No. 24-983

In the Supreme Court of the United States

HAVANA DOCKS CORPORATION, PETITIONER

v.

ROYAL CARIBBEAN CRUISES, LTD., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. 6021 *et seq.*, creates for United States victims of unlawful expropriation by the Cuban Government a damages action against those who traffic in the expropriated property. The question presented is whether the right of action is limited to property in which the plaintiff would have had an interest at the time of the trafficking had the expropriation not occurred.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

INTRODUCTION

This case involves a significant United States foreign-policy interest: encouraging private actions against the Cuban regime and those who enrich it by trafficking in property that the Castro regime illegally expropriated from Americans. Congress authorized private plaintiffs to bring such suits in Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. 6021 *et seq.*, by creating a cause of action for "any United States national who owns the claim to [confiscated] property" to seek money damages from "any person" who "traffics in" such property. 22 U.S.C.

6082(a)(1)(A). Such suits promote justice for American victims, impose accountability on the Cuban government, deter private actors from collaborating with that government to exploit expropriated property, deprive the Cuban government of funds that undermine the United States' longstanding embargo of Cuba, and increase economic pressure to achieve democratic reforms in Cuba.

Successive Presidents suspended those suits pursuant to 22 U.S.C. 6085(c). In 2019, however, President Trump's administration allowed the suspension to lapse so that Title III plaintiffs could sue for the first time.[1] In 2025, his second administration reiterated its foreign-policy "commit[ment] to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime."[2]

The Eleventh Circuit, in a split decision, limited the reach of Title III suits just when those suits have become an increasingly important foreign-policy tool. That court reversed the first suit to result in a final judgment for Title III plaintiffs—a $440 million ruling against respondents, cruise lines that brought almost a million people to Cuba using docks and a terminal at the Port of Havana. Petitioner Havana Docks owned a 99-year concession in that property, which the Castro regime unlawfully extinguished in 1960 (when the concession still had 44 years to run); petitioner has long held a

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[1] Press Release, The White House, *Fact Sheets: President Donald J. Trump Is Taking a Stand For Democracy and Human Rights In the Western Hemisphere* (Apr. 17, 2019), https://perma.cc/LL4A-C9TT.

[2] Press Statement, Marco Rubio, Sec'y of State, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), https://perma.cc/HL77-66QG.

certified claim to that property. The majority below held that anyone in petitioner's position—*i.e.*, anyone who owns a claim to a leasehold, patent, or other time-limited property interest that would have expired before the alleged trafficking occurred—cannot bring suit under Title III unless they can satisfy an atextual, counterintuitive, and counterfactual condition. The majority would require courts to "view the property interest at issue * * * as if there had been no expropriation and then determine whether the alleged conduct constituted trafficking in that interest." Pet. App. 20a. The majority thus effectively nullified that class of claims, barring Title III suits that deter secondary actors from working hand in glove with the Cuban government and commercially exploiting expropriated property.

This Court should grant review to prevent the decision below from blocking a wide array of suits authorized by Congress and determined by the Executive to advance important foreign-policy objectives. As Judge Brasher explained in dissent, the majority's interpretation "is incompatible with the text of the [LIBERTAD] Act." Pet. App. 30a. Title III's cause of action simply requires that (1) the U.S. national have a "claim" to—*i.e.*, hold a right to payment in—some type of confiscated "property"; and (2) the defendant "traffic[ked]" in the property to which the U.S. national owns a claim. 22 U.S.C. 6082(a)(1)(A). And Title III defines confiscated "property" as "any property," including time-limited intellectual property like "patents" and other limited property interests (such as "leasehold[s]" and "present, future, or contingent right[s]"). 22 U.S.C. 6023(12)(A). Yet many of those property interests, like patents, by definition would have expired by the time Congress enacted the LIBERTAD Act in 1996 and created liability

for trafficking in that property after November 1, 1996. 22 U.S.C. 6082(a)(1)(A), 6085(a). Congress did not effectively extinguish those claims—and allow the Cuban government to profit from secondary actors' exploitation of those expropriated property interests—merely because, in a counterfactual world, those property interests would have already expired.

