

No. 24-983

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IN THE  
**Supreme Court of the United States**

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HAVANA DOCKS CORPORATION,

*Petitioner,*

*v.*

ROYAL CARIBBEAN CRUISES, LTD., *et al.*,

*Respondents.*

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

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**BRIEF OF DANIEL W. FISK  
AS *AMICUS CURIAE* IN SUPPORT  
OF PETITIONER AND REVERSAL**

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**INTEREST OF AMICUS CURIAE<sup>1</sup>**

*Amicus* Daniel W. Fisk was a Senior Professional Staff Member and Associate Counsel of the United States Senate Foreign Relations Committee from 1994 to 1997. Under the direction of Senator Jesse Helms, then-Chairman of the Foreign Relations Committee, Mr. Fisk oversaw the drafting of the Cuban Liberty and Democratic Solidarity Act of 1996 (“LIBERTAD Act” or the “Act”), also known as the Helms-Burton Act.

From 2002 to 2005, Mr. Fisk served as the Deputy Assistant Secretary for Western Hemisphere Affairs, supervising the Office of Cuban Affairs in the Department of State. From 2005 to 2009, Mr. Fisk was the Special Assistant to the President and Senior Director of Western Hemisphere Affairs of the National Security Council in the Executive Office of the President. Mr. Fisk is an expert on U.S. policy toward Cuba including the LIBERTAD Act—he has written extensively on the subject and has been published numerous times for his work in the space.<sup>2</sup>

Mr. Fisk, as *amicus*, respectfully submits this brief to offer the Court his unique perspective on the purpose,

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1. No party or party’s counsel authored this brief in whole or part, and no person other than counsel for amicus contributed financially for its preparation or submission.

2. See, e.g., Symposium, *The Cuban Embargo: Policy Outlook After 50 Years*, Occasional Paper Series 10, UNIV. GA. SCH. L. (2014), [https://digitalcommons.law.uga.edu/rusk\\_oc/10/](https://digitalcommons.law.uga.edu/rusk_oc/10/); Daniel W. Fisk, *Foreign Claims*, 33 INT’L L. 493 (1999); Daniel W. Fisk, *Cuba in U.S. Policy: An American Congressional Perspective*, in CAN., THE US & CUBA HELMS-BURTON & ITS AFTERMATH (1999).

substance, and deterrent nature of the Act, and to explain the Act's role as part of longstanding U.S. policy to deny resources to Cuba's Communist regime and to protect the fundamental rights of U.S. claimants harmed by the regime's unlawful takings of their property.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

Since the early 1960s, U.S. policy towards Cuba has centered on economic sanctions meant to isolate the Cuban government. Joshua, Klein, CONG. RSCH. SERV., IF10045, Cuba: U.S. Policy Overview 1 (2025). Consistent with this approach, the LIBERTAD Act, when enacted in 1996, included a remedy for U.S. victims of trafficking in property confiscated by the Cuban government. Havana Docks is one of the victims whose property was confiscated by Cuba's Communist regime.

In 1967, Havana Docks filed a claim with the Foreign Claims Settlement Commission (FCSC).<sup>3</sup> In 1971, Havana Docks was awarded a certified claim in the amount of \$9.179 million, which the Cuban government has never paid. J.A. 266; Dkt. 318-1 at 17. The certified claim recognized the property confiscated as waterfront piers and related physical assets, as well as the concession for construction and operation of docks. J.A. 256-263. At the time of the Cuban government's confiscation in 1960,

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3. To adjudicate the property claims of U.S. nationals against foreign governments, the United States established the Foreign Claims Settlement Commission (FCSC). Steve P. Mulligan, *The Foreign Claims Settlement Commission of the United States*, CONG. RSCH. SERV., IF11376, (2019); *see also Dames & Moore v. Regan*, 453 U.S. 654, 681–82 (1981) (discussing history of FCSC).

Havana Docks held a 99-year concession to the property that was slated to expire in 2004. J.A. 31-32.

From December 2015 to June 2019, Respondents trafficked in the confiscated docks that are the subject of Havana Docks’ certified claim, disembarking nearly one million tourists. J.A. 98-101. Subsequently, Havana Docks brought suit against the Respondents in the U.S. District Court for the Southern District of Florida, which held Respondents liable for trafficking in Havana Docks’ property and assessed damages. *See* J.A. 253.

