No. 24-983

In the
Supreme Court of the United States

HAVANA DOCKS CORPORATION,

Petitioner,

v.

ROYAL CARIBBEAN CRUISES, LTD., NORWEGIAN CRUISE LINE HOLDINGS LTD., CARNIVAL CORPORATION, MSC CRUISES S.A., and MSC CRUISES (USA), INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

E. JOSHUA ROSENKRANZ
ROBERT M. LOEB
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000

Counsel for Respondents MSC Cruises S.A. and MSC Cruises (USA), Inc.

PAUL D. CLEMENT
Counsel of Record
MATTHEW D. ROWEN
NICCOLO A. BELTRAMO
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

Counsel for Respondent Royal Caribbean Cruises, Ltd.

(*additional counsel listed on inside cover*)

May 23, 2025

J. DOUGLAS BALDRIDGE
ANDREW T. HERNACKI
VENABLE LLP
600 Massachusetts Ave., NW
Washington, DC 20001
(202) 344-4000

Counsel for Respondents MSC Cruises S.A. and MSC Cruises (USA), Inc.

KANNON K. SHANMUGAM
WILLIAM T. MARKS
ABIGAIL FRISCH VICE
PAUL, WEISS,
RIFKIND, WHARTON &
GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300

Counsel for Respondent Carnival Corporation

DEREK L. SHAFFER
CHRISTOPHER G. MICHEL
NICHOLAS J. CALUDA
QUINN EMANUEL
URQUHART&
SULLIVAN, LLP
1300 I Street, NW, Suite 900
Washington, DC 20005
(202) 538-8000

Counsel for Respondents Norwegian Cruise Line Holdings Ltd.

QUESTION PRESENTED

Whether a factbound decision turning entirely on the particular metes and bounds of an idiosyncratic foreign-law property interest merits review, where there is a conceded lack of a circuit conflict and multiple alternate grounds for affirmance.

PARTIES TO THE PROCEEDING

Petitioner Havana Docks Corporation was the appellee in the Eleventh Circuit and the plaintiff in district court.

Respondents Royal Caribbean Cruises, Ltd., Norwegian Cruise Line Holdings Ltd., Carnival Corporation, MSC Cruises S.A., and MSC Cruises (USA), Inc., were the appellants in the Eleventh Circuit and defendants in district court.

CORPORATE DISCLOSURE STATEMENT

Respondent Royal Caribbean Cruises, Ltd., is a publicly traded company with no parent corporation. No publicly held corporation owns 10% or more of Royal Caribbean's stock.

Respondent Norwegian Cruise Line Holdings Ltd. is a publicly traded company with no parent corporation. No publicly held corporation owns 10% or more of Norwegian's stock.

Respondent Carnival Corporation is a publicly traded corporation with no parent corporation. No publicly held corporation owns 10% or more of Carnival's stock.

Respondent MSC Cruises (USA) LLC is a wholly owned subsidiary of MSC Cruises S.A., a privately owned corporation. No publicly held corporation owns 10% or more of MSC's stock. Respondent MSC Cruises S.A. is a privately owned corporation with no parent corporation. No publicly held corporation owns 10% or more of MSC Cruises S.A.'s stock.

TABLE OF CONTENTS

QUESTION PRESENTED i
PARTIES TO THE PROCEEDING ii
CORPORATE DISCLOSURE STATEMENT iii
INTRODUCTION 1
STATEMENT OF THE CASE 3
A. Factual Background 3
B. Legal Background 7
C. Procedural History 9
REASONS FOR DENYING THE PETITION 15
I. The Decision Below Is Correct 16
II. This Case Presents A Poor Vehicle To Review The Question Presented 21
III. HDC's Claims About The Decision Below's Importance Are Wildly Overblown 24
CONCLUSION 28

TABLE OF AUTHORITIES

Cases

Boggs v. Boggs,
520 U.S. 833 (1997) 14

Echevarria v. Trivago GMBH,
No. 19-22620 (S.D. Fla. Apr. 18, 2025) 2

Fernandez v. Seaboard Marine Ltd.,
135 F.4th 939 (11th Cir. 2025) 2, 26

Garcia-Bengochea v. Carnival Corp.,
57 F.4th 916 (11th Cir. 2023) 5, 9

Harrel v. Raoul,
144 S.Ct. 2491 (2024) 21

Marti
v. Iberostar Hoteles y Apartamentos S.L.,
54 F.4th 641 (11th Cir. 2022) 9

N. Am. Sugar Indus. Inc.
v. Xinjiang Goldwind Sci. & Tech. Co.,
2021 WL 3741647 (S.D. Fla. Aug. 24, 2021) 9

N. Am. Sugar Indus., Inc.
v. Xinjiang Goldwind Sci. & Tech. Co.,
124 F.4th 1322 (11th Cir. 2025) 5

PDK Laboratories, Inc. v. DEA,
362 F.3d 786 (D.C. Cir. 2004) 21

Tahoe-Sierra Pres. Council, Inc.
v. Tahoe Reg'l Plan. Agency,
535 U.S. 302 (2002) 18

Statutes

22 U.S.C. §6023(12)(A) 17

22 U.S.C. §6023(13)(A) 8, 23

22 U.S.C. §6023(13)(B) 8, 23

22 U.S.C. §6023(4) 17
22 U.S.C. §6081(3)(B) 5
22 U.S.C. §6082(a)(1) 1, 8, 11, 13, 16, 20
22 U.S.C. §6082(a)(3) 8
22 U.S.C. §6083(a)(1) 12, 18
22 U.S.C. §6091(a) 9
28 U.S.C. §505 27
Pub. L. No. 104-114, 110 Stat. 785 (1996) 7

