No. 24-983

In the
Supreme Court of the United States

HAVANA DOCKS CORPORATION,

Petitioner,

v.

ROYAL CARIBBEAN CRUISES, LTD., NORWEGIAN CRUISE LINE HOLDINGS LTD., CARNIVAL CORPORATION, MSC CRUISES S.A., and MSC CRUISES (USA), INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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QUESTION PRESENTED

The Cuban government conferred upon petitioner, and then later confiscated from it, a non-exclusive, time-limited, use-limited property interest: the right to build certain docks in the Port of Havana, and to collect profits from cargo-ship operations there until 2004. Ten years after petitioner's property interest expired on its own terms, the United States government altered its posture toward Cuba. As a part of its new foreign policy of engagement with Cuba, it encouraged respondents, the four largest cruise lines operating out of the United States, to facilitate travel to the island. Respondents obliged and moored at the only available point for passengers to disembark near Havana, the docks from which petitioner once had the right to collect cargo fees. Years later—after another change in administration and associated policy shift, which included making the Helms-Burton Act's private right of action operable for the first time in its history—petitioner sued respondents for allegedly trafficking in the property the Cuban government had confiscated from it.

The Court granted certiorari on the following question:

Whether a plaintiff must prove that the defendant trafficked in property confiscated by the Cuban government as to which the plaintiff owns a claim (as the statute requires), or instead that the defendant trafficked in property that the plaintiff would have continued to own at the time of trafficking in a counterfactual world "as if there had been no expropriation" (as the divided Eleventh Circuit panel held below).

PARTIES TO THE PROCEEDING

Petitioner Havana Docks Corporation was the appellee in the Eleventh Circuit and the plaintiff in district court.

Respondents Royal Caribbean Cruises, Ltd., Norwegian Cruise Line Holdings Ltd., Carnival Corporation, MSC Cruises S.A., and MSC Cruises (USA), Inc., were the appellants in the Eleventh Circuit and defendants in district court.

CORPORATE DISCLOSURE STATEMENT

Respondent Royal Caribbean Cruises, Ltd., is a publicly traded company with no parent corporation. No publicly held corporation owns 10% or more of Royal Caribbean's stock.

Respondent Norwegian Cruise Line Holdings Ltd. is a publicly traded company with no parent corporation. No publicly held corporation owns 10% or more of Norwegian's stock.

Respondent Carnival Corporation is a publicly traded corporation with no parent corporation. No publicly held corporation owns 10% or more of Carnival's stock.

Respondent MSC Cruises (USA) LLC is a wholly owned subsidiary of MSC Cruises S.A., a privately owned corporation. No publicly held corporation owns 10% or more of MSC's stock. Respondent MSC Cruises S.A. is a privately owned corporation with no parent corporation. No publicly held corporation owns 10% or more of MSC Cruises S.A.'s stock.

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INTRODUCTION

Over a century ago, the predecessors of petitioner Havana Docks Company ("HDC") made a deal with the Cuban government: They would help develop the country's infrastructure by building docks and cargo facilities in the Port of Havana. In exchange, they would receive a non-exclusive concession, limited in both time and function, to operate certain of the dock facilities and collect cargo fees from them from 1905 to 2004. That kind of time- and/or purpose-limited concession, also known as a usufructuary interest, is an accepted feature of Cuban property law.

In the middle of the 99-year term, Castro's revolutionaries took control of the government and confiscated HDC's concession. Everyone on this side of the bay agrees that HDC should get paid for what was taken from it. But HDC wants more, and not just from Cuba. HDC seeks to recover—multiple times over—for the loss of property rights it never owned from entities that did not visit the property until years after the concession expired for purposes unrelated to HDC's cargo-specific usufruct. The Eleventh Circuit correctly rejected that gambit. The Helms-Burton Act does many things, some of them novel. But nothing in the statute allows courts to "convert property interests which were temporally limited at the time of their confiscation into fee simple interests in perpetuity." Pet.App.22a.

The Helms-Burton Act permits parties to recover for trafficking only in the actual property the Cuban government took from them. Courts in Helms-Burton Act cases must therefore begin by identifying the property interest that Cuba's government took from the plaintiff. And once they do so, the next step is to

ask whether the defendant actually trafficked in that which Cuba confiscated. Without such a one-to-one correspondence between the property interest that was confiscated and the property interest that was trafficked in, the plaintiff has a claim against Cuba, but not against the defendants.

Here, what Cuba took from HDC is clear: Cuba seized a limited concession to conduct cargo operations at the Port of Havana until 2004. The concession was HDC's only property interest, so it was the only property the Cuban government could take from it. After 2004, the underlying real property and all benefit from and control over the cargo operations belonged to the Cuban government, with or without a confiscation. In other words, after 2004, HDC simply had no entitlement to profit from use of the docks for cargo services—confiscation or not. And even before 2004, HDC's interest was limited to cargo operations and not exclusive.

HDC's contrary position, which the Eleventh Circuit squarely rejected, is wrong many times over. It flouts the Helms-Burton Act's text, which creates liability only for trafficking in the actual property that was confiscated. It massively expands the role of certified claims, transforming them into vehicles to redefine foreign property rights *sub silentio* and *ex parte*. It ignores the temporal and use-based limitations imposed on HDC's property interest not just by the terms of the concession but by Cuban property law. And it creates constitutional problems by binding unsuspecting parties to the outcome of adjudications before an administrative tribunal designed to facilitate the settlement of espoused

claims between nations, not bind third parties in civil litigation in Article III courts.

Perhaps realizing those defects, HDC raises an alternative ground for reversal that defies both reality and the question on which this Court granted certiorari. On that theory—which HDC lost at summary judgment, J.A.182, and abandoned before the Eleventh Circuit, *see* Carnival.CA11.Br.4 n.2—HDC did not just have a *concession* to use the docks and profit from them in limited ways; instead, HDC says, it owned the docks outright all along. That position, besides having been rejected and then abandoned, is inconsistent with background principles of Cuban property law and all the evidence in this case, including HDC's own certified claim.

In all events, even if HDC were correct on this alternative theory, that would only counsel in favor of dismissing the writ of certiorari as improvidently granted. HDC's question presented, like every opinion in the courts below, presumes ownership of a time-limited interest in the docks. The significance of that time-limited interest is the issue that divided the panel below and the district court itself as it flip-flopped. But the question that divided those courts and that HDC presented to this Court does not even arise when the confiscee owned the confiscated property in fee simple. Accordingly, were this Court to accept HDC's new theory of its property interest, the question presented would be mooted and the writ would need to be dismissed as improvidently granted.

STATEMENT OF THE CASE

I. Factual Background

A. HDC Acquires a Non-Exclusive, Time- and Use-Limited Interest in the Operation of Certain Docks at the Port of Havana.

In 1904, an American named Sylvester Scovel approached the Cuban government with a proposal: He would build a pier and associated facilities in the Port of Havana in exchange for the Cuban government granting him a concession to charge for cargo operations there for a limited time thereafter. NCL.Dkt.235-1 at 7.[1] A concession is a type of civil-law property interest. Specifically, it is "[a] government grant for specific privileges," akin to "[a] contract in which a country transfers some rights to a foreign enterprise which then engages in an activity (such as mining) contingent on state approval and subject to the terms of the contract." Concession, *Black's Law Dictionary* (12th ed. 2024). Scovel ultimately did not see the project through, but Compañia del Puerto ("CdP"), his successor-in-interest, did. In 1905, the Cuban government granted CdP a concession to carry out Scovel's project in the Port of Havana's San Francisco Wharf. Pet.App.9a.

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[1] "NCL.Dkt." refers to the district court docket in the case against Norwegian, No. 1:19-cv-23591 (S.D. Fla.); "RCCL.Dkt." refers to the district court docket in the case against Royal Caribbean, No. 1:19-cv-23590 (S.D. Fla.); "Carnival.Dkt." refers to the district court docket in the case against Carnival, No. 1:19-cv-21724 (S.D. Fla.); "MSC.Dkt." refers to the district court docket in the case against MSC, No. 1:19-cv-23588 (S.D. Fla.).

In doing so, Cuba retained ownership of the docks, while conveying only a usufruct to CdP. Pet.App.9a. A usufruct is a "right for a certain period to use and enjoy the fruits of another's property." Usufruct, *Black's Law Dictionary*, *supra*. Such usufructs can be limited in time, or purpose (e.g., access to property for a limited purpose), and thus can resemble licenses or easements. *See* J.A.182.

Cuba did not confer any right to exclude others from using the docks. Pet.App.11a. It simply allowed CdP to use and benefit from the public areas on which its fixtures were built, as well as in the streets that ran between the pier's jetties. Pet.App.9a. CdP's concession was further limited in various ways. It was use-limited: The concession allowed CdP to collect fees related to *cargo* services at the docks, but said nothing about *passenger* services. *See* Pet.App.9a. And, most importantly here, it was of limited duration: The concession ran for 50 years and would expire on its own, without any further action by any party, in 1955, at which point all rights in the docks would revert to the Cuban government. Pet.App.9a.

