APPENDIX

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APPENDIX A

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[PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-12966

ODETTE BLANCO DE FERNANDEZ,
a.k.a. Blanco Rosell,
EMMA RUTH BLANCO,
in her personal capacity, and as
Personal Representative of the
Estate of Alfredo Blanco Rosell, Jr.,
HEBE BLANCO MIYARES,
in her personal capacity, and as
Personal Representative of the
Estate of Byron Blanco Rosell,
SERGIO BLANCO DE LA TORRE,
in his personal capacity, and as
Administrator Ad Litem of the
Estate of Enrique Blanco Rosell,
EDUARDO BLANCO DE LA TORRE,
as Administrator Ad Litem of the
Estate of Florentino Blanco Rosell,
LIANA MARIA BLANCO,
SUSANNAH VALENTINA BLANCO,
LYDIA BLANCO BONAFONTE,
JACQUELINE M. DELGADO,
BYRON DIAZ BLANCO, JR.,

MAGDELENA BLANCO MONTOTO,
FLORENTINO BLANCO DE LA TORRE,
JOSEPH E. BUSHMAN,
CARLOS BLANCO DE LA TORRE,
GUILLERMO BLANCO DE LA TORRE,

Plaintiffs-Appellants,

versus

SEABOARD MARINE LTD.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-25176-BB

[Filed: April 14, 2025]

Before JORDAN, BRASHER, and ABUDU, Circuit Judges.

BRASHER, Circuit Judge:

In 1996, Congress enacted the Cuban Liberty and Democratic Solidarity Act—known as the Helms-Burton Act—to provide U.S. nationals with a way to regain losses they suffered when the Castro regime came to power in Cuba and confiscated their property. The Act provides a private right of action for those U.S. nationals against anyone who knowingly "traffics" in property the Castro regime confiscated from them.

Odette Blanco de Fernandez and her four siblings' heirs and estates alleged that Seaboard Marine trafficked in property that the Castro regime confiscated from their family's companies—Azucarera Mariel,

S.A. and Maritima Mariel, S.A.—when it shipped goods to a container terminal on the west side of Mariel Bay. The district court granted summary judgment for Seaboard because, among other things, it concluded that Fernandez failed to present any evidence that Seaboard trafficked in confiscated land.

We agree with the district court that Seaboard did not traffic in any property confiscated from Maritima, but we disagree that Fernandez did not provide sufficient evidence to support a finding that Seaboard trafficked in property confiscated from Azucarera. Accordingly, we affirm in part and reverse in part.

I.

A.

Odette Blanco de Fernandez and her four siblings each held a twenty percent ownership stake in two of their family's companies—Azucarera Mariel, S.A. and Maritima Mariel, S.A.—that owned property in and around the Mariel Bay in Cuba. After the Castro regime came to power in 1959, it confiscated all the property that the family owned. The confiscation decree explained that the government had investigated Fernandez and her siblings and that it would "confiscate in favor of the Cuban State the shares" Fernandez and her siblings owned in Azucarera Mariel and Maritima Mariel along with "all the entities' properties, rights, and actions." Soon after, Fernandez and her siblings fled Cuba and became U.S. citizens. Fernandez's siblings passed away after March 12, 1996, and before this lawsuit was filed.

Before the Cuban revolution, Azucarera bought thousands of acres on the west side of Mariel Bay on

and around the Angosta Peninsula. The pre-Castro Cuban government built a naval air station on that peninsula, and Azucarera's real property abutted that air station. The illustration below depicts the Cuban government's pre-Castro land holding as the shaded area on the peninsula:

In 2014, the Cuban government opened a container terminal on the naval air station site. Fernandez and the other plaintiffs say that the container terminal extends beyond the former naval air station and partially sits on land that the Castro regime confiscated from Azucarera. Indeed, the plaintiffs' international mapping expert reported that "it is reasonable to conclude that" Azucarera owned land in "areas situated both north and south of the naval air station[.]" Fernandez produced maps from the Cuban government that show the container terminal extends onto that same land.

For its part, Maritima owned port facilities on the eastern side of the bay in a town known as Punta Coco Solo. That ownership arose out of Fernandez's family's acquisition of a company called Central San Ramon in 1949. The Cuban government granted Central San Ramon a concession in a 1934 decree to privately use the docks and warehouses "on the coast of the Port of Mariel, a place known as Punta Coco Solo[.]"

In a 1955 decree, the Cuban government approved Maritima's request to build additional facilities in Mariel Bay with government financing. The operative part of the decree provides a "concession" "for the construction of new buildings and works, without detriment to the vested rights of third parties and entities by virtue of previous and concurrent concessions[.]" The several "whereas" clauses of the decree explain that Maritima proposed to build "walls, docks, warehouses, dredging, fillings-in, and others in low lands and mangroves of its property, and in the maritime-terrestrial zone of the littoral adjacent to" land that Maritima owned "in the north coast of the province of Pinar del Rio[.]" These clauses explain that Maritima sought "to convert to public use the dock and warehouse located on the land of its property" that was "legalized and authorized for private use" by the 1934 decree. The decree also established deadlines for Maritima to complete the project, provided government financing, and set parameters for how Maritima would operate the port facilities once completed. The concession was to last for seventy years. Fernandez and the other plaintiffs say that the concession granted Maritima the exclusive right to build and use docks for shipping in the bay, subject only to preexisting concession holders.

Seaboard began shipping frozen chicken to Cuba through the Bay of Mariel in 2019. To do so, Seaboard docks its vessels at the container terminal on the old naval base on the Angosta peninsula on the west side of Mariel Bay. A Cuban entity called Terminal de Contenedores de Mariel, S.A., or TCM, manages the Terminal. Seaboard contracts with TCM and another Cuban entity called Agencia Maritima Taina, S.A., for various services related to unloading its shipments and arranging for transportation inland.

B.

The Helms-Burton Act created a private right of action for U.S. nationals who own claims to property confiscated by the Castro regime against any person who "traffics" in that property. *See* 22 U.S.C. § 6082(a). Fernandez and her siblings' heirs and estates sent Seaboard a letter in September 2020 that notified Seaboard it was trafficking in confiscated property under the Act by delivering chicken to the terminal on the old navy base. Seaboard did not cease its shipping activities after receiving that letter.

Fernandez and her siblings' heirs and estates sued Seaboard. The plaintiffs claim that Seaboard unlawfully used confiscated property in two ways. First, they claim that its deliveries to the container terminal violated Maritima's exclusive right to exploit commercial docks in the bay. Second, they claim that the deliveries trafficked in Azucarera's real estate because the terminal on the old navy base was built, in part, on real property that the Castro government confiscated from Azucarera and because the two entities Seaboard contracted with (TCM and Taina) transported Seaboard's goods across confiscated land.

The district court dismissed the siblings' heirs and estates, concluding that they could not bring a claim under the Act because the siblings died after March 12, 1996, and therefore the heirs and estates "acquired" their claims after the statutory bar date. But it held that Fernandez's claims against Seaboard could proceed.

Seaboard later moved for summary judgment. Among other things, it argued that (1) Fernandez did not own property confiscated by the Cuban government because her companies, not Fernandez herself, owned the confiscated property, and (2) Seaboard did not traffic in any confiscated property by delivering chicken to the terminal on the old navy base.

The district court granted Seaboard's motion for summary judgment. It held that Fernandez could sue because she owned shares in Maritima and Azucarera, which owned the property confiscated by the Castro regime. But the district court held that there was no genuine dispute of material fact that Seaboard had not "trafficked" in any confiscated property for three reasons. First, it determined that Maritima's 1955 concession did not give it the exclusive right to exploit the entirety of the bay. Second, as for the claims about Azucarera's confiscated real estate, the district court held that Azucarera likely owned a portion of the land that the container terminal was built on. But Fernandez presented no evidence that Seaboard trafficked in that specific confiscated land. And third, the district court rejected Fernandez's argument that Seaboard trafficked in Azucarera land because Taina and TCM used Azucarera land in storing and transporting Seaboard's goods. *See §* 6023(13)(A)(iii).

This appeal followed.

II.

We review *de novo* a district court's grant of summary judgment. *Owens v. Governor's Off. of Student Achievement*, 52 F.4th 1327, 1333 (11th Cir. 2022). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Although we draw "all justifiable inferences . . . in favor of the nonmoving party, inferences based upon speculation are not reasonable." *Kernel Recs. Oy v. Mosley*, 694 F.3d 1294, 1301 (11th Cir. 2012) (citation omitted). Thus, a nonmoving party must present more than "[e]vidence that is merely colorable, or is not significantly probative" or "a mere scintilla of evidence" to support their claims to survive a motion for summary judgment. *Id.* (citation and quotation marks omitted).

III.

Congress enacted the Helms-Burton Act in 1996 "to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime." 22 U.S.C. § 6022(6). Title III of the Act provides a private right of action for U.S. nationals against anyone who "traffics" in that confiscated property. *See id.* § 6082(a)(1)(A). A person "traffics" in confiscated property under the Act if, without the authorization of the U.S. national, he or she knowingly and intentionally: (i) "sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses,

or otherwise acquires or holds an interest in confiscated property"; (ii) "engages in a commercial activity using or otherwise benefiting from confiscated property"; or (iii) "causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person." *Id*. § 6023(13)(A).

As shareholders in Maritima and Azucarera, Fernandez and the other plaintiffs argue that Seaboard's chicken deliveries to Cuba trafficked in their confiscated property in three ways. First, they argue that Seaboard's deliveries to the old navy base violated Maritima's exclusive right to exploit commercial docks in the bay. Second, they argue that the deliveries trafficked in Azucarera's real estate because the terminal on the old navy base was built, in part, on real property that the Castro government confiscated from Azucarera. Third, they argue that Seaboard benefited commercially from Azucarera's seized real estate because Seaboard's Cuban contractors used that land to unload Seaboard's goods and transport them into Cuba's interior. We consider whether Fernandez and her siblings' heirs and estates can bring a claim and address each theory of liability in turn.

A.

First, we must consider whether the district court properly dismissed the siblings' estates and heirs as plaintiffs in this action. Our recent holding in *Garcia-Bengochea v. Carnival Corp*., 57 F.4th 916, 930 (11th Cir. 2023), resolves the matter. Because the heirs and estates inherited the claims after the statutory bar date, they cannot bring a claim under the Act.

The Helms-Burton Act provides that "a United States national may not bring an action . . . on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996." 22 U.S.C. § 6082(a)(4)(B). In *Garcia-Bengochea*, we held that individuals who inherited an interest in confiscated property after the cutoff date are barred from bringing a claim under the Act. 57 F.4th at 930–31. As part of our decision, we adopted the Fifth Circuit's analysis that the ordinary meaning of "acquires" is to "gain possession or control of; to get or obtain," which includes inheritance. *Id.* (quoting *Glen v. Am. Airlines, Inc.*, 7 F.4th 331, 336 (5th Cir. 2021)). Our precedent is directly on point and controls our analysis here.

The estates argue that our decision in *Garcia-Bengochea* may prevent the heirs from bringing a claim but not the estates. They contend that under Florida law the creation of an estate does not confer ownership on the estate's personal representatives. Therefore, the claim still belongs to the deceased siblings who acquired it before the statutory bar. We disagree. In *Garcia-Bengochea*, we did not consider any state law dimensions to the issue and asked only whether the person bringing the suit had acquired the property before March 12, 1996. *Id.* In doing so, we cited to our unpublished decision in *Gonzalez v. Amazon.com, Inc.*, 835 F. App'x 1011, 1012 (11th Cir. 2021) for the proposition that "[a] U.S. national whose property was confiscated before March 12, 1996, cannot recover damages for another person's unlawful trafficking of that property unless 'such national'—i.e., *the specific person bringing suit*—acquired the claim to the property before March 12, 1996." *Id.* at 931 (emphasis

added). Under this principle, only the siblings—who acquired the claim before the deadline—can commence the action, not their estate representatives—who acquired it after the deadline. *See Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 43 (1989) ("We start . . . with the general assumption that in the absence of a plain indication to the contrary, . . . Congress when it enacts a statute is not making the application of the federal act dependent on state law.") (internal quotation marks and citation omitted).

But even if we look to Florida law, we reach the same conclusion. To establish that an individual retains property interests after death, the estate relies on a single provision of Florida law that defines the "estate" as "the property of a decedent that is the subject of administration." Fla. Stat. § 731.201(14). But other provisions of Florida law suggest the opposite. *See* Fla. Stat. § 732.514 ("The death of the testator is the event that vests the right to devises unless the testator in the will has provided that some other event must happen before a devise vests."); Fla. Stat. § 732.101(2) ("The decedent's death is the event that vests the heirs' right to the decedent's intestate property."). And Florida case law confirms that the estate acquires an interest in the property after the decedent dies. *See Depriest v. Greeson*, 213 So. 3d 1022, 1025 (Fla. 1st DCA 2017) ("[W]e do not agree that the estate had no legal ownership interest in Decedent's car."); *Sharps v. Sharps*, 214 So. 2d 492, 495 (Fla. 3d DCA 1968) ("Upon [the husband's] death, in the twinkling of a legal eye, that check became an asset of the husband's estate."). Even if the estates do not obtain a full ownership interest in the claim, they obtain their in-

terests only upon the death of the descendants. Therefore, the estates acquired an interest in the claim only after the deadline and cannot bring this action.

In a last-ditch effort to escape this conclusion, the estates argue that they should be able to bring their claims as a matter of policy. They insist that the purpose of the bar date was to prevent foreigners from transferring claims to U.S. nationals, and that interpreting "acquire" broadly would mean that the Act will eventually have no effect. We rejected similar arguments in *Garcia-Bengochea* and explained that if Congress intended to narrow the meaning of "acquire" it knew how to do so. 57 F.4th at 931. The statute is clear, and "policy arguments cannot supersede the clear statutory text." *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 192 (2016). Because the estates and heirs acquired the claim after the deadline, they cannot bring this action.

B.

Next, we must consider whether shareholders can assert claims under the Act based on the confiscation of corporate property, and if so, whether Fernandez had presented sufficient evidence to create a genuine dispute of material fact that she was a shareholder of Maritima and Azucarera. As explained below, we determine that shareholders can bring claims and that Fernandez sufficiently demonstrated that she was a shareholder.

To start, Title III of the Act creates a private right of action for "any United States national who owns the *claim* to such property" confiscated by the Cuban government. 22 U.S.C. § 6082(a)(1)(A) (emphasis added). The Act further defines "property" as "any property

. . . whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein[.]" *Id.* § 6023(12)(A). Seaboard argues that Fernandez cannot bring a claim because Maritima and Azucarera owned the property at issue, rather than the shareholders. But this reading would require us to remove the word "claim" from the statute or redefine property against the statute's explicit language. We are not permitted "to add or subtract words from a statute[.]" *Friends of the Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1224 (11th Cir. 2009). Rather, "it is an elementary principle of statutory construction that, in construing a statute, we must give meaning to all the words in the statute." *Legal Env't Assistance Found., Inc. v. U.S. E.P.A.*, 276 F.3d 1253, 1258 (11th Cir. 2001). The statute operates to protect those who had an interest in confiscated property, including shareholders, even if they did not own the property itself. *See Garcia-Bengochea*, 57 F.4th at 937 (Jordan, J., concurring) ("Nothing in the language of Title III indicates that Congress intended to limit the remedy to the original owners of the property[.]"); *Fernandez v. CMA CGM S.A.*, 683 F. Supp. 3d 1309, 1327 (S.D. Fla. 2023) ("The plain meaning of the word 'claim' is broad enough to encompass more than direct ownership. . . . Accordingly, like those who owned property directly, a shareholder gained a 'claim to' confiscated property once the shareholder's previous ownership rights were extinguished.") (citation omitted).

Next, Fernandez presented enough evidence that she had a stake in the confiscated companies to survive summary judgment. Although she initially testified that she did not recall owning shares of stock in

any corporation, she later changed her testimony. Through errata sheets and an affidavit, she stated that she did recall that she was an equal owner in the family's businesses. Under Rule 30(e), a deponent may review the deposition and "if there are changes in form or substance, . . . sign a statement listing the changes and the reasons for making them." Fed. R. Civ. P. 30(e)(1)(B). Although we have not defined the limits within which Rule 30(e) can be used, a district court's ruling on the matter is reviewed for abuse of discretion. *See EBC, Inc. v. Clark Bldg. Sys., Inc.*, 618 F.3d 253, 270 (3d Cir. 2010). The district court determined that the errata sheets were proper because Fernandez timely submitted her changes and provided reasons for doing so—namely, confusion at the time of questioning, fatigue, and mistake. Because the district court's order complies with the text of the rule, we cannot say that the court erred under the deferential abuse of discretion standard.

In addition to Fernandez's changed testimony, the district court relied on her prior testimony to determine that there was a genuine dispute of material fact. In particular, Fernandez testified that she attended corporate meetings and received annual dividends from the business, and that her family owned property around the Bay of Mariel. Even the Cuban government's own confiscation decree corroborates Fernandez's claim. In that decree, the Cuban government ordered the confiscation of "all the property and rights, whatever their nature," including "the shares . . . representing [Maritima and Azucarera's] capital" and "all the entities' properties, rights, and actions" from Fernandez. Based on the available evidence, the

district court properly concluded that Fernandez presented enough evidence that she was a shareholder in the confiscated companies to survive summary judgment

C.

After determining that Fernandez can bring a claim, we now consider her contention that Seaboard trafficked in Maritima's confiscated rights under the 1955 concession. She argues that the pre-Castro Cuban government's 1955 decree granted Maritima the exclusive right to exploit port facilities in Mariel Bay. Thus, Fernandez says that when Seaboard berthed its vessels at the container terminal on the west side of Mariel Bay, it "engage[d] in a commercial activity using or otherwise benefitting from" Maritima's property rights under the concession. 22 U.S.C. § 6023(13)(A)(ii). Seaboard responds that the district court was correct to reject this argument because the 1955 decree granted Maritima only a nonexclusive concession to build port facilities on certain portions of Mariel Bay.

Because of the way the parties have litigated this dispute, we cannot resolve this issue without making two legal assumptions about the 1955 concession. First, we will assume without deciding that this concession is a cognizable property interest protected by the Act. *See id.* § 6023(12) (defining "property" covered by the Act). Second, we will interpret the 1955 decree as if it were a contract between Maritima and the Cuban government. Whether as a matter of pre-Castro Cuban law or federal common law, the parties (and the district court) rely on common law principles of contract interpretation to support their respective

positions. We'll assume without deciding that they are correct to do so.

Under standard common law principles, "[c]ontract interpretation is generally a question of law." *Underwriters at Lloyds Subscribing to Cover Note B0753PC1308275000 v. Expeditors Korea Ltd.*, 882 F.3d 1033, 1039 (11th Cir. 2018) (citation omitted). There are no issues of fact for a jury to decide unless "an ambiguous contract term forces [us] to turn to extrinsic evidence of the parties' intent[.]" *Id.* (citation omitted). Under "general contract principles," a contract is ambiguous if it is "reasonably susceptible to more than one interpretation." *In re FFS Data, Inc.*, 776 F.3d 1299, 1304 (11th Cir. 2015) (internal quotations and citations omitted); *Maccaferri Gabions, Inc. v. Dynateria Inc.*, 91 F.3d 1431, 1439 (11th Cir. 1996). But just because the parties disagree on the meaning of a contractual term does not mean the contract is ambiguous. *See Bayshore Ford Truck Sales, Inc. v. Ford Motor Co.*, 380 F.3d 1331, 1335 (11th Cir. 2004).

Reviewing the text of the 1955 decree, we conclude that Seaboard did not traffic in any right conferred by the decree. By its own unambiguous terms, the 1955 decree did not grant Maritima an exclusive right to develop all future docks in the bay. The 1955 decree approved Maritima's application to build port facilities in Mariel Bay and granted it the right to do so for a term of seventy years. Although the concession exists "in the Bay of Mariel," nothing in the text of the decree purports to give Maritima an *exclusive* right to do anything at all. Instead, to the extent that the decree addresses exclusivity, it expressly states that Maritima's rights are not exclusive but rather existed

"without detriment to the vested rights of third parties[.]" And nothing in the decree reflects a governmental promise not to grant additional concessions or build additional docks. *Cf. Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276, 1281–83 (11th Cir. 2024) (discussing the scope of a usufructuary concession granted by the Cuban government).

Rather than pointing to any text in the decree to support their exclusivity argument, Fernandez relies on the context of the agreement. Specifically, the decree allows Maritima to obtain government financing, and Fernandez argues that Maritima's ability to repay the government financing was predicated on the opportunity to raise revenue as the only maritime terminal in the area. We disagree. To be sure, the concession conveyed Maritima the apparently valuable right to construct port facilities for public use in the bay and provided financing to that end. But had Cuban history taken a different turn, one can easily imagine a robust commercial shipping industry in Mariel Bay that supports many public docks and shipping terminals, only one of which would be operated by Maritima. In any event, there is no reason to conclude that the government implicitly agreed not to build additional docks or allow additional shippers, just because it agreed to finance Maritima's project.

We also note that Fernandez's argument conflicts with the "whereas" clauses of the decree. "A preamble, purpose clause, or recital" such as a "whereas" clause, "is a permissible indicator of meaning." *Bittner v. United States*, 598 U.S. 85, 98 n.6 (2023) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text*s 217 (2012)). The

"whereas" clauses in the 1955 decree identify specific properties on the eastern side of the bay on which Maritima could build docks and suggest that a preexisting private dock could be converted to public use. The first "whereas" clause identifies rights in the "low lands and mangroves" on property Maritima owned "in the north coast of the province of Pinar del Rio[.]" Likewise, the eighth "whereas" clause states that the concession allows Maritima "to convert to public use the dock and warehouse located on land of its property which were legalized and authorized for private use" through a 1934 decree. That land was in an area known as Punta Coco Solo on the east side of the bay in the town of Mariel. We cannot say these clauses—explaining the limits of Maritima's rights to the land—establish exclusivity to the bay.

Because Seaboard did not deliver to any dock that was built or operated by Maritima, we agree with the district court that Seaboard did not traffic in a property right secured by the 1955 decree. The decree limited Maritima's rights to building port facilities on its real estate in the eastern side of the bay. At no point did the pre-Castro government promise Maritima that it would be the only shipper in the bay or that no additional docks would be constructed for seventy years.

D.

We now turn to Fernandez's two arguments that Seaboard trafficked in confiscated Azucarera land. She first argues that Seaboard "engage[d] in a commercial activity using or otherwise benefitting from" confiscated Azucarera land when it shipped goods to the container terminal because the terminal was partly built on confiscated Azucarera land. 22 U.S.C.

§ 6023(13)(A)(ii). Second, she argues that Seaboard trafficked by contracting with two Cuban entities—TCM and Taina—to ship its goods to Cuba. She says that through these contracts, Seaboard "cause[d], direct[ed], participate[d] in, or profit[ed] from" TCM and Taina's trafficking, and that TCM and Taina trafficked by "engag[ing] in a commercial activity using or otherwise benefitting from confiscated property" when they transferred Seaboard's containers inland from its ships. *Id.* § 6023(13)(A)(ii)-(iii). We address these arguments in turn.

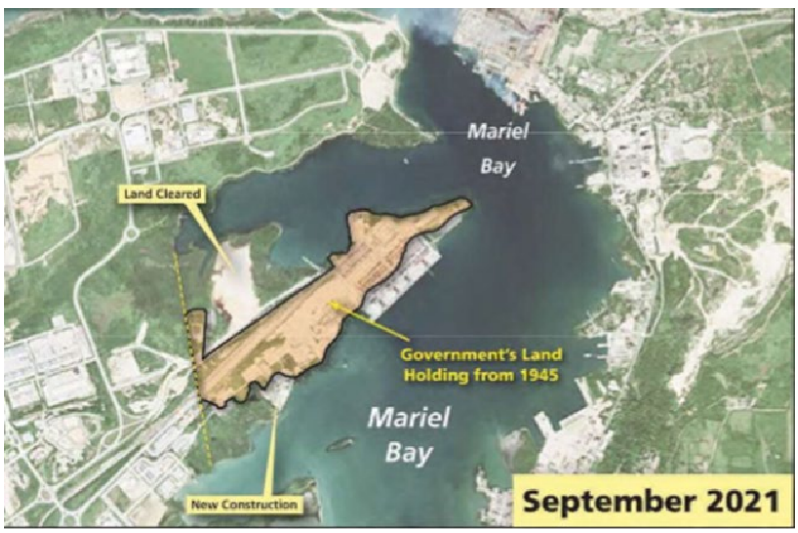
1.

We start with Fernandez's contention that Seaboard itself trafficked by "engag[ing] in a commercial activity using or otherwise benefitting from confiscated property[.]" *See id.* § 6023(13)(A)(ii). This subsection requires that the defendant engaged in (1) "commercial activity" that (2) "us[ed] or otherwise benefit[ed] from" (3) "confiscated property." *Id.*

The first element is easily resolved. Seaboard does not dispute that its shipping was a "commercial activity," and for good reason. The Act adopts the meaning of "commercial activity" from 28 U.S.C. § 1603(d), which defines it as "either a regular course of commercial conduct or a particular commercial transaction or act." *Id.* § 6023(3). Seaboard began shipping its goods to the container terminal in 2019 and contracts with two Cuban entities to unload its cargo and dock its vessels. It has made at least two dozen shipments to the terminal. Its multiple shipments to the container terminal were plainly a "regular course of commercial conduct" and each shipment was a "particular com-

mercial transaction or act." *Id.* § 1603(d). Its only engagement with the property has been commercial in nature.

The third element is likewise easy to resolve. Seaboard argues that there is no evidence that where the terminal unloads cargo has any relation to the confiscated land. But we agree with the district court that the facts would allow a reasonable jury to conclude that the terminal extends beyond the boundaries of the old air base onto at least some real estate that the government confiscated from Azucarera. The bounds of Azucarera's landholdings in the area are unclear. But Fernandez's international mapping expert explained that "it is reasonable to conclude that" Azucarera owned land in "areas situated both north and south of the naval air station," as shown below:



Further, Fernandez produced the following illustration from the Cuban government that shows that the

container terminal, designated by the grey box, extends onto land that surrounded the old naval air station:

Viewing these facts in the light most favorable to Fernandez, she has established for purposes of summary judgment that Seaboard used a terminal that was built at least in some part on confiscated land.

The second element is more complicated. Seaboard argues (and the district court held) that, assuming the terminal was at least partly built on confiscated land, there is no evidence that its commercial activity "uses" or "otherwise benefits from" that slice of real estate. But the Act defines neither "use" nor "otherwise benefit from." So we must determine the "ordinary, everyday meanings" of those terms. Scalia & Garner, *supra*, at 69. And, to that end, we turn to

dictionaries, which "state[] the core meaning[] of a term." *Id.* at 418. Indeed, "a dictionary definition is an assertion of the very meaning that an ordinary person would give a particular word because it is the result of an examination into the interpretation that ordinary people would give the word." *Robinson v. Liberty Mut. Ins. Co.*, 958 F.3d 1137, 1140 (11th Cir. 2020) (cleaned up).