Regulations

31 C.F.R. §515.560(c)(1) (2015) 6
31 C.F.R. §515.572(a)(2) (2015) 6
31 C.F.R. §515.572(a)(4) (2015) 6
80 Fed. Reg. 2,291 (Jan. 16, 2015) 6
80 Fed. Reg. 56,898 (Sept. 21, 2015) 6
84 Fed. Reg. 25,986 (June 5, 2019) 9
84 Fed. Reg. 25,992 (June 5, 2019) 9

Other Authorities

John B. Bellinger III, *The First Year of Helms Burton Lawsuits*, Lawfare (Apr. 23, 2020), https://perma.cc/K7ZK-5GBG 25
Black's Law Dictionary (11th ed. 2019) 4
Ada Ferrer, *Cuba: An American History* (2021) 5
Jury Verdicts, *Echevarria* v. *Trivago GMBH*, No. 19-22621 (S.D. Fla. Apr. 18, 2025) 26

José Manuel Pallì, *"Superficie" Rights and Usufruct in Cuba: Are They "Real," "Title Insurable" Rights?*, 22 L. & Bus. Rev. Am. 23 (2016) 4

Statement by the President on Cuba Policy Changes, White House (Dec. 17, 2014), https://perma.cc/TZ9N-2WF9 6

INTRODUCTION

Petitioner Havana Docks Corporation ("HDC") invites this Court to review a factbound decision that it admits implicates no circuit split and presents multiple alternative grounds for affirmance. The Court should decline the invitation. Under the Helms-Burton Act, an entity that "traffics in property which was confiscated by the Cuban Government … shall be liable to any United States national who owns the claim to such property." 22 U.S.C. §6082(a)(1)(A). HDC's "property" in Cuba was a time-limited concession granting it limited rights to use Havana's pier complex in limited ways until 2004. Respondents did not set sail for Cuba or dock in Havana until 2016, after the Executive Branch reopened travel to the island from the United States. This case thus presents the question of whether respondents in 2016 could traffic in a time-limited property interest that expired in 2004. To ask that question is to answer it—and resolve this case. Because HDC only ever held a limited right to use the pier complex for a limited time (and in limited ways), that is all the Cuban government confiscated from it. And because that time-limited interest expired on its own terms in 2004, any use of the docks after 2004 is not "traffic[king] in property which was confiscated by the Cuban Government." 22 U.S.C. §6082(a)(1)(A). This case really is that simple.

To hear HDC tell it, though, this case is astoundingly important. The conceded lack of a circuit split might necessitate such grandiose claims, but the reality of the decision below is far more mundane. The sum-total of the Eleventh Circuit's holding is that HDC's time-limited interest expired before 2016. That

narrow, factbound conclusion is not the stuff of certiorari, let alone of diplomatic crises. While the parties debated some more consequential issues about liability and damages under the Helms-Burton Act below, the Eleventh Circuit left all those less factbound issues unresolved. And subsequent developments in the Eleventh Circuit powerfully refute HDC's alarmist claim that the decision below renders the Helms-Burton Act "[in]effective." Pet.32. Just last month, the Eleventh Circuit—the one circuit in which the decision below is binding law—held that the heirs to a company that (until Castro seized power) allegedly owned in fee simple "thousands of acres on the west side of Mariel Bay" could establish that an ocean carrier trafficked in their confiscated property in violation of the Helms-Burton Act by "deliver[ing] commercial goods" in 2019 "to a dock that is partly built on [the company's] confiscated land." *Fernandez v. Seaboard Marine Ltd.*, 135 F.4th 939, 945, 955 (11th Cir. 2025). Nor is that all. A jury recently awarded tens of millions of dollars to a Helms-Burton Act plaintiff in *Echevarria v. Trivago GMBH*, No. 19-22620 (S.D. Fla. Apr. 18, 2025). And last but certainly not least, HDC's claims *in this case* remain live on remand against one of the four cruise lines (based on some pre-2004 cruises operated by a foreign cruise line in which Carnival later acquired an interest). Those HDC claims have problems of their own, but they suffice to underscore that the decision below decided only a threshold and factbound issue about the temporal scope of HDC's concession, not some critical legal issue signaling the Helms-Burton Act's demise.

That leaves HDC with a conceded lack of a circuit split and bereft of any other consideration that would

support plenary review of this factbound question turning as much on the particularities of Cuban property law as on the reach of the Helms-Burton Act. HDC's attack on the decision on the merits is neither correct nor a remotely adequate basis for plenary review. The Helms-Burton Act is strong medicine in many respects, but it does not convert a time-limited property interest into a perpetual fee simple. Instead, it provides a remedy for what Cuba confiscated, nothing more or less. Finally, it bears emphasis that the decision below resolved only a factbound threshold question about the scope of HDC's property interest. Alternative grounds for affirmance abound. After all, the notion that cruise lines should pay hundreds of millions of dollars for following the Executive Branch's lead in reopening travel to Cuba defies both common sense and other aspects of the Helms-Burton Act. The Eleventh Circuit left all those other issues for another day because the expiration issue was straightforward and dispositive for all the post-2004 travel. There is no basis for disturbing that eminently correct and hopelessly factbound conclusion. The Court should deny the petition.

