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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Respondents' core submission is that Congress needed to do more than speak clearly to abrogate Cuban instrumentalities' sovereign immunity in Title III of the Helms-Burton Act. Because Congress acted against the backdrop of the Foreign Sovereign Immunities Act (FSIA), it had to speak *in a particular way*, by amending the FSIA directly. The 104th Congress would be perplexed by such a rule. When that Congress amended the Fair Credit Reporting Act (FCRA) to authorize damages actions against any "person" who violates the FCRA, defined to include any "government or governmental subdivision or

agency," it eliminated sovereign immunity for the federal government. *Department of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 50 (2024). When the same 104th Congress authorized damages actions against any "person" who violates the Helms-Burton Act, defined to include "any agency or instrumentality of a foreign state," it surely intended the same result for Cuban instrumentalities. Yet under respondents' higher bar for abrogation, those nearly identical statutes generate different results.

Apart from their magic-words requirement, respondents argue that Title III does not speak with the requisite clarity. But they downplay or ignore the most telling textual clues in Title III itself—including the cause of action in Section 6082(a), the extension of ordinary federal-question jurisdiction in Section 6082(c)(1), the express incorporation of FSIA service-of-process rules in Section 6082(c)(2), and the statutory findings in Section 6081(8) and (11). Respondents misapprehend confirmatory structural arguments about the embargo and Presidential suspension authority. And they rely on a snapshot of legislative history that, once understood in context, points firmly in the opposite direction.

At bottom, respondents fundamentally misunderstand what the Helms-Burton Act is. It is a very narrow exception to the general FSIA rule. Though narrow, it is *sharp*. Congress was frustrated that "[t]he international judicial system . . . lacks fully effective remedies" for Americans whose property was stolen. 22 U.S.C. § 6081(8). It created a novel cause of action, trained at a recalcitrant Cuban government, and allowed the President to soften the blow when diplomat-

ically necessary. Respondents' theory that Congress left the Cuban government largely untouched cannot be squared with the statute's history or its text.

ARGUMENT

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

Although Title III contains no magic words, it clearly evinces Congress's intent to abrogate Cuban instrumentalities' immunity from damages actions brought under that novel remedial statute. The statutory text requires that reading, and the statute's history and purposes confirm it. Respondents' array of other arguments—most of which this Court need not address—do not undermine that conclusion.

A. There Is No Ultra-Clear-Statement Rule To Abrogate Foreign Sovereign Immunity.

Respondents' central argument is that FSIA immunity is nearly insurmountable. In their telling, the sovereign immunity of foreign governments can be overcome only through (1) express amendment of the FSIA or (2) the creation of a cause of action that could never satisfy any FSIA exception. This Court's approach to statutory interpretation—even in the sensitive immunity context—has never been so limited.

1. To determine whether Congress has withdrawn the federal government's sovereign immunity, or has abrogated the "States' constitutionally secured immunity from suit" or the immunity of Indian tribes, this Court has always applied the same "simple but stringent test." *Dellmuth* v. *Muth*, 491 U.S. 223, 228 (1989) (citation omitted). It asks whether Congress

made "its intention unmistakably clear in the language of the statute." *Ibid.*; *see Financial Oversight & Mgmt. Bd. for Puerto Rico* v. *Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 347 (2023) (*FOMB*). To satisfy that "clear statement" requirement, Congress "need not use magic words," "discuss sovereign immunity in so many words," or "state its intent in any particular way." *Kirtz*, 601 U.S. at 48-49 (citation omitted). All it must do is "speak clearly," in "one way or another," "to the government's liability." *Id.* at 49, 52.

No greater clarity should be required to abrogate foreign sovereign immunity, as codified in the FSIA. If anything, it should be easier for Congress to abrogate foreign governments' immunity from suit in federal court. Pet. Br. 42-43. After all, subjecting States to federal damages suits "upsets the fundamental constitutional balance between the Federal Government and the States," *Dellmuth*, 491 U.S. at 227-228 (internal quotation marks omitted), whereas foreign sovereigns' immunity "is a matter of grace and comity," *Republic of Argentina* v. *NML Cap., Ltd.*, 573 U.S. 134, 140 (2014). Respondents never respond to that basic point, except to say (at 17 n.1) that Congress might make "different judgment[s]" for each type of sovereign—true, but irrelevant to the question of *how* to assess what judgments Congress has made.

