

No. 24-983

Supreme Court of the United States

HAVANA DOCKS CORPORATION,
Petitioner,

v.

ROYAL CARIBBEAN CRUISES, LTD., ET AL.
Respondents.

On petition for a writ of certiorari to the
United States Court of Appeals for the Eleventh Circuit

**BRIEF OF REP. MARIO DÍAZ-BALART, SEN. RICK
SCOTT, REP. DEBBIE WASSERMAN SCHULTZ, REP.
MARÍA ELVIRA SALAZAR, AND REP. CARLOS
ANTONIO GIMÉNEZ AS AMICI CURIAE
SUPPORTING PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Amici Mario Díaz-Balart, Rick Scott, Debbie Wasserman Schultz, María Elvira Salazar, and Carlos Antonio Giménez are members of Congress. They are interested in this case because the judgment sought to be reviewed undermines a central pillar of our nation's foreign policy on Cuba.

¹ No counsel for a party authored this brief in whole or in part. This brief was prepared and submitted pro bono by the undersigned counsel. No person made a monetary contribution intended to fund—or that, in fact, funded—the preparation or submission of the brief. Counsel of record for the parties received timely notice of the intent to file this brief.

SUMMARY OF ARGUMENT

The private cause of action under Title III of the LIBERTAD Act is a central pillar of our nation's foreign policy on Cuba. The judgment sought to be reviewed nullifies that private cause of action and thereby undermines our nation's foreign policy on Cuba.

ARGUMENT

I. The private cause of action under Title III of the LIBERTAD Act is a central pillar of our nation’s foreign policy on Cuba.

“Congress holds express authority to regulate public and private dealings with other nations in its war and foreign commerce powers” *Am. Ins. v. Garra-mendi*, 539 U.S. 396, 414 (2003). The Framers granted this authority to Congress due to the “concern for uniformity in this country’s dealings with foreign nations.” *See id.* at 413 (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 n.25 (1964)).

Exercising that authority, Congress enacted the International Claims Settlement Act of 1949, Pub. L. No. 81-455, 64 Stat. 12. The Act created a procedure whereby funds from settlements with foreign nations could be claimed and distributed. *Id.* § 4. It also “created the International Claims Commission, now the Foreign Claims Settlement Commission.” *Dames & Moore v. Regan*, 453 U.S. 654, 680 (1981).

“When Fidel Castro came to power in 1959, the Cuban Government confiscated all property in Cuba owned by United States nationals.” *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276, 1290 (11th Cir. 2024) (Brasher, J, dissenting). Congress therefore amended the Act and authorized the Commission to adjudicate claims by United States nationals against Cuba related to its confiscation of property. Act of Oct. 16, 1964, Pub. L. No. 88-666, 78 Stat. 1110. The amendment required the Commission to “certify” filed claims. *Id.* § 507.

Cuba never paid United States nationals for its confiscations, nor did it reach a settlement with the United States. Accordingly, “[a]fter nearly four

decades of those nationals receiving no compensation from the Cuban Government for their stolen property,” Congress enacted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785. *Havana Docks*, 119 F.4th at 1290 (Brasher, J., dissenting).

The LIBERTAD Act—consisting of four titles—codified Congress’s foreign policy on Cuba. A stated purpose of the Act was “to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere.” Pub. L. No. 104-114 § 3(1). Another stated purpose was “to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” *Id.* § 3(6).

Title I of the Act sought to strengthen the existing sanctions against the Cuban government and reaffirmed prior legislation concerning the United States’ foreign policy on Cuba. *See id.* §§ 101–116. Title II required the President to develop a plan to economically assist the Cuban people to transition to a democratically elected government. *See id.* §§ 201–207. Title IV authorized the Executive Branch to exclude from the United States any foreign nationals who, among other things, trafficked in property confiscated by the Cuban government. *See id.* § 401.

This case concerns Title III, which created a private cause of action for United States nationals who have a claim to property confiscated by Cuba to sue third parties who traffic in the property encumbered by that claim. *Id.* §§ 301–06. Claims certified by the Commission warrant treble damages and a presumption in favor of the certified value. *Id.* § 302.