STATEMENT OF THE CASE

A. Factual Background

1. This case is about a time-limited interest in "certain commercial waterfront real property in the Port of Havana." App.8-9. The specific metes and bounds of that property interest are governed by the details of various Cuban government decrees and the intricacies of Cuban property law. But the basic time-limited nature of the interest is both undeniable and undenied. In 1905, the Cuban government granted a

concession—a kind of "franchise, license, permit, [or] privilege" common in certain civil-law jurisdictions, App.10; *accord Concession*, Black's Law Dictionary (11th ed. 2019) ("A government grant for specific privileges.")—to Compañia del Puerto ("CdP") to construct a pier in the Port of Havana and operate it for 50 years, after which the interest would be extinguished. App.9. The concession granted CdP no right to exclude others from the state-owned docks, but it did grant CdP a usufruct—a right to use and claim the benefits from the property for a time without fundamentally altering its form—in the public areas on which its fixtures were built, as well as in the streets that ran between the pier's jetties. App.9-10; *see* NCL.Dkt.235-1 at 9; Carnival.Dkt.73-3 at 8 (explaining that the concession did not allow the concessionaire to interfere with third parties' rights); *see also* José Manuel Pallì, *"Superficie" Rights and Usufruct in Cuba: Are They "Real," "Title Insurable" Rights?*, 22 L. & Bus. Rev. Am. 23 (2016) (discussing Cuban usufructs).[1]

The terms of the concession were refined in the years that followed. As relevant here, in 1920 Cuba issued Decree No. 1044, which altered the concession in two main respects: It directed that two of the planned four piers would be merged into one larger pier to service higher-capacity cargo ships; and it

[1] "NCL.Dkt." refers to the district court docket in the case against Norwegian, No. 1:19-cv-23591 (S.D. Fla.); "RCCL.Dkt." refers to the district court docket in the case against Royal Caribbean, No. 1:19-cv-23590 (S.D. Fla.); "Carnival.Dkt." refers to the district court docket in the case against Carnival, No. 1:19-cv-21724 (S.D. Fla.); "MSC.Dkt." refers to the district court docket in the case against MSC, No. 1:19-cv-23588 (S.D. Fla.).

extended the life of the concession from 50 years to 99 years, running from the initial issuance date in 1905. App.10-11. The concessionaire—which at this point was the Port of Havana Docks Company, to which CdP had assigned its rights—thus held a limited right, running from 1905 to 2004, to build and maintain the piers, and to profit from operating cargo services at them. *See* App.11 & n.3. The concessionaire had no right to exclude others from the state-owned docks. *See* Carnival.Dkt.73-3 at 8. And although the concession's term expired in 2004, it could be terminated at any time: If the Cuban government so decided, it could revoke the concession, leaving the holder with only "compensation for the work performed and the materials used." App.12.

In 1928, the Port of Havana Docks Company sold itself to petitioner (HDC). App.12. HDC finished building the piers by 1930, and the Cuban government ratified the transfer around that time. App.12.

2. "In January 1959, Fidel Castro and the 26th of July Movement seized control of the Cuban government." *N. Am. Sugar Indus., Inc. v. Xinjiang Goldwind Sci. & Tech. Co.*, 124 F.4th 1322, 1327 (11th Cir. 2025). Castro's government later expropriated the property of "thousands of United States nationals." 22 U.S.C. §6081(3)(B); *see also* Ada Ferrer, *Cuba: An American History* 347-48 (2021). In response, Congress enacted the Cuban Claims Act of 1964, which "authorized the Foreign Claims Settlement Commission to gather information for an eventual negotiation on claims of confiscated properties in Cuba." *Garcia-Bengochea v. Carnival Corp.*, 57 F.4th 916, 920 (11th Cir. 2023) (per curiam).

3. Because HDC's concession was one of the many property rights the Castro regime confiscated, HDC filed a claim with the Commission in 1967. App.12-13. As HDC explained in its application, "[t]he entire pier properties are held under the terms of a concession granted by the Cuban Government," which "provide for transfer of ownership of the pier properties to the Cuban Government in the year 2004." NCL.Dkt.235-12 at 2. The Commission certified HDC's claim. App.13-14. Consistent with the terms of HDC's application, the Commission found that HDC "had a concession … for the construction and operation of wharves and warehouses in the Port of Havana" that was "set 'to expire in 2004, at which time [HDC] had to deliver the piers to the [Cuban Government]." App.14. The Commission certified the value of HDC's loss to be $9,179,700.88, with "interest to accrue at 6% per year," dating back to 1960. App.14.

4. Nearly 50 years later, the United States "chang[ed] its relationship with the people of Cuba." *Statement by the President on Cuba Policy Changes*, White House (Dec. 17, 2014), https://perma.cc/TZ9N-2WF9. Pursuant to a new policy of engagement, Executive Branch agencies promulgated various regulations opening Cuba up for significant travel, including via cruises. *See, e.g.*, 80 Fed. Reg. 2,291, 2,291, 2,297 (Jan. 16, 2015) (Office of Foreign Assets Control); 80 Fed. Reg. 56,898, 56,900 (Sept. 21, 2015) (Bureau of Industry and Security); *see also* 31 C.F.R. §§515.560(c)(1), §515.572(a)(2)(i) & (a)(4) (2015).

5. Respondents, the four largest cruise lines operating out of the United States, took extensive measures to comply with the Executive's new regulatory framework. Before allowing passengers to

board a Cuba-bound ship, for instance, Norwegian required all passengers to sign an affidavit certifying under penalty of perjury that they would be traveling to Cuba pursuant to and in compliance with OFAC's regulations. NCL.Dkt.238 ¶18. Norwegian also took pains to help travelers understand their individual obligations under OFAC's regulations, including avoiding transactions with entities on OFAC's "Cuba Restricted List." NCL.Dkt.238 ¶19. The other cruise lines did much the same. *See, e.g.*, Carnival.Dkt.326-47 (Carnival explained to all passengers their OFAC travel and documentation obligations); MSC.Dkt.210-23 (MSC required passengers to certify that they would be traveling to Cuba pursuant to and in compliance with OFAC regulations); RCCL.Dkt.132 at 7-8 (similar); *see also* MSC.Dkt.210-19 at 1. And none of them set sail for Cuba from the United States before the OFAC license issued. NCL.Dkt.235 at 3-4.

