

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**

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VOLUME I**

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TABLE OF CONTENTS

	Page
<u>VOLUME I</u>	
Eleventh Circuit Opinion, Oct. 22, 2024.....	1
S.D. Fla. Summary Judgment Order, Mar. 21, 2022	41
Havana Docks Certified Claim Proposed Order, Apr. 21, 1971, Carnival Dkt. 1-1	254
Havana Docks Certified Claim Final Order, Sept. 28, 1971, Carnival Dkt. 1-1	264
Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996	267
22 U.S.C. § 1622g	350
22 U.S.C. § 1623	351
22 U.S.C. §§ 1643, 1643a-m	358
National Security Presidential Memorandum 5, June 30, 2025	365
General Law of Public Works of the Island of Cuba, May 30, 1883, Carnival Dkt. 331-5	377
Law of Ports for the Island of Cuba, Oct. 31, 1890, Carnival Dkt. 331-3.....	425
Decree No. 467, Nov. 29, 1905, Carnival Dkt. 331-4	444
Decree No. 1944, Dec. 13, 1920, Carnival Dkt. 73-4	461

TABLE OF CONTENTS—Continued

	Page
Decree No. 2424, Sep. 7, 1934, Carnival Dkt. 73-5	473
Resolution No. 3, Oct. 24, 1960, Carnival Dkt. 73-6	482
Acta, Nov. 21, 1960, Carnival Dkt. 73-7	497

VOLUME II

Photographs of Havana Docks Terminal, 1959, MSC Dkt. 41-9	499
Photographs of Havana Docks Terminal, 2015- 2019, Carnival Dkt. 73-10, MSC Dkt. 41-10 ...	501
CLIA Memorandum re: Title III Analysis, Feb. 20, 2019, Norwegian Dkt. 220-41	503
Carnival Dkt. 326-26	520
Carnival Dkt. 326-34	588
Carnival Dkt. 326-45 (excerpt)	630
Carnival Dkt. 326-47 (excerpt)	676
Expert Report of Ambar Diaz, Esq. (excerpt), Carnival Dkt. 331-1	679
MSC Dkt. 357-17 (excerpt)	713
Norwegian Dkt. 214-48	761
Norwegian Dkt. 390-33	769
Norwegian Dkt. 390-34	772

TABLE OF CONTENTS—Continued

	Page
Norwegian Dkt. 390-35	775
Norwegian Dkt. 234-36	784
Norwegian Dkt. 234-37	796
Norwegian Dkt. 234-38	808
Norwegian Dkt. 234-39	820
Norwegian Dkt. 235-12	832
Norwegian Dkt. 237-24 (excerpt)	834
Norwegian Dkt. 237-27	837
Norwegian Dkt. 237-28 (excerpt)	841
Norwegian Dkt. 238-1	843
Royal Caribbean Dkt. 122-18	860
Royal Caribbean Dkt. 122-23	869
Royal Caribbean Dkt. 133-5 (excerpt)	876
Royal Caribbean Dkt. 133-6 (excerpt)	895
Declaration of Margarita Levay and Selected Exhibits Thereto, Royal Caribbean Dkt. 133-35	902

1

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-10151

HAVANA DOCKS CORPORATION,
Plaintiff-Appellee,

versus

ROYAL CARIBBEAN CRUISES, LTD.,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19-cv-23590-BB

No. 23-10171

HAVANA DOCKS CORPORATION,
Plaintiff-Appellee Cross Appellant,

versus

ROYAL CARIBBEAN CRUISES, LTD.,
NORWEGIAN CRUISE LINE HOLDINGS, LTD.,
CARNIVAL CORPORATION,
a foreign corporation doing business as
Carnival Cruise Lines,
SC CRUISES S.A. CO.,
MSC CRUISES (USA), INC., et al.,
Defendants-Appellants Cross Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19-cv-23591-BB

Before WILLIAM PRYOR, Chief Judge, and
JORDAN and BRASHER, Circuit Judges.

JORDAN, Circuit Judge.

Title III of the Cuban Liberty and Democratic Solidarity Act, known as the Helms-Burton Act, provides a private cause of action for certain U.S. nationals against anyone who “traffics” in “property which was confiscated by the Cuban Government on or after January 1, 1959.” 22 U.S.C. § 6082(a)(1)(A). For over 20 years, Title III of the Act remained dormant because the right to bring an action under Title III was suspended by Presidential decree. *See* 22 U.S.C. § 6085(c)(1)(B) (granting the President the authority to suspend the right to bring an action under Title III if, among other things, the President determines the suspension is “necessary to the national interests of the United States and will expedite a transition to democracy in Cuba”). Title III has been fully effective since May of 2019, *see Garcia-Bengochea v. Carnival Corp.*, 57 F. 4th 916, 920 (11th Cir. 2023), and trafficking cases filed since then have posed a number of issues of first impression.

In these consolidated cases, the district court entered Title III judgments of over \$100 million against each of four cruise lines (Royal Caribbean Cruises, Norwegian Cruise Line Holdings, Carnival Corporation, and MSC Cruises) for trafficking in the confiscated property of Havana Docks at the Port of

Havana (now known as the Havana Cruise Port Terminal) from 2016 to 2019. The court ruled at summary judgment that the cruise lines had engaged in trafficking by having their ships dock at the Terminal and one of its piers, by using that property to embark and disembark passengers, and by having that property serve as the starting and ending point for shore excursions for cruise travelers. *See Havana Docks Corp. v. Carnival Corp.*, 592 F. Supp. 3d 1088, 1153–55 (S.D. Fla. 2022).

Havana Docks’ confiscated property, however, was not a fee simple ownership interest in real property at the Port of Havana. It was, instead, a 99-year usufructuary concession that would have expired in 2004 were it not for the Cuban Government’s expropriation in 1960. So we must decide whether the cruise lines engaged in trafficking under Title III when they used the Terminal and one of its piers from 2016 to 2019.

After a review of the record, and with the benefit of oral argument, we hold that Havana Docks’ limited property interest had expired, for purposes of Title III, at the time of the alleged trafficking by the cruise lines. We therefore set aside the judgments in favor of Havana Docks and remand for further proceedings as to its other claims against Carnival.¹

I

These cases come to us in a summary judgment posture. That means we view the evidence in the light most favorable to the cruise lines and determine whether Havana Docks was entitled to summary

¹ Given our resolution, we need not and do not address other issues raised by the cruise lines.

judgment on its trafficking claims as a matter of law under Rule 56. *See, e.g., Tolan v. Cotton*, 572 U.S. 650, 651 (2014); *Benning v. Comm’r, Ga. Dept. of Corr.*, 71 F. 4th 1324, 1328 (11th Cir. 2023).

II

Title III allows a “[U.S.] national who owns the claim to [confiscated] property” to bring an action for trafficking. *See* 22 U.S.C. § 6082(a)(1)(A). The district court ruled, at summary judgment, that Havana Docks is a U.S. national under Title III and could therefore assert claims for trafficking. *See Havana Docks*, 592 F. Supp. 3d at 1161–65. The cruise lines contend that this constituted error, but we disagree.

Under Title III a U.S. national is “(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.” 22 U.S.C. § 6023(15)(A)–(B). It is undisputed that Havana Docks satisfies the first part of this second definition, as it is (and has been) organized under the laws of Delaware since the early part of the 20th century. The parties’ main dispute centers around Havana Docks’ principal place of business. Because we agree with the district court that Havana Docks is a U.S. national under § 6023(15)(B), we need not address § 6023(15)(A).

Havana Docks was incorporated in Delaware in 1917 and was a U.S. national in 1960 when the Cuban Government expropriated its usufructuary concession. Indeed, its corporate nationality was a significant reason for the confiscation. *See In re Havana Docks Corp.*, Foreign Cl. Settlement Comm’n

No. 2492, Proposed Decision, at 2 (Apr. 21, 1971) (later finalized in *In re Havana Docks Corp.*, Foreign Cl. Settlement Comm’n No. 2492, Final Decision (Sept. 28, 1971)); Carnival D.E. 73-8 at 6. *See also* Ada Ferrer, *Cuba: An American History* 347–48 (2021) (describing the Castro regime’s expropriation of assets and property belonging to U.S. nationals and U.S. companies in the 1960s).

For purposes of diversity jurisdiction under 28 U.S.C. § 1332(c)(1), the principal place of business of a corporation is its “nerve center.” “[I]n practice” that is “normally . . . the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the ‘nerve center,’ and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).” *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010). A corporation’s nerve center is a “single place.” *Id.*

Although *Hertz* was a diversity jurisdiction case, we think its nerve-center test should apply to determine a company’s principal place of business for purposes of § 6023(15)(B) of Title III. Both § 1332(c)(1)—the diversity provision at issue in *Hertz*—and § 6023(15)(B)—the Title III provision at issue here—use the term “principal place of business,” and *Hertz* manifests a preference for “simple jurisdictional tests.” *Holston Invs., Inc. B.V.I. v. LanLogistics Corp.*, 677 F.3d 1068, 1071 (11th Cir. 2012).

Here’s how the district court described the record evidence on the issue of Havana Docks’ principal place of business:

The only corporate address associated with Havana Docks is in Lexington, Kentucky. Havana Docks has only two functions: to exist and manage its income-producing assets. Indeed, Havana Docks has no employees. [Jerry] Johnson, who operates out of Kentucky, is tasked with performing both of those functions. It is undisputed that [Mr.] Johnson has performed duties to, among other things, maintain Havana Docks' corporate status active and in good standing; coordinate the filing of Havana Docks' taxes; and maintain Havana Docks' ledger, balance sheets, [and] income statements.

Mickael Behn, Havana Docks' President, testified that "[a]ll decisions are executed by [Mr.] Johnson, and that Johnson could do "[p]retty much everything" without his input. [Mr.] Behn added that [Mr.] Johnson "has authority . . . to do what he needs to do for Havana Docks. It's a certified claim. And to keep the company running." [Mr.] Johnson similarly testified that although he reports to [Mr.] Behn as President, [he] is "largely responsible" for "the day-to-day business decisions for Havana Docks." [Mr.] Johnson further stated at deposition that [Mr.] Behn does not conduct any Havana Docks business in England.

Havana Docks, 592 F. Supp. 3d at 1163–64 (record citations omitted).

The cruise lines base their challenge on the fact that Mr. Behn lives in London, England. In their view, Mr. Behn directs Havana Docks' corporate aff-

airs from there—for example, approving Mr. Johnson’s hiring of an accountant and counsel—and as a result the company’s “nerve center” is located outside of the United States. *See* Joint Br. for RC, NCL, and MSC Cruises at 65–69; Br. for Carnival at 46–60. We see things differently.

We first consider the “nature of [Havana Docks’] activities, as it is difficult to locate a corporation’s brain without first identifying its body.” *Johnson v. SmithKline Beecham Corp.*, 724 F. 3d 337, 356 n.21 (3d Cir. 2013). In this respect Havana Docks’ only purposes are to maintain its corporate existence and manage its income-producing assets (e.g., its Title III trafficking claims). We must therefore look to where those activities are “controlled and directed.” *Id.* Mr. Johnson, though an unpaid director, keeps Havana Docks’ corporate status active and in good standing, coordinates the filing of Havana Docks’ taxes, and maintains Havana Docks’ ledger, balance sheets, and income statements. And he does all of those things in Kentucky, the place where Havana Docks has its only corporate address.

That Mr. Behn made some strategic corporate decisions from London does not call for that location to be Havana Docks’ nerve center. Mr. Johnson made decisions about “paying taxes, investments, administration . . . [p]retty much everything.” Carnival D.E. 508-17 at 39. Indeed, Mr. Behn testified that Mr. Johnson has full “authority” and “autonomy” to keep Havana Docks going and to protect its certified claim. *See id.*; NCL D.E. 279-1 at 8. For his part, Mr. Johnson testified without contradiction that he could “bind the company” on any decision without Mr. Behn’s authorization. *See* Carnival D.E. 318-2 at 21.

The cruise lines point to evidence indicating that Mr. Behn could override Mr. Johnson if the two disagreed, but there is no evidence that there has been any such disagreement on a matter of importance. The nerve center test, as articulated in *Hertz*, focuses on the actual management of a company and not theoretical possibilities. *See Hertz*, 559 U.S. at 80 (explaining that the focus is on the “place where the corporation’s high-level officers direct, control, and coordinate the corporation’s activities”). *See also* 13F Arthur R. Miller, Fed. Prac. & Pro. § 3625 (3d ed. & June 2024 update) (“If . . . managerial control, as well as the company’s actual operations, is dispersed among several states or is located in the same state as the executive offices, then there is a substantial amount of judicial precedent for the proposition that the site of executive and administrative offices should be relied upon to determine a corporation’s principal place of business for purposes of diversity jurisdiction.”).

The fact that Havana Docks is not registered or licensed to do business in Kentucky does not tip the scales in favor of England as the company’s principal place of business. That is because Havana Docks does not do any substantive business and because it is also not registered or licensed to do business in England. At best, this matter is a wash.

In sum, Havana Docks is incorporated in Delaware and has its principal place of business—its nerve center—in Kentucky. On this record, no reasonable jury could have found otherwise. The district court correctly ruled that Havana Docks is a U.S. national under Title III.

III

Havana Docks is the owner of an interest in, and claim to, certain commercial waterfront real property in the Port of Havana (now known as the Havana Cruise Port Terminal). Here's what that property interest consists of and how it came to be.

A

In 1905, the Cuban Government issued Decree No. 467 granting a concession to Compañía del Puerto (as the successor to the interest of Sylvester Scovel) for a 50-year term. The concession, issued pursuant to the provisions of the Law of Public Works and the Law of Ports, allowed Compañía del Puerto to build at its own expense a pier at the Port of Havana—which constituted state property—under the control and supervision of the Cuban Government. The pier, which was to have mechanical installations, was to be used in the docking, loading, and unloading of vessels. Once the construction was completed, Compañía del Puerto could operate a cargo service on the premises subject to the regulations, fees, and tariffs of the Cuban Government. The concession granted Compañía del Puerto a “usufruct” in certain public areas on which the installed works were located, and in the public spaces between the streets that were established as public thoroughfares between certain jetties. *See Havana Docks*, 592 F. Supp. 3d at 1121 (quoting Carnival D.E. 73-3 at 3); Carnival D.E. 331-1 at 7–8, 10, 14 (Declaration of Ambar Diaz, Esq.); Decree No. 467, Condition No. 4 Nov. 29, 1905, Gaceta Oficial [G.O.] (Cuba). *See also*

Carnival D.E. 331-4 at 12 (English translation of Decree No. 467).²

In civil law or mixed law jurisdictions, a “concession” is a “franchise, license, permit, [or] privilege[.]” Henry Saint Dahl, *Dahl’s Law Dictionary* 79 (3d ed. 1999). A “usufruct” is “the right to enjoy a thing owned by another person and to receive all the products, utilities, and advantages produced thereby, under the obligation of preserving its form and substance, unless the deed constituting [the] usufruct or the law otherwise decrees.” *Id.* at 496 97. *Accord* 2 Butterworths Spanish-English Legal Dictionary 659 (1991) (defining “usufruct” as a “right of enjoyment of or right to use another’s property and to take the fruits therefrom without altering its substance,” and explaining that it is “[u]sually temporary and may be gratuitous or for consideration”); Black’s Law Dictionary 1712 (4th ed. 1951) (defining “usufruct,” in “the civil law,” as the “right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing”).

In 1910, the Cuban Government issued Decree 1022. This law allowed Compañía del Puerto to build four piers and set an approved fee schedule for use of

² The concession granted to Compañía del Puerto contained a provision concerning expropriation. The provision stated that “[i]f at any time during the term of the concession the works were to be expropriated . . . by virtue of the application of the [Law of Ports], the Government or its agencies shall indemnify the concession holder for the value of all works built by the latter, including the Customs Inspectors Department and the dock on the north side of the jetty.” *Havana Docks*, 592 F. Supp. 3d at 1121.

the piers once constructed. *See* Carnival D.E. 331-1 at 9; Decree No. 1022, Nov. 19, 1910, Gaceta Oficial [G.O.] (Cuba). *See also* Carnival D.E. 331-4 at 21–24 (English translation of Decree No. 1022).

Compañía del Puerto assigned its rights and interests under the concession to Port of Havana Docks Company. Decree No. 184 approved this assignment in 1911, with all of the terms of the initial concession remaining in place. *See* Carnival D.E. 331-1 at 9; Decree No. 184, Mar. 13, 1911, Gaceta Oficial [G.O.] (Cuba). *See also* Carnival D.E. 331-4 at 3 (English translation of Decree No. 184). In 1920, the Cuban Government issued Decree No. 1944, which amended the concession so that two of the piers would become a single pier of larger capacity for cargo handling. Decree No. 1944 also extended the term of the concession from 50 years to 99 years (with the term beginning in 1905). *See* Decree No. 1944, Dec. 13, 1920, Gaceta Oficial [G.O.] (Cuba); Carnival D.E. 331-1 at 18–19. *See also* Royal Caribbean D.E. 31-4 at 2–4 (English translation of Decree No. 1944).³

Under the Law of Public Works, concessions could only be granted for a maximum term of 99 years, and any rights granted to the beneficiary would expire when the fixed term ended. This meant, effectively, that the beneficiary's property at the Port of Havana would revert back to the Cuban Government at the end of the 99-year term. *See* Carnival D.E. 331-1 at 11, 18–19. *See also* Ley General de Obras Públicas de la Isla de Cuba y Reglamento Para Su Ejecucion 15

³ In one of its submissions to the Foreign Claims Settlement Commission in 1959, Havana Docks' appraisal expert stated that the concession "ran for 99 years, to the year 2004." Carnival D.E. 331-1 at 20 (quoting Luis Parajon's appraisal report).

(1891), *translated in* General Law of Public Works of the Island of Cuba and Regulations for its Execution 15 (U.S. Customs and Insular Affs., War Dep't, 1899). The concession did not provide the beneficiary with exclusive rights to the piers, and the Law of Ports provided that the concession could be unilaterally terminated by the Cuban Government at any time with the beneficiary having the exclusive recourse of seeking compensation for the work performed and the materials used. *See* Carnival D.E. 331 1 at 15–16, 20–21. *See generally* Ley de Puertos de la Isla de Cuba (1890), *translated in* The Law of Ports in Force in the Island of Cuba 11-12 (U.S. Customs and Insular Affs., War Dep't, 1900).

In 1928, Port of Havana Docks Company sold all of its corporate stock to Havana Docks, which as noted was and is a Delaware corporation. The deed was notarized in Cuba that same year, and Havana Docks thereby acquired the concession at the Port of Havana. The construction of the piers finished in 1930, and four years later the Cuban Government approved the assignment of the concession from Port of Havana Docks Company to Havana Docks. In doing so, the Cuban Government noted that the concession's purpose was to serve the public interest. *See* Carnival D.E. 331-1 at 10.

B

Shortly after coming to power in 1959, the Castro regime began nationalizing and expropriating property owned or held by U.S. nationals and U.S. companies. *See generally* Ferrer, Cuba: An American History, at 347–48. In 1960, through Resolution No. 3 and pursuant to Law No. 851, the Castro regime confiscated (i.e., expropriated) the concession held by Havana Docks and forcibly took possession of its

premises at the Port of Havana. *See* Carnival D.E. 73-6 at 7 & D.E. 337 at 6; NCL D.E. 367 at 29–30; Law No. 851, Oct. 24, 1960, Gaceta Oficial [G.O.] (Cuba). Havana Docks has never received any compensation from the Cuban Government for the expropriation of its concession or the taking of its property. *See* Carnival D.E. 318-1 at 17.

“In response to the takings of American property in Cuba by the Castro regime, Congress amended the International Claims Settlement Act of 1949 with the Cuban Claims Act of 1964, 22 U.S.C. §§ 1643–1643k. The Cuban Claims Act authorized the Foreign Claims Settlement Commission to gather information for an eventual negotiation on claims of confiscated properties in Cuba.” *Garcia-Bengochea*, 57 F. 4th at 920 (citations omitted). The Commission “reviewed the applications of U.S. corporate and individual claimants and certified as legitimate nearly 6,000 claims valued at about \$1.9 billion.” *Id.* “In 2005 and 2006 the Commission, pursuant to a subsequent grant of statutory authority, conducted a second round of claims review. *See* Pub. L. 105-277, § 2211, 112 Stat. 2681-812. Cuba and the United States, however, have never reached a settlement on these claims (or, for that matter, on claims by Cuba against the United States).” *Id.*

Havana Docks filed a claim with the Foreign Claims Settlement Commission. The Commission issued a proposed decision on the claim in April of 1971. It then rendered a final decision September of 1971 which affirmed the proposed decision except for an increase in some land values. *See In re Havana Docks Corp.*, Foreign Cl. Settlement Comm’n No. 2492, Proposed Decision (Apr. 21, 1971); *In re Havana Docks Corp.*, Foreign Cl. Settlement Comm’n

No. 2492, Final Decision (Sept. 28, 1971); Carnival D.E. 73-8.

First, the Commission found that Havana Docks was a U.S. national within the meaning of the Cuban Claims Act. This was because more than 50% of its stock was held by persons who were U.S. nationals. *See In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Proposed Decision, at 2 (Apr. 21, 1971) (later finalized in *In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Final Decision (Sept. 28, 1971)).

Second, the Commission made a number of findings about Havana Docks' concession and the Cuban Government's expropriation. It found that (a) Havana Docks had a concession which was renewed in 1934 for the construction and operation of wharves and warehouses in the Port of Havana and which was set "to expire in 2004, at which time [it] had to deliver the piers to the [Cuban Government] in good state of preservation;" (b) Havana Docks acquired at the same time certain real property facing the Bay of Havana; (c) Havana Docks owned certain installation machinery, loading and unloading equipment, vehicles, furniture, and fixtures at the Port of Havana and at its corporate offices; (d) in June of 1946 Havana Docks' property was encumbered with a \$1.6 million mortgage in favor of certain bondholders; and (e) in 1960 the Cuban Government nationalized and expropriated Havana Dock's property and assets in Cuba. *See id.* at 3.

Third, the Commission certified that Havana Docks suffered a loss as a result of the Cuban Government's actions and valued its "concession and tangible assets" at \$8.684 million and its securities, accounts receivable, and government debts collect-

ively at \$495,340. The certified loss, then, totaled \$9.179 million with interest to accrue at 6% per year from the respective dates of loss to the date of settlement. *See In re Havana Docks Corp.*, Foreign Cl. Settlement Comm’n No. 2492, Final Decision, at 3 (Sept. 28, 1971).

C

Title III establishes a private right of action for “any United States national who owns the claim to [confiscated] property” against “any person that . . . traffics in [such] property.” 22 U.S.C. § 6082(a)(1)(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.”). Under Title III, “confiscated” means “the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959, . . . without . . . adequate and effective compensation provided.” 22 U.S.C. § 6023(4)(A)(i). The term “property” is defined as “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). It also includes some, but not all, real property used for residential purposes. *See* 22 U.S.C. § 6023(12)(B).

Under Title III, a certification by the Foreign Claims Settlement Commission pursuant to the International Claims Settlement Act, 22 U.S.C. §§ 1643

et seq., constitutes “conclusive proof of ownership of an interest in property.” 22 U.S.C. § 6083(1). As set out earlier, Havana Docks has a claim certified by the Commission. But due to the operative language of § 6082(a)(1)(A)—“traffics in property which was confiscated by the Cuban Government”—the trafficking must be in the property that was confiscated, and not in the claim held by the U.S. national based on that confiscated property.⁴

1

The issue presented here is one of first impression, and it is not easy. Indeed, the district court was of two minds about the effect of the concession’s 99-year term on Havana Docks’ trafficking claims against the cruise lines.

The district court first denied a motion to dismiss by Carnival and rejected the argument that Havana Docks could not sue because it no longer had a property interest at the time of the alleged trafficking from 2016 to 2019. The court explained that Title III “does not expressly make any distinction whether [the] trafficking needs to occur while a party holds a property interest in the property at issue,” and agreed with Havana Docks that Carnival was “incorrectly confla[ting] a claim to a property and a property interest.” *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724, 2019 VVTL 8895241, at *4 (S.D. Fla. Aug. 28, 2019).

Then the district court reversed course and granted motions to dismiss filed by MSC Cruises and NCL on the ground that Havana Docks’ concession had

⁴ We limit our discussion to the property interest at issue here—a 99-year usufructuary concession at the Port of Havana.

expired in 2004, well before the alleged trafficking by the cruise lines. *See Havana Docks Corp. v. MSC Cruises SA Co.*, 431 F. Supp. 3d 1367, 1371–74 (S.D. Fla. 2020); *Havana Docks v. Norwegian Cruise Line Holdings, Ltd.*, 431 F. Supp. 3d 1375, 1378–80 (S.D. Fla. 2020). The court noted that Havana Docks admitted that its concession “expired in 2004.” *MSC*, 431 F. Supp. 3d at 1372. Havana Docks, moreover, “d[id] not appear to dispute that the Cuban Government’s confiscation extinguished [its] property rights.” *NCL*, 431 F. Supp. 3d at 1379. The court ruled that a property interest “involving a time-limited concession . . . does not give [Havana Docks] the right to sue for activities that took place years after it no longer has an interest in the property.” *MSC*, 431 F. Supp. 3d at 1373. A cruise line “could only ‘traffic’ in [Havana Docks’] confiscated property if it undertook one of the prohibited activities before [Havana Docks’] interest in the property expired.” *NCL*, 431 F. Supp. 3d at 1380. Turning to the purposes of Title III—to deter trafficking and to provide a remedy for trafficking—the court explained that “there is nothing to suggest that Congress intended to grant victims of property confiscations more rights to the property than they would otherwise have simply by virtue of the confiscation.” *MSC*, 431 F. Supp. 3d at 1374.

Havana Docks moved for reconsideration. The district court changed its mind again and reverted to the rationale it employed in denying Carnival’s motion to dismiss in 2019. The court explained that it had made a factual error in the *MSC* and *NCL* cases by determining, at the Rule 12(b)(6) stage, that Havana Docks’ concession expired in 2004. According to the court, Havana Docks had a 99-year concession, and not a concession which was to end in 2004. The

court also stated that its finding that the concession ended in 2004 was contrary to the language in the certified claim because the Foreign Claims Settlement Commission only stated that the concession was set to expire in 2004. *See Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 454 F. Supp. 3d 1259, 1271–72 (S.D. Fla. 2020). The court noted as well that Havana Docks had more than the concession itself; it owned the fixtures and equipment it had installed at the Port of Havana. *See id.* at 1272. Finally, the court concluded that though the Cuban Government’s expropriation extinguished the property rights of victims like Havana Docks, the Eleventh Circuit’s decision in *Glen v. Club Mediterranee S.A.*, 450 F.3d 1251 (11th Cir. 2006), indicated that victims of trafficking could bring Title III actions based on claims to the confiscated property. *See NCL*, 454 F. Supp. 3d at 1273. “[T]he Cuban Government’s expropriation” extinguished “all rights Havana Docks had to the remaining concession term of 44 years,” but as no trafficking could occur on property already confiscated, Havana Docks could maintain its Title III claim. *See id.* at 1274.

In its summary judgment order, the district court adopted the reasoning set out in *NCL*, 454 F. Supp. 3d at 1272–73. It rejected the cruise lines’ argument that because Havana Docks’ concession would have expired in 2004 there could be no trafficking from 2016 to 2019. *See Havana Docks*, 592 F. Supp. 3d at 1255.

We conclude that the district court correctly assessed the limited nature of Havana Docks’ property interest when it granted the motions to dismiss filed by MSC Cruises and NCL. *See MSC*, 431 F. Supp. 3d

at 1373; *NCL*, 431 F. Supp. 3d at 1379. Havana Docks’ usufructuary concession ended, for purposes of Title III, in 2004 when the 99-year term would have expired by its own terms. As a result, when the cruise lines used the Terminal and one of its piers from 2016 to 2019, they did not traffic in property that had been confiscated by the Cuban Government.⁵

No one disputes that the 1960 expropriation by the Cuban Government extinguished Havana Docks’ usufructuary concession under Cuban law. *See Glen*, 450 F.3d at 1255. The district court correctly noted in one of its orders that a Title III plaintiff, following expropriation, no longer owns property that can be trafficked because that property now belongs to the Cuban Government (or whomever else it has conveyed the property to). *See NCL*, 454 F. Supp. 3d at 1274.

There is a reasonable argument that the Cuban Government’s expropriation of Havana Docks’ usufructuary concession—i.e., the taking of the property of a national of another country—without payment of compensation violated international law. *See Comparelli v. Republica Bolivariana de Venezuela*,

⁵ Title III’s definition of “property” includes “future” and “contingent” interests, 22 U.S.C. § 6023(12)(A), but this case does not require us to address such interests. At the time of the Cuban Government’s confiscation, Havana Docks’ usufructuary concession was fully vested and was therefore not contingent on the occurrence of any future events. *See generally* Restatement (Third) of Property § 25.3 (Am. Law Inst. 2011) (“A future interest is either contingent or vested. A future interest is contingent if it might not take effect in possession or enjoyment.”); 31 C.J.S. Estates § 185 (May 2024 update) (explaining that a “contingent right is one that only comes into existence on an event or condition which may not happen until another event prevents vesting”).

891 F.3d 1311, 1326 (11th Cir. 2018) (“[U]nder the third prong of the [expropriation] exception [of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(3)], there are three ways in which a taking may violate international law: (1) when it does not serve a public purpose; (2) when it discriminates against those who are not nationals of the country; or (3) when it is not accompanied by provision for just compensation.”); Restatement (Third) of Foreign Relations § 712 (Am. Law Inst. 1987) (“A state is responsible under international law for injury resulting from . . . a taking by the state of the property of a national of another state that (a) is not for a public purpose, or (b) is discriminatory, or (c) is not accompanied by provision for just compensation.”). But a Title III claim is an action against a third party for trafficking in “property which was confiscated by the Cuban Government,” and not an action against the Cuban Government for expropriating that property decades ago. *See Exxon Mobil Corp. v. Corporación CIMEX S.A.*, 534 F. Supp. 3d 1, 16 (D.D.C. 2021) (“Trafficking in expropriated property is the ‘gravamen’ of a Title III claim, not Cuba’s expropriation of the property.”), *vacated on other grounds and remanded*, 111 F.4th 12 (D.C. Cir. 2024).

In our view, the way to give effect to the statutory language (“traffics in property which was confiscated”), and to acknowledge that not all property rights are the same, is to 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. We set out our reasoning below.

“A common idiom describes property as a ‘bundle of sticks’—a collection of individual rights which, in

certain combinations, constitute property.” *United States v. Craft*, 535 U.S. 274, 278 (2002). An “interest in real property is defined by the metes and bounds that describe its geographic dimensions and the term of years that describes the temporal aspect of the owner’s interest.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 535 U.S. 302, 331–32 (2002).

Interests in real property are as varied as the colors and shades on a paint wheel. At one end are freehold estates like an estate in fee simple absolute, which is ownership “not subject to a special limitation . . . or a condition subsequent . . . or an executory limitation.” Restatement (First) of Property § 15 (Am. Law Inst. 1936). “If one conceives of property as likened thus to a bundle of rights, privileges, immunities and liabilities adaptable to any physical thing, the fee simple absolute is the largest segment thereof that the political philosophy of the time and place permits any private individual to obtain.” 2 David A. Thomas, Thompson on Real Property, Thomas Editions § 14.04(c)(1) (Matthew Bender Apr. 2024 update). At the other end are limited possessory rights like those created by a tenancy at will, which endures “only so long as both the landlord and the tenant desire.” Restatement (Second) of Property—Landlord and Tenant § 1.6 (Am. Law Inst. 1977).

Congress, we think, understood the varied nature of property interests when it drafted Title III. For example, 22 U.S.C. § 6023(12)(A) includes “leasehold interests” in the definition of property, and a leasehold interest is necessarily restricted in terms of location and duration. *See generally* Restatement (Second) of Property—Landlord and Tenant § 1.1 (Am. Law Inst. 1977) (“The landlord-tenant relation-

ship exists only with respect to a space that is intended to have a fixed location for the duration of the lease.”).

We do not believe that Congress, in enacting Title III, meant to convert property interests which were temporally limited at the time of their confiscation into fee simple interests in perpetuity such that the holders of such limited interests could assert trafficking claims through what Buzz Lightyear called “infinity and beyond.” *Toy Story* (Pixar Animation Studios/Walt Disney Pictures 1995). In the words of the district court, “there is nothing to suggest that Congress intended to grant victims of property confiscations more rights to the property than they would otherwise have simply by virtue of the confiscation.” *MSC*, 431 F. Supp. 3d at 1374. *Cf. Alamo Land & Cattle Co. v. Arizona*, 424 U.S. 295, 303 (1976) (“[T]he holder of an unexpired leasehold interest in land is entitled, under the Fifth Amendment, to just compensation for the value of that interest when it is taken upon condemnation by the United States.”); *Lafayette Airport Comm’n v. Roy*, 328 So.2d 182, 186 (La. App. 3d Cir. 1976) (once the value of a parcel of land taken by the government through eminent domain is established for just compensation purposes, it is the burden of the usufructuary, “as a claimant of a portion of that total award, to prove the value of her interest”).

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. To recap, Havana Docks did not have any fee simple ownership rights in any real property at the Port of Havana; it had only a usufructuary concession, i.e., a

“personal servitude granting the right to use another’s property and take its ‘fruits’ or profits.” 8 Thompson on Real Property, Thomas Editions § 64.03 n.23. By its own terms the concession had a 99-year term and was to end in 2004. Havana Docks, moreover, had no option for unilateral renewal of the concession and had to return the property and piers to the Cuban Government in a state of good preservation when the term expired.

In statutory terms, what the Cuban Government confiscated from Havana Docks in 1960 was its “control” and enjoyment of the property at the Port of Havana through a time-limited usufructuary concession. *See* 22 U.S.C. § 6023(4)(A). When that concession expired in 2004, any property interest that Havana Docks had by virtue of that concession ended. Thus, the cruise lines’ conduct from 2016 to 2019 did not constitute trafficking in Havana Docks’ confiscated property. Two contrasting examples will help explain our holding.

Imagine that in October of 1965 the Cuban Government confiscated a private airport for small aircraft which was owned (land and all) by a corporation that was (and remains) a U.S. national. Imagine also that the Cuban Government has since been operating the airport as its own and collecting fees for its use. If the corporation owned the airport in fee simple at the time of its expropriation, an airline which landed its planes on that airport today and paid the Cuban Government a fee for the privilege of doing so would be engaged in trafficking and the corporation could (assuming other statutory requisites were satisfied) sue that airline under Title III. That is because a fee simple interest, if not for the expropriation, would

have continued unabated into the future without any inherent temporal limitation.

On the other hand, imagine that the same U.S. corporation had only a five-year lease to operate the same airport, which was owned (land and all) by a Cuban national. Imagine also that the Cuban Government confiscated the corporation's leasehold interest and took over the airport in October of 1965, when the lease had only two months left to go in its five-year term. If an airline landed its planes on the airport today and paid the Cuban Government a fee for the privilege of doing so, the corporation could not sue the airline for trafficking under Title III. The reason is that its leasehold interest, if not for the expropriation, would have expired by its own terms in December of 1965. The airline would not have trafficked in the corporation's confiscated property by using the airport today.

3

Havana Docks, defending the district court's final decisions on this issue, *see NCL*, 454 F. Supp. 3d at 1271–74, and *Havana Docks*, 592 F. Supp. 3d at 1255, maintains that it can assert trafficking claims against the cruise lines for conduct taking place from 2016 to 2019. At the end of the day, we are not convinced by its arguments.

First, Havana Docks is wrong in asserting that the certified claim from the Foreign Claims Settlement Commission in 1971 establishes that the cruise lines trafficked in its confiscated property. *See* Br. for Appellee at 39–45. Title III provides that a certification of a claim by the Commission constitutes “conclusive proof of ownership of an interest in property,” 22 U.S.C. § 6083(a)(1), and we accept that

Havana Docks owned a property interest in the usufructuary concession at the time of the confiscation. But Title III's conclusive presumption of Havana Docks' ownership interest at some point in the past does not speak to the nature of the interest today. Nor does it tell us whether trafficking in the concession can occur beyond its scheduled end date in 2004.

Though a U.S. national with a certified claim has a basis for seeking compensation in any future settlement proceedings between the United States and Cuba, and has to some degree monetized the value of the property (or property interest) confiscated by the Cuban Government, the certified claim is not a means for expanding the nature of a limited property interest in a Title III action. And to the extent that its decision is relevant to the issue before us, the Commission recognized that Havana Docks' concession was set to expire in 2004, at which point Havana Docks had to return the property and piers to the Cuban Government in a good state of preservation. *See In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Proposed Decision, at 5 (Apr. 21, 1971) (later finalized in *In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Final Decision (Sept. 28, 1971)).

Second, we disagree with Havana Docks that the nature of its usufructuary concession allows it to assert trafficking claims against the cruise lines for conduct which took place from 2016 to 2019. *See* Br. for Appellee at 45–46. Havana Docks cites *Boggs v. Boggs*, 520 U.S. 833, 836 (1997), for the proposition that a “lifetime usufruct is the rough equivalent of a common-law life estate,” but that citation is misplaced because the concession here was limited to 99

years and did not give Havana Docks any unilateral rights of renewal.

Third, we reject Havana Docks' argument that a Title III claim can be brought against the cruise lines because the interest in the usufructuary concession—having been extinguished in 1960 by the Cuban Government's confiscation, *see Glen*, 450 F.3d at 1255—has been replaced with a certified claim for compensation against the Cuban Government. *See* Br. for Appellee at 52–57. Havana Docks is right that it now holds a certified claim from the Commission for the value of the confiscated property interest, but under the language of Title III that claim does not provide the basis for a trafficking action. As explained earlier, Title III provides that “any person” who “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.” 22 U.S.C. § 6082(a)(1)(A). As this language indicates, the trafficking must be in the “property which was confiscated,” and not in the claim later certified by the Commission. A U.S. national who owns “the claim to such property” can bring a Title III action for trafficking, but the existence of the claim does not do away with the requirement that the trafficking be in the confiscated property.

Fourth, contrary to Havana Docks' contention, the use of the past tense in § 6082(a)(1)(A) (“was confiscated”) does not point to a different result. We recognize that the Cuban Government's confiscations of property belonging to U.S. nationals largely took place in the 1960s. And we understand that through the Title III remedy Congress sought to both deter the use of confiscated properties by third parties and

to compensate the owners of such properties for their use (i.e., their exploitation). *See* 22 U.S.C. § 6081(1)-(11) (congressional findings). But Havana Docks does not offer any persuasive support for its assertion that “[a]ny temporal limitations on [confiscated] property interests are reflected in the value of the claim, not the scope of the property subject to trafficking.” Br. for Appellee at 54. Accepting Havana Docks’ position would mean that a U.S. national with a temporally-limited and now-expired property interest would (a) have that interest turned into a fee simple interest of infinite duration as a result of the Cuban Government’s confiscation, and (b) be allowed to sue any third party which used or benefited from any portion of that expired property interest in 2025, 2050, 2075, 2100, and so on. Congress conceivably could have created such a scheme, but we do not think that it did.

Our resolution does not dispose of all of Havana Docks’ trafficking claims. Havana Docks also alleged that Carnival trafficked in its concession from 1996 to 2001 through its interests in two other companies, Airtours and Costa. The district court did not separately address these claims given its ruling in favor of Havana Docks on the 2016–2019 trafficking claims.

Havana Docks and Carnival agree that we should remand the 1996–2001 claims for further proceedings. *See* Br. for Carnival at 17 n.2; Br. for Appellee at 51 n.6. We concur in their assessment. Because Havana Docks’ concession would not have expired until 2004, our holding today does not preclude claims for trafficking based on conduct taking place before then.

We affirm the district court's ruling that Havana Docks is a U.S. national under Title III of the Helms-Burton Act but reverse the judgments in favor of Havana Docks and against the cruise lines for conduct taking place between 2016 and 2019. We remand for further proceedings as to the trafficking claims against Carnival based on conduct taking place from 1996 to 2001.

AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED.

BRASHER, Circuit Judge, dissenting:

When Fidel Castro came to power in 1959, the Cuban Government confiscated all property in Cuba owned by United States nationals. After nearly four decades of those nationals receiving no compensation from the Cuban Government for their stolen property, Congress passed the Helms-Burton Act as another way for those nationals to seek compensation for their losses. To that end, Title III of the Act creates a private cause of action for any U.S. national who owns a “claim” to “property which was confiscated” against anyone who commercially benefits from the stolen property.

Havana Docks is a U.S. national that owned a concession to construct and operate piers and terminal facilities at the Port of Havana for a term of 99 years beginning in 1905. Under the auspices of that concession, it constructed multiple piers and docks in Havana. The Cuban Government ended that concession and confiscated its docks in 1960. Even though the Foreign Claims Settlement Commission certified the value of Havana Docks’ stolen property and recognized its claim against the Cuban Government, the Cuban Government has not paid for confiscating Havana Docks’ property. Nonetheless, over the last ten years, various cruise lines have been coordinating with the Cuban Government to deliver passengers to its confiscated docks.

The majority opinion holds that Havana Docks cannot sue those cruise lines for using its confiscated property in the present day because its 99-year right to operate the docks (that it built) ended in 2004. But the majority opinion is wrong. The Cuban Government ended Havana Docks’ concession in 1960 when that concession still had 44 years left to run.

The majority's counterfactual analysis—asking what would have happened to Havana Docks' docks if they had not been confiscated in 1960—is incompatible with the text of the Act and undermines its remedial purpose. Nothing 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. Accordingly, I respectfully dissent.

I.

Congress enacted the Helms-Burton Act to provide a comprehensive remedial regime for the property that the Cuban Government confiscated in 1959. The Act explains that it seeks to resolve “the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.” 22 U.S.C. § 6081(6)(B). And a certified claim from the Foreign Claims Settlement Commission—like the one Havana Docks has obtained—is “conclusive proof of ownership of an interest in property” that was confiscated and entitles the owner to compensation under the Act. *Id.* § 6083(a)(1). In other words, the Act recognizes that a U.S. national's pre-1959 property interests are no more; they have been replaced by claims against the Cuban Government. We have explained that, under the Act, “former owners of confiscated property now have . . . ownership of a ‘claim to such property,’” instead of any rights in the property itself. *Glen v. Club Mediterranee, S.A.*, 450 F.3d 1251, 1255 (11th Cir. 2006) (quoting 22 U.S.C. § 6082(a)(1)(A)).

In an ideal world, the Cuban Government would pay the claims for the property it confiscated in 1959. But, because the Cuban Government has no intention of doing so, the Act provides another path to

compensation through a private right of action for claim-holding U.S. nationals to obtain the value of their claim from any person that traffics in the property that underlies their claim. 22 U.S.C. § 6082(a)(1)(A). Specifically, the Act creates a cause of action against “any person that . . . traffics in property which was confiscated by the Cuban Government” in favor of “any United States national who owns the claim to such property.” *Id.* The Act broadly defines “property” as “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). And the Act broadly defines “traffics” as “engag[ing] in a commercial activity using or otherwise benefiting from confiscated property” without the authorization of a U.S. national who owns a claim to the property. 22 U.S.C. § 6023(13)(A)(ii).

As damages, a successful Title III plaintiff is entitled to the value of its “claim.” The Act provides three different ways to measure that value: (1) the amount of a certified claim from the Foreign Claims Settlement Commission, plus interest, (2) the amount determined by a special master, plus interest, or (3) the fair market value at present or at the time of confiscation, whichever is greater, plus interest. 22 U.S.C. § 6082(a)(1)(A)(i). A successful plaintiff is also entitled to court costs and reasonable attorneys’ fees. *Id.* § 6082(a)(1)(A)(ii).

Before Castro came to power, Havana Docks owned a concession to construct piers and terminal facilities at the Port of Havana and to own, maintain, and operate those facilities for a term of 99 years

beginning in 1905 and expiring in 2004. By the time Castro took control, Havana Docks had finished construction and begun operating those facilities. Because Havana Docks is a U.S. national, the Cuban Government confiscated the docks and ended its concession and all related rights in 1959.

After the confiscation, Havana Docks sought restitution with the Foreign Claims Settlement Commission, which has the authority to issue a “final and binding decision[] with respect to claims by United States nationals against” the Cuban Government. *Dames & Moore v. Regan*, 453 U.S. 654, 680 (1981); *see also* 22 U.S.C. §§ 1621, 1643. The Commission agreed with Havana Docks that it was owed money from the Cuban Government and certified a claim for Havana Docks against the Cuban Government for over \$9 million.

Between 2015 and 2019, the defendant cruise lines brought almost a million tourists to Cuba through the Port of Havana using the very same piers in the very same terminal that the Cuban Government confiscated from Havana Docks. The district court held that the cruise lines trafficked in property to which Havana Docks “owns [a] claim.” The cruise lines appealed.

II.

The parties’ briefs raise several questions, and some of them are difficult. But the question the majority opinion answers is, to me, very simple. The Cuban Government stole Havana Docks’ property—its docks, piers, and other things that it had the right to operate under its concession. And the cruise lines have—all agree—commercially benefited by depositing paying customers on those docks and piers.

Accordingly, the district court was correct that the cruise lines trafficked in confiscated property to which Havana Docks owns a claim.

To avoid this straightforward analysis, the cruise lines argue that they didn't traffic in confiscated property because their activity took place between 2015 and 2019, and Havana Docks' concession would have ended in 2004 if the docks had not been confiscated. The majority opinion agrees. In the words of the majority opinion, we should "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 of that interest." In other words, to prevail under the Act, a Title III plaintiff must establish a counterfactual—that the defendant trafficked in property that it *would have had* a present interest in at the time of the trafficking if the Cuban Government had not confiscated the property.

In my view, there are three problems with this judicially created prove-a-counterfactual requirement. First, it is not supported by the statute's text. The 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*. Second, the majority is focused on the wrong confiscated property. Here, Havana Docks argues that the cruise lines trafficked by using the physical docks that the Cuban Government confiscated, not by using its concessionary interest in those docks. Third, this test effectively voids many of the property interests that are expressly protected by the statute. The statute was enacted in 1994 and it expressly protects interests that were contingent, future, and time limited when the underlying property was confiscated in 1959, but

none of those interests are protectible under the majority's rule. I'll address each of these issues in turn.

A.

Let's start with the statute's text. At its most basic level, there are two elements to the Act's cause of action: (1) the defendant used confiscated property and (2) a U.S. national owns a claim to that confiscated property. As we have explained elsewhere, the Act replaces U.S. citizens' property interests with new claims against the Cuban Government because it confiscated that property. *Glen*, 450 F.3d at 1255. Then, the Act says that anyone who benefits commercially from "property which was confiscated by the Cuban Government" is liable to "any United States national who owns the claim to such property," unless that person has permission from the U.S. national. 22 U.S.C. § 6082(a)(1)(A).

I think Havana Docks has established that it meets these statutory elements. Did the cruise lines benefit commercially from "property which was confiscated by the Cuban Government?" Of course they did. They used the docks and piers that Havana Docks built and had the right to operate when they were taken in 1960. Does Havana Docks own a "claim to such property?" Of course it does. The Commission's judgment on that point is "conclusive proof" under the terms of the statute. 22 U.S.C. § 6083(a)(1). But, even without the Commission's judgment, it can hardly be contested that Havana Docks' claim arises from the confiscation of the same piers and docks that the cruise lines used.

Under the text of the Act, there is no requirement that the plaintiff would have owned a present

interest in the property at the time of the trafficking if its property had not been confiscated. Instead, the timing that matters is that a U.S. national “owns *the claim*” to confiscated property at the time of the trafficking. Unlike Havana Docks’ original concessionary interest in the docks, its claim is not time limited. The claim persists until the plaintiff recovers in full either directly from the Cuban Government or indirectly by bringing an action under the Act. *See BUC Int’l Corp. v. Int’l Yacht Council Ltd.*, 517 F.3d 1271, 1276 (11th Cir. 2008) (explaining the general rule that “a plaintiff is entitled to only one satisfaction for a single injury”).

To be sure, that an interest in confiscated property was limited in duration is not irrelevant under the text of the Act. But any temporal limitation on an interest in confiscated property—such as the 44 years remaining on Havana Docks’ concession when the docks were confiscated—goes to the value of the claim, not the scope of the property subject to trafficking. A one-day leasehold interest in property that was confiscated would presumably be less valuable than a fee simple interest in that same property. The cruise lines acknowledge as much throughout their arguments. They recognize that the International Claims Settlement Act of 1949, which authorized the Foreign Claims Settlement Commission to certify these types of claims against foreign governments, “focuses on the temporal dimensions of the property interest and would award nothing for a leasehold that expired just before expropriation” and “[t]he Act similarly would award only a small amount for a leasehold set to expire shortly after expropriation.” And that is exactly what the Commission did when it certified Havana Docks’ claim: it expressly noted that the concession would have expired

in 2004 had it not been confiscated and valued the claim at \$9 million in light of this limited term.

In short, nothing in the text of the Act requires a plaintiff to prove a counterfactual to succeed on its trafficking claim. The defendant must have used confiscated property and the plaintiff must “own the claim” at the time of the trafficking. But those are the only two elements in the statute’s text.

B.

Moving to the second problem with the majority’s rule: it is directed at the wrong “confiscated property.” Havana Docks isn’t suing the cruise lines on the theory that they are trafficking by using its intangible concessionary interest. Its theory is not, for example, that the cruise lines are trading its old lease among themselves as a security. Instead, Havana Docks’ theory is that the cruise lines are using *the docks*—which still exist, are still in use, and have not expired, ended, or fallen into the sea.

A claim can represent a wide range of interests in confiscated property. 22 U.S.C. § 6082(a)(1)(A). The Act defines “property” as any “real, personal, or mixed” property, 22 U.S.C. § 6023(12)(A), which covers the physical docks and their surroundings. To be sure, the definition also covers “any present, future, or contingent right, security, or other interest [in any property], including any leasehold interest.” *Id.* But Havana Docks alleges trafficking through the use of the physical property itself, not trafficking in a lease. As Havana Docks explains in its brief, it “filed a claim to the Havana docks—the very terminal and piers used by the cruise lines—in 1967, see Dkt. 331-14 (Tab B), the Commission certified that claim in 1971, see Dkt. 1-1 (Tab C), and that certified claim

facially and conclusively establishes that the cruise lines used Havana Docks' 'property' confiscated by the Cuban government." Br. for Havana Docks at 105.

The majority opinion focuses on temporal limitations in Havana Docks' concession, but those temporal limits have nothing to say about whether the cruise lines are trafficking in the physical docks. All Havana Docks' property rights—whatever they were—ceased to exist the moment the Cuban Government confiscated the docks. *See Glen*, 450 F.3d at 1255. From that day forward Havana Docks no longer had any enforceable rights in the docks. The same is true for anyone else who ever had a property interest of any kind that the Cuban Government confiscated. As we have recognized, those original property interests are gone. *See Glen*, 450 F.3d at 1255. They cannot be vindicated by, for example, bringing a trespass or unjust enrichment action. Instead of owning property interests, former property owners have claims. And the Helms-Burton Act provides legal recourse for those former property owners to seek compensation for those claims from the people who are benefiting from the property that underlies that claim.

The issue in this case is not whether a plaintiff can sue someone who profits from an intangible concession or lease. Instead, this case is about real physical property. Havana Docks argues that the defendants have trafficked in "confiscated property" by using the docks and piers that the Cuban Government seized, Havana Docks has a claim against people who use that property, and there is no time limit on that claim.

The third problem with the majority's rule is that it nullifies myriad property interests that are expressly protected by the Helms-Burton Act. The Act expressly covers certain property like "patents" and certain interests in property, such as "future" and "contingent" interests, that the majority's rule wouldn't protect. 22 U.S.C. § 6023(12)(A). Under the majority's view, it would not be possible to traffic in some of these interests at all. Consider patents—any patents that were confiscated in 1959 would have necessarily "expired" before the Act outlawed trafficking in 1996. For interests that were "contingent" or "future" in 1959, the majority's rule would require a trip to the multiverse to see how Cuban history would have developed—and whether these interests would have realized into present interests—but for their confiscation.

The majority opinion says it need not address these problems with its rule, because these kinds of interests aren't present in this appeal. But the words of a statute can't be ignored just because they are inconvenient. Congress would not have written the Act expressly to cover "patents" if, under the majority opinion's rule, it did not, in fact, cover any patents. Likewise, if a statute expressly covers contingent and future interests, it doesn't make sense to hold, as the majority opinion does, that the statute protects only present interests. See Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) (explaining that "every word and every provision is to be given effect").

The majority opinion suggests some hypothetical problems with the district court's understanding of the Act. But they are easily resolved by recognizing

that a temporal limitation on a property interest at the time of confiscation determines the value of a Title III “claim,” not the existence of one. Consider the majority opinion’s two hypothetical airport owners: one who owned a fee simple interest to the airport in 1959, and another who owned a five-year leasehold interest in the airport with two months remaining at the time of confiscation. Because both owners had a cognizable property interest that was confiscated by the Cuban Government, both own a claim to that confiscated property under the Act. 22 U.S.C. § 6082(a)(1)(A). So both can sue someone who is using the airport in Cuba without their permission. The previous owner of the fee simple interest will likely have a more valuable claim—because a fee simple interest in 1959 was more valuable than the remaining two months on a lease—but the higher value of that claim doesn’t mean the former owner of the leasehold interest has no claim at all. *See* 22 U.S.C. § 6082(a)(1)(A)(i) (explaining damages).

Unless and until the property confiscation claims of U.S. nationals are paid, those claims continue to exist and are enforceable under the Helms-Burton Act. But the majority opinion’s interpretation means that the Act provides no remedy for U.S. nationals with property interests that were confiscated in 1959 but, absent confiscation, would have “expired” before the present day. It does so even though there is no textual support for that result and even though the Act expressly protects interests that were contingent or time-limited when they were confiscated. And it adopts that rule even though there is a perfectly rational alternative that better conforms to the Act—that the time-limited nature of an interest in confiscated property goes to the value of a claim, not to the claim’s existence.

III.

I believe the district court correctly interpreted the Act in this respect, and I would go on to address the other issues in the appeal. Because the majority opinion instead reverses on this ground, I respectfully dissent.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-21724 BLOOM/MCALILEY

HAVANA DOCKS CORPORATION,
Plaintiff,

v.

CARNIVAL CORPORATION,
Defendant.

Case No. 19-cv-23588 BLOOM/LOUIS

HAVANA DOCKS CORPORATION,
Plaintiff,

v.

MSC CRUISES SA,
MSC CRUISES SA CO, AND MSC CRUISES (USA) INC.,
Defendants.

Case No. 19-cv-23590 BLOOM/LOUIS

HAVANA DOCKS CORPORATION,
Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.,
Defendant.

Case No.: 19-cv-23591 BLOOM/LOUIS

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

NORWEGIAN CRUISE LINE HOLDINGS, LTD.,

Defendant.

TABLE OF CONTENTS

I. STATUTORY AND REGULATORY BACKGROUND	6
A. Relevant Statutes	7
1. International Claims Settlement Act	7
2. Cuban Democracy Act	8
3. LIBERTAD Act	8
4. Trade Sanctions Reform and Export Enhancement Act	10
B. Relevant Regulations	10
1. Cuban Asset Control Regulations .	10
2. OFAC's CACR Amendments	11
II. PROCEDURAL BACKGROUND	16
A. Havana Docks' Allegations	16
B. The Omnibus Summary Judgment Motions	19
1. Defendants' Omnibus Motion	19
2. Havana Docks' Omnibus Motion ...	19
C. The Individual Summary Judgment Motions	21
1. Havana Docks	21
2. Carnival	22
3. MSC	23
4. Royal Caribbean	23
5. Norwegian	24

III. MATERIAL FACTS	24
A. Havana Docks	25
B. Confiscation of the Terminal by the Cuban Government	29
C. The Concession and the Certified Claim	30
D. Defendants and Related Entities	33
1. Carnival	33
2. MSC	34
3. Royal Caribbean	35
4. Norwegian	35
E. Specific and/or General Licenses	36
1. Carnival	36
2. MSC	39
3. Royal Caribbean	40
4. Norwegian	42
F. Defendants' Use of the Terminal	43
1. Carnival	43
2. MSC	44
3. Royal Caribbean	45
4. Norwegian	45
G. Defendants' Contracts and Payments to Cuban Entities	46
1. Carnival	46
2. MSC	47
3. Royal Caribbean	48

4. Norwegian	49
H. Defendants' Shore Excursions	50
1. Carnival.....	50
2. MSC	55
3. Royal Caribbean.....	59
4. Norwegian	63
I. Havana Docks' Notice	69
J. Defendants' Knowledge of the LIBERTAD Act and the Certified Claim.....	69
K. Defendants' Revenues and Profits.....	69
1. Carnival.....	69
2. MSC	70
3. Royal Caribbean.....	71
4. Norwegian	71
L. Other Cruises to Cuba.....	72
M. Defendants' Experts	72
1. Ambar Diaz	72
2. Julian Ackert.....	73
IV. LEGAL STANDARD.....	75
A. Summary Judgment Standard	75
B. <i>Daubert</i> Standard.....	78
C. Review of Report and Recom- mendation Standard.....	79
V. DISCUSSION.....	80
A. "Person"	80

B. “Traffics”	80
1. Scope of Havana Docks’ Claim	82
a) Carnival.....	82
b) Royal Caribbean	83
c) Norwegian	83
d) MSC.....	85
2. Trafficking Activity	86
3. “Knowingly and Intentionally”	90
C. Property Confiscated by Cuban Government	98
D. United States National	99
E. Ownership of Claim to Confiscated Property	105
F. Trafficking After November 1, 1996...	112
G. Defendants’ Affirmative Defenses	113
1. Lawful Travel Exception.....	113
a) “Lawful Travel” Prong	113
b) “Necessary to the conduct of such travel” Prong	145
2. Ex Post Facto Clause	151
3. The Fifth Amendment’s Due Process Clause.....	152
4. Expiration of the Concession	152
5. Failure to State a Claim	153
6. Lack of Knowledge and Intent.....	153
7. Lack of Standing Due to Lack of Injury-in-Fact	154

8. Lack of Indemnity Right	155
9. Lack of Causation	156
10. Lack of Use of Claimed Property...	156
11. Article II of the United States Constitution.....	157
12. Act of State Doctrine.....	158
13. Extraterritorial Application of United States Law	159
14. Election of Remedies under Title III	159
15. Failure to Join an Indispensable Party	160
16. Purpose of Certified Claim	161
17. Statute of Limitations or Repose...	161
18. Eighth Amendment.....	163
19. Non-U.S. Sailings.....	165
VI. CONCLUSION	165

OMNIBUS ORDER

THIS CAUSE is before the Court upon ten (10) pending summary judgment motions filed in the four (4) above-styled cases. The Court conducted a hearing on each summary judgment motion over the course of two (2) days. *See, e.g., Havana Docks Corporation v. Carnival Corporation*, No. 19-cv-21724, ECF Nos. [442], [449]. The Court has reviewed the parties' memoranda and statements of facts, the record in each case, the applicable law, and is otherwise fully advised.

Plaintiff Havana Docks Corporation ("Havana Docks") filed separate actions to recover damages against Defendants Carnival Corporation d/b/a Carnival Cruise Line ("Carnival"); MSC Cruises S.A. ("MSC SA"), MSC Cruises SA Co. ("MSC Co."), and MSC Cruises (USA) Inc. ("MSC USA") (collectively, "MSC"); Royal Caribbean Cruises Ltd. ("Royal Caribbean"); and Norwegian Cruise Line Holdings Ltd. ("Norwegian"). The Defendants are four cruise operators whose ships used the Havana Cruise Port Terminal, also called the Sierra Maestra Terminal (the "Terminal"), when traveling to Havana, Cuba. Havana Docks claims each Defendant unlawfully trafficked in property confiscated by the Cuban Government—the Terminal and its piers—in violation of the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. §§ 6021, *et seq.*, referred to as the LIBERTAD Act or Helms-Burton Act.

Pending before the Court are the following motions for summary judgment:

(1) Defendants' Omnibus Motion for Summary Judgment, *Havana Docks Corporation v. Carnival*

Corporation, No. 19-cv-21724, ECF No. [330]; *Havana Docks Corporation v. MSC Cruises, SA, et al.*, No. 19-cv-23588, ECF No. [216]; *Havana Docks Corporation v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, ECF No. [137]; *Havana Docks Corporation v Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, ECF No. [227];

(2) Plaintiff Havana Docks Corporation's Omnibus Motion for Partial Summary Judgment, *Havana Docks Corporation v. Carnival Corporation*, No. 19-cv-21724, ECF No. [336]; *Havana Docks Corporation v. MSC Cruises, SA, et al.*, No. 19-cv-23588, ECF No. [222]; *Havana Docks Corporation v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, ECF No. [143]; *Havana Docks Corporation. v Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, ECF No. [232];

(3) Carnival Corporation's Individual Motion for Summary Judgment, *Havana Docks Corporation v. Carnival Corporation*, No. 19-cv-21724, ECF No. [324];

(4) Plaintiff Havana Docks Corporation's Individual Motion for Summary Judgment against Carnival Corporation, *Havana Docks Corporation v. Carnival Corporation*, No. 19-cv-21724, ECF No. [333];

(5) MSC Cruises' Individual Motion for Summary Judgment, *Havana Docks Corporation v. MSC Cruises, SA, et al.*, No. 19-cv-23588, ECF No. [209];

(6) Plaintiff Havana Docks Corporation's Individual Motion for Summary Judgment against MSC Cruises, SA & MSC Cruise (USA). Inc., *Havana Docks Corporation v. MSC Cruises, SA, et al.*, No. 19-cv-23588, ECF No. [225];

(7) Defendant's [Royal Caribbean Cruises, Ltd.] Individual Motion for Summary Judgment, *Havana Docks Corporation v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, ECF No. [132];

(8) Plaintiff Havana Docks Corporation's Individual Motion for Summary Judgment Against Royal Caribbean Cruises, Ltd., *Havana Docks Corporation v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, ECF No. [142];

(9) Plaintiff Havana Docks Corporation's Individual Motion for Summary Judgment against Defendant Norwegian Cruise Line, Ltd., *Havana Docks Corporation v Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, ECF No. [229]; and

(10) Norwegian's Individual Motion for Summary Judgment, *Havana Docks Corporation. v Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, ECF No. [230].

Also before the Court, and pertinent to the summary judgment motions, is Havana Docks' Motion to Exclude the Expert Opinions of Julian Ackert and Pablo Spiller. *Havana Docks Corporation v. Carnival Corporation*, No. 19-cv-21724, ECF No. [328]; *Havana Docks Corporation v. MSC Cruises, SA, et al.*, No. 19-cv-23588, ECF No. [214]; *Havana Docks Corporation v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, ECF No. [138]; *Havana Docks Corporation v Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, ECF No. [226]. Magistrate Judge Chris M. McAliley issued a Report and Recommendation regarding Julian Ackert only. *Havana Docks Corporation v. Carnival Corporation*, No. 19-cv-21724, ECF No. [425]. Havana Docks filed partial Objections to the Report and Recommendation.

Havana Docks Corporation v. Carnival Corporation, No. 19-cv-21724, ECF No. [430].¹ The Court has conducted a *de novo* review of the Report and Recommendation, the record in this case, and is otherwise fully advised. *See Williams v. McNeil*, 557 F.3d 1287, 1291 (11th Cir. 2009) (citing 28 U.S.C. § 636(b)(1)).

Each Motion is ripe for the Court's consideration.

I. STATUTORY AND REGULATORY BACKGROUND

Since Fidel Castro seized power in Cuba in 1959, “communist tyranny and economic mismanagement” has plagued the island nation, substantially deteriorating the welfare and health of the Cuban people. *See* 22 U.S.C. § 6021(1)(A), (2). The communist Cuban Government has systematically repressed the Cuban people through, among other things, “massive and systemic violations of human rights” and deprivations of fundamental freedoms. *Id.* § 6021(4), (24). In response, the United States has consistently sought to impose international sanctions against the Castro regime. *Id.* § 6021(8)–(10).

The result is a “pervasive” economic embargo against Cuba. *Odebrecht Const., Inc. v. Sec’y, Fla. Dep’t of Transp.*, 715 F.3d 1268, 1277 (11th Cir. 2013). But the federal regime governing the embargo “contains numerous exceptions, permitting certain kinds of transactions with Cuba through licensing as well as through complete exemptions.” *Id.* The federal scheme “is designed to sanction strongly the Castro regime while simultaneously permitting humani-

¹ In the interest of brevity and clarity, the Court will refer to each respective case as *Carnival*, *MSC*, *Royal Caribbean*, and *Norwegian* in place of its case number.

tarian relief and economic transactions that will benefit the Cuban people.” *Id.* at 1278. A brief description of the relevant legislative acts and executive regulations follows.

A. Relevant Statutes

1. *International Claims Settlement Act*

The International Claims Settlement Act (“Settlement Act”), 22 U.S.C. §§ 1621, *et seq.*, established the Foreign Claims Settlement Commission (“FCSC”) (formerly called the International Claims Commission) to adjudicate claims against foreign governments that involve the expropriation of property belonging to nationals of the United States. *See Dames & Moore v. Regan*, 453 U.S. 654, 680–81 (1981) (discussing history of FCSC). In 1964, Congress amended the Settlement Act “to provide for the determination of the amount and validity of claims against the Government of Cuba . . . which have arisen since January 1, 1959[.]” 22 U.S.C. § 1643. The Settlement Act tasks the FCSC with determining “the amount and validity of claims by nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for losses resulting from the nationalization . . . [of] property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.” 22 U.S.C. § 1643b(a). A claim certified by the FCSC under the Settlement Act serves as both conclusive proof of ownership of a property interest and as the presumptive measure of damage under the LIBERTAD Act. 22 U.S.C. §§ 6082(a)(2), 6083(a)(1). Since February 9, 2015, all FCSC Commission

decisions issued under its Cuba claims program have been available online.²

2. *Cuban Democracy Act*

In 1992, Congress passed the Cuban Democracy Act of 1992 (“CDA”), 22 U.S.C. §§ 6001, *et seq.*, which “ramped up economic sanctions against the Cuban government while simultaneously permitting humanitarian relief to the Cuban people.” *Odebrecht*, 715 F.3d at 1276. Four years later, following an unprovoked attack by Cuban military jets on an American civilian aircraft, *see* 22 U.S.C. § 6046 (Congressional condemnation of the Brothers to the Rescue incident), Congress passed the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. §§ 6021, *et seq.*, referred to as the LIBERTAD Act or Helms-Burton Act.

3. *LIBERTAD Act*

The LIBERTAD Act, effective March 12, 1996, aimed to address “the 36 years of communist tyranny and economic mismanagement by the Castro government” and improve “the welfare and health of the Cuban people.” 22 U.S.C. § 6021(1), (2). Among the LIBERTAD Act’s goals were “to assist the Cuban people in regaining their freedom and prosperity,” § 6022(1), “to strengthen international sanctions against the Castro government,” § 6022(2), and “to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” § 6022(6).

² *Final Opinions and Orders*, United States Department of Justice, <https://www.justice.gov/fcsc/final-opinions-and-orders-5#Cuba>. (last visited Mar. 16, 2022).

To accomplish those goals, the LIBERTAD Act codified “[t]he economic embargo of Cuba” and “the regulatory sanctions that were in place on March 1, 1996.” *Odebrecht*, 715 F.3d at 1277; *see* 22 U.S.C. § 6032(h) (stating that “[t]he economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect on March 12, 1996, and shall remain in effect, subject to section 6064 of this title.”); *see also* 22 U.S.C. § 6023(7)(A) (defining “economic embargo of Cuba” as “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 or any other provision of law[.]”).

Title III of the LIBERTAD Act provides a private cause of action to victims of confiscations by the Cuban Government. *Glen v. Club Mediterranee, S.A.*, 450 F.3d 1251, 1255 (11th Cir. 2006). Specifically, the LIBERTAD Act states that “any person that . . . 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” and attorneys’ fees and costs. 22 U.S.C. § 6082(a)(1)(A). But the LIBERTAD Act excludes from trafficking acts “transactions and uses of property incident to lawful travel to Cuba.” 22 U.S.C. § 6023(13)(B)(iii). The LIBERTAD Act defines a “United States national” as “any United States citizen” or “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.” 22 U.S.C. § 6023(15)(A)–(B).

The LIBERTAD Act grants the President the authority to suspend the right to bring a cause of action under Title III at six-month intervals. *Glen*, 450 F.3d at 1255; *see* 22 U.S.C. § 6085(c). Every President has done so from 1996 to May 2019, until President Donald J. Trump allowed the suspension to expire. *N. Am. Sugar Indus. Inc. v. Xinjiang Goldwind Sci. & Tech. Co.*, No. 20-CV-22471, 2021 WL 3741647, at *2 (S.D. Fla. Aug. 24, 2021).

4. *Trade Sanctions Reform and Export Enhancement Act*

In 2000, Congress passed the Trade Sanctions Reform and Export Enhancement Act (“TSRA”) of 2000, 22 U.S.C. §§ 7201, *et seq.*, which “loosened the restrictions on exporting agricultural and medical products to Cuba.” *Odebrecht*, 715 F.3d at 1277; *see* 22 U.S.C. § 7209(a). At the same time, the TSRA reinforced the “[p]rohibition on travel relating to tourist activities.” § 7209(b)(1). The TSRA clarified that:

Notwithstanding any other provision of law or regulation, the Secretary of the Treasury, or any other Federal official, may not authorize the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities.

Id.

The TSRA defines “tourist activities” as:

any activity with respect to travel to, from, or within Cuba that is not expressly authorized in subsection (a) of this section, in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000).

§ 7209(b)(2).

B. Relevant Regulations

1. *Cuban Asset Control Regulations*

In 1963, under the Trading with the Enemy Act (“TWEA”), 50 U.S.C. §§ 4301–41, the Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued the Cuban Assets Control Regulations (“CACR”), 31 C.F.R. § 515.101. “Broadly speaking, the regulations prohibit, unless specifically authorized, any dealing in any property in which Cuba or a Cuban national has an interest of any nature.” *Odebrecht*, 715 F.3d at 1276; *see* 31 C.F.R. § 515.201(a)–(b).

As of 1996, when the LIBERTAD Act was enacted, the CACR permitted travel to Cuba under a general license to government officials, regularly employed journalists, and family members visiting “close relatives” with an “extreme humanitarian need,” but for a limited period. 31 C.F.R. § 515.560(a)(1)(i)–(iii) (1996). The CACR also authorized travel to Cuba via specific licenses to family members outside the general limits, for other humanitarian needs, for “professional research and similar activities,” to freelance journalists, for “clearly defined educational activi-

ties,” for “religious activities,” to “human rights organizations investigating human rights violations,” and “for purposes related to the exportation, importation, or transmission of information or informational materials.” § 515.560(b) (1996). The CACR clarified that no provision “authorizes transactions in connection with tourist travel to Cuba.” § 515.560(a)(2), (b)(2) (1996).

2. *OFAC’s CACR Amendments*

In 1999, OFAC amended the CACR to authorize travel to Cuba via general or specific license under twelve (12) travel categories of activities. § 515.560 (1999). Those categories—in effect in 2000 when the TSRA was enacted—were: (1) “Family visits”; (2) “Official business of the U.S. government, foreign governments, and certain intergovernmental organizations”; (3) “Journalistic activity”; (4) “Professional research”; (5) “Educational activities”; (6) “Religious activities”; (7) “Public performances, clinics, workshops, athletic and other competitions, and exhibitions”; (8) “Support for the Cuban people”; (9) “Humanitarian projects”; (10) “Activities of private foundations or research or educational institutes”; (11) “Exportation, importation, or transmission of information or informational materials”; and (12) “Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or controlled foreign firms.” § 515.560(a)(1)–(12) (2000). The CACR also underscored that “[n]othing in this section authorizes transactions in connection with tourist travel to Cuba.” § 515.560(g) (2000).

In January 2011, OFAC amended § 515.565—the “educational activities” travel regulation—to author-

ize travel, under a specific license, for “exchanges not involving academic study pursuant to a degree program when those exchanges take place under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact.” 76 Fed. Reg. 5072-01, (Jan. 28, 2011); 31 C.F.R. § 515.565(b)(2) (2011). Section 515.565 clarified, however, that “[t]ransactions related to activities that are primarily tourist-oriented, including self-directed educational activities that are intended only for personal enrichment, will not be authorized pursuant to this section.” § 515.565(c) (2011).

In January 2015, OFAC amended the CACR “to authorize travel-related transactions and other transactions incident to activities within the 12 existing travel categories in OFAC’s regulations . . . without the need for case-by-case specific licensing, while continuing not to authorize travel for tourist activities, which is prohibited by statute.” 80 Fed. Reg. 2291-01 (Jan. 16, 2015); *see* § 515.560(a) (2015). Under those amendments, travel “meant to promote people-to-people contact” (commonly referred to as people-to-people travel), could be done by general license, but under certain conditions:

- (1) The exchanges take place under the auspices of an organization that is a person subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact;
- (2) Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban

people's independence from Cuban authorities;

(3) Each traveler has a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba;

(4) An employee, paid consultant, or agent of the sponsoring organization accompanies each group traveling to Cuba to ensure that each traveler has a full-time schedule of educational exchange activities; and

(5) The predominant portion of the activities engaged in by individual travelers is not with individuals or entities acting for or on behalf of a prohibited official of the Government of Cuba . . . or a prohibited member of the Cuban Communist Party[.]

§ 515.565(b)(1)–(5) (2015).

The amended regulations in § 515.565 stated that “[t]ransactions related to activities that are primarily tourist-oriented, including self-directed educational activities that are intended only for personal enrichment, are not authorized pursuant to this section.” § 515.565(c) (2015). Section 515.560 also stated that “[n]othing in this section authorizes transactions in connection with tourist travel to Cuba.” § 515.560(f) (2015).

Given that OFAC had removed the requirement to apply for a specific license to engage in people-to-people travel under § 515.565, OFAC added examples within § 515.565 of what activities would qualify for a general license. For instance, an organization would satisfy the general license if it sponsored an exchange

“for individuals to learn side-by-side with Cuban individuals in areas such as environmental protection or the arts” where “[t]he travelers will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the travelers and individuals in Cuba.” § 515.565 (2015) (example). By contrast, “[a]n organization that sponsors and organizes trips to Cuba in which travelers engage in individually selected and/or self-directed activities would not qualify for the general license.” *Id.* Rather, “[a]uthorized trips are expected to be led by the organization and to have a full-time schedule of activities in which the travelers will participate.” *Id.*

In January 2015, OFAC also amended § 515.572 to allow common carrier services by aircraft to and from Cuba by general license. § 515.572(a)(2) (Jan. 2015). In September 2015, OFAC removed the limitation by aircraft, effectively covering vessels. *See* § 515.572(a)(2) (Sept. 2015). OFAC also authorized common carrier vessels “to provide lodging services onboard such vessels to persons authorized to travel to or from Cuba pursuant to this part during the period of time the vessel is traveling to, from, or within Cuba, including when docked at a port in Cuba.” § 515.572(a)(4) (Sept. 2015). OFAC added a note to the regulation, clarifying that common carrier vessels could transport “[p]ersons subject to U.S. jurisdiction who are traveling to or from Cuba pursuant to a general license under one of the 12 categories of travel listed in § 515.560 or under a specific license from [OFAC].” § 515.572 (Sept. 2015) (note). This note is still part of the regulation in the present version of § 515.572. *See* § 515.572 (note).

In March 2016, OFAC expanded § 515.565 to remove the requirement of a sponsoring organization for people-to-people travel, thus allowing self-guided people-to-people travel. 81 Fed. Reg. 13989-01 (Mar. 16, 2016); *see* § 515.565(b) (2016). People-to-people travel, however, still required “a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities,” and “a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba.” § 515.565(b)(1)–(2) (2016). OFAC also added a note to § 515.565 stating that “[a]n organization that sponsors and organizes trips to Cuba in which travelers engage in individually selected and/or self-directed activities would not qualify for the general license.” § 515.565(b) (2016) (note). Rather, “[a]uthorized trips are expected to be led by the organization and to have a full-time schedule of activities in which the travelers will participate.” *Id.* Moreover, § 515.565 reiterated that “[t]ransactions related to activities that are primarily tourist-oriented are not authorized pursuant to this section.” § 515.565(c) (2016). The regulation set forth specific examples:

Example 1 to § 515.565(b): An organization wishes to sponsor and organize educational exchanges not involving academic study pursuant to a degree program for individuals to learn side-by-side with Cuban individuals in areas such as environmental protection or the arts. The travelers will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the travelers and individuals in

Cuba. The organization's activities qualify for the general license, and the individual may rely on the entity sponsoring the travel to satisfy his or her recordkeeping requirement.

Example 2 to § 515.565(b): An individual plans to travel to Cuba to participate in discussions with Cuban artists on community projects, exchanges with the founders of a youth arts program, and to have extended dialogue with local city planners and architects to learn about historical restoration projects in Old Havana. The traveler will have a full-time schedule of such educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba. The individual's activities qualify for the general license, provided that the individual satisfies the recordkeeping requirement.

Example 3 to § 515.565(b): An individual plans to travel to Cuba to participate in discussions with Cuban farmers and produce sellers about cooperative farming and agricultural practices and have extended dialogue with religious leaders about the influence of African traditions and religion on society and culture. The traveler fails to keep any records of the travel. Although the traveler will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, the traveler's failure to keep records means that

the individual's activities do not qualify for the general license.

Example 4 to § 515.565(b): An individual plans to travel to Cuba to rent a bicycle to explore the streets of Havana, engage in brief exchanges with shopkeepers while making purchases, and have casual conversations with waiters at restaurants and hotel staff. None of these activities are educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, and the traveler's trip does not qualify for the general license.

Example 5 to § 515.565(b): An individual plans to travel to Cuba to participate in discussions with Cuban farmers and produce sellers about cooperative farming and agricultural practices and have extended dialogue with religious leaders about the influence of African traditions and religion on society and culture. The individual also plans to spend a few days engaging in brief exchanges with Cuban food vendors while spending time at the beach. Only some of these activities are educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, and the traveler therefore does not have a full-time schedule of such activities on each day of the trip. The trip does not qualify for the general license.

§ 515.565 (2016).

In October 2017, the Trump Administration issued a National Security Presidential Memorandum that sought, among other objectives, to ensure “adherence to the statutory ban on tourism to Cuba” and “that engagement between the United States and Cuba advances the interests of the United States and the Cuban people.” 82 Fed. Reg. 48875-04 (Oct. 20, 2017). In response, OFAC amended the CACR to remove self-guided people-to-people travel, emphasizing that such travel was only authorized if it constituted “a full-time schedule of activities that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities; and result[s] in meaningful interactions with individuals in Cuba.” 82 Fed. Reg. 51998-01 (Nov. 9, 2017); *see* § 515.565(b)(1)–(4) (2017). The regulation maintained that, “[t]ransactions related to activities that are primarily tourist-oriented are not authorized pursuant to this section.” § 515.565(f) (2017).