2. Respondents demand more here. They begin by invoking (at 20-22) the canon against implied repeals. That canon requires a "clearly expressed congressional intention," *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 510 (2018), no different from the "unmistakably clear" "intention" required to abrogate sovereign immunity, *Kimel* v. *Florida Bd. of Regents*, 528 U.S.

62, 73 (2000). So if Congress's intent is clear enough to abrogate immunity, it is clear enough to overcome the implied-repeal canon.

In any event, the implied-repeal canon does not apply here because Exxon's construction of the statute does not "effect[] a repeal." *Republic of Iraq* v. *Beaty*, 556 U.S. 848, 861 (2009). When Congress enacts an earlier, general statute (like the FSIA) and a later, specific statute (like the Helms-Burton Act), this Court does not treat that as an "effective[] repeal." Scalia & Garner, *Reading Law* 185 (2012); *see id.* at 189 (discussing "truly irreconcilable provisions at the same level of generality"). Instead, the Court applies the canon that the specific statute controls in its narrow sphere, and the general statute controls everywhere else. Under the "general/specific canon," Title III and the FSIA are actually "not in conflict" at all, "but can exist in harmony." *Id.* at 185; *see, e.g.*, *Townsend* v. *Little*, 109 U.S. 504, 512 (1883) ("[G]eneral and specific provisions, in apparent contradiction, . . . may subsist together, the specific qualifying and supplying exceptions to the general.").

Respondents emphasize language from several cases (at 21) declining to construe a later statute to impliedly repeal an earlier one unless "absolutely necessary in order that the words of the later statute shall have any meaning at all." But none involved two statutes that could easily be harmonized by treating the later enactment as a narrow exception to an otherwise-general rule. In *Epic Systems*, for example, the claim was that the National Labor Relations Act overrode the Federal Arbitration Act "on the same topic": the enforceability of arbitration agreements in employment contracts. 584 U.S. at 498. And

in *National Association of Home Builders* v. *Defenders of Wildlife*, the Court faced the exact opposite of the situation here: a claim that an earlier "specific" statute had been "submerged by a later enacted statute covering a more generalized spectrum." 551 U.S. 644, 646 (2007). The task is much simpler for the FSIA's general immunity rule and Title III's "specific, independent, and exclusive" exception. Pet. App. 41a (Randolph, J., dissenting) (emphasis omitted).

3. Respondents also observe (at 22-23) that "Congress has amended" the FSIA directly to add or change an immunity exception 15 times, which purportedly proves that Congress speaks in a certain way in this context. That point has two problems. First, as of Title III's enactment in 1996, Congress had added only three exceptions—and one of the three did not even involve a direct amendment to the FSIA. *See* Resp. Br. 22 n.3. So in 1996, amending the FSIA to add immunity exceptions was hardly standard congressional practice. Nor, as the Government points out, has it been uniformly followed since. *See* U.S. Br. 29-31 (discussing appropriations statute in *Beaty*, 556 U.S. at 856).

Second, the Court has roundly rejected similar arguments. For example, *Kirtz* acknowledged that there were "other provisions in the FCRA" "that address[ed] the question of sovereign immunity in different and arguably even more obvious terms." 601 U.S. at 51. But the "fact that Congress chose to use certain language to waive sovereign immunity" in one part of the statute "hardly mean[t] it was foreclosed" from using "different language to accomplish th[e] same goal." *Id.* at 52 (quoting *Lac du Flambeau Band of Lake Superior Chippewa Indians* v. *Cough-*

lin, 599 U.S. 382, 395 (2023)). "If no magic words are required" to abrogate, the Court explained, "then the clarity of each statute must be evaluated on its own terms." *Ibid.* (citation omitted). Just so here.

4. Finally, respondents claim (at 26) that Congress was required to speak with extra clarity here because "this Court ha[s] already held the FSIA to be 'comprehensive'" and the "'sole basis' of jurisdiction against foreign states." That judicial language, they say, put Congress on "prospective notice" that it needed to amend the FSIA directly to create new exceptions to sovereign immunity. Br. 26 (citations omitted); *see id.* at 44. This Court does not generally put Congress on "notice" that it may act only through specific amendments. That is particularly true where the Court has already explained that the very language respondents cite does not control in "circumstances that the Court was not then considering." *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 278 (2023). And it is unsurprising that this Court has described the FSIA as "comprehensive": when enacted, the FSIA set out exhaustive rules for suing foreign sovereigns. The fact that Congress later separately enacted one targeted sovereign-immunity waiver for Castro-era takings does not detract from the FSIA's general dominance.

