
Supreme Court of the United States

HAVANA DOCKS CORPORATION,

Petitioner,

v.

ROYAL CARIBBEAN CRUISES, LTD., ET AL.

Respondents.

On writ of certiorari to the
U.S. Court of Appeals for the Eleventh Circuit

**BRIEF OF REP. MARIO DÍAZ-BALART,
REP. DEBBIE WASSERMAN SCHULTZ, REP.
MARÍA ELVIRA SALAZAR, REP. CARLOS
ANTONIO GIMÉNEZ, REP. LOIS FRANKEL, AND
REP. NICOLE MALLIOTAKIS AS AMICI CURIAE
SUPPORTING PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Amici Mario Díaz-Balart, Debbie Wasserman Schultz, María Elvira Salazar, Carlos Antonio Giménez, Lois Frankel, and Nicole Malliotakis are members of Congress. They are interested in this case because the judgment on review undermines a central pillar of our nation's foreign policy on Cuba.

¹ No counsel for a party authored this brief in whole or in part. This brief was prepared and submitted pro bono by the undersigned counsel. No person made a monetary contribution intended to fund—or that, in fact, funded—the preparation or submission of the brief.

SUMMARY OF ARGUMENT

The private cause of action under Title III of the LIBERTAD Act is a central pillar of our nation's foreign policy on Cuba. The judgment on review nullifies that private cause of action and thereby undermines our nation's foreign policy on Cuba.

ARGUMENT

I. The private cause of action under Title III of the LIBERTAD Act is a central pillar of our nation’s foreign policy on Cuba.

“Congress holds express authority to regulate public and private dealings with other nations in its war and foreign commerce powers” *Am. Ins. v. Garamendi*, 539 U.S. 396, 414 (2003). The Framers granted this authority to Congress due to the “concern for uniformity in this country’s dealings with foreign nations.” *See id.* at 413 (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 n.25 (1964)).

Exercising that authority, Congress enacted the International Claims Settlement Act of 1949, Pub. L. No. 81-455, 64 Stat. 12. The act created a procedure whereby funds from settlements with foreign nations could be claimed and distributed. *Id.* § 4. It also “created the International Claims Commission, now the Foreign Claims Settlement Commission, and gave it jurisdiction to make final and binding decisions with respect to claims by United States nationals against settlement funds.” *Dames & Moore v. Regan*, 453 U.S. 654, 680 (1981).

“When Fidel Castro came to power in 1959, the Cuban Government confiscated all property in Cuba owned by United States nationals.” *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276, 1290 (11th Cir. 2024) (Brasher, J., dissenting). Congress therefore amended the International Claims Settlement Act of 1949 and authorized the Commission to adjudicate claims by United States nationals against Cuba related to its confiscation of property. Act of Oct. 16, 1964, Pub. L. No. 88-666, 78 Stat. 1110.

In signing the amendment, President Johnson stated that the Castro regime's "unlawful seizures violated every standard by which the nations of the free world conduct their affairs." 51 Dep't of State Bull. 674, 674 (1964). President Johnson was "confident that it will be possible to settle the claims of American nationals whose property has been wrongfully taken from them." *Id.* And he noted that the amendment would "provide for the adjudication of these claims of American nationals." *Id.*

As it turns out, however, Cuba never paid United States nationals for its confiscations, nor did it reach a settlement with the United States. Accordingly, "[a]fter nearly four decades of those nationals receiving no compensation from the Cuban Government for their stolen property," Congress enacted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785. *Havana Docks*, 119 F.4th at 1290 (Brasher, J., dissenting).

The LIBERTAD Act—consisting of four titles—codified Congress's foreign policy on Cuba. In the Act, Congress found that "[t]he 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." Pub. L. No. 104-114 § 2(8). Congress further found that the Castro regime had used "confiscation . . . as [a] means of retaining power." *Id.* § 2(15). Congress's sense was 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." *Id.* § 207(d).

