

No. 26-

IN THE
Supreme Court of the United States

RAMON ALBERTO RODRIGUEZ, *et al.*,

Petitioners,

v.

IMPERIAL BRANDS, PLC AND WPP PLC,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

JAMES L. BERENTHAL
DAVID W. BERENTHAL
BERENTHAL & ASSOCIATES, P.A.
2100 Ponce de Leon Boulevard,
Mezzanine Suite
Coral Gables, FL 33134

PAULINO A. NÚÑEZ, JR.
FRANK R. RODRIGUEZ
RODRIGUEZ TRAMONT
& NÚÑEZ P.A.
2100 Ponce de Leon Boulevard,
Mezzanine Suite
Coral Gables, FL 33134

JOHN G. CRABTREE
Counsel of Record
CHARLES M. AUSLANDER
BRIAN C. TACKENBERG
CRABTREE AUSLANDER
& TACKENBERG
240 Crandon Boulevard,
Suite 101
Key Biscayne, FL 33149
(305) 361-3770
john@crabtreelaw.com

Counsel for Petitioners

QUESTION PRESENTED

In *Fuld v. Palestine Liberation Organization*, 606 U.S. 1 (2025), this Court held that the Fifth Amendment’s Due Process Clause does not incorporate the Fourteenth Amendment’s minimum-contacts standard, without deciding what governs instead. The Court applied the Fourteenth Amendment’s burden-centered reasonableness factors that follow minimum contacts only to confirm that the statute before it would satisfy them even if required. The Eleventh Circuit nonetheless applied those factors to bar personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2) over foreign corporations sued on a federal cause of action — here, Title III of the Helms-Burton Act. No other court of appeals has decided what standard governs Rule 4(k)(2) after *Fuld*; the decision below is the first.

The question presented is:

What standard does the Fifth Amendment supply for personal jurisdiction under Rule 4(k)(2) over a foreign defendant — and, in particular, do the burden-centered reasonableness factors of this Court’s Fourteenth Amendment cases (factors *Fuld* never held required) supply that standard and defeat the jurisdiction federal law provides?

PARTIES TO THE PROCEEDINGS

Petitioners are Ramon Alberto Rodriguez, Alfredo Ramon Forns, Raul Lorenzo Rodriguez, Christina Conroy, and Francisco Ramon Rodriguez. Respondents are Imperial Brands, PLC (LSE: IMB; OTC: IMBBY) and WPP PLC (LSE: WPP; NYSE: WPP). Corporación Habanos, S.A., Young & Rubicam, LLC, and BCW, LLC were also defendants-appellees in the court of appeals. The district court dismissed the claims against Corporación Habanos for improper venue, a ruling petitioners did not challenge on appeal, and petitioners did not contest the dismissal of Young & Rubicam and BCW for lack of personal jurisdiction. Petitioners believe that none of the three has an interest in the outcome of this petition. See Rule 12.6. None of the three has a stock ticker symbol.

Luis Manuel Rodriguez and Maria Teresa Rodriguez (also known as Maria Teresa Landa) were plaintiffs in the district court and appellants in the court of appeals. Luis Manuel Rodriguez died on October 13, 2022, and Maria Teresa Rodriguez died on September 9, 2021, before the notice of appeal was filed; no personal representative has been substituted for either in the courts below, and neither is a petitioner here. Petitioners believe that neither has an interest in the outcome of this petition. See Rule 12.6. The court of appeals' personal-jurisdiction holding applies to all of the plaintiffs alike, and the question presented does not turn on the identity of any petitioner.

CORPORATE DISCLOSURE STATEMENT

Petitioners are individuals; no disclosure is required under Rule 29.6.

RELATED PROCEEDINGS

Rodriguez v. Imperial Brands, PLC, No. 1:20-cv-23287-DPG (S.D. Fla.) (judgment entered Apr. 8, 2024); *Rodriguez v. Imperial Brands, PLC*, No. 24-11487 (11th Cir.) (opinion and judgment entered July 23, 2026).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Ramon Alberto Rodriguez, Alfredo Ramon Forns, Raul Lorenzo Rodriguez, Christina Conroy, and Francisco Ramon Rodriguez respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–33a) is reported at 182 F.4th 1333. The order of the district court adopting in part the magistrate judge’s supplemental report and recommendation and dismissing the action for lack of personal jurisdiction (Pet. App. 34a–38a) is unreported. The district court’s earlier order adopting in part the magistrate judge’s first report and recommendation, dismissing the claims against Corporación Habanos, S.A., for improper venue, and remanding the remaining venue question (Pet. App. 39a–45a) is unreported. The magistrate judge’s supplemental report and recommendation (Pet. App. 46a–81a) is unreported.

JURISDICTION

The court of appeals entered judgment on July 23, 2026. This petition is timely under Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1). Because the constitutionality of an Act of Congress was drawn into question in the court of appeals, that court notified the Attorney General under Federal Rule of Appellate

Procedure 44. See Letter of the United States, C.A. Dkt. 77, at 1 (Aug. 11, 2025). The United States is not a party, so 28 U.S.C. § 2403(a) may apply, and this petition is being served on the Solicitor General. See Sup. Ct. R. 29.4(b).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution (Pet. App. 82a); Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Helms-Burton Act), 22 U.S.C. § 6081 (Pet. App. 83a–85a) and § 6082 (Pet. App. 86a–97a); the Act’s definition of “traffics,” 22 U.S.C. § 6023(13) (Pet. App. 98a–99a); the Act’s suspension provision, 22 U.S.C. § 6085(c) (Pet. App. 100a–101a); and Federal Rule of Civil Procedure 4(k) (Pet. App. 102a) are reproduced in the appendix to this petition.

INTRODUCTION

In 1961, the Cuban government seized a Havana cigarette factory from the family that owned and ran it — and paid them nothing. (Second Am. Compl. (“SAC”) ¶¶ 3, 75.) Petitioners are that family’s heirs, United States nationals who own the claim to the confiscated property. (Pet. App. 2a, 3a–4a.) In 1996, Congress gave them a remedy: Title III of the Helms-Burton Act makes anyone who knowingly traffics in confiscated Cuban property liable in damages to the American who owns the claim. 22 U.S.C. § 6082(a)(1)(A).

A company the Cuban government controlled made and sold cigars from that factory. (Pet. App. 4a–5a.) Respondent WPP, together with its United States

advertising subsidiaries, marketed them to the world: from 2017 on, through official brand portals on Twitter, YouTube, and Instagram, “conducted, in part, through US websites, internet domains and other US services.” (Pet. App. 6a.) Respondent Imperial held, through a subsidiary, a half-interest in that venture from 2007 to 2020. (Pet. App. 5a.)

Petitioners sued respondents under Title III. The Eleventh Circuit held that no court in the United States may hear petitioners’ claim. Whether the complaint states a claim under Title III, the panel left for another day, as the district court had done before it. (Pet. App. 8a n.2, 33a n.7.) What it decided is that the Fifth Amendment forbids any court in the United States even to reach that question. (Pet. App. 1a–3a, 31a–33a.) And because petitioners proceeded under Federal Rule of Civil Procedure 4(k)(2), whose premise is that these defendants are beyond any State’s reach, that constitutional holding forecloses the only forum that Rule supplies. (Pet. App. 7a.)

That result completes a sequence this Court began. In *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 608 U.S. 235 (2026), the Court told American claimants what trafficking is under the Act, vacating a judgment of the same circuit that had read Title III too narrowly. In *Exxon Mobil Corp. v. Corporación CIMEX, S.A.*, 609 U.S. ___, 146 S. Ct. 1909 (2026), the Court told them whom the Act reaches, rejecting a reading that would “largely negate the Act’s cause of action.” *Id.* at 1919. The Eleventh Circuit has now told those claimants where the Act may be enforced against a foreign trafficker beyond any State’s reach: nowhere.

And the facts that defeated jurisdiction are not peculiar to this case; they are built into the class of suits Congress wrote the Act for. The United Kingdom’s blocking statute, which the panel weighed as a “severe” litigation burden, reaches, on the panel’s own description, every Title III suit against every U.K. company. (Pet. App. 25a–27a.) The absence of American sales is not a business choice; it is the embargo itself — Cuban goods “could not be sold legally” here. (Pet. App. 6a.) The remedy this Court twice construed in claimants’ favor now stops at the water’s edge.

How the panel got there is the question *Fuld v. Palestine Liberation Organization* reserved. *Fuld* held that the Fifth Amendment “does not incorporate the Fourteenth Amendment minimum contacts standard,” but did not say what standard applies instead. 606 U.S. at 23; (Pet. App. 14a.) Petitioners accepted below that the Fifth Amendment imposes some limit; the question was what that limit is. (Pet. App. 24a.)

The Eleventh Circuit filled the open space with the very framework *Fuld* declined to import. Minimum contacts is that framework’s threshold; the Fourteenth Amendment’s burden-centered reasonableness factors are its second step. And the panel applied them not to check state power but to displace a cause of action Congress enacted — without deciding “whether such analysis is constitutionally required” at all. (Pet. App. 23a–24a.) The result is a federal statutory claim dismissed on constitutional grounds under factors the court that applied them declined to hold the Constitution requires. (Pet. App. 23a–24a.)

The panel’s treatment of the blocking statute shows where that approach leads. The United Kingdom enacted that statute in response to Title III; it forbids U.K. companies both to comply with the Act and to defend against Title III suits without their government’s permission. (Pet. App. 25a–27a, citing SI 1996/3171 and SI 2020/1660.) The panel counted that prohibition (“not insignificantly,” in its own words) among the reasons suit in an American court would burden respondents too severely to be constitutional. (Pet. App. 25a–27a.) So the accommodation of foreign objections to an Act of Congress — a judgment the political branches exercised through twenty-three years of presidential suspensions, and then declined to exercise, see *Havana Docks*, 608 U.S. 235 — now rests with foreign legislatures. The Constitution does not grade the reach of federal law by the vigor of foreign opposition to it.

Fuld reserved one question: what standard the Fifth Amendment imposes on a federal court’s exercise of the jurisdiction federal law provides. Lower courts are already left to improvise in the open space: two circuits have confined *Fuld* to exercises of the National Government’s own jurisdiction; a district court in New York has devised its own answer in the same vacuum; and the D.C. Circuit, facing the question in *Gligorov*, a Rule 4(k)(2) case reargued after *Fuld*, applied the parties’ stipulated standard “without deciding” that the Fifth Amendment requires it. *Akhmetshin v. Browder*, 181 F.4th 1307 (D.C. Cir. 2026); *Waldman v. Palestine Liberation Organization*, 171 F.4th 575, 588 (2d Cir. 2026) (on remand from *Fuld*, assuming the reasonableness inquiry applies — “a question the Supreme Court expressly declined to

answer” — and finding it satisfied); *Lelchook v. Société Générale de Banque au Liban S.A.L.*, 147 F.4th 226, 249 n.9 (2d Cir. 2025); *Orient Plus Int’l Ltd. v. Baosheng Media Grp. Holdings Ltd.*, 808 F. Supp. 3d 609 (S.D.N.Y. 2025); *Gligorov v. Nation of Brunei*, No. 24-7150, 2026 WL 2276372, at *5 (D.C. Cir. Aug. 7, 2026).

