No. 24-983

In the
Supreme Court of the United States

HAVANA DOCKS CORPORATION,
Petitioner,

v.

ROYAL CARIBBEAN CRUISES, LTD., NORWEGIAN CRUISE LINE HOLDINGS LTD., CARNIVAL CORPORATION, MSC CRUISES S.A., and MSC CRUISES (USA), INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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The government's invitation brief confirms that certiorari should be denied. As the government admits, "the decision below" is "interlocutory," U.S.Br.22; there are multiple "potential alternative grounds" for affirmance "that the Eleventh Circuit did not address," some of which raise complex constitutional concerns, U.S.Br.23; and "there is not yet a division in the circuits" on the question presented, U.S.Br.12. Nor is there any impediment to percolation—apart from the fact that the narrow question presented will likely never arise in another case. Suits under Title III of the Helms-Burton Act are hardly limited to the Eleventh Circuit; they have been and continue to be brought in federal courts across the country. Nevertheless, the confluence of a time-limited property interest and alleged trafficking that occurred after the expiration of the time limit is so rare, the question presented has not been pressed or passed upon *in any other case*.

Furthermore, and putting those fatal vehicle problems aside, the decision below is correct. The Helms-Burton Act creates liability for "traffic[king] in property which was confiscated by the Cuban government." 22 U.S.C. §6082(a)(1)(A). Just as defendants obviously cannot be held liable under the Act for using ("traffic[king] in") the parcel located *next to* the confiscated parcel, the Eleventh Circuit held that defendants are not liable for using property in which the plaintiff had a time-limited interest *after* that interest's natural expiration date. That narrow decision is correct and undeserving of this Court's attention.

All that said, if future litigation proves respondents wrong and reveals this issue to be either significant or divisive, then there will be time enough to address it; if not, then the wisdom of having stayed out now will be confirmed. Either way, the path forward is clear: The Court should deny the petition.

ARGUMENT

This case satisfies none of the traditional criteria for certiorari.

A. To start with common ground: Everyone agrees on "the lack of a circuit split" here. U.S.Br.22; *see also* Pet.23 (admitting the same).

But the lack of a split is not even the half of it. The confluence of events necessary for the issue presented to even arise is so rare that the question has literally never arisen in *any other case*.

While the government references a supposedly "significant universe of time-limited claims" that could theoretically implicate the question presented, U.S.Br.12, the most "significant" thing about that "universe" of theoretically possible claims is how microscopic it actually is. Start with the universe of claims certified by the Foreign Claims Settlement Commission. The Commission certified 5,913 Cuba claims, but just a handful of them even potentially implicate time-limited property interests that have reached their time limit, like HDC's here. Indeed, HDC—which has every incentive to plumb the depths of the Commission's archives to come up with potential candidates that resemble the fact-pattern here—has identified a grand total of *two other claims* that fit the bill, plus a few others it says might. *See*

HDC.Supp.Br.5 & n.2. And *none* of the claims to which HDC cites has resulted in litigation.

In fact, despite the thousands of claims the Commission certified, respondents know of *zero* Helms-Burton Act suits involving certified claims for time-limited property interests of *any* sort other than HDC's. And even looking beyond certified claims, respondents are aware of just a single set of cases, brought by the same plaintiffs and involving the same expropriated property (as to which no claim was certified), involving alleged trafficking in a time-limited property interest. *See, e.g.*, *Fernandez v. CMA CGM S.A.*, 683 F.Supp.3d 1309 (S.D. Fla. 2023); *de Fernandez v. Crowley Holdings, Inc.*, 593 F.Supp.3d 1162 (S.D. Fla. 2022); *see also* BIO.2, 26 (discussing *Fernandez v. Seaboard Marine Ltd.*, 135 F.4th 939 (11th Cir. 2025)). But even the *Fernandez* cases lack the other necessary ingredient for the question presented to arise, as the time limit there (a 70-year concession granted in August 1955) would not have expired until *August 2025*, and the litigation relates exclusively to alleged trafficking that took place before then. *See Fernandez*, 683 F.Supp.3d at 1316; *de Fernandez*, 593 F.Supp.3d at 1166. In short: Other than in this case, this legal issue *has never arisen*.