When respondents set sail for the island and their cruise ships arrived in Havana, they docked at the pier complex. They had no other choice for unloading passengers in Havana. Respondents explored alternative means of unloading passengers, including anchoring offshore and shuttling passengers on smaller vessels, but the Cuban government insisted that they use the pier complex. NCL.Dkt.235 at 4-7.[2]

B. Legal Background

In 1996, Congress enacted the Cuban Liberty and Democratic Solidarity Act, Pub. L. No. 104-114, 110 Stat. 785 (codified at 22 U.S.C. §6021 *et seq.*), known

[2] Furthermore, some of respondents' cruise ships were too large to dock anywhere else in Cuba with the mandatory customs, immigration, and screening facilities. *See* MSC.Dkt.209 at 6-8.

as the Helms-Burton Act. Under Title III of the Act, "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." 22 U.S.C. §6082(a)(1)(A). A person "traffics" in confiscated property within the meaning of the Act "if that person knowingly and intentionally … obtains control of, … uses, … [or] engages in a commercial activity using or otherwise benefiting from confiscated property, … without the authorization of any United States national who holds a claim to the property." *Id.* §6023(13)(A). The Act clarifies, however, that the term "'traffics' does *not* include … transactions and uses of property incident to lawful travel to Cuba," if such activity is "necessary to the conduct of such travel." *Id.* §6023(13)(B) (emphasis added).

A trafficking violation is no small matter—as the extraordinary penalties the Act authorizes (and in some cases requires) make clear. First, the Act authorizes significant monetary liability and allows successful plaintiffs to recover attorneys' fees. *Id.* §6082(a)(1)(A). Damages are measured by the value of the confiscated property or outstanding claim, *id.* §6082(a)(1)(A)(i), and can be trebled if a U.S. national with a certified claim gives notice to an entity of the claim and trafficking continues post-notice, *id.* §6082(a)(3). Other provisions go far beyond damages. Title IV of the Act requires—not empowers; *requires*—the President to expel (kick out) or exclude (keep out) from the country not just "any alien" who engaged in trafficking, but also "any alien" who "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 … or … a spouse, minor child, or agent of a person" whose exclusion the Act requires, even if such person played no role in the trafficking. *Id.* §6091(a).

The Act allows the President to suspend, for up to six months at a time, the private right to sue under Title III. *Id.* §6085(c)(1)(B). Beginning with President Clinton (immediately upon the statute's passage), every President suspended the right to bring Title III suits continuously, up to and well beyond 2004 when HDC's 99-year concession expired by its own terms. *See Garcia-Bengochea*, 57 F.4th at 919.

In May 2019, however, President Trump allowed the longstanding suspension of the Act's private right of action to lapse. *N. Am. Sugar Indus. Inc. v. Xinjiang Goldwind Sci. & Tech. Co.*, 2021 WL 3741647, at *2 (S.D. Fla. Aug. 24, 2021). For the first time in the Act's history, plaintiffs could bring suit under Title III. *Marti v. Iberostar Hoteles y Apartamentos S.L.*, 54 F.4th 641, 644 (11th Cir. 2022).

Shortly thereafter, the federal government eliminated the earlier-promulgated regulations that allowed respondents to conduct cruises to Cuba. *See* 84 Fed. Reg. 25,992 (June 5, 2019) (amending 31 C.F.R. §515.565(b)); 84 Fed. Reg. 25,986, 25,987 (June 5, 2019). Respondents then ceased all cruises to Cuba.

C. Procedural History

1. After the Obama Administration licensed cruising to Cuba, but while Title III remained suspended, HDC repeatedly sought to persuade the Executive to take action against respondents for their use of the docks at issue. Those efforts were unsuccessful. For example, HDC asked the

government to debar respondents' foreign executives and directors from the United States under Title IV of the Act, but the government not only refused, but explained that the cruise lines' use of the Havana port complex was necessary for lawful travel and thus permitted. NCL.Dkt.237-24 at 2; NCL.Dkt.237-27 at 3; NCL.Dkt.237-28 at 2. HDC separately sought OFAC sanctions against the cruise lines; those efforts were rebuffed as well. MSC.Dkt.357-17 at 126-28.

2. The day after President Trump allowed Title III to take effect, but a decade and a half after HDC's concession expired, HDC sued Carnival, seeking treble damages on the value of its claim. Carnival.Dkt.1. Carnival moved to dismiss on several grounds, including that its use of the docks was necessary and incident to lawful travel, and that HDC could not sustain a claim based on Carnival's use of the docks after 2004. Carnival.Dkt.17 at 3-15. The district court disagreed with Carnival and allowed HDC's claims to proceed to discovery. App.43-53.

Buoyed by that decision, HDC filed substantively identical suits against Royal Caribbean, Norwegian, and MSC, which all were assigned to the same district judge. *See* RCCL.Dkt.1; NCL.Dkt.1; MSC.Dkt.1.

A flurry of briefing followed, which culminated in the district court ruling that HDC's claims should proceed to discovery, App.82-83, and then ultimately granting summary judgment to HDC. App.104-130. The district court concluded that respondents had "committed trafficking acts" by using the docks and pier complex and by contracting with various Cuban government entities for cruising and shore excursions. NCL.Dkt.367 at 86-90. The court further concluded

that HDC proved the "knowingly and intentionally" *mens rea* requirement. NCL.Dkt.367 at 90-93. And the court rejected respondents' defense that they used the docks incident to lawful travel. NCL.Dkt.367 at 113-19. With respect to damages, the district court concluded that HDC was entitled to four times the trebled value of the certified claim, plus interest, plus attorney fees—totaling over $110 million from each cruise line. NCL.Dkt.452 at 2-3. In all, the court awarded approximately $440 million to HDC. *See* NCL.Dkt.452 at 3-8.

3. After affirming the district court's conclusion that HDC "is a U.S. national under Title III," App.4, the Eleventh Circuit turned to address the question whether respondents "trafficked" in HDC's property. The court of appeals found it plain that HDC's limited "concession ended … in 2004 when the 99-year term would have expired by its own terms." App.18-19; *see also* App.10-12. As a result, "when the cruise lines used the Terminal and one of its piers from 2016 to 2019" after the Obama Administration licensed and encouraged them to sail to Havana, "they did not traffic in property that had been confiscated by the Cuban Government." App.19.