A stated purpose of the Act was “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.” *Id.* § 3(1). Another stated purpose was “to provide for the continued national security of the United States in the face of continuing threats from the Castro government of . . . theft of property from United States nationals.” *Id.* § 3(3). Similarly, the act was intended “to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” *Id.* § 3(6).

The Act required the Secretary of State to report to Congress on “the property dispute question in Cuba.” *Id.* § 207(a). The Secretary of State’s report explained that “[t]he prompt resolution of confiscated property claims is essential to the revitalization of the Cuban economy under a transition or democratic government.” 142 Cong. Rec. 27426 (1996). The report noted that “prompt resolution of property claims is a priority for the U.S. government, both in order to protect the interests of U.S. claimants and to stimulate investment in a new Cuba.” *Id.*

Title I of the Act sought to strengthen the existing sanctions against the Cuban regime and reaffirmed prior legislation concerning the United States’ foreign policy on Cuba. Pub. L. No. 104-114 §§ 101–116. Title II required the President to develop a plan to economically assist the Cuban people to transition to a democratically elected government. *Id.* §§ 201–207. And Title IV authorized the Executive Branch to exclude from the United States any foreign nationals who, among other things, trafficked in property confiscated by the Cuban regime. *Id.* § 401.

These cases concern Title III, which created a private cause of action for United States nationals who have a claim to property confiscated by Cuba to sue third parties who traffic in the property encumbered by that claim. *Id.* §§ 301–06. Claims certified by the Commission warrant treble damages and a presumption in favor of the certified value. *Id.* § 302.

In enacting Title III, Congress made multiple findings. *Id.* § 301. Notably, it found that “[t]he 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.” *Id.* § 301(2). Congress found that Cuba was facilitating the trafficking of confiscated property by “offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using” that property. *See id.* § 301(5).

Congress determined that “[t]his ‘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.” *Id.* § 301(6). Specifically, trafficking in confiscated property undermines our nation’s foreign policy “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.” *Id.* § 301(6)(A). It also undermines our nation’s foreign policy “to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.” *Id.* § 301(6)(B).

On the House floor, then-Congressman Lincoln Díaz-Balart echoed these same points that later became part of Congress's findings:

In effect, this [legislation] will end Castro's possibility of obtaining the cash that he needs to keep his repressive machinery going, Mr. Speaker.

With this legislation, the American people's Representatives will be saying very clearly to those who are dealing in property stolen from Americans by the Cuban dictator: Do not do it, it is morally wrong, and if you nonetheless traffic in property stolen from American citizens, you will have to suffer consequences in the United States for your actions.

141 Cong. Rec. 25906 (1995).

To deter trafficking in confiscated property—and its undermining of our nation's foreign policy—Congress found that “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.” Pub. L. No. 104-114 § 301(11). This was necessary because, as Congress found, the then-existing judicial system “lack[ed] 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.” *Id.* § 301(8). Congress found that the U.S. government must “provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.” *Id.* § 301(10)

As reflected in Congress’s findings, the private cause of action authorized under Title III is directly tied to our nation’s efforts to restore democracy in Cuba. To that end, the Act provides that the rights to such an action “shall cease upon transmittal to the Congress of a determination of the President . . . that a democratically elected government in Cuba is in power.” *Id.* § 302(h)(1)(B). Further, the Act authorizes the President to suspend the cause of action upon determining that a suspension “is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.” *Id.* § 306(b)–(c).

Earlier this year, the Secretary of State ensured that the Title III private cause of action remains in force. *See* Press Statement of Secretary of State Marco Rubio, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), <https://www.state.gov/restoring-a-tough-u-s-cuba-policy/>. In doing so, he confirmed that the Executive Branch is “committed to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime.”

In sum, the private cause of action created by Title III of the LIBERTAD Act is a central pillar of our nation’s foreign policy on Cuba.

II. The judgment on review nullifies the private cause of action under Title III of the LIBERTAD Act and thereby undermines our nation’s foreign policy on Cuba.

