

No. 24-699

In the Supreme Court of the United States

EXXON MOBIL CORPORATION,
PETITIONER,

v.

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

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether the Helms-Burton Act abrogates foreign sovereign immunity in cases against Cuban instrumentalities, or whether parties proceeding under that Act must also satisfy an exception under the Foreign Sovereign Immunities Act.

DISCLOSURE STATEMENT

Petitioner Exxon Mobil Corporation certifies that it is a publicly traded corporation and it has no corporate parent. No publicly held corporation owns 10% or more of Exxon Mobil Corporation's stock.

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BRIEF FOR PETITIONER

INTRODUCTION

Shortly after taking control of Cuba in 1960, Fidel Castro declared that his new communist government would seize all the “Yankee property” in Cuba “down to the nails in their shoes.” *Castro Orders Seizure—Also Bitterly Attacks U.S. Sugar Bill*, N.Y. Times (June 30, 1960). Castro quickly made good on that promise, confiscating American-owned power plants, mines, sugar-cane fields, and—as relevant here—petitioner Exxon Mobil’s oil refineries and service stations. Most of the expropriated assets, including Exxon’s, were immediately transferred to state-owned companies controlled by the communist regime. The U.S. Foreign Claims Settlement Commission valued

Exxon’s loss at over \$70 million, in 1960 dollars. No compensation was ever paid for these unlawful takings.

Nearly four decades later, Congress enacted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, commonly called the Helms-Burton Act. Title III of that Act endowed U.S. victims of “Castro’s wrongful seizures” “with a judicial remedy in the courts of the United States.” 22 U.S.C. § 6081(11). In legislative findings, Congress criticized “[t]he wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government.” *Id.* § 6081(2). It also lamented the absence of “fully effective remedies for the wrongful confiscation of property” and “use of wrongfully confiscated property by governments.” *Id.* § 6081(8). To fill that void, Congress created a private right of action allowing U.S. nationals to sue “any person” who “traffics” in confiscated Cuban property. *Id.* §§ 6023(13)(A), 6082(a)(1)(A). Critically, the Act defines covered “person[s]” to include “any agency or instrumentality of a foreign state.” *Id.* § 6023(11). It repeatedly and expressly contemplates suits against Cuban instrumentalities—the main culprits in and continuing beneficiaries of Castro’s illegal seizures. *See, e.g., id.* §§ 6082(a)(7)(B), 6082(d), 6064(a).

Congress recognized that Title III was strong medicine and would have real diplomatic ramifications. It thus authorized the President to suspend Title III for six-month intervals if he concludes that suspension is “necessary to the national interests of the United States.” 22 U.S.C. § 6085(b). From 1996 onward, every President did just that, until President Trump finally allowed the suspensions to lapse on May 2, 2019. Announcing the decision, then-Secretary of State Pompeo

explained that the United States was finally “holding the Cuban Government accountable for seizing American assets.” Press Release, Michael R. Pompeo, Sec’y of State, *Remarks to the Press* (Apr. 17, 2019), <https://perma.cc/9MYA-HMJE>. That very day, Exxon filed this action against the Cuban state-owned oil companies that had received Exxon’s stolen property back in 1960 and have been exploiting it without compensation ever since.

After decades of waiting, Exxon did not make it very far. A divided D.C. Circuit panel concluded that the Helms-Burton Act was not the freestanding defense of Americans’ property that Congress thought it was, with the international consequences that Presidents had weighed for years. Instead, the court of appeals held that Title III plaintiffs may proceed against Cuban instrumentalities only if the plaintiffs can also satisfy one of the Foreign Sovereign Immunities Act’s limited exceptions to its general rule that foreign instrumentalities are immune from suit in federal court. In the court’s view, the FSIA provides the “sole basis” for obtaining jurisdiction over any foreign state or instrumentality. Pet. App. 8a.

The court of appeals got it wrong. As this Court unanimously held in *Department of Agriculture Rural Development Rural Housing Service v. Kirtz*, 601 U.S. 42 (2024), when Congress creates a cause of action that expressly authorizes suits for money damages against federal or state governments, it “effects a clear waiver” of sovereign immunity. *Id.* at 50. Title III does the same thing for foreign governments: it authorizes damages actions against “any person,” expressly defined to include “any agency or instrumentality of a foreign state.” 22 U.S.C. §§ 6023(11), 6082(a)(1)(A). The

Act's repeated and specific references to suits and judgments against Cuban instrumentalities confirm that Congress meant what it said. Requiring Title III plaintiffs to instead try to squeeze into ill-fitting FSIA exceptions "would effectively negate suits Congress has clearly authorized." *Kirtz*, 601 U.S. at 51 (alteration and citation omitted).

Despite all that, the panel majority reasoned that Congress must "mention[] jurisdiction or [sovereign] immunity *expressly*" to supersede the FSIA's general rule of immunity for Cuban instrumentalities. Pet. App. 12a (emphasis added). The panel thus declined to apply *Kirtz*'s straightforward test and adopted an even more demanding "*ultra-clear* statement" rule applicable to foreign sovereign immunity alone. Pet. App. 48a (Randolph, J., dissenting). The upshot is that Cuban instrumentalities are treated more favorably than both federal and state agencies—an inconceivable result for a statute specifically designed to punish and deter one particular foreign sovereign for profiting off stolen American property.

Like the thousands of other victims of the Castro regime, Exxon has been waiting since the early 1960s to receive compensation. Congress enacted the Helms-Burton Act to give claimants a path to recovery in federal court, including—indeed, primarily—from Cuban instrumentalities. After decades, the Executive Branch has "now determined that American foreign policy strongly favors allowing" such suits to proceed. U.S. Cert. Br. 18. The Judiciary should not throw up new roadblocks.

The judgment below should be reversed.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-51a) is reported at 111 F.4th 12. The opinion of the district court (Pet. App. 52a-108a) is reported at 534 F. Supp. 3d 1.

JURISDICTION

The judgment of the court of appeals was entered on July 30, 2024. On October 10, 2024, Chief Justice Roberts extended the time within which to file a petition for a writ of certiorari to and including December 27, 2024, and the petition was filed that day. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the petition appendix. Pet. App. 126a-165a.

STATEMENT

A. Factual Background

1. In the first half of the twentieth century, when “Cuba was under the close influence of the United States, Americans were encouraged to and did invest heavily in Cuba’s economy.” 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) (Commission Report). By 1960, American companies owned or controlled 90% of Cuba’s electricity generation, the entire telephone system, most of the mining industry, most of the sugar-growing lands, and many oil refineries, bottling plants, and warehouses. Timothy Ashby, *U.S. Certified Claims Against Cuba: Legal Reality and Likely*

Settlement Mechanisms, 40 U. Miami Inter-Am. L. Rev. 413, 413-414 (2009).

Like many other American companies, Standard Oil—later renamed Exxon Mobil Corporation—built a thriving business in Cuba. Pet. App. 53a-54a. Through several subsidiaries, including its wholly owned subsidiary Esso Standard Oil S.A. (Essosa), Standard Oil owned and operated an integrated business that supplied, refined, and distributed petroleum products throughout the island. *Id.* Essosa’s assets included a 35,000-barrel-per-day oil refinery, multiple bulk-product terminals and packaging plants, and a network of approximately 117 service stations across Cuba. Second Amended Complaint ¶ 31, *Exxon Mobil Corp. v. Corporación CIMEX S.A.*, 2020 WL 1430050 (D.D.C. Mar. 6, 2020) (Complaint).

Also like many other American companies, Standard Oil’s Cuba business came to an abrupt end once Fidel Castro seized power. On June 29, 1960, amid rising tensions with the United States, Castro gave a “three-and-a-half-hour speech, which ended at almost 2 [in the] morning,” in which he promised that the Cuban government would expropriate all American property in the country. *Castro Orders Seizure—Also Bitterly Attacks U.S. Sugar Bill*, N.Y. Times (June 30, 1960). Castro spent the rest of 1960 carrying through on that promise. By the end of that year, his revolutionary government had perpetrated “the largest uncompensated taking of American property by a foreign government in history.” Ashby, *supra*, at 414.

For Standard Oil, the fateful moment came on July 1, 1960, when the Cuban government formally appointed an “Intervenor” to assume control of “all the properties and installations that [Essosa] may have in

Cuba.” Complaint ¶ 28. Cuban authorities seized Essosa’s refinery, terminals, and service stations, and transferred them to two state-owned enterprises: Unión Cuba-Petróleo (CUPET), Cuba’s state-owned oil company, and Corporación CIMEX S.A. (Cuba) (CIMEX), a state-owned conglomerate. *Id.* ¶¶ 17, 68. The Cuban government has retained control of Exxon’s assets for 65 years now, and Exxon has never received a dime.

2. Shortly after Castro’s rise to power, the United States imposed a comprehensive trade embargo on Cuba. President Kennedy formally proclaimed the embargo in 1962. *See* Proclamation 3447, Embargo on All Trade with Cuba, 27 Fed. Reg. 1085 (Feb. 7, 1962). The embargo halted virtually all commerce between the two countries. It remains in effect today, with several minor modifications.

