

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 WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

BRIEF FOR THE PETITIONER

RICHARD KLINGLER
Counsel of Record
ELLIS GEORGE LLP
2021 L Street NW
Suite 101-316
Washington, DC 20036
(202) 492-4678
rklingler@ellisgeorge.com

VINCENT H. LI
ELLIS GEORGE LLP
152 West 57th Street, 28th fl.
New York, NY 10019

(Counsel listing continued on next page)

November 17, 2025

JARED A. FORBUS
ELLIS GEORGE LLP
2121 Avenue of the Stars
Suite 3000
Los Angeles, CA 90067

QUESTION PRESENTED

The LIBERTAD Act is an essential pillar of United States foreign policy toward Cuba’s hostile and anti-American regime. Title III of that Act creates a private right of action for United States nationals who have a claim to property confiscated by that regime against persons who traffic in that property. 22 U.S.C. §6082(a)(1). The Act specifies that such trafficking “undermines the foreign policy of the United States” by, among other things, “provid[ing] badly needed financial benefit” to the Cuban regime. 22 U.S.C. §6081(6).

The question presented here applies in every case brought under Title III, and will determine whether that provision continues to advance U.S. foreign policy toward Cuba: whether a plaintiff must prove that the defendant trafficked in property confiscated by the Cuban government as to which the plaintiff owns a claim (as the statute requires), or instead that the defendant trafficked in property that the plaintiff would have continued to own at the time of trafficking in a counterfactual world “as if there had been no expropriation” (as the divided Eleventh Circuit panel held below).

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellee below) is Havana Docks Corporation. Havana Docks Corporation has no parent corporation, and no publicly owned company owns 10% or more of its stock.

Respondents (defendants-appellants below) are Royal Caribbean Cruises, Ltd.; Norwegian Cruise Line Holdings, Ltd.; Carnival Corporation; MSC Cruises S.A., and MSC Cruises (USA), Inc.

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OPINIONS BELOW

The Eleventh Circuit’s opinion is reported at 119 F.4th 1276 (J.A. 1-40). The district court’s order granting Havana Docks summary judgment is reported at 592 F. Supp. 3d 1088 (J.A. 41-253).

JURISDICTION

The Eleventh Circuit entered judgment on October 22, 2024, J.A. 28, and denied a timely petition for panel rehearing or rehearing en banc on December 20, 2024. Petitioner filed a timely petition for certiorari on March 6, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS

Relevant provisions of the LIBERTAD Act, 22 U.S.C. §§6021-23, 6081-85, are reprinted at App. 1a-30a.

INTRODUCTION

This case presents a significant question regarding our nation’s foreign policy toward the communist government of Cuba. It concerns the scope of the U.S. economic embargo against Cuba and whether Cuba may deal in strategically important “property which was confiscated” by it from thousands of Americans. 22 U.S.C. §6082(a)(1). It focuses on whether Congress intended to provide all or only some of those U.S. victims with a remedy in U.S. courts and whether Congress contemplated that Cuba and its business partners could exploit many of those stolen properties with impunity, generating funds to prop up the repressive regime. The court below adopted a narrow view of the remedies provided to U.S. victims of

Cuba's actions and of the statutory limits on Cuba's commercial activities. Congress, however, plainly intended to create more robust remedies for U.S. nationals and more robust limits on the commercial activities of Cuba and its business partners.

In 1996, Congress enacted the LIBERTAD, or Helms-Burton, Act to provide "fully effective remedies" to U.S. nationals whose property had been confiscated by the Cuban government ("Cuba") following the 1959 Revolution. 22 U.S.C. §6081(8). By granting victims of those confiscations a private right of action, the Act's Title III sought to deter Cuba and its business partners from unjustly enriching themselves by exploiting those confiscated properties.

After the Revolution, Cuba confiscated vital infrastructure facilities built, owned, and operated by U.S. companies. Those valuable projects were often built based on a guaranteed but limited term of control granted to the U.S. company, designed to ensure the company would recoup its construction costs. Petitioner Havana Docks was one such company. It built, owned, and operated Havana's dock facilities pursuant to promises that it could recover its costs by operating the docks for at least a 99-year period, anticipated to end in 2004 if not extended. The Cuban government also promised that, if the docks were ever confiscated, it would pay Havana Docks the full value of those facilities. Cuba confiscated those docks in 1960. Cuba's business partners, Respondent cruise lines, paid the Cuban regime more than \$130 million as they took in more than \$1 billion in net revenue while exploiting those docks from 2015-2019. See *infra* pp. 15-16. Neither the cruise lines nor Cuba has paid anything to Havana Docks.

This case presents the question whether Congress intended Title III's private right of action to limit Cuba's exploitation of property on a continuing basis, as long as the victim's claims against Cuba remained outstanding, or instead Congress intended the Act's protections to end when the victim's confiscated interest was anticipated to have ended. The Eleventh Circuit adopted the latter, narrow test, stopping Title III's protections when Havana Docks was expected to have turned over ownership of its dock facilities had there been no confiscation. However, the statute's text confirms that Congress intended Title III's protections to continue to this day because Cuba has not resolved Havana Docks' claim against it.

Congress designed Title III to give effect to a straightforward concept: every U.S. national holding a claim against Cuba arising from the confiscations deserved a judicial remedy because Cuba had stolen the properties and was, along with its private business partners, unjustly enriching itself by profiting from them. Title III sought to give teeth to U.S. nationals' formal claims against Cuba as certified by the Foreign Claims Settlement Commission ("FCSC"). Those FCSC-certified claims identified and valued the confiscated property as it existed in 1960. Whenever "any person" exploits that "property which was confiscated," Title III enables any U.S. national "who owns the claim to such [confiscated] property" to secure damages from those who exploit it. 22 U.S.C. §6082(a)(1), (a)(3). That language should make this an easy case. Title III's protections continue as long as the plaintiff's "claim" certified by the FCSC remains outstanding, and that claim marks and encumbers the "property which was confiscated" as off limits to

exploitation. Nothing that occurred or was anticipated to occur in 2004 affects the Act's operation.

Only this ongoing Title III protection achieves Congress's principal goals: providing "fully effective remedies" to all claim holders for as long as Cuba failed to resolve their claim, deterring unjust enrichment from use of the property, and stopping payments that prop up the Cuban regime. In contrast, the Eleventh Circuit construed Title III's protections to begin and end when the confiscated interest would have begun or ended had there been no confiscations—a requirement found nowhere in the statute. Its test, grounded in a hypothetical world without confiscations, necessarily ignores what most troubled Congress: Cuba's initial and continuing wrongdoing, its failure to address the claims of thousands of Americans, and its and its partners' unjust enrichment from exploiting those stolen properties. To give no effect to concerns so central to the Act's text and intended operation is to misconstrue the Act.

STATEMENT OF THE CASE

A. The Development of Cuban Infrastructure Including the Havana Dock Facilities.

After winning independence in 1902, the Cuban government sought to foster economic development by granting rights to foreign companies to build and operate infrastructure facilities. See *infra* pp. 49-50. Both protective of the nation's sovereignty and deeply needing foreign capital to construct these facilities, the Cuban government granted predominantly U.S. companies extensive rights of ownership and control

in the facilities they would construct, but often also limited the duration of those arrangements and required the eventual transfer of the facilities' ownership to the Cuban government. J.A. 414 (Cuban Public Works Act of 1883, Art. 100) (99 year limit); *infra* pp. 49-50. By the 1959 Revolution, American companies held significant interests in infrastructure facilities supporting Cuba's telephone, transport, electricity, railway, and mining sectors. Leland L. Johnson, *U.S. Business Interests in Cuba and the Rise of Castro*, 17 *World Politics* 440, 442-43 (1965).

The development of Havana's dock facilities followed this model. In 1905, Cuba's president issued a decree authorizing a private company to construct a pier and terminal building in Havana Harbor and setting out the economic and legal framework governing the port facilities' development and operation. J.A. 444-60. Cuba would provide to the private company land and "usufruct" rights to that land and the public domain of the harbor. *Id.* 447. The private company would in turn build dock facilities at its own expense and, to recoup its construction costs, would be entitled to control those facilities and charge for their use for a term initially set at 50 years. *Id.* 447-48. At the end of the term, the dock facilities would be turned over to the Cuban government. *Id.* 454-55. Because the fees collected during that term were the consideration for building the docks, which the operator owned during that period, the decree provided that if the Cuban government ever expropriated the docks and related facilities, the government would "compensate the concessionaire for the value of all works constructed by" the latter. *Id.* 449.

Over the next few years, the development of the pier and terminal building expanded in scope and changed hands several times as the docks' initial developers ran into financial difficulty. In 1918, the project became Petitioner's responsibility. Dkt. 318-21 (unless otherwise indicated, "Dkt." refers to the Carnival docket). Havana Docks Corporation had been incorporated in 1917 to acquire the concession and "construct own maintain and operate and to carry on the business of proprietors of wharves piers jetties docks basins warehouses harbors ports works and channels." Dkts. 318-27, at 4-5; 318-21. It then did so by becoming the 100 percent shareholder of the concession holder, the Port of Havana Docks Company, assuming control of the project and indirect ownership of the concession. In 1920, Cuba's President issued a decree modifying the arrangement to require construction of three piers and substantial improvements to the existing infrastructure. See J.A. 461-72. Havana Docks obliged and ultimately oversaw the completion of a large terminal building and the San Francisco, Machina, and Santa Clara Piers—the same piers confiscated in 1960, that still existed in 2015-2019 when the cruise lines used them, and that remain in place today. J.A. 499-502. As "compensation" for the resulting "cost increase," the decree extended the arrangement's life from 50 to 99 years (with the same start of 1905). J.A. 464-65. In 1934, Cuba renewed the concession in Havana Docks' name, recognizing that Havana Docks had replaced its subsidiary as the formal owner of the concession and all related property. J.A. 473-481.

During Havana Docks' control of the docks, it collected fees from all operations at the port facilities, including passenger services. See Dkt. 318-35 (dozens

of entries showing revenue from “Passengers” from 1954-58); *id.* 167 (audit addressing “[i]ncome from ... passenger service charges”); Dkt. 73-2, at 4 (promotional brochure showing passenger cruise lines docking). It also exercised full rights of ownership, including assigning and leasing portions of the facilities and granting a mortgage secured by the facilities themselves. J.A. 261; Dkt. 318-12, Dkt. 318-18.

B. The United States Responds to the Castro Regime’s Confiscation of U.S. Nationals’ Property.

After the 1959 Revolution, Cuba’s new Communist government quickly targeted property owned by U.S. companies. Following significant confiscations of U.S. companies’ facilities in mid-1960, President Castro in October 1960 issued Resolution 3, decreeing the “nationalization by means of forced expropriation” of U.S.-owned companies and identifying “Havana Docks Corp.” as one of 165 entities whose assets were confiscated. J.A. 483-92. On November 21, 1960, armed Cuban officers appeared in the offices of Havana Docks. J.A. 497-98. They took over the docks and compelled Havana Docks to deliver to them the “corporation ... with all its assets and liabilities.” *Id.*

No U.S. individual or entity whose property was confiscated—including Havana Docks—has since received any compensation from the Cuban government. See Dkt. 318-1, at 17. Those Cuban confiscations represent “the largest uncompensated taking of American property by a foreign government in history.” Timothy Ashby, *U.S. Certified Claims Against Cuba*, 40 U. Miami Inter-Am L. Rev. 413, 414 (2009).