STATEMENT

A. Statutory Background

1. Before the Cuban Revolution, "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, through the Cuban Claims Act, "Congress authorized the U.S. Foreign Claims Settlement Commission "to gather information for an eventual negotiation on claims of confiscated properties in Cuba." Pet. App. 13a (citation omitted); 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 * * * for losses resulting from the * * * expropriation [of] * * * property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States." 22 U.S.C. 1643b(a). The Claims Act defined "property"

as "any property, right, or interest, including any leasehold interest, and debts owed by the Government of Cuba." 22 U.S.C. 1643a(3). But the claims process did not provide any means for victims to obtain compensation.

2. In 1996, Congress addressed that problem through the LIBERTAD Act. The Act codifies the United States' longstanding embargo of Cuba. 22 U.S.C. 6032(h), 6064(a). Further, Congress found that "[t]he international judicial system * * * lacks fully effective remedies" for the Castro regime's "wrongful confiscation or taking of property belonging to United States nationals" and its subsequent exploitation "by governments and private entities." 22 U.S.C. 6081(2) and (8).

Congress thus enacted Title III of the Act 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). 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 to any United States national who owns the claim to such property for money damages." 22 U.S.C. 6082(a)(1)(A).

Congress fashioned the Title III cause of action to deter continued "'trafficking' in confiscated property," which "provides badly needed financial benefit * * * to the current Cuban Government and thus undermines the foreign policy of the United States." 22 U.S.C. 6081(6). Specifically, Congress found that trafficking in confiscated property frustrates the United States' efforts "to bring democratic institutions to Cuba through the pressure of a general economic embargo." 22 U.S.C. 6081(6)(A).

Congress expressly defined Title III's key terms. First, "property" means "any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest." 22 U.S.C. 6023(12)(A).

Second, "confiscated" means, as relevant, "the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property" without the subsequent "return[ ]" of the property or payment of "adequate and effective compensation," or without the settlement of the claim to the property under an "international claims settlement agreement." 22 U.S.C. 6023(4)(A).

Third, a person "traffics" in confiscated property if the person "knowingly and intentionally," and "without the authorization of any United States national who holds a claim to the property," takes certain actions (like "sell[ing]") that would "dispose[ ] of confiscated property"; takes other actions (like "purchas[ing]" or "obtain[ing] control") that would give the person "an interest in confiscated property"; "engages in a commercial activity using or otherwise benefiting from confiscated property"; "causes, directs, participates in, or profits from" any of those acts taken "by another person"; or "otherwise engages" in any of those acts "through another person." 22 U.S.C. 6023(13)(A). But the term "traffics" excludes "transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel." 22 U.S.C. 6023(13)(B)(iii).

Congress also addressed the nature of a plaintiff's "claim" to property. Specifically, and as relevant here,

in cases where the plaintiff has a claim certified by the Commission, courts "shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest" by the Commission. 22 U.S.C. 6083(a)(1). Further, Congress deemed the Commission's valuation of the claim (plus interest) to be the presumptive amount of damages in Title III suits for trafficking in the expropriated property, in addition to court costs and attorneys' fees. See 22 U.S.C. 6082(a)(1) and (2). Title III also subjects to treble damages someone found liable for trafficking in property for which "a United States national owns a claim" that was certified by the Commission. 22 U.S.C. 6082(a)(3)(A) and (C). Conversely, a U.S. national "who was eligible to file a claim" with the Commission but did not do so "may not bring an action on that claim" under Title III. 22 U.S.C. 6082(a)(5)(A).

3. Title III's right of action lay dormant for over two decades as successive presidential administrations exercised their authority to "suspend [for six-month periods] the right to bring an action." 22 U.S.C. 6085(c)(1)(B) and (2).

