No. _____

In The Supreme Court of the United States

ROBERT M. GLEN,

Petitioner,

v.

TRIPADVISOR LLC, TRIPADVISOR, INC., TRIP NETWORK, INC. D/B/A CHEAPTICKETS, ORBITZ, LLC, KAYAK SOFTWARE CORPORATION, BOOKING HOLDINGS, INC., EXPEDIA, INC., EXPEDIA GROUP, INC., HOTELS.COM, L.P., HOTELS.COM, GP, LLC, TRAVELSCAPE LLC D/B/A TRAVELOCITY, VISA INC., VISA U.S.A. INC., VISA INTERNATIONAL SERVICE ASSOCIATION, MASTERCARD INCORPORATED, AND MASTERCARD INTERNATIONAL INCORPORATED,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title III of the Helms-Burton Act, 22 U.S.C. § 6081 *et seq.*, is a broad remedial statute that authorizes U.S. nationals whose property was confiscated by the Castro regime to assert trafficking claims against those who now unlawfully engage in commercial activity that benefits from confiscated Cuban property. The question presented is whether the single word "acquires" in Section 6082(a)(4)(B) of the Act bars trafficking actions by U.S. heirs who passively inherited claims to confiscated property during the 23 years between the Act's passage in March 1996 and the lifting of the suspension of its private right of action in May 2019.

PARTIES TO THE PROCEEDINGS

Petitioner Robert M. Glen was the plaintiff in the district court and the appellant in the Third Circuit.

Respondents TripAdvisor LLC, TripAdvisor, Inc., Trip Network, Inc. d/b/a Cheaptickets, Orbitz, LLC, Kayak Software Corporation, Booking Holdings, Inc., Expedia, Inc., Expedia Group, Inc., Hotels.com, L.P., Hotels.com, GP, LLC, Travelscape LLC d/b/a Travelocity, Visa Inc., Visa U.S.A. Inc., Visa International Service Association, Mastercard Incorporated, and Mastercard International Incorporated were the defendants in the district court and appellees in the Third Circuit.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following two proceedings, which were decided jointly by the district court and again by the Third Circuit:

- *Glen v. TripAdvisor LLC et al.*, No. 19-CV-1809 (D. Del.) (Mar. 30, 2021) (granting in part and denying in part Defendants' motion to dismiss for failure to state a claim);
- *Glen v. Visa Inc. et al.*, No. 19-CV-1870 (D. Del.) (Mar. 30, 2021) (granting in part and denying in part Defendants' motion to dismiss for failure to state a claim);
- *Glen v. TripAdvisor LLC et al.*, No. 21-1842 (3d Cir.) (Aug. 18, 2022) (affirming dismissal); and

STATEMENT OF RELATED PROCEEDINGS—
Continued

- *Glen v. Visa Inc. et al.*, No. 21-1843 (3d Cir.) (Aug. 18, 2022) (affirming dismissal).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert M. Glen respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The Third Circuit's opinion is unreported but available at 2022 WL 3538221 and reprinted in the Appendix ("App.") at 1-9. The district court's opinion is reported and available at 529 F. Supp. 3d 316 and reprinted at App. 10-44.

JURISDICTION

The Third Circuit issued its opinion on August 18, 2022. On October 31, 2022, Justice Alito extended the filing date for this petition to and including December 16, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 6082(a)(1)(A) of Title 22 of the United States Code provides:

> **(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 subchapter, 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 [22 U.S.C. 1621 et seq.], plus interest;

(II) the amount determined under section 6083(a)(2) of this title, 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.

Section 6082(a)(4) of Title 22 of the United States Code provides:

> **(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 March 12, 1996.
>
> (B) 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.
>
> (C) In the case of property confiscated on or after March 12, 1996, 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.

Section 6023(13)(A) of Title 22 of the United States Code provides:

> **(13) Traffics**
>
> (A) As used in subchapter 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.

STATEMENT OF THE CASE

This petition is an opportunity for the Court to remedy a fundamental error of statutory interpretation that has precluded victims of the Castro regime like Robert M. Glen and his family from vindicating

federal property rights. Without this Court's intervention, American companies that are trafficking in confiscated Cuban property—and thereby unlawfully financing the Cuban government—will be immunized from any consequences in U.S. court, contrary to Congress's express intent and enacted legislative findings.

