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 THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

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

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INTEREST OF THE UNITED STATES

This case concerns whether Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. 6021 *et seq.*, which establishes for U.S. victims a damages remedy for trafficking in property illegally expropriated by Fidel Castro's communist regime, permits plaintiffs to sue Cuban agencies and instrumentalities without having to satisfy an exception to the presumptive immunity afforded by the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1391(f), 1441(d), 1602 *et seq.* The United States has significant foreign-policy interests in encouraging democracy in Cuba by promoting accountability for the Cuban government's wrongful seizures through Title III suits and in supporting compensation for U.S. victims of unlawful Castro-era expropriations. The United States also has a substantial interest in the proper in-

terpretation of the FSIA. Civil litigation against foreign sovereigns in U.S. courts can have significant foreign-relations implications and can affect the reciprocal treatment of the United States in other nations' courts. The United States thus has a weighty interest in this case, which concerns the proper relationship between Title III and the FSIA in suits against Cuban agencies and instrumentalities. At the Court's invitation, the United States filed an amicus brief in this case at the petition stage.

INTRODUCTION

Foreign sovereigns are traditionally immune from suit in the United States—today, under the framework enshrined in the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1391(f), 1441(d), 1602 *et seq.* But Congress can provide otherwise, and it clearly and narrowly abrogated the immunity of Cuban agencies and instrumentalities from certain suits in the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. 6021 *et seq*. That statute authorizes private parties to sue Cuban agencies and instrumentalities so that U.S. nationals whose assets were illegally expropriated by Fidel Castro's regime can receive recompense and the Cuban government cannot further benefit from its wrongdoing.

Specifically, the LIBERTAD Act allows a private party to bring suits against "any person" who traffics in property confiscated by the Cuban government, 22 U.S.C. 6082(a)(1)(A), including "any agency or instrumentality of a foreign state," 22 U.S.C. 6023(11). Additional provisions remove any doubt that Congress authorized suits against Cuban agencies and instrumentalities. For example, the Act creates special rules for Title III judgments obtained against Cuban agencies

and instrumentalities if Cuba transitions to democracy —a provision that would be pointless were such judgments vanishingly rare or impossible to pursue. See 22 U.S.C. 6082(d). Congress also made express findings emphasizing the need to prevent the Cuban government from unjustly enriching itself via trafficking, reinforcing that Title III plaintiffs can sue Cuban agencies and instrumentalities. See 22 U.S.C. 6081(3), (5), (6), (8), and (11).

The D.C. Circuit instead held in a split decision that the FSIA provides the exclusive grounds for establishing jurisdiction over a foreign state, and that suits against Cuban agencies and instrumentalities cannot proceed under the LIBERTAD Act unless they also satisfy an enumerated exception to foreign sovereign immunity under the FSIA. Pet. App. 15a. That ruling incorrectly superimposes the FSIA's general framework for immunity determinations on a Cuba-specific statutory framework that clearly abrogates Cuban agencies' and instrumentalities' immunity and leaves it to the President—not the courts—to determine whether such suits should be available.

Requiring Title III plaintiffs to satisfy the FSIA's additional, narrow exceptions to sue Cuban agencies and instrumentalities would effectively nullify plaintiffs' ability to bring suits that Congress clearly authorized. The LIBERTAD Act codified the longstanding embargo of Cuba, see 22 U.S.C. 6032(h)—a restriction on commerce that would prevent most claims against Cuban agencies or instrumentalities from satisfying FSIA exceptions that require a nexus with the United States. Congress did not then create a cause of action in the same piece of legislation that plainly encompasses

Cuban agencies and instrumentalities but would rarely also satisfy the FSIA.

In holding otherwise, the D.C. Circuit's ruling upends Congress's carefully calibrated authorization of private suits against Cuban agencies and instrumentalities and stymies critical foreign-policy interests in promoting accountability for the Cuban government's continuing to benefit from its illegal expropriations. The FSIA adopts a blunt approach, barring suits against foreign sovereigns and their agencies and instrumentalities unless specified criteria are satisfied. But Congress deferred to the Executive Branch's judgments in the LIBERTAD Act, authorizing Presidents to suspend the ability to bring Title III suits, see 22 U.S.C. 6085(c) —as presidential administrations did until President Trump's administration allowed them to be brought in 2019, Pet. App. 5a.

Congress thus enacted a specific statute abrogating Cuban agencies' and instrumentalities' immunity and in effect yielding back to the Executive Branch its pre-FSIA ability to make immunity determinations at its discretion. Congress did not erect extra barriers to imposing liability on Cuban agencies and instrumentalities in a statute expressly devoted to authorizing suits against such entities. President Trump has determined that Title III suits are an invaluable foreign-policy tool. This Court should reverse the judgment below and allow Title III to work as Congress intended—to promote accountability for the Cuban government's unlawful expropriations by exposing its agencies and instrumentalities to suit for trafficking in expropriated property, thus depriving that government of its ill-gotten gains.

STATEMENT

A. Statutory Background

1. Foreign states have long enjoyed broad immunity from suit in American courts. See *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp. Ltd.*, 605 U.S. 223, 228 (2025). Because foreign sovereign immunity originated in U.S. courts as a common-law doctrine, "courts traditionally 'deferred to the decisions of the political branches —in particular, those of the Executive Branch.'" *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 271 (2023) (citation omitted).

For much of our Nation's history, the Executive Branch had the authority to determine foreign sovereigns' immunity from suit on a case-by-case basis, and those determinations were binding on the courts. See *Republic of Mexico* v. *Hoffman*, 324 U.S. 30, 34-36 (1945). But in 1976, Congress enacted the FSIA to provide a "comprehensive set of legal standards governing claims of immunity" by foreign states as well as their agencies and instrumentalities, including state-owned companies. *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 488 (1983); see 28 U.S.C. 1603(a) and (b). One principal purpose of the FSIA was to transfer, in most cases, "primary responsibility for deciding 'claims of foreign states to immunity' from the State Department to the courts." *Samantar* v. *Yousuf*, 560 U.S. 305, 313 (2010).