In reaching that conclusion, the Eleventh Circuit rejected the idea the Helms-Burton Act *sub silentio* "convert[ed] property interests which were temporally limited at the time of their confiscation into fee simple interests in perpetuity such that the holders of such limited interests could assert trafficking claims through what Buzz Lightyear called 'infinity and beyond.'" App.22. The Act instead takes property interests as they are. *See* 22 U.S.C. §6082(a)(1)(A) ("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*" (emphases added)). As a result, the court was required to "treat Havana Docks' property interest—the concession—as if the Cuban Government had never expropriated it, i.e., without the distorting effect of the confiscation," and then to ask whether that usufructuary concession, unmodified by "distorting effect of the confiscation," would have been implicated by respondents' conduct in docking at the Terminal and pier in the late 2010s. App.22-23. And because the answer to that question here is plainly no, HDC's trafficking claim failed as a matter of law.

That HDC had a certified claim from the Foreign Claims Settlement Commission did not change things. To be sure, a certified claim "constitutes 'conclusive proof of ownership of an interest in property.'" App.25 (quoting 22 U.S.C. §6083(a)(1)). But no one ever doubted that HDC had an interest in the docks. The dispute was over the nature and extent of that interest. And "Title III's conclusive presumption of Havana Docks' ownership interest at some point in the past does not speak to the nature of the interest today." App.25.

The court also rejected HDC's contention that "[a]ny temporal limitations on [confiscated] property interests are reflected in the value of the claim." App.27. HDC argued that §6082(a)(1)(A)'s use of the term "*was confiscated*" showed that Congress meant to encompass "property that is not subject to a *current*

property interest." CA11.Dkt.113 at 52, 54.[3] But HDC failed to "offer any persuasive support for" that assertion, which if accepted would allow individuals with now-expired property interests to convert those interests "into a fee simple interest of infinite duration as a result of the Cuban Government's confiscation," and thereby "sue any third party which used or benefited from any portion of that expired property interest in 2025, 2050, 2075, 2100, and so on." App.27. Congress, the court held, did not silently enact such an upside-down rule. App.27.

Nor, the court held, did Congress transform the existence of a certified claim into a new property right that enabled HDC to bypass the requirement that trafficking be in the confiscated property. App.26. Liability attaches to "any person that … traffics *in property which was confiscated by the* [*Castro*] *Government*." 22 U.S.C. §6082(a)(1)(A) (emphasis added). The Castro government did not confiscate any certified claims. It confiscated the property that its citizens, and U.S. nationals, held at the time. For HDC, that was a time-limited concession to use certain docks. So, under the plain language of the statute, only trafficking "in the property that was confiscated, and not in the claim held by the U.S. national based on that confiscated property," is actionable. App.16. And HDC's property interest expired on its terms in 2004, long before travel to Cuba was reopened.

Finally, HDC could not evade the consequences of its time-limited usufructuary interest by invoking this

[3] "CA11.Dkt." refers to the Eleventh Circuit docket in the consolidated appeal, No. 23-10171 (11th Cir).

Court's opinion in *Boggs v. Boggs*, 520 U.S. 833 (1997), which held that a "lifetime usufruct is the rough equivalent of a common-law life estate." *Id.* at 836. While that may have been true in the context of the "lifetime usufruct" there, HDC *did not have* a lifetime usufruct; Decree No. 1944 gave it only a time-limited usufruct for a period of 99 years, App.11. So the pragmatic equivalences of a lifetime usufruct simply had no bearing on HDC's claims. App.26.

The court thus agreed with respondents that HDC's property interests had expired over a decade before respondents' own cruise ships began visiting Cuba. But that did not wholly dispose of the case. As the court noted, HDC alleged that Carnival had "trafficked in its concession from 1996 to 2001 through its interests in two other companies, Airtours and Costa." App.27. Carnival disputed those allegations, but the district court did not address those pre-2004 claims given its mistaken view that the cruise lines' post-2004 use of the docks sufficed. As a result, while the court of appeals reversed the district court's judgments against each respondent, it remanded for further proceedings limited to HDC's Airtours and Costa claims against Carnival. App.27-28.

The court underscored that, "given [its] resolution" on the factbound ground that HDC's property interest expired in 2004, before the main cruising took place and its remand of the Airtours and Costa claims, it "need not and do[es] not address [the] other issues raised by the cruise lines." App.3 n.1. The court thus declined to address, *inter alia*, whether, expiration aside, HDC's property interest does not implicate the cruises at all because it was limited to a non-exclusive right to cargo services;

whether the cruises fell within the Act's lawful travel exception; and whether, even if their conduct was unlawful, respondents did not knowingly and intentionally traffic in confiscated property, as the Act requires. *See* CA11.Dkt.80 at 45-47, 47-65, 69-76.

Judge Brasher dissented, but only as to the expiration issue. In his view, the majority's reasoning was "directed at the wrong 'confiscated property.'" App.36. Whereas the majority focused on the "intangible concessionary interest" (i.e., the property HDC actually had), Judge Brasher thought the correct subject of the analysis was "the docks" themselves, "which still exist, are still in use, and have not expired, ended, or fallen into the sea." App.36. So, in his view, it was irrelevant that HDC's property interest would have terminated a decade before three of the four cruise lines set sail, or even that HDC's claim recognized as much. To Judge Brasher, HDC made out a prima facie case of liability because respondents "used confiscated property" (the docks) and "a U.S. national owns a claim to that confiscated property." App.34-35. Notably, however, Judge Brasher did not express a view on any of the other dispositive issues respondents raised, and thus did not address whether HDC could ultimately prevail on any of its claims.

