No. 24-699

IN THE

Supreme Court of the United States

EXXON MOBIL CORPORATION,

Petitioner,

v.

CORPORACIÓN CIMEX, S.A. (CUBA), *et al.*,

Respondents.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

To that end, the Chamber routinely files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community, including cases involving the proper interpretation and application of the Foreign Sovereign Immunities Act (FSIA) and the Cuban Liberty and Democratic Solidarity Act of 1996 (*i.e.*, the Helms-Burton Act). Such cases include *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, Nos. 23-1201 & 24-17 (Petition for cert. filed May 6, 2024), and *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276, 1278 (11th Cir. 2024).

The Chamber's members have a strong interest in ensuring that both the FSIA and the Helms-Burton Act are interpreted and applied fairly and consistent

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part and no entity or person, other than *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

with Congress's clear intentions. And the Chamber has unique views on the issues presented in this case. The Chamber is well suited to provide the Court with its perspective that the D.C. Circuit misinterpreted and misapplied both statutes in a way that significantly harms American businesses and conflicts with longstanding, clearly expressed federal policy.

SUMMARY OF ARGUMENT

This is precisely the type of case against precisely the type of defendant that Congress had in mind when it enacted the Helms-Burton Act. *See* 22 U.S.C. § 6021 *et seq.* Before Fidel Castro seized power in 1959, Standard Oil Company (now known as Exxon Mobil Corporation) owned subsidiaries with extensive operations and millions of dollars' worth of property in Cuba. Less than two years after Castro's power grab, however, the Cuban government wrongfully confiscated that property without paying a penny. Cuba then transferred Petitioner's assets to state-owned oil companies, including Respondents in this case. For decades, Respondents have used and profited from that expropriated property.

There is no dispute that what the Cuban regime did to Exxon was a clear violation of well-established international law. It is equally clear that Exxon should be entitled to a meaningful judicial remedy for the significant losses it incurred due to the Cuban government's illegal confiscations of its property. Congress crafted a remedy specifically designed to address the type of harm Exxon suffered when it passed the Helms-Burton Act in 1996. Title III of the Act permits American victims of wrongful takings by

Castro's regime to sue and obtain damages from "any person"—including "any agency or instrumentality of a foreign state"—who "traffics" in confiscated property by (among other things) profiting from that property. 22 U.S.C. § 6023(13)(A); *id.* § 6023(11).

The facts of this case are a perfect fit for that cause of action: Respondents are instrumentalities of the Cuban government that used and profited from Exxon's wrongfully confiscated property, and Exxon is an American victim of those wrongful confiscations by the Cuban government. Exxon promptly filed this action against Respondents more than six years ago—as soon as the suspension on Title III claims lapsed in May 2019—and Exxon's property was wrongfully expropriated in 1960. Exxon has waited far too long for redress.

But the decision below would further delay, and potentially deny, Exxon and countless other victims the remedy Congress established in enacting Title III. According to the D.C. Circuit, Exxon's Title III claims against the Cuban instrumentalities cannot proceed to the merits unless those claims fall independently within an exception to immunity under the FSIA. *Exxon Mobil Corp. v. Corporacion CIMEX, S.A.*, 111 F.4th 12, 22, 25 (D.C. Cir. 2024) (*Exxon*). If no exception applies, then Respondents will be immune from suit, and Exxon will be deprived of the very statutory remedy designed for victims of this type of expropriation.

The Chamber agrees with, but does not repeat, Exxon's persuasive arguments that the D.C. Circuit's decision is fundamentally at odds with this Court's

analogous decisions in cases involving federal sovereign immunity. *See Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 50-51 (2024); *see also Exxon*, 111 F.4th at 40 (Randolph, J., dissenting) (explaining that the majority's reasoning would mean that "Cuban agencies enjoy more protection from lawsuits than agencies of the United States"). Rather, it submits this brief to highlight how the court of appeals' decision harms American businesses.