Congress, in tandem with Presidents Eisenhower and Kennedy, responded to these confiscations by imposing extensive sanctions barring trade and financial dealings with Cuba. After the Eisenhower Administration had prohibited most American exports to Cuba, Congress authorized the President to “establish and maintain a total embargo upon all trade between the United States and Cuba.” 22 U.S.C. §2370(a)(1). The Kennedy Administration in turn promulgated the Cuban Assets Control Regulations (the “CACR”). See 28 Fed. Reg. 6974 (July 9, 1963).

The CACR broadly prohibits all direct and indirect transactions involving Cuba-related money or property unless “specifically authorized by the Secretary of the Treasury.” 31 C.F.R. §§515.201, 515.802 (delegating authority to the Office of Foreign Assets Control (“OFAC”)). While OFAC’s travel-related regulations have evolved and permitted activities such as family visits and educational activities, see 31 C.F.R. §515.560(a)(1) (1983), the CACR has since at least 1982 expressly prohibited tourism. See 47 Fed. Reg. 17030 (April 20, 1982); 31 C.F.R. §515.565(c) (Jan. 16, 2015–Nov. 8, 2017) (CACR does not authorize “[t]ransactions related to activities that are primarily tourist-oriented”); 31 C.F.R. §515.565(f) (Nov. 9, 2017–June 4, 2019) (same); see also 31 C.F.R. §§515.560(b)(2) (1996), 515.560(f) (2015, 2016, 2017, 2018); see also 22 U.S.C. §7209(b) (no federal official may in any form authorize listed travel-related transactions “for travel to, from, or within Cuba for tourist activities”).

**C. The Foreign Claims Settlement
Commission Certifies Havana Docks'
Claim to the Dock Facilities.**

Congress also responded to the confiscations by extending the nation's foreign claims settlement process to adjudicate and certify claims by U.S. nationals against Cuba. The resulting claims were designed to be espoused by the U.S. government to secure compensation from the Cuban government. See *Dames & Moore v. Regan*, 453 U.S. 654, 679 (1981); Restatement (Third) of Foreign Relations Law §712 (1987).

In 1949, Congress "created ... the Foreign Claims Settlement Commission, and gave it jurisdiction to make final and binding decisions with respect to claims by United States nationals against settlement funds." *Dames & Moore*, 453 U.S. at 680. By statute, the FCSC's decisions are "final and conclusive on all questions of law and fact," and not subject to review "by any court." 22 U.S.C. §1622g. In 1964, Congress authorized the FCSC to adjudicate the validity and value of U.S. nationals' claims against Cuba. See Pub. L. No. 88-666, 78 Stat. 1110 (Oct. 16, 1964). President Johnson signed the Cuban Claims Act into law "because of the importance of making such a permanent record while evidence and witnesses are still available." 51 Dept. of State Bull. 674 (1964). The FCSC concluded its first Cuban claims program in 1972, certifying 5,911 claims valued at over \$1.8 billion in 1960 dollars. See FCSC, *Section II: Completion of the Cuban Claims Program Under Title V of the International Claims Settlement Act of 1949*, 412 (1972).

Havana Docks filed its claim with the FCSC in 1967, and the Commission rendered a Proposed Decision in April 1971. See J.A. 254-63. The Commission found that Cuba had “nationalized” all “the Cuban assets” owned by Havana Docks and had done so by enacting Resolution 3 and by having “the facilities of the company ... physically occupied by agents of the Cuban Government on November 21, 1960.” *Id.* 257. Havana Docks had owned assets, the Commission found, separately comprised of (a) the renewed concession, (b) “the real property with all improvements and appurtenances” constituting the dock facilities (and subject to a recorded mortgage), and (c) various equipment, furniture, and machinery. *Id.* 256-57.

The Commission separately identified and valued two types of Havana Docks’ confiscated assets. J.A. 257. First, it affirmed Havana Docks’ claim that it had “owned and operated ... three piers” and associated equipment, office fixtures, furniture. *Id.* The Commission initially valued the pier “structures only” and the equipment at just under \$7.4 million before accounting for debt and depreciation. *Id.* 260. For example, the San Francisco and Machina Pier structures were valued at \$4.76 million and the Santa Clara Pier at \$2.11 million. *Id.* 259. Second, the FCSC separately valued the “concession for the construction and operation of wharves,” together with rights over the land Cuba had contributed to the project. *Id.* 256-57. That value was \$2.0 million, split equally between the concession rights and the land. *Id.* Adding in other confiscated assets and deducting depreciation, the claim totaled just under \$7.7 million. *Id.* 263. The Commission noted that the “terms of the concession ... were to expire in the year 2004,” and

that when that occurred, Havana Docks would “deliver the piers to the government in a good state of preservation.” *Id.* 259. On administrative appeal, the Commission increased its valuation by \$1.5 million, and its September 28, 1971 Final Decision certified a claim for a loss of nearly \$9.18 million (with 6 percent annual interest)—nearly \$100 million in current, inflation-adjusted dollars. J.A. 266.

D. The LIBERTAD Act.

In the mid-1990s, Congress again turned its attention to strengthening the Cuban embargo. For more than 35 years, the Cuban government had failed to compensate U.S. nationals for confiscating their property. Cuba also was conducting “a campaign to promote foreign investment,” including by offering “an infrastructure that consisted of a large number of properties taken from American citizens in violation of international law.” Daniel W. Fisk, *Cuba in US Policy: An American Congressional Perspective*, in *Canada, The US & Cuba: Helms-Burton and Its Aftermath*, 27, 29-30 (1999).

Congress responded in 1996, when an overwhelming bipartisan majority enacted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, also known as the Helms-Burton Act (the “Act”). The Act has four sections. Title I strengthened and codified the embargo. See 22 U.S.C. §§6031-46. Title II created a framework to govern U.S. relations with a free and democratic Cuba once the Communist regime ended. See 22 U.S.C. §§6061-67. Title III set out a private right of action in favor of claimholders to protect their claims, prevent unjust enrichment, and deter trafficking in their confiscated property, 22 U.S.C. §§6081-85, and Title IV restricted travel to the

United States by individuals affiliated with corporations trafficking in confiscated property. See 22 U.S.C. §6091.

At issue here, Title III's private right of action addressed how "[t]he Cuban Government is offering foreign investors the opportunity to ... enter into joint ventures using property and assets some of which were confiscated from U.S. nationals." 22 U.S.C. §6081(5). Such trafficking "provides badly needed financial benefit ... to the current Cuban Government," thus impeding the transition to democracy and resolution of "the claims of United States nationals who had property wrongfully confiscated by the Cuban Government." 22 U.S.C. §6081(6). The private right of action was thus designed "[t]o deter trafficking in wrongfully confiscated property" by providing "United States nationals who were the victims of these confiscations ... with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. §6081(11); see H.R. Rep No. 104-202, at 25 (1995).

In particular, the private right of action was designed to "provide fully effective remedies for ... unjust enrichment from the use of wrongfully confiscated property" 22 U.S.C. §6081(8). That goal also informed an exceptionally broad definition of "traffic[king]": Title III prohibits "any person" from taking any direct or indirect interest in, profiting from, or undertaking commercial activity that "use[s] or otherwise benefit[s] from" confiscated property, unless authorized to do so by the former owner or falling within a specific exception. 22 U.S.C. §6023(13).

Giving life to claims certified by the FCSC is the centerpiece of Title III's remedial scheme. Much like the enforcement of equitable and judgment liens, Title III's private right of action enables U.S. national victims of confiscation to sue to enforce the claim. See 22 U.S.C. §6082(a)(1)(A); see also 22 U.S.C. §6082(a)(4)(B) (limited exception to right to "bring an action ... on a claim to the confiscated property"). The certified claim identifies and values the property at the time of confiscation as found by the FCSC, 22 U.S.C. §6082(a)(3), and courts must accept a certified claim "as conclusive proof of ownership of an interest in property" that was confiscated, 22 U.S.C. §6083(a)(1). The FCSC-certified claim is the baseline damages measure, see 22 U.S.C. §6082(a)(1)(A)(i), and the Act imposes treble damages liability on traffickers in property subject to the certified claim. See 22 U.S.C. §6082(a)(3)(C).

Congress also designed Title III to address practical difficulties caused by the confiscated property's location in Cuba, the lack of domestic remedies against a foreign sovereign, and the passage of time since the confiscation. Relying on the FCSC's finding regarding the property as it existed at the time of confiscation, Title III grants those "who own[] the claim to such property" a cause of action against anyone who traffics in confiscated property. 22 U.S.C. §6082(a)(1)(A). Title III defines property broadly, 22 U.S.C. §6023(12)(A), and instructs that courts "shall accept the findings of the Commission on the claim as conclusive." 22 U.S.C. §6082(a)(5)(B); see also 22 U.S.C. §6083(a)(1). The effect of these provisions is to make any property in Cuba subject to a certified claim off limits to unauthorized use for as long as the claim

remains outstanding. See 22 U.S.C. §§6082, 6023(4), (13).

Title III's private right of action was not enforceable right away. In part because foreign governments had expressed concerns about the Act's extraterritorial application, Congress gave the President control over Title III's operation in two respects. The President could suspend the "effective date" of Title III for six month periods or, if the Title went into effect, could successively suspend the right to bring the cause of action for up to six month periods. 22 U.S.C. §6085(b)-(c).

Following the Act's enactment, President Clinton chose not to suspend Title III's effective date but did suspend the right to bring an action under it. He anticipated that companies would still be deterred from doing business with Cuba because, "with Title III in effect, liability will be established irreversibly during the suspension period and suits could be brought immediately when the suspension is lifted." Statement, 32 Weekly Comp. Pres. Doc. 1265 (July 16, 1996).

Presidents Bush and Obama continued to suspend Title III's private right of action. This would not change until May 2, 2019, when President Trump chose not to renew the suspension.

E. The Cruise Lines' Trafficking In The Property Confiscated From Havana Docks.

As noted, at all times since 1982, federal law (including the CACR) unambiguously prohibited tourist travel to Cuba. See *supra* p. 8. These restrictions were well known to the cruise lines. As

Norwegian's then-CEO acknowledged in 2015, "[t]ourism is still illegal under today's set of rules and policies and guidelines. And it would be difficult for us to have a ship with 4,000 tourists—people let's call them—show up in Havana and call that people-to-people travel." Norwegian-Dkt. 221-15, at 4.

Even so, the lure of profits from Cuba's potentially vast tourist market proved irresistible, and Title III's private right of action remained suspended. The cruise lines thus started bringing tourists to the Havana docks in December 2015 and continued to do so through June 4, 2019. J.A. 98-101. During that period, the four respondent cruise lines collectively carried nearly one million tourists to those docks, which they used to moor their ships and disembark passengers for shore tours over nearly 1,000 days. See Dkt. 445-7, 3-4, 6; J.A. 98-101. Each cruise line knew of Havana Docks' claim to the port facilities (as Carnival had since 1996 and Norwegian had since February 2017), J.A. 132, yet none of the cruise lines sought, let alone received, Havana Docks' authorization to use its confiscated facilities.

