

No. 24-983

In the Supreme Court of the United States

HAVANA DOCKS CORP., PETITIONER

v.

ROYAL CARIBBEAN CRUISES, LTD., ET AL.

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

**BRIEF OF CRUISE LINES INTERNATIONAL
ASSOCIATION AS AMICUS CURIAE
SUPPORTING RESPONDENTS**

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INTERESTS OF AMICI CURIAE

Cruise Lines International Association (CLIA) is a not-for-profit trade association whose membership includes dozens of cruise lines representing the vast majority of cruise capacity in North America. CLIA represents its members' interests before courts, Congress, the Executive Branch, and international tribunals. To that end, CLIA files amicus curiae briefs in cases, like this one, that raise issues of vital concern to the business of the cruise community. *See, e.g., Del Valle v. Trivago GMBH*, 56 F.4th 1265, 1270 (11th Cir. 2022); *United States v. Dish Network*, 954 F.3d 970, 973 (7th Cir. 2020).

CLIA has a strong interest in this case. In 2019, Respondents, which are CLIA-member cruise lines, were named as defendants in lawsuits alleging a novel theory of liability under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. § 6021 *et seq.*, also known as the Helms-Burton Act. *See, e.g., Garcia-Bengochea v. Royal Caribbean Cruises, Ltd.*, No. 19-cv-23592, 2020 WL 6081658, at *1 (S.D. Fla. Oct. 15, 2020); *Garcia-Bengochea v. Carnival Corp.*, No. 19-cv-21725, 2020 WL 4590825, at *1 (S.D. Fla. July 9, 2020). Respondents operated their cruises in response to encouragement from the federal government, including President Obama, and followed the government's new lawful-travel regulations.

But Petitioner, Havana Docks, sought massive damages because, it alleged, the cruise lines offloaded passengers on a dock in which it had a property interest that the Cuban government confiscated. The district court consolidated the cases and on summary judgment ordered Respondents to pay more than \$436

million, including treble damages, to Havana Docks. The Eleventh Circuit reversed, concluding that Respondents had not trafficked in Havana Docks' property. That decision was correct: The cruise lines did not traffic in any property of Havana Docks that was confiscated by the Cuban government. *See* Pet. App. 13a-14a. Havana Docks' "concession ended ... in 2004 when the 99-year term would have expired by its own terms." Pet. App. 30a. So when the cruise lines docked at the piers in 2016, they were not using any property that had been confiscated by the Cuban government.

But CLIA writes to underscore that the Eleventh Circuit's judgment is also correct for an additional reason the Eleventh Circuit did not reach: Respondents did not violate the Helms-Burton Act because they engaged in lawful travel.

INTRODUCTION AND SUMMARY OF ARGUMENT

On March 21, 2016, President Obama and President Raúl Castro held a historic press conference to celebrate the reopening of Cuba to American business and travel. After over 50 years of severely restricted travel between the United States and Cuba, President Obama declared that both governments were "moving ahead with more opportunities for Americans to travel to Cuba and interact with the Cuban people." The Obama White House, *Remarks by President Obama and President Raul Castro of Cuba in a Joint Press Conference* (Mar. 21, 2016), <https://tinyurl.com/3shrn78x>. Under changed regulations proposed by the Department of the Treasury, more Americans could travel to Cuba for educational purposes; airlines could begin direct commercial flights;

and, President Obama announced, the government had “removed the last major hurdle to resuming cruises” to Cuba. *Id.* All of this, the President declared, would mean “even more Americans visiting Cuba in the years ahead and appreciating the incredible history and culture of the Cuban people.” *Id.*