The FSIA grants foreign states and their agencies and instrumentalities immunity from civil suits, unless enumerated exceptions apply. Where FSIA immunity applies (and subject to certain international agreements not relevant here), such entities are "immune from the jurisdiction of the courts of the United States and of the States." 28 U.S.C. 1604. But that immunity is subject to exceptions, including where "the action is based upon"

an act in connection with "a commercial activity of the foreign state elsewhere" that "causes a direct effect in the United States," 28 U.S.C. 1605(a)(2); and where "rights in property taken in violation of international law are in issue" and a foreign state or its agency or instrumentality is engaged in commercial activity "in the United States," 28 U.S.C. 1605(a)(3); see 28 U.S.C. 1605-1607.

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

In addition to immunity from jurisdiction, the FSIA separately "confers on foreign states [another] kind[ ] of immunity" called "'execution immunity.'" *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 142 (2014). The FSIA provides that property in the United States owned by a foreign state is presumptively immune from "attachment[,] arrest[,] and execution," 28 U.S.C. 1609, subject to distinct exceptions, see 28 U.S.C. 1610-1611.

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

Before the Communist revolution in Cuba, "Americans were encouraged to and did invest heavily in Cuba's

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

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

In 1996, Congress addressed that problem through the LIBERTAD Act. The Act codifies the United States' longstanding embargo of Cuba. See 22 U.S.C. 6032(h). Particularly relevant here, Title III of the Act provides U.S. nationals with tailored redress for "unjust enrichment from the use of wrongfully confiscated property." 22 U.S.C. 6081(8). Title III aims to provide U.S. nationals "a judicial remedy * * * that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. 6081(11).

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

Title III does so by creating a damages remedy for certain U.S. nationals whose property was confiscated by the Castro regime: "any person" who "traffics in" such property "shall be liable" for money damages to the U.S. national who owns the claim to the property. 22 U.S.C. 6082(a)(1)(A). The Act defines "person" as "any person or entity, including any agency or instrumentality of a foreign state." 22 U.S.C. 6023(11). Elsewhere, the Act expressly contemplates claims and judgments against Cuban agencies and instrumentalities. See 22 U.S.C. 6082(a)(7)(B) (excluding "any claim against the Cuban Government" from property transfers that would otherwise be regulated); 22 U.S.C. 6082(d) ("any [Title III] judgment against an agency or instrumentality of the Cuban Government" becomes unenforceable against an agency or instrumentality of a transition or democratic government); see also 22 U.S.C. 6064(a) (authorizing the President "to suspend" new Title III suits "filed against the Cuban Government" after notifying Congress of his determination that "a transition government in Cuba is in power").

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

Title III indicates that district courts have subject-matter jurisdiction over Title III cases under the federal-question statute. See 22 U.S.C. 6082(c)(1) (characterizing an "action[ ] under" Title III as an "action brought under section 1331 of title 28"). Title III also incorporates the FSIA's rules for service of process

on foreign state agencies and instrumentalities. See 22 U.S.C. 6082(c)(2) (incorporating 28 U.S.C. 1608). To the extent there are conflicts between Title III and Title 28, Title III controls. See 22 U.S.C. 6082(c)(1).

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

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

In 2019, however, the Trump administration allowed the suspension to expire to provide "a chance at justice" and compensation for Americans and to hold "the Cuban Government accountable for seizing American as-

sets."[2] Thus, beginning on May 2, 2019, Title III plaintiffs could bring suits for the first time. See Pet. App. 5a, 56a-57a. On January 14, 2025, the Biden administration sent a letter notifying Congress that Title III actions would be suspended for the six-month period beyond January 29, 2025.[3] But the new Secretary of State withdrew that letter on January 29, emphasizing that the "Trump Administration is committed to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime." Press Statement, Marco Rubio, Sec'y of State, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), https://perma.cc/HL77-66QG. Title III is in full effect.

Cuba is a present national security threat and a designated State Sponsor of Terrorism. See *Restoring a Tough U.S.-Cuba Policy*, *supra*. The United States remains committed to promoting "more freedom and democracy, improved respect for human rights, and increased free enterprise in Cuba," including through economic pressure. National Security Presidential Memorandum/NSPM-5, § 1 (June 30, 2025), https://perma.cc/RH8E-KVHR. And President Trump has reiterated the United States' policy to "channel funds toward the Cuban people and away from a regime that has failed to meet the most basic requirements of a free and just society." *Ibid.*

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

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

B. Proceedings Below

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

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

Respondents moved to dismiss, arguing (*inter alia*) that they are immune from suit under the FSIA. Pet. App. 59a-60a. Exxon argued that Congress abrogated respondents' immunity in Title III of the LIBERTAD Act and, alternatively, that its suit could proceed under

the FSIA's exceptions for commercial activity or expropriation. *Id.* at 62a; see 28 U.S.C. 1605(a)(2) and (3).

The district court denied the motion to dismiss as to CIMEX, but deferred its ruling and allowed jurisdictional discovery as to CIMEX-Panama and CUPET.[4] Pet. App. 53a, 108a. The court rejected Exxon's argument that Title III abrogated respondents' immunity, reasoning that "[w]hile Title III provides Exxon with a cause of action against Cuba, it is silent as to sovereign immunity." *Id.* at 65a-66a. The court then rejected Exxon's invocation of the FSIA's expropriation exception because Exxon had possessed only an indirect interest in the property confiscated from its subsidiary. *Id.* at 95a-102a. But the court found the commercial-activity exception satisfied as to CIMEX. *Id.* at 71a-88a, 95a. As to CIMEX-Panama and CUPET, the court permitted jurisdictional discovery on whether CIMEX-Panama is CIMEX's alter ego, and on the extent of CUPET's contacts with the United States. *Id.* at 103a-105a.