Glen asserts trafficking claims against Respondents under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. § 6021 *et seq.*, also known as the Helms-Burton Act (the "Act"). Title III of the Act authorizes U.S. nationals holding claims to confiscated Cuban property to sue persons engaging in commercial activity that profits or benefits from the property. Congress enacted Title III as a broad remedial statute designed "[t]o deter trafficking in wrongfully confiscated property," and thereby specifically endowed victims of the Castro regime "with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. § 6081(11).

A bipartisan Congress passed the Act in 1996, but President Clinton (and later Presidents Bush and Obama) suspended the private right of action for successive six-month intervals. This meant that holders of claims to confiscated property, like Glen and his family, remained barred from filing suit against traffickers. In May 2019, President Trump lifted the suspension for the first time, finally allowing trafficking claims to go forward—some 60 years after the Castro regime's

original property confiscations and 23 years after Congress's passage of the Act.

Glen spent his childhood in Cuba and is a naturalized U.S. citizen. He is the sole heir of his mother and aunt, from whom the Castro regime directly confiscated prime, beachfront property in Varadero, Cuba during the Communist revolution. Glen often visited the property as a child. Today, the property is the site of four all-inclusive hotel resorts controlled by the Cuban government. These hotels operate on the confiscated property without Glen's permission and engage in commercial activities with U.S.-based traffickers, like Respondents.

Because Glen's mother and aunt could not outlive the successive suspensions of the private right of action (they died of old age in 1999 and 2011), Glen, like many other claimants under the Act, has asserted a trafficking action based on his inheritance of his family's claims to the confiscated Cuban property. This is standard for federal causes of action involving property rights, which are ordinarily survivable.

In the decision below, the Third Circuit first rejected Respondents' argument that Glen lacks Article III standing to pursue his trafficking claim against them. But, applying principles of collateral estoppel and relying on the Fifth Circuit's incorrect construction of Section 6082(a)(4)(B) of the Act in an earlier action filed by Glen against another trafficker, the Third Circuit held that Glen could not proceed, since he "acquire[d]" his claims to confiscated property through

inheritance, after the supposed cut-off date of March 12, 1996, when Congress passed the Act. Had Glen inherited his claim before March 1996, or had Glen's mother and aunt managed to survive until May 2019, the claim would not be barred. But because of the random timing of the deaths of Glen's mother and aunt, no party can now bring the claim, and Respondents are effectively immunized from suit. *See Garcia-Bengochea v. Carnival Corp.*, ___ F.4th ___, 2022 WL 17170885, at *12 (11th Cir. Nov. 23, 2022) (Jordan, J., concurring) (recognizing that the lower courts' broad construction of the word "acquires" "leaves many (and maybe most) U.S. nationals without a remedy for the trafficking of their confiscated properties").

This rigid application of collateral estoppel and hyper-literal interpretation of the word "acquires"—to include a sole heir's passive inheritance from his own mother and aunt during the 23-year suspension of the private right of action—contravenes the Act's broad remedial framework. It also ignores express legislative findings enacted by Congress: that victims of the Castro regime, like Glen himself, should be endowed with a judicial remedy against traffickers.

"A word in a statute," like "acquires" here, "may or may not extend to the outer limits of its definitional possibilities." *Abuelhawa v. United States*, 556 U.S. 816, 820 (2009). The Third and Fifth Circuits' interpretation, extending "acquires" to embrace an heir's passive inheritance, goes way too far, effectively eviscerating Title III's broad remedial scheme. Indeed, without intervention by this Court, all trafficking claims held by

heirs whose family members died between 1996 and 2019 will be totally barred. The decision below also undermines Congress's express foreign policy aim of deterring trafficking in confiscated property by granting a private right of action to naturalized victims of the Castro regime. This Court should grant review to resolve this issue of exceptional national importance.

A. The Helms-Burton Act

Cuban fighter jets shot down two U.S.-based airplanes flying a humanitarian mission over the Caribbean Sea in February 1996. In response, Congress passed the Act in March 1996 to fortify the trade embargo against Cuba.