To facilitate this material change in American–Cuban relations, the Department of Treasury’s Office of Foreign Assets Control (OFAC) issued revised regulations, known as the Cuba Assets Control Regulations (CACR), to set the bounds of lawful travel to Cuba. 85 Fed. Reg. 60,068 (Sept. 24, 2020); *see* 31 C.F.R. § 515.101. OFAC authorizes lawful travel to Cuba in two forms: A specific license, which OFAC can issue after receiving an application from a traveler seeking permission to take a particular trip to Cuba, or a general license, which OFAC can issue to authorize an entire class of travel. *See id.* § 591.306. To implement President Obama’s landmark foreign policy program “to further engage and empower the Cuban people,” 80 Fed. Reg. 2,291, 2,291 (Jan. 16, 2015), OFAC issued a general license permitting travel that included a “full-time schedule of activities” that was “intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities” and that would “result in meaningful interaction[s] [with] individuals in Cuba.” 31 C.F.R. § 515.565(b)(1), (2) (2016). While “travel for tourist activities” was prohibited under the general license, 80 Fed. Reg. at 2,291, travel that complied with OFAC’s new general license now constituted lawful travel to Cuba.

The travel industry followed the federal government’s lead. Cruise lines offered trips to Cuba that complied with OFAC’s amended travel regulations.

Their itineraries included excursions to Ernest Hemingway's home, to art museums, and to famous dance performances. And cruise lines were not the only groups to respond to the federal government's call. Groups like the Harvard Alumni Association, nonprofits, and several state bar associations all ran trips to Cuba that featured nearly identical itineraries to those of the cruise lines. Visitors on these trips learned about Cuba's rich culture and engaged with local Cubans around these activities. The government of the day saluted these historic trips. President Obama celebrated the "individuals, firms, and non-governmental organizations" who followed the administration's regulatory changes, noting the nearly doubling of air travel to Cuba and especially recognizing that "the first U.S. cruise liner visited Cuban ports in May 2016." The Obama White House, *Presidential Policy Directive—United States-Cuba Normalization* (Oct. 14, 2016), <https://tinyurl.com/4u69x6yc>. The amended regulations remained in place until 2017, when the Trump Administration cut back on travel to Cuba by amending the regulations to require "people-to-people" travel to take place under the auspices of a U.S. organization that sponsors cultural exchanges. *See* 82 Fed. Reg. 51,998, 51,998-99 (Nov. 9, 2017).

Despite the initiatives emanating from the highest echelons of government, and the clarity of OFAC's general license, Petitioner Havana Docks brought an expansive and novel suit against four cruise lines under the Helms-Burton Act. That Act allows persons whose property was confiscated by the Cuban government to bring an action against any person who "traffics in" confiscated property. 22 U.S.C. § 6082(a)(1)(A). But the Act excludes from liability

any “transactions and uses of property incident to lawful travel to Cuba.” 22 U.S.C. § 6023(13)(B)(iii). In Havana Docks’ view, however, the cruise lines had trafficked in confiscated property by offloading passengers on a dock in Havana in which Havana Docks had a property interest that the Cuban government had confiscated in 1959. In defense, the cruise lines argued, among other things, that the Helms-Burton Act’s exemption for lawful travel to Cuba immunized it from suit. But the district court disagreed, finding that the cruises’ excursions—the very same kind offered by various organizations and praised by the President—were not lawful travel. *See* J.A.186-232.

The Eleventh Circuit reversed on a different ground. The Eleventh Circuit held that the cruise lines did not traffic in property that had been confiscated by the Cuban government during the time period plaintiffs claimed damages for—2016 to 2019. The Eleventh Circuit reasoned that Havana Docks held a 99-year term concession that would have expired in 2004 on its own terms. Thus, the cruise lines could not traffic in confiscated property beyond 2004, because Havana Docks would no longer have had any claim to that property.

The Eleventh Circuit did not reach the lawful travel question, but the district court was wrong on that ground, too. The cruise trips to Cuba—encouraged and blessed by the government at every turn—were lawful travel under the amended OFAC regulations because they were intended to enhance contact with the Cuban people and resulted in meaningful interaction between passengers and Cuban people. They thus fell within the Helms-Burton Act’s lawful travel exception.

1. The cruise industry responded to the federal government's encouragement to open up travel to Cuba by offering cruises that exemplified American-Cuban cultural exchange and complied with the government's lawful-travel regulations. Reopening travel to Cuba was a cornerstone of President Obama's foreign policy agenda. President Obama traveled to Cuba to announce the changes, touted the new regulations in a historic press conference and during his final State of the Union address, and issued a press release celebrating the arrival of the first cruise ship to Cuba. Far from skirting any regulations, the cruise industry responded to the federal government's encouragement and followed the federal government's lead in setting sail for Cuba.