Subsequently, a divided panel of the Eleventh Circuit Court of Appeals set aside the judgments of the District Court. J.A. 3. The majority viewed the concession as having “expired in 2004,” J.A. 23, even though the property was confiscated in 1960, when the concession still had 44 years left to run. The majority treated “Havana Docks’ property interest—the concession—as if the Cuban government had never expropriated it, i.e., without the distorting effect of the confiscation.” J.A. 22.

The majority’s analysis, however, runs contrary to the Act’s intent and purpose, and brushes aside its critical components: the protection of claims to confiscated property and the deterrence of trafficking in that property. *Id.* The dissent below correctly noted that the majority’s counterfactual approach is not supported by the statutory text, which simply requires that (1) a U.S. national owns a claim to confiscated property, and (2) the defendant uses (*i.e.*, traffics) the confiscated property. J.A. 34.

Indeed, the plain text and codified purpose of the statute provides no support for the majority’s conclusion.

*Id.* As recognized by the majority itself, “Title III provides that ‘any person’ who ‘traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages.’” 22 U.S.C. § 6082(a)(1)(A); J.A. 26. Havana Docks’ property was confiscated by the Cuban government after January 1, 1959, and Havana Docks owns a 1971 certified claim to such property for its confiscation.

Even the majority understood “that through the Title III remedy Congress sought to both deter the use of confiscated properties by third parties and to compensate the owners of such properties for their use (i.e., their exploitation). *See* 22 U.S.C. § 6081(1)–(11) (congressional findings).” J.A. 26-27. Here, the Respondents are “third parties” who used Havana Docks’ confiscated property, and compensating Havana Docks for such “exploitation” would fulfill Congressional intent.

Havana Docks’ claim reaches the core purpose of the LIBERTAD Act’s private remedy: to deter the injection of hard currency into the Cuban Communist regime by allowing certified claimants like Havana Docks to sue for the unauthorized trafficking of the confiscated property underlying their claim.

## **ARGUMENT**

### **I. Havana Docks’ Claim Goes to the Heart of the LIBERTAD Act’s History, Purpose, and Text.**

On March 12, 1996, the LIBERTAD Act was signed into law. 22 U.S.C. §§ 6021–6091. The Act strengthened

international sanctions against the Castro regime, encouraged free and fair democratic elections in Cuba, and sought to “protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” *Id.* § 6022(6).

The Act has four primary sections (Title I–Title IV). *See id.* §§ 6021–6091. Relevant here, “[t]he most important element of [the] legislation is contained in [T]itle III,” which “create[d] a new right of action that allows U.S. nationals to sue those who are exploiting their confiscated property in Cuba.” 141 CONG. REC. S14998 (Oct. 11, 1995) (statement of Sen. Jesse Helms).

Havana Docks’ action is a quintessential exercise of the remedy provided by the LIBERTAD Act. The dissent below correctly credited the District Court’s ruling that the “time-limited nature” of the confiscated property goes to the value of a claim, not the existence of one under the Act. J.A. 39.

**A. The LIBERTAD Act is Part of Longstanding U.S. Policy to Deny Resources to Cuba’s Communist Regime.**

In 1961, then-Prime Minister Fidel Castro declared that Cuba was a socialist state and aligned Cuba with the former Soviet Union. *See Foreign Relations of the United States, 1961–1963, Vol. X, Cuba, Jan. 1961–Sept. 1962, Doc. 189, OFFICE OF THE HISTORIAN, U.S. DEP’T OF STATE*, <https://history.state.gov/historicaldocuments/frus1961-63v10/d189> (last visited Nov. 21, 2025). In response, Congress enacted the Foreign Assistance Act, which in part provides that no assistance shall be

furnished to the government of any country unless the President determines that such country is not subject to control by the international Communist movement, and that no assistance would be provided to the government of Cuba. *See* 22 U.S.C. § 2370(a)(1). The Act authorized the President “to establish and maintain a total embargo upon all trade between the United States and Cuba.” *Id.*

In 1962, President Kennedy proclaimed the embargo, which has remained in place for more than sixty years—during which time Cuba has remained a Communist country. *See U.S.-Cuba Relations*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/timeline/us-cuba-relations> (last visited Nov. 20, 2025). Subsequently, following the Cuban Missile Crisis, the Cuban Asset Control Regulations were developed under the congressional authority provided to the President by the Trading with the Enemy Act. *See* 31 CFR § 515 (1963).