In 1911, CdP assigned its usufructuary interest to the Port of Havana Docks Company ("PHDC"). Pet.App.10-11. And in 1920, the Cuban government extended PHDC's concession to a term of 99 years, running from the initial issuance in 1905. Pet.App.11. This was the maximum term permissible under Cuban law. Pet.App.11a. Thus, PHDC was left with a non-exclusive, time-limited usufructuary interest allowing it to construct docks and then "operate a cargo service in the port of Havana," J.A.699—an interest identical to CdP's, except extending until 2004 instead of 1955. As before, the Cuban

government remained free to grant others the same interest or to unilaterally terminate PHDC's concession at any time before 2004, in which case PHDC's "exclusive recourse" under Cuban law would be to "seek[] compensation" from the Cuban government only "for the work performed and the materials used," not for any value of the land—which Cuba always owned. Pet.App.12a.

In 1928, PHDC sold all its corporate stock to petitioner, the Havana Docks Company ("HDC"), and completed construction on the docks two years later. Pet.App.12a. The Cuban government approved the assignment of PHDC's concession to HDC a few years later, at which point HDC took possession of the non-exclusive, time-limited, use-limited usufructuary interest. Pet.App.12a.

B. The Cuban Government Seizes American Property; Congress Responds, Culminating in the Helms-Burton Act.

1. Fidel Castro and his revolutionaries seized control of the Cuban government in 1959 and began expropriating the property of "thousands of United States nationals" shortly thereafter. 22 U.S.C. §6081(3)(B). In response, Congress enacted the Cuban Claims Act of 1964, Pub. L. No. 88-666, 78 Stat. 1110, which "authorized the Foreign Claims Settlement Commission to gather information for an eventual negotiation on claims of confiscated properties in Cuba." *Garcia-Bengochea v. Carnival Corp.*, 57 F.4th 916, 920 (11th Cir. 2023) (per curiam).

The Foreign Claims Settlement Commission of the United States ("FCSC") had been established in the wake of World War II via the International Claims

Settlement Act of 1949 ("ICSA"), Pub. L. No. 81-455, §3, 64 Stat. 12, 13 (1950). Its limited purpose was to ascertain the value of claims that the United States government would espouse and ultimately resolve as part of a nation-to-nation claims-resolution process, ideally culminating in a claims-settlement treaty with a foreign nation. *See Dames & Moore v. Regan*, 453 U.S. 654, 681 (1981).

When the FCSC hears a claim, it is empowered to subpoena witnesses and evidence, 22 U.S.C. §1623(c), to depose witnesses, *id.* §1623(d), and to impose consequences for failure to comply with its orders, *id.* §1623(c), (e). However, it was never designed to adjudicate private rights or definitively fix the value of property interests for purposes of litigation in the Article III courts. ICSA made no provision for juries or the adversarial presentation of evidence; the only parties invited to attend are the claimant itself and the United States government. *Id.* §1623(g). While interested parties may be afforded a right to appear and present evidence, that option was designed to protect parties with a competing claim to the property, not parties whose interests might be implicated by a statute enacted decades later.

The Cuban Claims Act authorized the FCSC to adjudicate claims to property seized by the Cuban government, in anticipation of a potential future claims-settlement treaty with Cuba (which, to date, has not materialized). *Garcia-Bengochea*, 57 F.4th at 920. The FCSC reviewed nearly 9,000 claims against the Cuban government, certifying almost 6,000 of them, for a total value of $1.9 billion. *Completed Programs – Cuba, Program Overview*, U.S. Dep't of Just. (last updated Sept. 17, 2024),

https://perma.cc/P2VV-Q2XJ. The FCSC completed its review of Cuba claims decades before the Helms-Burton Act was enacted.

2. HDC submitted a claim to the FCSC concerning its confiscated concession. *See* J.A.254-266. HDC's submission noted that "[t]he entire pier properties are held under the terms of a concession granted by the Cuban Government," which "provide[s] for transfer of ownership of the pier properties to the Cuban Government in the year 2004." J.A.832-33.

The FCSC certified HDC's claim, finding that the Cuban government had seized from HDC "a concession for the construction and operation of wharves and warehouses in the harbor of Havana," which was "to expire in the year 2004," as well as "equipment, furniture and fixtures" that HDC had brought to and/or built on the docks pursuant to its concession. J.A.256-57, 259-60. The FCSC valued HDC's claim at $9,179,700.88, plus interest at 6% per year running from the date of the seizure. J.A.266.

3. Decades later, Congress sought to jumpstart the settlement of Cuba claims and provide further deterrence to the Castro regime by passing the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785, also known as the Helms-Burton Act.

A novel feature of the Helms-Burton Act was the creation of civil "[l]iability for trafficking in confiscated property claimed by United States nationals." 22 U.S.C. §6082 (title). To that end, the statute provides that, with certain exceptions, "any person that … traffics in property which was confiscated by the Cuban Government on or after

January 1, 1959, shall be liable to any United States national who owns the claim to such property." *Id.* §6082(a)(1)(A). The Act defines "property" to "mean[] any property"; the Act thus embraces a wide array of property interests, "whether real, personal, or mixed," and including "any present, future, or contingent right." *Id.* §6023(12)(A).

Under the Act, "a person 'traffics' in confiscated property" if, "without the authorization of any United States national who holds a claim to the property," the person "knowingly and intentionally" (i) "possesses, obtains control of, [or] uses … confiscated property," (ii) "engages in a commercial activity using or otherwise benefiting from confiscated property," or (iii) "profits from[]" such activity "by another person." *Id.* §6023(13)(A). Importantly, trafficking does *not* include "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." *Id.* §6023(13)(B)(iii).

Violations of the Act come with steep monetary liability. One found liable for trafficking is on the hook for "money damages" equivalent to "the greater of" "the amount, if any, certified to the claimant by the [FCSC]" (or, for plaintiffs without a certified claim, "the amount determined" by a special master "under section 6083(a)(2)") or "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." *Id.* §6082(a)(1)(A)(i); *see id.* §6083(a)(2). Whichever option is greatest is imposed "plus interest," *id.* §6082(a)(1)(A)(i), running "from the date of confiscation of the property involved to the date on which the action is brought," *id.* §6082(a)(1)(B). If the

violator was on advance notice of a certified FCSC claim involving the property, then the damages-plus-interest amount is trebled. *Id.* §6082(a)(3)(C)(ii), (a)(3)(D). Finally, "court costs and reasonable attorneys' fees" may be imposed. *Id.* §6082(a)(1)(A)(ii).

Those substantial monetary awards are not the end of a defendant's potential consequences for trafficking. The Act also imposes exceptional immigration penalties, including exclusion or expulsion from the United States. *Id.* §6091(a).

The Helms-Burton Act created a private right of action for holders of certified FCSC claims to expropriated property in Cuba to sue those who traffic in their property. *Id.* §6081(11). But Congress did not tie the right to sue to having obtained a certified claim from the FCSC. Even a plaintiff without an FCSC-certified claim may bring suit under Title III. *See id.* §6083(a)(2); *see also id.* §6082(a)(1)(A)(i) (describing how damages are calculated in such cases).

Finally, because the Helms-Burton Act was designed to facilitate the ultimate resolution of outstanding claims with Cuba, Congress gave the President substantial flexibility in negotiating with Cuba, empowering him either to unleash the private right of action in Title III or to "suspend the right to bring an action under" the Act for "period[s] of not more than 6 months if the President determines … that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba." *Id.* §6085(c). Consistent with that authority, Presidents from both parties uniformly suspended the private right of action nearly 50 times, every 6 months for 23 years, from the date of passage until 2019.

C. Respondents Lawfully Travel to Cuba at the Request and Encouragement of the United States Government.

1. In 2014 (ten years after HDC's time-limited concession ran its course), the United States "chang[ed] its relationship with the people of Cuba." *Statement by the President on Cuba Policy Changes*, White House (Dec. 17, 2014), https://perma.cc/TZ9N-2WF9. Pursuant to a new policy of engagement, Executive Branch agencies promulgated various regulations opening Cuba up for significant travel, including via cruises. *See, e.g.*, 80 Fed. Reg. 2,291, 2,291, 2,297 (Jan. 16, 2015) (Office of Foreign Assets Control); 80 Fed. Reg. 56,898, 56,900 (Sept. 21, 2015) (Bureau of Industry and Security); *see also* 31 C.F.R. §§515.560(c)(1), 515.572(a)(2)(i) & (a)(4) (2015).