3. In 1964, after the complete breakdown of diplomatic relations with Cuba, Congress enacted the Cuban Claims Act. The Act did not immediately expand the substantive claims available to the U.S. victims of the Castro regime’s expropriations. It did, however, create a mechanism for U.S. nationals to adjudicate their claims against the government of Cuba—facilitating future resolution through diplomatic channels or other substantive laws. Pub. L. No. 88-666, 78 Stat. 1110 (codified at 22 U.S.C. § 1643 *et seq.*). The Act tasked the Foreign Claims Settlement Commission with determining, “in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba” for “losses resulting from the nationalization, expropriation, intervention, or other taking of . . . property.” 22 U.S.C. § 1643b(a).

When President Johnson signed the Cuban Claims Act into law, he sharply condemned Castro's confiscation campaign. As he put it, the seizures had "violated every standard by which the nationals of the free world conduct their affairs." Commission Report 69. No one expected Castro's government to make things right in the near term. But President Johnson expressed hope that, "one day," it would "be possible to settle claims of American nationals whose property has been wrongfully taken from them." *Id.* at 69-70. To that end, he noted that the Commission would "provide for the adjudication of these claims . . . while evidence and witnesses [were] still available." *Id.* at 70.

The Commission completed its Cuba mandate in 1972, certifying claims by 5,911 U.S. claimants for a total of \$1.8 billion. Commission Report 412. With interest of 6% per year, that figure now stands at approximately \$9.2 billion. Among the largest certified claims is Standard Oil's (that is, Exxon's), based on Cuba's confiscation of Essosa's extensive assets. The Commission determined that "Standard Oil Company suffered a loss, as a result of the actions of the Government of Cuba," of \$71,611,002.90, plus interest beginning on July 1, 1960. Pet. App. 124a. When accounting for treble damages, *see* 22 U.S.C. § 6082(a)(3), Exxon's claim is well over \$1 billion today.

B. The Helms-Burton Act

1. In the mid-1990s, another international incident prompted Congress to act again. On February 24, 1996, Cuban fighter jets shot down two unarmed private aircraft flying in international airspace over the Florida Straits. The planes had been conducting humanitarian search-and-rescue missions for Cuban

refugees adrift at sea. The four men on board—three American citizens and one lawful permanent resident—were killed.

Americans were outraged. President Clinton promptly declared a national emergency, authorizing additional security operations in the territorial waters near Cuba. Proclamation 6867, 61 Fed. Reg. 8843 (Mar. 1, 1996). Within two weeks, Congress enacted and the President signed the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (codified at 22 U.S.C. § 6021 *et seq.*), also known as the Helms-Burton Act. Titles I, II, and IV of the Act strengthened the longstanding embargo and tightened sanctions against Cuba and the Castro regime.

2. This case concerns Title III of the Helms-Burton Act. There, Congress again condemned the “wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government.” 22 U.S.C. § 6081(2). Congress also made findings that the “international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities.” *Id.* § 6081(8). Congress concluded that the “United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny” those wrongdoers “any profits from economically exploiting Castro’s wrongful seizures.” *Id.* § 6081(11); *see id.* § 6022(6) (Title III’s purpose is to “protect United States nationals against confiscatory takings”).

Title III took a significant step beyond previous legislation like the Cuban Claims Act. This time, Congress created a new private right of action for U.S. nationals who “own[] the claim” to property “confiscated by the Cuban Government on or after January 1, 1959.” 22 U.S.C. § 6082(a)(1)(A). Such claimants may sue “any person” who “traffics in” the confiscated property. *Ibid.* A person “traffics” “in confiscated property if that person knowingly and intentionally,” and without authorization of the U.S. claimant, possesses, uses, or benefits from that property in a wide variety of ways. *Id.* § 6023(13)(A) (“trafficking” includes selling, distributing, purchasing, managing, possessing, using, or holding or acquiring an interest). Title III requires a court to accept the Commission’s certification of a claim as “conclusive proof of ownership of an interest in property.” *Id.* § 6083(a)(1). It also creates a rebuttable presumption that the plaintiff is entitled to the amount of loss certified by the Commission. *Id.* § 6082(a)(1)-(2). Congress further protected victims by providing for treble damages, costs, and attorney’s fees. *Id.* § 6082(a)(3)(A), (a)(3)(C)(ii).

Title III plainly authorizes suits against Cuban state-owned instrumentalities. The Act expressly defines the “person[s]” who may be sued for trafficking to “includ[e] any agency or instrumentality of a foreign state.” 22 U.S.C. § 6023(11). Another provision states that “any judgment against an agency or instrumentality of the Cuban Government” in “an action brought under this section” may not be enforced against a “transition government in Cuba or a democratically elected government in Cuba.” *Id.* § 6082(d). And another provides that “any claim against the Cuban Government” held by a U.S. national “shall not be deemed to be an

interest in property” subject to otherwise-applicable embargo-related controls. *Id.* § 6082(a)(7)(B).

Congress also addressed jurisdiction and procedure. Title III provides that district courts have subject-matter jurisdiction over Title III suits under the general federal-question statute, 28 U.S.C. § 1331. *See* 22 U.S.C. § 6082(c)(1) (describing an “action[] under” Title III as an “action brought under section 1331 of title 28”). Congress also expressly incorporated the FSIA’s special rules for serving process on foreign agencies and instrumentalities. *See id.* § 6082(c)(2).

3. In recognition of the significant new remedies that Congress had provided—and their serious implications for international relations—the Helms-Burton Act gives the President substantial diplomatic flexibility. It authorizes the President to suspend Title III’s cause of action for up to six months at a time, upon determining “that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.” 22 U.S.C. § 6085(b). For 23 years, starting with President Clinton, every President exercised that authority and kept Title III from taking effect.

That policy shifted on May 2, 2019, when the Trump Administration allowed the suspension to expire for the first time since Title III’s passage. As a result, victims of Cuba’s expropriations could finally seek redress in federal court. According to then-Secretary of State Michael Pompeo, the decision to allow the Title III suits that Congress had long ago authorized would hold “the Cuban Government accountable for seizing American assets.” Press Release, Michael R. Pompeo, Sec’y of State, *Remarks to the Press* (Apr. 17, 2019).

On January 14, 2025, shortly before leaving office, President Biden sent a notice to Congress announcing his intent to reinstate the suspension of Title III suits. *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). But on January 29, current Secretary of State Marco Rubio withdrew President Biden’s letter and reaffirmed the Executive Branch’s “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, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025).

C. Procedural History

1. On May 2, 2019—the same day that President Trump first allowed Title III to come into effect—Exxon filed this Title III suit in federal district court in the District of Columbia. The complaint names three Cuban instrumentalities as defendants: CUPET, the state-owned oil company that took over Standard Oil’s Cuban refinery, plants, and terminals; CIMEX, the state-owned conglomerate that took over Standard Oil’s service stations; and Corporación CIMEX S.A. (Panama), an alleged alter ego of CIMEX.

The complaint alleges that, using Essosa’s confiscated property, CUPET operates, explores, produces, refines, trades, and sells oil products, and thus engages in prohibited trafficking under Title III. Pet. App. 58a. The complaint similarly alleges that CIMEX operates service stations that were built on or are maintained on Essosa property. *Id.* at 57a-59a. Exxon seeks damages

equaling the amount of its Commission-certified claim, plus pre-judgment interest and treble damages. *Id.* at 6a.

2. The Cuban defendants moved to dismiss. They argued that the district court lacked jurisdiction over them because, as wholly owned instrumentalities of a foreign state, they are immune from suit under the Foreign Sovereign Immunities Act (FSIA).

The FSIA was enacted in 1976, two decades before the Helms-Burton Act. It provides that foreign states and their instrumentalities are generally immune from the jurisdiction of U.S. courts unless an enumerated exception applies. 28 U.S.C. § 1604. The commercial-activity exception, for one, provides jurisdiction when “the action is based upon a commercial activity” that “causes a direct effect in the United States.” 28 U.S.C. § 1605(a)(2). The expropriation exception, for another, applies when “rights in property taken in violation of international law are in issue,” “that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the [expropriating] state,” and “that agency or instrumentality is engaged in a commercial activity in the United States.” *Id.* § 1605(a)(3). The Cuban defendants argued that Exxon was required to—and could not—demonstrate that this suit comes within a statutory FSIA exception.

Exxon, by contrast, maintained that a Title III plaintiff need not satisfy an FSIA exception because the Helms-Burton Act supersedes the FSIA. The Helms-Burton Act thus itself abrogates Cuban instrumentalities’ sovereign immunity in Title III actions. In the alternative, Exxon argued that this suit satisfies both the commercial-activity and expropriation exceptions to the FSIA.