That is hardly surprising. The question presented can be implicated only in exceedingly narrow circumstances. For it to come into play, a party must have a claim for a time-limited property interest (and, as explained, the universe of such claims is minuscule); another entity must traffic in the property interest after the interest would have expired of its own force *and* after the Act's effective date; and the plaintiff must sue less than two years after the

trafficking ends, *see* 22 U.S.C. §6084. At the end of all that, one is left with the cases consolidated here and, to date, *no others* implicating the question presented.

Trying to overcome that obvious deficiency, the government contends that "a substantial majority of Title III cases against private parties are filed in the Eleventh Circuit." U.S.Br.22. But it is not as if plaintiffs are flocking to Florida and nowhere else. According to the government's own cited source, 26 suits (besides the four consolidated here) have been filed in district courts in Florida, while 15 have been filed in district courts in other circuits, including the Second, Third, Fifth, Ninth, and D.C. Circuits. *See* U.S.-Cuba Trade and Economic Council, Inc., *Libertad Act Title III Lawsuit Filing Statistics*, https://perma.cc/363H-DK9T (cited at U.S.Br.19-20).

As those numbers underscore, this is not a circumstance in which claims are all funneled to one jurisdiction. That makes the lack of a circuit split here considerably more meaningful than in *Exxon Mobil Corp. v. Corporación Cimex, S.A. (Cuba)*, No. 24-699 (U.S. filed Dec. 27, 2024), a Helms-Burton action against an instrumentality of the Cuban Government. In *Exxon*, "[t]he federal venue statute effectively limits suits against Cuban agencies and instrumentalities to the District of Columbia" and thus precludes a split from developing on the sovereign-immunity question that case raises. S.G.*Exxon*.Br.23; *see* 28 U.S.C. §1391(f)(4). Here, by contrast, federal courts from coast to coast have heard and continue to hear private suits under Title III of the Helms-Burton Act. *See, e.g.*, *Moreira v. Société Générale, S.A.*, 125 F.4th 371 (2d Cir. 2025); *Glen v. Am. Airlines, Inc.*, 7 F.4th 331 (5th Cir. 2021). Unlike in *Exxon*, what explains the

lack of a split here is that the fact-pattern has never previously arisen and likely will never arise again.

For similar reasons, this case does not involve "an important question of federal law" under Rule 10. Indeed, while the government notes its "significant foreign policy interests in having Title III claims proceed," U.S.Br.19, it elides that the decision below is the culmination of such proceedings, at least with respect to alleged trafficking post-expiration; the courts below have adjudicated the merits of HDC's claims. What is more, "Title III claims" *in this very case* will "proceed" on remand relating to alleged trafficking that occurred before the natural expiration date of HDC's usufructuary interest. *See* BIO.21.

It is also hard to take seriously the suggestion that one court's supposedly erroneous resolution of a question that has arisen *in no other case ever* and is unlikely to arise again could meaningfully undermine any "significant foreign policy interests." *See* U.S.Br.19. Respondents appreciate that the current Administration has taken a distinct position on Cuba. But a presidential foreign-policy agenda can hardly hinge on allowing a single private company to establish liability against cruise lines that did business on the island a decade ago *at the urging of the Administration in office at the time*. *See* BIO.6-7.[1]

B. Moreover, the government's brief is wrong on the merits—and underscores the wisdom of awaiting percolation of novel legal issues. The Helms-Burton

[1] That is all the more true given that Congress anticipated that U.S. nationals could pursue redress for confiscated property through means other than a Helms-Burton action. *See* 22 U.S.C. §6082(f) (requiring election of remedies).

Act creates liability for "any person" who "traffics in property which was confiscated by the Cuban Government." 22 U.S.C. §6082(a)(1)(A). So, to determine liability, a court must first determine what "property" was "confiscated." *Id.* In the case of real property, a property interest has multiple dimensions: It "is defined by the metes and bounds that describe its geographic dimensions and the term of years that describes the temporal aspect of the owner's interest" (fee-simple, term of years, etc.). *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 331-32 (2002). And in the case of a concession or other usufructuary interest, it is additionally defined by the specific use of the property conveyed—say, water rights or hunting and fishing rights. *See, e.g.*, *Fed. Power Comm'n v. Niagara Mohawk Power Corp.*, 347 U.S. 239, 246-47 (1954); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 187-88 (1999).