2. The cruise lines complied with the revised OFAC regulations by offering itineraries packed with various activities that immersed travelers in Cuban culture, from art, to music, cuisine, and dance. These trips constituted lawful travel to Cuba under 31 C.F.R. § 515.565(b) (2016) because they were intended to enhance contact with the Cuban people and resulted in meaningful interaction between passengers and Cubans. These trips were lawful travel to Cuba for the same reason that the cruises were lawful travel to Cuba. The district court's contrary interpretation risks chilling international travel should the United States reopen travel to Cuba or other countries. The district court's interpretation also would imply liability for other groups ranging from the Colorado Bar Association to the Metropolitan Museum of Art, which organized trips to Cuba in this period with itineraries that are notably similar to the cruise lines'.

3. Holding cruise lines liable for conduct that the federal government encouraged would raise serious

due process concerns. The due process guarantee ensures that people (including corporations) can order their affairs in reasonable reliance on the government’s word and course of conduct. The government may not impose after-the-fact liability based on conduct that was lawful and justified by reasonable reliance on what the government had previously said the law was. *See PHH Corp. v. CFPB*, 839 F.3d 1, 48 (D.C. Cir. 2016) (Kavanaugh, J.), *reinstated in pertinent part on reh’g en banc*, 881 F.3d 75, 83 (D.C. Cir. 2018) (en banc).

The government here affirmatively encouraged the cruise lines to operate in Cuba to achieve its foreign policy goals. Holding the cruise lines liable for actions they took “in reliance on the government’s assurances” that the conduct was lawful would “amount[] to a serious due process violation.” *PHH Corp.*, 839 F.3d at 48.

ARGUMENT

I. The cruise industry followed the lead of the United States government in offering travel to Cuba.

At every stage of the regulatory process that relaxed travel to Cuba, the Obama Administration encouraged the cruise industry to sail to Cuba. In turn, cruise lines followed every requirement to sail to Cuba. After the cruise lines had completed trips, the government celebrated their historic journeys—and the first Trump Administration followed suit for its first two years.

A. In 2014, the Obama Administration announced that, as part of a sweeping and historic change in the United States’ relationship with Cuba, the United States would make it “easier for Americans

to travel to Cuba.” The Obama White House, *Statement by the President on Cuba Policy Changes* (Dec. 17, 2014), <https://tinyurl.com/9jfhzjds>. “Nobody represents America’s values better than the American people,” President Obama observed, explaining that contact between Americans and Cubans “will ultimately ... empower the Cuban people.” *Id.* And when the government announced the lawful-travel regulations, the White House issued a statement that “[t]he President is taking steps to improve travel and remittance policies that will further increase people-to-people contact, support civil society in Cuba, and enhance the free flow of information to, from, and among the Cuban people.” The Obama White House, *Charting a New Course on Cuba*, <https://obamawhitehouse.archives.gov/issues/foreign-policy/cuba>. The White House praised the increased travel that would result, because “[w]ith expanded travel, Americans will be able to help support the growth of civil society in Cuba more easily, and provide business training for private Cuban businesses and small farmers. Americans will also be able to provide other support for the growth of Cuba’s nascent private sector.” *Id.*

President Obama celebrated the historic regulations in his 2016 State of the Union Address: “Fifty years of isolating Cuba had failed to promote democracy, and set us back in Latin America. That’s why we restored diplomatic relations [and] opened the door to travel and commerce, positioned ourselves to improve the lives of the Cuban people.” The Obama White House, *Remarks of President Barack Obama – State of the Union Address As Delivered* (Jan. 13, 2016), <https://tinyurl.com/3x73zmzt>. So did Benjamin Rhodes, the Deputy National Security Advisor: “We have enormous confidence in the American people as

ambassadors. ... There's no shortage of opportunities for Americans to build that type of meaningful schedule of people-to-people engagement while they go to Cuba. We believe that's the best way to connect the Cuban people with the wider world." Julie Hirschfeld Davis, *U.S. Eases Restrictions on Travel to Cuba and Bank Transactions*, *New York Times*, March 15, 2016, <https://tinyurl.com/2fctw4vy>.