Congress's stated purpose in passing the Act was 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). To this end, Congress's enacted legislative findings provided that "[s]ince Fidel Castro seized power in Cuba in 1959, . . . he has confiscated the property of millions of his own citizens; thousands of United States nationals; and thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States." *Id.* § 6081(3)(B). Congress further found that " 'trafficking' in confiscated property provides badly needed financial benefit . . . to the current Cuban Government and thus undermines the foreign policy of the United States." *Id.* § 6081(6).

In its legislative findings supporting Title III of the Act, Congress concluded that "[t]o 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." *Id.* § 6081(11). Congress therefore granted victims of the Castro regime with a private right of action against any person who "traffics" in confiscated Cuban property. *Id.* § 6082(a)(1)(A). "Traffics" is defined broadly and includes "engag[ing] in a commercial activity using or otherwise benefitting from confiscated property." *Id.* § 6023(13)(A)(ii). Recognizing this Court's prior jurisprudence in foreign takings cases, and seeking to ensure that the private right of action had teeth, Congress also specifically provided that "[n]o 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 [the Act]." *Id.* § 6082(a)(6).

Upon signing the Act into law in March 1996, President Clinton invoked his statutory authority to suspend its private right of action. *See id.* § 6085(b). Every six months, Presidents Clinton, Bush, and Obama continued the suspension of the private right of action, until May 2019, when President Trump lifted the suspension for the first time since the Act's original passage.

B. Glen's Claims to Confiscated Property

Glen grew up in Cuba and is a naturalized United States citizen. His great-grandfather owned two beachfront properties (the "Glen Properties") in Varadero, Cuba, which were passed down to Glen's mother and aunt prior to the revolution. Glen often visited the properties as a child. In connection with the Cuban revolution, the Castro regime confiscated the Varadero properties from Glen's mother and aunt, who, along with Glen, fled Cuba. Glen inherited his aunt's interest in the Glen Properties when she passed away in 1999 and inherited his mother's interest in the Glen Properties when she passed away in 2011 at the age of 102.

Today, Varadero is a popular tourist destination, and the Glen Properties are the site of four resort hotels (the "Hotels"). The Hotels have never paid any compensation to Glen or his family to operate on the Glen Properties, nor do they have Glen's authorization to do so. According to the U.S. Department of State, each of the Hotels is owned or controlled by the Cuban Government. *See* U.S. Dep't of State, Bureau of Economic and Business Affairs, *Cuba Prohibited Accommodations List* (Sept. 28, 2020) <https://tinyurl.com/cubalist>.

Respondents are online travel agencies and credit card companies. The online travel agencies operate hotel-booking websites, like Expedia and Orbitz, that specifically marketed travel to Varadero, Cuba and advertised the Hotels. Website users made reservations at the Hotels and the online travel agency

Respondents earned commissions in connection with these reservations. The credit card companies processed payments made by guests at the Hotels. Each time guests used a Visa- or Mastercard-branded card to pay for a stay at the Hotels, these Respondents earned commissions and fees.

Before initiating the actions below, Glen provided written notice to Respondents that they were unlawfully trafficking in the Glen Properties and demanded that they cease such activities. After the end of a thirty-day period, all Respondents except Visa continued to traffic in the Glen Properties.

C. Procedural History

1. On September 26, 2019 and October 4, 2019, Glen commenced two Helms-Burton actions in the United States District Court for the District of Delaware. After Glen amended the complaints and added additional parties, Defendants in the two actions moved to dismiss, arguing that Glen lacked Article III standing and failed to state a claim

In March 2021, the district court resolved the motions to dismiss filed by Defendants in the two actions in a single memorandum opinion. In its decision, the court held that Glen: (1) had Article III standing; (2) adequately alleged scienter for all Respondents except Visa; but (3) failed to state a claim as to all Defendants because he "acquired" his claim to the Cuban properties after March 12, 1996. App. 10-44. The District

Court did not reach other arguments put forward by Defendants.

2. Glen appealed. In August 2022, the Third Circuit issued a single decision affirming the dismissal of Glen's actions. The Third Circuit first held, like the District Court, that Glen had Article III standing (although Judge Bibas would have found that Glen lacked standing). Next, applying principles of collateral estoppel, the Third Circuit relied on the Fifth Circuit's prior dismissal of a separate action filed by Glen, *see Glen v. Am. Airlines, Inc.*, 7 F.4th 331 (5th Cir. 2021), on the basis that he did not "acquire" his claim to the Cuban properties prior to March 12, 1996. Like the Fifth Circuit before, the Third Circuit thus construed the Act to bar those who inherit claims after March 1996 from filing suit. App. 10-44.

