

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
U.S. Court of Appeals for the Eleventh Circuit**

REPLY BRIEF FOR PETITIONER

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**RULE 29.6 CORPORATE DISCLOSURE
STATEMENT**

Havana Docks Corp. has no parent company, and no publicly listed company owns 10 percent or more of its shares.

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ARGUMENT

The private right of action set out in Title III of the LIBERTAD Act, 22 U.S.C. §§ 6081-6085, is a pillar of this nation's sanctions directed against the Cuban government. Those sanctions are essential to the nation's foreign policy regarding Cuba and the Western Hemisphere. The Eleventh Circuit is the locus of most Title III claims, and in the decision below it adopted a generally applicable legal standard for resolving a threshold issue that arises for every Title III claim. The Eleventh Circuit's new standard significantly narrowed the intended broad scope and deterrent effect of Title III, contrary to the Act's text and the expressly stated objectives of Congress. The result is to impair the operation of those sanctions and impede U.S. foreign policy. That type of encroachment on the political branches' conduct of foreign affairs has often warranted this Court's review, as it does here.

The cruise lines contest little of this. Instead, their arguments rest on their claim that the opinions below concern only a fact-bound dispute over a particular property interest. However, those competing majority and dissenting opinions do not remotely support that reading. Instead, they neatly frame a dispute over the legal standard to be applied in each Title III case and whether the majority's rule is consistent with the statute's text. The cruise lines also belittle the importance of Title III, turn a blind eye to the Congressional and Presidential interests at stake, and incorrectly claim that this case presents a poor vehicle for this Court to consider the statutory issue at hand. None of these points diminishes the importance of the issue presented by the Eleventh Circuit's decision or the need for this Court's review.

I. The Decision Below Presents a Significant Issue Concerning the Legal Standard Governing the Scope of Title III and Our Nation’s Sanctions Against Cuba.

A. The Eleventh Circuit Adopted a Generally Applicable Legal Standard.

The cruise lines can claim that this case is “factbound” only by completely failing to acknowledge or address the Eleventh Circuit’s new legal standard governing Title III claims or the dueling opinions below addressing it. If that narrow legal standard stands, Title III will fail to achieve Congress’s principal objective of deterring companies from venturing with the Cuban government to exploit property confiscated from U.S. nationals. That issue could not be further from “factbound.”

One would not know from the Opposition that the opinions below even contest the appropriate standard governing Title III claims. For such claims, the panel majority’s test requires courts “to view the property interest as if there had been no expropriation and then determine whether the alleged conduct constituted trafficking in that interest.” Pet. App. 20a. The majority used its opinion to “set out our reasoning” in support of that generally applicable standard. *Id.*

Judge Brasher, however, favored a different standard grounded in the statute’s text. Recognizing that the Cuban government’s confiscation of property extinguished any property interest held by U.S. nationals and that Congress focused on providing a remedy for victims of those confiscations, he construed Title III as “creat[ing] a private cause of action for any

U.S. national who owns a ‘claim’ to ‘property which was confiscated’ against anyone who commercially benefits from the stolen property.” *Id.* 29a (quoting 22 U.S.C. § 6082(a)(1)(A)). His entire dissent is directed toward showing that “[t]he majority’s counterfactual analysis ... is incompatible with the text of the Act and undermines its remedial purpose.” *Id.* 30a. The dissent describes “three problems with this judicially created prove-a-counterfactual requirement” – how the majority’s standard lacks support in the statute’s text, focuses on the wrong property, and “voids many of the property interests that are expressly protected by the statute.” *Id.* 33a. The Petition simply drew these divergent legal standards to the Court’s attention as meriting its review, and elaborated and supplemented points made by Judge Brasher.