Just a few months after the State of the Union, President Obama took a historic trip to Cuba, where he continued to encourage the cruise industry to sail to Cuba. President Obama told a joint American-Cuban press corps that the two countries were "moving ahead with more opportunities for Americans to travel to Cuba and interact with the Cuban people." The Obama White House, *Remarks, supra*. President Obama announced that his administration had "removed the last major hurdle to resuming cruises and ferry service," and that, as a result of the amended regulations, "even more Americans [will] visit[] Cuba in the years ahead and appreciat[e] the incredible history and culture of the Cuban people." *Id.*

B. Before setting sail to Cuba, the cruise industry followed the amended regulations to the letter. Each of the Respondents sought specific licenses from OFAC for their trips to Cuba. In response, OFAC informed them that their trips were covered by the general license, so a specific license was not required. (Carnival had applied for, and received, a specific license before OFAC's general license regime went into effect. *See* Exhibit 23 of Carnival Corp.'s Individual Statement of Material Facts at 4, *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724 (S.D. Fla. Sept. 20, 2021).) And several of the cruise lines required its passengers to swear by affidavit that they were traveling

to Cuba with the intent to engage in people-to-people travel. *See* J.A.107, 125.

The government repeatedly refused to take action against the cruises during this time. Havana Docks sought to persuade the Executive that the cruises violated the Helms-Burton Act. *See* Exhibit 81 to Defendant’s Statement of Undisputed Material Facts at 5, *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591 (S.D. Fla. Sept. 21, 2021). The State Department disagreed, though, on the ground that the cruises were engaged in lawful travel and thus met the lawful travel exception. *See* J.A.834-36; J.A.837-40; J.A.841-42.

The State Department’s conclusion was consistent with the Obama Administration’s celebration of the cruise lines after they set sail. After Carnival docked the first cruise ship to sail to Cuba under the changed regulatory regime, the Obama Administration celebrated the landing, issuing a statement recognizing “the first U.S. cruise liner” to visit a Cuban port. The Obama White House, *Presidential Policy Directive—United States-Cuba Normalization*. Approving of the cruises that had set sail to date, the Obama Administration promised to “continue to encourage people-to-people linkages through government and privately sponsored exchanges, including those involving educational, cultural, business, science, environment, technology, and sports.” *Id.* Thus, the Obama Administration pledged to “continue to support the development of scheduled and chartered ... maritime links.” *Id.*

C. The Obama Administration wasn’t the only administration that blessed cruise travel to Cuba. For more than two years into President Trump’s first

term, the administration allowed cruises to continue lawful travel to Cuba without taking any action. *See Marti v. Iberostar Hoteles y Apartamentos S.L.*, 54 F.4th 641, 644 (11th Cir. 2022). The government’s approach to lawful travel did not change until 2019, when the Bureau of Industry and Security eliminated regulations allowing cruise travel to Cuba. *See* 84 Fed. Reg. 25,986, 25,987 (June 5, 2019). Once the regulations changed, the cruise lines immediately halted operations to Cuba.

II. The cruise excursions were intended to enhance contact with the Cuban people.

The federal government’s encouragement, praise, and repeated promises to continue supporting the cruise industry’s travel to Cuba was consistent with the announced policy of the Executive at the time. The cruise industry organized itineraries exposing travelers to a rich array of Cuban culture and affording many opportunities for Americans to interact with Cubans. That’s exactly why those itineraries satisfied the lawful travel regulation—they were intended to enhance contact with the Cuban people, and they resulted in meaningful interactions between Americans and Cubans. *See* 31 C.F.R. § 515.565(b) (2016). The cruise lines’ itineraries took travelers to museums, on guided tours of famous architectural and literary sites, and to artist colonies.

