No. 24-699

In the Supreme Court of the United States

EXXON MOBIL CORPORATION, PETITIONER

v.

CORPORACIÓN CIMEX, S.A. (CUBA), ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. 6021 *et seq.*, which creates for U.S. victims of unlawful expropriation by the Cuban government a damages action against those who traffic in the expropriated property, permits suit against Cuban agencies or instrumentalities, or whether such claims are barred by foreign sovereign immunity unless they also satisfy an exception codified in the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1330, 1391(f), 1441(d), 1602 *et seq*.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

INTRODUCTION

The United States has compelling foreign-policy interests in ensuring that U.S. nationals whose assets were illegally expropriated by Fidel Castro's communist regime receive recompense and in preventing the Cuban government from further benefiting from its wrongdoing. In the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. 6021 *et seq.*, Congress provided a vital mechanism to impose accountability on the Cuban government by authorizing private parties to bring suits against "any person" who traffics in property confiscated by the Cuban government, 22 U.S.C.

6082(a)(1)(A), including "any agency or instrumentality of a foreign state," 22 U.S.C. 6023(11). Recognizing the foreign-policy significance of such suits, Congress authorized Presidents to suspend their availability, see 22 U.S.C. 6085(c)—as Presidents did until President Trump's administration allowed them to proceed in 2019, Pet. App. 5a. President Trump has continued to determine that such suits should go forward.

The D.C. Circuit's split decision, however, upends Congress's carefully calibrated authorization of private suits against Cuban agencies and instrumentalities and thwarts a critical foreign-policy tool. That court reasoned that the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1391(f), 1441(d), 1602 *et seq.*, provides the exclusive grounds for establishing jurisdiction over a foreign state, and that suits against Cuban governmental entities cannot proceed under the LIBERTAD Act unless they satisfy an enumerated exception to foreign sovereign immunity under the FSIA. Pet. App. 15a.

This Court should grant review and hold that Title III suits against Cuban agencies and instrumentalities can proceed without having to additionally satisfy one of the enumerated exceptions to foreign sovereign immunity under the FSIA. The D.C. Circuit incorrectly superimposed the FSIA's general framework on a narrow, Cuba-focused statute that clearly abrogates Cuban agencies' and instrumentalities' immunity. That erroneous holding impedes private suits against Cuban agencies and instrumentalities and stymies important foreign-policy interests in holding the Cuban government accountable for continuing to benefit from its illegal expropriations. Review is especially warranted now, during a window when the President has allowed

Title III suits to proceed, and at a time when the United States believes that such suits could meaningfully contribute to American foreign-policy objectives involving Cuba.

STATEMENT

A. Statutory Background

1. Foreign states have long enjoyed broad immunity from suit in American courts. See *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp. Ltd*, 145 S. Ct. 1572, 1577 (2025). Because foreign sovereign immunity originated in U.S. courts as a common-law doctrine, "courts traditionally 'deferred to the decisions of the political branches—in particular, those of the Executive Branch.'" *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 271 (2023) (citations omitted).

In 1976, Congress enacted the FSIA to provide a "comprehensive set of legal standards governing claims of immunity" by foreign states as well as their agencies and instrumentalities, including state-owned companies. *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 488 (1983); see 28 U.S.C. 1603(a) and (b).

The FSIA grants foreign states and their agencies and instrumentalities immunity from civil suits, unless enumerated exceptions apply. Where FSIA immunity applies (and subject to certain international agreements not relevant here), such entities are "immune from the jurisdiction of the courts of the United States and of the States." 28 U.S.C. 1604. But that immunity is subject to exceptions, including where "the action is based upon a commercial activity" that "causes a direct effect in the United States," 28 U.S.C. 1605(a)(2); and where "rights in property taken in violation of international law are in issue" and a foreign state entity owns the property and

is engaged in "commercial activity" in the United States, 28 U.S.C. 1605(a)(3); see 28 U.S.C. 1605-1607.

If the FSIA's exceptions to immunity apply, foreign states and their agencies and instrumentalities can be liable on the same terms as private parties. 28 U.S.C. 1606. Further, if an exception applies, the FSIA grants federal district courts jurisdiction to hear civil suits against foreign states and supplies personal jurisdiction if the FSIA's service-of-process requirements are satisfied. See 28 U.S.C. 1330(a) and (b), 1608.

The FSIA separately provides that property in the United States owned by a foreign state is presumptively immune from "attachment[,] arrest[,] and execution," 28 U.S.C. 1609, subject to distinct exceptions, see 28 U.S.C. 1610-1611.