The Eleventh Circuit answered first, in the only court of appeals decision to decide what standard governs Rule 4(k)(2) after *Fuld* — and answered with the very doctrine *Fuld* refused to import. Whether the Fifth Amendment permits that answer is the question presented. Unless this Court supplies its own, the first answer will become the last.

STATEMENT OF THE CASE

A. Congress Created a Federal Damages Remedy Against “Any Person” Who Traffics In Property Confiscated From Americans — And Aimed It At Foreign Traffickers.

In 1996, Congress found that the United States “has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.” 22 U.S.C. § 6081(10). Title III of the Helms-Burton Act is that remedy: any person that “traffics in property which was confiscated by the Cuban Government” “shall be liable to any United States national who owns the claim to such property.” § 6082(a)(1)(A). To traffic is to act “knowingly and intentionally”: selling, transferring, managing, using, or otherwise “engag[ing] in a commercial activity using or otherwise benefiting from confiscated property.”

§ 6023(13)(A). The property the Act reaches lies in Cuba; the confiscating government is Cuba's; and Congress's findings call for a judicial remedy that would "deny traffickers any profits from economically exploiting Castro's wrongful seizures." §§ 6081(6), (11).

For twenty-three years, no suit could be brought: Presidents of both parties suspended the right of action from its effective date until the suspension was allowed to expire in May 2019. § 6085(c)(1)(B), (c)(2). When the first suits produced narrowing constructions, this Court granted review and reversed — twice, in a single Term. In *Havana Docks*, the Court vacated an Eleventh Circuit judgment that had confined trafficking liability to conduct that would have harmed the owner's interest even had there been no confiscation, a limit the statute's text does not contain. 608 U.S. at 238–39, *vacating* 119 F.4th 1276 (11th Cir. 2024). Weeks later, in *Exxon*, 146 S. Ct. 1909 (2026), it rejected a construction (requiring Helms-Burton plaintiffs suing Cuban instrumentalities to satisfy a Foreign Sovereign Immunities Act exception) that would "largely negate the Act's cause of action." *Id.* at 1919.

Exxon also construed the Act's only service-of-process provision, § 6082(c)(2), which directs that service in actions against "an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law" be made under the Foreign Sovereign Immunities Act's service rules. 28 U.S.C. § 1608. Those, the Court explained, are rules for "how to obtain personal jurisdiction over those foreign government entities." *Id.* at 1921. The statute contains no comparable provision for suits against private foreign defendants. Neither decision answered where

— and against which foreign defendants — the remedy Congress wrote can be enforced.

B. For a Decade, the Confiscated Factory’s Cigars Were Marketed Through United States Channels — With No United States Sales, Which Federal Law Forbids.

The 1961 confiscation took two properties. RRHSC — Ramón Rodríguez e Hijos Sociedad en Comandita, the Rodríguez family’s company — owned and operated the Havana cigarette factory, making cigarettes under the Partagás brand. Beside it stood a mixed-use building the company erected in 1955, with a storage facility and executive offices. (Pet. App. 2a, 3a–4a; SAC ¶¶ 1–3.) Petitioners are United States nationals, descendants of Ramón Rodríguez Gutiérrez, who inherited what was taken. The seven plaintiffs below hold a ninety-percent interest in RRHSC — and, through those shares, the claim to the confiscated property. (Pet. App. 4a; SAC ¶ 1 (the ninety percent, pleaded collectively); ¶¶ 29–33.)

The remedy slept for twenty-three years; the factory did not. Tabacuba, Cuba’s state tobacco monopoly (SAC ¶ 17), turned it from cigarettes to cigars (SAC ¶¶ 3, 10, 18; Pet. App. 4a–5a) and marketed them worldwide through a joint venture, Corporación Habanos, S.A. (“Habanos”). (Pet. App. 4a–5a.) Respondent Imperial Brands, PLC, a British tobacco company, held a one-half interest in that venture throughout. (Pet. App. 5a; SAC ¶¶ 17, 35.) Tabacuba also established offices in the mixed-use building, and from them managed the day-to-day business of all or some Cuban tobacco products. (Pet. App. 5a; SAC ¶¶ 11, 18, 80.)

Respondent WPP PLC, a British holding company, together with its United States advertising subsidiaries, marketed the venture's cigars from 2010 through October 2020. (Pet. App. 6a.) Starting no later than 2017, that marketing ran through official brand portals on Twitter, YouTube, and Instagram, "conducted, in part, through US websites, internet domains and other US services." (Pet. App. 6a, quoting SAC ¶¶ 21–22, 56.) Its email ran through the United States too: "multiple email addresses running through U.S.-based servers." (SAC ¶ 23.)

Federal law forbids persons subject to United States jurisdiction to purchase, import, or otherwise deal in merchandise of Cuban origin. 31 C.F.R. § 515.204. Petitioners accordingly alleged no domestic sales, and said as much below: WPP's United States operations "were not intended to reap profit from trafficking in the United States, where the products could not be sold legally." (Pet. App. 6a, quoting Supp. Br. of Appellants at 37.) The complaint alleges (allegations accepted as true at this stage) management of the Cuban tobacco business from the confiscated building's offices, and a decade of marketing the factory's cigars, conducted in part through United States channels. (Pet. App. 4a; SAC ¶¶ 11–12, 18, 21–22.)

C. The District Court Dismissed Solely For Lack of Personal Jurisdiction; No Court Adopted the Alternative Merits Recommendation, and the Court of Appeals Twice Declined To Reach It.

On August 6, 2020, petitioners sued respondents under Title III in the Southern District of Florida. Respondents

moved to dismiss for failure to state a claim and for lack of personal jurisdiction.

By the time the jurisdictional motions were decided, petitioners' case for personal jurisdiction rested on a single provision, Federal Rule of Civil Procedure 4(k)(2); the magistrate judge found every other theory abandoned. (Pet. App. 7a.) Rule 4(k)(2) supplies personal jurisdiction for precisely this case: a federal claim against a defendant "not subject to jurisdiction in any state's courts of general jurisdiction," so long as "exercising jurisdiction is consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(2)(A)–(B).

Only the constitutional condition was contested. Everything that followed, in the district court and in the court of appeals, turned on it. Two narrowing events framed what remained: the district court dismissed the claims against Habanos for improper venue, a ruling no party appealed (Pet. App. 39a–45a); and at the personal-jurisdiction hearing before the magistrate judge petitioners withdrew reliance on Rule 4(k)(2) as to WPP's American subsidiaries, leaving WPP and Imperial as the defendants whose amenability the courts below analyzed. (Pet. App. 7a, 58a.) WPP itself disclaimed general jurisdiction in New York, the parties agreed there was none in Florida, and the magistrate judge found that no State's courts had it. (Pet. App. 60a–61a.)

The magistrate judge recommended dismissal on two grounds: lack of personal jurisdiction and, alternatively, failure to state a claim. The district court adopted only the first; judgment entered April 8, 2024. (Pet. App. 8a & n.2.) The alternative ground stands recommended, not

adopted — and, on appeal, twice reserved. (Pet. App. 8a n.2, 33a n.7.)

D. The Eleventh Circuit Affirmed Under a Fifth Amendment “Reasonableness” Test It Declined To Hold the Constitution Requires.

This Court decided *Fuld* while the appeal was pending. The panel heard argument in August 2025, then ordered supplemental briefing on *Fuld*’s “import” for the case (C.A. Dkt. 80 (Sept. 25, 2025)), received the parties’ supplemental briefs (C.A. Dkts. 81–82 (Oct. 17, 2025)), and affirmed in a published opinion.

The panel first rejected petitioners’ reliance on Rule 4(k)(1)(C), under which service establishes personal jurisdiction “when authorized by a federal statute.” Petitioners had invoked that rule in a notice of supplemental authority filed June 30, 2025 (C.A. Dkt. 70), “for the first time,” the panel observed (Pet. App. 19a), and respondents pressed forfeiture; rather than “wade into the forfeiture dispute,” the panel resolved the point on the merits. (Pet. App. 19a.) The Act, it held, does not authorize personal jurisdiction: petitioners “don’t point to any language in the Helms-Burton Act that expressly authorizes personal jurisdiction over foreign defendants,” and the congressional finding they cited, § 6081(10), “isn’t an express authorization — nor, we think, is it even particularly compelling evidence of implied authorization.” (Pet. App. 19a–20a.)

That left Rule 4(k)(2) and the Fifth Amendment. Describing its task as “[d]oing our best to apply” *Fuld* (Pet. App. 2a), the panel read this Court’s opinion to establish

that the Fifth Amendment does not incorporate the Fourteenth Amendment’s minimum-contacts standard. (Pet. App. 14a.) This Court, it observed, “was considerably less clear about exactly what personal jurisdiction ‘standard’ the Fifth Amendment *does* embody.” (Pet. App. 14a (emphasis in original).) The panel took petitioners to have conceded that the Fifth Amendment imposes some reasonableness limit: “the plaintiffs here concede that the Fifth Amendment imposes a ‘reasonableness’ requirement,” it wrote (Pet. App. 24a). And the parties disputed that limit’s content. (Pet. App. 23a–24a.) The panel applied “the three factors laid out in *Fuld*” — factors *Fuld* itself quoted from *Asahi*, a Fourteenth Amendment case — “[w]ithout definitively ‘determin[ing] whether such analysis is constitutionally required.’” (Pet. App. 23a–24a (quoting *Fuld*, 606 U.S. at 23–24, in turn quoting *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113, 115 (1987)).)

One factor favored petitioners: they “have a strong interest in vindicating their rights under the Helms-Burton Act,” and United States courts “are the only tribunals in which they can do so.” (Pet. App. 24a.) The panel’s other findings ran against them. The forum’s interest was “more attenuated” than in *Fuld*: the Act, the panel wrote, is “much broader than” the Promoting Security and Justice for Victims of Terrorism Act (PSJVTA) sustained in *Fuld* “and contains no similar jurisdictional predicates,” reaching “run-of-the-mill private defendants.” (Pet. App. 25a, 28a.) And the burden on respondents was “severe.” (Pet. App. 26a.)

For WPP, the panel pointed first to the burden of defending across an ocean, and then (“not insignificantly,

we think”) to the United Kingdom’s blocking statute, under which “U.K. law bars U.K.-incorporated companies like WPP and Imperial both from complying with Title III of the Helms-Burton Act and from defending against Title III lawsuits without authorization from the government of the United Kingdom.” (Pet. App. 26a; The Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996, SI 1996/3171 (making it an offense to breach Articles 2 or 5 of Council Regulation (EC) No. 2271/96), retained by SI 2020/1660.)

