

In the Supreme Court of the United States

HAVANA DOCKS CORPORATION, PETITIONER

v.

ROYAL CARIBBEAN CRUISES, LTD., ET AL.

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

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER**

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QUESTION PRESENTED

Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. 6021 *et seq.*, creates for United States victims of unlawful expropriation by the Cuban government a damages action against those who traffic in the expropriated property. The question presented is whether the right of action in 22 U.S.C. 6082 is limited to property in which the plaintiff would have had an interest at the time of the trafficking had the expropriation not occurred.

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INTEREST OF THE UNITED STATES

This case concerns the proper interpretation of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. 6021 *et seq.*, which creates a cause of action for “any United States national who owns the claim” to property confiscated by the Cuban regime, allowing such a national to seek damages from “any person” who “traffics in” the confiscated property. 22 U.S.C. 6082(a)(1)(A). The United States has a significant foreign-policy interest in ensuring that Title III remains an effective mechanism to allow victims of Cuban expropriation to obtain redress and to deter private actors from collaborating with the Cuban regime to exploit such property. At the Court’s invitation, the United States filed an amicus brief in this case at the petition stage.

INTRODUCTION

In Title III of the LIBERTAD Act, Congress authorized private plaintiffs to bring suits against those who enrich the Cuban government by trafficking in property that the Castro regime illegally expropriated from Americans. Title III provides a cause of action for “any United States national who owns the claim to [confiscated] property” to seek “money damages” from “any person” who “traffics in” that property. 22 U.S.C. 6082(a)(1)(A). Congress created that cause of action to deter the use of wrongfully confiscated property, to prevent the Cuban government from benefiting from its expropriations, and to protect the claims of U.S. nationals who had interests in that property. 22 U.S.C. 6081(6), (8), and (11).

Petitioner brought these suits under Title III after respondent cruise lines used the pier and terminal facilities at the Port of Havana to which petitioner owns a certified claim. Petitioner’s claim is based in part on its 99-year concession in the docks, which the Castro regime unlawfully extinguished in 1960 when the concession still had 44 years to run. The district court granted petitioner final judgment, but the court of appeals reversed, holding that petitioner is required to show that, but for the expropriation, its property interest would have continued to exist at the time of the trafficking.

The court of appeals’ holding is incompatible with the statutory text and undermines the framework that Congress adopted. Congress based the availability of Title III actions on claim ownership—not on whether the underlying property interest would still exist in a counterfactual world in which the confiscation never occurred. Rather than blunting Title III’s deterrent effect by allowing its private right of action to expire when the

underlying interest would have ceased to exist, Congress provided for suit so long as the property has been “confiscated”—a status that continues until the property is “returned,” “adequate and effective compensation [is] provided,” or the “claim to the property” is “settled.” 22 U.S.C. 6023(4). Any time limitation may reduce the claim’s value, but does not make it nonactionable.

The court of appeals’ contrary interpretation would render practically insignificant Congress’s explicit protection of time-limited interests. The statutory definition of “property” expressly includes inherently time-limited interests such as patents and leaseholds. 22 U.S.C. 6023(12)(A). When Congress enacted Title III in 1996, certified claims for patents and leaseholds confiscated in the 1960s already existed. But under the court’s analysis, many of those existing certified claims could never support a suit because the underlying interests would have expired before Title III was enacted. Congress did not expressly include those time-limited interests in the statute only to disallow any suits based on those existing claims. This Court should hold that a suit under Title III depends on whether the defendant trafficked in confiscated property to which the plaintiff owns a claim—not on any temporal limitation in the underlying property interest.

STATEMENT

A. Statutory Background

1. Before the communist revolution in Cuba, “Americans were encouraged to and did invest heavily in Cuba’s economy,” which was substantially “developed with American capital.” Foreign Claims Settlement Comm’n, U.S. Dep’t of Justice, *Section II Completion of the Cuban Claims Program Under Title V of the International Claims Settlement Act of 1949*, at 71 (1972)

(1972 Commission Report). But after Fidel Castro seized power in 1959, “the Government of Cuba effectively seized and took into state ownership” U.S. nationals’ property. *Id.* at 69. The United States has sought compensation for those wrongful expropriations for more than 60 years.

In 1964, through the Cuban Claims Act, Congress “authorized the Foreign Claims Settlement Commission to gather information for an eventual negotiation on claims of confiscated properties in Cuba.” Pet. App. 13a (citation omitted); Act of Oct. 16, 1964, Pub. L. No. 88-666, 78 Stat. 1110 (22 U.S.C. 1643 *et seq.*). Congress charged the Commission with “receiv[ing] and determin[ing] * * * the amount and validity of claims by nationals of the United States against the Government of Cuba * * * for losses resulting from the * * * expropriation [of] * * * property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.” 22 U.S.C. 1643b(a). The Cuban Claims Act defined “property” as “any property, right, or interest, including any leasehold interest, and debts owed by the Government of Cuba.” 22 U.S.C. 1643a(3). But the claims process included no means for victims to obtain compensation directly.

2. The 1996 enactment of the LIBERTAD Act provided such a means. The Act codifies the United States’ longstanding embargo of Cuba. 22 U.S.C. 6032(h), 6064(a). It also includes Congress’s express finding that “[t]he international judicial system * * * lacks fully effective remedies” for the Castro regime’s “wrongful confiscation or taking of property belonging to United States nationals” and the “subsequent exploitation” of that

property “by governments and private entities.” 22 U.S.C. 6081(2) and (8).

Congress concluded that U.S. nationals “should be endowed with a judicial remedy * * * that would deny traffickers any profits from economically exploiting Castro’s wrongful seizures.” 22 U.S.C. 6081(11). Title III therefore creates a damages remedy for certain U.S. nationals whose property was confiscated by the Castro regime. It provides that “any person” who “traffics in” confiscated property “shall be liable to any United States national who owns the claim to such property for money damages.” 22 U.S.C. 6082(a)(1)(A).

Congress explained that the Title III cause of action would deter continued “‘trafficking’ in confiscated property,” which “provides badly needed financial benefit * * * to the current Cuban Government and thus undermines the foreign policy of the United States.” 22 U.S.C. 6081(6). Congress specifically found that trafficking in confiscated property frustrates the United States’ efforts “to bring democratic institutions to Cuba through the pressure of a general economic embargo” and to “protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.” 22 U.S.C. 6081(6)(A) and (B).