2. This case involves the interplay between the FSIA and the LIBERTAD Act. Enacted in 1996, that Act authorizes U.S. nationals to pursue a private damages action against "any person" who traffics in property that the Cuban government confiscated to which they own the claim, 22 U.S.C. 6082(a)(1)(A), and defines "person" as including "any agency or instrumentality of a foreign state," 22 U.S.C. 6023(11).

Before the Cuban Revolution, "Americans were encouraged to and did invest heavily in Cuba's economy," which was substantially "developed with American capital." U.S. Foreign Claims Settlement Comm'n, *Section II Completion of the Cuban Claims Program Under Title V of the International Claims Settlement Act* 71 (1972). But after Fidel Castro seized power in 1959, "the Government of Cuba effectively seized and took into state ownership" U.S. nationals' property. *Id.* at 69. The United States has sought compensation for those wrongful expropriations for more than 60 years.

"In 1964, Congress established a mechanism for U.S. nationals to submit expropriation claims against Cuba to the U.S. Foreign Claims Settlement Commission." Pet. App. 3a; Act of Oct. 16, 1964, Pub. L. No. 88-666, 78 Stat. 1110 (22 U.S.C. 1643 *et seq.*). Congress charged the Commission with "receiv[ing] and determin[ing] * * * the amount and validity of claims by nationals of the United States against the Government of Cuba." 22 U.S.C. 1643b(a). In total, "[t]he Commission ultimately certified $1.9 billion in claims." Pet. App. 42a (Randolph, J., dissenting).[1] But that process did not provide any means for victims to obtain compensation.

In 1996, Congress addressed that problem through the LIBERTAD Act. The Act codifies the United States' longstanding embargo of Cuba. See 22 U.S.C. 6032(h), 6064(a). Particularly relevant here, Title III of the Act provides Americans with tailored redress for "unjust enrichment from the use of wrongfully confiscated property." 22 U.S.C. 6081(8). Title III aims to provide U.S. nationals "a judicial remedy * * * that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. 6081(11). Title III does so by creating a damages remedy for certain U.S. nationals whose property was confiscated by the Castro regime: "any person" who "traffics in" such property "shall be liable" for money damages to the U.S. national who owns the claim to the property. 22 U.S.C. 6082(a)(1)(A). The Act defines "person" as "any person or entity, including any agency or instrumentality of a foreign state." 22 U.S.C. 6023(11). Elsewhere, the Act expressly contemplates claims and judgments against Cuban agencies and instrumentalities.

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[1] The current value of all certified claims (principal and interest) is approximately $9.2 billion.

See 22 U.S.C. 6082(a)(7)(B) (excluding "any claim against the Cuban Government" from property transfers that would otherwise be regulated); 22 U.S.C. 6082(d) ("any [Title III] judgment against an agency or instrumentality of the Cuban Government" becomes unenforceable against a transition or democratic government); see also 22 U.S.C. 6064(a) (authorizing the President "to suspend" suits "filed against the Cuban Government").

The Act broadly defines "'traffics'" as "knowingly and intentionally" taking a variety of actions with respect to confiscated property, including selling or otherwise disposing of it, holding an interest in it, or using it in commercial activity. 22 U.S.C. 6023(13)(A). In addition to costs and attorneys' fees, the Act allows treble damages for certain claims. See 22 U.S.C. 6082(a)(3).

Title III indicates that district courts have subject-matter jurisdiction over Title III cases under the federal-question statute. See 22 U.S.C. 6082(c)(1) (characterizing an "action[ ] under" Title III as an "action brought under section 1331 of title 28"). Title III also incorporates the FSIA's rules for service of process on foreign state agencies and instrumentalities. See 22 U.S.C. 6082(c)(2) (incorporating 28 U.S.C. 1608). To the extent there are conflicts between Title III and Title 28, Title III controls. See 22 U.S.C. 6082(c)(1).

The LIBERTAD Act also amended the FSIA to provide that a foreign state's property is immune from attachment and execution to satisfy a Title III judgment if it is "a facility or installation used by an accredited diplomatic mission for official purposes." 28 U.S.C. 1611(c). Such facilities are protected even if an FSIA exception to execution immunity otherwise applies. See *ibid.*

3. The LIBERTAD Act includes numerous provisions that defer to the President's foreign-affairs determinations regarding Cuba. Congress authorized the President to suspend the Act's effective date, 22 U.S.C. 6085(b), though that authority was never exercised. The President may terminate "[a]ll rights created" under Title III's cause of action if he determines that "a democratically elected government in Cuba is in power." 22 U.S.C. 6082(h)(1). Most relevant here, Title III authorizes the President to "suspend [for six months] the right to bring an action" under Title III, and impose additional six-month suspensions upon appropriate notice to Congress. 22 U.S.C. 6085(c)(1)(B) and (c)(2). From 1996 until 2019, presidential administrations suspended Title III suits for successive six-month periods.