The district court rejected Exxon’s argument that Title III independently abrogates sovereign immunity. Pet. App. 65a-66a. The court therefore analyzed whether an FSIA exception applied. It concluded that none of Exxon’s claims fell within the expropriation exception, 28 U.S.C. § 1605(a)(3). Pet. App. 101a-102a. The court then analyzed the commercial-activity exception, 28 U.S.C. § 1605(a)(2), finding it satisfied with respect to CIMEX but not the other two defendants. Pet. App. 95a. The court reasoned that CIMEX’s operation of service stations on former Essosa property constituted commercial activity with a direct effect in the United States. *Ibid.*

3. A divided panel of the court of appeals vacated the district court’s order and remanded for further jurisdictional discovery and analysis of the commercial-activity exception as applied to defendant CIMEX.

a. The court of appeals began by rejecting Exxon’s argument that Title III displaces the FSIA. Pet. App. 8a. Citing several of this Court’s decisions—none of which addressed a statute enacted after the FSIA—the court of appeals stated that the FSIA “provides the *sole basis* for obtaining jurisdiction over a foreign state.” *Ibid.* (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989)). The court recognized that Title III defines covered “persons” to include foreign instrumentalities, and that the statute thus “contemplates that its cause of action can encompass suits against a foreign state.” *Id.* at 10a. But the court found that text insufficient to abrogate sovereign immunity, given “the absence of . . . language in Title III” that “mention[s] jurisdiction or [sovereign] immunity expressly.” *Id.* at 11a-12a.

On that point, the panel majority attempted to distinguish this Court’s recent decision in *Kirtz*. There, this Court unanimously held that the Fair Credit Reporting Act “effects a clear waiver of” the federal government’s sovereign immunity by (i) imposing civil liability on “any person” who fails to comply with the Act, and (ii) defining such “person[s]” to include “any . . . government or governmental subdivision or agency.” 601 U.S. at 46, 50 (quoting 15 U.S.C. §§ 1681a(b), 1681n(a)). The court of appeals gave two reasons for declining to read Title III’s virtually identical language as displacing the FSIA. First, the court reasoned, the “foreign-relation concerns” unique to foreign sovereign immunity “bolster[] the need to respect Congress’s balancing of those considerations in the provisions of the FSIA.” Pet. App. 14a. Second, unlike in *Kirtz*, the conclusion that Cuban instrumentalities continue to enjoy immunity would not make Title III “completely pointless,” because trafficking claims could still theoretically be brought against some foreign instrumentalities “if an FSIA exception applies.” *Id.* at 15a.

The court of appeals then turned to the FSIA exceptions. The court first held that Exxon’s claims do not satisfy the FSIA’s expropriation exception because the confiscated property “was owned by Exxon’s subsidiary, Essosa,” meaning that *Exxon*’s interest was only “as a shareholder” in Essosa. Pet. App. 19a. The court reasoned that “international law generally does not recognize a shareholder’s right in property owned by the corporation.” *Ibid.*

The court of appeals then addressed the commercial-activity exception as applied to CIMEX. It concluded that CIMEX’s operation of service stations on Exxon’s confiscated property, which includes processing

remittances from the United States at Western Union terminals located at the stations, qualifies as a “commercial activity.” Pet. App. 34a. But the court remanded for further jurisdictional discovery to determine whether that activity creates the necessary “direct effect” in the United States. 28 U.S.C. § 1605(a)(2). For example, the court noted that Exxon might show that the remittance-processing business at service stations located on former Essosa property causes an increased “outflow of money from the United States to Cuba”—which could depend on whether there are “other Western Union sites in the immediate vicinity.” Pet. App. 35a-36a. The court also stated that Exxon could proceed if it could show that CIMEX has “sufficient and continuing awareness” that certain goods sold in its service stations, which CIMEX obtains from a Cuban supplier, actually “originate from the United States.” *Id.* at 39a.

b. Judge Randolph dissented. He agreed with Exxon that there was no need to analyze the FSIA’s exceptions because “Title III, considered alone, deprives the Cuban defendants of immunity from suit.” Pet. App. 45a. Judge Randolph explained that the language of Title III—which creates a cause of action and then expressly applies it against foreign instrumentalities—is “scarcely” different from language that this Court has repeatedly found sufficient to abrogate federal and state sovereign immunity, including most recently in *Kirtz*. *Id.* at 47a. He observed that it would have been “a shock” to the Congress that enacted the Helms-Burton Act to learn that “Cuban agencies enjoy more protection from lawsuits than agencies of the United States.” *Id.* at 48a. As he explained, the majority’s decision rested on a novel “legal

principle . . . unheard of until now—that Congress must make an *ultra-clear* statement to abrogate foreign sovereign immunity.” *Ibid.*

SUMMARY OF ARGUMENT

Title III of the Helms-Burton Act displaces the FSIA and abrogates the foreign sovereign immunity of Cuban instrumentalities in suits involving Castro-era takings.

A. The plain text of Title III expresses Congress’s clear intent to abrogate sovereign immunity. Most obviously, Congress used language that this Court has repeatedly found sufficient for that purpose—including in another statute enacted by the same 104th Congress. As the Court explained in *Kirtz* just two Terms ago, Congress clearly withdraws sovereign immunity when it enacts a statute that (i) creates a cause of action for damages and (ii) expressly authorizes such suits against a governmental entity. Title III does just that. Applying the FSIA to Title III claims against Cuban instrumentalities would thus effectively negate a large swath of claims at the heart of the Helms-Burton Act: claims against the Cuban state-owned companies that continue to possess, control, and exploit expropriated American property.

Title III also contains numerous other textual indications that Congress intended to abrogate sovereign immunity. First, several provisions assume that plaintiffs will sue Cuban defendants and win “judgment[s] against an agency or instrumentality of the Cuban Government.” *E.g.*, 22 U.S.C. § 6082(d). Such “judgments” of course will not arise unless plaintiffs can obtain jurisdiction. Second, Congress specifically and selectively incorporated into Title III the FSIA’s

procedures for service of process on foreign instrumentalities. That would have been unnecessary if Title III plaintiffs were already required to comply with the FSIA. Third, Congress characterized Title III suits as actions brought under Section 1331 (the federal-question-jurisdiction statute), not Section 1330 (the FSIA-jurisdiction statute), confirming that jurisdiction in Title III actions does not depend on satisfying any FSIA exception.

B. The purposes and history of the Helms-Burton Act corroborate that the Act abrogates sovereign immunity. As it explained in legislative findings, Congress enacted Title III to provide a “fully effective” judicial remedy for Americans whose property was seized by the Castro regime and is still being exploited by Cuban state-owned enterprises. 22 U.S.C. § 6081(8). Requiring those American victims to satisfy an FSIA exception would legally bar many claims and would erect near-insurmountable practical barriers for most of the rest. It would also undermine Congress’s evident intent in designing Title III to return to something like the pre-FSIA regime, in which the Executive Branch makes foreign-policy determinations whether actions may go forward. Finally, the legislative record further supports abrogation.

C. The contrary view adopted by the court of appeals and urged by respondents is wrong. Both would require Congress to use magic words—that is, actually mention the FSIA or at least sovereign immunity—to express its intent to abrogate. That rule is flatly inconsistent with *Kirtz*, and there is no reason to demand more of Congress in exercising its discretion to regulate courts’ jurisdiction over foreign sovereigns. Although this Court has at points described the FSIA as

the “sole basis for obtaining jurisdiction over a foreign state,” the Court recently explained that those general statements do not resolve all conceivable sovereign-immunity questions.

The court of appeals’ and respondents’ additional arguments are also unpersuasive. Properly understood, Title III’s creation of a special immunity against execution for Cuban diplomatic property supports abrogation; at worst, it is a neutral factor. The same is true of Title III’s express directive that courts cannot apply the act-of-state doctrine. Finally, contrary to respondents’ arguments, Title III plaintiffs are *not* required to go through the FSIA to establish personal jurisdiction or to collect unpaid judgments against Cuban instrumentalities. Regardless, respondents do not explain why the answer to the jurisdictional-immunity question presented here must track the answers to the other questions respondents apparently would prefer to fight about. Even assuming that Title III plaintiffs may face other hurdles to recovery, that is no reason to let stand an additional barrier that Congress did not erect.

ARGUMENT

THE HELMS-BURTON ACT ABROGATES THE SOVEREIGN IMMUNITY OF CUBAN INSTRUMENTALITIES.

Whether Exxon may recover damages from Cuban instrumentalities for exploiting its stolen property is determined by the Helms-Burton Act, not the Foreign Sovereign Immunities Act. Since its enactment in 1976, the FSIA has provided a “comprehensive set of legal standards governing claims of immunity” by foreign states and state-owned companies like

respondents here. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488 (1983). The FSIA establishes the general rule that foreign states and their instrumentalities are immune from suit, subject to certain enumerated exceptions. But of course Congress remains free to create other specific exceptions from the default rule of sovereign immunity, whether by amending the FSIA or by enacting a separate statute. In 1996, Congress did the latter in Title III of the Helms-Burton Act. It deliberately abrogated Cuban instrumentalities' immunity in suits, like this one, seeking to hold the Cuban government accountable for its continued exploitation of stolen American property.