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

a. As to whether Title III abrogates respondents' immunity, the court of appeals reasoned that the FSIA establishes a "comprehensive framework" and provides the sole basis for asserting jurisdiction over a foreign sovereign. Pet. App. 8a-9a (quoting *Republic of Austria* v. *Altmann*, 541 U.S. 677, 699 (2004)). The court held that Title III provides a cause of action but lacks ex-

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

press language departing from FSIA immunity and that Title III and the FSIA can "harmoniously coexist[]" "when an FSIA exception applies." *Id.* at 10a-11a.

The court of appeals held that this Court's decision in *Department of Agriculture Rural Development Rural Housing Service* v. *Kirtz*, 601 U.S. 42 (2024), is distinguishable. Pet. App. 13a-15a. *Kirtz* held that Congress waived the United States' immunity in the Fair Credit Reporting Act (FCRA) by authorizing damages suits against "[a]ny person" for violations of the FCRA and defining "person" as including "any . . . governmental . . . agency." 601 U.S. at 50 (quoting 15 U.S.C. 1681a(b), 1681n(a), and 1681*o*(a)) (brackets in original). Notwithstanding the textual similarity to Title III, the D.C. Circuit reasoned that *Kirtz* and its antecedents dealt with federal or state sovereign immunity, "which derive from different sources than does foreign sovereign immunity" and do not raise the same "foreign-relations concerns." Pet. App. 14a. The majority also read this Court's cases to find abrogation only where "'recognizing immunity would have negated' the conferral of a cause of action against governments *entirely*." *Id.* at 14a-15a (citation omitted). Because "Title III suits against [foreign] governments can proceed if an FSIA exception applies," the court of appeals deemed *Kirtz* non-controlling. *Id.* at 15a.

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

b. Judge Randolph dissented, reasoning that Title III clearly and unambiguously abrogates respondents' immunity. Pet. App. 41a-51a. He found "scarcely a difference" between the language of Title III and the statutory language at issue in *Kirtz*, which sufficed to abrogate the United States' sovereign immunity. *Id.* at 47a-48a. He faulted the majority for requiring Congress to "make an *ultra-clear* statement to abrogate foreign sovereign immunity." *Id.* at 48a.

SUMMARY OF ARGUMENT

Plaintiffs may sue Cuban agencies and instrumentalities under Title III of the LIBERTAD Act without separately satisfying an exception to foreign sovereign immunity in the FSIA.

A. Title III's text clearly abrogates Cuban state agencies' and instrumentalities' immunity from suit. The statute creates a cause of action against "any person" who traffics in property confiscated by the Cuban government, 22 U.S.C. 6082(a)(1)(A), and defines "person" to include "any agency or instrumentality of a foreign state," 22 U.S.C. 6023(11). This Court held that similar language abrogates immunity in closely related contexts. See *Department of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 49-50 (2024). Moreover, and critically, many of the LIBERTAD Act's other provisions specifically contemplate that Cuban agencies and instrumentalities could be liable for trafficking. For example, the Act gives Title III judgments obtained against Cuban agencies and instrumentalities special treatment, providing that such judgments will become unenforceable against a transition or democratically elected government in Cuba. See 22 U.S.C. 6082(d). And Congress's express findings—which emphasize the need to prevent the Cuban government from unjustly

enriching itself via trafficking and thereby undermining the U.S. embargo—reinforce that Congress intended Title III relief to be broadly available against Cuban agencies and instrumentalities. See 22 U.S.C. 6081(3), (5), (6), (8), and (11).

B. Superimposing the FSIA's immunity framework onto Title III would effectively negate suits that Congress clearly authorized. *Kirtz*, 601 U.S. at 51. The longstanding embargo of Cuba, which the LIBERTAD Act codified, 22 U.S.C. 6032(h), means that few claims against Cuban agencies or instrumentalities would satisfy the relevant FSIA exceptions, which require an act in connection with commercial activity to have "a direct effect in the United States," 28 U.S.C. 1605(a)(2), or require the foreign state or agency or instrumentality to be engaged in commercial activity "in the United States," 28 U.S.C. 1605(a)(3). Congress cannot be thought to have restricted transactions with Cuba by codifying the embargo but then requiring the relevant actions for a Title III suit to have a nexus with the United States that the embargo is intended to restrict. Moreover, Title III's selective incorporation of some FSIA provisions, but not others, confirms that the LIBERTAD Act narrowly displaces the FSIA. And requiring that Title III plaintiffs additionally satisfy an exception to FSIA immunity would override the President's foreign-policy judgment that plaintiffs should be able to file Title III suits against Cuban agencies and instrumentalities, as well as Congress's decision to leave the President with flexibility to make that determination.

C. The court of appeals' and respondents' contrary reading of Title III as preserving Cuban agencies' and instrumentalities' immunity is incorrect. While they stress that the FSIA is typically the sole basis for juris-

diction over foreign sovereign entities, Congress's decision to enact comprehensive default rules in the FSIA did not prevent it from later enacting separate, specific statutes modifying immunity in particular cases, as it did here. And Congress need not use magic words or expressly amend the FSIA's text to accomplish that result. Nor is there anything unusual in Congress leaving immunity from execution and attachment intact in Title III suits for certain diplomatic facilities. Jurisdictional immunity from suit and execution immunity are separate concepts, and execution immunity is typically broader because executing a judgment against a foreign state's property is typically more intrusive than subjecting the state to suit in the first place. Finally, respondents and the court of appeals wrongly argue that imposing the FSIA framework would not completely negate Title III suits. Effective—not complete—negation is the standard, and it is satisfied here because few Title III claims could ever satisfy FSIA exceptions.