In 2019, however, the Trump administration allowed the suspension to expire to provide "a chance at justice" and compensation for Americans and hold "the Cuban Government accountable for seizing American assets."[3] Thus, beginning on May 2, 2019, Title III plaintiffs could bring suits for the first time. *Fact Sheets*, *supra* p. 2 n. 1. On January 14, 2025, the outgoing administration sent a letter to Congress attempting to reinstate the suspension of Title III actions beginning on January

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

29, 2025.[4] But on January 29, Secretary Rubio withdrew that letter, emphasizing the current administration's "commit[ment] to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime." *Restoring a Tough U.S.-Cuba Policy*, *supra* p. 2 n. 2. 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* p. 2 n. 2. 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. Memorandum from Donald J. Trump, U.S. President, to the Vice President and Heads of Federal Departments, *Nat'l Sec. Presidential Mem./NSPM-5* (June 30, 2025), https://perma.cc/RH8E-KVHR. President Trump recently 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.*

B. Proceedings Below

1. In 1905, Cuba granted Compañia del Puerto a "usufructuary concession," Pet. App. 3a, pursuant to which the company would build piers at the state-owned Port of Havana in exchange for a 50-year "concession" with a "usufruct" in the physical property, *id.* at 9a-10a.

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[4] 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.

In civil law, a "concession" is "a 'franchise, license, permit, [or] privilege[.]'" *Id.* at 10a (quoting Henry Saint Dahl, *Dahl's Law Dictionary* 79 (3d ed. 1999)) (brackets in original). And a "usufruct" is "the 'right of enjoying a thing, the property of which is vested in another.'" *Ibid.* (quoting *Black's Law Dictionary* 1712 (4th ed. 1951)). Compañia del Puerto was to invest upfront to build the piers and facilities in exchange for a right to operate and profit from them during the concession's term.

In 1911, Compañia del Puerto assigned those rights to the Port of Havana Docks Company. Pet. App. 10a-11a. In 1920, the Cuban government extended the concession to 99 years—the "maximum term" possible. *Id.* at 11a. "In 1928, [the] Port of Havana Docks Company sold all of its corporate stock" to petitioner, a Delaware corporation, and the Cuban government "approved the assignment of the concession" to petitioner. *Id.* at 12a.

In 1960, the Castro regime nationalized and unlawfully expropriated property in Cuba belonging to U.S. nationals, including petitioner's property interests. Pet. App. 12a. Petitioner filed a claim with the Commission, which certified petitioner's losses in 1971. *Id.* at 13a. The Commission determined the value of petitioner's interest in the piers, the land, the concession at the time of Cuba's expropriation, and other items like equipment and fixtures. *Id.* at 140a-143a. That valuation accounted for the fact that "[t]he terms of the concession * * * were to expire in the year 2004, at which time [petitioner] had to deliver the piers to the government in good state of preservation." *Id.* at 141a. The Commission certified a claim for petitioner's loss at $9,179,700.88, with interest accruing at 6 percent annually from the date of the expropriation. *Id.* at 134a.

2. After the Trump administration allowed the suspension on Title III actions to lapse, petitioner sued the respondent cruise lines—Carnival, MSC Cruises (MSC), Royal Caribbean, and Norwegian Cruise Line (NCL)—in the United States District Court for the Southern District of Florida. Pet. App. 104a-105a. Petitioner alleged that respondents trafficked in its confiscated property between 2016 and 2019 by using the terminal and one of the piers. *Id.* at 2a-3a.[5]

The district court issued several opinions addressing whether petitioner's concession, which would have expired in 2004, could form the basis of a trafficking claim. In denying Carnival's motion to dismiss, the court accepted that Carnival might have trafficked in petitioner's property even though the trafficking happened after 2004. Pet. App. 43a-53a. The court then reconsidered that view in granting MSC's and NCL's motions to dismiss, concluding that alleged acts after 2004 could not constitute trafficking. *Id.* at 54a-65a; 431 F. Supp. 3d 1375.