In 2019, however, the Trump administration allowed the suspension to expire to provide "a chance at justice" and compensation for Americans and hold "the Cuban Government accountable for seizing American assets."[2] Thus, beginning on May 2, 2019, Title III plaintiffs could bring suits for the first time. See Pet. App. 5a, 56a. On January 14, 2025, the outgoing administration sent a letter to Congress attempting to reinstate the suspension of Title III actions beginning on January 29, 2025.[3] But on January 29, Secretary Rubio withdrew that letter, emphasizing the current administration's

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[2] Press Release, Michael R. Pompeo, Sec'y of State, *Remarks to the Press* (Apr. 17, 2019), https://perma.cc/9MYA-HMJE.

[3] See Letter from Joseph R. Biden Jr., U.S. President, *Letter to the Chairmen and Chair of Certain Congressional Committees on the Suspension of the Right to Bring an Action Under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996* (Jan. 14, 2025), https://perma.cc/URJ5-U26A.

"commit[ment] to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime." Press Statement, Marco Rubio, Sec'y of State, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), https://perma.cc/HL77-66QG. Title III is in full effect.

Cuba is a present national security threat and a designated State Sponsor of Terrorism. See *Restoring a Tough U.S.-Cuba Policy*, *supra*. The United States remains committed to promoting "more freedom and democracy, improved respect for human rights, and increased free enterprise in Cuba," including through economic pressure. Memorandum from Donald J. Trump, U.S. President, to the Vice President and Heads of Federal Departments, *Nat'l Sec. Presidential Mem./NSPM-5* (June 30, 2025), https://perma.cc/RH8E-KVHR. President Trump recently reiterated the United States' policy to "channel funds toward the Cuban people and away from a regime that has failed to meet the most basic requirements of a free and just society." *Ibid.*

B. Proceedings Below

1. Petitioner Exxon Mobil Corporation (formerly Standard Oil) had numerous oil and gas assets in pre-Castro Cuba. Pet. App. 53a-54a. When Castro seized power in 1959, an Exxon subsidiary owned an oil refinery, multiple bulk-product terminals, and more than 100 service stations in Cuba. *Id.* at 3a; Second Am. Compl. ¶ 31. The Castro regime confiscated those properties in 1960. Pet. App. 3a. In 1969, the U.S. Foreign Claims Settlement Commission certified that Exxon's losses totaled approximately $71.6 million. *Id.* at 3a-4a.

2. When President Trump's administration allowed the suspension on Title III actions to expire in May

2019, Exxon sued in the United States District Court for the District of Columbia. Pet. App. 5a, 57a; see 28 U.S.C. 1391(f)(4). Respondents are the three defendants, which are owned by Cuba: Corporación CIMEX S.A. (Cuba) (CIMEX), a conglomerate; its alleged alter ego, Corporación CIMEX S.A. (Panama) (CIMEX-Panama); and Unión Cuba-Petróleo (CUPET), Cuba's state-owned oil company. Pet. App. 5a; see Second Am. Compl. ¶¶ 17-22. Exxon alleges that respondents use Exxon's confiscated properties to import, refine, and sell petroleum products; to sell other consumer goods; and to process remittances. Pet. App. 57a-59a. Exxon seeks damages in the amount of its certified claim, plus interest and treble damages. *Id.* at 4a-6a, 53a.

Respondents moved to dismiss, arguing (inter alia) that they are immune from suit under the FSIA. Pet. App. 59a-60a. Exxon argued that Congress had abrogated respondents' immunity in Title III of the LIBERTAD Act and, alternatively, that its suit could proceed under the FSIA's expropriation or commercial-activity exceptions. *Id.* at 62a; see 28 U.S.C. 1605(a)(2) and (a)(3).

The district court denied the motion to dismiss as to CIMEX, but deferred its ruling and allowed jurisdictional discovery as to CIMEX-Panama and CUPET.[4] Pet. App. 53a, 108a. The district court rejected Exxon's argument that Title III abrogated respondents' immunity, reasoning that "[w]hile Title III provides Exxon with a cause of action against Cuba, it is silent as to sovereign immunity." *Id.* at 65a-66a. The district court then rejected Exxon's invocation of the FSIA's expro-

[4] The district court deferred decision on personal jurisdiction until appellate proceedings resolve subject-matter jurisdiction. Pet. App. 60a.

priation exception because Exxon had possessed only an indirect interest in the property confiscated from its subsidiary. *Id.* at 95a-102a; see 28 U.S.C. 1605(a)(3). But the court found the commercial-activity exception satisfied as to CIMEX. Pet. App. 71a-88a, 95a. As to CIMEX-Panama and CUPET, the court permitted jurisdictional discovery on whether CIMEX-Panama is CIMEX's alter ego, and the extent of CUPET's contacts with the United States. *Id.* at 103a-105a.