First, if allowed to stand, the decision below would significantly harm American plaintiffs and defendants. For American plaintiffs, by requiring them to litigate the additional threshold jurisdictional issue of sovereign immunity under the FSIA at the outset, the D.C. Circuit's decision forces Title III plaintiffs with otherwise meritorious claims to engage in costly and protracted jurisdictional discovery and motions practice, as Exxon's experience in this case shows. Because the merits of Title III cases brought against Cuban instrumentalities are often straightforward, these jurisdictional discovery costs may well exceed the costs of litigating the cases' merits, while significantly delaying the plaintiff's ability to obtain a hearing on the merits. For plaintiffs with less patience and financial wherewithal, the need to overcome sovereign immunity may operate as a significant deterrent against pursuing Title III claims against Cuba and its instrumentalities at all. The decision below also hurts American defendants by creating perverse incentives for plaintiffs to pursue claims against American businesses with attenuated connections to confiscated property, as opposed to the

culpable foreign actors, like Respondents. That is because the D.C. Circuit's decision shields only the most culpable defendants—the Cuban state and its instrumentalities.

Second, the D.C. Circuit's decision conflicts with this Court's immunity precedents and the policies underlying the Helms-Burton Act. The Helms-Burton Act was designed, in part, to remove certain barriers faced by a narrow class of plaintiffs and to facilitate their ability to obtain redress for the expropriation of their property by the Cuban regime. Foreign sovereign immunity unquestionably represented one of the barriers that the Act was designed to overcome, but the D.C. Circuit's decision interpreting the FSIA to bar many Helms-Burton Act cases essentially reconstructs those barriers and thus contravenes Congress's intent. For these reasons, the Court should reverse the D.C. Circuit's decision.

ARGUMENT

I. The D.C. Circuit's Decision Harms U.S. Businesses.

The five-year history of Title III litigation shows that the private cause of action is not working as Congress intended. The D.C. Circuit's decision will exacerbate that regrettable trend and harm Americans—both as plaintiffs and defendants—in the process. The court's interpretation of the interplay between the FSIA and Title III will make it much more difficult, costly, and arduous for American businesses to obtain a judgment against the agencies and instrumentalities of the Cuban government that have spent decades profiting from property that it

confiscated wrongfully from American businesses. To make things worse, the barriers erected through the D.C. Circuit's decision have created powerful incentives for Title III plaintiffs to target American businesses with negligible connections to the confiscated property, since those businesses may technically fall within Title III's broad definition of trafficking. While the foreign actors that directly participated in and benefited from the confiscations will be shielded from suit in the United States under the FSIA, those American businesses enjoy no such protections, making them comparatively more attractive defendants.

A. The D.C. Circuit's Decision Makes It Harder, More Costly, and More Time-Consuming for U.S. Businesses to Vindicate Their Title III Rights.

Congress passed the Helms-Burton Act to give victims of the Cuban government's confiscations of property (like Exxon) a "judicial remedy" in American courts. 22 U.S.C. § 6081(11). In doing so, Congress abrogated any sovereign immunity that instrumentalities of the Cuban government may have had under the FSIA—as explained persuasively in Petitioner's brief and Judge Randolph's dissent. If the D.C. Circuit's contrary decision is allowed to stand, it will place substantive, time-consuming, and costly barriers on those victims' ability to obtain the redress that Congress intended to make available to them through the Helms-Burton Act.

First, the D.C. Circuit's decision will make it increasingly difficult, if not impossible, for many Title III plaintiffs to obtain relief. Requiring Title III plaintiffs to establish an independent exception to immunity would erect difficult, if not insurmountable, hurdles to plaintiffs in the many instances where the trafficking is being done by instrumentalities of the Cuban government.

While the FSIA contains several exceptions to sovereign immunity, only two—the expropriation and commercial-activity exceptions—potentially apply in this case. *See* 28 U.S.C. § 1605. The D.C. Circuit held that the FSIA's expropriation exception does not apply here, leaving Exxon (and others) with a narrow path by which to overcome sovereign immunity and proceed to the merits of their Title III claims against Cuban agencies and instrumentalities: the commercial-activity exception.