The panel declined to impute the United States subsidiaries’ conduct to WPP absent an alter-ego showing, and declined to impute their conduct to Imperial on an agency theory. (Pet. App. 27a–30a, 31a–32a.) And it set aside “the plaintiffs’ allegation that WPP has dual headquarters in London and New York” as “not enough” standing alone, because “[t]here are no allegations that WPP engaged in conduct at its New York office that had any relationship to the conduct on which the plaintiffs’ trafficking claims are predicated.” (Pet. App. 30a.)

As to Imperial, the panel weighed a 2007 “Response” to a U.S. Securities and Exchange Commission inquiry, in which Imperial acknowledged the Act “could affect its Cuban business operations.” That acknowledgment did not, in the panel’s view, “serve[] as evidence that [Imperial] was on notice it could be sued in U.S. courts for the conduct at issue in this case,” and Habanos “was controlled by Cuba, not by Imperial.” (Pet. App. 31a–32a.) And the Act, the panel found, gave neither respondent clear notice of amenability to suit in United States courts: “[u]nlike the PSJVTA, which not only included a specific grant of jurisdiction but also explicitly identified the PLO

and PA by name, the Helms-Burton Act lacks any express jurisdictional predicates.” (Pet. App. 27a & n.3.)

Summing up as to both respondents, the panel concluded: “the Helms Burton Act gave neither clear notice that they could be sued in U.S. courts; neither engaged in any conduct related to the trafficking claims that had a meaningful relationship to the United States; and neither had any significant presence in this country.” (Pet. App. 32a.) Three questions it expressly left open. It left open whether a relatedness requirement applies under the Fifth Amendment: “Perhaps. But we don’t think we have clear enough warrant in *Fuld* to decree that new rule.” (Pet. App. 30a n.5.) It left open whether the complaint states a claim. (Pet. App. 33a n.7.) And it left open whether the reasonableness analysis it applied is constitutionally required. (Pet. App. 23a–24a.)

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit answered the question *Fuld* reserved — by converting factors *Fuld* applied only to sustain jurisdiction into a bar against it.

A. *Fuld* Decided Which Standard Does Not Govern, and Expressly Declined To Say Which One Does.

Fuld left the governing Fifth Amendment standard open, and said so. The Court did not “purport to delineate the outer bounds of the Federal Government’s power, consistent with due process, to hale foreign defendants into U.S. courts.” 606 U.S. at 18. What it closed, it closed

explicitly: the Fifth Amendment’s Due Process Clause “does not incorporate the Fourteenth Amendment minimum contacts standard.” *Id.* at 23; see *id.* at 16 (“declin[ing] to import” that standard).

The Court’s reasons ran to the difference between the sovereigns: “State sovereign authority is bounded by the States’ respective borders,” but “[t]he Constitution creates no such relation between the United States and foreign countries as it creates between the States themselves,” so the Fifth Amendment “necessarily permits a more flexible jurisdictional inquiry commensurate with the Federal Government’s broader sovereign authority.” *Id.* at 14–16 (quoting *Burnet v. Brooks*, 288 U.S. 378, 405 (1933)). And the Court sustained the PSJVTa on that footing, expressly not resting on consent. *Id.* at 23. In its own closing words, the statute “reasonably ties” federal jurisdiction to “conduct that involves the United States.” *Id.* at 25. The Court delineated no outer limit: “It is sufficient unto the day that, whatever the Fifth Amendment’s outer limits on the territorial jurisdiction of federal courts, the PSJVTa does not transgress them.” *Id.* at 19.

The panel saw the open space. It read *Fuld* as “considerably less clear about exactly what personal jurisdiction ‘standard’ the Fifth Amendment *does* embody” (Pet. App. 14a (emphasis in original)), and it opened its opinion “[d]oing our best to apply” this Court’s decision. (Pet. App. 2a.)

B. The Court of Appeals Filled That Space With the Fourteenth Amendment’s Reasonableness Factors — And Used Them To Close Every Forum To the Federal Claims Congress Aimed At Foreign Traffickers.

The three “reasonableness” factors the panel applied — the burden on the defendant, the interest of the forum, the plaintiff’s interest in relief (Pet. App. 24a) — are not a freestanding body of fairness law. They are the second step of the minimum-contacts framework itself, developed in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), and *Asahi* to ask whether jurisdiction that a defendant’s forum contacts would otherwise support remains fair to exercise. The panel described the factors as drawn from *Fuld* (Pet. App. 23a–24a). But *Fuld* declined to “determine whether such analysis is constitutionally required,” applying the factors only because “even if it were,” the PSJVT satisfied them, 606 U.S. at 23, and it took them from *Asahi* — a Fourteenth Amendment case. 480 U.S. at 113 (the three factors); see *id.* at 115 (the “reasonableness” inquiry). Their pedigree runs through the very body of law *Fuld* held does not govern.

Applying them, the panel found the burden on respondents “severe” and the forum’s interest “more attenuated” than in *Fuld*. (Pet. App. 24a–27a.) Petitioners’ interest it called strong. And it affirmed the dismissal anyway, “[w]ithout definitively ‘determin[ing] whether such analysis is constitutionally required.’” (Pet. App. 23a–24a (quoting *Fuld*, 606 U.S. at 23).) Even its reservation, the panel borrowed.

The result is an anomaly: this federal cause of action left without a forum anywhere, on constitutional grounds, under a test even the court applying it would not hold the Constitution requires. (Pet. App. 23a–25a.) That is not settled doctrine applied to unusual facts. It is a new constitutional rule, the first in any court of appeals decision, applied as dispositive by a court that reserved whether the Constitution requires it.

And the borrowed doctrine did not travel neutrally. Burden-centered balancing was built for a context in which the plaintiff has somewhere else to go: another State, another sovereign’s courts. Rule 4(k)(2) exists for the case with nowhere else: it operates only where “the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction.” Fed. R. Civ. P. 4(k)(2)(A).

And Rule 4(k)(2) is deliberate federal law, not improvisation: promulgated under the Rules Enabling Act, 28 U.S.C. § 2072, and permitted by Congress to take effect in 1993, it closed the gap this Court identified in *Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97 (1987) — federal law’s grant of a forum for precisely this defendant, sued on a federal claim and amenable in no State. And here, the panel found, no other sovereign’s courts were open either: United States courts are “the only tribunals” in which petitioners can vindicate their rights. (Pet. App. 24a.)

Imported into that setting, the Fourteenth Amendment’s factors do not weigh a forum choice; they decide whether a federal right can be vindicated at all. The panel’s own findings prove it: petitioners’ interest

was strong, the forum was the last one available — and the case was dismissed anyway, because appearing here would burden defendants whose own sovereign forbids them to comply — or even to defend. (Pet. App. 24a–27a.) Nor is that burden a fixed fact of the world. The United Kingdom enacted its blocking statute in response to Title III (Pet. App. 25a–27a; SI 1996/3171), and any sovereign can enact one, as Part II.D shows.

C. Petitioners Conceded a Limit Exists; The Only Dispute Is Which One — And That Answer Should Come From This Court.

Petitioners conceded below that, as *Fuld* read it, the Fifth Amendment imposes some reasonableness limit on the jurisdiction federal law provides. (Pet. App. 24a.) That concession frames the dispute exactly as *Fuld* left it: not whether the Fifth Amendment constrains the federal courts, but what the constraint is. Nor did the concession supply the standard: *Fuld* itself proceeded on the same footing. “We need not determine whether such analysis is constitutionally required because, even if it were,” the statute “easily comports with the factors we have previously applied.” 606 U.S. at 23.

Petitioners conceded nothing this Court had not already assumed. The record shows what petitioners actually pressed: their supplemental brief walked *Fuld*’s own three factors (the burden on these defendants, the Nation’s interest expressed in the Act’s findings, and petitioners’ interest in the only forum open to them) and urged that each was satisfied. Supp. Br. of Appellants at 33–35 (C.A. Dkt. 81). The reasonableness petitioners conceded was *Fuld*’s, not the Fourteenth Amendment’s.

The panel gave its answer — the Fourteenth Amendment’s, minus the label — in a precedential opinion that expressly declines to decide whether the test it applied is constitutionally required. (Pet. App. 23a–24a.) Unless this Court grants review, the question *Fuld* reserved will have been answered not by this Court but by the first court of appeals to reach it. And it is the wrong answer, entrenched in the one circuit where these cases live.

II. The question is nationally important, and the decision below is, for all practical purposes, already the national rule.

A. In the Year Since *Fuld*, Only the Decision Below Has Answered Its Open Question.

A year on, no second answer has come. Well over a hundred decisions have cited *Fuld*, more than ten of them in the courts of appeals, and petitioners have identified none settling the successor standard it reserved. The only appellate court to answer filled the space with the Fourteenth Amendment’s own balancing. And the two circuits that have engaged *Fuld* most directly have confined it to the setting it addressed. The D.C. Circuit declined to extend *Fuld*’s more flexible federal-sovereign inquiry to the District of Columbia’s local courts, whose territorial jurisdiction is state-like in scope and remains bound by the minimum-contacts test. *Akhmetshin*, 181 F.4th at 1310–12. The Second Circuit confirmed that where Rule 4(k)(1)(A) directs a federal court to state law, the Fourteenth Amendment’s familiar analysis “continues to apply”: *Fuld* changes nothing there. *Lelchook*, 147 F.4th at 249 n.9. Together they mark the reserved question’s boundary: it arises only where a federal court exercises

the National Government’s own jurisdiction — under Rule 4(k)(2), or a federal service statute.

And when the reserved question itself arrived, in *Gligorov*, a Rule 4(k)(2) case reargued after *Fuld* came down, the answer was an explicit non-answer: “for purposes of this appeal only, we will assume without deciding that a ‘reasonableness’ test applies,” because the parties had stipulated to one — and the court affirmed the dismissal under that assumed test. *Gligorov v. Nation of Brunei*, No. 24-7150, 2026 WL 2276372, at *5, *11 (D.C. Cir. Aug. 7, 2026). The court then questioned whether *Fuld* speaks to the Rule at all: “[a]s a court-promulgated rule, Rule 4(k)(2) does not communicate any substantive federal policy or congressional interest in subjecting defendants to federal jurisdiction,” leaving the case, in that court’s words, “an odd fit” for *Fuld*’s analysis. *Id.* at *8.