In 1992, Congress passed the Cuban Democracy Act, reaffirming bipartisan congressional oversight of and policy direction to the President and executive branch on U.S. policy toward Communist Cuba. *See Researching Cuba: Business, Economy, and U.S. Relations*, LIBR. OF CONG. (May 2025), <https://guides.loc.gov/cuba-business-economy/legislation-actions>.

In 1995, Senator Helms introduced the LIBERTAD Act to address the continuing threat Cuba posed to the United States, the hemisphere, and the Cuban people, as well as to deter the Cuban Communist regime’s use of confiscated American properties to replace lost Soviet subsidies. *See* 22 U.S.C. §§ 6021–6091.

In 1996, Cuba shot down two Brothers to the Rescue planes, killing three Americans and a U.S. resident. *See* Andreas F. Lowenfeld, *Congress and Cuba: The Helms-Burton Act*, 90 AM. J. INT'L L. 419, 419 (1996). That tragic moment expedited Congress' enactment of the LIBERTAD Act, which codified the Cuban embargo and required it to remain in place until the President certifies that Cuba has transitioned from a Communist regime to a democratically elected government. *See id.*; 22 U.S.C. § 6032(h).

The “consistent policy of the United States towards Cuba since the beginnings of the Castro regime . . . has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.” 22 U.S.C. § 6021(8). The LIBERTAD Act strengthened existing congressional policy of sanctioning the Cuban regime and supporting the transition of Communist Cuba to a democracy.

**B. The Purpose of the LIBERTAD Act Was Intentionally Inserted into the Text of the Statute and Would Be Undermined if Havana Docks is Deprived of Relief.**

The LIBERTAD Act sets forth important findings of Congress with respect to Cuba, *see* 22 U.S.C. § 6021, and findings related to the protection of property rights of U.S. nationals. *Id.* § 6081. The Act details its purposes, which include the protection of U.S. nationals “against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” *See id.* § 6022(6).

The Cuban regime caused severe damage to U.S. nationals who held property interests in the country. The regime “confiscated the property of . . . thousands of United States nationals.” *Id.* § 6081(3). Significantly, Congress found that the trafficking and exploitation of property belonging to U.S. nationals, “provides badly needed financial benefit, including hard currency[,] . . . to the current Cuban Government and thus undermines the foreign policy of the United States.” *Id.* § 6081(6).

To further a major purpose of the Act, Title III created a broad private right of action for the “trafficking” of confiscated property in Cuba. *See id.* §§ 6022(6); 6081(11). Title III was an extension of the FCSC’s claims process and provided additional protections to claimholders. Congress clearly meant to deter future use of property that had been confiscated by the Cuban government.

The drafters’ committee and floor statements and official Congressional Reports reinforce these purposes. The House Report on H.R. 927 stated:

Titles III and IV seek to protect the interests of U.S. nationals whose property has been confiscated illegally by making persons or companies that knowingly and intentionally traffic in confiscated property of U.S. nationals in Cuba (beginning six months after the date of enactment) liable for damages in U.S. District Court (title III), and by excluding from entry into the United States any person who traffics in confiscated property of U.S. nationals (title IV). These provisions are intended primarily to create a ‘chilling effect’ that will deny

the current Cuban regime venture capital, discourage third-country nationals from seeking to profit from illegally confiscated property, and help preserve such property until such time as the rightful owners can successfully assert their claim.

H. REP. NO. 104-202(1), at 25 (1995).

Senator Helms, the primary Senate sponsor of the Act, added a similar statement regarding Title III of the Act:

This new civil remedy will also discourage persons and companies from engaging in commercial transactions involving confiscated property, and in so doing deprive Cuba's Communist Elite of the Capital—the cash money—which they need to perpetuate their exploitation of the people of Cuba.