REASONS FOR GRANTING THE PETITION

This Court should grant review for three reasons. *First*, this petition raises a fundamental legal question of statutory interpretation that is recurring in the lower courts and in an area of exceptional national importance. *Second*, absent review, the decision below effectively precludes individual victims of the Castro regime from taking advantage of the express private right of action endowed to them by Congress. *Third*, Title III of the Act sets forth the express foreign policy of the United States toward Cuba. The decision below undermines this stated policy and contravenes

Congress's clear intent to deter and remedy unlawful trafficking.

I. The Third Circuit's Resolution of an Important Question of Federal Law Calls Out for this Court's Intervention.

Title III of the Helms-Burton Act grants a broad remedy to victims whose property in Cuba was confiscated, stating 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." 22 U.S.C. § 6082(a)(1)(A). Section 6082(a)(4)(A) in turn provides that a claim can be brought whether the property was confiscated before or after the passage of the Act on March 12, 1996. *See id.* § 6082(a)(4)(A). This broad applicability provision is cabined by a subsequent section that bars a cause of action for property confiscated before the Act's enactment "unless such national acquires ownership of the claim before March 12, 1996." *Id.* § 6082(a)(4)(B).

Glen inherited his claim to the properties at issue when his mother and aunt passed away after March 12, 1996. The Act is silent on whether a claimant who passively inherits a claim to confiscated property after the enactment of the Act may assert a trafficking claim, or whether the inheritance of a claim post-enactment is a disqualifying "acquisition." The Act also does not define the term "acquires." Thus, at the very least, the term "acquires" presents an ambiguity.

See, *e.g.*, *Helvering v. Reynolds*, 313 U.S. 428, 433 (1941) (term "acquisition" was ambiguous as used in tax code).

Whether the word "acquires" within the context of the Act embraces a broad or narrow meaning is an important question of first impression, and is therefore worthy of granting certiorari. *See*, *e.g.*, *Am. Fed'n of Musicians v. Wittstein*, 379 U.S. 171, 175 (1964) (granting review to evaluate the phrase "majority vote of the delegates voting at a regular convention" under the Labor-Management Reporting and Disclosure Act of 1959).

Indeed, numerous cases in the lower courts are coming up against the novel and troublesome issue in this case, and resolution by this Court would promote judicial efficiency. *See*, *e.g.*, *Garcia-Bengochea v. Carnival Corp.*, ___ F.4th ___, 2022 WL 17170885 (11th Cir. Nov. 23, 2022) (collecting cases). How the word "acquires" is interpreted in this context will therefore affect numerous individual victims with putative claims under the Act—the very group that Congress sought to protect when passing the Act. 22 U.S.C. § 6081(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. . . ."); *see also Patterson v. Lamb*, 329 U.S. 539 (1947) (granting review to evaluate the status and claims of thousands of World War I draftees); *see infra* Part II.

This Court has previously emphasized that words must not be viewed in isolation because "[s]tatutory construction . . . is a holistic endeavor." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (Scalia, J.) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law."). Indeed, "when interpreting . . . any statute, we do not aim for 'literal' interpretations, but neither do we seek to indulge efforts to endow . . . maximum . . . flexibility. We simply seek the law's ordinary meaning." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1484 (2021) (Gorsuch, J.); *see also Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1750 (2020) (Gorsuch, J.) ("[W]e must be attuned to the possibility that a statutory phrase ordinarily bears a different meaning than the terms do when viewed individually or literally."); *McBoyle v. United States*, 283 U.S. 25, 26 (1931) (concluding that "vehicle" in the phrase "any other self-propelled vehicle not designed for running on rails" did not include airplanes, in part because airplanes were not mentioned in the Congressional record).