The Helms-Burton Act satisfies any clear-statement rule for abrogating foreign sovereign immunity or displacing the FSIA. Its operative text makes plain that Cuban instrumentalities are appropriate defendants—indeed, *the* primary defendants that Congress targeted. The Act is shot through with references to suits against the Cuban government. Its evident purpose was to sanction the Castro regime. And the careful calibration that Congress entrusted to the President makes most sense if the statute actually authorizes suits against foreign instrumentalities. The court of appeals strained the text to find ambiguity where there is none. The Act is clear: U.S. victims of Castro-era seizures can sue the Cuban instrumentalities that use and profit from their stolen property to this day.

A. The Plain Text Of Title III Conclusively Demonstrates Congress’s Intent To Abrogate Immunity.

Congress must speak clearly to withdraw sovereign immunity. It has done so here. Most importantly, Title III expressly authorizes suits against “any agency or instrumentality of a foreign state.” 22 U.S.C. § 6023(11). Many other Title III provisions likewise presuppose the existence of suits—and successful judgments—against Cuban instrumentalities. *See, e.g., id.* §§ 6082(a)(7)(B), 6082(d), 6064(a). And Congress even specified that Title III actions are to function like general federal-question lawsuits, not special actions that arise under and are governed by the FSIA.

1. *Title III uses language that this Court has deemed sufficient to withdraw sovereign immunity.*

Title III creates a cause of action for damages against “any person” who “traffics in” property confiscated by the Cuban Government. 22 U.S.C. § 6082(a)(1). The statute then defines “person” to include “any agency or instrumentality of a foreign state.” *Id.* § 6023(11). That language, even standing alone, clearly abrogates the sovereign immunity of Cuban instrumentalities.

a. As this Court explained just two Terms ago, a statute effects a “clear waiver of sovereign immunity” when it “creates a cause of action and explicitly authorizes suit against a government on that claim.” *Kirtz*, 601 U.S. at 49 (internal quotation marks omitted). Although such statutes “may not discuss sovereign immunity in so many words,” they do the next best thing: they “clearly demonstrate[]” Congress’s “intent to

subject” the pertinent governmental entity “to suit for money damages.” *Id.* at 50 (quotation omitted). Because that intent is incompatible with “dismissing a claim against the government” on sovereign-immunity grounds, such statutory language is enough to “effect[] a clear waiver of [that] immunity.” *Ibid.*

The Court first relied on that chain of reasoning to find abrogation in *Kimel v. Florida Bd. of Regents*, 528 U.S. 62 (2000), when addressing the Age Discrimination in Employment Act. Through a cross-reference to the Fair Labor Standards Act, the ADEA authorizes employees to bring claims for age discrimination “against any employer (including a public agency).” *Id.* at 73 (quoting 29 U.S.C. § 216(b)). The ADEA also defines “public agency” to “include ‘the government of a State or political subdivision thereof, and ‘any agency of . . . a State, or a political subdivision of a State.’” *Id.* at 74 (quoting 29 U.S.C. § 203(x)). *Kimel* explained that “the plain language of these provisions clearly demonstrates Congress’ intent to subject the States to suit for money damages at the hands of individual employees.” *Ibid.* The statutory text made Congress’s “intention” to “abrogate the States’ constitutionally secured immunity from suit in federal court . . . unmistakably clear.” *Id.* at 73 (citation omitted).

The Court reached the same conclusion three years later in addressing the Family Medical Leave Act, which contains “identical language” to the ADEA. *Nevada Dep’t of Human Resources v. Hibbs*, 538 U.S. 721, 726 (2003) (citing 29 U.S.C. § 2617(a)(2)). Given that language, the Court found “the clarity of Congress’ intent” to abrogate States’ immunity in FMLA suits “not fairly debatable.” *Ibid.*

“Guided by these principles,” the Court in *Kirtz* unanimously held that the Fair Credit Reporting Act waives the federal government’s immunity from damages actions brought under that statute. 601 U.S. at 50. The FCRA, the Court explained, “authorizes consumer suits for money damages against ‘[a]ny person’ who willfully or negligently fails to comply” with certain directives, and “defines the term ‘person’” “to include ‘any . . . governmental . . . agency.’” *Ibid.* (quoting 15 U.S.C. §§ 1681a(b), 1681n(a), 1681o(a)). Congress thus “explicitly permitted . . . claims for damages against the government,” and necessarily intended to withdraw the sovereign immunity that would have blocked such claims. *Id.* at 51. The Court noted that it “need[ed]” to “look no further to resolve” the question of waiver. *Ibid.*

Kimel, *Hibbs*, and *Kirtz* establish a straightforward rule: by specifically authorizing damages actions against a governmental entity, Congress “may waive [that entity’s] sovereign immunity” “even without a separate waiver provision” “addressing sovereign immunity” “in so many words.” *Kirtz*, 601 U.S. at 53-54. After all, Congress does not expressly “authorize a suit against a sovereign with one hand, only to bar it with another.” *Financial Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 348 (2023). So “when a statute creates a cause of action and authorizes suit against a government on that claim,” it “abrogate[s] sovereign immunity.” *Id.* at 347.

b. That framework controls the analysis here. *Kirtz* is particularly instructive because the Helms-Burton Act was enacted by “the same Congress” as the FCRA (the 104th) and “use[s] the same language” as

the FCRA. Pet. App. 48a (Randolph, J., dissenting). Just like the FCRA, Title III of the Helms-Burton Act creates a cause of action for damages against “any person” who takes a prohibited action. 22 U.S.C. § 6082(a)(1)(A). And just like the FCRA, Title III expressly defines the term “person” to cover governmental entities that would otherwise be entitled to sovereign immunity. *Id.* § 6023(11) (“The term ‘person’ means any person or entity, including any agency or instrumentality of a foreign state.”). Thus, just like the FCRA, Title III “explicitly permit[s] . . . claims for damages against” a governmental entity, and dismissing such suits on immunity grounds “would effectively negate suits Congress has clearly authorized.” *Kirtz*, 601 U.S. at 51 (alteration and citation omitted). Any other conclusion would counterintuitively mean that “Cuban agencies enjoy more protection from lawsuits than agencies of the United States” (as in *Kirtz*) or of the 50 States (as in *Kimel* and *Hibbs*). Pet. App. 48a (Randolph, J., dissenting).

Indeed, the evidence of Congress’s intent to abrogate immunity here is stronger than it was in *Kirtz*, *Kimel*, or *Hibbs*. Claims against state and federal entities arising from their actions as employers (under the ADEA and FMLA) or lenders (under the FCRA) are far from central to the design or operation of any one of those statutes. All are broadly applicable laws that apply to thousands, if not millions, of private entities; governmental entities may be covered, too, but they are not the primary targets. By contrast, the Congress that wrote the Helms-Burton Act understood that Cuban instrumentalities would be *the most frequent* violators of the prohibition on “trafficking” in confiscated property. As Congress noted in legislative

findings, such property is often still held by state-owned enterprises like CUPET or CIMEX. *See* 22 U.S.C. § 6081(5) (“[T]he Cuban Government . . . use[s] property and assets some of which were confiscated from United States nationals.”). As a result, one of Congress’s central goals in enacting Title III was to provide redress for the continued illegal “use of wrongfully confiscated property *by governments*.” *Id.* § 6081(8) (emphasis added); *see* p. 27 *infra*.

Relatedly, applying the FSIA in Title III actions would “effectively negate” a much larger set of claims than were at issue in *Kirtz*, *Kimel*, or *Hibbs*. If the FSIA applies, then Title III plaintiffs with claims against Cuban instrumentalities must satisfy an FSIA exception to overcome immunity. But most of the ways that Cuban instrumentalities traffic in confiscated property will never realistically fit within any FSIA exception. For example, “trafficking” includes “possess[ing],” “us[ing],” “control[ling],” “acquir[ing],” or “hold[ing] an interest in” any confiscated property. 22 U.S.C. § 6023(13)(A)(i). Virtually all such conduct by Cuban instrumentalities takes place in Cuba itself. And Congress clearly understood that the blanket embargo—in place for decades before, and then codified in the Helms-Burton Act itself, *id.* § 6032—would largely prevent Cuban firms from accessing American markets.

Together, those two points prevent most potential Title III claims against Cuban instrumentalities from triggering the available FSIA exceptions. The commercial-activity exception, after all, requires that commercial activity either be “carried on in the United States” or “cause[] a direct effect in the United States.” 28 U.S.C. § 1605(a)(2). So too for the expropriation

exception, which requires that the defendant instrumentality be “engaged in a commercial activity in the United States.” *Id.* § 1605(a)(3). In short, the FSIA’s exceptions are focused on activity in or directly affecting the United States, whereas the Helms-Burton Act targets conduct occurring in Cuba by entities with virtually no commercial dealings with the United States. If Helms-Burton plaintiffs must satisfy the FSIA, many will be shut out. The core lesson of *Kirtz* and its predecessors is that Congress does not write statutes that way.