By its design, however, the commercial-activity exception is ill-suited to Title III cases brought against Cuban state instrumentalities. The exception abrogates the sovereign immunity of a foreign state or instrumentality in an action based on the foreign state's commercial activities. But it requires a nexus between those commercial activities and the United States. 28 U.S.C. § 1605(a)(2). This means the action must be based upon the foreign state instrumentality (1) carrying out commercial activities in the United States, (2) engaging in "an act performed in the United States in connection with a commercial

activity," or (3) conducting foreign commercial activities that "cause[ ] a direct effect in the United States." *Id.*

As Congress surely knew when it enacted the Helms-Burton Act, the Cuban embargo will make it difficult in most cases (though not necessarily this one) for a Helms-Burton plaintiff to satisfy this exception when the trafficker is an agency or instrumentality of the Cuban government. This is because the Cuban embargo prohibits the overwhelming majority of commercial activity by Cuban instrumentalities that could have a sufficient nexus with the United States to satisfy the commercial-activities exception. *See generally* 22 U.S.C. § 6023. Having adopted measures to strengthen the existing Cuban embargo in the Helms-Burton Act itself, Congress understood the Act would make it virtually impossible in most cases to show that Cuban instrumentalities' commercial activity had a direct effect in the United States. *See* 28 U.S.C. § 1606(a)(2). Yet Congress enacted Title III to provide a full and effective judicial remedy to victims of the Cuban government's expropriation and explicitly provided that Cuban agencies and instrumentalities are "persons" subject to suit under Title III. *See* 22 U.S.C. § 6081(11). It makes little sense to assume, as the D.C. Circuit majority did, that Congress intended to limit Title III claims to fact patterns that satisfy the commercial-activity exception at the same time Congress was severely restricting all such commercial activity between the United States and Cuba. *See*

Havana Club Holding, S.A. v. Galleon S.A., 203 F.3d 116, 120, 124 (2d Cir. 2000) (explaining that Congress codified the Cuban embargo, which had been previously reflected in the Cuban Asset Control Regulations, through the Helms-Burton Act with the purpose of "prevent[ing] any Cuban national or entity from attracting hard currency into Cuba by selling, assigning, or otherwise transferring rights subject to United States jurisdiction").

Second, even in cases like this one, where the FSIA may leave a narrow path for Title III plaintiffs to proceed against Cuban instrumentalities, the D.C. Circuit's requirement that those plaintiffs make a threshold showing that an exception applies will make it much more time-consuming and expensive for Title III plaintiffs to obtain relief. That is because contested issues related to sovereign immunity, which determines the existence of subject-matter jurisdiction, must be resolved (both in the trial court and on appeal) at the outset of a case. *Exxon*, 111 F.4th at 19, 22. That approach will require victims of Cuban expropriation to engage in costly and protracted litigation (including extensive jurisdictional discovery) at the threshold of an action to determine whether an exception to the FSIA applies. Litigating these issues will at the very least considerably delay Americans' opportunities to be heard on their meritorious Title III claims and obtain relief, while also driving up the cost of the litigation to a point where many Title III plaintiffs may not be able to pursue their claims at all.

Because Congress intended to, and did, abrogate the sovereign immunity of Cuban-government instrumentalities through Title III of the Helms-Burton Act, there should be no need to litigate these issues. Once again, Exxon's experience in this case—including the D.C. Circuit's remand for even more FSIA-related discovery and litigation over threshold jurisdictional issues—exemplifies the tremendous cost and delay associated with litigating immunity questions.

Exxon's property was wrongfully confiscated more than *six decades ago*, and it filed this litigation *six years ago*—on the earliest date it could do so. Even though Title III plainly permits Exxon to sue Cuban instrumentalities, Exxon has been mired for years in litigation over Respondents' assertion of sovereign immunity.