The Eleventh Circuit's decision correctly treated all those dimensions for what they are: essential attributes of the "property" "confiscated" by Cuba. Thus, when Cuba confiscated HDC's property interest in the dock complex, it did not confiscate the whole complex or any fee-simple interest (which the Cuban government always retained and never conveyed). Instead, Cuba took only what HDC owned: a nonexclusive, time-limited usufructuary interest in cargo operations at the docks. *See* BIO.5, 19. But because all HDC ever owned (and thus all the Cuban government could ever take) was a limited interest set to expire in 2004, respondents could not "traffic[]" in the "property which was confiscated" unless they used the dock complex *before 2004*. *See* BIO.5, 16-17.

While the government emphasizes various elements of certified claims—who owns the claim, U.S.Br.13-14, the value of the claim, U.S.Br.14, and so on—it notably fails to tie those elements to the statute. That is because it cannot. Under the Act, the claim does not create or define the property interest itself, the latter of which is what matters for determining whether trafficking occurred in the first place, *see* 22 U.S.C. §6082(a)(1)(A). To be sure, Helms-Burton Act liability is "keyed to 'claim' ownership" in the sense that the person who holds a claim can give consent to use the property over which it had an interest. U.S.Br.14. But that is beside the point. When it comes to determining whether someone has trafficked, what matters is what "property" the plaintiff had and thus was "confiscated." That is why the Act speaks of trafficking in "*property*," not trafficking in *claims*. *See* 22 U.S.C. §6082(a)(1)(A) (emphasis added).[2]

Besides flouting statutory text, the government's approach radically inflates the property interests that were actually owned by the victims of expropriation. Under the government's theory, neither the temporal dimension of a property interest nor the use limits of a usufructuary interest has any relevance to the question of whether a defendant has trafficked in that interest. The government insists not only that trafficking after the lifespan of a time-limited property interest still incurs liability, but that trafficking in attributes to which a usufructuary interest does not

[2] What is more, the statute is explicit that plaintiffs can bring Title III suits *without* "a claim … certified by the … Commission," 22 U.S.C. §6083(a)(2), which further underscores the flaws with the government's atextual "claims-focused" position.

extend *also* incurs liability. *See* U.S.Br.21 n.7 (claiming that use of the docks for passenger services would constitute trafficking in a usufructuary interest limited to cargo operations). That makes no sense. Not even the government would extend such (il)logic to ignore the spatial limits on confiscated property; it is not enough to traffic in the vicinity of the "property" actually "confiscated." The government offers no coherent theory for privileging the spatial metes and bounds of a property interest over its temporal or use limitations. The reality is that, for all the dimensions of the property interest, close does not count.

As a last-ditch effort, the government argues that the decision below must be wrong given the Helms-Burton Act's reference to patents. *See* 22 U.S.C. §6023(12)(A) (defining "property" to include, *inter alia*, "patents, copyrights, trademarks, and any other form of intellectual property"). From this passing reference to patents, the government leaps to the conclusion that Congress must have deemed temporal limits on property rights irrelevant, because (it says) any expropriated patents would have long expired by the time the Act went into effect. U.S.Br.18. That is wrong several times over.

First, the statutory definition of "confiscated" "property" is broader than just property confiscated "on" January 1, 1959; it also covers property confiscated "after" that date. 22 U.S.C. §§6023(4)(A), 6082(a)(1)(A). Indeed, the Act expressly contemplates actions with respect to property confiscated "on" or "after" *March 12, 1996*. *Id.* §6082(a)(4)(A). So, even crediting that "[t]he bulk of expropriations happened in the 1960s," U.S.Br.18, that hardly suggests that the Eleventh Circuit's textual interpretation reads

patents out of the statute. Second, the statute is not limited to Cuban (or U.S.) patents and would apply equally to confiscated foreign patents, which have varying terms and expiration dates. Thus, there is no anomaly created by the inclusion of patents in the Helms-Burton Act's definition of property. In fact, given that the way someone would traffic in a patent is by infringing it, the real anomaly would be extending a patent's protection well beyond its term of years in violation of the basic patent-law bargain.