141 CONG. REC. S14998 (daily ed. Oct. 11, 1995) (statement of Sen. Helms).

The deterrent and remedial purposes of the Act were advanced when President Trump lifted the suspension of the Title III cause of action in 2019. The Cuban government has since felt the monetary “chilling effect” and has repeatedly pleaded for the suspension of the private right of action and for the end of the embargo as a whole. *See, e.g., Statement by H.E. Mr. Bruno Rodríguez Parrilla, Minister of Foreign Affairs of the Republic of Cuba*, REPRESENTACIONES DIPLOMÁTICAS DE CUBA EN EL EXTERIOR (Oct. 29, 2025), <https://misiones.cubaminrex>.

cu/en/rticulo/statement-he-mr-bruno-rodriguez-parrilla-minister-foreign-affairs-republic-cuba-1. Cuba's repeated pleas validate the deterrent effect of the LIBERTAD Act.

Since 2019, the executive branch has reaffirmed its commitment to allowing Title III suits to proceed in furtherance of the Act's policy of deterrence. J.A. 2; *see also Restoring a Tough U.S.-Cuba Policy*, U.S. Dep't of State (Jan. 31, 2025), <https://www.state.gov/restoring-a-tough-u-s-cuba-policy/>.

In this case, Respondents' actions exemplify what Congress sought to deter through the LIBERTAD Act. Respondents are cruise lines in the tourism industry that exploited Havana Docks' confiscated property in order to promote tourism to Cuba, providing more than \$130 million to the Cuban government. J.A. 101-06. In doing so, they significantly aided in the funding of the Cuban Communist regime, contrary to U.S. policy as clearly expressed by Congress. Respondents' actions also violated the fundamental rights of Havana Docks, a U.S. national with a certified claim stemming from the confiscation of its property.

The LIBERTAD Act was meant to hold companies like Respondents responsible when they traffic in confiscated property. Holding them responsible sends the message that Congress meant what it wrote, and that the Act provides an effective remedy for trafficking.

**C. The Text of the LIBERTAD Act Deliberately Provides a Broad Private Right of Action for Claimholders, Like Havana Docks, Against Companies, Like Respondents, who “Traffic” In Property Confiscated by the Cuban Communist Regime.**

Congress knew the provisions of the LIBERTAD Act would be interpreted by the courts. With that in mind, Congress—in the text of the Act—provided courts with clear direction as to the property interests protected, the handling of certified claims, and the calculation of damages.

**i. Havana Docks’ Property is Protected Under the Act.**

Under the Act, anyone who “traffics in property which was confiscated by the Cuban Government . . . shall be liable to any United States national who *owns the claim to such property . . .*” 22 U.S.C. § 6082(a)(1)(A) (emphasis added). As such, the plain text of Title III requires two elements for a cause of action: (1) the U.S. national must possess a “claim” to—*i.e.*, hold a right to payment arising from—some type of confiscated “property,” and (2) the defendant must have “traffic[ked]” in the property that is the subject of the U.S. national’s claim. *Id.*

The Act contains broad definitions of “property” and “traffics” in property, as noted by Judge Brasher’s dissent below. *See* J.A. 31. The term “property” is defined as “any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent

right, security, or other interest therein, including any leasehold interest.” 22 U.S.C. § 6023(12)(A). This definition plainly encompasses property interests beyond fee-simple ownership. *See id.* Thus, the Act extends protection to any property interest held by a U.S. national, including time-limited interests such as Havana Docks’ concession. *See id.*

The definition of “traffics” further confirms that Title III liability is linked to “claim” ownership, rather than present possession of or a speculative future entitlement to the confiscated property. An individual “traffics” in confiscated property “by engag[ing] in a commercial activity using or otherwise benefitting from confiscated property . . . without the authorization of any United States national who holds a claim to the property.” *Id.* § 6023(13)(A)(ii).

The statute’s focus on a claim to property is entirely consistent with its core deterrent purpose. It reflects Congress’ intent “to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban government.” *Id.* § 6081(6)(B). The Eleventh Circuit majority’s narrow construction of Title III effectively nullifies that objective by imposing an additional atextual requirement that the U.S. national must have an interest in the property at the time of the trafficking, but for the expropriation. J.A. 20. The majority’s requirement essentially ignored the confiscation of Havana Docks’ property for the 44 years that transpired between the 1960 confiscation and the slated 2004 expiration of the concession, contrary to the text and purpose of the Act.

The drafters of the Act in 1996 intended to (1) protect U.S. nationals’ interests in confiscated properties that

were the subject of claims for as long as the claims remain outstanding, and (2) deter third parties from using the properties that had been confiscated, in order to prevent the Cuban government from benefiting from the confiscations. The majority's narrow interpretation of the Act contravenes that Congressional intent.