Respondents also cite (at 41) a pair of this Court's FSIA decisions that, they claim, were "particularly insistent on explicit textual language to abrogate or modify FSIA immunity." But neither case fits that description. In *Rubin* v. *Islamic Republic of Iran*, the Court adopted the "most natural reading" of the relevant provision after applying ordinary interpretive tools and looking to relevant historical practice.

583 U.S. 202, 211-215 (2018). *Republic of Hungary* v. *Simon* likewise engaged in standard textualist reasoning, noting that the "plain text" of the relevant provision controlled. 604 U.S. 115, 128 (2025). Neither decision elevates the FSIA to some sort of super statute.

B. Title III Clearly Withdraws Cuban Instrumentalities' Sovereign Immunity.

Congress's intent to abrogate the sovereign immunity of Cuban instrumentalities in Title III suits is "clearly discernable from the statutory text in light of the traditional interpretive tools." *FAA* v. *Cooper*, 566 U.S. 284, 291 (2012). And despite respondents' "attempt[] to create ambiguity," *Kimel*, 528 U.S. at 75, the Helms-Burton Act's structure, purposes, and history point in the same direction.

1. The text of Title III clearly abrogates immunity.

All agree that what matters is the text. Respondents oddly accuse (at 2) Exxon of "resort[ing] to Title III's purposes, not text," but both Exxon and the United States start with the statutory language. *See* Pet. Br. 19-30; U.S. Br. 16-20, 24-26. This Court can end there, too. In Title III, Congress used a formulation that this Court has recognized strongly indicates an intent to withdraw sovereign immunity, and coupled that formulation with several other provisions that make its intent crystal clear with respect to Cuban instrumentalities.

Sections 6082(a) and 6023(11)

The clearest evidence of Congress's intent to withdraw immunity here is that Congress followed a time-

honored textual formula: it "create[d] a cause of action and explicitly authorize[d] suit against a government on that claim." *Kirtz*, 601 U.S. at 49; *see* Pet. Br. 21-26; U.S. Br. 18-19. Indeed, Title III's language is "virtually identical" to the FCRA's. U.S. Br. 19.

Respondents raise several objections to applying the *Kirtz* principle here. None works.

First, respondents argue (at 15-20) that the combination of Section 6082(a)'s cause of action and Section 6023(11)'s definition of covered "persons" constitutes proof of intent to abrogate only if sovereign immunity would otherwise block *every conceivable* Title III action against Cuban instrumentalities. That would not be true here, respondents observe, because it is theoretically possible that some Title III suits—even if a vanishingly small number—could squeeze through an FSIA exception.

That argument finds no support in *Kirtz* or its predecessor immunity decisions. Instead, the Court has consistently framed the inquiry as whether "[r]ecognizing immunity" would preclude "a host of claims Congress" has clearly authorized—that is, some meaningful set, not every possible one. *FOMB*, 598 U.S. at 348-349; *see Kirtz*, 601 U.S. at 50 (finding waiver because "dismissing *a claim* against the government . . . would effectively negate *a claim* Congress has clearly authorized") (emphasis added); *Kimel*, 528 U.S. at 75 (finding abrogation because statute was clear that "actions may be maintained" "against the sovereign"). Indeed, if respondents' "dead-letter" requirement were taken seriously, this Court could not have found that the ADEA or FMLA abrogates state sovereign immunity, because a State's

immunity from damages is not absolute and could always be waived.

Respondents ignore that this is a *stronger* case for abrogation than *Kirtz*, *Kimel*, or *Nevada Department of Human Resources* v. *Hibbs*, 538 U.S. 721 (2003). *See* Pet. Br. 24-25. Respondents never deny that Cuban instrumentalities are both the main culprits in and main continuing beneficiaries of Castro's thefts, placing claims against those defendants at the heart of what Congress set out to accomplish. That was not true of the claims Congress had authorized in the FCRA, ADEA, or FMLA; governments were among many covered actors. Moreover, in those other statutes, Congress applied the cause of action to governments "through [a] series of statutory directions" and cross-references enacted at different times, *Kirtz*, 601 U.S. at 50-51, raising at least some question whether Congress intended to sweep in governmental defendants at all. Here, Congress's intent to subject Cuban instrumentalities to damages actions is not even debatable. *See, e.g.*, 22 U.S.C. § 6082(a)(7), (c)(2), (d), (h).