Dictionaries define the word "use" as to "convert to one's service," to "avail oneself of," to "employ," or to "carry out a purpose or action by means of." *See Use*, *Webster's New International Dictionary of the English Language* (*Webster's Second*) (2d ed. 1937) (defining "to use" as "[t]o convert to one's service" or "to employ"); *Use*, *Webster's New International Dictionary of the English Language* (*Webster's Third*) (3d ed. 1961) (defining "use" as "to put into action or service"); *Use*, *Black's Law Dictionary* (6th ed. 1990) (defining "use" as "[t]o make use of; to convert to one's service; to employ; to avail oneself of; to utilize; to carry out a purpose or action by means of"); *Use*, *Black's Law Dictionary* (11th ed. 2019) (defining "use" as "[t]o employ for the accomplishment of a purpose; to avail oneself of"); *Use*, *The Oxford English Dictionary* (2d ed. 1989) (defining "use" as "to put into practice or operation; to carry into action or effect" and "to make use of . . . as a means or instrument; to employ for a certain end or purpose"). Black's Law Dictionary also defines "commercial use" as "[a] use that is connected with or furthers an ongoing profit-making activity." *Commercial Use*, *Black's Law Dictionary* (11th ed. 2019). Neither the Act nor these definitions suggest that "use" must be direct or physical. Thus, to "use" confiscated property suggests that a person must make that property

of service to them, avail themselves of that property, or carry out some action in connection with the property, either directly or indirectly.

Dictionaries define the word "benefit" as something that is "useful or profitable," or something a person gains an "advantage or privilege" from. *See Benefit*, *Black's Law Dictionary* (11th ed. 2019) (defining "benefit" as "[t]he advantage or privilege something gives; the helpful or useful effect something has," and "profit or gain"); *Benefit*, *Webster's Second* (defining "benefit" as "a pecuniary advantage or profit"); *Benefit*, *Webster's Third* (defining "benefit" as "to be useful or profitable"); *Benefit*, *The Oxford English Dictionary* (2d ed. 1989) (defining "benefit" as "to receive benefit, to get advantage; to profit"). Furthermore, a statute should be read in such a way that gives every word meaning. Scalia & Garner, *supra*, at 440; *see United States v. Rice*, 671 F.2d 455, 460 (11th Cir. 1982) ("[T]he choice of different verbs" in a statute is one "which we properly take as evidence of an intentional differentiation[.]"). Read in context, "otherwise benefit" must mean something different and broader than simply "using." *See Otherwise*, *Black's Law Dictionary* (10th ed. 2014) (defining "otherwise" as "[i]n a different way" or "in a different manner"); *Otherwise, The American Heritage Dictionary of the English Language* (defining "otherwise" as "[i]n another way; differently"). And again, the statute and these definitions lack any suggestion that the "benefit" must be directly attributable to a given source. Thus, to "benefit" from confiscated real estate, a person must gain some profit, advantage, or privilege from the property. The district court determined that Fernandez failed to present evidence that Seaboard's commercial activity

"used" or "benefited" from the confiscated land. Given our understanding of the catchall provision, we disagree.

On this record, a reasonable factfinder could determine that the Cuban government confiscated Fernandez's property and used part of it to construct and operate the container terminal. And it's reasonable to believe that Seaboard's commercial activity "otherwise benefit[s]" from Fernandez's property, even if Seaboard did not directly encroach upon it—because without Fernandez's property the terminal could not have been built and could not operate as it does today. A reasonable factfinder could conclude that by using the terminal, Seaboard benefits from the confiscated property because the larger terminal's existence and operation is what allows Seaboard to conduct its shipping activities.

In short, we disagree with the district court that Fernandez's theory of liability necessarily fails. Our reading of the law may seem broad, but the Act imposes broad liability. Congress designed the Act not just to compensate victims of the Castro regime, but to deter third parties from using or benefitting from confiscated property. *See* 22 U.S.C. § 6081(11) ("To deter trafficking in wrongfully confiscated property, . . . victims of these confiscations should be endowed with a judicial remedy . . . that would deny traffickers any profits from economically exploiting Castro's wrongful seizures."); *Penn. Dept. of Corrections v. Yeskey*, 524 U.S. 206, 212 (1988) ("[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demon-

strates breadth.") (internal quotation marks and citation omitted). Accordingly, we believe a factfinder could conclude that Seaboard benefited from confiscated property when it delivered commercial goods to a dock that is partly built on confiscated land.

2.

Fernandez separately argues that she has presented evidence that Seaboard trafficked in confiscated property through its contracts with TCM and Taina. She says that, through these contracts, Seaboard "direct[ed], participate[d] in, or profit[ed] from" TCM and Taina's trafficking. *Id.* § 6023(13)(A)(iii). The statute does not define the terms "participates," "directs," or "profits," so we must determine the "ordinary, everyday meanings" of those terms. Scalia & Garner, *supra*, at 69. To "participate" means to take part in something. *See Participate*, *Webster's Second* (defining "participate" as "to have a share in common with others; to partake" and "to share in profits"); *Participate*, *Webster's Third* (defining "participate" as to "partake" and "to take part in something"); *Participation*, *Black's Law Dictionary* (11th ed. 2019) (defining "participation" as "[t]he act of taking part in something"); *Participate*, *The Oxford English Dictionary* (2d ed. 1989) ("To take or have a part or share of or in . . . ."). To "direct" means to be in charge of or control the actions of another. *See Direct*, *Webster's Second* (defining "direct" as "to cause (a person or thing) to turn, move, point, or follow a course" and "to regulate the activities or course of"); *Direct*, *Webster's Third* (defining "direct" as "to regulate the activities or course of" and "to guide and supervise"); *Direct*, *The*

Oxford English Dictionary (2d ed. 1989) ("To give authoritative instructions to; to ordain, order or appoint (a person) to do a thing . . . ."). A person "profits" if they gain some return or advantage. *See Profit*, *Webster's Second* ("Advantage; benefit."); *Profit*, *Webster's Third* ("[A]n advantage, benefit, accession of good, gain, or valuable return, especially in financial matters . . . ."); *Profit*, *The Oxford English Dictionary* (2d ed. 1989) ("To make progress; to advance, go forward; to improve, prosper, grow, increase."); *Profit*, *Black's Law Dictionary* (11th ed. 2019) (defining "profit" as "[t]he excess of revenues over expenditures in a business transaction"). Thus, Fernandez must present evidence that Seaboard took part in, controlled the actions of, or gained some return on TCM and Taina's trafficking.

Fernandez argues that TCM traffics by "manag[ing] . . . confiscated property" and that Seaboard "participates" in that trafficking through the parties' contractual relationship. Neither party disputes that TCM operates and manages the container terminal, which allegedly includes some part of confiscated land. But no provision of Seaboard's contract with TCM or any other evidence indicates Seaboard "participates" in TCM's management of the terminal.

Fernandez also says that TCM and Taina traffic by transporting Seaboard's goods inland across land that Azucarera owned. She provides no specific facts as to whether or how TCM and Taina transport items from the terminal. But Fernandez's theory is that Azucarera owned all the land surrounding the container terminal and so, however items are removed, the

goods must be moved across Azucarera land. Fernandez further argues that Seaboard "directs" or "profits from" those entities' activity through contracts with TCM and Taina that require those entities to transport Seaboard's goods inland from the container terminal.

There are two main problems with this theory.

First, a reasonable factfinder could not find—based on this record—that the *only* means of egress from the container terminal is over land confiscated from Azucarera. There is no evidence about whether or how the old naval airbase could be accessed by land before it became a shipping terminal. Even though a reasonable jury could conclude that at least some parts of the terminal were built on land confiscated from Azucarera, it is speculation to conclude that the *only* way to access the terminal is over land that was confiscated from Azucarera. But a jury cannot infer facts based on "speculation and conjecture[.]" *See Blackston v. Shook & Fletcher Insulation Co.*, 764 F.2d 1480, 1482 (11th Cir. 1985).

Second, a factfinder would have to speculate to find that Seaboard "directed" or "profited from" TCM's or Taina's activities. Fernandez relies exclusively on Seaboard's contracts with those entities as evidence of its relationship with them, but the contracts alone do not bear out Fernandez's argument. The TCM contract provides that Seaboard may demand that TCM ship goods inland. Similarly, the Taina contract provides that Seaboard may require Taina to "arrange inland haulage . . . according to Shippers [sic] instructions[.]" But there is no evidence about what happened to any goods that Seaboard shipped. There is no

evidence of how TCM and Taina operate generally at the container terminal or beyond, no evidence of what those entities did with any of Seaboard's shipments, no evidence of what use or benefit those entities derived from any confiscated land in their activities, and no evidence that TCM or Taina acted "knowingly and intentionally" as required under the Act. *See* 22 U.S.C. § 6023(13)(A).

In short, Fernandez has enough evidence to hypothesize that TCM or Taina *could* have used or benefitted from confiscated land, and that Seaboard *could* have directed or profited from that trafficking. But that kind of speculation is not "enough of a showing that the jury could reasonably find for" the Fernandez. *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990). We have explained that "an inference is not reasonable if it is only a guess or a possibility, for such an inference is not based on the evidence but is pure conjecture and speculation." *Daniels v. Twin Oaks Nursing Home*, 692 F.2d 1321, 1324 (11th Cir. 1982) (internal quotations omitted). Simply put, Fernandez asks the factfinder to make inferences based on a guess or a possibility. *See Blackston*, 764 F.2d at 1482 (summary judgment for defendant where asbestos-exposure plaintiff presented evidence that he worked in proximity to insulators and that some insulators who worked in the same mill used asbestos-containing insulation but no evidence he worked with those specific insulators). Thus, we agree with the district court that this theory of liability cannot support a judgment in Fernandez's favor.

E.

Seaboard argues that even if it did use or benefit from the confiscated property, Fernandez cannot prove that it did so "knowingly and intentionally" as required by the statute. *See* 22 U.S.C. § 6023(13)(A). We disagree.

First, Seaboard argues that the facts fail to show that it acted "knowingly" or "intentionally." Fernandez contends that Seaboard knowingly and intentionally trafficked in confiscated property because it continued to use the port of Mariel after Fernandez sent letters notifying it of the violation. In these letters, Fernandez explained that she owned claims to the "ports, docks, warehouses and land at the port of Mariel," that Seaboard "benefitted, and continues to benefit, from trafficking in the Confiscated Property," and that she intended to file suit under the Act if Seaboard did not stop trafficking. According to Fernandez, this notice could support a determination that Seaboard knowingly and intentionally trafficked in the property. The parties also disagree as to whether the Act requires that Seaboard "knowingly and intentionally" engaged in commercial activity covered by the Act or whether it must also knowingly and intentionally benefit from property it knew to be confiscated.

We need not decide what Seaboard must know or what its intentions must be in order to be liable under the Act because the letter is sufficient to create a genuine dispute of material fact under either construction. As previously mentioned, Seaboard does not dispute that it was engaging in commercial activity by shipping its goods to the container terminal. And the

information contained in the letter could support a finding that Seaboard knew both that the property was confiscated and that it was benefiting from that property. Based on this evidence, we cannot say that Seaboard was entitled to summary judgment on this basis.

F.

Next, Seaboard argues that it cannot be found liable because its conduct fell under the "lawful travel" exception. Under the Act, the term "traffics" 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[.]" 22 U.S.C. 6023(13)(B)(iii). But Seaboard stretches the meaning of this exception too far.

The Act clearly distinguishes between trade and travel. For example, the Act defines "the economic embargo of Cuba" as referring to "all restrictions on trade or transactions with, and travel to or from, Cuba[.]" *Id*. § 6023(7). When Congress uses different terms, we expect that they hold different meanings, especially when the same meaning would render one of the terms superfluous. *See Pulsifer v. United States*, 601 U.S. 124, 149 (2024) ("In a given statute, . . . different terms usually have different meanings."). Because we must give meaning to all the words in a statute, we must interpret "trade" and "travel" differently. *See Legal Env't Assistance Found., Inc.*, 276 F.3d at 1258.

Dictionary definitions of these terms and federal law's application of them confirm our intuition. Dictionary definitions suggest that "trade" refers specifically to the transfer of goods while "travel" concerns the movement of people. *Compare Trade*, *Webster's*

New College Dictionary (1996) ("the buying and selling of commodities or the bartering of goods; commerce"), *with Travel, id.* ("to go from one place to another; make a journey or journeys"). And federal regulations implementing the Act that Congress has since codified, *see* 22 U.S.C. § 6032(h), reinforce this distinction. Those regulations impose different restrictions on the movement of people and the movement of goods. *Compare* 31 C.F.R. § 515.571(a) (authorizing "transactions ordinarily incident to travel," all referring to "personal" use and consumption); *id.* § 515.560(a) (allowing authorization of "travel-related transactions" referring generally to the movement of people), *with id.* § 515.533 (describing transactions related to the "exportation" or "reexportation of items," the "shipping of specific exports or reexports," and those that are "incident to the importation . . . of items").

Based on the ordinary meaning of "travel" and "trade," as well as the statutory and regulatory language related to these terms, we conclude that the lawful travel exception does not apply to Seaboard's conduct. Seaboard delivered commercial goods to Cuba; it did not engage in "lawful travel." And although the lawful travel exception does not apply here, we express no view on how it may apply in other scenarios.

G.

Finally, Seaboard argues that summary judgment was proper because Fernandez failed to present adequate evidence of damages. Again, we disagree. Fernandez provided two expert reports that estimated damages. Seaboard objects to the estimated amount

and the way it was calculated, but those arguments are not proper on appeal from the grant of summary judgment. By presenting these estimates, Fernandez established a genuine dispute of material fact, and if Seaboard wants to challenge them it can do so at a *Daubert* hearing or otherwise before the district court. *See Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993).

Seaboard also suggests that these potential damages may raise constitutional concerns if a jury found it liable and awarded damages. But again, we cannot say at this juncture whether these potential damages are proper. Nor is it appropriate for us to consider a constitutional challenge to a hypothetical damages award on appeal. *Parr v. United States*, 351 U.S. 513, 516 (1956) ("Only one injured by the judgment sought to be reviewed can appeal[.]"). Seaboard can raise these issues if and when it is found liable and ordered to pay damages.

IV.

The district court is **AFFIRMED IN PART** and **REVERSED IN PART**. The claims of the following parties were correctly dismissed: Emma Ruth Blanco, in her personal capacity and as personal representative of the estate of Alfredo Blanco Rosell, Jr.; Hebe Blanco Miyares, in her personal capacity and as personal representative of the estate of Byron Blanco Rosell; Sergio Blanco de la Torre, in his personal capacity and as administrator ad litem of the estate of Enrique Blanco Rosell; Eduardo Blanco de la Torre, as administrator ad litem of the estate of Florentino Blanco Rosell; Liana Maria Blanco; Susannah Valentina Blanco;

Lydia Blanco Bonafonte; Jacqueline M. Delgado; Byron Diaz Blanco, Jr.; Magdelena Blanco Montoto; Florentino Blanco de la Torre; Joseph E. Bushman; Carlos Blanco de la Torre; and Guillermo Blanco de la Torre. The district court properly granted summary judgment as to Fernandez's claim arising from the 1955 concession to Maritima. Fernandez's claim that Seaboard trafficked and profited from Azucarera's confiscated land may go forward.

JORDAN, Circuit Judge, Concurring.

I join Judge Brasher's opinion for the court in full, and write separately with some further observations on a couple of issues.

I

Title III of the Helms-Burton Act Title states that trafficking includes "engag[ing] in a commercial activity using or otherwise benefiting from confiscated property[.]" 22 U.S.C. § 6023(13)(A)(ii). As far as I can tell, Congress has employed the "or otherwise benefit[s] from" language in only one other similar statute providing a federal right of action against third parties—a now-repealed provision of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, § 403, 100 Stat. 1086 (1986). *See* 22 U.S.C. § 5083(a) ("Any national of the United States who is required by this Act [ ] to terminate or curtail business activities in South Africa may bring a civil action for damages against any person, partnership, or corporation that takes commercial advantage or otherwise benefits from such termination or curtailment."), *repealed by* South African Democratic Transition Support Act of 1993, Pub. L. 103-149, § 4, 107 Stat. 1503 (1993). But I have not found any cases decided under that provision which interpreted or applied the "or otherwise benefits from" language.[1]

I agree with the court's reading of the phrase "otherwise benefiting from" in 22 U.S.C. § 6023(13)(A)(ii).

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[1] For a general discussion of this short-lived (and apparently unused) federal cause of action, see Louis K. Rothberg, *Sections 402 and 403 of the Comprehensive Anti-Apartheid Act of 1986*, 22 Geo. Wash. J. Int'l L. & Econ. 117, 149–72 (1988).

Because we generally do not read different words or terms in a statute to mean the same thing, *see Pulsifer v. United States*, 601 U.S. 124, 149 (2024), it seems to me that this phrase means something different and more expansive than the verb "using." *See* The American Heritage Dictionary of the English Language 1246 (4th ed. 2009) (defining "otherwise" as "[i]n another way; differently"); Black's Law Dictionary 1325 (12th ed. 2024) (defining "otherwise" as "[i]n a different way" or "in another manner").

II

The court holds that the "lawful travel to Cuba" exception set out in 22 U.S.C. § 6023(13)(B)(iii) does not apply to the run-of-the-mill commercial delivery of goods (like gift parcels or frozen chicken) to Cuba. I agree, but the court does not directly address one of Seaboard's contrary arguments and I do so below.

Seaboard asserts that its transportation of gift parcels and frozen chicken to Cuba was authorized by federal regulations and therefore constituted "lawful travel." *See* Brief for Appellee at 50–53. For example, licenses for exports to Cuba are not needed for "[g]ift parcels and humanitarian donations" (the GFT exception) or for "agricultural commodities" (the AGR exception). *See* 15 C.F.R. § 746.2(a)(1)(viii), (xii). Seaboard maintains that the gift parcels satisfied the GFT exception, codified at 15 C.F.R. § 740.12, because the shippers agreed by contract that the parcels would meet the regulatory requirements and certified that they indeed met those requirements. Seaboard also contends that frozen chicken is an "agricultural commodity" and the shipments of that commodity met the

requirements of the AGR exception, codified at 15 C.F.R. § 740.18.[2]

No court has squarely addressed Seaboard's interpretation of the "lawful travel to Cuba" exception, but one has assumed (without deciding) its general validity in denying a motion to dismiss in a separate Helms-Burton action brought by Ms. de Fernandez *See de Fernandez v. MSC Mediterranean Shipping Co. S.A.*, No. 1:22-cv-6305-GHW, 2024 WL 5047492, *20 (S.D.N.Y. Dec. 9, 2024) ("[E]ven assuming, without deciding, that compliance with 15 C.F.R. § 740.18(a) would suffice to establish a lawful-travel defense under [22 U.S.C. §] 6023(13)(B)(iii), it is not clear from the face of the pleadings that Defendants complied with those regulations."). In some other Helms-Burton cases that previously came before us, the United States took the position that "'lawful travel to Cuba' . . . means travel for which transactions are authorized under the Cuban Assets Control Regulations [e.g., 31 C.F.R. §§ 515.201, 515.560, 515.565]" or "other regulatory regimes" like the "Export Administration Regulations promulgated by the Bureau of Industry and Security in the Commerce Department [e.g., 15 C.F.R. § 746.2]." Brief for the United States as *Amicus Curiae* in *Del Valle et al. v. Trivago GMBH et al.*, Case Nos. 20-12407, 20-12960, 20-14251, 2022 WL 1135129, at 34 & n.6 (Apr. 11, 2022).

As a verb, travel generally means "[t]o go from one place to another as on a trip" or "journey" or "[t]o go

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[2] Seaboard does not argue that it is engaged in "lawful travel to Cuba" under the regulations set out in Part 515 of Title 31 of the Code of Federal Regulations. I therefore do not address those regulations.

from place to place as a salesperson or agent." The American Heritage Dictionary of the English Language 1836 (4th ed. 2009) (defs. 1 & 2). *See also* 2 Shorter Oxford English Dictionary 3334 (5th ed. 2002) ("Go from one place to another; make a journey, esp. of some length or abroad.") (def. 2). Travel, however, can also mean "to be transmitted, as light or sound[,] move or pass." American Heritage Dictionary at 1836 (def. 3). As with other Helms-Burton interpretive matters, the question for us is what sense of the word to use when figuring out the meaning of § 6023(13)(B)(iii). *See Garcia-Bengochea v. Carnival Corp.*, 57 F.4th 916, 933 (11th Cir. 2023) (Jordan, J., concurring) ("The word 'acquires' has both broad and narrow meanings, and dictionaries do not tell us what meaning to use for Title III. So we have to rely on matters outside of the text to interpret the text.").

In my view, Seaboard's reading of the phrase "lawful travel to Cuba"—though grammatically permissible—does not carry the day. Like the court, I think the better reading of "lawful travel to Cuba" is one that requires the volitional conduct of the actor engaged in the journey. I reach that conclusion for several reasons.

First, travel is usually an "active verb." *United States v. Seward*, 967 F.3d 57, 67 (1st Cir. 2020). And inanimate objects like gift parcels and frozen chicken do not move from one place to another on their own. *Cf. Hill v. United States*, 103 Ct. Cl. 597, 606 (1945) (addressing the meaning of the phrase "during travel under orders" in a congressional act: "When used with reference to a movement by private or common car-

rier, the word 'travel' is more often applicable to a voluntary agent than to inanimate objects such as household goods.").

Second, statutory interpretation should take into account the way people usually speak and how they use language in everyday conversations. *See Bondi v. VanDerStok*, ___ S.Ct. ___, 2025 WL 906503, at * 6 (U.S. Mar. 26, 2025) (discussing how "everyday speakers sometimes use artifact nouns"); *Lockhart v. United States*, 577 U.S. 347, 364 (2016) (Kagan, J., dissenting) (considering the "completely ordinary way that people speak and listen, write and read"); *United States v. Caniff*, 916 F.3d 929, 941 (11th Cir. 2019) (Newsom, J., concurring in part and dissenting in part) ("First, and most obviously, that's just not how people talk."), *vacated and superseded*, 955 F.3d 1183 (11th Cir. 2020). Although "conversational conventions do not control [the] legal analysis," *Bostock v. Clayton County*, 590 U.S. 644, 646 (2020), they are certainly relevant, as we recognized in *Heyman v. Cooper*, 31 F.4th 1315, 1320 n.3 (11th Cir. 2022).

In normal conversation we use the word travel to refer to persons who have chosen to embark on a journey and not to inanimate goods or commodities that are transported by others. It would be odd, I think, for one person to say to another over coffee that gift parcels or crates of frozen chicken traveled to Cuba. *See Owusu-Ansah v. Coca-Cola Co.*, 715 F.3d 1306, 1312 (11th Cir. 2013) ("[C]ommon sense is not irrelevant in construing statutes[.]").

I close by emphasizing that our holding concerning the "lawful travel to Cuba" exception is narrow, and concerns only Seaboard's transportation of gift

parcels and frozen chicken. We leave for another day whether and how this exception might apply to other Cuba-related commercial activities such as cruise ship travel.

III

With these thoughts, I join the court's opinion.

APPENDIX B

[Doc. 66]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

ODETTE BLANCO DE FERNANDEZ,
née Blanco Rosell, *et al.*,

Plaintiffs,

v.

SEABOARD MARINE, LTD.,

Defendant.

[Filed: July 27, 2021]

ORDER ON MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant Seaboard Marine Ltd.'s ("Defendant") Motion to Dismiss Plaintiffs' Amended Complaint, ECF No. [52] ("Motion"). Plaintiffs[1] filed an Opposition to Defendant's Motion to Dismiss, ECF No. [57] ("Response"), to which Defendant filed a Reply, ECF No. [63] ("Reply").

[1] There are eighteen Plaintiffs in this action, including Odette Blanco de Fernandez ("Ms. Fernandez"), the estates of her four deceased siblings Alfredo Blanco Rosell, Byron Blanco Rosell, Enrique Blanco Rosell, and Florentine Blanco Rosell ("Estates"), and the descendants of the Blanco Rosell Siblings ("Inheritors") (collectively, "Plaintiffs"). *See* ECF No. [45] ¶¶ 16-33.

The Court has carefully reviewed the Motion, all opposing and supporting materials, the record in this case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion is granted in part and denied in part.

I. BACKGROUND

A. The LIBERTAD Act

Since Fidel Castro seized power in Cuba in 1959, Cuba has been plagued by "communist tyranny and economic mismanagement," that has substantially deteriorated the welfare and health of the Cuban people. *See* 22 U.S.C. §§ 6021(1)(A), (2). The communist Cuban Government has systematically repressed the Cuban people through, among other things, "massive and systemic violations of human rights" and deprivations of fundamental freedoms, *see id.* §§ 6021(4), (24), and the United States has consistently sought to impose effective international sanctions for those violations against the Castro regime, *see id.* §§ 6021(8)-(10).

In 1996, Congress passed Title III of the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. § 6021, *et seq*. (the "LIBERTAD Act," "Title III," or the "Act"), commonly referred to as the Helms-Burton Act, "to strengthen international sanctions against the Castro government" and, relevant to the instant case, "to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime." 22 U.S.C. §§ 6022(2), (6). Under Title III of the Act, Congress denounced the Cuban Government's history of confiscating property of Cuban citizens and U.S. nationals, explaining that "[t]he wrongful confiscation or

taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development." 22 U.S.C. §§ 6081(2)-(3). The Act explains that foreign investors who traffic in confiscated properties through the purchase of equity interests in, management of, or entry into joint ventures with the Cuban Government to use such properties "complicate any attempt to return [these expropriated properties] to their original owners." *Id.* §§ 6081(5), (7). The LIBERTAD Act cautions that:

> [t]his "trafficking" in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States—
>
> (A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure; and
>
> (B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.

Id. §§ 6081(6)(A)-(B).

Further, the lack of effective international remedies for the wrongful confiscation of property and for unjust enrichment from the use of that property by foreign governments at the expense of the rightful

owners left U.S. citizens without protection against wrongful confiscations by foreign nations and their citizens. *Id.* § 6081(10). Congress therefore concluded that, "[t]o deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." *Id.* § 6081(11); *see also* 22 U.S.C. § 6082(a)(1)(A). As a result, in passing Title III of the LIBERTAD Act, "Congress created a private right of action against any person who 'traffics' in confiscated Cuban property." *Garcia-Bengochea v. Carnival Corp.*, 407 F. Supp. 3d 1281, 1284 (S.D. Fla. 2019) (citing 22 U.S.C. § 6082(a)(1)(A); 22 U.S.C. § 6023(13)(A)).

> Shortly after Helms-Burton was passed, however, the President invoked Title III's [suspension] provision, and "Title III has since been waived every six months, . . . and has never effectively been applied." *Odebrecht Const., Inc. v. Prasad*, 876 F. Supp. 2d 1305, 1312 (S.D. Fla. 2012). That changed on April 17, 2019, when the U.S. Department of State announced that the federal government "will no longer suspend Title III." *See* U.S. Department of State, Secretary of State Michael R. Pompeo's Remarks to the Press (Apr. 17, 2019), https://www.state.gov/remarks-to-the-press-11/.