2. At the Executive Branch's encouragement, respondents, the four largest cruise lines operating out of the United States, planned to begin travel to Cuba. Before setting sail, however, each of them took extensive measures to comply with the Executive's new regulatory framework. For example, before the Executive promulgated and directed cruise lines to the generally applicable license regulations, Carnival sought and obtained a license specifically authorizing it to sail to Cuba. J.A.91-92; *see also* J.A.588-590. In addition, Norwegian required all passengers wishing to board Cuba-bound ships to sign affidavits on penalty of perjury that they were traveling in compliance with OFAC's regulations. NCL.Dkt.238 ¶18. It also took pains to help travelers understand their individual obligations under OFAC's regulations, including avoiding transactions with entities on OFAC's "Cuba Restricted List."

NCL.Dkt.238 ¶19. The other cruise lines did much the same. *See, e.g.*, J.A.676-78 (Carnival); MSC.Dkt.210-23 (MSC); RCCL.Dkt.132 at 7-8 (Royal Caribbean); *see also* MSC.Dkt.210-19 at 1. All respondents ultimately proceeded under licenses to conduct "people-to-people" travel to Cuba and "carrier services" for transporting travelers. *See* NCL.Dkt.235-18 at 2; NCL.Dkt.235-20 at 2; NCL.Dkt.367 at 55; *see also* 80 Fed. Reg. 56,915, 56,916, 56,924 (Sept. 21, 2015).

When respondents sailed to Havana (pursuant to the Executive's direction and with its blessing), they moored in the Port of Havana, at the docks in which HDC once held a limited concessionary interest. That was the only meaningful option. Respondents explored various means of disembarking passengers, including by constructing an offshore platform or by ferrying passengers to the island directly from the cruise ships, but the Cuban government did not permit any disembarkation in Havana except at the dock complex. NCL.Dkt.235 at 4-7. Moreover, MSC's cruise ships were too large to dock anywhere else on the island. MSC.Dkt.209 at 10-12.

3. During this time, HDC repeatedly tried to persuade the Executive to take action against respondents for their use of the docks. On at least three occasions, HDC compiled its allegations and "presented these facts to State Department officials and requested a Title IV action against the foreign executives and directors of cruise lines." NCL.Dkt.240-27 at 5. But the State Department repeatedly refused and explained that the cruise lines' use of the terminal was necessary for lawful travel as permitted by the Act. J.A.834-36; J.A.837-40; J.A.841-42. HDC also sought OFAC sanctions against

respondents over their use of the docks, but those requests were similarly rebuffed. *See* J.A.713-60.

Meanwhile, others affiliated with HDC questioned internally whether HDC still had a valid basis to sue the cruise lines given the concession's limited duration. In September 2018, for instance, Robert MacArthur (an HDC shareholder) emailed Mickael Behn (HDC's president) to say that although "the right-to-operate was 'stolen' when Castro came into power … that right would have expired by now under the original terms." NCL.Dkt.235-11 at 4.

4. Cruises to Cuba continued following President Trump's election in 2016. While the Trump Administration signaled that it would take a different policy approach than its predecessor, *see* 82 Fed. Reg. 48,875 (Oct. 20, 2017), for more than two years President Trump allowed the cruises to continue and extended the long-running practice of suspending the Act's private right of action. *See Marti v. Iberostar Hoteles y Apartamentos S.L.*, 54 F.4th 641, 644 (11th Cir. 2022).

That changed, however, in 2019. In May of that year, President Trump allowed the suspension of the Act's private right of action to lapse. *See* Sec'y of State Michael R. Pompeo, *Remarks to the Press* (April 17, 2019), https://perma.cc/9MYA-HMJE. For the first time, plaintiffs could bring suit under Title III.

President Trump also eliminated the earlier-promulgated regulations that allowed respondents to conduct cruises to Cuba. *See* 84 Fed. Reg. 25,986, 25,992 (June 5, 2019) (amending 31 C.F.R. §515.565(b) (making clear that "cruise ships … generally will be prohibited from going to Cuba" from then on)); *id.* at

25,987. At that point, respondents promptly ceased all cruises to Cuba. J.A.194, 203, 212, 218.

II. Procedural Background

A. HDC Files Suit; the District Court Issues Multiple Conflicting Opinions, but Ultimately Rules for HDC.

One day after President Trump allowed Title III to take effect, and a decade and a half after HDC's concession expired on its own terms, HDC sued Carnival, seeking treble damages on the inflation-adjusted value of its claim. Carnival.Dkt.1.

Carnival moved to dismiss on several grounds, including failure to allege a viable property interest because the concession would have expired in 2004 regardless of confiscation. CA11.App.59-60. The district court disagreed and allowed HDC's claims to proceed to discovery. Pet.App.43a-53a. Immediately afterward, HDC filed substantively identical suits against Royal Caribbean, Norwegian, and MSC, all of which were assigned to the same district judge. *See* RCCL.Dkt.1; NCL.Dkt.1; MSC.Dkt.1.

MSC and Norwegian moved to dismiss HDC's complaints against them on the grounds that their cruises were lawful travel and that HDC's limited concession ended in 2004. MSC.Dkt.24; NCL.Dkt.31. This time around, the court granted the motions. MSC.Dkt.40; NCL.Dkt.42. Because HDC's property rights were "limited by [the concession's] own terms," the court concluded that ignoring the concession's expiration date "would lead to impermissibly broadening [HDC's] property rights." MSC.Dkt.40 at 7. The court thus dismissed HDC's complaints against MSC and Norwegian, as HDC did "not dispute that the

property interest at stake is a concession that expired in 2004." MSC.Dkt.40 at 5, 9-10; NCL.Dkt.42 at 10.

A flurry of motions followed. Carnival sought reconsideration of the denial in its case, Carnival.Dkt.65, and Royal Caribbean moved for judgment on the pleadings, RCCL.Dkt.26. Separately, HDC sought reconsideration of the Norwegian and MSC dismissals and leave to file amended complaints.

The court then reversed course once again. On its third pass, the court concluded that the Helms-Burton Act was best read to "create[] liability for trafficking in the broadly defined 'confiscated property,' … not in a particular interest in confiscated property." NCL.Dkt.53 at 24-25. The court thus permitted HDC's claims to proceed to discovery.

Ultimately, the court granted summary judgment to HDC against each respondent. J.A.41-243. The court then awarded treble damages on the value of HDC's certified claim which, once interest was added, amounted to roughly $110 million—which the court imposed four times over (once per defendant), bringing the total near $440 million. NCL.Dkt.452 at 2-7.

B. The Eleventh Circuit Reverses.

Respondents raised multiple grounds for reversal, but the Eleventh Circuit focused on one, holding that respondents did not traffic in any property of HDC's that was confiscated by the Cuban government. The court found it plain that HDC's "concession ended … in 2004 when the 99-year term would have expired by its own terms." Pet.App.18a-19a; *see also* Pet.App.10a-12a (rejecting HDC's argument that it actually had a lifetime usufruct). Accordingly, "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." Pet.App.19a.

In reaching that conclusion, the Eleventh Circuit rejected the notion that the Helms-Burton Act *sub silentio* "convert[ed] property interests which were temporally limited at the time of their confiscation into fee simple interests in perpetuity." Pet.App.22a. The Act instead takes property interests as they are. *See* 22 U.S.C. §6082(a)(1)(A) ("any person that … traffics *in property* which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to *such property*" (emphases added)). As a result, the court "treat[ed] Havana Docks' property interest—the concession—as if the Cuban Government had never expropriated it, i.e., without the distorting effect of the confiscation," and then asked whether that usufructuary concession, unmodified by "the distorting effect of the confiscation," would have been implicated by respondents' conduct in docking at the pier in the late 2010s. Pet.App.22a-23a. Because the answer to that question here is plainly no, HDC's trafficking claim failed.[2]

Judge Brasher dissented, arguing that the correct subject of analysis was "the docks" themselves, not HDC's "intangible concessionary interest" in them.

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[2] In addition to reversing the district court's judgments against each respondent, the court of appeals remanded for further proceedings limited to HDC's claims against respondent Carnival, Pet.App.27a-28a, based on dockings between 1996 and 2001 by two European companies in which Carnival held an interest, J.A.86-87.

Pet.App.36a. Thus, in his view, it was immaterial that HDC's time-limited interest had expired a decade before respondents visited the island. Judge Brasher did not address respondents' various other defenses, including the use limitations in HDC's concession.

SUMMARY OF ARGUMENT

The Helms-Burton Act imposes liability on those who "traffic[] in property which was confiscated by the Cuban Government," 22 U.S.C. §6082(a)(1)(A), and defines "property" to include not just parcels owned in fee simple, but any stick in the bundle, *id.* §6023(12)(A). The Act thus creates a one-to-one correspondence between the property interest confiscated and the property interest that was trafficked. Accordingly, in any Helms-Burton Act case, the essential question is: "What property did Cuba's government confiscate from the plaintiff?" In this case, the answer is straightforward: HDC's property was a concession, which conferred the non-exclusive right to build docks and profit from cargo operations at the docks until the year 2004. HDC could have sought relief under the Act for any actionable trafficking in that interest. But it could not seek relief for trafficking in property interests that it never owned. And of central relevance here, HDC never owned the docks themselves. It had no right to exclude others from using the docks. It had no right to operate and profit from passenger operations at the docks. And it had no rights at all come the year 2005. Its only interest was limited as to time and function. And because that is the only "property which was confiscated by the Cuban Government" from HDC, respondents' use of the docks for passenger unloading and reloading from 2016 to 2019 did not implicate

HDC's property or violate Title III. The Eleventh Circuit correctly applied that straightforward understanding, holding that the Helms-Burton Act does not transmogrify non-exclusive, time- and use-limited property interests into fee-simple holdings, and instead takes property interests as they are.