A circuit that orders reargument on the governing standard, then assumes one by stipulation and doubts the framework’s application to the Rule, has not answered the reserved question; it has confirmed how open the question remains, and opened a second question beneath it: whether *Fuld*’s framework applies to Rule 4(k)(2) at all. The decision below entertained no such doubt; it applied that framework as settled. Days later the Ninth Circuit gave the same non-answer at one further remove: on the *Devas* remand it assumed without deciding that Antrix — the foreign defendant — was a “person” the Fifth Amendment protects, applied reasonableness factors it never held required, and sustained jurisdiction under a statute that carries its own jurisdictional grant. *Devas Multimedia Private Ltd. v. Antrix Corp.*, No. 20-36024, 2026 WL 2330570, at *7–*8 (9th Cir. Aug. 12, 2026).

Only one court has gone further and filled the vacuum itself: the decision below is the only court of appeals decision in which an answer to the reserved question has supplied the rule of decision, and the only one to decide what standard governs Rule 4(k)(2), the setting in which that question is unavoidable. Nor will the question resolve itself: this Court reserved it in *Fuld* outright, and the only answer any court of appeals has given since is the decision below. See 606 U.S. at 18.

B. Because Title III Suits Against Foreign Defendants Are Filed Where the Claimants Are, the First Appellate Answer Is, In Practice, the National Rule.

Title III litigation has a geography. Of the last three Title III cases presented to this Court — *Havana Docks*, *Exxon*, and this one — two arose in the Eleventh Circuit, because the statute’s claimants are concentrated where the Cuban-American community is: the Southern District of Florida. Other circuits have reviewed Title III judgments, but in postures this case does not share. In the D.C. Circuit’s decision in *Exxon*, 111 F.4th 12 (D.C. Cir. 2024), *rev’d and remanded*, 609 U.S. ____, 146 S. Ct. 1909 (2026), the defendants were instrumentalities of the Cuban state, the class of defendant for which the Act supplies its own service provision, § 6082(c)(2). In the Fifth Circuit’s *Glen v. American Airlines, Inc.*, 7 F.4th 331 (5th Cir. 2021), the defendant was an American company amenable to suit at home.

The question here arises only in suits against private foreign defendants beyond any State’s reach — the defendants Rule 4(k)(2) exists for. Those suits are filed where the claimants are. A plaintiff could sue an alien

defendant elsewhere; the venue rules permit it. See 28 U.S.C. § 1391(c)(3). But that plaintiff would litigate against the decision below as the only published appellate authority on the books. For the statute Congress aimed at foreign traffickers, the first appellate answer is, in practice, the final one.

C. Waiting Will Not Supply a Conflict Worth the Wait.

There is no circuit conflict here, and the structure of this litigation gives the Court no reason to expect that waiting would produce one. In the Southern District of New York, a court facing the same doctrinal vacuum in a different statutory setting sustained jurisdiction over the noncitizen directors of a Chinese issuer under Rule 4(k)(1)(C) and the Securities Act’s nationwide- and worldwide-service provision. It borrowed the “sufficient nexus” test from Second Circuit *criminal* precedent, reiterating that the reasonableness inquiry is “largely academic” where Congress has provided for nationwide service. *Orient Plus*, 808 F. Supp. 3d at 617–21. Different rule, different statute, same vacuum: a court improvising a Fifth Amendment standard from criminal-law analogies because the civil standard does not exist.

Nor is that court alone; in the year since *Fuld*, district courts have filled the open space four different ways. One sustained jurisdiction over foreign defendants because the case implicates “important foreign policy and national security concerns.” *Finan v. Lafarge S.A.*, 2025 WL 2504317, at *16–17 (E.D.N.Y. Aug. 29, 2025). Another permitted consideration of “contacts throughout the United States.” *In re Global Cord Blood Corp. Sec.*

Litig., 820 F. Supp. 3d 221, 241 (S.D.N.Y. 2026). A third observed that *Fuld* “lowers the constitutional floor” and so “theoretically unsettles” a circuit’s minimum-contacts-based Rule 4(k)(2) standard. *Central Am. Bank for Econ. Integration v. Mossi*, 2025 WL 2732731, at *8 (D.D.C. Sept. 25, 2025).

And a fourth required no charting at all, because traditional minimum contacts satisfies, *a fortiori*, whatever *Fuld* requires. *King v. Bon Charge*, 823 F. Supp. 3d 508, 517 (D. Del. 2025) (Bibas, J., sitting by designation) (the Fifth Amendment “may yet require” a reasonableness inquiry; jurisdiction constitutional under “the pre-*Fuld* nationwide minimum-contacts standard” is “*a fortiori* constitutional under *Fuld*”), *as amended* (Apr. 30, 2026); *A.A. v. Omnicom Grp., Inc.*, 834 F. Supp. 3d 419, 438 n.1, 442–43 (S.D.N.Y. 2026) (“Some courts have questioned whether this analytical framework survives... *Fuld*”).

Those decisions do not conflict with the decision below; they show, by the spread of their methods, how much *Fuld* left undone. And not one of those cases arises under Title III: the vacuum runs to every federal statute enforced against absent foreign defendants — securities, terrorism, and beyond — wherever Rule 4(k)(2) or a federal service provision supplies the forum.

The appellate pipeline selects which answers get reviewed. A decision denying jurisdiction is a final judgment, appealable as of right, reviewed within a year or two — that is this case. A decision sustaining jurisdiction is interlocutory: no appeal lies without a final judgment years away, a discretionary § 1292(b) certification, or mandamus. *King v. Bon Charge* runs the experiment in

real time: jurisdiction sustained in December 2025, the opinion amended in April 2026, the merits still in litigation. And no court of appeals will see the question from that case for years, if ever.

Nor is review of some future dismissal elsewhere a surer source of conflict. A Title III plaintiff who files outside the Eleventh Circuit litigates against the decision below as the only published appellate authority in the field; district courts that follow it will be affirmed by courts of appeals with no occasion to decide anything anew, and every such agreement entrenches the rule without creating a conflict. A court of appeals that instead rejected the only authority in the field would do so years from now, after the decision below had governed the statute's heartland unreviewed.

The D.C. Circuit has just supplied the proof: facing the reserved question in *Gligorov*, it resolved the appeal on a standard the parties had stipulated, “assum[ing] without deciding” that it applies. 2026 WL 2276372, at *5. The D.C. Circuit assumed a standard by stipulation; it did not hold one, and only a holding creates a conflict. Within a week, the assumption began to replicate: facing the same vacuum days after *Gligorov*, a district court in the same circuit ordered — and received — supplemental briefing on *Fuld* that neither party had thought to offer, yet went no further than to “assum[e] without deciding that federal exercises of personal jurisdiction must be reasonable,” citing *Gligorov* for “taking a similar approach.” *Perimetral Oriental de Bogotá, S.A.S. v. Agencia Nacional de Infraestructura*, No. 25-1099 (JDB), 2026 WL 2364470, at *16 & nn.9–10 (D.D.C. Aug. 14, 2026). This Court did not wait for a conflict in *Fuld* itself: it granted certiorari to review a single circuit's holding that an Act of Congress

could not “establish personal jurisdiction” consistent with due process — and reversed. See *Fuld*, 606 U.S. at 10–11.

Percolation here is not neutral: jurisdiction-denying answers propagate through the reporters; jurisdiction-sustaining answers, interlocutory and unappealed, do not. Waiting will produce more decisions like the one below and no conflict to show for it. *Fuld*’s logic holds here: which Amendment’s law governs does not become clearer as more courts apply the wrong body of it.

D. The Decision Hands Foreign Legislatures a Veto Over an Act of Congress — A Judgment the Constitution Assigns To the Political Branches.

Leave the decision below in place, and the reach of an Act of Congress will be set in foreign capitals. The panel’s burden finding rests in substantial part on the United Kingdom’s blocking statute: U.K. law forbids respondents to comply with Title III — or even to defend a Title III suit — without their government’s leave, and the panel counted that prohibition “not insignificantly” toward its finding that the burden of litigating here is “severe.” (Pet. App. 25a–27a.) Consider what that reasoning makes possible. The United Kingdom enacted its blocking statute in response to Title III. (Pet. App. 25a–27a; SI 1996/3171 (making it an offense to breach Articles 2 or 5 of Council Regulation (EC) No. 2271/96), retained by SI 2020/1660.) Any government can do the same. If a blocking statute renders American jurisdiction constitutionally unreasonable, then any foreign legislature can acquire a veto over this Act of Congress, and over any Act of Congress aimed at conduct abroad.

Whether and how far to accommodate foreign objections to Title III is a judgment the Constitution assigns elsewhere. *Fuld*'s own vocabulary decides where: the PSJVTa was sustained because it tied federal jurisdiction to conduct that “involves the United States and implicates sensitive foreign policy matters within the prerogative of the political branches,” 606 U.S. at 25, and this Court does not “cavalierly interfere” with the “delicate judgments” on matters of foreign policy that are in “the prerogative of the political branches to make.” *Id.* at 19, 22 (quoting *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 273 (2018) (plurality opinion)).

Congress wrote the accommodation into the Act itself: a presidential suspension power, exercised continuously from the Act's effective date until the political branches let it lapse in May 2019 — and then, by their own choice, exercised no more. § 6085(c)(1)(B), (c)(2). And the political branches are no strangers to this question: the United States was a party in *Fuld* itself, successfully defending the more flexible Fifth Amendment inquiry the decision below curtails, and it is monitoring this litigation. See Letter of the United States, C.A. Dkt. 77, at 1–2 (Aug. 11, 2025). A constitutional rule that lets foreign legislation displace that calibrated scheme hands the political branches' judgment to foreign legislatures instead of respecting it. Under the decision below, the surest way for a foreign government to shield its companies from an Act of Congress is to forbid them to obey it.

III. The decision below is wrong: the Fifth Amendment does not import the Fourteenth Amendment’s burden-centered balancing to defeat a remedy Congress aimed at foreign defendants.

A. The Decision Below Reads *Fuld* Backward.

The error is not interstitial: the Fifth Amendment does not import the Fourteenth’s burden-balancing to defeat a remedy Congress aimed at foreign defendants. The decision below is *Fuld*’s holding read backward. *Fuld* held the Fifth Amendment “does not incorporate the Fourteenth Amendment minimum contacts standard” because the two Clauses answer to different sovereigns: the Fourteenth polices the States’ competing authority; the Fifth addresses a National Government whose writ, particularly in foreign affairs, runs nationwide and outward. 606 U.S. at 14–16, 23. Whatever follows from that holding, one thing cannot: that the Fourteenth Amendment’s burden-centered balancing, the second step of the very framework *Fuld* declined to import, supplies the rule of decision against a federal statute. If the Fifth Amendment’s content is different in kind, it cannot be the Fourteenth’s content under another name. Yet that is the standard the panel supplied — filling the space *Fuld* reserved with the framework it refused. (Pet. App. 23a–27a.)

