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

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

Congress designed Title III to keep Cuba from exploiting the facilities it had seized from Americans. Those facilities are "property which was confiscated" and thus subject to Title III's anti-trafficking prohibition. 22 U.S.C. §6082(a)(1)(A). Cuba's seizures extinguished Americans' property interests in the facilities, and Title III provides those victims with a distinct federal remedy in their place. That private right of action to enforce the Act's anti-trafficking provision is available to any U.S. national who holds a claim reflecting any former interest in the seized property. That natural reading of Title III achieves all of Congress's foreign policy objectives.

Respondents would have this Court narrow Title III's scope at every turn. A linchpin of respondents' argument is that a plaintiff must show trafficking in its own former property *interest*. However, the Act instead distinguishes carefully between seized property that cannot be trafficked and "claims," which can arise from any of the former interests in confiscated property and enable each claimholder to enforce the anti-trafficking prohibition. Respondents break this link between claims and the private right of action.

Respondents also would erase from the statute's protection many "claims" that would otherwise support anti-trafficking actions even under respondents' narrow, interest-focused view of Title III. In their view, no "claim" can support a Title III action if, had no confiscations occurred, a plaintiff would have lacked a present interest in the property at the time of trafficking. However, Congress had focused entirely on providing a remedy for confiscations that

had occurred and had *extinguished* Americans' interests. Title III seeks to protect rights identified in certified claims, which reflect rights stolen from Americans and valued by the FCSC as they actually existed when confiscated in 1960—not as imagined to exist at the time of trafficking. The duration of Title III's protection against trafficking is not governed by how Cuban property law would have operated on the extinguished interest. Instead, Title III expressly places its own time limitations on its remedy, based on whether Cuba has remedied the harm it caused to U.S. victims. Here, Title III gives effect to the claim arising from the taking of Havana Docks' (or "HDC") interest in and commercial control of the docks. It does not, as respondents would have it, "expand" the duration of a right that ceased to exist in 1960.

Finally, respondents argue throughout that, under Cuban law, HDC's interest was limited to handling cargo operations and was not the extensive interest and plenary commercial control of the docks determined by the FCSC. Respondents would have trafficked in the docks even if their view of HDC's interest were accurate, but the Act relieves the Court of any need to resolve Cuban law issues. Title III treats the FCSC as the expert on Cuban law and gives conclusive weight to the FCSC's determinations regarding HDC's taken interest. In any event, Cuban law provided broad rights to HDC and fully supports the FCSC's decisions, providing one more reason that Title III's plain terms enable HDC to proceed with a suit addressing respondents' use of the docks.

ARGUMENT

I. Title III Liability Arises from Cuba's Seizure and Exploitation of the Dock Facilities.

A. The Dock Facilities Are the "Property Which Was Confiscated."

1. Respondents argue that Title III liability arises only when a defendant traffics in a plaintiff's specific property interest. Resp.Br. 20-21, 24. However, the Act does not support limiting "property which was confiscated" to the plaintiff's former interest.

To the contrary, Cuba's seizures of physical property routinely extinguished many different interests in that confiscated property.[1] Congress was acutely aware that Cuba had taken a vast range of physical property—*facilities* such as mines, refineries, transportation operations, and others were all "property which was confiscated." Fisk Amicus Br. 8. It thus defined "confiscated" property to include any "nationalization, expropriation, or other *seizure … of … control* of property." 22 U.S.C. §6023(4)(A) (emphasis added). Congress recognized that the seizure of any land, plant, or other physical or other

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[1] Respondents' asserted "one-to-one correspondence" between confiscated property and the plaintiff's former interest, Resp.Br. 20, also misreads the Act because separate claims may be held in the same confiscated property—for example, by tenants in common, co-owners of patents or copyrights, trust beneficiaries, joint inheritors, and various other holders of coterminous interests. See, *e.g.*, FCSC, *Section II Completion of the Cuban Claims Program*, 77-80 (1972) ("FCSC Final Report").

property would harm a range of holders of different property interests. It thus provided each of the former owners (if a U.S. national) with the ability to enforce its "claim," reflecting "ownership of an interest in property," 22 U.S.C. §6083(a)(1), through a private right of action against whoever trafficked in the underlying "property which was confiscated," 22 U.S.C. §6082(a)(1)(A). At the same time, Congress used "property" in the phrase "property which was confiscated" without any limiting reference to plaintiff's interest.