Petitioner “is the owner of an interest in, and claim to, certain commercial waterfront real property” in Cuba known as the Havana Cruise Port Terminal. *Havana Docks*, 119 F.4th at 1278, 1281. That property was confiscated by the Castro regime. *Id.* at 1279. In 1971, the Foreign Claims Settlement Commission certified that Petitioner had suffered a loss of \$9.179 million as a result of the confiscation. *Id.* at 1284.

Respondents—four cruise lines—used the property from 2016 to 2019. *Id.* at 1278. Petitioner then sued Respondents for trafficking in confiscated property in violation of Title III of the LIBERTAD Act. The district court granted summary judgment in favor of Petitioner and entered judgments of over \$100 million against Respondents. *Id.*

A divided panel of the Eleventh Circuit reversed. *Id.* at 1291. The majority determined that Petitioner’s “usufructuary concession ended, for purposes of Title III, in 2004 when the 99-year term would have expired by its own terms.” *Id.* at 1286. The majority therefore held that “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.” *Id.*

Petitioner correctly argues that the judgment on review upends the LIBERTAD Act and undermines our nation’s foreign policy on Cuba. Whereas Congress created a private cause of action for trafficking under Title III of the Act, the panel majority below nullified that cause of action by holding that it must “view the property interest at issue in a Title III action as if

there had been no expropriation and then determine whether the alleged conduct constituted trafficking in that interest.” *Id.* at 1287. In other words, the judgment below requires a Title III plaintiff to “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.” *Id.* at 1292 (Brasher, J., dissenting).

As the dissenting opinion below put it, “[t]he majority’s counterfactual analysis—asking what would have happened to [property] if [it] had not been confiscated in 1960—is incompatible with the text of the Act and undermines its remedial purpose.” *Id.* at 1291. The majority’s analysis means that *no victim* can ever maintain a cause of action under Title III. After all, no one knows who would have owned particular property in Cuba decades after it was expropriated. And because the majority’s test assumes an alternate universe, the defendant can always come up with a hypothetical set of facts to defeat a Title III claim.

The decision below authorizes the very problem that Title III of the LIBERTAD Act was designed to address. Again, Congress determined that trafficking in property confiscated by the Castro Regime “provides badly needed financial benefit . . . to the current Cuban Government and thus undermines the foreign policy of the United States.” Pub. L. No. 104-114 § 301(6). That is exactly what happened here: Respondents each paid tens of millions of dollars to the Cuban regime to use Petitioner’s confiscated property. *See Havana Docks Corp. v. Carnival Corp.*, 592 F. Supp. 3d 1088, 1129–32 (S.D. Fla. 2022).

Take Carnival for instance. “From 2016 to 2018, Carnival contracted with three Cuban Government

agencies to use the Terminal.” *Id.* at 1129. “Carnival paid a total of \$18,629,807.7” to these agencies of the Cuban regime. *Id.* at 1130. “Carnival never made any payments in Cuba to anyone or any entity that was not affiliated with the Cuban Government.” *Id.* at 1130.

The other Respondents also paid staggeringly large amounts to the Cuban regime. Petitioner contends that the Respondents collectively paid the regime more than \$130 million. Pet.’s Br. 2, 15–16. The decision below allows this financial backing to go unpunished because the decision nullifies the cause of action under Title III. As Petitioner explains, because of the decision below, Cuba is now open for business to would-be traffickers of confiscated property.

Petitioner correctly argues that this Court should not allow the lower court’s decision to stand. Indeed, “the Constitution does not make the judiciary the overseer of our government.” *Barclays Bank PLC v. Franchise Tax Bd. of Cal.*, 512 U.S. 298, 330 (1994) (cleaned up). Rather, U.S. foreign policy must be left “to Congress—whose voice, in this area, is the Nation’s.” *See id.* This Court should therefore reverse the judgment below, which undermines our nation’s foreign policy on Cuba.

CONCLUSION

This Court should reverse the judgment below, which undermines our nation's foreign policy on Cuba.

Respectfully submitted,

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