *et seq.* (the "Helms-Burton Act"). Teck's principal place of business is in Canada, it is organized under the laws of Canada, has no connection whatsoever with the State of Florida, and none is pleaded in the Amended Complaint. Thus, the Amended Complaint fails for lack of personal jurisdiction.[2]

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that is identical to the original Complaint in its content but removes a watermark reading "DRAFT" from the second through ninth pages.

[2] At the time of filing the Amended Complaint, Plaintiff was not an existing entity despite Plaintiff's allegation that it is a Florida limited liability company. As was set forth in Plaintiff's opposition to the Motion to Dismiss, Plaintiff did not become officially "registered" online with the Florida Department of State until September 11, 2020. See Plaintiff's Response in Opposition to Defendant's Motion to Dismiss, p. 15 [Dkt. 23]

The Amended Complaint suffers from substantive defects as well, including the fact that (1) there is and can be no allegation that HRGC acquired the claim at issue before March 12, 1996, which is a threshold requirement for a claim under Title III of the Helms-Burton Act, because HRGC did not come into existence until 2020; (2) the claim for expropriation and trafficking, if there is one, belongs to a Cuban corporation, Minera Rogoca S.A., not its late shareholder, Mr. Gomez Cabrera, his heirs or their supposed assignee, HRGC; (3) to the extent Mr. Gomez Cabrera, a Cuban national, had derivative standing to assert Minera Rogoca's claim for expropriation, a claim by a Cuban national for the expropriation of Cuban property in Cuba does not come within the provisions of the Helms-Burton Act[3]; (4) the Amended Complaint does not adequately plead that Teck "knowingly and willingly" dealt with property expropriated from a United States national; and (5) even if Mr. Gomez Cabrera or the entity that actually owned the mines had been a United States national at the time of the seizure, no claim was filed with Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949, 22 U.S.C. 1643, *et seq*., which would bar the present claim. Because of those incurable procedural and substantive deficiencies, discovery should be stayed until the Motion to Dismiss is resolved. Granting this relief will conserve judicial resources and those of the parties.

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[3] Rather, the expropriation claim belongs to Minera Rogoca, S.A., the Cuban corporation whose property was allegedly confiscated in 1960 (Am. Compl. ¶¶ 6-7), not Mr. Gomez Cabrera, from whom HRGC's title is said to derive.

BACKGROUND

Congress passed the Helms-Burton Act in 1996 to provide a cause of action against those who "traffic" in property belonging to United States nationals that was confiscated by the Cuban government. 22 U.S.C. § 6082. Specifically, the Helms-Burton Act provides that "any person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages . . . " *Id.* § 6082(a)(1)(A).

On April 17, 2020 Plaintiff filed this action, alleging that Teck trafficked in property confiscated by the Cuban government in 1960 in violation of the Helms-Burton Act. Am. Compl. ¶¶ 31-34. Plaintiff alleges that it is a Florida limited liability company, *id.* ¶ 11, and that Teck is a Canadian corporation with its headquarters in Canada, *id.* ¶ 12. Plaintiff does not allege that Teck has any contacts with Florida.

On April 20, 2020, this Court entered an Order Requiring Discovery and Scheduling Conference and Referring Discovery Matters to the Magistrate Judge, *inter alia*, setting forth a discovery schedule in this matter. Dkt. 2. Teck was never served with the Summons and Complaint, and although service of the Amended Complaint was not valid, the undersigned counsel agreed to accept service of the Amended Complaint on July 16, 2020. On September 15, 2020, Teck filed the Motion to Dismiss arguing that the Amended Complaint should be dismissed in its entirety and identifies five specific bases for dismissal with prejudice. Dkt. 14. The Motion to Dismiss was fully

briefed as of November 13, 2020. *See* Dkt. 26. Although the parties previously agreed that discovery would be stayed while the Motion to Dismiss was pending, HRGC served discovery on Teck on January 20, 2021, supposedly in order to comply with this Court's scheduling order, which necessitates a response. For the reasons outlined herein and in the Joint Interim Status Report [Dkt. 27], discovery should be stayed.

ARGUMENT

A. Standard

It is axiomatic that this Court "has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997); Fed. R. Civ. P. 26(c)(1). The standard for granting this motion is "good cause shown." *Id.* Teck submits that such relief is particularly appropriate where, as here, the disposition of the pending motion may, and likely will, end the case and "entirely eliminate the need for such discovery." *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006) (internal quotation omitted); *see also Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) ("A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined."). As detailed below, this is textbook example of the type of case that warrants a stay of discovery because, on the face of the Amended Complaint, it is clear that Teck's Motion to Dismiss is dispositive on the merits and will result in dismissal of this action.

B. A Stay is Appropriate

a. A Stay is Appropriate Given That Personal Jurisdiction is Lacking.

Although courts in this District are typically liberal in allowing jurisdictional discovery when a motion to dismiss for lack of personal jurisdiction is made, when no basis for personal jurisdiction is pleaded or plausible, a stay of discovery should be entered to conserve the time and resources of the Court and the parties. As this Court noted in denying a request for jurisdictional discovery a few months ago, "[J]urisdictional discovery is favored where there is a genuine dispute concerning jurisdictional facts necessary to decide the question of personal jurisdiction; it is not an unconditional right that permits a plaintiff to seek facts that would ultimately not support a showing of personal jurisdiction." *Del Valle v. Trivago GMBH*, Civil Action No. 22619-CIVScola, 2020 U.S. Dist. LEXIS 92395, 2020 WL 2733729, at *4 (S.D. Fla. May 26, 2020) (citations omitted).

Here, as in *Del Valle*, there is no such genuine dispute as to the material jurisdictional facts, and discovery should be stayed while the Motion to Dismiss is decided. For example, in *Thompson v. Carnival Corp.*, 174 F.Supp.2d 1327 (S.D. Fla. 2016), the plaintiff made no showing of personal jurisdiction in its Complaint, but argued, in response to defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), that he should be allowed an opportunity for jurisdictional discovery. Chief Judge Moore denied that application, stating as follows:

> [Plaintiff] contends he is entitled to jurisdictional discovery to test "the veracity of the

> statements made in the [moving defendants] affidavit". . . . However, [plaintiff's] request is procedurally improper . . . Even if he had properly requested jurisdictional discovery, there exists "no genuine dispute on a material jurisdictional fact to warrant jurisdictional discovery." *Peruyero v. Airbus S.A.S.*, 83 F.Supp.3d 1283, 1290 (S.D. Fla. 2014); *see also Yepez v. Regent Seven Seas Cruises*, No. 10-23920-CIV, 2011 U.S. Dist. LEXIS 86687, 2011 WL 3439943, at *1 (S.D. Fla. Aug. 5, 2011) ("[T]he failure of a plaintiff to investigate jurisdictional issues prior to filing suit does not give rise to a genuine jurisdictional dispute."). Accordingly, Thompson is foreclosed from pursuing jurisdictional discovery in an attempt to marshal facts that he "should have had–but did not–before coming through the courthouse doors." *Lowery v. Alabama Power Co.*, 483 F.3d 1184, 1216 (11th Cir. 2007).

Id. at 1338-39 (citation to record omitted).

As more fully set forth in the Motion to Dismiss, Teck has no offices in Florida, does not conduct any business in Florida and, indeed, has no jurisdictional relationship with this state at all, or, to the extent it would be relevant, with the United States. Under those circumstances, the Court should exercise its discretion to stay discovery.

b. A Stay is Warranted Because the Motion to Dismiss is Well Grounded on the Merits.