In arguing to the contrary, HDC invokes the Act's references to "claims" to argue that liability turns *not* on the actual property interest owned by the plaintiff and confiscated by the Cuban government, but on the interest (supposedly) recognized by the claim (although the claim itself recognizes the concession's 2004 expiration date and HDC's limited rights). That submission flouts the text of the Act. While the Act assigns FCSC claims a critical role, Congress did not create liability for trafficking in FCSC claims; it created liability *for trafficking in confiscated property itself*. That explains why parties do not even need a certified claim to sue under the Act. And it confirms that the decision below is the only one consistent with the Act's plain text.

Adopting HDC's position would create grave constitutional problems. Trafficking under the Helms-Burton Act turns on the metes and bounds of the property the Cuban government confiscated. If the certified claim is what definitively determines the scope of such property, and defendants—who would have had no inkling at the time of certification that they would later become defendants pursuant to a not-yet-enacted statute—have no ability to contest such determinations in Title III suits, then defendants' private rights were extinguished by an *ex parte* tribunal, in defiance of basic due process and Seventh Amendment principles. That could not have been

Congress' intent, as the FCSC process was never designed to definitively determine private rights or conclusively resolve the liabilities of necessarily absent third parties in the Article III courts. Honoring Congress' intent and avoiding constitutional problems both counsel in favor of keeping the focus on the property confiscated, rather than on the claim certified.

Apparently recognizing the problems with the question that brought it to this Court, HDC attempts a remarkable pivot. HDC now argues that it did not just hold a limited, usufructuary concession granted by the Cuban government to profit from cargo operations at the docks. Instead, HDC says, it owned the docks outright. HDC.Br.26. That late-breaking claim is inconsistent with every piece of evidence in this case, including *the certified claim itself*.

It is also inconsistent with the question presented. The question presented and every opinion below—majority, dissenting, and the district court opinions vacillating on the issue—are premised on the understanding that HDC owned only a time-limited interest in operating a concession at the docks. If that is not true, the Court should consider whether to dismiss the writ as improvidently granted. If it is true, the Court should affirm, as respondents cannot have trafficked in a fee-simple interest HDC never owned and Cuba never confiscated.

ARGUMENT

I. The Decision Below Is Correct.

A. HDC's Claims Fail Because Its Limited Usufructuary Concession Expired Before Respondents Set Sail for Havana.

1. The Helms-Burton Act imposes liability on "any person that … traffics in property which was confiscated by the Cuban Government." 22 U.S.C. §6082(a)(1)(A). Under the Act, one "traffics in property" when one "disposes of confiscated property … or otherwise acquires … an interest in confiscated property"; "engages in a commercial activity using or otherwise benefiting from confiscated property"; or "causes, directs, participates in, or profits from, trafficking … by another person." *Id.* §6023(13)(A). But Congress was sensitive to the fact that not all uses of confiscated property should give rise to Helms-Burton Act liability, so it included certain exceptions. One key exception is that trafficking liability does not attach if the use of the property was with the permission of the confiscee. Another is that parties do not incur trafficking liability through "transactions and uses of property incident to lawful travel to Cuba," so long as those "transactions and uses of property are necessary to the conduct of such travel." *Id.* §6023(13)(B).

Helms-Burton Act liability is predicated on the "trafficking" of the specific "property" that was confiscated by the Cuban government. The Act demands a one-to-one correspondence between the property interest confiscated and the property interest trafficked. Accordingly, the very first question in any Helms-Burton Act case is: What "property" did the

plaintiff own before the Cuban government "confiscated" it? *See id.* §6082(a)(1)(A). For most cases, answering that question will be straightforward: A plaintiff who owned property in fee will have had its plenary ownership interest confiscated. Other cases will be more complicated: A plaintiff may have had an unfamiliar civil-law property interest, or a time-limited or partial interest in certain property. But, in every case, the court must identify the moment of expropriation and look to the property interest that existed—and therefore was taken—at that time.

2. Here, HDC's only "property interest in the Havana docks" was a time- and use-limited "concession." As a result, as HDC itself conceded, when the "Communist government extinguished the concession" in 1960, it "thereby" "extinguished" HDC's entire "property interest in the docks." Pet.2; *see also, e.g.*, HDC.CA11.Br.45 (noting that its concession gave it a "right for a certain period to use and enjoy the fruits of *another's property*" (emphasis added)).

That makes this case straightforward. The only property HDC ever held was the concession—specifically, a usufructuary interest granted by the Cuban government that allowed HDC to use specific docks in specific ways for a specific term. *See generally United States v. Craft*, 535 U.S. 274, 278 (2002) (recognizing that what "constitute[s] property" is "a collection of individual rights"). That concession—a "personal servitude granting the right to use [the Cuban government's] property" and derive certain "profits" from it, Pet.App.22a-23a—was always set "to expire in the year 2004, at which time [HDC] had to

deliver the piers to the [Cuban government] in good state of preservation." J.A.259.

HDC did not own the docks themselves or have any "fee simple ownership rights in any real property at the Port of Havana." Pet.App.22a-23a. The docks and attendant real property were always owned by the Cuban government. *See* J.A.686 (Cuban law provided at the time that a "concession" was a "[p]ublic works project[]" on government-owned land undertaken "to benefit the public"). Indeed, even the FCSC recognized in the certified claim that HDC's property interest was limited to "a concession" set "to expire in the year 2004." J.A.256, 259. And it would make no sense to say that Cuba "confiscated" property it always owned (and HDC never did). Thus, the only "property which was confiscated by the Cuban Government," 22 U.S.C. §6082(a)(1)(A)—and the only property that could give rise to trafficking liability vis-à-vis HDC—was the concession itself and the rights it conferred.

The terms of HDC's concession were strictly limited across multiple dimensions. First, HDC's rights were non-exclusive in every sense: The concession granted no right to exclude others, and Cuba could have granted another entity a concession to operate on and profit from the docks at any point. J.A.684, 700-03. Second, the concession had spatial constraints: It was limited to only specific docks in the Port of Havana, notably those on San Francisco Wharf. J.A.447. Third, the concession had use constraints: It allowed HDC to operate *cargo facilities* and to collect fees related to *cargo services*, but it did not grant any rights related to passenger services at the Port of Havana. Pet.App.9a. Finally, HDC's rights were temporally constrained: The concession

extended only for 99 years, until its expiration in 2004. Pet.App.11.

Neither Cuba's confiscation, nor the FCSC's certification, nor the Helms-Burton Act's enactment changed the underlying nature of the only property interest HDC ever had. Thus, when respondents used the docks (which HDC never owned) for passenger disembarkation in furtherance of the President's policy goals in 2016 and later, respondents were not using or trafficking in any property interest HDC ever owned. At that point, with or without a confiscation, all property interests in the docks were in the hands of the Cuban government (who, of course, gave respondents permission to use the docks for passenger service). Because HDC's only right to the property terminated on a date certain in 2004, HDC no longer had any right to control the property after that time. Accordingly, use of the docks for cargo operations—let alone passenger operations, in which HDC *never* had any property rights—could no longer lead to trafficking liability.

3. HDC and the government argue that this Court should look not to HDC's actual property right—that "which was confiscated by the Cuban Government," 22 U.S.C. §6082(a)(1)(A) ("Liability for trafficking")—but rather to HDC's FCSC-certified claim. That misreads the statute. As the Act makes clear, a defendant is liable for "traffic[king] in *property*," not for trafficking in *claims*. *Id.* (emphasis added). And the only "property" that matters in that analysis is that "which was confiscated by the Cuban Government." *Id.* Under the plain text, the focus is on the underlying property interest itself, not any claim that concerns the property. Indeed, under the

statute, a property interest is indispensable, while having filed a claim is optional.

To be sure, the Act makes traffickers liable only to the "United States national who owns *the claim*" to confiscated property. *Id.* (emphasis added). But that clause simply underscores that the Act is designed to facilitate the government's effort to resolve the claims of U.S. nationals, i.e., claims the United States would espouse in nation-to-nation negotiations. That does not shift the basis for liability from confiscated property to certified claims. It simply designates which party is entitled to sue for violations of the Act and to whom traffickers will consequently owe damages. Indeed, even that clause illustrates that the focus of any liability determination is on *the property that was actually confiscated*: After all, the clause refers to the "United States national who owns the claim *to such property*," referring back to the "property which was confiscated by the Cuban Government." *Id.* (emphasis added). The upshot is clear: Under the plain text of the statute, if a defendant used or benefited from property *other than that which was confiscated*, no liability may attach.