In June 2019, following a foreign policy address from National Security Advisor Ambassador John Bolton “that the Department of the Treasury would further restrict non-family travel,” OFAC “remove[d] the authorization for group people-to-people educational travel in § 515.565(b).” 84 Fed. Reg. 25992-01 (June 5, 2019); *see* § 515.565(b) (2019).

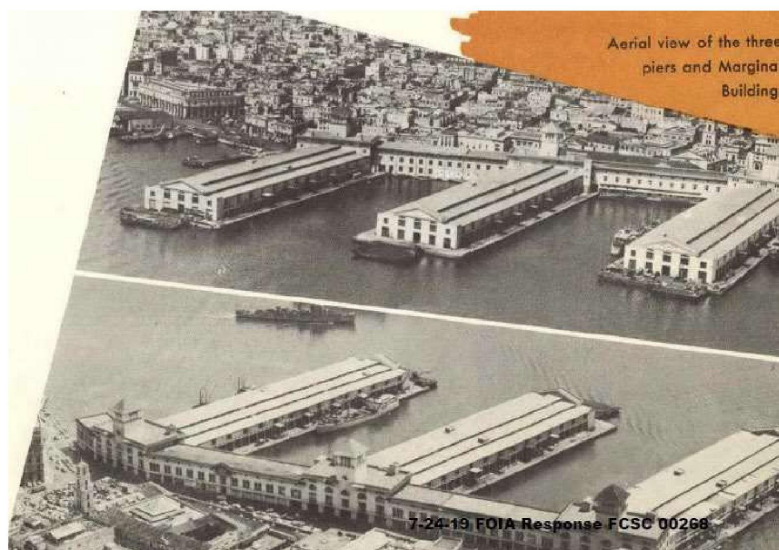
II. PROCEDURAL BACKGROUND

A. Havana Docks’ Allegations

Havana Docks filed separate actions for damages under Title III of the LIBERTAD Act against each cruise operator (and some affiliates): (1) Carnival; (2) MSC SA, MSC Co., and MSC USA; (3) Royal Caribbean; and (4) Norwegian. *Carnival*, ECF No.

[149]; *MSC*, ECF No. [104]; *Royal Caribbean*, ECF No. [46]; *Norwegian*, ECF No. [56]. In each case, Havana Docks alleges that it is “a U.S. national as defined by 22 U.S.C. § 6023(15)” and “the rightful owner of an interest in and certified claim to certain commercial waterfront real property in the Port of Havana, Cuba identified specifically by [Cuba] as the Havana Cruise Port Terminal.” *E.g.*, *Carnival*, ECF No. [149] ¶ 6. Havana Docks claims that it “and its predecessor in interest constructed and managed the [Terminal],” and that Havana Docks “owned, possessed, used and managed” the Terminal until its confiscation by the Cuban Government in 1960. *Id.* ¶ 7.

The picture below depicts the Terminal. *Id.*, ECF Nos. [337] ¶ 18, [367] ¶ 18.



The first pier is the San Francisco, the second pier is the Machina, and the third is the Santa Clara. *Id.*, ECF Nos. [331] ¶ 22, [331-1] at 3 n.1, [388] ¶ 22.

Havana Docks alleges that the FCSC certified its ownership interest in the Terminal under Certified Claim No. CU-2492 (the “Certified Claim”). *E.g., id.*, ECF No. [149] ¶ 12. The most significant portion of the Certified Claim’s valuation is a concession (“Concession”) from the Cuban Government, which “granted [Havana Docks] a term of 99 years for the use of, improvement, construction upon, operation and management of the [Terminal].” *E.g., id.*, ECF No. [149] ¶ 15. Havana Docks contends that upon confiscation, 44 years remained on the Concession. *Id.* The Concession states that Havana Docks would be entitled to indemnification if its property was expropriated under Article 50 of the Law of Ports, but the Cuban Government did not pay the indemnity. *Id.* ¶¶ 15–18.

Havana Docks claims that Defendants “knowingly and intentionally commenced, conducted, and promoted [their] commercial cruise line business to Cuba using the [Terminal] by regularly embarking and disembarking its passengers on the [Terminal] without the authorization of Plaintiff.” *Carnival*, ECF No. [149] ¶ 40; *Royal Caribbean*, ECF No. [46] ¶ 22; *Norwegian*, ECF No. [56] ¶ 21. Havana Docks’ claim relative to MSC is slightly different; it alleges that MSC “knowingly and intentionally commenced, conducted, and promoted their commercial cruise line business from Miami to Cuba using the [Terminal][.]” *MSC*, ECF No. [104] ¶ 23. Havana Docks alleges that Defendants “knowingly and intentionally participated in and profited from the communist Cuban Government’s possession of the [Terminal] without the authorization of Plaintiff.” *Carnival*, ECF No. [149] ¶ 41; *MSC*, ECF No. [104] ¶ 24; *Royal Caribbean*, ECF No. [46] ¶ 23; *Norwegian*, ECF No. [56] ¶ 22.

Havana Docks alleges that (1) Carnival used the Terminal from 2016 to 2019, *Carnival*, ECF No. [149] ¶¶ 40–44; (2) MSC used the Terminal from November 1, 1996, to June 2019, *MSC*, ECF No. [104] ¶¶ 23–29; (3) Royal Caribbean used the Terminal for two years beginning on April 23, 2017, *Royal Caribbean*, ECF No. [46] ¶ 22; and (4) Norwegian used the Terminal for two years beginning March 2017, *Norwegian*, ECF No. [56] ¶ 21.

Havana Docks further alleges that Carnival “knowingly and intentionally caused, directed, participated in, and/or profited from” trafficking by Airtours Plc (“Airtours”), or “otherwise engaged in” trafficking through Airtours, which used the Terminal from 1996 through 2001. *Carnival*, ECF No. [149] ¶¶ 24–30. Havana Docks similarly contends that Carnival engaged in the same conduct with Costa Crociere S.p.A. (“Costa”), a wholly-owned subsidiary that used the Terminal in 1997 and renovated and managed the Terminal in a joint venture with the Cuban Government. *Id.* ¶¶ 31–39. In addition, Havana Docks alleges that Royal Caribbean controlled and operated four cruise brands, including Silversea Cruises. *Royal Caribbean*, ECF No. [46] ¶ 2.

B. The Omnibus Summary Judgment Motions

1. *Defendants’ Omnibus Motion*

Defendants’ Omnibus Motion seeks summary judgment on Havana Docks’ claims based on four grounds: (1) Havana Docks did not own the Terminal but only a “limited right to operate a cargo business in which Defendants did not and could not have trafficked”; (2) Defendants’ cruises to Cuba fall within the lawful travel exception; (3) Havana Docks lacks statutory standing because it is not a United

States national; and (4) Havana Docks' interpretation of Title III violates the United States Constitution in several ways. *Carnival*, ECF No. [330] at 2–3.

2. *Havana Docks' Omnibus Motion*

Havana Docks' Omnibus Motion seeks summary judgment on Defendants' common affirmative defenses: (1) the lawful travel exception,³ (2) the *Ex Post Facto* Clause of the United States Constitution,⁴ (3) The Fifth Amendment Due Process Clause,⁵ (4) expiration of the Concession,⁶ (5) failure to state a claim,⁷ (6) lack of knowledge and intent,⁸ (7) lack of

³ *Carnival*, ECF No. [160] at 18 (Def. Nos. 1 and 2); *MSC*, ECF No. [115] at 16 (MSC USA and MSC Co. Def. Nos. 1 and 2), [133] at 15 (MSC SA Def. Nos. 1 and 2); *Royal Caribbean*, ECF No. [59] at 5 (Def. No. 1), *Norwegian*, ECF No. [107] at 14 (Def. Nos. 1 and 2).

⁴ *Carnival*, ECF No. [160] at 19 (Def. No. 6); *MSC*, ECF Nos. [115] at 17 (MSC USA and MSC Co. Def. No. 6), [133] at 16 (MSC SA Def. No. 6), *Royal Caribbean*, ECF No. [59] at 6 (Def. No. 10), *Norwegian*, ECF No. [107] at 14 (Def. No. 4).

⁵ *Carnival*, ECF No. [160] at 18 (Def. No. 4), *MSC*, ECF Nos. [115] at 16 (MSC USA and MSC Co. Def. No. 4), [133] at 15 (MSC S.A. Def. No. 4), *Royal Caribbean*, ECF No. [59] at 5, 6, 9 (Def. Nos. 3, 4, 11, 25, 26); *Norwegian*, ECF No. [107] at 18 (Def. No. 21).

⁶ *Carnival*, ECF No. [160] at 20 (Def. No. 14); *MSC*, ECF Nos. [115] at 18 (MSC USA and MSC Co. Def. No. 13), [133] at 17 (MSC SA Def. No. 13); *Royal Caribbean*, ECF No. [59] at 5 (Def. No. 2); *Norwegian*, ECF No. [107] at 16 (Def. No. 12).

⁷ *Carnival*, ECF No. [160] at 20 (Def. No. 15); *MSC*, ECF Nos. [115] at 18 (MSC USA and MSC Co. Def. No. 14), [133] at 17 (MSC SA Def. No. 14); *Royal Caribbean*, ECF No. [59] at 9 (Def. Nos. 22 and 28); *Norwegian*, ECF No. [107] at 16 (Def. No. 13).

⁸ *MSC*, ECF No. [115] at 18 (MSC USA and MSC Co. Def. No. 12), [133] at 17 (MSC SA Def. No. 12); *Royal Caribbean*, ECF No. [59] at 9 (Def. Nos. 21 and 27); *Norwegian*, ECF No. [107] at

standing due to lack of injury-in-fact,⁹ (8) lack of indemnity right,¹⁰ (9) lack of causation,¹¹ (10) lack of use of claimed property,¹² (11) Article II of the United States Constitution,¹³ (12) extraterritorial application of United States law,¹⁴ (13) Act of State Doctrine,¹⁵

16 (Def. No. 11). Carnival withdrew this defense. *See Carnival*, ECF No. [279] at 4.

⁹ *Carnival*, ECF No. [160] at 19 (Def. No. 8); *MSC*, ECF Nos. [115] at 17 (MSC USA and MSC Co. Def. No. 8), [133] at 18 (MSC SA Def. No. 8); *Royal Caribbean*, ECF No. [59] at 6 (Def. No. 8); *Norwegian*, ECF No. [107] at 15 (Def. No. 6).

¹⁰ *Carnival*, ECF No. [160] at 22 (Def. No. 24); *MSC*, ECF Nos. [115] at 20 (MSC USA and MSC Co. Def. No. 20), [133] at 19 (MSC SA's Def. No. 21); *Royal Caribbean*, ECF No. [59] at 8 (Def. No. 24); *Norwegian*, ECF No. [107] at 17 (Def. No. 19).

¹¹ *Carnival*, ECF No. [160] at 21 (Def. No. 18); *MSC*, ECF Nos. [115] at 19 (MSC USA and MSC Co. Def. No. 17), [133] at 18 (MSC SA Def. No. 17); *Royal Caribbean*, ECF No. [59] at 9 (Def. No. 29); *Norwegian*, ECF No. [107] at 17 (Def. No. 16).

¹² *Carnival*, ECF No. [160] at 20 (Def. No. 8); *MSC*, ECF Nos. [115] at 19 (MSC USA and MSC Co. Def. No. 15), [133] at 17–18 (MSC SA Def. No. 15); *Royal Caribbean*, ECF No. [59] at 7 (Def. No. 13); *Norwegian*, ECF No. [107] at 16 (Def. No. 14).

¹³ *Carnival*, ECF No. [160] at 19 (Def. No. 7); *MSC*, ECF Nos. [115] at 17 (MSC USA and MSC Co. Def. No. 7), [133] at 16 (MSC SA Def. No. 7); *Royal Caribbean*, ECF No. [59] at 8 (Def. No. 19); *Norwegian*, ECF No. [107] at 15 (Def. No. 5).

¹⁴ *Carnival*, ECF No. [160] at 19 (Def. No. 5); *MSC*, ECF Nos. [115] at 17 (MSC USA and MSC Co. Def. 5); [133] at 16 (MSC SA Def. No. 5); *Royal Caribbean*, ECF No. [59] at 8 (Def. No. 9); *Norwegian*, ECF No. [107] at 14 (Def. No. 3).

¹⁵ *Carnival*, ECF No. [160] at 21 (Def. No. 19); *MSC*, ECF Nos. [115] at 19 (MSC USA and MSC SA Def. No. 18), [133] at 18 (MSC SA Def. No. 18); *Royal Caribbean*, ECF No. [59] at 7 (Def. No. 16); *Norwegian*, ECF No. [107] at 17 (Def. No. 17).

(14) election of remedies under Title III,¹⁶ (15) failure to join an indispensable party,¹⁷ and (16) purpose of Certified Claim.¹⁸ *Carnival*, ECF No. [336] at 10–31. Havana Docks also seeks summary judgment on the issue of its statutory standing, including that it is a United States national under the LIBERTAD Act. *Id.* at 5, 8–10.

C. The Individual Summary Judgment Motions

1. *Havana Docks*

In each of its Individual Summary Judgment Motions, Havana Docks argues that it has established the elements under Title III of the LIBERTAD Act as a matter of law: (1) the Cuban Government confiscated its property on or after January 1, 1959; (2) Havana Docks owns the claim to the confiscated property; (3) Havana Docks acquired the ownership of that claim before the statutory date; (4) Havana Docks is a United States national; (5) Defendants knowingly and intentionally trafficked in the confiscated property; and (6) the trafficking occurred after November 1, 1996. *Carnival*, ECF No. [333] at 2–9;

¹⁶ *Carnival*, ECF No. [160] at 20–21 (Def. No. 17); *MSC*, ECF Nos. [115] at 19 (MSC USA and MSC Co. Def. No. 16), [133] at 18 (MSC SA Def. No. 16); *Royal Caribbean*, ECF No. [59] at 7 (Def. No. 14); *Norwegian*, ECF No. [107] at 16 (Def. No. 15).

¹⁷ *Carnival*, ECF No. [160] at 21 (Def. No. 21); *MSC*, ECF Nos. [115] at 18 (MSC USA and MSC Co. Def.

No. 11), [133] at 17 (MSC SA Def. No. 11); *Royal Caribbean*, ECF No. [59] at 7 (Def. No. 15); *Norwegian*, ECF No. [107] at 18–19 (Def. No. 22).

¹⁸ *Carnival*, ECF No. [160] at 23 (Def. No. 28); *MSC*, ECF Nos. [115] at 20 (MSC USA and MSC Co. Def. No. 20); ECF No. [133] at 19 (MSC SA Def. No. 20); *Royal Caribbean*, ECF No. [59] at 8 (Def. No. 18).

MSC, ECF No. [225] at 2–8; *Royal Caribbean*, ECF No. [142] at 2–10; *Norwegian*, ECF No. [229] at 2–9.

Havana Docks also moves for summary judgment on the affirmative defenses raised by Defendants. As to Carnival, Havana Docks seeks summary judgment regarding Carnival’s first and second affirmative defenses (lawful travel exception), third affirmative defense (statute of limitations or repose), twelfth affirmative defense (Eighth Amendment), and twenty-ninth affirmative defense (non-U.S. sailings). *Carnival*, ECF No. [333] at 10–19.

As to MSC, Havana Docks seeks summary judgment on MSC’s first and second affirmative defenses (lawful travel exception), third affirmative defense (statute of limitations or repose), twenty-third affirmative defense (licensing), twenty-fourth affirmative defense (waiver), and twenty-fifth affirmative defense (equitable estoppel), and twenty-sixth affirmative defense (laches). *MSC*, ECF No. [225] at 9–21.

As to Royal Caribbean, Havana Docks seeks summary judgment on Royal Caribbean’s first affirmative defense (lawful travel exception), ninth affirmative defense (foreign government conduct), twelfth affirmative defense (venue), twentieth affirmative defense (Eighth Amendment), and twenty-third affirmative defense (statute of limitations). *Royal Caribbean*, ECF No. [142] at 10–21.

As to Norwegian, Havana Docks seeks summary judgment on Norwegian’s first and second affirmative defenses (lawful travel exception), tenth affirmative defense (Eighth Amendment), and twentieth affirmative defense (statute of limitations/repose). *Norwegian*, ECF No. [229] at 9–20.

2. *Carnival*

Carnival moves for summary judgment on three grounds. First, Carnival argues that it is not liable for its ownership interest in Costa and Airtours. *Carnival*, ECF No. [324] at 7–14. Second, Carnival contends that the use of the Terminal by Costa, Airtours, and Carnival was incident to and necessary for the conduct of lawful travel. *Id.* at 7–14, 18–21. Third, Carnival maintains that any claim based on pre-2004 conduct is time-barred, and the “continuing violation” theory is inapplicable. *Id.* at 14–18.

3. *MSC*

MSC moves for summary judgment on three grounds. First, MSC contends that they meet the lawful travel exception. *MSC*, ECF No. [209] at 8–13. Second, MSC argues that MSC Co. and MSC USA did not engage in commercial activity or benefit from the use of the Terminal to constitute trafficking. *Id.* at 13–14. Third, MSC submits that there is no evidence that they trafficked knowingly and intentionally. *Id.* at 15–18.

As a preliminary matter, Havana Docks has abandoned any claim that MSC Co. trafficked under the LIBERTAD Act. *See Cusick v. Yellowbook, Inc.*, 607 F. App’x 953, 954 n.1 (11th Cir. 2015) (holding that district court may deem abandoned claims not addressed in response to a motion for summary judgment). MSC argues in its individual summary judgment motion that MSC Co. is “an inactive Florida corporation which has never had any employees, office and has never performed any business activities,” and did not commit a trafficking act. *MSC*, ECF No. [209] at 14 (emphasis in original). Havana Docks does not address that contention in its

response. *Id.*, ECF No. [258]. Notably, Havana Docks' individual summary judgment motion is directed only against MSC SA and MSC USA. *Id.*, ECF No. [225]. In its Response, MSC correctly points out that the omission shows that Havana Docks has dropped its claim against MSC Co. *Id.*, ECF No. [256] at 22. Given Havana Docks' lack of argument, MSC Co. is entitled to summary judgment. *See Cusick*, 607 F. App'x at 954 n.1.

4. *Royal Caribbean*

Royal Caribbean moves for summary judgment on four grounds. First, Royal Caribbean argues that it is not liable for cruises to Cuba conducted by its subsidiary, Silversea Cruises. *Royal Caribbean*, ECF No. [132] at 2–6. Second, Royal Caribbean contends that it meets the lawful travel exception. *Id.* at 6–9. Third, Royal Caribbean submits that there is no evidence that it acted with the requisite knowledge and intent. *Id.* at 9–11. Fourth, Royal Caribbean maintains that Havana Docks' time-limited Concession expired in 2004, precluding a finding of trafficking for cruises that used the Terminal after that date. *Id.* at 12.

5. *Norwegian*

Norwegian moves for summary judgment on two grounds. First, Norwegian contends that it is legally entitled to the lawful travel exception. *Norwegian*, ECF No. [230] at 6–15. Second, Norwegian submits that there is no evidence that it acted with knowledge and intent. *Id.* at 15–19.

III. MATERIAL FACTS

Based on the parties' respective statements of material facts, along with the evidence in the record, the following facts are not genuinely in dispute unless otherwise noted.¹⁹

¹⁹ Havana Docks filed a statement of facts in support of its omnibus motion for partial summary judgment. *Carnival*, ECF No. [337], Carnival filed a counter statement, *id.*, ECF No. [367], and Havana Docks filed a reply statement, *id.*, ECF No. [396]. Defendants filed a statement of facts in support of their omnibus motion for summary judgment, *id.*, ECF No. [331], Havana Docks filed a counter statement, *id.* at ECF No. [388], and Defendants filed a reply statement, *id.*, ECF No. [401].

Havana Docks filed a statement of facts in support of its individual motion for summary judgment against Carnival, *Carnival*, ECF No. [332]. Carnival responded. *Id.*, ECF No. [374]. Carnival also filed a statement of facts in support of its individual summary judgment motion. *Id.*, ECF No. [326]. Havana Docks responded, *id.*, ECF No. [377], and Carnival filed a reply, *id.*, ECF No. [404].

Havana Docks filed a statement of facts in support of its individual motion for summary judgment against MSC, *MSC*, ECF No. [224]. MSC filed a response. *Id.*, ECF No. [253]. MSC also filed a statement of facts in support of its individual motion for summary judgment. *Id.*, ECF No. [210]. Havana Docks responded, adding additional facts, *id.*, ECF No. [259], to which MSC filed a reply, *id.*, ECF No. [273].

Havana Docks filed a statement of facts in support of its individual motion for summary judgment against Royal Caribbean, *Royal Caribbean*, ECF No. [141]. Royal Caribbean filed a response, adding additional facts, *id.*, ECF No. [172], to which Havana Docks filed a reply, *id.*, ECF No. [205]. Royal Caribbean also filed a statement of facts in support of its individual motion for summary judgment. *id.*, ECF No. [133]. Havana Docks responded, adding additional facts, *id.*, ECF No. [183], to which Royal Caribbean filed a reply, *id.*, ECF No. [202].

Havana Docks filed a statement of facts in support of its individual motion for summary judgment against Norwegian,

A. Havana Docks

The following facts relate to this issue of Havana Docks' statutory standing as a United States national:

Havana Docks was incorporated in Delaware in 1917. *Carnival*, ECF Nos. [337] ¶ 1, [331] ¶ 29, [367] ¶ 1, [388] ¶ 29. Pursuant to its articles of incorporation, Havana Docks' stated purpose was to acquire the Concession from the Port of Havana Docks Company. *Id.*, ECF No. [318-27] at 4. Since the Cuban Government confiscated its property, part of Havana Docks' business has been to maintain its corporate existence in the event it is able to recover on its Certified Claim. *Id.*, ECF Nos. [388] ¶ 114, [401] ¶ 114. Havana Docks also manages some income-producing marketable assets. *Id.*, ECF Nos. [388] ¶ 115, [401] ¶ 115. In April 2021, the Delaware Secretary of State certified that Havana Docks has remained in good standing and is authorized to transact business. *Id.*, ECF No. [318-29].

Havana Docks' corporate address is 215 Southland Drive, Lexington, Kentucky. *Id.*, ECF Nos. [331-118] at 9, [388] ¶ 113, [401] ¶ 113. The address also corresponds to Bank of the Bluegrass & Trust Company. *Id.*, ECF Nos. [318-1] at 54, [331-113] at 7. Defendants contend that Havana Docks is not registered to do business in Kentucky. *Id.*, ECF No. [331] ¶ 44. Havana Docks does not dispute this;

Norwegian, ECF No. [228]. Norwegian filed a response, adding additional facts, *id.*, ECF No. [282], to which Havana Docks filed a reply, *id.*, ECF No. [310]. Norwegian also filed a statement of facts in support of its individual motion for summary judgment. *Id.*, ECF No. [234]. Havana Docks filed a response, adding additional facts, *id.* at ECF No. [284], to which Norwegian filed a reply, *id.*, ECF No. [309].

rather, it contends that Kentucky law allows Havana Docks to engage in significant activities without registering to do business. *Id.*, ECF No. [388] ¶ 44.

In 2011, Mickael Behn, then Havana Docks' Vice President, Secretary, and a director, and Aphra Behn, then also Havana Docks' Vice President and a director, engaged Jerry Johnson to maintain Havana Docks' corporate status as active and in good standing and to manage Havana Docks' investments. *Id.*, ECF Nos. [337] ¶ 50, [367] ¶ 50. Jerry Johnson is a banker with a prior banking relationship with the Behn family. *Id.*, ECF No. [318-1] at 5. He works at Bank of the Bluegrass & Trust Company. *Id.*, ECF No. [318-1] at 5.

In 2018, Johnson became Havana Docks' Secretary and Treasurer. *Id.*, ECF Nos. [337] ¶ 51, [367] ¶ 51; *see id.*, ECF No. [331-112] (Johnson deposition). Havana Docks states that Johnson also became Havana Docks' Vice President and Comptroller; Defendants dispute those additional titles. *Id.*, ECF Nos. [337] ¶ 51, [367] ¶ 51.

In 2019, when Havana Docks filed these actions, Havana Docks had two directors and officers: Mickael Behn and Jerry Johnson. *Id.*, ECF Nos. [331] ¶ 30, [388] ¶ 30. In 2019, Mickael Behn was Havana Docks' President, a director, and a shareholder, and Jerry Johnson was Havana Docks' Secretary and Treasurer, but not a shareholder. *Id.*, ECF Nos. [331] ¶¶ 31, 33, [388] ¶¶ 31, 33. Since 1999, Mickael Behn's primary residence is in London, United Kingdom. *Id.*, ECF Nos. [331] ¶ 36, [388] ¶ 36. At the time these lawsuits were filed, Johnson's primary place of residence was Lexington, Kentucky. *Id.*, ECF Nos. [331] ¶ 37, [388] ¶ 37. As of December 2020, Behn had not been to Kentucky since he was a child. *Id.*, ECF Nos.

[331] ¶ 45, [388] ¶ 45. Havana Docks' historical corporate records are kept in Behn's family home in Miami. *Id.*, ECF Nos. [331] ¶ 58, [388] ¶ 58.

Havana Docks has no employees. *Id.*, ECF Nos. [388] ¶ 111, [401] ¶ 111. Mickael Behn receives a monthly distribution of \$250.00 for "work on Havana Docks." *See id.*, ECF No. [331-135]. Jerry Johnson received no stipend. *Id.*, ECF Nos. [331] ¶ 61, [388] ¶ 61.

Under Havana Docks' by-laws, Havana Docks' directors are tasked with the authority to manage Havana Docks' business, and the directors have assigned that responsibility to Mickael Behn and Jerry Johnson. *Id.*, ECF Nos. [331] ¶ 38, [388] ¶ 38. Defendants do not dispute that between 2011 and January 2021, Johnson has at one point:

- performed duties to maintain Havana Docks' corporate status active and in good standing to protect Havana Docks' rights under the Certified Claim, *id.*, ECF Nos. [337] ¶ 52, [367] ¶ 52;
- coordinated with Havana Docks' CPA each year for the filing of Havana Docks' Form 1120 tax filing to the IRS and annual franchise tax filing to the state of Delaware, *id.*, ECF Nos. [337] ¶ 54, [367] ¶ 54;
- maintained Plaintiff's ledger, balance sheets, income statements, *id.*, ECF Nos. [337] ¶ 55, [367] ¶ 55;
- updated and maintained Havana Docks' stockholders' registry and coordinated and distributed information to stockholders for annual meetings, *id.*, ECF Nos. [337] ¶ 56, [367] ¶ 56;

- recorded results from annual stockholders' meetings, *id.*, ECF Nos. [337] ¶ 57, [367] ¶ 57; and
- exercised his responsibilities from Lexington, Kentucky. *Id.*, ECF Nos. [337] ¶ 59, [367] ¶ 59.

Havana Docks asserts that Jerry Johnson also engaged lawyers, lobbyists, and consultants to pursue Havana Docks' rights under the LIBERTAD Act, including these actions. *Id.*, ECF No. [337] ¶ 58. Defendants agree but assert that Johnson engaged these individuals with Mickael Behn's approval from London. *Id.*, ECF No. [367] ¶ 58.

When asked at deposition who decided to hire Havana Docks' attorney, Mickael Behn testified, "[a]ll decisions are executed by Jerry Johnson," and, "Jerry and I always talked about it, what we might do . . . [s]o I would have approved it with Jerry at the same time." *Id.*, ECF No. [331-113] at 26. When asked the same question later in his deposition, Mickael Behn responded, "[i]t would have been Jerry. I mean, in consultation with me. We always made decisions together." *Id.*, ECF No. [331-113] at 40. Mickael Behn was also asked, "Are there any decisions that Mr. Johnson can make on behalf of Havana Docks Corporation that didn't require your input?" *Id.* Mickael Behn answered, "I think paying taxes, investments, administration. Pretty much everything, I would say." *Id.* Mickael Behn further testified that decisions relating to Havana

Docks' Certified Claim "would involve all the directors for compensation of the certified claim," and he could not recall a decision Johnson made about Havana Docks' Certified Claim that did not involve Mickael Behn's input. *Id.* Mickael Behn testified that

Johnson “has authority . . . to do what he needs to do for Havana Docks. It’s a certified claim. And to keep the company running.” *Id.*

Jerry Johnson testified that he is “largely responsible” for “the day-to-day business decisions for Havana Docks,” but that he “report[s] to Mickael Behn who is the president of Havana Docks.” *Id.*, ECF No. [331-102] at 29; *see also id.*, ECF No. [331-112] at 13. Johnson also testified that Mickael Behn approved the hiring of Havana Docks’ CPA and corporate lawyer while Mickael Behn was in London. *Id.*, ECF No. [331-112] at 61. Johnson explained that it was his own idea to hire the CPA and corporate lawyer, that he spoke with Mickael Behn on the telephone about it, and that Mickael Behn agreed with Johnson’s decision. *Id.* Johnson testified that Mickael Behn does not conduct any Havana Docks business in England, but “as president of the corporation, Mr. Behn is apprised of all of our actions.” *Id.*, ECF No. [318-1] at 54.

Defendants contend that “Mickael Behn is the officer who reviews and provides approval for payments, such as occasional consulting fees paid to Aphra Behn, Mickael Behn’s mother, Jerry Johnson, and Aaron Johnson (Jerry Johnson’s son).” *Id.*, ECF No. [331] ¶ 55. As support, Defendants provide a printout of the “Disbursement Transactions” for Havana Docks showing three distributions made to Jerry Johnson (in 2018) and Aphra Behn (in February 2019) “PER REQUEST OF MICKAEL BEHN FOR CONSULTING FEE.” *Id.*, ECF No. [331-135] at 7–8. Defendants also point to a May 2018 email where Jerry Johnson instructed his son to forward “to Mickael for his review and approval with [a] copy to me” an invoice for “time” Aaron Johnson

had charged to Havana Docks. *Id.*, ECF No. [331-136]. Aaron Johnson testified that his father wanted Mickael Behn to look at the invoice because his father “didn’t want to raise an issue with Mickael since I am my dad’s son.” *Id.*, ECF No. [331-137] at 11. Havana Docks disputes that the referenced evidence supports Defendants’ assertion. *Id.*, ECF No. [388] ¶ 55.

Defendants also assert that “Mickael Behn is the officer who reviews and provides approval of drafts of corporate governance records.” *Id.*, ECF No. [331] ¶ 56. As support, Defendants provide an email from August 1, 2018, with the subject line, “Consent in lieu documents,” in which Jerry Johnson instructed his son to forward to Mickael Behn “for his final approval” drafts of certain documents—the documents are not attached to the filed email. *Id.*, ECF No. [331-138]. Defendants also filed as part of their Omnibus Summary Judgment Motion, email communications from August 1 and August 2, 2018, in which Jerry Johnson sent to Mickael Behn “for final review” a PDF titled “Final - 2017 HDC Financial” and a Word document titled “Consent in Lieu of Stockholders Meeting.” *Id.*, ECF No. [331-139]. The documents are not attached to the filed email. *Id.*

Defendants submit that “Mickael Behn is the ultimate decision-making officer for Plaintiff with respect to lobbying and legal strategy.” *Id.*, ECF No. [331] ¶ 57. As support, Defendants also filed a January 2019 email with the subject line, “Havana Docks Corp Letter for title III partial,” in which Jerry Johnson writes to Mickael Behn, “See what you think of the attached edited draft.” *Id.*, ECF No. [331-140]. The referenced draft is not attached to the filed email. *Id.* Defendants also rely on an email dated

March 5, 2019, in which Mickael Behn relates “some suggestions from the HDC camp” to Jerry Johnson, Aaron Johnson, and third parties, to language in an email detailing “Title III: Next Steps.” *Id.*, ECF No. [331-141].

B. Confiscation of the Terminal by the Cuban Government

On October 24, 1960, under Resolution No. 3, the Fidel Castro-led Cuban Government naturalized all property located in Cuba of United States nationals, including Havana Docks’ assets. *Carnival*, ECF Nos. [337] ¶¶ 27–28, [367] ¶¶ 27–28; *see Carnival*, ECF No. [73-6]; *MSC*, ECF No. [41-6]; *Royal Caribbean*, ECF No. [31-6]; *Norwegian*, ECF No. [43-6].

Havana Docks contends that the Cuban Government never compensated Havana Docks for confiscating the Terminal. *Carnival*, ECF No. [337] ¶ 31. Defendants do not dispute this; instead, Defendants contend that the Cuban Government has always owned the Terminal and thus did not confiscate it from Havana Docks by continuing to own it. *Id.*, ECF No. [367] ¶ 31.

C. The Concession and the Certified Claim

The Concession was established in 1905 when the Cuban Government awarded it to Compañía del Puerto for a term of 50 years. *Carnival*, ECF Nos. [337] ¶ 3, [367] ¶ 3. The Concession was published in 1905 in the Gaceta Oficial of the Republic of Cuba. *Carnival*, ECF No. [73-3]; *MSC*, ECF No. [41-3]; *Royal Caribbean*, ECF No. [31-3]; *Norwegian*, ECF No. [43-3]. The Concession was “for the construction of a jetty pier with machinery, a building for the Customs Department, a special department to be used by customs inspectors, and devices for loading

and offloading, and all other accessory works in the port of this capital city.” *Carnival*, ECF No. [73-3] at 2. Per the Concession, “[t]he State assigns in usufruct²⁰ during the term of the concession that part of the San Francisco docks, as well as the public domain area, that will be occupied by the project’s works.” *Id.* at 3. The Concession states that

[i]f at any time during the term of the concession the works were to be expropriated . . . by virtue of the application of the aforesaid Article 50 of the Ports Act, the Government or its agencies shall indemnify the concession holder for the value of all works built by the latter, including the Customs Inspectors Department and the dock on the north side of the jetty[.]

Id. at 5.

In addition, the Concession states:

During the term of the concession, the concession holder shall, for its own account, maintain in good repair and in such condition the foundations, streets, buildings, and all other plant facilities that, upon the conclusion of said term, it may surrender the works to the Government in perfectly serviceable condition.

Id.

²⁰ “A right for a certain period to use and enjoy the fruits of another’s property without damaging or diminishing it, but allowing for any natural deterioration in the property over time.” *Usufruct*, *Black’s Law Dictionary* (11th ed. 2019).

The Concession further provides:

This concession is understood to be granted with no prejudice to third parties, except as regards the right of ownership, and on the understanding that the concession holder is bound by such laws of a general nature as have been, or may in the future be, issued with respect to this class of concessions.

Id. at 8.

In 1911, the Cuban Government recognized Compañía del Puerto's transfer of the Concession to the Port of Havana Docks Company. *Id.*, ECF Nos. [337] ¶ 9, [367] ¶ 9. The Port of Havana Docks Company sold the Concession and all rights and interests in the Concession to Havana Docks. *Id.*, ECF Nos. [337] ¶ 11, [367] ¶ 11. In December 1920, the Cuban Government agreed to extend the Concession to 99 years. *Id.*, ECF Nos. [337] ¶ 14, [367] ¶ 14. In September 1934, the Cuban Government recognized the transfer of the Concession from the Port of Havana Docks Company to Havana Docks. *Id.*, ECF Nos. [337] ¶ 20, [367] ¶ 20. The Cuban Government confiscated Havana Docks' assets, which included the Concession, on October 24, 1960. *Id.*, ECF Nos. [337] ¶¶ 27–28, [367] ¶¶ 27–28.

On April 28, 1967, Havana Docks submitted a claim to the FCSC pursuant to the Settlement Act. *Id.*, ECF Nos. [318-10], [337] ¶ 33, [367] ¶ 33. Havana Docks argued to the FCSC “that on the basis of a concession granted by the Government of Cuba, it owned and operated, at the entrance of the harbor of Havana three piers: the ‘San Francisco’, ‘Machina’ and ‘Santa Clara’ linked with a large marginal

building.” *Id.*, ECF No. [73-8] at 6. Havana Docks claimed losses of

more than \$9 million, submitting as evidence (1) a trial balance as of the end of 1958; (2) balance sheets for years 1956 through 1959; (3) an auditor’s report from the end of 1958; (4) an evaluation from a civil engineer and professional appraiser in Cuba; and (5) and an inventory of the equipment, furniture, and fixtures as of the end of 1959. *Id.* at 8.

On April 21, 1971, the FCSC issued its Final Decision No. CU-6165, Havana Docks’ Certified Claim. *Carnival*, ECF No. [73-8]; *MSC*, ECF No. [41-8]; *Royal Caribbean*, ECF No. [31-8]; *Norwegian*, ECF No. [43-8]. The Certified Claim includes the following findings:

- Havana Docks was a “national of the United States” within § 1643a(1) because U.S. nationals owned more than 50 percent of the capital stock and, at the time of filing the claim, only approximately 3 percent of the shares were held by persons who were not U.S. nationals. *E.g., Carnival*, ECF No. [73-8] at 6.
- In 1934, the Cuban Government granted Havana Docks a “renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana, formerly granted to its predecessor concessionaire, the Port of Havana Docks Company.” *Id.* at 7.
- Havana Docks “acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana.” *Id.*

- In June 1946, “the property was encumbered with a mortgage in favor of certain bondholders for the amount of \$1,600,000.00.” *Id.*
- Havana Docks “also owned the mechanical installations, loading and unloading equipment, vehicles and machinery, as well as furniture and fixtures located in the offices of the corporation.” *Id.*
- “[T]he Cuban assets of [Havana Docks] were nationalized by Resolution No. 3, published in the Official Gazette of October 24, 1960.” *Id.*

The FCSC certified that Havana Docks suffered a loss as a result of the actions of the Government of Cuba in the amount of \$9,179,700.88, plus six percent annual interest from the date of the loss. *Id.* at 4. The certified loss amount accounted for four categories: (1) “Concession and tangible assets” (\$8,684,360.18); (2) “Securities” (\$184,005.70); (3) “Accounts Receivable” (\$301,055.00); and (4) “Debt of Cuban Government” (\$10,280.00). *Id.* at 3.

In determining that amount, the FCSC determined that Havana Docks’ balance sheet for the year ending in 1959 represented “the valuation most appropriate to the property and equitable to the claimant.” *Id.* at 9. The balance sheet provided a book value for “Land and Concession” (\$2,000,000.00), “San Francisco and Machina Piers” (\$4,758,829.00), and “Santa Clara Pier” (\$2,110,845.00). *Id.* When describing the Concession, the FCSC stated: “[t]he terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation.” *Id.* at 9.

Havana Docks has always been the owner of the Certified Claim. *Carnival*, ECF Nos. [337] ¶¶ 40–41, [367] ¶¶ 40–41. The Certified Claim has been in the public records of the FCSC since 1971. *Id.*, ECF Nos. [337] ¶ 43, [367] ¶ 43.

D. Defendants and Related Entities

1. *Carnival*

Carnival is a foreign corporation with its principal place of business in Miami-Dade County, Florida. *Carnival*, ECF Nos. [332] ¶ 1, [374] ¶ 1. Carnival Cruise Lines (“CCL”) is a division and brand of Carnival. *Id.*, ECF Nos. [332] ¶ 2, [374] ¶ 2. HAL Nederland N.V. (“HAL”), Costa, and Fathom Travel Ltd. (“Fathom”) are subsidiaries of Carnival. *Id.*, ECF Nos. [332] ¶¶ 3–5, [374] ¶¶ 3–5.

In 1996, Carnival acquired a 29.6% equity interest in Airtours, a publicly-traded United Kingdom tour operator of cruise ships under the “Sun Cruises” brand. *Id.*, ECF Nos. [326] ¶ 1, [332] ¶ 6, [374] ¶ 6, [377] ¶ 1. From 1997 to 2000, Carnival and Airtours each owned a 50% equity interest in Costa, an Italian company. *Id.*, ECF Nos. [326] ¶¶ 8–9, [332] ¶ 10, [374] ¶ 10, [377] ¶¶ 8–9. In 2000, Carnival acquired Airtours’ 50% interest in Costa. *Id.*, ECF Nos. [332] ¶ 11, [374] ¶ 11. In 2001, Carnival sold its interest in Airtours. *Id.*, ECF Nos. [332] ¶ 9, [374] ¶ 9.

Before June 1997, when Carnival made its first acquisition in Costa, Costa was in a joint venture with the Cuban Government to manage operations at the Terminal, and Costa was operating a cruise ship that used the Terminal. *Id.*, ECF No. [326] ¶¶ 13, 15, [377] ¶¶ 13, 15. Carnival represents that its acquisition in Costa was authorized by a specific OFAC license. *Id.*, ECF No. [326] ¶¶ 16–18.

Carnival's Rule 30(b)(6) Corporate Representative, Arnaldo Perez, testified that as part of Carnival's acquisition of Costa, OFAC issued a specific license in February 1997 requiring that Costa abandon the joint venture and unwind operations in Cuba within six months. *Id.*, ECF No. [326-2] at 71–75. Neither Carnival nor OFAC has been able to locate and produce the 1997 license. *Id.* at 72, 77–78.

2. *MSC*

MSC SA is chartered and located in Geneva, Switzerland. *MSC*, ECF Nos. [224] ¶ 1, [253] ¶ 1. Between 2015 and 2019, MSC SA owned and operated the *MSC Opera* and *MSC Armonia* cruise ships, which sailed to Cuba. *Id.*, ECF Nos. [224] ¶ 11, [253] ¶ 11. MSC is the parent company of MSC USA, which is based in Fort Lauderdale, Florida. *Id.*, ECF Nos. [224] ¶¶ 12–15, [253] ¶¶ 12–15. MSC USA transacted business on behalf of MSC SA by selling and marketing MSC SA's cruises from Miami to Cuba. *Id.*, ECF Nos. [224] ¶¶ 16–18, [253] ¶¶ 16–18. MSC USA received revenue from marketing and selling tickets for cruises to Cuba. *Id.*, ECF Nos. [224] ¶ 19, [253] ¶ 19.

MSC SA was also the parent company of MSC Co., another Fort Lauderdale-based subsidiary. *Id.*, ECF Nos. [224] ¶¶ 12, 22, 24, [253] ¶¶ 12, 22, 24. MSC Co. was administratively dissolved during the pendency of this lawsuit, in September 2020. *Id.*, ECF Nos. [224] ¶ 23, [253] ¶ 23.

3. *Royal Caribbean*

Royal Caribbean is a foreign corporation that maintains its principal executive office in Miami, Florida. *Royal Caribbean*, ECF Nos. [141] ¶ 1, [172] ¶ 1. Royal Caribbean operated cruises to Cuba under

at least two brands: Azamara and Royal Caribbean International. *Id.*, ECF Nos. [141] ¶ 2, [172] ¶ 2. Havana Docks contends that Royal Caribbean also operated under the brand Silversea. *Id.*, ECF No. [141] ¶ 2. Royal Caribbean disputes this, stating that although it owned a two-thirds interest in Silversea, it did not control Silversea or provide Silversea services for its cruises to Cuba. *Id.*, ECF No. [172] ¶ 2. Royal Caribbean acquired its interest in Silversea in 2018. *Id.*, ECF Nos. [133] ¶ 44, [183] ¶ 44.

Royal Caribbean operated *The Majesty of the Seas* and the *Nordic Empress* (also known as the *Empress of the Seas*) ships under the Royal Caribbean International brand. *Id.*, ECF Nos. [141] ¶ 3, [172] ¶ 3. Royal Caribbean also operated the *Journey* and the *Quest* ships under the Azamara brand. *Id.*, ECF Nos. [141] ¶ 6, [172] ¶ 6.

4. Norwegian

Norwegian is a foreign corporation that maintains its principal executive office in Miami, Florida. *Norwegian*, ECF Nos. [228] ¶ 1, [282] ¶ 1. Norwegian operated three brands that traveled to Cuba: Norwegian Cruise Line, Oceania Cruises, and the Regent Seven Seas. *Id.*, ECF Nos. [228] ¶ 2, [282] ¶ 2. Norwegian Cruise Line operated the *Norwegian Sky* and the *Norwegian Sun* ships; Oceania Cruises operated the *MS Marina*, *MS Insignia*, *MS Regatta*, *MS Sirena*, and *MS Riviera* ships; and Regent Seven Seas operated the *MS Seven Seas Mariner*, *MS Seven Seas Navigator*, and the *MS Seven Seas Voyager* ships. *Id.*, ECF Nos. [228] ¶¶ 3–5, [282] ¶¶ 3–5.

E. Specific and/or General Licenses

1. *Carnival*

In May 2015, Carnival submitted an authorization request to OFAC to conduct carrier services to Cuba. *Carnival*, ECF Nos. [326] ¶ 33, [377] ¶ 33; *see id.*, ECF No. [326-26] at 5–15. In the request, Carnival proposed that “each day ashore will be programmed with at least 8 hours of P2P activity” for its passengers. *Id.*, ECF No. [326-26] at 9. Carnival represented that “[a]ll of the on-shore activities organized and lead by Carnival personnel and its contractors or P2P Licensees are designed to be educational in nature and to provide opportunities for meaningful interaction between the traveler and individuals in Cuba,” and that “[t]he on-shore programs will not be individually selected or self-directed and will provide a full-time schedule of activities.” *Id.* at 11.

Carnival provided to OFAC an “Illustrative Cuba Itinerary,” consisting of one-and-half days in Havana, stops in Cienfuegos and Santiago de Cuba, and two-and-a-half days at sea. *Id.* at 16. Carnival represented that “[a]ll shore activities and onboard programming will be included in the trip fare and prepaid in the USA” and “[e]ach day of the trip will have sufficient capacity of organized P2P shore activities to accommodate all 740 passengers in motor coaches, vans or other conveyances with English speaking Cuban guides leading the activity.” *Id.* at 17. For the first day in Havana, Carnival outlined six activities: “Old City Walking Experience (Cultural Heritage and Micro-Enterprise Development),” “Afro-Cuban Community Meeting (Cultural Exchange and Artistic Impact),” “Cuba Art’s Today: Muraleando, La Colmenita (Arts History and the

Humanitarian Impact of Arts + Music),” “Journalistic Perspective (Journalism + Documentary),” “Hemingway (Literature and Micro-enterprise History),” and “Alamar: Planned Soviet-style Community (Infrastructure + Community Gardens).” *Id.* at 17–18. For the second day in Havana, Carnival also outlined six activities: (1) “Rural Cuba (Micro-Enterprise, Community Health + Medical Workshop),” “Old Havana Booksellers (literacy, literature + micro-enterprise),” “Casa Fuster and Fusterlandia (Art + Immersion + Micro-enterprise Development),” “Interaction with Cuban Professionals (Professional Exchange, Meeting and Research, Economic Development),” “Organic Farm: Visit an organopónico (Urban Organic Farm and Agriculture + Microenterprise),” and “Paladares: The Entrepreneurs of Modern Cuba (Economic Development, Entrepreneurship and Micro-Enterprise).” *Id.* at 19–20.

Carnival set forth similar activities for the days ashore in Cienfuegos and Santiago de Cuba. *Id.* at 21–24. In addition, Carnival stated that there would be an on-board film series, lecture series, and entertainment during the days at sea. *Id.* at 19, 21, 25.

Shortly after Carnival submitted its request, a Sanctions Licensing Officer from OFAC’s Licensing Division sent an email to Carnival seeking “additional clarification on a few matters before continuing to process the Application.” *Id.* at 27. The Licensing Officer asked, among other questions, “Could passengers decide to opt out of the on-the-ground P2P / other authorized activities altogether at certain destinations?” *Id.* Carnival answered,

Passengers will be expected to participate in the on-the-ground P2P programs. As dis-

cussed below, on-the-ground P2P programs will be included in the voyage fare. Carnival will take steps to identify and monitor the passengers that sign up for the full-time programming onshore provided by Carnival. Specifically, all passengers will be expected to participate in one or more of the authorized onshore P2P programs. Carnival will obtain certifications from passengers and will advise them that should they disembark the ship to go on an unauthorized excursion, such activity may be a violation of the OFAC rules.

Id. at 26.

In a supplemental letter to OFAC, Carnival stated that it had “launched its new brand, Fathom, dedicated to purpose-driven social impact,” and that it would be “using the Fathom program to provide meaningful social impact travel for authorized passengers, and such program [could] be easily tailored to meet the requirements of the full-time schedule for people-to-people travel pursuant to the [CACR].” *id.*, ECF No. [326-26] at 2–3.

In July 2015, OFAC granted Carnival a specific license to provide “carrier services” to Cuba and lodging, “including when docked at a port in Cuba.” *Id.*, ECF Nos. [326] ¶ 37, [377] ¶ 37; *see id.*, ECF Nos. [326-26] at 32, [326-35] at 4.²¹ OFAC’s letter granting the carrier-services specific license stated that it was not granting a further specific license for people-to-people travel, because the CACR already authorized

²¹ The CACR did not allow common carrier services by vessel to and from Cuba by general license until September 2015. *See* § 515.572(a)(2) (Sept. 2015).

people-to-people travel by general license. *Id.*, ECF No. [326-26] at 32–33. OFAC explained, “[p]rovided that the organization sponsoring and organizing the program and individuals participating in the program comply with the requirements of the general license, no further authorization would be required.” *Id.* at 33.

The letter advised that “OFAC does not view onboard lectures while in port as satisfying the requirements of the general license at section 515.565(b)(2).” *Id.* The letter stated “[t]hat general license authorizes educational exchanges to promote people-to-people contact, namely contact between the traveler *and nationals of Cuba*, which would not occur in the case of an onboard lecture or similar activity.” *Id.* (emphasis in original). Moreover, OFAC stated in the letter that “[t]he enclosed specific license does not authorize Carnival to transport any person who will disembark in Cuba and who is not authorized by a general license or a separate specific license.” *Id.* Finally, the letter warned that “compliance with the requirements of the CACR does not excuse a U.S. person from the need to comply with other provisions of 31 C.F.R. chapter V, and with other applicable provisions of law.” *Id.*

The license itself similarly cautioned that it “does not excuse compliance with any law or regulation (including reporting requirements) administered by [OFAC] or any other agency applicable to the transactions herein licensed, nor does it release the Licensees or third parties from civil or criminal liability for violation of any law or regulation.” *Id.*, ECF No. [326-35] at 4. The license also stated, “nothing in this License authorizes any person subject to the jurisdiction of the United States to

engage in any transaction or activity prohibited by the CACR, or by any other laws and regulations administered by [OFAC].” *Id.* at 5. Moreover, the license stated that it “appl[ies] only to the laws and regulations administered by OFAC and should not be interpreted to excuse the Licensees from compliance with other laws, regulations, orders, or rulings to which they may be subject[.]” *Id.*

The U.S. Government did not require Carnival to cruise to Havana. *Id.*, ECF Nos. [332] ¶ 46, [374] ¶ 46. The U.S. Government did not direct Carnival where to dock its ships in Cuba. *Id.*, ECF Nos. [332] ¶ 47, [374] ¶ 47. It was not necessary for a Carnival cruise ship to dock at the Terminal to cruise to Santiago de Cuba, Cuba, or Cienfuegos, Cuba. *Id.*, ECF Nos. [332] ¶ 50, [374] ¶ 50. Carnival could, and did, dock its ships and embark and disembark its passengers at Santiago de Cuba and Cienfuegos. *Id.*, ECF Nos. [332] ¶ 53, [374] ¶ 53. Carnival’s ships could, and did, anchor offshore and tender passengers in Cienfuegos and Santiago de Cuba. *Id.*, ECF Nos. [332] ¶ 54, [374] ¶ 54.

2. MSC

OFAC did not give MSC SA a specific license to use, operate, and embark and disembark passengers on the Terminal. *MSC*, ECF Nos. [224] ¶ 81, [253] ¶ 81. OFAC never provided a specific license to MSC SA with regard to any of its cruises to Cuba. *Id.*, ECF Nos. [224] ¶ 82, [253] ¶ 82. The OFAC general license did not specify the use of the Terminal. *Id.*, ECF Nos. [224] ¶ 78, [253] ¶ 78. OFAC did not provide any specific approval of a specific port to be used by the MSC ships during their cruises to Cuba. *Id.*, ECF Nos. [224] ¶ 80, [253] ¶ 80.

The U.S. Government did not require MSC SA to cruise to Havana. *Id.*, ECF Nos. [224] ¶ 70, [253] ¶ 70. The U.S. Government did not instruct, direct or designate MSC SA, whether orally or in writing, to use the Terminal in its cruises to Cuba. *Id.*, ECF Nos. [224] ¶ 73, [253] ¶ 73. The U.S. Government did not inform MSC SA that it could not go to another port in Cuba besides Havana. *Id.*, ECF Nos. [224] ¶ 74, [253] ¶ 74. And MSC SA was not required to cruise to Cuba. *Id.*, ECF Nos. [224] ¶ 75, [253] ¶ 75.

The Cuban Government authorized MSC ships to sail to Punta Frances, Isla de la Juventud, Cuba, and to transport passengers to and from shore by tender boats. *Id.*, ECF Nos. [224] ¶ 93, [253] ¶ 93. MSC SA could and did embark and disembark passengers in Punta Frances. *Id.*, ECF Nos. [224] ¶ 94, [253] ¶ 94.

3. *Royal Caribbean*

Neither Havana Docks nor Royal Caribbean address whether Royal Caribbean was ever issued a specific license to travel to Cuba. In any event, Havana Docks and Royal Caribbean agree that the U.S. Government did not direct Royal Caribbean where to sail in Cuba. *Royal Caribbean*, ECF Nos. [141] ¶ 59, [172] ¶ 59. Nor did the U.S. Government require Royal Caribbean to dock at the Terminal. *Id.*, ECF Nos. [141] ¶ 60, [172] ¶ 60. The Cuban Government likewise did not require Royal Caribbean to cruise to Havana. *Id.*, ECF Nos. [141] ¶ 61, [172] ¶ 61. The Cuban Government did not require that Royal Caribbean use the Terminal to cruise to Cuba. *Id.*, ECF Nos. [141] ¶ 62, [172] ¶ 62.

In December 2014, Royal Caribbean identified six ports in Havana that could accommodate its cruise ships: Matanzas, Holguin, Santiago, Manzanillo,

Cienfuegos, and Havana. From at least 2017 to 2019, the Cuban authorities allowed Royal Caribbean to operate cruises that called in Cienfuegos and Santiago de Cuba. *Id.*, ECF Nos. [141] ¶ 63, [172] ¶ 63. The ports of Cienfuegos and Santiago de Cuba have immigration, customs, and medical screening capabilities. *Id.*, ECF Nos. [141] ¶ 75, [172] ¶ 75. The Royal Caribbean ships did not need to use the Terminal to sail to Cienfuegos or Santiago. *Id.*, ECF Nos. [141] ¶ 74, [172] ¶ 74. In 2018 and 2019, Cienfuegos, Cuba, was the first port of call in Cuba for nine cruises on the *Empress of the Seas*. *Id.*, ECF Nos. [141] ¶ 71, [172] ¶ 71. The *Empress of the Seas*, *Azamara Quest*, and *Azamara Journey* called at Cienfuegos between 2017 and 2019 and called at Santiago de Cuba between 2018 and 2019. *Id.*, ECF Nos. [141] ¶¶ 72–73, [172] ¶¶ 72–73. The Royal ships did not need to use the Terminal to sail to Cienfuegos or Santiago. *Id.*, ECF Nos. [141] ¶ 74, [172] ¶ 74.

In 2018, OFAC audited, by way of a subpoena and an on-site visit, Royal Caribbean’s “provision of travel, carrier, and other transportation-related services in connection with travel-related transactions involving Cuba.” *Id.*, ECF No. [122-23] at 2, 3. Following the audit, in June 2019, OFAC sent Royal Caribbean a “Cautionary Letter.” *Id.*, ECF No. [122-23]. The Cautionary Letter informed Royal Caribbean that “[t]ravel-related transactions involving Cuba are authorized by general license only if the travel falls into one of the [12] categories” for travel under the CACR. *Id.* at 4. The letter further emphasized that “[t]ravel-related transactions to, from, or involving Cuba for any other purpose, or that do not meet the full criteria and conditions of one or more of the [12] categories of general licenses, including recordkeeping requirements, are prohibited.” *Id.*

The Cautionary Letter advised that the audit had “revealed areas of concern related to [Royal Caribbean’s] compliance with its recordkeeping obligations.” *Id.* at 5. Specifically, a sampling of passenger affidavits showed that “12 paper certifications failed to either select a general travel license or provide a specific license number” and “five certifications . . . had hand written comments indicating that the individual traveler did not intend to disembark in Cuba,” which was contrary to Royal Caribbean’s “policy that passengers could not embark on a voyage to Cuba without providing the general license number that authorized their travel.” *Id.* The Cautionary Letter advised that it “represents a final enforcement response to the apparent violations, but does not constitute a final agency determination as to whether violations have occurred.” *Id.*

4. *Norwegian*

On July 14, 2015, Norwegian submitted a License Application to OFAC to

[r]equest authorization (1) to provide carrier services by vessel to, from, and within Cuba in connection with the travel or transportation between the United States and Cuba of persons, baggage, and cargo authorized pursuant to the Cuban Assets Control Regulations, and (2) to provide lodging aboard vessels to passengers and crew while the vessel is traveling to and from Cuba, docked at port (or otherwise stationary) in Cuban waters, and while traveling from location to location within Cuba.

Norwegian, ECF Nos. [234] ¶ 1, [284] ¶ 1. On August 3, 2015, Norwegian submitted an Export License

Application to the United States Department of Commerce Bureau of Industry and Security (“BIS”) to request authorization for the “[t]emporary sojourn of Oceania and Regent Seven Seas vessels to Cuba, along with accompanying passengers, crew, and ship stores, in connection with OFAC authorized provision of carrier services by vessel to, from, and within Cuba.” *Id.*, ECF Nos. [234] ¶ 2, [284] ¶ 2. BIS granted Norwegian’s August 3, 2015, specific license application. *Id.*, ECF Nos. [234] ¶ 3, [284] ¶ 3. From OFAC, Norwegian received a letter dated October 5, 2015, informing Norwegian that “[i]n light of the recent regulatory amendments.” *Id.*, ECF Nos. [234] ¶ 4, [284] ¶ 4. Neither the U.S. Government nor OFAC directed Norwegian where to sail in Cuba. *Id.*, ECF Nos. [228] ¶¶ 51–52, [282] ¶¶ 51–52.

The Cuban Government did not require that Norwegian stop at a particular port in Cuba on any particular day. *Id.*, ECF Nos. [228] ¶ 54, [282] ¶ 54. The Cuban Government authorized Norwegian to berth at Santiago de Cuba, Cienfuegos, and Havana. *Id.*, ECF Nos. [228] ¶ 55, [282] ¶ 55. Norwegian could, and did, dock its ships and embark and disembark its passengers at Santiago and Cienfuegos. *Id.*, ECF Nos. [228] ¶ 59, [282] ¶ 59. Norwegian’s ships also anchored offshore and tendered passengers to shore in Santiago de Cuba and Cienfuegos. *Id.*, ECF Nos. [228] ¶ 60, [282] ¶ 60. The port facilities in the Cuban ports of Santiago and Cienfuegos housed medical screening, immigration, and customs services for cruise passengers. *Id.*, ECF Nos. [228] ¶ 62, [282] ¶ 62. Norwegian acknowledges that persons could satisfy then-existing OFAC travel-category restrictions by visiting cities in Cuba other than Havana. *Id.*, ECF Nos. [228] ¶ 58, [282] ¶ 58.

F. Defendants' Use of the Terminal

Carnival's, MSC SA's, Royal Caribbean's, and Norwegian's ships docked at the Terminal's first pier, the San Francisco Pier, when they traveled to Havana. *Carnival*, ECF Nos. [331] ¶ 22, [388] ¶ 22. The following is a summary of the Defendants' activities:

1. *Carnival*

From May 2016 to April 2017, Fathom ship *Adonia* docked at the Terminal 31 times, listing 20,999 passengers on the manifests. *Id.*, ECF Nos. [332] ¶¶ 23–24, [374] ¶¶ 23–24. From December 2017 to April 2019, HAL ship *Veendam* docked at the Terminal 19 times, listing 30,401 passengers on the manifests. *Id.*, ECF Nos. [332] ¶¶ 25–26, [374] ¶¶ 25–26. From June 2017 to May 2019, CCL ships *Paradise* and *Sensation* docked at the Terminal 33 times, listing 76,213 passengers on the manifests. *Id.*, ECF Nos. [332] ¶¶ 27–28, [374] ¶¶ 27–28.

Carnival's ships docked at the Terminal to disembark and embark passengers. *Id.*, ECF Nos. [332] ¶ 17, [374] ¶ 17. Carnival intentionally traveled to Havana, but Carnival submits that the Cuban Government required Carnival to embark and disembark passengers at the Terminal and repeatedly denied Carnival's requests to dock at other ports in Havana or to anchor and tender in Havana. *Id.*, ECF No. [374] ¶ 18. Havana Docks further contends that from 2018 to 2020, Carnival provided "recommendations and advice" for the renovation and enhancement of the Terminal. *Id.*, ECF No. [332] ¶ 34. Carnival disputes Havana Docks' characterization but admits that it "provided technical information

about requirements for Carnival ships to safely dock at the Terminal.” *Id.*, ECF No. [374] ¶ 34.

2. MSC

Between 2016 and 2018, the *Armonia* made 65 voyages that started and ended in Havana and docked at Terminal. *MSC*, ECF Nos. [224] ¶ 41, [253] ¶ 41. From December 2018 through June 2019, the *Armonia* made 25 voyages from Miami to Havana, docking at the Terminal on 50 calendar days and listing in its manifests 51,908 passengers. *Id.*, ECF Nos. [224] ¶¶ 40, 48, [253] ¶¶ 40, 48. Between 2015 and 2019, the *Opera* made 100 voyages that began and ended in Havana and docked at the Terminal. *Id.*, ECF Nos. [224] ¶ 45, [253] ¶ 45. The *Opera* averaged 2,000 passengers for each call to Havana. *Id.*, ECF Nos. [224] ¶ 61, [253] ¶ 61.

Between 2015 and 2019, the MSC ships docked at the Terminal on all their voyages to Havana. *MSC*, ECF Nos. [224] ¶ 34, [253] ¶ 34. During that period, the *Opera* docked at the Terminal to embark and disembark passengers in Havana in connection with Cuba-to-Cuba cruises. *Id.*, ECF Nos. [224] ¶ 35, [253] ¶ 35. The *Opera* used the Terminal as a homeport from 2015 to 2019. *Id.*, ECF Nos. [224] ¶ 37, [253] ¶ 37.

Between December 2018 and June 2019, the *Armonia* docked at the Terminal to embark and disembark passengers in Havana in connection with Miami-to-Cuba cruises. *Id.*, ECF Nos. [224] ¶¶ 36, 40, [253] ¶¶ 36, 40. The *Armonia* used the Terminal as a homeport in 2016, 2017, and 2018. *Id.*, ECF Nos. [224] ¶ 38, [253] ¶ 38. The *Opera* homeporting at the Terminal from 2015 through March 2019 in connection with Cuba-to-Cuba cruises overlapped

with the *Armonia's* Miami-to-Cuba cruises. *Id.*, ECF Nos. [224] ¶ 39, [253] ¶ 39. The *Armonia* was the only MSC SA ship to cruise from the U.S. to Cuba. *Id.*, ECF Nos. [210] ¶ 15, [259] ¶ 15.

MSC SA disembarked passengers from the *Armonia* at the Terminal for shore excursions in Havana. *Id.*, ECF Nos. [224] ¶ 49, [253] ¶ 49. The shore excursions offered in Havana to passengers on the MSC ships began and ended at the Terminal. *Id.*, ECF Nos. [224] ¶ 50, [253] ¶ 50. MSC cruise passengers also cleared customs and immigration on the first floor of the Terminal. *Id.*, ECF Nos. [259] ¶ 48, [273] ¶ 48.

3. *Royal Caribbean*

Between 2017 and 2019, the *Quest*, *Journey*, *Empress of the Seas*, and *Majesty of the Seas* docked at the Terminal on 193 voyages for a total of 334 days, carrying a total of 347,008 passengers. *Royal Caribbean*, ECF Nos. [141] ¶¶ 29–30, [172] ¶¶ 29–30. The first ship to dock at the Terminal was the *Quest* on March 31, 2017. *Id.*, ECF No. [141] ¶ 28, [172] ¶ 28. The *Empress of the Seas* last docked at the Terminal on June 5, 2019. *Id.*, ECF No. [141] ¶ 32, [172] ¶ 32.

Royal Caribbean intentionally docked at the first pier of the Terminal to disembark and embark its passengers. *Id.*, ECF Nos. [141] ¶ 27, [172] ¶ 27. Many of Royal Caribbean's passengers boarded buses parked on the ground floor of the Terminal to take them on excursions, which Royal Caribbean claims are "people-to-people excursions." *Id.*, ECF Nos. [141] ¶ 34, [172] ¶ 34. Most shore excursions began and ended at the Terminal. *Id.*, ECF Nos. [141] ¶ 93, [172] ¶ 93.

4. *Norwegian*

Between 2017 and 2019, 10 different Norwegian ships collectively provided passenger carrier services to Havana 166 times, docking at the Terminal for a collective total of 299 calendar days. *Norwegian*, ECF Nos. [228] ¶ 15, [282] ¶ 15. Norwegian intended to travel to Havana, and Norwegian docked at Pier 1 of the Terminal to disembark and embark its passengers. *Id.*, ECF Nos. [228] ¶ 14, [282] ¶ 14. Norwegian docked its ships at the Terminal on every voyage to Cuba. *Id.*, ECF Nos. [284] ¶ 71, [309] ¶ 71. Some of Norwegian's passengers boarded buses parked on the ground floor of the Terminal to take them on shore excursions, which Norwegian states were people-to-people shore excursions. *Id.*, ECF Nos. [228] ¶ 18, [282] ¶ 18.

G. Defendants' Contracts and Payments to Cuban Entities

1. *Carnival*

From 2016 to 2018, Carnival contracted with three Cuban Government agencies to use the Terminal. *Carnival*, ECF Nos. [332] ¶¶ 29–31, [374] ¶¶ 29–31; *see id.*, ECF Nos. [311-29], [311-32], [322-6], [322-7], [322-8]. First, Carnival entered into a series of commercial contracts with Aries Transportes, S.A. ("Aries"), part of the Cuban Government's Ministry of Transportation serving as its port authority, for Carnival's ships to dock at the Terminal. *Id.*, ECF Nos. [332] ¶ 29, [374] ¶ 29. Second, Carnival entered into a series of commercial contracts with Empresa Consignatoria Mambisa ("Mambisa"), part of the Cuban Government Ministry of Transportation serving as its port agent, for Carnival's ships to use the Terminal. *Id.*, ECF Nos. [332] ¶ 30, [374] ¶ 30.

Third, Carnival entered into a series of commercial contracts with Grupo Internacional de Turoperadores y Agencias de Viajes, Havanatur S.A. (“Havanatur”),²² part of the Cuban Government’s Ministry of Tourism serving as its tour operator, related to Carnival’s use of the Terminal. *Id.*, ECF Nos. [332] ¶ 31, [374] ¶ 31; *see id.*, ECF Nos. [311-33], [322-7].

Carnival paid a total of \$18,629,807.71 related to its cruises to Cuba, with \$12,461,542.99 paid to Havanatur; \$3,480,380.40 paid to Mambisa; and \$2,605,429.34 paid to the Aries. *Id.*, ECF Nos. [332] ¶ 32, [374] ¶ 32. Carnival never made any payments in Cuba to anyone or any entity that was not affiliated with the Cuban Government. *Id.*, ECF Nos. [332] ¶ 33, [374] ¶ 33.

2. MSC

From 2015 to 2019, MSC SA entered into contracts with Aries to dock at the Terminal. *MSC*, ECF Nos. [224] ¶ 51, [253] ¶ 51; *see id.*, ECF Nos. [202-30], [202-31], [218-13]. In 2015, MSC SA entered into contracts with Agencia Maritima Mapor S.A. (“Mapor”)²³ to act as its port agent in Havana. *Id.*,

²² Carnival identifies Havanatur as “Havanatur Celimar ABG.” *Carnival*, ECF No. [332] ¶ 31. The service contracts between Carnival and Havanatur, however, identified Havanatur as “Grupo Internacional de Turoperadores y Agencias de Viajes, Havanatur S.A.” *See id.*, ECF Nos. [311-33], [322-7]. The name under the service contracts is also consistent with how other Defendants refer to the Cuban company.

²³ There is some dispute in the record as to whether the Cuban Government owns Mapor. In answers to requests for admissions, MSC could neither admit nor deny that Mapor is owned, or is a part of, the Cuban Government. *MSC*, ECF No. [218-4] at 44–45. Luigi Pastena, Vice President of Port Operations at an MSC-affiliated entity, *id.*, ECF No. [201-8] at 5, testified that Mapor was “a private agency,” *id.* at 18. But

ECF Nos. [224] ¶ 52, [253] ¶ 52; *see id.*, ECF No. [218-14]. MSC SA paid Aries indirectly through Mapor for fees charged for the use of the Terminal by MSC ships for docking and the embarkation and disembarkation of passengers. *Id.*, ECF Nos. [224] ¶ 53, [253] ¶ 53. MSC SA paid Mapor at least \$9,314,386.41 related to Mapor's services as ship agent for MSC SA and for the use of the Terminal. *Id.*, ECF Nos. [224] ¶ 55, [253] ¶ 55.

In 2018, MSC SA contracted with Agencia Viajes Cubanacan S.A. ("Cubanacan") to operate shore excursions in Havana that MSC SA sold to passengers. *Id.*, ECF Nos. [224] ¶ 56, [253] ¶ 56; *see id.*, ECF No. [218-9]. Cubanacan was a part of the Cuban Government's Ministry of Tourism. *Id.*, ECF Nos. [224] ¶ 57, [253] ¶ 57. Cubanacan provided ground and transportation services to and from the Terminal for MSC SA passengers going on excursions. *Id.*, ECF Nos. [224] ¶ 58, [253] ¶ 58. MSC SA paid Cubanacan \$7,623,480.37 for shore excursions offered to MSC ship passengers. *Id.*, ECF Nos. [224] ¶ 59, [253] ¶ 59.

According to the Shore Excursion Agreement between MSC SA and Cubanacan, "VIAJES CUBANACAN is engaged in the business of organizing, promoting and selling tourist excursions in the Cuban national territory." *Id.*, ECF No. [218-9] at 3. The agreement states that Cubanacan is "capable and willing to assume the organization, promotion and sale of tourist excursions in the Cuban national territory," and that it would provide "tourist services

Massimiliano Mio, MSC SA's chief legal officer, *id.*, ECF No. [201-6] at 4, testified at deposition that Mapor was one of the Cuban entities with which MSC SA contracted, *id.* at 38. The dispute does not change the analysis given that MSC SA paid Aries, a Cuban entity, through Mapor.

described below . . . during the term of the operation of THE VESSELS [defined as the *Opera* and *Armonia*], between December 1, 2018 and November 30, 2019.” *Id.* at 3–4. Part of Cubanacan’s responsibilities included “[t]o assist . . . the tourists before the authorities of the country and in all the necessary legal procedures during the agreed season, for the realization of [MSC SA’s] shore excursions in Cuba.” *Id.* at 5. MSC SA, in turn, had to, among other things, ensure that it communicated to Cubanacan the “[l]anguage of the tourists” who bought excursions and “guarantee that the tourists traveling on THE VESSELS and taking the tourist excursions with [Cubanacan] have a valid insurance policy.” *Id.* at 7.

The only persons or entities in Cuba to which MSC SA made payments in connection with its U.S.-to-Cuba cruises were Comar (Cuba-based lawyers²⁴), Mapor, and Cubanacan. *Id.*, ECF Nos. [259] ¶ 81, [273] ¶ 81.

3. *Royal Caribbean*

From 2016 to 2017, Royal Caribbean contracted with three Cuban Government agencies related to the use of the Terminal. *Royal Caribbean*, ECF Nos. [141] ¶¶ 37, 41, 45, [172] ¶¶ 37, 41, 45; *see also id.*, ECF Nos. [128-17], [128-20], [128-21]. First, Royal Caribbean entered into contracts with Aries to dock its ships at the first pier at the Terminal. *Id.*, ECF Nos. [141] ¶ 37, [172] ¶ 37. Second, Royal Caribbean entered into a series of contracts with Mambisa to act as port agent in Havana. *Id.*, ECF Nos. [133] ¶ 23,

²⁴ MSC SA paid Comar, a Cuban law firm, \$27,000.00 for legal services in connection with cruises to Cuba. *MSC*, ECF Nos. [201-6] at 38–39, [218-4] at 42.

[141] ¶ 41, [172] ¶ 41, [183] ¶ 23. Third, Royal Caribbean entered into a series of contracts with Havanatur to operate shore excursions in Havana that were sold by Royal Caribbean to its passengers. *Id.*, ECF Nos. [141] ¶ 45, [172] ¶ 45. The Cuban Government owns Aries, Mambisa, and Havanatur. *Id.*, ECF Nos. [141] ¶¶ 39, 43, 46, [172] ¶¶ 39, 43, 46.

Royal Caribbean paid Aries \$6,982,902.88 related to cruises to Cuba that sailed from March 2017 to June 2019. *Id.*, ECF Nos. [141] ¶ 40, [172] ¶ 40. Royal Caribbean also paid Mambisa \$3,583,630.00 for its port agent services. *Id.*, ECF Nos. [141] ¶ 44, [172] ¶ 44. Royal Caribbean paid Havanatur \$19,314,276.21 in connection with shore excursions for passengers in Cuba, most of which began and ended at the Terminal. *Id.*, ECF Nos. [141] ¶ 47, [172] ¶ 47. Royal Caribbean made payments only to Aries, Mambisa, Comar, and Havanatur. *Id.*, ECF Nos. [141] ¶ 36, [172] ¶ 36.

4. *Norwegian*

From 2016 to 2019, Norwegian contracted with three Cuban Government agencies related to the use of the Terminal. *Norwegian*, ECF Nos. [228] ¶¶ 21–23, 27–29, 31–32, [282] ¶¶ 21–22, 27–28, 31–32; *see id.*, ECF Nos. [282-2], [282-3], [282-4]. First, Norwegian entered into various agreements and supplements with Aries to provide port berthing operations services for Norwegian’s passenger cruises at the Terminal’s Pier 1. *Id.*, ECF Nos. [228] ¶ 21, [282] ¶ 21. Aries was the port authority that operated the Terminal, and it acted on behalf of the Cuban Government. *Id.*, ECF Nos. [228] ¶¶ 22–23, [282] ¶¶ 22–23. Second, Norwegian entered into an agreement and supplements with Mambisa to provide port agent services for Norwegian’s passenger cruises the

Terminal's Pier 1. *Id.*, ECF Nos. [228] ¶ 27, [282] ¶ 27. Mambisa is the port agent that operated the Terminal when Norwegian provided passenger carrier services to Cuba, and Mambisa acted on behalf of the Cuban Government. *Id.*, ECF Nos. [228] ¶¶ 28–29, [282] ¶¶ 28–29. Third, Norwegian entered into agreements and amendments/supplements with Havanatur—the excursion operator the Cuban Government assigned to Norwegian. *Id.*, ECF Nos. [228] ¶ 31, [282] ¶ 31. Havanatur provided excursions sold by Norwegian related to its passenger carrier services to Havana, which left from, and returned to, the Terminal. *Id.*

Norwegian signed the initial contracts with Aries, Mambisa, and Havanatur at Pier 1 of the Terminal. *Id.*, ECF Nos. [228] ¶ 36, [282] ¶ 36. Norwegian paid Aries and Mambisa through a third-party, Fuego Enterprises, Inc. (“Fuego”). *Id.*, ECF Nos. [228] ¶ 25, [282] ¶ 25. From August 2015 to July 2019, Norwegian paid Fuego \$7,481,302.52 related to Norwegian's use of the Terminal, which included payments made to Aries and Mambisa related to Norwegian's use of the Terminal. *Id.*, ECF Nos. [228] ¶ 26, [282] ¶ 26. From February 2017 to July 2019, Norwegian also directly paid Mambisa \$1,824,387.44 for its port agent operations services in Cuba, including services to be rendered at the Terminal. *Id.*, ECF Nos. [228] ¶ 30, [282] ¶ 30. Norwegian directly paid Havanatur \$6,262,367.00 for Havanatur to provide shore excursions and other travel-related services to passengers in Cuba, including for shore excursions that left from and returned to the Terminal. *Id.*, ECF Nos. [228] ¶ 35, [282] ¶ 35.

H. Defendants' Shore Excursions

1. *Carnival*

Carnival contends that it “developed an OFAC compliance program for its passengers, staff and crew members” and “offered day-long shore excursions for social and educational enrichment exchanges” that complied with the people-to-people travel guidelines. *Carnival*, ECF No. [326] ¶¶ 41–42. Carnival also submits that it “required its passengers to swear in affidavits that they traveled to Cuba pursuant to one of the categories of travel licensed and authorized by the U.S. Government (one of which included educational, people-to-people travel), and complied with those requirements.” *Id.*, ECF No. [374] ¶ 78. Havana Docks disputes those facts, contending that there is no evidence that passengers, staff, and crew complied with Carnival’s OFAC compliance program or that Carnival’s excursions were people-to-people travel compliant. *Id.*, ECF No. [377] ¶¶ 41–42.

The shore excursions that Carnival offered to its passengers included “Tropicana Cabaret: Rhythms of the Night,” “Parisien Cabaret at Hotel Nacional,” and “El Canonazo: An Evening Out in Havana.” *Id.*, ECF Nos. [332] ¶ 78, [374] ¶ 78. Havana Docks describes these excursions as “tourist shows,” incompatible with people-to-people travel. *Id.*, ECF No. [332] ¶ 78. Carnival does not dispute that description but argues: “Carnival offered OFAC compliant fulltime programming for P2P travel, and only offered evening excursions . . . as additional and optional experiences to passengers who completed the full-time schedule. *Id.*, ECF No. [374] ¶ 78.