In addition to the jurisdictional argument in support of dismissal, the Amended Complaint suffers

from numerous substantive deficiencies that militate in favor of granting a stay. "In evaluating whether the moving party has met its burden, a court 'must balance the harm produced by a delay in discovery against the possibility that the [dispositive] motion will be granted and entirely eliminate the need for such discovery.'" *Bocciolone v. Solowsky*, 2008 WL 2906719, at *2 (S.D. Fla. July 24, 2008) (emphasis added) (quoting *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006)). To that end, this Court may take a "preliminary peek at the merits of [the] dispositive motion to see if it appears to be clearly meritorious and truly case dispositive." *Feldman,* 176 F.R.D. at 652-53. In doing so here, taking all of the allegations in the Amended Complaint as true, Plaintiff has not and cannot state a claim under the Act.

On the record before the Court, Eleventh Circuit precedent strongly supports the granting of a stay. For example, in *Chudasama v. Mazda Motor Corp.,* 123 F. 3d 1353, 1367 (11th Cir. 1997), the Eleventh Circuit reasons that "[a]llowing a case to proceed through the pretrial processes with an invalid claim that increases the costs of the case does nothing but waste the resources of the litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system." *Chudasama*, 123 F. 3d at 1368. *Accord Roberts v. FNB S. of Alma, Georgia,* 716 F. App'x 854, 857 (11th Cir. 2017) ("[I]n general, motions to dismiss for failure to state a claim 'should be resolved before discovery begins."); *Roman v. Tyco Simplex Grinnell*, 732 F. App'x 813, 815 (11th Cir. 2018) ("[A] motion to dismiss for failure to state a claim must be resolved before discovery begins."); *Fondo De Proteccion Soc.*

De Los Depositos Bancarios v. Diaz Reus & Targ, LLP, No. 16-21266-CIV, 2016 WL 10952495, at *1 (S.D. Fla. Dec. 29, 2016) (Torres, M.J.) (granting stay of discovery after determining that pending motion to dismiss had merit); *Prohias v. Asurion Corp.,* No. 05-22259-CIV, 2006 WL 8433152, at *1 (S.D. Fla. Jan. 10, 2006) (holding that good cause existed to stay discovery where "preliminary peek" at motion to dismiss indicated it could be "truly case dispositive"). That is particularly so when a motion will likely dispose of the entire case. *See Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D. Fla.), *aff'd*, 87 F. App'x 713 (11th Cir. 2003); s*ee Gibbons v. Nationstar Mortg. LLC*, 2015 WL 12840959, at *1 (M.D. Fla. May 18, 2015) ("Overall, stays of discovery are seldom granted, but courts have held that good cause to stay discovery exists when resolution of a dispositive motion may dispose of the entire action.")

As more fully detailed in the Motion to Dismiss, Plaintiff has not and cannot establish a claim under the Helms Burton Act, so that under established Eleventh Circuit guidance, a stay of discovery is warranted.

C. Teck has Met its Burden for the Issuance of a Stay.

Given the lack of merits of Plaintiff's claim, allowing pre-trial discovery to proceed will not serve the interests of conserving judicial resources or the interests of the parties. *See, e.g., Staup v. Wachovia Bank, N.A.,* 2008 WL 1771818, at *1 (S.D. Fla. Apr. 16, 2008) ("Defendant should not be required to comply with the initial disclosure requirements of Fed. R. Civ. P. 26(a), and discovery should not commence,

until after the Court has issued a ruling on Defendant's Motion to Dismiss" that "is largely a facial challenge on the legal sufficiency of Plaintiff's Complaint"); *Chevaldina,* 2017 WL 6372620 at *2 (Torres, M.J.) (granting stay of discovery where pending motion to dismiss demonstrated lack of diversity of citizenship and identified other serious legal defects with complaint). As detailed below, the elements of granting a stay have been met.

a. There Is Good Cause for a Stay of Discovery.

As noted above, staying discovery will "preserve resources for all parties, including the Court." *Chevaldina,* 2017 WL 6372620 at *3. "Allowing a case to proceed through the pretrial processes with an invalid claim that increases the costs of the case does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system." *Id.* In *Chudasama*, the Court explained that:

> Discovery imposes several costs on the litigant from whom discovery is sought. These burdens include the time spent searching for and compiling relevant documents; the time, expense, and aggravation of preparing for and attending depositions; the costs of copying and shipping documents; and the attorneys' fees generated in interpreting discovery requests, drafting responses to interrogatories and coordinating responses to production requests, advising the client

> as to which documents should be disclosed and which ones withheld, and determining whether certain information is privileged. The party seeking discovery also bears costs, including attorneys' fees generated in drafting discovery requests and reviewing the opponent's objections and responses. Both parties incur costs related to the delay discovery imposes on reaching the merits of the case. Finally, discovery imposes burdens on the judicial system; scarce judicial resources must be diverted from other cases to resolve discovery disputes.

123 F.3d at 1367-68.

Courts in this District "routinely exercise the power to stay a proceeding where a stay would promote judicial economy and efficiency." *Fondo De Proteccion,* 2016 WL 10952495 at *1; *accord Theodore D'Apuzzo, P.A. v. United States,* No. CV 16-62769-CIV, 2017 WL 3098713, at *2 (S.D. Fla. Apr. 11, 2017) (Scola, J.) (granting stay of discovery where plaintiff "would suffer prejudice and undue burden should discovery proceed pending the Court's decision on the motion to dismiss"); *Pierce v. State Farm Mut. Auto. Ins. Co.,* No. 14-22691-CIV, 2014 WL 12528362, at *1 (S.D. Fla. Dec. 10, 2014) (same); *Staup v. Wachovia Bank, N.A.,* 2008 WL 1771818, at *1 (S.D. Fla. Apr. 16, 2008) (same); *Carcamo v. Miami-Dade Cnty.,* 2003 WL 24336368, at * (S.D. Fla. Aug. 1, 2003) (same). Here, as detailed in the Motion to Dismiss, the Amended Complaint suffers from multiple jurisdictional and substantive deficiencies, any one of which standing alone is sufficient to support dismissal.

Under those circumstances, a stay is more than warranted.

b. A Stay of Discovery is Particularly Appropriate Because the Defendant is a Foreign Corporation

Because Teck is a foreign corporation, a Court should be particularly reluctant to allow discovery to go forward in the face of a Motion to Dismiss with a substantial chance of success. As the Supreme Court explained in the *Aérospatiale* case:

> American courts, in supervising pretrial proceedings, should exercise special vigilance to protect foreign litigants from the danger that unnecessary, or unduly burdensome, discovery may place them in a disadvantageous position. Judicial supervision of discovery should always seek to minimize its costs and inconvenience, and to prevent improper uses of discovery requests. When it is necessary to seek evidence abroad, however, the district court must supervise pretrial proceedings particularly closely to prevent discovery abuses. For example, the additional cost of transportation of documents or witnesses to or from foreign locations may increase the danger that discovery may be sought for the improper purpose of motivating settlement, rather than finding relevant and probative evidence. Objections to "abusive" discovery that foreign litigants advance should therefore receive the most careful consideration. In addition, we have long recognized the demands of comity in

> suits involving foreign states, either as parties or as sovereigns with a coordinate interest in the litigation . . . American courts should therefore take care to demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state. We do not articulate specific rules to guide this delicate task of adjudication.

Société Nationale Industrielle Aérospatiale v. United States District Court, 482 U.S. 522, 545-46 (1981) (citation omitted).