ARGUMENT

THE LIBERTAD ACT ABROGATES CUBAN AGENCIES' AND INSTRUMENTALITIES' IMMUNITY

Title III abrogates Cuban agencies' and instrumentalities' immunity—so plaintiffs need not separately satisfy an FSIA exception to foreign sovereign immunity. Title III creates "a *specific*, *independent*, and *exclusive* cause of action for American nationals whose property the Cuban government had confiscated decades earlier," Pet. App. 41a (Randolph, J., dissenting), and it clearly abrogates the foreign sovereign immunity of Cuban agencies and instrumentalities that continue to traffic in that property. The D.C. Circuit's decision contravenes the text and undermines the political branches' foreign-policy judgment that plaintiffs should

be able to bring Title III suits against Cuban agencies and instrumentalities.

A. The LIBERTAD Act Clearly Authorizes Suits Against Cuban Agencies And Instrumentalities Regardless Of The FSIA

The FSIA is generally "the sole basis for obtaining jurisdiction over a foreign state in federal court." *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989). But Congress later enacted the Cuba-specific LIBERTAD Act, which expressly authorizes suits against Cuban agencies and instrumentalities that traffic in expropriated property and contains other indications that Congress expected such entities to face liability. Those provisions, especially taken together, clearly abrogate Cuban agencies' and instrumentalities' immunity.

1. Though the FSIA presumptively governs foreign sovereign immunity, Congress can enact other statutes abrogating foreign sovereign immunity so long as Congress does so with "unmistakably clear" language. Cf. *Financial Oversight & Mgmt. Bd. for Puerto Rico* v. *Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 346 (2023) (*FOMB*) (citation omitted). "The standard for finding a congressional abrogation is stringent," *ibid.*, especially because Congress enacted the FSIA as a "'comprehensive framework'" for addressing claims of foreign sovereign immunity to replace the pre-1976 common-law regime, *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 141 (2014) (citation omitted). The FSIA did not, however, change the bedrock principles that foreign sovereign immunity is "a matter of grace and comity on the part of the United States," and that how far to extend that grace is a question for "the political branches." *Id.* at 140 (citation omitted). Con-

gress remains free to revise the balance it struck in the FSIA because earlier Congresses cannot bind later ones. See, *e.g.*, *Bank Markazi* v. *Peterson*, 578 U.S. 212, 236 (2016); *Republic of Iraq* v. *Beaty*, 556 U.S. 848, 856-857 (2009); *Reichelderfer* v. *Quinn*, 287 U.S. 315, 318 (1932). Congress made a tailored revision here.

2. Numerous aspects of the LIBERTAD Act, taken together, demonstrate that the statute clearly abrogates immunity for Cuban agencies and instrumentalities that traffic in property that the Cuban government confiscated from U.S. victims, regardless of whether those claims otherwise satisfy an FSIA immunity exception.[5]

Several provisions in the statutory text expressly contemplate suits against Cuban agencies and instrumentalities. Title III creates a cause of action against "any person" who traffics in property confiscated by the Cuban government, 22 U.S.C. 6082(a)(1)(A), and the Act defines "person" to include "any person or entity, *including any agency or instrumentality of a foreign state*," 22 U.S.C. 6023(11) (emphasis added). This Court has held that similar language abrogates immunity in related contexts. For example, Congress "clear[ly]" abrogates the federal government's and the States' im-

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[5] This case does not present the question whether the LIBERTAD Act abrogates immunity as to agencies and instrumentalities of foreign states other than Cuba. Abrogation of Cuban agencies' and instrumentalities' immunity is particularly clear from the LIBERTAD Act's text, which repeatedly refers to preventing the Cuban government from benefiting from its wrongdoing. See, *e.g.*, 22 U.S.C. 6081(5), (6), (8), (10), and (11). Respondents are incorrect to suggest (Supp. Br. in Opp. 4-6) that by addressing only the narrow question presented, the United States has expressed a view on any issue that might arise in other Title III cases regarding "the immunity of third-country instrumentalities."

munity "'when a statute creates a cause of action' and explicitly 'authorizes suit against a government on that claim.'" *Department of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 49 (2024) (quoting *FOMB*, 598 U.S. at 347). Indeed, *Kirtz* considered virtually identical language, which authorized damages suits against "[a]ny person" for violations of the FCRA and defined "person" as including "any . . . governmental . . . agency." *Id.* at 50 (citations omitted; brackets in original). The Court held that through such language, "Congress ha[d] explicitly permitted consumer claims for damages against the government." *Id.* at 51.

On top of that, other LIBERTAD Act provisions specifically assume the existence of trafficking claims against Cuban agencies and instrumentalities:

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

There is only one way to read those provisions: Congress contemplated that plaintiffs generally could litigate Title III claims against Cuban agencies and instrumentalities to final judgments, and it intended that Title

III would supply the universe of restrictions on those Cuba-specific claims.

Congressional findings reinforce that conclusion. Congress's stated aim was to "endow[ ]" U.S. nationals with "a judicial remedy * * * that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. 6081(11). Congress recognized that "[t]he international judicial system" at the time "lack[ed] fully effective remedies" for "wrongful confiscation" and "unjust enrichment from the use of wrongfully confiscated property *by governments*" and others. 22 U.S.C. 6081(8) (emphasis added). And one overall purpose of the LIBERTAD Act is "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 also found that the "Cuban Government is offering foreign investors" interests in confiscated property and has derived "badly needed financial benefit" from such trafficking in confiscated property, which "undermines the foreign policy of the United States." 22 U.S.C. 6081(5) and (6). The LIBERTAD Act was thus enacted to "provide for the continued national security of the United States in the face of * * * theft of property from United States nationals by the Castro government." 22 U.S.C. 6022(3).