In short, the Eleventh Circuit got the meaning of the Helms-Burton Act exactly right (and avoided multiple legal defects with HDC's claims by resolving this case as it did). The Act takes property interests as it finds them and respects all the dimensions of those interests, whether spatial or temporal.[3]

C. Finally, far from enhancing the President's ability to promote the national interest, HDC's position, if adopted, would hamstring the President's ability to fine-tune Cuba policy to best accomplish his foreign policy goals. As a general matter, private

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[3] The government trumpets the fact that HDC "obtained an approximately $440 million award" from the district court, U.S.Br.20, but ignores that the district court reached its number on a theory that would award HDC the full value of the claim with interest ($110 million) each time someone sets one toe on the docks, in perpetuity. There is no basis in law to transform a time-limited concession into a perpetual cash cow. The government also ignores that any interest of the United States in having a claim satisfied via Title III litigation rather than through a government-to-government global resolution is exhausted whenever there is a single recovery for the full value of the claim plus interest, as the Helms-Burton Act makes explicit. *See* 22 U.S.C. §6082(a)(1)(A)(i), (3)(C)(ii).

lawsuits tend to complicate the Executive's diplomatic efforts, which is why the Executive typically espouses the claims of United States citizens against a hostile government and can resolve them definitively even over the objections of the claim holder. *See generally Dames & Moore v. Regan*, 453 U.S. 654 (1981); *see also* n.1, *supra*. That also presumably explains why previous presidents, from both political parties, consistently suspended the operation of Title III.

More generally, the President's ability to promote the United States' interests and effectuate a transition to democracy in Cuba through a carrot-and-stick approach relies upon the cooperation of private entities like respondents. Even the current Administration envisions ongoing travel to Cuba, *see Strengthening the Policy of the United States Toward Cuba*, 2025 Daily Comp. Pres. Doc. 726, §§2(d), 3(a)(iii)(C)-(D) (June 30, 2025), which cannot happen without the cooperation of airlines and other private entities. This very case arose as a result of similar cooperation—a previous president decided the best way to hasten a transition to democracy in Cuba was to end its diplomatic isolation and to foster cultural exchange with the country. Respondents obliged, relying on that president's representations as to the legality of engagement with Cuba. *See* BIO.6-7.

But under HDC's and the government's position, respondents would incur massive liability for having cooperated with the government's own Cuba policy. Were HDC to prevail, companies would have little incentive to rely on the White House's representations moving forward, or to cooperate with policies that rely on joint action between the government and industry. Quite the opposite: Companies would be strongly

deterred from serving that necessary role in circumstances when the President wants to facilitate certain kinds of travel or other commerce.

Moreover, under HDC's and the government's (mis)reading of the Act, not only does the President lack any power to calibrate the Cuban sanctions regime, negotiate with foreign leaders, and exercise discretion to allow for lawful travel, but the President is equally powerless to determine whom can come to or remain in the country. *See* 22 U.S.C. §6091(a)(3)-(4) (requiring the Executive to expel or exclude "any alien" who engaged in trafficking, as well as "any alien" who "is a corporate officer, principal, or shareholder with a controlling interest of an entity … involved in the … trafficking in confiscated property," or "a spouse, minor child, or agent of [such] person").

To be sure, any given administration might try to decline to enforce the Helms-Burton Act's draconian mandatory-removal penalties. *Cf.* Exec. Order No. 14,310, 90 Fed. Reg. 26913 (June 19, 2025). But even assuming such a refusal would be constitutional, there is no guarantee that successor administrations would be so charitable. Indeed, as this case itself illustrates, administrations take wildly divergent positions on Cuba policy, and companies cannot rely on the continued forbearance of successive administrations. That reality leaves those who rely on the President's representations to engage with Cuba operating with a proverbial Sword of Damocles over their heads. Any future administration, for any reason, might reimpose devastating penalties on them and their corporate leadership. Rather than facilitating the government's foreign policy, that is a recipe to end private cooperation with it altogether.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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