Here, in addition to the general caution that should be exercised with regard to discovery against foreign parties, there is a Canadian "blocking statute" that allows the Attorney General of Canada to prohibit compliance by Canadian parties with discovery orders entered in cases under the Helms-Burton Act. While Teck does not contest the power of the Court to order discovery in the face of such a foreign statute, it does submit that placing a party potentially in the position of having to disobey either the law of its own country or the ruling of an American court calls for, in the words, of *Aérospatiale*, "a delicate task of adjudication." Under the circumstances, given the remarkably thin pleading before the Court, Teck respectfully submits that its Motion to Dismiss should be heard and decided before any discovery is allowed.

c. A Stay of Discovery Is Reasonable.

For the same reasons, the stay is reasonable based on these facts. It is improbable that the Amended

Complaint will withstand the scrutiny of this Court, and likely that Teck's Motion to Dismiss will be granted. Teck's motion to dismiss is a "facial challenge [] to the legal sufficiency of a claim" that "presents a purely legal question." *Chudasama*, 123, F.3d at 1367; *see also Moore v. Potter*, 141 F. App'x 803, 807 (11th Cir. July 8, 2005) (quoting *Chudasama*); *Horsely v. Feldt*, 304 F.3d 1125, 1131 n.2 (11th Cir. 2002). Indeed, the requested stay will not create any significant delay or cause any prejudice to plaintiff, because the case is likely to be dismissed and discovery cannot cure its defects. Given the early stage of this case, a stay of discovery while the Court addresses the Motion to Dismiss makes eminent sense. *Pierce v. State Farm Mut. Auto. Ins. Co.,* No. 14-22691-CIV, 2014 WL 12528362, at *1 (S.D. Fla. Dec. 10, 2014).

CONCLUSION

For the foregoing reasons, Defendant Teck respectfully requests that the Court enter an order staying discovery and all other pretrial matters pending a ruling on the Motion to Dismiss.

REQUEST FOR HEARING

Pursuant to Southern District of Florida Local Rule 7.1, Teck respectfully requests a hearing on its Motion to Stay Discovery. Oral argument of the issues presented herein may assist the Court in making its ruling as they relate to Teck's likelihood of success on its Motion to Dismiss. Teck estimates that a hearing would require approximately an hour of the Court's time.

Good Faith Certificate Pursuant to Local Rule 7.1(a)(3)

In August of 2020 and again on February 17, 2021, the parties conferred regarding this Motion, at which time Plaintiff's counsel advised the undersigned that he would agree to an enlargement of time to respond to discovery that does not alter the trial dates in this cause, but otherwise objects to the stay.

Respectfully submitted,

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PLAINTIFF'S MOTION FOR RECONSIDERATION AND LEAVE TO AMEND (MAY 25, 2021)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.

Case No. 1:20-cv-21630-RNS-EGT

Plaintiff, HEREDEROS DE ROBERTO GOMEZ CABRERA (hereinafter "Plaintiff"), by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 15, 16, 59 and 60, respectfully moves for reconsideration of the portion of the Court's Order on Defendant's Motion to Dismiss Plaintiff's Amended Complaint relating to denial of Plaintiff's request for Leave to File an Amended Complaint. In support of this Motion, Plaintiff states the following:

INTRODUCTION

Because Plaintiff has had no opportunity to amend, and because it can allege additional facts the

Court has not considered, it moves for reconsideration of the Court's April 27, 2021 Order Granting Motion to Dismiss, which dismissed Plaintiff's Complaint without prejudice but preemptively denied Plaintiff leave to amend [ECF No. 39] (the "Dismissal Order").

As addressed below, Plaintiff should be given an opportunity to amend its Complaint. Plaintiff, through an amended Complaint attached hereto as Exhibit "A," is indeed able to state a claim against Defendant under Title III that is consistent with the Court's interpretation of that statute in the Dismissal Order. Plaintiff, thus, respectfully requests leave to file an amended Complaint that (i) sets forth additional allegations that sufficiently allege that Defendant knowingly and intentionally trafficked in the confiscated property; (ii) alleges additional grounds in support of personal jurisdiction over the Defendant; and (iii) adds additional individual Plaintiffs, who are the heirs to the original owner of the Confiscated Property that had collectively formed the Plaintiff entity to bring this action as a trustee on their behalf.

In addition to the foregoing, Plaintiff also requests that the Court reconsider the Court's findings in the Dismissal Order regarding jurisdictional discovery. The Dismissal Order found, *sua sponte*, that Plaintiff was barred from taking jurisdictional discovery because it had not sufficiently and expressly requested leave to take jurisdictional discovery. Plaintiff respectfully seeks reconsideration of this finding on grounds that (i) Plaintiff had timely served requests for production that was sufficiently broad to cover both general fact discovery and jurisdictional discovery; (ii) Plaintiff had expressly requested the ability to take jurisdictional

discovery in at least four filings prior to the entry of the Dismissal Order; and (iii) jurisdictional discovery should be permitted in the interests of due process and judicial economy.

RELEVANT PROCEEDINGS

On April 17, 2020, Plaintiff filed its complaint against Defendant based on Defendant's unlawful trafficking of confiscated property belonging to the Plaintiff in violation of Title III of the Cuban Liberty and Democratic Solidarity Act (the "Helms-Burton Act," or the "Act") [ECF No. 1]. On July 8, 2020, Plaintiff filed its amended complaint to correct a scrivener's error to remove a "draft" watermark from the copy of the Complaint that was filed. [ECF No. 7]. Other than the removal of the aforementioned watermark, Plaintiff has not previously sought to amend its Complaint in this litigation.

On July 10, 2020, after multiple unsuccessful attempts to serve Defendant during the COVID-19 pandemic, Plaintiff served Defendant by serving Defendant's subsidiary, Teck American, Inc. ("TAI"), by leaving a copy of the summons and complaint at the home of Mr. Trevor Hall, Vice President and General Counsel of TAI, located in Spokane, Washington. [ECF No. 09].

On July 24, 2020, counsel for Defendant advised Plaintiff's counsel that Defendant disputes service of process, but agreed to accept service on Defendant's behalf if, in exchange, Plaintiff agreed to a stay of discovery pending resolution of Teck's motion to dismiss. Plaintiff's position is that it could not agree to stay discovery without first reviewing the motion to dismiss and that it may have to initiate discovery

in order to meet the Court's discovery schedule. *See generally,* ECF Nos. 28 at p. 4, 34 at pp. 1Ñ2.

Teck filed its Motion to Dismiss on September 15, 2020, Plaintiff filed its Response in Opposition to Plaintiff's Motion to Dismiss on October 23, 2020 [DE 23], and Teck filed its Reply in Support of its Motion to Dismiss on November 13, 2020 [DE 26]. In its Response, Plaintiff incorporated a request to take jurisdictional discovery (pp. 11-12, 13, 26) and for leave to amend its complaint (p. 18, fn 5 as to standing; p. 23 as to allegations concerning ownership; p. 26 as to allegations concerning "knowingly and intentionally trafficking"; and p. 26, wherefore clause, generally requesting leave to amend to correct any pleading deficiencies).

On October 13, 2020, the parties filed their Joint Scheduling and Discovery Report ("JSR") [ECF No. 17], wherein the parties indicated that it was "in their best interests to stay discovery pending this Court's ruling on the pending Motion to Dismiss." The parties also stated in the JSR that they "disagree on whether there should be jurisdictional discovery, with Plaintiff believing it is appropriate; Defendant believes that no such discovery is warranted." *See* JSR, ¶ 3. The parties also stated the following with respect to their discovery plan as required by Federal Rule of Civil Procedure 26(f)(3):

> Defendant has challenged the Court's jurisdiction over the Defendant and as such, Plaintiff wishes to bifurcate the discovery process to conduct discovery into two phases: (i) jurisdictional discovery and (ii) merit-based discovery. Defendant does not believe that jurisdictional discovery is appropriate

> under the circumstances, and believes that all other discovery should be stayed pending a resolution on the motion to dismiss.