If the D.C. Circuit's decision is allowed to stand, Title III plaintiffs suing Cuban state instrumentalities will be forced to engage in complex and costly jurisdictional discovery about whether the commercial-activity exception applies. The D.C. Circuit's exacting standard for establishing a "direct effect" under Section 1605(a)(2) would require Title III plaintiffs to uncover detailed facts about the state instrumentalities' business operations and to establish complex counterfactual scenarios.

Exxon's experience in this case illustrates this problem with unique clarity. The D.C. Circuit acknowledged that Exxon had presented evidence

that Corporación Comex, S.A. ("CIMEX") used property expropriated from Essosa to operate remittance service stations and that those service stations "'specifically targeted' parties in the United States." *Exxon*, 111 F.4th at 34 (quoting *EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.*, 894 F.3d 339, 342, 346 (D.C. Cir. 2018)); *see id.* at 32-33.

But the D.C. Circuit determined that this was not enough, holding that to satisfy the "direct effect" prong, Title III plaintiffs suing Cuban instrumentalities must show that, in a counterfactual scenario, the instrumentality would have earned fewer profits without the use of the expropriated property. *Id.* at 34-35. For Exxon, that means showing that the use of the specific stations on Essosa property raised the total "outflow of money from the United States" rather than simply causing customers to use other remittance stations. *Id.* at 35.[2] To make such an exacting showing, Exxon could be required to probe into the instrumentalities' business and revenue streams. Worse, it could require probing into the decision-making process and hypothetical actions of third-party customers to construct a counterfactual

[2] Alternatively, because CIMEX also sells U.S. imported goods at its service stations, the D.C. Circuit concluded that Exxon could establish a direct effect by showing that CIMEX had "sufficient and continuing awareness that the goods it receives from [an intermediary] originate from the United States." *Id.* at 36.

about what those customers would have done absent the use of expropriated property.

If the decision below is permitted to stand, Title III plaintiffs, like Exxon, would be required to establish all of this at the outset of the case, before merits discovery even begins. In Exxon's case, as in countless others, resolving such threshold factual issues, which deal solely with establishing an exception to the FSIA, would almost certainly prove more complicated and more costly than litigating the essentially contested merits of the actual claims at issue.

Exxon may well prevail despite the D.C. Circuit's imposition of these significant jurisdictional hurdles. Other Helms-Burton plaintiffs, however, may not be able to afford to even try. According to publicly available government records, many of the Cuban expropriation claimants in the U.S. Foreign Claims Settlement Commission are individuals—not corporations. *See FOIA Library*, Foreign Claims Settlement Commission of the U.S., U.S. Dep't of Just. (Aug. 27, 2024) (providing a link to a list of claims under the "Commission's Cuba claims program").[3] For example, the Commission certified losses for individuals (or, now, their estates) for tens of thousands of dollars in lost farming land and, for

[3] https://www.justice.gov/fcsc/foia-library.

other individuals, millions in lost land value. *Id.*[4] For claimants with less resources, or with lower-value but still meritorious claims, the D.C. Circuit's jurisdictional requirements may render those claims uneconomic to bring, in clear derogation to Congress's goals and the plain text of Title III. *See* Keith N. Hylton, *Litigation Costs and the Economic Theory of Tort Law*, 46 U. Mia. L. Rev. 111, 113 (1991) ("[B]ecause litigation is costly, not every victim will find it profitable to bring suit. Some victims will bear their losses without seeking compensation through the tort system. The victims who choose to bring suit will do so on the basis of an arbitrary standard: whether the anticipated damage award exceeds the cost of litigating. . . . [T]he probability of winning a lawsuit becomes an important consideration in the decision to bring suit." (footnotes omitted)).