That is particularly obvious given that a certified claim is not even a prerequisite to sue under the Act. U.S. nationals may sue for trafficking under Title III even without "a claim … certified by the … Commission." *Id.* §6083(a)(2). Numerous Title III suits have been brought by parties without a certified claim. *See, e.g.*, *Fernandez v. Seaboard Marine Ltd.*, 135 F.4th 939 (11th Cir. 2025). That confirms beyond cavil that the contents of a certified claim cannot be the critical determinant of a defendant's liability under Title III (or the metes and bounds of a plaintiff's

property interest for Helms-Burton Act purposes more generally).

HDC and the government make much of the Act's provision that claims certified by the Commission provide "conclusive proof" of the plaintiff's ownership of the property described in the claim. 22 U.S.C. §6083(a)(1). But that "conclusive proof" serves only a narrow function: It officially recognizes the rightful owner of the property interest at issue, clarifying who is entitled to vindicate those rights under the Act. That underscores that the claims-certification process is well-designed for resolving competing claims by interested persons in the same property interest. Once that process runs its course, the certified-claim holder is the sole individual with the right to authorize use of the confiscated property interest, *id.* §6023(13), or to sue for violations of the Act, *id.* §6082(a)(1)(A). Certification thus works to facilitate negotiations by clarifying property rights and resolving competing claims to a given property interest. But nothing in the claim-certification process precludes certification of multiple claims involving two different property interests at the same physical location or authorizes ignoring temporal limits on one of those property interests. "Title III's conclusive presumption of Havana Docks' ownership interest at some point in the past does not speak to the nature of the interest today," Pet.App.25a, let alone allow the FCSC's certification to override the actual metes, bounds, or temporal limits of the "property which was confiscated," 22 U.S.C. §6082(a)(1)(A). "A U.S. national who owns 'the claim to such property' can bring a Title III action for trafficking, but the existence of the claim does not do away with the

requirement that the trafficking be in the confiscated property." Pet.App.26a.

In all events, HDC's reliance on the certified claim here does not take it very far. HDC's certified claim includes an explicit recognition that the property confiscated by the Cuban government was limited to "a concession for the construction and operation of wharves and warehouses in the harbor of Havana," which was "to expire in the year 2004." J.A.256, 259. Because the cruises at issue here began 2016, that "limited property interest had expired, for purposes of Title III, at the time of the alleged trafficking by the cruise lines." Pet.App.3a.

B. The Helms-Burton Act Adopts and Respects Background Rules of Property Law, Recognizing Rights Subject to Spatial, Temporal, and Use Limitations.

1. The Helms-Burton Act is premised on the basic notion that "not all property rights are the same." Pet.App.20a. The Act defines "property," for purposes of identifying "confiscated property" (and therefore trafficking liability), as "any 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(4), (12)(A). That sentence alone reveals Congress' desire to capture a multitude of different forms of property, not just fee-simple interests (or their equivalents). More to the point, the Act's embrace of "contingent" and "leasehold interest[s]," *id.* §6023(12)(A), reveals a clear intention to recognize property interests that are time-limited.

Rather than construe the Act as requiring courts to treat such limited property interests as if they were indistinguishable from perpetual fee interests, as HDC urges, the Eleventh Circuit respected the limits inherent in time-limited property interests like the concession. A property right's spatial, temporal, and use limitations thus are not mere ancillary details to be dealt with at the damages phase of a Title III action; they are what defines the extent of the "property which was confiscated," and thus the extent of trafficking liability under the Act. 22 U.S.C. §6082(a)(1)(A). In short, nothing in the text of the Act "suggest[s] that Congress intended to grant victims of property confiscations more rights to the property than they would otherwise have simply by virtue of the confiscation." Pet.App.22a.

HDC charts a different course, inviting this Court to disregard the temporal and use dimensions of its property interest, while apparently not disputing that the Court must respect spatial limitations. Trafficking in the neighborhood is not sufficient, but (according to HDC) use of the property for purposes and during times for which the plaintiff never had any rights are somehow covered. That slicing-and-dicing approach finds no support in the text of the Act—which makes sense, as it defies the modern, interests-based view of property that held sway when the Act was passed in 1996.

"An interest in real property is defined by the metes and bounds that describe its geographic dimensions *and the term of years that describes the temporal aspect of the owner's interest*." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 331-32 (2002) (emphasis added). And in the

case of a concession or usufructuary interest, an interest in real property is additionally defined by the specific use of the property conveyed—say, water rights or hunting and fishing rights. *See, e.g.*, *Fed. Power Comm'n v. Niagara Mohawk Power Corp.*, 347 U.S. 239, 246-47 (1954); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 187-88 (1999). Those spatial, temporal, and use limitations are essential components that define the property itself. Surface rights and mineral rights are two distinct property interests, even if they both involve the same parcel. The same is true for two property interests in a single parcel with different temporal dimensions. Two leaseholds may concern the same parcel, but they are different property interests altogether.

It is therefore no more sensible to disregard the temporal or use limitations of a usufructuary interest than it would be to ignore the geographic limitations of a freehold. *See* Pet.App.21a-22a. No one would seriously argue that the fee-simple owner of a baseball field in Havana could bring a Helms-Burton Act suit against someone who used a neighboring park, let alone against someone who parked their car half a mile away. There is no reason to privilege those spatial dimensions of property over the temporal dimensions that limit the scope of the concession at interest here. Property law places spatial and temporal interests on equal footing. *Tahoe-Sierra*, 535 U.S. at 331-32. So too for use limitations. If a U.S. national had the right to quarry stone on a parcel, and that right was confiscated, it would be odd to say that someone could traffic in that person's property by harvesting timber on the same parcel. The right to

harvest timber might not have been confiscated at all, or confiscated from a different person.

The conduct challenged in a Helms-Burton Act case is either within the property interest or without, and it makes no difference whether it is without because it falls outside the spatial boundaries, the temporal boundaries, or the use boundaries that define any one owner's property interests. At bottom, it would be equally absurd to impose trafficking liability against a defendant who used confiscated property one day after a property interest had expired on its terms—or for uses the property interest never included—as it would be to impose trafficking liability against a defendant who used property one foot away from the boundaries of that which was confiscated.

2. To try to evade that reality, HDC suggests that the confiscation did not take what it possessed, but simply tolled or suspended its interests. HDC argues that because 44 years remained on its concession when it was seized, 44 years have remained on its concession ever since. HDC.Br.42-43. In short, HDC asks this Court to pretend that Cuba did not confiscate its concession so much as suspend it. HDC's position is wrong as a matter of fact and law.

First, Cuban property law does not stop the clock from running on the expiration of a time-limited concession while the concession is unusable, even when that lack of usability derives from government conduct. The concession covers specific calendar years, not 99 years of uninterrupted use subject to periodic tolling. That should come as no surprise to HDC—after all, *this very concession* has already been subject to that rule once before. From 1906 through 1910, use of the docks was halted because HDC's

predecessor in interest demanded to occupy portions of the Port of Havana other than those conveyed by the concession, and the Cuban government refused. *See* J.A.691. But even though work was suspended for four years due to a disagreement with the Cuban government, the time on the concession continued to run. J.A.708. The supposed tolling principle HDC proposes is thus incompatible with its predecessor's own experience and the law that defines HDC's property rights.

The Act's definition of "traffics" does not change the analysis. Under 22 U.S.C. §6023(13)(A)(ii), "a person 'traffics' in confiscated property if that person knowingly and intentionally … engages in a commercial activity using or otherwise benefiting from confiscated property." HDC urges (at 35-37) that the "otherwise benefiting from" language broadens its property interest, beyond what the Cuban government confiscated from it, for purposes of a Helms-Burton Act claim. This is a new argument: In the Eleventh Circuit and at the certiorari stage, HDC argued that respondents "traffic[ked]" within the meaning of §6023(13)(A)(ii) by "us[ing]" the docks. *E.g.*, CA11.HDC.Br.24, 38; Pet.32. HDC briefly reprises that contention, HDC.Br.36, but it quickly pivots. Apparently recognizing that "using" the docks in and after 2016 could not have trenched upon any property confiscated from it—because, again, HDC never owned the docks or had a right to exclude others from using them at any point, and any rights HDC had to profit from cargo operations at the docks ended in 2004—HDC asserts that "Cuba and its partners clearly 'otherwise benefit[ted]' from Havana Docks' construction of the docks." HDC.Br.36.

There are three problems with this argument. First, it is forfeited: This argument was abandoned below and not raised in the petition for certiorari. Second, respondents are not Cuba, and the only government with which they "partner[ed]" when they traveled there was *the United States Government*, which explicitly licensed and encouraged them to facilitate people-to-people travel to Cuba as part of its new foreign policy. *See* pp.11-13, *supra*.