See JSR [ECF No. 17], ¶ 12.

On October 22, 2020, the Court entered a Scheduling Order and Order of Referral to Mediation [DE 21], requiring the parties to, *inter alia*, complete all fact discovery by May 27, 2021.

On January 20, 2021, given that the Court had yet to rule on Defendant's Motion to Dismiss that was fully-briefed as of November 17, 2020, Plaintiff served its Requests for Production on Defendant, which sought both jurisdictional and merits-based discovery.[1]

On January 28, 2021, as required by this Court's Scheduling Order, the parties submitted their Joint Interim Status Report [DE 27] and therein stated the following with respect to the status of discovery:

> Plaintiff's Response:
>
> On January 20, 2021, Plaintiff served Defendant with its initial Request for Production of Documents, seeking both jurisdiction-based discovery and merits-based discovery. Plaintiff has proposed January 29, 2020 as the date for the parties to exchange Initial Disclosures. Defendant is opposed to engaging in any discovery, including discovery relating to personal jurisdiction, and Defendant intends on filing a motion to stay all

[1] A copy of Plaintiff's First Request for Production is attached hereto as Exhibit "B."

discovery pending a ruling by this Court on Defendant's Motion to Dismiss. Plaintiff has indicated that it would be agreeable to a limited stay as to merits-based discovery, so long as this Court reasonably extends the current discovery cutoff. However, Plaintiff has requested in its Response in Opposition to Defendant's Motion to Dismiss that Plaintiff be permitted to conduct reasonable discovery regarding the aforementioned personal jurisdiction issue. Defendant does not believe that any discovery is warranted, including discovery directed at personal jurisdiction, until a ruling is entered on Defendant's Motion to Dismiss.

Defendant's Response:

The parties originally agreed to a stay of all discovery (substantive and jurisdictional) pending a ruling on Defendant's Motion to Dismiss, as the same conserves resources and serves judicial economy given the arguments raised by Defendant. This was reflected in the parties' Joint Scheduling Report filed on October 13, 2020. Dkt. 17. However, when this Court issued its Scheduling Order and Order of Referral to Mediation, it included dates for discovery including a fact discovery cut-off of May 27, 2021. Dkt. 21. Given the deadlines imposed in the Scheduling Order, Defendant proposed that the parties file a joint motion again advising of their decision to stay discovery and seeking to modify the dates in the Scheduling Order. Although Plaintiff origi-

> nally agreed to a stay of discovery, it is now taking the position that discovery should proceed. As a result, Defendant has indicated that it intends to file a motion to stay discovery, which it believes serves the administration of justice given that the pending motion is case dispositive.

Joint Interim Status Report [DE 27], § VI.

On February 17, 2021, Teck filed its Motion to Stay Discovery [ECF No. 28] referencing "a Canadian 'blocking statute' that allows the Attorney General of Canada to prohibit compliance by Canadian parties with discovery orders entered in cases under the Helms-Burton Act." Motion to Stay at p. 11. In its response in opposition to Defendant's Motion to Stay Discovery [ECF No. 33], Plaintiff re-iterated its prior requests to take jurisdictional discovery, argued against a stay of discovery, and requested that the Court either deny the motion to stay entirely or to permit Plaintiff to take jurisdictional discovery.

On February 18, 2021, Teck filed its Motion for Extension of Time to Respond to Plaintiff's discovery requests [ECF No. 29], seeking, *inter alia*, a thirty (30) day extension of time within which to respond to the requests. On February 23, 2021, this Court entered an order granting an extension of time for Defendant to respond to Plaintiff's discovery requests, on or before March 16, 2021. [ECF No. 30].

On March 16, 2021, Teck served its Responses and Objections to the Requests for Production, asserting a general objection to participating in discovery in this action pursuant to the Canadian blocking statute and asserting specific objections to each of Plaintiff's

requests, a copy of which is attached hereto as Exhibit "C."

On April 15, 2021, Plaintiff filed an unopposed motion for extension of time to file a motion to compel given the parties' continuing meet and confer efforts. [ECF No. 36].

On April 27, 2021, before Plaintiff had an opportunity to file a motion to compel or obtain any discovery from Defendant, and before a ruling was entered on Teck's Motion to Stay Discovery, this Court entered its Dismissal Order. Specifically, the Court dismissed Plaintiff's complaint *without* prejudice, but unexpectedly ordered that Plaintiff was preemptively denied leave to amend its Complaint. *Id.* The Dismissal Order also ruled, sua sponte, that Plaintiff was not permitted to conduct jurisdictional discovery, notwithstanding the fact that timely filed discovery requests (merits and jurisdictional based discovery) had been timely filed in advance of the Dismissal Order. *Id.*

Plaintiff respectfully moves for reconsideration of the Dismissal Order to the extent that it (i) preemptively prohibits Plaintiff leave to file an amended complaint following the entry of the Dismissal Order; (ii) finds that personal jurisdiction was not adequately alleged in the Complaint or within the proposed Amended Complaint; and (iii) it rules that Plaintiff is not entitled to discovery, including, but not limited to, discovery relating to the issue of personal jurisdiction.

ARGUMENT

I. Legal Standard

A. Leave to Amend

A "district court's discretion to dismiss a complaint without leave to amend is 'severely restrict[ed]' by Fed. R. Civ. P. 15(a), which directs that leave to amend 'shall be freely given when justice so requires.'" *Thomas v. Town of Davie*, 847 F.2d 771, 773 (11th Cir. 1988) (*quoting* Dussouy v. Gulf Coast Inves. Corp., 660 F.2d 594, 597 (5th Cir. 1981)). "The Supreme Court has held" that Rule 15(a) "allows denial of a motion to amend only under specific circumstances." *Pioneer Metals, Inc. v. Univar USA, Inc.*, 168 F. App'x 335, 336 (11th Cir. 2006) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be freely given. *Foman*, 371 U.S. at 182. "The Supreme Court has emphasized that leave to amend must be granted absent a specific, significant reason for denial." *Spanish Broadcasting Sys. of Fla., Inc. v. Clear Channel CommcÕns, Inc.*, 376 F.3d 1065, 1077 (11th Cir. 2004)). "[U]nless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial." *Thomas*, 847 F.2d at 773 (quoting Dussouy, 660 F.2d at 598).

The Supreme Court in *Foman v. Davis*, 371 U.S. 178, 182 (1962) stated that:

> Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded. *See generally*, 3 Moore, Federal Practice (2d ed. 1948), 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be 'freely given.' Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Id. (emphasis added in bold).

Post-judgment, a plaintiff may seek leave to amend through Rule 59(e) or Rule 60(b)(6). *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344-45 (11th Cir. 2010) (*quoting United States ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1361 n.22 (11th Cir. 2006); *Czeremcha v. Int'l Ass'n of Machinists and Aerospace*

Workers, AFL-CIO, 724 F.2d 1552, 1556 (11th Cir. 1984)). Even after a dismissal, Rule 15 standards apply "when a plaintiff seeks to amend after a judgment of dismissal has been entered by asking the district court to vacate its order of dismissal pursuant to Fed. R. Civ. P. 59(e)." *Pioneer Metals*, 168 F. App'x at 336; *Spanish Broadcasting*, 376 F.3d at 1077; *Foman*, 371 U.S. at 182.