These Cuba voyages were big business for the cruise lines and the Cuban government. The cruise lines collectively earned over \$1 billion from their cruises to the confiscated port: Carnival's net revenue exceeded \$112 million; MSC's exceeded \$272 million; Royal's reached almost \$330 million; and Norwegian's reached almost \$300 million. J.A. 132-35. The cruise lines paid entities directly connected with the Cuban government more than \$130 million to use the confiscated port facilities, to obtain "tourist visas," and to conduct shore tours for their passengers to nightclubs, dolphin shows, beaches, and other tourist hotspots, all of which began and ended at the

confiscated port facilities. *Id.* 101-06. OFAC never changed its regulations to permit tourism or took any affirmative action approving any of these shore excursions; indeed, OFAC declined Carnival’s request to specifically bless proposed shore excursions. J.A. 543-58, 570-71.

The more than \$130 million the cruise lines paid to Cuba were principally payments to Cuba’s military and security forces. Dkt. 445-7 at 2; J.A. 101-06. Cuban governmental entities conducted these onshore tours and were all affiliates of Cuba’s military and security forces. See *infra* p. 50. No ordinary Cuban person or entity received any money from the cruise lines. See Dkt. 445-7 at 2.

F. Title III’s Private Right of Action Takes Effect.

From the outset in 2017, the Trump Administration signaled that its policy toward Cuba would “[e]nsure adherence to the statutory ban on tourism to Cuba.” See, 82 Fed. Reg. 48875, 48876 (Oct. 20, 2017). That policy increasingly focused on ending the suspension of Title III’s private right of action.

Against this backdrop, Havana Docks sent each cruise line a letter in February 2019 noting its certified claim and emphasizing that trafficking in its confiscated dock facilities violated Title III. See, *e.g.*, Dkt. 318-47. No cruise line ever responded, and each continued to use the confiscated port facilities until late May or early June 2019.

Upon receiving the letters, the cruise lines directed their trade association, the Cruise Lines International Association (“CLIA”), to assess their potential liability. In February 2019, CLIA’s lawyers warned

the cruise lines' most senior executives and in-house lawyers that "the scope of Title III has potentially very broad implications" and "a court may interpret that the use of port docks, which are associated with confiscated property, constitutes violative 'trafficking' under the Act." J.A. 508. They noted "[t]he Havana Docks Corporation ... holds a claim valued at \$9.2 million by the [Commission] in 1971 (absent interest)" and that "the accumulation of interest ... has significantly increased the value of the[] claim[]." *Id.* 517. The CLIA lawyers suggested seeking relief from the Administration but warned that might prove insufficient to evade liability. *Id.* 518-19.

The cruise lines continued to lobby the Executive to maintain the suspension or create an exception for their industry. Carnival's Chairman lobbied the President directly, emphasizing that "[i]f there are no exceptions or clarifications, we would be subject to significant legal liability for our use of the Ports." Dkt. 318-7, at 2; see *id.* ("[T]he potential penalty to my company alone would be over \$600 million.").

Those efforts were unsuccessful. After months of warnings, Secretary of State Pompeo announced that Title III's private right of action would no longer be suspended as of May 2, 2019. U.S. Dep't of State, Remarks to the Press (Apr. 17, 2019), available at <https://tinyurl.com/4yrjz8fb>. Even then, the cruise lines continued to operate at Havana Docks' confiscated port until late May or early June 2019. J.A. 98-101.

Title III's private right of action remained in effect through President Biden's Administration. Although President Biden started the process of re-suspending it in the last days of his term, Secretary of State Rubio

promptly reversed course, explaining that the Administration “is committed to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime.” U.S. Dep’t of State Press Statement, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), available at <https://tinyurl.com/44fe2fyz>.

On June 30, 2025, President Trump directed officials to undertake further measures to ensure that funds are “channel[led] ... away from a regime that has failed to meet the most basic requirements of a free and just society.” J.A. 365-76 (NSPM-5). He sought to ensure “adherence to the statutory ban on tourism to Cuba,” *id.* 368, §2(b), and to prevent payments to “the Cuban military, intelligence, or security services or personnel”—the recipients of the cruise lines’ substantial payments for use of the docks and onshore tour services. *Id.* 369, §3(a)(i); *infra* p. 50.

G. The Proceedings Below.

Havana Docks filed a Title III action against Carnival in the U.S. District Court for the Southern District of Florida on the day the suspension lapsed, and several months later filed Title III actions against MSC, Royal, and Norwegian. The cases were eventually assigned to District Judge Beth Bloom.

On consolidated cross-motions for summary judgment, the District Court granted Havana Docks’ motion while largely denying the cruise lines’ motions. See J.A. 41-253. In a detailed 169-page decision, Judge Bloom considered and rejected the cruise lines’ various arguments and affirmative defenses, including whether the property at issue was limited to cargo operations through the application of Cuba law,

whether the Obama Administration had authorized the cruise lines' trafficking through inaction, whether the cruise lines had knowingly used or benefitted from the confiscated property, and whether the cruise lines had facilitated lawful "people-to-people" educational exchanges rather than "tourism." J.A. 158-67, 176-85, 186-225. On the issue now before this Court, the District Court had initially denied one cruise line's motion to dismiss; then granted another motion from two cruise lines; then reconsidered those decisions to conclude that Title III continued to apply to the cruise lines' conduct; and finally affirmed that decision at summary judgment. Pet. App. 43a-53a, 54a-65a, 66a-103a; MSC-Dkt. 55; Norwegian-Dkt. 42.

After resolving the various legal challenges by the cruise lines to the Act's statutory damages, the District Court entered separate final judgments against each of the four cruise lines. See Dkt. 544; MSC-Dkt. 395; Royal-Dkt. 318; Norwegian-Dkt. 453. Because each cruise line had separately and independently exploited the docks to unjustly enrich itself and the Cuban government without Havana Docks' authorization, each cruise line was independently liable for statutory damages. See 22 U.S.C. §6082(a)(1)(A) ("any person that ... traffics in [confiscated] property ... shall be liable ... for money damages in an amount equal to" the greater of three statutory measures). With interest added, damages trebled, and fees and costs included, each judgment amounted to more than \$100 million.

On appeal to the Eleventh Circuit, the cruise lines attacked multiple aspects of Judge Bloom's summary judgment order. After the court affirmed that Havana Docks is a U.S. national, the divided panel resolved the case on the ground that, as a matter of law, the

cruise lines could not have trafficked in Havana Docks' confiscated property because "[w]hen [its] concession expired in 2004, any property interest that Havana Docks had by virtue of that concession ended." J.A. 23. To reach that conclusion, the panel majority held that courts 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." J.A. 20. Based on its view that Havana Docks would have owned no interest in the confiscated port facilities after 2004 in a world without confiscations, the panel majority reversed the judgments in Petitioner's favor. J.A. 28.

Judge Brasher dissented. He explained that the majority's "counterfactual analysis—asking what would have happened to [the plaintiff's property] if [it] had not been confiscated in 1960—is incompatible with the text of the Act and undermines its remedial purpose." J.A. 30 (Brasher, J., dissenting). He noted that "[n]othing in the statute requires that a claimant establish that, absent the confiscation, it would have a current, present day property interest in its stolen property." *Id.*

This Court thereafter granted a writ of certiorari to consider the issue.

SUMMARY OF ARGUMENT

Title III's private right of action rests on a basic premise: Cuba stole U.S. nationals' property by confiscating it, and neither Cuba nor its business partners should "traffic[]" in that "property which was confiscated." 22 U.S.C. §6082(a)(1)(A). Congress designed a simple and elegant mechanism to enforce

that prohibition. In doing so, Congress gave new life to the FCSC certified claims that valued and memorialize what property Cuba confiscated, as it existed in 1960. Any U.S. national owning such a claim could sue to enforce the new prohibition on trafficking. Title III thus placed off limits from further exploitation all confiscated property identified in and encumbered by those claims, and did so for as long as Cuba failed to resolve them. Cuba's confiscations destroyed the property interests of U.S. nationals, and nothing about how those interests would likely have evolved after 1960, had no confiscation taken place, limits the continuing operation of Title III's remedy.

I. Title III's "fully effective remed[y]," 22 U.S.C. §6081(8), protects any U.S. national owning an FCSC-certified claim by continuing to limit Cuba's exploitation of the stolen property for as long as Cuba fails to resolve the claims. A claimholder is entitled to damages upon a showing that it owns an FCSC-certified claim reflecting an interest in "property which was confiscated" and that the defendants trafficked in that property. See 22 U.S.C. §6082(a)(1)(A).

Here, Havana Docks' FCSC-certified claim conclusively establishes that the "property which was confiscated" included the dock facilities owned by Havana Docks as well as the 44 years of further control of them associated with a stream of payments due to Havana Docks for constructing the docks. Because Cuba confiscated the docks and all interests in them, and Cuba and its partners each used and benefitted from the docks without authorization, Title III liability should be straightforward. Through this fundamental link between the unresolved claim and the confiscated property, Congress protected claims

reflecting any type of confiscated interests captured in the Act's broad definition of property—future, contingent, time-limited, and any other interests.

II. Any time limit built into an interest in the confiscated property does not run the clock on Title III's protections and remedy. Title III's protections do not cease or change over time according to how U.S. nationals' confiscated interests were anticipated to evolve after confiscation. Those interests remain "property which was confiscated" because Cuba stole them, and Title III's protections continue from enactment to this day and beyond until U.S. nationals' claims are satisfied. Nothing anticipated to occur in 2004 has any limiting effect on Title III's operation and remedy.

A. Title III clearly establishes this continuing protection. The trafficking prohibition continues for as long as property remains confiscated, and the Act defines "confiscated" to ensure that property, once confiscated, remains confiscated as long as the claim remains outstanding. Title III enforces the certified claim much as any other judgment is enforced, creating a continuing obligation on Cuba's part to right its wrong, including by imposing an ongoing encumbrance on the property it stole. Likewise, Title III applies unjust enrichment principles that run with the property and limit a wrongdoer's ability to deal in improvements not paid for, applying principles tracing to William Blackstone and Lord Mansfield. With the same result, Title III operates as an anti-fencing statute, reflected in its broad definition of "traffic[king]."

B. Title III's treatment of confiscated property also confirms the Act's ongoing protections. The FCSC-

certified claims conclusively determine what property was confiscated in 1960 and thus remains off limits to exploitation. Here, the FCSC identified and valued Havana Docks' ownership of the dock facilities, and separately did the same for the 44 years of control and payments still due to Havana Docks which, when that period ended, would have served as the precondition for transferring the dock facilities. Those were also the interests used by and benefiting each cruise line. Further, confiscation extinguished Havana Docks' rights and obligations in the property, including the obligation to transfer the docks expected to occur in 2004. That obligation did not arise and the docks were not transferred, except in an imagined world where no confiscations occurred. In the real world, Cuba owns the docks because it confiscated them in 1960.