The district court misread the regulation, however. Instead of looking holistically at the “full-time schedule of activities” to assess whether they “enhance[d] contact with the Cuban people,” *id.*, the district court looked activity-by-activity and assessed whether each individual activity satisfied the regulation. That was wrong, and the Eleventh Circuit could

have vacated the district court’s order on this independent ground.

A. The cruise itineraries were lawful travel under 31 C.F.R. § 515.565(b).

The Helms-Burton Act provides an exception for liability for “transactions and uses of property incident to lawful travel to Cuba.” 22 U.S.C. § 6023(13)(B)(iii). OFAC promulgated a regulation defining lawful travel, which included “people-to-people travel,” defined as travel “for the purpose of engaging, while in Cuba, in a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities.” 31 C.F.R. § 515.565(b), (b)(1) (2016). The regulation also requires each traveler to have “a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba.” *Id.*

The text of each of those provisions requires an examination of the itinerary *as a whole*. Both provisions focus on the “full schedule,” not each individual activity on the schedule. Thus, travel is lawful if the itinerary, in its entirety, is intended to promote contact with the Cuban people and will result in meaningful interactions between travelers and Cubans.

The examples of lawful travel provided by OFAC during the rulemaking process confirm that trip itineraries must be assessed holistically. In one example, OFAC described a hypothetical trip in which Americans traveled to Cuba to volunteer with an organization building schools in Cuba. “In their free time, the travelers plan to rent bicycles to explore the

streets of Havana and visit an art museum.” 82 Fed. Reg. at 52,003. OFAC advised that this trip “would qualify for the general license” because the trip would “constitute a full-time schedule that enhances contact with the Cuban people ... and results in meaningful interaction between the travelers and individuals in Cuba.” *Id.* OFAC did not parse each aspect of the trip individually, but focused on the itinerary as a whole.

Under that standard, the cruise itineraries were lawful travel. Take one sample cruise itinerary. One of the days, “The Best of Havana,” included a tour of “El Cristo” (a 55-foot-tall statute of Christ) and a tour of a historic fort, followed by a visit to a historic cemetery and the Plaza de la Revolución. Exhibit 175 of Plaintiff’s Statement of Material Facts in Support of Individual Motion for Summary Judgment at 12, *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724 (S.D. Fla. Sept. 16, 2021). After lunch at a local Cuban restaurant, passengers visited the “Fusterlandia mosaic playground,” a community cultural arts complex where passengers met with local artists. *Id.* The day concluded in the Plaza de la Catedral, an active Cuban plaza. *Id.*

Another sample itinerary, “Flavors & Traditions of Havana,” introduced passengers to other aspects of Cuban culture. First, guests began with a “traditional Cuban meal” where a local guide told the history of Cuba through the lens of the country’s agriculture and cuisine. *Id.* at 16. Passengers then visited a plaza to learn about famous Cuban poet José Martí, followed by a trip to “Muraleando,” a local art space and community center where passengers could meet local artists. *Id.* The day ended with a live performance. *Id.*

Assessed as a whole, itineraries like these were intended to enhance contact with the Cuban people. The itineraries introduced passengers to the religion, cuisine, arts, music, and architectural history of Cuba. In other words, the trips exposed passengers to core facets of Cuban culture, just as a visitor to France may gain an appreciation of French culture by taking a guided tour of the Louvre, eating at a local café, or attending a cabaret performance at the Moulin Rouge. Visitors who spend a full day embarking on such activities enhance their contact with locals, even if not every minute of every activity involved dialoguing with a local. In the cruise itineraries, passengers interacted with Cuban artists and could interact with other Cubans while in the historic plazas where the tour began and concluded. Viewed in total, a day of museum tours, artist workshops, dance performances, and local cuisine undoubtedly enhances contact between cultures.

B. The district court’s contrary conclusion rested on a flawed interpretation of the regulations and could chill future travel.

Despite the cross-cultural contact at the center of the cruise lines’ itineraries, the district court concluded that those itineraries were not lawful travel under 31 C.F.R. § 515.565(b) (2016). In reaching that conclusion, the district court failed to examine the itineraries’ “schedule of activities” and instead looked activity-by-activity, asking whether each activity involved direct interaction between passengers and Cubans. That was error. The regulation calls for a holistic inquiry into the “full-time schedule of activities” to determine whether they are “intended to enhance contact with the Cuban people.” *Id.* § 515.565(b)(1) (2016).