2. *Several other Title III provisions confirm that the Helms-Burton Act displaces the FSIA.*

Because Title III creates a cause of action and expressly applies it to Cuban instrumentalities, the Court “need look no further to resolve this case.” *Kirtz*, 601 U.S. at 51. Again like *Kirtz*, though, several “other portions of [Title III] point to the same conclusion.” *Ibid.* When read collectively, they leave no doubt that Congress authorized suits against Cuban instrumentalities under the Helms-Burton Act itself.

a. First, several other provisions in Title III assume that plaintiffs will bring—and will be able to win—trafficking suits against Cuban instrumentalities. Start with Section 6082(d), which states that in “an action brought under this section, any judgment against an agency or instrumentality of the Cuban Government shall not be enforceable against an agency or instrumentality of either a transition government or a democratically elected government in Cuba.” 22 U.S.C. § 6082(d). That provision is a clear affirmation that Congress understood that it was authorizing

such “judgment[s] against an agency or instrumentality of the Cuban Government” in the first place. Indeed, Congress anticipated that such judgments could be significant enough to interfere with a hypothetical future democratic Cuban government, and thus provided for their suspension.

At least two other provisions also contemplate “actions” or “claims” “against the Cuban Government,” which the statute defines to include Cuban agencies and instrumentalities. 22 U.S.C. § 6023(5)(A). One empowers the President to suspend new Title III actions “against the Cuban Government” upon certifying that a transition government has taken power in Cuba. *Id.* § 6064(a). Another clarifies that U.S. nationals’ “claim[s] against the Cuban Government shall not be deemed to be an interest” subject to the embargo. *Id.* § 6082(a)(7)(B). Those provisions are further confirmation that Congress understood the Helms-Burton Act to authorize claims against the Cuban government.

Congress’s enacted findings point the same way. Those findings explain that Congress enacted the Helms-Burton Act to provide a “judicial remedy in the courts of the United States” for “United States nationals who were the victims of” “Castro’s wrongful seizures.” 22 U.S.C. § 6081(11). It did so because the international judicial system “lacks fully effective remedies” for, among other things, “unjust enrichment from the use of wrongfully confiscated property by governments.” *Id.* § 6081(8). The Act’s stated purposes likewise include “protect[ing] United States nationals against” “the wrongful trafficking in property confiscated by the Castro regime.” *Id.* § 6022(6). Congress thus made clear that the statute’s central object was to

hold the Cuban state and its instrumentalities accountable for profiting from confiscated American property.*

b. Second, construing Title III not to supersede the FSIA would “render superfluous an entire provision” of the statute. *Yates v. United States*, 574 U.S. 528, 543 (2015). Title III selectively incorporates the FSIA’s special procedures for service of process on foreign instrumentalities. *See* 22 U.S.C. § 6082(c)(2) (“In an action under this section, service of process on an agency or instrumentality of a foreign state . . . shall be made in accordance with section 1608 of title 28.”). That entire paragraph of Title III—which exclusively addresses “Service of Process”—would have been unnecessary “if Congress understood the FSIA to apply to Title III *in toto*.” Pet. App. 51a (Randolph, J., dissenting). If the FSIA (including Section 1608) governed Title III actions, it would have already prescribed how “[s]ervice in the courts of the United States . . . shall be made upon an agency or instrumentality of a foreign state.” 28 U.S.C. § 1608(b). Directing plaintiffs to use the FSIA service procedures was

* At the certiorari stage, respondents contended that any ruling in Exxon’s favor would necessarily expose other foreign countries and their instrumentalities, not just Cuba, to suits under Title III. Br. in Opp. i, 21. That possibility has zero practical relevance. As Judge Randolph pointed out below, respondents have never identified any “instance in which Cuba has sold or transferred confiscated property to another foreign sovereign’s instrumentality that then trafficked in that property.” Pet. App. 47a n.3. And “[a]brogation of Cuban governmental entities’ immunity is particularly clear from” Title III’s text, “which repeatedly refers to holding the Cuban government accountable and preventing it from benefiting from its wrongdoing.” U.S. Cert. Br. 14 n.5. So the Court can leave the likely academic question about other sovereigns for another day.

therefore necessary only if the Helms-Burton Act otherwise would have operated outside of the FSIA. Put differently, Congress incorporated service-of-process provisions from the FSIA precisely because the FSIA did not otherwise apply.

c. Third, another provision of Title III, Section 6082(c), underscores that plaintiffs need not satisfy an FSIA exception to have their day in federal court. Section 6082(c) characterizes Title III suits as “action[s] brought under *section 1331* of Title 28,” and directs that “the rules of the courts of the United States apply to actions brought under [Title III] to the same extent as such provisions and rules apply to any other” Section 1331 suit. 22 U.S.C. § 6082(c)(1) (emphasis added). Section 1331 is the general federal-question statute, conferring subject-matter jurisdiction in “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

That matters because FSIA suits are *not* brought under Section 1331. The FSIA has its own special provision conferring subject-matter jurisdiction on district courts: 28 U.S.C. § 1330(a). Section 1330 “work[s] in tandem” with Section 1604 of the FSIA, 28 U.S.C. § 1604. *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 276 (2023). Specifically, Section 1330 “confers district-court jurisdiction over ‘any nonjury civil action against a foreign state’ as to ‘any claim . . . with respect to which the foreign state is not entitled to immunity.’” *Ibid.* Section 1604 “then confers immunity on foreign states unless an enumerated exception,” such as the commercial-activity exception, “applies.” *Ibid.* This Court has thus explained that, as a general matter in cases against foreign sovereigns, the FSIA “collapses subject matter jurisdiction” and

“sovereign immunity into a single inquiry”: whether an FSIA exception is available. *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223, 234 (2025).

Section 6082(c) severs that usual “link” “among foreign sovereign immunity, subject-matter jurisdiction,” and “the enumerated exceptions” in the FSIA. *Antrix*, 605 U.S. at 234. Congress made a deliberate choice to frame Title III suits as “brought under” the federal-question-jurisdiction provision and subject to the more general rules in federal court, rather than the special provisions of the FSIA. That language confirms that, unlike in the typical case brought against a foreign sovereign, subject-matter jurisdiction in Title III actions does not depend on satisfying an FSIA exception.

B. The Purposes And History Of Title III Corroborate Congress’s Intent To Abrogate Immunity.

What the legislative text makes clear in multiple respects, “[s]tatutory history and purpose confirm,” *Wooden v. United States*, 595 U.S. 360, 371 (2022): Title III displaces the FSIA in suits against Cuban instrumentalities for Castro-led takings.

1. Requiring plaintiffs to satisfy an FSIA exception would conflict with the design of Title III.

a. There is no need to speculate about Title III’s purpose. Congress spelled out that it enacted Title III to make up for the “lack[]” of “fully effective remedies for the wrongful confiscation of property.” 22 U.S.C. § 6081(8). Creating a cause of action against Cuban instrumentalities while leaving the FSIA in place would have saddled the new remedy with the same failings of the old ones: it would have been far from “fully

effective.” Most obviously, as discussed earlier (at 25), Congress would have understood that many expropriation victims could sue only the Cuban state-owned companies currently possessing or using their property, and that most of those claims would have no reasonable prospect of satisfying an FSIA exception in light of the Cuban embargo codified in the same Helms-Burton Act. Even for those few claims that might, the practical hurdles involved in actually establishing jurisdiction under the FSIA would undermine Congress’s evident goal of creating a “judicial remedy” that would actually punish traffickers. 22 U.S.C. § 6081(11); *see, e.g.*, King Ranch Cert. Amicus Br. 11-12; Chamber of Commerce Cert. Amicus Br. 10-11.

For one thing, immunity determinations under the FSIA can often turn on arcane and tangential questions of fact. Congress could not have intended for Title III plaintiffs’ ability to bring suit to depend on the happenstance of a Cuban entity’s necessarily tenuous commercial connections with the United States—which have little to do with the plainly illegal expropriation itself. Pinning down those critical facts is all the more difficult for plaintiffs because Cuba criminalizes providing any information that could assist a Title III plaintiff. *See* Ley de Reafirmación de la Dignidad y Soberanía (Ley 80), 36 I.L.M. 472 (1997). If the victims of Castro’s expropriations must make such complex and resource-intensive showings to get through the courthouse doors, then those doors will remain closed to many heartland Title III claims.