HDC sought rehearing en banc, but "no judge" (not even Judge Brasher) called for a poll. App.42.

REASONS FOR DENYING THE PETITION

The decision below correctly resolved a narrow issue that turns on the particular metes and bounds of a century-old property interest governed by the vagaries of Cuban law. That issue is as factbound as it gets. And even HDC admits that there is no circuit

split. Furthermore, even if there were a certworthy question here (and there is not), this case would be a poor vehicle to address it, given the multiple alternative grounds that stand in the way of imposing massive liability on cruise lines caught in the cross-winds of changing diplomatic approaches to U.S.-Cuban relations. The Eleventh Circuit's correct and factbound resolution of this case obviated the need for it to reach any of those broader questions, and the resulting decision does not begin to satisfy the criteria for plenary review.

I. The Decision Below Is Correct.

A U.S.-national plaintiff establishes a prima facie case of Helms-Burton Act liability by showing that the defendant used "property which was confiscated by the Cuban Government" and that the plaintiff "owns the claim to such property." 22 U.S.C. §6082(a)(1)(A). Here, HDC never owned the docks in Havana or any part of the pier complex; the Cuban government has always owned them and their associated structures. The only "property" HDC ever held was a concession, a type of usufructuary interest granted by the Cuban government that allowed HDC to use the docks in limited ways for a limited term and that was always "set 'to expire in 2004, at which time [it] had to deliver the piers to the [Cuban Government] in good state of preservation.'" App.14 (alterations in original). Because that was the only "property" HDC had, it was also the only "property" the Castro regime could have "confiscated." Not even Cuba could confiscate its own property or dispossess HDC of a property interest HDC never possessed. So, under the statute's plain terms, respondents could be liable to HDC only if they trafficked in the property Cuba confiscated, i.e., HDC's

concession. But respondents' own travel to Cuba fell entirely outside that property's temporal bounds. App.23. The Eleventh Circuit correctly held that HDC's claims based on travel to Cuba years after the concession expired failed as a simple matter of chronology.

HDC's contrary position would convert time-limited property rights into perpetual rights, creating massive windfalls. Even if HDC were correct, it would not transform this factbound and splitless decision into a viable certiorari candidate. But HDC's position is flawed from start to finish, as the Eleventh Circuit correctly recognized.

First and foremost, HDC's arguments defy the statute's plain terms. The Helms-Burton Act defines "confiscated property" as "the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property." 22 U.S.C. §6023(4). It then defines "property" broadly to include many distinct and distinctly limited interests in property. Under the Act, "property" means "any property … whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest." *Id.* §6023(12)(A). The Act's plain terms thus recognize the basic reality that "not all property rights are the same." App.20.

HDC's strident assertion that the decision below limited the Helms-Burton Act's definition of property to "plenary, perpetual property interests," Pet.27, thus gets things exactly backwards. The Eleventh Circuit acknowledged that the Act "encompasses time-limited property interests like the concession" here. *Contra*

Pet.27. *See, e.g.*, App.21. But rather than treating those time-limited interests as if they were indistinguishable from perpetual fee interests, the Eleventh Circuit respected the limits inherent in "property interests like the concession." It is thus HDC, not the decision below, that fails to give full effect to the breadth of the Act's definition of property.

Indeed, adopting HDC's contrary position would flout basic principles of property law. HDC casts the duration of the concession as some ancillary attribute of the property relevant only to its value. But "[a]n interest in real property is defined by the metes and bounds that describe its geographic dimensions *and* the term of years that describes the temporal aspect of the owner's interest." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 331-32 (2002) (emphasis added). Disregarding the temporal limits of a usufructuary interest makes no more sense than disregarding the geographic limits of a freehold interest. *See* App.21-22. No one would seriously argue that the fee-simple owner of a baseball field in Havana could bring a Helms-Burton Act suit against someone who used a neighboring park, let alone against someone that docked at the pier miles away. And for all of HDC's overheated rhetoric, there is no more reason to ignore temporal limitations on property interests than spatial limits.

To try to evade (or at least elide) that reality, HDC focuses on the statute's use of the word "claim." To be sure, "claims certified by the Foreign Claims Settlement Commission provide 'conclusive proof' of the plaintiff's ownership of the property described in the claim." Pet.25 (quoting 22 U.S.C. §6083(a)(1)). But the certification addresses only what was

confiscated, which remains a time-limited concession, rather than a perpetual fee-simple interest in the docks. Accordingly, the Commission's certification of HDC's claim does not help HDC. Indeed, HDC admitted before the Commission that its concession always provided "for transfer of ownership of the pier property to the Cuban Government in the year 2004." NCL.Dkt.235-12 at 2. Consistent with that admission, the Commission's certification itself limited the scope of the claim to a usufructuary interest in the docks *set to expire in 2004*. NCL.Dkt.43-8 at 5; *see* App.14, 25.

It is no more availing to insist that liability attaches based on "the plaintiff's property interest as it existed when extinguished by the confiscation." Pet.25. At the time HDC's "property interest" was "extinguished by the confiscation" in 1960, it was at most a time-limited usufructuary interest set to expire in 2004, App.11-12, *as the certified claim itself recognizes*, App.14, 25. HDC had every opportunity to rebut the evidence that, as a matter of Cuban law, the terminal remained "national property and for public use" throughout the term of the concession, *e.g.*, Carnival.Dkt.331-1 at 12, 331-3 at 11—yet it did not. Giving full effect to the property interest that existed at the time of confiscation thus ends up with HDC right back where it started: holding a limited interest that expired a decade before the 2016-2019 cruises that formed the basis of the district court's nearly half-a-billion-dollar verdict.