Here, this Court's review is necessary to determine how expansive the definition of "acquires" is in the context of Title III of the Act and under this Court's precedent. *Abuelhawa v. United States*, 556 U.S. 816, 820 (2009) ("A word in a statute may or may not extend to the outer limits of its definitional possibilities."). Given Title III's broad remedial scheme and the context

in which the word "acquires" is used, a narrower definition—such as "to get by one's own efforts"—is appropriate. *See United States v. Adade*, 547 Fed. App'x 142, 146 n.4 (3d Cir. 2013) (unpublished) (listing multiple dictionary definitions of "acquire," including "to get by one's own efforts" (quoting *The American Heritage Dictionary* (4th ed. 2009))); *see also Garcia-Bengochea*, 2022 WL 17170885, at *15 (Jordan, J., concurring) ("The word 'acquires' has both broad and narrow meanings, and dictionaries do not tell us what meaning to use for Title III.").

This narrower definition comports with Congress's finding that Section 6082(a)(4)(B) was intended "to eliminate any incentive that might otherwise exist to transfer claims to confiscated property to U.S. nationals in order to take advantage of the remedy created by this section." H.R. Rep. No. 104-468, at 59 (1996); *see also Garcia-Bengochea*, 2022 WL 17170885, at *15 (Jordan, J., concurring) ("[T]he legislative history indicates that Congress was worried not about the inheritance of interests in confiscated properties, but about the sale, trading, or bartering of such interests after the passage of the Helms-Burton Act."). Glen inheriting, from his mother and aunt, a claim to confiscated property, which he regularly visited as a child, was simply not Congress's concern.

Finally, the statutory construction of Section 6082(a)(4)(B) is a pure question of law and relies on no disputed facts. And there is no claimant who better exemplifies the problems with the Third Circuit and Fifth Circuit's statutory construction than Glen, who

merely seeks to hold accountable those who are unlawfully trafficking in his family's confiscated property. This petition is therefore an ideal vehicle for review.

II. The Decision Below Eviscerates the Act's Broad Remedial Purpose and Contravenes This Court's Precedents.

Title III is a broad remedial statute that endows victims with a private right of action against traffickers of confiscated property. But the lower courts' statutory interpretation contravenes this remedial purpose and this Court's precedent by "reduc[ing] the number of potential plaintiffs to almost zero, rendering [Title III] a dead letter." *United States v. Atl. Research Corp.*, 551 U.S. 128, 137 (2007). Absent this Court's intervention, Title III's landmark private right of action will become illusory.

Congress's purpose in passing Title III is no mystery. Congress enacted Title III of the Act so that victims of the Castro regime could assert claims against traffickers in federal court. This legislative purpose was set forth by Congress directly in Title III itself: Congress specifically found that "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." 22 U.S.C. § 6081(1). Congress further specifically found that "[t]o 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." *Id.* § 6081(11). "These codified purposes, . . . call for a narrow interpretation of the word 'acquires' that does not encompass interests in property obtained by inheritance." *Garcia-Bengochea*, 2022 WL 17170885, at *14 (Jordan, J., concurring).

The Third Circuit's analysis ignores these legislative findings and Congress's purpose, instead reading the word "acquires" in a vacuum. But in light of the Act's broad remedial purpose, it is unlikely "that Congress nevertheless confined the reach of the law to only narrow [claims]." *United States v. Turkette*, 452 U.S. 576, 590 (1981); *see also*, *e.g.*, *Atchison, Topeka and Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 561-62 (1987) (granting review to determine whether the Railway Labor Act, which was passed to send minor labor disputes to arbitration, precluded claims for emotional injury under the Federal Employers' Liability Act, which was a broad remedial statute passed to ensure that workers could sue employers for personal injuries).

In *Turkette*, for example, this Court construed the scope of the term "enterprise," as used in the RICO statute. In holding that "enterprise" encompassed both legitimate and illegitimate enterprises, the Court relied on Congress's legislative findings, including that "it was the declared purpose of Congress 'to seek the eradication of organized crime in the United States by

strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.'" *Id.* at 589 (quoting 84 Stat. 923). The Court held that "[c]onsidering this statement of the Act's broad purposes, the construction of RICO suggested by respondent and the court below is unacceptable." *Id.*

The same is true here. Title III is a broad remedial statute, supported by express congressional findings that victims of the Castro regime needed "new [judicial] remedies" (in the words of *Turkette*) to hold traffickers accountable. The lower courts' literal construction of the word "acquires" in Section 6082(a)(4)(B)—which effectively nullifies this new remedy for individual victims—cannot be squared with Congress's stated purpose. *See N.Y. State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes."); *Buell*, 480 U.S. at 563 ("It is inconceivable that Congress intended that a worker who suffered a disabling injury would be denied recovery under the FELA simply because he might also be able to process a narrow labor grievance under the RLA to a successful conclusion."). Simply put, there is no canon of statutory interpretation that supports a reading of an undefined term in a statute to create a result that is in direct contravention of Congress's explicitly stated purpose in passing the remedial legislation in which that term resides.