B. Congress Gave Exactly the Notice the Panel Found Missing.

The panel found the Act gave respondents no clear notice of amenability to suit because it “lacks any express

jurisdictional predicates” — unlike the PSJVTa, whose jurisdictional predicates identify the defendants they reach. (Pet. App. 27a & n.3.) But Congress spoke to exactly this. It found that the United States owes its citizens protection against wrongful confiscations “by foreign nations and their citizens,” § 6081(10), defined trafficking to reach the foreign commerce that puts confiscated property to profitable use, § 6023(13), and created a damages action against “any person” who engages in it, § 6082(a)(1)(A).

A foreign company that knowingly traffics in property Congress declared protected — for a decade, through United States channels — has all the notice due process demands: the statute told it, in terms, that this conduct creates liability to American nationals. What the panel demanded — by-name targeting on the PSJVTa’s model — is a standard that a statute of general application cannot be written to satisfy, and no decision of this Court is cited, below or elsewhere, that makes it a requirement.

C. Each of the Panel’s Factors Inverts the Ordinary Inquiry.

Take the panel’s factors as given. The “severe” burden is a prohibition respondents’ own sovereign enacted in response to the statute being enforced: a barrier of foreign law’s own making, credited as a constitutional shield. (Pet. App. 25a–27a.) The panel’s burden finding also screened out respondents’ alleged American presence: it set aside the “allegation that WPP has dual headquarters in London and New York” because no conduct at the New York office was alleged to relate to the trafficking claims. (Pet. App. 30a.) That is the Fourteenth Amendment’s own

relatedness requirement — applied in the same opinion whose footnote entertained, and declined to adopt for lack of “clear enough warrant in *Fuld*,” the argument that it “shouldn’t apply in the Fifth Amendment context” at all. (Pet. App. 30a n.5.)

The notice inquiry measured a general private-remedy statute against a statute that identified its defendants, and found the general statute wanting. (Pet. App. 26a–28a.) And the forum-interest inquiry discounted the United States’ interest because Congress legislated broadly — the Act reaches “run-of-the-mill private defendants” (Pet. App. 25a, 28a) — as though the breadth of a remedy were evidence against the sovereign’s interest in enforcing it.

Last is the factor that inverts most sharply. The panel found no conduct with a “meaningful relationship to the United States” and no “significant presence” in this country. (Pet. App. 32a.) But no one may lawfully sell these cigars in the United States; federal law has forbidden it for six decades. 31 C.F.R. § 515.204. The absence the panel counted against the forum is, in significant part, the embargo working — the United States’ own Cuba policy, obeyed, became the reason the United States’ courts must close.

Each move inverts the ordinary inquiry; together they produce a rule under which the more ambitiously Congress legislates against foreign conduct, the less enforceable the legislation becomes.

The corrective is at hand, and *Fuld* supplies it. The Court sustained the PSJVTa because the statute “reasonably ties the assertion of federal jurisdiction over

the PLO and PA to conduct that involves the United States and implicates sensitive foreign policy matters within the prerogative of the political branches.” 606 U.S. at 25. That formulation generalizes: where federal law provides the forum and the federal claim rests on the defendant’s own conduct involving the United States, the Fifth Amendment is satisfied. And the formulation limits as it authorizes: conduct that does not involve the United States — the foreign traffic accident, the wholly foreign tort — supplies no tie for federal jurisdiction to rest on, however broadly Congress legislates.

This record presents that rule in its purest form: a claim Congress created for foreign trafficking, a forum only Rule 4(k)(2) supplies, and allegations (accepted as true at this stage) of a decade of marketing “conducted, in part, through US websites, internet domains and other US services.” (Pet. App. 6a.) Whether that conduct counts as respondents’ own is among the questions the panel resolved only from inside the framework under review (Pet. App. 27a–30a, 31a–32a), and it would be measured afresh under whatever standard this Court supplies. A grant would not launch the Court onto an open sea: *Fuld*’s own sustaining logic charts the course.

IV. This case is the vehicle: one question, cleanly preserved and outcome-determinative, with a straight path from grant to merits.

This case presents the reserved question and nothing else. The constitutional condition of Rule 4(k)(2) was the contested issue at every stage: petitioners proceeded under the Rule from the magistrate judge forward (Pet. App. 7a) and conceded that some reasonableness limit

exists while disputing its content (Pet. App. 24a); the panel decided the question in a published opinion. (Pet. App. 22a–32a.)

The court of appeals itself framed the question: its supplemental-briefing order directed the parties to address “[w]hat limits, if any, does the Fifth Amendment impose on a federal court’s exercise of personal jurisdiction over an extraterritorial defendant?” C.A. Dkt. 80, at 3 (Sept. 25, 2025). It is outcome-determinative: Rule 4(k)(2)’s other conditions formed no part of the decision below, so the constitutional standard controls the jurisdictional question.

The panel’s subsidiary findings (the weight assigned the blocking statute, the refusal to credit the United States-based marketing to respondents, the demand for PSJVTa-style notice) were each made in applying the framework under review, and the panel itself reserved whether relatedness has any place in the Fifth Amendment inquiry. (Pet. App. 30a n.5.) So too the panel’s summation that neither respondent engaged in conduct with a “meaningful relationship to the United States” or had a “significant presence in this country.” (Pet. App. 32a.) Those conclusions followed only from the panel’s refusal to attribute the United States-based marketing to respondents under alter-ego and agency doctrines drawn from the minimum-contacts case law. (Pet. App. 27a–30a.) Those attribution rules’ Fifth Amendment content is itself part of the question reserved.

Whatever standard this Court supplies will govern those questions on remand from the first step; none stands apart from the framework that produced it. No alternative

ground obstructs review: the failure-to-state-a-claim recommendation was adopted by no court, and the court of appeals twice declined to reach it (Pet. App. 8a n.2, 33a n.7). A court that lacked personal jurisdiction could not have rested this judgment on the merits. See *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94–95 (1998); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999). This Court reviews judgments, and the only judgment below is jurisdictional. And the consequences of reversal are modest: it would restore a forum, impose no liability, and leave every merits defense open on remand. The Court would decide the question *Fuld* reserved on a record that presents it first, cleanly, and alone.

CONCLUSION

Sixty-five years ago, the Cuban government took the Rodriguez family's factory. Thirty years ago, Congress promised American owners a remedy against those who profit from what was taken. Twice in a single Term, this Court kept that promise from being construed away. The decision below answers the question this Court reserved in *Fuld* by closing the last courthouse door — and that answer will govern every suit against the foreign traffickers Congress aimed the Act at, until this Court supplies its own. The petition for a writ of certiorari should be granted.

Respectfully submitted,

JAMES L. BERENTHAL
DAVID W. BERENTHAL
BERENTHAL & ASSOCIATES, P.A.
2100 Ponce de Leon Boulevard,
Mezzanine Suite
Coral Gables, FL 33134

PAULINO A. NÚÑEZ, JR.
FRANK R. RODRIGUEZ
RODRIGUEZ TRAMONT
& NÚÑEZ P.A.
2100 Ponce de Leon Boulevard,
Mezzanine Suite
Coral Gables, FL 33134

JOHN G. CRABTREE
Counsel of Record
CHARLES M. AUSLANDER
BRIAN C. TACKENBERG
CRABTREE AUSLANDER
& TACKENBERG
240 Crandon Boulevard,
Suite 101
Key Biscayne, FL 33149
(305) 361-3770
john@crabtreelaw.com

Counsel for Petitioners

September 15, 2026

APPENDIX

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1a

**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT, FILED JULY 23, 2026**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-11487

LUIS MANUEL RODRIGUEZ, MARIA
RODRIGUEZ, A.K.A. MARIA TERESA LANDA,
ALFREDO RAMON FORNS, RAMON ALBERTO
RODRIGUEZ, RAUL LORENZO RODRIGUEZ, *et al.*,

Plaintiffs-Appellants,

v.

IMPERIAL BRANDS, PLC., CORPORACION
HABANOS, S.A., WPP, PLC., YOUNG &
RUBICAM, LLC., BCW, LLC., A.K.A.
BURSON COHN & WOLFE LLC,

Defendants-Appellees.

Filed: 07/23/2026

OPINION

Before JORDAN, NEWSOM, Circuit Judges, and HONEYWELL,*
District Judge.

* Honorable Charlene E. Honeywell, United States District
Judge for the Middle District of Florida, sitting by designation.

Appendix A

NEWSOM, Circuit Judge:

The Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. §§ 6021–6091—more commonly known as the Helms-Burton Act—imposes liability on any person that “traffics” in property that was confiscated by the Cuban government on or after January 1, 1959, and to which a U.S. national has a claim. The plaintiffs in this case are seven U.S. nationals and descendants of Ramón Rodríguez Gutiérrez, who owned property confiscated by the Cuban government in 1961. The plaintiffs sued several corporations alleging that they had “traffic[ked]” in that property within the meaning of the Helms-Burton Act. The district court granted the corporations’ respective motions to dismiss for lack of personal jurisdiction. As relevant here, the plaintiffs now appeal the dismissal of their claims against two British corporations—Imperial Brands and WPP. Doing our best to apply the Supreme Court’s recent decision in *Fuld v. Palestine Liberation Organization*, 606 U.S. 1 (2025), we hold that the federal courts lack personal jurisdiction over WPP and Imperial, and we therefore affirm the district court’s dismissal of the plaintiffs’ complaint.

I

A

Congress enacted the Helms-Burton Act in 1996 “to strengthen international sanctions against the Castro government.” 22 U.S.C. § 6022(2). As relevant here, “Title III of the Act provides a private cause of action

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for U.S. nationals against those who knowingly traffic in property expropriated by the Cuban government after the start of the Cuban Revolution.” *Garcia-Bengochea v. Carnival Corp.*, 57 F.4th 916, 919 (11th Cir. 2023) (per curiam). Specifically, the statute states: “[A]ny 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 for money damages” 22 U.S.C. § 6082(a)(1)(A). The term “[t]raffics” is broadly defined:

[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,

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

Id. § 6023(13).

B

The plaintiffs are U.S. nationals who allege that their property in Cuba was wrongly confiscated and then trafficked in violation of the Helms-Burton Act. They are the heirs and successors of Ramón Rodríguez Gutiérrez and the owners of a 90% interest in Ramón Rodríguez e Hijos Sociedad en Comandita (RRHSC).¹ RRHSC once owned and operated a cigarette factory in Havana, but after the Castro regime seized power, the Cuban government nationalized (among many others) the tobacco industry. As part of that takeover, the government took ownership of RRHSC and confiscated its property in 1961. At the time of the seizure, RRHSC's property included a cigarette factory and an adjacent mixed-use building.

The plaintiffs here initially sued a handful of related companies:

- Habanos—a Cuban corporation controlled by the Cuban government, directly or through non-party Tabacuba, Cuba's

1. “We review the district court’s dismissal for lack of personal jurisdiction de novo, accepting the allegations in the complaint as true.” *Herederos De Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 43 F.4th 1303, 1307 (11th Cir. 2022), *abrogated on other grounds by Fuld*, 606 U.S. at 16.