Id.; *see also* 22 U.S.C. § 6085(c) (presidential power to suspend the right to bring a cause of action under Title III). On May 2, 2019, the suspension of claimants'

rights to bring actions under Title III was lifted, enabling suit to be filed against alleged traffickers.

B. This Case

On December 20, 2020 Plaintiffs initiated this action against Defendant to recover damages under Title III of the LIBERTAD Act for Defendant's alleged trafficking in property that was confiscated by the Cuban Government and to which Plaintiffs own claims. *See* ECF No. [1]. According to the Amended Complaint, ECF No. [45], the Blanco Rosell Siblings owned various corporations and assets in Cuba that were confiscated by the Cuban Government in 1960. *Id.* ¶¶ 4, 67-73. Specifically, the Blanco Rosell Siblings owned Maritima Mariel SA ("Maritima Mariel"), a Cuban corporation, to which the Cuban Government granted a 70-Year Concession to develop docks, warehouses, and port facilities in Mariel Bay, Cuba:

> 'Maritima Mariel, SA' is hereby granted the concession to plan, study, execute, maintain, and exploit public docks and warehouses in the Bay of Mariel Bay, province of Pinar del Rio Province, and the construction of new buildings and works, without prejudice to the rights acquired by third persons or entities under previous concessions still in force, for the purposes stated in this paragraph.

Id. ¶ 68 (quoting Cuban Official Gazette, Decree No. 2367, at 13864 (Aug. 15, 1955) (English Translation)). The 70-Year Concession further granted Maritima Mariel a series of "exceptional" rights to the Bay of Mariel, including "the right of mandatory expropriation[,]" and the right to impose "any class of easement" and "to evict any tenants . . . or other occupants[.]" *Id.*

¶ 69 (quoting Decree No. 2367, at 13865-66). The Blanco Rosell Siblings also owned other companies, including a sugar mill then known as Central San Ramón and Compañia Azucarera Mariel S.A. ("Azucarera Mariel"). *Id.* ¶¶ 71-72. Through Central San Ramón and Azucarera Mariel, the Blanco Rosell Siblings owned approximately 11,000 acres of land to the southeast, south, and west of Mariel Bay, which included improvements such as roads, railways, buildings, and utilities. *Id.* ¶¶ 71-73.

On September 29, 1960, the Cuban Government announced the confiscation without compensation of all assets owned by the Blanco Rosell Siblings, including: Maritima Mariel, Central San Ramón, Azucarera Mariel, along with their property, rights, and shares—i.e., the 70-Year Concession and land owned by these entities ("Confiscated Property"). *Id.* ¶¶ 74-75 (quoting Cuban Official Gazette, Resolution No. 436, at 23406 (Sept. 29, 1960) (English Translation)). Following the Cuban Government's confiscation, the Blanco Rosell Siblings fled Cuba and became United States citizens before March 12, 1966. *Id.* ¶ 5.

According to the Amended Complaint, the confiscation was published in the Cuban Official Gazette and reported in the Revolucion newspaper, which are both available to the public. *Id.* ¶ 78. Plaintiffs also allege that "the confiscation of the [Confiscated Property] was so well known that, on April 18, 2019, the day after the Trump Administration announced that it would allow Helms-Burton Act lawsuits under Title III to go forward," stories were published on a Cuban television and radio program stating that the Mariel Special Development Zone, a "special economic zone"

created by the Cuban Government at Mariel Bay ("ZEDM"), "was built on nationalized land where the Carranza-Bernal, Carbonell-González and Blanco-Rosell families owned sugar and hemp processing plants." *Id.* ¶ 79.

1. Alleged Trafficking by the Zona Especial De Desarollo Mariel ("ZEDM" or "Mariel Special Economic Zone")

The ZEDM is an "agency or instrumentality of the Cuban Government" and operates as a "special economic zone" at Mariel Bay. *Id.* ¶ 82. Plaintiffs contend that the Cuban Government "incorporated the Confiscated Property in the ZEDM without authorization of Plaintiffs and therefore the ZEDM traffics in the Confiscated Property." *Id.* ¶ 84. Specifically, beginning in 2009, the Cuban Government rebuilt the Port of Mariel and constructed a container terminal in the ZEDM. *Id.* ¶ 85. Plaintiffs allege that the container terminal, located in ZEDM section A7, "subsumes the Blanco Rosell Siblings' 70-Year Concession rights, pursuant to which they possessed the right . . . 'to plan, study, execute, maintain, and exploit public docks and warehouses in the Bay of Mariel . . . and the construction of new buildings and works[.]'" *Id.* ¶ 86 (quoting Decree No. 2367, at 13865). Plaintiffs further allege that their "extensive land holdings on the southeast, south and west sides of Mariel Bay . . . cover virtually every square meter of ZEDM section A5, which the ZEDM operates as a logistics zone." *Id.* ¶ 87.

2. Alleged Trafficking by Defendant

Defendant is an ocean transportation company that operates vessels between the United States and the Caribbean Basin. *Id.* ¶ 34. The Amended Complaint alleges that beginning on or about May 9, 2019, Defendant operated approximately twenty-four voyages where its vessels sailed from the Port of New Orleans to the Port of Mariel in Cuba. *Id.* ¶¶ 91-92. When at the Port of Mariel, Defendant's vessels purportedly "call at and/or otherwise use, benefit, and profit from the container terminal in the ZEDM, including the ZEDM's ports, docks, warehouses and facilities." *Id.* ¶ 91. Plaintiffs further contend that by using or otherwise benefiting from the ZEDM and Plaintiffs' Confiscated Property, Defendant "engag[ed] in commercial activities." *Id.*

Defendant now moves to dismiss the Amended Complaint, arguing that the Amended Complaint fails to plausibly allege that: (1) Defendant trafficked in the Confiscated Property; (2) Defendant "knowingly and intentionally" trafficked in the Confiscated Property; and (3) Plaintiffs, other than Ms. Fernandez, have an actionable ownership interest in the Confiscated Property. *See* ECF No. [52]. In their Response, Plaintiffs take the opposing position on each of Defendant's bases for dismissal. *See* ECF No. [57].

II. LEGAL STANDARD

A pleading in a civil action must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although a complaint "does not need detailed factual allegations," it must provide "more than labels and conclusions, and a formulaic recitation of the elements

of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that Rule 8(a)(2)'s pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation"). Nor can a complaint rest on "'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

When reviewing a motion under Rule 12(b)(6), a court, as a general rule, must accept the plaintiff's allegations as true and evaluate all plausible inferences derived from those facts in favor of the plaintiff. *See Miccosukee Tribe of Indians of Fla. v. S. Everglades Restoration Alliance*, 304 F.3d 1076, 1084 (11th Cir. 2002); *AXA Equitable Life Ins. Co. v. Infinity Fin. Grp., LLC*, 608 F. Supp. 2d 1349, 1353 (S.D. Fla. 2009). However, this tenet does not apply to legal conclusions, and courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678; *Thaeter v. Palm Beach Cnty. Sheriff's Office*, 449 F.3d 1342, 1352 (11th Cir. 2006). Moreover, "courts may infer from the factual allegations in the complaint 'obvious alternative explanations,' which suggest lawful conduct rather than the unlawful conduct the plaintiff would ask the court to infer." *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 682).

A court, in considering a Rule 12(b)(6) motion, "may consider only the complaint itself and any documents referred to in the complaint which are central to the claims." *Wilchombe v. TeeVee Toons, Inc.*, 555

F.3d 949, 959 (11th Cir. 2009) (citing *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997)); *see also Maxcess, Inc. v. Lucent Techs., Inc.*, 433 F.3d 1337, 1340 n.3 (11th Cir. 2005) ("[A] document outside the four corners of the complaint may still be considered if it is central to the plaintiff's claims and is undisputed in terms of authenticity." (citing *Horsley v. Feldt*, 304 F.3d 1125, 1135 (11th Cir. 2002))).

III. DISCUSSION

As noted, Defendant argues that dismissal of the Amended Complaint is warranted because it fails to plausibly allege that: (1) Defendant trafficked in the Confiscated Property; (2) Defendant "knowingly and intentionally" trafficked in the Confiscated Property; and (3) Plaintiffs, other than Ms. Fernandez, have an actionable ownership interest in the Confiscated Property. *See* ECF No. [52]. The Court addresses each argument in turn.

A. Trafficking in Confiscated Property

Defendant contends that the Amended Complaint fails to plausibly allege that Defendant trafficked in property confiscated by the Cuban Government and to which Plaintiffs own a claim. Under the LIBERTAD Act, "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." 22 U.S.C. § 6082(a)(1)(A). The Act defines "traffics" as follows:

> a person "traffics" in confiscated property if that person knowingly and intentionally—

> (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
>
> (ii) engages in a commercial activity[2] using or otherwise benefiting from confiscated property, or
>
> (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,
>
> without the authorization of any United States national who holds a claim to the property.

22 U.S.C. § 6023(13)(A) (footnote supplied). Thus, the definition of "traffics" relates to offending conduct in the broad concept of "confiscated property"—i.e., in any property that was nationalized, expropriated, or otherwise seized by the Cuban Government to obtain ownership or control, without the property having been returned or adequate and effective compensation—"without the authorization of any United States

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[2] Under the Title III, the term "commercial activity" is defined as "either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." 28 U.S.C. § 1603(d); 22 U.S.C. § 6023(3).

national who holds a claim to the property." *Id.* § 6023(13); *see also id.* § 6023(4).

1. Trafficking under 22 U.S.C. § 6023(13)(A)(ii)

Upon review, the Amended Complaint sufficiently alleges that Defendant engaged in "commercial activity using or otherwise benefited from" the Port of Mariel and the container terminal without Plaintiffs' authorization, thereby trafficking in Plaintiffs' Confiscated Property.[3] *See* 22 U.S.C. § 6023(13)(A)(ii); *see also* ECF No. [45] ¶¶ 10-14, 91-96. Specifically, the Amended Complaint alleges that the Cuban Government "incorporated the Confiscated Property into the ZEDM" where the newly constructed Port of Mariel and container terminal are located. ECF No. [45] ¶¶ 84-85, 88. The Amended Complaint then identifies twenty-four voyages during which vessels operated by Defendant sailed to the Port of Mariel and "call[ed] at and/or otherwise use[d], benefit[ed], and profit[ed] from the container terminal in the ZEDM, including the ZEDM's ports, docks, warehouses, and facilities." *Id.* ¶¶ 91-92 (identifying each voyage by IMO number, arrival date, ship name, and operator); *see also id.* ¶¶ 95-96. Lastly, the Amended Complaint alleges that Defendant's commercial activities in the Confiscated

[3] Contrary to Defendant's contention, Plaintiffs need not set forth specific facts indicating the precise square footage within which Defendant trafficked. ECF No. [52] at 15. At the motion to dismiss stage, Plaintiffs' allegations that the Cuban Government incorporated the Confiscated Property into the ZEDM is sufficient. ECF No. [45] ¶¶ 84-88. Ultimately, any recovery Plaintiffs may obtain in this case will be commensurate with the value of Confiscated Property actually trafficked in.

Property were conducted without Plaintiffs' authorization. *Id.* ¶¶ 99, 101-02.

Defendant maintains that Plaintiffs' allegation regarding trafficking must fail because it "merely tracks the statutory definition[.]" ECF No. [52] at 14 (citing 22 U.S.C. § 6023(13)(A)(ii)). The Court is not persuaded. Indeed, while the term "call" is admittedly undefined in the Amended Complaint, Plaintiffs explain that a "port of call" in the shipping industry is defined as: (1) "an intermediate port where ships customarily stop for supplies, repairs, or transshipment of cargo" or (2) "a stop included in an itinerary[.]" *See* Port of Call, *Merriam-Webster.com Dictionary*, available at https://www.merriam-webster.com/dictionary/port%20of%20call (last visited July 23, 2021). Accepting this definition as true, the Court can plausibly infer that Defendant engaged in "commercial activity" when its vessels called at the container terminal in the ZEDM. Thus, at this stage of the proceedings, Plaintiffs' allegations are more than sufficient to "give [Defendant] fair notice of what the . . . claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Defendant further contends that "the container terminal is not property to which Plaintiffs[] own a claim that could provide a basis for their Title III claims" because the Port of Mariel and its container terminal were constructed in March of 2009 and, therefore "decades after the Cuban Government confiscated the property in 1960." ECF No. [52] at 14. However, the Amended Complaint sufficiently sets forth that in constructing the Port of Mariel and its container terminal in ZEDM, the Cuban Government

exploited the same rights that were granted to the Blanco Rosell Siblings in the 70-Year Concession. *See* ECF No. [45] ¶ 68 (granting, among other things, the right to "plan, develop, study, execute, maintain and exploit public docks and warehouses in the Bay of Mariel[.]"); *id.*¶¶ 85-86, 88; *see also Iglesias v. Richard*, No. 20-cv-20157, 2020 U.S. Dist. LEXIS 164117, at *26 (S.D. Fla. Aug. 17, 2020) (rejecting defendant's argument that "the commercial activity occurred with a different product and brand name nearly thirty years after the alleged illegal taking" was sufficient to defeat plaintiff's allegations of a trafficking).[4]

Moreover, the fact that Plaintiffs' concession rights to develop the Bay of Mariel were non-exclusive does not alter the Court's analysis. *See* ECF No. [45] ¶ 68 (stating that the 70-Year Concession was granted "without prejudice to the rights acquired by third persons or entities under previous concessions still in force[.]"). As Plaintiffs correctly highlight, there is no language in Title III that requires Plaintiffs to have an exclusive claim to the Confiscated Property. ECF No. [57] at 23. "[O]ne of the most basic interpretive canons [is] that a statute should be construed so that

[4] Additionally, the Court is not convinced that Plaintiffs should somehow be precluded from asserting a Title III claim because the Cuban Government enhanced and/or changed the nature of the Confiscated Property following its illegal confiscation. Holding as such would certainly undermine Congress' stated goal of protecting the claims of United States nationals whose property was wrongfully confiscated by the Cuban Government. *See* 22 U.S.C. § 6022(6) (one reason for passing Title III was "to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.").

effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Patel v. U.S. Att'y Gen.*, 917 F.3d 1319, 1326 n.5 (11th Cir. 2019) (quoting *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018)); *see also Friends of the Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1224 (11th Cir. 2009) (In construing a statute, a court is "not allowed to add or subtract words from [the] statute."). Yet, notably absent from the definition of "traffics" is any limitation on the scope of trafficking to only a particular interest in confiscated property. *See* 22 U.S.C. § 6023(13)(A). Further contradicting any need to constrict the definition of "traffics" is the fact that it relates to offending conduct in the broad definition of "property"—"any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest." *Id.* § 6023(12)(A). Thus, the Court rejects Defendant's narrow interpretation of Title III.

Lastly, while the 70-Year Concession was granted "without prejudice to the rights acquired by third persons or entities under previous concessions still in force[,] *id.* ¶ 68, the Amended Complaint alleges that the 70-Year Concession "authorized Maritima Mariel to execute a series of exceptional rights in the Bay of Mariel" including the right of mandatory expropriation, the right to impose any class of easement, and the right to evict any occupants from the property. *Id.* ¶ 69 (citing Decree No. 2367, at 13865-66). Thus, accepting the allegations in the Amended Complaint as true, had the 70-Year Concession not been illegally confiscated, the Blanco Rosell Siblings' authorization

would have been required for the ZEDM to exploit those rights.[5]

2. Trafficking under 22 U.S.C. § 6023(13)(A)(iii)

The Amended Complaint also plausibly alleges that Defendant trafficked in the Confiscated Property through the acts of the ZEDM. *See* 22 U.S.C. § 6023(13)(A)(iii); *see also* ECF No. [45] ¶¶ 82-90. Specifically, the Amended Complaint alleges that: (1) the ZEDM is "an agency or instrumentality of the Cuban Government[,]" *id.* ¶ 82; (2) "Cuba incorporated the Confiscated Property into the ZEDM[,]" *id.* ¶ 84; (3) the Cuban Government "rebuilt the Port of Mariel and constructed a container terminal in the ZEDM[,]" *id.* ¶ 85; (4) the "container terminal subsumes the Blanco Rosell Siblings' 70-Year Concession rights," which included the right "to plan, study, execute, maintain, and exploit public docks and warehouses in the Bay of Mariel," *id.* ¶ 86; and (5) "[t]he Blanco Rosell Siblings' extensive land holdings . . . which are part of the Confiscated Property, cover virtually every square meter of ZEDM section A5, which the ZEDM operates as logistics zone[,] *id.* ¶ 87. Thus, the Cuban Government,

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[5] While Defendant appears to challenge Plaintiffs' ownership interest to the Confiscated Property, this argument necessarily involves factual determinations that go well beyond the four corners of the Amended Complaint. *See* ECF No. [63] at 11-12 (arguing that to the extent Maritima Mariel failed to begin enumerated work within 18 months from the date of the concession, any purported interest in the 70-Year Concession was forfeited). At this stage of the proceedings, the Court is satisfied that Plaintiffs have sufficiently pled an ownership interest in the Confiscated Property. *See* ECF No. [45] ¶¶ 4, 16-20, 67-77.

through the ZEDM, traffics in the Confiscated Property by exploiting the Blanco Rosell Siblings rights set forth in the 70-Year Concession, as well as their right to the land holdings on which the ZEDM sits. Conversely, because Defendant purportedly participates or otherwise profits from the ZEDM's trafficking by calling at the Port of Mariel and its container terminal, the Court can reasonably infer that Defendant has benefited from the ZEDM's trafficking in the Confiscated Property. Thus, the Amended Complaint plausibly alleges that Defendant participated in, and profited from, the Cuban Government's confiscation and possession of the Confiscated Property without Plaintiffs' authorization.

B. Scienter: "Knowing and Intentionally"

Defendant next argues that the Amended Complaint lacks factual allegations that allow a plausible inference that Defendant "knowingly and intentionally" trafficked in the Confiscated Property. *See* ECF No. [52] at 12-15. In support of its position, Defendant highlights that, unlike other Title III cases before this Court, Plaintiffs' claims to the Confiscated Property were not certified by the Foreign Claim Settlement Commission ("FCSC"). Defendant further argues that Plaintiffs' "bare allegations that articles were published in Cuba and [that] Plaintiffs sent a [pre-suit] demand letter to [Defendant] do not and cannot support a plausible inference that Defendant" knowingly and intentionally trafficked in confiscated property. *Id.* at 2.

In addition to alleging that the Cuban Government's confiscation was published and available to the public well-before Defendant began trafficking in

2019, ECF No. [45] ¶¶ 2, 4, 68, 75, 78-79, the Amended Complaint further alleges that Defendant continued to traffic in the Confiscated Property both after it received Plaintiff's pre-suit notice letter and after it was served with the initial Complaint. *See* ECF Nos. [1], [25], and [45] ¶¶ 92, 98-100 (alleging that on November 21, 2020, December 13, 2020, and January 21, 2021, Defendant operated the NODBALTIC, which arrived in the Bay of Mariel and called at the Port of Mariel). Accepting these facts as true and drawing all reasonable inferences in Plaintiffs' favor, the Court finds that the Amended Complaint sufficiently sets forth Defendant's scienter, at the very least for the post-notice period. *See Glen v. Trip Advisor LLC*, No. 19-cv-1809-LPS, 2021 WL 1200577, at *10 (D. Del. Mar. 30, 2021) (finding that plaintiff plausibly alleged scienter against defendants who continued to traffic in the subject property more than thirty days after receiving plaintiff's pre-suit notice of claim). Accordingly, the Motion is denied on this basis.

C. Plaintiffs' Actionable Ownership Interest

Lastly, Defendant seeks dismissal of the Inheritors and Heirs from this action, arguing that they do not have an actionable ownership interest in the Confiscated Property because they acquired their claims after March 12, 1996.[6] The relevant provision of the LIBERTAD Act provides: "In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless *such* national

[6] Defendant does not challenge Ms. Fernandez's ownership interest, which is otherwise sufficiently alleged. ECF No. [45] ¶ 16.

acquires ownership of the claim before March 12, 1996." 22 U.S.C. § 6082(a)(4)(B) (emphasis added).

The unambiguous language of § 6082(a)(4)(B) instructs that a United States national cannot bring an action under Title III "unless such national" acquires an interest to the confiscated property before March 12, 1996. *Id.* The statutory language also makes clear that the United States national who acquired ownership of the claim must be the *same* United States national who brings the Title III action. *See Gonzalez v. Amazon.com, Inc.*, No. 19-23988-CIV, 2020 WL 2323032, at *2 (S.D. Fla. May 11, 2020), *aff'd*, 835 F. App'x 1011 (11th Cir. 2021) ("The statute states that a United States national may not being an action 'unless *such* national' acquires an interest to the property before 1996." (citations omitted)); *Glen*, 2021 WL 1200577, at *7 ("[T]he United States national who acquired the ownership of the claim must be the same United States national who brings the action, not the predecessor of the United States national who brings the action[.]" (citations omitted)).

The Court agrees that the Inheritors have not plausibly alleged that they acquired claims to the Confiscated Property before March 12, 1996. Indeed, because each of the deceased Blanco Rosell Siblings died after March 12, 1996, the Inheritors could not have acquired a claim to the Confiscated Property before the statutory cutoff. ECF No. [45] ¶¶ 17-20. In their Response, Plaintiffs effectively urge the Court to disregard the plain language of Title III, as well as the clear guidance from every court that has addressed this precise issue—including the Eleventh Circuit. *See Gonzalez v. Amazon.com, Inc.*, 835 F. App'x 1011,

1012 (11th Cir. 2021) (per curiam).[7] The Court declines to do so. Accordingly, because the Inheritors did not acquire their claims to the Confiscated Property until after the statutory cutoff, they cannot maintain an action under Title III.

Similarly, the Estates do not have an actionable ownership interest in the Confiscated Property and cannot maintain a Title III action on behalf of the deceased Blanco Rosell Siblings. The Eleventh Circuit has instructed that "[i]n the absence of an expression of *contrary intent*, the survival of a federal cause of action is a question of federal common law." *United States v. NEC Corp.*, 11 F.3d 136, 137 (11th Cir. 1993) (emphasis added) (citing *James v. Home Constr. Co. of Mobile*, 621 F.2d 727, 729 (5th Cir. 1980)). As stated above, the congressional intent is clear that those who acquired claims to confiscated property after the March 12, 1996 cutoff cannot assert a cause of action under Title III. *See* 22 U.S.C. § 6082(a)(4)(B).

While there is no dispute that the deceased Blanco Rosell Siblings acquired their claims to the Confiscated Property before March 12, 1996, ECF No. [45] ¶¶ 17-20, the Court disagrees that "the estates and

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[7] *See also Herederos de Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, No. 20-cv-21630-, 2021 WL 1648222, at *5 (S.D. Fla. Apr. 27, 2021); *Glen*, 2021 WL 1200577, at *7; *Garcia-Bengochea v. Royal Caribbean Cruises, Ltd.*, No. 19-cv-23592-JLK, 2020 WL 6081658, at *3 (S.D. Fla. Oct. 15, 2020); *Glen v. Am. Airlines, Inc.*, No. 20-cv-482-A, 2020 WL 4464665, at *4 (N.D. Tex. Aug. 3, 2020); *Iglesias*, 2020 U.S. Dist. LEXIS 164117, at *26; *Garcia-Bengochea v. Carnival Corp.*, No. 19-cv-21725-JLK, 2020 WL 4590825, at *3 (S.D. Fla. July 9, 2020); *Del Valle v. Trivago GmbH*, No. 19-cv-22619, 2020 WL 2733729, at *5 n.2 (S.D. Fla. May 26, 2020).

personal representatives 'stepped into the shoes' of the decedents [and] maintain[ed] the original acquisition date of the Confiscated Property[.]" ECF No. [57] at 8. Indeed, it is well-settled that upon the death of the four Blanco Rosell Siblings, their assets became property of their respective estates and no longer belonged to them individually. *See Depriest v. Greeson*, 213 So. 3d 1022, 1025 (Fla. 1st DCA 2017); *Sharps v. Sharps*, 214 So. 2d 737, 738 (Fla. 4th DCA 1982) ("Upon [husband's] death, in the twinkling of a legal eye, that check became an asset of the husband's estate."); *see also* Fla. Stat. § 732.101(2) ("The decedent's death is the event that vests the heirs' right to the decedent's intestate property."); Fla. Stat. § 732.514 ("The death of the testator is the event that vests the right to devises unless the testator in the will has provided that some other event must happen before a devise vests."). Thus, because the ability to bring a Title III action is contingent upon acquiring a claim to confiscated property by a date certain, the Estates had to acquire their interest in the Confiscated Property before March 12, 1996, which they did not. Thus, the Estates cannot maintain a cause of action under Title III.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Motion, **ECF No. [52]**, is **GRANTED IN PART AND DENIED IN PART**.
2. The following Plaintiffs are dismissed from this action: (1) Estate of Alfredo Blanco Rosell; (2) Estate of Byron Blanco Rosell; (3) Estate of Enrique Blanco Rosell; (4) Estate of Florentino

Blanco Rosell; (5) Emma Ruth Blanco; (6) Liana Maria Blanco; (7) Susannah Valentina Blanco; (8) Hebe Blanco Miyares; (9) Lydia Blanco Bonafonte; (10) Jacqueline M. Delgado; (11) Byron Diaz Blanco, Jr.; (12) Magdelena Blanco Montoto; (13) Sergio Blanco; (14) Florentino Blanco de la Torre; (15) Joseph E. Bushman; (16) Carlos Blanco de la Torre; and (17) Guillermo Blanco De La Torre.

3. Defendant shall file an Answer to the Amended Complaint, ECF No. [45], **no later than August 10, 2021**.

DONE AND ORDERED in Chambers at Miami, Florida, on July 27, 2021.

/s/ [Signature]
BETH BLOOM
UNITED STATES
DISTRICT JUDGE

Copies to:

Counsel of Record

APPENDIX C

[Doc. 75]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

ODETTE BLANCO DE FERNANDEZ,
née Blanco Rosell,

Plaintiff,

v.

SEABOARD MARINE, LTD.,

Defendant.

[Filed: October 21, 2021]

ORDER ON MOTION FOR PARTIAL RECONSIDERATION

THIS CAUSE is before the Court upon Plaintiffs' Motion for Partial Reconsideration, ECF No. [68] ("Motion"), filed on August 24, 2021. Defendant Seaboard Marine, Ltd. ("Defendant") filed an Opposition to the Motion, ECF No. [70] ("Response"), to which Plaintiffs filed a Reply, ECF No. [71] ("Reply"). The Court has carefully reviewed the Motion, all opposing and supporting materials, the record in this case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion is denied.