Second, respondents invoke (at 19-20) Section 1983 and the Torture Victim Protection Act (TVPA). Their arguments are difficult to follow. Respondents appear to cite the TVPA because the U.S. Government previously argued that the TVPA does not displace the FSIA. Of course, the Government also argued four years later in *Kirtz* that the FCRA did not waive sovereign immunity. Having lost that argument for its own immunity, it is entitled to apply this Court's reasoning and recognize, like Judge Randolph below, that Cuban agencies should not "enjoy more protec-

tion from lawsuits than agencies of the United States." Pet. App. 48a.

As for Section 1983, respondents describe it (at 18) as a statute that, like the FSIA, provides "less-than-absolute immunity." But respondents cite cases involving prosecutors and legislators, who *are* entitled to absolute immunity, and remain so despite the enactment of Section 1983. It is unclear what lesson respondents would have the Court draw from that comparison. At any rate, this Court's Section 1983 decisions have been guided mainly by the unique "presuppositions" of that statute's Reconstruction-era "political history." *Tenney* v. *Brandhove*, 341 U.S. 372, 372 (1951). There are no parallels here.

Third, without any sense of irony, respondents accuse (at 17) *Exxon* of "advocating an impermissible 'magic words' requirement" by pointing out the near-identical language of the FCRA and Title III. That is not a magic-words rule; it is the principle that "when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended . . . the same meaning in both statutes." *Smith* v. *City of Jackson, Miss.*, 544 U.S. 228, 233 (2005). Respondents note that this presumption can be rebutted by "context." Br. 17 (quoting *McLaughlin Chiropractic Assocs., Inc.* v. *McKesson Corp.*, 606 U.S. 146, 164 (2025)). But there is no relevant context here pushing away from abrogation—as discussed below, quite to the contrary.

Section 6082(c)(1)

Respondents have no good answer to the Helms-Burton Act's description of Title III suits as "action[s]

brought under section 1331"—the general federal-question jurisdictional statute, not the FSIA's jurisdictional provision at 28 U.S.C. § 1330. Pet. Br. 29-30; U.S. Br. 25. Respondents suggest (at 45) that this was merely "imprecise shorthand" that picks up "Title 28's procedural provisions." But that is not what it says. It says that the procedural provisions of Title 28 apply to Title III suits "to the same extent as such provisions and rules apply to any *other* action brought under section 1331." 22 U.S.C. § 6082(c)(1) (emphasis added). The use of the word "other" indicates that Title III suits, too, are in the class of "action[s] brought under section 1331."

Respondents insist (at 45) that Section 6082(c)(1) is too "oblique" to "effectuate so momentous a change." The Court need not decide whether this provision would be too "oblique" on its own, when it is one of several statutory signals working in parallel. The express shift from Section 1330 to Section 1331 simply confirms what Section 6082(a) already makes clear: that the FSIA's usual "link" between sovereign immunity and subject-matter jurisdiction is superseded in Title III suits. Pet. Br. 30; U.S. Br. 25.

Section 6082(c)(2)

Congress also selectively incorporated the FSIA's procedures for service of process, 22 U.S.C. § 6082(c)(2), which it would have had no reason to do "if [it] understood the FSIA to apply to Title III *in toto*" already. Pet. App. 51a (Randolph, J., dissenting). In opposing certiorari, respondents argued that Congress expressly incorporated FSIA service rules to make clear that they "must be followed by state courts." Br. in Opp. 27-28. As Exxon explained in re-

ply, that does not work: the FSIA's service rules already apply "in the courts of the United States *and of the States*." Cert. Reply 6 (quoting 28 U.S.C. § 1608(a)) (emphasis added).

Respondents have now retreated to much narrower ground. They note (at 52-53) that Title III requires use of FSIA rules in suits against "an agency or instrumentality of a foreign state," *or* against "individuals acting under color of law." 22 U.S.C. § 6082(c). Respondents assert (at 53) that only this second clause does new work, and admit that the first creates "modest redundancy."