The cruise lines address none of this. The majority’s and dissent’s battle of legal standards makes no appearance in their opposition brief. The majority’s test is not mentioned in the entire argument section and is noted in passing in the fact section only as an implication, not the foundation, of the majority’s analysis of property interests subject to Title III claims. Br. in Opp. 11. According to the cruise lines, “[t]he sum-total of the Eleventh Circuit’s holding is that HDC’s time-limited interest expired before 2016,” and Judge Brasher simply “thought the correct subject of the analysis was ‘the docks’ themselves.” *Id.* 11, 15. But as reflected in the opinions themselves, the focus, structure, and content of the panel’s opinions do not remotely support this reading.

B. The Eleventh Circuit's Erroneous Legal Standard Severely Narrows the Scope and Operation of Title III.

By not acknowledging that the majority set out a generally applicable standard for determining when dealings with confiscated property give rise to trafficking claims, or that the court below chose a narrow standard over a broad one, the cruise lines also fail to address the broader implications of that choice.

Those issues lie at the heart of the Petition and the choice presented to this Court. If, as Judge Brasher noted, the majority's "test effectively voids many of the property interests that are expressly protected by the statute," Pet. App. 33a, and if, as the Petition argued, the majority's test presents a range of litigation advantages to traffickers and difficulties of proof for the victims of trafficking in nearly every case, see Pet. 18-19, then the Eleventh Circuit's decision significantly narrows the scope and intended deterrent and remedial effect of Title III. The cruise lines point to two recent cases that did not foreclose a Title III remedy. See Br. in Opp. 26-27. But the fact that a remedy may be available in some cases does not diminish the broad significance of the majority's rule for others, or for Cuba's trading partners who consider exploiting confiscated property. Review is warranted even if the Eleventh Circuit's new rule only cripples but does not fully erase Title III.

Of the range of property interests the majority's rule excludes from Title III's remedial scope, the cruise lines address only confiscated intellectual property. The cruise lines claim that it was "prudent" for the majority not to address the issue directly, and

nor do they. Br. in Opp. 20. But that argument ignores how the majority's standard will *necessarily* preclude such claims, because those confiscated intellectual property interests are time-limited in exactly the way Havana Docks' interest was found to be limited. The cruise lines' argument also provides no response to the broader point that "contingent, future, and time limited" interests (all protected by the Act) are no longer "protectible under the majority's rule." Pet. App. 34a (Brasher, J.). Under the majority's rule and counterfactual analysis, claims based on time-limited interests fall away as the decades continue to pass. Traffickers remain free to exploit confiscated property where future interests would not have vested in that counterfactual world. And in that world, contingent interests related to trafficked property will remain unprotected whenever the contingency is uncertain or has not occurred. Nor do the cruise lines address the newly created, pervasive difficulties of proof arising in the "prove a counterfactual" world created by the majority. *Id.* 36a (Brasher, J.).

This case presents those concerns front and center. The cruise lines claim this case amounts to only a simple property dispute, where the "dispositive issue" is as simple as "confirm[ing] that 2016 came after 2004." Br. in Opp. 27. That could be so *only* if the panel majority's test applies (and if Havana Docks' concession remained unchanged in the counterfactual "but for" world of no confiscation, without further extensions of the concession term as in the past). If, however, Judge Brasher's legal standard applies, then the issue has nothing to do with what would have occurred in the absence of confiscation or with the hypothetical end dates of property interests extinguished in 1960. Instead, a remedy is afforded to

parties such as Havana Docks when another party exploits confiscated property encumbered by the victim's claim – here, a certified claim, with even stronger statutory protections. See 22 U.S.C. § 6082(a)(2). Under that construction of the statute, remedies are fixed at the time of confiscation, and do not twinkle into existence or fade away based on changes to property arrangements that may have been anticipated in 1960 but in the real world never occurred.