The Eleventh Circuit's decision respects Congress' choice to take property interests as they are. HDC's position, by contrast, would mean that the Helms-Burton Act grants it an altogether different property interest than the one that was confiscated. HDC is not

even coy about this. In its telling, the "question" in a Helms-Burton Act case is "did the defendant traffic in property in Cuba as to which the plaintiff has a confiscation claim against the Cuban government?" Pet.28. But that is emphatically not the question the statute asks. The question the statute poses is whether the defendant "traffic[ked] in property which was confiscated by the Cuban Government," provided that the plaintiff "owns the claim to such property." 22 U.S.C. §6082(a)(1)(A). Here, the Cuban government always owned the docks, and it had a reversionary interest upon the concession's expiration. The docks themselves thus could not be "property which was confiscated by the Cuban Government," *id.*, because the Cuban Government could not confiscate its own property. HDC's arguments thus depend not only on ignoring basic principles of property law, but on rewriting the statute Congress enacted, which nowhere "suggest[s] that Congress intended to grant victims of property confiscations more rights to the property than they would otherwise have simply by virtue of the confiscation." App.22.

As a last-ditch effort, HDC faults the Eleventh Circuit for failing to address other types of property interests, like patents. *See* Pet.28. To be sure, there are strong arguments against allowing the Helms-Burton Act to effectively convert a patent for a term of years into a permanent patent contradicting the basic patent-law bargain. But that is by no means settled, which is an affirmative reason why it was prudent for the Eleventh Circuit to decide only the case before it and not pre-decide issues that will get the benefit of full briefing if and when they actually arise. In short, the Eleventh Circuit's decision to decide no more than

necessary has a strong pedigree. *See PDK Laboratories, Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in judgment) ("if it is not necessary to decide more, it is necessary not to decide more"). It also renders the narrow and factbound decision below an exceedingly poor candidate for plenary review.

II. This Case Presents A Poor Vehicle To Review The Question Presented.

In a brief full of overstatements, the single greatest may well be the claim that this is "a perfect vehicle." Pet.32. The decision below is deeply factbound, turning on the particular metes and bounds of a particular property interest governed by the vagaries of Cuban property law. That idiosyncratic property interest is unlikely to be the subject of further litigation—except, of course, in the remand proceedings in *this* case. HDC neglects to mention that the decision below is nonfinal as to its "trafficking claims" against Carnival, who by virtue of subsequently acquiring an interest in non-U.S. companies is subject to allegations concerning the alleged use of the docks "from 1996 to 2001." App.27-28. While the interlocutory nature of a federal-court decision is not a jurisdictional obstacle, it certainly renders this case an imperfect vehicle. *See, e.g., Harrel v. Raoul*, 144 S.Ct. 2491, 2492 (2024) (Thomas, J., respecting the denial of certiorari) ("This Court is rightly wary of taking cases in an interlocutory posture.").

The interlocutory nature of the decision below is just the tip of the imperfection iceberg. Resolving the threshold question HDC presents ("whether a plaintiff

must prove that the defendant trafficked in property confiscated by the Cuban government as to which the plaintiff owns a claim," Pet.i) in HDC's favor would hardly translate into a certain victory for HDC. The time-limited nature of HDC's property was just one of the many objections respondents raised below to the district court's award to HDC. By agreeing with respondents on the timing issue, the Eleventh Circuit obviated the need to reach those serious arguments, but they underscore that the petition hardly presents a case-dispositive issue of law. Indeed, there would be multiple additional fatal problems that stand as an obstacle to HDC's ultimate recovery.

To begin, the concession's time limits are not even the only factbound concession-specific problems with HDC's trafficking theory. HDC's concession was not just limited in time; it was limited to cargo operations (and even then, did not confer an exclusive right). *See* Carnival.Dkt.73-3 at 8. The cruise lines used the docks for passenger services, not cargo operations. Thus, in yet one more dimension, respondents' actions did not implicate any property interest that HDC *ever* held.

And the problems with HDC's claims only multiply from there. Despite its paean to the Executive's foreign-policy prerogatives, HDC glosses over the Executive's foreign-policy decision that led to the use of the docks at issue here—namely, President Obama's historic decision to reopen Americans' access to Cuba. That (short-lived) policy shift explains why the cruise lines that had respected the travel embargo for decades began including Havana on their itineraries. And even then, respondents began stopping in Havana only after close coordination and

active encouragement from Executive Branch officials anxious to facilitate to people-to-people exchanges. That is not just a helpful contextual fact; it is a(nother) complete defense. Congress exempted from the definition of "traffic[king]" all "transactions and uses of property" that are "incident to lawful travel to Cuba" and "necessary to the conduct of such travel." 22 U.S.C. §6023(13)(B)(iii). Travel-related transactions are lawful if "they are authorized by OFAC regulations at the time of the transaction." Brief for United States as Amicus Curiae at 15, *Garcia-Bengochea v. Carnival Corp.*, No. 20-12960, 2022 WL 1135129 (11th Cir. Apr. 11, 2022).

That describes the conduct relevant here to a T. The Executive not only told respondents that "the provisions of [the] general license" that OFAC had granted authorized their cruising, NCL.Dkt.235-18 at 2, but repeatedly rebuffed HDC's entreaties to treat them as unlawful traffickers for that reason. And the cruise lines docked in Havana only because that was where the Cuban government required them to dock. *See* NCL.Dkt.240-27 at 5 (State Department official explaining to HDC that it "was necessary for the cruise lines to use" the docks). The Executive Branch's approval of respondents' travel and the Cuban government's mandate to use the particular docks in question conclusively refute any notion that respondents' subsequent use of the docks violated the Helms-Burton Act. After all, "a person 'traffics' in confiscated property" under the Act only "if that person *knowingly and intentionally*" commits certain acts involving "confiscated property." 22 U.S.C. §6023(13)(A) (emphasis added).