Consider the district court's approach to one cruise line's "Hemingway's Havana" itinerary. The tour includes "travel by bus to Hemingway's former home," a guided tour of the fishing town Cojimar (the inspiration for *The Old Man and the Sea*), and a visit to a local community to engage "with local Cubans working to improve their communities." J.A.197 (citations omitted). In the district court's view, *only* that last tour stop constituted lawful travel. *Id.* The district court failed to recognize that a visit to the home of one the world's most famous authors associated with Cuba and a guided tour of the town that inspired that author's Pulitzer Prize winning novel could enhance contact with the Cuban people.

Taken to its logical conclusion, the district court's interpretation would find unlawful an itinerary that included a rest stop for passengers to use the bathroom, or one that provided a stop for lunch, or one that required a ten-minute bus ride from activity to activity. After all, none of those activities involve direct dialogue with Cuban people. It would be impossible to construct an itinerary that complies with the district court's interpretation of the regulation, and the regulation does not call for such a detailed examination of each activity in any event. Viewed properly, the cruise itineraries complied with the lawful travel regulation.

Although the Eleventh Circuit reversed the district court on other grounds, reviving the district court's lawful travel analysis could chill future travel to Cuba and elsewhere.

The district court's erroneous analysis risks chilling future travel—to Cuba, or to any other country. It is uncertain where the next historic thawing of relations between the United States and other

countries will come, and what regulatory regime may govern travel. But the district court's decision casts a shadow over the cruise industry's participation in historic foreign policy. And parts of the lawful-travel regulation—including the language permitting travel (which now must take place under the auspices of particular organizations, *see* 31 C.F.R. § 515.565(b)(1))—remain in effect. Thus, organizations planning travel to Cuba face the threat of onerous liability. An atextual, cramped reading of the lawful travel regulation—particularly when set against the broad, sweeping pronouncements celebrating cruise travel by the federal government—will be a cautionary tale for the industry going forward.

That chilling effect has real, and unfortunate, consequences. The purported goal of the Obama Administration's regulation was to assure the travel industry that it was now lawful to travel to Cuba. The underlying premise of this policy rationale was that increased international travel would benefit both Americans and the entire globe. *See* The Obama White House, *Presidential Policy Directive—United States-Cuba Normalization*. Yet if the travel industry is unable to provide such services without incurring the risk of treble damages amounting to a more-than-\$400 million price tag, then lawful travel to Cuba would remain impracticable, no matter what assurances the federal government offers.

C. Many groups—not just cruises—offered excursions to Cuba.

All sorts of groups—encouraged by the federal government—traveled to Cuba with similar itineraries under OFAC's lawful-travel regulations. Bar associations, university alumni groups, museums,

and nonprofits (just to name a few) all developed itineraries filled with visits to artists' colonies, museums, architecture tours, and live performances. Under the district court's interpretation of § 515.565(b), *none* of those trips were lawful.

Recall the "Best of Havana" itinerary. The Harvard Alumni Association organized a trip to Cuba in 2017 with a remarkably similar itinerary. Harvard alumni went on a walking tour of Old Havana; traveled to artist Jose Fuster's "Fusterlandia," where they met with artists; took in a performance "by a local stomp band"; and ate at a traditional restaurant for dinner. Harvard Alumni Association, *Travels 2017: ¡Cuba!*, at 5, <https://tinyurl.com/bdenp5kn>. This trip would also fail the district court's flawed interpretation of the lawful travel regulation; only the Fusterlandia component, viewed in isolation, would count as lawful travel. On the district court's view, the rest of the activities would not count, the trip would have been unlawful, and the Alumni Association would be liable under the Helms-Burton Act for any incidental use of property that had been confiscated.