Congress supplied expansive definitions for Title III’s key terms. First, “property” means “any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.” 22 U.S.C. 6023(12)(A).

Second, “confiscated” means, as relevant here, “the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property”

without the subsequent “return[]” of the property or payment of “adequate and effective compensation,” or without the settlement of the claim to the property under an “international claims settlement agreement.” 22 U.S.C. 6023(4)(A).

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

Congress also addressed the nature of a plaintiff’s “claim” to property. Specifically, and as relevant here, in cases where the plaintiff has a claim certified by the Commission, a court “shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest” by the Commission. 22 U.S.C. 6083(a)(1). Further, Congress deemed the Commission’s valuation of the claim (plus interest) to be the presumptive amount of damages in Title III suits for trafficking in the expropriated property, in addition to court costs and attorneys’ fees. See 22 U.S.C. 6082(a)(1) and (2). Title III also subjects to treble dam-

ages someone found liable for trafficking in property for which “a United States national owns a claim” that was certified by the Commission. 22 U.S.C. 6082(a)(3)(A) and (C). Conversely, a U.S. national “who was eligible to file a claim” with the Commission but did not do so “may not bring an action on that claim” under Title III. 22 U.S.C. 6082(a)(5)(A).

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

In 2019, however, President Trump allowed the suspension to expire to provide “a chance at justice” and compensation for Americans and to hold “the Cuban Government accountable for seizing American assets.”¹ Thus, beginning on May 2, 2019, Title III plaintiffs could bring suits for the first time.² On January 14, 2025, the Biden administration sent a letter notifying Congress that Title III actions would be suspended for the six-month period beyond January 29, 2025,³ but the new Secretary of State withdrew that letter on January 29, emphasizing that the “Trump administration is committed to U.S. persons having the ability to bring pri-

¹ Press Release, Michael R. Pompeo, Sec’y of State, *Remarks to the Press* (Apr. 17, 2019), <https://perma.cc/9MYA-HMJE>.

² Press Release, The White House, *Fact Sheets: President Donald J. Trump Is Taking a Stand For Democracy and Human Rights In the Western Hemisphere* (Apr. 17, 2019), <https://perma.cc/LL4A-C9TT>.

³ See Letter from Joseph R. Biden Jr., U.S. President, *Letter to the Chairmen and Chair of Certain Congressional Committees on the Suspension of the Right to Bring an Action Under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996* (Jan. 14, 2025), <https://perma.cc/URJ5-U26A>.

vate rights of action involving trafficked property confiscated by the Cuban regime.”⁴

The United States remains committed to promoting “more freedom and democracy, improved respect for human rights, and increased free enterprise in Cuba,” including through economic pressure. J.A. 366 (National Security Presidential Memorandum/NSPM-5, § 1 (June 30, 2025)). And President Trump has reiterated the United States’ policy to “channel funds toward the Cuban people and away from a regime that has failed to meet the most basic requirements of a free and just society.” J.A. 367 (NSPM-5, § 1).

B. Proceedings Below

1. In 1905, Cuba granted Compañía del Puerto a “usufructuary concession,” Pet. App. 3a, under which the company promised to build piers at the state-owned Port of Havana in exchange for a 50-year “concession” with a “usufruct” in the physical property, *id.* at 9a-10a. In civil law, a “concession” is “a ‘franchise, license, permit, [or] privilege[.]’” *Id.* at 10a (quoting and adding brackets to Henry Saint Dahl, *Dahl’s Law Dictionary* 79 (3d ed. 1999)). And a “usufruct” is “the ‘right of enjoying a thing, the property of which is vested in another.’” *Ibid.* (quoting *Black’s Law Dictionary* 1712 (4th ed. 1951)). Thus, Compañía del Puerto invested in building the piers and facilities in exchange for a right to operate and profit from them during the concession’s term. The decree granting the concession provided that “[i]f, at any time during the term of the concession, the works are expropriated * * * the Government or its

⁴ Press Statement, Marco Rubio, Sec’y of State, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), <https://perma.cc/HL77-66QG>.

agencies will compensate the concessionaire for the value of all works constructed by it.” J.A. 449.

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

In 1960, the Castro regime nationalized and unlawfully expropriated property in Cuba belonging to U.S. nationals, including petitioner’s property interests. Pet. App. 12a. Petitioner filed a claim with the Foreign Claims Settlement Commission, which certified petitioner’s losses in 1971. *Id.* at 13a; see *id.* at 131a-134a. “Based upon the record,” the Commission found that petitioner had “a concession for the construction and operation of wharves and warehouses in the harbor of Havana” and that it had “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.* at 138a.

The Commission determined the value of petitioner’s interest in the piers, the land, the concession at the time of Cuba’s expropriation, and other items like equipment and fixtures. Pet. App. 140a-143a. That valuation accounted for the fact that “[t]he terms of the concession * * * were to expire in the year 2004, at which time [petitioner] had to deliver the piers to the government in good state of preservation.” *Id.* at 141a. The Commission certified a claim for petitioner’s loss at \$9,179,700.88, with

interest accruing at six percent annually from the 1960 dates of the expropriation. *Id.* at 133a-134a.

2. After the executive suspension of Title III ended, petitioner filed four separate actions against respondent cruise lines—Carnival, MSC Cruises (MSC), Royal Caribbean, and Norwegian Cruise Line (NCL)—in the United States District Court for the Southern District of Florida. Pet. App. 104a-105a. Petitioner alleged that, by using the terminal and one of the piers in Havana, respondents trafficked in petitioner’s confiscated property between 2016 and 2019. *Id.* at 2a-3a.⁵

The district court issued several opinions addressing whether petitioner’s concession, which would have expired in 2004, may form the basis of a trafficking claim. In denying Carnival’s motion to dismiss, the court accepted that Carnival might have trafficked in petitioner’s property even though the trafficking happened after 2004. Pet. App. 43a-53a. The court initially changed its view when granting MSC’s and NCL’s motions to dismiss, concluding that alleged acts after 2004 could not constitute trafficking in petitioner’s property. *Id.* at 54a-65a; 431 F. Supp. 3d 1375. But the court later granted petitioner’s motions for reconsideration, reverting to its original view that there can be liability for trafficking after 2004. Pet. App. 66a-103a; 455 F. Supp. 3d 1355. And the court adhered to that view of post-2004 trafficking when granting summary judgment in favor of petitioner. Pet. App. 104a-130a (excerpts of order); J.A. 41-253 (full order).