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state-run tobacco monopoly. Habanos used the RRHSC factory to manufacture, sell, market, and distribute cigars. Tabacuba established offices in the mixed-use building portion of the RRHSC property.

- Imperial—a corporation incorporated and headquartered in the United Kingdom. In 2007, Imperial acquired a Spanish company, Altadis, S.A., which had a 50% noncontrolling ownership interest in Habanos. Imperial disposed of its indirect ownership interest in Habanos in 2020.
- WPP—a British holding company incorporated in the Bailiwick of Jersey with “dual-headquarters in London and New York City.” Second Am. Compl. ¶ 36, Dkt. No. 208. WPP was retained, along with its subsidiaries, by Imperial, either directly or through Habanos, to assist in marketing cigars “managed from or produced or stored” at the RRHSC property. *Id.* ¶¶ 20, 61.
- Young & Rubicam LLC (Y&R) and Burson Cohn & Wolfe, LLC (BCW)—WPP’s U.S.-based advertising agency subsidiaries, which were also retained to assist in marketing cigars produced at the RRHSC property. The subsidiaries are incorporated in Delaware and have their principal places of business in New York.

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The plaintiffs allege that from 2010 through October 2020, WPP, together with Y&R and BCW, “continuously trafficked in the RRHSC property by marketing and publicizing the Cuban tobacco products made, stored, shipped or managed from the RRHSC property.” *Id.* ¶ 21. Starting no later than 2017, plaintiffs continue, WPP, acting through Y&R and BCW, “assisted in setting up . . . official ‘portals’ . . . to market Habanos products on the U.S.-based social media platforms Twitter, YouTube, and Instagram.” *Id.* ¶ 22. This marketing, according to plaintiffs, “was conducted, in part, through US websites, internet domains and other US services.” *Id.* ¶ 56.

The plaintiffs do not allege that Habanos cigars were sold in the United States. Indeed, they admit in their brief that WPP’s U.S. “operations were not intended to reap profit from trafficking in the United States, where the products could not be sold legally.” Supp. Br. of Appellants at 37. But the plaintiffs allege that all the defendants “participated in, or profited from, trafficking of the RRHSC property by the Cuban government.” Second Am. Compl. ¶ 19.

After the plaintiffs filed their second amended complaint, all the defendants moved to dismiss. Following some jurisdictional discovery, a magistrate judge recommended that the complaint be dismissed for improper venue. The district court affirmed the magistrate judge as to Habanos but remanded as to the other defendants for the magistrate judge to determine whether they had waived their improper-venue defenses.

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On remand, the magistrate judge concluded that the remaining defendants had indeed waived their venue defenses. Then, though, the magistrate judge recommended that Imperial's and WPP's motions to dismiss be granted for lack of personal jurisdiction and on the ground that the plaintiffs had failed to state a claim against them. The magistrate judge concluded that the plaintiffs had abandoned their argument that WPP's U.S. subsidiaries were subject to personal jurisdiction. In fact, the judge determined that the plaintiffs had abandoned *all* personal-jurisdiction arguments save for the contention that WPP and Imperial were subject to personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2), which provides as follows:

For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws.

Fed. R. Civ. P. 4(k)(2).

Following Eleventh Circuit precedent as it existed at the time, the magistrate judge recommended that the suit be dismissed for lack of personal jurisdiction as to both WPP and Imperial because the plaintiffs had failed to establish that either entity had the requisite "minimum contacts" with the United States. For support,

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the magistrate judge pointed to *Fraser v. Smith*, in which this Court had held that “the mere existence of a website that is visible in a forum and that gives information about a company and its products is not enough, by itself, to subject a defendant to personal jurisdiction in that forum.” 594 F.3d 842, 847 (11th Cir. 2010) (citation modified). The magistrate judge explained that the plaintiffs’ theory of personal jurisdiction over Imperial hinged entirely on there being personal jurisdiction over WPP and, in turn, that personal jurisdiction over WPP hinged entirely on generally accessible websites that advertised Habanos’ products. The district court adopted the magistrate judge’s recommendation to dismiss for lack of personal jurisdiction.²

On appeal, the plaintiffs contend that personal jurisdiction does exist over WPP and Imperial. Initially, the plaintiffs argued that the defendants had the necessary minimum contacts with the United States. Following the completion of the parties’ briefing, the Supreme Court decided *Fuld*, in which it held, as a matter of first impression, that the Fifth Amendment’s Due Process Clause “does not incorporate the Fourteenth

2. The magistrate judge also dismissed for failure to state a claim, but the district court declined to adopt that portion of his recommendation after concluding that the court lacked personal jurisdiction over the defendants. On appeal, the defendants urge us to affirm the district court’s dismissal for lack of personal jurisdiction, but in the alternative they assert that we could affirm on the ground that the plaintiffs failed to state a claim. Because we affirm the dismissal for lack of personal jurisdiction, we don’t reach the defendants’ alternative argument.

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Amendment minimum contacts standard,” 606 U.S. at 23, and instead “permits a more flexible jurisdictional inquiry,” *id.* at 16. *Fuld* abrogated this Court’s decisions concluding that the personal-jurisdiction analyses under the Fifth and Fourteenth Amendments are the same. *See, e.g., Herederos*, 43 F.4th at 1308.

Following oral argument, we ordered supplemental briefing on several *Fuld*-related questions. Most importantly, we asked what limits, if any, the Fifth Amendment’s Due Process Clause imposes on a federal court’s exercise of personal jurisdiction over a foreign defendant and, in light of those limits, whether personal jurisdiction exists in this case.

Before us, the plaintiffs agree that the Fifth Amendment imposes some limits on a federal court’s exercise of personal jurisdiction—namely, they say, by way of a “reasonableness” standard of the sort to which the Supreme Court adverted in *Fuld*—but they insist there is personal jurisdiction over the defendants in this case. The defendants, by contrast, deny that *Fuld* applies here at all, but contend in the alternative that even if it does, subjecting them to personal jurisdiction would be unreasonable.

II

Because of the seismic shift created by *Fuld*, we begin with a discussion of personal jurisdiction as it existed both before and after the Supreme Court’s decision.

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A

First, some personal-jurisdiction basics. “A court must have . . . power over the parties before it (personal jurisdiction) before it can resolve a case.” *Lightfoot v. Cendant Mortg. Corp.*, 580 U.S. 82, 95 (2017). This requirement “flows not from Art[icle] III, but from the Due Process Clause”—be it of the Fifth or Fourteenth Amendment. *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). In either event, “[u]ntil the court has established personal jurisdiction . . . any assertion of judicial power over the party violates due process.” *Id.* at 706.

For a case arising in federal court, personal jurisdiction is (absent consent) proper only if two requirements are satisfied. As an initial matter, some federal statute or Federal Rule of Civil Procedure must authorize service of a summons on the defendant. *See Omni Cap. Int’l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987). Separately, the exercise of personal jurisdiction must comport with due process. *See id.*; *see also Ins. Corp. of Ireland*, 456 U.S. at 702–03. Let’s briefly unpack the service and constitutional requirements in turn.

First, the rules regarding the service of summons. Federal Rule of Civil Procedure 4 authorizes several means of serving a non-resident defendant. Rule 4(k)(1)(A) is the most familiar. Under that Rule, service of a summons is effective to establish personal jurisdiction if the defendant “is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.” Fed. R. Civ. P. 4(k)(1)(A). In other words, Rule

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4(k)(1)(A) looks to the law governing exercises of personal jurisdiction in the courts of the state in which the federal court sits. Accordingly, a federal court may exercise personal jurisdiction over a non-resident defendant provided (1) that service is effectuated in compliance with the state’s “long-arm” statute, *see* 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1068 (4th ed. 2026), and (2) the assertion of jurisdiction comports with the limitations imposed by the *Fourteenth* Amendment’s Due Process Clause—more on that shortly.

There are also two lesser-trod paths to establishing personal jurisdiction over non-resident defendants in federal court: Rule 4(k)(1)(C) and Rule 4(k)(2). Under Rule 4(k)(1)(C), service of process is effective to establish personal jurisdiction over a defendant “when authorized by a federal statute.” Fed. R. Civ. P. 4(k)(1)(C). Rule 4(k)(2)—the “national long-arm statute,” *Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1291 (11th Cir. 2000), *abrogated for other reasons by Fuld*, 606 U.S. 1—provides that “serving a summons . . . establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws.” Fed. R. Civ. P. 4(k)(2). Notably, exercises of personal jurisdiction pursuant to Rules 4(k)(1)(C) and 4(k)(2) are subject to constitutional limitations imposed by the *Fifth* Amendment’s Due Process Clause, rather than the *Fourteenth*’s. *See Herederos*, 43 F.4th at 1307.

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On, then, to the constitutional constraints. Before *Fuld*, the Supreme Court’s “modern personal jurisdiction cases . . . ha[d] grappled only with the limitations imposed by the *Fourteenth* Amendment on *state* courts.” *Fuld*, 606 U.S. at 11. To be clear, that’s not because personal-jurisdiction cases didn’t arise in federal court, but because Federal Rule of Civil Procedure 4(k)(1)(A) often applies.

So let’s start with the standard that governs exercises of personal jurisdiction under the Fourteenth Amendment. The canonical description comes from *International Shoe Co. v. Washington*, in which the Supreme Court “held that a tribunal’s authority depends on the defendant’s having such ‘contacts’ with the forum State that ‘the maintenance of the suit’ is ‘reasonable, in the context of our federal system of government,’ and ‘does not offend traditional notions of fair play and substantial justice.’” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021) (quoting *Int’l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316–17 (1945)).

This “contacts”-based focus on “the defendant’s relationship to the forum State” led the Court to recognize two types of personal jurisdiction: “general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.” *Id.* at 358 (citation modified). Where the defendant is “fairly regarded as at home” in a particular state, a court there has general jurisdiction and “may hear *any* claim against that defendant.” *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 262 (2017). If a

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state court doesn't have general jurisdiction, then it must have specific jurisdiction over the particular case. "In order for a state court to exercise specific jurisdiction, 'the *suit*' must 'aris[e] out of or relat[e] to the defendant's contacts with the *forum*.'" *Id.* (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)). Put simply, to establish personal jurisdiction over a non-resident defendant, a plaintiff must show—in one way or the other—that the defendant had the requisite "minimum contacts" with the state.

For years, this Court had held that the personal-jurisdiction analysis under the Fifth Amendment mirrored that under the Fourteenth. *See Herederos*, 43 F.4th at 1308; *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1219 n.25 (11th Cir. 2009); *Fraser*, 594 F.3d at 850; *Sec. & Exch. Comm'n v. Marin*, 982 F.3d 1341, 1349 (11th Cir. 2020). Accordingly, we repeatedly said that "[t]he exercise of personal jurisdiction comports with due process when (1) the nonresident defendant has purposefully established minimum contacts with the forum and (2) the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice." *Herederos*, 43 F.4th at 1310 (quoting *Marin*, 982 F.3d at 1349).