This case exemplifies the challenges that Title III plaintiffs face when their claims are forced into the FSIA. Exxon’s complaint alleges that CUPET (a

Cuban oil company) explores, extracts, imports, refines, trades, and sells oil and petroleum using stolen Exxon land, refineries, terminals, and plants. Complaint ¶¶ 127-135. All of that is undoubtedly commercial activity under the FSIA, but the FSIA imposes the additional burden of showing that it “causes a direct effect in the United States.” 28 U.S.C. § 1605(a)(2). As noted, that is particularly challenging in light of the longstanding Cuban embargo, which shuts U.S. companies out of the Cuban oil market, and vice versa. The court of appeals explicitly left open the possibility of FSIA jurisdiction against CIMEX, which operates service stations. But the court required Exxon to show that either (i) the use of Western Union terminals at Exxon’s former service stations increased the net “out-flow[] of money” from the United States to Cuba, accounting for other geographically proximate terminals; or (ii) CIMEX has “sufficient and continuing awareness” that certain goods on its station shelves originated in the United States, before being purchased from a Cuban company. Pet. App. 35a, 39a. Those potential connections have nothing to do with the confiscatory conduct that the Helms-Burton Act actually cares about.

Another difficulty in satisfying an FSIA exception is the sheer time that it takes. Because FSIA immunity is a threshold issue subject to interlocutory appeal, it can take plaintiffs half a decade or longer just to earn a chance at the merits. This case is again a prime example. It is instructive to compare it with the other Helms-Burton Act case that this Court is currently reviewing, *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 24-983. Both were filed on May 2, 2019, the first day that President Trump allowed Title

III's previous suspensions to expire. Yet this case against Cuban instrumentalities is still at the pleading stage—indeed, the threshold jurisdictional stage of the pleading stage. By contrast, *Havana Docks*, in which the defendants are private businesses operating in the United States, has already proceeded to the final damages judgment under review.

Worse still, forcing Title III plaintiffs through the FSIA deters plaintiffs from bringing suit against the most culpable defendants: the state-owned entities that received Americans' stolen property immediately after its expropriation, or effectuated the expropriations themselves. Instead, it creates a "perverse incentive[]" for plaintiffs to target American companies" with Title III lawsuits to avoid the burdens in time and money inherent in satisfying the FSIA. *See* Chamber of Commerce Cert. Amicus Br. 12-17 (listing examples of such suits). Congress could not have intended to encourage such intramural fights among American individuals and businesses, the very parties it enacted Title III to "protect[]." 22 U.S.C. § 6081(6), (10).

b. Applying the FSIA here would also conflict with Congress's design of Title III as a foreign-policy tool for the Executive Branch. Title III contains an unusual provision authorizing the President to suspend the private right of action if he determines that doing so "is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba." 22 U.S.C. § 6085(b)(1). For the first 23 years after the Helms-Burton Act, the consistent judgment of the Executive Branch was that such suspensions were warranted. But the current President has determined that allowing Americans to pursue Title III actions, including against Cuban state-owned companies, both serves

the national interest and helps facilitate the arrival of a democratic government in Havana. Requiring Title III plaintiffs to nevertheless establish jurisdiction under the FSIA robs that foreign-policy judgment of much of its intended bite. After all, if the FSIA applies, Cuban instrumentalities will rarely face a serious risk of being held “accountable for seizing” and profiting from “American assets.” Press Release, Michael R. Pompeo, Sec’y of State, *Remarks to the Press* (Apr. 17, 2019).

For similar reasons, requiring Title III plaintiffs to route their claims through the FSIA would contradict Congress’s evident intent to create for claims against Cuba a dynamic akin to the pre-FSIA regime. Under that earlier regime, courts “deferred to the decisions of the political branches—in particular, those of the Executive Branch—on whether to take jurisdiction over actions against foreign sovereigns and their instrumentalities.” *Verlinden*, 461 U.S. at 486. The FSIA sought to “reduce[] the foreign policy implications of immunity determinations” by “transfer[ring] the determination . . . from the executive branch to the judicial branch.” H.R. Rep. No. 94-1487, at 7 (1976). Congress, however, reimposed Executive discretion for Title III claims, which it viewed as so consequential that it allowed them to move forward only with the concurrence of Congress (through the Helms-Burton Act) and the current President (through his non-exercise of the suspension authority). Channeling those claims to the FSIA would largely neuter that choice.

2. *The legislative record supports abrogation.*

As this Court has explained, “no amount of legislative history can dislodge” an “unmistakably clear”

abrogation expressed in the enacted statutory text. *Kirtz*, 601 U.S. at 49 (quoting *Dellmuth v. Muth*, 491 U.S. 223, 230 (1989)). To the extent the Court considers the history, however, it supports abrogation.

On the whole, the legislative history confirms what the statutory text says: that Congress envisioned a unique remedy against the Cuban government. The Conference Report for the Helms-Burton Act reiterates that Congress viewed the Title III cause of action as a “unique but proportionate remedy” for the Cuban “government’s exploitation (‘trafficking’) of wrongfully confiscated American properties.” H.R. Rep. No. 104-468, at 57-58 (1996) (Conf. Rep.). The “purpose of this civil remedy” was to “deny the Cuban regime of Fidel Castro the capital generated” by that exploitation. *Id.* at 58. As explained above, leaving the FSIA in place for claims against Cuban instrumentalities would have gutted that central purpose.

The Conference Report also corroborates the importance of Section 6082(c)’s reference to Section 1331. *See supra*, pp. 29-30. In describing that provision of Title III, the Report makes clear that Congress intended Title III actions to “be subject to the same procedural requirements as any other ‘federal question’ action.” H.R. Rep. No. 104-468, at 61. By contrast, there is no mention in the Conference Report of routing claims through the FSIA, or of claimants needing to satisfy an FSIA exception to move forward. Given the context, and the specific remarks in the legislative record on other procedural points, that silence is itself informative.

Title III’s drafting history tells a similar story. As respondents pointed out in opposing certiorari, an early iteration of the bill would have added a specific

Title III exception to the FSIA itself. Br. in Opp. 18 & n.3 (citing *Markup Before the Subcomm. on the Western Hemisphere of the Comm. on Int'l Relations on H.R. 927*, 104th Cong., 1st Sess. pp. 56-59 (Mar. 22, 1995)). In a vacuum, that piece of evidence might cut either way, but here the silence speaks volumes. If Congress's change to the earlier language was intended to pull back the abrogation of sovereign immunity and gut one of the main features of the bill, surely at least one legislator would have noted as much. But none did. In fact, Senator Helms specifically outlined the "conditions" in the final bill "that an American claimant must satisfy before he can even get into court"—yet said nothing about satisfying the FSIA's immunity exceptions. 141 Cong. Rec. 27722 (1995). Moreover, long after the original language was deleted, opponents of Title III's passage inserted into the Congressional Record a letter from the State Department warning that Title III "would permit suits against agencies and instrumentalities of foreign governments . . . far beyond current exemptions in the FSIA." 104 Cong. Rec. S15107 (Oct. 12, 1995). The State Department thus read Title III to abrogate foreign sovereign immunity.

Accordingly, to the extent pertinent here, the legislative and drafting history of Title III aligns with the teaching of *Kirtz* and its predecessors: Congress made its intention to withdraw sovereign immunity manifest, even though the statutory text does not "discuss sovereign immunity in so many words." 601 U.S. at 50.

C. The Court Of Appeals’ And Respondents’ Contrary Arguments Lack Merit.

Both the court of appeals and respondents would nevertheless elevate the FSIA to a kind of super-statute. On their view, no other statute—not even a later-in-time, targeted law like the Helms-Burton Act, with all the clear indicators of meaning discussed above—can provide for jurisdiction over a foreign sovereign unless Congress expressly amends the FSIA itself, or at least uses the words “foreign sovereign immunity.” That approach flips the governing interpretive principles on their heads. The additional arguments that the panel majority and respondents have offered are no more persuasive.

1. There is no magic-words requirement for Congress to abrogate foreign sovereign immunity.

The court of appeals mainly went wrong by insisting that Congress must “mention[] jurisdiction or [sovereign] immunity *expressly*” to abrogate the immunity of foreign sovereigns and their instrumentalities. Pet. App. 12a (emphasis added); *see id.* at 11a (noting the “absence of any . . . language in Title III” “referencing—much less departing from—the FSIA’s prescription” of immunity). The court acknowledged that under “*Kirtz* and the line of cases preceding it,” there is no such magic-words requirement where either “federal or state sovereign immunity” is concerned. *Id.* at 14a; *see Kirtz*, 60 U.S. at 52. But the court thought *foreign* sovereign immunity was different, for three reasons: (i) the text of the FSIA; (ii) this Court’s cases interpreting the FSIA; and (iii) the special “foreign-relations concerns” that “pervade waivers of foreign

sovereign immunity.” Pet. App. 14a. As Judge Randolph explained in dissent, none of those grounds supports the novel requirement of an “*ultra-clear* statement to abrogate foreign sovereign immunity” alone. *Id.* at 48a.

a. First, the panel majority wrongly believed that, under “the terms of the FSIA,” “jurisdiction in a civil action against a foreign sovereign [can] arise only under the FSIA itself, not some other statute like Title III.” Pet. App. 8a. The court pointed to Section 1604 of the FSIA, which provides that foreign states and instrumentalities “*shall be immune* from the jurisdiction of the courts of the United States and of the States *except as provided* in section 1605 to 1607 of this chapter”—that is, except as provided in the FSIA’s own enumerated exceptions. *Ibid.* (quoting 28 U.S.C. § 1604) (emphasis in original).