Third, and most important, this new argument contravenes the statutory text. Perhaps it is fair to say that respondents benefited from HDC's "construction of the docks," HDC.Br.36, in the same way they would have benefited from the efforts of a construction company hired by HDC or Cuba to build the docks. But the Act defines "traffics" to mean "engages in a commercial activity using or otherwise benefiting *from confiscated property*." 22 U.S.C. §6023(13)(A)(ii) (emphasis added). And, again, the Cuban government did not confiscate the docks HDC built; it confiscated a time- and use-limited concession. Respondents' use of the docks for passenger services years after the concession expired by its terms thus did not "use" or "otherwise benefit[] from" any *confiscated* property, *id.*—meaning that respondents did not "traffic in" "property *which was confiscated*" from HDC, *id.* §6082(a)(1)(A) (emphasis added). Simply put, the Act's definition of "traffics" does not somehow allow HDC to transform its non-exclusive, time- and use-limited concession into a fee-simple-style interest in the docks themselves.

Neither does the Act's definition of "confiscated property." *Contra* HDC.Br.34-35. "Confiscation" under the Act means "the nationalization,

expropriation, or other seizure by the Cuban Government of ownership or control of property." 22 U.S.C. §6023(4)(A). The Cuban government could only confiscate the "ownership or control of property" *HDC actually possessed*—here, a non-exclusive, time- and use-limited concession. After all, the Cuban government itself always owned the terminal at the Port of Havana in fee, and it had a reversionary interest upon the concession's expiration. J.A.454-55 (Decree No. 467) ("Upon expiration of the term of the concession, the State will replace the concessionaire in possession of the works and will immediately come into enjoyment of it and its proceeds."); *see also* J.A.426 (Law of Ports for the Island of Cuba) ("First and second class harbors of general interest are national property and for public use."); J.A.438 (same) (permitting "cession of the land where the works are carried on" only "for a limited time"). Only by trafficking "in property which was confiscated by the Cuban Government" can a person become liable under the Act. 22 U.S.C. §6082(a)(1)(A). Because the Cuban government could confiscate only what someone else owned, anything beyond that ownership interest cannot be "confiscated property," no matter how "broadly defined." NCL.Dkt.367 at 112.

Neither the length of HDC's concession, nor the absence of competing concessionaires or leaseholders, nor the reality that Cuba and not some other private owner held fee-simple title, should be allowed to confuse the issue. It would be absurd to give someone with a leasehold set to expire a few days after confiscation a perpetual claim to sue anyone who arrived at the same address. The claim to those later trespasses would belong to the person who owned the

property in fee simple, not the tenant whose only claim to the property expired soon after the confiscation.

Similarly, if a dock's owner leased it to Party *A* until 1963, and to Party *B* from 1964-1974, with a reversionary interest, it would be clear that someone trespassing on the confiscated dock in 1962 would owe *A* damages, but owe *B* nothing, and vice-versa for a trespass in 1965, while owing only the original owner for a trespass in 1975.[3] By the same token, if another U.S. national had a concession similar to HDC's that was set to run from 2005 for the next 99 years, it would be obvious that the other U.S. national—and not HDC—would be the proper party to sue for trafficking post-2004. The fact that Cuba itself holds the interests after 2004 should not change the analysis. None of this disregards or diminishes what was taken from U.S. nationals; it just allows recovery for what was confiscated—no more.

Nor does it help HDC to insist that "property, once confiscated, remains confiscated until Cuba resolves the U.S. national's claim against it." HDC.Br.29; *see also* U.S.Br.3, 15, 22-26, 32-33. Of course, confiscated property "remains confiscated" (not just suspended) unless and until it is returned to its lawful owner. But the act of confiscation did not somehow expand or enlarge the property that was confiscated. And under the terms of HDC's concession here, once the calendar turned to 2005, all title and actual control over the docks rested in Cuba, with or without a confiscation. Because respondents' use of the docks did not take

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[3] Unless the reversionary interest belonged to Cuba, of course—in which case the reversionary interest would not have been confiscated at all.

place until a decade later (and with the permission of the Cuban government), no liability may attach.[4]

3. The Eleventh Circuit rightly concluded that it need not go further to reverse the grant of summary judgment in favor of HDC, and this Court need go no further to affirm. But the temporal limitations on HDC's property interest are not HDC's only problem. HDC also ignores the non-exclusivity and cargo-use limitations inherent in its concession.

As explained, HDC's property interest flowed from its concession—which, as a matter of Cuban law, gave HDC no "*exclusive* right to do anything at all." *Fernandez*, 135 F.4th at 951 (Brasher, J.). Respondents' use of the docks therefore cannot have infringed on HDC's concessionary rights. Moreover, even if HDC's right had been exclusive as to *something*, any such exclusivity would have encompassed only a right to operate cargo services, not passenger services. HDC's concession authorized it to "collect the state-approved fees for the loading, unloading and temporar[y] storage *of cargo*" at the docks it operated. J.A.690 (emphasis added).[5]

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[4] HDC and the government repeatedly invoke the Eleventh Circuit's line that courts should assess "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. But, as reading the whole passage in context makes clear, the Eleventh Circuit was not envisioning a complex hypothetical; it was simply reiterating that the relevant inquiry is *what property was confiscated*.

[5] Whether HDC incrementally profited from passenger services, *see* HDC.Br.6-7, is thus irrelevant. HDC possessed no right to do so (or to exclude others from doing so); accordingly,

Respondents travelled to Cuba offering *passenger* cruise line services. Their cruise ships are not cargo ships; nor did they perform cargo transit functions in the course of their Cuba travel. Thus, since HDC never had any rights relating to *passenger* use of the docks, respondents cannot have trafficked in its property by using the docks to disembark passengers.

HDC ignores these limitations on its property interest. But they were no less critical than the spatial (or temporal) limitations: They bounded HDC's right to use the pier by confining HDC to a non-exclusive right to oversee and collect fees from cargo operations. J.A.690; Pet.App.11a. This was not a coincidence. In his initial proposals, Scovel (HDC's predecessor) "did not request to offer passenger related services." J.A.690. As a result, "pursuant to Decree 467 the concessionaire *was not authorized to offer passenger services*." *Id.* (emphasis added). And, on top of all that, the concessionaire (which at the time of confiscation was HDC) lacked any right to exclude others from use of the docks *at all*. Pet.App.11a.

That reality defeats the government's attempt to analogize the concession to an office lease. U.S.Br.28. Leaseholders are entitled to physical occupation of the premises—and thus have a correlative right to exclude others. HDC's non-exclusive concessionary right—like all concessionary rights—is fundamentally different. The concessionary right to sell pens in a Yosemite gift shop, for instance, *see* George Coggins, *Concessions Law and Policy in the National Park System*, 74 Denver U. L. R. 729, 736 (1997), would not

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passenger operations could not have trafficked in any right possessed by HDC.

be infringed by the National Park Service's expropriating the lease to the gift shop, as long as the concession was not reassigned or vitiated. So too here. After all, the right to exclude always remained with the Cuban government.

HDC now seeks to usurp that right through a misguided amalgamation of the FCSC and the Helms-Burton Act. HDC contends that it may assert property rights it never held—and which therefore could not have been "confiscated" from it 65 years ago. Nothing in the text of the Helms-Burton Act or in the property-law principles upon which it is built supports such after-the-fact enlargement of property interests.

Rather than confront that issue, HDC changes the subject, asserting that respondents' reading would render the Act's reference to patent claims surplusage. HDC.Br.47; *see* 22 U.S.C. §6023(12) (defining "property" to "includ[e] patents"); *see also* U.S.Br.29-31. But while one who held a Cuban patent in 1960 may not be able to sue under the Act for trafficking today (Cuban patents at that time lasted only 17 years),[6] confiscations did not end in 1960. The statute plainly recognized this fact, defining "[c]onfiscated" to include the "nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on *or after* January 1, 1959." 22 U.S.C. §6023(4)(A). Patent-trafficking claims thus are

[6] *See* World Intell. Prop. Org. (WIPO), Decree-Law No. 805 of Apr. 4, 1936 (Law on Industrial Property), ch. II, Art. 56 (Cuba), https://tinyurl.com/5n6pmf7v.

(and always were) viable to the extent they are based on later confiscations.[7]

Furthermore, and if anything, the Act's protection of patents *undermines* HDC's position. Under HDC's interpretation, a patent issued in 1955 and confiscated in 1960 would remain enforceable in 2030. That would defeat the basic nature of patent rights—namely, rewarding innovation with exclusivity "for limited Times," after which others can build on the innovation to the benefit of society as a whole. *See* U.S. Const. art. I, §8, cl. 8. HDC would create "super patents" spanning decades, if not centuries.