Then came *Fuld*.

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The Supreme Court’s decision in *Fuld* made one thing absolutely clear: The Fifth Amendment Due Process Clause “does *not* incorporate the Fourteenth Amendment minimum contacts standard.” *Fuld*, 606 U.S. at 23 (emphasis added). Although the Court was considerably less clear about exactly what personal jurisdiction “standard” the Fifth Amendment *does* embody, it provided hints. Because *Fuld* is the latest word, it merits extended attention.

In *Fuld*, the Court confronted a case arising under the Promoting Security and Justice for Victims of Terrorism Act (PSJVTA), which authorizes the exercise of personal jurisdiction over the Palestine Liberation Organization (PLO) and Palestinian Authority (PA) in Anti-Terrorism Act cases in the event that either entity engages in certain predicate conduct. The question was whether the exercise of jurisdiction in that case comported with the Fifth Amendment. *Id.* at 5. Making that determination required the Court to confront a question it had long reserved: Whether the Fifth Amendment’s Due Process Clause “impose[s] the same restrictions on the exercise of personal jurisdiction by a federal court” as are imposed by the Fourteenth Amendment’s Due Process Clause. *Id.* at 11.

The Supreme Court ultimately held that the Fifth Amendment “necessarily permits a more flexible jurisdictional inquiry” than the Fourteenth Amendment because the two provisions’ respective Due Process Clauses

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address different sovereigns. *Id.* at 16. The Fourteenth Amendment’s due process limitations, the Court reasoned, are “driven by two principles: (1) treating defendants fairly, and (2) protecting interstate federalism.” *Id.* at 13 (citation modified). But, the Court observed, “interstate federalism concerns . . . do not apply to limitations under the Fifth Amendment upon the power of the Federal Government and the corollary authority of the federal courts.” *Id.* at 15. Because “the United States is a distinct sovereign,” *id.* at 16 (quoting *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011)), and because “the Constitution confers upon the Federal Government—and it alone—both nationwide and extraterritorial authority,” *id.* at 15, the Fifth Amendment does not mechanically incorporate the Fourteenth Amendment’s minimum-contacts standard, *id.* at 16.

So again, the *Fuld* Court clearly decoupled the Fifth and Fourteenth Amendments’ personal-jurisdiction analyses. Beyond that, the Court’s opinion is less definitive. Most notably for our purposes, the Court didn’t expressly adopt a particular due process standard applicable to personal-jurisdiction inquiries under the Fifth Amendment—it did not, in its words, “purport to delineate the outer bounds of the Federal Government’s power, consistent with due process, to hale foreign defendants into U.S. courts” under the Fifth Amendment. *Id.* at 18. It held only that the Fifth Amendment permits an exercise of personal jurisdiction under a statute like the PSJVTA, which “ties federal jurisdiction to conduct closely related to the United States that implicates important foreign policy concerns.” *Id.*

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To begin to understand the constraints that the Fifth Amendment imposes on the assertion of personal jurisdiction, we turn to a careful examination of *Fuld* and the statute whose constitutionality was assessed, the PSJVT. That statute authorizes the assertion of personal jurisdiction over the PLO and PA in Anti-Terrorism Act cases if either entity (1) makes a direct or indirect payment to an imprisoned terrorist or that terrorist’s family “for committing any act of terrorism that injured or killed a national of the United States,” 18 U.S.C. § 2334(e)(1)(A), or (2) 15 days after the statute’s enactment continues to maintain a physical presence in the United States or “conducts any activity while physically present in the United States,” *id.* § 2334(e)(1)(B).

The Court concluded that the statute was sufficiently narrow relative to its foreign-policy objectives to avoid due process concerns, *Fuld*, 606 U.S. at 19–23, and that it didn’t offend any “reasonableness” requirement to assert personal jurisdiction over the PLO and PA, *id.* at 23–24. Regarding the statute’s tailoring, the Court emphasized that the PSJVT applies only to a “narrow category of claims,” has targeted triggering predicates, and “limits jurisdiction to only two enumerated nonsovereign foreign entities.” *Id.* at 20–21. “It is permissible,” the Court wrote, “for the Federal Government to craft a narrow jurisdictional provision that ensures, as part of a broader foreign policy agenda, that Americans injured or killed by acts of terror have an adequate forum in which to vindicate their right to ATA compensation.” *Id.* at 21.

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Regarding the governing Fifth Amendment standard, the most the Court was willing to say was this: “[T]he prospect remains that the Fifth Amendment might entail [an] ‘inquiry into the reasonableness of the assertion of jurisdiction in the particular case.’” *Id.* at 23 (quoting *Asahi Metal Indus. Co. v. Superior Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 115 (1987)). “Reasonableness,” the Court said, “will depend in each case ‘on an evaluation of several factors,’ including ‘[1] the burden on the defendant, [2] the interests of the forum State, and [3] the plaintiff’s interest in obtaining relief.’” *Id.* at 24 (quoting *Asahi*, 480 U.S. at 113).

On the facts before it, the Court concluded with respect to the second listed factor that the United States “has an exceedingly compelling interest” in providing American victims of international terrorism with a forum to hold perpetrators to account. *Id.* So too, with respect to the third, the Court observed that “American plaintiffs have a strong interest in seeking justice through an ATA damages action in U. S. courts.” *Id.* In analyzing the first, burden-on-the-defendant factor, the Court noted that the defendants hadn’t “complain[ed] of any lack of notice or contend[ed] that litigating these cases in the United States would force them to bear an unfair or unmanageable burden.” *Id.* Moreover, the Court reasoned that PLO and PA couldn’t plausibly assert such a burden because they (1) are “sophisticated international organizations” with “billion-dollar budgets” that “govern a territory recognized as a sovereign state by many other countries”; (2) have had a continual “longstanding presence in the United States”; (3) were on notice that they could be haled

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into U.S. courts for these types of cases because they had litigated them in the United States “for decades”; and (4) by virtue of the narrowly drafted personal jurisdiction predicates in the PSJVTAs, had “clear notice” that “engag[ing] in certain specified conduct would open them up to potential federal court jurisdiction.” *Id.* at 24–25 (citation modified). Ultimately, the Court concluded that “the PSJVTAs easily comports with the factors we have previously applied to determine the reasonableness of the exercise of jurisdiction even under the Fourteenth Amendment.” *Id.* at 23–24 (citation modified).

III

On, then, to this case. The plaintiffs argue that the federal courts may assert personal jurisdiction over the defendants under either Rule 4(k)(1)(C) or Rule 4(k)(2). We conclude that the Helms-Burton Act does not authorize the assertion of personal jurisdiction and, therefore, that Rule 4(k)(1)(C) does not apply here. Regarding Rule 4(k)(2), we conclude—in line with the Court’s opinion in *Fuld*—that the Fifth Amendment Due Process Clause imposes a “reasonableness” standard and that the assertion of personal jurisdiction here over either WPP or Imperial would not be reasonable.

A

First, plaintiffs’ Rule 4(k)(1)(C) argument. As a reminder, that Rule states that service of process is effective to establish personal jurisdiction over a

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defendant “when authorized by a federal statute.” Fed. R. Civ. P. 4(k)(1)(C). Both before the district court and in its opening briefing to this Court, the plaintiffs argued that personal jurisdiction was authorized under Rule 4(k)(2) alone. It wasn’t until briefing had concluded that, in a notice of supplemental authority, the plaintiffs argued for the first time that Rule 4(k)(1)(C) applied because, they said, “Helms-Burton authorizes personal jurisdiction based on trafficking in wrongfully confiscated property.” Pls.’ Notice of Supp. Authority at 1–2, June 30, 2025 (citing 22 U.S.C. § 6081(9)-(11)).

The defendants contend that the plaintiffs forfeited any Rule 4(k)(1)(C) argument and that, even if they didn’t, the Helms-Burton Act doesn’t authorize personal jurisdiction here. Because we agree with the defendants that the Helms-Burton Act doesn’t authorize personal jurisdiction over the defendants, we needn’t wade into the forfeiture dispute.

In *Omni Capital*, the Supreme Court declined to hold that a federal statute “implied[ly]” authorized nationwide service of process, emphasizing that Congress knows how to provide for such service explicitly when it wants to. *See* 484 U.S. at 106–08. This case is similar. The plaintiffs here don’t point to any language in the Helms-Burton Act that expressly authorizes personal jurisdiction over foreign defendants. Instead, they argue that the authorization is implied by a statutory finding that “[t]he United States Government has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the

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provision of private remedies.” 22 U.S.C. § 6081(10). That isn’t an express authorization—nor, we think, is it even particularly compelling evidence of implied authorization. Following the logic and rationale of *Omni Capital*, we decline to hold that Helms-Burton impliedly authorizes personal jurisdiction over foreign defendants. Accordingly, Rule 4(k)(1)(C) is inapplicable.

B

We proceed, then, to the plaintiffs’ argument that we may exercise personal jurisdiction over the defendants under Rule 4(k)(2). We begin by addressing *Fuld*’s impact on any Rule 4(k)(2) analysis. We then proceed to apply the “reasonableness” test suggested by the Court in *Fuld*.

1

Rule 4(k)(2) has two requirements. Service of process establishes personal jurisdiction over a defendant on a federal claim if “(A) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws.” Fed. R. Civ. P. 4(k)(2).

For purposes of Rule 4(k)(2), “the relevant constitutional provision . . . is the Fifth Amendment’s Due Process Clause, which applies to the federal government and its courts, not the Fourteenth’s, which applies to the states.” *Herederos*, 43 F.4th at 1307. Because *Fuld* interpreted the Fifth Amendment Due Process Clause, *Fuld* applies squarely to cases, like this one, in which the

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plaintiffs assert that they established personal jurisdiction via Rule 4(k)(2).

WPP and Imperial contend that *Fuld* is irrelevant to our Rule 4(k)(2) analysis because *Fuld* “is limited to cases where Congress has authorized personal jurisdiction such that service is permitted under Rule 4(k)(1)(C).” Supp. Br. of Appellees at 3. Respectfully, we disagree. True, the *Fuld* Court acknowledged that “[a]ny difference between the Fifth and Fourteenth Amendments is . . . implicated in only a subset of federal cases, such as those in which personal jurisdiction is—as in the PSJVT—‘authorized by a federal statute.’” *Fuld*, 606 U.S. at 11 (quoting Fed. R. Civ. P. 4(k)(1)(C)). But the Court did not in that passage limit its holding exclusively to Rule 4(k)(1)(C) cases, in particular. Instead, the Court said that Rule 4(k)(1)(C) cases are exemplary of the “subset of federal cases”—note the “such as”—in which the difference between the Fifth and Fourteenth Amendment matters. *Id.* Rule 4(k)(2) cases also fall within that subset.