I. BACKGROUND

Plaintiffs initiated this action against Defendant to recover damages under 22 U.S.C. § 6021, *et seq*. (the "LIBERTAD Act," "Title III," or the "Act"). ECF No. [1]; *see also* ECF No. [45]. According to the Amended Complaint, Odette Blanco De Fernandez *née* Blanco Rosell ("Ms. Fernandez") and her four siblings (collectively, "Blanco Rosell Siblings") owned various corporations and assets in Cuba that were confiscated by the Cuban Government in 1960 ("Confiscated Property"). *See* ECF No. [45] ¶¶ 16-33. Ms. Fernandez, the estates of the four Blanco Rosell Siblings ("Estates"), and the descendants of the four Blanco Rosell Siblings ("Inheritors") all sought to hold Defendant liable under Title III for "trafficking" in the Confiscated Property. 22 U.S.C. § 6082(a)(1)(A).

On March 16, 2021, Defendant filed a Motion to Dismiss Plaintiffs' Amended Complaint, ECF No. [52] ("Motion to Dismiss"), arguing in relevant part that the Inheritors and the Estates did not have an actionable ownership interest in the Confiscated Property because they acquired their claims after March 12, 1996. *See* 22 U.S.C. § 6082(a)(4)(B) ("In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless *such* national acquires ownership of the claim before March 12, 1996." 22 U.S.C. § 6082(a)(4)(B) (emphasis added); *see also Gonzalez v. Amazon.com, Inc.*, No. 19-23988-CIV, 2020 WL 2323032, at *2 (S.D. Fla. May 11, 2020), *aff'd*, 835 F. App'x 1011 (11th Cir. 2021) ("The statute states that a United States national may not bring an action 'unless *such* national' acquires an

interest to the property before 1996." (citations omitted)).

On July 27, 2021, the Court dismissed the claims of the Inheritors and the Estates from this action. ECF No. [66] ("Order"). Specifically, the Court explained that "because each of the deceased Blanco Rosell Siblings died after March 12, 1996, the Inheritors could not have acquired a claim to the Confiscated Property before the statutory cutoff." *Id.* at 15; *see also* ECF No. [45] ¶¶ 17-20. With respect to the Estates, the Court found that they too did not have an actionable ownership interest in the Confiscated Property. ECF No. [66] at 15-16. The Court rejected Plaintiffs' argument that "the estates and personal representatives 'stepped into the shoes' of the decedents [and] maintain[ed] the original acquisition date of the Confiscated Property" and determined that "upon the death of the four Blanco Rosell Siblings, their assets became property of their respective estates and no longer belonged to them individually." *Id.* at 16. *See Depriest v. Greeson*, 213 So. 3d 1022, 1025 (Fla. 1st DCA 2017); *Sharps v. Sharps*, 214 So. 2d 492, 495 (Fla. 3d DCA 1968) ("Upon [husband's] death, in the twinkling of a legal eye, that check became an asset of the husband's estate."); *see also* Fla. Stat. § 732.101(2) ("The decedent's death is the event that vests the heirs' right to the decedent's intestate property."); Fla. Stat. § 732.514 ("The death of the testator is the event that vests the right to devises unless the testator in the will has provided that some other event must happen before a devise vests.").

Plaintiffs now move pursuant to Federal Rule of Civil Procedure 59(e) for the Court to reconsider dismissal of the Estates only. *See* ECF No. [68]. Specifically, Plaintiffs maintain that "neither *Sharps* nor *Depriest* stand for the proposition that the estates in those cases acquired ownership of the decedent's property." *Id.* at 7 Rather, according to Plaintiff, "those cases simply describe the property of decedents after their death[.]" *Id.*; *see also* Fla. Stat. § 731.201(14) ("'Estate' means the property of a decedent that is the subject of administration."). Plaintiffs also aver that the Court's reliance on Fla. Stat. §§ 732.101(2), 732.514 is misplaced because "these statutes do not provide that an heir acquires ownership of any property upon the death of the decedent, nor could [they] be read to immediately pass ownership to an heir" because "the decedent's property is still 'subject to administration.'" ECF No. [68] at 9. Stated differently, Plaintiffs contend that "[o]wnership of the decedent's property maintains with the decedent until it is formally distributed by the personal representative to the heirs and other beneficiaries[.]" *Id.* Defendant opposes the Motion. *See generally* ECF No. [70].

II. LEGAL STANDARD

A motion for reconsideration is "an extraordinary remedy to be employed sparingly." *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1370 (S.D. Fla. 2002). "The burden is upon the movant to establish the extraordinary circumstances supporting reconsideration." *Saint Croix Club of Naples, Inc. v. QBE Ins. Corp.*, No. 2:07-cv-00468-JLQ, 2009 WL

10670066, at *1 (M.D. Fla. June 15, 2009) (citing *Taylor Woodrow Constr. Corp. v. Sarasota/Manatee Airport Auth.*, 814 F. Supp. 1072, 1073 (M.D. Fla. 1993)).

> A motion for reconsideration must do two things. First, it must demonstrate some reason why the court should reconsider its prior decision. Second, it must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. Courts have distilled three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice.

Cover v. Wal-Mart Stores, Inc., 148 F.R.D. 294, 295 (M.D. Fla. 1993) (citations omitted).

Because court opinions "are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure," a motion for reconsideration must clearly "set forth facts or law of a strongly convincing nature to demonstrate to the Court the reason to reverse its prior decision." *Am. Ass'n of People With Disabilities v. Hood*, 278 F. Supp. 2d 1337, 1339, 1340 (M.D. Fla. 2003) (citations omitted). As such, a court will not reconsider its prior ruling without a showing of "clear and obvious error where the 'interests of justice' demand correction." *Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, No. 6:11-cv-1637-Orl-31, 2013 WL 425827, at *1 (M.D. Fla. Feb. 4, 2013) (quoting *Am. Home Assurance Co. v. Glenn Estess & Assoc.*, 763 F.2d 1237, 1239 (11th Cir. 1985)). "When issues have been carefully considered and decisions ren-

dered, the only reason which should commend reconsideration of that decision is a change in the factual or legal underpinning upon which the decision was based." *Taylor Woodrow Constr. Corp.*, 814 F. Supp. at 1072-73; *see also Longcrier v. HL-A Co.*, 595 F. Supp. 2d 1218, 1247 n.2 (S.D. Ala. 2008) (noting that reconsideration motions are to be used sparingly, and stating, "imagine how a district court's workload would multiply if it was obliged to rule twice on the same arguments by the same party upon request").

Similarly, "A motion for reconsideration should raise new issues, not merely readdress issues litigated previously." *PaineWebber Income Props. Three Ltd. Partnership v. Mobil Oil Corp.*, 902 F. Supp. 1514, 1521 (M.D. Fla. 1995); *see also Lamar Advertising of Mobile, Inc. v. City of Lakeland*, 189 F.R.D. 480, 490 (M.D. Fla. 1999) ("A motion to reconsider is not a vehicle for rehashing arguments the Court has already rejected and should be applied with finality and with conservation of judicial resources in mind." (internal quotation marks omitted)). Furthermore, a motion for reconsideration "is not an opportunity for the moving party . . . to instruct the court on how the court 'could have done it better' the first time." *Hood v. Perdue*, 300 F. App'x 699, 700 (11th Cir. 2008) (citation omitted).

> It is improper for defendant to utilize its Motion to Reconsider as a platform for rearguing (and expounding on) an argument previously considered and rejected in the underlying Order. *See Garrett v. Stanton*, [No. 08-0175-WS-M, 2010 WL 320492, at *2 (S.D. Ala. Jan. 18, 2010)] ("Far too often, litigants operate under

> the flawed assumption that any adverse ruling on a dispositive motion confers upon them license to move for reconsideration . . . as a matter of course, and to utilize that motion as a platform to criticize the judge's reasoning, to relitigate issues that have already been decided, to champion new arguments that could have been made before, and otherwise to attempt a 'do-over' to erase a disappointing outcome. This is improper."); *Hughes v. Stryker Sales Corp.*, [No. 08-0655-WS-N, 2010 WL 2608957, at *2] (S.D. Ala. June 28, 2010) (rejecting notion that motions to reconsider "are appropriate whenever the losing party thinks the District Court 'got it wrong'").

Smith v. Norfolk S. Ry. Co., No. 10-0643-WS-B, 2011 WL 673944, at *2 (S.D. Ala. Feb. 17, 2011).

Nevertheless, a motion for reconsideration may be "appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Kapila v. Grant Thornton, LLP*, No. 14-cv-61194, 2017 WL 3638199, at *1 (S.D. Fla. Aug. 23, 2017) (quoting *Z.K. Marine Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992)). "Such problems rarely arise and the motion to reconsider should be equally rare." *Burger King Corp.*, 181 F. Supp. 2d at 1369. Ultimately, reconsideration is a decision that is "left 'to the sound discretion' of the reviewing judge." *Arch Specialty Ins. Co. v. BP Inv. Partners, LLC*, No. 6:18-cv-1149-Orl-78DCI, 2020 WL

5534280, at *2 (M.D. Fla. Apr. 1, 2020) (quoting *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 806 (11th Cir. 1993)).

III. DISCUSSION

In the Motion, Plaintiffs argue that the Court erred in determining that the Estates do not have an actionable ownership interest in the Confiscated Property and cannot maintain Title III action on behalf of the deceased Blanco Rosell Siblings. *See generally* ECF No. [68]. In its Response, Defendant argues that Plaintiffs show no basis for reconsideration, and that Plaintiffs should not be permitted to reargue the same issue already considered by the Court or assert new arguments previously available but not presented. *See generally* ECF No. [70].

Upon review, Plaintiffs' Motion is not well taken and reconsideration is not warranted under the circumstances of this case. Specifically, the Motion fails to raise any new issues or arguments that support granting the requested relief; rather, Plaintiffs' Motion presents nothing more than its disagreement with the Court's Order. *See Z.K. Marine Inc.*, 808 F. Supp. at 1563 ("It is an improper use of the motion to reconsider to ask the Court to rethink what the Court already thought through—rightly or wrongly." (citation and alterations omitted)). This attempt to relitigate issues that the Court previously considered—and rejected—runs afoul of the well-established principle that, "when there is mere disagreement with a prior order, reconsideration is a waste of judicial time and resources and should not be granted." *Roggio v. United States*, No. 11-22847-CIV, 2013 WL 11320226, at *1 (S.D. Fla. July 30, 2013) (internal citation and

quotation marks omitted); *see also Application of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262, 1274 (11th Cir. 2014) (finding that the "district court . . . acted entirely within its sound discretion in denying [the] motion for reconsideration" when the "bulk of [the] motion for reconsideration just reiterated [] already-rejected arguments"). As such, Plaintiffs' Motion is improper.

Even so, the Court does not find a basis to disturb its conclusion that the Estates do not have an actionable Title III claim. In determining whether a cause of action survives death, the Eleventh Circuit has instructed that "[i]n the absence of an expression of *contrary intent*, the survival of a deferral cause of action is a question of federal common law." *United States v. NEC Corp.*, 11 F.3d 136, 137 (11th Cir. 1993) (emphasis added) (citing *James v. Home Constr. Co. of Mobile*, 621 F.2d 727, 729 (5th Cir. 1980)). The congressional intent is clear that those who acquired claims to confiscated property after Mach 12, 1996 cannot assert a cause of action under Title III. *See* 22 U.S.C. § 6082(a)(4)(B).

In the Order, the Court explained that although the Blanco Rosell Siblings acquired their claims to the Confiscated Property before March 12, 1996, ECF No. [45] ¶¶ 17-20, "upon the death of the four Blanco Rosell Siblings, their assets became property of their respective estates and no longer belonged to them individually." ECF No. [66] at 16 (citations omitted). Yet, according to Plaintiffs, "the Court erroneously relied on the *Sharps'* 'twinkling eye' analogy (which was

cited in *Depriest*), to conclude that the estates 'acquired' ownership of the deceased siblings' claims to the Confiscated Property when the siblings died." ECF No. [68] at 2. Plaintiffs further explain that "the Probate Code's post-*Sharps* definition of 'estate' reveals [that] an estate is not a legal entity that can acquire the decedent's property" but rather the term used to describe the decedent's property that is subject to administration in probate." *Id.*; *see also* Fla. Stat. § 731.201(14). As such, according to Plaintiffs, the deceased Blanco Rosell Siblings still owned their claims to the Confiscated Property, no one else acquired them, and the personal representatives are authorized to manage their claims by bringing this lawsuit on their behalf. The Court is not persuaded.

In concluding that the Estates did not have an actionable claim to the Confiscated Property, the Court relied on *Depriest*, 213 So. 3d at 1025-26, which was decided well after the definition of "estate" was codified in § 731.201(14), and relied on *Sharps'* twinkling eye analogy. In *Depriest*, an injured motorist brought an action against a decedent's estate, alleging that the estate was vicariously liable for damages caused by the decedent's daughter while driving the decedent's car. *Id.* at 1024. Before the trial court and on appeal, the parties disputed whether the estate owned the decedent's car after he died. *Id.* at 1025. While the *Depriest* Court ultimately agreed with the trial court's disposition of the case, they did "not agree that the estate had no legal ownership in Decedent's car." *Id.* at 1025. The court explained as follows:

> When Decedent died, "in the twinkling of a legal eye," the car became an asset of his estate.

Sharps v. Sharps, 214 So. 2d 492, 495 (Fla. 3d DCA 1968) (holding that an uncashed check payable to the decedent became an asset of his estate the instant he died, and his widow would have to prove that it was a gift to her individually in order to obtain the proceeds for herself). *See also Mills v. Hamilton*, 121 Fla. 435, 163 So. 857, 858 (1935) ("It is well settled that at the death of the owner of any personal property the title thereto vests in his personal representative and during the administration the personal representative is entitled to the possession of the same.").

Although Decedent's car was an asset of the estate, it did not belong to anyone individually. Decedent's will did not bequeath the car to anyone, and his daughter and stepson were co-equal beneficiaries under the residuary clause of the will. Therefore, neither the daughter nor the stepson had any specific right to the car, nor did either of them as individuals have a superior right against the other to prohibit use of the car. The car was an asset of the estate and subject to administration. *In re Vettese's Estate*, 421 So. 2d 737, 738 (Fla. 4th DCA 1982) (holding that property improperly transferred directly to decedent's daughters must be returned to the estate for proper administration under the terms of the will and governing law); *see also* § 731.201(14), Fla. Stat. (2013) (defining "estate" as "the property of a decedent that is subject to administration"); *Blechman v. Estate of Blechman*, 160 So. 3d 152, 157 (Fla. 4th DCA 2015) ("If the

> subject property will pass either intestate or by way of a will, then it is part of the decedent's probate estate."). Ultimate ownership of the car would not be determined until after resolution of claims, taxes, debts, expenses of administration, and other obligations of the estate, if any. It might have ended up being sold to pay the estate's obligations, no longer belonging to the estate or any beneficiary.

Id. at 1025-26; *see also Sharps*, 214 So. 2d at 495 (holding that while "it was not improper for" the decedent's wife to deposit the subject check into their joint account during her husband's lifetime, it was improper to deposit the check into the account after her husband died because "that check became an asset of the husband's estate.").

Here, under the reasoning provided in *Depriest* and *Sharps*, the Court cannot conclude that the Estates "stepped into the shoes" of the deceased Blanco Rosell Siblings and maintained the original acquisition date. Indeed, upon the death of each of the Blanco Rosell Siblings, their purported claims to the Confiscated Property "became an asset of [their] [Estates]." *Depriest*, 213 So. 3d at 1025 (citing *Sharps*, 214 So. 2d at 495). And as an asset of their Estates, the claim to the Confiscated Property no longer belonged to the decedents or anyone else individually. *Id.* at 1025-26. Simply put, because the four Blanco Rosell Siblings died after 1996, and their purported claims to the Confiscated Property were not part of their respective Estates before the statutory cutoff, the Estates cannot maintain a cause of action under Title III. For this reason alone, the Motion is due to be denied.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiffs' Motion, **ECF No. [68]**, is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, on October 21, 2021.

/s/ [Signature]
BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record

APPENDIX D

[Doc. 256]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

ODETTE BLANCO DE FERNANDEZ,
née Blanco Rosell,

Plaintiff,

v.

SEABOARD MARINE, LTD.,

Defendant.

[Filed: July 21, 2022]

ORDER ON MOTION TO STRIKE UNTIMELY AND IMPROPER DECLARATIONS IN OPPOSITION TO SEABOARD MARINE'S SUMMARY JUDGMENT AND *DAUBERT* MOTIONS

THIS CAUSE is before the Court upon Defendant Seaboard Marine Ltd.'s ("Defendant" or "Seaboard Marine") Motion to Strike Untimely and Improper Declarations in Opposition to Seaboard Marine's Summary Judgment and *Daubert* Motions, ECF No. [221] ("Motion"). Plaintiff Odette Blanco De Fernandez ("Plaintiff") filed a Response in Opposition, ECF No. [228] ("Response"), to which Defendant filed

a Reply, ECF No. [232] ("Reply"). The Court has carefully considered the Motion, all opposing and supporting submissions, the record in the case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion granted in part and denied in part consistent with this Order.

I. BACKGROUND

On December 20, 2020, Plaintiff initiated this action against Defendant to recover damages and interest under Title III of the Cuban Liberty and Democratic Solidarity ("LIBERTAD") Act of 1996, codified at 22 U.S.C. § 6021, *et seq*. ("Helms-Burton Act" or "Act") against Seaboard Marine for trafficking in property that was confiscated by the Cuban Government. *See* ECF No. [1]. Plaintiff thereafter filed her Amended Complaint. *See* ECF No. [45] ("Amended Complaint"). According to the Amended Complaint, Plaintiff and her four brothers (collectively, "Blanco Rosell Siblings") owned various corporations and assets in Cuba that were confiscated by the Cuban Government in 1960 ("Confiscated Property"). *See id.* ¶¶ 4, 14, 66-73. Plaintiff seeks to hold Defendant liable under Title III of the Act for "trafficking" in the Confiscated Property. *See* 22 U.S.C. § 6082(a)(1)(A).

On December 16, 2022, the Court entered an Order Amending Scheduling Order and Certain Pretrial Deadlines. *See* ECF No. [83] ("First Amended Scheduling Order"). In the First Amended Scheduling Order, the Court instructed the parties to disclose experts and exchange expert witness summaries or reports by January 11, 2022. *See id.* On January 31, 2022, the Court entered a second Order Amending Scheduling Order and Certain Pretrial Deadlines. *See*

ECF No. [106] ("Second Amended Scheduling Order") (collectively, "Scheduling Orders"). In the Second Amended Scheduling Order, the Court instructed the parties to exchange rebuttal expert witness summaries or reports by February 9, 2022. *See id.*

In the instant Motion, Defendant seeks an Order:

(a) striking and excluding from consideration, and precluding testimony at trial concerning the April 18, 2022 and April 21, 2022 Declarations of Scott Edmonds ("Edmonds"), ECF Nos. [201-5], [201-6], the April 22, 2022 Declaration of Douglas Jacobson ("Jacobson"), ECF No. [201-16],[1] and the April 25, 2022 Declaration of Mauricio Tamargo ("Tamargo"), ECF No. [201-7], all submitted in support of Plaintiff's Opposition to Seaboard Marine's Motion for Summary Judgment, ECF No. [197] ("MSJ Response");

(b) striking and excluding from consideration, and precluding testimony at trial concerning the April 21, 2022 Declaration of Timothy Riddiough ("Riddiough"), ECF No. [194-4],[2] and the April 22, 2022 Declaration of Harold Martin, ECF No. [194-3],

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[1] On page 5 of the Motion, Defendant appears to mistakenly refer to Jacobson's expert report, ECF No. [201-8], as opposed to Jacobson's Declaration, ECF No. [201-16]. *See* ECF No. [221] at 5.

[2] Due to a filing error, this particular filing was not accessible through the Court's CM/ECF system. As such, the Court directed Plaintiff to refile the April 21, 2022 Declaration of Timothy Riddiough. *See* ECF No. [252]. Plaintiff did so. *See* ECF No. [253].

submitted in support of Plaintiff's Opposition to Seaboard Marine's *Daubert* Motion, ECF No. [194] ("*Daubert* Response"); and

(c) striking and excluding from consideration the April 21, 2022 Declaration of Avelino Gonzalez ("Gonzalez"), ECF No. [201-3], and the April 21, 2022 Declaration of Alejandro Auset Domper ("Domper"), ECF No. [201-4], submitted in support of Plaintiff's MSJ Response.

See ECF No. [221] at 5. Defendant argues that Plaintiff violated the Court's Scheduling Orders, ECF Nos. [83], [106], and failed to comply with the applicable disclosure rules. *See* ECF No. [221].

Plaintiff responds that the Declarations of Plaintiff's Rule 26 experts and *Daubert* experts should not be excluded because the Rules do not bar supplemental expert declarations that are materially similar to the experts' prior opinions and because Plaintiff is entitled to submit additional expert opinions to respond to Defendant's Motion for Summary Judgment, ECF No. [177] ("Motion for Summary Judgment"), and *Daubert* Motion, ECF No. [178-1] ("*Daubert* Motion"). *See* ECF No. [228]. Plaintiff also argues that the Court has the discretion to consider the Declarations of foreign law experts and Defendant's request to strike the Declarations of foreign law experts is moot in light of the parties' arguments regarding the Motion for Summary Judgment. *See id.*

The Court refers to the original Declaration in this Order after having review the refiled Declaration.

II. LEGAL STANDARD

A. Rule 26

Federal Rule of Civil Procedure 26 requires a party to disclose to the other parties the identity of any witness it may use at trial to present expert testimony. *See* Fed. R. Civ. P. 26(a)(2). To make a proper disclosure, parties must disclose the expert's identity "accompanied by a written report." Fed. R. Civ. P. 26(a)(2)(B). The written report must contain an array of information, including a "complete statement of all opinions the witness will express and the basis and reasons for them," "the facts or data considered by the witness in forming them," and the witness' qualifications, lists of cases where the witness testified as an expert, the expert's fee arrangement, and exhibits used to summarize or support the expert's opinions. *See* Fed. R. Civ. P. 26(a)(2)(B)(i)-(vi). Expert disclosures must be made at the times and in the sequence that the court orders. *See* Fed. R. Civ. P. 26(a)(2)(D).

Parties must supplement their expert disclosures when required under Rule 26(e). *See* Fed. R. Civ. P. 26(a)(2)(E). Rule 26(e) imposes a duty on a party to supplement or correct its expert disclosure or response "in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or as ordered by the court." Fed. R. Civ. P. 26(e)(1). Further, for an expert whose report must be disclosed under Rule 26(a)(2)(B), "the party's duty to supplement extends both to information included in

the report and to information given during the expert's depositions," and any "additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due." Fed. R. Civ. P. 26(e)(2).

However, the Eleventh Circuit has affirmed that the supplementation of an expert report "is not a device to allow a party's expert to engage in additional work, or to annul opinions or offer new ones to perfect a litigating strategy." *Cochran v. Brinkmann Corp.*, *No.* 1:08-cv-1790-WSD, 2009 WL 4823858 at * 5 (N.D. Ga. Dec. 9, 2009), *aff'd*, 381 F. App'x. 968 (11th Cir. 2010). "[T]he expert disclosure rule is intended to provide opposing parties 'reasonable opportunity to prepare for effective cross examination and perhaps arrange for [rebuttal] expert testimony from other witnesses.'" *Reese v. Herbert*, 527 F.3d 1253, 1265 (11th Cir. 2008) (quoting *Sherrod v. Lingle*, 223 F.3d 605, 613 (7th Cir. 2000)).

B. Rule 37

If a party violates Rules 26(a) or (e), Rule 37(c) provides for the exclusion of the expert evidence "unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). The non-disclosing party bears the burden of showing that the failure to comply with Rule 26 was substantially justified or harmless. *Mitchell v. Ford Motor Co.*, 318 F. App'x 821, 824 (11th Cir. 824). In making this determination, the Court considers four factors: "(1) the importance of the excluded testimony; (2) the explanation of the party for its failure to comply with the required disclosure; (3) the potential prejudice that would arise from al-

lowing the testimony; and (4) the availability of a continuance to cure such prejudice." *Torres v. First Transit, Inc.*, No. 17-CV-81162, 2018 WL 3729553, at *2 (S.D. Fla. Aug. 6, 2018) (citations omitted). "Prejudice generally occurs when late disclosure deprives the opposing party of a meaningful opportunity to perform discovery and depositions related to the documents or witnesses in question." *Bowe v. Pub. Storage*, 106 F. Supp. 3d 1252, 1260 (S.D. Fla. 2015) (citation omitted).

Ultimately, the "determination of whether a Rule 26(a) violation is justified or harmless is entrusted to the broad discretion of the district court." *Smith v. Jacobs Eng'g Grp., Inc.*, No. 4:06CV496-WS/WCS, 2008 WL 4264718, at *6 (N.D. Fla. Mar. 20, 2008), *report and recommendation adopted*, No. 4:06 CV 496 WS, 2008 WL 4280167 (N.D. Fla. Sept. 12, 2008) (citation omitted); *Warren v. Delvista Towers Condo. Ass'n, Inc.*, No. 13-23074-CIV, 2014 WL 3764126, at *2 (S.D. Fla. July 30, 2014) (noting that a court has "great discretion in deciding whether to impose such a sanction" for failure to comply with expert witness disclosure requirements). Indeed, "[c]ourts have broad discretion to exclude untimely expert testimony—even when they are designated as 'supplemental' reports." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 718 (11th Cir. 2019).

C. Rule 44.1

"A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or

admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law." Fed. R. Civ. P. 44.1. Further, "expert testimony may not be invariably necessary." *Dixieben Co. v. Falkenburg*, 737 F. Supp. 1542, 1547 (N.D. Ala. 1990), *aff'd*, 974 F.2d 1348 (11th Cir. 1992). The court may rely upon its own research and any submissions from the parties when considering foreign law. *See Ackermann v. Levine*, 788 F.2d 830, 838 n.7 (2d Cir. 1986). In fact, "federal judges may reject even the uncontradicted conclusions of an expert witness and reach their own decisions on the basis of independent examination of foreign legal authorities" *Barnett v. S/S VERACRUZ I*, No. 86-178-CIV-T-13(A), 1990 WL 10858625, at *1 (M.D. Fla. Mar. 14, 1990).

III. DISUCSSION

A. Scott Edmonds

Defendant points out that Edmonds' expert report, disclosed on January 11, 2022, ECF No. [178-27] ("Edmonds-1"), discusses a fence on the Angosta Peninsula in the Bay of Mariel and concludes that the Cuban Government did not acquire some of the land east of the fence for the naval air station. *See* ECF No. [221] at 9-10. Edmonds' second expert report disclosed on April 5, 2022, ECF No. [200-12] ("Edmonds-2"), clarifies that some of the statements in Edmonds-1 were Plaintiff's counsel's assumptions as opposed to Edmonds' opinions. In contrast, Edmonds' Declaration dated April 18, 2022, ECF No. [201-5] ("Edmonds-3"), and his Declaration dated April 21, 2022, ECF No. [201-6] ("Edmonds-4"), contain new opinions about the location of the Mariel Empty Container Depot ("DCV"), the Mariel TCM Container Office ("TCM-

Office"), and railway lines. Defendant argues that those new opinions, offered for the first time nearly four (4) months after the January 11, 2022 expert disclosure deadline, are untimely and unduly prejudicial. *See* ECF No. [221] at 10-11.