B. Motion for Reconsideration

"While Rule 59(e) does not set forth any specific criteria, the courts have delineated three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." *Williams v. Cruise Ships Catering & Serv. Int'l, N.V.*, 320 F.Supp.2d 1347, 1357-58 (S.D. Fla. 2004) (citing *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994)); *see also Burger King Corp. v. Ashland Equities, Inc.*, 181 F.Supp.2d 1366, 1369 (S.D. Fla. 2002). A motion for reconsideration requests that the Court grant "an extraordinary remedy to be employed sparingly." *Burger King Corp.*, 181 F.Supp.2d at 1370. A party may not use a motion for reconsideration to "relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (quoting *Michael Linet, Inc. v. Vill. of Wellington*, Fla., 408 F.3d 757, 763 (11th Cir. 2005)). "This prohibition includes new arguments that were 'previously available, but not pressed.'" *Id.* (quoting *Stone v. Wall*, 135 F.3d 1438, 1442 (11th Cir. 1998) (per curiam)).

A motion to reconsider is "appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Kapila v. Grant Thornton, LLP*, No. 14-61194-CIV, 2017 WL 3638199, at *1 (S.D. Fla. Aug. 23, 2017) (quoting *Z.K. Marine Inc. v. M/V Archigetis*, 808 F.Supp. 1561, 1563 (S.D. Fla. 1992)) (quotation marks omitted). A motion for reconsideration "is not an opportunity for the moving party . . . to instruct the court on how the court 'could have done it better' the first time." *Hood v. Perdue*, 300 F. App'x 699, 700 (11th Cir. 2008) (citation omitted).

Under Rule 60(b), a party may seek relief from a final judgment. Fed. R. Civ. P. 60(b). "The first five provisions of Rule 60(b) provide relief in specific circumstances, including in the event of mistake, fraud, or newly discovered evidence. Rule 60(b)(6) provides a catch-all, authorizing a court to grant relief from a judgment for 'any other reason that justifies relief.'" *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 741 F.3d 1349, 1355 (11th Cir. 2014) (quoting Fed. R. Civ. P. 60(b)(6)). "By its very nature, the rule seeks to strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the 'incessant command of the court's conscience that justice be done in light of all the facts.'" *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. 1981) (quoting *Bankers Mortg. Co. v. United States*, 423 F.2d 73, 77 (5th Cir. 1970)).[2]

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[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981), the Court of Appeals for the Eleventh Circuit adopted as

Thus, a movant seeking relief under Rule 60(b) "must demonstrate a justification so compelling that the [district] court was required to vacate its *1269 order." *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006) (per curiam) (quoting *Cavaliere v. Allstate Ins. Co.*, 996 F.2d 1111, 1115 (11th Cir. 1993)).

II. Leave to Amend Should Be Permitted

Plaintiff respectfully submits that reconsideration of the portion of the Court's Order regarding the *sua sponte* denial of Plaintiff's ability to seek leave to amend the complaint is warranted in this case, to correct what is otherwise a manifest injustice. Here, the Court denying Plaintiff leave to amend is manifestly unjust as it denied Plaintiff the opportunity to correct the deficiencies in the pleadings and to test its claims on the merits.

Importantly here, the Court's dismissal of Plaintiff's case was not on the merits as it was a dismissal without prejudice. *See Grayson v. K Mart Corp.*, 79 F.3d 1086, 1094 (citing 9 Moore Federal Practice ¶ 110.13[1] n. 30) ("A dismissal 'without prejudice' refers to the fact that the dismissal is not on the merits, not whether the dismissal is final and appealable."). As the Supreme Court stated in *Foman*, "[if] the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." Same here, Plaintiff ought to be afforded an opportunity to test the merits of its claim.

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binding precedent decisions of the Court of Appeals for the Fifth Circuit handed down prior to September 30, 1981.

Under applicable law, leave to amend should be granted when an order granting a motion to dismiss was entered after the deadline set by the Court to amend pleadings or add parties. *See Ermini v. Scott*, No. 2:15-CV-701-FTM-99CM, 2016 WL 11410895, at *1 (M.D. Fla. Oct. 24, 2016); *Emess Capital, LLC v. Rothstein*, No. 10-60882-CIV, 2012 WL 13001838, at *6 (S.D. Fla. May 2, 2012); *see also Woznicki v. Raydon Corporation*, 2020 WL 7408280 (M.D. Fla. 2020) (noting that leave to amend can be denied after the entry of an order dismissing a Complaint if the plaintiff waits an unreasonable time to seek leave to amend after the entry of said order of dismissal).

On the other hand, it would be manifestly unjust and prejudicial to force Plaintiff to re-file the action because doing so would unnecessarily introduce a potential statute of limitations issue into the case[3] and would require Plaintiff to pay another $6,548.00 special fee for filing an action under Title III of the Helms-Burton Act.

Here, the amendment would not be prejudicial to the Defendant, because the proposed amendment does not raise any new legal theory that would require the gathering and analysis of facts not already considered by the opposing party. Defendant could not reasonably claim prejudice given its recent filing requesting a stay of discovery and to halt the progress of this action pending a ruling on its motion to dismiss "given the early stage of this case." [ECF No. 28, p. 9, 11]. Furthermore, there has not been any bad faith or undue delay on the part of the Plaintiff

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[3] Title III of the Helms-Burton Act imposes a 2-year statute of limitations. 22 U.S.C. § 6084

in seeking leave to amend. Importantly, the proposed amendment would not be futile as it cures the deficiencies highlighted by the Court in its Order and includes jurisdictional allegations that the Court would have considered in its analysis regarding personal jurisdiction over the Defendant.

If permitted leave to file a second amended complaint, Plaintiff will cure the two (2) pleading deficiencies found by the Court in Section 4.C of the Dismissal Order, *i.e.*, that: (i) Plaintiff lacks standing because it did not acquire the claim before March 12, 1996; and (ii) Plaintiff has not sufficiently alleged that Defendant knowingly and intentionally trafficked in the confiscated property. [ECF No. 39, pp. 9—10].

Specifically, Plaintiff seeks leave to add and/or substitute each of the original heirs to the claims of the Confiscated Property who acquired ownership of their claims prior to March 12, 1996, as additional Plaintiffs in addition to the above captioned Plaintiff (which was acting as attorney and fact and trustee for said individuals). *See Cibran Enters, Inc. v. BP Prods. N. Am., Inc.*, 365 F.Supp.2d 1241, 1251-52 (S.D. Fla. 2005) (explaining the "substitution of plaintiffs should be liberally allowed" and permitting amendment to include an individual as plaintiff where the issue was raised as to the invalidity of an assignment of rights to a corporate entity). In addition, the proposed amended complaint introduces additional factual allegations sufficient to state a claim and establishing Defendant's "knowing and intentional" trafficking in confiscated property. *See* Ex. A, ¶ 33.

III. Personal Jurisdiction and Jurisdictional Discovery

A. Personal Jurisdiction Generally

The Court recognized in its Order that Rule 4(k)(2) is appropriate to establish jurisdiction over Defendant, but found that Plaintiff has not made a sufficient showing to satisfy the due process requirement of the Fourteenth Amendment. *See* Dismissal Order, p. 5.