The Colorado Bar Association would also have been liable under the district court's interpretation. Its 2017 trip to Cuba featured a day in Havana including a walking tour of Havana's plazas, a lecture about Cuba's history, lunch in a local restaurant, and an orchestral performance in the evening. Colorado Bar Association, *Journey to Cuba: A Cross-Cultural Educational Exchange*, January 29 – February 2, 2017, at 3, <https://tinyurl.com/3b359p89>. Picking apart that itinerary with the district court's flawed methodology would mean that the trip was unlawful.

Finally, consider the Fulbright Association's 2017 tour to Cuba. One of the days included a visit to a garden and then a visit of Ernest Hemingway's home, followed by lunch, and a tour of Old Havana's plazas. Fulbright Association, February 2017 Insight Tour to Cuba, <https://tinyurl.com/5dc2rpyx>. By the district court's logic, the Fulbright Association engaged in unlawful travel and would thus be subject to damages for trafficking in any confiscated property.

The list goes on. In addition to the Harvard Alumni Association, the Colorado Bar Association, and the Fulbright Association, other groups traveled to Cuba under the 2015 OFAC regulations and engaged in nearly the same important cultural activities that cruise passengers engaged in, including the Contra Costa County Bar Association (Journey to Cuba: A Cross-Cultural Educational Exchange, February 18-24, 2017, <https://tinyurl.com/5yww2x94>), University of Pennsylvania Alumni Travel (Discover 2017: Explore Cuba, February 18-25, <https://tinyurl.com/3j2hpu5u>), Lewis and Clark College Alumni (Cuba: Art, Music, and Cultural Creativity in the 21st Century, May 7-14, 2017, <https://tinyurl.com/hvwfh4wm>), the University of Wisconsin-Milwaukee's Osher Lifelong Learning Institute (Cuba: Art, Culture, History, Politics and Economics, November 27-December 4, 2017, <https://tinyurl.com/tr8a8vjz>), the Metropolitan Museum of Art in New York (The Art & Architecture of Cuba: A New Year's Celebration, <https://tinyurl.com/22eak6kn>), and the Flying Physicians Association (Cuba: A Trip Back in Time, at 16-19, <https://tinyurl.com/5yst2u6f>).

It is no coincidence that each of these trips converged on extremely similar itineraries. Nearly all

these groups partnered and interacted with a small group of *Cuban companies* to organize OFAC-compliant itineraries fulfilling the foreign policy goals set out at the highest level of the federal government. Many of the groups advertised that they contracted with the same Cuban company as the cruise lines to develop itineraries. *See, e.g., Cuba: A Trip Back in Time*, at 16. There is no more reason to think that the cruise industry deserves a \$400 million punishment for answering the federal government’s call than there is to think that any of these other groups violated the law. The cruise lines are only some of many groups that worked with the federal government to facilitate travel to Cuba. They complied with the relevant regulations and offered what their customers considered to be enriching culture-focused trips to Cuba.

III. Holding cruise lines liable for conduct the government encouraged raises serious due process concerns.

Due process requires the government to “turn square corners in dealing with the people.” *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 24 (2020). When the government engenders reliance on its interpretation and articulation of the law, due process—and indeed, the rule of law—ensures that citizens may order their affairs in reasonable reliance on the government’s word and course of conduct. Courts thus should not condone after-the-fact liability for conduct that the government represented was lawful and which parties thus undertook in reasonable reliance on what the government had said the law was. *PHH Corp.*, 839 F.3d at 46-49. Imposing penalties on parties for following the government’s inducement to lawful action creates an unconstitutional bait and

switch. Due process requires that “regulated parties should know what is required of them so they may act accordingly.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

Interpreting the Helms-Burton Act to require damages for the very conduct that the federal government encouraged would create just such an unconstitutional bait and switch. The Obama Administration actively sought cruise lines’ cooperation to further its foreign policy agenda, and it spurned Havana Docks’ effort to find the cruise lines liable under the Helms-Burton Act. *See supra* pp. 7-11. Recognizing liability for the cruise lines’ conduct, which the federal government encouraged and blessed, create serious due process concerns. Those concerns are all the more reason to affirm the Eleventh Circuit’s judgment.

CONCLUSION

The Court should affirm.

Respectfully submitted.

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