The district court subsequently granted petitioner's motions for reconsideration, however, reverting to its original view that there could be liability for trafficking after 2004. Pet. App. 66a-103a; 455 F. Supp. 3d 1355. And the court hewed to that view of post-2004 trafficking when granting petitioner summary judgment. *Id.* at 104a-130a; 592 F. Supp. 3d 1088.

The district court ultimately determined that respondents had trafficked in violation of Title III, finding that they "earned hundreds of millions of dollars for their trips to Cuba" and "paid Cuban entities tens of millions of dollars to use the Terminal and operate

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[5] Petitioner also alleged that respondent Carnival engaged in trafficking from 1996 to 2001. Pet. App. 28a, 112a-113a.

shore excursions." 592 F. Supp. 3d at 1155. The court held that respondents "'knowingly and intentionally' engaged in trafficking acts," *id.* at 1156 (citation omitted), finding that "the undisputed facts show that [respondents] continued using the Terminal after gaining actual knowledge of [petitioner's] Certified Claim," *id.* at 1158. Finally, the court rejected respondents' contention that their conduct was "incident to lawful travel to Cuba" and therefore not trafficking. 22 U.S.C. 6023(13)(B)(iii). The court found that "the record evidence establishes that [respondents'] activities were outside the [Cuban Assets Control Regulations'] dictates of people-to-people exchanges" and that respondents "engaged in tourism expressly prohibited by" statute. 592 F. Supp. 3d at 1174.

The district court ultimately awarded petitioner approximately $110 million from each respondent, including treble damages on the amount of its certified claim. See 19-cv-23591 D. Ct. Doc. 452, at 2-3 (Dec. 30, 2022).

3. A divided panel of the Eleventh Circuit reversed. Pet. App. 1a-28a.

a. The court of appeals majority held that a Title III plaintiff claiming a time-limited property interest must show that, but for the Cuban government's confiscation, the plaintiff's property interest would have existed at the time of trafficking. Pet. App. 20a. In the majority's view, that approach "acknowledge[s] that not all property rights are the same." *Ibid.* Applying its rule, the court treated petitioner's "property interest—the concession—as if the Cuban Government had never expropriated it," and held that the interest "ended" in 2004 such that respondents' use of the terminal and pier between 2016 and 2019 "did not constitute trafficking in [petitioner's] confiscated property." *Id.* at 22a-23a.

The court of appeals reversed the grant of summary judgment to petitioner, but remanded on petitioner's claims against Carnival concerning alleged trafficking between 1996 and 2001, before petitioner's concession would have expired in 2004. Pet. App. 27a-28a.

b. Judge Brasher dissented. Pet. App. 29a-40a. In his view, "[t]he majority's counterfactual analysis * * * is incompatible with the text of the Act and undermines its remedial purpose." *Id.* at 30a. He observed that the cause of action's text requires that "the trafficking must occur when a plaintiff 'owns the claim,' not when the plaintiff *would have owned the property*." *Id.* at 33a. He reasoned that "any temporal limitation on an interest in confiscated property * * * goes to the value of the claim, not the scope of the property subject to trafficking." *Id.* at 35a.

DISCUSSION

The court of appeals imposed an atextual precondition for suits under Title III of the LIBERTAD Act, requiring that plaintiffs with claims involving time-limited interests show that they would have had a present interest at the time of trafficking. That test incorrectly bars suits involving a significant universe of time-limited claims that Congress explicitly recognized as confiscated "property." In so doing, the decision below wrongly allows the Cuban government and secondary actors to traffic in expropriated property with impunity, ignoring the Act's remedial purposes. While there is not yet a division in the circuits, that holding frustrates U.S. foreign policy and affects a disproportionate share of the suits that have been brought under Title III. This Court should grant the petition for a writ of certiorari.