These types of inefficiencies compound the extant weaknesses of the tort system. *See* U.S. Chamber of Com. Inst. for Legal Reform, *Tort Costs in America: An Empirical Analysis of the Costs and Compensation of the U.S. Tort System* 2, 4 (2022) (examining "the costs of the legal system and the efficiency with which it delivers compensation to injured parties" and

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[4] Many claimants also seek recovery based on lost securities or corporate assets, so, like Exxon, they would be unable to utilize the expropriation exception under the decision below. *See id.*; *see also Exxon*, 111 F.4th at 27 (holding that the expropriation exception cannot apply where a claimant is a shareholder rather than the direct owner).

concluding that the American "tort system is relatively inefficient at delivering compensation to claimants"). Further, they benefit only those directly responsible (and most culpable) for the underlying confiscations and are unnecessary given the language in Title III abrogating Respondents' immunity. The costs and delays associated with litigating exceptions to the FSIA create significant impediments to Title III litigation against Cuban agencies and instrumentalities.

The net effect of the D.C. Circuit's decision is to erect substantive, costly, and time-consuming barriers to Title III lawsuits by Americans against Cuban instrumentalities and agencies. The barriers will harm Americans and prevent them from vindicating their Title III right to a judicial remedy against agencies and instrumentalities of the Cuban government.

B. The D.C. Circuit's Decision Creates Perverse Incentives for Title III Plaintiffs to Sue U.S. Businesses with Attenuated Connections to Confiscated Property Rather than Culpable Foreign Actors.

Jurisdictional barriers to suing Cuban agencies and instrumentalities under Title III have had a related, unintended consequence. They harm American businesses by placing a Title III target on their backs. Although Title III claims have been permitted only since May 2019, when President Trump allowed the suspension to lapse, the early Helms-Burton cases have demonstrated that the legislation has not

worked as Congress intended. These cases show that, in practice, the Cuban state entities directly responsible for and benefitting from the wrongful confiscation of property from American citizens are largely insulated from liability, while less culpable domestic businesses—which lack the sovereign-immunity and jurisdictional protections that foreign state instrumentalities enjoy—have been subjected to costly and potentially ruinous litigation. If upheld, the D.C. Circuit's decision will only exacerbate this trend by further encouraging Title III plaintiffs to pursue the path of least resistance—targeting U.S. businesses instead of the Cuban state actors who were responsible for the expropriations and who profit from the trafficking of the expropriated assets.

In certain instances, including in Exxon's case, the Cuban government or its instrumentalities continue to own or operate the confiscated property. Yet, in the face of clear authorization from Congress under Title III for plaintiffs to seek damages directly from those wrongdoers, the D.C. Circuit's ruling affords Cuban state-owned entities presumptive immunity from the potential liability that the Act was expressly enacted to create, while leaving American companies as the only possible class of defendants from which plaintiffs could seek redress in most instances.

In many other cases, courts have found that private foreign corporations that have taken over or operate expropriated property lie beyond the personal jurisdiction of U.S. courts. Foreign companies are, by definition, incorporated abroad, and it is rare for claims of trafficking in Cuban property to arise out of

whatever contacts those companies have with the United States. *See, e.g.*, *Herederos De Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 43 F.4th 1303, 1306 (11th Cir. 2022) (affirming dismissal, for lack of personal jurisdiction, of Helms-Burton claim against Canadian mining company that operated mines confiscated by the Cuban government); *Rodriguez v. Imperial Brands plc*, No. 20-cv-23287, 2024 WL 1505535, at *2 (S.D. Fla. Apr. 8, 2024), *appeal filed* No. 24-11487 (11th Cir. May 7, 2024) (dismissing Helms-Burton claims against tobacco company for lack of personal jurisdiction); *see also N. Am. Sugar Indus. Inc. v. Xinjiang Goldwind Sci. & Tech. Co.*, 124 F.4th 1322, 1327 (11th Cir. 2025) (vacating dismissal for lack of personal jurisdiction and remanding for further proceedings on jurisdiction in case involving three foreign companies and two U.S. companies arising out of a shipment of wind turbine blades from China to Cuba). That leaves American companies whose activities may implicate the use of expropriated property—however tangentially—as the easiest defendants to sue.[5]