CIMEX appealed the denial of sovereign immunity under the collateral-order doctrine. Pet. App. 7a. The court of appeals allowed CIMEX-Panama and CUPET to take interlocutory appeals. *Ibid.* Exxon cross-appealed the district court's rulings that Title III does not abrogate sovereign immunity and that the FSIA's expropriation exception does not apply. *Ibid.*

3. A divided panel of the D.C. Circuit vacated the district court's order and remanded for further proceedings on the commercial-activity exception as to CIMEX.

a. As to whether Title III independently abrogates respondents' immunity, the court of appeals reasoned that the FSIA establishes a "comprehensive framework" and provides the sole basis for asserting jurisdiction over a foreign sovereign. Pet. App. 8a-9a (quoting *Republic of Austria* v. *Altmann*, 541 U.S. 677, 699 (2004)). The court held that Title III provides a cause of action but lacks express language departing from FSIA immunity and that Title III and the FSIA can "harmoniously coexist[ ]" "when an FSIA exception applies." *Id.* at 10a-11a.

The court of appeals held that this Court's decision in *Department of Agriculture Rural Development Rural Housing Service* v. *Kirtz*, 601 U.S. 42 (2024), is dis-

tinguishable. Pet. App. 13a-15a. *Kirtz* held that Congress waived the United States' immunity in the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.*, by authorizing damages suits against "[a]ny person" for violations of the FCRA and defining "person" as including "any . . . governmental . . . agency." 601 U.S. at 50 (quoting 15 U.S.C. 1681a(b), 1681n(a), 1681*o*(a)) (brackets and ellipses in original). Notwithstanding the textual similarity to the statute in this case, the D.C. Circuit reasoned that *Kirtz* and its antecedents dealt with federal or state sovereign immunity, "which derive from different sources than does foreign sovereign immunity" and do not raise the same "foreign-relations concerns." Pet. App. 14a. The majority also read *Kirtz* to find abrogation only where "'recognizing immunity would have negated' the conferral of a cause of action against governments *entirely*." *Id.* at 14a-15a (citation omitted). Because "Title III suits against [foreign] governments can proceed if an FSIA exception applies," the court deemed *Kirtz* non-controlling. *Id.* at 15a.

The court of appeals then agreed with the district court that the expropriation exception does not apply because Exxon owned the confiscated property through its subsidiary. Pet. App. 18a-24a. As to the commercial-activity exception, the court of appeals vacated and remanded for further factfinding and analysis regarding the degree of connection to the United States. *Id.* at 29a-40a.

b. Judge Randolph dissented, reasoning that Title III clearly and unambiguously abrogates respondents' immunity. Pet. App. 41a-51a. He found "scarcely a difference" between the language of Title III and the statutory language at issue in *Kirtz*, which sufficed to abrogate the United States' sovereign immunity. *Id.* at 47a-

48a. He faulted the majority for requiring Congress to "make an *ultra-clear* statement to abrogate foreign sovereign immunity." *Id.* at 48a.

DISCUSSION

This Court should grant the petition for a writ of certiorari. Title III creates "a *specific*, *independent*, and *exclusive* cause of action for American nationals whose property the Cuban government had confiscated decades earlier," Pet. App. 41a (Randolph, J., dissenting), and it clearly abrogates the foreign sovereign immunity of Cuban agencies and instrumentalities that continue to traffic in that property. The D.C. Circuit's decision is contrary to the text and undermines the political branches' foreign-policy judgment that Title III litigation against Cuban agencies and instrumentalities is a critical tool for compensating U.S. victims and holding the Cuban government accountable.

A. The LIBERTAD Act Abrogates Cuban Agencies' And Instrumentalities' Immunity

The FSIA is generally "the sole basis for obtaining jurisdiction over a foreign state in federal court." *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989). But here, Congress later enacted a Cuba-specific statute, the LIBERTAD Act, that expressly authorizes suits against agencies and instrumentalities of foreign sovereigns that traffic in expropriated property. The Act also repeatedly expresses Congress's intent to prevent the Cuban government from continually benefiting from its unlawful expropriations and contains a host of other textual and contextual indications that Congress expected Cuban governmental entities to face liability. That more specific statute unambiguously abrogates the immunity of Cuban

agencies and instrumentalities regardless of whether more general FSIA exceptions apply. The D.C. Circuit's contrary interpretation would require Title III plaintiffs to also satisfy an FSIA exception, effectively negating Congress's Cuba-specific policy and thwarting the foreign-policy objectives that the political branches intended Title III suits to advance.