Even that half-measure answer is wrong; under respondents' theory, *both* clauses were redundant at Title III's enactment. In 1996, it was settled law that the FSIA applied to "individuals acting under color of" law. Cert. Reply 6; *see Samantar* v. *Yousuf*, 560 U.S. 305, 310 n.4 (2010) (overturning that rule while noting that courts of appeals were unanimous the other way until 2005). Respondents say (at 52) that the concept of "acting under color of law" is distinct from acting in an "official capacity," but they do not explain the difference in this context.[1] The key point is that when Congress wrote Title III, the prevailing view was that the FSIA already "applie[d] to individual of-

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[1] In the pre-*Samantar* world, individual defendants were sued for "damages from [their] own pockets," so in that sense in their "personal capacity." *Samantar*, 560 U.S. at 325. Thus, when those cases talk about whether such defendants came within the FSIA when sued in their "official capacity," what they meant was defendants sued for actions "within the scope of [their] office"—that is, acts under color of their sovereign's law. *Id.* at 318.

ficials of a foreign state," *Samantar*, 560 U.S. at 310, just as it already applied in state courts. That leaves Title III's specific adoption of the FSIA's service-of-process provisions inexplicable on respondents' view.

Respondents also suggest that "even without Section 6082(c)(2)," the FSIA's "service provision" would still apply because the immediately preceding paragraph requires courts to apply the "provisions of title 28," which include the entire FSIA. Br. 53 (quoting 22 U.S.C. § 6082(c)(1)). But that just begs the question. Section 6082(c)(1) actually states that the "provisions of title 28" will apply in Title III actions "[e]xcept as otherwise provided in" Title III. The whole question in this case is whether the rest of Title III indeed "provide[s]" that the FSIA does not apply.

Other Title III provisions

Title III is shot through with confirmatory signs. Many provisions specifically assume the existence of trafficking claims against Cuban agencies and instrumentalities, referring to "judgment[s]," "claim[s]," and "actions" "against the Cuban Government." 22 U.S.C. §§ 6064(a), 6082(a)(7)(B), 6082(d); *see id.* § 6023(a)(5) (defining "Cuban Government" to include its agencies and instrumentalities). Congress's legislative findings make the same assumption, explaining that the aim of enacting Title III was to address the lack of "fully effective remedies" for the continuing "use of wrongfully confiscated property *by governments*." *Id.* § 6081(8) (emphasis added); *see id.* § 6081(11) (giving confiscation victims "a judicial remedy in the courts of the United States"); *see also id.* §§ 6021(15), 6022(3), 6022(6). It would have been odd for Congress to devote so much attention to claims

and judgments against Cuban instrumentalities if only a handful might ever make it past the FSIA. *See* U.S. Br. 24. Yet respondents do not even acknowledge these provisions, which strongly support abrogation.

2. The structure, purposes, and history of Title III corroborate Congress's intent to abrogate immunity.

The text is clear enough. But Title III's structure, purposes, and history further confirm that Congress intended to abrogate Cuban instrumentalities' sovereign immunity. Requiring plaintiffs to go through the FSIA would bar most core Title III claims, undercut Congress's design of Title III suits as potent foreign-policy tools, and contradict the best reading of the legislative record. Pet. Br. 30-36. Respondents' counterarguments on these points lack merit.

a. The same Helms-Burton Act that created an unprecedented cause of action against Cuban instrumentalities—and emphasized the forcefulness of doing so—simultaneously codified an embargo that had halted virtually all commercial activity between Cuba and the United States. 22 U.S.C. § 6032(h). Because commercial activity with a "considerable [United States] nexus" is the cornerstone of the FSIA's exceptions to sovereign immunity, *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp.*, 605 U.S. 223, 233 (2025), those simultaneous actions make no sense under respondents' theory. *See* Pet. Br. 30-32; U.S. Br. 22-24.

Respondents accuse Exxon (at 33) of having forfeited this "embargo argument." That is puzzling. The embargo has been a key point in Exxon's argument since this case began. *See, e.g.*, Opp. to Mot. to

Dismiss 14, *Exxon Mobil Corp.* v. *Corporación CIMEX S.A.*, 2020 WL 5807315 (D.D.C. Sept. 29, 2020) ("Title III's contemplation of suits brought against Cuban agencies and instrumentalities, which at the time of Title III's passage had restricted access to U.S. markets because of the embargo, would make no sense if Congress intended claimants to be restricted by the FSIA."). Regardless, having argued below that Title III supersedes the FSIA, Exxon is "not limited to the precise arguments [it] made below" in support of that statutory construction. *Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992).