The Act thus provides former holders of any interest in the seized property with a claim-based private right of action directed against trafficking in the seized property. Thus, "[a]ny person that traffics in confiscated property" "shall … be liable" to any U.S. national that "owns a claim with respect to that property." 22 U.S.C. §6082(a)(3)(A); see *id.* §6082(a)(4) (certain limits on ability to "bring an action … on a claim to the confiscated property"); see also HDC.Br. 24-27; U.S.Br. 17-24; Pet.App. 89a-100a & J.A.184-85 (Judge Bloom). Title III simply imposes no requirement that a plaintiff show that a defendant trafficked in the plaintiff's particular former interest in confiscated property.

2. The seizure of HDC's dock facilities illustrates the point. As the FCSC recognized, the Cuban government sent armed officials to "physically occup[y]" the dock facilities, J.A.257, making them "property which was confiscated" through a "seizure" of "control." 22 U.S.C. §§6023(4)(A), 6082(a)(1)(A). For example, that confiscated property included not only HDC's interests, but also a mortgage protected by a security interest in the physical docks. J.A.261 (FCSC

recognition, affecting valuation); *id.* 14 (Eleventh Circuit majority). Havana Docks had also leased a portion of the docks to the United Fruit Company, and had that lease not ended earlier, it, too, would have been a taken interest in the "confiscated property." *See* Carnival.Dkt. 318-12. All of the U.S. national owners of these affected interests and any other interests in the fixtures, piers, or land would each, under the plain reading of the Act, have claims that could be enforced against any person trafficking in the dock facilities.

3. This Court, too, has taken a similar view of confiscation and the various interests it affects. It explained that Cuba had seized "property or enterprises in which American nationals had *an interest*." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 401 (1964) (emphasis added).[2] It also rejected the argument, much like respondents' here, that "Cuba had expropriated merely contractual rights"—there, related to the right to receive the proceeds of sugar held in a ship seized just off Cuba's coast and subject to an executed sales contract. *Id.* 413. Even though the physical sugar was subject to the purchaser's rights as successor (making the American victim's interest time-limited, as it would end upon the completed sale), the Court looked to the property subject to Cuba's seizure of control. The Court reasoned in part that Cuba had seized the physical sugar by forcibly preventing the ship from departing Cuban waters—and did not merely

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[2] That confiscation power mirrors the one at issue here. See *Sabbatino* at 403 n.7 (Resolution 1, implementing Law No. 851); compare J.A.482-96 (Resolution 3, implementing same law against HDC).

"expropriate a contractual right" of the American victim. *Id.* That conclusion was not dicta, but was rather necessary to the Court proceeding to analyze the Act of State doctrine issue for which the case is famous.

4. Respondents ignore how Cuba's seizure of facilities extinguished various interests in them, and they attack HDC's and the government's construction of the statute as "radical." Resp.Br. 37. They point to no textual basis for their attack apart from the Act's use of "property." Instead, they assert that Title III prohibits only trafficking "in a plaintiff's confiscated property" and that the "Helms-Burton Act addresses property interests." *Id.* 37-38. That limit on trafficking is found nowhere in the Act, see *supra* at 3-4, and "property interests" are important under the Act because their former ownership is reflected in "claim[s]" that entitle the former owner to enforce the anti-trafficking provision. 22 U.S.C. §§6082(a)(1)(A), 6083(a)(1). Trafficking liability arises whenever a person traffics in "property which was confiscated"—not in the plaintiff's claim or the particular interest giving rise to it, which was long ago extinguished.

There is nothing radical or unusual in Congress providing that any party harmed when Cuba seized property can sue when that seized property is exploited. That is, in fact, the point of the Act. See 22 U.S.C. §6081(2), (5)-(8) & (10)-(11); HDC.Br. 44-50.