The district court ultimately determined that respondents trafficked in violation of Title III, finding that they “earned hundreds of millions of dollars for

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

their trips to Cuba” and “paid Cuban entities tens of millions of dollars to use the Terminal and operate shore excursions.” J.A. 155. The court held that respondents “‘knowingly and intentionally’ engaged in trafficking acts,” J.A. 158 (citation omitted); see J.A. 167, finding that “the undisputed facts show that [respondents] continued using the Terminal after gaining actual knowledge of [petitioner’s] Certified Claim,” J.A. 161. Finally, the court rejected respondents’ contention that their conduct was “incident to lawful travel to Cuba,” 22 U.S.C. 6023(13)(B)(iii), and therefore not trafficking. The court found that “the record evidence establishes that [respondents’] activities were outside the * * * dictates of [the Cuban Assets Control Regulations for] people-to-people exchanges” and that respondents “engaged in tourism expressly prohibited by” 22 U.S.C. 7209(b). J.A. 193.

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

3. The court of appeals reversed. Pet. App. 1a-28a.

a. The court of appeals held that a Title III plaintiff claiming a time-limited property interest must show that, but for the Cuban government’s confiscation, the plaintiff’s property interest would have existed at the time of trafficking. Pet. App. 20a. The court explained that, “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.” *Id.* at 16a. In the court’s view, “the way to give effect to the

statutory language * * * 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.” *Id.* at 20a. The court reasoned that Congress did not mean “to convert property interests which were temporally limited at the time of their confiscation into fee simple interests in perpetuity such that the holders of such interests could assert trafficking claims” endlessly. *Id.* at 22a.

Applying its rule, the court of appeals treated petitioner’s “property interest—the concession—as if the Cuban Government had never expropriated it,” and held that the interest “ended” in 2004, such that respondents’ later use of the terminal and pier (between 2016 and 2019) “did not constitute trafficking in [petitioner’s] confiscated property.” Pet. App. 22a-23a. The court recognized that Title III’s definition of property includes other limited interests in property, such as “future” and “contingent” interests. *Id.* at 19a n.5 (quoting 22 U.S.C. 6023(12)(A)). But the court declined to consider whether that has implications for its interpretation of Title III’s right of action because petitioner’s concession was “fully vested” when confiscated and “was therefore not contingent on the occurrence of any future events.” *Ibid.*

In so holding, the court of appeals rejected petitioner’s contention that the Commission’s certification of petitioner’s claim “establishes that the cruise lines trafficked in [petitioner’s] confiscated property.” Pet. App. 24a. In the court’s view, the certified claim constitutes “‘conclusive proof’” of petitioner’s “usufructuary concession at the time of the confiscation,” but it “does

not speak to the nature of [petitioner's] interest today.” *Id.* at 25a (citation omitted).

The court of appeals reversed the grant of summary judgment to petitioner but remanded for further proceedings to address petitioner’s claims against respondent Carnival concerning alleged trafficking before the hypothetical expiration of petitioner’s concession in 2004. Pet. App. 27a-28a.

b. Judge Brasher dissented. Pet. App. 29a-40a. In his view, “[t]he 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.” *Id.* at 30a. He observed that the text of the right of action requires that “the trafficking must occur when a plaintiff ‘owns the claim,’ not when the plaintiff *would have owned the property*.” *Id.* at 33a (quoting 22 U.S.C. 6082(a)(1)(A)). As he saw it, “any temporal limitation on an interest in confiscated property * * * goes to the value of the claim, not the scope of the property subject to trafficking.” *Id.* at 35a; see *id.* at 39a. Judge Brasher also viewed the majority’s framework as focusing on the wrong property. *Id.* at 33a. While petitioner had an interest in the intangible concession, it had a separate interest in “the physical property itself,” which is the basis of petitioner’s trafficking claim. *Id.* at 36a. Judge Brasher further noted that the majority’s framework “voids many of the property interests”—such as “contingent, future and time limited” interests—“that are expressly protected by the statute,” which leaves no remedy for plaintiffs with those sorts of interest, contrary to Congress’s intent. *Id.* at 33a-34a.

SUMMARY OF ARGUMENT

Title III of the LIBERTAD Act allows any U.S. national who “owns the claim” to property confiscated by the Cuban government to bring suit against any person who “traffics” in that property. 22 U.S.C. 6082(a)(1)(A). Nothing in the Act makes the right of action depend on whether the property interest giving rise to the plaintiff’s claim was subject to a temporal limitation that would have expired after its confiscation. The court of appeals’ contrary interpretation is inconsistent with the statute Congress enacted.

A. To bring an action under Title III, a plaintiff must show that the Cuban government “seiz[ed] * * * ownership or control of property” without returning it, providing “adequate and effective compensation,” or otherwise “settl[ing]” the “claim” to the property. 22 U.S.C. 6023(4)(A). A plaintiff must then show that the defendant trafficked in the property by, for example, “engag[ing] in a commercial activity using or otherwise benefiting from confiscated property” without the authorization of any claim owner. 22 U.S.C. 6023(13)(A)(ii). Finally, the plaintiff must show that it owns the claim to the confiscated property, which can be conclusively established if the plaintiff has a claim certified by the Foreign Claims Settlement Commission. 22 U.S.C. 6083(a)(1).

Petitioner’s allegations satisfy each of those requirements. The Castro regime seized control of the docks, eliminating petitioner’s usufructuary concession and all other property rights, without providing any compensation. Respondents later used those same docks when their cruise ships brought nearly a million tourists to Havana. And the Commission certified petitioner’s

claim to the docks, valuing petitioner's time-limited concession and its interest in the land and the piers.

The statutory text does not contemplate that any temporal limits on the original property interest will prevent a claimant from bringing suit. Instead, Congress premised the right of action on present ownership of a claim. Liability runs to the national who "owns the claim to [confiscated] property," 22 U.S.C. 6082(a)(1)(A); claim ownership is conclusively proved based on the Commission's "certification of a claim to ownership of" the property interest, 22 U.S.C. 6083(a)(1); and whether a defendant trafficked in the confiscated property depends in part on whether the defendant received authorization from "any United States national who holds a claim to the property," 22 U.S.C. 6023(13)(A).