C. Congress designed Title III to avoid precisely the results produced by the Eleventh Circuit's test: U.S. nationals who hold claims against Cuba left without remedy even as the confiscated properties they once built and controlled are opened to exploitation by Cuba and its business partners. The Eleventh Circuit's test provides only fleeting and incomplete protection for U.S. nationals' claims. It provides no limit on exploiting confiscated property in periods before a future or contingent interest may have vested, after a time limited interest was expected to expire, or when a claim holder reflecting any type of interest cannot prove what present interest it may have held when trafficking occurred, in a hypothetical world of no confiscations. The result is an unworkable test that imposes impossible burdens of proof. That falls far short of the "fully effective remed[y]" Congress envisioned and permits companies to make massive profits and massive payments to Cuba by

using the confiscated property. Congress intended Title III to prevent, not produce, these results.

ARGUMENT

I. The Cruise Lines Are Liable for Exploiting Confiscated Property Encumbered by Havana Docks' Certified Claim.

Title III is a straightforward judicial remedy that provides ongoing rights to U.S. nationals whose interests in Cuban property were extinguished by Cuba's confiscations. In short, under Title III, a victim of Castro's confiscation need only show ownership of a claim identifying an interest in confiscated property and establishing "property which was confiscated," and further show that Cuba or its partners trafficked in the property. That right of action is grounded in the FCSC-certified claim and continues for as long as Cuba has not resolved it. Until then, any person owning a certified claim reflecting any former interest in confiscated property can claim damages for exploitation of the confiscated property.

Congress designed that right of action to advance three principal objectives: (i) to deter foreign companies from propping up the Cuban regime by paying Cuba to use properties it had confiscated from U.S. nationals, 22 U.S.C. §6081(2), (5)-(6)(A), (ii) to provide "fully effective remedies" to all U.S. nationals who hold a claim against Cuba based on property confiscated from them, 22 U.S.C. §§6022(3), (6), 6081(6)(B), (8), (10)-(11), and (iii) to deter Cuba and its business partners from unjustly enriching themselves by exploiting that stolen property, 22 U.S.C. §6081(8), (11).

Title III's judicial remedy accomplishes these goals by providing that "any person that ... traffics in property which was confiscated by the Cuban Government ... shall be liable to any United States national who owns the claim to such property." 22 U.S.C. §§6082(a)(1)(A), 6023(13). That is, a U.S. national victim of Cuba's confiscations must show that (a) it owns "the claim" with respect to "property which was confiscated" and (b) Cuba or its business partners used or otherwise "traffic[ked]" in that "property which was confiscated." 22 U.S.C. §6082(a)(1)(A). "Property" means "any property," including "any ... interest therein," 22 U.S.C. §6023(12), and one "traffics" in "confiscated property" through exploiting or "hold[ing] an interest in confiscated property." 22 U.S.C. §6023(13)(A)(i). An FCSC-certified claim "is conclusive proof of ownership of an interest in property," including in confiscated property. 22 U.S.C. §6083(a)(1); see also 22 U.S.C. §1622g.

The FCSC-certified claim thus does much of the work in determining whether Title III establishes liability. In certifying claims, the Commission addressed and valued the property as it was taken *in 1960*. Its findings conclusively resolve whether plaintiff owns a claim that identifies and values an interest in "property which was confiscated," as well as identify the nature of that confiscated property itself. 22 U.S.C. §6083(a)(1). The FCSC certified claim thus identifies the property that cannot be trafficked without giving rise to liability and defines it as it existed at the time of confiscation. Likewise, a victim "who holds a claim to the [confiscated] property" is provided with the right to authorize (and thus receive payment for) use of the property. 22 U.S.C.

§6023(13)(A). Much like enforcement of a judgment, Title III authorizes the plaintiff to sue to enforce the certified claim when the formerly held property is exploited without that authorization. See *infra* pp. 30-32; *cf.* 22 U.S.C. §6082(a)(4)(B).

Havana Docks’ own FCSC-certified claim makes this an easy case. That claim set out the property owned by and confiscated from Havana Docks in 1960: the dock facilities themselves, and a “concession,” or right to receive payments for constructing the docks through an additional 44 years of operating them. See J.A. 259; *infra* pp. 39-40. As elaborated below, Havana Docks’ FCSC-certified claim sets out the particular confiscated property interests and confirms that the dock facilities and all interests in them were “property which was confiscated,” 22 U.S.C. §6082(a)(1)(A), when Cuban officials occupied and took ownership of them at gunpoint. J.A. 257; *infra* pp. 39-41. The final element, “traffic[king],” is not established by reference to the certified claim, but the cruise lines admitted they used and exploited the docks through their cruises. J.A. 98-101. When Cuba and the cruise lines worked together to deposit nearly a million tourists on those docks for onshore tours led by Cuban officials, each one “traffic[ked]” in the confiscated property and each as a result is liable for Title III damages. 22 U.S.C. §§6023(13), 6082(a)(1)(A), (3); see *supra* pp. 15-16.

This case also shows how Congress designed Title III to protect claims reflecting the full range of confiscated property interests. For Havana Docks itself, this point is straightforward: the FCSC valued and certified Havana Docks’ claim to own the very dock facilities that were the “property which was confiscated” and which Cuba and the cruise lines later

used. See J.A. 98-101; *infra* pp. 39-41. Even if the additional confiscated interest of 44 years of Havana Docks’ further control is viewed in isolation, that too is an interest in the confiscated docks that was taken by Cuba when it took the docks. See J.A. 259; *infra* pp. 39-40. The same analysis applies to any “interest in [such] property” the FCSC determined to have been taken. 22 U.S.C. §6083(a)(1). In this way, Congress ensured that U.S. nationals who held claims reflecting confiscated “future,” “contingent,” time-limited, and “any other” interests were provided with the right to compensation for any unauthorized use of the underlying, confiscated property. 22 U.S.C. §6023(12). Interests reflecting only limited rights over the confiscated docks might have limited financial value and thus yield limited damages, see 22 U.S.C. §6082(a)(2), but the Act expressly makes such interests enforceable under Title III. See 22 U.S.C. §6023(12); J.A. 35-36 (Brasher, J., dissenting); *infra* p. 44. Title III’s plain language requires only ownership of a claim reflecting an interest in “property which was confiscated” as that property existed in 1960. The Act’s protections persist with the claim, and do not turn on or off according to what was expected to occur later to confiscated property in a world without confiscation. See *infra* Part II.

II. Title III Limited Trafficking in Havana’s Dock Facilities Before and After 2004.

Title III’s protections did not cease, as the Eleventh Circuit would have it, when Havana Docks was anticipated to turn over the dock facilities in a world without confiscations. J.A. 23. The Eleventh Circuit’s approach ignores Cuba’s continuing theft of property and failure to pay for it, and it ignores how the events that would have triggered the handover of

dock facilities in the ordinary course did not, in fact, occur. Cuba owns the docks—and they remain “property which was confiscated” even today—because Cuba confiscated them in 1960, not because any event happened or was anticipated to happen in 2004.

Nothing in the Act’s text or intended operation requires the claimholder to prove it would have possessed a present interest in the property when trafficked. Indeed, “[t]he text of the statute says that the trafficking must occur when a plaintiff ‘owns the claim,’ not when the plaintiff would have owned the property.” J.A. 33 (Brasher, J., dissenting). In the real world where confiscations did occur, Congress intended Title III to protect against exploitation of property confiscated from U.S. nationals for as long as Cuba failed to resolve their claims. Only with this continuing protection could Title III provide to all claimholders the “fully effective remedies” promised in the Act.

**A. Title III’s Limitation on Trafficking
Continues As Long As Cuba’s
Wrongdoing Continues.**

The notion that Title III restricted Cuba from dealing in the dock facilities through 2004 but then left it free to profit from doing so thereafter is contrary to everything Congress sought to achieve. Instead, Congress singled out Cuba as a wrongdoer and designed Title III’s restrictions to continue as long as Cuba’s wrongdoing continued. That wrongdoing is clear and simple: Cuba took property without paying for it. It then compounded that wrong by exploiting the property with its business partners and without the claimholder’s authorization. Title III’s plain terms

and resulting enforcement mechanism ensure that Cuba and its partners cannot profit from those wrongful actions without consequence.

1. Property, Once Confiscated, Remains Confiscated Until Cuba Resolves the U.S. National's Claim Against It.

Start with Title III's plain language. "[T]raffic[king]" in property gives rise to liability as long as the property remains "confiscated." 22 U.S.C. §§6082(a)(1), 6023(13). The gist of the Eleventh Circuit's and cruise lines' reasoning is that the dock facilities and Havana Docks' other assets were "confiscated" property from 1960 through 2004 but "for purposes of Title III" became "unconfiscated" and open for business thereafter. See J.A. 23.

Congress provided otherwise. Section 6082's core provision, "property which was confiscated," 22 U.S.C. §6082(a)(1)(A), and the common understanding of the term "confiscated" naturally point to the fixed and continuing status of confiscated property. Title III's definition of "confiscated" removes whatever ambiguity may otherwise lurk in that statutory phrase. That definition confirms that property remains "confiscated" for purposes of the Act and its trafficking prohibition—until Cuba rights its wrong to the U.S. national.

Specifically, "confiscated" property remains so until one of three events occurs: Cuba "return[s]" the property, pays the former owner "adequate and effective compensation," or "settle[s] [the claim] pursuant to an international claims settlement agreement" 22 U.S.C. §6023(4)(A)(i)-(ii). None of those events occurred here. So, as a result, the

“property which was confiscated” in 1960, when Castro’s troops took control of the docks, remains, for purposes of Title III, confiscated to this day.

Title III’s sunset provisions, too, indicate that Title III’s prohibition on exploiting confiscated property continue until Cuba resolves U.S. nationals’ claims. Congress anticipated that U.S.-Cuban diplomatic relations would resume only after Cuba resolved those claims, once it had transitioned to a democratic government. See 22 U.S.C. §6067(d). Accordingly, if a transitional government takes power, the President is authorized to “suspend the right of action created in Section 6082,” 22 U.S.C. §6064(a), and victims’ right to bring Title III actions would “cease[]” once the President determined that “a democratically elected government in Cuba is in power” (pending suits could continue). 22 U.S.C. §6082(h)(1)(B). As a result, only when Cuba resolves U.S. nationals’ claims will Title III’s prohibition on trafficking be lifted.

2. Title III Continues to Limit Trafficking in Confiscated Property to Enforce the Certified Claim.

Title III created a continuing remedy similar to centuries-old principles related to enforcement of equitable and judgment liens. By making certified claims the centerpiece of the statute, Title III enables owners of those claims to enforce their rights against any party that exploits the confiscated property until the claim is resolved.

Title III “provide[s] an additional remedy for U.S. nationals through which they may take action to protect their claim to a confiscated property in Cuba.” H.R. Rep No. 104-468, at 58 (1996). That remedy

enforces the right Title III provides to U.S. nationals to authorize any exploitation of their former property and to secure damages against each and every person that conducts unauthorized dealings in the property.¹ See 22 U.S.C. §§6082(a)(1), 6023(13) (trafficking). The “claim” that forms the basis for Title III’s operation is the judgment, or certified claim, issued by the FCSC, and it like other judgments reduces the finding of fault to an obligation to pay a determined value. See 22 U.S.C. §§1643b(a), 6083. Title III’s provision for private rights of action based on certified claims is similar in kind to an action on a judgment to secure payment from the judgment-debtor.