B. Title III Did Not Cease Protecting the Docks From Trafficking in 2004.

Even if respondents were right that the "property which was confiscated" is coterminous with HDC's former interest in the docks, the result would be the

same. That is so because Title III addresses and provides a remedy to rule off limits from trafficking the "property which was confiscated" *as it existed and was taken in 1960*. Cuba at that time took HDC's right to 44 more years of control of the dock facilities, and that taking—and Title III's protection of it as confiscated property—remain in effect to this day. "[P]roperty which was confiscated" and Title III's associated protection of it did not instead lapse in 2004.

1. Throughout their brief, respondents present their core argument—the need to "treat[] property like property" and variations on the point—as though references to "property" resolve rather than beg the question of which property Congress addressed in the phrase "property which was confiscated." Resp.Br. 42. The parties agree that Cuba's seizure of control of the docks took HDC's interest in the docks as it existed in 1960, that the FCSC valued those 1960 property interests and certified HDC's claim arising from its former ownership of them, and that the resulting certified claim provides the basis for HDC's Title III suit. However, the parties dispute whether Congress intended "property which was confiscated" to mean the property interest taken in 1960 (an interest in and control of the docks, with at least 44 years to run) or intended the phrase to mean whatever interest a plaintiff would have owned under Cuban law at the time of trafficking had there been no confiscation (thus permitting Cuba and respondents to exploit the docks after 2004). Respondents' references to "Cuban property law" or "actual property"—or their assumptions that Title III looks to Cuban law on an ongoing basis to determine the evolving "metes and bounds of a plaintiff's property interest" as it would

have existed but for confiscation, Resp.Br. 24-25—do not speak to why, of these two contested constructions, theirs is correct.

Respondents cannot reconcile (i) the uncontested fact that "claim[s]" to "such property" reflect property identified and valued as it existed upon confiscation with (ii) their view that "property which was confiscated" does not also identify and protect confiscated property as it existed at that time. Their view severs Section 6082's link between claims and enforcement of the prohibition against trafficking in confiscated property. Doing so defeats all of Congress's clear objectives.

Respondents likewise duck the core interpretive issue by dismissing the Eleventh Circuit's central holding in a footnote. Resp.Br. 34 n.4. At least the Eleventh Circuit majority provided a rationale for its conclusion. It reasoned that Title III should be implemented by viewing "the property interest at issue in a Title III action as if there had been no expropriation" and "whether the alleged conduct constituted trafficking in that interest." J.A.20; *id.* 22 (instructing courts to ignore "the distorting effects of confiscation").

Respondents avoid this holding, but the Eleventh Circuit's express tie of Title III's scope to how Cuban law would have continued to affect the former interest in the absence of confiscation (which also underpins the cruise lines' "actual property" points) is the source of all the practical mischief that court's holding generates. By defining "property which was confiscated" in this way rather than as the property rights existing at the time of confiscation and reflected in a claim, the Eleventh Circuit dramatically curtailed

Title III's operation. No longer placing off limits from exploitation all facilities and other property seized by Cuba, the Eleventh Circuit's test fails to give effect to claims reflecting a broad range of property interests including the very significant time-limited properties seized by Cuba. HDC.Br. 48-50. This, in turn, enables Cuba and its partners to exploit the seized property and undermines Congress's foreign policy objectives. This is also the furthest thing from Congress's objective of enabling all FCSC-certified claims to support Title III actions, such that "no court should dismiss a certification in an action brought under this title." H.R. Rep. 104-468, at 63 (1996) (conference report); see Fisk Amicus Br. 14-16.

2. Respondents do briefly address arguments they claim relate to "suspended" or "tolled" property interests, Resp.Br. 29-30, but this, too, misses the core point of Title III and Havana Docks' argument. Congress was intensely focused on how Cuba had stolen or, more politely, "confiscated" Americans' property, thereby extinguishing their interests through an unremedied wrong. Because confiscation extinguished HDC's former rights, those rights ceased to exist: there was no suspension or tolling. Cuban law no longer applied to limit or terminate those rights, and HDC's former property interest neither benefited HDC nor limited the operation of Title III's anti-trafficking provision to HDC's detriment. See HDC.Br. 27-37; but see Resp.Br. 29 ("Cuban property law does not stop the clock from running" on HDC's interest). Because Havana Docks' 1960 interest and its 44 years of further control of the docks was stolen and Cuba's wrong continued, the property remained "confiscated," 22 U.S.C. §6023(4)(A), and Title III's protections persisted. The docks remain encumbered

by HDC's claim, and Title III continues to impose liability if Cuba or its partners control or otherwise use them for commercial purposes. HDC.Br. 27-37.