The statute is designed "to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government." 22 U.S.C. 6081(6)(B). To achieve that end, Congress did not set an expiration date for the right of action vindicating those claims based on temporal limits in the underlying property interest. Instead, the right of action continues to exist so long as the property at issue remains "confiscated." And property remains confiscated until the property is "returned," compensation is provided, or the claim to the property is settled. 22 U.S.C. 6023(4)(A). Allowing plaintiffs to continue to bring suit until the claim is satisfied through one of those methods accomplishes the statute's expressly declared purposes: preventing the Cuban government from profiting from its expropriations and deterring secondary actors from trafficking in such property in a way that benefits the Cuban government, contrary to a longstanding precept of U.S. foreign policy.

B. The court of appeals' contrary analysis is flawed. It departs from the statutory text by adding a requirement to prove that, but for the confiscation, the plaintiff would have maintained the property interest until the time of trafficking. Such a counterfactual inquiry is inconsistent with Title III's focus on *claim* ownership and its express inclusion of time-limited interests like patents and leaseholds. Certified claims for those interests existed when Congress enacted the LIBERTAD Act, though the underlying property interests often would have expired. Yet under the court of appeals' analysis, the right of action for those claim owners would have ceased to exist before Title III was ever adopted. It is implausible that Congress expressly included such interests within the statute while simultaneously precluding any suit based on the existing claims.

The court of appeals' focus on the anticipated length of petitioner's concession also indicates that the court focused on the wrong property. The Cuban government confiscated the physical docks themselves when eliminating petitioner's concessionary usufruct and taking control of the property. Petitioner's certified claim reflected its interest in the physical property—which petitioner had built in exchange for the usufruct and which has now been exploited by respondents—and the court was required to accept that certification as conclusive of its interest.

The court of appeals and respondents likewise err in contending that allowing petitioner to assert a claim would effectively convert a time-limited interest into fee-simple ownership. The Commission's valuation of the claim already accounts for the limited duration of petitioner's property interest. There is no need for an additional limitation on the ability to bring suit alto-

gether, which would eliminate a wide array of suits that were authorized by Congress and that would, in the Executive’s view, advance important foreign-policy objectives.

ARGUMENT

U.S. OWNERS OF CLAIMS TO CONFISCATED PROPERTY CAN SUE UNDER TITLE III REGARDLESS OF TEMPORAL LIMITS ON THE UNDERLYING PROPERTY INTEREST

In Title III of the LIBERTAD Act, Congress has authorized any U.S. national “who owns the claim” to property confiscated by the Cuban government to sue a defendant who trafficked in that property. 22 U.S.C. 6082(a)(1)(A). The statute expressly ties the right of action to claim ownership and allows the claim to be asserted as long as the property remains confiscated. The court of appeals erred in adopting a rule that would prevent claim owners from asserting their rights based on temporal limits in the property interest that are already reflected in the value of the claim. That understanding contradicts the statutory text and should be rejected.

A. Title III Authorizes Suit Based On Ownership Of Claims To Confiscated Property, Not On Characteristics Of The Underlying Property Interest

Section 6082 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.” 22 U.S.C. 6082(a)(1)(A). The cause of action can be broken down into three basic elements: (1) the Cuban government confiscated property; (2) the defendant trafficked in that property; and (3) the plaintiff is a U.S. national who owns the claim to that property. Petitioner’s allegations satisfy each element—none of

which depends on whether the plaintiff would have a present property interest in a counterfactual world in which the expropriation never occurred.

1. The first element requires a showing that the Cuban government “seiz[ed] * * * ownership or control of property, on or after January 1, 1959,” and did not provide “adequate and effective compensation” or “settle[]” the “claim” to the property. 22 U.S.C. 6023(4)(A). Here, as the Foreign Claims Settlement Commission found, the Castro regime nationalized petitioner’s Cuban assets in October 1960 without providing compensation. Pet. App. 133a, 138a; see J.A. 483, 487 (Resolution No. 3, ordering “nationalization by means of forced appropriation” of “properties and enterprises” of various companies, including petitioner). The following month, “the facilities of the company were physically occupied by agents of the Cuban Government.” Pet. App. 138a. The Castro regime thus eliminated petitioner’s usufructuary concession and forcibly took possession of its premises, thereby “seiz[ing] * * * control” of, *inter alia*, the physical property of the docks. 22 U.S.C. 6023(4)(A).

The second element considers whether the defendant trafficked in the confiscated property by, for example, “engag[ing] in a commercial activity using or otherwise benefiting from confiscated property * * * without the authorization of any United States national who holds a claim to the property.” 22 U.S.C. 6023(13)(A)(ii). Here, it is undisputed that respondents “brought almost a million tourists to Cuba through the Port of Havana.” Pet. App. 32a (Brasher, J., dissenting); see Br. in Opp. 7. In doing so, they “us[ed] the very same piers in the very same terminal that the Cuban Government confiscated from [petitioner].” Pet. App. 32a (Brasher, J., dis-

senting). And respondents have never argued that petitioner authorized them to use the docks (which would have meant they were not trafficking in that property, 22 U.S.C. 6023(13)(A)).⁶

Under the third element, the plaintiff must show that it owns the claim to the confiscated property. Title III requires courts to “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.” 22 U.S.C. 6083(a)(1). Here, petitioner has such a certified claim. The Commission found that petitioner obtained a “concession for the construction and operation of wharves and warehouses in the harbor of Havana” and “acquired at the same time the real property with all improvements and appurtenances located” at the harbor. Pet. App. 138a. Accordingly, the Commission’s valuation of petitioner’s claim took into account “not only the value of the concession but also the value of the land and of the piers alongside the property.” *Id.* at 142a; see *id.* at 131a-134a. The claim thus provides “conclusive proof” that petitioner owns an interest in the docks by way of its certified claim to the land, the piers, and the concessionary interest.

⁶ Respondents have contended (Br. in Opp. 23-24) that their use of the docks falls under Title III’s exception for “lawful travel” and is therefore excluded from the Act’s definition of “traffics.” See 22 U.S.C. 6023(13)(B)(iii). Similarly, respondents have asserted (Br. in Opp. 23-24) that alleged encouragement by the U.S. Government to travel to Cuba negates the requirement that they “knowingly and intentionally” took the prohibited trafficking actions. See 22 U.S.C. 6023(13)(A). The court of appeals did not consider those arguments below, Pet. App. 3a n.1, and they fall outside the question presented, Pet. i. Accordingly, the United States takes no position on those issues.