Judgments are enforced on an ongoing basis, operating through liens that attach to the property of the judgment debtor and continuing in effect as an encumbrance on the judgment debtor’s property until the judgment is discharged. That encumbrance “preserv[es] a judgment creditor’s interest in that property until the judgment is satisfied,” Judgment liens—Priorities, 5 Tiffany Real Prop. §1584 (3d ed.), and the judgment lien “confers a right ... to the exclusion of other adverse interests subsequent to the judgment.” *Conard v. Atl. Ins. Co. of N.Y.*, 26 U.S. 386,

¹ The duration of Title III’s trafficking prohibition is an issue separate from the damages Title III imposes once trafficking in confiscated property occurs. To deter trafficking and associated payments to Cuba, Congress imposed stiff statutory damages against “any person that ... traffics” in confiscated property. 22 U.S.C. §6082(a)(1)(A); see 22 U.S.C. §6082(a)(3). Each and every trafficker that violates the rights Title III provides to claimholders is thus liable to pay those statutory damages, with Congress’s deterrent objective underscored by its imposition of treble damages when the victim holds a certified claim. See 22 U.S.C. §6082(a)(3)(A), (C)(ii).

443 (1828) (Story, J.). This remedy traces back to the Statute of Westminster of 1285 and has for centuries been reflected in U.S. state statutes. See *Morsell v. First Nat. Bank*, 91 U.S. 357, 360 (1875). Today it is implemented through Federal Rule of Civil Procedure 69(a)(1).

Title III operates similarly. A certified claim reflecting any interest in confiscated property encumbers that property, and Title III creates a mechanism to enforce that claim against anyone who exploits the property. See H.R. Rep No. 104-468, at 59 (1996) (“investors in Cuba have been effectively on notice regarding the 5,911 certified U.S. claims since the Cuban claims program was completed on July 6, 1972”). To give effect to its unjust enrichment and deterrence objectives, Congress focused the relief to apply to the confiscated property (rather than to all of Cuba’s real property, as with other judgment debtors) and to trigger liability for any person who exploits that confiscated property. With these adjustments, Congress designed Title III, like any other judgment enforcement mechanism, to provide a “fully effective remed[y]” that runs with and encumbers the underlying property on an ongoing basis. Whether Cuba is viewed (accurately) as the successor in interest commencing in 1960 or (wrongly) as one beginning in 2004 makes no difference: the limitation on the use of the confiscated property subject to Havana Docks’ claim continues to apply. In this way, Title III provides owners of claims to any interest in confiscated property with an ongoing remedy against any person who uses the property without authorization at any time after the Act’s effective date.

3. Title III Prevents Cuba's and Its Partners' Unjust Enrichment for as Long as the Claim Remains Unresolved.

Congress designed Title III to give effect to unjust enrichment principles that further confirm Title III's continuing limitation on Cuba's and its partners' exploitation of the confiscated dock facilities. Title III does not, as the Eleventh Circuit held, cease operating simply because, had Cuba not stolen the property, the docks facilities might have been transferred from Havana Docks' control in 2004.

Congress grounded Title III's right and remedy in basic principles of unjust enrichment. Title III provides "fully effective remedies ... for unjust enrichment from the use of wrongfully confiscated property," 22 U.S.C. §6081(8); see 22 U.S.C. §6081(2), (11), and, in doing so, "den[ies] traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. §6081(6), (11); see, *e.g.*, *Moreira v. Societe Generale, S.A.*, 125 F.4th 371, 385-86 (2d Cir. 2025) (Title III applies unjust enrichment principles). A principal author of the Helms-Burton Act explained that Title III establishes liability for those who "mak[e] profit off stolen goods" and places Cuba's potential foreign business partners on notice that they cannot "unjustly benefit from American property confiscated by Fidel Castro and his henchmen." 141 Cong. Rec. S15077-02 (daily ed. October 12, 1995) (Sen. Helms). According to another principal supporter, under Title III, "'fencing' stolen property carries a cost." *Id.*, S15081-02 (Sen. Dole). Various states have similarly authorized treble damages against knowing users of stolen property. See, *e.g.*, Cal. Penal Code §496; Conn. Gen. Stat. §52-564.

Under the common law, redress for unjust enrichment has long taken the form of an equitable lien that continues to encumber the affected property and bind the successor in interest until the unjust enrichment ceases. The Anglo-American tradition traces “[t]his ... very extensive and beneficial remedy” to securing relief where “consideration ... fail[s]” or property is secured “through imposition, extortion, or oppression, or where undue advantage is taken of the plaintiff’s situation.” 3 William Blackstone, *Commentaries on the Laws of England* *162 (1st ed. 1768) (lettering modernized) (citing *Moses v. Macferlan*, (1760) 97 Eng. Rep. 976 (K.B.) (Mansfield, J.)(similar language)). So, for example, if property is taken without compensation to the former owner, that former owner has an interest in property akin to an “equitable lien,” which “can be discharged by a payment of just compensation to the former owner.” *Fulcher v. United States*, 632 F.2d 278, 284 (4th Cir. 1980) (en banc). The equitable lien has been described as “a right of a special nature over property which constitutes a charge or encumbrance” and “is a remedy for a debt,” 53 C.J.S. Liens §18, wherein the “owner’s title is not forced away from him, but the equitable lien ... is preserved.” *Griswold v. Bragg*, 48 F. 519, 522 (C.C.D. Conn. 1880). This ongoing equitable claim applies especially to improvements to land and would do so even if the party making such improvements was under the misimpression of ownership and the true owner was faultless (which hardly applies to Cuba). See *Bright v. Boyd*, 4 F. Cas. 127, 132-34 (C.C.D. Me. 1841) (Story, J.); *Griswold v. Bragg*, 48 F. at 522.

Title III gives effect to these deeply entrenched principles. Under Title III, any successor to Havana

Docks (including Cuba) remains subject to Havana Docks' ongoing rights arising from its claim. See 22 U.S.C. §§6023(13), 6082(a)(1). So do others acting in concert with the successor. In Blackstone's and Mansfield's terms, that is so whether Havana Docks' loss is characterized as an oppressive taking or as a failure of consideration (Havana Docks was deprived of 44 years of payments that would have served as consideration for building the docks). See Restatement (Second) of Foreign Relations Law §193, cmt. e (1965) (foreign state confiscations of concessions have characteristics of takings and contract breach). Under Title III, the certified claim acts on the confiscated property much like this "equitable lien," with the effect that Title III's limits on trafficking attach to any property wrongfully confiscated in 1960 and apply until the claim is resolved. See 22 U.S.C. §§6082(a)(1), 6023(4). It operates in this ongoing way whether Havana Docks' confiscated interest is viewed as ending in 1960 (as it did) or as ending in 2004 (in the hypothetical world of no confiscations). Title III in this respect simply gives effect to the unjust enrichment principles reflected in the statute's text. See 22 U.S.C. §6081(2), (8), (11).

4. Title III's "Traffic[king]" Definition Imposes Continued Limits on Dealings in the Confiscated Property.

Title III's definition of "traffics" further reflects these unjust enrichment principles and separately bars treating the docks as open to exploitation after 2004. The breadth of the "traffics" definition reflects how Congress designed Title III to operate as an anti-fencing provision. 22 U.S.C. §6023(13); *supra* p. 33.

All three prongs of the trafficking definition show how Title III continues to bar Cuba's and the cruise lines' exploitation of the docks. First, a person "traffics" who "receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property." 22 U.S.C. §6023(13)(A)(i). That applies directly to Cuba and to the cruise lines. After confiscation in 1960, Cuba plainly trafficked in the dock facilities in this manner, and nothing in the definition suggests a different result arose beginning in 2004. So, too, with the definition's third prong, imposing liability on one who "participates in, or profits from, trafficking ... by another person" 22 U.S.C. §6023(13)(A)(iii). Each cruise line not only itself "use[d]" the docks, but profited from its own and Cuba's exploitation of the dock facilities.

The definition's remaining prong, encompassing any "commercial activity using or otherwise benefiting from confiscated property," is especially relevant here. 22 U.S.C. §6023(13)(A)(ii). Cuba and its partners plainly did "use" the confiscated dock facilities for commercial purposes. Indeed, that is how they landed their tourist expeditions in Havana.

But even if "using" confiscated property were somehow limited to commercial activity that directly encroaches on what would have been a present interest in property (absent confiscation), "otherwise benefiting" is not. Cuba and its partners clearly "otherwise benefit[ted]" from Havana Docks' construction of the docks—just as any successor in interest benefits from a predecessor's improvements. As Judge Brasher noted in a later Eleventh Circuit decision, the term "otherwise benefiting" must be given independent meaning and reflects how Title III

“imposes broad liability,” as “Congress designed the Act not just to compensate victims of the Castro regime, but to deter third parties from using or benefiting from confiscated property.” See *Fernandez v. Seaboard Marine LTD.*, 135 F.4th 939, 955 (11th Cir. 2025) (Title III liability triggered by a defendant’s use of an unconfiscated shipping terminal constructed using adjacent confiscated land), *cert.* pending No. 25-283.

The Eleventh Circuit treated “traffic[king]” in confiscated property as equivalent to trespass in what would have been a presently held property interest in the hypothetical world of no confiscation. J.A. 20. However, the entire point of Title III—and any other anti-fencing statute—is to limit dealings in the stolen property *after* the rightful owner is dispossessed of the property and the thief or others assume the role of a (wrongful) successor in interest. The Eleventh Circuit let Cuba and the cruise lines off the hook because it treated Cuba as Havana Docks’ natural and rightful successor in interest to the port facilities in its imagined world of no confiscations. J.A. 22-23 (“For purposes of Title III, therefore, we treat Havana Docks’ property interest—the concession—as if the Cuban Government had never expropriated it, *i.e.*, without the distorting effect of the confiscation.”). However, Congress focused instead on Cuba’s wrongful confiscations in 1960 and on Cuba’s and its partners’ later profiting from that wrong. To hypothesize that Cuba committed no wrong and did not control the property as a result of the 1960 confiscation is to erase the foundation for Title III’s operation, as well as to imagine that Havana Docks received the benefit of its bargain with Cuba and thus undertook a transfer of the docks that never occurred.

**B. The Property Stolen From Havana
Docks Did Not Expire in 2004 or Curtail
Title III's Operation at That Date.**

Title III's treatment of property interests also confirms that the Act forecloses the Eleventh Circuit's interpretation that the expected time limit on Havana Docks' former property interests functioned to limit the duration of Title III's protections. Cuba confiscated the dock facilities themselves, which continue to be used today. That property along with Havana Docks' ability to receive payment for it over the next decades was taken in 1960, and no later transfer of the dock facilities or any preconditions for their transfer ever occurred. Indeed, nothing occurring or anticipated to occur in 2004 has any bearing on the Act's operation.

1. Cuba Confiscated Dock Facilities Owned by
Havana Docks.

Because the FCSC-described "pier properties" and related rights of control in those dock facilities formerly owned by Havana Docks are the "property which was confiscated" and to which Havana Docks owns the claim, see *supra* pp. 10-11, this should be an easy case. Those facilities were owned by Havana Docks and confiscated in 1960, are conceded to be confiscated property through 2004, and remained the same facilities, still confiscated, thereafter. Those are the same docks the cruise lines paid Cuba to use for its tourist excursions. See J.A. 98-101, 499-502.

The FCSC decisions certifying the claims conclusively establish that Cuba confiscated dock facilities owned by Havana Docks and its related interests in the docks. See 22 U.S.C. §6083(a)(1)

(“conclusive proof of ownership of an interest in property”); see 22 U.S.C. §1622g.