A. The Decision Below Is Incorrect

The court of appeals held that a plaintiff who owns a claim to a time-limited property interest cannot bring a Title III suit unless that interest would have endured through the time of trafficking. Pet. App. 3a, 20a. That test has no basis in Title III, which permits any U.S. national who presently "owns the claim" to "property which was confiscated by the Cuban Government" to sue "any person that * * * traffics in" that property. 22 U.S.C. 6082(a)(1)(A). Title III does not additionally require the U.S. national to have an interest in property at the time of the trafficking, but for the expropriation. The court's test would effectively foreclose claims based on time-limited property interests like patents and leases, even though Congress expressly included such interests among the types of "property" subject to Title III suits.

1. Title III's text provides that, so long as a plaintiff holds a "claim" to confiscated property, that plaintiff may sue defendants who traffic in that property—regardless of what might have happened to the plaintiff's property interest in an alternative world without Castro's expropriations.

Title III authorizes suits based on *claim* ownership, not on present or future entitlement to the confiscated property. Title III makes a person who "traffics in property which was confiscated by the Cuban Government" liable "to any United States national who *owns the claim* to such property." 22 U.S.C. 6082(a)(1)(A) (emphasis added). Title III then details how claim ownership can be established. If a plaintiff has a "certified claim[ ]," the Commission's "certification of a claim to ownership" of a property interest counts "as conclusive proof of ownership of" that interest. 22 U.S.C. 6083(a)(1).

If a plaintiff lacks a certified claim, courts can appoint a special master (or the Commission) "to make determinations regarding * * * ownership of the claim." 22 U.S.C. 6083(a)(2).

The Act's definition of "traffics" reinforces that Title III suits are keyed to "claim" ownership, not the current state of expropriated property. A person "'traffics' in confiscated property" if he "knowingly and intentionally" engages in specified activity with respect to "confiscated property" "without the authorization of any United States national *who holds a claim* to the property." 22 U.S.C. 6023(13)(A) (emphasis added).

Damages in Title III suits also largely depend on the value of the "claim." For plaintiffs with "certified claims," the presumptive measure of Title III liability is "the amount that is certified" by the Commission (plus interest). 22 U.S.C. 6082(a)(1)(A)(i)(I) and (2). If "a claim has not been so certified," liability may be "the amount * * * of the claim" (plus interest) as determined by a special master or the Commission. 22 U.S.C. 6083(a)(2); 22 U.S.C. 6082(a)(1)(A)(i)(II).[6]

Further, a U.S. national's eligibility to sue hinges on when (and sometimes how) they acquired the claim, not the underlying property. For property confiscated before March 1996, the U.S. national may not bring a suit "on a claim to the confiscated property unless such national acquire[d] ownership of the claim" before March 1996. 22 U.S.C. 6082(a)(4)(B). Conversely, if the property was confiscated after March 1996, a U.S. national

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[6] Liability may also be calculated based on "the fair market value" of the property (plus interest)—either "current value," or "the value of the property when confiscated," "whichever is greater." 22 U.S.C. 6082(a)(1)(A)(i)(III). This valuation does not turn on the "claim," but also does not turn on present or future ownership.

"who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim." 22 U.S.C. 6082(a)(4)(C).

That claim-focused statutory regime makes sense: Congress expressly sought "to protect *the claims* of United States nationals who had property wrongfully confiscated by the Cuban Government." 22 U.S.C. 6081(6)(B) (emphasis added). When property was confiscated, whatever interests U.S. nationals owned in that property "ceased to exist" at that moment. Pet. App. 37a (Brasher, J., dissenting). Congress thus gave holders of *claims* to ownership of interests in confiscated property a right to prevent further use of that property to account for that fundamental disruption in original owners' rights and expectations. A "claim" is a "[r]ight to payment." *Black's Law Dictionary* 247 (6th ed. 1990); accord 3 *The Oxford English Dictionary* 261 (2d ed. 1989) ("an assertion of a right to something" or "right or title"). "Instead of owning property interests, former property owners have claims," Pet. App. 37a (Brasher, J., dissenting)—*i.e.*, rights to payment for the property that was confiscated. And when a property interest is distilled to a claim, "any temporal limitation" on that property interest "goes to the value of the claim." *Id.* at 35a (Brasher, J., dissenting).