B. Title III Plaintiffs Need Not Additionally Satisfy An FSIA Exception

Requiring that Title III plaintiffs also satisfy an FSIA exception would make Title III's authorization of suits against Cuban agencies and instrumentalities self-defeating, undermine Congress's Cuba-specific focus, and thwart the foreign-policy objectives that the political branches intended Title III suits to advance.

1. If Title III plaintiffs also needed to establish an FSIA exception to immunity, that additional hurdle would "effectively 'negate'" the category of suits that Title III authorizes—a sure sign that Title III should not be read that way. *Kirtz*, 601 U.S. at 51 (brackets and citation omitted). Few Title III claims against Cuban agencies and instrumentalities arising from the Cuban government's expropriations would satisfy FSIA exceptions that require a nexus to the United States because the LIBERTAD Act itself codified the longstanding embargo of Cuba that heavily restricts transactions between the United States and Cuba, thwarting commerce between the two nations.

Congress thus authorized Title III plaintiffs to sue Cuban agencies and instrumentalities against the backdrop of an embargo that made it exceedingly unlikely that trafficking in confiscated property would have the requisite nexus with the United States to satisfy FSIA exceptions requiring an act in connection with commercial activity to cause a direct effect in the United States or the foreign state or agency or instrumentality to engage in commercial activity in the United States. Congress does not "authorize a suit against a sovereign with one hand, only to bar it with the other." *FOMB*, 598 U.S. at 348.

All agree that the only two FSIA exceptions that might conceivably apply to Title III claims are the commercial-activity exception and the expropriation exception.[6] See Supp. Br. in Opp. 10, 12; Pet. Br. 25-26.

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[6] Other FSIA exceptions are less likely to apply to such claims. Some require a territorial nexus with the United States and would be inapplicable for similar reasons. See, *e.g.*, 28 U.S.C. 1605(a)(4) (requiring property to be "in the United States"); 28 U.S.C. 1605(a)(5) (requiring tort to "occur[] in the United States"). Other

For the commercial-activity exception, the "direct effect" prong is the most plausible because it can apply to "act[s] outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere." 28 U.S.C. 1605(a)(2). But that exception still requires showing that the relevant "act causes a direct effect in the United States." *Ibid.* Under that exception, "jurisdiction may not be predicated on purely trivial effects in the United States" but instead must "follow[] 'as an immediate consequence of the defendant's . . . activity.'" *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607, 618 (1992) (citation omitted).

But especially in 1996—when Congress enacted the LIBERTAD Act and codified the embargo of Cuba, 22 U.S.C. 6032(h)—prohibitions and related restrictions on travel to and commerce with Cuba would have made it highly unlikely for the immediate and direct consequences of unlawful trafficking to be felt in the United States. The regulations:

- prohibited all persons subject to the jurisdiction of the United States from dealing in property in which Cuba or a Cuban national had any interest of any nature whatsoever, direct or indirect, unless authorized by a general or specific license or exempt from prohibition, 31 C.F.R. 515.201, 515.206 (1996);
- permitted travel to Cuba without a specific license only for government employees on official business, some journalists, and individuals visiting

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exceptions would not map on to Title III claims. See, *e.g.*, 28 U.S.C. 1605(a)(6) (claims arising from arbitration agreements); 28 U.S.C. 1605(b) (suits in admiralty); 28 U.S.C. 1605(d) (actions to foreclose a preferred mortgage); 28 U.S.C. 1605A, 1605B (damages relating to terrorism).

close relatives "in circumstances that demonstrate extreme humanitarian need," 31 C.F.R. 515.560(a)(1) (1996);

- generally restricted persons subject to U.S. jurisdiction from "purchas[ing], transport[ing], import[ing], or otherwise deal[ing] in or engag[ing] in any transaction" with respect to Cuban merchandise that is outside the United States, 31 C.F.R. 515.204 (1996);
- required a specific license (which the government's "general policy [wa]s to deny") for exports of "virtually all U.S.-origin commodities," 15 C.F.R. 785.1(a) (1996); and
- generally disallowed family remittances absent very narrow circumstances based on extraordinary need, 31 C.F.R. 515.563(a) (1996).

Those restrictions effectively foreclosed any showing of the "considerable domestic nexus" that the FSIA's commercial-activity exception requires. *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp. Ltd*, 605 U.S. 223, 233 (2025).[7]

As for the FSIA's expropriation exception, a plaintiff must show that "rights in property taken in violation of international law are in issue" and either that the property taken (or any property exchanged for it) is "present in the United States in connection with a commercial activity carried on in the United States by the foreign state," or that the property taken (or any property exchanged for it) is "owned or operated by an agency or instrumentality of the foreign state and that agency or

[7] The other two prongs of the commercial-activity exception—which would require the commercial activity or relevant act to take place "in the United States," 28 U.S.C. 1605(a)(2)—are even less likely to be satisfied in Tite III suits.

instrumentality is engaged in a commercial activity in the United States." 28 U.S.C. 1605(a)(3). The expropriation exception thus requires that the foreign state or agency or instrumentality be engaged in commercial activity "in the United States"—something the Cuba embargo effectively barred as to the Cuban government because of restrictions on persons subject to U.S. jurisdiction engaging in commerce with Cuba.

Even if rare claims under Title III might also satisfy an FSIA exception, it would make little sense for Congress to create such elaborate special rules for claims against Cuban agencies and instrumentalities, see pp. 19-20, *supra*, if the fraction of Title III claims that could ever proceed would be so small. That threat would not supply the pressure of suits against Cuban agencies and instrumentalities that Congress expected to create a further incentive for Cuba to democratize. See 22 U.S.C. 6082(d) (judgments "against an agency or instrumentality of the Cuban Government" unenforceable against a transition or democratic government).

Imposing the FSIA framework on Title III suits would thus upend the LIBERTAD Act's Cuba-specific approach, contrary to basic principles of interpretation. "[T]he specific governs the general." *Kemp* v. *United States*, 596 U.S. 528, 537 (2022) (quoting *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012)); *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 375 (1990).