1. Though the FSIA presumptively governs foreign sovereign immunity, Congress can enact other statutes abrogating foreign sovereign immunity so long as Congress does so with "unmistakably clear" language. Cf. *Financial Oversight & Mgmt. Bd. for Puerto Rico* v. *Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 346 (2023) (*FOMB*) (citation omitted). "The standard for finding a congressional abrogation is stringent," *ibid.*, especially because Congress enacted the FSIA as a "comprehensive framework" for addressing claims of sovereign immunity to replace the pre-1976 common-law regime, *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 140-141 (2014) (citation omitted). The FSIA did not, however, change the bedrock principles that foreign sovereign immunity is "a matter of grace and comity on the part of the United States," and that the question of how far to extend that grace is one for "decision[] [by] the political branches." *Id.* at 140 (citation omitted). Congress remains free to revise the balance it struck in the FSIA because earlier Congresses cannot bind later ones. See, *e.g.*, *Reichelderfer* v. *Quinn*, 287 U.S. 315, 318 (1932). Congress made a tailored revision here.

2. Several aspects of the LIBERTAD Act, taken together, demonstrate that the statute clearly abrogates immunity for Cuban agencies and instrumentalities that traffic in property that the Cuban government confis-

cated from U.S. victims, regardless of whether those claims otherwise satisfy an FSIA exception to immunity.[5]

a. Several provisions in the statutory text expressly contemplate suits against Cuban agencies and instrumentalities. Title III creates a cause of action against "any person" who traffics in property confiscated by the Cuban government, 22 U.S.C. 6082(a)(1)(A), and the Act defines "person" to include "any person or entity, *including any agency or instrumentality of a foreign state*," 22 U.S.C. 6023(11) (emphasis added). Similar language has been held to abrogate immunity in related contexts. For example, Congress "clear[ly]" abrogates the United States' immunity "'when a statute creates a cause of action' and explicitly 'authorizes suit against a government on that claim.'" *Department of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 49 (2024) (quoting *FOMB*, 598 U.S. at 347). Indeed, *Kirtz* considered virtually identical language authorizing damages suits against "[a]ny person" for violations of the FCRA and defining "person" as including "any . . . governmental . . . agency." *Id.* at 50 (citations omitted) (brackets and ellipses in original). The Court held that through such language, "Congress had explicitly permitted consumer claims for damages against the government." *Id.* at 51.

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[5] This case does not present the question whether the LIBERTAD Act abrogates immunity as to the agencies or instrumentalities of foreign states besides Cuba. Abrogation of Cuban governmental entities' immunity is particularly clear from the LIBERTAD Act's text, which repeatedly refers to holding the Cuban government accountable and preventing it from benefiting from its wrongdoing. See, *e.g.*, 22 U.S.C. 6081(6), (8), (10) and (11).

Critically for purposes of abrogation, many of the LIBERTAD Act's other provisions specifically assume the existence of trafficking claims against Cuban agencies and instrumentalities. For instance:

- A Title III plaintiff's "claim against the Cuban Government," defined to include its agencies or instrumentalities, "shall not be deemed to be an interest in property" subject to restriction under the Cuba embargo. 22 U.S.C. 6082(a)(7)(B); 22 U.S.C. 6023(5)(A).
- Judgments obtained "against an agency or instrumentality of the Cuban Government" will become unenforceable against a transition or democratic Cuban government. 22 U.S.C. 6082(d).
- Once Cuba begins democratizing, the President may suspend new suits "against the Cuban Government." 22 U.S.C. 6064(a); see 22 U.S.C. 6065, 6082(h)(1)(A).

In those provisions, the statute contemplates that plaintiffs will litigate Title III claims against Cuban agencies and instrumentalities to final judgments—an understanding incompatible with immunity.