2. As the foregoing shows, the statutory text does not contemplate that any temporal limits on the original property interest will prevent a claim from being the basis for an action under Title III. Had the Castro regime not expropriated petitioner's assets, petitioner's property interest in the docks likely would have expired in 2004. But that fact affects only the value of petitioner's claim for trafficking, without extinguishing altogether its ability to seek damages. That is because Title III authorizes suits based on claim ownership, not on present or future entitlement to the confiscated property. Congress could have provided for the right of action to expire along with any underlying property interests; but the statute instead focuses on whether claimants have yet been compensated for the expropriation of their property interests.

a. Congress's focus on claim ownership is apparent throughout Title III. Title III provides a right of action to "any United States national who *owns the claim* to [confiscated] property." 22 U.S.C. 6082(a)(1)(A) (emphasis added). It requires courts to treat the Commission's "certification of a claim to ownership" of a property interest "as conclusive proof of ownership of" that interest. 22 U.S.C. 6083(a)(1). If a plaintiff lacks a certified claim, courts can appoint a special master (or the Commission) "to make determinations regarding * * * ownership of the claim." 22 U.S.C. 6083(a)(2). Whether a defendant "'traffics' in confiscated property" depends in part on whether he received "the authorization of any United States national *who holds a claim* to the property." 22 U.S.C. 6023(13)(A) (emphasis added).

Damages in Title III suits also depend largely on the value of the "claim." For plaintiffs with "certified claims," the presumptive measure of Title III liability is "the

amount that is certified” by the Commission plus interest. 22 U.S.C. 6082(a)(1)(A)(i)(I) and (2). If “a claim has not been so certified,” liability may be “the amount * * * of the claim” (plus interest) as determined by a special master or the Commission. 22 U.S.C. 6083(a)(2); see 22 U.S.C. 6082(a)(1)(A)(i)(II).⁷

Further, eligibility to sue hinges on when (and sometimes how) a U.S. national acquired the claim, not the underlying property. For property confiscated before March 1996, the U.S. national may not bring a suit “on a claim to the confiscated property unless such national acquire[d] ownership of the claim” before March 1996. 22 U.S.C. 6082(a)(4)(B). Conversely, if the property was confiscated after March 1996, a U.S. national “who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim.” 22 U.S.C. 6082(a)(4)(C). In addition, a U.S. national who was eligible to file a claim with the Commission but did not do so “may not bring an action on that claim.” 22 U.S.C. 6082(a)(5)(A).

Congress thus sought “to protect *the claims* of United States nationals who had property wrongfully confiscated by the Cuban Government.” 22 U.S.C. 6081(6)(B) (emphasis added). When property was confiscated, whatever interests U.S. nationals owned in the property “ceased to exist” at that moment. Pet. App. 37a (Brasher, J., dissenting). In place of those interests, Congress rec-

⁷ Liability may also be calculated based on “the fair market value” of the property (plus interest)—either “current value,” or “the value of the property when confiscated,” “whichever is greater.” 22 U.S.C. 6082(a)(1)(A)(i)(III). That valuation does not turn on the “claim,” but also does not turn on present or future ownership. It simply indicates Congress’s desire to maximize claimholders’ recovery when they can prove a higher value than the Commission found.

ognized a claim—or a “[r]ight to payment,” *Black’s Law Dictionary* 247 (6th ed. 1990)—to account for the fundamental disruption in the original owners’ rights and expectations.

b. Congress could have provided an expiration date for a Title III suit based on temporal limitations on the underlying property interest, but it did not. Instead, a claim continues to form the basis for a Title III action so long as the property at issue remains “confiscated”—a status that endures until the property is “returned,” “adequate and effective compensation [is] provided,” or the claim is “settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure.” 22 U.S.C. 6023(4)(A).

Indeed, Congress tied the termination of rights granted under Title III to Cuba’s provision of compensation for its expropriations. The right to bring an action ceases when the President transmits to Congress his determination that a democratically elected government is in power in Cuba. 22 U.S.C. 6082(h)(1)(B). And Congress has made clear that to qualify as “democratically elected,” the Cuban government must have “made demonstrable progress in returning to United States citizens * * * property taken by the Cuban Government from such citizens and entities * * * or providing full compensation for such property in accordance with international law standards and practice.” 22 U.S.C. 6066(6); see 22 U.S.C. 6067(d). In other words, the Cuban government must begin remedying its confiscations before Title III rights are terminated.

3. Recognizing that Title III actions remain available until compensation is provided advances the statute’s express purposes. Congress sought to prevent the Cuban government from benefiting from its wrongdo-

ing and “[t]o deter” secondary actors from “trafficking in wrongfully confiscated property” by “endow[ing]” the “victims” of Cuba’s confiscations with a “judicial remedy” that “den[ies] traffickers any profits from economically exploiting Castro’s wrongful seizures.” 22 U.S.C. 6081(11). Congress explained that “‘trafficking’ in confiscated property provides badly needed financial benefit * * * to the current Cuban Government and thus undermines the foreign policy of the United States,” including its policy “to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.” 22 U.S.C. 6081(6)(B). And Congress recognized the need to create a judicial remedy because “[t]he 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.” 22 U.S.C. 6081(8).

The foreign-policy interests in deterring secondary actors from financially benefiting the Cuban government and in providing victims with a remedy for the wrongful confiscation do not cease when a temporal limit on the extinguished property interest would have run. So long as the property remains confiscated, the Cuban government continues to benefit from the expropriation because the government never had to compensate the claimant or return the property for whatever time remained on the prematurely extinguished interest. And the victim continues to suffer the effects of the wrongful confiscation because it never received the full benefit of the property interest or compensation for the expropriation. Congress thus carefully tailored the availability of Title III suits by making clear that prop-

erty remains “confiscated”—and trafficking in that property remains prohibited—unless and until those with claims to the property have had the property returned, have received “adequate and effective compensation,” or have had their claims “settled.” 22 U.S.C. 6023(4)(A).