2. Further confirming that the Cuba-specific LIBERTAD Act displaced the FSIA, Title III selectively incorporates some FSIA provisions while expressly displacing FSIA provisions that require satisfying FSIA exceptions.

Title III expressly controls in any conflict with Title 28 of the U.S. Code, which includes the FSIA. See 22 U.S.C. 6082(c)(1). Further, Title III describes a Title III suit as an "action brought under [28 U.S.C. 1331]," 22 U.S.C. 6082(c)(1), providing an alternative basis for subject-matter jurisdiction and replacing the FSIA's grant of jurisdiction when an FSIA exception applies, see 28 U.S.C. 1330(a). Section 6082(c)(1) thus "severs th[e] usual 'link' 'among foreign sovereign immunity, subject-matter jurisdiction,' and 'the enumerated exceptions' in the FSIA." Pet. Br. 30 (citation omitted).

Similarly, Title III supplants the FSIA's service-of-process rules. See 22 U.S.C. 6082(c)(2). Service under Title III also provides a means to obtain personal jurisdiction through the federal rules of civil procedure, see *ibid.*; Fed. R. Civ. P. 4(k)(1)(C) ("Serving a summons * * * establishes personal jurisdiction over a defendant * * * when authorized by a federal statute."). Title III thus replaces the FSIA's grant of personal jurisdiction where an FSIA exception is satisfied and service has been made, see 28 U.S.C. 1330(b); contra Br. in Opp. 23, again underscoring that Congress wanted to sever the FSIA's usual linkage among immunity, service of process, and personal jurisdiction.

Conversely, when Congress wanted to incorporate FSIA provisions into Title III, it did so expressly. For instance, the statute incorporates the FSIA's *method* of effecting service of process. 22 U.S.C. 6082(c)(2) (incorporating 28 U.S.C. 1608). And the statute incorporates some FSIA definitions. See 22 U.S.C. 6023(1) ("agency or instrumentality of a foreign state"), 6023(3) ("commercial activity"). But there would have been "no need for" these provisions "if Congress understood the FSIA

to apply to Title III *in toto*." Pet. App. 51a (Randolph, J., dissenting).

3. The LIBERTAD Act's codification of the Executive Branch's flexibility to make foreign-policy judgments regarding whether plaintiffs should be able to bring Title III suits further supports that the Act displaces the FSIA and independently abrogates immunity as to Cuban agencies and instrumentalities.

In the LIBERTAD Act, Congress expressly empowered the President to decide whether the right to bring trafficking suits should be suspended. If the President determines that it is "necessary to the national interests of the United States" and that it "will expedite a transition to democracy in Cuba," the Act lets the President suspend the ability to bring Title III suits—effectively immunizing Cuban agencies and instrumentalities at the President's discretion. 22 U.S.C. 6085(c). Title III's design thus resembles the pre-FSIA regime, which required courts to "accept and follow the executive['s] determination" on immunity to avoid "embarrass[ing] the executive [branch] in its conduct of foreign affairs." *Republic of Mexico* v. *Hoffman*, 324 U.S. 30, 35-36 (1945).

Indeed, "[f]or the better part of the last two centuries, the political branch making the determination was the Executive," *NML Capital*, 573 U.S. at 140, and even after the FSIA's enactment, it has been "entirely unremarkable" for Congress to "afford the President some flexibility" to continue making case-by-case immunity decisions "in unique circumstances," *Beaty*, 556 U.S. at 856-857. For example, Congress has authorized the President to waive the FSIA's terrorism exception with respect to Iraq, see National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083(d), 122 Stat. 343-344; waive a terrorism-related exception to ex-

ecution immunity with respect to certain diplomatic or consular property, see Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 201(b), 116 Stat. 2337 (codified at note following 28 U.S.C. 1610); and waive a terrorism-related exception to execution immunity applicable to certain foreign-state property blocked under sanctions programs, see 28 U.S.C. 1610(f)(3).

But superimposing on Title III suits the FSIA's framework of "bright-line rule[s]" that courts apply without regard to "'political considerations,'" *CC/Devas*, 605 U.S. at 229 (citation omitted), would supplant the political branches' foreign-policy judgments. For more than half a century, the United States has sought billions of dollars in compensation for American victims of Castro's illegal expropriations. See U.S. Foreign Claims Settlement Comm'n, U.S. Dep't of Justice, *Completed Programs – Cuba* (last updated Sept. 17, 2024), https://perma.cc/GH6J-EEL8. Congress sought to advance that interest in the LIBERTAD Act by abrogating Cuban agencies' and instrumentalities' immunity from suits for trafficking in the confiscated property of U.S. nationals. And President Trump has determined that American foreign policy strongly favors allowing plaintiffs to bring Title III suits, including against Cuban agencies and instrumentalities.

That decision "reflects 'delicate judgments' on matters of foreign policy that are in 'the prerogative of the political branches to make.'" *Fuld* v. *Palestine Liberation Org.*, 606 U.S. 1, 22 (2025) (citation omitted). This Court interprets statutes "affecting international relations" to avoid interpretations that would produce "'foreign policy consequences not clearly intended by the political branches.'" *Federal Republic of Germany* v. *Philipp*, 592 U.S. 169, 184-185 (2021) (citation omitted);

see *Bank Markazi*, 578 U.S. at 215 (foreign-policy actions of Congress and the President "warrant[ ] respectful review by courts"); *Beaty*, 556 U.S. at 860 ("courts ought to be especially wary of overriding apparent statutory text supported by executive interpretation"). Congress did not contradictorily supplant its own judgments and the President's sensitive, Cuba-specific foreign-policy determinations by superimposing the FSIA's politically agnostic framework for judicial determinations of immunity.