Respondents predictably downplay (at 38-39) both the sweep of the embargo and the difficulty of satisfying the FSIA in Title III actions.[2] But they never deny that applying the FSIA would doom a "large swath of claims at the heart" of Title III, and at minimum dissuade all but the most dogged of claimants. Pet. Br. 17; *see id.* at 31-33. Respondents likewise do not dispute that this state of affairs has made suing tangentially connected American companies the path of

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[2] Much of that is wrong too. Respondents emphasize (at 35-38) that the President has marginal authority to adjust the availability of certain licenses, but the embargo must remain "as [it was] in effect on March 1, 1996," absent major changes in Cuba's governance. 22 U.S.C. § 6032(h); *see id.* § 6064(a) (providing that both the embargo and the Title III cause of action continue until democratic change in Cuba). Respondents also mistakenly focus (at 37-38) on *exports* from the United States to Cuba. But American exports are less relevant to the FSIA, and there continues to be a near-complete prohibition on *imports* from Cuban state-owned companies. *See* 31 C.F.R. §§ 515.201, 515.204, 515.337; *cf. id.* § 515.582 (permitting certain imports from "independent private sector entrepreneurs").

least Title III resistance. *See* Chamber of Commerce Amicus Br. 14-22. And they nowhere explain how these negative outcomes can be squared with Congress's enacted findings. As those findings make clear, Congress sought to "endow[]" Castro's victims with a "private remed[y]" that would "protect" Americans while addressing the "lack[]" of "fully effective remedies" then available to them under the "international judicial system." 22 U.S.C. §§ 6022(6), 6081(6)(B), 6081(8), 6081(11).

Respondents assert that "assumed legislative purposes" cannot "change the meaning of operative text" because no statute "pursues its goals at all costs." Br. 12, 27-29, 34. Those truisms are beside the point here. There is no need to "assume[]" what Congress's purposes were—they are "encompassed in the Act itself" in enacted legislative findings. *American Textile Mfrs. Inst., Inc.* v. *Donovan*, 452 U.S. 490, 521-522 (1981) (looking to "statement of findings and declaration of purpose" in interpreting statute); *see H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 492 U.S. 229, 255 (1989) (Scalia, J., concurring in the judgment) (relying on "prologue of the statute" to discern its "relatively narrow focus"). There is also a difference between stretching a statute to "its furthest possible implication," *Hewitt* v. *United States*, 606 U.S. 419, 457 (2025) (Alito, J., dissenting), and adopting an already-persuasive construction to avoid "completely eviscerat[ing] the congressional goal," *Bowsher* v. *Merck & Co.*, 460 U.S. 824, 836 (1983).

b. Congress clearly understood that Title III would enable significant claims against Cuban instrumentalities. For example, Section 6082(d) provides that Title III "judgment[s] against an agency or

instrumentality of the Cuban government" cease to be enforceable if Cuba transitions to a democratic government. 22 U.S.C. § 6082(d); *see id.* § 6064(a) (providing for suspension of "actions thereafter filed against the Cuban government" "to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba"). Congress thus anticipated that such judgments would be significant enough that precluding their enforcement could have real importance to a future transition effort. Under respondents' theory, it is hard to see why Section 6082(d) would be necessary.

Similarly, by authorizing the President to suspend Title III's cause of action as "necessary to the national interests of the United States," 22 U.S.C. § 6085(b), Congress acknowledged that it had crafted a sharp tool and gave the President the discretion to sheath it. Respondents' view of sovereign immunity would strip the President's suspension authority of its real diplomatic potency. *See* Pet. Br. 33-34; U.S. Br. 26-28. Respondents retort (at 46) that a "Presidential decision *not* to suspend . . . does not operate to deprive instrumentalities" of FSIA immunity. But no one says that the President can abrogate immunity if Congress has not. The suspension authority is simply a (strong) piece of evidence bearing on whether Congress abrogated that immunity in the first place.

c. Against all that, respondents emphasize (at 23-25) legislative history supposedly showing that Congress considered, but did not enact, an express amendment to the FSIA for Title III claims. As *Kirtz* makes clear, such legislative history is irrelevant: "a court charged with asking whether Congress has spoken clearly" on immunity "has its answer long before

it might have reason to consult the Congressional record." 601 U.S. at 49.