Respondents correctly note that takings cases point to the nature of the confiscated property, Resp.Br. 38-39, but they draw the wrong lesson from them. For example, when the government takes a leasehold interest, it must pay for the value of improvements as well as the net value of the remaining use of the property. See *Almota Farmers Elevator & Warehouse Co. v. United States*, 409 U.S. 470, 474-78 (1973). That is so despite the leaseholder's having had no right to the improvement after the lease was to have expired. Title III likewise recognized that no payment was forthcoming from Cuba for such taken interests and so made the seized facilities subject to an anti-trafficking right of action. The dock facilities are, at the least, valuable improvements constructed by Havana Docks and are, in accord with *Almota*, "property which was confiscated" encumbered by a certified claim that provides the basis to sue under Title III. See HDC.Br. 33-35; *cf.* FCSC Final Report, at 75 (lease improvements were allowable losses). And Cuba's ongoing obligation to pay for the improvements is especially clear here, where the 44 years of control of the docks taken from HDC was designed to serve as payment for Havana Docks' earlier construction of the dock facilities. HDC.Br. 33-35.

3. The cruise lines at various junctures present their "treat[] property like property" argument as an objection that the United States' and HDC's constructions of Title III would "expand" HDC's former property interest and turn it into a fee simple

interest. (Although fee simple interests are literally foreign to Cuban civil law, see *infra* 19, this refers apparently to an interest without time or use limitations.) That, too, misconstrues Title III, which does not resurrect a plaintiff's extinguished interest in the confiscated property. Rather, Title III provides a remedy targeted against seized property subject to a claim. After confiscation, the Title III plaintiff plainly receives no benefit from any former interest, "fee simple" or otherwise, and likewise Cuban law has no ongoing effect on plaintiff's protections afforded by Title III. There is no "expanded" property interest. There is just a distinct federal remedy premised on claim ownership. That federal remedy protects from exploitation the property seized by Cuba, and gives effect to plaintiff's taken rights as they existed at the time of confiscation. It also bears its own time limit, defined by the term "confiscated" and persisting until Cuba rights its wrong. See HDC.Br. 33-35. In contrast, respondents' point assumes that their "one-to-one correspondence" limits trafficking to use of HDC's former interest and that Cuban law continued to limit that interest and the Act's operation, ending Title III's protections in 2004. But their argument provides no reason to support either assumption or to conclude that Title III is limited in the dramatic manner respondents claim.

C. Cuba and Its Business Partners Trafficked in Confiscated Property.

Even if the cruise lines could show the "one-to-one" equivalence limiting the scope of confiscated property *and* show the relevance of HDC's former interest having been expected to end in 2004, they would still have to—but cannot—show that they did not "use or

otherwise benefit[] from confiscated property." 22 U.S.C. §6023(13)(A)(ii); HDC.Br. 35-37.

Respondents principally argue that HDC's argument "contravenes the statutory text" by ignoring how the defendant's commercial activity must "otherwise benefit" from "confiscated property," and that a finding of trafficking here would "transform" Havana Docks' interest "into a fee-simple style interest in the docks themselves." Resp.Br. 31. This "interest expanding" argument is wrong for reasons just noted. Further, Cuba's and respondents' later commercial exploitation of the docks, before and after 2004, did "otherwise benefit" from Cuba's seizure of the docks: Cuba is using the same property it took rather than paid for, and it and its partners benefitted from that windfall as they used the docks.[3] Title III is an anti-fencing statute designed to prevent exactly this *ongoing* unjust enrichment, HDC.Br. 33-38, and a finding of trafficking on this basis is wholly consistent with the Act's language and purpose.