In the Tropicana Cabaret excursion, Carnival invited guests to “[e]njoy an evening under the

beautiful Cuban sky with a performance at the Tropicana Cabaret -- Cuba's largest nightclub." *Id.*, ECF No. [311-38] at 4. Carnival's excursion included: "Elaborate costumes, entertaining performers and a live orchestra -- you'll enjoy it all and much more in this Vegas-style extravaganza. Your cabaret package includes admission, assigned seating, a welcome drink, plus 1/4 bottle of rum with mixers." *Id.* Carnival described the Parisien Cabaret excursion as follows: "Hosted at the famed Hotel Nacional, the Parisian Cabaret showcases the soul of Cuba. Inspired by Indo-American, Hispanic and African cultures, the Parisian tells the story of Cuba in traditional cabaret fashion. Your outing includes transportation by motorcoach, entrance and a cocktail." *Id.* at 8. The El Canonazo excursion involved a visit to "El Cristo -- an impressive . . . 55-foot-tall statue of Christ sculpted from Italian marble," which gave travelers "beautiful photo opportunities of the statue and the Havana skyline," as well as the opportunity to watch a "cannon ceremony" at a former Spanish fortress. *Id.* at 6.

All three evening excursions had a disclaimer stating, "This evening shore excursion does not comply with the People-to-People guidelines and cannot be considered to be part of the required full schedule of activities." *Id.* at 4, 6, 8.

One of Carnival's excursions marketed as people-to-people travel compliant was "Explore Havana by American Classic Car." *Id.* at 5. Carnival described the excursion as follows:

Experience a meeting of the ages as you travel in '60s style through Havana's modern neighborhoods. This two-hour joyride in an **American classic vehicle** shows you the

sights and introduces you to Havana. Begin with a transfer to the **Plaza de la Revolucion**, where pastel-colored classic Fords, Chevys and Oldsmobiles greet you with bright chrome smiles that belong to a different era. Feel the breeze in your hair as you ride along the **Malecon** and through the Vedado and Miramar districts, seeing some of the city's most famous hotels and embassies.

Visit the Almacenes San Jose market to enjoy free time to interact with the local souvenir vendors and take home your very own piece of Cuban memorabilia.

Id. (emphasis in original). The tour description further stated:

After guests have completed their required full time [sic] schedule of people to people activities, they are welcome to explore Cuba on their own or participate in evening HAL excursions (not designed to be people to people programs).

This tour is designed to be in compliance with People to People guidelines.

Id.

Carnival's corporate representative, Giora Israel, testified as follows regarding the evening excursions:

The person that comes to Havana on the people-to-people, whether by land or by ship, had to be engaged in a day's long activity. It doesn't mean that he couldn't do other things in the evening.

So we -- the only thing we can do is to provide a day long, a[n] eight-hour or so -- and our tours were eight hours or two tours of four hours. And if the ship stayed until midnight and they wanted to do a Havana Tropicana tour, they could do that, and so we would sell them that tour. There's nothing wrong with that.

Id., ECF No. [308-4] at 60.

Israel also testified:

We did operate strictly in accordance to [sic] US OFAC regulations that applied to us, and I can tell you that people-to-people can be done in various places. But what the people wanted to see, what the people demanded is Havana, and that's it. Nobody would have operated -- we would have not planned for it, nor did any other cruise line, to go to Cuba without going to Havana. Havana is Cuba and Cuba is Havana notwithstanding the restrictions that it has to be people-to-people.

Id. at [326-32] at 88–89.

Israel explained how excursions were offered on Carnival ships. *Id.*, ECF No. [326-32] at 172–74. Initially, tours were provided to *Adonia* passengers free of charge. *Id.* at 172. Once other Carnival ships began sailing to Cuba, passengers had to purchase “people-to-people elements from us” and “satisfy us by issuing the appropriate people-to-people certifications that they have acquired/purchased from us.” *Id.* at 173. Carnival had, in turn, “bought those from Havanatur tour elements that qualify under people-to-people that in total had to fill at least an eight-

hour day of engaging in people-to-people activities.” *Id.* As Israel described it, “we were the seller, and we had bought it from Havanatur which was the only entity we could buy those tours [from].” *Id.* at 174. “After a relaxation of the regs,” passengers “did not need to buy tours from us anymore,” although Carnival “encouraged them to buy the tours from us - - mainly so they are protected to be under the people-to-people.” *Id.* at 173.

According to Carnival’s Fathom Travel Ltd. Cuba Operations Compliance Plan,²⁵ “Passengers have two options for participating in qualifying P2P [people-to-people] exchange programs: (i) participation in a ‘Fathom-Guided’ group program fully arranged and sponsored by Fathom; or (ii) participation in a ‘self-guided’ P2P program arranged individually by the passenger.” *Id.*, ECF No. [326-45] at 7. The plan further stated that “[a]ll guests must participate in a people-to-people program on each day in Cuba,” and that “[a]ll daytime Carnival Adventure excursions fulfill this requirement.” *Id.* at 45.

Carnival’s Shore Excursion Manager Tour Operations Guide (“Guide”), dated March 2019, listed four evening excursions lasting 2.5 to 3 hours: (1) “Tropicana Cabaret - Rhythms of the Night,” beginning at 8:00 p.m. and lasting 3.5 hours; (2) “El Canonazo Evening Tour,” beginning at 7:30 p.m. and lasting 2.5 hours; (3) “The Parisien Cabaret at the Hotel Nacional,” beginning at 9:15 p.m. and lasting 3 hours; and (4) “Buenavista Social Club at Havana

²⁵ As stated earlier, when applying for a specific license to travel to Cuba, Carnival informed OFAC that it would be “using the Fathom program . . . to meet the requirements of the full-time schedule for people-to-people travel pursuant to the [CACR].” *Carnival*, ECF No. [326-26] at 3.

Cafe,” beginning at 8:00 p.m. and lasting 3.5 hours. *Id.*, ECF No. [326-46] at 8–9. Carnival also offered several excursions that took place during the day, including “Explore Modern Havana in an American Classic.” *Id.* at 8–9. The guide states that the daytime excursions were part of “Community Projects where guests have the People to People cultural interaction with the people from Cuba that is required per law.” *Id.* at 12. By contrast, “[n]ight tours [did] not have these Community projects” and “therefore [were not] in compliance with the P2P guidelines.” *Id.*

One section of the Guide, labeled “People to People guidelines,” addressed whether it is “**mandatory to have an excursion to exit the ship.**” *Id.* (emphasis in original). The guide cautioned that this “sensitive question” must be “answered with honesty in order to avoid future conflicts, complaints and being involved in bad situation with guests.” *Id.* The guide stated that “[t]he answer is **NO**, [it] is not mandatory to have an excursion to leave the ship.” *Id.* (emphasis in original). The guide continued that “[g]uests without excursions can come in and out as much they want” but “**they will not be in COMPLIANCE** with the P2P guidelines (unless they claim they have 3rd party P2P experience . . . but once again we cannot vouch for that to be valid).” *Id.* (emphasis in original).

2. MSC

MSC contends that it “developed a program to ensure all passengers who disembarked from the *Armonia* in Havana were in compliance with the General Licenses.” MSC, ECF No. [210] ¶ 19. According to MSC, its website informed passengers about governmental regulations. *Id.* ¶ 20. Before boarding, every passenger was required to submit a

certification that they were traveling under one of the twelve permissible OFAC categories. *Id.* ¶ 21. While on board the *Armonia*, MSC provided passengers “with information regarding compliance with the regulations for cruising to Cuba, including an on-board presentation about the OFAC regulatory requirements.” *Id.* ¶ 22. Before debarkation, “passengers were required either to purchase a shore excursion compliant with people-to-people regulations or to participate in another of the 12 categories of authorized travel permitted by OFAC.” *Id.* ¶ 23. And “[a]ll shore excursions offered by MSC [SA] were vetted to ensure that they complied with the requirements of the people-to-people regulations.” *Id.* ¶ 24.

Havana Docks concedes that MSC’s website informed passengers of the *Armonia* that they had to either participate in a people-to-people program or qualify under another permissible category of travel. *Id.*, ECF No. [259] ¶ 20. But Havana Docks contends that MSC SA did not have a policy to ensure that its passengers and the excursions provided complied with the people-to-people guidelines. *Id.* ¶¶ 19, 24. Havana Docks further submits that MSC SA did not require people-to-people programming in all aspects of the cruises or require that *Armonia* passengers purchase excursions. *Id.* ¶¶ 21, 23. Moreover, Havana Docks argues that no competent evidence shows that passengers received onboard OFAC training. *Id.* ¶ 22.

It is undisputed that MSC SA, in consultation with Cubanacan, chose and approved the shore excursions that could be offered to passengers on the cruise ships and contracted with Cubanacan for these excursions. *Id.*, ECF Nos. [224] ¶ 101, [253] ¶ 101. The parties also agree that MSC SA sold its passengers shore excursions that were designed and

marketed as complying with the OFAC regulations. *Id.*, ECF Nos. [259] ¶ 68, [273] ¶ 68. MSC adds that the excursions were implemented as marketed. *Id.*, ECF No. [273] ¶ 68.

On Cuba-to-Cuba cruises, MSC SA provided excursions entitled “Sun, Sea and Sand at Varadero Beach,” “Beach Time at Santa Maria del Mar,” and “Tropicana Cabaret.” *Id.*, ECF Nos. [224] ¶¶ 102–104, [253] ¶¶ 102–104. MSC contends that the Varadero Beach and Santa Maria del Mar excursions were not available on U.S.-to-Cuba cruises. *Id.*, ECF No. [253] ¶¶ 102–103. MSC does not dispute that the Tropicana Cabaret excursion was offered on U.S.-to-Cuba cruises. *Id.*, ECF No. [253] ¶ 104.

The excursions available on the *Armonia* included “Havana City Tour by Vintage American Cars,” “Cultural Havana, Rum & Cigars,” and “A Night at the Tropicana Cabaret.” *Id.*, ECF No. [253-2] at 30. According to the *Armonia*’s Shore Excursion Program, the 3.5-hour Havana City Tour by Vintage American Cars involved traveling “around Havana’s historical cityscape in a vintage car,” “a Cuban cocktail before continuing on down the seafront Malecón boulevard and Quinta Avenida,” and visits to landmarks, including “‘Proyecto Comunitario Callejón de Hamel’, a colourful street full of murals and surprising sculptures made out of random objects including hand pumps or bathtubs.” *Id.* at 30. The 4-hour Cultural Havana, Rum & Cigars excursion involved a “watch[ing] highly-skilled torcedors as they hand-roll the best Cuban cigars”; photos at the “Plaza de la Revolución”; and visits to the “Hotel Nacional de Cuba via the Museum of the Revolution” and the “Havana Club Museum to find out how freshly cut sugarcane is distilled into rum.” *Id.* The description

also stated: “As a final highlight, you’ll be able to enjoy a taste of the finished product. Some free time will then be yours to browse for a memento and take more photos before you return to the ship.” *Id.* The 4-hour Tropicana Cabaret excursion featured “dancing girls wearing scanty costumes and feathered headgear.” *Id.* Guests would watch a “[a] live orchestra” and “some 200 performers, whose only remit is to provide a fascinating insight into the things Cubans love most: music, dancing and Havana Club rum, of which you’ll be served a 1/4 bottle with a suitable mixer to sip during the show.” *Id.*

MSC’s instructions to passengers stated that “[a] People to People shore excursion program has been designed for these sailings. All guests wishing to go ashore in Cuba, must do so as part of an organized P2P excursion.” *Id.*, ECF No. [210-23] at 1. Maria-luisa Iaccarino, the Shore Excursion Business Development Manager for MSC SA, *Id.*, ECF No. [201-7] at 5, testified:

The requirement of the American laws and not MSC only. So MSC was just informing or trying even under every single possible way - - even before they were boarding the ship to get the proper information about the travel restrictions when a cruise starting from US and then going to Cuba.

So it was highly recommended to buy shore excursions or the guests were a select -- they had to fill in the declaration that if they were falling under the 12 other categories allowed to travel to Cuba, that was their responsibility to do so. It wasn’t MSC requirement, although, as I said, highly recommended.

Id. at 26.

Iaccarino testified:

Okay. Let me rephrase it. MSC did anything in any possible way to inform guests that it was their responsibility to be part of the shore excursion of MSC or be part of any other categories, but it was a separate declaration. It was still under the responsibility of the guests itself, whatever they will do in Havana. It's referring to -- the department I'm referring to -- I can tell you that every guest was taking an excursion, was proving the ticket that they were taking an excursion, and once ashore in Havana, they did the people-to-people excursions.

Id. Iaccarino also testified: "Our responsibility is not to police guests but to inform them about the local regulations and the things to respect when on shore excursions." *Id.* at 25.

Mark Zeller, Vice President of US Hotel Operations for MSC SA, stated in a December 2018 internal email, "we do not police guests, we do not check whether a guest has purchased a tour ticket or not, we do not block guests at the gangway." *Id.*, ECF No. [202-47] at 2. Iaccarino testified that Zeller was mistaken about MSC's policy. *Id.*, ECF No. [201-7] at 27.

In addition, Iaccarino testified that MSC's excursions had "a main element a cultural exchange, historical visits, and that's what we have to try to enhance the program that we used to have for Havana by adding those aspects in every single excursion we were planned to have." *Id.* at 15. Iaccarino also stated that MSC relied on Cubanacan to develop the people-to-people excursions—"Being

our tour operator, that's practically their job, to sell to us a product"—but that MSC "vetted every single excursion content and verify that it was meeting the people-to-people criteria." *Id.* at 24.

When asked about the Tropicana Cabaret excursion, Iaccarino testified:

first of all, it's a historical part of Cuba that was founded in 1939. The iconic celebration of the culture, as you easily mentioned just dancing girls, actually takes place in explaining the people the local culture of the famous mulatta girls, and it's also talking and using historical music or languages such as the Yoruba language that allows the people not only to -- just to see any cabaret that you will see in any other place but really a unique experience in Cuba, hearing what is the music, what is the dance -- typical dances of Cuba itself. So it's not only a cabaret show. It really has a historical background, not only because it's situated in a historical location but because the contents of the show are historical itself. And they teach a lesson and they explain to tourists even. And it's also really a way to see the Cuban life from another point of view that is not only just going and seeing monuments.

Id., ECF No. [201-7] at 21.

Concerning the Vintage Car Tour, Iaccarino testified: "In every excursion we created the possibility to interact or to discover some commentary or social so-called project. In this specific case, although the experience is not from the buses but is from cars that

-- I mean, every single tourist would love to be in it.”
Id.

In a declaration filed in support of MSC’s Individual Summary Judgment Motion, Iaccarino testified that “[e]very shore excursion that MSC Cruises S.A. provided, with the assistance of local Cuban tour operator Cubanacan, was vetted internally to ensure that each possessed a predominant cultural or historical component.” *Id.*, ECF No. [210-18] ¶ 5. She also states in her declaration that “MSC Cruises S.A.’s program also required passengers to show proof of excursion before a passenger was permitted to disembark in Havana.” *Id.* ¶ 11.

Roberto Fusaro, a director at MSC USA, *id.*, ECF No. [201-2] at 9, testified that his “understanding was that under the people-to-people license that we applied while . . . MSC Cruises S.A. was offering cruises from the US to Cuba, passengers had to disembark with a shore excursion organized under the people-to-people regulations.” *Id.* at 29. Fusaro further testified that “[t]he policy of MSC Cruises S.A. in the past was that no passengers would be allowed to disembark in Havana unless they have purchased a shore excursion,” but he did not recall what procedures were in place to enforce that policy. *Id.*

MSC SA’s CEO, Giovanni Onorato, *id.*, ECF No. [201-3] at 4, testified that he did not know whether cruise passengers were educated about the lack of political freedoms in Cuba or met with Cuban dissidents. *Id.* at 53–54.

3. *Royal Caribbean*

Havana Docks states that Royal Caribbean approved, developed, and determined the shore excur-

sions that could be offered to passengers on its ships. *Royal Caribbean*, ECF No. [141] ¶ 91. Royal Caribbean does not dispute that fact; instead, it clarifies that Havanatur ran the shore excursions that Royal Caribbean developed. *Id.*, ECF No. [172] ¶ 91. The excursions Royal Caribbean offered included Cocktail Making Classes (the Art of Cuba Cocktails), Tropicana Cabaret, Parisien Cabaret, Arsenio Rodriguez Band, and Old Havana Sightseeing and Walking Tour Combination. *Id.*, ECF Nos. [141] ¶ 96, [172] ¶ 96.

A 2018 shore excursion catalog for Royal Caribbean listed 40 excursions. *Id.*, ECF No. [131-43] at 4–5. The catalog stated that “[f]or all excursions, the people-to-people component will appear with the symbol **P2P**.” *Id.* at 6 (emphasis in original).

The Cocktail Making Classes, which were 3.5 hours long, had the following description:

- Welcome and group meeting by the guide at the Cruise Terminal (20 min)
- Depart to the locales for interaction in relation to making Cuban cocktails. (20 min).
- Clients will receive explanations from specialists in making cocktails on how to make these types of drinks at home. (20 [to] 30 min).
- Sub-groups will be formed within the locales so the clients can comfortably prepare the drinks being taught, and competitions will take place between the groups to determine which preparations were the best (25 min).
- **At the end there will be time to interact with the training specialists and hear**

some of their experiences and anecdotes about the profession (P2P). (15 min).

- Taste some hors d'oeuvres as well as 3 beverages, with a choice of mojito, daiquiri, cubalibre, soft drink, beer, water. (45 min).
- Return to port. (25 min).

Id. at 29 (emphasis added).

The catalog listed two Tropicana excursions, one without dinner and a VIP experience, both lasting 3.5 hours. *Id.* at 17–18. None of them have a “P2P” designation. *Id.* The description of the non-VIP version stated that there is a 90-minute “Tropicana performance,” which “[i]ncludes [a] welcome cocktail, 1 bottle of rum per table, 1 soft drink, mixed hors d'oeuvre and one tobacco.” *Id.* at 17. The catalog also stated that “[o]ur guides provide the clients a historical summary of the locale and the Italian American Mafia’s management of the space prior to 1959.” *Id.*

The catalog described the “Cabaret Parisién” excursion as follows:

Enjoy one of the most well-known typical night cabaret shows of Cuban Culture in the world, in the Hotel Nacional de Cuba, renowned worldwide. A night visit to the Malecon of Havana and part of the city from the gardens of the Hotel Nacional de Cuba. In the Hotel Nacional, they will find historical information about the stays of Frank Sinatra, Ava Gardner, Buster Keaton and Winston Churchill, who attended the Cabaret Parisien decades before to admire the sensational show “Cubano, Cubano”.

Id. at 19. The description for the Cabaret Parisién does not include a “P2P” designation. *Id.*

The catalog described the Arsenio Rodriguez Band excursion as follows:

Treat yourself with one of the most well-known typical night cabaret shows of Cuban Culture in the world, the Arsenio Rodriguez Band show, music experienced in the US in the first half of the 20th Century, which even has a street named after it. Creator of the “Salsa” style in Cuba. Pure Cuban rhythm with traditional musical offerings like son, chachacha, montuno, rumba, guaracha, among other surprises.

Id. at 18. As the “P2P” component, the catalog stated, “[t]he visitor will have the opportunity to be not just a spectator, but also actively with [sic] some of the orchestra’s musical instruments. There may be a small interaction with some of the musicians to learn about their academic and musical training, customs, etc.” *Id.* at 19.

The Old Havana Sightseeing and Walking Tour Combination, which lasts 9 hours, includes visits to various locations in Havana for photos; explanations of the various sites; and “[t]ime to taste an exquisite tobacco, and a rum beverage.” *Id.* at 32–33. The only “P2P” designation is a 90-minute segment that states: “Walking tour through the Plaza de San Francisco de Asis, Plaza de Armas, Plaza de la Catedral and Plaza Vieja. There, they will have the opportunity to have ongoing exchanges with locals, vendors, artisans, entrepreneurs, and to learn about the customs of the residents of Old Havana.” *Id.* at 33.

Maria “Megan” Shaw, Royal Caribbean’s Account Manager of Product Development, and involved with

Royal Caribbean's shore excursions for 29 years, *id.*, ECF No. [122-4] at 5, characterized the Tropicana Cabaret as "one of the most iconic shows that were very popular from like the '30s through the '50s onwards in Havana." *Id.* at 28. She described the experience as follows:

It was actually a super neat experience. Guests were taken over. They were put into the show area, and then they saw the performers, the music. There was a little bit of history on . . . how the styles kind of changed along the way in dancing and music. And then at the end, the guests had a chance to participate and come on stage and dance [a] little bit with the performers.

Id. When asked about the people-to-people component of the Tropicana Cabaret show, Shaw answered that "throughout the show," there was "an MC kind of giving you a history of Cuba." *Id.* at 35.

Regarding the Cabaret Parisién, Shaw testified:

That's along the same lines as the Tropicana. So this one took place, if I remember correctly, at Hotel Nacional, which is one -- probably one of the most iconic hotels in Havana proper. And it's the same sort of thing -- it had a lot of history, which I thought was really neat, of performers in the past that have either performed there or stayed at the property. The property was just gorgeous. And then they had the same sort of concept. So they would go ahead and talk about the history of Cuba. They'll talk about the performers that had performed at that location. They did different musical

routines with dancers. And then at the end they would have interactivity with our guests before going back to the ship.

Id. at 29.

Concerning the “Art of Cuba Cocktails,” Shaw stated:

So that one we had as kind of a workshop. It was a smaller group of people that would actually interact with people that have worked in particular hotels that were -- again, had a history of ties with the US in the past. So, you know, there was -- back in the earlier ‘50s, there were ties with casino people here in the United States that maybe would have owned property in Cuba and -- and so they talked about the history, and then they also showed them the most popular cocktails. So like the mojitos -- other cocktails that they can go ahead and do and at the same time learn with them, much like other interactions where I felt it was actually a neat way of exposing people through food and beverage, which people really feel much more comfortable about and enjoying.

Id. at 30.

In January 2019, Jorge Delgado, Vice President of Global Business Development at Celebrity Cruises, one of Royal Caribbean’s brands, *Id.*, ECF No. [122-6] at 10, sent an internal email to Celebrity’s Director of Strategy & Consumer Insights, three other Celebrity employees, regarding current developments in Cuba. *Id.*, ECF No. [123-29] at 3–4. Delgado related that Cuba’s socioeconomic and political environment had

worsened in the last six months, reaching levels unseen since the “special period” in the 1990s, after the collapse of the Soviet Union. *Id.* at 3. Havanatur’s tour guides were “tired, hungry, scared, and much like everybody else, don’t believe in the regime any longer.” *Id.* Delgado explained that “many of them are hired from the Cuban Ministry of Foreign Relations Academy (because of their language skills) these individuals (after being brainwashed for four years) come to work for Havanatur believing our guests are not tourists, but the American invaders they were told were coming.” *Id.* at 4.

At deposition, Delgado recalled that during the later years of the tours, the tour guides would “enter all kinds of nonsensical discussions with our guests on political issues.” *Id.*, ECF No. [122-6] at 27. As Delgado put it, “What they were doing basically to our guests was reading the communist party bible on whatever they believe in.” *Id.* Delgado also stated, “I believe that many of these guys got those positions and were trained on how to respond to questions from the guests in the way they did, basically brainwash[ed].” *Id.*

4. *Norwegian*

Norwegian sold shore excursions to its passengers that it designed, approved, marketed, and guaranteed complied with the “general license for people-to-people travel.” *Norwegian*, ECF Nos. [284] ¶ 73, [309] ¶ 73. Norwegian approved every shore excursion in Cuba that it sold to its passengers. *Id.*, ECF Nos. [228] ¶ 78. [282] ¶ 78. Havanatur operated and organized the shore excursions approved and sold by Norwegian. *Id.*, ECF Nos. [228] ¶ 80, [282] ¶ 80.

Norwegian contends that it “implemented a robust program to ensure [OFAC] compliance.” *Id.*, ECF No. [234] ¶ 16. Norwegian submits that it maintained an OFAC compliance manual, required each passenger to execute an affidavit attesting that they were traveling for a permissible reason, and educated passengers regarding OFAC regulations. *Id.*, ECF No. [234] ¶¶ 17–19. Havana Docks agrees that Norwegian had an OFAC compliance manual but disputes the rest of the facts and raises hearsay objections. *Id.*, ECF No. [284] ¶¶ 16–19.

The shore excursions approved, offered, and sold by Norwegian in Havana included “The Legendary Tropicana Cabaret,” “Parisien Cabaret at the Hotel Nacional de Cuba,” “Buena Vista Social Club at Habana Café,” “An Evening Stroll in Colonial Havana,” “The Old Colonial Havana,” “Modern Havana in an American Classic,” “Colors and Flavors in Havana,” and “Las Terrazas and It’s Nature.” *Id.*, ECF Nos. [228] ¶ 85, [282] ¶ 85. Norwegian also approved, offered, and sold the excursions “Submerged Pearl,” “Cienfuegos Dolphins,” and “Cienfuegos & Its Nature” during cruises to Cienfuegos that included a stop at the Terminal. *Id.*, ECF Nos. [221-16], [217-6], [228] ¶ 86, [282] ¶ 86. Havana Docks states that these cruises also docked at the Terminal, and Norwegian does not present evidence to the contrary. *Id.*

Norwegian’s Shore Excursion Program (“Program”) informed passengers:

Please be advised that the Cruise *tourism* in Cuba is operated by a Government owned Tour company. Therefore, guides, venues and any means of transportation are selected & provided solely at their own discretion.

Tour Guides' English competency varies greatly, please expect heavy accents. Tour durations are approximate and unforeseen delays may be expected. The American Cruise Industry is fairly new to Cuba, therefore, we appreciate your understanding if the same quality and standards are not met as to those other more tourism-developed cruise destinations.

Id., ECF No. [217-6] at 6 (emphasis added)

The Program states that the "Tropicana Cabaret" excursion involves a show but provides no detail about its content. *Id.* For the "Parisien Cabaret," the program states that guests will "[e]njoy the atmosphere of the [Hotel Nacional] while waiting for the show to start" (30 minutes); watch "a spectacular Vegas style performance, which blends the Indo-American, Hispanic and African cultures that led to the Cuban culture as it is known today" (two hours); and "[e]njoy leisure time at the club" (15 minutes). *Id.* at 7. For the "Buena Vista Social Club," the program states that guests will "[e]njoy the atmosphere of the [Habana Café] while waiting for the show to start" (35 minutes) and "[e]njoy the musical performance of Buena Vista Social Club" (an hour and 40 minutes). *Id.* at 6.

For the "An Evening Stroll in Colonial Havana" tour, the Program states that guests will visit Cathedral Square, Arms Square, Old Square, and Sloppy Joe's Bar. *Id.* at 7. "The Old Colonial Havana" excursion had a similar itinerary, adding that passengers could "[v]isit the Almacenes de San Jose and have the opportunity to buy [a] Cuban souvenir." *Id.* The "Modern Havana in an American Classic" is

described as encompassing various Havana landmarks in a vintage automobile. *Id.* at 6.

Norwegian's January 2019 Program contained a slightly different disclaimer:

Please be advised that shore excursions in Cuba are operated by a third party, therefore guides, venues and any means of transportation are selected and provided solely at their discretion. Tour Guides' English competency varies greatly, please expect heavy accents. Tour durations are approximate, content can change and unforeseen delays up to 1-2 hours are expected and quite common. The U.S. Cruise Industry is new to Cuba; therefore, we appreciate your understanding if the quality and standards are not met as compared to other more developed cruise destinations. **All our shore excursions are OFAC compliant.**

Norwegian, ECF No. [301-2] at 3 (emphasis added).

The "Modern Havana in an American Classic" excursion added the following disclaimer: "The Vintage Car ride is an orientation drive operated by a driver only. Drivers barely [s]peak English and are not guides. Information is very limited. However, a tour guide will provide explanations to the group at each stop during the bus drive." *Id.*

Disclaimers were also added to the "Tropicana Cabaret" excursion: dinner was not included, beverages were an additional charge, and "show may contain sensual dancing." *Id.*

The 2019 Program also included descriptions of excursions in Cienfuegos and Santiago de Cuba. *Id.*,

ECF No. [301-2] at 5–6. The “Cienfuegos Dolphins” excursion included a visit to various sites, a “[d]olphin show and opportunity to talk to the coaches,” and “free time on the historical Boulevard Santa Isabel, where you may browse the shops before returning to the pier.” *Id.* at 5. The “Cienfuegos & Its Nature” excursion included “1h30min of hiking in the park,” “[f]ree time to swim in . . . natural pools,” and a “Creole-style lunch” at a local restaurant. *Id.*; see also *id.*, ECF No. [301-3] at 4 (stating that guests “will have free time for [a] bath in natural settings and to take photos”). According to another document describing some of the Norwegian’s Cienfuegos shore excursions, “The Submerged Pearl” excursions involved visits to several Cienfuegos sites and the opportunity to buy souvenirs in the Boulevard Santa Isabel. *Id.*, ECF No. [301-3] at 9.

In another document describing the Havana excursions, in “Colors and Flavors in Havana,” Norwegian passengers would “[d]elve into the local culture by visiting a superb dance company, sampling Cuban rum paired with cigars, and learning to make classic cocktails before dining on Cuban cuisine.” *Id.*, ECF No. [301-1] at 7. “Las Terrazas and It’s Nature” involved an eight-hour tour of “an environmentally conscious small town where most of the activities revolve around nature.” *Id.* at 2. According to the excursion description, “[a]s you meander around the eco-friendly town, you will probably see artists in their workshops and encounter hikers on their way to and from the many trails surrounding Las Terrazas.” *Id.* The excursion included a visit to a museum, coffee at a café, and a drive to the San Juan River, where travelers were “free to swim in the gently flowing waters or simply relax in the shade and gaze out over the tropical landscape.” *Id.*

Regarding the Tropicana, Norwegian's Corporate Representative, Mario Parodi, was asked at deposition, "That's a great tourist attraction; correct, sir?" *Id.*, ECF No. [214-1] at 34. Parodi answered, "Yes, it is." *Id.* In addition, when asked, "[b]esides the Tropicana Nightclub, what other similar type of tourist excursions did Havanatur organize for the NCL passengers?" he answered, "I know there are two other shows that we offer through Havanatur, and then there are the monuments and the local attractions." *Id.* In addition, Parodi was not aware of any Norwegian excursion that met with religious organizations. *Id.* at 35. Parodi also confirmed that Havanatur did not organize excursions where passengers met with members of the dissident movement in Cuba, persons not affiliated with the Cuban Government, or artists not employed by a Cuban Government agency. *Id.*

Christine Manjencic, who was responsible for shore excursions in Cuba for Norwegian, testified that the people-to-people components of the "Buena Vista Social Club" excursion included a "meet and greet by maître d', wait staff" and "a component where our guests met with the artists" and "where guests had the opportunity to dance with the artists or partake in the activity that was happening at that time." *Id.*, ECF No. [214-8] at 41. Manjencic testified similarly about the Tropicana Cabaret, adding that "guests could have an exchange with the artists, with the performers, with the musicians, the presenters -- so they could discuss about the show and about their art history," and learn salsa at the end of the show. *Id.* Manjencic provided similar testimony regarding the "Parisien Cabaret." *Id.* at 41-42.

Norwegian also filed a Declaration of Christine Manjencic in support of its opposition to Havana Docks' Individual Motion for Summary Judgment. *Id.*, ECF No. [282-12]. Manjencic described "An Evening Stroll in Colonial Havana" as "a walking tour, led by a Cuban guide, of various culturally significant locations throughout the densely populated Old Havana, including a local pedestrian street where passengers had an opportunity to interact with locals, such as artists and street vendors." *Id.* ¶ 3. Manjencic stated that "[t]he excursion concluded with a stop outside of the historical Sloppy Joe's Bar" but did not take place "inside Sloppy Joe's Bar." *Id.* ¶ 4. Manjencic describes "The Old Colonial Havana" excursion in the same manner, adding that "passengers also had an opportunity to interact with the owners of privately owned businesses at the Almacenes de San Jose." *Id.* ¶¶ 5–6.

Concerning the "Modern Havana in an American Classic" shore excursion, Manjencic stated that "passengers were paired with a local Cuban driver." *Id.* ¶ 7. Manjencic testified that "Cienfuegos Dolphins" allowed passengers to "interact[] with and learn[] from local Cubans who worked with dolphins and interacting with the locals at the historic Boulevard Santa Isabel -- a dense urban commercial street for pedestrians to interact with local vendors and artisans." *Id.* ¶ 10. As to "Cienfuegos & Its Nature," Manjencic stated that "passengers were led by a local Cuban guide through the historically significant Escambray Mountains," "had an opportunity to personally interact with local residents," and "dined at a privately owned restaurant that served Creole-style lunch at which passengers had an opportunity to interact with the chef and employees." *Id.* ¶¶ 11–12. Manjencic also stated that for "The Submerged

Pearl,” “a local Cuban guide facilitated exchanges between passengers and locals at various architectural landmarks in Cienfuegos” and “passengers had an opportunity to interact with local fishermen about the history and significance of this unique area as well as their daily life.” *Id.* ¶ 13.

In April 2015, Norwegian’s President and CEO, Frank Del Rio, when publicly speaking at the “Inaugural Cuba Opportunity Summit” at the University of Pennsylvania, was asked, “So travel restrictions when it comes to non-tourism travel have been eased dramatically, but is there anything that President Obama announced in December that allows you to do that?” *Id.*, ECF No. [221-15] at 4. Del Rio answered,

I think it gets us one step closer. It starts the conversation. It starts the wheels moving. But today, no cruise line that is American-based -- certainly not a publicly traded company like Norwegian -- can routinely go to Cuba with tourists. Tourism 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. That would be a stretch of the -- of the rules.

Id.

I. Havana Docks’ Notice

On February 11, 2019, each Defendant received a letter from Havana Docks’ counsel, informing each Defendant of the Certified Claim and accusing each of trafficking under the LIBERTAD Act. *Carnival*, ECF Nos. [332] ¶ 41, [374] ¶ 41; *MSC*, ECF Nos. [224] ¶ 28, [253] ¶ 28; *Royal Caribbean*, ECF Nos.

[141] ¶ 20, [172] ¶ 20; *Norwegian*, ECF Nos. [228] ¶ 11, [282] ¶ 11. No Defendant obtained authorization from Havana Docks to use the Terminal. *Carnival*, ECF Nos. [332] ¶ 43, [374] ¶ 43; *MSC*, ECF Nos. [224] ¶ 32, [253] ¶ 32; *Royal Caribbean*, ECF Nos. [141] ¶ 24, [172] ¶ 24; *Norwegian*, ECF Nos. [228] ¶ 12, [282] ¶ 12.

J. Defendants' Knowledge of the LIBERTAD Act and the Certified Claim

Defendants have been aware of the LIBERTAD Act since 1996 or 1997. *Carnival*, ECF Nos. [332] ¶ 14, [374] ¶ 14; *MSC*, ECF Nos. [224] ¶ 26, [253] ¶ 26; *Royal Caribbean*, ECF Nos. [141] ¶ 8, [172] ¶ 8; *Norwegian*, ECF Nos. [228] ¶ 6, [282] ¶ 6.

Carnival had a general awareness since 1996 that there was a Certified Claim concerning the Terminal, and *Carnival* specifically learned of the Certified Claim in 2012. *Carnival*, ECF Nos. [332] ¶¶ 15–16, [374] ¶¶ 15–16. *Norwegian* learned of the Certified Claim in February 2017. *Norwegian*, ECF Nos. [228] ¶ 9, [282] ¶ 9. *MSC* and *Royal Caribbean* learned of the Certified Claim from the Havana Docks notice, in February 2019. *MSC*, ECF Nos. [210] ¶ 45, [259] ¶ 45; *Royal Caribbean*, ECF Nos. [141] ¶ 20, [172] ¶ 20.

K. Defendants' Revenues and Profits

1. *Carnival*

Havana Docks states that *Carnival* earned money, or profited from, its cruises to Cuba. *Carnival*, ECF No. [332] ¶ 36. *Carnival* disputes that assertion, but *Carnival*'s only counter-fact is that the *Adonia* was not profitable. *Id.*, ECF No. [374] ¶ 36. Based on *Carnival*'s answers to requests for admissions,

Havana Docks asserts Carnival earned total net revenue for the CCL ships that docked at the Terminal of \$67,788,397.00 and revenues for *Veendam* cruises that docked at the Terminal of \$44,496,253.86. *Id.*, ECF No. [332] ¶¶ 37, 39; *see id.*, ECF No. [322-2] at 24, 38. Carnival disputes that those figures represent monies earned from the use of the Terminal, explaining that they represent revenues from every voyage that included a stop in Havana. *Id.*, ECF No. [374] ¶¶ 37–38.

Havana Docks also claims that Carnival earned \$4,047,742.00 in revenue from the *Adonia*. *Id.*, ECF No. [332] ¶ 40. Carnival disputes that claim by stating that the *Adonia* was not profitable and by faulting Havana Docks for citing to 600 pages of documents without providing a pin citation. *Id.*, ECF No. [374] ¶ 40.

2. MSC

MSC denies that it profited from any of its cruises to Cuba. *MSC*, ECF No. [253] ¶ 69. MSC, however, admits that MSC SA earned approximately €247,000,000.00 in net cruise revenues from the *Armonia* and *Opera* cruises to the Terminal between 2015 and 2019. *Id.*, ECF Nos. [224] ¶ 62, [253] ¶ 62. For cruises from the U.S. to Cuba on the *Armonia* that docked at the Terminal between December 2018 and June 2019, the net cruise revenue was €38,994,000.00, and the net ticket revenue was €26,387,000.00. *Id.*, ECF Nos. [224] ¶¶ 63–64, [253] ¶¶ 63–64. MSC SA further admits that it earned revenues from *Opera* cruises that docked at the Terminal between December 2015 and March 2019, from *Opera* cruises that used the Terminal as the homeport, *Armonia* cruises that docked at the Terminal between November 2016 and June 2019, and

Armonia ships that used the Terminal as the home-port, although neither party provides any figures. *See id.*, ECF Nos. [224] ¶¶ 65–68, [253] ¶¶ 65–68. In addition, from 2015 to 2019, MSC SA earned €21,614,000.00 from the sale of shore excursions to *Opera* and *Armonia* passengers. *Id.*, ECF Nos. [259] ¶ 70, [273] ¶ 70.

3. *Royal Caribbean*

From 2017 to 2018, Royal Caribbean earned \$430,925,849.00 in gross revenue for its cruises to Cuba, of which \$304,461,457.00 was for gross ticket revenue for cruises that docked at the Terminal. *Royal Caribbean*, ECF Nos. [141] ¶ 52, [172] ¶ 52; *see also id.* ¶¶ 48–50. Havana Docks contends that subtracting costs results in net revenues of \$329,094,322.00. *Id.*, ECF No. [141] ¶ 52. Royal Caribbean disputes that figure, explaining that it “does not track net revenue or profit on a cruise-by-cruise basis.” *Id.*, ECF No. [172] ¶ 52.

When addressing the recission of people-to-people travel in June 2019, Royal Caribbean’s Chief Financial Officer, Jason Liberty, described Cuba as a “high yielding destination,” *Id.*, ECF No. [131-32] at 6. Liberty added, “The result of this policy change has created a short-term impact to our guests, operations and earnings.” *Id.* Liberty estimated that the regulatory change would affect Royal Caribbean’s earnings per share by \$0.25 to \$0.35 per share. *Id.* Cruises to Cuba earned a “premium”—meaning that they outperformed, on a yield basis, non-Cuba cruises. *Id.*, ECF Nos. [141] ¶ 55, [172] ¶ 55.

4. *Norwegian*

Norwegian admits that it earned money, or profited from, providing passenger carrier services on

the vessels that docked at the Terminal. *Norwegian*, ECF Nos. [228] ¶ 48, [282] ¶ 48. Cruises to Cuba commanded a premium price due to pent-up demand and limited availability. *Id.*, ECF Nos. [228] ¶ 49, [282] ¶ 49. Norwegian earned \$299,860,891.00 in total revenue for voyages to Cuba. *Id.*, ECF Nos. [228] ¶ 50, [282] ¶ 50. Norwegian adds that its net revenue for voyages to Havana and excursions in Havana was \$25,139,622.00. *Id.*, ECF No. [282] ¶ 50.

L. Other Cruises to Cuba

From 2017 to 2019, Viking Cruises offered cruises to Cienfuegos that transported passengers to Havana by bus for a one or two-day excursion. *MSC*, ECF Nos. [224] ¶ 90, [253] ¶ 90; *Royal Caribbean*, ECF Nos. [141] ¶ 81, [172] ¶ 81. Other cruise lines, such as Thomson, Fred Olsen, and Noble Caledonia, offered cruises to Cuba that stopped in Cienfuegos, Santiago, or Holguin, but did not include a stop in Havana. *MSC*, ECF Nos. [224] ¶ 98, [253] ¶ 98; *Royal Caribbean*, ECF Nos. [141] ¶ 67, [172] ¶ 67.

M. Defendants' Experts

1. *Ambar Diaz*

Defendants retained Ambar Diaz as their expert attorney. Attorney Diaz has been licensed to practice law in Florida since 2003, specializing in advising U.S. companies how to navigate the Cuban market. *Carnival*, ECF No. [331-1] at 4. Attorney Diaz was a practicing lawyer in Cuba, specializing in maritime and insurance law until she immigrated to the United States in 2000. *Id.* Defendants retained Attorney Diaz to perform two tasks: (1) review the Concession and “opine on what rights the Concession provides under the laws of Cuba,” and (2) “opine on Cuban laws and regulations applicable to ports in

Cuba that were in effect during 2015 to the present,” and their relation to “the mooring of cruise ships in the Port of Havana.” *Id.*, ECF No. [331-1] at 3.

On the first topic, Diaz opines that the Concession, when viewed through the lens of various Cuban laws related to marine ports, granted Havana Docks only a non-exclusive, limited right to operate cargo services at the Terminal. *Id.*, ECF No. [331-1] at 5–6, 15–17. On the second topic, Diaz opines that Cuban laws and regulations mandated that Defendants use the Terminal when traveling to Havana. *Id.* at 23–35.

Havana Docks moved to preclude Diaz from testifying before a jury and for the Court to disregard her report and testimony. *Id.*, ECF No. [366]. Magistrate Judge Chris McAliley issued a Report and Recommendation, recommending denial of Havana Docks’ motion to preclude. *Id.*, ECF No. [416]. Judge McAliley explained that “[t]o the extent Ms. Diaz offers opinions about relevant questions of Cuban law, the Court can then determine, under Rule 44.1, whether Ms. Diaz’s opinions are worthy of the Court’s reliance.” *Id.* at 8. Following no objections from the parties, the Court adopted the Report. *Id.*, ECF No. [428].

2. *Julian Ackert*

Defendants also retained Julian Ackert, a computer forensics expert, in support of their argument that Havana Docks’ principal place of business is outside the United States. *See id.*, ECF No. [325-1]. As such, Defendants contend that Havana Docks is not a United States national pursuant to § 6023(15)(B). According to his declaration, Ackert reviewed 801 emails provided by Havana Docks in discovery (“Production Set”). *Id.* ¶ 20.

Ackert extracted the geographic location of the IP addresses for 675 emails. *Id.* Ackert does not “opine[] on the geographic location information for [the remaining] 126 emails.” *Id.* at 8 n.2.

Ackert issued two opinions:

Based on an analysis of the available email metadata in the Production Set, 41 of the 42 (98%) of the emails collected from custodian Mickael Behn that were sent from email addresses associated with Mickael Behn routed through computers physically located in the United Kingdom (UK) or European Union (EU). The email metadata for these 41 emails indicates that at the time the email was sent, the sender was geographically located in the UK or EU.

Based on an analysis of the available email metadata in the Production Set, 114 of 165 (69%) emails collected from custodians Mickael Behn and Jerry Johnson that were communications between email addresses associated with Mickael Behn and Jerry Johnson routed through computers physically located in the UK or EU, and up to 164 out of 165 emails (99%) were routed from or to an individual located in the UK or the EU. The email metadata for these 114 emails indicates that at the time the email was sent or received, either the sender or the recipient was geographically located in the UK or EU.

Id. ¶¶ 11–12.

In its Motion, Havana Docks seeks to exclude Ackert’s opinions under *Daubert* as unreliable, unhelpful, and misleading. *Id.*, ECF No. [328] at

6–12. Havana Docks contends that Ackert provides no authority to support his methodology of tracing emails from their IP address, *id.* at 7, and Ackert did not account for the myriad ways that remote access to computers may skew IP addresses. *Id.* at 7–9. Havana Docks submits that Ackert’s opinions are unhelpful because, among other reasons, he does not know the content of the emails he analyzed. *Id.* at 9–11. Moreover, Havana Docks argues that Ackert’s opinions are misleading and prejudicial given that it concerns only a subset of emails. *Id.* at 11–12.

Defendants respond that Ackert sufficiently explained his methodology and that expert opinion on metadata is generally admissible. *Id.*, ECF No. [364] at 14–16. Defendants contend that there is no evidence that Behn or Johnson used remote access systems, and even if there was, that evidence would go to the weight of the opinions, not their admissibility. *Id.* at 17–18. Defendants further argue that Ackert’s opinions are helpful because they relate to the issue of Havana Docks’ statutory standing; moreover, Ackert’s opinions will not confuse the trier of fact or prejudice Havana Docks, because Havana Docks may, through effective cross-examination, expose any weakness in Ackert’s opinions. *Id.* at 18–21.

Magistrate Judge McAliley concluded that Ackert’s methodology is sufficiently reliable. *Id.*, ECF No. [425] at 8–9. Judge McAliley further found that Ackert’s inability to rule out whether Behn or Johnson used remote access goes to the weight, not admissibility, of the opinions. *Id.* at 9–10. Judge McAliley also determined that whether Ackert’s opinions are helpful would depend on what provision of § 6023 applies. *Id.* at 12. If Havana Docks can

simply establish that it is a United States national under 22 U.S.C. § 6023(15)(A), then Ackert's opinions are irrelevant. *Id.*

But if Havana Docks must prove that its principal place of business is in the United States, as set forth in 22 U.S.C. § 6023(15)(B), then Ackert's opinions would be relevant. *Id.* at 12–13. And concerning Ackert's lack of knowledge regarding the content of the emails, Judge McAliley observed that it “may be [a] strong [consideration] when it comes to the weight to be given Ackert's opinions,” but it did not make the opinions inadmissible. *Id.* at 13. Finally, Judge McAliley concluded that exclusion under Federal Rule of Evidence 403 was not warranted, because any misleading use of percentages goes to the weight of the opinions. *Id.* at 13–14.

Havana Docks' partial Objection to the Report and Recommendation is based on the fact that Ackert did not review or identify the emails that form the basis of his opinions. *Id.*, ECF No. [430]. Havana Docks argues that Ackert's deficiency cannot be cured on cross-examination and render his opinion that 98% Havana Docks' “business” emails came from overseas misleading. *Id.*

IV. LEGAL STANDARD

A. Summary Judgment Standard

A district court's disposition of cross-motions for summary judgment employs the same legal standards applied when only one party files a motion. *See United States v. Oakley*, 744 F.2d 1553, 1555 (11th Cir. 1984). “Nonetheless, cross-motions may be probative of the non-existence of a factual dispute when, as here, they demonstrate a basic agreement

concerning what legal theories and material facts are dispositive.” *Id.* at 1555–56.

A court may grant a motion for summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The parties may support their positions by citation to the record, including, *inter alia*, depositions, documents, affidavits, or declarations. *See* Fed. R. Civ. P. 56(c). An issue is genuine if “a reasonable trier of fact could return judgment for the non-moving party.” *Miccousukee Tribe of Indians of Fla. v. United States*, 516 F. 3d 1235, 1243 (11th Cir. 2008) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986)). A fact is material if it “might affect the outcome of the suit under the governing law.” *Id.* (quoting *Anderson*, 477 U.S. at 247–48). The court views the facts in the light most favorable to the non-moving party and draws all reasonable inferences in the party’s favor. *Crocker v. Beatty*, 886 F.3d 1132, 1134 (11th Cir. 2018). “The mere existence of a scintilla of evidence in support of the [non-moving party’s] position will be insufficient; there must be evidence on which a jury could reasonably find for the [non-moving party].” *Anderson*, 477 U.S. at 252. The Court does not weigh conflicting evidence. *See Skop v. City of Atlanta, Ga.*, 485 F.3d 1130, 1140 (11th Cir. 2007) (quoting *Carlin Comm’n, Inc. v. S. Bell Tel. & Tel. Co.*, 802 F.2d 1352, 1356 (11th Cir. 1986)).

The moving party shoulders the initial burden to demonstrate the absence of a genuine issue of material fact. *See Shiver v. Chertoff*, 549 F.3d 1342, 1343 (11th Cir. 2008). If a movant satisfies this burden, “the nonmoving party ‘must do more than simply show that there is some metaphysical doubt

as to the material facts.” *Ray v. Equifax Info. Servs., L.L.C.*, 327 F. App’x 819, 825 (11th Cir. 2009) (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). Instead, “the non-moving party ‘must make a sufficient showing on each essential element of the case for which he has the burden of proof.’” *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). The non-moving party must produce evidence, going beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designating specific facts to suggest that a reasonable jury could find in the non-moving party’s favor. *Shiver*, 549 F.3d at 1343.

In resolving the issues presented under Fed. R. Civ. P. 56, “the court may not weigh conflicting evidence to resolve disputed factual issues; if a genuine dispute is found, summary judgment must be denied.” *Carlin Commc’n, Inc.*, 802 F.2d at 1356; *see also Aurich v. Sanchez*, No. 08-80113-CIV, 2011 WL 5838233, at *1 (S.D. Fla. Nov. 21, 2011) (“If a reasonable fact finder could draw more than one inference from the facts, and that inference creates an issue of material fact, then the court must not grant summary judgment.” (citing *Hairston v. Gainesville Sun Publ’g Co.*, 9 F.3d 913 (11th Cir. 1993))). Even “where the parties agree on the basic facts, but disagree about the factual inferences that should be drawn from those facts,” summary judgment may be inappropriate. *Warrior Tombigbee Transp. Co., Inc. v. M/V Nan Fung*, 695 F.2d 1294, 1296 (11th Cir. 1983).

Furthermore, summary judgment is inappropriate where the Court would be required to weigh conflicting renditions of material fact or determine witness

credibility. *See Hairston*, 9 F.3d at 919; *see also Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996) (“It is not the court’s role to weigh conflicting evidence or to make credibility determinations; the non-movant’s evidence is to be accepted for purposes of summary judgment.”); *see also Strickland v. Norfolk S. Ry. Co.*, 692 F.3d 1151, 1154 (11th Cir. 2012) (“Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he [or she] is ruling on a motion for summary judgment or for a directed verdict.” (quoting *Anderson*, 477 U.S. at 255)); *Gary v. Modena*, No. 05-16973, 2006 WL 3741364, at *16 (11th Cir. Dec. 21, 2006) (Fed. R. Civ. P. 56 precludes summary judgment where court would be required to reconcile conflicting testimony or assess witness credibility); *Ramirez v. Nicholas*, No. 13-60820-CIV, 2013 WL 5596114, at *4 (S.D. Fla. Oct.11, 2013) (“The Court may not make the credibility determinations needed to resolve this conflict; only the jury may do so.”).

B. *Daubert* Standard

Federal Rule of Evidence 702 governs the admissibility of expert testimony. When a party proffers the testimony of an expert under Rule 702, the party offering the expert testimony bears the burden of laying the proper foundation, and that party must demonstrate admissibility by a preponderance of the evidence. *See Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1291–92 (11th Cir. 2005); *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1306 (11th Cir. 1999). To determine whether expert testimony or any report prepared by an expert may be admitted, the court must engage in a three-part inquiry, which includes

whether: (1) the expert is qualified to testify competently regarding the matters the expert intends to address; (2) the methodology by which the expert reaches his or her conclusions is sufficiently reliable; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue. *See City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 562 (11th Cir. 1998) (citing *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993)). The Court of Appeals for the Eleventh Circuit refers to each of these requirements as the “qualifications,” “reliability,” and “helpfulness” prongs. *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004). While some overlap exists among these requirements, the court must individually analyze each concept. *See id.*

Under *Daubert*, a district court must take on the role of gatekeeper, but this role “is not intended to supplant the adversary system or the role of the jury.” *Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 1333, 1341 (11th Cir. 2003) (citations omitted) (quotation marks omitted). Consistent with this function, the district court must “ensure that speculative, unreliable expert testimony does not reach the jury.” *McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1256 (11th Cir. 2002). “[I]t is not the role of the district court to make ultimate conclusions as to the persuasiveness of the proffered evidence.” *Quiet Tech.*, 326 F.3d at 1341 (citations omitted) (quotation marks omitted). Thus, the district court cannot exclude an expert based on a belief that the expert lacks personal credibility. *Rink*, 400 F.3d at 1293 n.7.

On the contrary, “vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” *Quiet Tech.*, 326 F.3d at 1341 (quoting *Daubert*, 509 U.S. at 596). “Thus, ‘[o]n cross-examination, the opposing counsel is given the opportunity to ferret out the opinion’s weaknesses to ensure the jury properly evaluates the testimony’s weight and credibility.’” *Vision I Homeowners Ass’n, Inc. v. Aspen Specialty Ins. Co.*, 674 F. Supp. 2d 1321, 1325 (S.D. Fla. 2009) (quoting *Jones v. Otis Elevator Co.*, 861 F.2d 655, 662 (11th Cir. 1988)). Ultimately, as noted, “a district court enjoys ‘considerable leeway’ in making” evidentiary determinations such as these. *Cook ex rel. Est. of Tessier*, 402 F.3d at 1103 (quoting *Frazier*, 387 F.3d at 1258).

C. Review of Report and Recommendation Standard

“In order to challenge the findings and recommendations of the magistrate judge, a party must file written objections which shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection.” *Macort v. Prem, Inc.*, 208 F. App’x 781, 783 (11th Cir. 2006) (quoting *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989)) (alterations omitted). The objections must also present “supporting legal authority.” S.D. Fla. L. Mag. J.R. 4(b). The portions of the report and recommendation to which objection is made are reviewed de novo only if those objections “pinpoint the specific findings that the party disagrees with.” *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); see also Fed. R. Civ. P. 72(b)(3). If a party fails to object

to any portion of the magistrate judge's report, those portions are reviewed for clear error. *Macort*, 208 F. App'x at 784 (quoting *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999)); see also *Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C.*, 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001). A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1).

V. DISCUSSION

Divided into the elements of the claim, the LIBERTAD Act states that (1) "any person"; (2) that "traffics"; (3) "in property which was confiscated by the Cuban Government on or after January 1, 1959"; (4) "shall be liable to any United States national"; (5) "who owns the claim to such property"; and (6) trafficking must occur after November 1, 1996. See 22 U.S.C. §§ 6082(a)(1)(A), 6085(a). The Court will address each element in turn, and then address the affirmative defenses.

A. "Person"

Defendants are indisputably "persons" under the LIBERTAD Act. See 22 U.S.C. §§ 6023(11) ("The term 'person' means any person or entity, including any agency or instrumentality of a foreign state."). Defendants do not argue to the contrary. Therefore, Havana Docks has established this element as a matter of law.

B. "Traffics"

Title III of the LIBERTAD Act defines the term "traffics" as follows:

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.

§ 6023(13)(A) (emphasis supplied).

Title III of the LIBERTAD Act excludes from the term “traffics” several acts, such as:

- (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.

§ 6023(13)(B) (emphasis supplied).

In its Individual Summary Judgment Motions, Havana Docks argues that each Defendant knowingly and intentionally engaged in various trafficking acts under subsections (i), (ii), and (iii) of § 6023(13)(A). Defendants challenge the alleged trafficking acts, including whether Havana Docks sufficiently alleged in its complaints all trafficking theories it now includes in its moving papers. Defendants, however, admit that they used the Terminal to travel to Havana. *See Carnival*, ECF No. [373] at 8–9 n.2; *MSC*, ECF No. [256] at 15 n.10; *Royal Caribbean*, ECF No. [173] at 4 n.1; *Norwegian*, ECF No. [281] at 3 n.1, 4 n.2. Defendants contend that they did not act knowingly and intentionally, and that any use of the Terminal was incident and necessary to lawful travel under § 6023(13)(B).

1. *Scope of Havana Docks' Claim*

Preliminarily, in response to Havana Docks' Individual Motions for Summary Judgment, each Defendant contends that Havana Docks is seeking summary judgment on unpled trafficking theories. The Court addresses the arguments in turn.

a) *Carnival*

Carnival contends that Havana Docks did not plead a theory of trafficking beyond disembarking and embarking passengers at the Terminal. *Carnival*, ECF No. [373] at 11. According to *Carnival*,

trafficking based on providing shore excursions or contracting with Cuban entities are beyond the scope of the pleadings. *Id.* Havana Docks responds that a complaint need not specify in detail the precise theory giving rise to liability; rather, a defendant must be on notice of the claim and the grounds upon which it rests. *Id.*, ECF No. [402] at 4. Havana Docks submits that the operative pleading and discovery placed Carnival on notice of Havana Docks' claims. *Id.* at 5. Havana Docks' argument is persuasive.

In the operative Second Amended Complaint, Havana Docks alleged that "Carnival knowingly and intentionally commenced, conducted, and promoted its commercial cruise line business to Cuba using the [Terminal] by regularly embarking and disembarking its passengers" and "participated in and profited from the communist Cuban Government's possession of the [Terminal]." *Carnival*, ECF Nos. [149] ¶¶ 40–41. The disembarkation of passengers at the Terminal was part and parcel to those passengers going on shore excursions—the two acts cannot be separated. Moreover, the allegations encompass the trafficking activities that fall not only under § 6023(13)(A)(i) (using confiscated property), but also under § 6023(13)(A)(ii) (commercial activities) and § 6023(13)(A)(iii) (participating in and profiting from trafficking). As such, the Second Amended Complaint sufficiently alleges trafficking by Carnival through its contracts with

Cuban entities, including for the purpose of operating shore excursions.

b) Royal Caribbean

Royal Caribbean argues that Havana Docks' trafficking theories based on selling shore excursions or

engaging in commercial activities are unpled. *Royal Caribbean*, ECF No. [173] at 2–4. Royal Caribbean also contends that Havana Docks’ First Amended Complaint tracks the definition of “traffics” under subpart (i) and (iii) of § 6023(13)(A), but ignores the theory of liability under subpart (ii) of § 6023(13)(A). *Id.* at 4. Havana Docks responds that a complaint need not specify in detail the precise theory giving rise to liability; rather, a defendant must be on notice of the claim and the grounds upon which it rests. *Id.*, ECF No. [206] at 4. Havana Docks submits that the operative pleading and discovery placed Royal Caribbean on notice of Havana Docks’ claims. *Id.* at 5. Royal Caribbean’s arguments fail.

In the operative First Amended Complaint, Havana Docks alleged that Royal Caribbean “knowingly and intentionally commenced, conducted, and promoted its commercial cruise line business to Cuba using the [Terminal] by regularly embarking and disembarking its passengers on the [Terminal],” and “participated in and profited from the communist Cuban Government’s possession of the [Terminal].” *Id.*, ECF No. [46] ¶¶ 22–23. The disembarkation of passengers at the Terminal was inextricably intertwined with passengers going on shore excursions. Moreover, the allegations sufficiently encompass the trafficking activities that fall under § 6023(13)(A)(i) (using confiscated property), § 6023(13)(A)(ii) (commercial activities), and § 6023(13)(A)(iii) (participating in and profiting from trafficking). Therefore, the pleading includes trafficking by Royal Caribbean through its contracts with Cuban entities and related to the shore excursions.

c) Norwegian

Norwegian similarly argues that Havana Docks' trafficking theories based on selling shore excursions or engaging in commercial activities are unpled. *Norwegian*, ECF No. [281] at 3–4. Norwegian also maintains that Havana Docks tracked the language of § 6023(13)(A)(i) and (iii) in the First Amended Complaint, but not § 6023(13)(A)(ii). *Id.* at 4. Havana Docks responds that a complaint need not specify in detail the precise theory giving rise to liability; rather, a defendant must be on notice of the claim and the grounds upon which it rests. *Id.*, ECF No. [311] at 4. Havana Docks submits that the operative pleading and discovery placed Royal Caribbean on notice of Havana Docks' claims. *Id.* at 5. Norwegian's arguments are also unpersuasive.

In the operative First Amended Complaint, Havana Docks alleged that Norwegian “knowingly and intentionally commenced, conducted, and promoted its commercial cruise line business to Cuba using the [Terminal] by regularly embarking and disembarking its passengers on the [Terminal],” and “participated in and profited from the communist Cuban Government’s possession of the [Terminal].” *Id.*, ECF No. [56] ¶¶ 21–22. As such, the pleading sufficiently provides notice of trafficking by Norwegian through its contracts with Cuban entities and related to the shore excursions. The cases relied upon by Norwegian are inapposite. *See Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004) (raising contract claim for the first time in response to a summary judgment motion); *Altadis USA, Inc. v. NPR, Inc.*, 162 F. App’x 926, 928–29 (11th Cir. 2006) (noting that district court properly denied entry of summary judgment on unpled

theories of liability, but reviewing district court decision “only to see if the district court properly refused to permit Altadis to amend its complaint to assert alternative theories”); *Cruz v. Advance Stores Co.*, 842 F. Supp. 2d 1356, 1360 (S.D. Fla. 2012) (finding that plaintiff attempted to raise new negligence theories in opposition to summary judgment motion). Here, Havana Docks does not seek to assert new claims or theories of liability. Instead, Havana Docks has asserted one cause of action for trafficking and has sufficiently alleged the scope of the claim.

Norwegian also submits that Havana Docks never alleged that Norwegian trafficked through a third party, Fuego Enterprises. *Norwegian*, ECF No. [281] at 4–5. Havana Docks alleges that Norwegian “participated in and profited from the communist Cuban Government’s possession of the [Terminal].” *Id.*, ECF No. [56] ¶¶ 21–22. While discovery may have revealed that Norwegian used Fuego Enterprises as a third-party intermediary to make payments to Aries and Mambisa, Cuban Government-owned entities, *id.*, ECF Nos. [228] ¶¶ 25–26, 28–29, [282] ¶¶ 25–26, 28–29, the allegations of participation and profit are sufficient. As such, indirect payments made to Aries and Mambisa through Fuego Enterprises fall within the scope of Havana Docks’ pleading.

d) MSC

MSC argues that Havana Docks’ allegations are limited to Miami-to-Cuba cruises, and do not include Cuba-to-Cuba cruises—where the *Armonia* and *Opera* homeported in Havana. *MSC*, ECF No. [256] at 5–11. Havana Docks responds that the operative pleading includes Cuba-to-Cuba cruises. *Id.*, ECF No. [281] at 4–7. Havana Docks is correct. Cuba-to-Cuba

cruises are expressly encompassed within Havana Docks’ Second Amended Complaint against MSC. *Id.*, ECF No. [104]. The First Amended Complaint alleged that MSC SA “operated the cruises to Cuba from Miami that are the subject of this lawsuit.” *Id.*, ECF No. [56] ¶ 2. However, the operative Second Amended Complaint clarified that MSC SA “owns and operates cruise ships which, after November 1, 1996 traveled to Cuba, *including* the cruises to Cuba from Miami[.]” *Id.*, ECF No. [104] ¶ 2 (emphasis added). In addition, although the First Amended Complaint alleged trafficking acts under § 6023(13)(A)(iii) that began in December 2018, *id.*, ECF No. [56] ¶ 22, the Second Amended Complaint *expanded* the activities timeline to after November 1996, *id.*, ECF No. [104] ¶ 24. The *Armonia* traveled from Miami to Cuba beginning in December 2018. *Id.*, ECF Nos. [224] ¶ 40, [253] ¶ 40. But the *Armonia* and *Opera* used the Terminal as their homeport at different points between 2015 and 2019. *Id.*, ECF Nos. [224] ¶¶ 38–39, [253] ¶¶ 38–39. Therefore, the Second Amended Complaint, although not a model of clarity, sufficiently alleges that the alleged trafficking encompasses Cuba-to-Cuba cruises.

2. Trafficking Activity

While disclaiming liability on other grounds, Carnival, MSC SA, Royal Caribbean, and Norwegian admit in their memoranda that they used the Terminal. *See Carnival*, ECF No. [373] at 8–9; *MSC*, ECF No. [256] at 15 n.10; *Royal Caribbean*, ECF No. [173] at 4 n.1; *Norwegian*, ECF No. [281] at 3 n.1, 4 n.2. It is undisputed that during the time Carnival, MSC SA, Royal Caribbean, and Norwegian cruised to Havana, their ships docked at the Terminal’s Pier 1 to embark and disembark passengers. *Carnival*, ECF

Nos. [331] ¶ 22, [332] ¶¶ 17, 23–28, [374] ¶¶ 17, 23–28, [388] ¶ 22; *MSC*, ECF Nos. [224] ¶¶ 35, 40, 41, 45, [253] ¶ 35, 40, 41, 45; *Royal Caribbean*, ECF Nos. [141] ¶¶ 27, 29–30, [172] ¶¶ 27, 29–30; *Norwegian*, ECF Nos. [228] ¶¶ 14–15, [282] ¶¶ 14–15. In addition, the *Opera* and *Armonia* used the Terminal as a homeport from 2015 to 2019. *MSC*, ECF Nos. [224] ¶¶ 37–38, [253] ¶¶ 37–38. The Terminal was often used as a starting or stopping point for shore excursions for cruise travelers. *MSC*, ECF Nos. [224] ¶¶ 49–50, [253] ¶¶ 49–50; *Royal Caribbean*, ECF Nos. [141] ¶¶ 34, 93, [172] ¶¶ 34, 93; *Norwegian*, ECF Nos. [228] ¶ 18, [282] ¶ 18.

As such, by using the Terminal and one of its piers in various ways, Carnival, MSC SA, Royal Caribbean, and Norwegian committed trafficking acts under § 6023(13)(A)(i). *See Exxon Mobil Corp. v. Corporation Cimex S.A.*, No. 19-CV-1277 (APM), 2021 WL 4709566, at *2 (D.D.C. Oct. 8, 2021) (“Title III makes any subsequent user of confiscated property . . . liable for trafficking in such property.”); *see also* § 6023(13)(A)(i) (“a person ‘traffics’ in confiscated property if that person knowingly and intentionally . . . uses . . . confiscated property[.]”).

Importantly, there is no threshold level or type of trafficking activity that must occur for liability to attach under the LIBERTAD Act. Section 6082(a)(1) unambiguously states that a person who “traffics” in confiscated property is liable, § 6082(a)(1), and “traffics” is defined broadly and disjunctively, encompassing many types of acts. *See* § 6023(13). Moreover, the LIBERTAD Act sets forth that a person who “traffics in property” is presumptively liable for “the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the

International Claims Settlement Act” or “the fair market value of that property,” if the presumption is rebutted by clear and convincing evidence. § 6082(a)(1)(A)(i), (2).

In addition, Defendants’ use of the Terminal and commercial contracts with Cuban entities constituted “engag[ing] in a commercial activity” under § 6023(13)(A)(ii). The LIBERTAD Act states that “[t]he term ‘commercial activity’ has the meaning given that term in section 1603(d) of Title 28.” § 6023(3). Section 1603(d) defines “commercial activity” as “either a regular course of commercial conduct or a particular commercial transaction or act.” § 1603(d).

Carnival, MSC SA, Royal Caribbean, and Norwegian contracted with Aries to dock at the Terminal. *Carnival*, ECF Nos. [332] ¶ 29, [374] ¶ 29; *MSC*, ECF Nos. [224] ¶ 51, [253] ¶ 51; *Royal Caribbean*, ECF Nos. [141] ¶ 37, [172] ¶ 37; *Norwegian*, ECF Nos. [228] ¶ 21, [282] ¶ 21. Carnival, Royal Caribbean, and Norwegian contracted with Mambisa as port agent for the Terminal, *Carnival*, ECF Nos. [332] ¶ 30, [374] ¶ 30; *Royal Caribbean*, ECF Nos. [133] ¶ 23, [141] ¶ 41, [172] ¶ 41, [183] ¶ 23; *Norwegian*, ECF Nos. [228] ¶ 27, [282] ¶ 27, while MSC SA contracted with Mapor as port agent for the Terminal, *MSC*, ECF Nos. [224] ¶ 52, [253] ¶ 52.²⁶ MSC SA contracted with Cubanacan to operate shore excursions, *MSC*, ECF

²⁶ Although there is some dispute whether the Cuban Government owns Mapor, there is no dispute that Mapor was the port agent for MSC SA, for which MSC SA paid Mapor \$9,314,386.41. *MSC*, ECF Nos. [224] ¶ 55, [253] ¶ 55. As such, Mapor benefited from use of the Terminal, and MSC SA participated in Mapor's use of the Terminal.

Nos. [224] ¶ 56, [253] ¶ 56, while *Carnival*, *Royal Caribbean*, and *Norwegian* contracted with Havanatur, *Carnival*, ECF Nos. [332] ¶ 31, [374] ¶ 31; *Royal Caribbean*, ECF Nos. [141] ¶ 45, [172] ¶ 45; *Norwegian*, ECF Nos. [228] ¶ 31, [282] ¶ 31.

The revenues earned by the cruise operators and the payments they made to Cuban entities evidence the commercial nature of the transactions. As the Court has previously noted, *Carnival*, *MSC SA*, *Royal Caribbean*, and *Norwegian* earned hundreds of millions of dollars for their trips to Cuba, and they paid Cuban entities tens of millions of dollars to use the Terminal and operate shore excursions. *See Carnival*, ECF No. [332] ¶¶ 32, 37–39, [374] ¶¶ 32, 37–39; *MSC*, ECF Nos. [224] ¶ 55, 59, 62, [253] ¶ 55, 59, 62; *Royal Caribbean*, ECF Nos. [141] ¶¶ 40, 44, 47, 52, [172] ¶¶ 40, 44, 47, 52; *Norwegian*, ECF Nos. [228] ¶¶ 24–26, 30, 35, 50 [282] ¶¶ 24–26, 30, 35, 50.

The contracts with Cuban entities also constitute trafficking acts under subpart (iii) of § 6023(13)(A) given that, to use the Terminal, *Carnival*, *MSC SA*, *Royal Caribbean*, and *Norwegian* “participate[d] in” trafficking under § 6023(13)(A)(iii) by entering into agreements with Cuban entities that “manage[d],” “use[d],” or “benefit[ed] from” the Terminal. § 6023(13)(A)(i), (ii).

Moreover, Defendants admit or fail to dispute that they profited from the use of the Terminal, which constitutes trafficking under subpart (iii) of § 6023(13)(A). Although *Carnival* contends that the *Adonia* was not profitable, *Carnival*, ECF No. [374] ¶ 36, *Carnival* does not state that its other cruises were not profitable. Havana Docks submits that *Carnival* earned total net cruise revenue and shore excursion net revenue for the CCL ships that docked

at the Terminal of \$67,788,397.00 and revenues for *Veendam* cruises to Cuba that docked at the Terminal of \$44,496,253.86. *Id.*, ECF No. [332] ¶¶ 37, 39. Carnival responds that those figures represent revenues from every voyage that included a stop in Havana, *id.*, ECF No. [374] ¶¶ 37–39, yet that response does not deny that using the Terminal resulted in profits to Carnival.

MSC denies that it profited from any of its cruises to Cuba. *MSC*, ECF No. [253] ¶ 69. MSC, however, admits that MSC SA earned approximately €247,000,000.00 in *net* cruise revenues from the *Armonia* and *Opera* cruises to the Terminal between 2015 and 2019. *Id.*, ECF Nos. [224] ¶ 62, [253] ¶ 62. For cruises from the U.S. to Cuba on the *Armonia* that docked at the Terminal between December 2018 and June 2019, the *net* revenue for cruises was €38,994,000.00, and the *net* ticket revenue was €26,387,000.00. *Id.*, ECF Nos. [224] ¶¶ 63–64, [253] ¶¶ 63–64. Moreover, from 2015 to 2019, MSC SA earned €21,614,000.00 from the sale of shore excursions to *Opera* and *Armonia* passengers. *Id.*, ECF Nos. [259] ¶ 70, [273] ¶ 70.

Havana Docks contends that Royal Caribbean earned net revenues of \$329,094,322.00 from cruises that docked at the Terminal. *Royal Caribbean*, ECF No. [141] ¶ 52. Royal Caribbean responds that it “does not track net revenue or profit on a cruise-by-cruise basis.” *Id.*, ECF No. [141] ¶ 52. That statement is not a denial that using the Terminal resulted in a profit to Royal Caribbean. Notably, Royal Caribbean’s Chief Financial Officer, Liberty, described Cuba as a “high yielding destination,” *Id.*, ECF No. [131–32] at 6. He also added that the recission of people-to-people travel “created a short-term impact to our guests,

operations and earnings,” affecting Royal Caribbean’s earnings per share by \$0.25 to \$0.35 a share. *Id.* Royal Caribbean admitted that cruises to Cuba earned a “premium,” outperforming non-Cuba cruises. *Id.*, ECF Nos. [141] ¶ 55, [172] ¶ 55.

Norwegian admits that it earned money, or profited from, providing passenger carrier services on the vessels that docked at the Terminal. *Norwegian*, ECF Nos. [228] ¶ 48, [282] ¶ 48. Norwegian earned \$299,860,891.00 in total revenue for voyages to Cuba, resulting in net revenue for voyages to Havana and excursions in Havana of \$25,139,622.00. *Id.*, ECF Nos. [228] ¶ 50, [282] ¶ 50. Norwegian further admits that cruises to Cuba commanded a premium price due to pent-up demand and limited availability. *Id.*, ECF Nos. [228] ¶ 49, [282] ¶ 49. Norwegian’s President and CEO, Frank Del Rio, testified that Cuba “was a profitable itinerary to operate, and we didn’t want to see it stopped.” *Id.*, ECF No. [214-6] at 22.²⁷

Finally, as to MSC USA, Havana Docks’ broad trafficking allegations encompass all MSC entities—MSC SA, MSC USA, and MSC Co.²⁸ *See MSC*, ECF

²⁷ Given this ruling, the Court need not address the factual dispute concerning whether Carnival provided “recommendations and advice” for the renovation and enhancement of the Terminal. *Carnival*, ECF No. [332] ¶ 34; *see id.*, ECF No. [374] ¶ 34. Nor does the Court need not reach the issue of whether Carnival also trafficked through Airtours or Costa or any of the related issues. Carnival engaged in direct trafficking acts. There is likewise no need to address whether Royal Caribbean trafficked through Silversea or any of the related issues. Royal Caribbean also engaged in direct trafficking acts.

²⁸ As stated previously, however, the Court grants summary judgment in favor of MSC Co. due to Havana Docks’ lack of argument.

No. [104] ¶¶ 23–24. It is undisputed that MSC USA sold and marketed MSC SA’s cruises from Miami to Cuba. *Id.*, ECF Nos. [224] and [253] ¶¶ 16–18. It is also undisputed that MSC USA received revenue from its marketing and ticket sales. *Id.*, ECF Nos. [224] and [253] ¶ 19. As such, MSC USA engaged in commercial activities benefiting from MSC SA’s use of the Terminal under § 6023(13)(A)(ii) and participated in MSC SA’s use of the Terminal under § 6023(13)(A)(iii).

Based on the undisputed facts, the Court finds that Carnival, MSC SA, MSC USA, Royal Caribbean, and Norwegian engaged in acts enumerated under § 6023(13)(A)(i)–(iii) of the LIBERTAD Act as a matter of law. The Court now considers whether Defendants engaged in those acts “knowingly and intentionally.” § 6023(13)(A).

3. “*Knowingly and Intentionally*”

As discussed previously, Defendants are liable under the LIBERTAD Act if they “knowingly and intentionally” engaged in trafficking acts. § 6023(13)(A). The LIBERTAD Act defines “knowingly” as being “with knowledge or having reason to know.” § 6023(9).

The parties’ knowledge and intent arguments are substantially similar throughout the Motions. Havana Docks argues that Defendants’ acts were “[d]one with the aim of carrying out the act,” which is Black’s Law Dictionary’s definition of “intentional.” *E.g.*, *Carnival*, ECF No. [333] at 7. Concerning the definition of “knowingly,” Havana Docks argues that “knowledge” refers to actual knowledge, while “having reason to know” indicates constructive knowledge. *Id.* at 7–8.

According to Havana Docks, Carnival has admitted that it was generally aware of a Certified Claim since 1996 and learned of the Certified Claim in 2012. *Id.*, ECF No. [333] at 8. Norwegian has admitted that it learned of the Certified Claim in February 2017, *Norwegian*, ECF No. [229] at 7.²⁹ MSC and Royal Caribbean learned of the Certified Claim in February 2019, and both had access to the Certified Claim from public records since 1971. *MSC*, ECF No. [225] at 6–7, *Royal Caribbean*, ECF No. [142] at 7–8.³⁰

Defendants respond that a reasonable person reading the Certified Claim would not have known or had reason to know that Havana Docks had an interest in confiscated property that extended beyond 2004. *Carnival*, ECF No. [373] at 13; *MSC*, ECF Nos. [209] at 16–17, [256] at 24; *Royal Caribbean*, ECF Nos. [132] at 10, [173] at 6; *Norwegian*, ECF Nos. [230] at 16–17, [281] at 6. Defendants rely on this Court's initial interpretation of the Concession, abandoned on reconsideration, that Havana Docks could not state a claim for trafficking that occurred after its leasehold interest would have expired. *Carnival*, ECF No. [373] at 13; *MSC*, ECF No. [209] at 17; *Royal Caribbean*, ECF No. [132] at 11; *Norwegian*, ECF No. [230] at 17–18. In addition,

²⁹ Although the record establishes *when* Carnival and Norwegian gained actual knowledge of the Certified Claim, the record does not indicate *how* they gained that knowledge.

³⁰ Havana Docks also argues that Royal Caribbean gained constructive knowledge of the Certified Claim due to comments from Congressman Mario Diaz-Balart, two billboards that appeared near Royal Caribbean's principal executive office, and four articles published in the Tampa Bay Times and Miami Herald. *Royal Caribbean*, ECF No. [142] at 8–9. Based on the Court's rulings, none of these facts are necessary to establish the requisite knowledge and intent.

Defendants interpret the scienter requirement as applying to all elements of a cause of action under the LIBERTAD Act, including whether Havana Docks was a United States national and whether the property was confiscated by the Cuban Government. *Carnival*, ECF No. [373] at 13; *MSC*, ECF No. [256] at 24; *Royal Caribbean*, ECF No. [173] at 5; *Norwegian*, ECF No. [281] at 5–6.

Knowledge generally entails “actual knowledge,” while having “reason to know” denotes “constructive knowledge.” *Luxottica Grp., S.p.A. v. Airport Mini Mall, LLC*, 932 F.3d 1303, 1312 (11th Cir. 2019) (explaining that a person engages in contributory infringement where the infringer “supplies a ‘product’ to the direct infringer whom it ‘knows’ is directly infringing (actual knowledge), or . . . “has reason to know” is directly infringing (constructive knowledge).” As this Court has explained in another LIBERTAD Act case, trafficking in confiscated property after receiving notice from the plaintiff is enough to establish scienter. *See de Fernandez v. Seaboard Marine, Ltd.*, No. 20-CV-25176, 2021 WL 3173213, at *8 (S.D. Fla. July 27, 2021).