Plaintiff responds that Edmonds' Declarations are supplemental expert declarations that are materially similar to the opinions he offered in his deposition. *See* ECF No. [228] at 8-9. Further, Plaintiff avers that Defendant misused Edmonds' expert opinions in its Motion for Summary Judgment, and Edmonds is entitled to respond to Defendant's misuse of his opinions. *See id.* Plaintiff points out that Defendant specifically argued in its Motion that "Plaintiff's own expert [Edmonds] agrees" that Defendant did not traffic on the Confiscated Property. *Id.* (quoting ECF No. [177] at 17). Edmonds, therefore, clarifies through his Declarations that Defendant trafficked on the Confiscated Property because the DCV and TCM-Office are located on the Confiscated Property and the only land entrance to the Port of Mariel lies on the railway lines, which are also located on the Confiscated Property. *See id.* at 8. Edmonds' Declarations do not change his methodology or evidence and merely responds to Defendant's arguments. *See id.* at 8-9.

The Court agrees with Defendant. First, it is apparent that Edmonds' Declarations provide new opinions regarding the locations of the DCV, TCM-Office, and the railway lines. *Compare* ECF Nos. [178-27], [200-12], *with* ECF Nos. [201-5], [201-6]. Those locations were not disclosed in Edmonds' prior expert reports. *See* ECF Nos. [178-27], [200-12]. Further, as Defendant correctly points out in its Reply, Plaintiff

fails to provide any citation in Edmonds' deposition testimony where he purportedly testified about the location of the DCV, TCM-Office, and the railway lines. *See* ECF No. [232] at 4-5. As noted above, the Eleventh Circuit has affirmed that the supplementation of an expert report "is not a device to allow a party's expert to engage in additional work, or to annul opinions or offer new ones to perfect a litigating strategy." *Cochran,* 2009 WL 4823858, at * 5. Thus, the Court determines that Plaintiff improperly seeks to introduce new expert opinions after the expert disclosure deadline.

Next, as noted above, courts may admit new expert opinions after the expert disclosure deadline if the untimely disclosure "was substantially justified or [was] harmless." Fed. R. Civ. P. 37(c)(1). In this case, the late disclosure was not substantially justified. Plaintiff's argument that the late disclosure was justified because Defendant misused Edmonds' expert opinions in its Motion for Summary Judgment is unavailing. If Defendant misstated Edmonds' expert reports in its Motion for Summary Judgment, then the Court is certainly capable of making that determination based on the expert reports without the need for additional declarations. Further, Plaintiff provides no other justification for the late disclosure. There is no indication that the buildings and railway lines were not previously discoverable when Edmonds' expert reports were filed.

In addition, the late disclosure was not harmless. Defendant has been deprived of an opportunity to address Edmonds' new opinions by further deposing Edmonds or by retaining additional experts. *See Reese*,

527 F.3d at 1265 (affirming the district court's striking of an untimely disclosed expert's affidavit attached to a response to a motion for summary judgment because the "disclosure of [the expert's] affidavit almost seven weeks after the close of discovery foreclosed the defendants' opportunity to depose [the expert] and to obtain an expert of their own"). To the extent Plaintiff argues that Defendant was on notice of Edmonds' methodology and evidence, the Court notes that such notice does not provide Defendant with a meaningful opportunity to respond to Edmonds' *new* opinions regarding the locations of the DCV, TCM-Office, and railway lines.

As such, Edmonds' Declarations are stricken.

B. Douglas Jacobson

Defendant argues that Jacobson's opinion, disclosed on February 9, 2022, ECF No. [201-8] ("Jacobson-1"), was limited to whether Defendant's expert Barbara Linney ("Linney") provided evidence that Defendant's exports to Cuba complied with all requirements of License Exception AGR in the Expert Administration Regulations ("EAR"). *See* ECF No. [221] at 11 (quoting ECF No. [201-8]). Jacobson further testified that the "sole focus" of his opinion was "License Exception AGR." ECF No. [182-9] at 132. However, Jacobson's Declaration dated April 22, 2022, ECF No. [201-16] ("Jacobson-2"), contains new opinions including (i) a statement that Defendant's transportation activity is "not travel or travel-related activity"; (ii) analysis of CACR §§ 515.560 and 515.533(a); (iii) analysis of EAR License Exception GFT; and (iv) analysis of EAR License Exception AVS. Defendant avers that similar to Edmonds' Declarations, Jacobson's

Declaration is untimely and unduly prejudicial. *See* ECF No. [221] at 11-13.

Plaintiff responds that Defendant misused Jacobson's expert opinion in its Motion for Summary Judgment and Jacobson is entitled to respond to Defendant's misuse by submitting a "supplemental declaration." ECF No. [228] at 9-11. Moreover, the opinions in Jacobson's Declaration were the subject of his deposition, and Jacobson's Declaration merely adds more details to support his opinion that the lawful travel exception does not apply. *See id.* at 10. As such, Jacobson's Declaration is not improper. *See id.* (citing *Schenone v. Zimmer Holdings, Inc.*, No. 12-CV-1046-J-39MCR, 2014 WL 9879924, at *20 (M.D. Fla. July 30, 2014)). Plaintiff further argues that Jacobson's Declaration is a response to Defendant's President's affidavit regarding License Exception AVS, submitted after Jacobson's expert report. *See id.* at 10-11 (citing ECF No. [177-1]; *Dickens v. Castle Key Ins. Co.*, No. 13-20300-CIV, 2014 WL 11878438, at *1 (S.D. Fla. Dec. 30, 2014)).

The Court agrees with Defendant. First, it is apparent that Jacobson-2 offers new opinions that were not expressed in Jacobson-1. *Compare* ECF No. [201-8] (offering no opinion on License Exceptions AVS and GFT, analysis of CACR §§ 515.560 and 515.533(a), and travel or travel-related activity), *with* ECF No. [201-16] (offering an opinion on License Exceptions AVS and GFT, analysis of CACR §§ 515.560 and 515.533(a), and travel or travel-related activity). Further, Jacobson's deposition testimony cannot be used as a basis to disclose new opinions, especially when Jacobson testified in the same deposition that the

"sole focus" of his opinion was "License Exception AGR." ECF No. [182-9] at 132. Rule 26 requires an expert report containing "a complete statement of *all* opinions the witness will express and the basis and reasons for them." Fed. R. Civ. P. 26(a)(2)(B)(i) (emphasis added). Any opinion not contained in Jacobson-1 is a *new* opinion, even if it was discussed in Jacobson's deposition. As such, Jacobson-2 is not a proper supplementation but an untimely disclosed new expert opinion. *See Cochran*, 2009 WL 4823858, at * 5. To the extent that Plaintiff relies on *Schenone*, 2014 WL 9879924, at *20, the Court notes that the case is inapposite. *Schenone* involved an expert who had disclosed "no new opinions or conclusions." *Id.*

Given that Jacobson-2 offers new opinions, the untimely disclosure must be substantially justified or harmless as the Court noted above. *See* Fed. R. Civ. P. 37(c)(1). Although Plaintiff argues that the late disclosure is justified by Defendant misstating Jacobson's expert opinion, in its Motion for Summary Judgment, the Court once again stresses that it is capable of making that determination based on the expert report without an additional declaration.[3] The Court further notes that the fact that Defendant's President's affidavit concerned License Exception AVS does not justify the late disclosure. Defendant's expert, Linney, opined on License Exception AVS before Defendant's President's testimony. *See* ECF No. [176-2] at 23-24;

[3] To the extent that Plaintiff argues that the opinions contained in Jacobson-2 are not new opinions because the same opinions can be found in Jacobson's deposition, the Court notes that Jacobson-2 is unnecessary, and the Court can rely on Jacobson-1 and Jacobson's deposition. Moreover, Plaintiff will not be prejudiced by the striking of Jacobson-2.

see also ECF No. [182-11]. A fact witness later testifying as to License Exception AVS does not give Jacobson a substantially justified reason to introduce new opinions about License Exception AVS given that Linney already opined on it and Jacobson could have opined on the matter in Jacobson-1. For the same reason, Plaintiff's reliance on *Dickens*, 2014 WL 11878438, at *1, is unavailing. *Dickens* involved an expert who submitted a new supplemental report in response to a new expert report and deposition testimony and based on information that the expert did not have when he had filed his original expert report. Finally, similar to the late disclosure of Edmonds' Declarations, the late disclosure of Jacobson's Declaration is not harmless. Defendant has been deprived of an opportunity to address Jacobson's new opinions by further deposing Jacobson or retaining additional experts.

As such, Jacobson's Declaration is stricken.

C. Mauricio Tamargo

Defendant argues that Tamargo's opinion, disclosed on February 9, 2022, ECF No. [178-33] ("Tamargo-1"), was limited to rebutting Defendant's expert Amber Diaz's ("Diaz") expert opinion, was in regard to "what materials have been used in the past by the Foreign Claims Settlement Commission ['FCSC'] to determine ownership of property," and concluded that certain "evidence" of Plaintiff's ownership interests were "of the types of evidence that the FCSC looks to and relies upon" in determining whether to certify a claim. *See* ECF No. [221] at 13. However, in Tamargo's new Declaration submitted on April 25, 2022, ECF No. No. [201-7] ("Tamargo-2"), Tamargo offers

new opinions "regarding some of the relevant Exhibits offered by the Plaintiff in her Opposition to Defendant's Motion for Summary Judgment." *Id.* at 4-5. Tamargo-2 opines "as to the appropriateness, and reliability of the use of these documents as proof of ownership of a concession and real property under the standards utilized in claims proceedings before the [FCSC]." *Id.* at 2. Further, when deposed about Tamargo-1, Tamargo testified that he was not offering an interpretation of any confiscatory decree at issue in this case. *See* ECF No. [178-34] at 26 ("Q. You're not offering a legal interpretation of any confiscatory decree in this case, are you? A. No, sir. Q. Did you read the confiscatory decree? A. No, I did not."). Yet now, in Tamargo-2, Tamargo does exactly that. *See* ECF No. [201-7] at 14 (opining that Resolution No. 436 Confiscatory Decree "is the official Castro government action and announcement of the confiscation of Plaintiff's property and companies, including those companies relevant to this case" and that it would be viewed by the Commission "as not just credible but also of significant probative value.")).

Plaintiff responds that Defendant conflates an opinion on the types of evidence that the FCSC would consider and the legal interpretation of a decree of ownership. *See* ECF No. [228] at 11-12. Tamargo's expert report discusses the types of evidence that the FCSC considers, but he does not offer a legal interpretation of the types of evidence. *See id.* at 11. Tamargo's expert report also does not discuss the legal significance of a decree of ownership. *See id.* Tamargo's Declaration simply expands on the types of evidence that the FCSC considers and opines that the exhibits pre-

sented by Plaintiff would have been considered. Tamargo's Declaration does not conclude that the FCSC would have found that Plaintiff has a claim based on the exhibits, but rather concludes that the FCSC would have considered the exhibits. Further, Plaintiff argues that the late disclosure was substantially justified because Plaintiff is entitled to respond to Defendant's arguments that the FCSC would not have considered the exhibits by relying on her expert from the FCSC rather than relying solely on Plaintiff's counsel's arguments on the matter. *See id.* at 12.

The Court agrees with Defendant. First, upon review of Tamargo-1 and Tamargo-2, it is apparent that Tamargo is offering a new opinion. *Compare* ECF No. [201-7], *with* ECF No. [178-33]. Instead of opining on the types of evidence the FCSC generally considers, as Tamargo did in Tamargo-1, Tamargo opines in Tamargo-2 that the FCSC would have considered particular exhibits and would have assigned some exhibits significant probative value. *See* ECF No. [201-7]. The consideration of particular exhibits is an untimely disclosed new opinion even if Tamargo does not offer a definitive conclusion that FCSC would have certified Plaintiff's claim. *See Cochran*, 2009 WL 4823858, at * 5.

Since Tamargo-2 offers a new opinion, the Court reiterates that the untimely disclosure must be substantially justified or harmless. *See* Fed. R. Civ. P. 37(c)(1). Plaintiff's argument that the late disclosure was justified because Plaintiff is entitled to respond to Defendant's arguments in the Motion for Summary Judgment by relying on her expert is unavailing. The

Court is unaware of, and Plaintiff fails to cite, any legal authority permitting new undisclosed expert opinions to address arguments raised in a motion for summary judgment. As noted above, Eleventh Circuit precedent indicates otherwise. *See Reese*, 527 F.3d at 1265. Moreover, Plaintiff possessed the exhibits when Tamargo-1 was filed, and Plaintiff provides no reason why the new opinions were not included in Tamargo-1. Next, as with the late disclosure of Edmonds' and Jacobson's Declarations, the late disclosure of Tamargo's Declaration is not harmless. Defendant has been deprived of an opportunity to address Tamargo's new opinion by further deposing Tamargo or retaining additional experts.

As such, Tamargo's Declaration is stricken.

D. Timothy Riddiough and Harold Martin

Defendant argues that Riddiough's Declaration, ECF No. [194-4], and Martin's Declaration, ECF No. [194-3], submitted in response to Defendant's *Daubert* Motion, should be stricken because they are untimely and improper. *See* ECF No. [221] at 15-17. Defendant points out that Plaintiff timely disclosed two experts, Lori Wolin ("Wolin") and Jose Alberro ("Alberro"), and Defendant's *Daubert* Motion challenged both experts' methodology. *See* ECF No. [178-1]. In response, Plaintiff submitted Riddiough and Martin's Declarations to supplement Wolin and Alberro's methodology. Defendant argues that Riddiough and Martin's "supplemental" Declarations are improper and should be struck for merely bolstering defective or problematic expert reports. *See* ECF No. [221] at 8-9 (citing *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 719 (11th Cir. 2019) ("[A] party

cannot abuse Rule 26(e) to merely bolster a defective or problematic expert witness report."); *Thames v. City of Pensacola*, 2005 WL 1876175, at *4, 5 (N.D. Fla. Aug. 1, 2005) (holding that so-called "supplemental" expert declaration is improper, and should be struck, where it "offers a new opinion" or "chang[es] [the] position as set out in [the expert's] report or his deposition testimony.")). Defendant also contends that Riddiough and Martin's Declarations were untimely disclosed. *See id.* at 15-16. Lastly, Defendant submits that Riddiough and Martin's Declarations offer an impermissible legal conclusion, and the Court should conduct its own evaluation of an expert opinion, not look to undisclosed experts' declarations that a disclosed expert's methodology is reliable. *See id.* at 16-17.

Plaintiff responds that Riddiough and Martin's opinions are not being offered to the jury, but rather to assist the Court in deciding Defendant's *Daubert* Motion. *See* ECF No. [228] at 12-13. As such, Rule 26 disclosure requirements do not apply. Further, because Defendant challenged Wolin and Alberro's methodology in a *Daubert* Motion filed three (3) months after the January 11, 2022 expert disclosure deadline, if the January 11, 2022 deadline applied to Riddiough and Martin, then Plaintiff would be required to anticipate Defendant's challenge to Wolin and Alberro's methodology and craft Riddiough and Martin's Declarations in response to a challenge that has not yet been made. *See id.* at 13 (citing *Massachusetts Mut. Life Ins. Co. v. DB Structured Prod., Inc.*, No. CV 11-30039-MGM, 2015 WL 12990692, at *3 (D. Mass. Mar. 31, 2015); *Advanced Analytics, Inc. v. Citigroup Global Markets, Inc.*, 301 F.R.D. 31, 43

(S.D.N.Y. 2014)). Plaintiff further contends that Riddiough and Martin's Declarations properly addresses the issue of reliability, and the Court need not exclude them on the grounds that they offer legal conclusion because the Court is not required to exclude legal conclusions regarding the reliability of expert opinions. Plaintiff points out that the court in *In re Syngenta AG MIR 162 Corn Litig* welcomed such evidence. *See id.* at 14 (citing No. 14-md-2591-JWL, 2017 WL 1738014, at *8-*9 (D. Kan. May 4, 2017)).

Upon review of Riddiough and Martin's Declarations, it is apparent that they are not a supplemental declaration by the originally disclosed experts, Wolin and Alberro, or rebuttal expert reports in response to any of Defendant's experts. Rather, Riddiough and Martin are undisclosed experts who seek to bolster the reliability of Wolin and Alberro's methodology. The Rules do not provide for such declarations. Further, courts in this District have held that affidavits intended to supplement existing expert reports by bolstering expert opinions are improper. The court in *In re Denture Cream Prod. Liab. Litig.*, No. 09-2051-MD, 2012 WL 3639045, at *4 (S.D. Fla. Aug. 23, 2012), stated that "supplementation is not appropriate whenever a party wants to bolster or submit additional expert opinions because to permit such supplementation would reek [*sic*] havoc in docket control and amount to unlimited expert opinion preparation." In *Riley v. Tesla, Inc.*, the court similarly stated that "[c]learly, a party cannot use a supplemental expert report to merely bolster an expert opinion." No. 20-CV-60517, 2022 WL 1486905, at *6 (S.D. Fla. May 11, 2022), *on reconsideration*, No. 20-CV-60517, 2022 WL 2341165 (S.D. Fla. June 29, 2022); *see also Cochran*,

2009 WL 4823858 at * 5 (holding that supplementation of an expert report "is not a device to allow a party's expert to engage in additional work, or to annul opinions or offer new ones to perfect a litigating strategy"). Moreover, given the established precedent set forth by the Eleventh Circuit in affirming *Cochran*, 2009 WL 4823858 at * 5, and applied by the courts in *In re Denture Cream Prod. Liab. Litig.*, 2012 WL 3639045, at *4, and *Riley*, 2022 WL 1486905, at *6, the Court is not persuaded by Plaintiff's reliance on cases from outside the Eleventh Circuit, including *Massachusetts Mut. Life Ins. Co.*, 2015 WL 12990692, at *3, *Advanced Analytics, Inc.*, 301 F.R.D. at 43, and *In re Syngenta AG MIR 162 Corn Litig.*, 2017 WL 1738014, at *8-*9.

As such, Riddiough and Martin's Declarations are improper and are stricken.

E. Avelino Gonzalez and Alejandro Domper

Defendant argues that Gonzalez's Declaration regarding Cuban Laws No. 80 and 88, ECF No. [201-3], and Domper's Declaration on Spanish law, ECF No. [201-4], should be stricken because they are untimely for failing to comply with the Court's Scheduling Orders and Plaintiff failed to provide adequate notice under Rule 44.1. *See* ECF No. [221] at 22-23. Defendant points out that Plaintiff's late Rule 44.1 Notice indicated that "Plaintiff only anticipates raising one issue of foreign law: Cuban Law No. 88" with no reference to Cuban Law No. 80 or Spanish law. ECF No. [147].

Plaintiff responds that foreign law experts are governed by Rule 44.1, not Rule 26. As such, Gonzalez and Domper's Declarations are not untimely. *See* ECF

No. [228] at 17-18. Plaintiff argues that requiring Gonzalez and Domper's Declarations to be disclosed by the Rule 26 expert disclosure deadline would preclude Plaintiff from relying on her foreign law experts when responding to Defendant's Motion for Summary Judgment that raises foreign law issues. *See id.* at 18. Plaintiff further argues that Defendant's demand to strike Gonzalez and Domper's Declarations is moot. *See id.* at 18-19. According to Plaintiff, Defendant relied on its foreign law expert Diaz to raise an untenable position regarding Cuban law in its Motion for Summary Judgment. Plaintiff thereafter relied on Gonzalez and Domper's Declarations to respond to Defendant's argument and argued in her MSJ Response that Cuban law foreclosed Diaz's interpretation. Since Defendant failed to respond to Plaintiff's argument in its Reply, Defendant abandoned its original position. Therefore, Plaintiff no longer needs to rely on Gonzalez and Domper in response to Defendant's now abandoned argument.

Defendant replies that the purpose of the notice requirement in Rule 44.1 is to give fair notice of foreign legal issues that a party intends to raise. *See* ECF No. [232] at 11. As such, regardless of Rule 26, by failing to provide fair notice under Rule 44.1, Defendant was deprived of an opportunity to conduct discovery on Gonzalez and Domper. *See id.* at 11-12. Further, Defendant contends that it did not abandon its position by not addressing arguments raised by Plaintiff in her MSJ Response. *See id.* at 12.

First, the Court agrees with Defendant that the argument is not moot given that Defendant continues to rely on its foreign law expert Diaz in its Reply, *see*

ECF No. [219] at 15 (citing ECF No. [181-1]), indicating that Defendant is not abandoning Diaz's application of foreign law.

Second, the Court agrees with Plaintiff to the extent that Plaintiff is not required to comply with the timing requirements of Rule 26 for Gonzalez and Domper's Declarations. The Court begins with the text of Rule 44.1. As noted above, Rule 44.1 states that "[a] party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law." Fed. R. Civ. P. 44.1. The plain text of Rule 44.1 does not require foreign law experts disclosed under Rule 44.1 to comply with Rule 26.

A review of Gonzalez and Domper's Declarations indicate that they do not present any arguments on questions of fact. Rather, they each discuss the legal scope of a Cuban Government concession under Cuban and Spanish law. As such, Gonzalez and Domper are foreign law experts subject to Rule 44.1, and Rule 44.1 does not require compliance with the disclosure requirements of Rule 26. *See* Fed. R. Civ. P. 44.1, *World Fuel Servs.*, 489 F. Supp. 3d at 1345, *BCCI Holdings*, 184 F.R.D. at 9.

Moreover, case law supports this Court's conclusion. In *World Fuel Servs., Inc. v. M/V PARKGRACHT*, 489 F. Supp. 3d 1340, 1345 (S.D. Fla. 2020), *appeal dismissed*, No. 20-14042-DD, 2021 WL 316122 (11th Cir. Jan. 21, 2021), the plaintiffs argued that the

defendant's foreign law expert, Dr. French, should be stricken because the defendant failed to comply with Rule 26 disclosure requirements. In response, the defendant argued that Rule 26 did not apply because Dr. French was a foreign law expert. The court in this district held that because Dr. French was a foreign law expert, Rule 44.1 applied, and Rule 26 did not. *See id.* (holding that "contrary to Plaintiffs' contention, Owner was not required to provide a traditional expert report as required under Rule 26(a)(2)"). Similarly, in *BCCI Holdings (Luxembourg), Societe Anonyme v. Khalil*, 184 F.R.D. 3, 9 (D.D.C. 1999), the court held that Rule 26 did not apply to foreign law experts disclosed under Rule 44.1.

Next, to the extent that Defendant argues that Gonzalez and Domper's Declarations should be stricken because Plaintiff failed to provide adequate notice under Rule 44.1, the Court is again not persuaded. As an initial matter, the Court notes that the text of Rule 44.1 requires notification of a party's reliance on the laws of a "foreign country[.]" Fed. R. Civ. P. 44.1. In this case, Plaintiff states in her Rule 44.1 Notice that "Plaintiff only anticipates raising one issue of foreign law: Cuban Law No. 88." ECF No. [147] at 1. Plaintiff also states as follows:

> If Defendant intends to pursue its defenses that appear to raise foreign law issues, Plaintiff believes the Court should consider the opinions of two foreign law experts, Avelino Gonzalez, Esq., and Alejandro Auset Domper . . . . Plaintiff reserves her right to submit the expert opinions of either or both foreign law experts to respond specifically to any foreign law

> issue or issues Defendant ultimately pursues, if any.

Id. at 3.

Plainly, Plaintiff gave notice of her potential reliance on Cuban law, albeit not expressly citing Cuban law 80. As such, Plaintiff gave sufficient notice of Plaintiff's reliance on Gonzalez's application of Cuban law. However, Plaintiff's Rule 44.1 Notice provides no notice of Plaintiff's reliance on Spanish law. *See id.* As such, Plaintiff's notice is deficient on that basis for failing to give adequate notice of Domper's application of Spanish law. Nonetheless, the Court is unaware of, and Defendant fails to cite, any legal authority requiring the Court to strike Domper's Declaration simply because Plaintiff's Rule 44.1 Notice does not adequately identify the foreign country. Further, the Court finds little reason to strike an expert opinion regarding the application of a potentially relevant foreign country's law. Rule 44.1 is intended to assist the Court on the proper application of foreign law. Thus, striking Domper's Declaration and thereby precluding the Court from considering his potentially helpful expert opinion on the proper interpretation and application of foreign law would contravene the underlying purpose of Rule 44.1. As such, the Court declines to strike Gonzalez and Domper's Declarations on the basis that Plaintiff failed to provide adequate notice.

Defendant's argument that it was not given sufficient time to conduct discovery on Gonzalez and Domper is similarly unavailing. As noted above, the Eleventh Circuit has affirmed that expert testimony on foreign law is not invariably necessary. *See Dixieben*, 737 F. Supp. at 1547. Further, "federal judges

may reject even the uncontradicted conclusions of an expert witness and reach their own decisions on the basis of independent examination of foreign legal authorities." *Barnett*, 1990 WL 10858625, at *1. Given that any discovery on Gonzalez and Domper would simply raise additional arguments on the application of foreign law – arguments that the Court need not rely upon – the Court notes that it is well-equipped to address issues of law without the benefit of additional arguments. Further, Defendant has already provided Diaz's expert opinion, which applies Cuban law to the same issue. Given the existence of Diaz's expert opinion, there is no undue prejudice from Defendant's inability to retain yet another expert to argue for a similar, if not the same, application of Cuban law. As such, Defendant's inability to depose Gonzalez and Domper and retain additional experts is immaterial.

For the same reasons, Defendant's reliance on *Schablonentechnik v. MacDermid Graphic Arts, Inc.*, No. 1:02-CV-2585-ODE, 2005 WL 5974438, at *4 (N.D. Ga. June 21, 2005), is unavailing. In *Schablonentechnik*, 2005 WL 5974438, the court was concerned about the potential need to push back the dispositive motions deadline because the court determined that the defendant in that case should be allowed an opportunity to depose the plaintiff's foreign law experts and retain rebuttal experts if the foreign law experts were to be admitted. This Court does not share the same concern, especially considering Diaz's expert opinion that provides a counter to Gonzalez and Domper's Declarations as noted above.

As such, Defendant's Motion is denied as to this matter.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

4. Defendant's Motion, **ECF No. [221]**, is **GRANTED IN PART AND DENIED IN PART**.
5. The Declarations of Scott Edmonds, **ECF Nos. [201-5]**, **[201-6]**, are **STRICKEN**.
6. The Declaration of Douglas Jacobson, **ECF No. [201-16]**, is **STRICKEN**.
7. The Declaration of Mauricio Tamargo, **ECF No. [201-7]**, is **STRICKEN**.
8. The Declaration of Timothy Riddiough, **ECF No. [194-4]**, is **STRICKEN**.[4]
9. The Declaration of Harold Martin, **ECF Nos. [194-3]**, is **STRICKEN**.

DONE AND ORDERED in Chambers at Miami, Florida, on July 20, 2022.