Respondents also claim that Havana Docks' argument is "new" and thus forfeited. Resp.Br. 31. HDC's argument would, even if new, be well within the bounds of additional points that can be presented and considered because it supports an issue or claim already before the Court. See *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 534-35 (1992). Regardless, HDC has always argued that the cruise lines trafficked in

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[3] Respondents note that "respondents are not Cuba," Resp.Br. 31, but respondents themselves used and benefited from the confiscated property and are also liable because they "participate[d] in, or profit[ed] from" Cuba's own trafficking. 22 U.S.C. §6023(13).

confiscated property as defined in Section 6023(13) and repeatedly quoted and relied on the full statutory phrase "using or otherwise benefiting from confiscated property." J.A.147-151 (Judge Bloom rejecting respondents' argument). If HDC now emphasizes the middle three words of the phrase, that is because those words are particularly relevant to the question presented (showing why the Eleventh Circuit's hypothetical test misconstrues the Act) and operate as described in a decision issued on April 14, 2025. See *Fernandez v. Seaboard Marine*, 135 F.4th 939, 954-55 (11th Cir. 2025), cert. pending (No. 25-283).

Respondents' *amici* argue that the Obama Administration authorized respondents' activities, making those activities "lawful travel" for purposes of an affirmative defense to Title III's trafficking prohibition. See 22 U.S.C. §6023(13)(B). This issue has nothing to do with the question presented and is, as respondents have argued, Cert.Opp. 22-24, a separate issue untouched by the Eleventh Circuit (but which would be before it on remand). In any event, the argument is without merit. Judge Bloom comprehensively canvassed respondents' evidence and legal arguments on the point and emphatically rejected them for multiple reasons, principally focused on how relevant statutes and regulations prohibited "tourism" (and respondents are nothing if not in the tourism business). J.A.186-225. Respondents' *amici* do not here contest that the statutory and regulatory prohibitions on tourism in Cuba remained in place (including during the first Trump Administration, when most of respondents' use of the docks occurred), nor do they establish that respondents' conduct was anything but tourism or that either OFAC or the

President took any affirmative action (as opposed to mere non-enforcement) that made their conduct lawful.[4]

II. Havana Docks' Former Interest Gave It Plenary Commercial Control of the Dock Facilities.

Respondents rest much of their narrative and argument on the assertion that, as a matter of Cuban law, Havana Docks possessed only a non-exclusive, limited right to use the docks only for cargo operations. Those supposed limits on HDC's confiscated interests are wholly imagined, wrong as a matter of Cuban law, and foreclosed here by the Act's terms.

1. This "limited use" theory would not assist the cruise lines even if it had any basis in Cuban law and was not foreclosed by the FCSC's decisions. If "property which was confiscated" is that which Cuba seized (the docks), then all that is required to pursue a Title III action here is a claim reflecting any former interest in those docks. See *supra* Part I.A. Respondents acknowledge that "no one ever doubted that HDC had an interest in the docks," Cert.Opp. 12, and the FCSC decisions and the grants of rights from

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[4] Respondents' *amici* cite 31 C.F.R. §515.565(b), but that expressly bars authorization for "tourism." They also invoke a "general license" addressing transport to Cuba, but that generally-applicable regulation reflected no approval of particular conduct—and applied at most to transport to Cuba (not the onshore excursions) while excluding tourism. See J.A.208-210; J.A.192-93; see generally J.A.194-225.

Cuba plainly establish HDC's substantial interest in them. See U.S.Br. 27; HDC.Br. 25-27; J.A.254-266 (FCSC decisions); *infra* p. 16.

Even if "property which was confiscated" is construed as only the interest taken from Havana Docks, see *supra* Part I.B, then all that is required to pursue a Title III action here is a claim reflecting commercial control over the docks at that time, because Cuba's and respondents' later use of the docks clearly exercised those rights taken from HDC. The FCSC decisions and the Cuban grants of rights conclusively show Havana Docks possessed at least this controlling operational interest and more (subject to turning the docks over to Cuba after 99 years of use). See HDC.Br. 26-27; J.A.254-66 (FCSC decisions); J.A.444-472 (rights-granting documents); J.A.9-12 (Eleventh Circuit summary of Cuban law).