In any event, the best reading of the opaque legislative history *supports* the proposition that Congress intended to abrogate Cuban instrumentalities' immunity. Respondents repeatedly point (at 23-25) to a provision in the original version of the House bill that would have directly amended the FSIA. But there are at least two likely explanations for that provision's removal—though it is admittedly "ill advised" to try to divine any coherent intent from a rapidly shifting piece of draft legislation. *Zedner* v. *United States*, 547 U.S. 489, 511 (2006) (Scalia, J., concurring in part and concurring in the judgment).

First, when the express FSIA amendment was dropped from the House bill, legislators made a corresponding change at the same time: they broadened the Title III cause of action to cover "any person, *including any agency or instrumentality of a foreign state*," that "traffics in confiscated property." H.R. 927, 104th Cong. § 302(a)(1) (reported Aug. 4, 1995) (emphasis added). That reference to agencies and instrumentalities was not in the earlier version. *See* H.R. 927, 104th Cong. § 302(a)(1) (introduced Feb. 14, 1995). So there is good reason to believe that the drafters simply swapped two different ways of achieving abrogation.

Second, the most likely reason that the drafters did so appears in the DOJ letter, dated June 1995, that respondents reproduce (at 1a-10a). DOJ raised concerns that a contemplated version of the draft bill would have included both (1) an FSIA amendment that applied to *foreign states*, and (2) a cause of action that mentioned only *foreign agencies and instrumen-*

talities. Resp. App. 4a-5a. DOJ argued that, as a result, Congress's intent "with respect to the immunity of foreign states is unclear." *Id.* at 5a. Because the congressional drafters apparently wanted to abrogate only the sovereign immunity of instrumentalities—not the sovereign immunity of the Cuban government itself—they may have excised the FSIA provision to avoid the confusion that DOJ had flagged.

In all events, after the August 1995 change, everyone continued to understand the bill to allow suits against foreign-sovereign defendants. The State Department submitted a post-amendment letter warning that the bill's then-"current form" would "permit suits against agencies and instrumentalities of foreign governments . . . far beyond current exemptions in the FSIA." 104 Cong. Rec. S15107 (Oct. 12, 1995).[3] And a different post-amendment letter from the Chairman of the Joint Corporate Committee on Cuban Claims described the new version as continuing to authorize suits against "persons or entities . . . including the Government of Cuba." 104 Cong. Rec. S15111 (Oct. 12, 1995) (letter dated Sept. 20, 1995). If the August 1995 amendment were in fact aimed at gutting a key aspect of the original bill, it is strange that not one

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[3] Respondents note (at 24-25 n.6) that the State Department letter is undated and insist that it "could only have referred to the bill as it was pending with the express FSIA Amendment." But the letter quoted a *post*-amendment version of the bill, which included the revised definition of "person or entity" to encompass "any agency or instrumentality of a foreign state," 141 Cong. Rec. 27572 (Oct. 11, 1995)—language the original version did not have.

person said as much, or mentioned the FSIA as an obstacle to Title III suits. *See* Pet. Br. 36.

C. Respondents' Other Counterarguments Are Misplaced.

Respondents offer a smattering of other arguments for why Congress could not have meant to abrogate Cuban instrumentalities' sovereign immunity in Title III. A handful are textual; most are consequentialist; none is persuasive.

1. On the text, respondents contend (at 26) that because Title III overrode the act-of-state doctrine by name, "*a fortiori* it would [have done]" the same for the FSIA. After all, they say, the FSIA is likewise a barrier to recovery. But that is just the same misguided magic-words requirement in new garb. *See* Pet. Br. 46. The fact that Congress addressed the act-of-state doctrine "in so many words" does not mean that it had to do so for sovereign immunity, even if that would have been "even more obvious." *Kirtz*, 601 U.S. at 50-51.

Next, respondents observe (at 26) that Title III "*explicitly* amend[ed] the FSIA's execution immunity provisions," but not its jurisdictional-immunity provisions. Respondents are presumably referring to the fact that Title III added Section 1611(c) to the FSIA. *See* 28 U.S.C. § 1611(c). But Exxon already explained why that amendment has no bearing on the jurisdictional-immunity question presented here. *See* Pet. Br. 43-45. Respondents simply ignore those points. Respondents have likewise abandoned their earlier argument that a ruling for Exxon would leave no path for Title III plaintiffs to establish personal jurisdiction or subject-matter jurisdiction in suits

against Cuban instrumentality defendants. *See* Br. in Opp. 13-16, 23; Pet. Br. 46-47.