Also instructive is how courts have interpreted the term “knowingly” under the False Claims Act (FCA), which is defined as “actual knowledge of the information,” “acts in deliberate ignorance of the truth or falsity of the information,” or “acts in reckless disregard of the truth or falsity of the information.” 31 U.S.C. § 3729(b)(a)(A)(i)–(iii). As the Eleventh Circuit has explained, reckless disregard encompasses “the ostrich type situation where an individual has buried his head in the sand and failed to make simple inquiries which would alert him that false claims are being submitted.” *Yates v. Pinellas*

Hematology & Oncology, P.A., 21 F.4th 1288, 1303 (11th Cir. 2021). Thus, “a person acts with reckless disregard—and thus ‘knowingly’—under the FCA when he knows or has reason to know of facts that would lead a reasonable person to realize that harm is the likely result of the relevant act.” *Id.* (internal marks omitted).

Here, the undisputed facts show that Defendants continued using the Terminal after gaining actual knowledge of the Certified Claim. Carnival learned of the Certified Claim in 2012. *Carnival*, ECF Nos. [332] ¶¶ 15–16, [374] ¶¶ 15–16. Norwegian learned of the Certified Claim in February 2017. *Norwegian*, ECF Nos. [228] ¶ 9, [282] ¶ 9. MSC and Royal Caribbean learned of the Certified Claim in February 2019 (or shortly thereafter). *MSC*, ECF Nos. [210] ¶ 45, [259] ¶ 45; *Royal Caribbean*, ECF Nos. [141] ¶ 20, [172] ¶ 20. Yet despite their knowledge, Carnival, MSC SA, MSC USA, Royal Caribbean, and Norwegian continued using the Terminal until May or June 2019. *See Carnival*, ECF Nos. [337] ¶ 86, [367] ¶ 86 (general admission that Defendants continued using the Terminal after receiving Havana Docks’ letters on February 11, 2019); *id.*, ECF Nos. [332] ¶¶ 27–28, [374] ¶¶ 27–28 (Carnival’s use of the Terminal until May 2019); *MSC*, ECF Nos. [224] ¶¶ 16–18, 40, 48, [253] ¶¶ 16–18, 40, 48 (MSC USA’s sales and marketing of MSC SA’s cruises from Miami to Cuba and the *Armonia*’s use of the Terminal until June 2019); *Royal Caribbean*, ECF No. [141] ¶ 32, [172] ¶ 32 (Royal Caribbean’s use of the Terminal until June 2019); *Norwegian*, ECF Nos. [228] ¶ 16, [282] ¶ 16 (Norwegian’s use of the Terminal after February 11, 2019). Under the plain language of the statute, the post-actual-notice trafficking by Carnival, MSC SA, MSC USA, Royal Caribbean, and

Norwegian is enough to establish liability under the LIBERTAD Act. *See* § 6082(a)(1).

It is also undisputed that Defendants had reason to know of the Certified Claim long before cruise operators started traveling to Havana. The Certified Claim has been a matter of public record since 1971.³¹ *Carnival*, ECF Nos. [337] ¶ 43, [367] ¶ 43. Defendants have also been aware of the LIBERTAD Act since 1996 or 1997. *Carnival*, ECF Nos. [332] ¶ 14, [374] ¶ 14; *MSC*, ECF Nos. [224] ¶ 26, [253] ¶ 26; *Royal Caribbean*, ECF Nos. [141] ¶ 8, [172] ¶ 8; *Norwegian*, ECF Nos. [228] ¶ 6, [282] ¶ 6. Therefore, Defendants had reason to know of the Certified Claim well before they gained actual knowledge of the Certified Claim.

Concerning the intentional element of the knowledge prong, the Court finds instructive *United States v. Tosca*, 848 F. App'x 371, 376 (11th Cir. 2021), which defined “knowingly” under a criminal statute as “an act was done voluntarily and intentionally and not because of a mistake or by accident.” Here, Defendants did not use the Terminal by mistake or accident; they voluntarily and intentionally traveled to Havana and used the Terminal.³² *See Carnival*, ECF Nos. [332] ¶¶ 17–18, [374] ¶¶ 17–18; *Royal Caribbean*, ECF Nos. [141] ¶ 27, [172] ¶ 27; *MSC*,

³¹ According to the Department of Justice's website, all FCSC decisions were electronically compiled in October 2009, and the decisions have been available online since February 9, 2015. *See* Foreign Claims Settlement Commission of the U.S., The United States Department of Justice, <https://www.justice.gov/fcsc>. (last visited Mar. 16, 2022).

³² By the same token, MSC USA did not accidentally or mistakenly sell cruise tickets to Cuba.

ECF Nos. [224] ¶¶ 36–38 [253] ¶¶ 36–38; *Norwegian*, ECF Nos. [228] ¶ 14, [282] ¶ 14.

The Court is not persuaded by Defendants’ contention that they lacked the requisite scienter because a reasonable reading of the Certified Claim revealed an expired interest in the Terminal. In 2006, the Eleventh Circuit established that although the LIBERTAD Act deemed confiscations by the Cuban Government wrongful, it did not proclaim those confiscations ineffective. *Glen v. Club Mediterranee, S.A.*, 450 F.3d 1251, 1255 (11th Cir. 2006). And while victims of confiscations had lost their property, the LIBERTAD Act set forth that “the property interest that former owners of confiscated property now have [is] ownership of a ‘claim to such property.’” *Id.* Applying *Glen* to Havana Docks’ Certified Claim, this Court previously explained that “the Cuban Government’s expropriation of the [Terminal] extinguished all rights Havana Docks had to the remaining concession term of 44 years.” *Havana Docks Corp. v. MSC Cruises SA Co.*, 455 F. Supp. 3d 1355, 1369 (S.D. Fla. 2020). But “in lieu of its property interest in the remaining 44 years of the concession,” Havana Docks “now owns an interest only in the Certified Claim,” which has no time limitation. *Id.*³³ This Court’s initial reading of the Certified Claim is not a shield from liability. Defendants were in possession of facts from the Certified Claim—either through

³³ As its twenty-fifth affirmative defense, Carnival submits that “Congress lacks Article I power to create property rights abroad.” *Carnival*, ECF No. [160] at 22. This is a pure issue of law, and the defense is foreclosed by *Glen*, which explained that under the LIBERTAD Act, victims of confiscated property have lost their property interests abroad but are suing upon a Certified Claim to that interest. Thus, Havana Docks is entitled to summary judgment on this affirmative defense.

public records or directly from Havana Docks—which, in light of *Glen*, would lead a reasonable person to conclude that using the Terminal may constitute trafficking under the LIBERTAD Act.

The case of *United States ex rel. Sheldon v. Allergan Sales, LLC*, 24 F.4th 340 (4th Cir. 2022), which Defendants provided as supplemental authority, is distinguishable. In that case, the Fourth Circuit held that “[u]nder the [Fair Credit Reporting Act], a defendant cannot act ‘knowingly’ if it bases its actions on an objectively reasonable interpretation of the relevant statute when it has not been warned away from that interpretation by authoritative guidance.” *Id.* at 348. Here, the LIBERTAD Act is clear: “any person that . . . 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.” § 6082(a)(1)(A). Defendants did not reasonably rely on a different interpretation of the LIBERTAD Act, but on a different interpretation of the Certified Claim. Moreover, *Glen*, which is binding authority from 2006, should have warned Defendants, precluding their limiting interpretation of the Certified Claim.

The Court also disagrees with Defendants that the LIBERTAD Act’s scienter requirement also applies to the United States national element—meaning that Defendants had to know or have reason to know that Havana Docks is a United States national. Defendants rely on *Glen v. Trip Advisor LLC*, 529 F. Supp. 3d 316 (D. Del. 2021), which found “persuasive the analyses of numerous other courts that have interpreted statutes having specific knowledge requirements as requiring knowledge of all the elements

listed in the statute.” *Id.* at 331 n.16. *Glen*, however, relied on a series of cases that support the proposition that “[a]s a matter of ordinary English grammar, we normally read the statutory term ‘knowingly’ as applying to all the subsequently listed elements of the crime.” *Rehaif v. United States*, 139 S. Ct. 2191, 2196 (2019).

Rehaif concerned 18 U.S.C. § 924(a), which set forth criminal penalties for a person who “knowingly violates” 18 U.S.C. § 922(g), which made it unlawful for certain individuals, like illegal aliens, to possess firearms. *Rehaif*, 139 S. Ct. at 2194. The issue before the Supreme Court was whether a defendant had to both knowingly possess a firearm and know that he could not possess a firearm, or simply knowingly possess a firearm. *Id.* The Court held that the term “knowingly” applied to the entirety of § 922(g), and thus to both the possession element and status element. *Id.* at 2195.

The LIBERTAD Act is different. The LIBERTAD Act does not place the term “knowingly” before all subsequently listed elements of a Title III claim. Instead, the LIBERTAD Act states that a person who “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[.]” § 6082(a)(1)(A). The terms “knowingly and intentionally” are included only within the *definition* of “traffics,” which lists what constitutes trafficking acts. § 6023(13) (stating, “a person ‘traffics’ in confiscated property if that person knowingly and intentionally,” and then listing trafficking acts). Thus, under the plain terms of the statute, the term “knowingly and intentionally” modifies only the listed trafficking acts. Consequently, a Title III plaintiff

need only show that the defendant knowingly and intentionally engaged in a trafficking act.

Defendants also rely on *Gonzalez v. Amazon.com, Inc.*, No. 19-23988-CIV, 2020 WL 1169125, at *2 (S.D. Fla. Mar. 11, 2020), which found that the plaintiff did not sufficiently allege scienter because he did not set forth that “Defendants knew the property was confiscated by the Cuban government nor that it was owned by a United States citizen.” *Gonzalez* concerned only the sufficiency of the plaintiff’s complaint. *Gonzalez* did not address the scope of the scienter requirement. In this case, the plain text of the statute shows that the scienter requirement applies only to trafficking acts.

Even if the requisite scienter must be established as to all elements of the LIBERTAD Act, Defendants’ arguments still fail. The Certified Claim, of which Defendants had both constructive and actual knowledge, sets forth Havana Docks’ claim “that on the basis of a concession granted by the Government of Cuba, it owned and operated, at the entrance of the harbor of Havana three piers: the ‘San Francisco’, ‘Machina’ and ‘Santa Clara’ linked with a large marginal building.” *Carnival*, ECF No. [73-8] at 6. The FCSC found, among other things, that (1) Havana Docks was a “national of the United States”; (2) owned a “concession for the construction and operation of wharves and warehouses in the harbor of Havana”; (3) “acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana,” as well as other property; (4) had its assets nationalized by the Cuban Government; and (5) that the loss was valued at more than

\$9 million. *Carnival*, ECF No. [73-8]; *see also MSC*, ECF No. [41-8]; *Royal Caribbean*, ECF No. [31-8]; *Norwegian*, ECF No. [43-8]. Thus, the Certified Claim contained facts from which Defendants knew, or had reason to know, that Havana Docks once held an interest in the Terminal related to its operation and management that was unjustly confiscated by the Cuban Government.

The Court determines that *Carnival*, MSC SA, MSC USA, *Royal Caribbean*, and *Norwegian* acted “knowingly and intentionally” under the LIBERTAD Act.

C. Property Confiscated by Cuban Government

It is undisputed that on October 24, 1960, the Fidel Castro-led Cuban Government naturalized all property located in Cuba of United States nationals, including Havana Docks’ assets. *Carnival*, ECF Nos. [337] ¶¶ 27–28, [367] ¶¶ 27–28; *see id.*, ECF No. [73-6]; *MSC*, ECF No. [41-6]; *Royal Caribbean*, ECF No. [31-6]; *Norwegian*, ECF No. [43-6]. Defendants do not dispute that Havana Docks was not compensated by the Cuban Government for the Terminal. Instead, Defendants contend that the Cuban Government has always owned the Terminal. *Carnival*, ECF No. [367] ¶ 31. The FCSC, however, has conclusively determined that Havana Docks had an interest in the confiscated property.

Title III of the LIBERTAD Act states that “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 [FCSC]” § 6083(a)(1). The LIBERTAD Act is consistent with the limitation on judicial review of certified

claims. The Settlement Act states that “[t]he decisions of the [FCSC] with respect to claims shall be final and conclusive on all questions of law and fact, and shall not be subject to review by the Attorney General or any other official of the United States or by any court by mandamus or otherwise.” 22 U.S.C. § 1622g; see *Haven v. Polska*, 215 F.3d 727, 734 n.8 (7th Cir. 2000) (citing § 1622g for the proposition that “FCSC decisions may not be reviewed by a federal court.”). Similarly, the Settlement Act states that “[t]he action of the [FCSC] in allowing or denying any claim . . . shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.” 22 U.S.C. § 1623(h); see *Robles v. Kerry*, 74 F. Supp. 3d 254, 264 (D.D.C. 2014) (explaining that per § 1623(h), the Settlement Act “explicitly provides that [FCSC] decisions are not subject to judicial review”). Accordingly, under the plain terms of the LIBERTAD Act and Settlement Act, the Court must accept as true the FCSC’s certification of an ownership of an interest in confiscated property made in favor of Havana Docks.

The Court finds that Havana Docks has established that the Cuban Government confiscated property to which Havana Docks owned an interest.

D. United States National

Havana Docks contends that the FCSC conclusively determined its nationality. *Carnival*, ECF No. [336] at 8. Defendants disagree, pointing out that the Settlement Act and LIBERTAD Act define United States nationals differently. *Id.*, ECF No. [368] at 9. Defendants are correct. The Settlement Act defines

“national of the United States” as “a corporation or other legal entity which is organized under the laws of the United States . . . if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.” § 1643a(1). By contrast, the LIBERTAD Act defines a “United States national” as “any United States citizen,” § 6023(15)(A), or “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.” § 6023(15)(B).

The FCSC found that Havana Docks was a “national of the United States” because U.S. nationals owned more than 50 percent of Havana Docks’ capital stock. *Carnival*, ECF No. [73-8] at 6. The LIBERTAD Act does not define a “United States national” corporation in accordance with the citizenship of stockholders. Instead, the corporation must have “its principal place of business in the United States.” § 6023(15)(B). Moreover, although the LIBERTAD Act states that “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 [FCSC]. . . .” § 6083(a)(1), there is no similar provision stating that the Court must also accept as conclusive proof the FCSC’s determination of nationality. The reason is obvious: Havana Docks’ claim will not change after certification, but its principal place of business might.

Havana Docks also argues that “citizen” under § 6023(15)(A) of the LIBERTAD Act is not limited to natural persons, and Havana Docks is a United

States citizen because it is incorporated in the United States. *Carnival*, ECF No. [336] at 9. Defendants respond that Havana Docks has never pled that it is a United States citizen under § 6023(15)(A), and Defendants disagree that § 6023(15)(A) applies to legal entities. *Id.* at 10. The Court agrees with Defendants that “United States citizen” under § 6023(15)(A) does not include corporate entities. “Between competing interpretations, one which renders part of the statute superfluous and one which gives effect to all of its provisions, we opt for the latter.” *Bellitto v. Snipes*, 935 F.3d 1192, 1202 (11th Cir. 2019). Section 6023(15)(B) explicitly mentions legal entities, stating that they must be both incorporated in the United States and have their principal place of business in the United States. § 6023(15)(B). If Havana Docks is deemed a United States citizen just by virtue of being incorporated in the United States, then it would render the principal-place-of-business prong superfluous.

Finally, Havana Docks contends that its corporate activities show that its principal place of business is in the United States. *Carnival*, ECF No. [336] at 9. Defendants respond that, under the “nerve center” test, Havana Docks’ principal place of business is in the United Kingdom. *Id.*, ECF No. [368] at 11–14. Defendants also move for summary judgment on the issue of Havana Docks’ principal place of business, arguing that Havana Docks’ nerve center is overseas as a matter of law. *Id.*, ECF No. [330] at 24–25. Havana Docks responds that the nerve center test points to Kentucky as its principal place of business. *Id.*, ECF Nos. [389] at 25–29, [395] at 6–9.

Under the nerve center test, a corporation’s principal place of business is “the place where a

corporation’s officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). As the Supreme Court explained:

in practice it should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the “nerve center,” and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).

Id. at 93.

For example, in *Annon Consulting, Inc. v. BioNitrogen Holdings Corp.*, 650 F. App’x 729 (11th Cir. 2016), a corporation’s principal place of business was in Ontario, Canada, where the corporation, which had loaned money to the defendants, was only affiliated with an Ontario address, the bank account from which funds were wired was in Ontario, and “[n]othing in the record evidences that Annon’s corporate activities were directed, controlled, or coordinated from a location other than from Ontario, Canada.” *Id.* at 731; *see also Crockett v. Securitas Sec. Servs. USA, Inc.*, 278 F. App’x 863, 865 (11th Cir. 2007) (determining that corporation’s principal place of business was California because its corporate headquarters was located in California and 13% of its revenue came from California).

Here, the Court determines that Havana Docks’ principal place of business is in the United States as a matter of law. Even issues that are “generally a question of fact . . . may be resolved on summary

judgment where the undisputed record evidence would lead a reasonable juror to only one conclusion.” *Edge Sys. LLC v. Aguila*, 186 F. Supp. 3d 1330, 1349 (S.D. Fla. 2016). Moreover, “the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (emphasis in original). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* Also, “[i]nferences based on speculation and a mere scintilla of evidence in support of the nonmoving party will not suffice to overcome a motion for summary judgment.” *Daniels v. Jacobs*, 753 F. App’x 748, 755 (11th Cir. 2018) (internal citations omitted).

The only corporate address associated with Havana Docks is in Lexington, Kentucky. *Carnival*, ECF Nos. [331-118] at 9, [388] ¶ 113, [401] ¶ 113. Havana Docks has only two functions: to exist and manage its income-producing assets. *Id.*, ECF Nos. [388] ¶¶ 114–15, [401] ¶¶ 114–15. Indeed, Havana Docks has no employees. *Id.*, ECF Nos. [388] ¶ 111, [401] ¶ 111. Johnson, who operates out of Kentucky, *id.*, ECF Nos. [337] ¶ 59, [367] ¶ 59, is tasked with performing both of those functions. *Id.*, ECF Nos. [337] ¶ 50, [367] ¶ 50. It is undisputed that Johnson has performed duties to, among other things, maintain Havana Docks’ corporate status active and in good standing, *id.*, ECF Nos. [337] ¶ 52, [367] ¶ 52; coordinate the filing of Havana Docks’ taxes, *id.*, ECF Nos. [337] ¶ 54, [367] ¶ 54; and maintain Havana Docks’ ledger, balance sheets, income statements, *id.*, ECF Nos. [337] ¶ 55, [367] ¶ 55.

Mickael Behn, Havana Docks' President, testified that "[a]ll decisions are executed by Jerry Johnson," *id.*, ECF No. [331-113] at 26, and that Johnson could do "[p]retty much everything" without his input, *id.* at 40. Behn added that Johnson "has authority . . . to do what he needs to do for Havana Docks. It's a certified claim. And to keep the company running." *Id.* Johnson similarly testified that although he reports to Behn as President, Johnson is "largely responsible" for "the day-to-day business decisions for Havana Docks." *Id.*, ECF No. [331-102] at 29. Johnson further stated at deposition that Behn does not conduct any Havana Docks business in England. *Id.*, ECF No. [318-1] at 54.

Defendants fail to raise a genuine issue of material fact that Havana Docks' principal place of business is located outside the United States. "[T]he materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." *Anderson*, 477 U.S. at 248. The substantive law in this case—the nerve center test—indicates that the material facts are those showing "the place where a corporation's officers direct, control, and coordinate the corporation's activities." *Hertz*, 559 U.S. at 92–93. Defendants fail to show such material facts.

Defendants' reliance on the fact that Havana Docks' corporate address is also that of a bank where Johnson works or that Havana Docks is not registered to do business in Kentucky is misplaced. Havana Docks does nothing more than continue its corporate existence—which is in Kentucky—and manage some assets—also from Kentucky. Notably, Defendants do not identify any other corporate

address for Havana Docks nor any other location where it is registered to do business.

Defendants present no other material facts that Havana Docks' "corporate activities were directed, controlled, or coordinated from a location other than" Lexington, Kentucky. *Annon*, 650 F. App'x at 731. Relying on Ackert's expert report, Defendants represent that "[e]xpert forensic analysis of Mr. Behn's email shows that he sent 98% of Plaintiff's business emails from overseas, primarily from the United Kingdom." *Carnival*, ECF Nos. [330] at 25, [368] at 12 (emphasis removed). But that is not the substance what Ackert states in his declaration. Ackert analyzed metadata data from 675 of 801 emails and determined that 41 out of 42 emails sent by Behn were routed through the UK or UN. *Id.*, ECF No. [325-1] ¶¶ 11, 20–25. Ackert did not identify the subject matter of those emails, let alone identify them as "business emails." *Id.* Indeed, Ackert testified he did not review the content of the emails at all. *See id.*, ECF No. [325-3] at 31 ("Your review was limited to the metadata in the email files and not the content; correct? A. That is correct. I looked at the metadata of the produced files, not the content."). Ackert clarified at deposition that "[t]he scope of [his] analysis was not to form opinions on the content of emails," but to "form opinions as to the IP addresses located in the email header metadata." *Id.* Ackert further testified that he did know "anything about what they're [Havana Docks' principals] doing to conduct their business because I didn't look at the bodies or the content of the emails." *Id.* Moreover, Ackert testified that he had no opinion "on whether Mickael Behn was directing any . . . business of Havana Docks in any of the emails that [he] reviewed." *Id.* Thus, accepting Ackert's opinions as

true, he only established that an unidentified subset of emails came from the UK, not that “98% of Plaintiff’s business emails [came] from overseas,” *id.*, ECF No. [330] at 25, or that Havana Docks’ nerve center is outside of the United States.

Defendants also broadly assert that Mickael Behn “is the officer who reviews and provides approval for payments,” *id.*, ECF No. [331] ¶ 55; “is the officer who reviews and provides approval of drafts of corporate governance records,” *id.* ¶ 56; and “is the ultimate decision making officer for Plaintiff with respect to lobbying and legal strategy,” *id.* ¶ 57. The record, however, does not support those broad factual assertions. For the first assertion, Defendants point to three instances where consulting fees were approved by Behn. *Id.*, ECF No. [331-135] at 7–8. Those instances do not show that Behn is *solely* responsible for approving payments. Moreover, even if he was, such responsibility does not establish that Behn directed or controlled Havana Docks from the United Kingdom. As to the second assertion, Defendants rely on two emails where Behn provided edits to documents that are not part of the record. *Id.*, ECF Nos. [331-138], [331-139]. As such, these emails do not show that Behn directed or controlled Havana Docks from the United Kingdom. Concerning the last assertion, Defendants also rely on two emails where Behn provided commentary to documents regarding a Title III claim, and the documents are not attached. *Id.*, ECF Nos. [331-140], [331-141]. As such, these emails are not material facts regarding whether Behn directed or controlled Havana Docks from the United Kingdom.

The Court determines that Havana Docks is a “United States national” as defined in § 6023(15)(B) as a matter of law.³⁴

E. Ownership of Claim to Confiscated Property

For LIBERTAD Act claims brought upon a certified claim, Title III states that “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 [FCSC].” § 6083(a)(1).

In their Omnibus Motion, Defendants contend that Havana Docks never owned the Terminal or its piers, which were always owned by the Cuban Government. *Carnival*, ECF No. [330] at 3–12. Defendants rely on the unrebutted expert testimony from Ambar Diaz, an attorney who practiced maritime and insurance law in Cuba. *Id.* at 4–7; *see id.*, ECF No. [331-1] (expert report). Diaz opines that the Concession, when viewed through the lens of various Cuban laws related to marine ports, granted Havana Docks only a non-exclusive, limited right to operate cargo services at the Terminal. *Id.*, ECF No. [331-1] at 5, 15–17. Consequently, according to Defendants, Havana Docks never had a right to exclude others from the Terminal or to offer passenger services. *Id.*, ECF No. [330] at 7–9. Defendants maintain that because Havana Docks only owned a limited, non-

³⁴ MSC SA raises as an affirmative defense Havana Docks' status as a United States national. *MSC*, ECF No. [133] at 19 (MSC SA Def. No. 22). This defense is a denial of one of the elements of the cause of action, and the Court has determined that Havana Docks is a United States national as a matter of law.

exclusive right to engage in cargo services, Defendants did not traffic in “confiscated property” given that Defendants provide passenger services. *Id.* at 11–12.

Regarding § 6083(a)(1), Defendants contend that the Certified Claim is not entitled to deference because Havana Docks misrepresented to the FCSC that it owned the Terminal. *Id.* at 9–10. Defendants submit that Havana Docks then-Vice President Thomas Whittaker falsely represented that Havana Docks owned “land and concessions,” and Havana Docks, when answering the FCSC’s questions, falsely stated that it “own[ed] and operat[ed]” the Terminal and its piers. *Id.* at 9. Defendants also reject that the FCSC found that Havana Docks owned the Terminal, but merely valued its loss. *Id.* at 10 n.19. Defendants do not point to any particular portion of the Certified Claim but argue that “[t]he FCSC’s task was to determine the purported amount of [Havana Docks’] loss, which is precisely what the decision accomplished (although Defendants do not believe it did so correctly).” *Id.* Defendants further argue that relying on the FCSC’s findings as conclusive proof of ownership would violate due process. *Id.* at 10–11.

Havana Docks responds that under the LIBERTAD Act, the Certified Claim is conclusive proof of Havana Docks’ ownership interest, precluding judicial review of the certification’s findings, relying heavily on *United States v. Hernandez*, 864 F.3d 1292 (11th Cir. 2017). *Carnival*, ECF No. [389] at 3–5. *Hernandez* concerned a prosecution under the Maritime Drug Law Enforcement Act (“MDLEA”), which “criminalizes an individual’s possessing with intent to distribute a controlled substance ‘[w]hile on board a covered vessel,’ which includes ‘a vessel subject to the

jurisdiction of the United States,’ which in turn includes ‘a vessel without nationality.’” *Hernandez*, 864 F.3d at 1296 (quoting 46 U.S.C. §§ 70502(c)(1)(A), 70503(a)(1), (e)(1) (2012)). The MDLEA includes within the meaning of a “vessel without nationality” “a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.” § 70502(d)(1)(C). The MDLEA also states that “[t]he response of a foreign nation to a claim of registry . . . is proved conclusively by certification of the Secretary of State or the Secretary’s designee.” § 70502(d)(2).

In *Hernandez*, the U.S. Coast Guard arrested four individuals aboard a vessel that was actually registered in Guatemala. *Hernandez*, 864 F.3d at 1296. But the Government produced a written certification from a U.S. Coast Guard Commander declaring that the Guatemalan government “could neither confirm nor deny that the go-fast vessel was registered in Guatemala.” *Id.* at 1298–99. The Eleventh Circuit held that, under the plain terms of the MDLEA, the certification was conclusive proof of Guatemala’s lack of unequivocal assertion that the vessel was of Guatemalan nationality. *Id.* at 1299.

Havana Docks contends that no misrepresentations were made to the FCSC, and that Defendants rely solely only on Diaz’s conclusions, which are contrary to Cuban law and that do not create issues of fact. *Carnival*, ECF No. [389] at 6. Havana Docks argues that reliance on the FCSC’s findings does not violate due process because Defendants did not have a pertinent right or interest at the time of certification. Moreover, the FCSC’s findings are not conclusive of

the ultimate issue of whether trafficking has occurred. *Id.* at 7.

Havana Docks stresses that evidence supports its ownership interest. *Id.* at 8. Specifically, Havana Docks points to corporate minutes evidencing a transfer of “all rights titles and interest’ in the Concession, including ‘all of the lands buildings piers wharves docks and all other tangible properties’”; annual balance sheets listing “Concession, Piers, Equipment, Etc.” as assets of Havana Docks; a pledge of the Terminal by Havana Docks and its predecessor as collateral for a mortgage; and a lease of one of the piers by Havana Docks, with rent paid to satisfy Havana Docks’ personal interest payment. *Id.* at 8–9; see *id.*, ECF Nos. [318-12] (lease between Port of Havana Docks Company and United Fruit Company), [318-13] (Four Party Agreement between Havana Docks, Port of Havana Docks Company, United Fruit Company, and Old Colony Trust Company), [318-14] (Havana Docks indenture for the issuance of mortgage bonds), [318-18] (The National City Bank of New York Indenture with Havana Docks), [318-21] (1918 Port of Havana Docks Company Meeting Minutes), [318-25] (Port of Havana Docks Company indenture for issuance of mortgage bonds), [318-31] (1919 Havana Docks Directors Meeting Minutes), [318-36] (Havana Docks pre-confiscation financial reports). Havana Docks contends that Diaz misstates Cuban law and does not account for Havana Docks’ recorded income from passenger cruise travel to the piers. *Id.*, ECF No. [389] at 8–10.

Havana Docks submits that even if it owned only a concession to engage in cargo service, liability under the LIBERTAD Act is not limited to the previous uses of confiscated property. *Id.* at 10–11. Finally,

Havana Docks argues that Cuba's ownership interest is irrelevant because the LIBERTAD Act does not require a fee simple ownership interest. *Id.* at 11–12. The LIBERTAD Act broadly defines “property” as “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.” § 6023(12).

In their Reply, Defendants dispute that the evidence before the FCSC showed that Havana Docks owned the Terminal. *Id.*, ECF No. [399] at 2–4. Defendants do not submit any evidence in support; rather, Defendants point out that, under Cuban law, concessions could serve as collaterals to a loan; that the lease with United Fruit Company was only of Havana Docks' limited use of the Terminal; and that “self-servingly” listing assets on books does not prove ownership. *Id.* at 2. Defendants also contend that Havana Docks misinterprets Cuban law. *Id.*

Defendants further submit that Havana Docks' reliance on *Hernandez* is misplaced, because the MDLEA does not allow certification of an element of a claim, but a certification that is a “diplomatic courtesy.” *Id.*, ECF No. [399] at 4 n.5. Finally, Defendants maintain that since the Cuban Government always owned the Terminal and only confiscated a right to engage in cargo services, Defendants did not traffic in confiscated property by virtue of their passenger cruises. *Id.* at 5–6. As support of this last point, Defendants rely on the LIBERTAD Act's definition of “traffics”—“a person

‘traffics’ in confiscated property”—and “confiscated.”³⁵ *Id.* at 5.

The Court accepts the FCSC’s Certified Claim as conclusive proof that Havana Docks owned an interest in the Terminal. § 6083(a)(1). The Court finds *Hernandez* instructive where the Eleventh Circuit, under the plain terms of the MDLEA, accepted a certification as conclusive proof of a foreign country’s lack of assertion of foreign nationality. *Hernandez*, 864 F.3d at 1299. There is no record evidence of fraud, and this Court accepts the Certified Claim as conclusive proof of Havana Docks’

³⁵ 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.

claim to an interest in the Terminal and its piers. § 6083(a)(1).

The FCSC found that Havana Docks “obtained from the Government of Cuba the renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana.” *Carnival*, ECF No. [73-8] at 7. The FCSC further found that “[t]he terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to *deliver the piers to the government* in good state of preservation.” *Id.* at 9 (emphasis added). The FCSC then certified a loss for Havana Docks for the Concession and the piers. *Id.* Consistent with the language of the Certified Claim, the Court characterized Havana Docks’ interest as a 99-year leasehold interest that was cut short, leaving 44 years. *See MSC Cruises*, 455 F. Supp. 3d at 1366.

The language of the Concession also supports the conclusion that Havana Docks’ interest was a 99-year leasehold interest. Per the Concession, “[t]he State assigns in usufruct during the term of the concession that part of the San Francisco docks, as well as the public domain area, that will be occupied by the project’s works.” *Id.*, ECF No. [73-3] at 3. The Concession also gave an indemnity right “[i]f at any time during the term of the concession the works were to be expropriated.” *Id.* at 5. In addition, the Concession stated that

During the term of the concession, the concession holder shall, for its own account, maintain in good repair and in such condition the foundations, streets, buildings, and all other plant facilities that, upon the conclusion of said term, it may surrender the

works to the Government in perfectly serviceable condition.

Id. The fact that Havana Docks managed, operated, and maintained the Terminal, and then had to return the Terminal to the Cuban Government after a period of time, is consistent with a leasehold interest.

Notably, the Certified Claim does not establish liability; only that Havana Docks owned an interest in confiscated property. Havana Docks must still prove that Defendants are liable for knowingly and intentionally trafficking in confiscated property, as well as overcome their affirmative defenses.

Relying on *De Gaster v. Dillon*, 247 F. Supp. 511 (D.D.C 1963), Defendants contend that the *ex parte* proceeding before the FCSC cannot bind them due to Havana Docks' misrepresentations. *Carnival*, ECF No. [399] at 4–5. The *Dillon* court denied an injunction requiring the Secretary of the Treasury to pay an FCSC award because “a fraud was worked upon the Foreign Claims Settlement Commission by filing with it a false document.” *Dillon*, 247 F. Supp. at 516. A false document was filed contending that the petitioners had gained a favorable decision in the Supreme Court of Croatia, when they had not. *Id.* However, *De Gaster* is readily distinguishable.

In *De Gaster*, the party submitted a Croatian Supreme Court decision that was “false, fictitious or fraudulent.” *De Gaster*, 247 F. Supp. at 515. In this case, Havana Docks submitted several historical documents to the FCSC, such as corporate minutes, balance sheets, mortgage agreements, a lease agreement, and indentures, which together evidenced that Havana Docks had an interest in the Terminal. *See Carnival*, ECF Nos. [318-12], [318-13], [318-14], [318-

18], [318- 21], [318-25], [318-31], [318-36]. Moreover, the FCSC relied upon the Concession itself. Although Defendants characterize some of the historical documents as self-serving, they do not claim that the documents are false, fictitious, or fraudulent.

In the same vein, Defendants' contention that Havana Docks misrepresented to the FCSC its ownership interest is unavailing. *Carnival*, ECF No. [330] at 9. In support of their position that Havana Docks only had a limited right to engage in cargo services, Havana Docks' Cuban law expert, Diaz, relies on interpretations of various Cuban laws and the language of the Concession. *See id.*, ECF No. [331-1]. But the FCSC also relied on the language of the Concession, and Cuban law is a matter of public record. Moreover, the record evidence reflects that the FCSC gave full consideration to the claim and the entire record before it. While Defendants may seek to have the Court usurp the FCSC's role and issue its own legal and factual conclusions, the Court is unable to do so based on the express terms of the statute. *See* §§ 1622g, 1623(h), § 6083(a)(1).

Lastly, Defendants' limiting interpretation of the LIBERTAD Act as requiring trafficking in cargo services is unpersuasive, as the Court has already explained. *See MSC Cruises*, 455 F. Supp. 3d at 1374 ("The liability provision [of the LIBERTAD Act] . . . imposes liability for trafficking in the more broadly defined "confiscated property"—a term that . . . is not limited solely to the interest Plaintiff originally owned in the Subject Property."). Specifically, the LIBERTAD Act provides an expansive definition of "property," stating: "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.” § 6023(12)(A). The definition of “confiscated” incorporates that broad definition of “property.” *See* § 6023(4). And the LIBERTAD Act explicitly includes in the definition of “traffics” obtaining “an interest in confiscated property,” which strongly contradicts any interpretation limiting “traffics” based on a claimant’s property interest or the use of that property interest. *See* § 6023(13)(A)(i). Thus, Title III’s plain language creates liability for trafficking in the broadly defined “confiscated property”—*i.e.*, in any property that was nationalized, expropriated, or otherwise seized by the Cuban Government—not in a particular interest or use in confiscated property.

The Court finds that Havana Docks has demonstrated that it owns a claim to confiscated property pursuant to § 6082(a)(1)(A) as a matter of law.³⁶

F. Trafficking After November 1, 1996

There is no dispute that Defendants’ trafficking occurred after November 1, 1996. Carnival’s cruises began in 2016; MSC began U.S.-to-Cuba cruises in 2018 and Cuba-to-Cuba cruises in 2015; Royal Caribbean’s cruises began in 2017; and Norwegian’s cruises began in 2017. *Carnival*, ECF Nos. [332] ¶ 23, [374] ¶ 23; *MSC*, ECF Nos. [224] ¶¶ 35, 41, [253] ¶¶ 35, 41; *Royal Caribbean*, ECF Nos. [141] ¶ 29, [172] ¶ 29; *Norwegian*, ECF Nos. [228] ¶ 15, [282] ¶ 15. This element is established as a matter of law.

³⁶ This Court’s ruling also forecloses Carnival’s twenty-six and twenty-seventh affirmative defenses, which challenge the FCSC’s power to adjudicate Havana Docks’ Certified Claim. *See Carnival*, ECF No. [160] at 22.

G. Defendants' Affirmative Defenses

1. *Lawful Travel Exception*

a) "Lawful Travel" Prong

Havana Docks and Defendants separately move for summary judgment on the lawful travel exception in their respective Motions for Summary Judgment. The LIBERTAD Act excludes from trafficking acts "transactions and uses of property incident to lawful travel to Cuba." § 6023(13)(B)(iii). The LIBERTAD Act, however, does not define "lawful travel." And no court has determined what constitutes lawful travel to Cuba, making it an issue of first impression.

In their Omnibus Motion, Defendants represent that "the United States Government repeatedly and unequivocally agreed that cruise lines' passenger carrier services to Cuba – and specifically cruises lines' that used the Terminal to stop in Havana – met the 'lawful travel' exclusion requirements." *Carnival*, ECF No. [330] at 20. Defendants highlight an email from Deanna Kim, the Acting Coordinator for Cuban Affairs, who responded to Havana Docks' request that the State Department bring an enforcement action under Title IV of the LIBERTAD Act against Defendants for using the Terminal. *Id.*, ECF No. [330-104] at 2, 4. Kim replied that "given the clear exclusion in Title IV's definition of 'traffics' of transactions and uses of property incident to lawful travel to Cuba, we are not currently pursuing Title IV actions in relation to commercial cruise lines." *Id.* at 2. Defendants also rely on statements made from the State Department that they would not take action against the cruise lines given the lawful travel exception. *Id.*, ECF No. [330] at 21. Defendants argue that these opinions are entitled to deference. *Id.*

Havana Docks resists Defendants' contention that the U.S. Government determined that Defendants met the lawful travel exception. *Id.*, ECF No. [389] at 23–24. Havana Docks points to Kim's deposition testimony, in which she stated that she was not providing a legal interpretation of Title III and did not conduct any investigation. *Id.* at 24. Finally, Havana Docks states that general opinions about a statute's reach merit no special deference. *Id.*

Defendants' reliance on the Kim email and State Department statements is misplaced. The question of the LIBERTAD Act's reach is "a pure question of statutory construction . . . well within the province of the Judiciary." *Republic of Austria v. Altmann*, 541 U.S. 677, 701 (2004). "While the United States views on such an issue are of considerable interest to the Court, they merit no special deference." *Id.*; *see also Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 213 (1988) ("Deference to what appears to be nothing more than an agency's convenient litigating position would be entirely inappropriate."). As such, the statements relied upon by Defendants do not factor into the Court's statutory analysis.

Next, Defendants assert that their "passenger carrier services to Havana were unquestionably lawful because they were licensed, authorized, and encouraged by the United States Government." *Carnival*, ECF No. [330] at 13. Defendants emphasize that, after the issuance of some specific licenses to travel to Cuba, OFAC promulgated a general license during the Obama Administration for cruise lines to travel to Cuba, and the license did not restrict where cruises could travel. *Id.* Moreover, President Barack Obama made statements regarding the authorization of cruises to Cuba while in Havana. *Id.* Around the

same time, the United States Department of Commerce, Bureau of Industry and Security, and the United States Coast Guard relaxed other restrictions for travel to Cuba. *Id.* at 14. Defendants underscore that they stopped sailing to Cuba when the general licenses were revoked. *Id.* at 15. Defendants add that the LIBERTAD Act does not restrict the promulgation of regulations loosening restrictions on travel, and that the OFAC regulations have not been declared invalid. *Id.* at 22.

Havana Docks' position is that lawful travel "means the authorized travel to Cuba that existed on March 1, 1996 and was codified in the LIBERTAD Act," which allowed only specific and limited forms of travel to Cuba *Id.*, ECF No. [336] at 14–15. Havana Docks contends that OFAC exceeded the statutory restrictions under the TSRA and LIBERTAD Act when it issued the regulations to allow people-to-people travel to Cuba under a general license, rendering the licenses void. *Id.*, ECF Nos. [336] at 15, [389] at 20–21. According to Havana Docks, OFAC could, at most, issue specific licenses on a case-by-case basis and for the limited travel purposes under the CACR. *Id.* Havana Docks further submits that the cruise industry knew that cruises to Cuba would be unlawful, as shown by cautionary comments from members of the industry and their extensive lobbying to undo statutory restrictions. *Id.*, ECF No. [336] at 16.

Alternatively, Havana Docks argues that the CACR did not authorize trafficking in confiscated property. *Id.*, ECF No. [389] at 21. Havana Docks acknowledges that the regulations did not limit where cruises could travel to in Cuba, but Havana Docks points out that the regulations did not require the use of the Terminal either—Defendants could

have chosen to dock anywhere else in Cuba. *Id.* at 21–22. Havana Docks points out that President Obama’s statements from Havana do not absolve Defendants of complying with federal law—a point this Court already made when ruling on a motion to dismiss. *Id.* at 22.

The Court’s analysis of what constitutes “lawful travel” under the LIBERTAD Act begins with the text of the statute. The LIBERTAD Act excludes from trafficking acts “transactions and uses of property incident to lawful travel to Cuba.” § 6023(13)(B)(iii). “[W]e interpret words that are not defined in a statute with their ordinary and plain meaning because we assume that Congress uses words in a statute as they are commonly understood.” *Catalyst Pharms., Inc. v. Becerra*, 14 F.4th 1299, 1307 (11th Cir. 2021). “Moreover, courts do not read individual words or terms in isolation, but instead in light of their context within a particular text.” *Id.* If the text provides little guidance, however, “absent any other source of guidance, we reluctantly and cautiously turn to legislative history materials.” *Hunter v. City of Montgomery, Alabama*, 859 F.3d 1329, 1335 (11th Cir. 2017).

First, contrary to Defendants’ argument, “lawful travel” does not simply mean travel licensed and encouraged by the Executive Branch. As the U.S. Supreme Court and the Eleventh Circuit have explained long ago, “[t]he power of an administrative [agency] to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law . . . but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute.” *Legal Env’t Assistance Found., Inc. v. U.S. E.P.A.*, 118 F.3d 1467, 1473 (11th

Cir. 1997) (quoting *Dixon v. United States*, 381 U.S. 68 (1965)). “When a regulation implements a statute, the regulation must be construed in light of the statute.” *United States v. Marte*, 356 F.3d 1336, 1341 (11th Cir. 2004). As such, where “a regulation conflicts with a statute, the statute controls.” *Id.* Even when a federal agency has “broad powers to enact rules and regulations as it deems appropriate to effectuate legislative mandates,” the “federal agency may not make law or operate to create rules in disharmony with the congressional statute it administers.” *Commodity Futures Trading Comm’n v. Mass Media Mktg., Inc.*, 156 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001); see *United Nat. Bank v. U.S. Dep’t of Interior*, 54 F. Supp. 2d 1309, 1312 (S.D. Fla. 1998) (“It is well settled that a regulation that is not in harmony with the statute is *void ab initio* and cannot be relied upon by the agency.”).

Therefore, the fact that OFAC promulgated licenses for traveling to Cuba, and Executive Branch officials, including the President, encouraged Defendants to do so, does not automatically immunize Defendants from liability if they engaged in statutorily prohibited tourism. Indeed, the OFAC regulations specifically state that “[n]o license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, . . . the Foreign Assistance Act of 1961, . . . or any proclamation, order, regulation or license issued pursuant thereto.” 31 C.F.R. § 515.101.

Second, contrary to Havana Docks’ position, “lawful travel” does not mean only what was lawful in 1996. Although the LIBERTAD Act codified the 1996 regulatory restrictions on travel to Cuba, see *Odebrecht*,

715 F.3d at 1277; *see also* 22 U.S.C. § 6032(h), Congress later refined the scope of those restrictions in another legislative act, the TSRA. *See Odebrecht*, 715 F.3d at 1277; *see also* § 7209(a). As such, “lawful travel” encompasses the restrictions set forth in the TSRA.

Under the TSRA, Congress limited OFAC’s power to “authorize . . . travel-related transactions . . . either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities.” § 7209(b)(1). Moreover, Congress specifically defined “tourist activities” as “any activity with respect to travel to, from, or within Cuba that is not expressly authorized . . . in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations.” § 7209(b)(2). Therefore, if Defendants’ travel-related activities did not fall within the 12 categories for travel promulgated in § 515.560, then the activity is deemed to be tourism under the TSRA.

Third, the Court also disagrees with Havana Docks that OFAC violated the TSRA when it promulgated people-to-people travel rules. At no point did OFAC create a thirteenth exception to the term “tourist activities,” which would have been inconsistent with the TSRA. *See* § 7209(b)(2). Rather, OFAC amended the CACR to expand what constituted “educational activities” within § 515.565. Although OFAC at times amended the CACR to relax certain administrative hurdles for people-to-people travel (a specific license and a sponsoring organization), OFAC simultaneously added conditions for people-to-people travel and illustrative examples of what would be permissible and impermissible. At all times, OFAC explicitly prohibited “primarily tourist-oriented” activities.

See §§ 515.565(c) (2011)–(2016), 515.565(f) (2017). Consistent with that prohibition were the requirements that cruise travelers engage in “a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities,” and “result in meaningful interaction between the traveler and individuals in Cuba.” § 515.565(b)(2)–(3) (2015); § 515.565(b)(1)–(2) (2016); § 515.565(b)(2)–(3) (2017). Thus, consistent with the strict statutory ban on tourism in Cuba, the OFAC regulations were aimed at ensuring that people did not travel to Cuba under the guise of people-of-people exchanges, when in reality, such travel was disguised tourism. Indeed, OFAC has restricted educational travel in the past to prevent disguised tourism. See *Emergency Coal. To Defend Educ. Travel v. U.S. Dep’t of Treasury*, 498 F. Supp. 2d 150, 154 (D.D.C. 2007) (addressing OFAC amendments to the CACR implemented when OFAC “concluded that the educational travel provisions of the CACR were being abused by some travelers and educational institutions as ‘disguised tourism.’”).

Interpreting OFAC regulations consistent with the TSRA and the LIBERTAD Act, “lawful travel” means travel-related activities that strictly complied with the 12 categories for travel promulgated by OFAC, because the TSRA defines “tourist activities” as anything that falls outside of those categories. OFAC did not act outside its statutory authority when it authorized people-to-people travel within the “educational activities” category. Consistent with the Congressional intent of the LIBERTAD Act and the TSRA, the regulations at all times prohibited tourism, and OFAC continuously implemented conditions to ensure that people-to-people travel did not trans-

form into tourism, such as requiring a full-time schedule of activities and meaningful interactions with the Cuban people. As such, “lawful travel” included *proper* people-to-people travel. However, the record evidence establishes that Defendants’ activities were outside the regulation’s dictates of people-to-people exchanges and thus, interpreted people-to-people travel impermissibly broad. The record reveals that the Defendants engaged in tourism expressly prohibited by the TSRA.

The Court recognizes that “the role of the judiciary in foreign affairs is limited.” *United States v. Plummer*, 221 F.3d 1298, 1309 (11th Cir. 2000). As such, the Court does not question the wisdom of OFAC amendments to the CACR. *See id.* Nor will “[a]djudication of the present claim . . . interfere with the executive’s handling of foreign relations or show a lack of respect to the executive’s power in foreign affairs.” *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1235 (11th Cir. 2004). Rather, the lawful travel exception is an affirmative defense that Defendants bear the burden of proving. *See Garcia-Bengochea v. Carnival Corp.*, 407 F. Supp. 3d 1281, 1286 (S.D. Fla. 2019) (“Based on the text and structure of Helms-Burton, the Court holds that the lawful travel exception is an affirmative defense to trafficking that must be established by Carnival, not negated by Plaintiff.”).

Through that lens, the Court concludes that there is no genuine issue of material fact. The record evidence allows the Court to conclude that Defendants have not met their burden of demonstrating that they complied with the people-to-people travel requirements under § 515.565. Rather, during the relevant period of travel in each case, Defendants engaged

in “tourist activities” under the TSRA and thus do not meet the lawful travel exception under the LIBERTAD Act.

(1) Carnival’s Tourist Activities

Carnival used the Terminal from May 2016 to May 2019. *Carnival*, ECF Nos. [332] ¶¶ 23–28, [374] ¶¶ 23–28. Thus, the CACR governing people-to-people travel, amended in March 2016 and November 2017, applies to the Court’s analysis.³⁷

Carnival admits that its night excursions—Tropicana Cabaret: Rhythms of the Night, Parisien Cabaret at Hotel Nacional, El Canonazo: An Evening Out in Havana, and Buenavista Social Club at Havana Cafe—did not constitute people-to-people travel. *Id.*, ECF Nos. [374] ¶ 78; *see id.*, [326-46] at 12. As set forth in the TSRA, travel-related activities that do not fall within the 12 permissible reasons for travel are, by definition, “tourist activities.” § 7209(b)(2). Therefore, Carnival impermissibly engaged in tourist activities.

The descriptions of the evening excursions support the conclusion that the excursions constituted tourism. The Tropicana Cabaret, “Cuba’s largest nightclub,” involved guests watching a “Vegas-style extravaganza” with “a welcome drink, plus 1/4 bottle of rum with mixers.” *Id.*, ECF No. [311-38] at 4. The Parisien Cabaret likewise involved a show and drinks. *Id.* at 8. And El Canonazo was a sightseeing

³⁷ Section 515.565 was also amended in October 2016, but only in a minor way that does not affect this case. *See* § 515.565 (Oct. 2016). After November 2017, § 515.565 was amended in June 2019 to remove people-to-people travel. *See* § 515.565(b) (2019). This is why the Court is referring to the March 2016 and November 2017 OFAC amendments to the CACR.

and photo tour through Havana landmarks, ending with a “cannon ceremony” at a former Spanish fortress. *Id.* at 6.³⁸ None of these evening tours involved “a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities,” or that “result[ed] in meaningful interaction between the traveler and individuals in Cuba.” § 515.565(b)(1)–(2) (2016); § 515.565(b)(2)–(3) (2017). The excursions centered around watching shows, visiting landmarks, and taking photos—“primarily tourist-oriented” activities. *See* §§ 515.565(c) (2016), 515.565(f) (2017).

Carnival contends that it offered the evening excursions “as additional and optional experiences to passengers who completed the full-time schedule” of people-to-people activities. *Id.*, ECF No. [374] ¶ 78. But Carnival has failed to show that its guests only attended evening shows after spending a full day engaged in people-to-people exchange. Carnival’s shore excursion Guide stated that guests were not required to buy *any* excursion to exit the ship. *Id.*, ECF No. [326-46] at 12. Carnival’s Corporate Representative, Israel, similarly testified that, at one point, passengers “did not need to buy tours from us,” although Carnival “encouraged them to buy the tours[.]” *Id.*, ECF No. [326-32] at 173. Carnival’s Cuba Operations Compliance Plan did state that “[a]ll guests must participate in a people-to-people program on each day in Cuba,” *id.*, ECF No. [326-45] at 45, but nowhere does the guide state that guests who did not participate in a people-to-people program were prohibited from buying an evening excursion.

³⁸ There is no description in the record of the Buenavista Social Club excursion.

Carnival's daytime excursions were not people-to-people compliant, in any event. A prime example is the "Explore Havana by American Classic Car" tour, which involved a "two-hour joyride in an American classic vehicle" through Havana landmarks, ending with a visit at a local market, where guests would "enjoy free time to interact with the local souvenir vendors and take home [their] very own piece of Cuban memorabilia." *Id.*, ECF No. [311-38] at 5. In Example 4 to the 2016 version of § 515.565(b), OFAC instructed that "[a]n individual [who] plans to travel to Cuba to rent a bicycle to explore the streets of Havana, engage in brief exchanges with shopkeepers while making purchases, and have casual conversations with waiters at restaurants and hotel staff," has not participated in "educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, and the traveler's trip does not qualify for the general license." § 515.565(b) (2016). There is no meaningful distinction between OFAC's hypothetical bike tour and Carnival's classic car tour—the only difference is the vehicle used.

Even if Carnival's daytime excursions were OFAC complaint, neither the TSRA nor the CACR support the proposition that a passenger can spend the night at the Cuban nightclub simply because they spent the day engaged in people-to-people activities. "Broadly speaking, the regulations prohibit, unless specifically authorized, any dealing in any property in which Cuba or a Cuban national has an interest of any nature." *Odebrecht*, 715 F.3d at 1276. The TSRA defines "tourist activities" as anything that falls outside the 12 permissible reasons for travel. § 7209(b)(2). The evening excursions are thus "tourist

activities,” irrespective of whether daytime activities were not.

In addition, even accepting that Carnival’s excursions had some components of people to people exchanges, it was physically impossible for all passengers to string together a full-time schedule of people-to-people exchanges by completing one full-day tour or two half-day tours. Carnival offered full-day tours of seven hours (with one of 11 hours) and half-day tours of four to six-and-a-half hours. *Carnival*, ECF No. [326-46] at 8–9. Each tour had a maximum capacity, ranging from 60 guests to 420 guests. *Id.*

In the four-hour “Hemingway’s Havana” tour, guests would “travel by bus to Hemingway’s former home, Finca Vigia, and learn about the author’s attachment to Cuba and its people”; “[e]xplore with your guide the fishing town of Cojimar, which served as inspiration for the novel, *The Old Man and the Sea*”; and “enjoy a cocktail named in honor of the *Pilar*’s first mate [t]here.” *Id.*, ECF No. 311-28 at 3. The tour also included “[a] visit to a local community will provide guests the opportunity to engage with local Cubans working to improve their communities, a mission that Papa also strongly believed in.” *Id.* Travelers would then return to “Old Havana” and “discover the Plaza de Armas.” *Id.* The tour description stated that “[t]his is a half day tour, a second tour or self-certification activity will need to be completed to meet the 7-8 hour People-to-People requirement.” *Id.*

The local community visit is the only arguable people-to-people component in the excursion. As the show description expressly states, “[t]he community project associated with this tour is included to pro-

mote further understanding and interaction with the Cuban people,” and given “the fluid nature of community projects in Cuba, the location and type of community project visited may vary to provide the best experience for our guests.” *Id.* Therefore, only a portion of the four hours is devoted to people-to-people exchanges.

Similarly, in the “Art in Havana Past & Present” excursion, travelers would “visit the Bellas Artes Fine Arts Museum to learn more about Cuban art and styles from an art expert working at the museum;” “[t]ravel to Fusterlandia, the neighborhood of artist Jose Fuster, who has turned his community into a mosaic playground, with every inch of whimsical fantasy inspired by the works of Gaudi and Picasso”; and “visit the Muraleando community project, where local residents have used the Arts to improve their impoverished neighborhood.” *Id.* at 7. Again, the tour description states that “[t]he community project associated with this tour is included to promote further understanding and interaction with the Cuban people.” *Id.* But taking that as true, the community projects are only portions of a tour that chiefly involved visiting museums and enjoying art—primarily tourist activities. Thus, a traveler who booked both the “Hemingway’s Havana” and “Art in Havana Past & Present” tours would not be participating in a full-time schedule of people-to-people exchanges.

Further illustrating the point, the eight-hour “Hemingway’s Hangouts & Hideaways” excursion was described as follows:

First, travel by bus to Hemingway’s former home, Finca Vigia and learn about the author’s attachment to Cuba and its people.

Explore with your guide the fishing town of Cojimar, which served as inspiration for the novel, *The Old Man and the Sea*.

Back in Old Havana, a visit to a local graphic arts workshop where various artists create and display their work will provide the opportunity to engage with local artisans. Enjoy lunch at a local restaurant.

Discover the Plaza de Armas. This is the center of town and is where Papa Hemingway resided when he first moved to Cuba.

Visit the Plaza de la Catedral in one of the five main squares in Old Havana. Enjoy an hour of free time to explore and interact with the locals. Beverage stops will be made at the La Bodeguita and El Floridita.

Id., ECF No. 311-28 at 13.

Out of the eight-hour tour, only some portions are designated “opportunities” to engage with local Cubans, with one of those portions described as “*an hour of free time to explore and interact with the locals.*” *Id.* (emphasis added). Even taking as true that these opportunities go beyond casual conversations and brief exchanges, a guest on these tours would not have engaged in a full-time schedule of meaningful interactions with Cuban people. Also, the traveler who booked this full-day tour would not have had the opportunity to complete another daytime tour to add additional people-to-people components. All that would be left are the nighttime tours, which were not people-to-people compliant. *Id.*, ECF Nos. [374] ¶ 78; see *id.*, [326-46] at 12.

Next, as the Eleventh Circuit has recognized, Havanatur is the “travel agency exclusively authorized by Cuba to provide *tourist* services in Cuba.” *United States v. Fuentes-Coba*, 738 F.2d 1191, 1194 (11th Cir. 1984) (emphasis added). Indeed, Havanatur is part of the Cuban Government’s Ministry of Tourism. *Carnival*, ECF Nos. [332] ¶ 31, [374] ¶ 31. As Carnival’s Corporate Representative, Israel, testified, Carnival sold excursions to its passengers that Carnival had, in turn, purchased from Havanatur. *Id.*, ECF No. [326-32] at 172–74. The fact that Carnival purchased tours from a *tourism* excursion provider is powerful, additional evidence that Carnival was engaging in tourism.

In addition, Carnival’s Cuba Operations Compliance Plan stated that guests could engage in either self-guided people-to-people activities or purchase Carnival’s daytime activities, which “fulfill this requirement.” *Id.*, ECF No. [326-45] at 45. OFAC, however, prohibited sponsoring organizations from having travelers “engage in individually selected . . . activities.” §§ 515.565(b) (2016) (note). And yet that is exactly what Carnival did: it presented a menu of excursions for passengers to pick and choose from. *See id.*, ECF No. [326-46] at 8–9. Carnival’s shore excursion Guide stated that it was not mandatory for travelers to buy an excursion to leave the ship, leaving open the opportunity for passengers to enter Cuba and engage in non-compliant transactions. *Id.* at 12.

In the same vein, Carnival impermissibly disclaimed responsibility for passengers who traveled to Cuba and did *not* engage in people-to-people travel. *Id.* Carnival’s position was that a guest may “come in and out as much [as] they want” even if not in

compliance with people-to-people guidelines. *Id.* However, the general license allowing for vessels to travel to Cuba indicated that vessels may only transport “[p]ersons subject to U.S. jurisdiction who are traveling to or from Cuba pursuant to a general license under one of the 12 categories of travel listed in § 515.560 or under a specific license from [OFAC].” § 515.572 (note).

Carnival’s 2015 specific license further shows that Carnival engaged in tourism and that licensure in general cannot act as a shield to liability under the LIBERTAD Act. To begin, none of the evening excursions Carnival later provided to its guests were included in the “Illustrative Cuba Itinerary” Carnival presented to OFAC. *See Carnival*, ECF No. [326-26] at 16–25. Neither was the “Explore Havana by American Classic Car” tour. *Id.* The activities Carnival presented to OFAC when seeking a specific license, and the excursions Carnival ultimately offered to guests under the general licenses, are glaringly different. Moreover, Carnival represented to OFAC that it would monitor and ensure that passengers engage in full-time people-to-people programing while onshore in Cuba. *Id.* at 26. But Carnival’s Guide stated that it was not mandatory for travelers to buy an excursion to leave the ship. *Id.*, ECF No. [326-46] at 9.

In addition, the specific license issued to Carnival contained numerous qualifications regarding its limited scope. OFAC stated in the letter granting the specific license that “[t]he . . . license does not authorize Carnival to transport any person who will disembark in Cuba and who is not authorized by a general license or a separate specific license.” *Id.*, ECF No. [326-26] at 33. The letter also informed

Carnival that “compliance with the requirements of the CACR does not excuse a U.S. person from the need to comply with other provisions of 31 C.F.R. chapter V, and with other applicable provisions of law.” *Id.* The license itself specified that (1) it “does not . . . release the Licensees or third parties from civil or criminal liability for violation of any law or regulation”; (2) does not “authorize[] any person subject to the jurisdiction of the United States to engage in any transaction or activity prohibited by the CACR, or by any other laws and regulations administered by [OFAC]”; and (3) “appl[ies] only to the laws and regulations administered by OFAC and should not be interpreted to excuse the Licensees from compliance with other laws, regulations, orders, or rulings to which they may be subject[.]” *Id.*, ECF No. [326-35] at 4–5. The same qualifications apply with equal force to OFAC’s general licenses. *See* § 515.101.

One of “the purposes behind the Trading with the Enemy Act and the Cuban Assets Control Regulations” is “[t]o deny to Cuba or its nationals hard currency which might be used to promote activities inimical to the interests of the United States.” *De Cuellar v. Brady*, 881 F.2d 1561, 1569 (11th Cir. 1989); *see Regan v. Wald*, 468 U.S. 222, 229 (1984) (explaining that the CACRs were meant to “reduce Cuba’s hard currency earnings from travel by U.S. persons to and within Cuba”). “[W]hen it codified and strengthened the embargo by enacting the [LIBERTAD] Act, Congress justified the measure by describing Cuba as a threat to national security and making extensive findings to that effect.” *Plummer*, 221 F.3d at 1310 n.8. Yet Carnival paid more than \$18 million to Cuban Government-owned and controlled entities to use the Terminal. *See Carnival*,

ECF Nos. [332] ¶ 32, [374] ¶ 32. Carnival never made any payments in Cuba to anyone or any entity that was not affiliated with the Cuban Government. *Id.*, ECF Nos. [332] ¶ 33, [374] ¶ 33. Carnival’s cruises constituted tourist activities and not proper people-to-people activities, paying millions of dollars to the Cuban Government to engage in impermissible travel.

Based upon the undisputed facts, the Court determines that from May 2016 to May 2019, Carnival did not engage in lawful travel to Cuba under the LIBERTAD Act.³⁹

(2) MSC’s Tourist Activities

(a) Miami-to-Cuba Cruises by MSC

The *Armonia* traveled from Miami to Havana and used the Terminal from December 2018 to June 2019. MSC, ECF Nos. [224] ¶¶ 40, 48, [253] ¶¶ 40, 48. Thus, the CACR governing people-to-people travel amended in November 2017 applies to the Court’s analysis.

Like Carnival, MSC SA offered on the *Armonia* Tropicana Cabaret excursion, with “dancing girls wearing scanty costumes and feathered headgear”; “[a] live orchestra”; and “music, dancing and Havana Club rum.” *Id.*, ECF No. [253-2] at 30. But unlike Carnival, MSC contends that the excursion was people-to-people compliant. Iaccarino, the Shore Excursion Business Development Manager for MSC SA, characterized the excursion as “not only a cabaret

³⁹ Based on this ruling, the Court need not decide whether cruises by Airtours or Costa also fall within the lawful travel exception.

show,” but a historical lesson on Cuban music and dance. *Id.*, ECF No. [201-7] at 21.

MSC’s characterization of the Tropicana Cabaret excursion blurs the line between tourism and people-to-people travel. Virtually all music and dance have some historical origin. A tourist who cruises to Hawaii and attends a luau performance may witness some brief historical lessons on Polynesian culture. But one would be hard-pressed to deem such an excursion anything but primarily tourism or conclude that the tourist had a meaningful interaction with native Hawaiians. The same common-sense conclusion applies to the Tropicana Cabaret, a “primarily tourist-oriented” show. *See* § 515.565(f) (2017). The show provided, at most, casual contact with some Cuban performers and wait staff, which does not qualify as “educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba.” § 515.565(b)(2)–(3) (2017). A contrary conclusion would create disharmony between the TSRA and the CACR. *See Commodity*, 156 F. Supp. 2d at 1333.

MSC SA’s other excursions fare no better. Like Carnival, MSC SA offered on the *Armonia* a vintage car tour, which involved traveling “around Havana’s historical cityscape in a vintage car,” “a Cuban cocktail,” and visits to landmarks. *See MSC*, ECF No. [253-2] at 30. Iaccarino testified: “In every excursion we created the possibility to interact or to discover some commentary or social so-called project. In this specific case, although the experience is not from the buses but is from cars[.]” *Id.*, ECF No. [201-7] at 21. But there is no meaningful distinction between OFAC’s non-compliant hypothetical bike tour and

MSC’s classic car tour. § 515.565(b) (note) (2016).⁴⁰ At most, the tour provided an unspecified “possibility to interact or to discover some commentary or social so-called project.” *Id.*, ECF No. [201-7] at 21. This is contrary to OFAC’s requirement of a “full-time schedule of activities” that “result in meaningful interaction between the traveler and individuals in Cuba.” § 515.565(b)(2)–(3) (2017).

The same conclusion applies to the *Armonia*’s Cultural Havana, Rum & Cigars excursion, which involved watching Cubans roll cigars, taking photos at the Plaza de la Revolución, and visiting the “Havana Club Museum to find out how freshly cut sugarcane is distilled into rum.” *MSC*, ECF No. [253-2] at 30. Guests would “enjoy a taste of” rum and have “free time . . . to browse for a memento and take more photos before you return to the ship.” *Id.* These are “primarily tourist-oriented” activities. § 515.565(f) (2017). The same is true of the “Hemingway & Havana Tour,” which involved visit to Hemingway’s former home; a “pass through the historical fishing village of Cojimar”; “a Don Gregorio cocktail at the La Terraza de Cojimar restaurant”; and visits to “the historical Ambos Mundos Hotel, San Geronimo University and Plaza de la Catedral en route to the Restaurante Floridita for a daiquiri.” *Id.*, ECF No. 253-2 at 30. In the same vein, the “Legendario de Guajirito with Guest of Buena Vista” tour involved a “fabulous show at Iberostar Habana Riviera Hotel.” *Id.*

Notably, MSC SA’s CEO, Onorato, testified that he did not know whether cruise passengers were edu-

⁴⁰ Although the bicycle example was not included in the 2017 version of § 515.565, the Court still finds it instructive.

cated about the lack of political freedoms in Cuba or met with Cuban dissidents. *MSC*, ECF No. [201-3] at 53–54.

In addition, even accepting that *MSC SA*’s excursions had some components of people-to-people exchanges, it was physically impossible for all passengers to string together a full-time schedule of people-to-people exchanges by completing one or more tours. The tours on the *Armonia* ranged from 3 hours to 8 hours. *Id.*, ECF No. [253-2] at 29–32. The *Armonia* made 25 voyages from Miami to Havana, listing in its manifests 51,908 passengers. *Id.*, ECF Nos. [224] ¶¶ 40, 48, [253] ¶¶ 40, 48. While the tour excursions do not indicate the maximum capacity of each tour, each tour would have had a limit, as was the case with other cruise operators. As such, even if “every excursion . . . created the possibility to interact or to discover some commentary or social so-called project,” *id.*, ECF No. [201-7] at 21, or “possessed a predominant cultural or historical component,” *id.*, ECF No. [210-18] ¶ 5, the record evidence fails to establish enough tours in a single day to fulfill a full-time schedule of meaningful interactions.⁴¹

MSC SA contracted with Cubanacan, which is part of the Cuban Government’s Ministry of Tourism, to operate shore excursions in Havana that *MSC SA* sold to passengers. *MSC*, ECF Nos. [224] ¶ 57, [253] ¶ 57. The Shore Excursion Agreement between *MSC SA* and Cubanacan states that Cubanacan provided tourism-related services. Specifically, the agreement stated that “VIAJES CUBANACAN is engaged in the

⁴¹ This conclusion applies with equal force to the *Opera* cruises, which averaged 2,000 passengers for each call to Havana. *Id.*, ECF Nos. [224] ¶ 61, [253] ¶ 61.

business of organizing, promoting and selling *tourist excursions* in the Cuban national territory.” *Id.*, ECF No. [218-9] at 3 (emphasis added). The agreement set forth that Cubanacan is “capable and willing to assume the organization, promotion and sale of *tourist excursions* in the Cuban national territory,” and that it would provide “*tourist services* described below . . . during the term of the operation of THE VESSELS [including the *Armonia*], between December 1, 2018 and November 30, 2019.” *Id.* at 3–4 (emphasis added). Part of Cubanacan’s responsibilities included “[t]o assist. . . the *tourists* before the authorities of the country and in all the necessary legal procedures during the agreed season, for the realization of [MSC SA’s] shore excursions in Cuba.” *Id.* at 5 (emphasis added). MSC SA, in turn, had to, among other things, ensure that it communicated to Cubanacan the “[l]anguage of the *tourists*” who bought excursions and “guarantee that the *tourists* traveling on THE VESSELS and taking the *tourist excursions* with [Cubanacan] have a valid insurance policy.” *Id.* at 7 (emphasis added).

In addition, MSC impermissibly disclaimed responsibility for guests who traveled to Cuba and did not engage in people-to-people travel. *Id.*, ECF No. [201-7] at 25–26. Iaccarino, the Shore Excursion Business Development Manager for MSC SA, *id.* at 5, testified that it was only “highly recommended” that guests purchase shore excursions; it was ultimately the guests’ responsibility to certify that they were traveling for permissible reasons. *Id.* at 26. Zeller, Vice President of US Hotel Operations for MSC SA, likewise stated in an internal email, “we do not police guests, we do not check whether a guest has purchased a tour ticket or not, we do not block guests at the gangway.” *Id.*, ECF No. [202-47] at 2. The general

license allowing for vessels to travel to Cuba indicated that vessels may only transport “[p]ersons subject to U.S. jurisdiction who are traveling to or from Cuba pursuant to a general license under one of the 12 categories of travel listed in § 515.560 or under a specific license from [OFAC].” § 515.572 (note).

(b) Cuba-to-Cuba Cruises by MSC

The Court next analyzes whether the LIBERTAD Act and CACR govern MSC’s Cuba-to-Cuba cruises. MSC contends that the LIBERTAD Act does not apply extraterritorially, *MSC*, ECF No. [256] at 13, and that “non-U.S.-based trips . . . were not required to comply with OFAC regulations,” *id.*, ECF No. [272] at 9 (emphasis removed). Anticipating that the Court might disagree with its first point, MSC argues that Cuba-to-Cuba cruise constitute lawful travel under Cuban and Swiss law. *Id.*, ECF No. [256] at 14.

Havana Docks argues that the LIBERTAD Act does have extraterritorial reach. *Id.*, ECF No. [281] at 8. Havana Docks further contends that the LIBERTAD Act applies U.S. law, not Cuban or Swiss law. *Id.*, ECF No. [281] at 8–9. Havana Docks does agree that the general licenses under the CACR do not apply to Cuba-to-Cuba cruises but interprets that conclusion as meaning that the lawful travel exception is inapplicable to Cuba-to-Cuba cruises. *Id.* at 9.

The LIBERTAD Act *does* apply extraterritorially. Indeed, the LIBERTAD Act is broad in reach, having “caused an international uproar among United States’ allies due to the extraterritorial reach of Title III.” *Odebrecht Const., Inc. v. Prasad*, 876 F. Supp. 2d 1305, 1311–12 (S.D. Fla. 2012). This reach is what led to the advent of the EU blocking statute and

President Bill Clinton waiving the right to bring a cause of action. *Id.* at 1312. But “Congress unquestionably has the authority to enforce its laws beyond the territorial boundaries of the United States.” *Plummer*, 221 F.3d at 1304.

The CACR also applies extraterritorially. The CACR places “restrictions on any ‘[p]erson . . . subject to the jurisdiction of the United States,’ . . . which is defined by regulation to include U.S. corporations, their domestic and foreign subsidiaries, and any foreign company owned or controlled by a U.S. citizen.” *Odebrecht*, 715 F.3d at 1276 (quoting 50 U.S.C. § 4305(b)(1) and citing 31 C.F.R. § 515.329). MSC does not argue that it is not subject to the jurisdiction of the United States. Moreover, the CACR broadly prohibit “any dealing in any property in which Cuba or a Cuban national has an interest of any nature,” including dealings that do not originate in the U.S. *See id.* (explaining that OFAC regulations “apply to exports to Cuba, whether from the U.S. or even through offshore dealing by a person or entity subject to the CACR”); *see also Plummer*, 221 F.3d at 1307 (applying CACR prohibition on dealing in Cuban merchandise to individual prosecuted for attempting to smuggle Cuban cigars where all predicate acts occurred outside of the United States).⁴²

⁴² The Court recognizes that Magistrate Judge Lauren Louis, when resolving a discovery dispute, found that “[t]he shore excursions that took place on . . . Cuba-to-Cuba cruises are not relevant to rebutting [the] lawful travel defense” because “[w]hile Defendants indeed argue that the Miami-to-Cuba cruises were made pursuant to OFAC licenses and that they complied with the OFAC terms, the OFAC regulations do not govern the Cuba-to-Cuba cruises.” *Havana Docks Corp. v. MSC Cruises (USA) Inc.*, No. 1:19-CV-23588, 2021 WL 4973458, at *4

The general license within § 515.572 does not state otherwise. The licenses states that “[p]ersons subject to U.S. jurisdiction are authorized to provide carrier services to, from, *or within* Cuba in connection with travel or transportation, directly or indirectly, between the United States and Cuba of persons, baggage, or cargo authorized pursuant to this part.” § 515.572(a)(2)(i) (emphasis supplied). Moreover, even if § 515.572 only concerns travel to and from the United States and Cuba, § 515.572 simply allows cruises to act as common carriers. Section 515.572 does not address at all the permissible reasons for travel, including people-to-people requirements.

Having established that the LIBERTAD Act and the CACR apply to MSC’s Cuba-to-Cuba cruises, it is evident that such cruises present an even clearer case of tourism. Both the *Armonia* and *Opera* used Cuba as a homeport between 2015 and 2019. *MSC*, ECF Nos. [224] ¶¶ 35, 37, 38–39, [253] ¶¶ 35, 37, 38–39. Thus, the people-to-people OFAC regulations amended in 2015, March 2016, and November 2017 apply to the Court’s analysis.

It is undisputed that on Cuba-to-Cuba cruises, *MSC SA* provided several excursions that included activities not just at nightclubs, such as the Tropicana Cabaret, but at the beach. *MSC*, ECF No. [218-17].⁴³ In Example 5 to the 2016 version of

(S.D. Fla. Aug. 16, 2021). Judge Louis did not analyze the extraterritorial reach of the CACR but premised her statement on *MSC*’s erroneous position that Cuba-to-Cuba cruises fall outside the CACR.

⁴³ It is unclear whether beach excursions were also available in Miami-to-Cuba cruises. *MSC* contends that the beach excursions were only available on the *Opera*. *MSC*, ECF No. [253] ¶¶ 102–103. A July 2018 Excursion Revenue Report for

§ 515.565(b), OFAC advised that an individual who “plans to spend a few days engaging in brief exchanges with Cuban food vendors while spending time at the beach” would not be engaging in “educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba. § 515.565 (note) (2016). MSC SA’s beach excursions fall squarely within that prohibited example.

The record reflects that MSC only “highly recommended” that guests purchase shore excursions and did not verify whether a guest had purchased a shore excursion before exiting the ship. *MSC*, ECF Nos. [201-7] at 26, [202-47] at 2. OFAC, however, prohibited sponsoring organizations from having travelers “engage in individually selected . . . activities.” § 515.565(b) (2016) (note). And yet that is precisely what MSC did: it presented a menu of excursions for passengers to choose from, but passengers were not required to select any. *MSC*, ECF Nos. [201-7] at 26, [202-47] at 2.

As stated, one of the purposes behind CACR is “[t]o deny to Cuba or its nationals hard currency which might be used to promote activities inimical to the interests of the United States.” *De Cuellar*, 881 F.2d at 1569; *see Regan*, 468 U.S. at 229. MSC SA paid more than \$16.9 million to Cuban Government-owned and controlled entities to use the Terminal. *MSC*, ECF Nos. [224] ¶¶ 55, 59, [253] ¶¶ 55, 59. MSC’s cruises constituted tourist activities and not

the *Armonia* shows revenues for the beach excursions. *Id.*, ECF No. [218-10] at 2. But the *Armonia* also engaged in Cuba-to-Cuba cruises. *Id.*, ECF Nos. [224] ¶ 38, [253] ¶ 38. Given this factual dispute, the Court did not address the beach excursions in relation to the Miami-to-Cuba cruises.

proper people-to-people activities, paying millions of dollars to the Cuban Government to engage in impermissible travel.

Based upon the undisputed facts, the Court determines that from 2015 to June 2019, MSC did not engage in lawful travel to Cuba under the LIBERTAD Act.

(3) Royal Caribbean's Tourist Activities

Royal Caribbean used the Terminal from March 2017 to June 2019. *Royal Caribbean*, ECF Nos. [141] ¶¶ 28, 32, [172] ¶¶ 28, 32. Therefore, the CACR governing people-to-people travel, amended in March 2016 and November 2017, apply to the Court's analysis.

Like other cruise operators, Royal Caribbean offered guests a visit to the Tropicana Cabaret, which involved a 30-minute "Tropicana performance"; "[a] welcome cocktail, 1 bottle of rum per table, 1 soft drink, mixed hors d'oeuvre and one tobacco"; and a history lesson on the Mafia's use of the cabaret. *Id.*, ECF No. [131-43] at 17. Royal Caribbean likewise offered a similar show at the "Cabaret Parisi  n." *Id.* at 19. Although Royal Caribbean indicated in its shore excursion catalog what portions of tours were people-to-people compliant with a "P2P" symbol, neither of these tours had a "P2P" designation. *Id.*, ECF No. [131-43] at 6, 17–19.

At her deposition, Shaw, who was involved in shore excursions with Royal Caribbean for 29 years, *id.*, ECF No. [122-4] at 5, testified that the Tropicana Cabaret involved "a little bit of history" and "then at the end, the guests had a chance to participate and come on stage and dance [a] little bit with the performers." *Id.* at 28. She likewise testified that the

Cabaret Parisi  n involved a similar experience: “they would go ahead and talk about the history of Cuba. They’ll talk about the performers that had performed at that location. They did different musical routines with dancers. And then at the end they would have interactivity with our guests before going back to the ship.” *Id.* at 29.