Even if all that were wrong, the conceded right to use the docks for cargo purposes would, in any event, be incompatible with use of the same dock platforms, docking berths, and equipment for passenger operations. Any other incompatible commercial use by Cuba of the same physical facilities dedicated to cargo use, be it building a hotel on the site or lining the docks with passenger ships, would conflict with rights granted to and taken from HDC—and thus give rise to liability under Title III.

2. In addition, the FCSC decisions conclusively foreclose respondents' "limited cargo use" theory and bar any reliance on it here.

As a matter of substance, the FCSC decisions identified and valued interests reflecting at least HDC's plenary commercial control of the docks. The

Commission certified Havana Docks' claim to "own[] and operate[]" the docks, identified and valued Havana Docks' complete interest in the physical piers (at one point valuing "structures only"), and separately valued each of the improvements, control over land, the "concession," and equipment and office furniture and fixtures. See J.A.254-266 (FCSC decisions); HDC.Br. 9-11; J.A.182-83 (Judge Bloom's assessment of the FCSC's conclusions). As a matter of process, Congress deemed the FCSC the expert and final authority on Cuban property law, making its "conclusive" determination of Havana Docks' property immune from challenge in federal court. 22 U.S.C. §§6083(a)(1), 1622g; see HDC.Br. 25. Congress grounded Title III's private right of action in claim ownership, especially FCSC-certified claims, to prevent courts and Title III plaintiffs from having to relitigate, at a distance of decades, the nature of property taken under Cuban law. See Fisk Amicus Br. 15.

Respondents do not seriously contest any of this. They dispute not the FCSC's conclusions regarding HDC's plenary control of the docks but the tangential issue whether HDC *also* had "title" or some type of absolute ownership under Cuban law. Resp.Br. 46-50. Before the trial court, respondents never disputed that the FCSC decisions contradicted their position, and rather challenged them on fraud and due process grounds. See, *e.g.*, Carnival.Dkt. 330 at 8-10. Now, respondents seek to avoid the FCSC decisions by having this Court ignore the Act's conclusive presumption, 22 U.S.C. §6083(a)(1), and deem this key statutory mechanism unconstitutional on due process grounds. Resp.Br. 40. Their argument is clearly wrong. The FCSC addressed no rights of

respondents or statutes imposing liability on them.[5] Title III treated property reflected in FCSC-certified claims as legislative facts defining what property is off limits to trafficking. Congress routinely bases its classifications on any number of legislative facts conclusively determined by others, from federal property boundaries to designations of global terror organizations, approved medications, scheduled narcotics, and so on. See, *e.g.*, 18 U.S.C. §1752 (criminal trespass); *Touby v. United States*, 500 U.S. 160, 166-67 (1991) (Controlled Substances Act schedules); 21 U.S.C. §§829 & 802 (restricting dealings to "practitioners"); 18 U.S.C. §2339B (terrorism designation). The legislative classification here, like others, meets due process requirements because Congress enacted Title III, "publish[ed] it, and … afford[ed] those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements." *U.S. v. Locke*, 471 U.S. 84, 108 (1985); see also *Connecticut Dpt. Of Public Safety v. Doe*, 538 U.S. 1, 7-8 (2003) (procedural due process does not limit legislative classifications) (applying *Michael H. v. Gerald D.*, 491 U.S. 110, 121 (1989) (plurality)).[6] Title III and the publicly available FCSC

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[5] For like reasons, this case presents no Seventh Amendment difficulty, which respondents raise for the first time before this Court. See Resp.Br. 42.

[6] *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146 (2025), invoked by respondents, Resp.Br. 42, concerned an agency order directly addressing the statute determining the parties' obligations, and the Court made clear that even in that context, no due process concerns would arise if Congress intended the determination to be conclusive. *Id.* 158 ("When Congress wants to preclude

decisions issued in 1971 provided ample notice to respondents (in addition to their having actual notice of the decisions and Havana Docks' claim, J.A.132).

Independently defeating any due process objection, Judge Bloom *permitted* respondents to exhaustively litigate the issue. She surveyed and rejected testimony of their "legal expert," their "limited cargo use theory," their characterization of the rights granted to Havana Docks, and other challenges. She found that the expert presented nothing of value, that no evidence of fraud or other reason existed to treat the FCSC determinations as anything other than conclusive, and that in any event the relevant legal materials independently supported the conclusion the FCSC reached. J.A.176-185.