As an initial matter, Defendant focuses its motion to dismiss on the lack of contacts within Florida and fails to rebut Plaintiff's allegations as to Defendant's contacts with the United States as a whole by virtue of its own conduct and those of its various US-based subsidiary entities. *See ISI Intern, Inc. v. Borden Ladner Gervais LLP,* 256 F.3d 548, 552 (7th Cir. 2001) ("The fiduciary-shield doctrine, as a creation of state law regulating the limits of process in their own courts, does not apply when jurisdiction rests on Rule 4(k)(2)").

Moreover, the Dismissal Order should be reconsidered because it entirely ignores Plaintiff's arguments concerning the "effects test." [ECF 23 at pp. 6-7]. Moreover, the Dismissal Order should be reconsidered because it also entirely ignores Plaintiff's argument concerning "Specific National Jurisdiction." [ECF 23 at pp. 12-13]. By not addressing these arguments, the Dismissal Order essentially renders the private right of action under the Helms-Burton Act entirely ineffective. The purpose of the Helms-Burton Act was to afford a private right of action for US citizens against foreign entities. Personal jurisdiction is therefore available.

B. Plaintiff Should Be Afforded the Ability to Conduct Jurisdictional Discovery.

"[F]ederal courts have the power to order, at their discretion, the discovery of facts necessary to ascertain their competency to entertain the merits." *Steinberg v. Barclay's Nominees (Branches) Ltd.*, 04-60897-CIV, 2007 WL 4287662, at *1 (S.D. Fla. Dec. 5, 2007) (quoting *Oppenheimer Fund, Inc. v. Sanders,* 437 U.S. 340, 351, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978).

However, the Eleventh Circuit has cautioned that "jurisdictional discovery is not entirely discretionary." *Eaton v. Dorchester Development, Inc..,* 692 F.2d 727 (11th Cir. 1982). "When a defendant challenges personal jurisdiction, courts generally permit depositions confined to the issues raised in the motion to dismiss." *Id.* (citing 8 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2009 (2006); *Eaton v. Dorchester Development, Inc.,* 692 F.2d 727, 730 (11th Cir.1982) ("[i]f the jurisdictional question is genuinely in dispute, . . . [then] discovery will certainly be useful and may be essential to the revelation of facts necessary to decide the issue"); *see also Burns & Russell Co. of Baltimore v. Oldcastle, Inc.,* 166 F.Supp.2d 432, 443 (D. Md. 2001).

Notably, "Eleventh Circuit precedent indicates that jurisdictional discovery is highly favored before resolving Federal Rule of Civil Procedure 12(b)(2) motions to dismiss for want of personal jurisdiction." *Steinberg v. Barclay's Nominees (Branches) Ltd.*, 04-60897-CIV, 2007 WL 4287662, (S.D. Fla. Dec. 5, 2007) (emphasis added in bold) (citing *Eaton v. Dorchester Development, Inc..,* 692 F.2d 727, 731 (11th Cir. 1982). The Eleventh Circuit has held, in similar circumstances such as here, that "[a]lthough the

plaintiff bears the burden of proving the court's jurisdiction, the plaintiff should be given the opportunity to discover facts that would support his allegations of jurisdiction." *Majd-Pour v. Georgiana Cmty. Hosp., Inc.*, 724 F.2d 901, 903 (11th Cir. 1984).

Here, Plaintiff was not afforded any such opportunity. Although Plaintiff did not file a distinct and entirely independent motion to take jurisdictional discovery, Plaintiff had (i) timely filed general discovery months in advance of the Dismissal Order and (ii) had also requested jurisdictional discovery in four (4) separate court filings [ECF Nos. 17, 23, 27, 33], as described above in the *Relevant Procedural Background* section of this brief. Plaintiff was also reasonably diligent in seeking discovery by actually seeking both jurisdictional and merits-based discovery from Defendant, which Defendant successfully evaded until the entry of the Dismissal Order.

This is not a scenario where Plaintiff included a conclusory request for discovery without any explanation as to how the information sought was relevant to jurisdiction and failed to make any efforts to obtain discovery. And therefore, Plaintiff's request is unlike the requests made in the cases cited to by the Court in its Dismissal Order. *See, e.g.*, *Thompson v. Carnival Corp.*, 174 F.Supp.3d 1327, 1338 (S.D. Fla. 2016) (internal citation omitted) ("Despite not submitting any evidence or affidavits supporting his jurisdictional allegations, Thompson contends he is entitled to jurisdictional discovery to test the veracity of the statements made in the Excursion Entities affidavit."); *Peruyero v. Airbus S.A.S.*, 83 F.Supp.3d 1283, 1290 (S.D. Fla. 2014) (Cooke, J.) (denying request to take jurisdictional discovery because the

request was buried in the response in opposition to motion to dismiss and because the plaintiff had not any evidence to rebut the defendant's evidence against jurisdiction).

In other words, it is not solely the absence of a "formal" request drives the outcome in deciding whether jurisdictional discovery is granted. It is the absence of diligence altogether. *See, e.g., Henriquez v. El Pais Q'Hubocali.com*, 500 F. App'x 824, 830 (11th Cir. 2012) (noting that plaintiff "did not attempt to seek such discovery"); *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1281 (11th Cir. 2009) (noting that plaintiff "failed to take any formal action to compel discovery").

This Court's ruling in Road Space Media, LLC v. Miami-Dade County is instructive, which provides in pertinent part as follows:

> The Court is aware of at least three controlling cases in the Eleventh Circuit, decided in the context of subject matter jurisdiction, that remanded for further jurisdictional discovery even absent a "formal" motion for same where jurisdictional discovery was pending at the time of dismissal. *See, e.g., Majd-Pour v. Georgiana Cmty. Hosp., Inc.*, 724 F.2d 901, 903 (11th Cir. 1984) (vacating dismissal order and remanding "where the plaintiff's attorney protested that with discovery he could show the existence of jurisdiction"); *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 729-31 (11th Cir. 1982) (remanding because dismissal was "premature" where plaintiff's requests for production of documents bearing on jurisdiction remained outstanding); *see also Blanco v. Carigulf*

> *Lines*, 632 F.2d 656, 658 (5th Cir. 1980) ("Plaintiff is not required to rely exclusively upon a defendant's affidavit for resolution of the jurisdictional issue where that defendant has failed to answer plaintiff's interrogatories specifically directed to that issue.").1 Like the plaintiffs in these three cases, the Plaintiff here did "serve[] Defendants with Interrogatories, Requests for Production, and Requests for Admission." (ECF No. 53 at 3.) Although the present dispute could have been avoided had the Plaintiff formally moved for the Court to withhold ruling on the motion to dismiss and compel jurisdictional discovery, the Defendant has not shown that the Plaintiff was legally required to do so and the Plaintiff has been reasonably diligent in seeking such discovery.

2020 WL 2988424, at *1

WHEREFORE, Plaintiff, HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC respectfully requests that this Court grant this motion and grant such other relief as is just and proper.

REQUEST FOR HEARING

Pursuant to Southern District of Florida Local Rule 7.1, Plaintiff respectfully requests a hearing on its Motion for Reconsideration and Leave to Amend. Oral argument of the issues presented herein may assist the Court in making its ruling. Plaintiff estimates that a hearing would require approximately an hour of the Court's time.

GOOD FAITH CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(3)

On May 25, 2021, counsel to Plaintiff contacted counsel to the Defendant in an attempt to confer regarding this Motion, but have yet to receive a response as to Defendant's position.