Congressional findings reinforce that conclusion. Congress's stated aim was to "endow[ ]" U.S. nationals with "a judicial remedy" for Castro's unlawful expropriations. 22 U.S.C. 6081(11). Congress recognized that "[t]he international judicial system" at the time "lack[ed] fully effective remedies" for "wrongful confiscation," exploitation, and "unjust enrichment from the use of wrongfully confiscated property by governments" and others. 22 U.S.C. 6081(2) and (8). And Congress found that the "Cuban Government" has derived "badly needed financial benefit" from trafficking in con-

fiscated property, which "undermines the foreign policy of the United States." 22 U.S.C. 6081(6).

b. Requiring Title III plaintiffs to additionally establish the application of an FSIA exception to immunity would also "effectively 'negate'" suits that Title III authorizes. *Kirtz*, 601 U.S. at 51 (alteration and citation omitted). Imposing the FSIA would upend the LIBERTAD Act's Cuba-specific approach, contrary to basic principles of interpretation. "[A] specific statute will not be controlled or nullified by a general one." *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted).

First, the LIBERTAD Act authorizes claims against Cuban agencies and instrumentalities while codifying a strict embargo that had already prevented Cuban firms from doing business in the United States for more than 30 years. See 22 U.S.C. 6032(h); 31 C.F.R. 515. Congress surely understood that vanishingly few (if any) of the trafficking claims it was "clearly authoriz[ing]," *Kirtz*, 601 U.S. at 49-50, against Cuban agencies and instrumentalities would ever fit within FSIA exceptions that require a defendant to have engaged in commercial activity either "in the United States," 28 U.S.C. 1605(a)(3), or that "causes a direct effect in the United States," 28 U.S.C. 1605(a)(2). Congress does not "authorize a suit against a sovereign with one hand, only to bar it with the other." *FOMB*, 598 U.S. at 348.

Second, Title III's selective incorporation of some FSIA provisions but not others shows that Congress intended to displace the FSIA in this Cuba-specific context. Title III states that it controls in any conflict with Title 28, which includes the FSIA. See 22 U.S.C. 6082(c)(1). Further, Title III characterizes a Title III suit as an "action brought under" 28 U.S.C. 1331, 22

U.S.C. 6082(c)(1), thus providing an alternative basis for subject-matter jurisdiction and replacing the FSIA's grant of jurisdiction when an FSIA exception applies, see 28 U.S.C. 1330(a). Service of process under Title III, 22 U.S.C. 6082(c)(2), also provides a means to obtain personal jurisdiction through the federal rules, see Fed. R. Civ. P. 4(k)(1)(C) ("Serving a summons * * * establishes personal jurisdiction over a defendant * * * when authorized by a federal statute."), thus replacing the FSIA's grant of personal jurisdiction where an FSIA exception is satisfied and service has been made, see 28 U.S.C. 1330(b).

Conversely, when Congress wanted to incorporate FSIA provisions into Title III, it did so expressly. For instance, the statute incorporates the FSIA's service-of-process provision. 22 U.S.C. 6082(c)(2) (incorporating 28 U.S.C. 1608). Moreover, the LIBERTAD Act incorporates some FSIA definitions. See 22 U.S.C. 6023(1) ("agency or instrumentality of a foreign state"), (3) ("commercial activity"). There would have been "no need for" these provisions "if Congress understood the FSIA to apply to Title III *in toto*." Pet. App. 51a (Randolph, J., dissenting).

Third, the LIBERTAD Act codifies the Executive Branch's foreign-policy judgments about the desirability of allowing Title III suits to proceed—judgments that would be supplanted by superimposing the FSIA framework. If the President believes that suits against Cuban governmental entities risk undermining the country's "national interests" or hampering "a transition to democracy in Cuba," the Act lets the President suspend the ability to bring Title III suits—effectively immunizing those entities at the President's discretion. 22 U.S.C. 6085(c)(1)(B) and (c)(2). The President has

now determined that American foreign policy strongly favors allowing Title III suits, including against Cuban agencies and instrumentalities. That decision "reflects 'delicate judgments' on matters of foreign policy that are in 'the prerogative of the political branches to make.'" *Fuld* v. *Palestine Liberation Org.*, 606 U.S. 1, 22 (2025) (citation omitted).

That deferential regime, whereby the availability of suits depends on presidential foreign-policy judgments, resembles the pre-FSIA regime in which the State Department made determinations regarding immunity, and thus it is antithetical to the FSIA's framework. See *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp. Ltd*, 145 S. Ct. 1572, 1577-1578 (2025). Once the President determines that Title III suits should proceed, requiring plaintiffs to surmount the additional, steep hurdle of establishing an exception to FSIA immunity would undercut the President's foreign-policy judgments. This Court interprets statutes "affecting international relations" to avoid interpretations that would produce "'foreign policy consequences not clearly intended by the political branches.'" *Federal Republic of Germany* v. *Philipp*, 592 U.S. 169, 184-185 (2021) (quoting *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013)); contra Pet. App. 14a.