Respondents' argument that Havana Docks' reading of the FCSC decisions is a "new" argument justifying dismissal is quite wrong and rather desperate. Resp.Br. 46. "Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee,* 503 U.S. at 534; see also *Citizens United v. F.E.C.*, 558 U.S. 310, 330-31 (2010). Here, HDC's argument is not close to the line and is not even new. Havana Docks has always argued and continues to argue that its former property interest extended to plenary commercial control of the physical docks themselves, that the FCSC decisions recognized this and conclusively resolved the issue, that Cuba's confiscations extinguished HDC's interest in 1960, and that, had

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judicial review … it can easily say so."). Congress did just that here. See 22 U.S.C. §§6083(a), 1622g.

there been no confiscation (and no further negotiation of terms), Cuba would have secured control of the docks at the conclusion of 44 years of HDC's further use and control of them. "Ownership" simply refers to the possession of rights provided under law, not to "title" or fee simple interests (a concept that does not exist in the civil law),[7] and as noted, nothing turns on whether HDC had another stick or two in the property bundle beyond plenary commercial control. See *supra* Part I.A. The issue of the Act's application to a time-limited interest has not somehow dropped from the case. The Eleventh Circuit's decision presents the same error regarding its construction of Title III, with all the same adverse consequences for U.S. foreign policy arising from that court's evisceration of the Act. Even if all that were wrong, any "new" issue impermissibly injected by the point could simply be disregarded, and the balance of HDC's and the government's arguments would amply support reversal.

3. Even if the FCSC decisions had not conclusively resolved what Cuba confiscated from HDC, the FCSC was correct. The particular grants of rights to HDC under Cuban law also preclude the cruise lines' "non-exclusive, limited" cargo use argument.

Cuba's grant of rights to Havana Docks contained no "limited" or "non-exclusive" use restriction, and

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[7] "[T]he *fructus*, the *usus*, and the *abusus*" comprise "every essential element of ownership" under civil law. *Romeu v. Todd*, 206 U.S. 358, 367 (1907) (analyzing the Spanish civil code); U.S. Dep't of War, *Translation of the Civil Code in Force in Cuba, Porto Rico, and the Philippines* (GPO 1899) (code applied equally to Puerto Rico and Cuba).

respondents point to none.[8] J.A.444-481. Instead, those granting documents required Havana Docks to "assign" a portion of its soon-to-be constructed facilities to Cuba, J.A.448, and provided complete commercial rights to the designated land and to exploit the new dock facilities, to the exclusion of private third parties. See HDC.Br. 4-7; J.A.444-472. Havana Docks exercised those rights by leasing a portion of the docks to a third party, encumbering the docks with a mortgage security, building and exclusively exploiting the dock facilities, and collecting fees from passenger and cargo vessels. HDC.Br. 6-7, 40-41. The commercial "usufruct" rights granted to Havana Docks to access and control the designated public areas were plenary, unlimited by use, and shared with no third party. Even the Eleventh Circuit majority described how HDC's usufruct included "the right to enjoy a thing owned by another person and to receive *all* the products, utilities, and advantages produced thereby," as well as the "right … to *take the fruits* therefrom," and it quoted Black's Law Dictionary (4th ed. 1951) as defining "usufruct" to the same effect, as a grant to "draw from [the grantor's property] *all the profit, utility, and advantage* which it may produce." J.A.10 (internal quotations omitted; emphasis added); see also J.A.176-85 (Judge Bloom dismissing respondents' argument). Cuban law plainly provided HDC with a robust range of interests and rights, see *Rodrigue v. Rodrigue*, 218 F.3d 432, 437-38 (5th Cir. 2000) (describing three elements of civil law ownership);

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[8] Contrary to respondents' claim (Resp.Br. 37), the government did not state that HDC's interest was limited to cargo carriage. See U.S.Br. 28.

Hoffman v. Laurans, 18 La. 70, 73 (1841) (a usufruct is "a kind of ownership" that vests extensive ownership rights in the "usufructuary"), and no rational economic actor would have constructed the docks without receiving them.