Respectfully submitted,

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Dated: May 25, 2021

REDLINE OF SECOND AMENDED COMPLAINT

Note: Petitioner/Appellant filed this redlined second amended complaint in the Court of Appeals, Doc. 40-1

In this transcriptions
- **Items added are underlined**
- **Items deleted are crossed out**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA CASE NO. 20-CV-21630-RNS

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC, as trustee,

ROBERTO GOMEZ, an individual,

RAMIRO GOMEZ, an individual,

JUAN M. GOMEZ, an individual,

MARIA DEL CARMEN GOMEZ, an individual,

BEATRIZ KLEIN-GOMEZ, an individual,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.

SECOND AMENDED~~1~~ COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC, a Florida limited liability company

acting as trustee on behalf of the individual Plaintiffs, ROBERTO GOMEZ, RAMIRO GOMEZ, JUAN M. GOMEZ, MARIA DEL CARMEN GOMEZ, and BEATRIZ KLEIN-GOMEZ, each of whom are individuals and United States citizens (collectively, the "Plaintiffs"), sues Defendant TECK RESOURCES LIMITED ("TECK"), a Canadian corporation, and alleges as follows:

GENERAL ALLEGATIONS

NATURE OF ACTION

1) This is an action brought against pursuant to Title III of the Cuban Libertad and Democratic Solidarity (LIBERTAD) Act of 1996 (the "Libertad Act" or the "Act"), 22 U.S.C. § 6082, for the unlawful trafficking in property that was confiscated by the communist Cuban Government during the regime of Fidel Castro.

2) Specifically, Plaintiffs seeks monetary damages to properly compensate for the unlawful and unauthorized mining activities and extraction of valuable minerals from the rich ore and mineral mines in the Sierra Maestra region of Cuba, in and around the town of El Cobre, Province of Oriente.

3) Prior to being confiscated by the communist Cuban Government, Roberto Gomez Cabrera, through his company Rogoca Minera, S.A., was the rightful owner and claimant to the following twenty-one mines located in or around the town of El Cobre, Province of Oriente, Republic of Cuba:

a) Mina Grande;

b) Demasia Mina Grande;

c) Roberston;

d) Jueves Santo;

e) Gitanilla;

f) Lizzie;

g) Demasia de la mina Lizzie;

h) Estrella;

i) Capitana;

j) Maria Luisa;

k) Cristina;

l) Cobrera;

m) Trewinse;

n) Santa Rita;

o) Demasia de la Mina Maria Luisa;

p) Perla;

q) Resurrecion;

r) Preferencia;

s) Demasia de la mina Preferencia;

t) Ruinas Grandes; and

u) Reconstruccion.

4) The above-identified mining concessions total in size of approximately 253 Hectares or 624.91 Acres.

5) From 1950 to 1956, Minera Rogoca S.A. explored and mined the above-identified mining concessions pursuant to an agreement with the then-owner International Minerals and Metals Corporation, a New York company.

6) On or around July 1956, Minera Rogoca S.A. purchased the above-identified mining concessions

from a New York company named "International Minerals and Metals Corporation."

7) Minera Rogoca S.A. continued to explore and mine the above-identified mining concessions using its own industrial mining equipment and installations until its real and personal property (collectively referred to as the "Confiscated Property") were taken without compensation by the communist Cuban government.

8) All right, title, and interest held by Roberto Gomez Cabrera in Minera Rogoca S.A. and the Confiscated Property were inherited by his children on or about September, 1969.

9) Title III of the Libertad Act has been suspended for over twenty years by Presidential Orders until just recently, which prevented Plaintiffs' predecessors in interest from bringing the instant action in the first instance.

PARTIES, JURISDICTION, AND VENUE

10) This Court has specific and general jurisdiction over the parties to this action. 11) Plaintiff, HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC, is a Florida limited liability company organized and existing under the laws of the State of Florida, acting as trustee on behalf of the individual Plaintiffs to prosecute the claim filed in this action. Plaintiffs, ROBERTO GOMEZ, RAMIRO GOMEZ, JUAN M. GOMEZ, MARIA DEL CARMEN GOMEZ, BEATRIZ KLEIN-GOMEZ, are all individuals who are *sui juris*, reside in Miami-Dade County, Florida, were all United States citizens on March 12, 1996, and are ~~Plaintiff is~~ the holders of all right, title to, and interest in the claims brought in the instant

lawsuit ~~via an assignment~~ as the children and lawful heirs, ~~whom owned the claims and were United States citizens on March 12, 1996~~ of Roberto Gomez Cabrera.

12) Defendant, Teck Resources Limited ("TECK") is a Canadian corporation with its headquarters in Canada.

13) TECK maintains continuous and systematic affiliations within the United States, specifically in, *inter alia*, the States of Washington and Alaska.

14) TECK, directly or indirectly, owns, operates, controls, manages, and/or supervises at least seven U.S.-based subsidiaries in the State of Washington, such as:

a) Teck American Incorporated (formerly known as "Teck Cominco American Incorporated");

b) Teck Advanced Materials Incorporated;

c) Teck Alaska Maritime Incorporated;

d) Teck American Energy Sales Incorporated;

e) Teck American Metal Sales Incorporated;

f) Teck Washington Incorporated; ~~and~~

g) TCAI Incorporated; and

h) Teck CO, LLC (formerly known as "Teck Resources Inc." and "Teck Colorado Inc.").

15) TECK, directly or indirectly, owns, operates, controls, manages, and/or supervises one of the world's largest zinc mines known as "Red Dog" in Alaska, United States and an underground zinc and lead mine known as the "Pend Oreille" in Washington State, United States.

16) Some of TECK's corporate officers or leadership are also officers of TECK's U.S.-based subsidiaries. For instance, Mr. Dale Andres is the Senior Vice President of Base Metals for the Defendant while also serving as the Board of Governors for Teck American Metal Sales Incorporated, a U.S.-based subsidiary of TECK in Washington state. Another shared officer is Shehzad Bharmal, who serves as TECK's Vice President of North American Operations in Base Metals, and who also serves as a director or corporate officer in each of the following Defendant's U.S.-based subsidiaries: (a) Teck American Incorporated, (b) Teck American Energy Sales Incorporated, and Teck Alaska Incorporated (formerly known as "Teck Cominco Alaska Incorporated").

17) TECK offers employment and employing persons to work in the United States.

18) TECK is publicly traded on the New York Stock Exchange.

19) TECK'S U.S.-based operations alone have yielded hundreds of millions of dollars in revenue and gross profit. For instance, Teck's Red Dog mine operations yielded a $990 million gross profit before depreciation and amortization in 2018, compared with $971 million in 2017 and $749 million in 2016.

20) TECK owns nine registered trademarks in the United States.

21) Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 because this action arises under the laws of the United States, specifically Title III of the Libertad Act, codified at 22 U.S.C. § 6021 *et seq*.

22) The amount in controversy exceeds $50,000. 00 in damages as required by 22 U.S.C. § 6082(b).

23) Plaintiffs have paid ~~Contemporaneous with this filing, Plaintiff will pay~~ the special fee for filing an action under Title III of the Libertad, which is $6,548 pursuant to the fee schedule adopted by the Judicial Conference in September 2018.

24) Venue is proper in this judicial district under, *inter alia*, 28 U.S.C. § 1391(b)(3).

CONFISCATION AND TRAFFICKING OF EL COBRE MINES

25) In October 1960, the communist Cuban Government wrongfully and forcefully nationalized, expropriated, and seized ownership and control of the Confiscated Property by the adoption of Cuba's Gazette Law 890, which applied the Marxist-Leninist ideology of abolishing private ownership over the means of production and provides for the forceful taking of all right, title, and interest in all privately-held commercial and industrial businesses in Cuba.