C. Title III Is Important for Enforcing the Nation's Sanctions Against Cuba.

The cruise lines argue that whether Title III is construed broadly or narrowly is insignificant because few Title III claims arise in federal courts and those that do often involve U.S. defendants. Br. in Opp. 25. They calculate that “only” 26 cases were brought in the year following the reinstatement of Title III's cause of action. *Id.*

Belittling Title III is a bold strategy, and very misguided. Congress made clear that providing a remedy for trafficking in confiscated property, whenever a U.S. national held a claim arising from it, is fundamental to the nation's foreign policy of deterring trade with Cuba and that “the victims of these confiscations should be endowed with a judicial remedy.” 22 U.S.C. § 6081(11); see also *id.* §§ 6022(6), 6081(6) & 6082(a)(1) (traffickers “shall be liable to any United States national who owns the claim to such property”). The remedy was needed, as Congress states clearly in the Act's text, to pressure the Cuban government to adopt democratic reforms, to starve the Cuban government of funds used to oppress its population, to encourage the Cuban government to

satisfy the confiscation claims of U.S. nationals, and “[t]o deter trafficking in wrongfully confiscated property.” *Id.* § 6081(11); see also *id.* §§ 6081(2)-(3), (6) & (10).

The cruise lines’ argument based on the number of cases brought in federal court, Br. in Opp. 25, gets Congress’s intent exactly backwards. Congress intended Title III to operate principally as a *deterrent* to trade with Cuba. Title III’s importance is not reflected in the number of cases brought,¹ but rather in how little trafficking in confiscated property occurs. Congress plainly sought to deter trafficking altogether (in which event *no* cases would be brought), and to that end it attached very significant liabilities to a successful Title III claim. See 22 U.S.C. §§ 6082(a)(1) & 6082(a)(3)(c); *id.* § 6081(11) (deterrent purpose). Judge Brasher’s plain reading of Title III advances that objective, and the majority’s narrow construction undermines it.

Nor is there any support in the Act for the cruise lines’ notion that Congress directed Title III only or principally against foreign traders who use U.S. nationals’ confiscated property. Br. in Opp. 25.² The

¹ There is, in any event, no shortage of Title III claims. Claims filed in the first year following the reinstatement of the private right of action, see Br. in Opp. 25, are only a portion of the claims that have been asserted, and claims continue to be pursued – as the cruise lines themselves confirm in pointing to two recent cases, *id.* 26-27, and as this Court recently recognized in calling for the views of the Solicitor General in a Title III action brought by Exxon Mobil. See Order, *Exxon Mobil Corp. v. Corporación Cimex S.A.*, No. 24-699 (May 5, 2025).

² In any event, MSC Cruises (USA), LLC is the only defendant cruise line incorporated in the United States. See L. Miranda, I.

statutes and regulations that form the sanctions program against Cuba generally apply to U.S. persons to prevent their money flowing to the Cuban government, and Congress intended Title III to operate as part of that broader sanctions structure. See Pet. 8-10. While Title III may have been controversial in *also* encompassing certain foreign entities, it clearly applies to U.S. and foreign companies, and Congress is fully empowered to make that choice.

D. The Cruise Lines Understate the Congressional and Presidential Interests At Stake.

Because the cruise lines turn a blind eye to the Eleventh Circuit's legal standard, they downplay the separation of powers concerns presented by its narrow construction of Title III. However, Congress made clear that a more robust view of Title III advances its foreign policy objectives, including by providing a remedy for all U.S. nationals who hold claims related to trafficked, confiscated property. See 22 U.S.C. §§ 6081(6) & 6081(11); *id.* § 6082(a)(1). Presidents, and especially the current President, also have been highly sensitive to the foreign policy implications of how the sanctions and Title III operate. See Pet. 1-2.

One of the cruise lines' omissions in this respect is especially significant. When dismissing (in three sentences) the potential relevance of any views the Solicitor General might offer in this case, Br. in Opp. 27, the cruise lines fail to mention this Court's recent call for the Solicitor General's views in another

Soisson, *Most Cruise Lines Don't Pay Federal Income Tax*, NBC News (March 31, 2020), <https://tinyurl.com/b5bssthld>.