2. Past the text, respondents trot out an assortment of outcome-based arguments. This Court need not address any, and none affects Title III's immunity abrogation anyway.

Respondents first argue (at 42) that reading Title III to abrogate their immunity would "raise serious international law concerns" that this Court should avoid. But the *Charming Betsy* canon is not a relevant guide to congressional intent here. That canon reflects this Court's assumption that "Congress ordinarily seeks to follow" "principles of customary international law." *F. Hoffman-La Roche Ltd.* v. *Empagran S.A.*, 542 U.S. 155, 164 (2004). In the Helms-Burton Act, Congress intentionally pushed to or past the boundaries of international law—regardless of whether the Act abrogates immunity for foreign instrumentalities. Title III's extraterritorial cause of action itself was arguably "unknown to . . . customary international law," a point respondents echo here (at 8). *See* David Fidler, *LIBERTAD v. Liberalism: An Analysis Of The Helms-Burton Act From Within Liberal International Relations Theory*, 4 Ind. J. Global Legal Stud. 297, 311-320 (1997). That may be why the Act was originally subject to a Senate filibuster, and why a number of countries passed blocking statutes in response. The Act was, to say the least, novel.

Congress meant every word, well aware of how its handiwork might be received. It chose a bold, unprecedented remedy in response to the largest uncompensated taking of American property in history, followed by the shooting of American planes over in-

ternational waters. Congress adopted that approach after having determined that the "international judicial system" and "international law" had long failed to provide "fully effective remedies" for Castro's "wrongful confiscation" and "unjust enrichment." 22 U.S.C. § 6081(8)-(9). *Charming Betsy* has no application in these circumstances.

On a similar note, respondents suggest (at 40-41) that exercising jurisdiction over Cuban instrumentalities outside the FSIA's "territorial nexus requirements" would raise "due process" concerns. But respondents never dispute that Title III claims have an obvious nexus to the United States: as Congress explained, they redress egregiously wrongful "conduct outside [U.S.] territory that has or [was] intended to have substantial effect within its territory." 22 U.S.C. § 6081(9). That nexus is more than sufficient for due-process purposes, assuming respondents have due-process rights at all. *See* Pet. Br. 47.

Next, respondents contend (at 29) that Title III "leaves untouched" the FSIA's separate execution immunity, creating an "incongruous disconnect" if the FSIA's jurisdictional-immunity provisions do not apply. Exxon already addressed both parts of that argument. The best reading of Title III is that it *does* eliminate execution immunity. Pet. Br. 48. Regardless, it would not be "incongruous" to treat jurisdictional immunity and execution immunity differently, making the question academic. Pet. Br. 48-49; *see* U.S. Br. 31-32. Respondents ignore both points.

Finally, respondents repeatedly say (at 29-33) that a ruling against them would apply to instrumentalities of other foreign countries, not just Cuba. They may well be right: many textual indicators of Congress's

intent would apply in cases brought against other countries' instrumentalities, if there ever were such cases. But that broader application would hardly be the "premonition[] of doom" that respondents think it is. *Free Enter. Fund* v. *PCAOB*, 561 U.S. 477, 506 (2010). If a different foreign instrumentality were "economically exploit[ing] Castro's wrongful seizures" of Americans' property, 22 U.S.C. § 6081(11), there is every reason to think that Congress would have wanted Title III's cause of action to apply.

In any event, the question here is narrower. Some other statutory indicators are specific to Cuba. *See, e.g.*, 22 U.S.C. § 6082(d) ("judgment[s] against an agency or instrumentality of the Cuban Government"); *id.* § 6082(a)(7)(B) ("claim[s] against the Cuban Government"); *id.* § 6064(a) (actions "against the Cuban Government"); *see also* U.S. Br. 18 n.5. The answer to the question presented is thus that Title III, "[w]hen viewed as a whole," "makes abundantly clear that" Cuban instrumentalities are not immune from suit. *Ellingburg* v. *United States*, No. 24-482 (2026) (slip op., at 3). That is all the Court needs to decide.

CONCLUSION

For the foregoing reasons and those in Exxon's opening brief, this Court should reverse the judgment below.

Respectfully submitted.

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