3. The court of appeals' and respondents' contrary reading of Title III as preserving Cuban agencies' and instrumentalities' immunity is flawed.

a. That interpretation overreads this Court's FSIA precedents to conclude that Title III leaves the FSIA's immunity requirements intact. The D.C. Circuit and respondents emphasize this Court's description of the FSIA as "the *sole basis* for obtaining jurisdiction over a foreign state" in federal court. Pet. App. 8a-9a (quoting

OBB Personenverkehr AG v. *Sachs*, 577 U.S. 27, 30 (2015)); Br. in Opp. 14 (same); accord, *e.g.*, *Amerada Hess*, 488 U.S. at 443; *Republic of Austria* v. *Altmann*, 541 U.S. 677, 699 (2004). But "'general language in judicial opinions'" should not be read as "'referring to quite different circumstances that the Court was not then considering.'" *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 278 (2023) (citation omitted). That the FSIA supplies comprehensive default rules does not preclude Congress from enacting separate, specific statutes abrogating immunity, as Congress did here.

Nor must Congress expressly refer to FSIA immunity or enact a new FSIA exception to abrogate foreign sovereign immunity. Contra Pet. App. 11a-12a; Br. in Opp. 19-20. There is no "magic words" requirement to abrogate immunity, *Kirtz*, 601 U.S. at 52 (citation omitted), let alone a magic-placement rule requiring that Congress house immunity abrogations in the FSIA. The LIBERTAD Act contains four subchapters and spans over 30 sections of the U.S. Code. See 22 U.S.C. 6021 *et seq*. It would make little sense for Congress to parcel out Title III into the FSIA to abrogate immunity, but leave the rest of the LIBERTAD Act in Title 22. See *Kirtz*, 601 U.S. at 52.

Moreover, respondents and the court of appeals misapprehend the LIBERTAD Act's amendment to the FSIA's provisions for immunity of property from execution of a judgment, 28 U.S.C. 1611(c), to mean that Congress intended to leave FSIA jurisdictional immunity intact, see Pet. App. 12a; Br. in Opp. 22-23. A foreign state's jurisdictional immunity from suit and execution immunity are different concepts, addressed in different sections of the FSIA, and subject to different excep-

tions. See *NML Capital*, 573 U.S. at 141-142. That Congress protected from Title III judgments certain types of property used for diplomatic purposes, see 28 U.S.C. 1611(c), does not mean that Congress intended to leave the FSIA's jurisdictional-immunity rules intact for Title III plaintiffs. If anything, Section 1611(c) shows that where Congress wanted to leave the FSIA intact with respect to Title III actions, it did so expressly.

Respondents, moreover, argue that because the LIBERTAD Act expressly overrides the "act of state doctrine" in Title III cases, 22 U.S.C. 6082(a)(6), Congress would have overridden the FSIA expressly if it wanted to do so. Br. in Opp. 17. But the LIBERTAD Act's plain meaning and context already abrogate the sovereign immunity of Cuban agencies and instrumentalities with great clarity. See pp. 12-18, *supra*. A further statement would have been superfluous.

Finally, respondents err by invoking (Br. in Opp. 17-18) legislative history showing that Congress considered including in the LIBERTAD Act an express FSIA exception for Title III claims. What matters is the "statutory text rather than legislative history" because "no amount of legislative history can dislodge" the "'unmistakably clear'" abrogation in Title III. *Kirtz*, 601 U.S. at 49 (citation omitted).

b. The court of appeals and respondents likewise understate the immunity-abrogating effects of the LIBERTAD Act.

They contend that Title III does not abrogate immunity because Title III and the FSIA can coexist where an FSIA exception is satisfied, such that the FSIA would not "entirely 'negate' the Title III cause of action." Pet. App. 15a; see Br. in Opp. 10. But complete negation is not the standard; this Court finds immunity

abrogated if immunity would "effectively 'negate'" suits that Congress has authorized. *Kirtz*, 601 U.S. at 50 (alteration and citation omitted). Here, Congress created an express cause of action against Cuban agencies and instrumentalities and repeatedly signaled that Title III suits would be brought against them. Yet the overwhelming majority of suits against Cuban agencies and instrumentalities are unlikely to satisfy an FSIA exception due to the longstanding Cuba embargo. See p. 16, *supra*.