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

The court of appeals and respondents err by instead concluding that Title III preserves Cuban agencies' and instrumentalities' immunity and that only the FSIA exceptions can abrogate that immunity. See, *e.g.*, Pet. App. 14a-15a; Br. in Opp. 10-11; Supp. Br. in Opp. 8-9.

1. The court of appeals and respondents overread this Court's FSIA precedents to conclude that Title III leaves the FSIA's immunity requirements intact. They emphasize this Court's description of the FSIA as "the *sole basis* for obtaining jurisdiction over a foreign state" in federal court. Pet. App. 8a-9a (quoting *OBB Personenverkehr AG* v. *Sachs*, 577 U.S. 27, 30 (2015)); Br. in Opp. 14 (same); accord, *e.g.*, *Amerada Hess*, 488 U.S. at 443; *Republic of Austria* v. *Altmann*, 541 U.S. 677, 699 (2004). But "general language in judicial opinions" should not be read as "referring to quite different circumstances that the Court was not then considering." *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 278 (2023) (citation omitted).

That the FSIA supplies comprehensive default rules does not preclude Congress from enacting separate, specific statutes abrogating immunity. Though the

FSIA "transferred from the Executive to the courts the principal responsibility for determining a foreign state's amenability to suit," "it remains Congress' prerogative to alter a foreign state's immunity." *Bank Markazi*, 578 U.S. at 236. While respondents invoke (Supp. Br. in Opp. 7) the "separation of powers" to argue that the FSIA must trump executive-branch discretion, respondents ignore that defining the scope of foreign sovereign immunity is a power shared between Congress and the President. See pp. 27-28, *supra*. Thus, when Congress "alter[ed] the law governing the attachment of particular property belonging to Iran," notwithstanding the FSIA, this Court held that was "comfortably within the political branches' authority over foreign sovereign immunity." *Bank Markazi*, 578 U.S. at 236. And when Congress authorized the President to expand Iraq's immunity from suit by "'mak[ing] inapplicable'" the FSIA's terrorism exception, this Court observed that granting the President such "case-by-case" discretion was "well established * * * in the sphere of foreign affairs." *Beaty*, 556 U.S at 856-857 (citation omitted). Congress did the same thing in the LIBERTAD Act.

Nor are respondents aided by their invocation (Supp. Br. in Opp. 2) of the presumption against implied repeals. It "has no force here," where the proper "construction of the statute" does not "rest[] on implication" because Title III *expressly* subjects Cuban agencies and instrumentalities to suit; and the statute "d[oes] not repeal anything," but "merely grant[s] the President authority to waive the application of" the FSIA as to Cuban agencies and instrumentalities by allowing Title III suits to be brought. *Beaty*, 556 U.S. at 861. Even if the presumption applied, respondents admit (Supp. Br. in Opp. 3) that the "test for implied repeals mirrors the

test for waiver of immunity." Here, features of Title III that clearly abrogate Cuban agencies' and instrumentalities' immunity would provide the requisite evidence for an implied repeal too. See pp. 18-20, *supra*.

Nor must Congress expressly refer to FSIA immunity or enact a new FSIA exception to abrogate foreign sovereign immunity. Contra Pet. App. 11a-12a; Br. in Opp. 19-20; Supp. Br. in Opp. 3-4, 6. The decision below held that Title III does not abrogate Cuban agencies' and instrumentalities' immunity because it contains no language explicitly departing from the FSIA or expressly mentioning jurisdiction and immunity. See Pet. App. 11a-12a. That reasoning effectively requires Congress to make an ultra-clear statement to supersede the FSIA. But there is no "magic words" requirement to abrogate immunity, *Kirtz*, 601 U.S. at 52 (citation omitted), let alone a magic-placement rule that Congress must house immunity abrogations in the FSIA, or otherwise "address sovereign immunity in so many words in a discrete statutory provision," *id.* at 54. Even if Congress chose to alter FSIA immunity by amending the FSIA in the past, see Br. in Opp. 19-20, "the fact that Congress chose to use certain language to waive sovereign immunity in one" instance "hardly means it [i]s 'foreclose[d] . . . from using different language to accomplish th[e] same goal'" in another instance. *Kirtz*, 601 U.S. at 52 (citation omitted; brackets in original).

Beaty, *supra*, is illustrative and squarely refutes respondents' magic-placement rule. *Beaty* considered whether Congress, by generally providing that the President may "make inapplicable with respect to Iraq" any "provision of law that applies to countries that have supported terrorism," had permitted the President to exempt Iraq from the FSIA's terrorism exception. 556 U.S. at 856

(quoting Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. No. 108-11, § 1503, 117 Stat. 579). That language never mentioned immunity, and it appeared in a single sentence of a largely uncodified appropriations act—not the FSIA. Yet this Court unanimously held that it authorized the President to restore to Iraq the sovereign immunity that the terrorism exception would otherwise have stripped. See *id.* at 856-862. And here, the LIBERTAD Act contains four subchapters and spans more than 30 sections of the U.S. Code. See 22 U.S.C. 6021 *et seq*. It would make little sense for Congress to codify Title III within the FSIA to abrogate immunity, but leave the rest of the LIBERTAD Act in Title 22. See *Kirtz*, 601 U.S. at 52.

2. Respondents and the court of appeals also misapprehend the LIBERTAD Act's amendment to the FSIA's provisions for immunity of property from execution of a judgment, 28 U.S.C. 1611(c), to mean that Congress intended to leave FSIA jurisdictional immunity intact, see Pet. App. 12a; Br. in Opp. 22-23; Supp. Br. in Opp. 7-8. A foreign state's jurisdictional immunity from suit and execution immunity are different concepts addressed in different sections of the FSIA and subject to different exceptions. See *NML Capital*, 573 U.S. at 142. Section 1611(c) speaks only to whether a certain type of property can be used to satisfy a Title III judgment, not whether the FSIA's distinct jurisdictional immunity provisions apply in Title III actions.