B. The Court Of Appeals’ Contrary Reasoning Is Inconsistent With The Statutory Text And Otherwise Flawed

The court of appeals adopted an analysis requiring courts to consider whether, in a hypothetical world in which no expropriation occurred, the claimant’s property interest would still exist at the time of the trafficking. That analysis cannot be squared with the statutory text, which permits Title III suits so long as the underlying property remains confiscated. The court further erred by focusing on the wrong property, by failing to account for Congress’s express inclusion of time-limited property interests, and by conflating the identification of the confiscated property with the value of the interest in that property. Contrary to respondents’ contention, the court’s holding hinders the foreign-policy goals embraced by Congress in Title III.

1. The court of appeals held that “to give effect to the statutory language” that requires “traffic[ing] in property which was confiscated,” the court 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 in that interest.” Pet. App. 20a. Rather than “giv[ing] effect to the statutory language,” *ibid.*, the court distorted it.

The court of appeals’ analysis appears to stem from its understanding of the term “confiscated property,” and its view of the “varied nature of property interests,”

including time-limited property interests, that Congress included within Title III. Pet. App. 21a, 23a. But under the statutory text, what matters is that the property that was confiscated remains confiscated, even if the interest in that property would have expired if the expropriation had not happened. The definition of “confiscated” depends on whether the property has been returned, whether adequate and effective compensation has been provided, or whether the claim to the property has been settled, not on whether the original property interest would still exist in a hypothetical scenario. See p. 22, *supra*. In holding otherwise, the court impermissibly “impos[ed] a new requirement” on a plaintiff, “so that the law as applied demands something more of her than the law as written.” *Muldrow v. City of St. Louis*, 601 U.S. 346, 355 (2024).

Contrary to the court of appeals’ understanding (Pet. App. 21a-22a), Congress’s express inclusion of time-limited interests such as leaseholds in the definition of “property” does not suggest that an action based on such an interest includes an expiration date. If, for example, the Cuban government expropriated a commercial building owned by one company and leased to another, the property interests of both the owner and the leaseholder would be recognized. See 22 U.S.C. 6023(12)(A) (defining “property” to include “real” property and “any present, future, or contingent right, security, or other interest therein, including any leasehold interest”); see also 22 U.S.C. 1643a (defining “property” for purposes of claims before the Commission to “include[e] any leasehold interest”). The Commission would determine the “value of properties, rights, or interests taken,” by “tak[ing] into account the basis of valuation most appropriate to the property and equitable to the

claimant,” which may include “fair market value.” 22 U.S.C. 1643b(a). Under that analysis, the valuation of the leaseholder’s claim would reflect the time remaining on the lease at the time of the expropriation, while the valuation of the building owner’s claim would reflect the worth of the building itself and the loss of the rent. If a person then used that commercial building without authorization from the former landlord or tenant, then that person would be subject to liability under Title III in a suit brought by either claimholder, unless and until their claims were otherwise satisfied.

That application of the statutory text does not “convert property interests which were temporally limited at the time of their confiscation into fee simple interests in perpetuity.” Pet. App. 22a. It simply recognizes that, once property is confiscated, it remains confiscated under the terms of the statute until compensation is provided. And it recognizes that claimants who have never received any compensation or settlement for their confiscated property continue to suffer economic injury, regardless of whether they would still hold the property interest today.

2. The court of appeals’ focus on the anticipated length of petitioner’s concessionary interest also indicates that it focused on the “wrong ‘confiscated property.’” Pet. App. 36a (Brasher, J., dissenting). As the dissent explained, petitioner is not “suing the cruise lines on the theory that they are trafficking by using its intangible concessionary interest,” *ibid.*, just as a company that used the hypothetical expropriated commercial building would not be sued on the theory that it is “using or benefiting from” the intangible leasehold. Instead, respondents have used and benefited from the docks. And by extinguishing petitioner’s concession and all other

property rights and taking possession of the docks, the Castro regime “confiscated” the docks themselves. See p. 18, *supra*.

Respondents contend (Br. in Opp. 20) that the docks themselves cannot be the confiscated property because “the Cuban government always owned the docks, and it had a reversionary interest upon the concession’s expiration.” But that argument overlooks the statutory definition of “confiscated,” which includes “seizure by the Cuban Government” not only of ownership, but of “control of property.” 22 U.S.C. 6023(4)(A). Respondents also fail to account for the inclusion of “leasehold[s]” in the definition of property, 22 U.S.C. 6023(12)(A), which indicates that one need not own the property to assert that it was confiscated.

Recognizing that the docks themselves are the confiscated property reveals the irrelevance of the time-limited nature of petitioner’s interest with respect to petitioner’s ability to bring suit under Title III. There is no temporal limit on the docks’ existence or their continued confiscation. And petitioner maintains a claim to the docks themselves, as certified by the Commission, based on petitioner’s interest in the real property, even separate and apart from the concession. See pp. 9-10, 19, *supra*. The court of appeals thus erred in failing to treat as “conclusive proof” the Commission’s certification of the full extent of petitioner’s property interest. 22 U.S.C. 6083(a)(1). Once that interest is accepted, there is no basis for the court’s attempt to distinguish between use of the docks before and after the concession would have expired. See Pet. App. 28a (noting that the court’s analysis “does not preclude claims for trafficking based on conduct taking place” before petitioner’s concession would have expired in 2004).

The same analysis applies to respondents' argument that petitioner cannot maintain a Title III suit based on alleged trafficking in passenger services because petitioner's concession "was limited to cargo operations." Br. in Opp. 22; see Supp. Br. in Opp. 6-7. Regardless of the specifics of the concession, the Commission separately certified petitioner's interest in "the land and * * * piers alongside the property." Pet. App. 142a. And whatever particular limits the concession itself included, that interest gives petitioner a property interest in the relevant confiscated property—the docks. Suggesting otherwise would mean that a leaseholder with a rental agreement limiting use of a building to office space would have no cause of action if the Cuban government expropriated the building and leased it to a company to operate a restaurant. Title III's comprehensive prohibition on trafficking in confiscated property does not include such a loophole.