4. The government largely joins HDC's misguided statutory arguments—except it goes even further. Unlike HDC, the government at least acknowledges that HDC's concession "was limited to cargo operations." U.S.Br.28. According to the government, however, that does not matter; liability under Title III, it says, is "based on ownership of claims to confiscated property, not on characteristics of the underlying property interest." U.S.Br.17 (capitalization altered). Indeed, the government goes so far as to suggest that "eligibility to sue" under Title III does "not" depend on the terms of an "underlying property" interest *at all*. U.S.Br.21.

That position is as radical as it is wrong. The Helms-Burton Act addresses property interests, not street addresses or parcels. Indeed, the Act's express

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[7] The government retorts that the second, follow-on round of FCSC proceedings did not certify any patent claims. U.S.Br.30. But that is hardly impressive: The second, follow-on round hardly certified any claims at all. *See id.* (admitting second round of FCSC Cuba proceedings certified only two claims).

protection of "contingent right[s]" and "leasehold interest[s]," *see* 22 U.S.C. §6023(12)(A) (defining "property"), forecloses the idea that anyone with a claim to a limited property interest in a parcel actually has a claim to the whole parcel in perpetuity.

Adopting the government's position that the "underlying property" interest is irrelevant would turn basic principles of property law upside-down. Consider takings of leaseholds. "It has long been established that the holder of an unexpired leasehold interest in land is entitled … to just compensation for the value of that interest when it is taken upon condemnation by the United States." *Alamo Land & Cattle Co. v. Arizona*, 424 U.S. 295, 303 (1976). But the amount of just compensation owed to the lessee, which is limited to the value of the right to occupy the premises and exclude others for a limited time, is far different from the amount owed to the lessor, given the latter's broader ownership rights. Both lessee and lessor suffer a taking, but the leaseholder is entitled only to compensation for the duration and scope of the lease interests taken—no less, no more. *See United States v. Gen. Motors Corp.*, 323 U.S. 373, 382 (1945) (when the government "takes the property, that is, the fee, the lease, whatever he may own, terminating altogether his interest, under the established law it must pay him for what is taken, not more"). And if a taking occurs after the lease expires, only the property owner, not the former lessee, has a takings claim. *See Alamo Land & Cattle*, 424 U.S. at 303-04. Those same principles inform whether there has been trafficking in a plaintiff's confiscated property under §6082(a)(1)(A). Any other conclusion would mean that

the Helms-Burton Act radically expands property interests far beyond that which was confiscated.

The government notes that "[d]amages in Title III suits" sometimes may be measured based "on the value of the 'claim,'" rather than of that which was taken. U.S.Br.20. But that just assumes the claim is co-extensive with the property that was confiscated. That may often be true, but not always, and it would make no sense to think that if a claim covers two discrete parcels and the defendant traffics in only one of them, the defendant must pay the assessed value of both. Moreover, even when a defendant traffics in a single fee-simple parcel, the claim is not the sole measure of recovery. As the government recognizes, recovery "may also be calculated based on 'the fair market value' of the property," "either 'current value,' or 'the value of the property when confiscated,' 'whichever is greater.'" U.S.Br.21 n.7 (quoting 22 U.S.C. §6082(a)(1)(A)(i)(III)). These alternative recovery measures focus solely on the *property*, not the *claim*.

The government's construction also distorts the FCSC's own valuations of claims. The FCSC awarded claimants the "fair market value" of the property that was taken from them. 22 U.S.C. §1623(a)(2)(B). That fair market value is assessed by taking into account all the attributes of the property interest at issue. So, a larger property will be worth more than a smaller one, a fee-simple interest will be worth more than a time-limited one (and a lease with multiple years left will be worth more than one confiscated shortly before its expiration), and a use-unrestricted interest will be worth more than a use-restricted one. *See* RCCL.Dkt.178 at 11 (HDC admitting as much). The

value the FCSC certifies as part of the claim therefore reflects the fundamental attributes of property this Court has recognized. *See generally Tahoe-Sierra*, 535 U.S. at 331-32. But when a party attempts to hold others liable for trafficking long after his property interest expired (or for uses to which he never held a right in the first place), he creates a newer, more valuable property interest *that was never seized by the Cuban government and never certified by the FCSC*. And, in doing so, he grants himself a windfall through the right to recover on a larger, more valuable property interest that he never owned.

No matter what other purposes claims may serve, they are not the basis for trafficking liability. The referent in the Helms-Burton Act's trafficking prohibition is the underlying confiscated property. The Act does not speak in terms of trafficking in claims; it speaks in terms of trafficking in "property which was confiscated by the Cuban Government." 22 U.S.C. §6082(a)(1)(A). It is thus trafficking in *that property*, not in some later-certified claim, that creates liability under the Act.

5. That is all reason enough to reject HDC's and the government's crabbed construction. There are still more reasons. Treating the products of administrative FCSC proceedings (certified claims) as binding on Article III courts for purposes of resolving private rights and defining "property" under §6082(a)(1)(A) not only deviates from the statutory text, but raises serious constitutional problems.

Beyond the claimant, only the U.S. government was expressly invited to attend FCSC proceedings by statute. *See* 22 U.S.C. §1623(g). General principles of administrative law may have granted interested third

parties the opportunity to appear, but that would have largely been in service of resolving competing claims to the same properties. No one would have or even could have intervened in those proceedings on the theory that, someday in the future, they would be a defendant under a future statute. More to the point, no one could have anticipated that the end-product of those proceedings (i.e., the certified claim) would be used to determine the scope of their liability under a law that was not yet even a twinkle in Congress' eye.

Furthermore, the only non-governmental party in attendance at the FCSC proceedings had a near monopoly on relevant information and every incentive to inflate the value of the claims. Any incentive for the government to keep the scope of claims down was dulled by the reality that the larger the claims, the greater the government's leverage in nation-to-nation negotiations to resolve the claims by treaty. While there is nothing wrong with such a regime when the only party on the other side of the ledger is the Cuban government (whose claim to due process rights is questionable at best) and the end-product is used only as a starting point to resolve the value of espoused claims in nation-to-nation negotiations, the calculus is completely different if those claims are given dispositive weight in Article III litigation resolving private claims against absent third parties. The necessary procedural protections for giving the determinations dispositive effect for those purposes were completely lacking. Allowing the Helms-Burton Act to repurpose those findings to have that dispositive effect would raise constitutional problems of the first order. Fortunately, the Act as actually written avoids those problems by focusing on the

property interest actually confiscated. But reorienting the statute as HDC and the government envision cannot be squared with basic constitutional guarantees.

Indeed, if "[b]arring defendants in enforcement actions from raising arguments about the legality of agency rules or orders enforced against them raises significant questions under the Due Process Clause[,] especially for parties that did not exist or had no good or reasonably foreseeable reason to sue when the agency rule or order was first issued," *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 158 n.5 (2025), then barring defendants in nine-figure Helms-Burton Act suits from challenging the metes and bounds of the property that was confiscated is unconstitutional *a fortiori*, especially since a finding of trafficking liability may result in expulsion or exclusion from the country. *See* 22 U.S.C. §6091(a). In addition, while the absence of a jury is a wholly unobjectionable feature of a claims process designed for valuing espoused claims against Cuba, it is a Seventh Amendment problem if those determinations are given dispositive weight in resolving private rights in Article III courts. Given all that, bedrock constitutional-avoidance principles counsel against adopting HDC's and the government's position.

C. HDC's Policy Arguments Are Misguided and Beside the Point in All Events.

Ultimately, both HDC and the government retreat to policy arguments. Treating property like property, they claim, would under-deter Cuba and leave some unable to obtain private redress under Title III (but still with a claim against Cuba). HDC.Br.44-50; U.S.Br.22-24. Those concerns are

overblown, and in all events result from choices that Congress made.

It is certainly true that one of Congress' goals in enacting the Helms-Burton Act was "'[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.'" U.S.Br.22-23 (alterations in original) (quoting 22 U.S.C. §6081(11)). But as this Court often reminds litigants seeking to privilege legislative purpose over clear statutory text, "[n]o statute pursues a single policy at all costs." *Bartenwerfer v. Buckley*, 598 U.S. 69, 81 (2023). Indeed, this Court has described such bare legislative-purpose appeals as the "last redoubt of losing causes," *Dir., Off. of Workers' Comp. Programs v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 135 (1995), for good reason: "Every statute proposes, not only to achieve certain ends, but also to achieve them by particular means." *Id.* at 136. The *means* Congress chooses to select to accomplish its ends are no less important than the ends themselves.

Those principles apply with full force here. At bottom, the assumption underlying much of HDC's (and the government's) position is that Congress meant to provide universal relief for everyone who suffered any confiscation-related injury, even if relief has to come from parties that never actually trafficked in the property that was confiscated. Nothing in the Act's text or history (or even sound notions of policy, which respect constitutional norms) supports that view.