By recognizing a wide variety of property interests, confiscation of which could form the basis of a claim, see 22 U.S.C. 6023(12)(A), Congress realized that values of claims would widely vary too. Thus, the Act establishes a reticulated process for determining the value of "claims" —including by treating as conclusive the amount of a claim certified by the Commission, or by the court ap-

pointing a third party to determine the amount. 22 U.S.C. 6082(a)(1)(A)(i)(I) and (II), 6083(a)(1) and (2).

The Act thus treats a claim—a right to payment—as the basis for suit, allowing the U.S. owner of a claim to confiscated property to sue anyone who exploits that property in proscribed ways at any time after the Act's effective date for liability. See 22 U.S.C. 6082(a)(1)(A), 6085(a). Congress imposed such broad liability to prevent the Cuban government from benefiting further from its wrongdoing and "[t]o deter" secondary actors from "trafficking in wrongfully confiscated property," thus enriching the Cuban government. 22 U.S.C. 6081(11); see 22 U.S.C. 6081(6) and (8).

Here, petitioner owns a claim to the piers and facilities confiscated by the Cuban government. "All [of petitioner's] property rights * * * ceased to exist [at] the moment the Cuban Government confiscated the docks." Pet. App. 37a (Brasher, J., dissenting). Petitioner's property interests were distilled into a claim—a right to payment. Petitioner obtained a certification from the Commission, which valued petitioner's interests (not only in the concession, but also in the piers, the land, equipment, and fixtures). See *id.* at 140a-143a; see also *id.* at 131a-134a. And the Commission's 1971 certification accounted for the time-limited nature of petitioner's property interests, recognizing that the terms of the concession "were to expire in the year 2004" and valuing that concession accordingly. *Id.* at 141a. Because petitioner owns a "claim" under 22 U.S.C. 6082(a)(1)(A), petitioner can bring a Title III suit against "any person" who "traffics" in the property that forms the basis for that claim.

Congress's creation of the Title III cause of action, along with the Trump administration's allowing the sus-

pension on Title III suits to expire, reflects a "'delicate judgment[]' 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). The court of appeals' decision limits U.S. nationals' ability to obtain compensation for whole categories of claims and undermines the efficacy of civil litigation to discourage commercial dealings with Cuba, improperly inflicting "foreign policy consequences not clearly intended by the political branches." *Federal Republic of Germany* v. *Philipp*, 592 U.S. 169, 185 (2021) (quoting *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013)).

2. The court of appeals instead imposed an additional, atextual condition for Title III claims: a plaintiff may not sue unless the property interest that the Cuban government terminated would have existed at the time of the alleged trafficking, but for the termination. Pet. App. 20a. The court surmised that Congress did not "mean[] to convert property interests which were temporally limited at the time of their confiscation into fee simple interests in perpetuity such that the holders of such limited interests could assert trafficking claims" beyond the time of the property interests' counterfactual termination. *Id.* at 22a; Br. in Opp. 17 (same).

But recognizing that a plaintiff whose time-limited property interest was confiscated by the Cuban government, and thus extinguished, still has a claim against persons who traffic in that property does not "convert" the plaintiff's time-limited interest into a fee-simple interest. Rather, it applies the statute's plain language by allowing U.S. nationals with a *claim*—a right to payment—to sue those who traffic in the property that forms the basis of that claim. The court of appeals' con-

trary interpretation wrongly focuses on whether the property right endures at the time of trafficking.

The court of appeals' interpretation would also eliminate some categories of Title III claims that Congress expressly contemplated. The Act's definition of "property" includes "intellectual property," such as "patents." 22 U.S.C. 6023(12)(A). The Act thus authorizes claims for trafficking in patents and other time-limited intellectual property. But when Cuba expropriated U.S. nationals' property in 1960, Cuban patent rights lasted for a non-extendable 17-year period. See Decree-Law No. 805 of Apr. 4, 1936 (Law on Industrial Property), ch. II, Art. 56 (Cuba), https://www.wipo.int/wipolex/en/legislation/details/12023. Any patents expropriated by Cuba in 1960 would have long expired by the time of the Act's enactment 36 years later. Yet, under the court's rule, no plaintiff who owns a claim based on a Cuban patent could bring a Title III action against a defendant who trafficked in the patent. See Pet. App. 38a (Brasher, J., dissenting); see also, *e.g.*, *In re International Tel. & Tel. Corp.*, Foreign Claims Settlement Comm'n, Claim No. CU-2615, Proposed Decision (June 17, 1970), https://perma.cc/BLV2-C7WY (certifying claim including patent rights).