The cruise lines barely mention any of these rights or Havana Docks' history of exercising them, much less attempt the impossible task of reconciling them with their "non-exclusive, limited" cargo use theory. The cruise lines point to no factual instances of use by third parties reflecting their theory or any grants of such concessions. Their theory is entirely based on their legal "expert's" assertions of Cuba's potential authority, resting on Article 44 of the Law of Ports. J.A.700-01. But Article 44 actually states that Cuba could grant another concession "in the same harbor, beach, or stretch of coast" (rather than to HDC's facilities).[9] *Id.*; compare *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 464-65 (1837) (grant of exclusive rights to build one bridge does not prevent construction of competing bridge). Likewise, Articles 1 and 12 of the Law of Ports simply note that the state owns and can regulate the nation's coastal waters, J.A.425, 429, and Articles 48-49 preserve "prior rights" of access to the vast harbor and its many other facilities. J.A.438. These and related provisions invoked by respondents have nothing to do with third party access to facilities built

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[9] To the same effect is the *Seaboard Marine* statement regarding exclusivity noted by respondents, Resp.Br. 34: that addressed whether the grant of rights extended to the entire harbor area or just the specified area where the grantees' right to exclusively exploit the facilities was unquestioned. See *Seaboard Marine*, 135 F.4th at 951.

by HDC and do not conflict with HDC's plenary commercial control over them.

III. Respondents' Approach Would Defeat the Objectives Congress Designed Title III to Achieve.

Respondents do not contest any of Havana Docks' points showing that respondents' construction of the Act would render Title III's private right of action a near-nullity. They do not contest that Cuba could, under their view, exploit a range of properties seized from U.S. nationals because claims reflecting a broad variety of time-limited, contingent, future, and other interests could not be enforced, or that Cuba often employed time limits on its most significant infrastructure development projects. See HDC.Br. 23-24, 45-47; U.S.Br. 31-32. They cannot explain why Congress would have rendered unenforceable all claims arising from interests that would have expired from 1960 to 1996. See HDC.Br. 49-50. They provide no reason to think that Title III plaintiffs could enforce claims based on even run-of-the-mill interests under the Eleventh Circuit's test, which requires Title III plaintiffs to relitigate their taken interests under an impossible-to-prove standard of what would have happened in the last 65 years had there been no confiscations. HDC.Br. 47-48. And they are remarkably unembarrassed about having funneled more than $130 million to Cuba's military and security services—or to be asking this Court to provide a green light to far greater levels of such funding.

Respondents cast the dispute as "a contest between clear text and abstract purpose" and claim, with considerable chutzpah, to be on the side of text.

Resp.Br. 44-45. Both sides lay claim to the phrase "property which was confiscated," see *supra* pp. 3-4, 7-8, but otherwise it is respondents who must fight Title III's text. Havana Docks and the United States base their arguments as well on the Act's definitions of "traffics," "confiscated," and "property." See HDC.Br. 24-27; U.S.Br. 17-24; *supra* pp. 3-4. The Act's text sets out the FCSC's role, makes its decisions conclusive as to property "interest[s]," and grounds the private right of action in the FCSC's claim certifications. 22 U.S.C. §6083(a)(1); see *id.* §§ 1622g, 6082(a)(3)(A). Titles I-IV of the Act are all structured to buttress the embargo and move Cuba to democratic governance. Congress set out, in text, the foreign policy and other objectives Title III's private right of action was designed to fulfill by stopping exploitation of all facilities seized by Cuba from U.S. nationals. See 22 U.S.C. §§6081(1)-(11), 6022(1)-(6); HDC.Br. 24-25, 48-50.

Contrary to respondents' view, Resp.Br. 43, a statute's explicitly stated purposes can, as here, usefully confirm that a particular meaning of a contested statutory phrase is correct. See, *e.g.*, *Adoptive Couple v. Baby Girl*, 570 U.S. 637, 649 (2013). Respondents, in contrast, would have this Court conclude that Congress erred not through some slip of the pen, but by completely botching the drafting exercise.

CONCLUSION

For the foregoing reasons and those in petitioner's opening brief, this Court should reverse the decision of the Eleventh Circuit and remand for further proceedings.

Respectfully submitted,

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