In sum, these jurisdictional hurdles—the ability of Cuban instrumentalities to claim immunity from suit, coupled with challenges associated with establishing personal jurisdiction over foreign

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[5] Although this Court's decision in *Fuld v. Palestine Liberation Organization*, potentially opens the door to broader assertions of personal jurisdiction in Title III cases, *Fuld*'s precise parameters have yet to be determined. 606 U.S. 1, 18 (2025) (declining to "delineate the outer bounds of the Federal Government's power, consistent with due process, to hale foreign defendants into U.S. courts").

entities—have resulted in the opposite of what Congress intended. In recent years, American businesses with incredibly attenuated relationships to confiscated property have become the primary targets of Helms-Burton lawsuits. Meanwhile, the direct perpetrators who are most culpable for the confiscations and exploiting wrongly confiscated property for commercial gain (the Cuban government and its agencies and instrumentalities) have evaded accountability.

Viewed in this light, the D.C. Circuit's decision renders many U.S. companies, whose business activities can be linked—however remotely—to expropriated property in Cuba, the targets of Title III plaintiffs who are otherwise unable to seek recourse against foreign entities. The numerous Title III cases filed against American businesses since May 2019 highlight this trend.

Title III Claims Against Cruise Lines. Plaintiffs have targeted U.S.-based cruise lines with costly and protracted Title III litigation based on the cruise lines' use of docks in Cuba. Several of these cases resulted in the entry of nine-figure judgments against the cruise line operators. *See* Nora Gámez Torres, *Cruise Lines Ordered to Pay Over $400 Million for 'Trafficking' in Confiscated Property in Cuba,* Miami Herald (Jan. 1, 2023);[6] *Cruise Lines to Appeal U.S Court's Big Award to Owner of Havana*

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[6] https://www.miamiherald.com/news/nation-world/world/americas/cuba/article270608727.html.

Dock, Reuters (Jan. 3, 2023).[7] Those judgments were subsequently vacated on appeal, but only after the defendants spent years defending themselves in protracted, costly litigation. *See Appeals Court Sets Aside $440M Havana Damages Award Against Cruise Lines*, Maritime Executive (Oct. 22, 2024).[8] Moreover, that appellate decision is currently under review by this Court, which may reinstate those hefty judgments. *See Havana Docks Corp. v. Royal Caribbean Cruises*, 2025 WL 2808811, at *1 (Oct. 3, 2025) (issuing a writ of certiorari). These cases demonstrate the magnitude of potential liabilities that American companies face under Title III when plaintiffs decide to target them in lieu of difficult-to-reach foreign actors.

Title III Claims Against Airlines. Plaintiffs have similarly brought Title III cases against U.S.-based airlines for their use of airports in Cuba. *See* Carl Juste, *Firm Files Helms-Burton Lawsuit Against Airlines*, Miami Herald (Sept. 25, 2019).[9] These cases further demonstrate that plaintiffs have used Title III to target American companies with attenuated connections to the confiscation of property.

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[7] https://www.reuters.com/business/autos-transportation/cruise-lines-appeal-us-courts-big-award-owner-havana-dock-2023-01-03/.

[8] https://maritime-executive.com/article/appeals-court-sets-aside-440m-havana-damages-award-against-cruise-lines.

[9] https://www.miamiherald.com/news/nation-world/world/americas/cuba/article235484402.html.

Claims Against Online Travel Agencies. In an even more extreme example, other Title III plaintiffs have targeted American travel agencies for facilitating travel bookings at properties that were expropriated by the Cuban government and later developed into hotels. *See* Nora Gámez Torres, *Castro Confiscated His Apartments in Cuba. American Diplomats and Now Tourists Stay in Them*, Miami Herald (Jan. 10, 2022).[10]