Shaw’s description of the excursion amounts to passive history lessons—involving no interactions between the travelers and Cuban people—and then casual and brief exchanges in the form of guests dancing on stage. Such activities are not consistent with OFAC’s people-to-people exchanges, such as a full schedule of “discussions with Cuban artists on community projects, exchanges with the founders of a youth arts program, and . . . extended dialogue with local city planners and architects to learn about historical restoration projects in Old Havana.”    515.565(b) (2016) (Example 2). To interpret people-to-people travel to include the Tropicana Cabaret and Cabaret Parisi  n is to ignore the regulation’s express distinction between permitted educational travel and impermissible tourist travel.

Royal Caribbean’s excursions with a “P2P” symbol were likewise not people-to-people compliant, despite the designation. The designations only underscore that the excursions involved “primarily tourist-oriented” activities,     515.565(c) (2016), 515.565(f) (2017), lacking “a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities,” or that “result[ed] in meaningful interaction between the traveler and individuals in Cuba.”    515.565(b)(1)–(2) (2016);    515.565(b)(2)–(3) (2017).

For example, in Royal Caribbean’s 3.5-hour long cocktail making class, only a 15-minute segment was designated as P2P, which stated: “At the end there will be time to interact with the training specialists and hear some of their experiences and anecdotes about the profession.” *Royal Caribbean*, ECF No. [131-43] at 29. Having only 15 minutes of a 3.5-hour excursion dedicated to people-to-people interactions implicitly acknowledges that the excursion is “primarily tourist-oriented.” §§ 515.565(c) (2016), 515.565(f) (2017). In addition, Shaw testified that, during the cocktail-making class, some history would be discussed, and then guests were taught how to make classic Cuban drinks, like the mojito. *Royal Caribbean*, ECF No. [122-4] at 30. OFAC, however, had already advised that “brief exchanges” and “casual conversations” do not constitute meaningful interactions with the Cuban people. *See* § 515.565(b) (2016).

Similarly, in The Old Havana Sightseeing and Walking Tour Combination, which lasts 9 hours, the “P2P” segment is a 90-minute walk through various plazas where guests would “have the opportunity to have ongoing exchanges with locals, vendors, artisans, entrepreneurs, and to learn about the customs of the residents of Old Havana.” *Royal Caribbean*, ECF No. [131-43] at 33. The remainder of the tour consisted of visits to various photo spots in Havana, with “[t]ime to taste an exquisite tobacco, and a rum beverage.” *Id.* at 32–30. Even if the 90-minute “P2P” portion involved more than “brief exchanges with shopkeepers while making purchases,” § 515.565(b) (2016), travelers who engaged in this tour spent at least 7.5 hours engaging in “primarily tourist-oriented” activities. §§ 515.565(c) (2016), 515.565(f) (2017).

In addition, even accepting that Royal Caribbean's excursions had *some components* of people-to-people exchanges, it was physically impossible for all passengers to string together a full-time schedule of people-to-people exchanges by completing more than one tour. Tours had a maximum capacity of 75 to 500 people. *Royal Caribbean*, ECF No. 131-43 at 4–5. The eight-hour “Best of Havana” tour had one 45 minute “P2P” segment (“interact with workers and local residents” at the “Fusterlandia community project”) and another 35 minute “P2P” segment (“[t]ime for shopping and interact[ing] with artisans and private vendors . . . in the Almacenes de San Jose”). *Id.* at 7. The full day “Best of Havana with Colon Cemetery” tour had the same two people-to-people components. *See id.* at 8. As did the seven hour “Best of Havana with Hemingway’s House” tour. *See id.* at 8–9. No guests taking these full-day tour would have engaged in a full-time schedule of people-to-people exchanges.

Similarly, the four to five hour “Havana Half Day Walking Tour without lunch” excursion only had a 90-minute “P2P” segment (“the opportunity to have ongoing exchanges with locals, vendors, artisans, entrepreneurs, and to learn about the customs of the residents of Old Havana”). *Id.* at 9. Likewise, the five-and-a-half hour “Havana By Classic American [Car]” tour had a 50 minute “P2P” segment (“interaction with members of the community” within “the Callejon de Hammel, a religious art space”). *Id.* at 10. And in another example, the four-and-a-half hour “Easy Panoramic Havana” tour only included a 45 minute “P2P” component (“[t]ransfer to the Fusterlandia community project” to “interact with workers and local residents”). *Id.* at 11. Even taking two half-day tours and then engaging in a nighttime excursion, there simply were not enough people-to-

people components to piece together a full-time schedule of people-to-people exchanges.

Similar to Carnival, Royal Caribbean contracted with Havanatur to operate shore excursions. *Royal Caribbean*, ECF Nos. [141] ¶ 45, [172] ¶ 45. As explained, Havanatur is the “travel agency exclusively authorized by Cuba to provide tourist services in Cuba.” *Fuentes-Coba*, 738 F.2d at 1194. The fact that Royal Caribbean purchased tours from a tourism excursion provider further supports that Royal Caribbean was engaging in tourism.

The January 2019 email and testimony from Delgado, the Vice President of Global Business Development at one of Royal Caribbean’s brands, *Royal Caribbean*, ECF No. [122-6] at 10, demonstrates that excursions from Havanatur fell short of the people-to-people travel requirement of enhancing contact with the Cuban people, supporting civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities. According to Delgado, Havanatur’s tour guides had been “hired from the Cuban Ministry of Foreign Relations Academy (because of their language skills) [and] these individuals (after being brainwashed for four years) come to work for Havanatur believing our guests are not tourists, but the American invaders they were told were coming.” *Id.*, ECF No. [123-29] at 4. At deposition, Delgado recalled that during the later year of the tours, the tour guides would “enter all kinds of nonsensical discussions with our guests on political issues.” *Id.*, ECF No. [122-6] at 27. As Delgado put it, “What they were doing basically to our guests was reading the communist party bible on whatever they believe in.” *Id.* Delgado also stated, “I believe that many of these guys got those positions

and were trained on how to respond to questions from the guests in the way they did, basically brain-wash[ed].” *Id.*

In addition, the record demonstrates that Royal Caribbean presented a series of excursions that travelers could pick and choose from, in the same manner that any other tourist cruising to another Caribbean destination would be able to do. *See Royal Caribbean*, ECF No. [131-43] at 4–5. OFAC, however, prohibited sponsoring organizations from having travelers “engage in individually selected . . . activities.” §§ 515.565(b) (2016) (note).

The June 2019 OFAC Cautionary Letter to Royal Caribbean also establishes that Royal Caribbean failed to keep proper records, and that it transported passengers to Cuba for impermissible purposes. *See Royal Caribbean*, ECF No. [122-23]. Example 3 to the 2016 version of § 515.565(b) instructed that “[a] traveler’s failure to keep records means that the individual’s activities do not qualify for the general license.” As OFAC advised in the Cautionary Letter, “[t]ravel-related transactions to, from, or involving Cuba for any other purpose, or that do not meet the full criteria and conditions of one or more of the [12] categories of general licenses, including record-keeping requirements, are prohibited.” *Id.*, ECF No. [122-23] at 4. And yet a sampling of passenger affidavits from Royal Caribbean showed that “12 paper certifications failed to either select a general travel license or provide a specific license number” and “five certifications . . . had hand written comments indicating that the individual traveler did not intend to disembark in Cuba,” which was contrary to Royal Caribbean’s “policy that passengers could not embark on a voyage to Cuba without

providing the general license number that authorized their travel.” *Id.* at 5.

As stated, one of the purposes behind the CACR is “[t]o deny to Cuba or its nationals hard currency which might be used to promote activities inimical to the interests of the United States.” *De Cuellar*, 881 F.2d at 1569; *see Regan*, 468 U.S. at 229. Collectively, Royal Caribbean paid more than \$29.7 million to Cuban Government-owned and controlled entities to use the Terminal. *Royal Caribbean*, ECF Nos. [141] ¶¶ 40, 44, 47, [172] ¶¶ 40, 44, 47. Royal Caribbean’s cruises constituted tourist activities and not proper people-to-people activities, paying millions of dollars to the Cuban Government to engage in impermissible travel.

Based upon the undisputed facts, the Court determines that from March 2017 to June 2019, Royal Caribbean’s cruises did not engage in lawful travel to Cuba under the LIBERTAD Act.

(4) Norwegian’s Tourist Activities

Norwegian used the Terminal between March 2017 and June 2019. *Norwegian*, ECF Nos. [228] ¶ 15, [282] ¶ 15. Therefore, the people-to-people OFAC regulations, amended in March 2016 and November 2017, apply to the Court’s analysis.

Like other cruise operators, Norwegian offered excursions at the “The Legendary Tropicana Cabaret,” “Parisien Cabaret at the Hotel Nacional de Cuba,” and “Buena Vista Social Club at Habana Café.” *Id.*, ECF Nos. [228] ¶ 85, [282] ¶ 85. All three excursions involved musical shows, with the Parisien Cabaret being described as “a spectacular Vegas style performance.” *Id.*, ECF No. [217-6] at 6–7. As already

stated, these tourist shows fall well short of people-to-people exchanges.

The testimony of Manjencic, who was responsible for shore excursions in Cuba for Norwegian, reinforces that conclusion. Manjencic testified that the people-to-people components of the Buena Vista Social Club excursion included a “meet and greet by maître d’, wait staff” and “a component where our guests met with the artists” and “where guests had the opportunity to dance with the artists or partake in the activity that was happening at that time.” *Id.*, ECF No. [214-8] at 41. Manjencic testified about the Tropicana Cabaret, adding that “guests could have an exchange with the artists, with the performers, with the musicians, the presenters -- so they could discuss about the show and about their art history,” and learn salsa at the end of the show. *Id.* Manjencic likewise provided similar testimony regarding the Parisien Cabaret. *Id.* at 41–42. Yet, people-to-people exchanges cannot be interpreted so broadly as to encompass casual conversations with wait staff and dancing on stage without completely blurring the line between educational travel and tourist travel.

The testimony of Norwegian’s corporate representative, Parodi, further demonstrates that Norwegian provided tourist excursions. Parodi acknowledged at deposition that the Tropicana Nightclub was “a great tourist attraction.” *Id.*, ECF No. [214-1] at 34. When asked, “[b]esides the Tropicana Nightclub, what other similar type of tourist excursions did Havanatur organize for the NCL passengers,” he answered, “I know there are two other shows that we offer through Havanatur, and then there are the monuments and the local attractions.” *Id.* Moreover, Parodi was not aware of any Norwegian excursion

that met with religious leaders, members of the dissident movement in Cuba, persons not affiliated with the Cuban Government, or artists not employed by a Cuban Government agency. *Id.* at 35.

Statements in Norwegian's Shore Excursion Programs also highlight that Norwegian was engaged in tourist activities. The Shore Excursion Program for April 2017 contained a disclaimer stating, "the Cruise *tourism* in Cuba is operated by a Government owned Tour company," so "guides, venues and any means of transportation are selected & provided solely at their own discretion." *Id.*, ECF No. [217-6] at 6 (emphasis added). The disclaimer continued that guests should not expect "the same quality and standards . . . as to those other more *tourism*-developed cruise destinations." *Id.* (emphasis added). The repeated references to tourism in Norwegian's own shore excursion documents, as well as the warning that a "Government owned Tour company" was solely responsible for selecting guides and venues, further demonstrates that Norwegian's excursions did not constitute people-to-people exchanges.

Norwegian's January 2019 Shore Excursion Program contained a slightly different disclaimer, which removed references to "tourism" and claimed that "[a]ll our shore excursions are OFAC compliant." *Id.*, ECF No. [301-2] at 3. But the substantive changes to the Shore Excursion Program only served to underscore that the excursions were primarily tourist-oriented. For example, the Tropicana Cabaret excursion stated that the "show may contain sensual dancing." *Id.* Moreover, the "Modern Havana in an American Classic" excursion warned that "[t]he Vintage Car ride is an orientation drive operated by a driver only. Drivers barely [s]peak English and are

not guides. Information is very limited. However, a tour guide will provide explanations to the group at each stop during the bus drive.” *Id.* In her declaration, Manjencic justified the car tour by that “passengers were paired with a local Cuban driver.” *Id.*, ECF No. [282-12] ¶ 7. But noticeably absent is a representation that the drivers and passengers engaged in meaningful interactions, which is not likely given that paired drivers did not speak fluent English.

Norwegian also offered sightseeing tours that were likewise not OFAC compliant. Specifically, Norwegian offered “An Evening Stroll in Colonial Havana” tour, where guests would visit Cathedral Square, Arms Square, Old Square, and Sloppy Joe’s Bar. *Id.*, ECF No. [217-6] at 7. “The Old Colonial Havana” excursion had a similar itinerary, adding that passengers could “visit the Almacenes de San Jose and have the opportunity to buy [a] Cuban souvenir.” *Id.* The “Modern Havana in an American Classic” involved visiting various Havana landmarks in a vintage automobile. *Id.* at 6. The “Colors and Flavors in Havana” tour involved guests “visiting a superb dance company, sampling Cuban rum paired with cigars, and learning to make classic cocktails before dining on Cuban cuisine.” *Id.*, ECF No. [301-1] at 7. And the “Las Terrazas and It’s Nature” excursion involved an eight-hour tour of “an environmentally conscious small town where most of the activities revolve around nature,” including a visit to a museum, coffee at a café, free time to swim in a river. *Id.* at 2.

These activities represent classic “primarily tourist-oriented” activities. §§ 515.565(c) (2016), 515.565(f) (2017). There is no evidence that travelers engaged in

more than “brief exchanges” and “casual conversations” between vendors and wait staff. *See* § 515.565(b) (2016). If activities such as sightseeing, purchasing souvenirs, and swimming in a river constitute people-to-people exchanges, then the CACR would be inconsistent with the statutory prohibition against tourist travel, making the regulations void. *United Nat. Bank*, 54 F. Supp. 2d at 1312. The Court must construe the regulation to avoid such a result. *See Marte*, 356 F.3d at 1341.

Norwegian also offered excursions outside of Havana—but for guests on ships that docked at the Terminal—that did not constitute people-to-people exchanges: the “Submerged Pearl,” “Cienfuegos Dolphins,” and “Cienfuegos & Its Nature.” *Norwegian*, ECF Nos. [221-16], [217-6], [228] ¶ 86, [282] ¶ 86. The Cienfuegos Dolphins excursion included a visit to various sites, a “[d]olphin show and opportunity to talk to the coaches,” and “free time on the historical Boulevard Santa Isabel, where you may browse the shops before returning to the pier.” *Id.*, ECF No. [301-2] at 5. The Cienfuegos & Its Nature excursion included an hour and a half “of hiking in the park,” “[f]ree time to swim in . . . natural pools,” and a “Creole-style lunch” at a local restaurant. *Id.*; *see also id.*, ECF No. [301-3] at 4 (stating that guests “will have free time for [a] bath in natural settings and to take photos”). And “The Submerged Pearl” excursions involved visits to several Cienfuegos sites and the opportunity to purchase some souvenirs. *Id.*, ECF No. [221-16] at 6. Sight-seeing, watching trained dolphins, and swimming are indisputably “primarily tourist-oriented” activities. §§ 515.565(c) (2016), 515.565(f) (2017).

Manjencic's testimony supports this conclusion. Manjencic states that "Cienfuegos Dolphins" allowed passengers to "interact[] with and learn[] from local Cubans who worked with dolphins and interacting with the locals at the historic Boulevard Santa Isabel -- a dense urban commercial street for pedestrians to interact with local vendors and artisans." *Norwegian*, ECF No. [282-12] ¶ 10. As to "Cienfuegos & Its Nature," Manjencic declares that "passengers were led by a local Cuban guide through the historically significant Escambray Mountains" and "had an opportunity to personally interact with local residents" and eat at a privately owned restaurant. *Id.* ¶¶ 11–12. Manjencic also stated that for "The Submerged Pearl," "a local Cuban guide facilitated exchanges between passengers and locals at various architectural landmarks in Cienfuegos" and "passengers had an opportunity to interact with local fishermen about the history and significance of this unique area as well as their daily life." *Id.* ¶ 13.

Manjencic's declaration supports that the excursions provided some opportunity for interactions between guests and Cubans. However, the evidence does not establish that guests on these excursions had "a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities," or that "result[ed] in meaningful interaction between the traveler and individuals in Cuba." § 515.565(b)(1)–(2) (2016); § 515.565(b)(2)–(3) (2017).

In addition, even accepting that Norwegian's excursions had some components of people-to-people exchanges, it was physically impossible for all passengers to string together a full-time schedule of

people-to-people exchanges by completing more than one tour. The excursions ranged from three hours to ten hours. *Norwegian*, ECF No. [301-2] at 2–6. Although the tours do not indicate the exact number of passengers who may attend, the excursions likely had a limit capacity, as is the case with the other cruise lines. Moreover, “delays up to 1-2 hours [were] expected and quite common.” *Id.* at 3. Moreover, the regular format of tours provided by Havanatur were either half a day or a full day. As explained, Norwegian’s excursions had only limited opportunities that would arguably constitute people-to-people exchanges, the rest being primarily tourist oriented. Thus, passengers could not piece together enough people-to-people components from enough tours to engage in a full-time schedule of people-to-people exchanges.

That point was perhaps best made by Norwegian’s own President and CEO, Del Rio, during the April 2015 Inaugural Cuba Opportunity Summit. When asked about the easing of travel restrictions to Cuba under the Obama Administration, Del Rio stated, “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. That would be a stretch of the . . . rules.” *Norwegian*, ECF No. [221-15] at 4. And that is precisely the point: it is a stretch of the people-to-people travel regulation to encompass tourist activities: visiting landmarks, watching shows, drinking rum, smoking Cuban cigars, buying souvenirs, and swimming in natural pools.

Similar to Carnival and Royal Caribbean, Havanatur operated and organized Norwegian’s shore excursions. *Norwegian*, ECF Nos. [228] ¶ 80, [282] ¶ 80. As noted, one of the purposes behind the

CACR is “[t]o deny to Cuba or its nationals hard currency which might be used to promote activities inimical to the interests of the United States.” *De Cuellar*, 881 F.2d at 1569; *see Regan*, 468 U.S. at 229. Norwegian paid more than \$12 million to use the Terminal. *See Norwegian*, ECF Nos. [228] ¶¶ 26, 30, 35, [282] ¶¶ 26, 30, 35. Norwegian’s cruises constituted tourist activities and not proper people-to-people activities, paying millions of dollars to the Cuban Government to engage in impermissible travel.

Based upon the undisputed facts, the Court determines that from March 2017 to June 2019, Norwegian did not engage in lawful travel to Cuba under the LIBERTAD Act.

b) “Necessary to the conduct of such travel” Prong

To be excluded from the definition of trafficking, Title III of the LIBERTAD Act requires that “transactions and uses of property” be both “incident to lawful travel to Cuba” and “necessary to the conduct of such travel.” § 6023(13)(B)(iii). As shown above, Defendants failed to show that their use of the Terminal constituted lawful travel. But even if the Defendants’ use of the Terminal was incident to lawful travel, their use of the Terminal was not *necessary* to the conduct of lawful travel to *Cuba*.

Defendants submit that “‘necessary’ does not mean having no other alternative.” *Carnival*, ECF No. [330] at 16. Defendants argue that necessity is instead governed by a reasonableness test rather than absolute necessity. *Id.* at 16–17. As such, necessity may include “that which is only convenient, useful,

appropriate, suitable, proper, or conducive to the end sought.” *Id.* at 17.

Defendants contend that the proper inquiry is not whether use of the Terminal was necessary to travel to Cuba in general, but necessary to the conduct of travel to Havana, where the Terminal is located. *Id.* at 19. Defendants continue that their use of the Terminal was “useful, appropriate, helpful, or related to the conduct of the lawful travel at issue.” *Id.* at 19–20. Alternatively, Defendants argue that they also meet the absolute necessity standard because the Cuban Government required them to dock at the Terminal when calling on Havana. *Id.*

Havana Docks accuses Defendants of “tortur[ing] the plain meaning of the statutory language to defend their use of the . . . Terminal as ‘necessary’ to lawful travel.” *Id.*, ECF No. [389] at 22. Havana Docks submits that “necessary” means “required, essential, or indispensable.” *See Carnival*, ECF No. [333] at 13–15; *MSC*, ECF No. [225] at 12–15; *Royal Caribbean*, ECF No. [142] at 13–16; *Norwegian*, ECF No. [229] at 13–16. According to Havana Docks, Defendants could have used, and did use, other Cuban ports. *See Carnival*, ECF No. [333] at 16–17; *MSC*, ECF No. [225] at 15–17; *Royal Caribbean*, ECF No. [142] at 16–18; *Norwegian*, ECF No. [229] at 16–18. Havana Docks further argues that Defendants “stretch the rules of grammar to conclude that their use of confiscated property needed to be necessary only for travel to Havana, not travel to Cuba.” *Carnival*, ECF No. [389] at 23. Havana Docks points out that none of the regulations required that Defendants travel to Havana specifically and disagrees with Defendants that the Cuban Government required them to use the Terminal. *Id.*

The Court’s analysis begins with the text of the statute. See *Catalyst*, 14 F.4th at 1307. Under the plain text of the LIBERTAD Act, use of the Terminal must have been “incident to lawful travel to Cuba” and “necessary to the conduct of *such travel*,” i.e., “travel to Cuba” § 6023(13)(B)(iii) (emphasis added). “Such travel” does not mean “travel to Havana” or any other particular part of Cuba. Thus, if it was not necessary for Defendants to use the Terminal to travel to Cuba, then their use of the Terminal does meet the lawful travel exception.

“To determine the ordinary meaning of an undefined statutory term, we often look to dictionary definitions for guidance.” *Spencer v. Specialty Foundry Prod. Inc.*, 953 F.3d 735, 740 (11th Cir. 2020) (“internal quotation marks omitted). Also, “we look at how a phrase was defined at the time the statute was drafted and enacted.” *Sanders v. Jackson*, 209 F.3d 998, 1000 (7th Cir. 2000).

The Black’s Law Dictionary edition in effect in 1996, when the LIBERTAD Act was enacted, states that necessary can have different meanings:

This word must be considered in the connection in which it is used, as it is a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or it may import that which is only convenient, useful, appropriate, suitable, proper, or conducive to the end sought. It is an adjective expressing degrees, and may express mere convenience or that which is indispensable or an absolute physical necessity. It may mean something which in the accomplishment of a given object cannot be dispensed with, or it may mean something

reasonably useful and proper, and of greater or lesser benefit or convenience, and its force and meaning must be determined with relation to the particular object sought.

Necessary, Black's Law Dictionary, 1029 (6th ed. 1990).

Non-legal dictionaries, however, generally set forth a strict definition of necessary. For example, at the time the statute was enacted, the Oxford English Dictionary defined "necessary" as "[i]ndispensable, requisite, essential, needful; that cannot be done without." *Necessary*, OED Online, Oxford University Press (2d. ed. 1989), *available at* <https://www.oed.com/oed2/00156288> (last visited Mar. 16, 2022). Merriam-Webster's Collegiate Dictionary defined necessary as "an indispensable item: ESSENTIAL." *Necessary*, Merriam-Webster's Collegiate Dictionary, 776 (10th ed. 1996). And Webster's New World College Dictionary defined necessary as "that cannot be dispensed with," "essential," "indispensable," "that must be done," "mandatory," "not voluntary," "not free to choose," and "compelled by circumstances." *Necessary*, Webster's New World College Dictionary, 905 (3d ed. 1996).

The Court finds that the LIBERTAD Act employs the strict definition of the word necessary. "Like ordinary English speakers, the common law uses 'necessary' in this strict sense of essential or indispensable." *Vorchheimer v. Philadelphian Owners Ass'n*, 903 F.3d 100, 106 (3d Cir. 2018). "[W]hen Congress wants to loosen necessity to mean just 'sufficiently important,' it uses the phrase 'reasonably necessary.'" *Id.* at 107; *see Ayestas v. Davis*, 138 S. Ct. 1080, 1093 (2018) ("[18 U.S.C. § 3599] appears to use the term 'necessary' to mean something less than

essential. The provision applies to services that are ‘reasonably necessary,’ but it makes little sense to refer to something as being ‘reasonably essential.’”). In the LIBERTAD Act, Congress could have easily excluded from the definition of trafficking transactions that were “[reasonably] necessary to the conduct of” lawful travel. But Congress did not. Courts “are not allowed to add or subtract words from a statute; we cannot rewrite it.” *Friends of Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1224 (11th Cir. 2009).

Moreover, a strict interpretation of necessity would further the LIBERTAD Act’s goal of “protect[ing] United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” § 6022(1), (2), (6). If Defendants’ interpretation of necessity is correct, then traffickers in confiscated property may avoid liability by simply showing that using the property was convenient.

With the correct view of necessity in place, the undisputed facts show that it was not necessary (*i.e.*, essential) for Defendants to use the Terminal to Cuba—indeed, Defendants were not required to travel to Havana at all. Concerning Carnival, it is undisputed that the U.S. Government did not require Carnival to cruise to Havana. *Carnival*, ECF Nos. [332] ¶ 46, [374] ¶ 46. Nor did the U.S. Government direct Carnival where to dock its ships in Cuba. *Id.*, ECF Nos. [332] ¶ 47, [374] ¶ 47. It was not necessary for a Carnival cruise ship to dock at the Terminal to cruise to Santiago de Cuba, Cuba, or Cienfuegos, Cuba. *Id.*, ECF Nos. [332] ¶ 50, [374] ¶ 50. Carnival could, and did, dock ships and embark and disembark its passengers at Santiago de Cuba and Cienfuegos,

including by tendering offshore. *Id.*, ECF Nos. [332] ¶¶ 53–54, [374] ¶¶ 53–54.

Concerning MSC, it is undisputed that the U.S. Government did not require MSC SA to cruise to Havana. *Id.*, ECF Nos. [224] ¶ 70, [253] ¶ 70. Nor did the U.S. Government instruct, direct or designate MSC SA to use the Terminal in its cruises to Cuba. *Id.*, ECF Nos. [224] ¶ 73, [253] ¶ 73. The U.S. Government did not inform MSC SA that it could not go to another port in Cuba besides Havana. *Id.*, ECF Nos. [224] ¶ 74, [253] ¶ 74. Moreover, the Cuban Government authorized MSC ships to sail to Punta Frances, Isla de la Juventud, Cuba, and to transport passengers to and from shore by tender boats. *Id.*, ECF Nos. [224] ¶ 93, [253] ¶ 93. MSC SA could and did embark and disembark passengers in Punta Frances. *Id.*, ECF Nos. [224] ¶ 94, [253] ¶ 94.

Concerning Royal Caribbean, it is undisputed that the U.S. Government did not direct Royal Caribbean where to sail in Cuba. *Royal Caribbean*, ECF Nos. [141] ¶ 59, [172] ¶ 59. Nor did the U.S. Government require Royal Caribbean to dock at the Terminal. *Id.*, ECF Nos. [141] ¶ 60, [172] ¶ 60. The Cuban Government likewise did not require Royal Caribbean to cruise to Havana. *Id.*, ECF Nos. [141] ¶ 61, [172] ¶ 61. Nor did the Cuban Government require that Royal Caribbean use the Terminal to cruise to Cuba. *Id.*, ECF Nos. [141] ¶ 62, [172] ¶ 62. In addition, the ports of Cienfuegos and Santiago de Cuba have immigration, customs, and medical screening capabilities. *Id.*, ECF Nos. [141] ¶ 75, [172] ¶ 75. And it is undisputed that Royal Caribbean ships did not need to use the Terminal to sail to Cienfuegos or Santiago. *Id.*, ECF Nos. [141] ¶ 74, [172] ¶ 74.

Concerning Norwegian, it is undisputed that the Cuban Government did not require that Norwegian stop at a particular port in Cuba on any particular day. *Norwegian*, ECF Nos. [228] ¶ 54, [282] ¶ 54. The Cuban Government authorized Norwegian to berth at Santiago de Cuba and Cienfuegos. *Id.*, ECF Nos. [228] ¶ 55, [282] ¶ 55. Norwegian could, and did, dock its ships and embark and disembark its passengers at Santiago and Cienfuegos. *Id.*, ECF Nos. [228] ¶ 59, [282] ¶ 59. Norwegian's ships also anchored offshore and tendered passengers to shore in Santiago de Cuba and Cienfuegos. *Id.*, ECF Nos. [228] ¶ 60, [282] ¶ 60. The port facilities in the Cuban ports of Santiago and Cienfuegos housed medical screening, immigration, and customs services for cruise passengers. *Id.*, ECF Nos. [228] ¶ 62, [282] ¶ 62. In addition, Norwegian acknowledges that persons could satisfy then-existing OFAC travel-category restrictions by visiting cities in Cuba other than Havana. *Id.*, ECF Nos. [228] ¶ 58, [282] ¶ 58.

It is also notable that other cruise lines sailed to other parts in Cuba. From 2017 to 2019, Viking Cruises offered cruises to Cienfuegos that transported passengers to Havana by bus for a one or two-day excursion. *MSC*, ECF Nos. [224] ¶ 90, [253] ¶ 90; *Royal Caribbean*, ECF Nos. [141] ¶ 81, [172] ¶ 81. Other cruise lines, such as Thomson, Fred Olsen, and Noble Caledonia, offered cruises to Cuba that stopped in Cienfuegos, Santiago, or Holguin, but did not include a stop in Havana. *MSC*, ECF Nos. [224] ¶ 98, [253] ¶ 98; *Royal Caribbean*, ECF Nos. [141] ¶ 67, [172] ¶ 67.

Defendants contend, and Havana Docks disputes, that when they traveled to *Havana*, they were required by the Cuban Government to use the

Terminal. In their Omnibus Statement of Facts, Defendants submit that “[d]uring the time they were sailing to Havana, Defendants’ ships docked at Pier 1, which is one of the three piers at the Terminal, and that “[t]he Cuban Government required Defendants to dock at that pier, at that terminal, when calling in Havana.” *Carnival*, ECF No. [331] ¶¶ 22–23. According to Defendants, the Cuban Government denied their requests to tender passengers offshore or dock at other facilities in Havana. *Id.* ¶ 23. Moreover, Defendants contend that Cuban pilots boarded the ships and docked them at Pier 1 themselves, and that passengers tendered offshore, if available, would still have had to clear immigration and customs. *Id.* ¶¶ 24–25. Even taking Defendants’ facts as true, travel to the *city of Havana* was not “necessary” for Defendants to conduct lawful travel to the *country of Cuba*.

The Court determines that the “necessary” prong has not been established by the Defendants, and Defendants have failed to meet their burden on the lawful travel exception affirmative defense. For these additional reasons, Havana Docks is entitled to summary judgment on Defendants’ lawful travel exception defense. *Carnival*, ECF No [160] at 18; *MSC*, ECF No. [115] at 16, [133] at 15; *Royal Caribbean*, ECF No. [59] at 5, *Norwegian*, ECF No. [107] at 14.

2. *Ex Post Facto* Clause

Defendants contend that in violation of the *Ex Post Facto* clause (as well as the Fifth Amendment Taking and Due Process Clauses), the application of the LIBERTAD Act after its suspension and subsequent licensure is impermissibly retroactive. *Carnival*, ECF No. [330] at 28–30. Havana Docks contends that the

Court already ruled that Title III does not apply retroactively because its effective date was not suspended; rather, the right to bring a cause of action was suspended. *Id.*, ECF No. [389] at 30–31. Havana Docks is correct. As this Court previously found, “liability for trafficking under Title III attached beginning on November 1, 1996, and the consistent suspension of the right to bring an action under Title III did not affect this liability.” *Havana Docks Corp. v. MSC Cruises SA Co.*, 484 F. Supp. 3d 1177, 1200 (S.D. Fla. 2020). Accordingly, “the imposition of liability under Title III is not retroactive.” *Id.* Therefore, Havana Docks is entitled to summary judgment on Carnival’s sixth affirmative defense, MSC’s sixth affirmative defense, Royal Caribbean’s tenth affirmative defense, and Norwegian’s fourth affirmative defense. *Carnival*, ECF No. [160] at 19; *MSC*, ECF No. [115] at 17, [133] at 16; *Royal Caribbean*, ECF No. [59] at 6; *Norwegian*, ECF No. [107] at 14.

3. *The Fifth Amendment’s Due Process Clause*

Defendants argue that Havana Docks seeks to punish acts that were licensed and encouraged, in violation of due process principles. *Carnival*, ECF No. [330] at 27. Havana Docks responds that this Court has already rejected this “encouragement” defense, and that the U.S. Government did not license or authorize trafficking in confiscated property. *Id.*, ECF No. [389] at 29–30. Havana Docks is correct. As this Court previously explained, “[n]either the government’s encouragement and licensure nor the history of suspending Title III is sufficient to establish a lack of fair notice under the Due Process Clause.” *Havana Docks Corp. v. MSC Cruises SA Co.*, 484 F. Supp. 3d 1177, 1201 (S.D. Fla. 2020).

“Moreover, the government’s encouragement to travel to Cuba and to increase commercial relations with Cuba does not in any way absolve [Defendants] of [their] obligations to also comply with federal law—namely, by not trafficking in confiscated property without the consent of a Title III claimant.” *Id.* Therefore, Havana Docks is entitled to summary judgment on Carnival’s fourth affirmative defense; MSC’s fourth affirmative defense; Royal Caribbean’s third, fourth, eleventh, twenty-fifth, and twenty-sixth affirmative defense; and Norwegian’s twenty-first affirmative defenses. *Carnival*, ECF No. [160] at 18; *MSC*, ECF No. [115] at 16, [133] at 15; *Royal Caribbean*, ECF No. [59] at 6, 9; *Norwegian*, ECF No. [107] at 18.

4. *Expiration of the Concession*

Based on binding Eleventh Circuit precedent, this Court has already rejected the argument that Defendants could not have trafficked in a time-limited concession that expired in 2004. *See Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 19-CV-23590, 2020 WL 1905219, at *8 (S.D. Fla. Apr. 17, 2020); *see also Glen*, 450 F.3d at 1255. (“The Helms–Burton Act refers to the property interest that former owners of confiscated property now have as ownership of a “claim to such property.” 22 U.S.C. § 6082(a)(1)(A). When (or if) the portion of Title III that allows private litigants to bring lawsuits becomes effective, actions brought pursuant to the new statutory scheme would be actions brought “on a claim to the confiscated property” against traffickers in the property. 22 U.S.C. § 6082(a)(4)”). Therefore, Havana Docks is entitled to summary judgment on Carnival’s fourteenth affirmative defense, MSC’s thirteenth affirmative defense, Royal Caribbean’s

second affirmative defense, and Norwegian’s twelfth affirmative defense. *Carnival*, ECF No. [160] at 20; *MSC*, ECF No. [115] at 18, [133] at 17; *Royal Caribbean*, ECF No. [59] at 5; *Norwegian*, ECF No. [107] at 16.

5. *Failure to State a Claim*

Failure to state a claim is not an affirmative defense, and this case survived the motion-to-dismiss stage. *See Affiliati Network, Inc. v. Wanamaker*, No. 18-22576-CIV, 2019 WL 7376766, at *8 (S.D. Fla. Nov. 25, 2019), *aff’d* 847 F. App’x 583 (11th Cir. 2021) (granting summary judgment on failure to state a claim defense). Therefore, Havana Docks is entitled to summary judgment on Carnival’s fifteenth affirmative defense, MSC’s fourteenth affirmative defenses, Royal Caribbean’s twenty-second and twenty-eighth affirmative defense, and Norwegian’s thirteenth affirmative defense. *Carnival*, ECF No. [160] at 20; *MSC*, ECF No. [115] at 18, [133] at 17; *Royal Caribbean*, ECF No. [59] at 9; *Norwegian*, ECF No. [107] at 16.

6. *Lack of Knowledge and Intent*

Havana Docks argues that Defendants’ lack of knowledge and intent defense is a mere denial. *See Carnival*, ECF Nos. [336] at 22–23. Defendants do not dispute that assertion. *See Carnival*, [368] at 25–26. Moreover, the Court has already concluded that Defendants knowingly and intentionally trafficked as a matter of law. Therefore, Havana Docks is entitled to summary judgment on MSC’s twelfth affirmative defense, Royal Caribbean’s twenty-first and twenty-seventh affirmative defense, and Norwegian’s eleventh affirmative defense. *MSC*, ECF No. [115] at 18,

[133] at 17; *Royal Caribbean*, ECF No. [59] at 9; *Norwegian*, ECF No. [107] at 16.⁴⁴

7. *Lack of Standing Due to Lack of Injury-in-Fact*

This Court has already determined that that Havana Docks suffered injury-in-fact and that it has standing to bring its claims. *See, e.g., Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 484 F. Supp. 3d 1215, 1227–29 (S.D. Fla. 2020). As the Court explained, Havana Docks’ Title III claims satisfy the four elements of injury-in-fact: legally protected interest, concreteness, particularization, and imminence. *Id.* at 1227; *see Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020) (setting forth elements necessary to establish injury-in-fact). First, under the LIBERTAD Act, “trafficking in confiscated property is an invasion of a legally protected interest,” and “[t]he remedy for the violation of that right is compensation from third parties for trafficking.” *Havana Docks*, 484 F. Supp. 3d at 1227. Second, Havana Docks’ injury was concrete “because it is not receiving the benefit of its interest in the [Terminal] and [Defendants’] subsequent trafficking in the confiscated property has undermined [Havana Docks’] right to compensation for that expropriation.” *Id.* at 1228. Third, “Havana Docks’ injuries here are particularized because, rather than presenting a generalized harm, Havana Docks’ injury is entirely personalized to its interest in its Certified Claim to the [Terminal].” *Id.* at 1229. Fourth, imminence is established because “Havana Docks’ injury . . . is actual and not conjectural.” *Id.*

⁴⁴ *Carnival* withdrew this defense. *See Carnival*, ECF No. [279] at 4.

Defendants argue that the intervening case of *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021) shows that Havana Docks lacks standing. *TransUnion* held that “Congress’s creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III[.]” *Id.* at 2205. But decisions after *TransUnion* persuasively explain that a LIBERTAD Act plaintiff still suffers an injury-in-fact. *See Glen v. Am. Airlines, Inc.*, 7 F.4th 331, 334 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 863 (2022); *see also Sucesores de Don Carlos Nunez y Dona Pura Galvez, Inc. v. Societe Generale, S.A.*, No. 20-CV-851 (KMW), 2021 WL 6065758, at *7 (S.D.N.Y. Dec. 22, 2021). As the court in *Societe Generale* observed:

It is not necessary that Defendants benefit from trafficking in ways that correspond to an equal and opposite detriment to Plaintiffs. The Fifth Circuit in *Glen v. American Airlines* [7 F.4th 331, 334 (5th Cir. 2021)] held a Helms-Burton Act injury to be concrete in a case analogous to this one. In *American Airlines*, the owner of a claim to confiscated beachfront land alleged that the airline trafficked in confiscated property by operating a website through which travelers booked twelve reservations at hotels built on the confiscated beachfront land. *American Airlines*, 7 F.4th at 334. The Fifth Circuit held the plaintiff’s injury to be concrete even though he would not have been entitled to the booking fees from those reservations if he did own and control the beachfront property. *See id.*; *see also Trip Advisor*, 529 F. Supp. 3d at 327 (similar). The Court is

persuaded that a plaintiff is injured concretely when she is shut out wrongfully from the gains produced by exploiting property that is rightfully hers. Under the relevant precedents, then, Plaintiffs have alleged a sufficient injury in fact for Article III standing.

Id. at 8.

Havana Docks alleges an injury that is entirely separate from the confiscation of its property rights by the Cuban Government. The use of Havana Docks' property without its authorization constitutes a tangible injury. Accordingly, Havana Docks is entitled to summary judgment on Carnival's eighth affirmative defense, MSC USA's and MSC SA's eighth affirmative defense, Royal Caribbean's eighth affirmative defense, and Norwegian's sixth affirmative defense. *Carnival*, ECF No. [160] at 19; *MSC*, ECF No. [115] at 17, [133] at 18; *Royal Caribbean*, ECF No. [59] at 6; *Norwegian*, ECF No. [107] at 15.

8. *Lack of Indemnity Right*

Havana Docks argues that Defendants' lack of indemnity right defense is a mere denial. *See Carnival*, ECF Nos. [336] at 23–24. Defendants do not dispute that assertion. *See Carnival*, [368] at 25–26. Moreover, the Court as already determined that, under the Certified Claim, the Cuban Government confiscated Havana Docks' interest in the Terminal, without just compensation. The Certified Claim is now the property interest upon which Havana Docks' claim is premised. *See Glen*, 450 F.3d at 1255. Therefore, Havana Docks is entitled to summary judgment on Carnival's twenty-fourth affirmative defense, MSC USA's twentieth affirmative defense, MSC SA's twenty-first affirmative defense, Royal

Caribbean’s twenty-fourth affirmative defense, and Norwegian’s nineteenth affirmative defense. *Carnival*, ECF No. [160] at 22; *MSC*, ECF Nos. [115] at 20, [133] at 19; *Royal Caribbean*, ECF No. [59] at 8; *Norwegian*, ECF No. [107] at 17.

9. *Lack of Causation*

Havana Docks argues that Defendants’ lack of causation defense is a mere denial. *See Carnival*, ECF Nos. [336] at 24. Defendants do not dispute that assertion. *See Carnival*, [368] at 25–26. Moreover, the Court has determined that Havana Docks has established all necessary elements for a Title III claim. Therefore, Havana Docks is entitled to summary judgment on Carnival’s eighteenth affirmative defense, MSC USA’s and MSC’s seventeenth affirmative defense, Royal Caribbean’s ninth affirmative defense, and Norwegian’s sixteenth affirmative defense. *Carnival*, ECF No. [160] at 21; *MSC*, ECF No. [115] at 19, [133] at 18; *Royal Caribbean*, ECF No. [59] at 9; *Norwegian*, ECF No. [107] at 17.

10. *Lack of Use of Claimed Property*

Havana Docks argues that Defendants’ defense disputing that they trafficked in all property certified by the FCSC is a mere denial. *See Carnival*, ECF Nos. [336] at 23–24. Defendants do not dispute that assertion. *See Carnival*, ECF No. [368] at 25–26. In addition, as explained in this Order, the FCSC certified that Havana Docks had an interest in the Terminal; the Court has also determined that Defendants knowingly and intentionally trafficked through their use of the Terminal. And as the Court previously recognized, the LIBERTAD Act “imposes liability for trafficking in . . . broadly defined

‘confiscated property’ — a term that . . . is not limited solely to the interest [Havana Docks] originally owned in the [Terminal].” *MSC Cruises*, 455 F. Supp. 3d at 1374. Therefore, Havana Docks is entitled to summary judgment on Carnival’s eighth affirmative defense, MSC’s fifteenth affirmative defense, Royal Caribbean’s thirteenth affirmative defense, and Norwegian’s fourteenth affirmative defense. *Carnival*, ECF No. [160] at 20; *MSC*, ECF No. [115] at 19, [133] at 17–18; *Royal Caribbean*, ECF No. [59] at 7; *Norwegian*, ECF No. [107] at 16.

11. *Article II of the United States Constitution*

Article II of the United States Constitution vests executive power exclusively with the President of the United States. U.S. Const. art. II § 1. Havana Docks moves for summary judgment on Defendants’ Article II affirmative defense, arguing that foreign policy decisions by the executive branch do not have the force of law, and Title III does not impose liability based on foreign policy decisions. *Carnival*, ECF No. [336] at 27. Defendants respond that the LIBERTAD Act violates Article II because “Title III’s private right of action empowers a private plaintiff to sue over—and thus asks an Article III court to decide—not only private property rights but the validity of foreign policy determinations that are relegated to the Executive Branch.” *Id.*, ECF No. [368] at 27. Defendants are incorrect.

Title III of the LIBERTAD Act does not empower plaintiffs to invalidate foreign policy determinations made by the Executive Branch. Rather, Title III provides a private cause of action to victims of confis-

cations by the Cuban Government against persons who traffic in that confiscated property. § 6082(a)(1)(A); *see Glen*, 450 F.3d at 1255. Nor has the Court invalidated or questioned the foreign policy decisions that led OFAC to amend the CACR to remove procedural requirements for people-to-people travel. To the contrary, the Court has analyzed whether Defendants *complied* with the requirements for people-to-people travel under the CACR in order to determine whether Defendants engaged in lawful travel to Cuba, an affirmative defense in this case. *Garcia-Bengochea*, 407 F. Supp. 3d at 1286. Although this case necessarily stems from the ephemera of various political climates, this Court's Order does not question or invalidate those foreign policy decisions, and thus does not implicate Article II's power-vesting provision.

As such, Havana Docks is entitled to summary judgment on Carnival's seventh affirmative defense, MSC USA's and MSC SA's seventh affirmative defense, Royal Caribbean's nineteenth affirmative defense, and Norwegian's fifth affirmative defense. *Carnival*, ECF No. [160] at 19; *MSC*, ECF No. [115] at 17, [133] at 16; *Royal Caribbean*, ECF No. [59] at 8; *Norwegian*, ECF No. [107] at 15.

12. *Act of State Doctrine*

As the Eleventh Circuit has held, the LIBERTAD Act “explicitly forecloses use of the act of state doctrine as a defense to causes of action for liability for trafficking, the statutory cause of action created by 22 U.S.C. § 6082(a)(1).” *Glen*, 450 F.3d at 1256; *see* § 6082(a)(6) (“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).”). Defendants recognize that

binding Eleventh Circuit precedent forecloses their defense, but Defendants seek to preserve the defense for appellate purposes. *Carnival*, ECF No. [368] at 30. As such, Havana Docks is entitled to summary judgment on Carnival’s nineteenth affirmative defense, MSC USA’s and MSC SA’s eighteenth affirmative defense, Royal Caribbean’s sixteenth affirmative defense, and Norwegian’s seventeenth affirmative defense. *Carnival*, ECF No. [160] at 21; *MSC*, ECF No. [115] at 19, [133] at 18; *Royal Caribbean*, ECF No. [59] at 7; *Norwegian*, ECF No. [107] at 17.

13. *Extraterritorial Application of United States Law*

As explained in this Order, both the LIBERTAD Act and the CACR apply extraterritorially. The LIBERTAD Act’s broad reach “caused an international uproar among United States’ allies due to the extraterritorial reach of Title III.” *Odebrecht*, 876 F. Supp. 2d at 1311–12. The CACR places “restrictions on any ‘[p]erson . . . subject to the jurisdiction of the United States,’ . . . which is defined by regulation to include U.S. corporations, their domestic and foreign subsidiaries, and any foreign company owned or controlled by a U.S. citizen.” *Odebrecht*, 715 F.3d at 1276 (quoting 50 U.S.C. § 4305(b)(1) and citing 31 C.F.R. § 515.329). Therefore, Havana Docks is entitled to summary judgment on Carnival’s fifth affirmative defense, MSC SA’s and MSC USA’s fifth affirmative defense, Royal Caribbean’s ninth affirmative defense, and Norwegian’s third affirmative defense. *Carnival*, ECF No. [160] at 19; *MSC*, ECF No. [115] at 17, [133] at 16; *Royal Caribbean*, ECF No. [59] at 8; *Norwegian*, ECF No. [107] at 14.

14. *Election of Remedies under Title III*

Title III's election of remedies provision states:

(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.

§ 6082(f)(1).

Defendants interpret this provision as prohibiting Havana Docks from bringing separate actions against each Defendant. *Carnival*, ECF No. [368] at 30. A plain reading of § 6082 belies that assertion. Section (A) of § 6082(f)(1) states that a Title III plaintiff cannot bring another civil action “under the common law, Federal law, or the law of any of the several States . . . by reason of the same subject matter[.]” § 6082(f)(1)(A). Conversely, subsection (B) of § 6082(f)(1) states that if a plaintiff brings a cause of action “under the common law or any provision of law other than this section . . . for which an action would

otherwise be cognizable under this section,” then the plaintiff cannot also maintain a Title III action. In other words, a plaintiff must elect to seek relief under Title III or relief under other sources, like the common law, but not both. That is the reason why the four actions in this case raise only one count: violation of the LIBERTAD Act. Defendants’ interpretation would raise form over substance and be unworkable, forcing Title III plaintiffs to sue all persons who may have trafficked in confiscated property in one case, regardless of how different the individual facts may be.

Accordingly, Havana Docks is entitled to summary judgment on Carnival’s seventeenth affirmative defense, MSC USA’s sixteenth affirmative defense, MSC SA’s sixteenth affirmative defense, Royal Caribbean’s fourteenth affirmative defense, and Norwegian’s fifteenth affirmative defense. *Carnival*, ECF No. [160] at 20–21; *MSC*, ECF No. [115] at 19, [133] at 18; *Royal Caribbean*, ECF No. [59] at 7; *Norwegian*, ECF No. [107] at 16.

15. *Failure to Join an Indispensable Party*

Each Defendant raised an affirmative defense contending that Havana Docks’ President, Mickael Behn, is an indispensable party to this action. *Carnival*, ECF No. [160] at 21; *MSC*, ECF No. [115], [133] at 17; *Royal Caribbean*, ECF No. [59] at 7; *Norwegian*, ECF No. [107] at 18–19. Havana Docks contends that Behn is not an indispensable party because only Havana Docks owns a claim for confiscated property. *Carnival*, ECF No. [336] at 30–31. Defendants do not address this affirmative defense in their response to Havana Docks’ summary judgment motion, waiving the issue. *See Trans-america Leasing, Inc. v. Inst. of London Under-*

writers, 267 F.3d 1303, 1308 n.1 (11th Cir. 2001). In any event, Behn’s joinder is not necessary to afford the parties’ complete relief. *See* Fed. R. Civ. P. 19(a)(1)(A). Havana Docks has always been the owner of the Certified Claim. *Carnival*, ECF Nos. [337] ¶¶ 40–41, [367] ¶¶ 40–41.

Therefore, Havana Docks is entitled to summary judgment on Carnival’s twenty-first affirmative defense, MSC USA’s and MSC SA’s eleventh affirmative defense, Royal Caribbean’s fifteenth affirmative defense, and Norwegian’s twenty-second affirmative defense. *Carnival*, ECF No. [160] at 21; *MSC*, ECF No. [115] at 18, [133] at 17; *Royal Caribbean*, ECF No. [59] at 7; *Norwegian*, ECF No. [107] at 18–19.

16. *Purpose of Certified Claim*

Carnival, MSC SA, MSC USA, and Royal Caribbean contend as affirmative defenses that a Certified Claim used to obtain reparations from the Cuban Government cannot be used later in a civil lawsuit against a third party. This defense amounts to a mere denial of Havana Docks’ claims. Therefore, Havana Docks is entitled to summary judgment on Carnival’s twenty-eighth affirmative defense, MSC SA’s and MSC USA’s twentieth affirmative defense, and Royal Caribbean’s eighteenth affirmative defense. *Carnival*, ECF No. [160] at 23; *MSC*, ECF Nos. [115] at 20, [133] at 19; *Royal Caribbean*, ECF No. [59] at 8.

17. *Statute of Limitations or Repose*

Title III of the LIBERTAD Act states that “[a]n 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. § 6084. Carnival argues in its Individual Motion For

Summary Judgment that § 6084 is a statute of repose, not a statute of limitations, barring a claim for pre-2004 conduct—*i.e.*, those involving Airtours and Costa. *See Carnival*, ECF No. [324] at 14–18. Carnival further contends that the continuing violation doctrine does not apply to statutes of repose. *Id.* at 17–18.

Havana Docks responds that under the plain language § 6084, Defendants’ trafficking did not “cease to occur” until May or June of 2019. *Carnival*, ECF No. [333] at 17–18; *MSC*, ECF No. [225] at 17–18; *Royal Caribbean*, ECF No. [142] at 21; *Norwegian*, ECF No. [229] at 19. Alternatively, Havana Docks argues that § 6084 is a statute of limitations subject to equitable tolling. *Carnival*, ECF No. [378] at 9–14.⁴⁵

MSC raises a different statute of limitations argument, which targets only the Cuba-to-Cuba cruises. *MSC*, ECF No. [256] at 11–12. MSC contends that it stopped homeporting in Havana in March 2019, but Havana Docks did not advance a Cuba-to-Cuba trafficking theory until June 2021 at the earliest, when it sought discovery regarding Cuba-to-Cuba cruises. *Id.* MSC also contends that an amendment to include Cuba-to-Cuba cruises would not relate back to the filing of the original complaint. *Id.* at 12 n.6.

⁴⁵ Havana Docks also argues that Carnival waived the statute of repose defense when it stated, in a motion to dismiss, that Havana Docks has a “cause of action against anyone who used the port between 1996 and 2004.” *Carnival*, ECF No. [378] at 8; *see id.*, ECF No. [17] at 22 n.3. The Court disagrees. Carnival was merely expressing its position that Havana Docks has no cause of action after the Concession expired. The statement was not an express waiver of a statute of repose defense.

Royal Caribbean has withdrawn its statute of limitations defense. *Royal Caribbean*, ECF No. [173] at 7.⁴⁶ Therefore, Havana Docks is entitled to summary judgment on Royal Caribbean's twenty-third affirmative defense. Similarly, Norwegian did not respond to Havana Docks' statute of limitations arguments. *See Norwegian*, ECF No. [281]. Therefore, Havana Docks is entitled to summary judgment on Norwegian's twentieth affirmative defense.

Concerning Carnival, as already noted, Carnival's alleged trafficking through Airtours and Costa is an academic question. Carnival is liable under the LIBERTAD Act for using the Terminal from 2016 to 2019, regardless of Airtours' and Costa's use of the Terminal before those dates. Consequently, the Court need not address the statute of limitations/repose issue relative to Carnival, and summary judgment on that defense is denied as moot.⁴⁷

As to MSC, as the Court already explained, Havana Docks' Second Amended Complaint, which was filed in September 2020, encompasses Cuba-to-Cuba cruises. *See MSC*, ECF No. [104]. Claims regarding Cuba-to-Cuba cruises were therefore filed within the two-year statute of limitation period. Havana Docks is entitled to summary judgment on

⁴⁶ Royal Caribbean has also withdrawn its ninth affirmative defense (foreign government conduct) and twelfth affirmative defense (improper venue), *Royal Caribbean*, ECF No. [173] at 7. Therefore, summary judgment is entered against Royal Caribbean on those defenses.

⁴⁷ Nor does not Court have to address Carnival's twenty-second affirmative defense that the trading or holding of publicly traded securities is not actionable under the LIBERTAD Act. *Carnival*, ECF No. [160] at 22.

MSC USA's and MSC SA's third affirmative defense. *MSC*, ECF Nos. [115] at 16, [133] at 15.⁴⁸

18. *Eighth Amendment*

Carnival, Royal Caribbean, and Norwegian raise the Eighth Amendment of the U.S. Constitution as an affirmative defense. *Carnival*, ECF No. [160] at 20 (Def. No. 12); *Royal Caribbean*, ECF No. [59] at 8 (Def. No. 20); *Norwegian*, ECF No. [107] at 16 (Def. No. 10). Havana Docks argues that the Eighth Amendment's Excessive Fines Clause does not apply to awards of money damages in a civil action. *Carnival*, ECF No. [333] at 18; *Royal Caribbean*, ECF No. [142] at 20–21; *Norwegian*, ECF No. [229] at 18–19. Carnival, Royal Caribbean, and Norwegian disagree, positing that the LIBERTAD Act allows for an excessive civil penalty to further the Government's goal of punishing and deterring trafficking in

⁴⁸ Havana Docks also moved for summary judgment regarding MSC SA's twenty-third affirmative defense (licensing), twenty-fourth affirmative defense (waiver), and twenty-fifth affirmative defense (equitable estoppel), and twenty-sixth affirmative defense (laches). *MSC*, ECF No. [225] at 9–21. In a footnote, and only relative to Cuba-to-Cuba cruises, MSC states that the defenses apply because Havana Docks “never notified MSC Cruises S.A. or objected to its use of the Terminal for four years.” *MSC*, ECF No. [256] at 12. However, “[w]hen a federal statute enumerates defenses to liability, without specifying that other unenumerated defenses are available, the enumerated statutory defenses are generally deemed to be the exclusive defenses available under the statute.” *United States v. Barlow*, 576 F. Supp. 2d 1375, 1381 (S.D. Fla. 2008). The LIBERTAD Act already provides for a limitations period, and Havana Docks' claims were brought within that period. Moreover, as the Court has already explained, licensure is not an absolute defense in this case. Havana Docks is thus entitled to summary judgment on MSC SA's twenty-third through twenty-sixth affirmative defense. *MSC*, ECF No. [133] at 19–20.

confiscated property. *Carnival*, ECF No. [373] at 23–24; *Royal Caribbean*, ECF No. [173] at 17–18; *Norwegian*, ECF No. [281] at 19–20.

Defendants also argue that disproportionate damages violate the Fifth Amendment’s Due Process Clause. *Carnival*, ECF No. [330] at 30–31. Defendants raise the disproportionate damages issue within their due process affirmative defenses. *Carnival*, ECF No. [160] at 20 (eleventh affirmative defense); *MSC*, ECF Nos. [115] at 16 (MSC USA’s fourth affirmative defense), [133] at 15 (MSC SA’s fourth affirmative defense); *Royal Caribbean*, ECF No. [59] at 6 (Royal Caribbean’s fifth affirmative defense); *Norwegian*, ECF No. [107] at 15 (Def. No. 9).

Under the Eighth Amendment, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amdt. 8. The Excessive Fines Clause “does not constrain an award of money damages in a civil suit when the government neither has prosecuted the action nor has any right to receive a share of the damages awarded.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 505 n.18 (2008); see *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1308 (11th Cir. 2021) (explaining that “the Excessive Fines Clause applies only to payments imposed by the United States (or the States) and payable to it (or them)”). Here, the U.S. Government has not prosecuted this action nor has the right to receive a share of the damages.

In addition, the Court also already determined that whether a statutory penalty is excessive may not be determined until there is a damages award. See *Havana Docks Corp. v. MSC Cruises SA Co.*, 484 F.

Supp. 3d 1177, 1203 (S.D. Fla. 2020). Although Havana Docks seeks damages in excess of the Certified Claim total of \$9,179,700.88 (plus interest), the LIBERTAD Act states that the certified amount is the presumed measure of damages unless the fair market value of the property is shown, by clear and convincing evidence, to be the most appropriate measure of damages. *See* § 6082. A jury may determine that Havana Docks is entitled to no more than the FCSC certified amount of \$9,179,700.88, plus six percent annual interest from the date of the loss. *See Carnival*, ECF No. [149-1] at 4. As such, Defendants' disproportionate-award argument would likely be moot.

For these reasons, Havana Docks is entitled to summary judgment on Carnival's eleventh and twelfth affirmative defense, Royal Caribbean's fifth and twentieth affirmative defense, Norwegian's ninth and tenth affirmative defense, and MSC's fourth affirmative defense. *Carnival*, ECF No. [160] at 20; *Royal Caribbean*, ECF No. [59] at 8; *Norwegian*, ECF No. [107] at 15–16; *MSC*, ECF Nos. [115] at 16, [133] at 15.

19. *Non-U.S. Sailings*

Under its twenty-ninth affirmative defense, Carnival argues that cruises from Airtours and Costa were legal under foreign law. *Carnival*, ECF No. [373] at 24–26. Explained previously, whether Carnival trafficked through Airtours and Costa is irrelevant to determine whether Carnival is liable for trafficking through its direct use of the Terminal. Therefore, summary judgment on Carnival's twenty-ninth affirmative defense is denied as moot.

VI. CONCLUSION

As set forth above, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants' Omnibus Motion for Summary Judgment, *Havana Docks Corp. v. Carnival Corporation*, No. 19-cv-21724, **ECF No. [330]**; *Havana Docks Corp. v. MSC Cruises, SA, et al.*, No. 19-cv-23588, **ECF No. [216]**; *Havana Docks Corp. v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, **ECF No. [137]**; *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, **ECF No. [227]**, is **DENIED**.

2. Plaintiff Havana Docks Corporation's Omnibus Motion for Partial Summary Judgment, *Havana Docks Corp. v. Carnival Corporation*, No. 19-cv-21724, **ECF No. [336]**; *Havana Docks Corp. v. MSC Cruises, SA, et al.*, No. 19-cv-23588, **ECF No. [222]**; *Havana Docks Corp. v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, **ECF No. [143]**; *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, **ECF No. [232]**, is **GRANTED**.

3. Carnival Corporation's Individual Motion for Summary Judgment, *Havana Docks Corp. v. Carnival Corporation*, No. 19-cv-21724, **ECF No. [324]**, is **DENIED**.

4. Plaintiff Havana Docks Corporation's Individual Motion for Summary Judgment against Carnival Corporation, *Havana Docks Corp. v. Carnival Corporation*, No. 19-cv-21724, **ECF No. [333]**, is **GRANTED IN PART AND DENIED IN PART**. The motion is denied as moot as to Carnival's third affirmative defense (statute of limitations or repose) and twenty-ninth affirmative defense (Non-U.S. Sailings). The motion is otherwise granted.

5. MSC Cruises' Individual Motion for Summary Judgment, *Havana Docks Corp. v. MSC Cruises, SA, et al.*, No. 19-cv-23588, **ECF No. [209]**, is **GRANTED IN PART AND DENIED IN PART**. The motion is granted as to MSC Co., but denied in all other respects.

6. Plaintiff Havana Docks Corporation's Individual Motion for Summary Judgment against MSC Cruises, SA & MSC Cruise (USA). Inc., *Havana Docks Corp. v. MSC Cruises, SA, et al.*, No. 19-cv-23588, **ECF No. [225]**, is **GRANTED**.

7. Defendant's [Royal Caribbean Cruises, Ltd.] Individual Motion for Summary Judgment, *Havana Docks Corp. v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, **ECF No. [132]**, is **DENIED**.

8. Plaintiff Havana Docks Corporation's Individual Motion for Summary Judgment Against Royal Caribbean Cruises, Ltd., *Havana Docks Corp. v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, **ECF No. [142]**, is **GRANTED**.

9. Plaintiff Havana Docks Corporation's Individual Motion for Summary Judgment against Defendant Norwegian Cruise Line, Ltd., *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, **ECF No. [229]**, is **GRANTED**.

10. Norwegian's Individual Motion for Summary Judgment, *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, **ECF No. [230]**, is **DENIED**.

11. Havana Docks' Motion to Exclude the Expert Opinions of Julian Ackert and Pablo Spiller. *Havana Docks Corp. v. Carnival Corporation*, No. 19-cv-21724, ECF No. [328]; *Havana Docks Corp. v. MSC*

Cruises, SA, et al., No. 19-cv-23588, **ECF No. [214]**; *Havana Docks Corp. v. Royal Caribbean Cruises Ltd.*, No. 19-cv-23590, **ECF No. [138]**; *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, **ECF No. [226]**, is **DENIED** as to Julian Ackert. Magistrate Judge Chris M. McAliley's Report and Recommendation, *Havana Docks Corp. v. Carnival Corporation*, No. 19-cv-21724, **ECF No. [425]**, is **ADOPTED**. Accepting each of Julian Ackert's opinions, the Court determines that they do not create a genuine issue of material fact as to Plaintiff's statutory standing. As such, the Court need not consider Havana Docks' partial Objections. *Havana Docks Corp. v. Carnival Corporation*, No. 19-cv-21724, **ECF No. [430]**.

12. Consistent with this Court's Order, the trials scheduled in each case shall proceed solely on the issue of Havana Docks' damages.

DONE AND ORDERED in Chambers at Miami, Florida on March 21, 2022.

/s/ Beth Bloom
BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

Claim No. CU-2492

Decision No. CU-6165

IN THE MATTER OF THE CLAIM OF
HAVANA DOCKS CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant: Davis, Polk & Wardwell
By Peter H. Madden, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by HAVANA DOCKS CORPORATION for \$9,915,879.00, based upon the asserted ownership and loss of its assets nationalized by the Government of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in

accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term ‘property’ means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term “national of the United States” as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that in 1917 claimant corporation was organized under the laws of the State of Delaware. Claimant’s Vice-President and Assistant Comptroller stated that at all times between August 14, 1917 and the presentation of the claim, more than 50 percent of

the outstanding capital stock of all classes has been owned by persons who were United States nationals, and that at the time of filing the claim, of 35,505 outstanding shares of stock of HAVANA DOCKS CORPORATION only 1,003 or approximately 3% of the total outstanding shares were held by persons who were not nationals of the United States. The Commission therefore holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that on the basis of a concession granted by the Government of Cuba, it owned and operated, at the entrance of the harbor of Havana three piers: the "San Francisco", "machine" and "Santa Clara" linked with a large marginal building. The piers and buildings were used for warehousing purposes, cargo deposits, and for merchandise provisionally stored pending Customs clearance. Each pier consisted of a two-story concrete building with an apron equipped with platforms, and a double rail-road track to permit direct unloading of cargo from ships to railroad cars and vice versa. All official port authorities were located within the marginal building, such as the Customs House of Havana, the Inspector General of the Port, the Immigration Department and other governmental agencies, Elevators, escalators, portable cranes, tractors, trailers, fork lift trucks, and other port and dock equipment were part of claimant's installations on the piers and in the warehouses, which were located in the center of harbor activities of the port of Havana.

Based upon the record, the Commission finds that on September 7, 1934, claimant HAVANA DOCKS CORPORATION obtained from the Government of Cuba the renewal of a concession for the construction and operation of wharves and warehouses in the

harbor of Havana, formerly granted to its predecessor concessionaire, the Port of Havana Docks Company; that claimant acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana; that in June, 1946, the property was encumbered with a mortgage in favor of certain bondholders for the amount of \$1,600,000.00 in accordance with Public Instrument of June 1, 1946, recorded in Havana on July 25, 1946; and that claimant corporation also owned the mechanical installations, loading and unloading equipment, vehicles and machinery, as well as furniture and fixtures located in the offices of the corporation.

The record further shows that the Cuban assets of claimant corporation were nationalized by Resolution No. 3, published in the Official Gazette of October 24, 1960, pursuant to Law No. 851 of July 6, 1960, and that the facilities of the company were physically occupied by agents of the Cuban Government on November 21, 1960. Accordingly, the Commission finds that the Cuban assets of HAVANA DOCKS CORPORATION were nationalized by the Government of Cuba on October 24, 1960.

Claimant states that the corporation suffered the following losses:

Land and Concession	\$ 2,000,000.00
Buildings	6,892,557.00
Personal property, equipment, etc.	595,315.00
Securities (1000 common stock shares of Cuban Telephone Company).....	100,000.00
Debts owed by nationalized enter- prises and by the Government of Cuba...	<u>328,007.00</u>
	\$ 9,915,879.00

In support of this valuation of losses claimant submitted, among other things, the following evidence:

- (1) Trial balance as of December 31, 1958;
- (2) Balance sheets for the years 1956, 1957, 1958 and 1959;
- (3) Auditor's report as of December 31, 1958;
- (4) An evaluation of the properties by Mr. Louis Parajon, a civil engineer and former professional appraiser in Cuba; and
- (5) An inventory of the equipment, furniture and fixtures as of December 31, 1959,

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record contains a report of the Office of the Property Register of Havana which shows that in 1928, the concession, then owned by the Fore of Havana Docks Company, had an assessed market value of \$600,000.00, and that a subsequent assess-

ment established the value of the concession at \$5,000,000.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the Balance Sheet for the year ended 1959, supported by the Trial Balance for December 31, 1958. These financial statements reflect the following book values adopted by claimant corporation:

Land and Concession	\$ 2,000,000.00
San Francisco and Machina Piers	4,758,829.00
Santa Clara Pier	2,110,845.00
Equipment.....	419,056.00
Office Furniture and Fixtures	90,616.00
Railroad Tracks	<u>22 883 00</u>
Total	\$ 9,402,229.00

The record indicates that the pier properties are stated at values appraised as of December 31, 1920, plus subsequent additions at cost. The terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation. The equipment, office furniture were acquired more recently and are stated at cost. The appraiser, Louis Parajon states in his report that in 1960 the concession, real property, office and general equipment had a value of \$16,180,000.00 after depreciation, which is considerably more than what the claimant describes as the loss.

The Commission is aware that from 1920 to 1960 real property prices in Havana had increased, and that the values expressed in prices of the year 1920 may not have been realistic in 1960. The Commission, however, notes that during the prior years claimant

corporation allowed for depreciation of the real property and amortization of the concession approximately 1-1/2 per cent per year; and that nothing was added to show any appreciation of the property.

The Commission, therefore, concludes that it would be equitable and appropriate to consider as basic the year 1934 when HAVANA DOCKS CORPORATION obtained the concession for the operation of the docks; to deduct from that year up to the year 1960 one per cent (1%) yearly for amortization of the concession and for the depreciation of the buildings; and further deduct 25% from the stated value of the equipment, furniture and fixtures for wear and tear, assuming that most equipment was in operation during an average time of five years, when it was taken by the Government of Cuba.

The Commission finds that the amount of \$2,000,000 includes not only the value of the concession but also the value of the land and of the piers alongside the property which, in the opinion of the Commission, had a value of \$1,000,000 in the year 1960.

Amortization and depreciation is therefore applicable as follows;

- (a) 1% per year from 1934 to 1960, or 26% on the following values:

Concession	\$ 1,000,000
San Francisco and	
Machina Piers	4,758,829 (structures only)
Santa Clara Pier	2,110,845 (structures only)
Railroad Tracks.....	22,883
	Total \$ 7,892,557
26% thereof.....	\$ 2,052,064.82

(b) 25% from the value of the equipment, office furniture and fixtures of \$509,672..... 127,418.00

Total depreciation \$ 2,179,482.82

As stated above, the real property was encumbered with a mortgage of \$1,600,000 in favor of certain bondholders, but the balance sheet for the year ended December 31, 1959 shows that this funded debt has been reduced to a balance of \$38,386.00 as of that date. Consequently, from the value of the property of \$ 9,402,229.00

must be deducted

for depreciation \$ 2,179,482.82

and the balance of

the funded debt 38,386.00 2,217.868.82

resulting in the net value

of the tangible property,

including concession, of \$ 7,184,360.18

The Commission further finds that claimant corporation was the owner of 1,000 shares of common stock of the Cuban Telephone Company. The Commission has held that the Cuban Telephone Company was nationalized on August 6, 1960 by Resolution No. 1 published by the Government of Cuba pursuant to Law 851, and that the loss sustained by the holders of common stock shares amounted to \$184.0057 per share. (See *Claim of International Telephone & Telegraph Corporation*, Claim No. CU-2615.) Accordingly, claimant suffered a loss as the owner of 1,000 common stock shares in the aggregate amount of \$184,005.70.

The Commission further finds that the amount claimed of \$328,007 for debts owed by nationalized enterprises and by the Cuban Government, included a debt of \$99,097 due from the Government of Cuba, and accounts receivable of \$218,630 due to claimant corporation from trade enterprises nationalized, expropriated

or intervened by the Government of Cuba. The Commission, there-fore, concludes that claimant is entitled to an additional certification of losses for accounts receivable in the amount of \$317,727.00.

The Commission does not deduct liabilities of United States corporations and other entities, except for taxes due to the Cuban Government. (See *Claim of Simmons Company*, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.) In the present claim the record shows that taxes accrued at the end of 1959 due to the Cuban Government amounted to \$16,672.00.

Therefore, from the sum of accounts	
receivable of	\$317,727.00
the tax indebtedness of	<u>16 672 00</u>
is deducted, leaving a net amount	
of receivables of	\$301,055.00

Included in the debt claim is also an amount of \$10,280.00 for handling charges, but the evidence does not disclose that this amount was due from enterprises nationalized, expropriated, intervened or taken by the Government of Cuba, or that the amount was a charge on property which was nationalized, expropriated, intervened or taken by the Cuban Government, as required by Section 502(3) of the Act. Accordingly, the claim for \$10,280.00 for handling charges is denied.

Summarizing, claimant corporation suffered the following losses with-in the meaning of Title V of the International Claims Settlement Act of 1949, as amended:

		<u>Date of loss</u>
Loss of concession and tangible assets	\$7,184,360.18	October 24, 1960
Loss of securities	184,005.70	August 6, 1960
Loss of accounts receivable	<u>301,055.00</u>	October 24, 1960

Total loss \$7,669,420.88

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644) and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 24, 1960	\$7,485,415.18
August 6, 1960	184,005.70

CERTIFICATION OF LOSS

The Commission certifies that HAVANA DOCKS CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Million Six Hundred Sixty-Nine Thousand Four Hundred Twenty Dollars and Eighty-Eight Cents (\$7,669,420.88) with interest thereon at 6% per annum from the re-spective dates of loss to the date of settlement.

Dated at Washington, D.C., and entered as the Proposed Decision of the Commission

Apr. 21, 1971

/s/ Lyle S. Garlock
Chairman
/s/ Theodore Jaffe
Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20379

No CU-2492

Decision No. CU-6165

IN THE MATTER OF THE CLAIM OF
HAVANA DOCKS CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant: Davis Polk & Wardwell
by Douglas M. Galin, Esquire.

Appeal and objections from a Proposed Decision
entered April 12, 1971. Oral hearing requested.

Oral argument September 15, 1971 by Douglas M.
Galin, Esquire

FINAL DECISION

The Commission issued its Proposed Decision on this claim on April 21, 1971, certifying that claimant suffered a loss of \$7,669,420.88 within the scope of Title V of the International Claims Settlement Act of 1949, as amended, resulting from actions of the Government of Cuba.

Claimant, through counsel, objected to the Proposed Decision, and requested an oral hearing which was held on September 15, 1971. In support of the objections claimant submitted an affidavit of John C. Hover, a member of counsel's firm.

In the objections, claimant stated that the concessions and dock facilities had a higher value than the amount determined by the Commission, and that an item of \$10,280.00 for handling charges was improperly denied.

Full consideration having been given to claimant's objections, the supporting affidavit, counsel's argument at the hearing, and the entire record, the Commission now finds that in view of the considerable increase of land values along the Havana waterfront between 1934 and 1960, the value of claimant's concession and tangible assets should be increased from \$7,84,360.18 to \$8,684,360.18.

Regarding the appraisal of Luis Parajon who valued the above properties at \$16,180,000.00, the Commission holds that this appraisal cannot be relied upon to the exclusion of other evidence of record because, inter alia, it does not specify the size and value of the land and improvements thereon separately and individually; and because its findings are based on generalities, not appropriate in this type of evaluation of valuable improved real property.

The Commission further considered claimant's objections with respect to the item of \$10,280.00 for handling charges, and finds that these are, in fact, storage charges for unclaimed merchandise, due and payable by the Government of Cuba, and that they should be included in the Loss, which is restated as follows:

		<u>Date of Loss</u>
Concession and tangible assets	\$8,684,360.18	October 24, 1960
Securities	184,005.70	August 6, 1960
Accounts receivable	301,055.00	October 24, 1960
Debt of Cuban Government	<u>10,280.00</u>	October 24, 1960
Total Loss	\$9,179,700.88	

The interest at the rate of 6% per annum will be included in the instant case as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 184,005.70
October 24, 1960	8,995,695.18

Accordingly, the Certification of Loss in the Proposed Decision is set aside; the following Certification of Loss will be entered; and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that HAVANA DOCKS CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Million One Hundred Seventy-nine Thousand Seven Hundred Dollars and Eighty-eight Cents(\$9,179,700.88) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C., and entered as the Final Decision of the Commission

Sep. 28 1971

/s/ Lyle S. Garlock
Lyle S. Garlock, Chariman
/s/ Theodore Jaffe
Theodore Jaffe, Commissioner

Public Law 104-114
104th Congress

An Act

To seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.
- Sec. 4. Definitions.
- Sec. 5. Severability.

TITLE I—STRENGTHENING INTERNATIONAL
SANCTIONS AGAINST THE
CASTRO GOVERNMENT

- Sec. 101. Statement of policy.
- Sec. 102. Enforcement of the economic embargo of Cuba.
- Sec. 109. Prohibition against indirect financing of Cuba.

- Sec. 104. United States opposition to Cuban membership in international financial institutions.
- Sec. 105. United States opposition to termination of the suspension of the Cuban Government from participation in the Organization of American States.
- Sec. 106. Assistance by the independent states of the former Soviet Union for the Cuban Government.
- Sec. 107. Television broadcasting to Cuba.
- Sec. 108. Reports on commerce with, and assistance to, Cuba from other foreign countries.
- Sec. 109. Authorization of support for democratic and human rights groups and international observers.
- Sec. 110. Importation safeguard against certain Cuban products.
- Sec. 111. Withholding of foreign assistance from countries supporting Juragua nuclear plant in Cuba.
- Sec. 112. Reinstitution of family remittances and travel to Cuba.
- Sec. 113. Expulsion of criminals from Cuba.
- Sec. 114. News bureaus in Cuba.
- Sec. 115. Effect of Act on lawful United States Government activities.
- Sec. 116. Condemnation of Cuban attack on American aircraft.

TITLE II—ASSISTANCE TO A FREE AND
INDEPENDENT CUBA

- Sec. 201. Policy toward a transition government and a democratically elected government in Cuba.
- Sec. 202. Assistance for the Cuban people.
- Sec. 203. Coordination of assistance program; implementation and reports to Congress; reprogramming.
- Sec. 204. Termination of the economic embargo of Cuba.
- Sec. 205. Requirements and factors for determining a transition government.
- Sec. 206. Requirements for determining a democratically elected government.
- Sec. 207. Settlement of outstanding United States claims to confiscated property in Cuba.

TITLE III—PROTECTION OF PROPERTY RIGHTS
OF UNITED STATES NATIONALS

- Sec. 301. Findings.
- Sec. 302. Liability for trafficking in confiscated property claimed by United States nationals.
- Sec. 303. Proof of ownership of claims to confiscated property.
- Sec. 304. Exclusivity of Foreign Claims Settlement Commission certification procedure.
- Sec. 305. Limitation of actions.
- Sec. 306. Effective date.

TITLE IV—EXCLUSION OF CERTAIN ALIENS

Sec. 401. Exclusion from the United States of aliens who have confiscated property of United States nationals or who traffic in such property.

22 U.S.C. 6021 SEC. 2. 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 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 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 SEC. 3. PURPOSES.

The purposes of this Act 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 SEC. 4. DEFINITIONS.

As used in this Act, 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, United States Code.

(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, United States Code.

(4) CONFISCATED.—As used in titles 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, United States Code, 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 206.

(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 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), 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 title III of this Act, the term “property” does not include real property used for residential purposes unless, as of the date of the enactment of this Act—

(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 title 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 206.

(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.