26) From as early as 1994 through 2009, TECK, together with Joutel Resources Limited, a Canadian corporation, and directly or indirectly with Geominera S.A, a Cuban government-owned and operated entity, exploited the Confiscated Property and extracted significant valuable minerals and other geological materials from the Confiscated Property.

27) In February 1994, TECK and Joutel engaged in a strategic joint venture alliance together to explore and develop significant land holdings in Cuba.

28)At all times material hereto, Joutel held exclusive mineral exploration and development rights to 4,000 sq. km. in Cuba, including El Cobre mines located in the Sierra Maestra regions of Cuba.

29)In January 1996, TECK and Joutel entered into a written agreement giving TECK the right to earn a 50% interest in all of Joutel's holdings in Cuba by completing a formal feasibility study and provide mine financing for Joutel's share of development costs to place deposits into production.

30)On or about February 6, 1996, TECK and Joutel reached an agreement to jointly engage in exploration and mining activity in lands in Cuba under an agreement with Geominera S.A.

31)Upon information and belief, in accordance with the above agreement, TECK purchased 1.5 million subordinate voting shares of Joutel for a total investment of $1 million with the option to buy a further 3 million of Joutel shares over three years, representing a investment of $4.5 million. In addition, TECK has the right to participate in future financings to retain its pro rata interest in Joutel. The share purchase allows TECK to earn half of Joutel Resource Limited's interest in all of Joutel's land holdings in Cuba. Joutel holds exclusive mineral exploration and development rights to 4,660 sq. km of land in Cuba. Development and exploitation of a deposit will be shared 50-50 between Joutel and Geominera S.A., a Cuban government entity.

32)In addition, TECK agreed, and did in fact, complete a formal feasibility study and financed Joutel's share of development costs of bringing the properties to the commercial production stage. As a

result, TECK operated the mines developed on the Joutel's concessions.

33) TECK had actual and constructive knowledge of the fact that they were trafficking in property that was confiscated by the Cuban government belonging to US citizens. TECK's knowledge is obtained by virtue of, without limitation: (i)the Cuban constitution and laws, including Cuba's Gazette Law 890, enacted on or about October 1960, which effected the confiscation of the Confiscated Property by the communist Cuban government; (ii) public records that identify Roberto Gomez Cabrera and/or Minera Rogoca as the owners of the Confiscated Property prior to its confiscation, including without limitation: property records located in the Cuban Office of the Registrar (*Registro de la Propedad*) in the online publications; (iii) when the Helms-Burton Act was passed in 1996 because TECK is listed in the 1996 Congressional Record (https://www.congress.gov/crec/1996/03/05/CREC-1996-03-05-pt1-PgS1479-5.pdf) as a foreign company subject to the Helms-Burton Act for doing business in Cuba;[13] and (iv) through notice

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[13] 2 In addition to general notice by means of codification of the law, notice was also expressly provided in the Federal Register and by the Clinton Administration. *See*, *e.g.*, 22 U.S.C. § 6082(a)(8) (directing the Attorney General to "prepare and publish in the Federal Register a concise summary of the provisions" of the LIBERTAD Act); Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 61 Fed. Reg. 24955-57 (May 11, 1996); William J. Clinton, Statement of Action on Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 (July 16, 1996) ("I will allow Title III to come into force. As a result, all companies doing business in Cuba are hereby on notice that by trafficking in expropriated American property, they face the prospect of lawsuits and significant liability in the United

given to Joutel (TECK's joint venturer) by the Roberto Gomez Cabrera's children via letter dated June 25, 1997.

34)On information and belief, beginning on or about February 6, 1994 and continuing for at least 15 years thereafter, TECK knowingly and intentionally commenced, conducted, and used the Confiscated Property for commercial purposes without the authorization of Plaintiffs or any U.S. national who holds a claim to the Confiscated Property.

35) On information and belief, beginning on or about February 6, 1994 and continuing for at least 15 years thereafter, TECK also knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Confiscated Property without the authorization of Plaintiffs or any U.S. national who holds a claim to the Confiscated Property.

36) TECK is knowingly and intentionally trafficking confiscated property as defined in 22 U.S.C. § 6023(13)(A).

37) As a result of TECK's trafficking of Plaintiffs' Confiscated Property, TECK is liable to Plaintiffs for all monetary damages allowable under 22 U.S.C. § 6082(a).

38) The communist Cuban Government maintains possession of the Confiscated Property and has not paid compensation to Plaintiffs for its seizure. Further, the claim to the Confiscated Property has

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States. This will serve as a deterrent to such trafficking, one of the central goals of the LIBERTAD Act.").

not been settled pursuant to an international claim settlement agreement or other settlement procedure.

39)Plaintiffs never abandoned their ~~his~~ legitimate interest in the Confiscated Property; nor have any of Plaintiffs' predecessors in interest ever abandoned their legitimate interest in the Confiscated Property.

CONDITIONS PRECEDENT

40)All conditions precedent to the institution of this action have been waived, performed, or have occurred.

ATTORNEYS' FEES AND COSTS

41) Plaintiffs have retained the undersigned counsel to represent it in this action and is obligated to pay counsel a reasonable fee for its services. Plaintiffs seek to recover its reasonable attorney's fees and costs from TECK pursuant to applicable law.

COUNT I – VIOLATION OF TITLE III OF THE LIBERTAD ACT

42)Plaintiffs incorporates by reference, re-allege, or adopt paragraphs one (1) through thirty-five (35) of this Complaint as though fully stated herein.

43)This is an action for violation of Title III of the Libertad Act, 22 U.S.C. § 6082.

44) Title III of the Libertad Act ("Title III") establishes a private right of action for money damages against any person who "traffics" in such property as defined by 22 U.S.C. § 6023(13). *See* 22 U.S.C. § 6082.

45) Section 302 of the Libertad Act provides, in pertinent part, the following civil remedy: any person that, after the end of the 3-month period beginning

on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages . .

46) The Libertad Act's purpose is to "protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro Regime." 22 U.S.C. § 6022(6).

47) As set forth in Title III and alleged above, beginning on or around January 15, 1997, TECK did traffic, as that term is defined in 22 U.S.C. § 6023(13)(A), in the Confiscated Property, which was confiscated by the communist Cuban Government on or after January 1, 1959 and is therefore liable to Plaintiffs, who own the claim to the Confiscated Property, for money damages.

48) As of the date of filing this Complaint, the United States Government has ceased suspending the right to bring an action under Title III, 22 U.S.C. § 6085, which therefore permits Plaintiffs to seek the relief requested herein.

49) Plaintiffs are ~~Plaintiff is~~ entitled to all money damages allowable under 22 U.S.C. § 6082(a), including, but not limited to, those equal to the sum of: a) The amount greater of: (i) the amount determined by a special master pursuant to 22 U.S.C. § 6083(a)(2) or (iii) the "fair market value" of the Confiscated Property, plus interest; *and* b)Three times the amount determined above (treble damages); *and* c) Court costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter a judgment in their ~~his~~ favor and against TECK for:

A) all recoverable compensatory, statutory, and other damages sustained by Plaintiff;

B) both pre-judgment and post-judgment interest on any amounts awarded;

C) attorneys' fees, costs, and expenses;

E) treble and/or punitive damages as may be allowable under applicable law; equitable relief; and

F) such other relief as the Court may deem be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues so triable, and a trial pursuant to Rule

Federal Rules of Civil Procedure, as to all matters not triable as of right by a jury extent permitted by law.

Dated: ~~June 2, 2020~~

Miami, FL

Respectfully submitted,

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