As Judge Jordan rhetorically put it in his concurring opinion in *Garcia-Bengochea*, "What compensatory and/or deterrent effect would Title III have if the only thing potential traffickers had to do was wait until the original owners died to benefit from their confiscated properties?" *Garcia-Bengochea*, 2022 WL 17170885, at *14 (Jordan, J., concurring). Barring actions by claimants like Glen and others simply by virtue of *when* they inherited their claims "does not make much (if any) sense." *Id.* Indeed, there is "no rational basis for allowing heirs to sue if they inherited their interests in confiscated properties prior to the passage of the Helms-Burton Act, while at the same time precluding heirs who inherited their interests after enactment." *Id.*

But that is precisely the result that the lower courts have reached. Unless the Court grants review, the only "victims" of the Castro regime who will be able to prosecute claims will be corporate plaintiffs, who unlike Glen's family members, are not bound by the unavoidable principles of biology. *See*, *e.g.*, *Havana Docks Corp. v. Carnival Corp.*, 592 F. Supp. 3d 1088 (S.D. Fla. 2022) (granting summary judgment to Helms-Burton claimant organized as a corporation in 1917 and whose "business has been to maintain its corporate existence in the event it is able to recover on its Certified Claim").

Glen and other victims waited decades for Congress to pass the Act, and then another two decades for President Trump to lift the suspension of the private right of action. By closing the courthouse doors to the

very victims that Congress sought to protect, the decision below calls out for this Court's attention.

III. Review is Necessary Because the Third Circuit's Interpretation Undermines Congress's Stated U.S. Foreign Policy.

The Act, and Title III in particular, is landmark legislation that governs the United States' heavily scrutinized relationship with Cuba. But the lower courts' interpretation of Section 6082(a)(4)(B) contravenes Congress's stated foreign policy objectives in the Act. *See Garcia-Bengochea*, 2022 WL 17170885, at *12 (Jordan, J., concurring) (recognizing that broad interpretation of the word "acquires" eviscerates Title III remedy for Cubans who fled Castro regime and became U.S. nationals).

In other words, this appeal does not involve the more common question of "the danger of unwarranted judicial interference in the conduct of foreign policy" where Congress has not clearly expressed its view on the extraterritoriality of U.S. law. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013). Rather, this appeal presents the opposite paradigm: Congress has made its view clear, expressing in Title III and in legislative findings that individual victims of the Castro regime should have a remedy in U.S. courts against those trafficking in confiscated Cuban property. Congress "alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident." *Benz v.*

Compania Naviera Hidalgo, S.A., 353 U.S. 138, 147 (1957). By interpreting "acquires" as broadly as possible and without reference to the Act's remedial purpose, the lower courts' statutory interpretation usurps this foreign relations authority from Congress and the Executive Branch, in violation of separation-of-powers principles. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 695 (2004) (Courts should be "particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs.").

This appeal presents an opportunity for the Court to put Title III back in its rightful place as a significant foreign policy tool in the United States' strained relationship with Cuba. The United States' congressionally enacted Cuba policy "is designed to sanction strongly the Castro regime while simultaneously permitting humanitarian relief and economic transactions that will benefit the Cuban people." *Havana Docks*, 592 F. Supp. 3d at 1106 (citation omitted). In this vein, Congress passed Title III to reinforce the trade embargo, deter investment in the Cuban government—which most certainly is not humanitarian relief or for the benefit of the Cuban people—and provide a remedy to victims against those unlawfully trafficking in confiscated property. President Trump lifted the suspension of Title III so that trafficking claims could finally proceed in court after decades of delays. But the lower courts' interpretation of Section 6082(a)(4)(B) renders Title III toothless, based entirely on an overly literal interpretation of the word "acquires." Because the vast majority of claims to confiscated property are

held by individuals—who reached old age by 1996 and passed away long before 2019—the clear foreign policy objectives of the Legislative and Executive Branches will be stymied, unless this Court intervenes.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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