3. Further indicating the court of appeals' error, its interpretation would entirely preclude relief of certain classes of claims for which Congress plainly contemplated relief, while calling into question the availability of relief for others.

a. When enacting Title III, Congress was specifically aware of the universe of 5911 claims that the Commission had certified at that time and intended to provide a remedy for those claimants. See, *e.g.*, H.R. Rep. No. 468, 104th Cong., 2d Sess. 59 (1996) ("[I]nvestors in Cuba have been effectively on notice regarding the 5,911 certified U.S. claims since the Cuban claims program was completed on July 6, 1972."); *id.* at 63 ("The committee of conference recognizes the importance of a decision by the Foreign Claims Settlement Commission in certifying a claim and, accordingly, believes that no

court should dismiss a certification in an action brought under this title.”). To ensure that someone with a certified claim would have access to a remedy, Congress provided such a claimholder with certain advantages. See, *e.g.*, 22 U.S.C. 6082(a)(2) (presumption that liability will be based on the amount certified by the Commission); 22 U.S.C. 6082(a)(3) (treble damages for owner of certified claim); 22 U.S.C. 6082(a)(5)(C) (providing that those without certified claims “may not bring an action on a claim * * * before the end of the 2-year period beginning on March 12, 1996”); 22 U.S.C. 6083(a)(1) (providing that courts “shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership” made by the Commission).

Included among the 5911 certified claims are those involving time-limited rights like leaseholds and patents that the Castro regime expropriated before their terms had expired. See, *e.g.*, 1972 Commission Report 197, 247, 260, 304, 403 (describing various leasehold and patent interests in claims that the Commission certified). Congress accordingly defined “property” in the Act to include “intellectual property,” such as “patents,” as well as “leasehold interest[s].” 22 U.S.C. 6023(12)(A). But many of those time-limited interests would have expired before Congress enacted Title III in 1996—36 years after the bulk of Cuba’s expropriations occurred. With respect to leaseholds, for example, the Commission certified claims including leaseholds that ran for 30-year terms. See, *e.g.*, 1972 Commission Report 400 (describing 30-year leasehold, 2 years of which had expired as of the date of confiscation); *id.* at 260 (describing 30-year leasehold beginning in December 1950); *id.* at 304 (describing lease expiring in November 1989).

Under the court of appeals' interpretation, Congress would have provided no remedy for any of those expropriations.

The result is even starker for patent claims. When Cuba expropriated U.S. nationals' Cuban property in 1960, Cuban patent rights lasted for a non-extendable 17-year period. See World Intellectual Property Organization (WIPO), Decree-Law No. 805 of Apr. 4, 1936 (Law on Industrial Property), ch. II, Art. 56 (Cuba), <https://www.wipo.int/wipolex/en/legislation/details/12023>. Thus, any Cuban patent interest included among the 5911 certified claims would have long expired by the time Congress enacted Title III. See Pet. App. 38a (Brasher, J., dissenting). Under the court of appeals' rule, no plaintiff who owns a certified claim based on a Cuban patent could bring a Title III action against a defendant who trafficked in that patent.

Respondents contend (Supp. Br. in Opp. 8) that Title III's reference to patents is not rendered wholly superfluous because it could provide an action for trafficking in patents that were confiscated "on" or "after" March 12, 1996. But they do not dispute that the vast majority of expropriations happened in the 1960s. The Commission's claim certifications illustrate as much. During the first Cuban Claims Program, which addressed claims for losses occurring on or after January 1, 1959, and which was completed on July 6, 1972, the Commission certified 5911 claims. See Foreign Claims Settlement Comm'n, U.S. Dep't of Justice, *Completed Programs – Cuba*, <https://www.justice.gov/fcsc/claims-against-cuba>. During the second program, which addressed claims not previously adjudicated that arose between May 1, 1967, and February 13, 2006, the Commission certified only two claims, neither of which involved patents. *Ibid.*; see

Foreign Claims Settlement Comm’n, U.S. Dep’t of Justice, *Cuban Claims Program Certified Claimant List* 109 (Apr. 22, 2009), <https://perma.cc/SL9Y-DRYJ>. Respondents’ reading would thus render Congress’s inclusion of patents “insignificant, if not wholly superfluous,” and should be rejected. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation omitted).⁸

b. The court of appeals also failed to explain how its rule would apply to claims based on future or contingent property interests. The court declined to consider such interests, noting only that “this case does not require [the court] to address” them. Pet. App. 19a n.5. But the court’s reasoning would presumably require the same counterfactual analysis that it applied to temporal limits. For a contingent interest, a court would need to determine when the interest would have vested absent confiscation, as well as whether the contingencies would have occurred at all in a hypothetical Cuba where Castro never seized power. For a future interest, a court would again need to divine when, in that hypothetical world, the prior interest would have naturally terminated and a future interest would have taken effect. Unless and until those contingencies and future events

⁸ Respondents also contend (Supp. Br. in Opp. 9) that the 17-year term for Cuban patents is not the only relevant time limit because Title III “would apply equally to confiscated foreign patents, which would have varying terms and expiration dates.” But patent law is territorial, such that a patent granted in one country does not grant protections beyond the boundaries of that country. See WIPO, *Patent Law*, <https://perma.cc/N67Q-9JQT>. Should the Cuban government seek to use or manufacture an invention in Cuba that is not subject to a Cuban patent, the government would have no need for expropriation. And should the Cuban government seek to expropriate a patent registered in a foreign state, there is no basis to believe that the foreign state would recognize the purported confiscation.

occurred, Cuba could continue to benefit from its expropriations without recourse. Such a result has no grounding in the statutory framework that Congress adopted and would add unnecessary complexity to the analysis. Under the enacted framework, future and contingent property interests are expressly protected alongside present interests, and the nature of each interest is reflected in the valuation of the claim.

4. Respondents also err in contending (Supp. Br. in Opp. 7) that “the government’s approach radically inflates the property interests that were actually owned by the victims of expropriation.” The Commission already took account of limitations on the claimant’s interest in the confiscated property when it valued that interest. See, *e.g.*, 1972 Commission Report 403 (valuing 30-year leasehold and noting that “less than 2 years” had expired as of the date of expropriation). A fee-simple interest in property will therefore be worth more than a time- or use-limited interest in the same property. See Pet. App. 39a (Brasher J., dissenting).

That understanding does not “privileg[e] the spatial metes and bounds of a property interest over its temporal or use limitations.” Supp. Br. in Opp. 8. It simply recognizes that “confiscated property” can refer to a physical property itself, which must then be identified by geographical limits. The claimant’s particular interest in the confiscated property requires analysis of any temporal or use limitations, which are reflected in the valuation of the claim. Such an approach is consistent with the statutory text, which defines the term “confiscated” to include the seizure of “ownership or control” over physical property, and treats that physical property as confiscated until it is returned, or adequate and effective compensation is provided, or claims to the

property are settled. 22 U.S.C. 6023(4). In adopting that definition, Congress allowed the owners of claims to time-limited interests in physical property to continue asserting those claims until they receive appropriate compensation for what was seized.