Recently, a Title III plaintiff won a $30 million jury verdict from an American travel agency, with the jury awarding treble damages. Although the court later set aside the jury verdict because the plaintiff had failed to prove that the holding company of the travel agency (the named defendant in the case), rather than the subsidiary that made the bookings, had trafficked in hotels the Cuban government later built on the plaintiff's property, dozens of similar cases remain pending in the courts. Nora Gámez Torres, *Miami Judge Overturns Landmark $30M Jury Verdict Against Expedia on Cuba Case*, Miami Herald (September 8, 2025);[11] *see also* Richard Luscombe, *US Jury's $30m Verdict Brings Hope for Cuban Exiles Over Confiscated Land*, The Guardian (May 4, 2025) (discussing the jury verdict and quoting

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[10] https://www.miamiherald.com/news/nation-world/world/americas/cuba/article257093227.html.

[11] https://www.miamiherald.com/news/nation-world/world/americas/cuba/article312022066.html.

a statement that there are "45 other suits that are making their way through the courts").[12]

These cases are another example of costly Title III litigation targeting American businesses with extremely remote and attenuated connections to confiscated property.

Cases Against Online Retailers. Title III plaintiffs have also targeted American online retailers for selling goods that were produced on property confiscated by the Cuban government decades ago—another example of the backwards manner in which Title III lawsuits have been used to target American businesses. *See* Gergana S. Sivrieva, *The Helms-Burton Act Backfires: Surprising Litigation Trends Following Title III's Long-Feared Activation*, 42 N. Ill. Univ. L. Rev. 1, 69-75 (2021).

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These cases show that, if permitted to stand, the D.C. Circuit's decision will amplify the perverse incentive for plaintiffs to target American companies with Title III claims. As Congress made clear, the purpose of the Act was "to provide protection against wrongful confiscations" of the property of U.S. nationals, 22 U.S.C. § 6081(10), and to discourage "transactions involving [this] confiscated property, and in so doing to *deny the Cuban regime the capital generated by such ventures*." H.R. Rep. No. 104-202, pt. 1, at 39 (1995) (emphasis added); *see also* 22 U.S.C.

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[12] https://www.theguardian.com/world/2025/may/04/cuba-cayo-coco-florida-land.

§§ 6022, 6081(6). But by further insulating the state-owned actors that were the intended targets of Title III litigation, the D.C. Circuit's decision will only encourage plaintiffs to pursue domestic companies, thus exposing U.S. businesses to litigation expense and potentially enormous liability. All this despite the fact that the purpose of the Act was to provide those harmed by acts of the Cuban government a right to seek recourse in U.S. courts against those directly responsible (*i.e.*, the Cuban government and its instrumentalities), and to further deny the Cuban government the benefits of the expropriated property.

Critically, the Helms-Burton Act permits plaintiffs to seek pre-filing interest from the date of the confiscation of the property (typically 1960) to the date the complaint was filed, *see* 22 U.S.C. § 6082(a)(1)(B), and further provides for treble damages, *see id.* § 6082(a)(3). These punitive measures were intended to punish those entities directly profiting from the confiscated property, not to subject American companies to claims worth multiples of the entire value of the confiscated property (after inflation adjustment). As discussed above, such substantial damages claims, which are now being directed largely toward American companies, are completely untethered to the U.S. businesses' incidental connections to the properties at issue and to the statute's purpose.

Simply put, by imposing a barrier to suing the responsible state-owned parties and by forcing plaintiffs to overcome the strong protections of foreign sovereign immunity, the D.C. Circuit's decision creates a substantial risk that plaintiffs with valid

Title III claims will pursue the path of least resistance and focus their claims on U.S. companies. By disincentivizing the pursuit of the foreign instrumentalities that the Act expressly targeted, this ruling effectively immunizes the very state-owned entities that are directly responsible for the wrongdoing while simultaneously putting American companies directly in the line of fire.

II. The D.C. Circuit's Decision Conflicts with this Court's Immunity Precedents and Policies Underlying the Helms-Burton Act.