22 U.S.C. 6024 SEC. 5. SEVERABILITY.

If any provision of this Act or the amendments made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, the amendments made by this Act, or the application thereof to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

TITLE I-STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT

22 U.S.C. 6031 SEC. 101. STATEMENT OF POLICY.

It is the sense of the Congress that—

(1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;

(2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council, a mandatory

international embargo against the totalitarian Cuban Government pursuant to chapter VII of the Charter of the United Nations, employing efforts similar to consultations conducted by United States representatives with respect to Haiti;

(3) any resumption of efforts by any independent state of the former Soviet Union to make operational any nuclear facilities in Cuba, and any continuation of intelligence activities by such a state from Cuba that are targeted at the United States and its citizens will have a detrimental impact on United States assistance to such state; and

(4) in view of the threat to the national security posed by the operation of any nuclear facility, and the Castro government's continuing blackmail to unleash another wave of Cuban refugees fleeing from Castro's oppression, most of whom find their way to United States shores, further depleting limited humanitarian and other resources of the United States, the President should do all in his power to make it clear to the Cuban Government that—

(A) the completion and operation of any nuclear power facility, or

(B) any further political manipulation of the desire of Cubans to escape that results in mass migration to the United States,

will be considered an act of aggression which will be met with an appropriate response in order to maintain the security of the national borders of the United States and the health and safety of the American people.

**22 U.S.C. 6032 SEC. 102. ENFORCEMENT OF THE
ECONOMIC EMBARGO OF CUBA.**

(a) POLICY.—

(1) RESTRICTIONS BY OTHER COUNTRIES.—The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states that the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(2) SANCTIONS ON OTHER COUNTRIES.—The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of that Act against countries assisting Cuba.

(b) DIPLOMATIC EFFORTS.—The Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic embargo of Cuba, and are urging foreign governments to cooperate more effectively with the embargo.

(c) EXISTING REGULATIONS.—The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) TRADING WITH THE ENEMY ACT.—

(1) CIVIL PENALTIES.— Subsection (b) of section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16(b)), as added by Public Law 102-484, is amended to read as follows:

“(b)(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any

person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

"(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the direction of the Secretary of the Treasury, be forfeited to the United States Government.

"(3) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

"(4) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code."

(2) CONFORMING AMENDMENT; CRIMINAL FORFEITURE.—Section 16 of the Trading with the Enemy Act is further amended by striking subsection (b), as added by Public Law 102-393.

(3) CLERICAL AMENDMENTS.—Section 16 of the Trading with the Enemy Act is further amended—

(A) by inserting "SEC. 16." before "(a)"; and

(B) in subsection (a) by striking "participants" and inserting "participates".

(e) DENIAL OF VISAS TO CERTAIN CUBAN NATIONALS.—It is the sense of the Congress that the President should instruct the Secretary of State and the Attorney General to enforce fully existing regulations to deny visas to Cuban nationals considered by the Secretary of State to be officers or employees

of the Cuban Government or of the Communist Party of Cuba.

(f) **COVERAGE OF DEBT-FOR-EQUITY SWAPS BY ECONOMIC EMBARGO OF CUBA.**—Section 1704(bX2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) is amended—

(1) by striking “and” at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

“(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and”;

(4) by adding at the end the following flush sentence: “As used in this paragraph, 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, United States Code, with each reference in such section to ‘a foreign state’ deemed to be a reference to ‘Cuba’.”.

(g) **TELECOMMUNICATIONS SERVICES.**—Section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)) is amended by adding at the end the following new paragraphs:

“(5) PROHIBITION ON INVESTMENT IN DOMESTIC TELECOMMUNICATIONS SERVICES.—Nothing in this subsection shall be construed to authorize the investment by any United States person in the domestic telecommunications network within Cuba. For purposes of this paragraph, an ‘investment’ in the domestic telecommunications network within Cuba includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network.

“(6) REPORTS TO CONGRESS.—The President shall submit to the Congress on a semiannual basis a report detailing payments made to Cuba by any United States person as a result of the provision of telecommunications services authorized by this subsection.”.

(h) CODIFICATION OF ECONOMIC EMBARGO.—The economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act.

22 U.S.C. 6033 SEC. 103. PROHIBITION AGAINST INDIRECT FINANCING OF CUBA.

(a) PROHIBITION.—Notwithstanding any other provision of law, no loan, credit, or other financing may be extended knowingly by a United States national, a permanent resident alien, or a United States agency to any person for the purpose of financing transactions involving any confiscated property the claim to which is owned by a United States national as of the date of the enactment of this Act, except for financing by the United States

national owning such claim for a transaction permitted under United States law.

(b) **SUSPENSION AND TERMINATION OF PROHIBITION.**—

(1) **SUSPENSION.**—The President is authorized to suspend the prohibition contained in subsection (a) upon a determination made under section 203(c)(1) that a transition government in Cuba is in power.

(2) **TERMINATION.**—The prohibition contained in subsection (a) shall cease to apply on the date on which the economic embargo of Cuba terminates as provided in section 204.

(c) **PENALTIES.**—Violations of subsection (a) shall be punishable by such civil penalties as are applicable to violations of the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) **DEFINITIONS.**—As used in this section—

(1) the term “permanent resident alien” means an alien lawfully admitted for permanent residence into the United States; and

(2) the term “United States agency” has the meaning given the term “agency” in section 551(1) of title 5, United States Code.

22 U.S.C. 6034 SEC. 104. UNITED STATES OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.

(a) **CONTINUED OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Secretary of the Treasury shall

instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution until the President submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) TRANSITION GOVERNMENT—Once the President submits a determination under section 203(c)(1) that a transition government in Cuba is in power—

(A) the President is encouraged to take steps to support the processing of Cuba's application for membership in any international financial institution, subject to the membership taking effect after a democratically elected government in Cuba is in power, and

(B) the Secretary of the Treasury is authorized to instruct the United States executive director of each international financial institution to support loans or other assistance to Cuba only to the extent that such loans or assistance contribute to a stable foundation for a democratically elected government in Cuba.

(b) REDUCTION IN UNITED STATES PAYMENTS TO INTERNATIONAL FINANCIAL INSTITUTIONS.—If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance, with respect to either of the following types of payment:

(1) The paid-in portion of the increase in capital stock of the institution.

(2) The callable portion of the increase in capital stock of the institution.

(c) DEFINITION.—For purposes of this section, the term “international financial institution means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

22 U.S.C. 6035 SEC. 105. UNITED STATES OPPOSITION TO TERMINATION OF THE SUSPENSION OF THE CUBAN GOVERNMENT FROM PARTICIPATION IN THE ORGANIZATION OF AMERICAN STATES.

The President should instruct the United States Permanent Representative to the Organization of American States to oppose and vote against any termination of the suspension of the Cuban Government from participation in the Organization until the President determines under section 203(c)(3) that a democratically elected government in Cuba is in power.

22 U.S.C. 6036 SEC. 106. ASSISTANCE BY THE INDEPENDENT STATES OF THE FORMER SOVIET UNION FOR THE CUBAN GOVERNMENT.

(a) REPORTING REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report detailing progress toward the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of

section 3 of the FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.

(b) CRITERIA FOR ASSISTANCE.—Section 498A(a)(11) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(a)(11)) is amended by striking “of military facilities” and inserting “military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos”.

(c) INELIGIBILITY FOR ASSISTANCE.—

(1) IN GENERAL.—Section 498A(b) of that Act (22 U.S.C. 2295a(b)) is amended—

(A) by striking “or” at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following new paragraph:

“(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within that 30-day period) that such government is providing assistance for, or engaging in nonmarket based trade (as defined in section 498B(k)(3)) with, the Cuban Government; or”

(2) DEFINITION.—Subsection (k) of section 498B of that Act (22 U.S.C. 2295b(k)) is amended by adding at the end the following new paragraph:

“(3) NONMARKET BASED TRADE .—As used in section 498A(b)(5), the term ‘nonmarket based trade’ includes exports, imports, exchanges, or other arrangements that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including—

“(A) exports to the Cuban Government on terms that involve a grant, concessional price, guaranty, insurance, or subsidy;

“(B) imports from the Cuban Government at preferential tariff rates;

“(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Cuban Government is not held accountable for unfulfilled exchange contracts, and arrangements under which Cuba does not pay appropriate transportation, insurance, or finance costs; and

“(D) the exchange, reduction, or forgiveness of debt of the Cuban Government in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

“(4) 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, United States Code, with each reference in such section to ‘a foreign state’ deemed to be a reference to ‘Cuba’.”.

(3) EXCEPTION.—Section 498A(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295A(c)) is amended by inserting after paragraph (3) the following new paragraph:

“(4) The assistance is provided under the secondary school exchange program administered by the United States Information Agency.”.

(d) FACILITIES AT LOURDES, CUBA.—

(1) DISAPPROVAL OF CREDITS.—The Congress expresses its strong disapproval of the extension by Russia of credits equivalent to \$200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.

(2) REDUCTION IN ASSISTANCE.—Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended by adding at the end the following new subsection:

“(d) REDUCTION IN ASSISTANCE FOR SUPPORT OF INTELLIGENCE FACILITIES IN CUBA.—

“(1) REDUCTION IN ASSISTANCE.—Notwithstanding any other provision of law, the President shall withhold from assistance provided, on or after the date of the enactment of this subsection, for an independent state of the former Soviet Union under this Act an amount equal to the sum of assistance and credits, if any, provided on or after such date by such state in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba.

“(2) WAIVER.—(A) The President may waive the requirement of paragraph (1) to withhold assistance if the President certifies to the appropriate congressional committees that the provision of such assistance is important to the national security of the United States, and, in the case of such a certification made with respect to Russia, if the President certifies that the Russian Government has assured the United States Government that the Russian Government is not sharing intelligence data collected at the Lourdes facility with officials or agents of the Cuban Government.

“(B) At the time of a certification made with respect to Russia under subparagraph (A), the President shall also submit to the appropriate congressional committees a report describing the intelligence activities of Russia in Cuba, including the purposes for which the Lourdes facility is used by the Russian Government and the extent to which the Russian Government provides payment or government credits to the Cuban Government for the continued use of the Lourdes facility.

“(C) The report required by subparagraph (B) may be submitted in classified form.

“(D) For purposes of this paragraph, the term ‘appropriate congressional committees’ includes the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

“(3) EXCEPTIONS TO REDUCTIONS IN ASSISTANCE.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

"(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

"(B) democratic political reform or rule of law activities;

"(C) technical assistance for safety upgrades of civilian nuclear power plants;

"(D) the creation of private sector or non-governmental organizations that are independent of government control;

"(E) the development of a free market economic system;

"(F) assistance under the secondary school exchange program administered by the United States Information Agency; or

"(G) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160).”.

22 U.S.C. 6037 SEC. 107. TELEVISION BROADCASTING TO CUBA.

(a) **CONVERSION TO UHF.**—The Director of the United States Information Agency shall implement a conversion of television broadcasting to Cuba under the Television Marti Service to ultra high frequency (UHF) broadcasting.

(b) **PERIODIC REPORTS.**—Not later than 45 days after the date of the enactment of this Act, and every three months thereafter until the conversion described in subsection (a) is fully implemented, the Director of the United States Information Agency shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).

(c) **TERMINATION OF BROADCASTING AUTHORITIES.**—Upon transmittal of a determination under section 203(c)(3), the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa and following) and the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 and following) are repealed.

22 U.S.C. 6038 SEC. 108. REPORTS ON COMMERCE WITH, AND ASSISTANCE TO, CUBA FROM OTHER FOREIGN COUNTRIES.

(a) **REPORTS REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, and by January 1 of each year thereafter until the President submits a determination under section 203(c)(1), the President shall submit a report to the appropriate congressional committees on commerce with, and assistance to, Cuba from other foreign countries during the preceding 12-month period.

(b) **CONTENTS OF REPORTS.**—Each report required by subsection (a) shall, for the period covered by the report, contain the following, to the extent such information is available:

(1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.

(2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.

(3) A description of the joint ventures completed, or under consideration, by foreign nationals and business firms involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the

terms of agreement of the joint ventures and the names of the parties that are involved.

(4) A determination as to whether or not any of the facilities described in paragraph (3) is the subject of a claim against Cuba by a United States national.

(5) A determination of the amount of debt of the Cuban Government that is owed to each foreign country, including—

(A) the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and

(B) the amount of debt owed the foreign country that has been exchanged, forgiven, or reduced in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

(6) A description of the steps taken to assure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.

(7) An identification of countries that purchase, or have purchased, arms or military supplies from Cuba or that otherwise have entered into agreements with Cuba that have a military application, including—

(A) a description of the military supplies, equipment, or other material sold, bartered, or exchanged between Cuba and such countries,

(B) a listing of the goods, services, credits, or other consideration received by Cuba in exchange for military supplies, equipment, or material, and

(C) the terms or conditions of any such agreement.

22 U.S.C. 6039 SEC. 109. AUTHORIZATION OF SUPPORT FOR DEMOCRATIC AND HUMAN RIGHTS GROUPS AND INTERNATIONAL OBSERVERS.

(a) AUTHORIZATION.—Notwithstanding any other provision of law (including section 102 of this Act), except for section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba, including the following:

(1) Published and informational matter, such as books, videos, and cassettes, on transitions to democracy, human rights, and market economies, to be made available to independent democratic groups in Cuba.

(2) Humanitarian assistance to victims of political repression, and their families.

(3) Support for democratic and human rights groups in Cuba.

(4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.

(b) OAS EMERGENCY FUND.—

(1) FOR SUPPORT OF HUMAN RIGHTS AND ELECTIONS.—The President shall take the necessary steps to encourage the Organization of American States to create a special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba.

(2) ACTION OF OTHER MEMBER STATES.—The President should instruct the United States Permanent Representative to the Organization of American States to encourage other member states of the Organization to join in calling for the Cuban Government to allow the immediate deployment of independent human rights monitors of the Organization throughout Cuba and on-site visits to Cuba by the Inter-American Commission on Human Rights.

(3) VOLUNTARY CONTRIBUTIONS FOR FUND—Notwithstanding section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) or any other provision of law limiting the United States proportionate share of assistance to Cuba by any international organization, the President should provide not less than \$5,000,000 of the voluntary contributions of the United States to the Organization of American States solely for the purposes of the special fund referred to in paragraph (1).

(c) DENIAL OF FUNDS TO THE CUBAN GOVERNMENT.—In implementing this section, the President shall take all necessary steps to ensure that no funds or other assistance is provided to the Cuban Government.

**22 U.S.C. 6040 SEC. 110. IMPORTATION SAFEGUARD
AGAINST CERTAIN CUBAN PRODUCTS.**

(a) PROHIBITION ON IMPORT OF AND DEALINGS IN CUBAN PRODUCTS.—The Congress notes that section 515.204 of title 31, Code of Federal Regulations, prohibits the entry of, and dealings outside the United States in, merchandise that—

- (1) is of Cuban origin;
- (2) is or has been located in or transported from or through Cuba; or
- (3) is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.

(b) EFFECT OF NAFTA.—The Congress notes that United States accession to the North American Free Trade Agreement does not modify or alter the United States sanctions against Cuba. The statement of administrative action accompanying that trade agreement specifically states the following:

- (1) “The NAFTA rules of origin will not in any way diminish the Cuban sanctions program. . . . Nothing in the NAFTA would operate to override this prohibition.”.
- (2) “Article 309(3) of the NAFTA] permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that United States products are not exported to Cuba through those countries.”.

(c) RESTRICTION OF SUGAR IMPORTS.—The Congress notes that section 902(c) of the Food Security Act of 1985 (Public Law 99-198) requires the President not to allocate any of the sugar import quota to a country

that is a net importer of sugar unless appropriate officials of that country verify to the President that the country does not import for reexport to the United States any sugar produced in Cuba.

(d) ASSURANCES REGARDING SUGAR PRODUCTS.—Protection of essential security interests of the United States requires assurances that sugar products that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States are not products of Cuba.

22 U.S.C. 6041 SEC. 111. WITHHOLDING OF FOREIGN ASSISTANCE FROM COUNTRIES SUPPORTING JURAGUA NUCLEAR PLANT IN CUBA.

(a) FINDINGS.—The Congress makes the following findings:

(1) President Clinton stated in April 1993 that the United States opposed the construction of the Juragua nuclear power plant because of the concerns of the United States about Cuba's ability to ensure the safe operation of the facility and because of Cuba's refusal to sign the Nuclear Non-Proliferation Treaty or ratify the Treaty of Tlatelolco.

(2) Cuba has not signed the Treaty on the Non-Proliferation of Nuclear Weapons or ratified the Treaty of Tlatelolco, the latter of which establishes Latin America and the Caribbean as a nuclear weapons-free zone.

(3) The State Department, the Nuclear Regulatory Commission, and the Department of Energy have expressed concerns about the construction and operation of Cuba's nuclear reactors.

(4) In a September 1992 report to the Congress, the General Accounting Office outlined

concerns among nuclear energy experts about deficiencies in the nuclear plant project in Juragua, near Cienfuegos, Cuba, including—

(A) a lack in Cuba of a nuclear regulatory structure;

(B) the absence in Cuba of an adequate infrastructure to ensure the plant's safe operation and requisite maintenance;

(C) the inadequacy of training of plant operators;

(D) reports by a former technician from Cuba who, by examining with x-rays weld sites believed to be part of the auxiliary plumbing system for the plant, found that 10 to 15 percent of those sites were defective;

(E) since September 5, 1992, when construction on the plant was halted, the prolonged exposure to the elements, including corrosive salt water vapor, of the primary reactor components; and

(F) the possible inadequacy of the upper portion of the reactors' dome retention capability to withstand only T pounds of pressure per square inch, given that normal atmospheric pressure is 32 pounds per square inch and United States reactors are designed to accommodate pressures of 50 pounds per square inch.

(5) The United States Geological Survey claims that it had difficulty determining answers to specific questions regarding earthquake activity in the area near Cienfuegos because the Cuban Government was not forthcoming with information.

(6) The Geological Survey has indicated that the Caribbean plate, a geological formation near the south coast of Cuba, may pose seismic risks to Cuba and the site of the power plant, and may produce large to moderate earthquakes.

(7) On May 25, 1992, the Caribbean plate produced an earthquake numbering 7.0 on the Richter scale.

(8) According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the coast of the Gulf of Mexico as far as Texas, and northern winds could carry the pollutants as far northeast as Virginia and Washington, D.C.

(9) The Cuban Government, under dictator Fidel Castro, in 1962 advocated the Soviets' launching of nuclear missiles to the United States, which represented a direct and dangerous provocation of the United States and brought the world to the brink of a nuclear conflict.

(10) Fidel Castro over the years has consistently issued threats against the United States Government, most recently that he would unleash another perilous mass migration from Cuba upon the enactment of this Act.

(11) Despite the various concerns about the plant's safety and operational problems, a feasibility study is being conducted that would establish a support group to include Russia, Cuba, and third countries with the objective of completing and operating the plant.

(b) WITHHOLDING OF FOREIGN ASSISTANCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President shall withhold from assistance allocated, on or after the date of the enactment of this Act, for any country an amount equal to the sum of assistance and credits, if any, provided on or after such date of enactment by that country or any entity in that country in support of the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.

(2) EXCEPTIONS.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

(B) democratic political reform or rule of law activities;

(C) the creation of private sector or nongovernmental organizations that are independent of government control;

(D) the development of a free market economic system;

(E) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160); or

(F) assistance under the secondary school exchange program administered by the United States Information Agency.

(3) DEFINITION.—As used in paragraph (1), the term “assistance” means assistance under the Foreign Assistance Act of 1961, credits, sales, guarantees of extensions of credit, and other

assistance under the Arms Export Control Act, assistance under titles I and III of the Agricultural Trade Development and Assistance Act of 1954, assistance under the FREEDOM Support Act, and any other program of assistance or credits provided by the United States to other countries under other provisions of law,

22 U.S.C. 6042 SEC. 112. REINSTITUTION OF FAMILY REMITTANCES AND TRAVEL TO CUBA.

It is the sense of the Congress that the President should—

(1)(A) before considering the reinstitution of general licenses for family remittances to Cuba, insist that, prior to such reinstitution, the Cuban Government permit the unfettered operation of small businesses fully empowered with the right to hire others to whom they may pay wages and to buy materials necessary in the operation of the businesses, and with such other authority and freedom as are required to foster the operation of small businesses throughout Cuba; and

(B) if licenses described in subparagraph (A) are reinstituted, require a specific license for remittances described in subparagraph (A) in amounts of more than \$500; and

(2) before considering the reinstitution of general licenses for travel to Cuba by individuals resident in the United States who are family members of Cuban nationals who are resident in Cuba, insist on such actions by the Cuban Government as abrogation of the sanction for departure from Cuba by refugees, release of political prisoners, recognition of the right of association, and other fundamental freedoms.

22 U.S.C. 6043 SEC. 113. EXPULSION OF CRIMINALS FROM CUBA.

The President shall instruct all United States Government officials who engage in official contacts with the Cuban Government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.

22 U.S.C. 6044 SEC. 114. NEWS BUREAUS IN CUBA.

(a) ESTABLISHMENT OF NEWS BUREAUS.—The President is authorized to establish and implement an exchange of news bureaus between the United States and Cuba, if the exchange meets the following conditions:

- (1) The exchange is fully reciprocal.
- (2) The Cuban Government agrees not to interfere with the establishment of news bureaus or with the movement in Cuba of journalists of *any* United States-based news organizations, including Radio Marti and Television Marti.
- (3) The Cuban Government agrees not to interfere with decisions of United States-based *news* organizations with respect to individuals assigned to work as journalists in their news bureaus in Cuba.
- (4) The Department of the Treasury is able to ensure that only accredited journalists regularly employed with a news gathering organization travel to Cuba under this subsection.
- (5) The Cuban Government agrees not to interfere with the transmission of telecommunications signals of news bureaus or with the distribution within Cuba of publications of any United

States-based news organization that has a news bureau in Cuba.

(b) **ASSURANCE AGAINST ESPIONAGE**—In implementing this section, the President shall take all necessary steps to ensure the safety and security of the United States against espionage by Cuban journalists it believes to be working for the intelligence agencies of the Cuban Government.

(c) **FULLY RECIPROCAL**.—As used in subsection (a)(1), the term “fully reciprocal” means that all news services, news organizations, and broadcasting services, including such services or organizations that receive financing, assistance, or other support from a governmental or official source, are permitted to establish and operate a news bureau in the United States and Cuba.

**22 U.S.C. 6045 SEC. 115. EFFECT OF ACT ON
LAWFUL UNITED STATES GOVERNMENT ACTIVITIES.**

Nothing in this Act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency, or of an intelligence agency, of the United States.

**22 U.S.C. 6046 SEC. 116. CONDEMNATION OF CUBAN
ATTACK ON AMERICAN AIRCRAFT.**

(a) **FINDINGS**.—The Congress makes the following findings:

(1) Brothers to the Rescue is a Miami-based humanitarian organization engaged in searching for and aiding Cuban refugees in the Straits of Florida, and was engaged in such a mission on Saturday, February 24, 1996.

(2) The members of Brothers to the Rescue were flying unarmed and defenseless planes in a

mission identical to hundreds they have flown since 1991 and posed no threat whatsoever to the Cuban Government, the Cuban military, or the Cuban people.

(3) Statements by the Cuban Government that Brothers to the Rescue has engaged in covert operations, bombing campaigns, and commando operations against the Government of Cuba have no basis in fact.

(4) The Brothers to the Rescue aircraft notified air traffic controllers as to their flight plans, which would take them south of the 24th parallel and close to Cuban airspace.

(5) International law provides a nation with airspace over the 12-mile territorial sea.

(6) The response of Fidel Castro's dictatorship to Saturday's afternoon flight was to scramble 2 fighter jets from a Havana airfield.

(7) At approximately 3:24 p.m., the pilot of one of the Cuban MiGs received permission and proceeded to shoot down one Brothers to the Rescue airplane more than 6 miles north of the Cuban exclusion zone, or 18 miles from the Cuban coast.

(8) Approximately 7 minutes later, the pilot of the Cuban fighter jet received permission and proceeded to shoot down the second Brothers to the Rescue airplane almost 18.5 miles north of the Cuban exclusion zone, or 30.5 miles from the Cuban coast.

(9) The Cuban dictatorship, if it truly felt threatened by the flight of these unarmed aircraft,

could have and should have pursued other peaceful options as required by international law.

(10) The response chosen by Fidel Castro, the use of lethal force, was completely inappropriate to the situation presented to the Cuban Government, eking such actions a blatant and barbaric violation of international law and tantamount to cold-blooded murder.

(11) There were no survivors of the attack on these aircraft, and the crew of a third aircraft managed to escape this criminal attack by Castro's Air Force.

(12) The crew members of the destroyed planes, Pablo Morales, Carlos Costa, Mario de in Pena, and Armando Alejandro, were United States citizens from Miami flying with Brothers to the Rescue on a voluntary basis.

(13) It is incumbent upon the United States Government to protect the lives and livelihoods of United States citizens as well as the rights of free passage and humanitarian missions.

(14) This premeditated act took place after a week-long wave of repression by the Cuban Government against Concilio Cubano, an umbrella organization of human rights activists, dissidents, independent economists, and independent journalists, among others.

(15) The wave of repression against Concilio Cubano, whose membership is committed to peaceful democratic change in Cuba, included arrests, strip searches, house arrests, and in some cases sentences to more than 1 year in jail.

(b) STATEMENTS BY THE CONGRESS.—(1) The Congress strongly condemns the act of terrorism by the Castro regime in shooting down the Brothers to the Rescue aircraft on February 24, 1996.

(2) The Congress extends its condolences to the families of Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandro, the victims of the attack.

(3) The Congress urges the President to seek, in the International Court of Justice, indictment for this act of terrorism by Fidel Castro.

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

22 U.S.C. 6061 SEC. 201. POLICY TOWARD A TRANSITION GOVERNMENT AND A DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.

The policy of the United States is as follows:

(1) To support the self-determination of the Cuban people.

(2) To recognize that the self-determination of the Cuban people is a sovereign and national right of the citizens of Cuba which must be exercised free of interference by the government of any other country.

(3) To encourage the Cuban people to empower themselves with a government which reflects the self-determination of the Cuban people.

(4) To recognize the potential for a difficult transition from the current regime in Cuba that may result from the initiatives taken by the Cuban people for self-determination in response to the intransigence of the Castro regime in not allowing

any substantive political or economic reforms, and to be prepared to provide the Cuban people with humanitarian, developmental, and other economic assistance.

(5) In solidarity with the Cuban people, to provide appropriate forms of assistance—

(A) to a transition government in Cuba;

(B) to facilitate the rapid movement from such a transition government to a democratically elected government in Cuba that results from an expression of the self-determination of the Cuban people; and

(C) to support such a democratically elected government.

(6) Through such assistance, to facilitate a peaceful transition to representative democracy and a market economy in Cuba and to consolidate democracy in Cuba.

(7) To deliver such assistance to the Cuban people only through a transition government in Cuba, through a democratically elected government in Cuba, through United States Government organizations, or through United States, international, or indigenous nongovernmental organizations.

(8) To encourage other countries and multilateral organizations to provide similar assistance, and to work cooperatively with such countries and organizations to coordinate such assistance.

(9) To ensure that appropriate assistance is rapidly provided and distributed to the people of Cuba upon the institution of a transition government in Cuba.

(10) Not to provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government.

(11) To assist a transition government in Cuba and a democratically elected government in Cuba to prepare the Cuban military forces for an appropriate role in a democracy.

(12) To be prepared to enter into negotiations with a democratically elected government in Cuba either to return the United States Naval Base at Guantanamo to Cuba or to renegotiate the present agreement under mutually agreeable terms.

(13) To consider the restoration of diplomatic recognition and support the reintegration of the Cuban Government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba.

(14) To take steps to remove the economic embargo of Cuba when the President determines that a transition to a democratically elected government in Cuba has begun.

(15) To assist a democratically elected government in Cuba to strengthen and stabilize its national currency.

(16) To pursue trade relations with a free, democratic, and independent Cuba.

22 U.S.C. 6062 SEC. 202. ASSISTANCE FOR THE CUBAN PEOPLE.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The President shall develop a plan for providing economic assistance to Cuba at

such time as the President determines that a transition government or a democratically elected government in Cuba (as determined under section 203(c)) is in power.

(2) EFFECT ON OTHER Laws.—Assistance may be provided under this section subject to an authorization of appropriations and subject to the availability of appropriations.

(b) PLAN FOR ASSISTANCE.—

(1) DEVELOPMENT OF PLAN.—The President shall develop a plan for providing assistance under this section—

(A) to Cuba when a transition government in Cuba is in power; and

(B) to Cuba when a democratically elected government in Cuba is in power.

(2) TYPES OF ASSISTANCE.—Assistance under the plan developed under paragraph (1) may, subject to an authorization of appropriations and subject to the availability of appropriations, include the following:

(A) TRANSITION Government.—(i) Except as provided in clause (ii), assistance to Cuba under a transition government shall, subject to an authorization of appropriations and subject to the availability of appropriations, be limited to—

(I) such food, medicine, medical supplies and equipment, and assistance to meet emergency energy needs, as is necessary to meet the basic human needs of the Cuban people; and

(II) assistance described in subparagraph (C).

(ii) Assistance in addition to assistance under clause (i) may be provided, but only after the President certifies to the appropriate congressional committees, in accordance with procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, that such assistance is essential to the successful completion of the transition to democracy.

(iii) Only after a transition government in Cuba is in power, freedom of individuals to travel to visit their relatives without any restrictions shall be permitted.

(B) DEMOCRATICALLY ELECTED GOVERNMENT.—Assistance to a democratically elected government in Cuba may, subject to an authorization of appropriations and subject to the availability of appropriations, consist of economic assistance in addition to assistance available under subparagraph (A), together with assistance described in subparagraph (C). Such economic assistance may include—

(i) assistance under chapter 1 of part I (relating to development assistance), and chapter 4 of part II (relating to the economic support fund), of the Foreign Assistance Act of 1961;

(ii) assistance under the Agricultural Trade Development and Assistance Act of 1954;

(iii) financing, guarantees, and other forms of assistance provided by the Export-Import Bank of the United States;

(iv) financial support provided by the Overseas Private Investment Corporation for investment projects in Cuba;

(v) assistance provided by the Trade and Development Agency;

(vi) Peace Corps programs; and

(vii) other appropriate assistance to carry out the policy of section 201.

(C) MILITARY ADJUSTMENT ASSISTANCE.—Assistance to a transition government in Cuba and to a democratically elected government in Cuba shall also include assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy.

(c) STRATEGY FOR DISTRIBUTION.—The plan developed under subsection (b) shall include a strategy for distributing assistance under the plan.

(d) DISTRIBUTION.—Assistance under the plan developed under subsection (b) shall be provided through United States Government organizations and nongovernmental organizations and private and voluntary organizations, whether within or outside the United States, including humanitarian, educational, labor, and private sector organizations.

(e) INTERNATIONAL EFFORTS.—The President shall take the necessary steps—

(1) to seek to obtain the agreement of other countries and of international financial institutions and multilateral organizations to provide to a

transition government in Cuba, and to a democratically elected government in Cuba, assistance comparable to that provided by the United States under this Act; and

(2) to work with such countries, institutions, and organizations to coordinate all such assistance programs.

(f) COMMUNICATION WITH THE CUBAN PEOPLE.—The President shall take the necessary steps to COMMUNICATE to the Cuban people the plan for assistance developed under this section.

(g) REPORT TO CONGRESS.—Not later than 180 days AFTER the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.

(h) REPORT ON TRADE AND INVESTMENT RELATIONS.—

(1) REPORT TO CONGRESS.—The President, following the transmittal to the Congress of a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees a report that describes—

(A) acts, policies, and practices which constitute significant barriers to, or distortions of, United States trade in goods or services or foreign direct investment with respect to Cuba;

(B) policy objectives of the United States regarding trade relations with a democratically

elected government in Cuba, and the reasons therefor, including possible—

(i) reciprocal extension of nondiscriminatory trade treatment (most-favored-nation treatment);

(ii) designation of Cuba as a beneficiary developing country under title V of the Trade Act of 1974 (relating to the Generalized System of Preferences) or as a beneficiary country under the Caribbean Basin Economic Recovery Act, and the implications of such designation with respect to trade with any other country that is such a beneficiary developing country or beneficiary country or is a party to the North American Free Trade Agreement; and

(iii) negotiations regarding free trade, including the accession of Cuba to the North American Free Trade Agreement;

(C) specific trade negotiating objectives of the United States with respect to Cuba, including the objectives described in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)); and

(D) actions proposed or anticipated to be undertaken, and any proposed legislation necessary or appropriate, to achieve any of such policy and negotiating objectives.

(2) CONSULTATION.—The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate

congressional committees and shall seek advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974 regarding the policy and negotiating objectives and the legislative proposals described in paragraph (1).

22 U.S.C. 6063 SEC. 203. COORDINATION OF ASSISTANCE PROGRAM; IMPLEMENTATION AND REPORTS TO CONGRESS; REPROGRAMMING.

(a) COORDINATING OFFICIAL.—The President shall designate a coordinating official who shall be responsible for—

- (1) implementing the strategy for distributing assistance described in section 202(b);
- (2) ensuring the speedy and efficient distribution of such assistance; and
- (3) ensuring coordination among, and appropriate oversight by, the agencies of the United States that provide assistance described in section 202(b), including resolving any disputes among such agencies.

(b) UNITED STATES-CUBA COUNCIL.—Upon making a determination under subsection (c)(3) that a democratically elected government in Cuba is in power, the President, after consultation with the coordinating official, is authorized to designate a United States-Cuba council—

- (1) to ensure coordination between the United States Government and the private sector in responding to change in Cuba, and in promoting market-based development in Cuba; and
- (2) to establish periodic meetings between representatives of the United States and Cuban

private sectors for the purpose of facilitating bilateral trade.

(c) IMPLEMENTATION OF PLAN; REPORTS TO CONGRESS.—

(1) IMPLEMENTATION WITH RESPECT TO TRANSITION GOVERNMENT.—Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 202(b).

(2) REPORTS TO CONGRESS.—(A) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section 202(b)(2) (A) and (C) to the transition government in Cuba under the plan of assistance developed under section 202(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(B) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(3) IMPLEMENTATION WITH RESPECT TO DEMOCRATICALLY ELECTED GOVERNMENT.—The President shall, upon determining that a democratically elected government in Cuba is in power, submit that determination to the appropriate congress-

ional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such democratically elected government under the plan developed under section 202(b).

(4) ANNUAL REPORTS TO CONGRESS.—Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report on the assistance provided under the plan developed under section 202(b), including a description of each type of assistance, the amounts expended for such assistance, and a description of the assistance to be provided under the plan in the current fiscal year.

(d) REPROGRAMMING.—Any changes in the assistance to be provided under the plan developed under section 202(b) may not be made unless the President notifies the appropriate congressional committees at least 15 days in advance in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

22 U.S.C. 6064 SEC. 204. TERMINATION OF THE ECONOMIC EMBARGO OF CUBA.

(a) PRESIDENTIAL ACTIONS.—Upon submitting a determination to the appropriate congressional committees under section 203(c)(1) that a transition government in Cuba is in power, the President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba and to suspend the right of action created in section 302 with respect to actions thereafter filed against the Cuban Government, to the extent that such steps

contribute to a stable foundation for a democratically elected government in Cuba.

(b) **SUSPENSION OF CERTAIN PROVISIONS OF LAW.**—In carrying out subsection (a), the President may suspend the enforcement of—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with respect to the “Republic of Cuba”;

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005);

(4) section 902(c) of the Food Security Act of 1985; and

(5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

(c) **ADDITIONAL PRESIDENTIAL ACTIONS.**—Upon submitting a determination to the appropriate congressional committees under section 203(c)(3) that a democratically elected government in Cuba is in power, the President shall take steps to terminate the economic embargo of Cuba, including the restrictions under part 515 of title 31, Code of Federal Regulations.

(d) **CONFORMING AMENDMENTS.**—On the date on which the President submits a determination under section 203(c)(3)—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking “Republic of Cuba”;

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005) are repealed; and

(4) section 902(c) of the Food Security Act of 1985 is repealed.

(e) REVIEW OF SUSPENSION OF ECONOMIC EMBARGO.—

(1) REVIEW.—If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months thereafter, until he submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) JOINT RESOLUTIONS.—For purposes of this subsection, the term “joint resolution” means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress disapproves the action of the President under section 204(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to suspend the economic embargo of Cuba, notice of which was submitted to the

Congress on ____.”, with the blank space being filled with the appropriate date.

(3) REFERRAL TO COMMITTEES.—Joint resolutions introduced in the House of Representatives shall *be* referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) Procedures.—(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

22 U.S.C. 6065 SEC. 205. REQUIREMENTS AND FACTORS FOR DETERMINING A TRANSITION GOVERNMENT.

(a) REQUIREMENTS.—For the purposes of this Act, a transition government in Cuba is a government that—

(1) has legalized all political activity;

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; and

(4) has made public commitments to organizing free and fair elections for a new government—

(A) to be held in a timely manner within a period not to exceed 18 months after the transition government assumes power;

(B) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(C) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other election monitors;

(5) has ceased any interference with Radio Marti or Television Marti broadcasts;

(6) makes public commitments to and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) respecting internationally recognized human rights and basic freedoms as set forth in

the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(C) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, *and* political associations;

(7) does not include Fidel Castro or Raul Castro; and

(8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.

(b) ADDITIONAL FACTORS.—In addition to the requirements in subsection (a), in determining whether a transition government in Cuba is in power, the President shall take into account the extent to which that government—

(1) is demonstrably in transition from a communist totalitarian dictatorship to representative democracy;

(2) has made public commitments to, and is making demonstrable progress in—

(A) effectively guaranteeing the rights of free speech and freedom of the press, including granting permits to privately owned media and telecommunications companies to operate in Cuba;

(B) permitting the reinstatement of citizenship to Cuban-born persons returning to Cuba;

(C) assuring the right to private property;
and

(D) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(3) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States; and

(4) has permitted the deployment throughout Cuba of independent and unfettered international human rights monitors.

22 U.S.C. 6066 SEC. 206. REQUIREMENTS FOR DETERMINING A DEMOCRATICALLY ELECTED GOVERNMENT.

For purposes of this Act, a democratically elected government in Cuba, in addition to meeting the requirements of section 205(a), is a government which—

(1) results from free and fair elections-

(A) conducted under the supervision of internationally recognized observers; and

(B) in which—

(i) opposition parties were permitted ample time to organize and campaign for such elections; and

(ii) all candidates were permitted full access to the media;

(2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(3) is substantially moving toward a market-oriented economic system based on the right to own and enjoy property;

(4) is committed to making constitutional changes that would ensure regular free and fair elections and the full enjoyment of basic civil liberties and human rights by the citizens of Cuba;

(5) has made demonstrable progress in establishing an independent judiciary; and

(6) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities an or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

22 U.S.C. 6067 SEC. 207. SETTLEMENT OF OUTSTANDING UNITED STATES CLAIMS TO CONFISCATED PROPERTY IN CUBA.

(a) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall provide a report to the appropriate congressional committees containing an assessment of the property dispute question in Cuba, including—

(1) an estimate of the number and amount of claims to property confiscated by the Cuban Government that are held by United States nationals in addition to those claims certified

under section 507 of the International Claims Settlement Act of 1949;

(2) an assessment of the significance of promptly resolving confiscated property claims to the revitalization of the Cuban economy;

(3) a review and evaluation of technical and other assistance that the United States could provide to help either a transition government in Cuba or a democratically elected government in Cuba establish mechanisms to resolve property questions;

(4) an assessment of the role and types of support the United States could provide to help resolve claims to property confiscated by the Cuban Government that are held by United States nationals who did not receive or qualify for certification under section 507 of the International Claims Settlement Act of 1949; and

(5) an assessment of any areas requiring legislative review or action regarding the resolution of property claims in Cuba prior to a change of government in Cuba.

(d) SENSE OF CONGRESS.—It is the sense of the Congress that the satisfactory resolution of property claims by a Cuban Government recognized by the United States remains an essential condition

for the full resumption of economic and diplomatic relations between the United States and Cuba.

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS

22 U.S.C. 6081 SEC. 301. 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 SEC. 302. 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 title, 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, plus interest;

(II) the amount determined under section 303(a)(2), 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, United States Code, 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 (1) 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 (H) 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, 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 the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, 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 such date of enactment.

(C) In the case of property confiscated on or after the date of the enactment of this Act, 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 the date of the enactment of this Act.

(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 5(b) of the Trading with the Enemy Act 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 the date of the enactment of this Act.

(B) Notwithstanding any other provision of law, and for purposes of this title 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 the enactment of this Act, or requires after the enactment of this Act, 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 the date of the enactment of this Act, the Attorney General shall prepare and publish in the Federal Register a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title.

(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 title, the provisions of title 28, United States Code, 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, United States Code,

(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, United States Code.

(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) CERTAIN PROPERTY IMMUNE FROM EXECUTION.—Section 1611 of title 28, United States Code, is amended by adding at the end the following new subsection:

“(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.”.

(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 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 204(a); and

(B) shall cease upon transmittal to the Congress of a determination of the President under section 203(c)(3) 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, United States Code.

22 U.S.C. 6083 SEC. 303. PROOF OF OWNERSHIP OF CLAIMS TO CONFISCATED PROPERTY.

(a) EVIDENCE OF OWNERSHIP.—

(1) CONCLUSIVENESS OF CERTIFIED CLAIMS.—in any action brought under this title, 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 title 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 title 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 title, 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) AMENDMENT OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949.—Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following) is amended by adding at the end the following new section:

“DETERMINATION OF OWNERSHIP OF CLAIMS REFERRED
BY DISTRICT COURTS OF THE UNITED STATES

“SEC. 514. Notwithstanding any other provision of this Act and only for purposes of section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, a United State district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996), resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in section 502(1)) at the time of the action by the Government of Cuba.”.

(c) RULE OF CONSTRUCTION.—Nothing in this Act or in section 514 of the International Claims Settlement Act of 1949, 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 the date of the enactment of this Act.

SEC. 304. EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE.

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following), as amended by section 303, is further amended by adding at the end the following new section:

“EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT
COMMISSION CERTIFICATION PROCEDURE

“SEC. 515. (a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under section 503 but did not timely file such claim under that section, nor any person who was ineligible to file a claim under section 503, nor any national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under section 507, nor shall any district court of the United States have jurisdiction to adjudicate any such claim.

“(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of capital stock of nationals of the United States owning claims certified by the Commission under section 507.”.

22 U.S.C. 6084 SEC. 305. LIMITATION OF ACTIONS.

An action under section 302 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 SEC. 306. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsections (b) and (c), this title and the amendments made by this title 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 title and the amendments of this title have taken effect-

(A) no person shall acquire a property interest in any potential or pending action under this title; and

(B) the President may suspend the right to bring an action under this title 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 title 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.

TITLE IV—EXCLUSION OF CERTAIN ALIENS

22 U.S.C. 6091 SEC. 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.

(a) GROUNDS FOR EXCLUSION.—The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act—

(1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;

(2) traffics in confiscated property, a claim to which is owned by a United States national;

(3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or

(4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) DEFINITIONS.—As used in this section, the following terms have the following meanings:

(1) CONFISCATED; CONFISCATION.—The terms “confiscated” and “confiscation” refer to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property—

(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—

(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.

(2) TRAFFICS.—(A) Except as provided in subparagraph (B), a person “traffics” in confiscated property if that person knowingly and intentionally—

(i)(I) transfers, distributes, dispenses, brokers, or otherwise disposes of confiscated property,

(II) purchases, receives, obtains control of, or otherwise acquires confiscated property, or

(III) improves (other than for routine maintenance), invests in (by contribution of funds or anything of value, other than for routine maintenance), or begins after the date of the enactment of this Act to manage, lease, possess, use, or hold an interest in confiscated property,

(ii) enters into a commercial arrangement 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.

(c) EXEMPTION.—This section shall not apply where the Secretary of State finds, on a case by case basis, that the entry into the *United States* of the person who would otherwise be excluded under this section is necessary for medical reasons or for purposes of litigation of an action under title III.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.

(2) TRAFFICKING.—This section applies only with respect to acts within the meaning of “traffics” that occur on or after the date of the enactment of this Act.

Approved March 12, 1996.

LEGISLATIVE HISTORY—H.R. 927:

HOUSE REPORTS: Nos. 104-202, Pt. 1 (Comm. on International Relations) and 104-468 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 141 (1995): Sept. 20, 21, considered and passed House.

Oct. 11-13, 17-19, considered and passed Senate, amended.

Vol. 142 (1996): Mar. 5, Senate agreed to conference report.

Mar. 6, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Mar. 12, Presidential remarks and statement.

22 U.S. Code § 1622g – Independence of Foreign Claims Settlement Commission of the United States; finality of Commission decisions

Nothing in this Act shall be construed to diminish the independence of the Commission in making its determinations on claims in programs that it is authorized to administer pursuant to the powers and responsibilities conferred upon the Commission by the War Claims Act of 1948, as amended [50 U.S.C. 4101 et seq.], the International Claims Settlement Act of 1949, as amended [22 U.S.C. 1621 et seq.], and Reorganization Plan Numbered 1 of 1954. The decisions of the Commission with respect to claims shall be final and conclusive on all questions of law and fact, and shall not be subject to review by the Attorney General or any other official of the United States or by any court by mandamus or otherwise. (Pub. L. 96–209, title I, § 107, Mar. 14, 1980, 94 Stat. 97.)

22 U.S. Code § 1623 – Claims**(a) JURISDICTION OF COMMISSION; BASES FOR DETERMINATION; FAIR MARKET VALUE**

(1) The Commission shall have jurisdiction to receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or of any national of the United States—

(A) included within the terms of the Yugoslav Claims Agreement of 1948;

(B) included within the terms of any claims agreement concluded on or after March 10, 1954, between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof; or

(C) included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

(2) In the decision of claims under this subchapter, the Commission shall apply the following in the following order:

(A) The provisions of the applicable claims agreement as provided in this subsection.

(B) The applicable principles of international law, justice, and equity. In determining the value of a claim under international law, the Commission shall award the fair market value of the property as of the time of the taking by the foreign government involved (without regard to any action or event that occurs after the taking), except that the value of the claim shall not reflect any diminution in value attributable to actions which are carried out, or threats of action which are made, by the foreign government with respect to the property before the taking. Fair market value shall be ascertained in accordance with the method most appropriate to the property taken and equitable to the claimant, including—

- (i) market value of outstanding equity securities;
- (ii) replacement value;
- (iii) going-concern value (which includes consideration of an enterprise's profitability); and
- (iv) book value.

In the case of any claim for losses in a service industry, the appropriate basis of valuation shall be presumed to be that referred to in clause (iii). For purposes of the preceding sentence, the term “service” means economic activity the output of which is other than tangible goods.

(b) NOTICE OF FILING TIME; PUBLICATION; BASIS OF DECISIONS; FINALITY OF DECISION

The Commission shall give public notice of the time when, and the limit of time within which, claims may

be filed, which notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter concerning which the Commission has jurisdiction under this subchapter. All decisions shall be upon such evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this subchapter shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

(c) ADMINISTRATION OF OATHS; EXAMINATION OF WITNESSES; SUBPENAS; REPORTING OF HEARINGS; WITNESS FEES; CONTEMPT

Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpoena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of

disobedience to a subpoena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of such books, papers, documents, records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) DEPOSITIONS

The Commission may order testimony to be taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence, and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinabove provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of the Commission, or other person commissioned by the Commission, or under letters rogatory issued by the

Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) PENALTIES

In addition to the penalties provided in section 1001 of title 18, any person guilty of any act, as provided therein, with respect to any matter under this subchapter, shall forfeit all rights under this subchapter, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

(f) ATTORNEY'S FEES; LIMITATION

No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Commission under this subchapter shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this subchapter on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both.

(g) REPRESENTATION BY UNITED STATES; PAYMENTS

The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States as to any claims of the Government of the United States with respect to which the Commission has jurisdiction

under this subchapter. Any and all payments required to be made by the Secretary of the Treasury under this subchapter pursuant to any award made by the Commission to the Government of the United States shall be covered into the Treasury to the credit of miscellaneous receipts.

(h) NOTIFICATION OF DISPOSITION OF CLAIMS; RIGHT TO HEARING; FINALITY OF COMMISSION'S DECISION

The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this subchapter shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

(i) SEPARATION OF AWARDS

The Commission may in its discretion enter an award with respect to one or more items deemed to have been clearly established in an individual claim while deferring consideration and action on other items of the same claim.

(j) COMPLIANCE WITH ADMINISTRATIVE PROCEDURE LAW

The Commission shall comply with the provisions of subchapter II of chapter 5, and chapter 7, of title 5 except as otherwise specifically provided by this subchapter.

(k) COMPLIANCE WITH PRINCIPLES OF INTERNATIONAL LAW, JUSTICE AND EQUITY; FAIR MARKET VALUE

In exercising authority granted after October 8, 1986, under this chapter or any other Act, the Commission, in determining the value of claims of the Government of the United States or of nationals of the United States (as defined in this chapter or such other Act) against any foreign government for losses arising from the nationalization or other taking of property, shall comply with the principles set forth in subsection (a)(2) of this section.

(Mar. 10, 1950, ch. 54, title I, §4, 64 Stat. 13; Aug. 9, 1955, ch. 645, §§1, 2, 69 Stat. 562; Pub. L. 90-421, §1(1), July 24, 1968, 82 Stat. 420; Pub. L. 99-451, §1, Oct. 8, 1986, 100 Stat. 1138; Pub. L. 105-277, div. G, subdiv. B, title XXII, §2211, Oct. 21, 1998, 112 Stat. 2681-812.)

22 U.S. Code § 1643. Congressional declaration of purpose

It is the purpose of this subchapter to provide for the determination of the amount and validity of claims against the Government of Cuba, or the Chinese Communist regime, which have arisen since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime, out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States, and claims for disability or death of nationals of the United States arising out of violations of international law by the Government of Cuba, or the Chinese Communist regime, in order to obtain information concerning the total amount of such claims against the Government of Cuba, or the Chinese Communist regime, on behalf of nationals of the United States. This subchapter shall not be construed as authorizing an appropriation or as any intention to authorize an appropriation for the purpose of paying such claims.

(MAR. 10, 1950, CH. 54, title V, § 501, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1110; amended PUB. L. 89-262, § 1, Oct. 19, 1965, 79 STAT. 988; PUB. L. 89-780, §1, Nov. 6, 1966, 80 STAT. 1365.)

CITE AS: 22 USC 1643

§ 1643a. Definitions

For the purposes of this subchapter:

- (1) The term “national of the United States” means (A) a natural person who is a citizen of the United States, or (B) a corporation or other legal entity which is organized under the laws of the

United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term “Commission” means the Foreign Claims Settlement Commission of the United States.

(3) The term “property” means any property, right, or interest, including any leasehold interest, and debts owed by the Government of Cuba or the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime.

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

(5) The term “Chinese Communist regime” means the so-called Peoples Republic of China, including any political subdivision, agency, or instrumentality thereof.

(MAR. 10, 1950, CH. 54, title V, § 502, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1110; amended PUB. L. 89-780, § 2, Nov. 6, 1966, 80 STAT. 1365.)

CITE AS: 22 USC 1643A

§ 1643b. Receipt of claims; determination of amount and validity

- (a) Claims for property loss
- (b) Claims for disability or death

(MAR. 10, 1950, CH. 54, title V, § 503, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1110; amended PUB. L. 89-262, § 2, Oct. 19, 1965, 79 STAT. 988; PUB. L. 89-780, § 3, Nov. 6, 1966, 80 STAT. 1365.)

CITE AS: 22 USC 1643B

§ 1643c. Ownership of claims by nationals

- (a) Requirements for consideration of claims for property loss
- (b) Requirements for consideration of claims for disability or death (MAR. 10, 1950, CH. 54, title V, § 504, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1111.) CITE AS: 22 USC 1643C

§ 1643d. Claims based on ownership interest in or debt or other obligations owing by corporations or other legal entities

- (a) Nationals of the United States; charge on property
- (b) Direct ownership
- (c) Indirect ownership
- (d) Computation of award

(MAR. 10, 1950, CH. 54, title V, § 505, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1111; amended PUB. L. 89-262, § 3, Oct. 19, 1965, 79 STAT. 988; PUB. L. 89-780, § 4, Nov. 6, 1966, 80 STAT. 1365.)

CITE AS: 22 USC 1643D

§ 1643e. Offsets

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

(MAR. 10, 1950, CH. 54, title V, § 506, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1112; amended PUB. L. 89-262, § 4, Oct. 19, 1965, 79 STAT. 988.)

CITE AS: 22 USC 1643E

§ 1643f. Action of Commission with respect to claims

(a) Certification of amounts

(b) Limitation on amount of claims of assignees

(MAR. 10, 1950, CH. 54, title V, § 507, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1112.)

CITE AS 22 USC 16425

§ 1643g. Transfer of records

The Secretary of State shall transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this subchapter as may be required by the Commission in carrying out its functions under this subchapter.

(MAR. 10, 1950, CH. 54, title V, § 508, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1112.) CITE AS: 22 USC 1643G

§ 1643h. Applicability of administrative provisions of subchapter I

To the extent they are not inconsistent with the provisions of this subchapter, the following provisions of subchapter I of this chapter shall be applicable to

this subchapter: Subsections (b), (c), (e), (h), and (j) of SECTION 1623 OF THIS TITLE; subsection (f) of SECTION 1626 OF THIS TITLE.

(MAR. 10, 1950, CH. 54, title V, § 509, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1112.)

CITE AS: 22 USC 1643H

§ 1643i. Time limitation on completion of affairs of Commission

The Commission shall complete its affairs in connection with the settlement of claims pursuant to this subchapter not later than July 6, 1972.

(MAR. 10, 1950, CH. 54, title V, § 510, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1112; amended PUB. L. 89-780, § 5, Nov. 6, 1966, 80 STAT. 1365; PUB. L. 91-157, Dec. 24, 1969, 83 STAT. 435.)

CITE AS: 22 USC 1643I

§ 1643j. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission to pay its administrative expenses incurred in carrying out its functions under this subchapter.

(MAR. 10, 1950, CH. 54, title V, § 511, as added PUB. L. 88-666, Oct. 16, 1964, 78 STAT. 1113; amended PUB. L. 89-262, § 5, Oct. 19, 1965, 79 STAT. 988.)

CITE AS: 22 USC 1643J

§ 1643k. Fees for services; limitation; penalty

No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under this subchapter shall exceed 10 per centum of so much of the

total amount of such claim, as determined under this subchapter, as does not exceed \$20,000, plus 5 per centum of so much of such amount, if any, as exceeds \$20,000. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both.

CITE AS: 22 USC 1643K

§ **1643L.** Determination of ownership of claims referred by district courts of the United States

Notwithstanding any other provision of this chapter and only for purposes of SECTION 6082 OF THIS TITLE, a United State¹ district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in SECTION 6023 OF THIS TITLE), resulting from the confiscation of property by the Government of Cuba described in SECTION 164313(A) OF THIS TITLE, whether or not the United States national qualified as a national of the United States (as defined in SECTION 1643A(1) OF THIS TITLE) at the time of the action by the Government of Cuba.

(MAR. 10, 1950, CH. 54, title V, § 514, as added PUB. L. 104-114, TITLE III, §303(B), Mar. 12, 1996, 110 STAT. 820.)

CITE AS: 22 USC 1643L

¹ So in original. Probably should be "States".

§ 1643m. Exclusivity of Foreign Claims Settlement Commission certification procedure

(a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under SECTION 1643B OF THIS TITLE but did not timely file such claim under that section, nor any person who was ineligible to file a claim under SECTION 1643B OF THIS TITLE, nor any national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under SECTION 1643F OF THIS TITLE, nor shall any district court of the United States have jurisdiction to adjudicate any such claim.

(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of capital stock of nationals of the United States owning claims certified by the Commission under SECTION 1643F OF THIS TITLE.

(MAR. 10,1950, CH. 54, title V, § 515, as added PUB. L. 104-114, TITLE III, §304, Mar. 12, 1996, 110 STAT. 821.) CITE AS: 22 USC 1643M

365

NATIONAL SECURITY PRESIDENTIAL
MEMORANDUM/NSPM-5

Presidential Memoranda

June 30, 2025

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF HEALTH AND HUMAN
SERVICES
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF HOMELAND SECURITY
THE DIRECTOR OF NATIONAL INTELLIGENCE
THE DIRECTOR OF THE CENTRAL
INTELLIGENCE AGENCY
THE CHAIRMAN OF THE JOINT CHIEFS OF
STAFF
THE ASSISTANT TO THE PRESIDENT AND
CHIEF OF STAFF

THE DIRECTOR OF THE OFFICE OF
MANAGEMENT AND BUDGET

THE ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS

THE ASSISTANT TO THE PRESIDENT AND
HOMELAND SECURITY ADVISOR

THE COUNSEL TO THE PRESIDENT

THE ASSISTANT TO THE PRESIDENT FOR
ECONOMIC POLICY

THE UNITED STATES TRADE REPRESENTATIVE

THE DIRECTOR OF THE OFFICE OF SCIENCE
AND TECHNOLOGY POLICY

THE REPRESENTATIVE OF THE UNITED
STATES OF AMERICA TO THE UNITED
NATIONS

THE ADMINISTRATOR OF THE SMALL
BUSINESS ADMINISTRATION

THE ADMINISTRATOR OF THE UNITED STATES
AGENCY FOR INTERNATIONAL
DEVELOPMENT

THE DIRECTOR OF THE OFFICE OF
PERSONNEL MANAGEMENT

SUBJECT: Reissuance of and Amendments to
National Security Presidential Memorandum 5 on
Strengthening the Policy of the United States Toward
Cuba

Section 1. Purpose.

The United States recognizes the need for more
freedom and democracy, improved respect for human
rights, and increased free enterprise in Cuba. The

Cuban people have long suffered under a Communist regime that suppresses their legitimate aspirations for freedom and prosperity and fails to respect their essential human dignity.

My Administration's policy will be guided by the national security and foreign policy interests of the United States, as well as solidarity with the Cuban people. I will seek to promote a stable, prosperous, and free country for the Cuban people. To that end, we must channel funds toward the Cuban people and away from a regime that has failed to meet the most basic requirements of a free and just society.

In Cuba, dissidents and peaceful protesters are arbitrarily detained and held in terrible prison conditions. Violence and intimidation against dissidents occur with impunity. Families of political prisoners are retaliated against for peacefully protesting the improper confinement of their loved ones. Worshipers are harassed, and free association by civil society organizations is blocked. The right to speak freely, including through access to the internet, is denied, and there is no free press. The United States condemns these abuses.

The initial actions set forth in this memorandum, including restricting certain financial transactions and travel, encourage the Cuban government to address these abuses. My Administration will continue to evaluate its policies so as to improve human rights, encourage the rule of law, foster free markets and free enterprise, and promote democracy in Cuba.

Sec. 2. Policy.

It shall be the policy of the executive branch to:

- (a) End economic practices that disproportionately benefit the Cuban government or its military, intelligence, or security agencies or personnel at the expense of the Cuban people.
- (b) Ensure adherence to the statutory ban on tourism to Cuba
- (c) Support the economic embargo of Cuba described in section 4(7) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (the embargo), including by opposing measures that call for an end to the embargo at the United Nations and other international forums and through regular reporting on whether the conditions of a transition government exist in Cuba.
- (d) Amplify efforts to support the Cuban people through the expansion of internet services, free press, free enterprise, free association, and lawful travel.
- (e) Not reinstate the “Wet Foot, Dry Foot” policy, which encouraged untold thousands of Cuban nationals to risk their lives to travel unlawfully to the United States.
- (f) Ensure that engagement between the United States and Cuba advances the interests of the United States and the Cuban people. These interests include:
 - advancing Cuban human rights; encouraging the growth of a Cuban private sector independent of government control; enforcing final orders of removal against Cuban nationals in the United States; protecting the national security and public health and safety of the United States, including through

proper engagement on criminal cases and working to ensure the return of fugitives from American justice living in Cuba or being harbored by the Cuban government; supporting United States agriculture and protecting plant and animal health; advancing the understanding of the United States regarding scientific and environmental challenges; and facilitating safe civil aviation.

Sec. 3. Implementation.

The heads of executive departments and agencies (agencies) shall begin to implement the policy set forth in section 2 of this memorandum as follows:

(a) Within 30 days of the date of this memorandum, the Secretary of the Treasury and the Secretary of Commerce, as appropriate and in coordination with the Secretary of State and the Secretary of Transportation, shall initiate a process to adjust current regulations regarding transactions with Cuba.

(i) As part of the regulatory changes described in this subsection, the Secretary of State shall identify any entities or subentities, as appropriate, that are under the control of, or act for or on behalf of, or for the benefit of, the Cuban military, intelligence, or security services or personnel (such as Grupo de Administracion Empresarial S.A. (GAESA), its affiliates, subsidiaries, and successors), and publish a list of those identified entities and subentities with which direct or indirect financial transactions would disproportionately benefit such services or personnel at the expense of the Cuban people or private enterprise in Cuba.

(ii) Except as provided in subsection (a)(iii) of this section, the regulatory changes described in this

subsection shall prohibit direct or indirect financial transactions with those entities or subentities on the list published pursuant to subsection (a)(i) of this section.

(iii) The regulatory changes described in this subsection shall not prohibit transactions that the Secretary of the Treasury or the Secretary of Commerce, in coordination with the Secretary of State, determines are consistent with the policy set forth in section 2 of this memorandum and:

- (A) concern Federal Government operations, including Naval Station Guantanamo Bay and the United States mission in Havana;
- (B) support programs to build democracy in Cuba;
- (C) concern air and sea operations that support permissible travel, cargo, or trade;
- (D) support the acquisition of visas for permissible travel;
- (E) support the expansion of direct telecommunications and internet access for the Cuban people;
- (F) support the sale of agricultural commodities, medicines, and medical devices sold to Cuba consistent with the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7201 *et seq.*) and the Cuban Democracy Act of 2002 (22 U.S.C. 6001 *et seq.*);
- (G) relate to sending, processing, or receiving authorized remittances;

(H) otherwise further the national security or foreign policy interests of the United States; or

(I) are required by law.

(b) Within 30 days of the date of this memorandum, the Secretary of the Treasury, in coordination with the Secretary of State, shall initiate a process to adjust current regulations to ensure adherence to the statutory ban on tourism to Cuba.

(i) The amended regulations shall require that educational travel be for legitimate educational purposes. Except for educational travel that was permitted by regulation in effect on January 27, 2011, all educational travel shall be under the auspices of an organization subject to the jurisdiction of the United States, and all such travelers must be accompanied by a representative of the sponsoring organization.

(ii) The regulations shall further require that those traveling for the permissible purposes of non academic education or to provide support for the Cuban people:

(A) engage in a full-time schedule of activities that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities; and

(B) meaningfully interact with individuals in Cuba.

(iii) The regulations shall continue to provide that every person engaging in travel to Cuba shall keep full and accurate records of all transactions related to authorized travel, regardless of whether they

were effected pursuant to license or otherwise, and such records shall be available for examination by the Department of the Treasury for at least 5 years after the date they occur.

(iv) The Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Transportation shall review their respective agencies' enforcement of all categories of permissible travel within 90 days of the date the regulations described in this subsection are finalized to ensure such enforcement accords with the policies outlined in section 2 of this memorandum.

(c) The Secretary of the Treasury shall regularly audit travel to Cuba to ensure that travelers are complying with relevant statutes and regulations. The Secretary of the Treasury shall request that the Inspector General of the Department of the Treasury inspect the actions taken by the Department of the Treasury to implement this audit requirement. The Inspector General of the Department of the Treasury shall provide a report to the President, through the Secretary of the Treasury, summarizing the results of that inspection within 180 days of the adjustment of current regulations described in subsection (b) of this section and annually thereafter.

(d) The Secretary of the Treasury shall adjust the Department of the Treasury's current regulation defining the term "prohibited officials of the Government of Cuba" so that, for purposes of title 31, part 515 of the Code of Federal Regulations, it includes Ministers and Vice-Ministers; members of the Council of State and the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly;

local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors, and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional).

(e) The Secretary of State and the Representative of the United States of America to the United Nations shall oppose efforts at the United Nations or (with respect to the Secretary of State) any other international forum to lift the embargo until a transition government in Cuba, as described in section 205 of the LIBERTAD Act, exists.

(f) The Secretary of State, in coordination with the Attorney General, shall provide a report to the President assessing whether and to what degree the Cuban government has satisfied the requirements of a transition government as described in section 205(a) of the LIBERTAD Act, taking into account the additional factors listed in section 205(b) of that Act. This report shall include a review of human rights abuses committed against the Cuban people, such as unlawful detentions, arbitrary arrests, and inhumane treatment.

(g) The Attorney General shall, within 90 days of the date of this memorandum, issue a report to the President on issues related to fugitives from American justice living in Cuba or being harbored by the Cuban government.

(h) The Secretary of State and the Administrator of the United States Agency for International Development shall review all democracy development programs of the Federal Government in Cuba to ensure that they align with the criteria set forth in section 109(a) of the LIBERTAD Act.

(i) The Secretary of State shall convene a task force, composed of relevant agencies, including the Office of Cuba Broadcasting, and appropriate non-governmental organizations and private-sector entities, to examine the technological challenges and opportunities for expanding internet access in Cuba, including through Federal Government support of programs and activities that encourage freedom of expression through independent media and internet freedom so that the Cuban people can enjoy the free and unregulated flow of information.

(j) The Secretary of State and the Secretary of Homeland Security shall continue to discourage dangerous, unlawful migration that puts Cuban and American lives at risk. The Secretary of Defense shall continue to provide support, as necessary, to the Department of State and the Department of Homeland Security in carrying out duties regarding interdiction of migrants.

(k) The Secretary of State, in coordination with the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Commerce, and the Secretary of Homeland Security, shall annually report to the President regarding the engagement of the United States with Cuba to ensure that engagement is advancing the interests of the United States.

(l) All activities conducted pursuant to subsections (a) through (k) of this section shall be carried out in a manner that furthers the interests of the United States, including by appropriately protecting sensitive sources, methods, and operations of the Federal Government.

Sec. 4. Earlier Presidential Actions.

(a) This memorandum amends sections 1 and 3 of National Security Presidential Memorandum 5 of June 16, 2017 (Strengthening the Policy of the United States Toward Cuba) (NSPM-5), and reissues NSPM-5 in its entirety. It does not otherwise amend the text or timelines reflected in the original NSPM-5 and is not intended to direct agencies to repeat actions already implemented under that NSPM.

(b) This memorandum supersedes and replaces both National Security Presidential Directive 52 of June 28, 2007 (U.S. Policy toward Cuba), and Presidential Policy Directive 43 of October 14, 2016 (United States-Cuba Normalization).

(c) This memorandum does not affect either Executive Order 12807 of May 24, 1992 (Interdiction of Illegal Aliens), or Executive Order 13276 of November 15, 2002 (Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region).

Sec. 5. General Provisions.

(a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- (d) The Secretary of State is hereby authorized and directed to publish this memorandum in the *Federal Register*.

DONALD J. TRUMP

377
TRANSLATION
OF THE
GENERAL LAW OF PUBLIC WORKS
OF THE
ISLAND OF CUBA,
AND
REGULATIONS FOR ITS EXECUTION.
WITH THE ADDITION OF ALL SUBSEQUENT
PROVISIONS PUBLISHED TO DATE.

(1891)

WAR DEPARTMENT,
DIVISION OF CUSTOMS
AND INSULAR AFFAIRS.
1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

GENERAL GOVERNMENT OF THE
ISLAND OF CUBA,

Office of the Secretary, Department of Public Works.

The Colonial Department, under date of the 19th of last April, communicates to his Excellency, the Governor-General, the following Royal Order:

Considering the reasons submitted to me by the Colonial Secretary, and by virtue of the authorization granted to the Government by Article 89 of the Constitution of the Monarchy, and in conformity with the report of the full Council of State, I have decreed as follows:

ARTICLE 1. In Cuba there shall govern a General Law of Public Works similar to that decreed for the Peninsula on the 13th of April, 1877.

ART. 2. The Colonial Secretary shall draft the regulations for the execution of this law and shall report this decree to the Cortes, which is sent to Your Excellency by Royal Order, accompanying the law with a copy of the Gaceta of Madrid, in which it has been published.

And in compliance with the superior order of Your Excellency, dated the 19th of the present month, it is published, together with said law, for general knowledge, together with the said General Law which extends it to this Island.

Havana, May 30, 1883.

M. DIAZ DE LA QUINTANA,
Secretary of the General Government.

GENERAL LAW OF PUBLIC WORKS FOR THE
ISLAND OF CUBA.

[Approved by Royal Decree of this date.]

CHAPTER I.

CLASSIFICATION OF THE WORKS.

ART. 1. Public works for the purposes of this law shall be understood to be those which are of general use or service, and such constructions as are devoted to the service and are in charge of the State, of the Provinces, and of the towns.

In the first group are included roads, ordinary as well as railroads, ports, light-houses, great irrigation canals, navigation canals, and the works necessary to the disposition, use, and police of waters, retention of rivers within their beds, draining of lakes and marshes, and sanitation of lands. And the second group shall include public buildings devoted to service depending on the Colonial Department.

ART. 2. The examination and approval of the projects, supervision of the construction, and preservation of the public works, their police and use, shall always be dependent on the Administration, in whichever of its central powers, and on the provincial and municipal Administrations.

ART. 3. Public works, both in relation to their plans and their construction, operation, and preservation, may be charged to the State, to the Province, to Municipalities, or to individuals or companies.

ART. 4. There are in charge of the State:

First. The highroads which are included in the general plan of those which have to be taken care of with general funds.

Second. The work of retaining within their beds and making navigable the principal rivers.

Third. Ports of commerce of general interest, as well as those of refuge, and military ports.

Fourth. Light-houses and buoys.

Fifth. The drainage of great marshes, lakes, and inlets belonging to the State.

Sixth. The construction, preservation, and operation of those railroads of great national interest, which, because of high considerations of government, shall not be turned over to individuals or companies.

Seventh. All other railroads of general interest, in so far as concerns the concession, examination and approval of plans, and superindendence, in order to see that they are constructed and operated in the safest and most proper manner.

Eighth. The construction and preservation of civil buildings necessary to the service of the Administration.

(Article 1 of the Regulations.)

ART. 5. There are in charge of the Province:

First. The roads included in the plan of those which have to be attended to with provincial funds.

Second. The ports within its territory which, not being included in the third paragraph of Article 4, offer greater advantages than those of a given locality.

Third. The sanitation of lakes, marshes, and inundated lands in which the Province is interested and which are not included in the fifth paragraph of said article 4.

Fourth. The construction and preservation of the buildings necessary for the service of the Provincial Administration.

(Article 56 of the Regulations.)

ART. 6. There are in charge of the Municipalities:

First. The construction and preservation of local roads included in the plan of those which have to be taken care of with municipal funds.

Second. The works for supplying water to the towns.

Third. The drainage of lakes and unhealthy lands which are not included in the fifth paragraph of Article 4, nor in the third paragraph of Article 5, and which affect one or more towns.

Fourth. Ports of merely local interest.

Fifth. The construction and preservation of the buildings necessary for the service of the municipal Administration.

Sixth. The works necessary to make and ornament the streets, squares, and boulevards of the towns.

(Article 91 of the Regulations.)

ART. 7. The following may be in charge of individuals or companies, in accordance with the general provisions of this law and the special provisions for each class of works:

First. Highroads and railroads in general.

Second. Ports.

Third. Irrigation and navigation canals.

Fourth. Drainage of lakes and marshes.

Fifth. Sanitation of unhealthy lands.

Sixth. Water supply of towns.

CHAPTER II.

ADMINISTRATION AND ECONOMIC MANAGEMENT OF PUBLIC WORKS.

ART. 8. The following shall be in charge of the Colonial Secretary:

First. All that refers to the plans, construction, preservation, repair, and police of the highroads in charge of the State.

Second. All that concerns the method and form of the constitution of partnerships or companies which may demand concessions of railroads of general interest, the granting of these concessions and privileges corresponding thereto, the examination and approval of the plans, and the service for the inspection which the State shall exercise in the construction, preservation, operation, and police of said railroads.

Third. All that refers to the construction and operation of those railroads of great public interest which, according to paragraph 6 of Article 4, are declared by special laws to be in charge of the State.

Fourth. Irrigation and navigation canals which may also be in charge of the State, in whatever relates to the drafting of plans, to works of construction, preservation, and improvement, and, finally, to the technical part of the distribution of the water and the policing of the navigation.

Fifth. The management and police of public waters, of rivers, torrents, lakes, streams, canals of artificial currents; the works relative to navigation, river navigation, to the defenses of the border of the rivers and lowlands exposed to be swept away or inundated; the draining of public waters, sanitation of marshy

lands, and, finally, the technical policing of inland navigation.

Sixth. The works of construction, preservation, and repair of the ports in charge of the State, and the technical policing of the same.

Seventh. The light-houses and all classes of maritime signals and buoys on the coasts.

Eighth. Everything in connection with the construction, building of additions, improvement and preservation of the civil buildings devoted to services dependent on the Colonial Department, and with those constructions which have the character of artistic and historic monuments. Ninth. The inspection of public works which are in charge of the Provinces or the Municipalities.

(Articles 78, 89, 101, and 120 of the Regulations.)

ART. 9. The Provincial Administration, according to the Organic Law, shall have charge of—

First. The highways, which, according to this Law, are in charge of the Provinces, as well as those which have to be provided for wholly with provincial funds in matters relative to the studies, construction, preservation, repair, and policing of said highroads.

Second. Navigation and irrigation canals declared to be exclusively of provincial interest, the technical part of the distribution of the water, and of the policing of the navigation.

Third. The sanitation of lakes and marshy lands declared of exclusive interest to the Provinces.

Fourth. The construction and improvement of the buildings having a provincial character devoted to

public service, and the preservation of historic and artistic monuments.

(Article 56 of the Regulations.)

ART. 10. The Municipal Administration shall, in accordance with the Organic Laws, have charge of—

First. The construction, repair, and preservation of local roads paid for by the Municipal Councils or which should be in charge of them, according to the provisions of this Law.

Second. The water supply of towns, in so far as the construction of the works or the concession of the same to private enterprises is concerned.

Third. The drainage of lakes or unhealthy lands which are declared of purely local interest.

Fourth. The construction and preservation of ports of local interest.

Fifth. The construction and improvement of buildings devoted to public service which depend on the Colonial Department, and the preservation of historic and artistic monuments.

Sixth. Highways and ornamentation of towns.

(Article 91 of the Regulations.)

ART. 11. The public works which have to be paid for with funds of the State shall be executed subject to the credits voted in the general budgets or in special laws.

ART. 12. In all the annual or general budgets of the State there must appear exactly the amounts necessary for the preservation of actually existing public works, which are in charge of the Colonial Department, as well as those which the economic

resources will permit for carrying on those already commenced, and for undertaking other new ones.

ART. 13. No amount whatever can be expended in public works of the State in this Island under the Colonial Department, except in accordance with a project duly approved, according to the provisions - of the present law.

ART. 14. In the annual budgets of the Provinces, there must be included exactly the amounts which may be necessary for the preservation of such actually existing works as are in charge of the Provinces, as well as whatever the resources of the said Provinces may permit for the prosecution of those already begun and for the undertaking of other new ones.

(Article 64 of the Regulations.)

ART. 15. No other provincial public work can be undertaken except in accordance with a project previously approved by the proper Depu. tation, after report of the Chief Engineer of the Province, or of the Provincial Architect, if there be one, in case of a work included under the name of civil construction.

(Articles 59, 89, and 120 of the Regulations.)

ART. 16. In the municipal budgets there shall appear precisely the amounts necessary for the preservation of public works which are in charge of the Municipal Councils, as well as what the resources of the Municipality may permit for the prosecution of those already commenced and for the undertaking of other new ones.

(Article 99 of the Regulations.)

ART. 17. No other municipal public work can be undertaken without a project previously approved by

the Governor of the Province, after hearing the Chief Engineer of the same, or the Provincial or Municipal Architect, in case of a civil building or construction.

(Article 93 of the Regulations.)

ART. 18. In the execution of all public works there must be observed, in so far as the investment of general provincial or municipal funds is concerned, the rules established in the Law of Accounting and in the organic laws of the Deputation and the Municipal Councils of this Island, as well as in the provisions of the Royal Decree of the 5th of May, 1876, in force for contracting public works when they are to be executed by contract.

CHAPTER III.

WORKS PAID FOR BY THE STATE.

ART. 19. The Colonial Department shall, at the proper time, formulate the general plan of public works which have to be paid for by the State, presenting the respective drafts of the law, in which these are determined and classified in their order of preference, to the Cortes.

(Article 2 of the Regulations.)

ART. 20. The Government can not undertake any public work for which there has not been a provision made in the budgets, assigning the proper credit. In any other case, in order to undertake a work, it shall be necessary for the Government to be authorized to do so by a special law. From this requisite are excepted works of mere repair, as well as those of new construction, which shall be declared of admitted urgency by the Colonial Department or its delegates, after report of the Consulting Board of Roads, Canals, and Ports and of the full Council of State.

(Articles 9, 10, 11, and 12 of the Regulations.)

The Colonial Secretary shall himself make use of the privilege to declare a work of admitted urgency which this article confers on him, when its value exceeds five thousand pesos. If the amount should be less, the Governor-General may authorize its execution, after favorable report of the Chief Engineer of the Province and of the Administrative Council which hears disputes, immediately reporting it to the Government.

ART. 21. No amounts whatsoever shall be included in the general budgets of the State for public works which are not included in the plans referred to in Article 19, unless the Government has been authorized to do so by a special law. In any case, in order to include the value of a work in the general budget, it shall be necessary that there be a previous study made and that the project receive the proper approval.

Concerning works of preservation and repair, it shall be sufficient that the general credit for this purpose be included in the budgets of the State existing at the time in which these works are to be executed.

(Article 13 of the Regulations.)

ART. 22. With the legislative credits, the Government may order the study of public works, the execution of which it deems convenient, in compliance with the provisions of the two preceding articles.

(Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Regulations.)

ART. 23. The Government may impose assessments and taxes for the use of works which are building with general funds, without prejudice to the rights which may have been acquired, and making report thereof to the Cortes.

ART. 24. The Government may construct the works in charge of the State by management or by contract. The first method shall be applied only to those works which can not be contracted for because of their special conditions, or because they can not be easily provided for in the budgets, because of the predomination of the hazardous parts in them, or for any other reason.

(Article 14 of the Regulations.)

ART. 25. The Government may contract for public works of which it may be in charge:

First. By obligating itself to pay the value of the works, according as they are being constructed at the times, and in the manner which may be determined on in the special provisions of each contract, and in the general conditions which should be contained in all those referring to this service.

Second. By granting to contractors the right to dispose of, for a specified time, the proceeds of the assessments which may have been established for the use of the work according to the provisions of Article 23 of the present law.

Third. By combining the two methods referred to.