Title III case. See Order, *Exxon Mobil Corp. v. Corporación Cimex, S.A.*, No. 24-699 (May 5, 2025). The Court’s action reflects the continued importance of Title III and the relevance of securing the Executive Branch’s views on such foreign policy matters. The *Exxon* case addresses the effect Congress intended Title III to have on foreign sovereign immunity. If this Court does not grant Havana Docks’ petition outright, the Solicitor General might usefully be asked to provide the Executive Branch’s views of Title III’s application in this case, too, which in contrast to *Exxon* concerns a threshold issue arising in all Title III cases and involving all types of defendants.

The cruise lines also dismiss the value of the Solicitor General’s views because this case supposedly concerns only “factual disputes turning on Cuban property law.” Br. in Opp. 27. But as noted, this case presents a dispute over the appropriate legal standard applicable in all Title III cases, which will determine how broadly or narrowly Title III sweeps. That issue, in turn, also bears directly on this Administration’s emerging Cuba and Western Hemisphere policies, as Secretary of State Rubio noted when he blocked President Biden’s earlier effort to suspend Title III’s operation. See U.S. Dep’t of State Press Statement, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), <https://tinyurl.com/2mrrv726> (“The Trump Administration is committed to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime.”).

When the cruise lines do touch on Presidential power, they mischaracterize its operation. They claim that President Obama in some manner “authorized” their funding of the Cuban government in pursuit of

tourism profits. Br. in Opp. 22-23. In fact, President Obama addressed travel to Cuba, not tourism in Cuba, and did not “license” any of the cruise lines’ onshore activities. *Id.* 9. The legal restrictions prohibiting tourism in Cuba remained in force. See 31 C.F.R. §§ 515.565(c) (2015-2017) & 515.565(f) (2017-2019) (“[t]ransactions related to activities that are primarily tourist-oriented are not authorized pursuant to this section”); *id.* § 515.560(f) (2015-2018) (no authorization “in connection with tourist travel to Cuba.”). It takes no “fly-specking,” Br. in Opp. 24, to tell that the cruise lines are, if nothing else, in the tourism business.

E. This Case Directly Presents the Statutory Issue.

Finally, the cruise lines claim this case is a “poor vehicle” for addressing the Title III issue because it comes to the Court in an “interlocutory” posture and “hardly presents a case-dispositive issue of law.” Br. in Opp. 21-22. That argument provides no basis for denying review.

For three of the four defendants – and three of the four separate judgments at issue – the Eleventh Circuit’s decision ends the dispute unless this Court grants the Petition. Those cases are otherwise final. Without review, those cruise lines’ calculated business decision that they could escape punishment for funding and venturing with the Cuban government will pan out. One defendant, Carnival, would face the prospect of further litigation, but that is no bar to review even for that defendant. See S. Shapiro *et al.*, *Supreme Court Practice* § 4.18 (11th ed. 2019). The remaining issue in Carnival’s case involves dealings Carnival’s affiliates had with the Cuban

government in the late 1990s and early 2000s. However that dispute is resolved, it would not implicate the Eleventh Circuit's interpretation of Title III giving rise to the Petition or undermine the finality of the other judgments in the other cases.

As for issues that would remain on remand if this Court reverses the Eleventh Circuit's Title III standard, the cruise lines cite nothing for their "case-dispositive issue of law" standard. Br. in Opp. 22. That standard would make no sense, especially for cases intruding on the conduct of foreign policy. This Court routinely addresses important or threshold issues of law where a ruling would not end the case. Indeed, much of its docket would evaporate if the Court took cases only when reversal would end the dispute. The issues that would remain for the Eleventh Circuit on remand are, in any event, quite distinct from the dispute over the generally applicable Title III standard. They concern calculation of damages and interest, the "tourism" issue noted above, and other issues raised by the cruise lines and all rejected by the district court in carefully reasoned decisions leading to entry of judgments against each cruise line. This case directly and cleanly presents that significant Title III issue for this Court's resolution.

CONCLUSION

For the foregoing reasons, this Court should grant Havana Docks' petition for writ of certiorari or, at the very least, call for the views of the Solicitor General.

Respectfully submitted,

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