Respondents argue (Br. in Opp. 30-31) that Title III would retain meaning, even if Cuban agencies and instrumentalities retained immunity, because suits against private defendants remain. That disregards numerous statutory provisions referencing suits against Cuban agencies and instrumentalities. And that reading would perversely interpret Title III to allow proceedings against private parties who collaterally benefit from the Cuban government's expropriations, yet would severely limit proceedings against Cuban agencies and instrumentalities, allowing the Cuban government—the initial and ultimate perpetrator—to continue economically benefiting from its wrongdoing.

B. The Question Presented Warrants This Court's Review

1. This Court has previously granted review of questions of sovereign immunity when, as here, courts misread this Court's sovereign-immunity precedents. *E.g.*, *FOMB*, 598 U.S. 339; *Torres* v. *Texas Dep't of Pub. Safety*, 597 U.S. 580 (2022); *FAA* v. *Cooper*, 566 U.S. 284 (2012).

The importance of the question presented to U.S. foreign policy further underscores the need for review. For more than half a century, the United States has pursued billions of dollars in compensation for Ameri-

can victims of Castro's illegal expropriations. See U.S. Foreign Claims Settlement Comm'n, U.S. Dep't of Justice, *Completed Programs – Cuba* (last updated Sept. 17, 2024), https://perma.cc/GH6J-EEL8. Congress sought to advance that interest in the LIBERTAD Act by abrogating Cuban agencies' and instrumentalities' immunity from such claims. And the President has made the foreign-policy judgment that Title III suits should proceed. See pp. 7-8, *supra*. The political branches have thus determined that it is time for the statutory remedy to work and for Cuban agencies and instrumentalities to face the consequences of exploiting property that the Castro regime unlawfully seized from Americans. This Court should grant certiorari to give effect to both Congress's design and the President's judgment.

The timing of this suit also strengthens the case for review. After 23 years of dormancy when successive presidential administrations suspended the availability of Title III suits, the window is now open for Title III plaintiffs to sue, and the administration has concluded that such suits would materially advance U.S. foreign-policy interests. This Court should thus resolve the question presented now, when suits have been prioritized by the President and the decision below erects an erroneous threshold hurdle for Title III plaintiffs who hold billions of dollars in potential claims. See Pet. 4.

2. This case is an appropriate vehicle to decide the question presented.

Although it arises in an interlocutory posture, and other issues remain "to be litigated on the way to judgment," Br. in Opp. 28, this Court frequently grants interlocutory review on threshold sovereign-immunity issues, see Pet. 32-33 (collecting cases). That is so even where the immunity question is not neces-

sarily dispositive. See, *e.g.*, *Turkiye*, 598 U.S. at 280-281 (remanding for consideration of common-law immunity). This case presents a straightforward legal question that was carefully considered by both courts below: whether Title III independently abrogates the foreign sovereign immunity of Cuban agencies and instrumentalities. Likewise, this Court should not await resolution of whether any FSIA exceptions apply to any respondents. Contra Br. in Opp. 28. Precisely because Title III independently abrogates respondents' immunity, parties should not have to undertake complex jurisdictional discovery to test whether any FSIA exceptions apply.

Nor should this Court await a circuit split because "[t]his case is likely to be the Court's only real opportunity to correct" the court of appeals' error. Pet. 31. The federal venue statute effectively limits suits against Cuban agencies and instrumentalities to the District of Columbia. See 28 U.S.C. 1391(f)(4). In suits against such entities, especially due to the Cuba embargo, it is unlikely that there will be another district where "a substantial part of the events or omissions giving rise to the claim occurred," where "a substantial part of property * * * is situated," or where "the agency or instrumentality is licensed to do business or is doing business." 28 U.S.C. 1391(f)(1) and (3).

Respondents also object (Br. in Opp. 28, 33) that Title III plaintiffs are unlikely to recover on judgments against Cuban agencies and instrumentalities due to FSIA execution immunity. Even if that were the case—which is not a given—the United States sees foreign-policy benefits in allowing Title III suits that could hold Cuba accountable for its past expropriations and pre-

sent abuses, notwithstanding any barriers to eventual recovery. See pp. 7-8, *supra*.

Respondents deem (Br. in Opp. 30-31) the question presented unimportant because claims remain available against non-sovereign private parties. The United States recognizes that it is critically important for Title III plaintiffs to pursue secondary wrongdoing from non-sovereign traffickers. See 22 U.S.C. 6081(8) and (11). But the United States has a paramount foreign-policy interest in holding accountable the Cuban government in particular. See *Restoring a Tough U.S.-Cuba Policy*, *supra*. It would be perverse—and detrimental to United States foreign policy—for the Cuban government to evade accountability for expropriating the property of U.S. nationals and continuing to benefit from trafficking in that property. See 22 U.S.C. 6081(2) and (6).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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