(Article 17 of the Regulations.)

ART. 26. When the works which the State has constructed may be operated with profit, this shall be done by means of a contract awarded after public bidding, excepting in the cases in which, because of

special circumstances, it is declared proper that the Government shall take charge thereof. This declaration shall be made by a decree issued by the Colonial Department, after hearing the Consulting Board of Roads, Canals, and Ports, and the Colonial Department of the Council of State.

(Articles 6 and 54 of the Regulations.)

ART. 27. In the works which are executed at the expense of the State in the manner indicated in the second and third paragraphs of Article 25, the prices which are fixed for the use and operation of said works shall not exceed the schedule of rates in accordance with which the award may have been made; but these rates may be reduced if the person to whom the award has been made shall deem it convenient, subject to the conditions which are prescribed in the contract.

ART. 28. In the articles of conditions of each contract shall be included the gratuitous services which those to whom the contract has been awarded must render, and the special rates for different public services.

ART. 29. The study of the projects, the direction of the works which are executed by management, and the supervision of those which are constructed by contract, shall, in all cases where the works are in charge of the State, be carried on by the Corps of Engineers of Roads, Canals, and Ports. The Government, through the same Engineers, shall carry on the inspection of provincial and municipal works which, according to the ninth paragraph of Article 8 of the present Law, is attributed to it.

Civil constructions are excepted, the study, management, and supervision of which should be intrust-

ed to architects having professional degrees, who shall be approved by the Colonial Secretary.

(Articles 15 and 18 of the Regulations.)

ART. 30. Contractors shall be at liberty to select such persons as they may deem proper for the direction of the works which they obligate themselves to construct, who shall in all cases exercise their duties under the surveillance and inspection of the Government agents, as provided for in the previous article.

ART. 31. Contractors of State works, their employees, and laborers shall have the local benefits of the use of firewood, pasturage, and other rights which the inhabitants of the towns within the district in which said works are included, may enjoy.

ART. 32. The works of preservation and repair which are necessary for works in charge of the State, shall be carried on by the Colonial Department, adjusting themselves to the credits which shall have been assigned for that purpose in the general budgets, in accordance with the provisions of Article 12 and of paragraph 2 of Article 21 of this Law.

(Article 8 of the Regulations.)

CHAPTER IV.

PROVINCIAL WORKS.

ART. 33. There shall be established in each Province, after the proceedings which the Regulations may provide, the plans of public works, which, in accordance with Article 5 of this Law, shall be in charge of the respective Deputation.

These plans, in which the works shall be classified, showing the order of preference in which they should

be constructed, shall be submitted for the approval of the Colonial Secretary.

(Articles 56, 57, and 58 of the Regulations.)

ART. 34. No works shall be undertaken at the expense of provincial funds, unless there be included the proper credit for this purpose in the budget of expenses of the Province.

ART. 35. In order that the appropriation for a public provincial work be included in the general expenses of the Province, it shall be necessary that said work be included in one of the plans referred to in Article 33, and that its project be previously and duly approved in the manner prescribed by Article 15 of the present Law.

Exception is made, however, of cases of admitted urgency, in which, after a special law or declaration of the Colonial Secretary, and after the proceedings provided for by the Regulations have taken place, the necessary credit for the execution of the work in question may be included in the budget of the expenses of the Province. But even in these special cases the proceedings of the study of the project and its approval must always have been first had, in accordance with the provisions of said Article 15, and also the declaration of public utility, which should be made in accordance with the provisions of the present law.

(Articles 60, 62, and 63 of the Regulations.)

ART. 36. With the credits which shall be included in the provincial budget, the Deputations may decide that the study of such public works in their charge as they may deem proper, shall be made, in accordance with the provisions of the two preceding articles.

ART. 37. The Provincial Deputations may impose taxes for the use of the work in their charge in order to reimburse themselves for the amount which they may have devoted to that purpose. The imposition of these taxes shall in all cases be submitted for the approval of the Government.

(Articles 65 and 87 of the Regulations.)

ART. 38. The Deputations may execute their works by management or by contract, proceeding in each case as provided by Articles 24 to 28, both inclusive, of the present Law in the manner prescribed therein concerning the works in charge of the State.

(Articles 60 and 61 of the Regulations.)

ART. 39. The projects, direction, and supervision of the works which are executed with provincial funds, shall be carried on by Engineers of Roads or by Assistants of Public Works. Civil constructions of a provincial character are excepted, which may be in charge of architects who have their professional degree.

Among the conditions established in each case shall be the naming of these technical agents by the proper Provincial Deputation. (Articles 61, 66, 67, 68, and 71 of the Regulations.)

ART. 40. Contractors of provincial works may submit the direction of the same to such persons as they may deem proper, keeping in mind the provisions of Article 30 concerning the works of the State; and these persons shall have the benefits allowed by Article 31 to those who contract for works which shall be executed with general funds.

ART. 41. The works of preservation and repair which may be necessary for the works which are in

charge of the Provinces, shall be carried on with reference to the credits which, as provided in Article 14 of the present Law, shall appear in the provincial budgets.

(Article 64 of the Regulations.)

ART. 42. Provincial public works shall be inspected by the Government, in accordance with the provisions of this Law, whenever the Colonial Secretary or the Governor-General thus orders, which shall at least be when they are finished and before they are turned over to public use.

(Articles 69 and 70 of the Regulations.)

CHAPTER V.

MUNICIPAL WORKS.

ART. 43. Municipal Councils shall, by the proceedings prescribed by the Regulations, formulate the plans of public works which may be in their charge, which shall be submitted for the approval of the Governor of the Province. If, from the decision of said authority approving or disapproving these plans there should be any appeal, the entire proceedings shall be sent to the Colonial Secretary, who shall definitely decide.

(Articles 91 and 92 of the Regulations.)

ART. 44. No municipal work can be carried out if in the budget of the respective Municipal Council there shall not be a credit assigned for this purpose, in the manner prescribed by the Laws and Regulations.

(Article 93 of the Regulations.)

ART. 45. In order that the appropriation for a municipal work may appear in the budget of the proper Municipal Council, it is necessary that said

work be included in one of the plans referred to in Article 43, and that its project shall have been duly approved in the manner prescribed by Article 17 of the present Law. Exception is made in cases of admitted urgency, when, after the Governor has declared it, and after the Provincial Deputation has been heard, and with the right of appeal to the Governor on the part of the Municipal Council interested, there may be included in the Municipal budget the credit necessary for the execution of the work. Even in such cases a plan must have previously been drawn and the project approved, and the declaration of public utility of the works made, in conformity with the provisions of the present Law. For the approval of plans for municipal works affecting territories of towns belonging to different provinces, the Governors of the said provinces shall agree, and if there be any disagreement the papers shall be sent through the Governor-General with his report to the Colonial Secretary, who, after hearing the opinion of the Consulting Board of Roads, Canals, and Ports, shall decide, with no further appeal.

(Articles 95 and 96 of the Regulations.)

ART. 46. Municipal Councils may impose assessments and taxes on the works which are executed at their cost in order to reimburse themselves for the amount which they may have expended. For the imposition of these taxes the authorization of the Government shall be necessary, which, in order to grant it, shall first hear the report of the Governor of the Province.

(Articles 98 and 119 of the Regulations.)

ART. 47. Municipal Councils may construct their works by management or by contract, subject to the

provisions of the present Law concerning this matter, in connection with the works in charge of the State and of the Provinces.

(Article 94 of the Regulations.)

ART. 48. For the drafting of projects, direction and supervision of the works which have to be constructed with municipal funds, Municipal Councils may name the person whom they believe best fitted therefor, provided he has the necessary professional degree to accredit his ability.

(Articles 100 and 102 of the Regulations.)

ART. 49. The works of preservation and repair which are necessary for works in charge of Municipal Councils, shall be carried out without any other limitation than that they must come within the credits which, in accordance with Article 16, shall be contained in the municipal budgets for that purpose.

(Article 99 of the Regulations.)

ART. 50. Roads of communication, and the other public works which are constructed at the expense of the Municipal Councils, shall be inspected by the technical agents of the Government whenever the Governor may deem this proper, and in all cases shall be submitted to the inspection of these agents before being turned over to public use.

From this provision is excepted the ordinary building of paths and local roads.

(Articles 101 and 110 of the Regulations.)

CHAPTER VI.

WORKS EXECUTED BY INDIVIDUALS FOR
WHICH NO SUBSIDY OR OCCUPATION OF THE
PUBLIC DOMAIN IS ASKED.

(Articles 89, 90, and 120 of the Regulations.)

ART. 51. Individuals and companies may construct, without further restrictions than those imposed by the Police, Safety, and Public Health Regulations, any work whatsoever of private interest which does not occupy or affect the public domain or that of the State, or which does not demand the exercise of the right of eminent domain over private property.

ART. 52. Individuals and companies may also build and operate public works devoted to general use and the others which are enumerated in Article 7 of this Law, when given the right to do so by concession.

ART. 53. Said concessions, providing that no subsidy or constant occupation of the public domain is requested, or that they do not destroy the plans which are referred to in Articles 19, 33, and 43, shall be granted by the Colonial Department, by the Provincial Deputation, or by the Municipal Council, respectively, in whose charge the works may be. The concessions of works for which no subsidy is requested, but which destroy the plans of the works in charge of the State, referred to in Article 19, can not be granted except by means of a law. In the same case those which destroy the plans of municipal or provincial works, referred to in Articles 33 and 43, can not be granted except by means of Royal Decrees issued by the Colonial Department.

(Articles 19, 72, 73, 103, and 104 of the Regulations.)

ART. 54. In all cases the concessions referred to in the preceding article shall not be granted for more than ninety-nine years, unless the very character of the work should demand a longer period, which shall be always granted by a law. When the time of the concession has run, the work shall become the property of the State, of the Province, or of the Municipality in whose charge it might be. Every concession shall be granted without prejudice to third parties and protecting the interests of private persons.

ART. 55. In order that a concession to an individual or company of a work in the cases referred to in Article 53 may be granted, there shall be necessary a project with all the facts which, according to the provisions of the Regulations, may be necessary to form a judgment of the work, of its objects, and of the advantages which will inure to the general interests from its construction.

(Articles 20, 21, 22, 74, and 105 of the Regulations.)

ART. 56. In order to form the project referred to in the preceding article, the petitioner may request of the Colonial Department, of the Governor-General, or of the proper corporations, the necessary authorization.

This authorization shall only carry with it—

The power to enter the private property of another in order to make the studies, after having received the permission of the owner, manager, or attendant who may reside on the property or near it; and otherwise, or when this is not granted, on the permission of the Alcalde, who shall always grant it when there is security, by means of a reasonable sum, for the immediate payment of the damages which may arise.

(Articles 20, 21, 74, and 105 of the Regulations.)

ART. 57. Individuals or companies which ask to construct or operate a public work, shall direct their petition to the Colonial Secretary, to the Governor-General, or to the corporation which in each case has power to grant the concession, accompanied by the project mentioned in Article 55, and also by a document showing that there has been deposited, as a guaranty of the proposal, 1 per cent of the estimate of said work.

(Articles 23, 75, and 106 of the Regulations.)

ART. 58. The Government, in cases in which it has the right to do so in accordance with Article 53, shall grant the concession, after consulting, in order better to form its judgment, the reports which concern each kind of works which may be established by special laws and by the Regulations, there being necessary as an indispensable requisite for the approval of the project, the previous opinion of the Consulting Board of Roads, Canals, and Ports, or of the Royal Academy of San Fernando, as the case may be.

When, according to the provisions of said article, a concession has to be granted by the legislative power, the Colonial Secretary shall present to the Cortes the proper form of law, if from the proceedings there should result the approval of the convenience of carrying out the work referred to in the petition.

The Provincial Deputation and Municipal Councils shall follow the provisions of the Regulations for the course of the proceedings to obtain the concession which they may have power to grant, in accordance with Article 53 of the present Law.

(Articles 24, 25, 26, 27, 76, 77, 107, 108, and 109 of the Regulations.) ART. 59.—As a general rule, there shall appear in the terms of every concession the following:

First. The amount which shall be deposited by the concessionaire as a guaranty of the fulfillment of his engagements, which shall be from 3 to 5 per cent of the estimate of the works.

Second. The time in which the work shall begin and end.

Third. The conditions for the establishment and for the use of the works, which in each case may be deemed convenient, in accordance with the laws.

Fourth. The cases of forfeiture and the consequences of this forfeiture. (Articles 28, 29, 77, 109, and 110 of the Regulations.)

ART. 60. The asking of subsidy after the said concession has been granted, shall be considered as a case of forfeiture of a concession included in Article 53. When by means of a law a subsidy or an aid with public funds in order to execute the work shall be granted, the subsidy or the aid shall not inure directly to the benefit of the former concessionaire, but only to that of the work itself, which shall be immediately submitted to public auction, in accordance with the provisions of this Law, concerning subsidized works.

(Article 29 of the Regulations.)

ART. 61. When more than one petition for the same work is presented, the one shall be preferred which offers the greatest advantages to the public interests. In order to determine these advantages, the Colonial Department, or the corporations which in a proper

case have the right to grant the concessions, shall proceed to obtain the reports provided for by the Regulations.

When the Colonial Secretary has the authority to grant the concession, before, deciding on the preference between the petitions, he shall hear the corporation interested and the Colonial Department of the Council of State.

(Articles 33, 80, 112, 113, and 118 of the Regulations.)

ART. 62. If from the reports referred to in the preceding article it shall appear that there is an equality among the proposals made, the concession shall be granted by means of a public bidding, in which not only the petitioners, but any other person who shall prove that he has made the deposit of one per cent of the estimate of the work, may take part.

The bidding shall be in the first place on the reduction of the rates of operation, and if in these there should result an equality of reductions, then in the period of the concession. The one to whom the award is made shall be obliged to pay to the signer of the petition. which may have been first presented, in case the latter shall not have been the best bidder, the expenses of the project according to the expert appraisal of the same made before the public bidding.

(Articles 34, 35, 36, 37, 38, 39, 81, 82, 113; and 114 of the Regulations.)

ART. 63. No concession of a public work, asked by companies or individuals, can be made without the previous publication of their petition in the Gaceta de Madrid and of Havana and in the Boletín Oficial of the respective province,- fixing the period of thirty

days for the admission of other propositions which may be better than the first.

(Article 32 of the Regulations.)

ART. 64. When the concession of a public work is made, the Government, or the corporations which in a proper case may have granted it, shall supervise, through their technical agents, the construction of the work, in order that the stipulated conditions may be observed. The same supervision shall be observed in connection with the operation, when the works have been completed, and when such operation is authorized in the manner prescribed by the Regulations.

(Articles 40, 78, and 110 of the Regulations.)

ART. 65. The concessionaire may, after authorization by the Colonial Department, or the corporation which may have granted the concession, alienate the works, provided that the grantee shall obligate himself in the same terms and with the same guaranties as the first concessionaire, for the fulfillment of the stipulated conditions.

ART. 66. The guaranty referred to in the first paragraph of Article 39 shall not be returned to the concessionaire until he has proved the construction of works to an amount equivalent to a third part of those included in the concession. Said works shall then take the place of the guaranty, and shall be liable for the fulfillment of the provisions of the concession.

(Article 28 of the Regulations.)

21634—2

ART. 67. The declaration of forfeiture of the concession of a public work of those included in this

Chapter, whenever made, shall be by the Colonial Department, or the corporation which might have granted it, and always after proceedings in which the interested party must be heard.

(Articles 29, 30, 78, and 111 of the Regulations.)

ART. 68. The forfeiture of the concession by reason of infractions imputable to the concessionaire shall always carry with it the loss of the guaranty, to the benefit of the general Provincial or Municipal Administration, as the case may be.

(Articles 31, 79, and 111 of the Regulations.)

ART. 69. If on the declaration of forfeiture the construction of the work shall not even have been commenced, the Administration shall be relieved of all agreements with the concessionaire. If the works have already been commenced, but if they should not be sufficient in order to return his guaranty to the concessionaire, the works constructed shall be offered to public bidding for a period of three months, and the basis of the bids shall be the value of the acquired lands, of the completed works, or the materials thereon. The works shall be awarded to the one who offers most for them, and the new concessionaire shall then pay to the first the amount of the bid, and shall be subrogated to him in all his rights and obligations. In both cases the first concessionaire shall forfeit his guaranty.

(Articles 31, 79, and 111 of the Regulations.)

ART. 70. If on the declaration of forfeiture the guaranty shall have been returned, the works completed by the concessionaire shall in the same way be offered to public bidding, for a period of two months, on the same basis. From the amount offered

by the best bidder, who shall be declared to be the owner of the concession, the Administration shall reserve the amount of the returned guaranty, and the difference, should there be any, shall be turned over to the first concessionaire.

(Articles 31, 79, and 111 of the Regulations.)

ART. 71. In the cases of the preceding articles, if there shall not be any auction by reason of an absence of bidders, the executed work shall again be put up for public bids for a period of one month, on the same basis.

If the concession is not awarded in any of the auctions, the State, Province, or towns which may have granted the execution of the works, shall take charge and shall use them in the manner deemed convenient, without the right to any claim whatsoever on the part of the concessionaire, whose rights shall be declared forfeited.

(Articles 31, 79, and 111 of the Regulations.)

ART. 72. No work for the operation of which there may be necessary the occupation of another work belonging to the State, the Province, or towns can be granted without previous public bidding, on the basis which may be determined for this purpose. There shall be reserved the right of preference on equal terms to the petitioner, and when the concession is not granted to him he shall be paid, by the one to whom it is awarded, the amount of the project, according to expert appraisal made and advertised before the public sale.

(Articles 38, 82, and 114 of the Regulations.)

CHAPTER VII.

WORKS SUBSIDIZED WITH PUBLIC FUNDS, BUT
WHICH DO NOT OCCUPY THE PUBLIC DOMAIN.

(Articles 89, 90, and 120 of the Regulations.)

ART. 73. Whenever a subsidy of any kind is requested for the execution by individuals or companies of a public work, which shall not constantly occupy or make use of a part of the public domain, the concession for this purpose, when the subsidy shall be given by a Province or some Municipality, shall be made by the corporation in whose charge the works are, but in every case after public bidding; and if the subsidy shall come from the State the concession shall moreover be the subject of a law.

By subsidy, for the purposes of this article, is understood any direct or indirect aid whatsoever from the public funds, including the exemption of customs duties on the material which is to be introduced from abroad, which exemption must always be granted by a law.

(Articles 73 and 104 of the Regulations.)

ART. 74. The concessions referred to in the preceding article shall always be temporary and can not exceed ninety-nine years. When this period has elapsed, the work shall become the property of the State, Province, or town which may have granted the subsidy.

ART. 75. The individuals or companies who request a subsidy of public funds to construct a work of those referred to in this Chapter, may ask for the necessary authorization to make the proposed studies in the terms and with the rights mentioned in Article 56 of

the present Law. The petition for the concession shall be accompanied by a complete project of the works, according to the provisions of the Regulations, and also a document showing that the petitioner has deposited, as a guaranty for the fulfillment of the propositions which he may have made or admitted in the course of the proceedings, the 1 per cent of the total estimate of the said works.

(Articles 41, 83, and 115 of the Regulations.)

ART. 76. The Colonial Department, or the proper corporation, shall make investigation, as determined by the Regulations, in order to prove the utility of the project. If the work referred to should be included in the plans referred to in Articles 19, 33, and 43 of this Law, it shall not be necessary to make this investigation.

(Articles 41, 83, and 115 of the Regulations.)

ART. 77. When the project is approved in the manner prescribed by the Regulations, when the work has been gone over on the ground by the Engineers of the State, or by the technical officials designated by the Deputation or Municipal Councils, according to circumstances, and when the conditions of the concession are mutually accepted, the Colonial Secretary, in case of State works, shall present to the Cortes the form of law necessary to grant it, in accordance with the provisions of Article 73.

(Articles 41, 42, 43, and 84 of the Regulations.)

ART. 78. When the maximum subsidy which may be given for the projected work has been fixed by a law, in case of State works, or by the Deputation or the proper Municipal Council, in case of works in charge of these corporations, the concession shall be

offered for public bids on this basis for three months; and it shall be awarded to the best bidder, with the obligation to pay to the petitioner, if he should not be given the award, the value of the studies of the project, in accordance with the expert appraisal made and announced previously to the bidding, in the form determined by the Regulations.

(Articles 43, 44, 45, 52, 53, 84, 86, and 116 of the Regulations.)

ART. 79. In order to take part in the bidding it is necessary to prove that there has been deposited, as a guaranty of the propositions which are presented, the 1 per cent of the total value of the work, according to the approved estimate.

(Articles 43, 84, and 116 of the Regulations.)

ART. 80. In no case can the instrument awarding the concession be executed until the concessionaire has proved that he has deposited, as a guarantee of the fulfillment of his obligations, 5 per cent of the estimated value of the works.

If the concessionaire allows fifteen days to pass without depositing the guaranty, the award shall be declared to be without effect, with the loss of the deposit referred to in the preceding article, the concession or the work being again put up for public bids for the period of forty days.

The guaranty treated of in this article shall not be returned to the company to which the concession is granted until the works of the concession shall be completely finished and in condition for operation.

(Articles 46, 85, and 117 of the Regulations.)

ART. 81. The provisions of Article 64 of the present law concerning the supervision which the Admin-

istration must exercise over the works during their construction and operation, are applicable to subsidized works.

The supervision of subsidized works shall extend also to the economic and mercantile part of the company to which the concession is granted, so that the delivery of the aids or subsidies shall be made in proportion to the executed works, in accordance with the stipulated provisions.

(Articles 55 and 88 of the Regulations.)

ART. 82. No variation or modification whatever may be made in the project which shall serve as the basis of a subsidized concession without a competent authorization of the Colonial Department or the corporation which might have granted it.

The authorization of the Colonial Department in connection with works subsidized by the State can not be granted until after hearing the proper corporation and the full Council of State, and after fulfilling the other requisites required by the Regulations for the execution of this law.

(Articles 47 and 45 of the Regulations.)

ART. 83. When, in consequence of the variations referred to in the preceding article, the cost of the works is diminished, the amount of the aid or subsidy shall be reduced proportionately to such diminution.

If the variations or modifications should result in increasing the cost, even when by means of them the works will be perfected or advantages obtained in their use or operation, the subsidies and the aids granted by the law of concession shall not for these reasons be increased unless the contrary shall be provided for by special law.

(Articles 47 and 85 of the Regulations.)

ART. 84. The declaration of forfeiture of the subsidized concession shall be made by the Colonial Department in all cases affecting State works, and in the other cases by the Deputation or the Municipal Council which, in accordance with Article 73, may have granted such concessions.

Whenever the forfeiture of a concession with subsidy has been finally declared, the amount of the guaranty which, in accordance with Article 80, may have been required from the concessionaire, shall remain for the benefit of the State, or of the proper corporation.

(Articles 48 and 85 of the Regulations.)

ART. 85. Concessions of subsidized public works shall be absolutely forfeited if the work shall not be begun or terminated entirely, or in the parts into which it may have been divided, within the time determined on.

Whenever there is a case of force majeure, and it is duly proved by virtue of an investigation made, as provided by the Regulations, the time may be extended for that absolutely necessary. If the subsidy comes from general funds, the Colonial Secretary must grant the extension of time, after hearing the Council of State.

At the end of the extension, the concession shall be forfeited, if within that period the stipulations are not carried out.

(Articles 49 and 85 of the Regulations.)

ART. 86. When by the fault of the company the public service of a subsidized work is interrupted, the Colonial Secretary, the Deputations, or the Municipal

Council, as the case may be, shall immediately adopt the necessary measures to assure its provisional operation at the expense of the concessionaire.

Within six months the company must prove that it has sufficient resources to continue the operation, which it may assign to another company or to a third person, after previous special authorization of the Government or the proper corporation. If even by these means the service is not continued, the concession shall be considered forfeited. (Articles 50 and 85 of the Regulations.)

ART. 87. From the resolution of the Government declaring forfeiture the concessionaire may appeal, by the administrative jurisdiction on contests, within the period of two months from the day on which he may have been notified. When this period has passed without an appeal being made, the decision of the Government shall be considered as consented to.

The concessionaires may also appeal by the administrative jurisdiction of contests, within the same time, from the decision of forfeiture which, according to its powers, may be made by the Deputations or the Municipal Councils, after the appeal to the Government shall have been exhausted, in the manner prescribed by the Law.

(Articles 48 and 85 of the Regulations.)

ART. 88. When a forfeiture of a subsidized concession is finally declared, the executed works shall be offered to public bids for the term of three months. The basis for these bids shall be the value, according to appraisal, of the lands acquired, of the completed works, and of the materials of construction and operation thereof, deducting the amounts which, as aid or subsidy, may have been given to the conces-

sionaire in lands, works, cash, or other kind of property.

(Articles 51 and 85 of the Regulations.)

ART. 89. If, at the auction referred to by the preceding article, there should be no bidder, a new auction shall be advertised for the period of two months, on the basis of two-thirds of the amount of the appraisal. If even then the sale should be prevented because there were no bidders, it shall be announced the third and last time, for a period of one month, at a fixed amount.

(Articles 51 and 85 of the Regulations.)

ART. 90. If at any of the three auctions referred to in the previous articles, propositions admissible within the advertised terms shall be made, the work shall be awarded to the best bidder, who shall give in guarantee 5 per cent of the amount of the works which are incompleted, and shall receive the concession under the same conditions as were granted in the forfeited one, being substituted to the previous concessionaire in all his rights and obligations, and subject to the provisions of the present Law.

(Articles 51 and 85 of the Regulations.)

ART. 91. From the proceeds of the works publicly sold, which shall be paid by the concessionaire, in the manner prescribed by the previous article, there shall be deducted the expenses of the appraisal and sale, and the rest shall be turned over to whomsoever it may belong.

(Articles 51 and 85 of the Regulations.)

ART. 92. In case the concession should not be awarded at any of the three auctions, the State, Province, or town in whose charge the work may be,

shall take charge of all which may have been constructed, and shall continue, if it deems it proper, by means of a new concession, which shall be granted in all things in conformity to the provisions of this Law, without the first concessionaire in such case having any right to any indemnity whatsoever.

(Articles 51 and 85 of the Regulations.)

CHAPTER VIII. CONCESSIONS OF THE PUBLIC DOMAIN AND OF THE DOMAIN OF THE STATE.

ART. 93. Concessions which individuals or companies request for the execution of works which have constantly to occupy or use a part of the public domain devoted to general use, shall in all cases be made by the Colonial Department, which shall follow the provisions established for this purpose in Chapter VI and in Chapter VII of this Law, according to whether there are involved subsidized works or those for the execution of which an aid of some sort is asked from the public funds.

(Article 122 of the Regulations.)

ART. 94. Individuals or companies who ask for a concession of the public domain for the construction of a work of general or private use shall direct their petition to the Colonial Department or its delegates, with a project made in accordance with the Regulations for the execution of this Law.

The Colonial Department shall examine the investigations which go to prove the established rights in the public domain which it is desired to occupy, the advantages or inconveniences which might result to the general interests from this work, and the other circumstances which it may be desirable to take into

account before the granting of the concession ; all of which shall be done in accordance with the provisions of the special laws and of the Regulations.

(Articles 123, 124, 125, 134, and 135 of the Regulations.)

ART. 95. If, from the investigation referred to in the preceding article, it should appear that the work in question does not hinder or impede the use of the public domain affected thereby, the concession may be granted by the Colonial Department or its delegates, in accordance with the provisions of the special laws of the several works, adding among the general provisions the following :

First. The time in which the works shall commence and be completed. Second. The conditions for the establishment and use of the work and the consequences of failure to comply with these conditions.

Third. The guarantee which the concessionaire shall give in order to secure the fulfillment of the stipulated provisions.

Fourth. The cases in which the concession may be declared forfeited, as well as the consequences of such forfeiture.

Fifth. The establishment of maximum rates designated for the use and profit of the works.

(Article 126 of the Regulations.)

ART. 96. If, before any decision shall be made concerning the petitions of the public domain referred to in the preceding articles, there should be another or other petitions incompatible with the first, the Colonial Department shall select those which offer the best terms to the public interests, for which purpose an investigation of the competing projects

shall be held, in the manner determined by the Regulations.

In similar cases, nevertheless, and in those in which it is not believed to be opportune because of special circumstances, the Colonial Department may decide that the concession be given, after a public bidding, in accordance with the provisions of Articles 97 and 98.

(Articles 127, 128, 129, 130, 131, 132, and 133 of the Regulations.)

ART. 97. If, from the investigation referred to in Article 94, it should appear that the work does not hinder or impede the use and profit to

which the part of the public domain affected by the work may be devoted, the concession may also be granted by the Colonial Department when it is thus deemed proper for the general interests.

The concession, in the case of the present article, shall always be made after public bidding, which shall be based in the first place on the reductions in the rates approved for the use and profit of the work; and in case of equality of these rates, on the raising of the price which shall previously have been designated for the part of the public domain which shall have to be ceded.

(Articles 135 and 136 of the Regulations.)

ART. 98. The conditions of the concession when, in accordance with the previous article, it shall have been made through public bidding, shall be those indicated in Article 95; adding that the person to whom the award is made shall be obliged, when he is not the same one who presented the project, to pay the petitioner the expenses which said project may

have occasioned him, according to expert appraisal made and published previously to the public sale.

(Article 137 of the Regulations.)

ART. 99. When, for the concessions of the class referred to in Article 97, two or more petitions may have been presented, the Colonial Secretary shall select, by the procedure determined by Article 96, the one which appears most proper to serve as the basis of the public biddings which must determine to whom the concessions shall finally be granted.

(Article 138 of the Regulations.)

ART. 100. The concessions referred to in the previous articles of this Chapter shall be granted for ninety-nine years at most, except in the cases wherein the special laws of public works establish a longer period, or when the concession is granted by means of a special law which may thus determine.

In all cases these concessions shall be understood to be made without prejudice to third parties and protecting vested rights. The concessionaire shall consequently be responsible for the damages and injuries which the work may occasion to private property or to the part of the public domain not occupied by him.

(Article 139 of the Regulations.)

ART. 101. When the concession is granted and the guaranty is deposited, an instrument shall be executed in which shall appear the grant of the concession and the stipulated conditions; certifying besides to the deposit of the guaranty, and adding a printed and authorized copy of this Law and of the Regulations for its execution.

(Article 139 of the Regulations.)

ART. 102. The concessionaire may transfer his concession or freely alienate the works, it being understood, however, that the one who substitutes him in his rights also substitutes him in his obligations imposed by the provisions of the concession, and that the guaranties which he may have made to cover his liability remain in existence.

Of the alienation or transfer of the rights belonging to the concessionaire, an account shall be given to the Colonial Department, or to the corporation which might have granted the concession, for the proper purposes.

(Article 139 of the Regulations.)

ART. 103. When the concession is made, the Administration shall have the right to see that the stipulated conditions are absolutely fulfilled, as well during the execution of the works as during their operation.

The guaranty referred to in the third paragraph of Article 95 shall be returned to the concessionaire when he proves that he has completed the works, and this shall be made to appear in his document of concession.

(Article 139 of the Regulations.)

ART. 104. The declaration of forfeiture of the concession of the public domain, in a proper case, shall be pronounced by the Colonial Secretary, after proceedings have been had, in which the interested party shall be especially heard. The consequences of the forfeiture shall be those which for similar cases are established in Chapters VI and VII of this Law.

When the forfeiture is declared, the instrument granting the concession shall be null, and shall be surrendered.

(Article 139 of the Regulations.)

ART. 105. When a work which shall permanently occupy a part of the public domain, in which there is no public use or profit whatever, is to be carried out by individuals or companies, the administrative authorization which the Colonial Secretary or his delegates is authorized to grant shall be sufficient, in accordance with the provisions of special laws and of the Regulations.

(Articles 141, 142, 143, and 144 of the Regulations.)

ART. 106. The person requesting the authorization referred to in the preceding article shall accompany with his petition a plan in which shall appear the object of the work, the part of the public domain it is intended to occupy, and an estimate of the works.

This project shall pass through the proceedings prescribed by special laws and the Regulations before the authorization shall be granted.

(Article 140 of the Regulations.)

ART. 107. When, for the execution or operation of a work requested by individuals or companies, it shall be necessary to occupy permanently a part of the public domain devoted to general use, there shall first be also obtained the authorization of the Colonial Secretary or his delegates. This authorization may be granted without demanding any guaranty or the presentation of the project, and by the brief proceedings which are designated by the Regulations.

(Article 145 of the Regulations.)

ART. 108. The administrative authorization is also needed for the execution or operation of a work which affects established servitude on private property for the benefit of the public domain.

This authorization shall be granted by the Colonial Secretary or his delegates, as in the case of the preceding article; but it may be perpetual, saving always the rights of private property.

(Article 145 of the Regulations.)

ART. 109. For the works devoted to the operation of a private industry, the occupation of matters connected with the public domain may be granted, in accordance with the provisions of this general Law and the special laws of public works; when the concession referred to in the preceding paragraph has been made, the individual or company obtaining it may construct the work and make use of it in the manner in which it may be deemed convenient, without further intervention on the part of the Government than that relating to the safety, policing and management of the public domain.

(Article 146 of the Regulations.)

ART. 110. When, for the execution of a work, by companies or individuals, devoted to public or to private use, there may be occupied a part of the public domain of the State, the previous concession of the Colonial Secretary shall be necessary, in accordance with the provisions of the articles of this Chapter treating of public domain; but always with the indispensable prerequisite that there be public bidding, at which the project of the petitioner shall serve as the basis.

The bidding shall have for its object the determination of the amount which the concessionaire shall have to pay for the domain ceded, and shall take place in accordance with the formalities necessary for the sale of public lands, the concession being granted to the best bidder.

The petitioner shall have the right of preference on equal terms at the bidding, and, in case he shall not take the concession, of being indemnified by the person to whom it is awarded, for the expenses of the project, according to expert appraisal made and published before the public sale.

(Article 147 of the Regulations.)

ART. 111. The authorization of the Colonial Secretary is necessary to execute or operate a work which changes servitudes established in the domain of the State.

This authorization shall be ceded in conformity with similar proceedings to those established by Article 108 of this Law.

(Article 148 of the Regulations.)

ART. 112. The resolutions concerning concessions by competent authority of the public domain and of the domain of the State, shall be final, saving the appeals which may be proper according to the Laws.

CHAPTER IX.

DECLARATION OF PUBLIC UTILITY.

ART. 113. Before the execution of any work devoted to public use, whoever may construct it, there shall be the declaration of public utility. From this formality are excepted:

First. The works which are in charge of the State and which are carried out in accordance with the provisions of Chapter III of the present Law.

Second. The works included in the general provincial or municipal plans, designated in Articles 19, 33, and 43 of the Law.

Third. Every work, of whatsoever kind, the construction of which may have been authorized by special law.

No work devoted to private use can be declared of public utility. (Article 149 of the Regulations.)

ART. 114. The declaration of public utility shall carry with it, so far as the individuals who request it are concerned:

First. The right of neighborhood for the builders and their employees, which consists of the use of the objects enjoyed in common in the district of the towns in which the works are situated.

Second. The application of the law of eminent domain to private property in accordance with the provisions of the said Law and of the Regulations for its execution.

Third. The exemption from the land tax and the property tax on the transfers of property which may take place in consequence of the application of the said law of eminent domain.

The declaration of public utility may also carry with it the exemption from other temporary or permanent taxes, whenever it is thus determined by a special law for each case.

(Article 150 of the Regulations.)

ART. 115. The declaration of public utility, when it shall have been made in accordance with the provisions of Article 113 and shall carry with it the application of the law of eminent domain, shall be made by the legislative power in relation to works which, in the judgment of the Government, are of great importance; by the Colonial Department in reference to works paid for by the general funds of the State, the budgets of which are approved, and by the Governor-General in reference to provincial and municipal works, which may embrace the territory of two or more provinces, and which may be submitted to his resolution according to Article 45; by the Governor-General in reference to State, provincial, or municipal works, the projects of which may be approved by his authority, according to this law, and by the respective Governors in what refers to provincial and municipal works which are within the territory of his jurisdiction.

In case the exercise of the right of eminent domain is not requested, the Municipal Councils shall have the right to make the declaration of public utility when the work is municipal, and is included in one municipal district; the Provincial Deputations shall make the declaration when the work is provincial, and when, being municipal, it is included in two or more towns; and lastly, the Colonial Secretary or the Governor General, respectively, when the work is in charge of the State, and when, being provincial, it shall embrace territories belonging to more than one province.

(Articles 152, 153, 154, 155, 156, 157, 158, and 159 of the Regulations.

ART. 116. The individual or company which asks for the declaration of public utility of a work shall

annex to his or its petition a complete project, so that judgment thereof may be formed, and of its object of the private property which it shall occupy, and of the advantage which shall accrue to the general interests.

(Article 151 of the Regulations.)

ART. 117. Before adopting a resolution, the project shall be submitted to an investigation, in which shall be heard, in the first place, all those interested in the condemnation proceedings, if the application of the law of eminent domain is requested, and afterwards the other individuals, officers, and corporations that, for each case, are specified in the Regulations.

When the investigation has been made, in the cases in which the declaration of public utility is to be declared by the Cortes, the Colonial Secretary shall present the proper form of law. As to the rest, the Colonial Secretary, his delegates, or the proper corporation shall decide upon the declaration requested, as may be deemed proper.

(Articles 152, 153, 154, 155, 156, 157, 158, and 159 of the Regulations.)

ART. 118. The resolutions which, in relation to public utility, may be adopted by the competent central Provincial or Municipal Administration shall be final, saving the appeals which are proper in accordance with the Law.

(Article 160 of the Regulations.)

CHAPTER X.
COMPETENCY OF JURISDICTION IN MATTERS
CONNECTED WITH PUBLIC WORKS.

ART. 119. The administrative jurisdiction to hear disputes shall bear the appeals against the rulings of the Administration—

First. When the forfeiture of a concession made to individuals or companies in the terms prescribed by this law is declared.

Second. In all those cases in which the administrative resolutions which are final affect rights acquired by virtue of rulings emanating from the same Administration.

ART. 120. The tribunals of justice shall have jurisdiction of—

First. Questions which may arise between the Administration and individuals concerning the public domain or private property, and concerning servitudes founded on titles of civil rights.

Second. Questions which may arise between individuals concerning the preferred right to the public domain, according to the present law, when the preference is founded on titles of civil rights.

Third. Questions relative to damages and injuries occasioned to a third person in his property right, the alienation of which is not compellable under the right of eminent domain, by reason of the establishment or use of the works which are the subject of the concession, or for any other causes depending on the concession.

CHAPTER XI.

GENERAL PROVISIONS.

ART. 121. Foreign capital which is employed in public works and in the acquisition of lands necessary for them, shall be exempt from reprisals, confiscations, and embargoes by reason of war.

ART. 122. The provisions of the present Law do not invalidate any of the rights acquired prior to its publication and in accordance with the legislation on which they may have been founded.

ART. 123. The proceedings relative to public works which, on the publication of these Laws, may be pending, shall be carried out in accordance with the prior legislation under which they were started, unless the interested parties prefer to submit to the provisions of the present Law.

In case there are several interested parties, and they do not agree, the proceedings shall follow the provisions of the former legislation.

ART. 124. The Colonial Secretary, after hearing the Secretary of the Navy regarding matters of ports which affect the services depending on that Department, and by himself in the others, but always after a report of the Consulting Board of Roads, Canals, and Ports, and after hearing the full council of State, may decide that the special laws published in the peninsula relative to railroads, highroads, waters, and ports may be extended to the Colonies, and of the Regulations and instructions for their application, introducing in them the modifications which he may deem proper; but always after the report of the Consulting of State.

ART. 125. All laws, decrees, and other prior provisions affecting public works which may be in conflict with the present Law are hereby repealed.

Madrid, April 19, 1883.

LAW OF PORTS FOR THE ISLAND OF CUBA.

CHAPTER I.

OWNERSHIP OF COAST WATERS, OF THE SHORES OF THE SEA, ACCRETIONS AND EASEMENTS OF ADJOINING LANDS.

ARTICLE 1. The following are national property and for public use, without prejudice to the rights of individuals:

First. The littoral zone, which is that portion of the coast or sea limits of the Spanish territory which lies between ebb and flow, where tides are perceptible, or which is covered by the highest surfs during storms, where they are not.

Said littoral zone extends also along the banks of rivers as far as they are navigable or tides are perceptible.

Second. The coast waters or maritime zone which girt the coasts of Spanish domain, throughout the width determined by international law, with their coves, roadsteads, bays, harbors and other havens available for fishing and navigation. Within said zone the State is in charge of the surveillance and utilities, as also of the right of asylum and immunity, in accordance to law and international treaties.

ART. 2. The lands that are added to the littoral zone through accretions and deposits caused by the sea are of public ownership. When by reason of said accretions and owing to the withdrawal of the sea the interior line limiting the said zone advances toward the former, the surplus lands remaining from the former littoral zone shall become the property of the State, after the proper survey thereof by the department of the colonies, with the approval of that of the

navy; and the former may alienate them when they are not considered necessary for maritime or other services of public utility. Should they be alienated in accordance to law, the right of refusal shall be granted to the owners of the adjoining lands.

ART. 3. Islands already formed, or which may be formed, within the littoral zone and in estuaries and mouths of rivers that are considered maritime harbors, under this law, are the property of the State. But if such islands should be created by the cutting of a river through lands of private ownership they shall continue to belong to the owner of the dismembered estate or estates, reserving the rights which private individuals may have.

ART. 4. Anchorages, ship-yards, docks, arsenals, and other establishments intended by the Government for the exclusive use of the navy, are the property of the State. First and second class harbors of general interest are national property and for public use.

ART. 5. Everything cast upon the shore by the sea and which has no known owner belongs to the State. The treasury department, after the proper inventory and appraisal, shall seize it, and shall be liable for the claims of a third person and for the payment of charges and rewards for the finding and salvage thereof, in accordance with the prescriptions of laws and regulations.

ART. 6. The Government, without prejudice to the obligations and rights of the owners and consignees, shall provide for the salvage of wrecked vessels, their cargoes and effects, and also for their recovery from the wreck in case of a total loss, in accordance with the provisions of maritime ordinances and regulations.

Consular agents shall exercise the proper intervention according to international agreements with regard to the nations they represent.

ART. 7. Private lands adjoining the sea or lying within the littoral zone are subject to the easements of salvage and coast surveillance.

ART. 8. The salvage easement has the same extension on private lands adjoining the sea as on the littoral zone within which they are situated and 20 meters in addition thereto toward the interior of the lands; and public use shall be made thereof for the purpose of saving and depositing the flotsam, effects, and cargoes of wrecked vessels.

Fishing vessels may also beach within this zone of easement when compelled to do so on account of the condition of the sea, and in the same manner deposit their effects on land while the storm rages.

This zone of easement shall advance or recede with the advance or recession of the sea, as established in general for the littoral zone.

For damages caused to property on the occasion of a salvage an indemnity shall be proper, but only to the extent of the value of the objects saved, after the expenses of assistance given and rewards to finders have been paid according to law.

ART. 9. The salvage easement is not an obstacle to owners of lands adjoining the sea from sowing and planting on their premises within the littoral zone and constructing agricultural buildings and country resorts thereon.

In order to build in such places, notice must first be given to the governor of the province, who, after hearing the naval commander and the chief engineer

of public works, may withhold his consent should it cause any obstruction to the exercise of the easement referred to in the foregoing article.

ART. 10. The coast surveillance easement consists of the obligation to leave free a general passage 6 meters wide adjoining the highest water line or that reached by the surf during the heaviest storms where tides are not perceptible, to be established when necessary by the governor-general of the island after hearing the naval authorities. In places where it is difficult or dangerous to pass, the passage may be carried more than 6 meters inland, but without exceeding what, in the opinion of said authority, is strictly necessary.

The surveillance easement, in extraordinary cases and when necessary for the service of the State, is imposed alike on lands that are fenced in, as on those that are open. Property which has not been subject to the surveillance easement until the promulgation of the water law of August 3, 1886, and subsequently thereto has suffered visible and material damages through the imposition of said easement, shall be paid the proper indemnity for said damage.

CHAPTER II.

USE AND UTILIZATION OF THE COAST WATERS AND BEACHES.

ART. 11. Only the owners of ponds, lakes, or basins of sea water in private property, having no navigable communication with the sea, have a right to fish therein without any restrictions but those relating to public health.

ART. 12. The free use of the coast waters, coves, roadsteads, bays, and havens is understood for the

purposes of navigation, fishing, shipping and landing, anchoring, and other similar acts, within the legal prescriptions and police regulations relating thereto. The same is the case with regard to the public use of beaches, which under similar restrictions is granted to everybody for traveling, bathing, spreading and drying clothes, casting nets, beaching, careening and building ships, bathing cattle, picking shells, plants, and shellfish.

CHAPTER III.

CLASSIFICATION OF PORTS.

ART. 13. For the purposes of this law ports are those places on the coast more or less protected, either by reason of the natural lay of the land or by expressly constructed works, and wherein maritime traffic is carried on in a permanent and legal manner.

ART. 14. Estuaries and mouths of rivers are likewise considered as ports up to where the tides are perceptible, and where there are none, up to where the surf reaches during ordinary storms, altering their usual flow, Above these points the banks or margins of rivers pre-serve their special fluvial character.

ART. 15. Ports are classified as first and second class ports of general interest, and ports of local or provincial and municipal interest.

Ports of general interest are considered those specially destined to anchoring grounds, mercantile depots, loading and unloading of vessels employed in maritime trade, when such trade may be of interest to several provinces, and when said ports are in direct communication with the principal centers of production of the island of the Peninsula, and of

foreign countries. Ports of refuge, so called owing to their position and special advantages of capacity, security, and shelter during storms, are also of general interest.

Ports of local interest, or provincial and municipal ports, are those principally destined for anchoring grounds, loading and unloading of vessels employed in local industry and commerce, without prejudice to being classified among those of general interest when their trade may extend to other localities, territories, or provinces.

The foregoing classification can not be altered except by virtue of a law.

ART. 16. Ports of the island which are qualified for foreign trade or commerce on the high seas are declared first-class ports of general interest.

Ports not so qualified, at which coasting vessels engaged between two or more provinces make a stop, are declared second-class ports of general interest.

ART. 17. All ports not included in the preceding article, and in which commercial trade is carried on; are declared ports of local interest.

CHAPTER IV.

EXECUTION AND MAINTENANCE OF WORKS IN PORTS, THEIR MANAGEMENT AND POLICE.

ART. 18. It shall be the duty of the colonial secretary to order the survey and preparation of plans for all kinds of works in ports of general interest; to approve the same and order their execution after hearing the department of the navy; to grant concessions, make service regulations, designate the necessary personnel, and prescribe the

duties of officials depending on the department of the colonies who are to direct and supervise the works.

ART. 19. In harbor works in ports of provincial interest the same duties devolve upon the provincial deputation as are assigned to the department of the colonies in the preceding article, except where the works should affect lands of public ownership. in which case the provisions of Chapter VIII of the general law of public works must be observed. Similar duties appertain to municipal councils with regard to municipal harbors.

The plans for works in ports corresponding to the provincial deputation or municipal councils shall, after the proper naval authorities have passed thereon, be submitted for the approval of the colonial department, which is also intrusted with the technical direction of the works and the appointment of the personnel required thereon.

ART. 20. The same duties appertain to the navy department, with regard to the surveys, plans, and execution of works in ports having military arsenals, in so far as they relate to the latter ports.

ART. 21. The establishment, repair, maintenance, and cleaning of ports, and management, service, and police thereof, in all civil matters appertain, in ports of general interest, to the colonial department, and in ports of local interest, to the deputations or municipal councils, according as to whether they are of a provincial or municipal character.

ART. 22. The port service is divided into two classes, one relating to the general shipping traffic, arrivals, departures, anchorages, berths, moorings and unmoorings at wharves; towing and maritime assistance appertain to the naval authority; and the

other, including the execution and maintenance of the works and buildings, operations of loading and unloading on wharves, traffic on the same and within its zone of service, and all that relates to the use of the various works, intended for the trade of the port, which appertain to the colonial department.

ART. 23. The governor-general of the island, as the superior chief of all the branches of the civil administration and as delegate of the colonial department, is the chief of all such services at the ports as are in charge of said colonial department.

ART. 24. Subject to the general service regulations and to the orders and instructions of the colonial department, and under the authority of the governor-general of the island, the engineers of roads, canals, and ports shall have charge of the survey and direction of all the works and supervision of the services comprised in the second class mentioned in article 22, excepting such works and services as pertain to the military arsenals.

ART. 25. Port of general interest shall be maintained by the State, according to the sums appropriated therefor in the general budgets and those included in their respective budgets by the deputations and municipal councils when these corporations wish to contribute toward the expenses of said ports. The works shall be executed either by officials of the administration or by contract, as may be determined in each case.

ART. 26. The Government may provide for the cost of harbor works by means of special taxes levied in the locality, to be exclusively applied to said works, independently of the general State budget, and organize boards of harbor works intrusted with the

administration and disbursement of funds and the execution of the works, under the supervision and surveillance of the colonial department.

ART. 27. The colonial department shall issue general regulations for the organization and management of existing boards of harbor works and for such as may hereafter be established. The appointment and removal of the chief engineer of said works shall be subject to the will of the Government, which may also appoint special delegates on the said boards whenever it may consider it advisable.

ART. 28. Works in ports of general interest, including such as have been planned or begun for the account of the State, may also be executed by means of concessions to private companies, in accordance with the general law of public works.

ART. 29. Ports of local interest shall be maintained with funds of the deputations or municipal councils, according as to whether the works are provincial or municipal. Toward the execution of works in ports pertaining to deputations, the State and municipal councils may contribute, either by furnishing skilled officials or by making appropriations for the purpose in their respective budgets. In like manner the State and provincial deputations may contribute toward harbor works which may be instituted by municipalities.

The surveys and plans and their approval as well as the concessions of provincial and municipal harbor works shall be made in accordance with the provisions of articles 39 and 48 of the general law of public works.

ART. 30. The proper instructions for the formation and approval of plans of new works in harbors,

stating the formalities and reports which must precede said approval, shall be included in the regulations for the execution of said law.

ART. 31. At every port there shall be a littoral zone of service, to be fixed by the colonial department, in each case, for the operation of loading and unloading, warehousing and transportation of goods, and the transit of persons and vehicles. The approval and project of said zone, and the apportionment thereof for the different services, carry with them the declaration of public utility, and such private lands or buildings as lie within it are subject to the exercise of the right of eminent domain.

ART. 32. The governor of the province, after hearing the captain of the port, the chief engineer, the provincial board of health, and the collector of customs, shall mark out and assign the zones of the port to the different services on the wharves, and shall decide all questions that may arise with regard to their use and police, when the port in question is of local interest; if it be of general interest, the governor-general of the island shall have these duties. From the decisions an appeal lies to the governor-general or to the secretary of the colonies, as the case may be.

ART. 33. Whenever a vessel is wrecked within a port her owners, or the consignees of the insurance companies shall proceed to raise her within the term fixed by the naval commander of the province. Should they not do so, the secretary of the navy shall order it done, deducting the cost from the proceeds of the vessel and goods which it may contain.

ART. 34. If, either willfully or through carelessness, any damage should be caused by vessels or their

mooring cables to the works of any port, or the latter should thereby be fouled, the captain of the port shall cause the parties responsible therefor to pay, in addition to the fines in stamped paper established by the regulations, the sum at which the engineer may estimate the necessary repairs, the latter amount to be paid into the Treasury.

ART. 35. Besides the general regulations for the execution of this law, special-service and police by-laws shall be framed for each port, containing the provisions relating to its use, and which must be approved by the colonial department, procuring the greatest uniformity in these regulations, in so far as possible, through the different conditions of each port for the benefit of commerce and maritime industry.

CHAPTER V.

SERVICES CONNECTED WITH PORTS.

ART. 36. The pilot service in ports of the Spanish domain shall continue to be in charge of the navy department.

ART. 37. Lights and beacons, being services connected with that of the ports, shall continue to be in charge of the colonial department. The maritime watch stations and semaphores and lifeboats shall be in charge of the same, but shall depend immediately on the superior naval authority of the island.

CHAPTER VI.

WORKS EXECUTED BY PRIVATE PERSONS.

ART. 38. At no points on the coasts, beaches, ports, and mouths of rivers, or on the islands formed within the littoral zone, can new works of any kind be executed, or buildings constructed without the proper

authorization, in accordance with the provisions of this law.

ART. 39. Permission to build temporary barracks or constructions designed for baths shall be granted by the governors, in maritime capitals, and in other towns, by the mayors, after consulting the naval authority, if said constructions are to be built outside the port; but if within the same the chief engineer shall also be heard, in addition to the naval authority.

ART. 40. Permission to establish other services or improvements of a temporary character within the littoral zone, which is national property and for public use, shall be granted by the naval commanders of the provinces, provided they do not interfere with the common uses to which said zone is devoted, and after hearing the governors and chief engineers of public works, where such concessions might affect other services under the control of the colonial office or some other branch of the administration.

ART. 41. Such permissions shall be revoked whenever necessary for a proper surveillance and service of the coasts, the town and rural police, or the concession of the land for other purposes of greater utility and importance, after instituting an inquiry and hearing the person interested before the authority who may have granted the permission.

In such cases the owners of the temporary constructions shall dispose only of the materials employed without any right to indemnity.

ART. 42. When the constructions and improvements referred to in the foregoing articles are of a permanent character, the authorization shall be granted

by the secretary of the colonies, after hearing the secretary of the navy.

ART. 43. Works for coast defense to protect private estates or buildings against the beating of the waves, even though of a permanent character, shall be authorized by the governor of the province, after hearing the opinion of the naval authorities and of the chief engineer of public works.

ART. 44. It is the duty of the colonial secretary to grant authorization, after hearing the naval authorities, for the construction on the sea or beaches and adjoining lands, or in ports, whether for private or public use, of such wharves, quays, dockyards, floating docks, shipyards, and other similar works as are complementary and auxiliary to those existing for the service of the port. Such authorization shall not constitute a monopoly, and therefore others may be granted for the same class of works in the same harbor, beach, or stretch of coast, provided the public service or use does not suffer thereby.

ART. 45. It is the duty of the colonial secretary, after hearing the naval authorities, to grant authorization for the establishment of salt ponds, works, and other buildings which may wholly or in part occupy public lands for private use.

ART. 46. It is the duty of the secretary of the navy to grant concessions for all sorts of fisheries, fish garths, crawls, shellfish nurseries, in accordance with the ordinances and regulations in force thereon or that may hereafter be established.

ART. 47. The colonial department may authorize private individuals or companies, under the terms prescribed in the general law of public works, to construct ports at places on the coast where there are

no works or plans of other ports that are classified, or where no special rights exist for the use and utilization of said place, after hearing the navy department.

ART. 48. When' the works of a port the concession of which is applied for, whether in conformity with the plan of the applicant, or subject to the one surveyed and approved by the colonial department, refers to one in which, although no work has yet been executed, there exists a legally authorized maritime commerce, and services are performed with more or less perfection, the concession must be granted under such conditions as may be necessary to reserve in full force the existing rights of entering the port, anchoring, loading, and unloading, afloat or on the coast, so that none of the services that are freely exercised or enjoyed by the public may be made compulsory.

ART. 49. Proper authorization may also be granted to a private company for executing the works of a port in charge of the State or for completing those which are constructed or suspended, or carrying out one part of the plan while the State executes the other, in which case special conditions may be established in compensation of the expenses thereof and for the benefit of the company in the shape of the cession of the land where the works are carried on, for a limited time, or other privileges, according to the available portion of the work, the cost of those that may be executed and the nature or importance of the public services existing in the port, provided prior rights to the use of the port and its works are reserved in full force, as stated in the preceding article.

ART. 50. In case works declared of public utility are to be executed in a port by the State, the deputations, or municipal councils, and in order to carry them out it should become necessary to utilize or destroy those constructed by private persons by virtue of concessions granted them, the concessionaries shall have a right to be indemnified only for the value of the material employed in said works, after an appraisal by experts made in conformity with the general regulations for the execution of this law.

ART. 51. The colonial department shall grant authorization for draining, cultivating, or otherwise improving salt marshes belonging to the State, or of public ownership, and such as do not belong to town commons or other property devoted to general use.

In order to request of the colonial department a declaration of lands pertaining to town commons, or devoted to general use, a period of one year is allowed from the date of the publication of this law. If the towns fail to obtain a favorable decision or the term expires without an application having been made for such declaration, said salt marshes shall be considered as waste lands; this, however, not to interfere in any case with the free public use of their natural products.

Salt marshes of private ownership may be drained by their owners with the consent of the governor, who shall give it after hearing the naval authority and the chief engineer of the province, provided navigation and fishing are not injured thereby.

For the draining and improvement of salt marshes that may be declared unhealthy, the provisions contained in the water law regarding marsh lands shall be observed.

ART. 52. The concessions referred to in the foregoing articles shall be subject to the formalities mentioned in the general regulations for the execution of this law.

ART. 53. Authorization for the survey or for drawing the plans of the works included in articles 44 and 45, and those mentioned in articles 47 and 51, shall be granted by the Governor-General of the island after receiving the report of the general inspector of public works of the same.

Those comprised in article 46 shall be granted by the naval commander of the maritime, province to which they belong.

ART. 54. The concessions of works and public lands mentioned in articles 44, 45, 47, and 48 shall be granted by the colonial department without any public bid or limited term, subject to the provisions of article 50. Should there be more than one application for the same or similar work, or the plans presented prove incompatible owing to their occupying a portion of public property used in common on the beaches, shores, or ports, where they may be established, those plans shall be preferred which offer the greatest advantages, and if they be equal, the one first presented.

ART. 55. Concessions of salt marshes shall be granted without public bids and in perpetuity, except in case some private party or company should demand an award by bids, presenting to that effect a proposition in which a standard of valuation is fixed and offered, guaranteed by a temporary deposit equal to said standard, which shall serve as a basis for the bid. If the person obtaining the award should not be the author of the plan approved for the drainage

works, he shall have to pay the cost of said plan to the author, appraised in accordance with the provisions governing such cases in bids for public works, or in the manner prescribed by the regulations.

ART. 56. Concessions of works in the cases referred to in article 49 shall be granted through bids and for a limited period. The bids shall be made upon any one of these three bases, namely:

The appraisal of the existing works and of the constructions and lands to be utilized; the reduction of the tariff rates charged for the use of the works; the period of time during which the company is to enjoy the benefits of the works.

The colonial department shall fix the basis, standard, and conditions for the bid, taking into consideration the plans and proposals that may have been presented requesting the concession.

ART. 57. In concessions of works in ports, whereby lands are reclaimed from the sea, there shall always be excepted, out of the lands recognized as the property of the concessioner, that portion which may be necessary for the service zone referred to in article 31, which shall remain the property of the State.

ART. 58. In every concession of public or private works there shall be fixed:

First. The period for which the concession is granted.

Second. The terms within which the works are to be begun and concluded.

Third. The proportional part of the estimate which has to be spent in each of the periods that it may be thought advisable to fix in order to carry out the

concession within the full term allowed for the termination of the works.

Fourth. The conditions for the establishment and use of the work as may be necessary in order not to injure acquired rights and general interests.

Fifth. The bond required of the concessioner in the case of a public work, to guarantee the execution thereof; and,

Sixth. The case where the concession may be declared forfeited, as well as the consequences thereof.

ART. 59. When a declaration of public utility is requested by private persons in behalf of any work, the procedure prescribed by the general law of public works for said declaration shall be observed.

ART. 60. He who shall have enjoyed during twenty years the usufruct of some maritime industry established on public property without opposition on the part of the authority or of a third party, shall continue to enjoy the same, even though he fail to show that he had obtained proper authority therefor; this right shall be understood as in force so long as the class 'of industry or the application of the space occupied have undergone no changes or alterations during the aforesaid twenty years; and otherwise it shall be declared forfeited unless authorization be obtained as in the case of a new work, and in the manner prescribed in this law.

ART. 61. All laws, royal decrees, regulations, royal orders, and other provisions conflicting with this law are hereby repealed.

ART. 62. The governor-general of the island may anticipate the concessions of the works included in this chapter, and which, according to the provisions

thereof, it is the duty of the colonial department to grant, without prejudice to, and reserving the definite decision which may be proper if the persons interested accept this condition, and provided there is no opposition or objection on the part of the corporations or officials interested, being obliged otherwise to forward to the colonial department the respective proceedings with their report for a final decision.

Approved by Royal Decree of this date.

FABIÉ

Madrid, October 31, 1890.
(*Gaceta* of December 13.)

OFFICIAL GAZETTE
MINISTRY OF PUBLIC WORKS

Decree No. 467.

After re-examination of the file submitted to the Civil Government of La Habana Province arising from the request and project submitted by Mr. Sylvester Scovel in connection with an administrative concession for the construction of a jetty/dock with mechanical installations, a building for Customs Offices, a special Department for Customs Inspectors, apparatus for loading and unloading, and other accessory works at the port of this Capital.

Whereas, in a Decree issued by this Office of the President dated last February 27, these works were declared to be of public utility, ordering the holding of an auction for the concession necessary to execute said works on the basis of the petitioner's project after valuation of said project and pertinent announcements.

Whereas verification of said valuation revealed a project value of fifty-nine thousand five hundred forty-seven pesos, forty-five cents (\$59,547.45) Cy. and the conditions under which the concession should be granted were defined, the petitioner declaring his acceptance of said valuation and conditions.

Whereas the auction ceremony was scheduled for the ninth day of this month of November at two p.m. at this Ministry, which was announced in the OFFICIAL GAZETTE and the "Diario de la Marina," "Discusion," and "Mundo" newspapers of this City in five consecutive issues, repeated in the first ten of the months of this past July, August, September, and October, as well as in those of Paris, "Le Figaro," "Le Matin," "Le Temps," and "Le Journal;" in "Track

Kischer Kurier” of Berlin, and in London and New York, where printed copies of the project were sent and made available to the public, including a copy of related drawings.

Whereas, with the Board with jurisdiction to hear the auction was in session on the scheduled day, time and place, with the assistance of a Civil Law Notary, the pertinent instrument was drawn up; of the three proposals submitted, the one submitted by Mr. D. Aceituno, which offered a twenty-seven percent (27%) reduction on the rates submitted by the project planner and reduced to fifty (50) years the ninety-nine (99) requested by the latter since the works were limited, was declared to be the most advantageous, the proposal of the petitioner, who insisted on the entirety of his project in said regard, and the other proposal, which, though it reduced to nine (9) years the term of the concession, only made a six percent (6%) reduction to the rates.

Whereas the legitimate representative of Compañía del Puerto [Port Company], successor of Mr. Scovel, creator of the project, in exercise of its right of pre-emption at the auction ceremony and within the legal timeframe, accepted Mr. Aceituno’s proposal on behalf of the Company they represent.

Whereas this file meets all requirements and complies with all formalities required by Law for the granting of the concession in question.

Whereas, pursuant to the Regulation for enforcement of the General Public Works Law, the approved project must serve as the basis for the auction and the proposals must first address the reductions of rates for use of the work, and according to Article 8 of the Technical Regulation, for the processing of concessions

to private individuals for port works on this Island, the auction must also be based firstly on the reduction of rates, followed by the term of the concession.

Whereas, in this regard, the declaration of the Board overseeing the auction to the effect that Mr. D. Aceituno's proposal is the most advantageous is legal and proper since it complies with the abovementioned current legal provisions, as it is the one that reduced the rates to the lowest extent.

Whereas Compañía del Puerto, as Mr. Scovel's successor, having availed itself in a timely and legal manner of the right of pre-emption conferred upon it by Article 38 of the Regulation of the Public Works Law, it fully subrogated Mr. Aceituno, whose proposal it accepted, wherefore it is proper to consider it the winner of the auction and award it the concession.

Pursuant to the abovementioned provisions and those contained in the General Public Works Law and the Regulation for its enforcement, and in the Ports Law and its Technical Regulation, and in the Law of September 11, 1879 on auctions for works and services.

Based on the proposal made by the Minister of Public Works, and by the authority vested in me, I award Compañía del Puerto, successor of Mr. Sylvester Scovel, the concession necessary to execute the works contained in the project submitted by Mr. Scovel on August 22, 1904, subject to the following conditions:

- 1.- The works will comply with the project submitted by the petitioner, Mr. Sylvester Scovel, dated August 22, 1904, in all respects not subsequently modified in the following clauses.

2.- This concession is understood as included among those defined in Articles 44 and 45 of the Ports Law of October 31, 1890 and Article 97 of the General Public Works Law of April 19, 1883, and is granted for a term of fifty (50) years starting on the date of the concession, subject to the provisions of Article 50 of the abovementioned Ports Law.

3.- Authorization is given for the establishment of the coal deposit and its operation on the south side of the jetty as outlined in the project, subject to the concessionaire having the obligation to take any measures needed to prevent dust from this coal from getting inside the buildings of the Customs Offices, the buildings of this city, or from becoming a nuisance to the public.

4.- The State gives in usufruct during the term of the concession the section of the San Francisco docks, as well as the area of public domain that will be occupied by the project works.

5.- As compensation and in payment for occupation of this section, as well as the impairment of general use caused by execution of the works, the concessionaire undertakes to:

(a) Transfer the building for the Customs Inspectors' Department that is part of the project to the State free of charge.

(b) Widen the entrance street to the jetty to thirty-six (36) feet, as indicated in the project drawings.

(c) Build a twenty-four (24) foot wide street on the jetty that is paved in the same fashion as other streets in the project that will run from North to South along said jetty, separating it from the Customs Agents

Department; the roof over this street will be at least fifteen (15) feet high.

(d) Install a scale at the entrance to the Customs Inspectors' Department in a location specified by the Port Customs Authority, the manufacturer of which will be specified by said Authority, to be used to weigh any items transferred to said Department by either the concessionaire's equipment or by carts from the public docks.

(e) Permanently transfer to the State at no cost all expansion work done on the Passenger Ticket Office intended for the Customs Offices, subject to the condition that this building may not be used for any purpose other than said Offices.

(f) Set aside for public use the dock on the north side of the projected jetty, subject to the condition that at any time during the concession, when it believes port traffic makes it necessary, the concessionaire may install equipment and machinery on said north side for the loading and unloading of vessels and steamships, enlarging the building for this purpose, ensuring its suitability for the plant that was improved. It may exercise this right by providing two months' advance notice to the Ministry of Public Works, submitting the relevant drawings therewith, whereafter the additional works will be included in the concession.

6.- In the event that, pursuant to the provisions of Article 50 of the Ports Law, it becomes necessary to expropriate the works, the concessionaire will be entitled to remove from the dock/jetty any machinery, material, rolling stock, equipment, or devices in use at such a time.

7.- If, at any time during the term of the concession, the works are expropriated, also pursuant to Article 50 of the Ports Law mentioned above, the Government or its agencies will compensate the concessionaire for the value of all works constructed by it, including the Customs Inspectors' Department and the dock on the north side of the jetty, but not for the value of the machinery, rolling stock, equipment, and devices referred to in the preceding clause in the event the concessionaire decides to remove them.

8.- In the event of the expropriation referred to in the two preceding clauses, the works will be appraised by direct measurement of their volume, applying the prices set for the units of works contained in the budget subject to the requirements provided in Paragraph 2 of Article 14 of the Technical Regulation for the Ports Law of November 17, 1890.

9.- The State will allow the concessionaire to freely use a large space on the site of the works, including access thereto, for storage and handling of tools and materials, and for any operations in connection with construction of the works.

10.- During the term of the concession, it will be the concessionaire's responsibility to maintain the foundations, streets, buildings, machinery, and other installations of the plant in good condition to ensure it turns the works over to the Government in perfect working order at the end of said term. The Government will be responsible for any repairs and renovations that need to be verified at the building set aside for the Customs Offices, and the section of the dock/jetty set aside for the public on the north side, as well as maintenance of the pavement on the seafront service area along the entire front side of the jetty with the land side.

11.- The concessionaire will not be liable for any damages resulting from delays on its part in construction of the plant at the project when such delay was caused by strike, shipwreck, cyclones, epidemics, or any other force majeure events.

12.- During the term of the concession, the concessionaire may add to the project plant's machinery, devices, and equipment anything it deems necessary to ensure proper management of the traffic at said plant, and may also make any improvements to said machinery, devices, and equipment that may be advantageous from time to time.

13.- The concessionaire will install machines needed for the generation of electricity, using steam engines, though it is entitled to acquire electrical power by agreement with any Companies able to supply it, in which case it will not be obligated to make these installations or use them if they were already made.

14.- The concessionaire may choose the means of implementation, agents, and other employees for the construction, maintenance, and Administration of the works.

15.- The concessionaire may freely use the elevated rail that runs through the Customs Inspectors' Department, as well as the right to enter and exit said building, to carry out any repair and maintenance work it deems necessary for the purposes of the concession.

16.- During the term of the concession, neither the section of the dock/jetty on the north side that is intended for the public, or the Customs Inspectors' Department, may be set aside for any use other than those assigned to them in this project. The State will not permit the provision of mechanical services such

as those used by the concessionaire for its operations on said part of the jetty.

17.- The concessionaire permanently transfers to the State all expansion work on the Passenger Ticket Office intended for the Customs Offices, subject to the condition that this building may not be used for any purpose other than the establishment of said Offices.

18.- In the event the State ceases using the works referred to in the two preceding clauses, the Government will hand over the dock and Customs Inspectors' Department to the concessionaire for its use and operation during the term of the concession, but will retain ownership of the expansion works for the Customs Offices building, compensating the concessionaire for their value based on an appraisal to be conducted at such a time and in line with their condition at said time, whereafter the Government may set aside said building for any use it deems appropriate.

19.- The works comprising the project are concessioned for public service, subject to the rates accepted in the auction for them, whose applicable bases and rules are contained in the project documents, and a rate higher than the one authorized cannot be demanded; said rate must be displayed to the public in a visible location.

20.- The application of these rates will be subject to the regulation attached thereto, though only to the extent their rules are not contrary to Customs Regulations and Ordinances and any other applicable related provisions, or any of a general nature that may be henceforth enacted.

21.- After receiving a complaint from the concessionaire, employees tasked with the maintenance and

policing of State docks will take appropriate action in line with the provisions of Article 26 of the Regulation for the Maintenance and Policing of State Docks against any consignees of boats and merchandise who allow refuse from broken flat tiles, tiles, bricks, etc., or straw, cane, and other materials used for the stowage of vessels to be thrown on the jetty in violation of Article 4 of said Regulation.

22.- Government vessels and those carrying goods intended for use by the State and its different sectors will enjoy preference when it comes to mooring, loading, and unloading on the jetty, provided the Head of the Office in question so requests, paying half of the rate established for other vessels for this service.

23.- The concessionaire is barred from granting any other preference for use of the jetty and its equipment, with the exception of the condition mentioned above, which will be according to the priority of the request, for which it will keep a chronological register of all requests it receives that it must show to anyone so requesting.

24.- Any regulations issued by the concessionaire for operations on the jetty will be in complete harmony with current Customs Regulations and Ordinances or any enacted henceforth, as well as the inspection and actions of Customs Authorities.

25.- Before commencing works, the Chief Engineer of the District, with the assistance of the concessionaire, will carry out the setting out of the works to be executed in accordance with the project, a record of which will be issued in triplicate, one copy of which will be submitted with the pertinent drawing for approval of the Ministry of Public Works, and once this is obtained, the other copy will be provided to the

concessionaire, and the third copy will be archived at the District Public Works Office.

26.- The concessionaire will commence work within four (4) months from the date of the concession and will execute them in the following order and term:

1.- The new Customs Offices must without fail be ready for occupation in three months.

2.- The Customs Inspectors' Department in the steel and cement building with its electrical mechanism for the handling of parcels, everything ready for use in thirteen months.

3.- The sidings and the five transverse sections south of the cement and steel building, which include a portion of the same, measuring six hundred forty (640) feet in length from East to West by eighty (80) feet in width from north to south, with an installation of "Locochoist" fixed tracks ready for use in twenty-two (22) months.

4.- The next seven transverse sections from the building with all related equipment ready for use in twenty-eight (28) months.

5.- The remaining fill dirt for the building and public dock in forty (40) months.

6.- In order for operation of all sections of the projected plant to be underway at the end of the forty (40) month term.

27.- All terms mentioned in the preceding article are understood to start on the date of the concession.

28.- Inspection of execution of the works, as well as compliance with these conditions, will be the responsibility of the Chief Engineer of Public Works in the District.

29.- Upon completion of the works, the Chief Engineer will carefully inspect them, and if it is determined that all provisions of this concession have been complied with during the execution, and that said works are in perfect working order, he will make this a matter of record in a certificate to be issued in triplicate, one of which will be sent to the Ministry of Public Works for its approval, and, once this is obtained, the others will be distributed as indicated for the setting out record.

30.- All expenses arising from the setting out, inspection, and acceptance of the works will be borne by the concessionaire, including expenses for inspection in foreign factories of the steel intended for use in the buildings and machinery, to which end the concessionaire will deposit one thousand pesos (\$1,000.00) a month at a place indicated to it during the entire duration of the inspection of the factories to bear its expense.

31.- This concession is understood to be made without prejudice to third parties, except for the right to property and with the understanding that the concessionaire will be bound by as many provisions of a general nature that have been enacted or that are hereafter enacted with regard to these kinds of concessions.

32.- This concession will expire if the concessionaire fails to comply with any of these provisions binding it, the consequences of said expiration being those provided by the General Public Works Law and its Regulation.

33.- Upon expiration of the term of the concession, the State will replace the concessionaire in possession of the works and will immediately come into

enjoyment of it and its proceeds, together with all its machinery, rolling stock, equipment, devices, and any improvements made thereto. The concessionaire will have the obligation to turn over the works and its operating material in good condition and working order.

In the five years prior to the end of the concession, the Government will be entitled to withhold the liquid proceeds from the works, and to use them to keep them in good condition, in the event the concessionaire does not attempt to fully carry out this obligation.

Havana, November 29, 1905.

T. ESTRADA PALMA,
President.

Rafael Montalvo,
Minister of Public Works

proposiciones acudan al acto que tendrá lugar á las dos de la tarde del día 22 del corriente mes en el local de la Sección de Consultoría y Bienes del Estado de esta Secretaría, presentando sus ofertas hasta las 2 y media ante la Comisión nombrada al efecto y con arreglo al pliego de condiciones siguiente:

2.ª.—Las proposiciones se presentarán por escrito en idioma castellano y en pliego cerrados, autorizadas con la firma entera del licitador, expresándose en ellas el domicilio, así como la conformidad y aceptación de todas las cláusulas del presente pliego y haberse reconocido las referidas locomotoras y planchas.—El hecho de presentarse la proposición implicará tenerse cabal conocimiento del estado en que se encuentra dicho material rodante.

3.ª.—Para optar á la subasta será requisito indispensable consignar conjuntamente en la mesa de la Comisión el 10% del importe de la proposición, en moneda americana efectiva; cuya suma será devuelta inmediatamente de terminado el acto á los licitadores cuyas proposiciones hayan sido rechazadas, depositándose en Arcas Públicas hasta la resolución del señor Secretario de Hacienda las consignadas por los postores cuyas proposiciones hayan sido tomadas en consideración.

3.ª.—Adjudicada la subasta se devolverán los depósitos constituidos á excepción del que corresponda al adjudicatario, cuyo depósito quedará en garantía del cumplimiento de la oferta y como parte del precio ofrecido, cuyo completo deberá realizarse dentro de los tres días siguientes al en que le sea notificada la adjudicación de la subasta.

Transcurrido dicho término sin cumplirse este compromiso podrá considerarse en quiebra la subasta con pérdida á favor del Estado de la cantidad depositada.

4.ª.—Servirá de tipo para la subasta la suma de cuatro mil setecientos cincuenta pesos moneda americana (\$4,750) por cada locomotora, y la de cuatrocientos pesos (\$400) en igual moneda por cada una de las planchas ó carros descuñados.

5.ª.—No se admitirá proposición que sea inferior al tipo indicado; y en caso de presentarse dos ó más que sean iguales, se abrirá una puja á la llana por espacio de 10 minutos entre los autores de las mismas, y la Meta determinará la que estime más conveniente con vista del resultado que se obtenga, la que será sometida á la resolución de la Secretaría de Hacienda, en unión de las demás proposiciones presentadas que hayan sido aceptadas igualmente.

6.ª.—La recepción de las locomotoras y planchas que hayan sido adjudicadas la verificará el rematador directamente de la Administración del Ferrocarril de Cárdenas y Júcaro, en el lugar en que se encuentran depositadas; debiendo á ese efecto entenderse la entrega realizada por el Estado desde el momento de la adjudicación y una vez comunicada ésta á la citada Administración y al interesado.

7.ª.—Los gastos de anuncios, otorgamientos de es-

crituras y demás que se originen con motivo de las mismas serán por cuenta y cargo del rematador.

8.ª.—Queda reservado á la Secretaría de Hacienda el derecho de aceptar cualquiera de las proposiciones presentadas ó el de rechazarlas todas.

Habana, Diciembre 8 de 1905.—Guill y S., Sub-Secretario.

CERTIFICADOS DEL EJÉRCITO

Habiéndose comprobado en el expediente número 47,58 al efecto, que el Certificado número 47,58 expedido en favor del Soldado fallecido del Quinto Cuerpo de Artillería Martínez, fué recojido indebidamente por el Cuerpo por doña Pilar Martínez por este medio á la expresada señora para que dentro del término de 10 días, á contar desde la fecha de publicación del presente anuncio, lo devolviera al Cuerpo con la advertencia de que transcurrido el plazo sin efectuarlo se declarará nulo el mismo y se procederá a la sustitución del mismo por el correspondiente Atestado.

Habana, Diciembre 6 de 1905.—Guill y S., Sub-Secretario de Hacienda.

SECRETARIA DE OBRAS PUBLICAS

DECRETO N.º 467.

Visto de nuevo el expediente instruido en el expediente N.º 100, de la Provincia de la Habana, con motivo de la solicitud y proyecto presentados por el Sr. Salvador Rodríguez sobre concesión administrativa para la construcción de un muelle espigón con instalaciones mecánicas, edificio para Oficinas de Aduana, Departamento especial para el servicio de los Vistas, aparato para carga y descarga de mercancías, y demás obras accesorias en el puerto de esta Capital.

Resultando que por Decreto de esta Presidencia de 27 de Febrero último, fueron declaradas esas obras de utilidad pública, disponiéndose se procediese á la subasta de la concesión necesaria para su ejecución, bajo la base del proyecto del peticionario, previa la aprobación de dicho proyecto y los anuncios correspondientes.