Like most legislation, the Helms-Burton Act reflects compromises, rather than pursuing any particular purpose at all costs. Congress ultimately landed on fixing liability based upon trafficking in "property which was confiscated," not attaching consequences to street addresses or parcels without regard to the interest actually confiscated. The latter certainly would have a greater deterrent effect (at the cost of both coherence and constitutional norms), but that is of no moment. In a contest between clear text and abstract purpose, text wins in a knockout. Courts cannot invoke foggy perceptions of purpose to "add features" that a litigant feels "will achieve the statutory 'purposes' more effectively." *Id.* at 135-36.

That is particularly true here, where Congress made countless textual decisions that limited the Act's deterrent effect. Congress declined to make the Act retroactive, providing a grace period before it went into effect. *See* 22 U.S.C. §6082(a)(1)(A). It did not authorize the imposition of punitive damages (although the damages regime it imposed is plenty punishing). Congress granted the President statutory authority to suspend the cause of action entirely. *Id.* §6085(c). And so on. Those choices limited how much deterrence the Act would have. But Congress was entitled to make those (and countless other) choices, and to impose limits on deterrence where it saw fit. *See McDermott v. Wisconsin*, 228 U.S. 115, 128 (1913) ("Congress may itself determine the means appropriate to this purpose, and so long as they do no violence to other provisions of the Constitution."). Such decisions, reflected in text that passed through bicameralism and presentment, cannot be overridden simply because it strikes a claimant, or even the

current administration, as insufficiently protective of their interests.

Even if this Court *could* overwrite Congress' work based on abstract policy preferences, it should not do so here, as HDC's and the government's position would grant massive windfalls to those who hold certified claims for limited property interests. On HDC's and the government's theory, temporal and use limitations on property rights have no role to play in determining Helms-Burton liability. Thus, a person who owns only a time-limited property right, and therefore had only a time-limited property right confiscated, could nonetheless use the FCSC to transmogrify that limited right into a fee-simple interest through the magic of a certified claim. That would grant the claimholder dominion over his erstwhile property far beyond the time for which he paid to possess it. And because (at least on HDC's theory) his ownership interest is tolled until Cuba surrenders the property to him, he could exploit that property right for years, extracting rents from others who seek to use his confiscated property and who therefore must negotiate with him for permission to do so. That outcome massively distorts property interests in a way that benefits one and only one party: the one holding the certified claim. Nothing in the text of the Helms-Burton Act suggests such a path. And, as discussed above, basic principles of property law and due process strongly counsel to the contrary.

II. HDC's Assertion That It Owned The Havana Docks Complex Outright Is Without Merit And Inconsistent With The Certified Claim.

Apparently recognizing the weakness of its arguments on the question presented, HDC says it not

only owned a time-limited concession to profit from certain uses of certain facilities at the Port of Havana (the subject of the question presented), but also owned *the docks themselves*. *E.g.*, HDC.Br.26, 38-39 (describing HDC's "claim to own the very dock facilities"). That argument is forfeited, wrong, and inconsistent with HDC's certified claim. To the extent this Court nonetheless agrees with HDC about what its property interest (somehow) became via the FCSC certification, the path forward would be to dismiss the writ as improvidently granted, as the premise of the question presented would be eliminated.

1. HDC never owned the docks it built in the Port of Havana. The Cuban government struck a specific bargain with HDC's predecessors: They would build a dock complex in the Port of Havana, and, in exchange, they would be permitted to operate it for a term of years and to collect fees during that time. J.A.686-87; *e.g.*, Carnival.Dkt.331-4 at 12 (conveying a "usufruct during the term of the concession" in the San Francisco Wharf and surrounding areas in exchange for the construction of various facilities). No one at the time HDC acquired the concession or any point thereafter believed that HDC had acquired ownership *of the docks themselves*. Ownership of the docks was always understood to rest with the Cuban government. All HDC got was a usufructuary right to benefit from certain cargo-related uses of the docks. *See, e.g.*, MSC.Dkt.40 at 5, 9-10 (district court noting that HDC did "not dispute that the property interest at stake is a concession that expired in 2004"); *see also* pp.4-6, *supra*.

Everything about the way the property interest operated reflects this reality. In its official decrees,

the Cuban government described fixtures like "warehouse[s]" as being "in the concession." Carnival.Dkt.331-4 at 23. That conveyed permission to use the physical facilities within the scope of the concession; the fixtures were not separate items to be owned by HDC. That much is confirmed by the fact that the accompanying Cuban government decrees discussed the possibility of expropriating the dock facilities only "during the term of the concession." Carnival.Dkt.331-4 at 12. Had HDC owned the docks themselves, the possibility of expropriation would have outlasted the term of the concession.

More fundamentally, the Cuban government *could not* have paid HDC with title to the docks in fee simple in the first place. At the time Cuba granted the concession, the Cuban law of public works provided for the use of time-limited concessions to pay for private construction of infrastructure. *See generally, e.g.*, J.A.396-418 (General Law of Public Works for the Island of Cuba). Nothing in that law contemplates the state paying for such construction with permanent transfers of real property in fee simple. Indeed, Cuban law declares harbor facilities like the docks HDC built *the exclusive property of the state*. J.A.426 (Law of Ports for the Island of Cuba) ("First and second class harbors of general interest are national property and for public use."). The model pre-Castro Cuba consistently used to facilitate public-works construction was a familiar one: In exchange for private parties constructing public works, Cuba permitted those private parties to derive profits from operation of the works for a maximum period of 99 years. *See* J.A.411-18.

It is thus quite telling that HDC points to nothing indicating where or when or how its supposed ownership of the docks came to be. As HDC itself told the FCSC, "[t]he entire pier properties are held under the terms of a concession granted by the Cuban Government," which "provide[s] for transfer of ownership of the pier properties to the Cuban Government in the year 2004." NCL.Dkt.235-12 at 2.

2. Despite reality and what HDC itself said to the FCSC—and despite the question it presented to this Court at the certiorari stage—HDC now argues that the certified claim recognized its ownership of the docks, such that the Court is required to treat HDC as having owned the docks even if it never did so in reality. HDC.Br.26.

That is wrong. The FCSC found that HDC "obtained from the Government of Cuba the renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana," and that, pursuant to the concession, it "acquired … the real property with all improvements and appurtenances located on the Avenida del Puerto." J.A.256-57. That is precisely the time-limited property right HDC now disclaims. What HDC "acquired" was a non-exclusive, time-limited, use-limited interest in the real property at the Port of Havana's San Francisco Wharf, which entitled HDC to collect cargo-related revenues, but did not entitle it to anything else—and which specifically precluded HDC from excluding others from using the real property. Indeed, the certified claim is explicit that the terms of "the concession granted by the Cuban Government were to expire in the year 2004." J.A.259.

To be sure, the certified claim also discusses HDC's ownership of particular assets—just not the ones HDC appears to want. The only time the certified claim discusses ownership of property outright is in the context of movable property within the warehouse and offices in the dock complex. J.A.257. The FCSC knew how to describe full ownership interests when it wanted to do so; it simply did not in describing the docks and concession more generally, *because HDC did not have any such ownership interest*. The FCSC recognized that what was confiscated was a concession expiring in 2004, not a concession that was merely suspended by virtue of the confiscation and thus continued to provide rights in 2016 and beyond.

HDC places near-dispositive weight on the fact that its claim includes a line-item valuation for "Buildings" separate from that for "Land and Concession." J.A.257. That, it believes, indicates that the "buildings," and thus, presumably, the docks, fall outside the scope of the "concession." HDC.Br.39-40. The government makes the same argument. U.S.Br.28. But this argument depends entirely on misreading the certified claim. The FCSC did not determine that there were "Buildings" separate from "Land and Concession"; it simply reported that HDC had *listed them* separately in its statement of losses and in its financial statements. J.A.257. Furthermore, the "buildings" line item reflected the fair market value of the buildings already constructed, thus compensating HDC for the work it did prior to expropriation on its property interest's own terms. It was not secretly conferring ownership of the docks through an accounting table.

3. In all events, even if HDC (somehow) were right and the FCSC recognized a claim to ownership of the docks outright, that would not help its cause before this Court. It would be a reason to dismiss the writ of certiorari as improvidently granted.

The question HDC presented—and on which this Court granted the writ of certiorari—was "whether a plaintiff must prove that the defendant trafficked in property confiscated by the Cuban government as to which the plaintiff owns a claim (as the statute requires), or instead that the defendant trafficked in property that the plaintiff would have continued to own at the time of trafficking in a counterfactual world 'as if there had been no expropriation'" Pet.i. That question arises only where there is a divergence between the property right at the time of the expropriation (and thus the property right that is reflected in the certified claim) and the property right at the time of the alleged trafficking. If instead HDC owned the docks outright, then the "property confiscated by the Cuban government as to which [HDC] owns a claim" is the same as the property HDC "would have continued to own at the time of trafficking" absent the expropriation. In such a circumstance, dismissing the writ as improvidently granted is the appropriate course.

CONCLUSION

This Court should affirm or, at the very least, dismiss the writ as improvidently granted.

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