Respondents contend that the decision below "did not eliminate liability" for trafficking in a time-limited interest *before* that interest would have expired. Br. in Opp. 25. But under the court of appeals' rule, trafficking in any time-limited interest must occur sometime after the Act's effective date for liability in 1996, see 22 U.S.C. 6082(a)(1)(A) and 6085(a), yet before the interest would have expired in the absence of the expropriation. The bulk of expropriations happened in the 1960s; only extremely long time-limited interests would still have

time on the clock when the Act took effect in 1996, and Cuban patents—with their 17-year terms at the time—would be unredressable. See p. 18, *supra*. Even under respondents' improperly cramped view that Title III "provid[es] a remedy for what Cuba confiscated, nothing more or less," Br. in Opp. 3, many victims of expropriation, including petitioner, would be left without any remedy "for what Cuba confiscated."

B. The Question Presented Warrants Review

1. The United States has significant foreign policy interests in having Title III claims proceed—both for the compensation of U.S. victims, and to halt economic benefits still accruing to the communist Cuban government. Title III's specially targeted cause of action, see 22 U.S.C. 6082(a)(1)(A), reinforced by statutory treble damages, 22 U.S.C. 6082(a)(3), was meant to deter private actors from trafficking in property confiscated by the communist regime and deprive the Cuban government of profits from its wrongdoing. Yet the decision below would impose a categorical bar to time-limited property claims and deprive Title III of much deterrent effect.

Only since the Trump administration allowed the suspension of Title III's cause of action to expire in 2019 could plaintiffs sue at all. Allowing such suits now—when they could deter collaboration with the Cuban government—is a priority for U.S. foreign policy, which calls for justice, accountability, and promotion of democratic reforms through across-the-board economic pressure. The importance of the question presented is magnified by the fact that the sizable majority of Title III cases against private parties are brought in the Eleventh Circuit. See U.S.-Cuba Trade and Economic

Council, Inc., Libertad Act Title III Lawsuit Filing Statistics, https://perma.cc/363H-DK9T.

Especially if the Court grants the pending petition for a writ of certiorari in *Exxon Mobil Corporation* v. *Corporación Cimex, S.A. (Cuba)*, No. 24-699, the Court should also grant review in this case. Doing so would allow the Court to conclusively resolve two of the most pressing Title III issues at a time when they matter to plaintiffs and U.S. foreign policy. And this case itself is important. It is a bellwether for future Title III cases—petitioner was the first Title III plaintiff to win a final judgment, and it obtained an approximately $440 million award. See p. 11, *supra*. The case involves serious allegations of trafficking, which the district court found convincing on the summary judgment record. See pp. 10-11, *supra*.

2. This case is an appropriate vehicle for resolving the question presented, which involves a straightforward issue of statutory interpretation. Respondents' contrary arguments lack merit.

First, respondents characterize the court of appeals' holding as a "factbound conclusion" about the time-limited nature of petitioner's property interest. Br. in Opp. 2. But the court broadly held that, for any claim based on a time-limited property interest, Title III requires "view[ing] the property interest * * * as if there had been no expropriation and then determin[ing] whether the alleged conduct constituted trafficking in that interest." Pet. App. 20a. As explained, see pp. 17-19, *supra*, that decision warrants review because the court's legal rule threatens all sorts of time-limited property interests. The decision below also risks broader consequences. While the court attempted to limit its holding, see Pet. App. 16a n.4, there is no apparent reason why

its but-for inquiry for time-limited property interests would not apply to other types of property interests.