Resultando que verificada esa tasación las obras ascendieron al valor del proyecto en cincuenta y nueve mil quinientos cuarenta y siete pesos, cuarenta y cinco céntimos (\$59,547.45) (N.º y se fijaron las condiciones de la concesión, las cuales debía otorgarse la concesión, habiendo sido aprobado el peticionario su conformidad con dicho proyecto y condiciones.

Resultando que fué señalado para el acto de adjudicación el día nueve del corriente mes de Noviembre de 1905, P. M. en esta Secretaría, la cual fué anunciada en la GACETA OFICIAL y en los periódicos de esta Capital, "Diario de la Marina", "Discusión" y "Mundo", y en los números consecutivos, repitiéndose en la primera decena de los meses de Julio, Agosto y Septiembre de 1905.

GACETA OFICIAL

4287

brevé próximo pasado, así como en los de París, "Le Figaro", "Le Matin" y "Le Temps" y "Le Journal"; en el "Track Kischer Kurier" de Berlín y en Londres y New York, donde se remitiéron ejemplares impresos del proyecto y se facilitaron al público, como también la copia de los planos referentes al mismo.

Resultando que constituyó en el día, hora y lugar señalado el Tribunal que debía entender en la subasta, con la asistencia de un Notario, se levantó la correspondiente acta, de las tres proposiciones que se presentaron, fué declarada más ventajosa la del señor D. Aceituno, que ofreció la rebaja de un veinte y siete por ciento (27%) en el tipo de las tarifas presentadas por el proyectista y redujo á cincuenta (50) años los noventa y nueve (99) que el mismo había solicitado, puesto que las obras se limitaban, la del peticionario, á insistir en su proyecto en toda su integridad, respecto de dichos términos, y la otra si bien reducía á nueve (9) años el plazo de la concesión, solo hacía en las tarifas el rebajo de un seis por ciento (6%).

Resultando que la legítima representación de la Compañía del Puerto, sucesora del señor Scovel, autor del proyecto, haciendo uso en el mismo acto de la sustancia del derecho de tanteo dentro del término legal, aceptó la proposición del señor Aceituno, para la Compañía su representante.

Considerando que en este expediente se han cumplido todos los requisitos y formalidades que exige la Ley para el otorgamiento de la concesión de que se trata.

Considerando que según el Reglamento para la ejecución de la Ley General de Obras Públicas, á la subasta debe servir de base el proyecto aprobado y las proposiciones deben recaer en primer término, sobre rebajas en las tarifas para el uso de la obra, y según el Artículo 8.º de la Instrucción, para tramitar las concesiones, á par-ticular de obras de puertos de esta Isla; también debe versar esa subasta, en primer lugar sobre la rebaja de las tarifas, y del plazo de la concesión en el segundo.

Considerando que en este concepto la declaración de ser más ventajosa la proposición del señor D. Aceituno, hecha por el Tribunal de subasta, es legal y procedente, toda vez que está ajustada á las disposiciones legales vigentes, antes citadas, por ser la que redujo á más bajo tipo el de las tarifas.

Considerando que habiendo hecho uso en tiempo y forma legal la Compañía del Puerto, como sucesora del señor Scovel, del derecho de tanteo que le otorga el Artículo 38 del Reglamento de la Ley de Obras Públicas, quedó subrogado en un todo al señor Aceituno, cuya proposición aceptó, por lo que es procedente se le estime adjudicatario en la subasta, y se otorgue á su favor la concesión.

De acuerdo con las disposiciones citadas y las contenidas en la Ley General de Obras Públicas y en el Reglamento para su ejecución, en la de Puertos é Instrucción de la misma, y en la de 11 de Septiembre de 1890 sobre subastas de obras y servicios.

De conformidad con lo propuesto por el Secretario de Obras Públicas, y haciendo uso de las atribuciones que me están conferidas, otorgo á la Compañía del Puerto, sucesora del señor Sylvester Scovel, la concesión necesaria para llevar á efecto las obras expresadas en el proyecto presentado por dicho señor Scovel de fecha 23 de Agosto de 1904, con sujeción á las siguientes condiciones:

1.ª—Las obras se ajustarán al proyecto presentado por el peticionario, señor Sylvester Scovel, que lleva fecha 22 de Agosto de 1904, en todo aquello que no resulte modificado en las siguientes cláusulas.

2.ª—Esta concesión se considera comprendida entre las que determinan los Artículos 44 y 45 de la Ley de Puertos de 31 de Octubre de 1890 y el 97 de la Ley General de Obras Públicas de 19 de Abril de 1883, y se otorga por el plazo de cincuenta (50) años, á contar de la fecha de la concesión, quedando sujeta á lo prevenido en el Artículo 50 de la citada Ley de Puertos.

3.ª—Se autoriza el establecimiento del depósito de carbón y las operaciones en el mismo en el costado Sur del espigón, de que trata el proyecto, pero en el concepto de que el concesionario queda obligado á poner todos los medios para evitar la invasión del polvo de este carbón en los edificios de las Oficinas de la Aduana, en los de la Ciudad ó molestias al público.

4.ª—Se cede por el Estado en usufructo durante el término de la concesión, la parte de los muelles de San Francisco, así como el área del dominio público que ha de ocuparse con las obras del proyecto.

5.ª—Como compensación y en pago de la ocupación de esta parte, así como del perjuicio que al uso general se causa por la ejecución de las obras, el concesionario se obliga:

(a) A ceder gratuitamente al Estado el edificio para el Departamento de Vistas que forma parte del proyecto.

(b) A ensanchar hasta treinta y seis (36) pies la calle de entrada del espigón, indicado en los planos del proyecto.

(c) A construir en el espigón una calle de veinte y cuatro (24) pies de ancho y de igual pavimentación que las otras del proyecto, que correrá de Norte á Sur de dicho espigón, separando á éste del Departamento de Vistas: el techo sobre esta calle, tendrá por lo menos quince (15) pies de altura.

(d) A colocar una balsa á la entrada del Departamento de Vistas en el lugar que designe la Administración de la Aduana del Puerto, del fabricante que indique dicha Administración, y que servirá para pesar los artículos que de allí pasaren á dicho Departamento, ya sea por medio de los aparatos del concesionario ó por carretones, desde los muelles públicos.

(e) A ceder definitiva y gratuitamente al Estado todas las obras de ampliación de la casilla de pasajeros, destinadas á las Oficinas de Aduanas, si bien con la condición de que ese edificio no podrá ser aplicado á otro objeto que á las mencionadas Oficinas.

4283

GACETA OFICIAL

(f) A destinar al uso público el muelle del costado Norte del espigón proyectado, si bien con la condición de que el concesionario en cualquier tiempo durante la concesión, cuando á su juicio el tráfico del puerto le exigiese, podrá instalar en dicho costado Norte aparatos, equipos y maquinarias para la carga y descarga de buques y vapores, ampliando el edificio para este objeto, de manera que quedare ajustado á la planta así mejorada. Podrá ejercer este derecho, previo aviso de dos meses anticipadamente á la Secretaría de Obras Públicas, presentando al mismo tiempo los planos correspondientes, y entonces las obras adicionales se incluirán dentro de la concesión.

6º.—En caso de que con arreglo á lo dispuesto en el Artículo 50 de la Ley de Puertos hubiese necesidad de expropiar las obras, tendrá derecho el concesionario á retirar del muelle espigón la maquinaria, material, rodante, equipos y aparatos que entonces se esté usando.

7º.—Si en cualquier tiempo durante el plazo de concesión se expropiaren las obras por virtud también de aplicación del citado Artículo 50 de la Ley de Puertos, el Gobierno ó sus dependencias, indemnizará al concesionario del valor de todas las obras construídas por él, incluyendo el Departamento de Vistas y el muelle del costado Norte del espigón, pero no el valor de la maquinaria, material rodante, equipos y aparatos á que hace referencia la cláusula que precede, en el caso en que el concesionario decidiese refractarlas.

8º.—En el caso de expropiación á que se refieren las dos cláusulas anteriores, se valorarán las obras mediante clausulas anteriores, se valorarán las obras mediante clausulas directas de las mismas, aplicando los precios fijados á las unidades de obras que figuran en el presupuesto, y previos los requisitos prevenidos en el párrafo 2.º del Artículo 14 de la Instrucción de la Ley de Puertos de 17 de Noviembre de 1890.

9º.—El Estado permitirá al concesionario el uso libre de un espacio amplio en el lugar de las obras, así como el acceso á él, para guardar y manipular herramientas y materiales y para cualquiera operación propia á la erección de las obras.

10º.—Durante el plazo de concesión será de cuenta del concesionario mantener en buen estado de conservación los cimientos, calles, edificios, maquinarias y demás instalaciones de la planta, en tales condiciones, que al finalizar dicho plazo, éste entregue las obras al Gobierno en perfecto estado de servicio. Las reparaciones y renovaciones que haya necesidad de verificar en el edificio destinado á Oficinas de la Aduana, y en la parte del muelle espigón destinado al público, al costado Norte, serán de cuenta del Gobierno, así como la conservación del pavimento de la zona litoral de servicio en todo el frente del espigón con la parte de tierra.

11º.—El concesionario no será responsable de los perjuicios que resulten por demora de su parte, en la construcción de la planta en proyecto, cuando esta demora fuere causada por huelga, naufragio, ciclones, epidemias ó cualquiera otra causa de fuerza mayor.

12º.—Durante el plazo de concesión podrá el concesionario

sionario adicionar la maquinaria, aparatos y la planta proyectada, con lo que juzgue necesario el oportuno manejo del tráfico de dicha planta, bien podrá aplicar á dicha maquinaria, aparatos, cualquiera, ó todos los perfeccionamientos que por en tiempo resulten ventajosos.

13º.—El concesionario instalará las máquinas necesarias para la generación de electricidad, la fuerza de vapor, pero se le reserva el derecho de utilizar la corriente eléctrica por contrato con Compañías que puedan facilitarla, en cuyo caso no estará obligado á hacer las indicadas instalaciones, ni á usarlas en estas hechas ya.

14º.—Serán de la elección del concesionario los medios de ejecución, los agentes y demás en que consista la construcción, conservación y Administración de las obras.

15º.—El concesionario podrá usar libremente el ferrocarril suspendido que pasa por el Departamento de Vistas, y el derecho de entrada y salida del mismo edificio, para hacer todos los trabajos de reparación y conservación que él estime necesarios para los fines de la concesión.

16º.—Durante el plazo de concesión, no podrá destinarse á otro objeto que al que en este proyecto se le asignan, la parte del muelle espigón, al costado Norte, que se destina al público, ni el Departamento de Vistas. El Estado no permitirá que sobre dicha parte del espigón se presten servicios mecánicos de las clases que constituyen la explotación del concesionario.

17º.—El concesionario cede en firme al Estado todas las obras de ampliación de la Casilla de Pasajeros destinada á Oficinas de la Aduana, si bien con la condición de que ese edificio no podrá ser aplicado á otro objeto que al establecimiento de dichas Oficinas.

18º.—Si llegare el caso de que el Estado deseara se el uso de las obras á que se refieren las dos cláusulas que preceden, el Gobierno entregará al concesionario el muelle y Departamento de Vistas para su uso durante el plazo de concesión, pero con servidumbre de propiedad de las obras de ampliación del edificio, que las Oficinas de Aduana, si bien indemnizando al concesionario el importe de ellas conforme á tasación que entonces se practique, según el estado en que se encuentren, y pudiendo entonce el Gobierno destinar el edificio á cualquier uso que tenga por conveniente.

19º.—Las obras que constituyen el proyecto, se ceden para servicio público, con sujeción á las leyes y reglamentos para su aplicación, constan los documentos del proyecto, y no podrá exigirse rifa que la autorizada, que deberá estar en el público en sitio visible. 21.º de Julio de 1905. A. V. 113. L. O. O.

20º.—Regirá para la aplicación de estas disposiciones el reglamento que las acompañe, pero entendiéndose únicamente, en cuanto no se opongan sus reglas y Ordenanzas de Aduana y demás disposiciones vigentes sobre la materia, ó que en lo que se dictan con carácter general.

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GACETA OFICIAL

4289

21ª.—Los empleados encargados de la conservación y policía de los muelles del Estado, cuidarán, previa denuncia del concesionario, de proceder como corresponde con arreglo á lo dispuesto en el Artículo 26 del Reglamento para la conservación y policía de los muelles del Estado, contra los consignatarios de barcos y de mercancías que permitan arrojar sobre el espigón las basuras procedentes de roturas de lozas, tejas, ladrillos, etc., así como las peñas, cañas y demás que sirven para la estiba de los buques, que constituyen infracción del Artículo 4º del expresado Reglamento.

22ª.—Tendrán derecho preferente para el atraque, carga y descarga en el espigón, las embarcaciones del Gobierno y las que conduzcan efectos destinados al Estado en sus diferentes ramos, siempre que así lo requeira el Jefe de la Oficina á quien corresponda, y abonándose por este servicio la mitad de la tarifa establecida para las demás embarcaciones.

23ª.—El concesionario no podrá dar otra preferencia para el uso del espigón y aparatos, salvo el caso de que trata la condición anterior que la corresponda á la prioridad de solicitud para lo cual llevará un registro cronológico de todas las peticiones que se le hagan, y que estará obligada á mostrar á los que lo soliciten.

24ª.—Todas las disposiciones que dictare el concesionario para las operaciones en el espigón, estarán en completa armonía con los Reglamentos y Ordenanzas de Aduana vigentes, ó con los que en lo sucesivo puedan dictarse, así como con la fiscalización é intervención de las Autoridades de Aduana.

25ª.—Antes de dar principio á los trabajos, el Ingeniero Jefe del Distrito practicará con asistencia del concesionario el replanteo de las obras que se han de ejecutar, con arreglo al proyecto, de cuya operación se extenderá acta por triplicado, uno de cuyos ejemplares con el plano correspondiente, se someterá á la aprobación de la Secretaría de Obras Públicas, y obtenida ésta, se entregará otro ejemplar al concesionario, archivándose el tercero en la Oficina de Obras Públicas del Distrito.

26ª.—El concesionario dará comienzo á las obras en el plazo de cuatro (4) meses, á contar desde la fecha de la concesión, y las ejecutará en el orden y plazo siguiente:

1º.—Las Oficinas nuevas de la Aduana quedarán indetectiblemente listas para ocuparse, á los trece meses.

2º.—El Departamento de Vistas en el edificio de acero y cemento con su mecanismo eléctrico para la manipulación de bultos, todo listo para usarse en trece meses.

3ª.—Los chuchos viajadores y los cinco tramos transversales del Sur del edificio de cemento y de acero, que comprenden una porción del mismo de seiscientos cuarenta (640) pies de largo de Este á Oeste por ochenta unidades pies de ancho de Norte á Sur, con una instalación de vigas y rieles fijos de los "Locoholists" listos para usarse, en trece meses.

4ª.—Los siguientes siete tramos transversales del

edificio con sus equipos completos y listos para usarse, en veinte y ocho (28) meses.

5ª.—El resto del relleno de tierra del edificio y muelle público, en cuarenta (40) meses.

6ª.—De modo que se puede hacer la explotación de la planta proyectada en todas sus partes, al expirar el plazo de los cuarenta (40) meses.

27ª.—Todos los plazos que se mencionan en el artículo anterior, se entienden á partir de la fecha de la concesión.

28ª.—La inspección de la ejecución de las obras, así como del cumplimiento de estas condiciones, se hallará á cargo del Ingeniero Jefe de Obras Públicas del Distrito.

29ª.—Terminadas las obras, el Ingeniero Jefe hará un detenido reconocimiento de ellas, y si encontrase que en la ejecución se han cumplido todas las prescripciones de esta concesión, y que dichas obras se hallan en perfecto estado de servicio, lo hará así constar en acta que se extenderá por triplicado, una de las cuales se remitirá á la Secretaría de Obras Públicas para su aprobación, y una vez obtenida ésta, se distribuirán las otras en la forma indicada para el acta de replanteo.

30ª.—Todos los gastos que se originen en el replanteo, inspección y recepción de las obras, serán de cuenta del concesionario, así como los de la inspección en las fábricas en el extranjero, del acero destinado á los edificios y maquinarias; para lo cual el concesionario depositará en el lugar que se le indique, la cantidad de mil pesos (\$1,000.00) mensuales mientras dure la inspección en las fábricas para responder á los gastos de la misma.

31ª.—Esta concesión se entiende hecha sin perjuicio de tercero, salvo el derecho de propiedad y en la inteligencia de quedar obligado el concesionario á cuantas disposiciones de carácter general se hayan dictado ó en lo sucesivo se dictaren respecto á esta clase de concesiones.

32ª.—Esta concesión caducará, si el concesionario faltase á cualquiera de estas prescripciones, que le son obligatorias, siendo las consecuencias de dicha caducidad, las que señala la Ley General de Obras Públicas y su Reglamento.

33ª.—Al expirar el plazo de concesión, el Estado reemplazará al concesionario en la posesión de las obras y entrará inmediatamente en el disfrute de ella y de sus productos, con toda su maquinaria, material rodante, equipos, aparatos y mejoras que puedan haberse introducido. El concesionario tendrá obligación de entregar las obras y su material de explotación, en buen estado de conservación y servicio.

En los cinco años que precedan al término de la concesión, el Gobierno tendrá derecho de retener los productos líquidos de las obras, y de emplearlas en conservación en buen estado, si el concesionario no tratase de llenar completamente esta obligación.

Habana, Noviembre 29 de 1905.

T. ESTRADA PALMA,
Presidente.

Rafael Montalvo,
Secretario de Obras Públicas.

461

Year XIX — No. 142
Havana, Thursday, December 15, 1920
Volume VI — Page 9149

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[. . .]

PUBLIC WORKS DEPARTMENT

DECREE No. 1944

Whereas: Port of Havana Docks Company, in a pleading dated October 15, 1919, addressed to the Secretary of Public Works, represents that: under the terms of Decree number 1022 of November 11, 1910, it is obliged to build dock "C" ten years after the termination of dock "B," and dock "D" five years after the termination of dock "C"; and that for the purpose of improving existing conditions it would immediately undertake the construction of the rest of the works, provided that the State, on its part, would agree to certain modifications that would redound to the benefit of the public service it provides.

Whereas: Said modifications consist, first, in consolidating into one single body the constructions corresponding to docks "C" and "D" on the site indicated on the attached plan for dock "C," thereby significantly increasing the effective area of the consolidated dock or jetty and achieving greater capacity for the handling of merchandise; second, expanding the existing docks "A" and "B" by building two 9.15 m.-wide side strips, as shown on the plan. And third, building on the side strips projected for the three jetties double railroad tracks that will connect to another double railroad track which is to be laid down on the space between the building on the edge and the fence fronting the street, which, in turn, will connect to the existing parallel tracks in front of the Paula docks and thus gain access, through the Ferrocarriles Unidos side line servicing the Paula docks (Havana Central Railway), to locations in the hinterland for the transportation of cargo received for such destinations; by their very nature, these modifications tend to perfect the works

granted and improve the conditions thereof; in addition, said petitionary company undertakes to build or to provide, at its own expense, bonded storage warehouses in order to avoid merchandise congestion on its docks and warehouses.

Whereas: The proposed modifications entail a cost increase for the Company of more than two million pesos in excess of the existing budget for its works, thereby imposing greater obligations upon them; and the Company, as compensation for such expenses and that part of the waterfront that would remain in favor of the State, requests that the term for the reversion of the works be extended to ninety-nine years, in accordance with the original project, and that it be granted the usufruct for the term thereof of the spaces between the streets that were established as public thoroughfares between jetties "A," "B," and "C," referred to in Article 4 of Decree number 1022 of November 11, 1910, which shall be intended for the storage of merchandise that may remain outdoors.

Whereas: The proposed works will undoubtedly facilitate the operations merchandise handling operations, and will additionally result in greater available capacity at the aforesaid docks, thereby meeting a significant need and affording the significant advantage of being able to transport cargo intended for the interior of the Republic without the current lighterage charges, which advantages redound to the benefit of the public service; and, taking into account the present congested situation existing in the port of Havana and the volume of commercial activity therein, it is necessary to provide for the improvement thereof in every respect.

Whereas: The General Public Works Act does not prohibit changes being made to projected works of

the nature of those granted to the Company that holds the concession and expressly authorizes them in projected public works of the State and in those that are granted to private parties with State subventions, the only difference with the works mentioned being the manner of compensation of the party that executes them.

Whereas: Once the first part of the works referred to in Decree 1022 of 1910 has been completed within the required term and conditions, the Company that holds the concession having noticed significant defects and omissions in them, it proposes to cure them by improving said works and the public service they are to provide and, instead of availing itself of the deadlines set for it to continue with the works until completion, it proposes to carry them out immediately, so that is fair and convenient to the general interests of the Port of Havana to agree to what has been requested.

Now, therefore, availing myself of the powers bestowed upon me by the Constitution and all other laws on the matter, and upon the proposal from Secretary of Health and Welfare and Acting Secretary of Public Works,

I RESOLVE:

First. To agree to the modifications listed in the request submitted by Port of Havana Dock Company, previously referred to, to which effect it shall file, as soon as possible, with the Department of Public Works, plans of said works in greater detail and the specifications thereof for approval and all other purposes.

Second: To extend the term for the reversion of the works to the State, referred to in the second condition

of Decree number 467 of November 29, 1905, to ninety-nine years reckoned as of the date of the concession.

Third: The concession-holding company is obligated to disassemble and transport to such location in the bay of Havana as the Department of Public Works may indicate to it the devices and accessories that make up the existing baggage disinfection plant at the Machina.

Fourth: The concession-holding company shall transport to and deliver at the location indicated to it the Machina and its plant, once it has been disassembled by the Government, and undertakes to make available to the Government its floating derrick for the purposes for which it used the Machina.

Fifth: The concession-holding company is obligated to pave with granite cobblestones on a concrete base and to maintain at its expense that part of the communication area all along the front of the area which is to be occupied by the works it intends to build.

Sixth: The concession-holding company waives the right to occupy the portion of the waterfront located to the north of jetty "A," its concession being bounded in that direction by the part already built adjacent to jetty "A," so that the State will be able to freely dispose of said portion of the waterfront.

Seventh: A single-track right of way shall be established for trains in the communication area outside the bounds of the concession, a double-track being allowed within the bounds thereof; it being clearly understood that in no event shall it be allowed for railroad wagons to interrupt car and cart traffic on the streets and public thoroughfares that afford access to said jetties, and that cars and carts and all

other cargo and passenger vehicles shall have preferential right to the use of and traffic on said streets.

Eighth: The Company is granted the use, for the term of the concession, of the spaces comprised between the public streets and thoroughfares affording access to the jetties established in Article 4 of Decree 1022 cited above, always leaving free for vehicular traffic the necessary space along the front of the building on the edge [of the concession].

Ninth: The concession-holding company must commence the works within the shortest possible period of time after the promulgation of the present Decree, not to exceed three months, and complete them within a term of thirty months reckoned as of the same date.

Tenth: The concession-holding company is obligated to comply with the conditions set forth in Decrees numbers 467 of November 29, 1905, and 1022 of November 11, 1910, to the extent that they are not contrary to or modified by the present Decree.

The Secretary of Public Works is charged with the enforcement of the present Decree,

Given in the Presidential Palace, Havana,
December 13, 1920.

M.G. MENOCAL
President

F. Méndez Capote,
Secretary of Health and Welfare,
and Acting Secretary of Public Works

[. . .]

467

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CERTIFICATE OF ACCURACY

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

Before me, a notary public in and for the State of Florida at large, appears Nelson Duran, Ph.D., who is personally known to me, for and on behalf of Lopez and Duran Interpreting and Translating, who, after being duly sworn, deposes and says that the foregoing is a true and correct translation from the Spanish of the attached document consisting of Four (4) pages, and that this is the last of the attached.

/s/ Nelson Duran
Nelson Duran, Ph.D.

Sworn to and subscribed this 30th day of
January, 20 20.

/s/ Armando Escoto
Armando Escoto
Notary Public,
State of Florida at Large

My commission expires:

[Stamp] Armando M. Escoto
My commission #GG 07672
EXPIRES: June 24, 2021
Bonded Thru Notary Public
Underwriters

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SECRETARIA DE JUSTICIA

DECRETO Nº 1931

Haciendo uso de las facultades que me confiere el artículo 283 de la Ley Orgánica del Poder Judicial y a propuesta del Secretario de Justicia.

Decorative

Nombrar para la plaza de Fiscal del Partido de Morit de las Tunas, que se encuentra vacante, al Sr. Carlos P. Pera y Conesa.

Dado en la finca "El Chico", Mariano, a once de diciembre de 1920.

M. G. MENOCAL,
Presidente.

Luis Ascárate,
Secretario de Justicia.

LAFORETTO N° 1982.

Haciendo uso de las facultades que me confiere el artículo 288 de la Ley Orgánica del Poder Judicial y a propuesta del Secretario de Justicia,

RESUMEN:

Nombrar para la plaza de Fiscal de Partidos a
 Juanabacoa, vacante por renuncia del señor Nicolás
 Magelín, al señor Ramón Masarroll y Bernal.
 Dado en la finca "El Chico", Mariano, a once
 de diciembre de 1920.

M. G. MENOCAL,
Presidente.

Don Axcárate,
Secretario de Justicia.

DECRETO N.º 1933.

Usando de las facultades que me están conferidas y a propuesta del Secretario de Justicia,

Resumo:

pedir título de Procurador a favor del señor don Esteban Calderón y Zúbarán, de acuerdo con lo establecido en la ley Orgánica del Poder Judicial, en su artículo 341, para ejercer en el Partido Judicial de Cienfuegos, y dejar sin efecto el Título de Mandatario Judicial que le fué expedido en 7 de noviembre de 1919, para ejercer en dicho Partido Judicial de Cienfuegos.

Dado en el Palacio de la Presidencia en la Habana, a primero de diciembre de 1920.

M. G. MENOCAL,
Presidente.

Luis Acórate,
Secretario de Justicia.

Decreto N° 1934

Usando de las facultades que me están conferidas y a propuesta del Secretario de Justicia.

RECEIVED

Expedir Título de Procurador a favor del señor Tomás Cruz y Macudero, de acuerdo con lo prescrito en la Ley Orgánica del Poder Judicial, en su artículo 841, para ejercer en el Partido Judicial de Santa Cruz del Sur.

Dado en el Palacio de la Presidencia en la Habana, a primero de diciembre de 1920.

M. G. MENÓCAL,
Presidente.

Luis Acórate,
Secretario de Justicia.

9152

GACETA OFICIAL

Diciembre 15 de 1920

túan los de la Lotería Nacional, han sido agraciados los Bonos cuyos números, Series y Denominaciones a continuación se expresan:

SERIE "B".—DENOMINACIÓN DE \$500.

BONOS	
Bola.	Al número
1015	50701
1025	51201
1031	51501
1034	51651
1053	52801
1061	53001
1064	53151
1176	58751
1181	59001
1184	59151

SERIE "B".—DENOMINACIÓN DE \$1,000.

BONOS	
Bola.	Al número
1206	60251
1237	61801
1251	62501
1278	63851
1296	64751

Estos Bonos devengarán intereses hasta el día 30 de Diciembre próximo venidero. Los tenedores de estos títulos podrán hacerlos efectivos en la Pagaduría de la Sección de Deudas Nacionales, en esta Secretaría, a partir del mencionado día. Lo que se hace público para general conocimiento.

Habana, 30 de Noviembre de 1920.—*Pablo J. Ro-vira*, Presidente de la Comisión.

4, 6, 8, 15, 16, 22, 23, 29, 30 día.

SECRETARIA DE OBRAS PUBLICAS

Decreto N° 1944.

Por cuanto: La Port of Havana Docks Company, en escrito de fecha 15 de octubre de 1919, dirigido al Secretario de Obras Públicas, manifiesta que: según los términos del Decreto número 1022 de 11 de noviembre de 1910, está obligada a construir el muelle "C", diez años después de la terminación del muelle "B", y el "D", cinco años después de la terminación del muelle "C"; y que con el propósito de mejorar las condiciones existentes, acometería inmediatamente la construcción del resto de las obras, siempre que el Estado, por su parte, accediera a ciertas modificaciones que redundarían en beneficio del servicio público que presta.

Por cuanto: las expresadas modificaciones consisten, primera, en refundir en un solo cuerpo de construcción los correspondientes a los muelles "C" y "D", en el emplazamiento indicado en el plano que acompaña, respecto del muelle "C", y en el

SERIE "A".—DENOMINACIÓN DE \$500.

BONOS	
Bola.	Al número
1026	51300
1033	52650
1054	52700
1101	55001
1104	55151
1121	56001
1131	56501
1137	56801
1162	58051
1183	59351

SERIE "A".—DENOMINACIÓN DE \$1,000.

BONOS	
Bola.	Al número
1219	60900
1232	61600
1235	61737
1261	63050
1292	64600

SERIE "B".—DENOMINACIÓN DE \$100.

BONOS	
Bola.	Al número
12	551
81	4001
85	4201
96	4751
101	5001
104	5151
125	6201
204	10151
206	10251
215	10701
236	11751
272	13551
281	14001
333	16601
336	16751
351	17501
356	17751
361	18001
402	20051
498	20351
498	21351
436	21751
374	18651
489	21901
495	24701
564	28151
625	31201
638	31851
539	26901
597	29801
502	25051
620	30951
661	33001
665	33201
706	35251
20100	20100
20400	20400
21400	21400
21800	21800
18700	18700
21950	21950
24750	24750
28200	28200
31250	31250
31900	31900
26950	26950
29850	29850
25100	25100
31000	31000
33050	33050
33250	33250
35300	35300

REV000384

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se aumenta considerablemente la superficie efectiva del muelle o espigón refundido, obteniéndose mayor capacidad para la manipulación de mercancías; segunda: ampliar los actuales espigones o muelles "A" y "B" construyendo dos fajas laterales de 9.15 m, de ancho, tal como se indica en el plano. Y tercera, construir sobre las fajas laterales que se proyectan en los tres espigones dobles vías de ferrocarril, las cuales conectarán con otra doble vía que habrá de instalarse en el espacio comprendido entre el edificio marginal y la raja del frente de la calle, la que a su vez conectará con las paralelas que ya existen frente a los muelles de Paula, para buscar salida por el ramal de los Ferrocarriles Unidos al muelle de Paula (Havana Central Railway) a los lugares del interior para el transporte de la carga que se reciba con ese destino; modificaciones éstas que por su naturaleza tienden a perfeccionar las obras concedidas, mejorando las condiciones de las mismas; comprometiendo, además la expresada Compañía peticionaria a construir o proveer por su cuenta alcances afianzados de depósitos a fin de evitar la congestión de mercancías en sus muelles y almacenes.

Por cuanto: las modificaciones propuestas presuponen un aumento de costo para la Compañía, de más de dos millones de pesos en exceso del actual presupuesto de sus obras, imponiéndole, por tanto, mayores obligaciones, y ésta, como compensación a esos gastos así como a la parte de litoral que quedaría a favor del Estado, solicita que se le prorrogue el término de reversión de las obras a noventa y nueve años, de acuerdo con el primitivo proyecto y que se le conceda el usufructo por el término de la misma, de los espacios entre las calles que para vía pública se establecieron entre los espigones "A", "B" y "C" a que se refiere el artículo 4º del Decreto número 1022 de 11 de noviembre de 1910, los cuales serán destinados para depositar mercancías que puedan permanecer al interior.

Por cuanto: las obras que se proponen, han de facilitar indudablemente las operaciones de manipulación de mercancías, obteniéndose además, mayor capacidad disponible en los muelles mencionados, llenándose con esto una gran necesidad sentida, así como también la gran ventaja de poder transportar la carga que de trasbordo venga para el interior de la República sin los actuales gastos de lanzamiento, ventajas éstas que redundan en beneficio del servicio público, y que habida cuenta de las condiciones actuales de congestión del puerto de la Habana y del volumen de su movimiento comercial es necesario proveer a su mejoramiento en todo sentido.

Por cuanto: la Ley General de Obras Públicas no prohíbe que se introduzcan cambios en proyectos de obras del carácter de las concedidas a la Compañía concesionaria y expresamente lo autoriza en proyectos de obras públicas del Estado que se ejecutan por contrato y en las que se conceden a particulares

con subvención del Estado y diferenciando ésta de que se trata de las obras mencionadas solo en la forma de remuneración al ejecutor de ellas.

Por cuanto: una vez realizada la primera parte de las obras a que se contrae el Decreto 1022 de 1910 dentro del término y condiciones requeridos, la Compañía concesionaria advierte defectos y omisiones importantes en las mismas y propone subsanarlas mejorando aquéllas, así como el servicio público que han de prestar y en vez de hacer uso de los plazos que se le fijaron para continuar las obras hasta su terminación, se propone realizarlas inmediatamente, es de equidad y conveniencia a los intereses generales del Puerto de la Habana acceder a lo solicitado.

Por tanto: en uso de las facultades que me confiere la Constitución, y demás Leyes referentes a la materia; y a propuesta del Secretario de Sanidad y Beneficencia e interino de Obras Públicas,

RESOLVO:

Primero: Acceder a las modificaciones enunciadas en la solicitud presentada por la Port of Havana Docks Company y a la que antes se ha hecho referencia, a cuyo efecto deberá presentar a la mayor brevedad a la Secretaría de Obras Públicas los planos en detalle de esas obras y las especificaciones de las mismas para su aprobación y demás efectos.

Segundo: Ampliar el término de reversión de las obras al Estado a que se refiere la condición segunda del Decreto número 467 de 29 de noviembre de 1906, a noventa y nueve años a contar de la fecha de la concesión.

Tercero: La Compañía concesionaria queda obligada a desmontar y trasportar al lugar de la Haja de la Habana que indique la Secretaría de Sanidad los apartos y accesorios que componen la planta de desinfección de equipajes existentes en la Maquina.

Cuarto: La Compañía concesionaria trasportará y entregará en el lugar que se le designe la Maquina y su planta, una vez desmontada por el Gobierno, obligándose a facilitar al Gobierno el libre uso de su grúa flotante para los fines que utilizaba la Maquina china.

Quinto: La Compañía concesionaria queda obligada a pavimentar con adoquín de granito sobre base de hormigón y a conservar a su costa la parte de la zona de comunicación en todo el frente que han de ocupar las obras que se proponen realizar.

Sexto: La Compañía concesionaria renuncia al derecho de ocupar la porción de litoral situada al Norte del espigón "A" quedando limitada su posesión por ese rumbo en la parte ya construida continuando al espigón "A", por lo que dicha porción de litoral quedará a la libre disposición del Estado.

Séptimo: Para el paso de trenes por la zona de comunicación fuera de los límites de la concesión, se establecerá una sola vía, permitiéndose la doble

vía dentro de los propios límites de las misma; bien entendido que no se permitirá en ningún caso que los carros de ferrocarril interrumpen el tráfico por las calles que para el tránsito público y de carros y carriones dan acceso a dichos espigones y que tendrán derecho preferente para el uso y tránsito por dichas calles los carretones y demás vehículos de carga y pasaje.

Octavo: Se concede a la Compañía el uso por el término de la concesión de los espacios comprendidos entre las calles que para vía pública y acceso a los espigones se establecieron en el artículo 4º del Decreto 1022 antes citado, dejando siempre libre el espacio necesario a lo largo del frente del edificio marginal para el tránsito de vehículos.

Noveno: La Compañía concesionaria deberá comenzar las obras en el plazo más breve posible después de la promulgación del presente Decreto, el cual no excederá de tres meses y terminadas en el plazo de treinta meses a contar de la misma fecha.

Décimo: La Compañía concesionaria queda obligada al cumplimiento de las condiciones que figuran en los Decretos números 467 de 29 de noviembre de 1905 y 1022 de 11 de noviembre de 1910, en cuanto no se pongan en éstas modificaciones por el presente Decreto.

El Secretario de Obras Públicas queda encargado del cumplimiento del presente Decreto.

Dado en el Palacio de la Presidencia, Habana, a 13 de diciembre de 1920.

M. G. MENOCAL,
Presidente.

F. Méndez Capó,
Secretario de Sanidad y Beneficencia
e Interior de Obras Públicas.

SECRETARIA DE AGRICULTURA, COMERCIO Y TRABAJO

Decreto N° 1943.

Por cuanto: La profesora señora Eva Mameli de Calvino, Doctor en Ciencias Naturales, Profesora de Botánica de la R. Universidad de Pavía, Italia, autora de varias publicaciones sobre Botánica Sistemática, Fisiológica, Biología y Anatomía Vegetal, con conocimientos especiales y necesarios que deben ser aprovechados para el mejor desarrollo de los estudios que se vienen realizando en la Estación Experimental Agronómica.

Por cuanto: Existe vacante en la misma el cargo de Jefe del Departamento de Botánica, debiéndose aprovechar esta oportunidad para utilizar los conocimientos de la Dr. Mameli.

Por tanto: Haciendo uso de las facultades que me confiere la ley de conformidad con lo dispuesto

por el Secretario de Agricultura, Comercio y Trabajo y teniendo en cuenta la excepción del párrafo primero del artículo 88 de la Ley del Servicio Civil.

Resumen:

Nombrar a la Profesora Dr. Eva Mameli de Calvino, para el desempeño del cargo de Jefe del Departamento de Botánica de la Estación Experimental Agronómica, con el haber anual de \$2,400.00 con que aparece dotado en presupuestos.

Dado en el Palacio de la Presidencia, en la Habana a primero de diciembre de 1920.

M. G. MENOCAL,
Presidente.

E. Sánchez Agramonte,
Secretario de Agricultura, Comercio
y Trabajo.

SECCIÓN DE LA PROPIEDAD INTELECTUAL, MARCAS Y PATENTES

Joseph A. Springer, apoderado de E. Merck de Darmstadt, Alemania ha presentado el día 9 de diciembre de 1920 solicitud de certificado de propiedad por inscripción del depósito de la marca alemana número 27,406 para distinguir preparados químicos y farmacéuticos, y preparados químicos que han de emplearse para fines medicinales. — Anotada al número 18,714.

Lo que en cumplimiento de los Decretos números 225 y 1766 de 14 de febrero y 7 de noviembre de 1917 se publica en la GACETA OFICIAL para general conocimiento; cuyo aviso con más detalles y diseño se publica en el Boletín de la Secretaría de Agricultura.

Habana 9 de diciembre de 1920. — Juan García Marín, Jefe del Registro General.

Joseph A. Springer apoderado de Tadashi D. Gomi de la ciudad y Estado de New York E. U. A. ha presentado el día 9 de diciembre de 1920 solicitud de certificado de propiedad por inscripción del depósito de la solicitud de una marca de fábrica presentada en la oficina de Patentes de los E. U. de América en fecha 11 de septiembre de 1920, al Serial número 137,082 para distinguir un espécimen en forma de líquido y de cristal para ciertas enfermedades, v. g.: sífilis, etc., etc. — Anotada al número 18,715.

Lo que en cumplimiento de los Decretos números 225 y 1766 de 14 de febrero y 7 de noviembre de 1917 se publica en la GACETA OFICIAL para general conocimiento; cuyo aviso con más detalles y diseño se publica en el Boletín de la Secretaría de Agricultura.

Habana 9 de diciembre de 1920. — Juan García Marín, Jefe del Registro General.

OFFICIAL GAZETTE
OF THE REPUBLIC OF CUBA

YEAR XXXII - N0.69

Havana, Wednesday, September 19, 1934

Volume III - Page 4929

DEPARTMENT OF PUBLIC WORKS - DECREE

No.2424

Having seen the briefs from the Havana Docks Corporation dated June 27, 1928 and January 14, 1931 addressed to his excellency the Secretary of Public Works announcing that it had acquired by cession from the Port of Havana Docks Company the administrative concession latter had according to the Decrees of this Presidency numbers 467 of November 29, 1905, 1022 of November 11, 1910, 184 .of March 13, 1911 and 1944 of December 13, 1920 for the construction of wharfs and warehouses in the Port of Havana so that said cession be officially recognized in favor of the Havana Docks Corporation.

Whereas: (Findings of Fact) The Havana Docks Corporation attaches to its request a first copy of the legal instrument (deed) number 49 dated April 11, 1928, given before Dr. Oscar A. Montero y Beldarrain, Notary Public of Havana, which justifies, according to a statement from the Legal Counsel Department of the Ministry of Public Works, the, transfer or sale (buying and selling) contract of said administrative concession and it has also been fully established that the transfer of said concession was performed with all its rights and actions in favor of the Havana Docks Corporation, which due said attainment will substitute the Port of Havana Docks Company in, all of its rights and actions as well in any obligations thereof contracted by the latter.

Whereas: According to the file records of the Ministry of Public Works due to the proceedings arraigned at the Provincial Government of Havana by virtue of a petition presented by Mr. Sylvester Scovel requesting an administrative concession for the construction of a wharf in the port of Havana, with mechanical installations, a building to serve as customs and other works, this Presidency issued Decree number 85 of February 27, 1905 declaring said proposed works to be of public interest and to proceed with the auction of the necessary concession for the execution of the works.

Whereas: The auction having been effected for the concession, this Presidency issued Decree No.467 of November 29, 1905 granting to "Compañia del Puerto" successor to Mr. Sylvester Scovel, the necessary concession to carry out the works projected by said gentleman in all that was not modified by the clauses as stated in said Decree.

Whereas: The execution of the works as projected would have been detrimental to the public interest, a change of project was advised and accepted by "Compañia del Puerto" and thus this Presidency issued Decree number 1022 of November 11, 1910 according to which four wharfs, known as A, B, C, and D must be constructed under certain conditions instead of only one wharf.

Whereas: Decree number 184 of March 13, 1911, of this Presidency recognized the transfer performed in favor of the Port of Havana Docks Co. with all its rights and obligations, of the concession granted by Presidential Decrees dated November 29, 1905 and November 11, 1910.

Whereas: Decree number 1944 of December 13, 1920 of this Presidency, authorized modifications among which was to include as one unit of construction those corresponding to wharfs C and D and the emplacement of wharf C and the period for escheat was extended to 99 years, the concessionaire company being obligated to fulfill all the obligations contemplated by Decrees numbers 467 of November 21, 1905 and 1022 of November 11, 1910 in as much as they are not opposed or modified by said Decree of December 13, 1920.

Whereas: The acknowledgement of the transfer being requested should have been proceeded by final acceptance of the works performed by the Port of Havana Docks Company which has been effected according to the minutes of September 1, 1933 taken by the executive office of the Department of Public Works of the District of Havana witnessed by a delegate of the Department of Finance and by the Vice-President of said company which document had the approval of the pertinent Department on October 21 of the same year and it is Stated in said document among other things that the Company is obligated to construct or provide bonded warehouses at any time in which they are needed, in order to avoid conglomeration of merchandise in its docks or warehouses and to fulfill its outstanding obligations with the State with respect to street maintenance around the third wharf known as Santa Clara as well as 41 the paved portions between the tracks and fifty centimeters beyond them.

Whereas: (Conclusions of Law) in accordance with article 102 of the General Law of Public Works in force, the effected transfer is legal, Whereas: These documents have been duly processed in accordance

with the law, Following a request from the Secretary of Public Works

I RESOLVE

To recognize the transfer performed by the Port of Havana Docks Co. in favor of Havana Docks Corporation, of the concession of the docks, warehouses and other works which were authorized in this Port to the first of said entities by the Decrees of this Presidency numbers 467 of November 29, 1905; 1022 of November 11, 1910; 184 of March 1e, 1911 and 1944 of December 13, 1920; in the understanding that the cessionaire entity, Havana Docks Corporation, is authorized to enjoy all the rights and is subject to all the obligations imposed in the clauses of the mentioned Decrees relative to the referenced concession and that the warranties covering its responsibilities remain effective.

Given in Havana, at the Presidential Palace, on the seventh day of the month of September, nineteen hundred and thirty four.

Carlos Mendieta
President

Enrique Ruiz Williams
Secretary of Public Works

S-49080

I hereby certify that I am a qualified translator/interpreter for the U. S. Department of State and that the above is a true translation from Spanish of the original document in that language.

Miami, October 9, 1967.

/s/(J.E. de la Torriente Jr.
J.E. de la Torriente Jr.

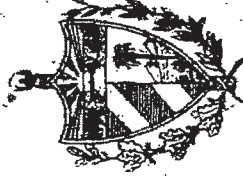
477

[Subscribed and sworn to this 9th day of October,
1967; before me -]

/s/ Raul Santiago

Notary Public, State of Florida at Large
My Commission Expires Aug. 4, 1968

GACETA



OFICIAL

DE LA

REPÚBLICA DE CUBA

DIRECTOR GENERAL: DR. JOSE DE LA PERA CRUZ
(En gratía para el Estado, la tirada corriente de la Gaceta y su distribución oficial.) Turnos permanentes de empleados al servicio del público, de 8 A. M. a 8 P. M., en la Secretaría de Gobernación, planta baja. Teléfonos: Oficial N° 78 y A-2057.

Publicación: Edición, inscripciones y anuncios en la Administración de Correos y Telégrafos, de 8 a 12 de la mañana y de 2 a 4 de la tarde, todos los días menos los festivos. Teléfono 21308.

Provincia: En casa de los respectivos agentes.

Subscripción mensual: UN PESO.

PARTE OFICIAL

PODER EJECUTIVO

CONSEJO DE SECRETARIOS

CARLOS MENDIETA Y MONTEGUR, Presidente Provisional de la República de Cuba.

HAGO SABER:

Que el Consejo de Secretarios ha aprobado y yo he sancionado lo siguiente:

Por cuanto: Los beneficios que se esperaban de los Tribunales de Urgencia, al promulgarse el Decreto-Ley número 292 de 15 de junio de este año, en lo que se refiere a la rapidez y eficiencia de los mismos, no han sido obtenidos del todo, debido en parte a la inapreciable a que dichos Tribunales no pueden intervenir su actuación con la brevedad que requieren las circunstancias.

Por cuanto: En determinadas localidades de la República existe un estado de alarma ante las agitaciones y los actos de terrorismo que llevan a cabo algunos elementos.

Por cuanto: Es de necesidad que las sanciones establecidas en el Decreto-Ley número 292, sean aplicadas por un procedimiento que sea característico por su brevedad.

Por tanto: En uso de las facultades que le están conferidas por la Ley Constitucional de la República, el Consejo de Secretarios resuelve dictar el siguiente

Decreto-Ley N° 491.

Artículo I.—Para el conocimiento y castigo, en lo sucesivo, de los delitos y faltas a que se refieren los artículos 32 y 34 del Decreto-Ley número 292, de 15 de junio y las infracciones de las disposiciones contenidas en el Decreto-Ley número 65, de 10 de marzo, ambos del corriente año, cometidas o que

se cometan en la provincia de la Habana, se crean los Tribunales, que funcionarán en esta Capital, los cuales se denominarán "Tribunal de Urgencia Número Uno" y "Tribunal de Urgencia Número Dos".

Artículo II.—El conocimiento de las causas en tramitación o que se inicien, por los hechos a que se refiere el anterior artículo, corresponderá a estos Tribunales en la forma siguiente: al Tribunal de Urgencia Número Uno, los cometidos en las demarcaciones de los Juzgados de Instrucción de las Secciones Primera, Segunda y Tercera de esta Capital, y en los Partidos Judiciales de Guanabacoa, Regla, Jaruco y Bejucal; y al Tribunal de Urgencia Número Dos, los realizados en las demarcaciones de los Juzgados de Instrucción de las Secciones Cuarta y Quinta de la Habana, y en los Partidos Judiciales de Marianao, Güines, San Antonio de los Baños e Isla de Pinos.

Artículo III.—Realizada cualquiera infracción de las comprendidas en este Decreto-Ley, el funcionario o autoridad que tuviere conocimiento de la misma, dará cuenta inmediatamente al Tribunal de Urgencia respectivo, presentando y dejando a su disposición a los presuntos culpables, los cuales comparecerán ante el mismo, dentro del propio día de la detención a ser posible, y de no serlo, al siguiente, con excepción de los ocurridos en el Partido Judicial de Isla de Pinos, que serán presentados a la mayor brevedad posible, habida cuenta de los medios de comunicación y serán juzgados por el procedimiento correccional establecido para los delitos en la Orden número 213 de 25 de mayo de 1900, la que será de aplicación también para todos los juicios a que este Decreto-Ley se refiere, siendo obligatoria la asistencia del Ministerio Fiscal a todos ellos, así como la de un Abogado defensor, de oficio, si en el momento del juicio no se presenta por el acusado letrado que se encargue de defenderlo.

Artículo IV.—Estos Tribunales impondrán las penas previstas en el Capítulo IV del Título I, y en

Considerando: Que dados los términos de la cuestión planteada, su decisión debe limitarse a determinar la base de liquidación de los derechos arancelarios del azafrán de procedencia española.

Considerando: Que entre las estipulaciones que integran el Convenio Comercial celebrado entre esta República y España, existe la contenida en el Artículo 2º que expresa que los derechos correspondientes a diversos artículos, entre ellos el azafrán, que en fecha de 15 de septiembre de 1925, estaban calculados ad-valorem, serían sustituidos por sus equivalentes en derechos específicos y tal conversión fué hecha al promulgarse el Arancel de Aduanas en vigor, fijándose a la partida 282 del mismo en que se comprende el azafrán, el derecho específico de \$8.00 por kilogramo en tarifa general.

Considerando: Que la Circular número uno dictada por la Secretaría de Hacienda con fecha 9 de enero de 1931, publicada en la GACETA OFICIAL del propio mes y año, contiene una amplia explicación sobre el particular de que se trata, demostrándose otra base de imposición de derechos al azafrán, que no sea la señalada de manera definitiva en el vigente Arancel, estimándose en su consecuencia que es improcedente la reclamación establecida.

Se acuerda, por unanimidad, declarar sin lugar la presente protesta, y se hace constar que esta resolución se dicta fuera de término por el exceso de trabajo que pesa sobre este Organismo.

ENVASES DE CARTON CORRUGADO

Resolución N° 1794B.

En la Ciudad de la Habana, a 24 de abril de 1934, la Junta de Protestas, reunida en sesión bajo la Presidencia del señor Alejandro Casuso, con asistencia de los Vocales señores José Beruff, Juan Manuel Planas y Miguel Angel Céspedes y del Secretario por sustitución reglamentaria señor Juan Raddillo Martí, dictó la resolución siguiente en la protesta número 17905.

Resultando: Que la razón social Vda. de Humar y Lastra, S. en C., protestó contra el aforo hecho en la Hoja número 17892 de la Aduana de este puerto, pago número 3112, de 21 de noviembre de 1932, de 288 kilos, peso neto, envases de cartón corrugado de una importación de artículos de vidrio por la partida 162-E del vigente Arancel de Aduanas; reclamándose que se aplique la propia partida pero en su letra "A".

Considerando: Que la mercancía a que se refiere esta protesta consiste, según se ha podido apreciar mediante el examen de los antecedentes del caso, en cajas envases, fabricadas con cartón corrugado, siendo correcto el aforo practicado por la Aduana de este puerto, bajo la partida 162-E del

Arancel de Aduanas en vigor, en cuya partida y letra se tarifa especialmente el cartón corrugado en sus diversas manufacturas, y en tal virtud, no es aplicable la partida 162-A, del propio Arancel; reclamada en la protesta.

Se acuerda, por unanimidad, declarar sin lugar la presente protesta y se hace constar que esta resolución se dicta fuera de término por el exceso de trabajo que pesa sobre este Organismo.

TEJIDO DE YUTE Y ALGODON TEJIDO

Resolución N° 17949.

En la Ciudad de la Habana, a 24 de abril de 1934, la Junta de Protestas, reunida en sesión bajo la Presidencia del señor Alejandro Casuso, con asistencia de los Vocales señores José Beruff, Juan Manuel Planas y Miguel Angel Céspedes y del Secretario por sustitución reglamentaria señor Juan Raddillo Martí, dictó la resolución siguiente en la protesta número 15381.

Resultando: Que los señores Manuel Seijo y Cía. protestaron contra el aforo hecho en la Hoja número 288, de la Aduana de este puerto, pago número 3598, de 22 de julio de 1931, de una importación de 244 kilos, peso neto, tejido de lino, tejido, en piezas, por la partida 133-C del vigente Arancel de Aduanas, con el recargo de 40%; reclamándose la clasificación por la propia partida y letra, pero sin el expresado recargo.

Considerando: Que la mercancía a que se refiere esta protesta consiste, según se ha podido apreciar mediante el examen de los antecedentes del caso, entre los que se encuentra el certificado de análisis químico número 28726, expedido por el Jefe del Laboratorio Químico de la Secretaría de Hacienda, con fecha 29 de agosto de 1932, en tejido fabricado con fibras de yute y algodón, tejido, por lo que procede sostener el aforo practicado por la Aduana de este puerto, por la partida 133-C del Arancel de Aduanas en vigor, con el recargo de 40%, por concepto de tejido, por lo cual no es de accederse a la petición de los reclamantes que interesan la clasificación de dicho tejido por la mencionada partida 133-C, pero sin la aplicación del citado recargo.

Se acuerda, por unanimidad, declarar sin lugar la presente protesta, y se hace constar que esta resolución se dicta fuera de término por el exceso de trabajo que pesa sobre este Organismo.

SECRETARIA DE OBRAS PUBLICAS

Decreto N° 2424.

Vistos los escritos de fechas 27 de junio de 1928 y de 14 de enero de 1931, dirigidos al señor Secre-

Septiembre 19 de 1934

GACETA OFICIAL

- 4943

rio de Obras Públicas por la Habana. Docks Corporation, participando haber adquirido por traspaso de la Port of Havana Docks Company, la concesión administrativa que tenía según los Decretos de esta Presidencia números 467 de 29 de noviembre de 1905, 1022 de 11 de noviembre de 1910, 184 de 13 de marzo de 1911 y 1944 de 13 de diciembre de 1920, para la construcción de espigones y almacenes en el Puerto de la Habana, a fin de que se reconociera oficialmente el referido traspaso de la concesión a favor de la Havana Docks Corporation.

Resultando: que la Havana Docks Corporation acompaña a su solicitud, primera copia de la escritura número 49 de fecha 11 de abril de 1928, otorgada ante el Notario de la Habana Dr. Oscar A. Montero y Beldarraín, por la que se justifica, según dictamen de la Consultoría Legal de la Secretaría de Obras Públicas, el contrato de transmisión o compra-venta de la referida concesión administrativa, y ha quedado también plenamente justificado, haberse hecho la transmisión de esa concesión, con todos sus derechos y acciones, a favor de la entidad anónima Havana Docks Corporation, la cual, por virtud de esa adquisición viene a sustituir en todos sus derechos y acciones a la Port of Havana Docks Company, así como también en las obligaciones en que ésta tenga contraídas.

Resultando: que según los antecedentes de archivo de la Secretaría de Obras Públicas, con motivo de expediente instruido en el Gobierno Provincial de la Habana, a virtud de instancia presentada por el señor Sylvester Scovel, en solicitud de concesión administrativa para la construcción en el Puerto de la Habana, de un muelle espigón con instalaciones mecánicas, de un edificio destinado a Aduana y otras obras, se dictó por esta Presidencia Decreto número 85 de 27 de febrero de 1905, declarando de utilidad pública las obras proyectadas y que se procediera a la subasta de la concesión necesaria para la ejecución de las obras.

Resultando: que efectuada la subasta de la concesión se dictó por esta Presidencia Decreto número 467 de 29 de noviembre de 1905, otorgando a la Compañía del Puerto. Sncsora del señor Sylvester Scovel la concesión necesaria para llevar a cabo las obras proyectadas por dicho señor en cuanto no resultara modificada por las cláusulas que se imponen en dicho Decreto.

Resultando: que por ser perjudicial a los intereses públicos la realización de las obras en la forma proyectada, se estudió cambiar el proyecto, lo cual aceptó la Compañía del Puerto, dictándose el Decreto de esta Presidencia número 1022 de 11 de noviembre de 1910 según el cual deben construirse cuatro espigones que se denominan A, B, C y D, en vez de un solo espigón y bajo ciertas condiciones.

Resultando: que por Decreto de esta Presidencia número 184 de 13 de marzo de 1911, se reconoció el

traspaso realizado a favor de la Port of Havana Docks Co., con todos sus derechos y deberes, de la concesión otorgada por Decretos Presidenciales de fechas 29 de noviembre de 1905 y 11 de noviembre de 1910.

Resultando: que por Decreto de esta Presidencia número 1944 de 13 de diciembre de 1920 se autorizaron modificaciones, entre ellas la de refundir en un solo cuerpo de construcción las correspondientes a los muelles C y D, en el emplazamiento del muelle C, así como también se amplió a 99 años el plazo de reversión al Estado, quedando obligada la Compañía concesionaria al cumplimiento de las condiciones que figuran en los Decretos números 467 de 29 de noviembre de 1905 y 1022 de 11 de noviembre de 1910, en cuanto no se opongan ni estén modificadas por dicho Decreto de 13 de diciembre de 1920.

Resultando: que el reconocimiento de traspaso que se solicita debía ser precedido por la recepción definitiva de las obras ejecutadas por la Port of Havana Docks Co., la cual ha sido ya verificada, según acta levantada en 1.º de septiembre de 1930 por la Jefatura de Obras Públicas del Distrito de la Habana, con asistencia de un Delegado de la Secretaría de Hacienda y del Vice-Presidente de la referida Compañía, mereciendo dicho documento la conformidad de la Secretaría del Ramo en 21 de octubre del propio año, y en cuyo documento se hace constar, entre otros particulares quedar obligada la Compañía a construir o proveer almacenes afianzados en cualquier tiempo en que éstos sean necesarios, para evitar la congestión de mercancías en sus muelles y almacenes y a cumplir los compromisos que tiene contraídos con el Estado en lo que respecta a la conservación de las calles en los alrededores del tercio espi-gón denominado Santa Clara así como todo el afirmado entre las carrileras y cincuenta centímetros por fuera de ellas.

Considerando: que de acuerdo con el Artículo 102 de la vigente Ley General de Obras Públicas, es legal el traspaso verificado.

Considerando: que se ha dado a este expediente la tramitación armonizada con la Ley.

A propuesta del Secretario de Obras Públicas,

RESUELVO:

Reconocer el traspaso realizado por la Port of Havana Docks Co. a favor de la Havana Docks Corporation de la concesión de muelles, almacenes y demás obras que fueron autorizadas en este Puerto a la primera de dichas entidades por Decretos de esta Presidencia números 467 de 29 de noviembre de 1905, 1022 de 11 de noviembre de 1910, 184 de 13 de marzo de 1911 y 1944 de 13 de diciembre de 1920; en la inteligencia de quedar autorizada la entidad concesionaria Havana Docks Corporation para el disfrute de todos los derechos y sujeta al cumplimiento de todas

las obligaciones que se imponen en la cláusula de los referidos Decretos, relativos a la concesión de referencia y quedando subsistentes las garantías que hacen efectiva su responsabilidad.

Dado en la Habana, en el Palacio Presidencial, a los siete días del mes de septiembre de mil novecientos treinta y cuatro.

CARLOS MENDIETA,
Presidente.

Enrique Ruiz Williams,
Secretario de Obras Públicas.

S-49080

SECRETARIA DE AGRICULTURA

COMITE DE PERMISOS DE EXPORTACION

A V I S O

Habana, septiembre 18, 1934.

El Sub-Comité de Permisos de Exportación, en sesión celebrada en el día de hoy ha resuelto determinar y anunciar que la cotización pronta entrega (spot) de New York que registró a los efectos del Decreto-Ley N° 456 para el día 19 de septiembre, 1934, para azúcares que se exporten a los Estados Unidos de América, costo y flete, 96° de polarización, es

2.29636

(Dos Punto Dos Nueve Seis Tres Seis) c/ por libra.

Comité de Permisos de Exportación.

3549 P 19
J. M. López Oña,
Presidente.

SECRETARIA DE EDUCACION

DECRETO N° 2425.

Por cuanto: la Escuela Técnica Industrial "Enrique José Varona" tiene necesidad imprescindible de adquirir una cocina de hierro, para sustituir el actual sistema de cocción a vapor que emplea, y que es deficiente, por el de carbón; para la cual adquisición no existe cantidad consignada, de manera expresa, en el vigente presupuesto de la referida Escuela; pero el Director de la misma informa que el concepto de "Manutención" del ejercicio fiscal de 1933-1934, existe un sobrante que no fué aplicado, y que puede dedicarse a la adquisición de la referida cocina;

Por tanto: en uso de las facultades que me están conferidas por la Ley Constitucional de la República y a propuesta del Secretario de Educación,

RESUELVO:

Primero: que con cargo al concepto de "Manutención" del presupuesto de la Escuela Técnica Industrial "Enrique José Varona", del ejercicio fiscal de 1933 a 1934, sea autorizada la adquisición de una cocina de hierro para la Escuela Técnica Industrial "Enrique José Varona", cuyo costo e instalación asciende a la cantidad de mil pesos (\$1,000.00).

Segundo: el Secretario de Educación queda encargado del cumplimiento del presente Decreto.

Dado en el Palacio de la Presidencia, en la Habana, a los treinta días del mes de agosto de mil novecientos treinta y cuatro.

CARLOS MENDIETA,
Presidente.

Medardo Viter,
Secretario de Educación.

S. 49081).

SECRETARIA DE SANIDAD Y BENEFICENCIA

DECRETO N° 2426.

En uso de las facultades que me están conferidas en la Ley Constitucional de la República, a propuesta del Secretario de Sanidad y Beneficencia,

RESUELVO:

Primero: Dar por terminados los servicios del Dr. Luis de la Torre, en el cargo de Jefe de Sexta Clase, Director Médico del Hospital Saturnino Lora, de Santiago de Cuba, que venta desempeñando.

Segundo: Nombrar al Dr. Norberto Machirán Ortiz, en el cargo de Jefe de Sexta Clase, Director Médico del Hospital Saturnino Lora, de Santiago de Cuba, con el haber anual de \$1,500.00.

El Secretario de Sanidad y Beneficencia queda encargado del cumplimiento del presente Decreto.

Dado en el Palacio de la Presidencia, en la Habana, a los 14 días del mes de septiembre de mil novecientos treinta y cuatro.

CARLOS MENDIETA,
Presidente.

Dr. Rafael Loré,
Secretario de Sanidad y Beneficencia.

S. 49082).

OFFICIAL GAZETTE
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EXECUTIVE POWER

Resolution No.3

Whereas: The imperialistic interests whose representatives Govern in the United States of North America in their aims of utilizing all the means they deem effective to prevent the consolidation of the Cuban Revolution have continued to carry out ever increasingly unscrupulous and criminal egressions against the economy of the nation.

Whereas: Among the many measures adopted by the Government of the United States of North America the outstanding one because of its exceptional aggressiveness is the general embargo of exports from said country to Cuba the aim of which is to strangle our economy.

Whereas: Said measures besides violating the most elemental norms of international coexistence, constitute an act of political coercion trying unsuccessfully to weaken the strenght of the Cuban Revolution by creating difficulties to the National procurement.

Whereas: It is evident that this behavior of the Government of the United States of North America reveals the desperation and impotency of imperialism guiding said Government to utilize more violent and iniquitous methods of egression against our fatherland.

Whereas: It is the duty of the revolutionary Government to defend the economy of the country.

Whereas: Moreover, it is fundamental for the liberation and economic development of our country to liquidate the Northamerican commercial or industrial enterprises which at the present time constitute the remainings of the financial capital of said country in our fatherland.

Whereas: In use of the powers invested in us, in accordance with what is stated in Law No.851 of July 6, 1960,

We Resolve:

First: The nationalization by means of forced expropriation is ordered, and consequently, all the properties and enterprises located within the National Territory and set forth bellow are adjudicated in favor the Cuban State in absolute ownership as well as the rights and actions emerging from the exploitation of same which are the properties of natural persons or corporations, nationals of the United States of North America or operators of enterprises whose predominant interest are nationals of said country:

“GROUP I”
FLOUR MILLS

1. Burrus Flour Mills, S.A.

“GROUP II”
CONTAINERS FACTORIES

1. Continental Can Corporation.

“GROUP III”
CHEMICALS

1. Cuban Air Products Corp.
2. Oriente Products Co., S.A.
3. Liquid Carbonic Corp. of Cuba.
4. Servicios de Gomas Pioneers, S.A.
5. Compañía Gas Líquido S.A.
6. Firestone Tire and Rubber Co, of Cuba, S.A.
7. Cia. de Vidrios Owens-Illinois de Cuba, S.A.
8. Armour & Co.
9. Tropical Gas Co. Inc.
10. Gas Popular de Cuba, S.A.
11. Polyplásticos Industriales, S.A.
12. Sika Industro-Química, S.A.
13. Home Products of Cuba, Inc.
14. Peison, Romsy y Cia.
15. Burrus Feed Mills, S.A.
16. Compañía Goodrich de Cuba, S.A.
17. Good Year de Cuba, S.A.
18. United States Rubber Co. Ltd.

“GROUP IV”
BASIC METALURGIC

1. The Armco International Corp.
2. Fundición Mc Farlane, S.A.
3. Reynolds Aluminium Co. of Cuba
4. Manufacturera Kawneer de Cuba, S.A.

5. The shares of the "Cia. Productos de Cobre the Cuba Pheldrak, S.A." belonging to Phelps Dodge Corporation.
6. Cuban American Metals Distributors, Inc.
7. Ventanas del Caribe, S.A.

"GROUP V"
PAPER MILLS

1. National Paper & Type Co. of Cuba, S. A.
2. Compañia Papelera Flamingo, S.A.

"GROUP VI"
LAMPS

1. Industrias Metalicas y Electricas, S.A.

"GROUP VII"
TEXTILES AND GARMENTS

1. Palm Clothing Co.
2. Cia. Nacional de Guatas, S.A.
3. Elliot Knitting Mills Inc. of Cuba.
4. Tejidos Nina, S.A.
5. Fabrícantes de Colchones Americanos, S.A.
6. Cia. Onix de Cuba, S. A.
7. Consolidated Textile Mills, Inc.

"GROUP VIII"
RICE MILLS

1. Arroquera Texita, S.A.

"GROUP IX"
FOOD STUFFS

1. Cia. de Refrescos Canada-Dry de Cuba, S.A.

2. Pan-American Standard Brands, Inc.
3. Cuba Grapefruit Co., Inc.
4. Cia. Emboteladora Coca-Cola, S.A.
5. Rancho Products Corp.
6. Alquízar Pineapple Co., Inc.

“GROUP X”
WHOLESALE GROCERIES

1. General Distributors, S.A.
2. Minimax Supermercados, S.A.
3. Supermercados Ekloh, S.A.

“GROUP XI”
DRUGS PROCESSING

1. Schering Pharmaceutical of Cuba.
2. Abbott Laboratories of Cuba, S.A.
3. Squibb & Sons Interamerican Corp.

“GROUP XII”
DEPARTMENT STORES

1. F.W. Woolworth Co.
2. Sears, Roebuck Co.

“GROUP XIII”
RAILWAYS

1. Compañía de Ferrocarril de Puerto Padre.
2. Hershey Cuban Railway Co., S.A.

“GROUP XIV”
PRINTING HOUSES

1. Reynolds International de Cuba, S.A.

**“GROUP XV”
CONSTRUCTIONS**

1. West Indies Perlite Manufacturing Corp.
2. Gia. de Cemento Cubana Portland, S.A.
3. Cuban American Line Supply Co.

“GROUP XVI”

1. General Electric Cubana,
2. Westinghouse Electric Co., S.A.
3. Distribuidora de Productos Eléctricos Disproesa, S.A.
4. Combustibles Domésticos, S.A.
5. Equipos Telefónicos Standard, S.A.
6. Manufactuera General Electric, S.A.
7. Unon Light Power Co. of Cuba.

**“GROUP XVII”
MARITIME**

1. Cia. Antillana de Lanchajes, S.A.
2. Havana Docks Corp.
3. Standard Fruit & Steamship Co.

**“CROUP XVIII”
MINING AND QUARIES**

1. Petr6leo Cruz Verde, S.A.
2. Cia. Cubana de Minas y Minerales, S.A.
3. Habana Coal Co.
4. Regla Coal & Co. of Cuba, S. A.
5. Consolidated Development Corp.
6. Sun Oil Company

7. Kewance Interamerican Oil Co.
8. Atesa Drilling Co.
9. Nicaro Nickel Co.
10. Cuban Nickel 'Co., S.A.
11. Nickel Processing Corp.
12. Bethlehem Cuba Iron Mines Co.
13. Atlantic Refining C o.
14. Exploration Incorporated Rayflex.
15. Cuban Gulf Oil Company.
16. Halliburton Oil Well Cementing Co.
17. John Brothers Company.

“GROUP XIX”
COSMETICS MANUFACTURING

1. Max Factor Company

“GROUP XX”
INSURANCE COMPANIES

1. Pan-American Life Insurance Co.
2. Cia, de Seguros de Ingenios, S.A.
3. United States Life Insurance Co.
4. American Insurance Co.
5. Commercial Insurance Co. of Newark, N.J.
6. The Home Insurance Co.
7. Insurance Co. of North America
8. Johnson & Higgins, S.A.
9. Seguros Frenkel de Cuba, S.A.

10. American Insurance Underwriters of Cuba, S.A.
11. Occidental Life Insurance Co.
12. American National Insurance Co.
13. The Employer's Fire Insurance.
14. Firemen's Insurance Co. of Newark.
15. Great American Insurance Co.
16. Hartford Fire Insurance Co.
17. The Hannover Fire Insurance Co.
18. Maryland Casualty Co.
19. National Union Fire of Pittsburgh.
20. Phoenix Insurance Co. of Hartford.
21. Saint Paul Fire & Marine Insurance.
22. Security Insurance Co. of New Haven,
23. The Unity Fire & General Insurance.
24. United States Fire Insurance Co.
25. American Surety Co.
26. American International Life.
27. American International Insurance Co.
28. National. Fire Insurance of Hartford.

"GROUP XXI"

INDUSTRIAL AND AGRICULTURAL
MACHINERY, MOTORS, AUTO EQUIPMENT,
ACCESSORIES AND SPARES

1. Powe Machinery Co., S.A.
2. Powe Equipment, S.A.
3. Internationa Harvester of Cuba.

4. W. M. Anderson Trading Co., S.A.
5. Willys Distributors, S.A.
6. Agencia de Tractores y Equipos, S.A.
7. Iberia Machinery Co. S.A.
8. Autos Volkswagen de Cuba, S.A.
9. Piezas y Accesorios K.W., S.A.
10. The United Shoe Machinery Co. 11,-
Remington Rand de Cuba, S.A.
11. La Antillana, Cia. Comercial de Creditos, S.A.
12. Otis Elevator Co.
13. Fiberglass Distributors Inc.
14. Compañia de Ensamblaje de Aires
Acondicionados, S.A.

“GROUP XXII”
SWUNG MACHINES AND BICYCLES’

1. Caribbean Merchandising Co.

“GROUP XXIII”
AUTO FINANCING

1. Creditos y Descuentos Mercantiles, S.A.
2. General Motors Acceptance Corp.
Southamerica.
3. Colon Independent-Trading Corp.

“GROUP XXIV”
COMMISSION MERCHANTS OF FOREIGN
PRODUCTS

1. Kodak Cubana, Ltd.

“GROUP XXV”

TRAVEL AND FREIGHT AGENCIES

1. Railway Express Agency, S.A.

“GROUP XXVI”

CATTLE AND AGRICULTURAL RANCHES

1. Hacienda San Andres, S.A.
2. Lone Star Farms, S.A.
3. American Hatchery and Farms, Co., S.A.
4. Granja Los Americanos, S.A.
5. Lykes Bros. Inc.

“GROUP XXVII”

FURNITURE AND MATTRESS MANUFACTURES

1. Simmons International Ltd.

“GROUP XXVIII”

TOBACCO: EXPORTS, IMPORTS &
DISTRIBUTORS

1. Calixto Lopez y Cia. Inc.
2. Rothchild-Sam el-Duignan, S.A.
3. Duys & Co. Havana Tobacco, S.A.
4. Ruppig Havana Tobacco Co., Inc.
5. Standard Havana Tobacco, Co., S.A.
6. Tabacalera Cubana, S.A.
7. Rey del Mundo -Cigar Co.
8. Cia. Tabacalera de Rancho Boyeros, S. A.

“GROUP XXIX”

HOTELS, CASINOS, BARS & CAFETERIAS

1. Hoteles Internacionales, S.A.

2. Casino de Capri, S.A.
3. Presidente Corp. S.A.
4. Restaurant Eden Roc, S.A.
5. Isla of Pines Enterprises, Inc.
6. Compañia de Hoteles La Riviera de Cuba, S.A.
7. Intercontinental Hotels Corp. of Cuba.
8. Ciia. Hotelera Shepard, S.A.
9. Hotel Casino Deauville, S.A.
10. Hoteles Hilton de Cuba, S.A.
11. Hipodromo Jockey Club de Cuba, S.A.

“GROUP XXX”
DRY CLEANINGS

1. Tintoreria Lug, S.A.
2. Lavanderia La Cubana.
3. Tintoreria y Lavanderia Panam, S.A.

“GROUP XXXI”
MISCELLANEOUS

1. Filtroma Cubana, S.A.
2. Pan American Protecting Service, S.A.

Second: Consequently, the Cuban State is subrogated in place of the natural persons or corporations mentioned above with respect to the properties, rights and actions as well as the assets and liabilities which make up the capital of the mentioned enterprises.

Third: It is declared that these forced expropriations are carried out by reasons of public necessity and, utility as well as for reasons of national interest

mentioned in the whereas clauses of the present Resolution.

Fourth: In accordance with what is stated in Article 3 of Law No.851 of

July 6, 1960, the following departments and agencies are designated to administrate the properties or enterprises object of the expropriations ordered in the present Resolution:

- 1) The enterprises included in Groups I, II, III, IV, V, VI, VII, IX, XI, XV, XVI, XVII, XIX, XXI, XXII, XXVII, XXVIII, XXX y XXXI, are assigned to the Department of Industrialization of the National Institute of Agrarian Reform.
- 2) The enterprises included in Groups VIII and XXVI are assigned to the Production Department of the National Institute of Agrarian Reform.
- 3) The enterprises appearing in Groups X, XII, XXIII and XXV are assigned to the Commercial office of the National Institute of Agrarian Reform.
- 4) The enterprises included in Group XIII are assigned to the National Transport Corporation.
- 5) The enterprises included in Group XIV are assigned to the National Press. of Cuba.
- 6) The enterprise appearing in Group XXIV is assigned to the Cuban Institute of Art and Cinematographic Industry.
- 7) The enterprises included in Group XXIX are assigned to the National Institute of Tourist Industry.

- 8) The enterprises included in Group XVII are assigned to the Maritime Development Department of the Ministry of the Revolutionary Armed Forces.
- 9) The enterprises included in Group XX are assigned to the Social Security Bank of Cuba.

Fifth: The aforementioned departments will assign their selected officials to assume, in the name of the Department thereof, complete administration of said enterprises and properties, without any limitation whatsoever, and as soon as said administrations have been assume they will so notify the persons in charge so that appraisers may be appointed for the evaluation of the expropriated properties for payment thereof in the manner contemplated in Law No.851 of July 6, 1960.

Sixth: The administrators are equally authorized to proceed with the immediate preventive intervention of the corporations, enterprises and subsidiary, related or entailed properties thereof, object of this resolution and *as soon as* said interventions have taken place, those in charge will be notified in order to proceed accordingly.

Seventh: The designated departments are authorized to make the corresponding notifications of the present Resolution to the legal representatives of the affected corporations as well as to execute what is herein resolved.

Eighth: Said departments are also, authorized to issue orders to the corresponding Registers of Deeds, Provincial Registers of Companies and that of Mercantile operations to proceed with the inscriptions in favor of the Cuban State of the enterprises, prop-

erties, rights and actions adjudicated to the Cuban State and referenced in the present Resolution.

Given in Havana on the twenty fourth of October, Nineteen Hundred and Sixty.

Oswaldo Dorticos Torrado
President

Fidel Castro Ruz
Prime Minister

S.9815

I hereby certify that I am a qualified translator/interpreter for the U. S. Department of State and that the above is a true translation from Spanish of the original document in that language.

Miami, October 9, 1967.

/s/ J.S. de la Torriente Jr.
J.S. de la Torriente Jr.

Sworn to and subscribed this 9th day of October, 1967; before me -

/s/ Raul Santiago
Notary Public, State. of Florida at Large My
Commission Expires Aug. 4, 1968

ACTA

In the city of Havana, today, November 21, 1960, at 4:30 P.M., the undersigned acting as a member of the Maritime Development Department of the Ministry of the Revolutionary Armed Forces, appears in the offices of the Havana Docks Corporation, who has been nationalized by Resolution No. 3 of October 24, 1960, and in accordance with said resolution and also by disposition of Law 851 of July 6, 1960, and being present Mr. Mario Rodriguez Lanza, who says he is General Manager of this corporation, informs Mr. Rodriguez Lanza the reason for this visit and fully reads the above mentioned Resolutions, a certified copy of which is shown to Mr. Rodriguez, duly signed by Dr. this M. Bush, Secretary to the Presidency and the Cabinet, and also in accord with the disposition made by the Chief of the Maritime Development Department, to whom this corporation has been assigned. And well informed Mr. Rodriguez Lanza of all the above, manifests that he hereby delivers this corporation, to the undersigned, with all its assets and liabilities, signing both parties this recta and sending the other copy to the Maritime Development Department. It is also mentioned that by the undersigned hereby proceeds to seal the Petty Cash funds in the hands of the Cashier, where supposedly there should be the amount of \$1,000.00 (One thousand dollars (Pesos), in cash and petty cash vouchers. It is also mentioned that in accord with the daily report signed by the Cashier and dated November 21, 1960, there is a balance of \$114,936.30 in two local banks, The Royal Bank of Canada and The First National City Bank of New York. It is also mentioned that in the Cash Department of this corporation, besides the Petty Cash fund of \$1,000.00 (One thousand pesos), there is an amount pending deposit equal to the

difference between \$75,536.37, corresponding to the total collections of this day and \$47,559.27 that are deposited in The First National City of New York, in accord with deposit slip.

In accordance with statement sent by the Havana Docks Corporation office in the city of New York the balance in the banks, The First National City Bank and Morgan Guaranty Trust Co., amount to \$26,445.80 as of August 31, 1960 corresponding \$386.96 to the first mentioned bank and \$26,058.84 to the second.

After the above mention and pending a cash audit to be executed tomorrow and the corresponding audit of the books of this corporation, this Acta is signed on the date mentioned at the beginning of same, at 4:55 in the afternoon.

Signed: G. Fernandez

Capt. de Corbeta - Gaston Fernandez Supervielle
Maritime Development Department
Ministry of the Revolutionary Armed Forces

Signed: M. Rodriguez Lanza

Mario Rodriguez Lanza
General Manager