As to what constitutes “property which was confiscated,” 22 U.S.C. §6083(a)(1)(A), the Commission is clear: “the Cuban assets of [Havana Docks] were nationalized” by Resolution 3 and when “the facilities of the company were physically occupied by agents of the Cuban Government on November 21, 1960.” J.A. 257. Those “facilities” were, of course, the dock facilities.

Further, the Commission’s findings identify the particular confiscated physical assets and other rights owned by Havana Docks and the subject of its “claim.” 22 U.S.C. §6083(a)(1). As elaborated above, see *supra* pp. 10-11, the FCSC separately identified and valued, on the one hand, the “pier properties” and other infrastructure facilities owned by Havana Docks and, on the other, “the concession” to operate the docks and related land access rights held by Havana Docks. J.A. 259. For the “pier properties” (“structures only”), the FCSC used the book value cost, reflecting Havana Docks’ ownership of the dock infrastructure in 1960, to assess the claim value of each of the three piers. It likewise valued Havana Docks’ confiscated equipment, machinery, office furniture and fixtures, and other physical property. J.A. 259.

The FCSC separately valued Havana Docks’ “Land and Concession” at a much lesser value, equally split between a “concession” and land and appurtenances of the same value. J.A. 259; *supra* p. 10. That value, too, reflected property taken from Havana Docks as it existed in 1960. J.A. 257-58. That taken “concession” reflected Havana Docks’ 44 years of further control of the dock facilities and the related payments due to

Havana Docks during that time. See *supra* pp. 10-11. Here, too, the certified claim sets out interests in the confiscated facilities—a 44-year ownership interest that has not diminished by one day since confiscation. That Havana Docks was anticipated to have turned over the dock facilities in 2004 after enjoying the benefits of that full period of control and payment does not change the “property which was confiscated” or the property reflected in Havana Docks’ certified claim.

Even if the FCSC’s conclusions were open to challenge, they were correct. They reflected the legal and economic reality of the construction project. The governing decree provided that Havana Docks was to construct the port facilities at its own cost and in return received a guaranteed term of control over them to enable it to recover its costs of construction and profits. See J.A. 447-48. Cuba, in turn, was to transfer to Havana Docks land and rights to access it while recognizing and protecting Havana Docks’ ownership interest in the facilities it constructed. *Id.* In this commonly employed infrastructure development model, the developers’ rights must be protected if the facilities are to be built, and here the decree provided that “[i]f, at any time during the term of the concession, the works are expropriated ... , the Government or its agencies will compensate the concessionaire for the value of all works constructed by it ... ,” *id.* 448, and guaranteed that Havana Docks could recover its costs over the full term of years (extended to 99 from 50 years). *Id.* 447-48. Prior to 1960, as the FCSC found, Havana Docks controlled the dock facilities with all the usual attributes of ownership—it granted a mortgage secured by the dock facilities, assigned a portion of the facilities, and

leased another portion. J.A. 261; *supra* p. 7. Cuba plainly confiscated the dock facilities that the cruise lines later used.

2. Havana Docks' Property Did Not Expire or Lapse in 2004.

The majority and dissenting Eleventh Circuit opinions agreed that, following confiscation, U.S. nationals retained no rights in the confiscated property, J.A. 37 (Brasher, J., dissenting), and the cruise lines have repeatedly acknowledged the same fact. See Joint Resp. Br. 41-42 (11th Cir., No. 23-10171); see also *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 430 (1964).

This cessation of U.S. nationals' property rights bears directly on the duration of Title III's protections. Because those rights no longer existed after confiscation, any time limit they implemented did not continue to run against the former U.S. owner. The commercial arrangement's clock on the time limit is stopped by confiscation and frozen in place in 1960, along with all the arrangement's other benefits and obligations. See J.A. 254-266 (FCSC claim decision); 22 U.S.C. §§6083, 6082(a)(1). The property rights taken are instead set out in the FCSC-certified claim and reduced to a dollar value. J.A. 254-266. Congress simply substituted that ongoing claim for the former property rights held by Havana Docks. See *supra* p. 9.

Likewise, the Commission's analysis underscores that nothing occurred or was anticipated to occur in 2004 that limits Title III's protection. Indeed, those claim decisions show that Cuba took the full value of the dock facilities. See *supra* pp. 10-11; J.A. 254-266. They also show that, because the parties expected

payments to Havana Docks to extend until the end of the concession term, Cuba took the facilities and the operating profits without paying for them. *Cf. e.g., Monongahela Nav. Co. v. United States*, 148 U.S. 312, 345 (1893) (on confiscation of state-sanctioned lock and dam, just compensation requires payment of both the physical structures and the franchise taken). That is, the certified claim identifies Cuba's wrongdoing that makes Title III's trafficking prohibition continue for as long as that wrongdoing persists.

The FCSC noted that the *concession's* terms "were to expire in ... 2004" and that Havana Docks' dock facilities had to be turned over when that period would have ended, too. J.A. 259. That handover was contingent: it would arise only if Havana Docks enjoyed the remaining 44 year term of control of the docks that was to be the consideration for their construction. J.A. 259 (FCSC decision); J.A. 454-55 (decree).

As it turned out, of course, Cuba instead stole the docks. Havana Docks has never enjoyed those additional 44 years of control and payment. Thus, the obligation to transfer the dock facilities in 2004 never arose, and Havana Docks did not in fact transfer the facilities. Indeed, it could not do so, because its interests did not lapse or expire in 2004: they had been taken and extinguished in 1960. Cuba has controlled the docks since 1960 because it confiscated them, not because it fulfilled any agreement that would have made it a rightful successor in interest in 2004.

In a limited sense, the cruise lines are correct that Title III should account for both time and geographical limits on property, Cert. Opp. Br. 18,—but they draw the wrong conclusion. Title III does

take both limits into account: it takes them as the FCSC found them to exist at the time of confiscation. The dock facilities and the 44 years of further control remain “property which was confiscated.” 22 U.S.C. §6082(a)(1)(A). What Title III does not do—because confiscation ended Havana Docks’ property rights and all the attendant limits—is to have only the time component of the hypothetical, post-confiscation property interest run against Havana Docks. How the property interest would have evolved had it not been confiscated is irrelevant to the duration of the certified claim and thus to the duration of Title III’s protections that flow from it.

The Eleventh Circuit’s hypothetical test applied in a world without confiscations expressly disregards Cuba’s theft of the dock facilities, and treats Cuba instead as having rightfully received the docks in 2004 in the normal course of business. But Congress was acutely conscious of Cuba’s past and continuing wrongdoing and built Title III to address it. To that end, Title III provides a “judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro’s wrongful seizures.” 22 U.S.C. §6081(11).

3. Havana Docks Received No Windfall.

Even as the Eleventh Circuit assumed away Cuba’s continuing harm to Havana Docks, it exaggerated how a straightforward application of Title III would benefit Havana Docks. It reasoned that recognizing Title III’s continuing protections would transform the confiscated property into a fee simple interest or enable suit to be brought in “2025, 2050, 2075, 2100,” or to “infinity and beyond.” J.A. 27, 22.

Those fears are unfounded. Havana Docks has only the rights provided to it by Title III. It has no fee simple interest. Since 1960, both before and after 2004, it has had no right to access or trade in the docks. It has had only the right under Title III to authorize any use of the confiscated property and to seek damages from any person who proceeds without that authorization. Each cruise line separately exploited the docks without authorization and without making the payment required to secure it; thus, each caused a distinct economic injury to Havana Docks.

Title III's remedy is hardly open-ended. It is limited by the value certified by the FCSC. See 22 U.S.C. §6082(a)(1)(A)(i)(I); J.A. 35-36 (Brasher, J., dissenting). A very short-term interest will be valued much lower than a longer-term one. And, Title III's continued protection lasts only until the claim is resolved. See *supra* pp. 29-30. As a practical matter, Title III's protections will likely extend until a democratic government serves the Cuban people, just as Congress intended.

C. The Eleventh Circuit's Test Strips Broad Classes of Claim Holders of Any Remedy and Defeats the Act's Objectives.

1. The Eleventh Circuit's Test Strips Broad Classes of Claim Holders of Any Title III Remedy.

Congress intended Title III to provide "fully effective remedies" to "United States nationals who were the victims of these confiscations," 22 U.S.C. §6081(8), (11), and "to protect the claims of United States nationals who had property wrongfully

confiscated by the Cuban Government.” 22 U.S.C. §6081(6)(B). The straightforward application of Title III’s terms outlined above in Part I accomplishes just that.

Congress achieved the Title’s objectives in large measure by extending Title III’s remedy to U.S. nationals whose certified claims were based on any type of interest in confiscated property. It protected claims reflecting “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) (“property” definition); see 22 U.S.C. §6082(a)(1)(A) (liability to owner of “claim to such property”).

In contrast, the Eleventh Circuit’s test dramatically limits relief to broad classes of claimholders while providing at best a very uncertain remedy to the rest. Congress did not intend these gaping holes in the embargo and in the remedy provided to claimholders. See *Louisville v. Nashville R. Co. v. Mottley*, 219 U.S. 467, 475 (1911) (“We must have regard to all the words used by Congress and as far as possible give effect to them.”); Antonin Scalia & Bryan A. Garner, *Reading Law* 63-65 (2012) (the “Presumption Against Ineffectiveness”). Title III’s text simply does not provide that liability arises only for actions invading presently held property interests that had been anticipated to exist in a world where no confiscations occurred.

For example, the holder of a certified claim to a future interest must, under the Eleventh Circuit’s test, sit idly by and be denied relief while Cuba

exploits the property in the years before that interest would have vested—even though that interest and the related property had clearly been confiscated. This is so even when the preceding, exploited interest may have been confiscated from another U.S. national or a national of another country. The holder of a certified claim reflecting a confiscated contingent interest is in an even worse position: that claimholder has no possibility of a remedy until the anticipated contingency would have occurred, and even then has no remedy at all if the contingency fails. In that event, Cuba remains free both before and after the anticipated contingency date to exploit the confiscated property. Congress, though, protected “any ... contingent right,” not “contingent rights that would have vested,” and it addressed “any ... future ... or other interest,” not “future interests once they would have vested.”

Holders of claims reflecting confiscated time-limited interests are in much the same position. The Eleventh Circuit’s test gives no protection to any certified claim for interests that would have ended or been transferred in the 36 years between confiscation and Title III’s passage. That result alone should disqualify the Eleventh Circuit’s approach. That lapse in protection occurs no matter the cause of the hypothetical end or transfer of the interest—death, bankruptcy, a specified event, or, as here, upon the conclusion of a period of payments. The Eleventh Circuit’s test provides no Title III remedy after the anticipated conclusion of the interest, even if the anticipated successor’s interest is another U.S. national or foreign national whose interest was also confiscated. With each passing year since 1960, Title III’s protections and deterrent effect dwindle under

the Eleventh Circuit's approach as additional time-limited and contingent interests expire, are transferred, or fail to vest.