5. Finally, respondents have expressed concern (Supp. Br. in Opp. 9-11) that rejecting the court of appeals' analysis and permitting petitioner's suit to proceed would not promote the government's foreign-policy interests. But both Congress and the President reached the opposite conclusion. Congress authorized suits such as petitioner's by adopting a broad definition of confiscated property, alongside a broad definition of trafficking, and by allowing for private actions to be based on ownership of a claim. The President then determined that the private right of action for such claims should no longer be suspended.

Rewriting statutory text to require Title III plaintiffs to establish an entitlement to a property interest at the time of the trafficking unduly circumscribes the utility of private suits to further the United States' foreign policy objectives. It permits private actors to provide Cuba's communist regime with significant funds and deprives victims of Cuban expropriation who have time-limited property claims from obtaining some measure of compensation for their claims. In so doing, the court of appeals' decision deprives Title III of the deterrent effect it otherwise would have on commercial dealings with Cuba. That is a "foreign policy consequence[] not clearly intended by the political branches." *Federal Republic of Germany v. Philipp*, 592 U.S. 169, 185 (2021) (quoting *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013)). The claims-based construction of Title III's cause of action is not only compelled by the statu-

tory text, it also furthers the statute's stated purpose of remedying the Castro regime's expropriations—a critical foreign policy objective that the Executive Branch is strongly committed to promoting. See *Restoring a Tough U.S.-Cuba Policy*, *supra* p. 8 n.4.

CONCLUSION

The court of appeals' judgment should be reversed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 22 U.S.C. 6022 provides:

Purposes

The purposes of this chapter are—

(1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;

(2) to strengthen international sanctions against the Castro government;

(3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;

(4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;

(5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and

(6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

2. 22 U.S.C. 6023 provides in relevant parts:

Definitions

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

* * * * *

(4) Confiscated

As used in subchapters I and III, the term “confiscated” refers to—

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

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

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

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(5) Cuban Government

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

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

(6) Democratically elected government in Cuba

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

* * * * *

(9) Knowingly

The term “knowingly” means with knowledge or having reason to know.

* * * * *

(11) Person

The term “person” means any person or entity, including any agency or instrumentality of a foreign state.

(12) Property

(A) The term “property” means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

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

(i) the claim to the property is held by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949 [22 U.S.C. 1643 et seq.]; or

(ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

(13) Traffics

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

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,

without the authorization of any United States national who holds a claim to the property.

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

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

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

(14) Transition government in Cuba

The term “transition government in Cuba” means a government that the President determines is a transition government consistent with the requirements and factors set forth in section 6065 of this title.

(15) United States national

The term “United States national” means—

(A) any United States citizen; or

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

3. 22 U.S.C. 6064(a) provides:

Termination of economic embargo of Cuba

(a) Presidential actions

Upon submitting a determination to the appropriate congressional committees under section 6063(c)(1) of this title 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 6082 of this title 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.

4. 22 U.S.C. 6065(b) provides:

Requirements and factors for determining transition government

* * * * *

(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.

5. 22 U.S.C. 6066 provides:

Requirements for determining democratically elected government

For purposes of this chapter, a democratically elected government in Cuba, in addition to meeting the requirements of section 6065(a) of this title, 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 on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

6. 22 U.S.C. 6081 provides:

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.

7. 22 U.S.C. 6082 provides:

Liability for trafficking in confiscated property claimed by United States nationals

(a) Civil remedy

(1) Liability for trafficking

(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this subchapter, traffics in property which was confiscated by

the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949 [22 U.S.C. 1621 et seq.], plus interest;

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

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

(ii) court costs and reasonable attorneys' fees.

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

(2) Presumption in favor of the certified claims

There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that

clause is the appropriate amount of liability under that clause.

(3) Increased liability

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

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

(i) a person against whom the action is to be initiated, or

(ii) a person who is to be joined as a defendant in the action,

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

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

(i) the amount determined under paragraph (1)(A)(ii), and

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

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

(i) shall be in writing;

(ii) shall be posted by certified mail or personally delivered to the person; and

(iii) shall contain—

(I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor;

(II) a demand that the unlawful trafficking in the claimant's property cease immediately; and

(III) a copy of the summary statement published under paragraph (8).

(4) Applicability

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

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

(C) In the case of property confiscated on or after March 12, 1996, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) Treatment of certain actions

(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 [22 U.S.C. 1643 et seq.] but did not so file the claim, that United States national may not bring an action on that claim under this section.

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

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on March 12, 1996.

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

action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

(6) Inapplicability of act of state doctrine

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

(7) Licenses not required

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

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

(8) Publication by Attorney General

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

(b) Amount in controversy

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

(c) Procedural requirements**(1) In general**

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

(2) Service of process

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

(d) Enforceability of judgments against Cuban Government

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

(e) Omitted

(f) Election of remedies

(1) Election

Subject to paragraph (2)—

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

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) Treatment of certified claimants

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

Settlement Act of 1949 [22 U.S.C. 1643 et seq.]—

(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 [22 U.S.C. 1643 et seq.] shall be entitled to payment in full of its claim

from the assets in such pool before any payment is made from the assets in such pool with respect to any claim not so certified.

(g) Deposit of excess payments by Cuba under claims agreement

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

(h) Termination of rights

(1) In general

All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government—

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

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

(2) Pending suits

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

(i) Imposition of filing fees

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

8. 22 U.S.C. 6083 provides:

Proof of ownership of claims to confiscated property

(a) Evidence of ownership

(1) Conclusiveness of certified claims

In any action brought under this subchapter, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) Claims not certified

If in an action under this subchapter a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this subchapter and do not constitute certifications under title V of the International Claims Settlement Act of 1949.

(3) Effect of determinations of foreign or international entities

In determining the amount or ownership of a claim in an action under this subchapter, the court shall not accept as conclusive evidence any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Omitted

(c) Rule of construction

Nothing in this chapter or in section 514 of the International Claims Settlement Act of 1949 [22 U.S.C. 1643], 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 [22 U.S.C. 1643 et seq.] before March 12, 1996.