Even if Title III did not modify FSIA execution immunity, there would be nothing unusual, let alone "incoherent," Supp. Br. in Opp. 7, about a statute that opens foreign agencies and instrumentalities to suit but leaves some of the foreign sovereign's property substantially immune from execution. That outcome is the norm even

where the FSIA applies *in toto*, because the FSIA's exceptions to execution immunity are "narrower" than its exceptions to immunity from suit. *NML Capital*, 573 U.S. at 142. That is no accident—executing a judgment against a foreign state's property is a significant step beyond merely subjecting the foreign state to litigation. Congress "fully intended to create rights without remedies, aware that plaintiffs would often have to rely on foreign states to voluntarily comply with U.S. court judgments." *Peterson* v. *Islamic Republic of Iran*, 627 F.3d 1117, 1128 (9th Cir. 2010).

Respondents are likewise incorrect in arguing (Br. in Opp. 17) that because the LIBERTAD Act expressly overrides the "act of state doctrine" in Title III cases, 22 U.S.C. 6082(a)(6), Congress would have overridden the FSIA expressly had it so wished. The LIBERTAD Act's plain meaning and context already abrogate the sovereign immunity of Cuban agencies and instrumentalities with great clarity. See pp. 18-20, *supra*. Anything more would have been superfluous.

Finally, respondents err by invoking (Br. in Opp. 17-18; Supp. Br. in Opp. 4) legislative history showing that Congress considered including in the LIBERTAD Act an express FSIA exception for Title III claims. An opposite inference is equally (if not more) plausible: Congress did not include such a provision because it believed it was unnecessary. See Cert. Reply Br. 6-7; Pet. Br. 34-36. Regardless, what matters is the "statutory text rather than legislative history," since "no amount of legislative history can dislodge" an "'unmistakably clear'" abrogation. *Kirtz*, 601 U.S. at 49 (citation omitted).

3. The court of appeals and respondents also understate the immunity-abrogating effects of the LIBER-

TAD Act. They contend that Title III does not abrogate immunity because Title III and the FSIA can coexist where an FSIA exception is satisfied, such that the FSIA would not "entirely 'negate' the Title III cause of action." Pet. App. 15a; see Br. in Opp. 10; Supp. Br. in Opp. 8-9. But complete negation is not the standard; this Court finds immunity abrogated if immunity would "effectively 'negate' suits [that] Congress has clearly authorized." *Kirtz*, 601 U.S. at 51 (brackets and citation omitted). Indeed, the Court rejected the government's argument in *Kirtz* that "allowing federal agencies a sovereign-immunity defense would not foreclose *every* suit." *Id.* at 53-54.

That does not result, as respondents suggest (Supp. Br. in Opp. 8-9), in an unworkable standard dependent on a "calculation" of "what percentage" of suits might fit within FSIA exceptions. "[W]hat matters is whether Congress has authorized a waiver of sovereign immunity that is 'clearly discernible' from the sum total of its work," and whether allowing a sovereign immunity defense would "effectively 'negate'" such a clearly authorized claim. *Kirtz*, 601 U.S. at 50, 54-55 (brackets and citations omitted). As discussed above, authorized Title III claims against Cuban agencies and instrumentalities would effectively be negated here because the LIBERTAD Act codified the longstanding embargo of Cuba, making it unlikely that potential suits against Cuban agencies and instrumentalities would satisfy an FSIA exception. See pp. 21-24, *supra*.

Respondents dispute as a factual matter how many Title III suits could fall within the FSIA's exceptions, pointing (Supp. Br. in Opp. 9-11 & nn.4-5) to present-day examples of U.S. travel to Cuba, U.S. exports to Cuba of agricultural goods and items intended for use

by the Cuban private sector, and monetary remittances from the United States to Cuba. But respondents never explain how those activities would satisfy the nexus requirements of the commercial-activity or expropriation exceptions—*e.g.*, by causing an immediate "direct effect in the United States," 28 U.S.C. 1605(a)(2), or by a foreign state or agency or instrumentality engaging in commercial activity "in the United States," 28 U.S.C. 1605(a)(3). Regardless, in 1996, when Congress enacted Title III and codified the Cuba embargo, the restrictions permitted only limited travel to and business with Cuba. See pp. 22-23, *supra*. While the President can adjust the availability of licenses, see Supp. Br. in Opp. 10-11 & n.6, the LIBERTAD Act requires the embargo to "remain in effect" as it existed in 1996, 22 U.S.C. 6032(h), until the President determines that a transition or democratically elected government in Cuba is in power and takes specified actions, 22 U.S.C. 6064. Congress in 1996 did not create a cause of action against Cuban agencies and instrumentalities that could not have effectively operated at the time.

Respondents finally argue (Br. in Opp. 30-31) that Title III would retain meaning, even if Cuban agencies and instrumentalities were immune, because suits against private defendants remain. Certainly, it is critically important for Title III plaintiffs to pursue secondary wrongdoing by non-sovereign traffickers. See 22 U.S.C. 6081(8) and (11). But that is no reason to ignore statutory text that clearly authorizes and envisions suits against Cuban agencies and instrumentalities. See pp. 18-20, *supra*. That reading would perversely allow the Cuban government—the original perpetrator of expropriations—to continue benefiting from its wrongdoing, while limiting liability to private parties

who collaterally benefit from the Cuban government's wrongdoing. See 22 U.S.C. 6081(2) and (6). Congress unambiguously sought to hold the Cuban government accountable for its wrongdoing, and the United States has a paramount foreign-policy interest in allowing U.S. nationals to pursue long-delayed justice. See *Restoring a Tough U.S.-Cuba Policy*, *supra*.

CONCLUSION

The judgment of the court of appeals should be reversed.

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