Patents pose a particular problem for the Eleventh Circuit's test. Congress plainly meant to provide causes of action for claims based on confiscated "patents," 22 U.S.C. §6023(12). Even so, the confiscations of U.S. nationals' property overwhelmingly occurred in 1960, and U.S. and Cuban patents confiscated then would have long expired by the time Title III was enacted. See 35 U.S.C. §154 (1960) (17 year limit); Decree-Law No. 805 of Apr. 4, 1936, ch. II, Art. 56 (17 year limit on Cuban patent protection), available at <https://tinyurl.com/3vfb8ehm>. The Eleventh Circuit's test effectively renders the Act's protections for patents ineffective. See *United States v. Atlantic Research Corp.*, 551 U.S. 128, 137 (2007) (rejecting an "interpretation [which] would reduce the number of potential plaintiffs to almost zero, rendering [the statutory provision] a dead letter"); J.A. 38 (Brasher, J., dissenting).

For all types of property interests, the claim holders' problems of proof under the Eleventh Circuit's test deprive them of anything approaching a "fully effective remed[y]." That test undoes Section 6083's "conclusive proof of ownership" reflected in an FCSC-certified claim, 28 U.S.C. §6083(a)(1), by requiring holders of claims certified by the FCSC to prove their ownership interest once again. Only this time, they have to do so 65 years after the confiscations in what Judge Brasher rightly called an impossible exploration of the "multiverse" of hypothetical scenarios where Cuba had confiscated no property. J.A. 37 (Brasher, J., dissenting). Anything

might have happened in that alternative world: property interests may have been sold or inherited; businesses may have gone bankrupt; or the property may have changed to the plaintiff's benefit—as here where Havana Docks was well-positioned to secure an extension of its rights, as had occurred before. See *supra* p. 6. Any clever defense lawyer can posit a world where the plaintiff's interest had dissipated or been divested. And the plaintiff's burden becomes nearly impossible as the evidence necessary to meet the test is inherently speculative and possibly inadmissible. See Fed. R. Evid. 602 (“Need for personal knowledge”). Congress could not have intended such uncertain protections. It instead foreclosed this entire litigation morass by directing that the FCSC certified claim, based on the property existing at the time of confiscation, conclusively establishes what property Title III protects from exploitation. See 28 U.S.C. §6083(a)(1); see also 22 U.S.C. §6082(a)(1), (a)(3).

2. The Eleventh Circuit's Test Defeats Title III's Principal Objectives.

Because the Eleventh Circuit's test would render broad sets of claimholders unable to enforce their claims, that test would defeat all three of Title III's objectives: (1) creating “fully effective remedies” for U.S. nationals whose property Cuba confiscated; (2) deterring companies from propping up the Cuban regime by paying it to exploit confiscated property; and (3) deterring unjust enrichment through exploitation of the stolen property. See 22 U.S.C. §§6022, 6081(5)-(11). To the extent Title III's remedy is watered down and rendered far less than “fully effective,” Cuba would be open for business to companies paying to exploit the highly valuable properties confiscated from U.S. nationals. See *New*

York Dept. of Soc. Svcs. v. Dublino, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

Infrastructure facilities developed by U.S. companies, including those subject to time limits much like Havana Docks’, present an especially important opportunity for the Cuban regime to bypass the embargo and use the resulting hard currency to maintain its grip on the nation. Very significant confiscated infrastructure facilities pervade the railway, fuel, port, mining, utility, and other sectors. See *supra* pp. 4-5. These facilities were often developed using the same basic economic model and legal framework applying to Havana Docks’ facilities. Article 100 of Cuba’s 1883 General Public Works Act applied broadly to Cuba’s public concessions and provided that rights “shall be granted for ninety-nine years at most” unless special laws provided a longer period.” J.A. 414. Sector-specific laws like the 1890 Ports Act and 1934 Mineral Fuel Law also elaborated processes and time limits associated with particular classes of infrastructure projects. See, *e.g.*, J.A. 433, 441-42 (Ports Act Art. 28 & 58 (port project rights “shall be in accord with the general law of public works” and for a “fixed period”)); Cuban Mineral Fuel Law of May 10, 1938 (concessions limited to 30 years), available at <https://tinyurl.com/mr8efvwb>. Further, Cuban decrees granting concessions, including Havana Docks’, referred to these and similar laws in the course of imposing specific time limitations. See, *e.g.*, J.A. 444-64 (Decree No. 467 (Havana Docks)); *Seaboard Marine LTD*, 135 F.4th at 946 (port concession “was to last for seventy years”); Decree-Law No. 1654 of Jul. 7, 1934 (20 year concession);

Decree-Law No. 2331 of Aug. 15, 1955 (30 year concession).

As Cuba's and the cruise lines' exploitation of Havana Docks' facilities shows, very significant payments to use such facilities go straight to propping up the most repressive elements of the Cuban regime. See *supra* p. 16. The cruise lines' payments for the provision of onshore tours to tourist attractions went to affiliates of the Cuban military and security forces singled out by OFAC and the U.S. President as presenting especially significant foreign policy concerns, as were payments to the port operator. See J.A. 369-70 (NSPM-5 §3(a)(i) (limiting funds to GAESA)); Nora Gamez Torres, *These Cuban Companies are Actually Run by the Military*, The Miami Herald (Aug. 6, 2025) (GAESA owns CIMEX and Gaviota, "GAESA's flagship tourism company"); Pet. Supp. Br. 6-7.

Under the Eleventh Circuit's narrow construction of Title III's protections, this pattern of payments to Cuban security forces would be repeated time and again as businesses sought to exploit Cuba's mines, hotels, ports, transportation facilities, and other facilities confiscated from U.S. nationals. Congress, in contrast, intended Title III to prevent those results, and designed Title III to rule those properties out of bounds to exploitation by providing an ongoing and effective remedy for all U.S. nationals whose property Cuba had confiscated.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Eleventh Circuit and remand for further proceedings.

Respectfully submitted,

RICHARD KLINGLER
Counsel of Record
ELLIS GEORGE LLP
2021 L Street NW
Suite 101-316
Washington, DC 20036
(202) 492-4678
rklingler@ellisgeorge.com

VINCENT H. LI
ELLIS GEORGE LLP
152 West 57th Street, 28th fl.
New York, NY 10019

JARED FORBUS
ELLIS GEORGE LLP
2121 Avenue of the Stars
Suite 3000
Los Angeles, CA 90067

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**Cuban Liberty and Democratic Solidarity
(LIBERTAD) Act, Pub. L. No. 104-114, 110 Stat.
785 (Mar. 12, 1996) (excerpts)**

22 U.S.C. §6021 – FINDINGS.

The Congress makes the following findings:

(1) The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of—

(A) the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually;

(B) 36 years of communist tyranny and economic mismanagement by the Castro government;

(C) the extreme decline in trade between Cuba and the countries of the former Soviet bloc; and

(D) the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.

(2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of this economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba.

(3) The Castro regime has made it abundantly clear that it will not engage in any substantive political reforms that would lead to democracy, a market economy, or an economic recovery.

(4) The repression of the Cuban people, including a ban on free and fair democratic elections, and

continuing violations of fundamental human rights, have isolated the Cuban regime as the only completely nondemocratic government in the Western Hemisphere.

(5) As long as free elections are not held in Cuba, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.

(6) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.

(7) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the people of Cuba living under tyranny.

(8) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

(9) The United States has shown a deep commitment, and considers it a moral obligation, to promote and protect human rights and fundamental freedoms as expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights.

(10) The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people.

(11) The Cuban Democracy Act of 1992 [22 U.S.C. 6001 et seq.] calls upon the President to encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(12) Amendments to the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] made by the FREEDOM Support Act require that the President, in providing economic assistance to Russia and the emerging Eurasian democracies, take into account the extent to which they are acting to “terminate support for the communist regime in Cuba, including removal of troops, closing military facilities, and ceasing trade subsidies and economic, nuclear, and other assistance”.

(13) The Cuban Government engages in the illegal international narcotics trade and harbors fugitives from justice in the United States.

(14) The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence.

(15) The Castro government has utilized from its inception and continues to utilize torture in various forms (including by psychiatry), as well as execution, exile, confiscation, political imprisonment, and other forms of terror and repression, as means of retaining power.

(16) Fidel Castro has defined democratic pluralism as “pluralistic garbage” and continues to make clear that

he has no intention of tolerating the democratization of Cuban society.

(17) The Castro government holds innocent Cubans hostage in Cuba by no fault of the hostages themselves solely because relatives have escaped the country.

(18) Although a signatory state to the 1928 Inter-American Convention on Asylum and the International Covenant on Civil and Political Rights (which protects the right to leave one's own country), Cuba nevertheless surrounds embassies in its capital by armed forces to thwart the right of its citizens to seek asylum and systematically denies that right to the Cuban people, punishing them by imprisonment for seeking to leave the country and killing them for attempting to do so (as demonstrated in the case of the confirmed murder of over 40 men, women, and children who were seeking to leave Cuba on July 13, 1994).

(19) The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions of sovereign states in the Western Hemisphere in violation of the Charter of the Organization of American States and other international agreements and international law.

(20) The United Nations Commission on Human Rights has repeatedly reported on the unacceptable human rights situation in Cuba and has taken the extraordinary step of appointing a Special Rapporteur.

(21) The Cuban Government has consistently refused access to the Special Rapporteur and formally expressed its decision not to “implement so much as one comma” of the United Nations Resolutions appointing the Rapporteur.

(22) The United Nations General Assembly passed Resolution 47–139 on December 18, 1992, Resolution 48–142 on December 20, 1993, and Resolution 49–200 on December 23, 1994, referencing the Special Rapporteur’s reports to the United Nations and condemning violations of human rights and fundamental freedoms in Cuba.

(23) Article 39 of Chapter VII of the United Nations Charter provides that the United Nations Security Council “shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . , to maintain or restore international peace and security.”.

(24) The United Nations has determined that massive and systematic violations of human rights may constitute a “threat to peace” under Article 39 and has imposed sanctions due to such violations of human rights in the cases of Rhodesia, South Africa, Iraq, and the former Yugoslavia.

(25) In the case of Haiti, a neighbor of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.

(26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorized the use of “all necessary means” to restore the “democratically elected government of Haiti”, and the democratically elected government of Haiti was restored to power on October 15, 1994.

(27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years, and the continued failure to do so constitutes ethically improper conduct by the international community.

(28) For the past 36 years, the Cuban Government has posed and continues to pose a national security threat to the United States.

22 U.S.C. §6022 – PURPOSES.

The purposes of this chapter are—

- (1) 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;
- (2) to strengthen international sanctions against the Castro government;
- (3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;
- (4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;
- (5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and
- (6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

22 U.S.C. §6023 – DEFINITIONS.

As used in this chapter, the following terms have the following meanings:

(1) AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE—The term “agency or instrumentality of a foreign state” has the meaning given that term in section 1603(b) of title 28.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES—The term “appropriate congressional committees” means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(3) COMMERCIAL ACTIVITY—The term “commercial activity” has the meaning given that term in section 1603(d) of title 28.

(4) CONFISCATED.—As used in subchapters I and III, the term “confiscated” refers to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959—

- (i) without the property having been returned or adequate and effective compensation provided; or
- (ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually

accepted settlement procedure;
and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959—

- (i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;
- (ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or
- (iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(5) CUBAN GOVERNMENT—

(A) The term “Cuban Government” includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term “agency or instrumentality of the Government of Cuba” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, with each reference in such section to “a foreign state” deemed to be a reference to “Cuba”.