The FSIA, however, does not and cannot control how a later-in-time statute like the Helms-Burton Act is interpreted. It is a fundamental principle that “statutes enacted by one Congress cannot bind a later Congress.” *Dorsey v. United States*, 567 U.S. 260, 274 (2012); see *Fletcher v. Peck*, 10 U.S. 87, 25 (1810) (Marshall, C.J.) (“One legislature cannot abridge the powers of a succeeding legislature.”). Congress always “remains free to repeal [an] earlier statute,” “to modify the earlier statute, or to apply the earlier statute but as modified.” *Dorsey*, 567 U.S. at 274. Critically, Congress “remains free to express any such intention either expressly *or by implication as it chooses*.” *Ibid.* (emphasis added). Even a statute that purports to direct a later Congress to speak “expressly” to supersede it—which the FSIA does not—cannot require that later “Congress to use any ‘magical passwords.’” *Ibid.*

(quoting *Marcello v. Bonds*, 349 U.S. 302, 310 (1955)). The question is always whether the later statute demonstrates “the necessary indicia of congressional intent” to depart from the earlier one, *ibid.*—which the Helms-Burton Act does here, *see supra*, pp. 21-30.

Second, even if there were a direct clash between the FSIA and the Helms-Burton Act, the usual rule is that “when two statutes are at odds, the specific prevails over the general.” Pet. App. 48a (Randolph, J., dissenting) (citing *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974)); *see Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (“A specific statute will not be controlled or nullified by a general one.”). Title III is plainly the more specific statute here. It abrogates immunity for a specific set of claims based on a specific set of historic seizures committed by the Cuban government. That stands in stark contrast with “the FSIA’s general rule of immunity for foreign governments.” *Permanent Mission of India to the United Nations v. New York*, 551 U.S. 193, 196 (2007). So even if these laws conflicted—and the Helms-Burton Act did not simply add another instance of immunity abrogation that post-dates the FSIA—the Helms-Burton Act would prevail.

b. The panel majority also placed too much reliance on this Court’s previous descriptive statements that the FSIA “provides the *sole basis* for obtaining jurisdiction over a foreign state.” Pet. App. 8a (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989)); *see OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 30 (2015) (quoting *Amerada Hess* in dicta); *Republic of Austria v. Altmann*, 541 U.S. 677, 699 (2004) (calling the FSIA “a comprehensive framework for resolving any claim of

sovereign immunity”). Pointing to those statements, the panel majority described the FSIA as the “exhaustive” or “exclusive mechanism for securing jurisdiction over civil suits against foreign sovereigns.” Pet. App. 9a-10a.

This Court recently rejected a similar attempt by another instrumentality of a foreign state to overread *these very same statements*. In *Turkiye*, the Court considered whether the FSIA immunizes foreign states “from criminal proceedings” in U.S. courts. 598 U.S. at 277. The defendant, a bank owned by the Republic of Turkey, pointed to the statement in *Amerada Hess* that the FSIA is the “sole basis for obtaining jurisdiction over a foreign state.” *Id.* at 278 (quoting 488 U.S. at 439). The Court rejected that argument, explaining that the “general language” of its prior opinions should not be read as “referring to quite different circumstances that the Court was not then considering.” *Ibid.*

So too here. None of this Court’s previous cases had any “occasion to consider the FSIA’s implications for” Title III of the Helms-Burton Act, or any other statute with an independent textual basis for abrogating foreign sovereign immunity. *Turkiye*, 598 U.S. at 278. *Amerada Hess* was decided in 1989, before the Helms-Burton Act was enacted. It addressed whether the Alien Tort Statute, a general jurisdictional statute enacted in 1789, continued to provide jurisdiction over foreign sovereigns even after the enactment of the FSIA. The Court held no, explaining that the more specific, later-in-time FSIA controlled. *See* 488 U.S. at 438 (explaining that the ATS is broader because it “does not distinguish among classes of defendants”).

Applied to this case, that logic cuts *against* applying the FSIA to the more specific, later-in-time Title III.

Meanwhile, both *Altmann* and *Sachs* were decided before Title III's cause of action had ever been permitted to come into effect, and involved "quite different circumstances" from the question presented here, *Turkiye*, 598 U.S. at 278. In *Altmann*, the Court considered whether the FSIA applies in suits that were pending before the FSIA's enactment. *See* 541 U.S. at 697. In *Sachs*, the Court considered when a tort claim for injuries suffered abroad falls within the FSIA's commercial-activity exception. *See* 577 U.S. at 33. Neither case had occasion to address the interaction of the FSIA with another potential immunity-abrogating statute enacted after 1976, let alone one focused on just one foreign nation and historical moment. Given the canons of construction already discussed, there is no reason to think that this Court was embracing the court of appeals' rule when it generically described the FSIA as governing the field of sovereign immunity. Pet. App. 14a.

c. Finally, the panel majority noted that "sensitive diplomatic and national-security judgments" "pervade waivers of foreign sovereign immunity" but "do not arise in cases involving federal or state sovereign immunity." Pet. App. 14a. The majority thought that these sensitivities "bolster[ed] the need to respect Congress's balancing of those considerations in the provisions of the FSIA" and thus supported a unique express-statement requirement. *Ibid.*

That does not follow. For one thing, sensitive judgments also pervade Congress's decision to waive the federal government's sovereign immunity, and especially its decision to abrogate the immunity of the 50

States. See *Alden v. Maine*, 527 U.S. 706, 715 (1999) (“The generation that designed and adopted our federal system considered immunity from private suits central to sovereign dignity.”). Indeed, Congress may only pierce States’ immunity where it can invoke the special “diminution of state sovereignty” found in its power to enforce the Fourteenth Amendment. *Fitzpatrick v. Butler*, 427 U.S. 445, 455 (1976). More fundamentally, the panel majority’s argument misses the point that Congress *rebalanced* the specific “sensitive and diplomatic national-security judgments” at play when it subjected Cuban instrumentalities to Title III damages suits (absent a suspension by the President). That deliberate, specific legislative judgment is entitled to just as much respect as Congress’s earlier, general judgment in the FSIA. See U.S. Cert. Br. 12, 17-18.

If anything, it should be easier for Congress to abrogate foreign sovereign immunity than federal or state sovereign immunity. This Court has explained that the clear-statement rule for state sovereign immunity protects the “usual constitutional balance between the States and the Federal Government.” *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985). That makes sense, as both state and federal sovereign immunity are “essential component[s] of our constitutional structure.” *Dellmuth v. Muth*, 491 U.S. 223, 228 (1989); see *United States v. Clarke*, 33 U.S. 436, 443 (1834) (Marshall, C.J.) (“[T]he United States are not suable of common right.”). By contrast, foreign sovereign immunity is not “statutorily or constitutionally required” at all but rather is a “matter of grace and comity on the part of the United States.” *Antrix*, 605 U.S. at 228. It falls within Congress’s full discretion

to extend and withdraw by statute. As a result, any thumb on the scale against abrogation should have a lighter touch for foreign sovereign immunity than for its constitutionally mandated counterparts. And in no event should *more* be required of Congress in this context.

2. The court of appeals and respondents draw incorrect inferences from several provisions.

a. In reading the text of Title III differently, the court of appeals focused on a single provision that supposedly supports its view: Section 1611(c) of the FSIA, which Congress added as part of the Helms-Burton Act. Pet. App. 12a.

Section 1611 is the last in a trio of FSIA provisions (1609 through 1611) that implement execution immunity for property in the United States that is owned by a foreign state or its instrumentalities. Section 1609 states the general rule that such property is immune from “attachment,” “arrest,” or “execution.” 28 U.S.C. § 1609. Section 1610 then sets forth a number of exceptions to that rule—that is, circumstances in which such property is *not* immune. Section 1611(c) then creates an exception to the exceptions, reinstating immunity over diplomatic property in Title III actions. It states that, in Title III actions, “[n]otwithstanding the provisions of section 1610 of this chapter, the property of a foreign state [or instrumentality] shall be immune from attachment and from execution . . . to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.” *Id.* § 1611(c).

The court of appeals seized on that prefatory “notwithstanding” clause: “[n]otwithstanding the provisions of section 1610 of this chapter.” 28 U.S.C. § 1611(c). In the court’s view, “Congress would expressly provide that an FSIA exception to FSIA-created immunity is inapplicable in Title III actions only if Congress understood foreign states to enjoy FSIA immunity in Title III actions in the first place.” Pet. App. 121a. In other words, Congress would not have created an exception to an FSIA provision, Section 1610, unless it thought that Section 1610 already applied in Title III cases.