/s/ [Signature]
BETH BLOOM
UNITED STATES
DISTRICT JUDGE

Copies to:

Counsel of Record

[4] Plaintiff's refiled Declaration of Timothy Riddiough, ECF No. [253], is similarly stricken.

APPENDIX E

[Doc. 268]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

ODETTE BLANCO DE FERNANDEZ,
née Blanco Rosell,

Plaintiff,

v.

SEABOARD MARINE, LTD.,

Defendant.

[Filed: August 19, 2022]

ORDER ON MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court upon Defendant Seaboard Marine Ltd.'s ("Defendant" or "Seaboard Marine") Motion for Summary Judgment, ECF No. [177] ("Motion"), along with the corresponding Statement of Material Facts, ECF No. [177-1] ("SMF"). Plaintiff Odette Blanco De Fernandez ("Plaintiff") filed a Response in Opposition, ECF No. [197] ("Response"), and her Opposition to the SMF, ECF No. [198] ("Opposition SMF"). Defendant filed a Reply to Plaintiff's Response, ECF No. [219] ("Reply"), and its Reply to the Opposition to the SMF, ECF No. [220] ("Reply SMF"). The Court has carefully

considered the Motion, all opposing and supporting submissions, the record in the case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion is granted.

I. BACKGROUND

On December 20, 2020, Plaintiff initiated this action against Defendant to recover damages under Title III of the Cuban Liberty and Democratic Solidarity ("LIBERTAD") Act of 1996, codified by 22 U.S.C. § 6021, *et seq*. ("Helms-Burton Act" or "Act"), for trafficking in property that the Cuban Government confiscated. *See* ECF No. [1]. Plaintiff thereafter filed an Amended Complaint. *See* ECF No. [45] ("Amended Complaint"). According to the Amended Complaint, Plaintiff and her four siblings ("Blanco Rosell Siblings") owned various corporations and assets in Cuba that the Cuban Government confiscated in 1960. *See id.* ¶¶ 4, 66-73. Plaintiff seeks to hold Defendant liable under Title III of the Act for "trafficking" in the confiscated property. *See* 22 U.S.C. § 6082(a)(1)(A).

In the instant Motion, Defendant seeks summary judgment in its favor because (1) Plaintiff does not own a claim to property confiscated by the Cuban Government; (2) Seaboard Marine did not traffic in any confiscated property; (3) Seaboard Marine did not "knowingly and intentionally" traffic in the confiscated property; (4) Seaboard Marine did not traffic through the Mariel Special Economic Zone ("ZEDM"); (5) there is no competent evidence of Plaintiff's damages; and (6) Seaboard Marine's use of the Container Terminal was incident to lawful travel to Cuba and necessary to the conduct of such travel. *See* ECF No. [177]. Plaintiff responds that (1) Plaintiff owns a

claim to the confiscated property; (2) Seaboard Marine trafficked in the confiscated property; (3) Seaboard Marine trafficked through the ZEDM; (4) Seaboard Marine's trafficking was knowing and intentional; (5) Seaboard Marine cannot invoke the lawful travel defense; and (6) Plaintiff proffered competent evidence of damages. *See* ECF No. [197].

II. MATERIAL FACTS

Based on the parties' statements of material facts in support of and in opposition to the Motion, along with the evidence in the record, the following facts are not genuinely in dispute unless otherwise noted.

Seaboard Marine is an ocean transportation company that transports goods by vessels from point A to point B. ECF No. [177-1] ¶ 1.[1] Plaintiff was born in Santiago de Cuba, Cuba on January 27, 1930. ECF Nos. [177-1] ¶ 4, [198] ¶ 4. Plaintiff has four brothers, Alfredo, Florentino, Enrique, and Byron, and one sister, Marie Hebe. ECF Nos. [177-1] ¶ 5, [198] ¶ 5.

Plaintiff claims that in 1960, the Cuban Government confiscated certain property from her family, including the companies Maritima Mariel S.A. ("Maritima Mariel"), Compania Azucarera Mariel S.A. ("Azucarera Mariel"), a 70-year concession held by Maritima Mariel, and land holdings of Azucarera Mariel. ECF Nos. [177-1] ¶ 7, [198] ¶ 7.

In response to Seaboard Marine's Interrogatories to Plaintiff, Plaintiff stated that "[t]he Blanco Rosell

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[1] Plaintiff disputes Defendant's phrasing. Plaintiff states that Seaboard Marine is an "ocean carrier." ECF No. [198] ¶ 1. The distinction is immaterial for the purposes of addressing the Motion.

Siblings each owned 20% of Azucarera Mariel S.A. [and] Maritima Mariel." ECF Nos. [177-1] ¶ 17, [198] ¶ 17. Plaintiff stated that the "Blanco Rosell Siblings" were "Plaintiff and her deceased brothers, Alfredo Blanco Rosell, Jr.; Florentino Blanco Rosell; Enrique Blanco Rosell." ECF Nos. [177-1] ¶ 17, [198] ¶ 17.[2]

The Bay of Mariel ("Bay" or "Mariel Bay") is located on the northwest coast of Cuba. ECF Nos. [177-1] ¶ 23, [198] ¶ 23. On the west side of the Bay of Mariel is a body of land called the Angosta Peninsula. ECF Nos. [177-1] ¶ 24, [198] ¶ 24. Members of the Balsinde family owned land on the Angosta Peninsula. ECF Nos. [177-1] ¶ 25, [198] ¶ 25.

Defendant states that the Cuban Government purchased the land on the Angosta Peninsula for the purpose of building a naval air station, which it built prior to January 1, 1959. ECF No. [177-1] ¶ 26. Defendant includes a map of the naval air station from Plaintiff's expert Scott Edmonds' ("Edmonds") initial and supplemental expert reports, which show the naval air station on the west side of Mariel Bay. *See id.* Plaintiff disputes Defendant's characterization that the Cuban Government purchased the land and contends that the Cuban Government forcibly expropri-

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[2] The parties omit the name of the fourth brother, Byron, who was mentioned elsewhere in the SMF, Opposition to the SMF, and Plaintiff's deposition. *See* ECF Nos. [177-1] ¶ 5, [198] ¶ 5, [180-4] at 13. The fact that the parties omit the name of the fourth brother when defining the Blanco Rosell Siblings appears to be scrivener's error. Regardless, the omission is immaterial for the purposes of addressing the Motion, given that the parties agree that Plaintiff claims to have a 20% stake in Maritima Mariel and Azucarera Mariel.

ated seven (7) caballerias of land for the naval air station and paid a court-determined value years later. ECF No. [198] ¶ 26. However, Plaintiff does not otherwise dispute that the map prepared by her expert Edmonds shows the footprint of the naval air station and that the naval air station was built prior to January 1, 1959. *See id.*

In 1902, Ramon Balsinde built a wooden dock on the east side of the Bay of Mariel, next to the town of Mariel. ECF Nos. [177-1] ¶ 33, [198] ¶ 33. In the early 1900's, the wooden dock was used to export sugar and was operated by members of the Balsinde family and then by Central San Ramon, S.A. ("Central San Ramon"), a company owned by members of the Balsinde family. ECF Nos. [177-1] ¶ 34.[3] In 1934, the Cuban Government granted to Central San Ramon a concession for private use (Decree No. 1655 or "1934 Concession"), recognizing the legality of the private use of that town dock. ECF Nos. [177-1] ¶ 35, [198] ¶ 35. The 1934 Concession describes the location of the dock as "Punta Coco Solo" and declares "the legal existence of the dock and warehouses which, for private use, the Corporation 'Central San Ramon, S.A.' possesses on the littoral of the Port of Mariel, at a place known as Punta Coco Solo." ECF Nos. [177-1] ¶ 36, [198] ¶ 36.

Plaintiff's father Alfredo Blanco Calas, Sr. purchased Central San Ramon in or around 1949. ECF

[3] Plaintiff argues that the dock was used "exclusively" for exporting sugar. ECF No. [198] ¶ 34. The distinction is immaterial for the purposes of addressing the Motion.

Nos. [177-1] ¶ 38.[4] Plaintiff claims that Azucarera Mariel owned and operated Central San Ramon. ECF Nos. [177-1] ¶ 8, [198] ¶ 8. On August 3, 1955, the Cuban Government granted to Maritima Mariel the right to "plan, study, execute, maintain, and exploit public docks and warehouses in Mariel Bay" and construct "a Maritime Terminal." ECF Nos. [200-4] at 11 ("1955 Concession"), [177-1] ¶ 41, [198] ¶ 41.[5]

In 2018, Seaboard Marine was approached by Boston Agrex, a shipper of poultry based in Boston, regarding the prospect of transporting frozen chicken to the Container Terminal at the Port of Mariel in Cuba. ECF No. [177-1] ¶ 57.[6] Beginning in May 2019, Seaboard Marine has transported frozen chicken in refrigerated containers from the United States to Cuba.

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[4] Plaintiff disputes Defendant's phrasing, arguing that Plaintiff's father did not purchase Central San Ramon. Plaintiff submits that Plaintiff's father purchased the sugar mill and sugar fields that belonged to Central San Ramon. *See* ECF No. [198] ¶ 38. However, Plaintiff later states that "the Blanco Rosell family acquired Central San Ramon from the Balsinde family in 1949." *Id.* ¶ 104. Plaintiff also states that "Plaintiff's father owned two sugar mills, Central Ramona *and Central San Ramon*." *Id.* ¶ 6 (emphasis added). Further, as noted below, Plaintiff agrees that Azucarera Mariel owned and operated Central San Ramon. *See id.* ¶ 8.

[5] The parties dispute the exact phrasing of the above fact. A review of the 1955 Concession supports the above phrasing. *See* ECF No. [200-4] at 11.

[6] Plaintiff disputes Defendant's phrasing. Plaintiff states that the transportation of goods to Cuba was an "export transaction" not a "travel transaction." ECF No. [198] ¶ 57. However, Defendant does not phrase the transportation of goods as a "travel transaction." Regardless, the distinction is immaterial for the purposes of addressing the Motion.

ECF No. [177-1] ¶ 58.[7] For all transports of containers by Seaboard Marine to the Container Terminal, Seaboard Marine docks vessels at the berths of the Container Terminal on the west side of the Bay of Mariel. ECF No. [177-1] ¶ 60.[8]

III. LEGAL STANDARD

A court may grant a motion for summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The parties may support their positions by citations to materials in the record, including, among other things, depositions, documents, affidavits, or declarations. *See* Fed. R. Civ. P. 56(c). An issue is genuine if "a reasonable trier of fact could return judgment for the non-moving party." *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). A fact is material if it "might affect the outcome of the suit under the governing law." *Id.*

A court views the facts in the light most favorable to the non-moving party, draws "all reasonable inferences in favor of the nonmovant and may not weigh evidence or make credibility determinations, which 'are jury functions, not those of a judge.'" *Lewis v. City of Union City, Ga.*, 934 F.3d 1169, 1179 (11th Cir.

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[7] As before, Plaintiff disputes Defendant's phrasing. Plaintiff maintains that the transportation of goods to Cuba was an "export transaction" not a "travel transaction." ECF No. [198] ¶ 58.

[8] Plaintiff disputes Defendant's phrasing. Plaintiff maintains that the transportation of goods to Cuba was an "export transaction" not a "travel transaction." ECF No. [198] ¶ 60.

2019) (quoting *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1252 (11th Cir. 2013)); *Davis v. Williams*, 451 F.3d 759, 763 (11th Cir. 2006); *see also Crocker v. Beatty*, 886 F.3d 1132, 1134 (11th Cir. 2018) ("[W]e accept [the non-moving party's] version of the facts as true and draw all reasonable inferences in the light most favorable to him as the non-movant."). "The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient; there must be evidence on which a jury could reasonably find for the [non-moving party]." *Anderson*, 477 U.S. at 252. "If more than one inference could be construed from the facts by a reasonable fact finder, and that inference introduces a genuine issue of material fact, then the district court should not grant summary judgment." *Bannum, Inc. v. City of Fort Lauderdale*, 901 F.2d 989, 996 (11th Cir. 1990). The Court does not weigh conflicting evidence. *See Skop v. City of Atlanta, Ga.*, 485 F.3d 1130, 1140 (11th Cir. 2007) (quoting *Carlin Comm'n, Inc. v. S. Bell Tel. & Tel. Co.*, 802 F.2d 1352, 1356 (11th Cir. 1986)).

The moving party shoulders the initial burden of demonstrating the absence of a genuine issue of material fact. *Shiver v. Chertoff*, 549 F.3d 1342, 1343 (11th Cir. 2008). If a movant satisfies this burden, "the nonmoving party 'must do more than simply show that there is some metaphysical doubt as to the material facts.'" *Ray v. Equifax Info. Servs., LLC*, 327 F. App'x 819, 825 (11th Cir. 2009) (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). Instead, "the non-moving party 'must make a sufficient showing on each essential element of the case for which he has the burden of proof.'" *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S.

317, 322 (1986)). The non-moving party must produce evidence, going beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designating specific facts to suggest that a reasonable jury could find in the non-moving party's favor. *Shiver*, 549 F.3d at 1343. Yet, even where a non-moving party neglects to submit any alleged material facts in dispute, a court must still be satisfied that the evidence in the record supports the uncontroverted material facts proposed by the movant before granting summary judgment. *Reese v. Herbert*, 527 F.3d 1253, 1268-69, 1272 (11th Cir. 2008); *United States v. One Piece of Real Prop. Located at 5800 S.W. 74th Ave., Mia., Fla.*, 363 F.3d 1099, 1103 n.6 (11th Cir. 2004). Indeed, even "where the parties agree on the basic facts, but disagree about the factual inferences that should be drawn from those facts," summary judgment may be inappropriate. *Warrior Tombigbee Transp. Co., Inc. v. M/V Nan Fung*, 695 F.2d 1294, 1296 (11th Cir. 1983).

IV. DISCUSSION

As noted above, Defendant seeks summary judgment in its favor because (1) Plaintiff does not own a claim to property confiscated by the Cuban Government; (2) Seaboard Marine did not traffic in any confiscated property; (3) Seaboard Marine did not "knowingly and intentionally" traffic in the confiscated property; (4) Seaboard Marine did not traffic through the ZEDM; (5) there is no competent evidence of Plaintiff's damages; and (6) Seaboard Marine's use of the Container Terminal was incident to lawful travel to Cuba and necessary to the conduct of such travel. *See* ECF No. [177]. Plaintiff responds that (1) Plaintiff owns a

claim to the confiscated property; (2) Seaboard Marine trafficked in the confiscated property; (3) Seaboard Marine trafficked through the ZEDM; (4) Seaboard Marine's trafficking was knowing and intentional; (5) Seaboard Marine cannot invoke the lawful travel defense; and (6) Plaintiff proffered competent evidence of damages. Defendant further argues that if Defendant prevails on any one of the issues raised, Defendant is entitled to summary judgment. *See* ECF No. [197]. The Court addresses Defendant's arguments in turn.

A. Ownership

As an initial matter, Title III of the Helms-Burton Act requires "proof of ownership of claims to confiscated property." 22 U.S.C. § 6083. A plaintiff may provide proof of ownership through a claim certified by the Foreign Claims Settlement Commission ("FCSC"), which the Court must accept as conclusive proof of ownership. *See id.* If there is no certified claim, courts must "make determinations regarding the amount and ownership of the claim." *Id.* In this case, because there is no certified claim, the Court must determine the amount and ownership of Plaintiff's claim. That is, the Court must determine whether there is any evidence that Plaintiff owns a claim to property confiscated by the Cuban Government.

Defendant first argues that Plaintiff cannot present competent evidence for the jury to find that Plaintiff owns a claim to property confiscated by the Cuban Government. *See* ECF No. [177] at 16-21. Defendant's argument relies on the premise that Plaintiff does not have admissible evidence showing that she owns a claim to Maritima Mariel or Azucarera

Mariel. Defendant avers that Plaintiff's testimony and interrogatory responses are not based on her personal knowledge and do not demonstrate her ownership of the companies. Further, Plaintiff does not have any documentary evidence to support her ownership of the companies. *See id.* In addition, Defendant argues that, even if Plaintiff could adduce admissible evidence that she has an ownership interest in the companies, Plaintiff does not own a claim to any land or concessionary rights held by those companies to form the basis of her claim under the Act. *See id.* at 21-22. Maritima Mariel – not Plaintiff – was granted the 1955 Concession, and a minority stake in Maritima Mariel cannot be the basis for a claim under the Act. *See id.* Similarly, Azucarera Mariel – not Plaintiff – owned the land, and a minority stake in Azucarera Mariel cannot be the basis for a claim under the Act. *See id.*

Plaintiff responds that she has an ownership interest in her family's businesses and that her testimony, her family members' testimony, her interrogatory responses, and various documents provide sufficient evidence to support her claim of ownership. *See* ECF No. [197] at 12-20. Further, Plaintiff argues that Defendant's interpretation of the Act – that forecloses Plaintiff's claim because the companies, not Plaintiff, were granted the 1955 Concession and owned the land – would unduly narrow Title III's broad authorization of a civil remedy for any claimant "who owns the claim to such property." 22 U.S.C. § 6082(a)(1)(A). Plaintiff argues that Defendant's "reading of the statute would require the Court to delete the word 'claim' from the phrase 'owns the claim to such property,' and effec-

tively rewrite Helms-Burton to cover only those plaintiffs who 'own such property.'" *Garcia-Bengochea v. Carnival Corp.*, 407 F. Supp. 3d 1281, 1290 (S.D. Fla. 2019); *see de Fernandez v. Crowley Holdings, Inc.*, No. 21-cv-20443, 2022 WL 860373, at *5 (S.D. Fla. Mar. 23, 2022) (finding that the plaintiffs sufficiently alleged ownership of a claim based on their ownership of companies whose assets were confiscated).

The Court agrees with Plaintiff. First, Plaintiff testified that although she could not recall the corporate names of her family's businesses, she attended corporate meetings with her brothers and received annual dividends "from the business," ECF No. [179-4] at 49-51, and her family owned the sugar mill, sugar cane fields surrounding the sugar mill, the family home called Tapia, and other property around the Bay of Mariel, *see id.* at 26-27, 32-33. Such testimony is sufficient for "a reasonable trier of fact [to] return judgment for [Plaintiff]" on the issue of Plaintiff's ownership of Maritima Mariel and Azucarera Mariel. *Miccosukee*, 516 F.3d at 1243. As such, Plaintiff presents a genuine issue of material fact with regard to Plaintiff's ownership of the companies. Given the Court's determination, the Court need not discuss whether other evidence could also persuade a reasonable trier of fact to return judgment in favor of Plaintiff.[9]

[9] To the extent that Defendant argues that Plaintiff's testimony was not based on personal knowledge and Plaintiff should not be permitted to serve errata changes to correct her testimony, the Court has already determined that Plaintiff is entitled to serve errata changes after refreshing her memory. *See* ECF No. [242].

Second, with respect to Defendant's argument that the companies – not Plaintiff – were granted the 1955 Concession and owned the land and that her minority stake in the companies does not give her a claim under the Act, the Court is not persuaded. The Act states in relevant part: "any person that, after the end of the 3-month period beginning on the effective date of this subchapter, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national *who owns the claim to such property* for money damages . . . ." 22 U.S.C. § 6082(a)(1)(A) (emphasis added). As Plaintiff correctly argues, Defendant's reading of the Act would require the Court to delete the word "claim" from the phrase "owns the claim to such property," and to effectively rewrite the Act to cover only those plaintiffs who "own such property." *Garcia-Bengochea*, 407 F. Supp. 3d at 1290; *see also de Fernandez v. Crowley Holdings, Inc.*, 2022 WL 860373, at *5 (S.D. Fla. Mar. 23, 2022). The plain language of the Act makes clear that plaintiffs who own *a claim* to confiscated property – not plaintiffs who own the confiscated property – are entitled to relief under the Act. 22 U.S.C. § 6082(a)(1)(A). As such, Plaintiff may seek relief under the Act given that she owns a claim to the confiscated property through her stake in the companies. Given the plain language of the statute, the Court declines the parties' invitation to further analyze Congressional intent with respect to this particular clause of the Act.[10]

[10] Defendant argues in a footnote that "[t]he holding in *Garcia-Bengochea* . . . is unpersuasive." ECF No. [177] at 22 n.7. Defend-

Further, the Court notes that Defendant's reliance on the *Havana Docks* cases[11] does not meaningfully advance Defendant's argument. *See* ECF No. [219] at 12. In those cases, the plaintiff was a company, Havana Docks, that owned a claim certified by the FCSC. In determining that Havana Docks could bring a lawsuit based upon its certified claim, the Court did not determine that only the corporate entity could bring a lawsuit for a claim and others who owned a stake in the corporate entity could not. *See, e.g.*, *Havana Docks Corp. v. Carnival Corp.*, No. 19-CV-21724, 2022 WL 831160, at *55 (S.D. Fla. Mar. 21, 2022).

In sum, Plaintiff has set forth sufficient evidence to suggest that she has an ownership interest in Maritima Mariel and Azucarera Mariel and can bring a claim under the Act. As such, Defendant's arguments on the issue of ownership are unavailing.[12]

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ant appears to argue that *Garcia-Bengochea* was wrongly decided because the court misapplied the word "claim." For the reasons noted above, the Court agrees with the holding in *Garcia-Bengochea*, as well as *Crowley Holdings, Inc.*, which interpreted the Act in the same manner.

[11] For the purposes of this Order, the *Havana Docks* cases are *Havana Docks Corp. v. MSC Cruises SA Co.*, No. 19-cv-23588, *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724, and *Havana Docks Corp. v. Royal Caribbean*, No. 19-cv-23590.

[12] The parties each seek to introduce numerous experts on this issue and filed several motions to strike the experts' reports or preclude the experts from testifying to the jury. *See* ECF Nos. [142], [176], [178-1], [221]. Based on the record, it appears that Plaintiff's experts Jaime Suchlicki ("Suchlicki") and Mauricio Tamargo ("Tamargo") and Defendant's expert Diaz seek to opine on

B. Confiscation and Trafficking

On the second issue, Defendant raises three overarching arguments. First, Defendant argues that Defendant did not traffic in any confiscated property because its activity took place on the Container Terminal, which is located on land that the Cuban Government purchased from the Balsinde family and has owned continuously since then. *See* ECF No. [177] at 25-27. Second, Defendant did not traffic in the land included in the 1955 Concession granted to Maritima Mariel because, according to Defendant's foreign law expert Ambar Diaz ("Diaz"), the 1955 Concession did not cover the Container Terminal and was limited to Punta Coco Solo on the east side of the Bay. *See id.* at 27-31. Third, even if Plaintiff could prove that the 1955 Concession granted rights to operate the entire Bay, including the Container Terminal, Defendant's conduct did not constitute trafficking. *See id.* at 31-33. Defendant did not sell, transfer, distribute, dispense, broker, manage, or otherwise dispose of the 1955 Concession, nor did it purchase, lease, receive, possess, obtain control of, manage, use, or otherwise acquire or

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issues at least tangentially related to Plaintiff's ownership claim. *See* ECF Nos. [195-2], [178-12], [178-33], [201-7]. For reasons stated in the Court's Order on the Motion to Strike, ECF No. [256] at 11-14, the Court does not consider Tamargo's Declaration, ECF No. [201-7]. Further, the Court's determination above was based on Plaintiff's testimony, which provides sufficient evidence of an ownership claim for the jury to find in her favor, and the plain reading of the Act, which permits anyone who owns a claim to confiscated property to bring a lawsuit. As such, the Court need not consider the experts' opinions or the pending *Daubert* Motions seeking to exclude Suchlicki and Diaz, ECF Nos. [178-1], [176], to address the ownership issue.

hold an interest in the 1955 Concession. *See id.* (citing 22 U.S.C. § 6023(13)(A)(i) (defining "traffics")).

Plaintiff responds that the 1955 Concession included the entire Bay of Mariel, including the land upon which the Container Terminal stands because the text of the 1955 Concession includes no geographic limitation within the Bay. *See* ECF No. [197] at 22-24. Plaintiff also argues that the 1955 Concession included additional secondary rights to "all of the facilities" needed to handle maritime trade in the entire Bay. *See id.* at 23. The secondary rights in the 1955 Concession include:

- The right to occupy and use, on a temporary or permanent basis, lands or waters in the public domain or under private ownership and those of the State, province, or municipality, whenever necessary for the execution and exploitation of the Concession projects and works;

- The right of mandatory expropriation of any public or private real estate or property rights needed for the Concession's works, uses or services, including the use of any maritime or public domain property of the national, provincial or municipal governments;

- The right to evict any occupant from any property needed to carry out the purposes of the Concession, either temporarily or permanently, subject to paying one year of rent;

- The right to convert Maritima Mariel's docks and warehouses covered by a 1934 private use concession to public use and to charge fees for their use and to build new docks and warehouses in the Bay of Mariel and to charge fees for their use;

- The right to expand, adapt, or modify works under the Concession to meet the public use declaration objectives or increase public utility; and

- The right to issue mortgage bonds using the Concession as collateral.

Id. at 23-24 (internal citations omitted). As such, irrespective of whether the Cuban Government purchased and owned the land in which the Container Terminal is located, Defendant trafficked in confiscated property by trafficking in land granted to Maritima Mariel by the 1955 Concession. In addition, Plaintiff argues that no choice of law analysis supports Defendant's application of Cuban law in relying on Diaz, who applied Cuban law to opine that the scope of the 1955 Concession was limited to Punta Coco Solo. *See id.* at 24-26. Plaintiff avers that U.S. law should apply and Diaz's opinions are therefore unreliable. *See id.* at 24-28. Plaintiff also contends, alternatively, that even were the Court to apply Cuban law, Diaz misapplies Cuban law, and the 1955 Concession covers the entire Bay. *See id.* at 28-29.

Next, Plaintiff submits that even if the 1955 Concession did not include the entire Bay, Plaintiff has a claim to Azucarera Mariel, which owned property on

the west side of the Bay, albeit not the naval air station where the Container Terminal is located. *See id.* at 30-35. Plaintiff argues that Defendant trafficked in the Mariel Empty Container Depot ("DCV") and the Mariel Container Terminal Office ("TCM-Office"), which are located on the west side of the Bay and on land that the Cuban Government confiscated when it confiscated Azucarera Mariel. *See id.* at 30, 33. Plaintiff stresses that Defendant used the DCV to store its empty containers. *See id.* at 32. Plaintiff further argues that the size and location of the Container Terminal present a genuine issue of material fact. *See id.* at 35-36. If the Container Terminal extends beyond the naval air station, as Plaintiff contends, then it is also located on land that the Cuban Government confiscated when the Cuban Government confiscated Azucarera Mariel. *See id.* As such, Plaintiff avers that Defendant trafficked in confiscated property to which Plaintiff has a claim.

Lastly, Plaintiff contends that Defendant's conduct constituted trafficking because Defendant was "otherwise benefitting" from all the services at the Port of Mariel, many of which are based on land confiscated from Plaintiff either through the confiscation of Maritima Mariel and its 1955 Concession or the confiscation of Azucarera Mariel and its land holdings on the west side of the Bay. *See id.* at 34-35.