In enacting Title III, Congress made multiple findings. *Id.* § 301. Notably, it found that “[t]he wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development.” *Id.* § 301(2). Congress found that Cuba was facilitating the trafficking of confiscated property by “offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using” that property. *See id.* § 301(5).

Congress determined that “[t]his ‘trafficking’ in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States.” *Id.* § 301(6). Specifically, trafficking in confiscated property undermines our nation’s foreign policy “to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure.” *Id.* § 301(6)(A). Trafficking also undermines our nation’s foreign policy “to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.” *Id.* § 301(6)(B).

On the House floor, then-Congressman Lincoln Díaz-Balart echoed these same points that later became part of Congress’s findings:

In effect, this [legislation] will end Castro’s possibility of obtaining the cash that he needs to keep his repressive machinery going, Mr. Speaker.

With this legislation, the American people's Representatives will be saying very clearly to those who are dealing in property stolen from Americans by the Cuban dictator: Do not do it, it is morally wrong, and if you nonetheless traffic in property stolen from American citizens, you will have to suffer consequences in the United States for your actions.

141 Cong. Rec. H9329 (Sept. 20, 1995).

To impose consequences for trafficking in confiscated property—and its undermining of our nation's foreign policy—Congress found that “United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures.” Pub. L. No. 104-114 § 301(11). This was necessary because, as Congress noted, the then-existing judicial system “lack[ed] fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property.” *Id.* § 301(8).

In sum, the private cause of action created by Title III of the LIBERTAD Act is a central pillar of our nation's foreign policy on Cuba.

II. The judgment sought to be reviewed nullifies the private cause of action under Title III of the LIBERTAD Act and thereby undermines our nation’s foreign policy on Cuba.

Petitioner correctly argues that the judgment sought to be reviewed upends the LIBERTAD Act and undermines our nation’s foreign policy on Cuba. Whereas Congress created a private cause of action for trafficking under Title III of the Act, the panel majority below nullified that cause of action by holding that it must “view the property interest at issue in a Title III action as if there had been no expropriation and then determine whether the alleged conduct constituted trafficking in that interest.” *Havana Docks*, 119 F.4th at 1287. In other words, the judgment below requires a Title III plaintiff to “establish a counterfactual—that the defendant trafficked in property that it *would have had* a present interest in at the time of the trafficking if the Cuban Government had not confiscated the property.” *Id.* at 1292 (Brasher, J., dissenting).

As the dissenting opinion below put it, “[t]he majority’s counterfactual analysis—asking what would have happened to [property] if [it] had not been confiscated in 1960—is incompatible with the text of the Act and undermines its remedial purpose.” *Id.* at 1291. The majority’s analysis means that *no victim* can ever maintain a cause of action under Title III. After all, no one knows who would have owned particular property in Cuba decades after it was expropriated. And because the majority’s test assumes an alternate universe, the defendant can always come up with a hypothetical set of facts to defeat a Title III claim.

Petitioner correctly argues that this Court should not allow a divided panel of the Eleventh Circuit the last word on this important foreign policy issue. Indeed, “the Constitution does not make the judiciary the overseer of our government.” *Barclays Bank PLC v. Franchise Tax Bd. of Cal.*, 512 U.S. 298, 330 (1994) (cleaned up). Rather, U.S. foreign policy must be left “to Congress—whose voice, in this area, is the Nation’s.” *See id.* at 331. This Court should therefore grant certiorari to correct the judgment below, which undermines our nation’s foreign policy on Cuba.

At the very least, this Court should call for the views of the Solicitor General. The Secretary of State recently ensured that the Title III private cause of action remains in force. *See* Press Statement of Secretary of State Marco Rubio, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), <https://www.state.gov/restoring-a-tough-u-s-cuba-policy/>. In doing so, he confirmed that the executive branch is “committed to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime.” Calling for the views of the Solicitor General is appropriate where, as here, the United States has a strong interest in the matter.

CONCLUSION

This Court should grant the petition for a writ of certiorari. At the very least, this court should call for the views of the Solicitor General.

Respectfully submitted,

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