Not necessarily. The court of appeals drew an inference from a “notwithstanding” clause. But as this Court has explained, notwithstanding clauses do not “expand or contract the scope of [any] provision by implication.” *Atlantic Richfield Co. v. Christian*, 590 U.S. 1, 16 (2020). Consider a classic example of the genre: “notwithstanding any other provision of law, follow rule X.” That clause does not somehow imply that every or even any provision on the books currently prevents following rule X. It simply “explain[s] what happens in the case of a clash,” if one arises. *Ibid.*

Here, the notwithstanding clause in Section 1611(c) heads off one possible misunderstanding of the statute. On its face, Section 1610 states that property of a foreign instrumentality “shall” be subject to attachment and execution in certain circumstances, full stop. 28 U.S.C. § 1610. If Section 1610’s conditions were met in a Title III case, then a court reading Section 1610 might conclude that all of the defendant’s property “shall” be available for execution. That would “clash” with Section 1611(c), *Atlantic Richfield*, 590 U.S. at 16, which states that diplomatic property may *never* be

used to satisfy a Title III judgment. 28 U.S.C. § 1611(c). Congress thus added the “notwithstanding” clause to Section 1611(c) to make doubly sure that Section 1611(c) controls. That suggests little, one way or the other, about whether Section 1610 otherwise applies in Title III cases. If anything, Section 1611(c) is yet another example of the many provisions that make clear that Congress contemplated Title III suits against Cuban governmental entities. *See supra*, pp. 26-30. Congress would not have needed to specially insulate Cuban diplomatic property from execution unless it thought that there might be Title III judgments against the entities that own that property.

In any event, Section 1611(c) at most has implications for execution. And whatever Section 1611(c) may imply about the application of the FSIA’s *execution* provisions, it cannot overcome the clear textual evidence that Congress superseded the FSIA’s *jurisdictional* provisions. On the jurisdictional-immunity question presented here, there are far more express textual and structural clues pointing toward abrogation.

b. For their part, respondents have pointed to Section 6082(a)(6), which states that no court “shall decline, based upon the act of state doctrine, to make a determination on the merits” in a Title III action. 22 U.S.C. § 6082(a)(6); *see* Br. in Opp. 6, 17. The act-of-state doctrine requires courts to “treat an official act of a foreign sovereign as conclusive with respect to the rights and duties addressed by the act.” Restatement (Fourth) of Foreign Relations Law § 441, cmt. a (2018); *see Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964) (applying doctrine in dispute over title to sugar expropriated after Cuban revolution). Respondents

rightly note that, by instructing courts not to apply the doctrine, Congress “removed one important obstacle” to recovery that Title III plaintiffs might otherwise have faced. Br. in Opp. 17. From that point, respondents offer the following inferential leap: because sovereign immunity is *also* an obstacle to recovery for Title III plaintiffs, they say, the fact that Congress did not *also* expressly override the FSIA suggests that Congress had no such intent. *Ibid.*

That is a huge stretch. As set forth above, Congress had already made its intent to abrogate immunity “unmistakably clear” by authorizing damages actions against foreign instrumentalities. *Kirtz*, 601 U.S. at 49. Although it could have “address[ed] the question of sovereign immunity in different” and “even more obvious terms,” that does not make its abrogation “any less clear.” *Id.* at 51-52.

3. The statutory scheme is perfectly coherent if Title III displaces the FSIA.

Finally, respondents have objected that interpreting Title III to abrogate foreign sovereign immunity would “create an incoherent statutory scheme,” because plaintiffs would still need to satisfy the FSIA’s immunity exceptions to (i) establish personal jurisdiction over Cuban instrumentalities and (ii) execute any judgment against Cuban instrumentalities. Br. in Opp. 22-23. Respondents’ premises are both wrong. First, the FSIA does not govern either question. Second, even if respondents were right about personal jurisdiction or execution immunity, the inferences they draw for jurisdictional immunity do not follow.

a. Respondents’ argument about personal jurisdiction assumes that Title III requires plaintiffs to use

FSIA-specific provisions to obtain personal jurisdiction over Cuban instrumentalities. It does not.

Again, in Title III, Congress severed the FSIA's link "among foreign sovereign immunity, subject-matter jurisdiction, personal jurisdiction, and the enumerated exceptions." *Antrix*, 605 U.S. at 234. Just as Title III makes clear that subject-matter jurisdiction lies under Section 1331, *see supra*, p. 29, it also points the way to obtaining personal jurisdiction under "the rules of the courts of the United States." 22 U.S.C. § 6082(c)(1). Title III plaintiffs may therefore obtain personal jurisdiction over Cuban instrumentalities through Federal Rule of Civil Procedure 4(k)(1)(C), which states that serving a summons "when authorized" to do so "by federal statute" "establishes personal jurisdiction over a defendant." Title III provides that statutory "authoriz[ation]" by expressly permitting "service of process" "in accordance with section 1608 of title 28." 22 U.S.C. § 6082(c)(2); *see* U.S. Cert. Br. 17.

Title III plaintiffs may also rely on Rule 4(k)(2) to establish personal jurisdiction over Cuban instrumentalities. Title III actions are "claim[s] that arise under federal law." Fed. R. Civ. P. 4(k)(2). Cuban instrumentalities are generally not "subject to jurisdiction in any state's courts of general jurisdiction." *Ibid.* And "exercising jurisdiction is consistent with the United States Constitution," *ibid.*, without any need for a minimum-contacts analysis, because exploiting Americans' stolen property is undeniably "conduct closely related to the United States that implicates foreign policy concerns." *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 18 (2025).

b. Respondents separately contend that even if Title III abrogated their sovereign immunity from suit, it “would not reach the FSIA’s separate provisions on execution immunity.” Br. in Opp. 22-23. And respondents contend that it would be “incongruous” for Congress to have allowed Title III plaintiffs to sue Cuban instrumentalities while leaving them no practical way to collect on their judgments, which respondents apparently intend not to pay. *Id.* at 23. Both steps of the analysis are wrong.

For starters, the best reading of Title III is that it *does* eliminate the execution immunity created by Section 1609 of the FSIA. That result naturally follows from Congress’s description of Title III suits as “action[s] brought under section 1331,” 22 U.S.C. § 6082(c)(2), the general federal-question jurisdiction statute, rather than Section 1330, the special FSIA jurisdictional statute. Again, by characterizing Title III actions as federal-question actions rather than FSIA actions, Congress made clear that the FSIA does not govern such actions. *See supra*, p. 29. That is also why Congress needed to expressly *incorporate* the FSIA’s service-of-process rules into the statute, as they otherwise would have been displaced in Title III actions along with the rest of the FSIA.

In any event, even assuming that the FSIA’s execution-immunity provisions apply in Title III suits, there would be nothing “incongruous” about a statute that preserved such immunity while abrogating the separate jurisdictional immunity from suit. Jurisdictional immunity and execution immunity are not always coextensive. In fact, “at the time the FSIA was passed, the international community viewed” a waiver of jurisdictional immunity as a lesser “affront” than a waiver

of execution immunity. *Connecticut Bank of Commerce v. Republic of Congo*, 309 F.3d 240, 255-256 (5th Cir. 2002). Against that backdrop, Congress could have reasonably applied the FSIA to one but not the other—a question that this Court need not decide today.

To be clear, a Title III judgment against a Cuban instrumentality still has real value, even if rarely executable in the United States under the current embargo. The FSIA’s execution provisions cover only “property in the United States,” 28 U.S.C. § 1609; Congress could have anticipated that Title III judgment creditors would focus on property outside this country, as creditors against foreign entities often must. See George K. Foster, *Collecting from Sovereigns: The Current Legal Framework for Enforcing Arbitral Awards and Court Judgments Against States and Their Instrumentalities, and Some Proposals for Its Reform*, 25 Ariz. J. Int’l & Compar. L. 665, 668 (2008). Judgments may generally be sold in exchange for consideration. See, e.g., N.Y. Gen. Oblig. L. § 13-103. And as the United States explained in urging certiorari (at 23), it “sees foreign-policy benefits in allowing Title III suits that could hold Cuba accountable for its past expropriations and present abuses, notwithstanding any barriers to eventual recovery.” At bottom, even if Title III judgments against Cuban instrumentalities might remain unsatisfied for some period of time, that hardly makes them worthless in dollar or policy terms. The Helms-Burton Act—enacted 32 years after the Cuban Claims Act—was itself part of a decades-long project; Congress was no stranger to piecemeal advancement toward final justice.

* * *

For all of the complexities that respondents gin up, this case really is not that complicated. This Court has repeatedly held that a federal statute that “creates a cause of action” and “explicitly authorizes suit against a government on that claim” “effects a clear waiver” of both federal and state sovereign immunity. *Kirtz*, 601 U.S. at 49-50. The issue here is whether identical language abrogates the sovereign immunity of Cuban state-owned companies when they are sued under a statute specifically designed to hold them accountable in federal court for profiting from stolen American property. The answer has to be yes, and it is.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted.

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NOVEMBER 28, 2025