1. Question of Law

The first critical issue is whether the 1955 Concession covered the entire Bay of Mariel – including the west side of the Bay where the Container Terminal, the DCV, and the TCM-Office are purportedly lo-

cated – or limited to the area subject to the 1934 Concession – known as Punta Coco Solo on the east side of the Bay where the town of Mariel is located. In order to resolve that issue, the Court must address whether the dispute as to the geographic scope of the 1955 Concession is a question of law or a question of fact. The parties agree that the language of the 1955 Concession is unambiguous and, therefore, interpreting the 1955 Concession is a question of law for the Court, rather than a question of fact for the jury. *See* ECF Nos. [197] at 22-23, [219] at 15 n.13. The Court agrees. *See Underwriters at Lloyds Subscribing to Cover Note B0753PC1308275000 v. Expeditors Korea Ltd.*, 882 F.3d 1033, 1039 (11th Cir. 2018) (holding that "contract interpretation is generally a question of law") (quoting *Lawyers Title Ins. Corp. v. JDC (Am.) Corp.*, 52 F.3d 1575, 1580 (11th Cir. 1995)).[13]

2. Application of U.S. Law

Before interpreting the 1955 Concession, the Court must also address whether it should apply Cuban law or U.S. law. Defendant appears to rely on Diaz, who interpreted the scope of the 1955 Conces-

[13] Although Plaintiff submits that interpreting the 1955 Concession is a question of law, Plaintiff argues, in the alternative, that if the 1955 Concession is ambiguous, then the jury must resolve the factual dispute. *See* ECF No. [197] at 23. Defendant contends that if the 1955 Concession is ambiguous, then the Court can look to extrinsic evidence and determine the geographic scope of the 1955 Concession as a matter of law, as long as the extrinsic evidence is undisputed. *See* ECF No. [219] at 15 n.13. The parties' arguments in the alternative are inapposite because the 1955 Concession is unambiguous for the reasons stated below.

sion under Cuban law. *See* ECF No. [177] at 27. Plaintiff responds that the Court can ascertain from a plain reading of the 1955 Concession the geographic scope of the 1955 Concession without relying on experts. *See* ECF No. [197] at 22. According to Plaintiff, the Court need not look to expert opinions, which should be considered improper parole evidence. *See id.* at 22-23. Further, even if the Court considers expert opinions to ascertain the geographic scope of the 1955 Concession, it should apply U.S. law, not Cuban law, in interpreting the 1955 Concession. *See id.* at 24-26. As such, the Court should not consider Diaz's opinion regarding the geographic limitation of the 1955 Concession under Cuban law. Plaintiff argues, in the alternative, that if the Court were to look to expert opinions rather than the plain language of the 1955 Concession and apply Cuban law to interpret the Concession, then Plaintiff's rebuttal experts demonstrate that Diaz misapplied Cuban law. *See id.* at 28-29. In the Reply, Defendant argues for the first time in a footnote that Cuban law should apply without meaningful analysis. *See* ECF No. [219] at 15 n.13.

As an initial matter, the Court agrees with both parties that the 1955 Concession is unambiguous, and it can look to the plain language of the 1955 Concession to determine the geographic scope of the 1955 Concession. Thus, it is not necessary or appropriate to consider the opinions of experts on this issue. As such, the Court does not consider Diaz's expert opinion on the matter. The Court also disregards the opinion of Plaintiff's expert Jean Paul Rodrigue ("Rodrigue"), who opines that there is no business case to be made for building a Maritime Terminal on the footprint of

the 1934 Concession, and the 1955 Concession necessarily meant to grant rights to the entire Bay of Mariel. *See* ECF No. [178-30]. Moreover, the Court does not consider the opinions of Plaintiff's foreign law experts, Avelino Gonzalez ("Gonzalez") and Alejandro Auset Domper ("Domper"), whom Plaintiff relies on in the event the Court looks beyond the plain text of the 1955 Concession and applies foreign law. *See* ECF Nos. [201-3], [201-4].[14]

Plaintiff contends that the Court should apply principles of contract interpretation under U.S. law. The Court agrees. Because subject matter jurisdiction in this case is based on a federal question, federal common law and the Restatement (Second) of Conflict of

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[14] The Court notes that several motions have been filed with respect to the expert witnesses, but none are relevant given the Court's determination above. First, Defendant filed a Motion to Strike Gonzalez and Domper's Declarations. *See* ECF No. [221]. The Court previously denied that aspect of the Motion to Strike, *see* ECF No. [256] at 16-21, but the Court does not consider their Declarations for the reasons stated above. Second, Plaintiff filed a *Daubert* Motion to preclude Diaz's opinion. *See* ECF No. [176]. Defendant also filed a *Daubert* Motion to preclude Rodrigue's opinion. *See* ECF No. [178-1]. However, *Daubert* motions address whether the jury, not the Court, should hear expert testimony. *See McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1256 (11th Cir. 2002) ("*Daubert* requires that trial courts act as 'gatekeepers' to ensure that speculative, unreliable expert testimony does not reach the *jury*." (emphasis added)). As such, arguments raised with regard to Diaz in Plaintiff's *Daubert* Motion and Rodrigue in Defendant's *Daubert* Motion are inapposite to the question of law before the Court. Further, as noted above, the Court need not consider their expert opinions or the *Daubert* Motions given that they provide parole evidence to interpret the unambiguous 1955 Concession.

Laws ("Restatement") control the choice of law analysis. *See Nguyen v. JP Morgan Chase Bank, NA*, 709 F.3d 1342, 1345 (11th Cir. 2013); *Lola v. Skadden, Arps, Slate, Meagher & Flom LLP*, 620 F. App'x 37, 42 (2d Cir. 2015) ("Where jurisdiction is based on the existence of a federal question . . . we have not hesitated to apply a federal common law choice of law analysis."). Section 6 of the Restatement, in turn, states that courts should consider the following:

> (a) the needs of the interstate and international systems,
>
> (b) the relevant policies of the forum,
>
> (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
>
> (d) the protection of justified expectations,
>
> (e) the basic policies underlying the particular field of law,
>
> (f) certainty, predictability and uniformity of result, and
>
> (g) ease in the determination and application of the law to be applied.

RESTATEMENT (SECOND) OF CONFLICT OF LAW § 6 (AM. L. INST. 1971). The Restatement further states as follows:

> (2) Contacts to be taken into account in applying the principles of s 6 to determine the law applicable to an issue include:
>
> (a) the place where the injury occurred,

(b) the place where the conduct causing the injury occurred,

(c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and

(d) the place where the relationship, if any, between the parties is centered.

Id. § 145(2) (AM. L. INST. 1971).

The Eleventh Circuit has instructed that courts should evaluate these contacts "'according to their relative importance with respect to the particular issue.'" *See Grupo Televisa, S.A. v. Telemundo Commc'ns Grp., Inc.*, 485 F.3d 1233, 1240 (11th Cir. 2007). Additionally, the first contact is generally the most important, as "absent special circumstances, '[t]he state where the injury occurred would, under most circumstances, be the decisive consideration in determining the applicable choice of law.'" *Pycsa Panama, S.A. v. Tensar Earth Techs., Inc.*, 625 F. Supp. 2d 1198, 1220 (S.D. Fla. 2008). In this case, the injury to Plaintiff occurred in Florida where Plaintiff is located. Although the injuring conduct – namely, trafficking – took place in Cuba, the injury caused by the injuring conduct was felt in Florida. Additionally, Plaintiff's domicile and Defendant's place of incorporation are both in the United States. *See* ECF No. [45] ¶¶ 16, 34. As such, the United States, not Cuba, has the most pertinent contact to assess the factors set forth in § 6 of the Restatement.[15]

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[15] To the extent that Plaintiff relies on Domper's Declaration applying Spanish law, the Court notes that there is little, if any,

Under § 6 of the Restatement, when comparing the relevant policies of the United States and those of Cuba, it is apparent the United States has a strong policy interest in adjudicating claims brought under the Helms-Burton Act, but Cuba does not. The United States also has a strong interest in having U.S. contract law principles govern the interpretation of contracts in U.S. federal courts. Cuba does not have a strong policy interest in having U.S. federal courts apply Cuban principles of contract interpretation. Plaintiff is further justified in expecting U.S. principles of contract interpretation to govern a claim brought under a U.S. statute in a U.S. federal court to recover damages prescribed by Congress. Furthermore, the Court is better equipped to apply U.S. principles of contract interpretation than Cuban principles of contract interpretation. As to the remaining factors – namely, the needs of the interstate and international systems; the basic policies underlying the particular field of law; and certainty, predictability, and uniformity of result – the Court has no reason to conclude, and Defendant fails to provide any reason why, those factors favor the application of Cuban law over U.S. law. As such, the relevant choice of law factors weigh in favor of the application of U.S. principles of contract interpretation. For this additional reason, the Court need not consider the opinions of Diaz who applies Cuban law, Gonzalez who also applies Cuban law, and Domper who applies Spanish law. *See* ECF Nos. [195-2], [201-3], [201-4].

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contact with Spain that justifies the application of Spanish law. *See* ECF No. [201-4].

3. Geographic Scope of the 1955 Concession

The Court now turns to the merits of the parties' arguments, which can be resolved through the Court's interpretation of the unambiguous text of the 1955 Concession under U.S. law without relying on expert opinions, as noted above. Defendant argues that it did not traffic on land granted to Maritima Mariel in the 1955 Concession because the 1955 Concession did not include the land where the Container Terminal is located. *See* ECF No. [177] at 27-31. Plaintiff responds that the 1955 Concession included the entire Bay, including the land where the Container Terminal is located, because the text of the 1955 Concession has no geographic limitation within the Bay. *See* ECF No. [197] at 22-24.

The Court agrees with Defendant. The 1955 Concession is unambiguous and states, in relevant part, as follows:

> Whereas: Having seen the file processed by the Nacional [*sic*] Financing Agency of Cuba with regard to the applications made and projects submitted by "Marítima Mariel, S.A." for the financing of and authorization for the construction of different works such as walls, docks, warehouses, dredging, fillings-in, and others in low lands and mangroves of its property, and in the maritime-terrestrial zone of the littoral adjacent to such land plot of the ownership of "Marítima Mariel, S.A." in the north coast of the province of Pinar del Rio, Bay of Mariel, Municipality of Mariel.
>
> . . .

Whereas: "Marítima Mariel, S.A." has requested through the National Financing Agency of Cuba to be authorized to convert to public use the dock and warehouse located on land of its property which were legalized and authorized for private use by Presidential Decree No. 1655, of June 26, 1934, acquired by the deed of incorporation, converting said warehouses into public according to the provisions of the current Commercial Code.

. . .

First: A concession is granted to "Maritima Mariel, S.A." to plan, study, execute, maintain, and exploit public docks and warehouses in the bay of Mariel, Province of Pinar del Rio, and for the construction of new buildings and works, without detriment to the vested rights of third parties and entities by virtue of previous and current concessions for the same goals as those expressed in the paragraph herein.

By ministry of this Decree, the study, planning, execution, operation, and exploitation of the following works are declared of public interest, of social interest, and of public convenience:

> A) The construction of a Maritime Terminal with new docks, containment walls, public warehouses, tanks, silos, ferry mooring piers, and other construction works in the Bay of Mariel, Province of Pinar del Rio, contained in the memory and maps filed by that entity with the National Financing Agency of Cuba and to

> the stated in the last paragraph of Part Third.
>
> B) The draining, dredging, and filling-in of part of said Bay of Mariel, in the maritime and terrestrial-maritime zone, in the portions and parts indicated in the memory and maps referred to, needed for the construction, unfolding, operation, and exploitation of said project for a Maritime Terminal.

ECF No. [63-1] at 2, 4-5 (emphasis in original).

Based on a plain reading of the 1955 Concession, the Cuban Government granted the 1955 Concession in light of Maritima Mariel's application "for the construction of different works such as walls, docks, warehouses, dredging, fillings-in, and others in low lands and mangroves of [Maritima Mariel's] property" that Maritima Mariel had acquired through the "Presidential Decree No. 1655, of June 26, 1934," also known as the 1934 Concession. *Id.* It is further undisputed that the 1934 Concession only grants rights to the docks in Punta Coco Solo on the east side of the Bay where the town of Mariel is located. *See* ECF Nos. [177-1] ¶ 36, [198] ¶ 36. As such, it is evident based on a plain reading of the 1955 Concession that when the Cuban Government granted the 1955 Concession "to plan, study, execute, maintain, and exploit public docks and warehouses in the Bay of Mariel," the Cuban Government was granting a concession with regard to the geographic scope prescribed in the 1934 Concession, namely Punta Coco Solo on the east side of the Bay where the town of Mariel is located. The reference to "public docks and warehouses in the Bay

of Mariel" describes the general geographic location of the docks and warehouses at Punta Coco Solo, rather than expanding the scope of the 1955 Concession to the entire Bay of Mariel. Plaintiff's argument that the reference to the "Bay of Mariel" establishes a concession with respect to the entire Bay of Muriel would require the Court to effectively read out the "Whereas" clauses in the 1955 Concession. The Court declines to do so. The granting of "all the facilities" in the 1955 Concession is similarly limited by the phrase "to build said docks and warehouses," and does not grant Maritima Mariel all the facilities to the entire Bay without limit. ECF No. [63-1] at 3. Furthermore, the 1955 Concession states that Maritima Mariel is given the right to construct "*a* Maritime Terminal" in "*part of* said Bay of Mariel." ECF No. [63-1] at 4-5 (emphasis added). In sum, the 1955 Concession plainly does not grant Maritima Mariel the right to construct all of the maritime terminals in the entire Bay of Mariel.

Plaintiff's next argument that the 1955 Concession included other secondary rights that cover the surrounding areas beyond the land granted in the 1934 Concession is similarly unavailing. Plaintiff belies the 1955 Concession by arguing that Maritima Mariel was granted the rights to "occupy and use," "expropriate[e]," "evict," "convert," "expand," and "issue mortgage bonds" with respect to the entire Bay of Mariel. ECF No. [197] at 23-24. As a precursor to providing the secondary rights, the 1955 Concession made clear that the secondary rights were being granted in light of "Part First" of the 1955 Concession quoted above. ECF No. [63-1] at 5. In addition, the enumerated rights include clauses that limit the scope of the secondary rights to works necessary to carry out

the project described in the "Part First" – namely, the construction of "a maritime terminal" on the east side of the Bay. *See id.* at 5-6. The pertinent sections of the 1955 Concession are set forth in light of Plaintiff's selective reference to the secondary rights granted in the 1955 Concession:

> Second: The declaration of public utility contained in *Part First* entails the following rights in favor of the concessionary of the works:
>
> a) The temporary or permanent occupation and use of the empty lots and waters of public domain or of the State, the Province, or the Municipality's ownership *insofar as those be indispensably necessary for the execution and exploitation of the jobs and works of reference.*
>
> b) The power of condemnation by expropriation according to the Decree No. 595, of May 22, 1907 or to any subsequent regulation regarding the ownership, possession and use of any private real estate and ownership right whatever which shall be occupied for the works, uses and services dealt with in *Part First*; procedure that it may carry out also in relation to whatever right granted by the State, the Province, or the Municipality in relation with the maritime-terrestrial zone or the empty lots of public domain or of the ownership of said entities of the Nation.
>
> c) The right of imposing any type of easement on realty of private property for the

construction of any type of ways of communications, access, movement and parking of vehicles, for the establishment of air or underground electric lines, for the laying of pipes and conductors of water, gas, ventilation and drainage, and in general *for whatever turn out to be inherent to or necessary for the goals of carrying out, maintaining and exploiting the works dealt with said paragraph First*, with the faculty of resorting also in these cases to expropriation as in the previous subsection.

d) The right of evicting any leaseholder, sharecropper, tenants-at-sufferance, and otherwise tenants by any concept from any realty or installation that shall be temporarily or permanently occupied *for the works referred to in the aforesaid Part First*, paying to those so evicted a compensation equivalent to the sum of one year of the rent or lease that they pay in each lease.

. . .

Tenth: It is hereby granted and "Marítima Mariel, S.A." is hereby authorized to the conversion to the public service of the dock and warehouses with its modifications, expansions, and improvements the private use of which was *granted by Presidential Decree number 1655 of June 26, 1934*; being [the corporation] able to freely encumber and alienate

> all said properties according to provisions of . . . the Decree herein.

ECF No. [63-1] at 5-6, 8 (emphasis added).

The plain text of the 1955 Concession makes clear that the secondary rights were limited in scope to the first part of the 1955 Concession, which permitted the construction of a maritime terminal on the east side of the Bay in accordance with the 1934 Concession.[16] The 1955 Concession did not grant secondary rights to the entire Bay. Therefore, to the extent that Plaintiff's claims rest on the allegation that Defendant trafficked in the Container Terminal, which is located on the west side of Bay, and not on land covered in the 1955 Concession, the Court is not persuaded.[17]

4. DCV and TCM-Office

Plaintiff's argument that Defendant trafficked in the DCV and TCM-Office, *see* ECF No. [197] at 30-34, requires additional analysis given that Plaintiff avers that the DCV and TCM-Office are located not only on

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[16] Plaintiff references the right to issue mortgage bonds using Maritima Mariel's properties as collateral. *See* ECF No. [197] at 24. The paragraph regarding mortgage bonds does not include a limiting clause, but it does not meaningfully advance Plaintiff's argument that the 1955 Concession granted rights to the entire Bay of Mariel. *See* ECF No. [63-1] at 7. Rather, a plain reading of the 1955 Concession as a whole indicates that the 1955 Concession granted the right to issue mortgage bonds with respect to Maritima Mariel's properties as set forth in the 1934 Concession on the east side of the Bay. *See id.*

[17] Although the exact scope of the Container Terminal is in dispute, the parties agree that the Container Terminal is located on the west side of the Bay. *See* ECF Nos. [177] at 26, [197] at 32-33, 35-36, [177-1] ¶ 60, [198] ¶ 60.

land given in the 1955 Concession – an argument that is unavailing as noted above – but also on land that Azucarera Mariel owned and the Cuban Government confiscated. Plaintiff's argument is premised on the following allegations. First, the Blanco Rosell family purchased approximately 11,000 acres of land in the Bay of Mariel up to the border of the naval air station. Second, the Blanco Rosell family placed the title to the land in Azucarera Mariel. Third, the Cuban Government confiscated Azucarera Mariel. Fourth, DCV and TCM-Office are located on the 11,000 acres of land previously owned by the Azucarera Mariel. Fifth, Defendant trafficked in the DCV and TCM-Office or used the facilities to store empty containers through the actions of its agent Agencia Maritima Taina S.A. ("Taina").

Defendant argues that there is no evidence that Plaintiff or her family owned the land where the DCV and TCM-Office are located or that Defendant used the facilities through its agent Taina. *See* ECF No. [219] at 13-15. Defendant points out that Defendant's contract with Taina states that Taina is "[t]o issue . . . at the request of [Defendant] . . . bills of lading . . . as ***may be required*** by [Defendant] from time to time." *Id.* at 14 (quoting ECF No. [199-6] at 3-4) (emphasis in original). The contract merely contemplates a contingency in which Defendant may call upon Taina to issue bills of lading. The contract does not affirmatively require Taina to regularly issue bills of lading. Plaintiff provides no evidence that Defendant requested Taina to issue a bill of lading or that Taina did so. *See id.*

Upon review of the record, the Court agrees with Plaintiff to the extent that there is evidence for the jury to find that Plaintiff or her family owned approximately 11,000 acres of land, that some of the land is located in the Bay of Mariel and was placed in Azucarera Mariel, and that the Cuban Government confiscated Azucarera Mariel. Plaintiff cites Exhibits 52, 53, 54, and 78 for her proposition that her family purchased the land and placed it in Azucarera Mariel. Exhibits 52 and 53 set forth assets owned by Central San Ramon and then subsequently by Azucarera Mariel. *See* ECF Nos. [198-9], [198-10]. Exhibit 54 suggests that "'San Ramón' Central belonged to the Balsinde family until after the harvest of 1949, in which it was sold to [Plaintiff's father]." ECF No. [198-11] at 19; *see also* ECF No. [200-8]. Plaintiff further provided evidence, through Edmonds' original expert reports, which have not been stricken or challenged in any of the pending motions, that some of the land holdings are located in the area surrounding the naval air station on the west side of the Bay and outside of the Container Terminal as defined by Defendant. *See* ECF Nos. [178-27] at 19, [200-12] at 22.

However, while Plaintiff has provided evidence of her ownership claim to the area surrounding the naval air station, the Court has stricken Edmonds' subsequent declarations pinpointing the locations of the DCV and TCM-Office. *See* ECF No. [256] at 6-9. As a result, Plaintiff provides no evidence for the jury to find that the DCV and TCM-Office are located on the 11,000 acres of land or other land previously owned by Azucarera Mariel. Therefore, any argument that Defendant or Taina used the DCV or TCM-Office to traf-

fic, or otherwise stored empty containers, is unavailing without evidence of where the two facilities are located. The Court further notes that there is no evidence that Defendant used the DCV or TCM-Office to store empty containers, as opposed to the Container Yard. *See* ECF No. [199-12] at 44. The only evidence indicating where the empty containers are stored suggests that they were stored in the Container Yard located in the Container Terminal as defined by Plaintiff. *See* ECF No. [180-3] at 53 (testifying that the Container Yard is located "alongside the berth . . . where the ship rests along the terminal.").

As such, Plaintiff's argument on this matter is unavailing.

5. Geographic Scope of Container Terminal

Lastly, Plaintiff argues that the geographic scope of the Container Terminal itself is in dispute. Plaintiff submits that the Container Terminal extends beyond Defendant's definition of the Container Terminal and includes land beyond the naval air station – land to which Plaintiff has a claim via her stake in Azucarera Mariel. For ease of reference, the Court refers to Defendant's narrow definition of the Container Terminal as the "Purple Box Container Terminal," *see* ECF No. [177] at 26, and Plaintiff's definition of the larger Container Terminal as the "Grey Box Container Terminal," *see* ECF No. [202-6] at 2. The Court also reproduces two maps: the first from Defendant's Motion depicting the Purple Box Container Terminal, *see* ECF No. [177] at 26, and the second from Plaintiff's exhibit depicting the Grey Box Container Terminal, *see* ECF No. [202-6] at 2.

Figure 1: Purple Box Container Terminal

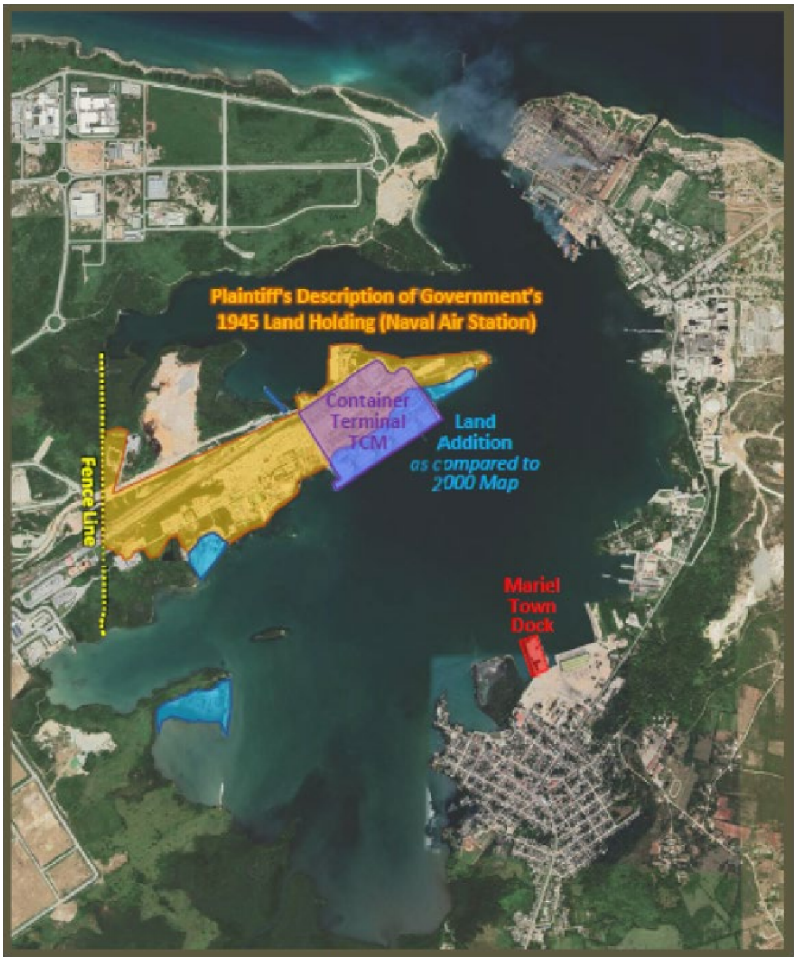
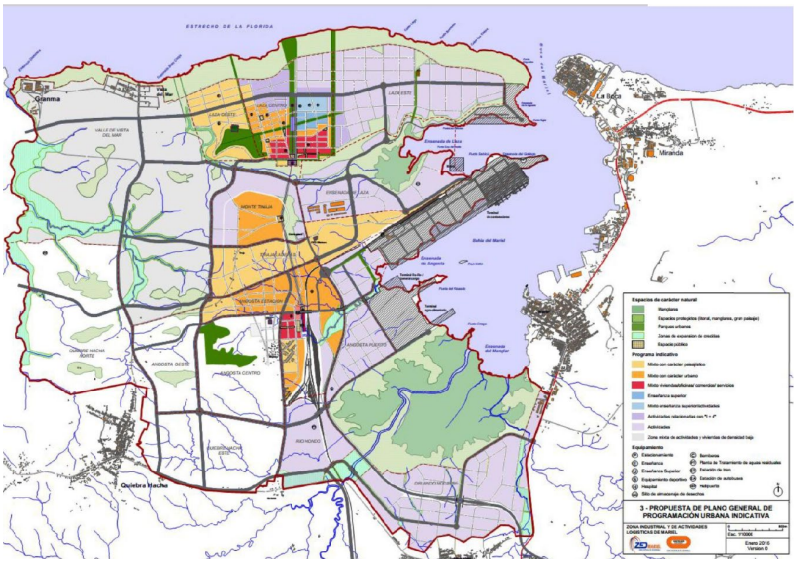


Figure 2: Grey Box Container Terminal



Following Plaintiff's logic, even if the 1955 Concession did not include the Bay of Mariel and even if Plaintiff cannot pinpoint the locations of the DCV and TCM-Office, Plaintiff has offered evidence that Plaintiff has a claim to the area west of the Bay through Azucarera Mariel's confiscated land holdings. Plaintiff has, therefore, presented sufficient evidence that she has a claim to the property in which Defendant trafficked by virtue of Defendant or its agent Taina's actions in the Grey Box Container Terminal. In support, Plaintiff specifically cites the "Container Terminal" as defined in Defendant's contract with Terminal de Contenedores de Mariel S.A ("TCM"). *See* ECF No. [199-12] at 5 ("'Container Terminal' means the Container terminal at the port stated in the Preamble hereof together with the Container yard and all other equipment and buildings at the said terminal, whether constructed or under construction, together

with any additional land, berths, buildings and Container yards to be installed in connection with any further developments thereto for the purpose of providing Container terminal services by [TCM]."). Plaintiff also relies on two maps of the Container Terminal purportedly extending beyond the Purple Box Container Terminal, one of which has been reproduced above. *See* ECF Nos. [202-6] at 2, [202-5] at 2. In addition, Plaintiff quotes Diaz's deposition in which she defines the Container Terminal as being 702 meters long and 27.09 meters wide. *See* ECF No. [181-12] at 122. Plaintiff further relies on Rodrigue's opinion on the scope of the Container Terminal. *See* ECF No. [198] at 7-8 (citing ECF No. [178-30]).