As Exxon's opening brief persuasively demonstrates, the D.C. Circuit's holding cannot be reconciled with this Court's decision in *Department of Agriculture Rural Development Rural Housing Service v. Kirtz*, 601 U.S. 42 (2024), which concluded that substantively identical language in a statute passed by the same Congress in the same Session abrogated federal and state sovereign immunity. *Id.* at 50-51. *Amicus* agrees with those arguments and does not repeat them here.

Amicus does, however, highlight how the interplay between the D.C. Circuit's interpretation of the Helms-Burton Act and this Court's existing FSIA jurisprudence conflicts with the policies underlying the Helms-Burton Act.

As Congress made clear in the text of the Helms-Burton Act, the statute's purpose was "to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime." 22 U.S.C. § 6022(6).

Congress specifically noted that "[t]he 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 . . . at the expense of the rightful owners of the property." *Id.* § 6081(8). The FSIA, which provides certain protections for foreign sovereigns and their agencies and instrumentalities, is part of that "international judicial system." As this Court has explained, the FSIA "embodies basic principles of international law." *Bolivarian Rep. of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 581 U.S. 170, 179 (2017). Congress therefore designed the Helms-Burton Act to help plaintiffs overcome barriers like the FSIA. The Helms-Burton Act provides "a judicial remedy in the courts of the United States" "to deter" trafficking in confiscated property and to help victims of Cuban expropriation overcome the obstacles under the international judicial system to vindicating their rights. *See* 22 U.S.C. § 6081(2), (11). The FSIA's barriers frustrate that purpose.

When properly viewed in this context, the D.C. Circuit misconstrues, and indeed contorts, the relationship between the Helms-Burton Act and the FSIA in a manner that undermines the purpose of the Act.

First, as Judge Randolph persuasively explained in dissent, the D.C. Circuit's interpretation of the Helms-Burton Act effectively creates a rule "that Congress must make an *ultra-clear* statement to abrogate foreign sovereign immunity." *Exxon*, 111 F.4th at 40 (Randolph, J., dissenting). This requirement, however, is not supported by any of this

Court's prior FSIA cases and incorrectly treats the FSIA differently from other statutes. Moreover, by finding that the Helms-Burton Act does not contain sufficiently clear language to abrogate sovereign immunity—even though this Court held that nearly identical language suffices to abrogate the U.S. government's immunity in *Kirtz*—the D.C. Circuit's decision leads to the illogical result "that Cuban agencies enjoy more protection from lawsuits than agencies of the United States" or of the 50 States. *Id.* That is not what Congress intended under either the Helms-Burton Act or the FSIA—and would be a "shock" to Congress, as Judge Randolph observed. *Id.* Nothing in the FSIA purports to afford foreign sovereigns greater immunity than federal or state governments have in American courts. The D.C. Circuit's "ultra-clear statement" approach will harm American businesses in cases brought against Cuban states or instrumentalities and place American defendants at a competitive disadvantage.

Second, one of the stated purposes of the Act is to "deter" the Cuban government and its instrumentalities from continuing to use and exploit confiscated property. 22 U.S.C. § 6081(11). But by rendering the instrumentalities of the Cuban government presumptively immune under the FSIA—and thus not subject to suit for trafficking in confiscated property—the D.C. Circuit's decision in many cases effectively revokes the private right of action granted to victims of expropriation under the Act, which in turn undermines the statute's goal of deterring the continued trafficking in confiscated property by the most culpable parties.

Finally, as explained in Section I, in practice, the Helms-Burton Act has been applied and enforced in a way that has caused substantial harm to U.S. businesses to the benefit of more culpable foreign actors that are not subject to suit in the United States—either because U.S. courts lack personal jurisdiction or because those foreign actors are entitled to sovereign immunity (or both). If allowed to stand, the D.C. Circuit's decision would serve only to further incentivize plaintiffs to focus their claims exclusively on domestic parties. This is not what Congress intended when it specifically identified "any agency or instrumentality" of the Cuban government in Title III as targets of damages claims under the newly created judicial remedy. 22 U.S.C. § 6023(11). The Court should right the ship in this case, before it is too late.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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