(6) DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA—The term “democratically elected government

in Cuba” means a government determined by the President to have met the requirements of section 6066 of this title.

(7) ECONOMIC EMBARGO OF CUBA—The term “economic embargo of Cuba” refers to—

(A) the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest) that was imposed against Cuba pursuant to section 2370(a) of this title, section 4305(b) of title 50, the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law; and

(B) the restrictions imposed by section 902(c) of the Food Security Act of 1985.

(8) FOREIGN NATIONAL—The term “foreign national” means—

(A) an alien; or

(B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(9) KNOWINGLY—The term “knowingly” means with knowledge or having reason to know.

(10) OFFICIAL OF THE CUBAN GOVERNMENT OR THE RULING POLITICAL PARTY IN CUBA—The term “official of the Cuban Government or the ruling political party in Cuba” refers to any member of the Council of Ministers, Council of State, central committee of the

Communist Party of Cuba, or the Politburo of Cuba, or their equivalents.

(11) PERSON—The term “person” means any person or entity, including any agency or instrumentality of a foreign state.

(12) PROPERTY.—

(A) The term “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.

(B) For purposes of subchapter III of this chapter, the term “property” does not include real property used for residential purposes unless, as of March 12, 1996—

- (i) the claim to the property is held by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949; or
- (ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

(13) TRAFFICS.—

(A) As used in subchapter III, and except as provided in subparagraph (B), a person “traffics” in confiscated property if that person knowingly and intentionally—

- (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
 - (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
 - (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,
- without the authorization of any United States national who holds a claim to the property.

(B) The term “traffics” does not include—

- (i) the delivery of international telecommunication signals to Cuba;
- (ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;
- (iii) 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; or

- (iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(14) TRANSITION GOVERNMENT IN CUBA—The term “transition government in Cuba” means a government that the President determines is a transition government consistent with the requirements and factors set forth in section 6065 of this title.

(15) UNITED STATES NATIONAL—The term “United States national” means—

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

**Title III—Protection of Property Rights Of
United States Nationals**

22 U.S.C. §6081 – FINDINGS.

The Congress makes the following findings:

- (1) Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution.
- (2) The 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.
- (3) Since Fidel Castro seized power in Cuba in 1959—
 - (A) he has trampled on the fundamental rights of the Cuban people; and
 - (B) through his personal despotism, he has confiscated the property of—
 - (i) millions of his own citizens;
 - (ii) thousands of United States nationals; and
 - (iii) thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States.
- (4) It is in the interest of the Cuban people that the Cuban Government respect equally the property

rights of Cuban nationals and nationals of other countries.

(5) The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals.

(6) This “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—

(A) 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; and

(B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.

(7) The United States Department of State has notified other governments that the transfer to third parties of properties confiscated by the Cuban Government “would complicate any attempt to return them to their original owners.”

(8) The international judicial system, as currently structured, lacks 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.

(9) International law recognizes that a nation has the ability to provide for rules of law with respect to

conduct outside its territory that has or is intended to have substantial effect within its territory.

(10) The United States Government has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.

(11) To deter trafficking in wrongfully confiscated property, 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.

**22 U.S.C. §6082 – LIABILITY FOR TRAFFICKING IN
CONFISCATED PROPERTY CLAIMED BY UNITED
STATES NATIONALS**

(a) CIVIL REMEDY.—

(1) LIABILITY FOR TRAFFICKING

(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this subchapter, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the

International Claims
Settlement Act of 1949 [22
U.S.C. 1621 et seq.], plus
interest;

(II) the amount determined
under section 6083(a)(2) of
this title, plus interest; or

(III) the fair market value of
that property, calculated as
being either the current
value of the property, or the
value of the property when
confiscated plus interest,
whichever is greater; and

(ii) court costs and reasonable
attorneys' fees.

(B) Interest under subparagraph (A)(i) shall
be at the rate set forth in section 1961 of title
28, computed by the court from the date of
confiscation of the property involved to the date
on which the action is brought under this
subsection.

(2) PRESUMPTION IN FAVOR OF THE CERTIFIED
CLAIMS.—There shall be a presumption that the
amount for which a person is liable under clause
(i) of paragraph (1)(A) is the amount that is
certified as described in subclause (I) of that
clause. The presumption shall be rebuttable by
clear and convincing evidence that the amount
described in subclause (II) or (III) of that clause is
the appropriate amount of liability under that
clause.

(3) INCREASED LIABILITY.—

(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 [22 U.S.C. 1643 et seq.], be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to—

- (i) a person against whom the action is to be initiated, or
- (ii) a person who is to be joined as a defendant in the action,

at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of—

- (i) the amount determined under paragraph (1)(A)(ii), and
- (ii) 3 times the amount determined applicable under paragraph (1)(A)(i).

(D) Notice to a person under subparagraph (B)—

- (i) shall be in writing;
- (ii) shall be posted by certified mail or personally delivered to the person; and
- (iii) shall contain—

- (I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor;
- (II) a demand that the unlawful trafficking in the claimant's property cease immediately; and
- (III) a copy of the summary statement published under paragraph (8).

(4) APPLICABILITY.—

(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after March 12, 1996.

(B) In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996.

(C) In the case of property confiscated on or after March 12, 1996, a United States national 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 under this section.

(5) TREATMENT OF CERTAIN ACTIONS.—

(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section.

(B) In the case of any action brought under this section by a United States national whose underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement

Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on March 12, 1996.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

(6) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(7) LICENSES NOT REQUIRED.—

(A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 4305(b) of title 50, that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on March 12, 1996.

(B) Notwithstanding any other provision of law, and for purposes of this subchapter only, any claim against the Cuban Government shall not be deemed to be an interest in property the transfer of which to a United States national required before March 12, 1996, or requires after March 12, 1996, a license issued by, or the permission of, any agency of the United States.

(8) PUBLICATION BY ATTORNEY GENERAL.—Not later than 60 days after March 12, 1996, the Attorney General shall prepare and publish in the Federal Register a concise summary of the provisions of this subchapter, including a statement of the liability under this subchapter of a person trafficking in confiscated property, and the remedies available to United States nationals under this subchapter.

(b) AMOUNT IN CONTROVERSY.—An action may be brought under this section by a United States national only where the amount in controversy exceeds the sum or value of \$50,000, exclusive of interest, costs, and attorneys' fees. In calculating \$50,000 for purposes of the preceding sentence, the applicable amount under subclause (I), (II), or (III) of subsection (a)(1)(A)(i) may not be tripled as provided in subsection (a)(3).

(c) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in this subchapter, the provisions of title 28 and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of title 28.

(2) SERVICE OF PROCESS.—In an action under this section, service of process on an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law, shall be made in accordance with section 1608 of title 28.

(d) ENFORCEABILITY OF JUDGMENTS AGAINST CUBAN GOVERNMENT.—

In an action brought under this section, any judgment against an agency or instrumentality of the Cuban Government shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(e) OMITTED.

(f) ELECTION OF REMEDIES.

(1) ELECTION.—Subject to paragraph (2)—

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may

not bring an action under this section on that claim.

(2) TREATMENT OF CERTIFIED CLAIMANTS.—

(A) In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949—

- (i) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;
- (ii) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment under a claims agreement described in clause (i) but only to the extent of the difference between the amount of the recovery and the amount of the certified claim; and
- (iii) if there is no recovery in the action, the United States national may receive payment on the

certified claim under a claims agreement described in clause (i) to the same extent as any certified claimant who does not bring an action under this section.

(B) In the event some or all actions brought under this section are consolidated by judicial or other action in such manner as to create a pool of assets available to satisfy the claims in such actions, including a pool of assets in a proceeding in bankruptcy, every claimant whose claim in an action so consolidated was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 shall be entitled to payment in full of its claim from the assets in such pool before any payment is made from the assets in such pool with respect to any claim not so certified.

(g) DEPOSIT OF EXCESS PAYMENTS BY CUBA UNDER CLAIMS AGREEMENT.—Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 [22 U.S.C. 1643 et seq.] that are in excess of the payments made on such certified claims after the application of subsection (f) shall be deposited into the United States Treasury.

(h) TERMINATION OF RIGHTS.—

(1) IN GENERAL.—All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government—

(A) may be suspended under section 6064(a) of this title; and

(B) shall cease upon transmittal to the Congress of a determination of the President under section 6063(c)(3) of this title that a democratically elected government in Cuba is in power.

(2) PENDING SUITS.—The suspension or termination of rights under paragraph (1) shall not affect suits commenced before the date of such suspension or termination (as the case may be), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension or termination had not occurred.

(i) IMPOSITION OF FILING FEES.—The Judicial Conference of the United States shall establish a uniform fee that shall be imposed upon the plaintiff or plaintiffs in each action brought under this section. The fee should be established at a level sufficient to recover the costs to the courts of actions brought under this section. The fee under this subsection is in addition to any other fees imposed under title 28.

22 U.S.C. §6083 – PROOF OF OWNERSHIP OF CLAIMS TO CONFISCATED PROPERTY.

(a) EVIDENCE OF OWNERSHIP.—

(1) CONCLUSIVENESS OF CERTIFIED CLAIMS.—In any action brought under this subchapter, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign

Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

- (2) CLAIMS NOT CERTIFIED.—If in an action under this subchapter a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this subchapter and do not constitute certifications under title V of the International Claims Settlement Act of 1949.
- (3) EFFECT OF DETERMINATIONS OF FOREIGN OR INTERNATIONAL ENTITIES.—In determining the amount or ownership of a claim in an action under this subchapter, the court shall not accept as conclusive evidence any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration to which the United States or the claimant submitted the claim.
- (b) OMITTED.
- (c) RULE OF CONSTRUCTION.—Nothing in this chapter or in section 514 of the International Claims Settlement Act of 1949 [22 U.S.C. 1643l], as added by subsection (b), shall be construed—

- (1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or
- (2) as superseding, amending, or otherwise altering certifications that have been made under title V of the International Claims Settlement Act of 1949 before March 12, 1996.

22 U.S.C. §6084 – LIMITATION OF ACTIONS.

An action under section 6082 of this title may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.

22 U.S.C. §6085 – EFFECTIVE DATE.

(a) IN GENERAL.—

Subject to subsections (b) and (c), this subchapter and the amendments made by this subchapter shall take effect on August 1, 1996.

(b) SUSPENSION AUTHORITY.—

- (1) SUSPENSION AUTHORITY.—The President may suspend the effective date under subsection (a) for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before such effective date that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

- (2) ADDITIONAL SUSPENSIONS.—The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.
- (c) OTHER AUTHORITIES.—
- (1) SUSPENSION.—After this subchapter and the amendments of this subchapter have taken effect—
- (A) no person shall acquire a property interest in any potential or pending action under this subchapter; and
- (B) the President may suspend the right to bring an action under this subchapter with respect to confiscated property for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.
- (2) ADDITIONAL SUSPENSIONS.—The President may suspend the right to bring an action under this

subchapter for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

- (3) PENDING SUITS.—The suspensions of actions under paragraph (1) shall not affect suits commenced before the date of such suspension, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension had not occurred.

- (d) RESCISSION OF SUSPENSION.—The President may rescind any suspension made under subsection (b) or (c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

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