Second, respondents suggest (Br. in Opp. 16-17) that the decision below could rest on an alternative ground that does not squarely implicate statutory questions about trafficking in time-limited property interests, namely that there is a mismatch between the "property" confiscated here and the property that was trafficked. Specifically, respondents contend (*ibid.*) that petitioner only ever held a "usufructuary interest" and that respondents could be liable only if they trafficked in that particular interest.

But that reasoning is "directed at the wrong 'confiscated property.'" Pet. App. 36a (Brasher, J., dissenting). Petitioner's theory is that respondents "are using *the docks*," which are property to which petitioner owns a claim. *Ibid.* Indeed, the Commission explained that the value of petitioner's confiscated property included "*not only* the value of the concession *but also* the value of the land and piers alongside the property." *Id.* at 142a (emphases added). That "certification of a claim to ownership of [an] interest" is "conclusive proof of ownership of an interest in property" in a Title III suit. 22 U.S.C. 6083(a)(1). What matters is trafficking in the docks—the property to which petitioner has a claim.[7]

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[7] The same goes for respondents' argument that petitioner cannot maintain a Title III action based on alleged trafficking in passenger services because petitioner's concession "was limited to cargo operations." Br. in Opp. 22. A Title III action turns on whether the plaintiff "owns the claim" to confiscated property and whether the defendant "traffic[ked]" in that property, 22 U.S.C. 6082(a)(1)(A)—not in the particular property interest that the Cuban government terminated.

Respondents also argue that because "the Cuban government always owned the docks, and it had a reversionary interest upon the concession's expiration," "[t]he docks themselves * * * could not be 'property which was confiscated by the Cuban Government.'" Br. in Opp. 20 (quoting 22 U.S.C. 6082(a)(1)(A)). That overlooks the definition of "confiscated," which includes the "seizure by the Cuban Government of * * * control of property," 22 U.S.C. 6023(4)(A), as well as the broad definition of "property" that accounts for multiple types of property interests besides fee-simple ownership, see 22 U.S.C. 6023(12)(A). By terminating petitioner's right to control the docks under the concession and seizing control of them, the Cuban government confiscated an interest in the docks.

Third, respondents highlight (Br. in Opp. 1, 2, 17, 24) the lack of a circuit split. But this Court should not await a circuit split, given the importance of resolving the question presented now, when the President has determined that allowing these suits materially advances the country's foreign policy towards Cuba. See pp. 7-8, *supra*. Moreover, as noted, a substantial majority of Title III cases against private parties are filed in the Eleventh Circuit. See p. 19, *supra*.

Finally, respondents object (Br. in Opp. 21) that the interlocutory nature of the decision below makes it a poor vehicle. But the only issue that the court of appeals has left for remand is petitioner's claims against Carnival for alleged trafficking before petitioner's concession would have expired in 2004. Pet. App. 27a-28a. Resolution of that issue has no bearing on the question presented, which involves trafficking liability for distinct, later conduct.

Similarly, respondents note (Br. in Opp. 24) potential alternative grounds that the Eleventh Circuit did not address. They contend that their actions fall under the "lawful travel" exception and are thus excluded from the Act's definition of "traffics." *Id.* at 23 (quoting 22 U.S.C. 6023(13)(B)(iii)). Similarly, respondents say that government encouragement to travel to Cuba negates the requirement that a person "knowingly and intentionally" take the prohibited trafficking actions. *Ibid.*; 22 U.S.C. 6023(13)(A). But those issues have no bearing on the resolution of the question presented. The decision below establishes a legal rule that imposes a threshold barrier to a significant number of Title III claims. This Court often grants review to address barriers to suit, regardless of whether other issues remain in the case. See, *e.g.*, *Ames* v. *Ohio Dep't of Youth Servs.*, 605 U.S. 303 (2025); *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp. Ltd.*, 145 S. Ct. 1572 (2025). This Court should grant review here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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