The majority focused on the irrelevant fact that Respondents' exploitation of the property occurred after Havana Docks' concession was slated to expire. Nothing in the Act, however, suggests that Congress meant to limit the trafficking remedy simply because the property interest, but for the confiscation, might or would expire at some point in the future. Neither the text of the LIBERTAD Act nor its legislative history indicates that Congress meant to deprive claimants of a remedy based on the temporal nature of their property interest. Any such limitation is incompatible with the Act's explicit focus on the property encumbered by a plaintiff's "claim." Moreover, such a limitation would run afoul of the deterrence that Congress intended.

As the dissent explained below, the Act logically provides that "trafficking must occur when a plaintiff 'owns the claim,' not when the plaintiff *would have owned the property*." J.A. 33. The counterfactual analysis required by the panel majority to sustain a Title III claim—hypothetical ownership of the property itself at the time of trafficking—would add a judicially constructed element not present in the text of the statute or intended by the drafters.

Havana Docks holds a certified claim stemming from the confiscation of its property. For as long as the claim

is outstanding, it does not expire, and the claimholder continues to own a remedy under the Act. The dissent's analysis of the time-limited nature of Havana Docks' property interest, that it "goes to the value of the claim, not the scope of the property subject to trafficking," comports with the intent and purpose of the LIBERTAD Act. J.A. 35.

**ii. Havana Docks Is a Certified Claimholder, Which Created a Presumption of Validity and Justifies a Heightened Damages Award.**

Title II of the LIBERTAD Act requires the Secretary of State to report to Congress on the status of claims to property confiscated by the Cuban government. *See* 22 U.S.C. § 6067. Congress placed a high priority on the potential resolution of these property claims: "It is the sense of Congress that the satisfactory resolution of property claims by a Cuban Government recognized by the United States remains an essential condition for the full resumption of economic and diplomatic relations between the United States and Cuba." *Id.* § 6067(d).

The design of the LIBERTAD Act was meant to build on the claims process that already existed with the FCSC, and to ensure that certified claimholders had a right of action under the Act. Respondents contend that certified claimholders who held a time-limited interest must fulfill a counterfactual requirement that they would hold a present interest in the property but for the Cuban government's illegal confiscation. However, that could not be further from the drafters' intent to protect certified claims: "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 [Title III].” See H.R. REP. NO. 104-468, at 63 (emphasis added).

Congress aimed at protecting certified claimholders in two primary ways: (1) declaring a presumption in favor of certified claims, and (2) increasing the liability for trafficking in property that is subject to a certified claim. See *id.* §§ 6082(a)(2)–(3). The presumption ensures that certified claimholders do not have to go through the process of proving their property claim all over again, and that courts do not have to decipher Cuban property law.

Further, Congress increased the liability for trafficking property subject to a certified claim because the claim put the entire world on notice:

The committee of conference notes that investors in Cuba have been effectively on notice regarding the 5,911 certified U.S. claims since the Cuban claims program was completed on July 6, 1972. Information regarding whether the claim to a particular property in Cuba is held by a certified U.S. claimant is readily available. The intent of the conference committee in revising the House language is to provide priority to certified claimants by allowing them to seek treble damages without an additional notice or an additional waiting period (beyond the initial 3-month grace period).

H.R. REP. NO. 104-468, at 59 (1996).

The inclusion of treble damages was not an incidental decision of Congress. Treble damages reflect Congress' conviction that trafficking in confiscated property previously adjudicated through the claims process is a serious transgression that bolsters a repressive and hostile foreign government. Congress' intent was to create a strong deterrent through the creation of a remedy for certified claimants like Petitioner in this case.

Havana Docks has been a certified claimholder since 1971. When Respondents exploited the property subject to Havana Docks' claim, they were on notice. Havana Docks is the exact type of claimant the LIBERTAD Act meant to protect, and the fact that it was a certified claimholder only strengthened Havana Docks' remedy.

**CONCLUSION**

As a member of the congressional staff team who played a substantial role in the drafting and passage of the LIBERTAD Act, Mr. Fisk urges this Court to reverse the Eleventh Circuit's decision and hold Respondents responsible for trafficking in the property that has been the subject of Havana Docks' certified claim since 1971.

Respectfully submitted,

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