The district court was able to find the lawful-travel exception inapplicable only by fly-specking the details of respondents' travel itineraries. NCL.Dkt.367 at 119-24. As respondents explained below, that analysis was misguided and would affirmatively undermine the Executive's ability to conduct diplomacy and adjust travel relationships. *See* CA11.Dkt.80 at 53-58. After all, the President cannot expand or restrict travel and people-to-people exchanges if the price on private companies for making those adjustments a reality is the prospect of crippling liability.

Respondents raised additional arguments below on everything from liability to damages to calculating interest. *See* CA11.Dkt.79; CA11.Dkt.80. The Eleventh Circuit did not reach those arguments, but in a case where there is a conceded lack of a circuit split, the multiple alternative grounds for reversing the district court render this a highly imperfect vehicle. In short, this Court does not grant certiorari to engage in error correction, and here there is no error to correct. There is instead a factbound and eminently correct decision that obviated the need for the Eleventh Circuit to address multiple alternative grounds for reversing the district court. There is quite simply no reason to grant review.

III. HDC's Claims About The Decision Below's Importance Are Wildly Overblown.

HDC makes some extreme claims about what the Eleventh Circuit's decision portends for U.S.-Cuba relations. *See* Pet.16, 22-23. But HDC's rhetoric is belied by reality: The real threat to U.S. foreign policy was the prospect that cruise lines who responded to

Executive encouragement to reopen travel to Cuba would face hundreds of millions of dollars in liability for following the Executive's lead.

Moreover, despite HDC's grand declarations about the Helms-Burton Act's role in "the Nation's foreign policy toolkit," Pet.32, "only 26 lawsuits" were filed in the year after Title III's activation, John B. Bellinger III, *The First Year of Helms Burton Lawsuits*, Lawfare (Apr. 23, 2020), https://perma.cc/K7ZK-5GBG. And the targets of those suits were not foreign investors that provide ongoing capital to the Cuban government. Instead, "the majority of defendants" sued to date "have been U.S. companies whose activities touch Cuba only in some minor way, rather than the Cuban companies or foreign companies that now own, lease, or operate property in Cuba." Bellinger, *supra*. The result has thus been "a boomerang effect, causing legal and financial suffering for U.S. companies that are not actually present in Cuba." *Id.*

But even assuming that Title III is a critical tool, its place in the toolkit remains secure. The decision below simply ensures that the tool is applied to property interests that were actually confiscated. Thus, as the limited remand underscores, the decision below did not eliminate liability for any trafficking that occurred here before 2004. And if some other concession began its 99-year term in 1945 instead of 1905, they would be protected against trafficking for another two decades.

Nor were property interests of U.S. persons in pre-Castro Cuba limited to concessions and leaseholds. Plenty of U.S. persons owned property in Cuba in fee

simple and so their ability to bring Title III litigation is entirely unaffected by the decision below. Indeed, just last month, the Eleventh Circuit allowed a Helms-Burton action based on a family company's fee-simple ownership interest in land confiscated by the Cuban government to continue, in an opinion written by the author of the dissent below and joined by the author of the decision below. *See Seaboard Marine*, 135 F.4th at 944-45, 952-55. That decision not only underscores the narrow property-interest-specific nature of the decision below, but makes clear that the rumors of Title III's demise in the Eleventh Circuit are greatly exaggerated.

Notably, the *Seaboard Marine* court "le[ft] for another day whether and how th[e Act's 'lawful travel'] exception might apply to other Cuba-related commercial activities *such as cruise ship travel*." *Id.* at 961 (Jordan, J., concurring). And just last month, the first jury verdict ever rendered under Title III of the Helms-Burton Act awarded nearly $30 million against Expedia, Hotels.com, Orbitz, and related entities. *See* Jury Verdicts, *Echevarria* v. *Trivago GMBH*, No. 19-22621 (S.D. Fla. Apr. 18, 2025).

Those results give the lie to HDC's sky-is-falling claims about what the decision below portends for Helms-Burton Act litigation. The *Seaboard Marine* court held (in an opinion written by Judge Brasher) that *other* property in which the same family had an interest could *not* form the basis of a trafficking claim, based on that interest's particular metes and bounds. 135 F.4th at 951-52. In reality, what these two Eleventh Circuit decisions reaching different results despite a substantial overlap in panel composition demonstrates is that "[i]nterests in real property are

as varied as the colors and shades on a paint wheel." App.21. That makes any one decision turning on the specific metes and bounds of the property interest at issue about as factbound as decisions can get. The concession here expired in 2004. That has consequences for uses of that one property that occurred after 2004 and almost nothing else.

There is thus no need to call for the views of the Solicitor General. While the Solicitor General may be "learned in the law," 28 U.S.C. §505, he has no special expertise or interest in weighing into factual disputes turning on Cuban property law. And when it comes to the dispositive issue reached by the court of appeals here, it only takes a calendar, not any great legal acumen, to confirm that 2016 came after 2004.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

E. JOSHUA ROSENKRANZ
ROBERT M. LOEB
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000

J. DOUGLAS BALDRIDGE
ANDREW T. HERNACKI
VENABLE LLP
600 Massachusetts Ave., NW
Washington, DC 20001
(202) 344-4000

Counsel for Respondents MSC Cruises S.A. and MSC Cruises (USA), Inc.

KANNON K. SHANMUGAM
WILLIAM T. MARKS
ABIGAIL FRISCH VICE
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300

Counsel for Respondent Carnival Corporation

PAUL D. CLEMENT
Counsel of Record
MATTHEW D. ROWEN
NICCOLO A. BELTRAMO
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

Counsel for Respondent Royal Caribbean Cruises, Ltd.

DEREK L. SHAFFER
CHRISTOPHER G. MICHEL
NICHOLAS J. CALUDA
QUINN EMANUEL URQUHART& SULLIVAN, LLP
1300 I Street, NW, Suite 900
Washington, DC 20005
(202) 538-8000

Counsel for Respondents Norwegian Cruise Line Holdings Ltd.

May 23, 2025