Defendant replies that Plaintiff's arguments regarding the disputed geographic scope of the Container Terminal are unavailing in light of Plaintiff's own expert's testimony that the Container Terminal was accurately depicted in maps confining the Container Terminal to the area of the Purple Box Container Terminal. *See* ECF No. [219] at 14 (citing ECF No. [184-1] at 134, 148-49, 190, 193, 203, 208). Defendant submits that the Container Terminal is confined to the naval air station, which the Cuban Government purchased from the Balsinde family, and land to which Plaintiff never had a claim through either Maritima Mariel or Azucarera Mariel. Defendant further argues that there is no evidence that Defendant or its agent trafficked in land outside the Purple Box Container Terminal.

The Court agrees with Plaintiff to the extent that the definition of the Container Terminal is in dispute in light of the maps provided by Plaintiff depicting a

larger Container Terminal, *see* ECF Nos. [202-6] at 2, [202-5] at 2. However, the definition of the Container Terminal is not a material fact unless Plaintiff can offer evidence that Defendant trafficked in the Grey Box Container Terminal. Defendant claims that its activity was constrained to the "water's edge" of the Purple Box Container Terminal or the Purple Box Container Terminal itself, not the Grey Box Terminal Container. ECF No. [177] at 23-24. The Court agrees that there is no evidence indicating that Defendant trafficked in the area outside the Purple Box Container Terminal. As such, even if the Court were to draw all reasonable inferences in favor of Plaintiff and conclude that the Container Terminal includes area beyond the naval air station, in keeping with Plaintiff's Grey Box Container Terminal, Plaintiff nonetheless fails to provide any evidence that Defendant trafficked in the area outside of the Purple Box Container Terminal and on land to which Plaintiff has a claim via Azucarera Mariel.

The contract between Defendant and Taina is not evidence of trafficking in areas outside the Purple Box Container Terminal and in the Grey Box Container Terminal. The contract lists Taina's duties as follows:

> a. <u>General Duties:</u>
>
> > i. To perform for the Principal, professionally and in accordance with the highest industry standards, best practices and the Principal's procedures, requirements and directions, as the Principal shall inform the Agent *from time to time*, all customary services of a shipping company's agent within the

Territory,[18] including, but not limited to, commercial agency work, communication and coordination with port/vessel agents, stevedore and terminal operator(s), the handling of all Principal's Equipment and otherwise all other services required by the Principal.

ii. To issue, on behalf of the Principal, and at the request of Principal in connection with connecting carriage or vessel sharing partners, bills of lading and manifests, documents requested by authorities at both ends of voyages or at transshipments ports, delivery orders, certificates and such other documents *as may be required by Principal from time to time*. The Agent shall carry out the above mentioned duties in accordance with Principal's procedures or instructions as updated from time to time.

iii. To represent the Principal and/or its affiliated and/or subsidiary and/or associated companies, *vis-à-vis* local authorities, port authorities or any additional body in the Territory that the Principal *may from time to time request*, using its best endeavors to comply at all times with any reasonable

[18] Territory is defined as "the country of Cuba." ECF No. [199-6] at 3.

[*sic*] specific instructions with the Principal may give.

iv. *If required by the Principal* and on its behalf and account, to make and receive all necessary payments with the Principal's prior written consent.

v. *Any case of an emergency or breakdown* of the Agent's services to the Principal of whatsoever nature shall be immediately reported to the Principal.

vi. The Agent shall keep the Principal fully updated and informed as to any local compulsory procedures, laws, regulations, restrictions and limitations applied or imposed upon imported/exported goods, their storage, vessels and equipment which may impose upon the Principal any extraordinary burden, financial, commercial, legal or otherwise, and which may be prevented, diminished or duly handled beforehand by proper advice and handling.

vii. The Agent has no authority to bind the Principal in any agreement and/or contract for any purpose whatsoever unless such authority is specifically granted by the terms of this Agreement and/or shall be specifically granted in writing to the Agent.

. . .

b. Equipment:

. . .

iv. To make seaworthy Equipment available for shippers and to arrange inland haulage according to documents, as required, and according to Shipper's instructions as undertaken in the agreement with them.

ECF No. [199-6] at 3-4 (emphasis added).[19]

As Defendant correctly argues, the contract between Defendant and Taina sets forth several conditional clauses, and such clauses do not constitute evidence that Defendant activated the clauses and required Taina to carry out its duties in the Container Terminal. *See id.* Even if Defendant activated the conditional clauses, there is no indication that Taina fulfilled its duties in the Grey Box Container Terminal, as opposed to the Purple Box Container Terminal. There is also no evidence indicating that any of the non-conditional duties – such as making payments, informing Defendant of service breakdowns, and making equipment available – required Taina's presence on the Grey Box Container Terminal, as opposed to the Purple Box Container Terminal. The only reference to a geographical location in the contract is a reference "Territory[,]" which is defined as the "country of Cuba." ECF No. [199-6] at 3. Without any further indication in the contract or elsewhere that required Taina to perform its duties in the Grey Box Container

[19] The Court notes that additional duties are listed in Section 3(b)-(d) of the contract. *See* ECF No. [199-6] at 4-6. The Court does not reproduce the duties here for brevity.

Terminal, any argument that Taina performed its duties in the Grey Box Container Terminal, as opposed to the Purple Box Container Terminal, would be speculation unsupported by any evidence. Such speculation is not sufficient "evidence on which a jury could reasonably find for [Plaintiff]" to survive summary judgment. *Anderson*, 477 U.S. at 252.

Finally, Plaintiff's reliance on an excerpt from Defendant's corporate representative's deposition regarding Taina's activity is unavailing. *See* ECF No. [197] at 31 (citing ECF No. [180-3] at 52-53). The excerpt merely indicates that Taina is Defendant's agent and that Taina discharged loads at Defendant's definition of the Container Terminal, namely the Purple Box Container Terminal, not the Grey Box Container Terminal. Plaintiff omits Defendant's corporate representative's description of Taina's duties on the Container Terminal as being confined to the Container Yard that is "half a football field" and located "alongside the berth[,]" which aligns with the size and location of the Purple Box Container Terminal, as opposed to the Grey Box Container Terminal. ECF No. [180-3] at 53-54.[20]

[20] To the extent that Plaintiff argues that Defendant "otherwise benefits from confiscated property" by benefitting from port facilities outside the Purple Box Container Terminal, including the DCV and TCM-Office, *see* ECF No. [197] at 34-35, the Court again notes that there is no evidence to indicate that the DCV, TCM-Office, or any other port facilities are located outside the Purple Box Container Terminal and on land which Azucarera Mariel previously owned.

In sum, there is no evidence that Plaintiff has an ownership interest in the property in which Defendant purportedly trafficked, and Defendant is entitled to summary judgment on this matter.[21]

6. Trafficking

Given the Court's determination that there is no evidence that Plaintiff owned the property in which Defendant purportedly trafficked, the Court need not address whether Defendant's conduct constitutes trafficking under the Act.

C. Scienter

Given the Court's determination that there is no evidence that Plaintiff owned the property in which

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[21] Given that there is no evidence of Defendant or Defendant's agent trafficking in the Grey Box Container Terminal, the Court need not go further. However, the Court notes that other than the two maps provided by Plaintiff to place the geographic scope of the Container Terminal in dispute, Plaintiff provides no other evidence to raise a genuine issue of material fact with regard to the geographic scope of the Container Terminal. First, Plaintiff's reliance on Diaz's testimony to argue that Defendant concedes that the geographic scope of the Container Terminal includes the Grey Box Container Terminal is unavailing. Diaz never opines on the location of the Container Terminal and expressly references two maps in her report that do not indicate that the scope of the Container Terminal extends beyond the Purple Box Container Terminal. *See* ECF No. [181-12] at 122 (citing ECF No. [195-2] at 18, 20). Second, Rodrigue's opinion similarly does not discuss on the geographic scope of the Container Terminal. *See* ECF No. [178-30]. Third, the definition of the Container Terminal as set forth in the contract between Defendant and TCM merely includes the Container Yard, which appears to be located in the Purple Box Container Terminal as noted above, *see* ECF No. [180-3] at 53, and other unspecified facilities whose locations are not provided by any evidence, *see* ECF No. [199-12] at 5.

Defendant purportedly trafficked, the Court also need not address whether Defendant "knowingly and intentionally" trafficked.

D. ZEDM

The Court next addresses the parties' arguments with regard to ZEDM, given that Plaintiff provided sufficient evidence that she has a claim to land on the west side of the Bay via Azucarera Mariel's land holdings. As an initial matter, the Court must set forth the meaning of ZEDM. The parties appear to refer to ZEDM as both a physical location and as an agency of the Cuban Government. *See* ECF No. [45] ¶ 82 (referring to ZEDM as "an agency or instrumentality of the Cuban Government" and also a "special economic zone in Cuba"). For clarity, the Court refers to the physical location as the "Zone" and the Cuban Government entity as "ZEDM." Next, the Court reiterates that Plaintiff has set forth evidence that she has a claim to 11,000 acres of land via Azucarera Mariel, some of which is in the Bay of Mariel near the naval air station, *see* ECF Nos. [178-27] at 19, [200-12] at 22, and evidence that the Zone covers broad areas near the Bay of Mariel, including the area around the naval air station, *see* ECF No. [45] at 23. As such, there is sufficient evidence for a jury to find that the Zone includes areas confiscated by the Cuban Government when it confiscated Azucarera Mariel.

Against this background, Defendant argues that there is no evidence that Defendant trafficked indirectly through the ZEDM and no evidence that Defendant otherwise trafficked in the Zone. *See* ECF No. [177] at 37-39. Plaintiff does not meaningfully re-

spond to the argument that Defendant did not indirectly traffic through ZEDM and instead submits that Defendant trafficked indirectly through TCM, which in turn traffics in the Zone. *See* ECF No. [197] at 36-38. As before, the Court notes that the parties refer to TCM as the facility known as the Mariel Container Terminal Office and also an entity that allegedly traffics in the Zone. For clarity, the Court reiterates that "TCM-Office" refers to the facility, as it has in the previous section discussing the Mariel Container Terminal Office, and "TCM" as the entity that allegedly traffics in the Zone, also known as the Terminal de Contenedores de Mariel S.A. Defendant replies that Plaintiff's new theory that Defendant indirectly trafficked through TCM is not alleged in the Amended Complaint and that there is no evidence that TCM trafficked in the Zone. *See* ECF No. [219] at 20-21.

First, Plaintiff's argument that Defendant trafficked through the ZEDM is unsupported. Despite alleging in her Amended Complaint that Defendant "engaged in commercial transactions with the . . . Zona Especial De Desarollo Mariel ('ZEDM')[,]" ECF No. [45] ¶ 11, Plaintiff fails to provide any evidence that Defendant trafficked through the actions of ZEDM. Plaintiff notably does not dispute that there is no evidence that ZEDM – as an entity – engaged in any trafficking conduct that benefited Defendant. *See generally* ECF No. [197].

Second, Plaintiff's contention that Defendant trafficked in the Zone directly through its own conduct on the Container Terminal is also unsupported. The Court reiterates that any argument that Defendant trafficked in the Purple Box Container Terminal is

unpersuasive since the Purple Box Container Terminal is not located on land that was a part of the 1955 Concession or on the 11,000 acres previously held by Azucarera Mariel. As such, any conduct on the Purple Box Container Terminal, while taking place in the Zone, is not grounds for liability under the Act. Although the Grey Box Container Terminal is in the Zone and part of the 11,000 acres of land previously held by Azucarera Mariel, there is no evidence that Defendant trafficked outside the Purple Box Container Terminal and in the Grey Box Container Terminal. Moreover, any argument that Defendant trafficked in the DCV and TCM-Office is unavailing because Plaintiff has failed to provide any evidence to establish where the DCV and TCM-Office are located, much less to establish that they are in the Zone.

Third, regarding the argument that Defendant trafficked in the Zone indirectly through TCM, the Court first notes that Plaintiff appears to set forth a new theory of liability based on TCM, which is not alleged in the Amended Complaint. *See generally* ECF No. [45]. This alone is fatal to Plaintiff's argument on the matter. *See Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004) ("At the summary judgment stage, the proper procedure for plaintiffs to assert a new claim is to amend the complaint in accordance with Fed. R. Civ. P. 15(a). A plaintiff may not amend her complaint through argument in a brief opposing summary judgment."). Nonetheless, even if the Court were to allow Plaintiff to raise a new theory of liability, Plaintiff provides no evidence that TCM trafficked in the Zone. Section 2.1 of the contract between Defendant and TCM states that "[TCM] will

provide [Defendant] with the Terminal Services induced in Appendix 1 and other services approved in its constitution, which *may be demanded* by the [Defendant] during the validity of this Contract and the [Defendant] compels itself to pay [TCM] the corresponding amounts in accordance with the rates, terms and other conditions established on this Contract." ECF No. [199-12] at 8 (emphasis added). Similar to the contract between Defendant and Taina, the contract between Defendant and TCM includes a conditional clause that does not suffice as evidence that Defendant actually invoked the clause requiring TCM to perform its duties in the Container Terminal. Further, even if Defendant invoked the clause or other provisions that required TCM's action, there is no evidence that TCM performed its contractual duties in the Grey Box Container Terminal as opposed to the Purple Box Container Terminal. The definition of the Container Terminal as set forth in the contract is limited to the Container Yard, which appears to be located in the Purple Box Container Terminal as noted above, *see* ECF No. [180-3] at 53, and other unspecified facilities, whose locations are not provided by any evidence, *see* ECF No. [199-12] at 5.

As such, Plaintiff's argument that Defendant trafficked in the Zone directly or indirectly through the ZEDM or TCM also does not provide a basis for relief for Plaintiff under the Act.[22]

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[22] The Court notes that Defendant's expert Diaz opines that ZEDM and TCM are different legal entities. *See* ECF No. [195-2] at 9. However, whether ZEDM and TCM are distinct legal entities according to Defendant's expert is inapposite to the Court's analysis above. Even if the Court were to assume that ZEDM and

E. Damages

Given the Court's determination that there is no evidence that Plaintiff owned the property in which Defendant purportedly trafficked, the Court need not reach the issue of damages.[23]

F. Lawful Travel Exception

Given the Court's determination that there is no evidence that Plaintiff owned the property in which Defendant purportedly trafficked, the Court need not address whether the lawful travel exception applies.[24]

TCM are the same entity, the fact remains that Plaintiff cannot provide any evidence that Plaintiff trafficked in the Zone directly or indirectly through the actions ZEDM or TCM as noted above. As such, the Court need not rely on Diaz's opinion or address Plaintiff's *Daubert* Motion seeking to exclude Diaz's opinion. *See* ECF Nos. [195-2], [176].

[23] To the extent that Plaintiff's experts Lori Wolin ("Wolin"), Jose Alberro ("Alberro"), Harold Martin ("Martin"), and Timothy Riddiough ("Riddiough"), and Defendant's expert Diaz seek to opine on damages, their opinions are not pertinent because the Court need not reach the issue of damages. *See* ECF Nos. [142-1], [142-2], [178-2], [178-4], [194-3], [194-4], [253]. The Court also need not consider Defendant's *Daubert* Motion seeking to exclude Wolin and Alberro, or the Motion to Strike Supplemental Expert Report of Lori Wolin. *See* ECF Nos. [178-1], [142]. The Court further notes that the Court has already stricken the Declarations of Martin and Riddiough. *See* ECF No. [256] at 14-16.

[24] To the extent that Plaintiff's experts Susan Hutner ("Hutner"), Nathan Sales ("Sales"), Matthew Levitt ("Levitt"), and Douglas Jacobson ("Jacobson"), and Defendant's expert Barbara Linney ("Linney") seek to opine on issues related to the lawful travel exception, their opinions are not pertinent because the Court need not address the lawful travel exception. *See* ECF Nos. [178-31], [178-16], [201-8], [201-16], [195-16]. As before, the

V. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

10. Defendant's Motion, **ECF No. [177]**, is **GRANTED**.
11. The above-styled case is **DISMISSED WITH PREJUDICE**.
12. To the extent not otherwise disposed of, all pending motions are **DENIED AS MOOT** and all deadlines are **TERMINATED**.
13. The Clerk of Court is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Miami, Florida, on August 19, 2022.

/s/ [Signature]
BETH BLOOM
UNITED STATES
DISTRICT JUDGE

Copies to:

Counsel of Record

Court also need not consider Defendant's *Daubert* Motion seeking to exclude Hutner, Sales, and Levitt, or Plaintiff's *Daubert* Motion seeking to exclude Linney. *See* ECF Nos. [178-1], [176]. The Court has already stricken the Declaration of Jacobson. *See* ECF No. [256] at 9-11.

APPENDIX F

[Doc. 269]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

ODETTE BLANCO DE FERNANDEZ,
née Blanco Rosell,

Plaintiff,

v.

SEABOARD MARINE, LTD.,

Defendant.

[Filed: August 22, 2022]

ORDER VACATING DISMISSAL

THIS CAUSE is before the Court the upon a *sua sponte* review of the record. The Court vacates the dismissal of the above-styled case in the Court's prior Order, ECF No. [268]. Pursuant to Federal Rule of Civil Procedure 58, Final Judgment will be entered by a separate order.

DONE AND ORDERED in Chambers at Miami, Florida, on August 19, 2022.

/s/ [Signature]
BETH BLOOM
UNITED STATES
DISTRICT JUDGE

Copies to:

Counsel of Record

APPENDIX G

[Doc. 270]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

ODETTE BLANCO DE FERNANDEZ,
née Blanco Rosell,

Plaintiff,

v.

SEABOARD MARINE, LTD.,

Defendant.

[Filed: August 22, 2022]

FINAL JUDGMENT

THIS CAUSE is before the Court upon Defendant Seaboard Marine Ltd.'s ("Defendant") Motion for Summary Judgment, ECF No. [177] ("Motion"). For the reasons given in the Court's Order on Motion for Summary Judgment, ECF No. [268], the Court enters **FINAL JUDGMENT**, pursuant to Rule 58 of the Federal Rules of Civil Procedure, in favor of Defendant on all claims asserted by Plaintiff Odette Blanco De Fernandez in her Amended Complaint, ECF No. [45].

DONE AND ORDERED in Chambers at Miami, Florida, on August 19, 2022.

/s/ [Signature]
BETH BLOOM
UNITED STATES
DISTRICT JUDGE

Copies to:

Counsel of Record

APPENDIX H

[Doc. 99-1]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-12966

ODETTE BLANCO DE FERNANDEZ,
a.k.a. Blanco Rosell,
EMMA RUTH BLANCO,
in her personal capacity, and as
Personal Representative of the
Estate of Alfredo Blanco Rosell, Jr.,
HEBE BLANCO MIYARES,
in her personal capacity, and as
Personal Representativeof the
Estate of Byron Blanco Rosell,
SERGIO BLANCO DE LA TORRE,
in his personal capacity, and as
Administrator Ad Litem of the
Estate of Enrique Blanco Rosell,
EDUARDO BLANCO DE LA TORRE,
as Administrator Ad Litem of the
Estate of Florentino Blanco Rosell,
LIANA MARIA BLANCO,
SUSANNAH VALENTINA BLANCO,
LYDIA BLANCO BONAFONTE,
JACQUELINE M. DELGADO,
BYRON DIAZ BLANCO, JR.,
MAGDELENA BLANCO MONTOTO,
FLORENTINO BLANCO DE LA TORRE,

JOSEPH E. BUSHMAN,
CARLOS BLANCO DE LA TORRE,
GUILLERMO BLANCO DE LA TORRE,

Plaintiffs-Appellants,

versus

SEABOARD MARINE LTD.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-25176-BB

[Filed: June 10, 2025]

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before JORDAN, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

APPENDIX I

22 U.S.C. 6023

§ 6023. Definitions

As used in this chapter, the following terms have the following meanings:

(1) Agency or instrumentality of a foreign state
The term "agency or instrumentality of a foreign state" has the meaning given that term in section 1603(b) of Title 28.

(2) Appropriate congressional committees
The term "appropriate congressional committees" means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(3) Commercial activity
The term "commercial activity" has the meaning given that term in section 1603(d) of Title 28.

(4) Confiscated
As used in subchapters I and III, the term "confiscated" refers to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(5) Cuban Government

(A) The term "Cuban Government" includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term "agency or instrumentality of the Government of Cuba" means an agency or instrumentality of a foreign state as defined in section 1603(b) of Title 28,

with each reference in such section to "a foreign state" deemed to be a reference to "Cuba".

(6) Democratically elected government in Cuba

The term "democratically elected government in Cuba" means a government determined by the President to have met the requirements of section 6066 of this title.

(7) Economic embargo of Cuba

The term "economic embargo of Cuba" refers to—

(A) the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest) that was imposed against Cuba pursuant to section 2370(a) of this title, section 4305(b) of Title 50, the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law; and

(B) the restrictions imposed by section 902(c) of the Food Security Act of 1985.

(8) Foreign national

The term "foreign national" means—

(A) an alien; or

(B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(9) Knowingly
The term "knowingly" means with knowledge or having reason to know.

(10) Official of the Cuban Government or the ruling political party in Cuba
The term "official of the Cuban Government or the ruling political party in Cuba" refers to any member of the Council of Ministers, Council of State, central committee of the Communist Party of Cuba, or the Politburo of Cuba, or their equivalents.

(11) Person
The term "person" means any person or entity, including any agency or instrumentality of a foreign state.

(12) Property

(A) The term "property" means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

(B) For purposes of subchapter III of this chapter, the term "property" does not include real property used for residential purposes unless, as of March 12, 1996—

(i) the claim to the property is held by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949; or

(ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

(13) Traffics

(A) As used in subchapter III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,

without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include—

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) 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; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(14) Transition government in Cuba
The term "transition government in Cuba" means a government that the President determines is a transition government consistent with the requirements and factors set forth in section 6065 of this title.

(15) United States national
The term "United States national" means—

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

22 U.S.C. 6082

§ 6082. Liability for trafficking in confiscated property claimed by United States nationals

(a) Civil remedy

(1) Liability for trafficking

(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this subchapter, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest;

(II) the amount determined under section 6083(a)(2) of this title, plus interest; or

(III) 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 plus interest, whichever is greater; and

(ii) court costs and reasonable attorneys' fees.

(B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of Title 28, computed by the court from the date of confiscation of the property involved to the date on which the action is brought under this subsection.

(2) Presumption in favor of the certified claims

There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) Increased liability

(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to—

(i) a person against whom the action is to be initiated, or

(ii) a person who is to be joined as a defendant in the action,

at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of—

(i) the amount determined under paragraph (1)(A)(ii), and

(ii) 3 times the amount determined applicable under paragraph (1)(A)(i).

(D) Notice to a person under subparagraph (B)—

(i) shall be in writing;

(ii) shall be posted by certified mail or personally delivered to the person; and

(iii) shall contain—

(I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor;

(II) a demand that the unlawful trafficking in the claimant's property cease immediately; and

(III) a copy of the summary statement published under paragraph (8).

(4) Applicability

(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after March 12, 1996.

(B) In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996.

(C) In the case of property confiscated on or after March 12, 1996, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) Treatment of certain actions

(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section.

(B) In the case of any action brought under this section by a United States national whose underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but

was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on March 12, 1996.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

(6) Inapplicability of act of state doctrine
No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(7) Licenses not required

(A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United

States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 4305(b) of Title 50, that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on March 12, 1996.

(B) Notwithstanding any other provision of law, and for purposes of this subchapter only, any claim against the Cuban Government shall not be deemed to be an interest in property the transfer of which to a United States national required before March 12, 1996, or requires after March 12, 1996, a license issued by, or the permission of, any agency of the United States.

(8) Publication by Attorney General
Not later than 60 days after March 12, 1996, the Attorney General shall prepare and publish in the Federal Register a concise summary of the provisions of this subchapter, including a statement of the liability under this subchapter of a person trafficking in confiscated property, and the remedies available to United States nationals under this subchapter.

(b) Amount in controversy
An action may be brought under this section by a United States national only where the amount in controversy exceeds the sum or value of $50,000, exclusive of interest, costs, and attorneys' fees. In calculating $50,000 for purposes of the preceding sentence, the applicable amount under subclause (I), (II), or (III)

of subsection (a)(1)(A)(i) may not be tripled as provided in subsection (a)(3).

(c) Procedural requirements

(1) In general

Except as provided in this subchapter, the provisions of Title 28 and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of Title 28.

(2) Service of process

In an action under this section, service of process on an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law, shall be made in accordance with section 1608 of Title 28.

(d) Enforceability of judgments against Cuban Government

In an action brought under this section, any judgment against an agency or instrumentality of the Cuban Government shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(e) Omitted

(f) Election of remedies

(1) Election

Subject to paragraph (2)—

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) Treatment of certified claimants

(A) In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949—

(i) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;

(ii) if the recovery in the action is less than the amount of the certified claim, the United States

national may receive payment under a claims agreement described in clause (i) but only to the extent of the difference between the amount of the recovery and the amount of the certified claim; and

(iii) if there is no recovery in the action, the United States national may receive payment on the certified claim under a claims agreement described in clause (i) to the same extent as any certified claimant who does not bring an action under this section.

(B) In the event some or all actions brought under this section are consolidated by judicial or other action in such manner as to create a pool of assets available to satisfy the claims in such actions, including a pool of assets in a proceeding in bankruptcy, every claimant whose claim in an action so consolidated was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 shall be entitled to payment in full of its claim from the assets in such pool before any payment is made from the assets in such pool with respect to any claim not so certified.

(g) Deposit of excess payments by Cuba under claims agreement

Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 that are in excess of the payments made on such certified claims after the

application of subsection (f) shall be deposited into the United States Treasury.

(h) Termination of rights

(1) In general

All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government—

(A) may be suspended under section 6064(a) of this title; and

(B) shall cease upon transmittal to the Congress of a determination of the President under section 6063(c)(3) of this title that a democratically elected government in Cuba is in power.

(2) Pending suits

The suspension or termination of rights under paragraph (1) shall not affect suits commenced before the date of such suspension or termination (as the case may be), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension or termination had not occurred.

(i) Imposition of filing fees

The Judicial Conference of the United States shall establish a uniform fee that shall be imposed upon the plaintiff or plaintiffs in each action brought under this section. The fee should be established at a level sufficient to recover the costs to the courts of actions brought under this section. The fee under this subsection is in addition to any other fees imposed under Title 28.