WPP and Imperial separately contend that a Fourteenth-Amendment-style minimum-contacts requirement should be read into Rule 4(k)(2) because the Advisory Committee Notes to the 1993 amendments to Rule 4 suggest that the drafters expected a nationwide minimum-contacts analysis to be relevant to the Rule’s application. *See Oldfield*, 558 F.3d at 1218 n.23 (quoting Advisory Committee’s Note to 1993 amendments to Rule 4). Specifically, those notes state that subsection (k)(2) was added to “correct[] a gap in the enforcement of federal law”—that is, to fix the “problem” presented

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when the defendant was a non-resident of the United States having contacts with the United States sufficient to justify the application of United States law and to satisfy federal standards of forum selection, but having insufficient contact with any single state to support jurisdiction under state long-arm legislation or meet the requirements of the Fourteenth Amendment limitation on state court territorial jurisdiction.

Fed. R. Civ. P. 4(k) advisory committee's notes to 1993 amendments.

We think WPP and Imperial are making too much of too little. Whatever one might try to read into the committee notes' use of the word "contacts," the simple fact is that the Rule's text permits personal jurisdiction provided that "exercising jurisdiction is consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(2)(B). We think the Rule's language is best read simply to require compliance with the Constitution, not as a prescription of any particular rule. And for reasons already explained, in the wake of *Fuld*, we think it clear that the Fifth Amendment's Due Process Clause doesn't impose a formal minimum-contacts requirement.

Which brings us to the merits of a *Fuld*-informed Rule 4(k)(2) analysis: WPP and Imperial don't dispute that the first prong of Rule 4(k)(2) is satisfied—*i.e.*, that they aren't subject to jurisdiction in any state's courts of general jurisdiction. Thus, our analysis focuses on prong

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two: Whether the plaintiffs established that exercising jurisdiction over WPP and Imperial “is consistent with the United States Constitution and laws.” Fed. R. Civ. P. 4(k)(2)(B).

While the *Fuld* Court didn’t chart the precise contours of a proper Fifth Amendment due process analysis, it provided guideposts by which to determine whether an assertion of personal jurisdiction transgresses constitutional limits. First, and more generally, we know that any limitations on jurisdiction imposed by the Fifth Amendment are animated by concerns about “treating defendants fairly.” *See Fuld*, 606 U.S. at 13, 15. Importantly, in that vein—and as we’ll explain in more detail next—*Fuld* strongly implied that the Fifth Amendment entails some sort of “reasonableness” criterion. *Id.* at 23. Second, and more specifically, we know that asserting personal jurisdiction over foreign defendants like the PLO and PA, which “have decades of ‘meaningful contacts, ties, [and] relations’” with the United States, doesn’t impose an unreasonable burden. *Id.* at 22 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

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The *Fuld* Court suggested that the Fifth Amendment “might entail” an “inquiry into the reasonableness of the assertion of jurisdiction in the particular case.” *Id.* at 23 (quoting *Asahi*, 480 U.S. at 115). Without definitively “determin[ing] whether such analysis is constitutionally

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required,” the Court posited that a “[r]easonableness” inquiry “will depend in each case ‘on an evaluation of several factors,’ including [1] ‘the burden on the defendant, [2] the interests of the forum State, and [3] the plaintiff’s interest in obtaining relief.’” *Id.* at 23–24 (quoting *Asahi*, 480 U.S. at 113). Because the *Fuld* Court evaluated the exercise of personal jurisdiction over the defendants before it for “reasonableness,” and because the plaintiffs here concede that the Fifth Amendment imposes a “reasonableness” requirement, we will evaluate the three factors laid out in *Fuld* to determine whether assertion of jurisdiction over WPP and Imperial is reasonable.

For ease of analysis, we’ll take *Fuld*’s reasonableness factors in reverse order—from the most straightforward to the most involved.

a

Taking the third factor first, we think it clear—and the defendants don’t meaningfully dispute—that the plaintiffs have a strong interest in vindicating their rights under the Helms-Burton Act. And because they are U.S. nationals, this country’s courts are the only tribunals in which they can do so. So, Factor 3 counts in favor of recognizing personal jurisdiction.

b

Next up, the second reasonableness factor—the interest of the forum state. In *Fuld*, the Supreme Court concluded that the United States had “a substantial

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interest in adjudicating” the dispute before it, in part, because of the “close connection” between the PSJVTa’s predicate conduct and this country. *Id.* at 24. The Court wrote that “[f]ar from haling just any run-of-the-mill private defendant into American courts, the PSJVTa represents but one targeted aspect of a multifaceted foreign policy toward these two *sui generis* foreign entities, both of which exercise governmental functions in a geopolitically sensitive region and have decades of meaningful contacts, ties, and relations” with the United States. *Id.* at 22 (citation modified). The Helms-Burton Act is much broader than the PSJVTa and contains no similar jurisdictional predicates. Unlike the PSJVTa, the Helms-Burton Act does seem to assert liability over “run-of-the-mill private defendants”: The Act is not targeted at “two *sui generis* foreign entities” but rather at “any person that . . . traffics” or has a connection to the trafficking of property confiscated by the Cuban government after 1959 to which a U.S. national has a claim, regardless of whether that “person” has a connection to this country. 22 U.S.C. § 6082(a)(1)(A). While the United States undoubtedly has an interest in providing a forum in which American victims can sue foreigners who wrongfully traffic in their property, we think the breadth of the Helms-Burton Act, which targets persons whose activity does not necessarily have a close connection to this country, suggests that the United States’s interest here is more attenuated than it was in *Fuld*.

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Lastly, *Fuld*'s first reasonableness factor—the burden on the defendants. In *Fuld*, the defendants didn't contend that they lacked notice or that forcing them to litigate in the United States would impose an unfair burden. 606 U.S. at 24. Here, both defendants do. Because WPP's and Imperial's "burden" theories differ slightly, we'll analyze them separately.

i

We start with WPP. For reasons we'll explain, the burden on WPP would be "severe." *Asahi*, 480 U.S. at 114.

Perhaps most obviously, recognizing personal jurisdiction over WPP could well require a U.K.-based company to dispatch officers and employees across an ocean to the Southern District of Florida to defend this suit in a foreign nation's judicial system. And not insignificantly, we think, U.K. law bars U.K.-incorporated companies like WPP and Imperial both from complying with Title III of the Helms-Burton Act and from defending against Title III lawsuits without authorization from the government of the United Kingdom. *See* The Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996, SI 1996/3171 (making it an offense to breach Articles 2 or 5 of European Union Council Regulation (EC) No. 2271/96 of November 22, 1996 (1996 O.J. (L 309/1) 2271)); The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment)

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(EU Exit) Regulations 2020, SI 2020/1660 (retaining the previous regulation with amendments upon the United Kingdom’s exit from the EU).

Moreover, and in any event, unlike the defendants in *Fuld*, WPP (1) had no clear statutory notice that profiting from its subsidiaries would expose it to suit in U.S. courts, (2) didn’t itself engage in predicate conduct bearing a meaningful connection to the United States, and (3) lacked a strong presence in this country.

First, the lack of clear statutory notice. Unlike the PSJVTA, which not only included a specific grant of jurisdiction but also explicitly identified the PLO and PA by name, the Helms-Burton Act lacks any express jurisdictional predicates. As relevant here, the Helms-Burton Act states that “a person ‘traffics’ in confiscated property if that person knowingly and intentionally . . . causes, directs, participates in, or profits from, trafficking . . . by another person, or otherwise engages in trafficking . . . 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).³ Far from the sort of by-name targeting exhibited in the PSJVTA, the Helms-

3. The plaintiffs contend that WPP was on notice that it could be haled into court under the Helms-Burton Act because it acknowledged in a U.S. Securities and Exchange Commission filing that the Group is “subject to the laws of the U.S.” But WPP’s general acknowledgement that it is subject to U.S. law doesn’t undercut its argument that a specific statute—the Helms-Burton Act— fails to provide clear notice of what conduct could subject it to personal jurisdiction.

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Burton Act thus sweeps broadly. The fact that an entity engages in covered conduct doesn't necessarily mean that it has a meaningful relationship with the United States. Accordingly, the Helms-Burton Act does the very thing the *Fuld* Court seemed to condemn: It asserts liability over "run-of-the-mill private defendants" that may not have "meaningful 'contacts, ties, [and] relations' with the United States." *Fuld*, 606 U.S. at 22 (quoting *Burger King*, 471 U.S. at 472). We therefore conclude that it can't fairly be said that the Act gave WPP clear notice that its alleged actions would expose it to suit in U.S. courts.

Second, the conduct in which WPP is alleged to have engaged—profiting through its subsidiaries' relationships with Habanos—had no meaningful relationship to the United States. Even if WPP's subsidiaries might have engaged in conduct with a meaningful relationship to this country, their conduct and contacts can't fairly be imputed to WPP.⁴ Under hornbook corporate-separateness principles, which *Fuld* didn't purport to jettison or alter, the actions of a foreign parent company's subsidiary can't be imputed to the parent for personal-jurisdiction purposes absent a showing that the sub is nothing more than an alter ego of the parent such that veil-piercing is proper. Compare, e.g., *Meier ex rel. Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1272 (11th Cir. 2002), with, e.g., *Herederos*, 43 F.4th at 1312.

4. WPP's U.S.-based subsidiaries used U.S.-based websites and social media portals to "provid[e] marketing and advertising services for Habanos." Second Am. Compl. ¶ 62.

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In *Meier*—a particularly extreme case—we concluded that a foreign parent’s subsidiaries fell into the alter-ego exception. 288 F.3d at 1272–74. There, the subs were wholly owned by their parent, conducted business exclusively for their parent, were “provide[d] day to day accounting services” by their parent, and intermingled their finances with their parent. *Id.* at 1272. In *Herederos*, by contrast, we concluded that the subsidiaries weren’t mere alter egos because they were “legally distinct entities and observe[d] all corporate formalities” in that each “ha[d] its own board of directors, officers, books of account, and separate taxes.” 43 F.4th at 1312. The facts that “some of [the parent’s] corporate officers or leadership [were] also officers of [its] U.S.-based subsidiaries” and that the parent “consolidate[d] its financial statements with those of its US- subsidiaries” were not alone “sufficient to establish a subsidiary’s alter-ego status.” *Id.* (citation modified).

This case is more like *Herederos* than *Meier*. To support the conclusion that Y&R and BCW “act as alter egos” of WPP, the plaintiffs principally point to coordination of finances. Second Am. Compl. ¶ 46. Specifically, they allege that “WPP centrally coordinated [its subsidiaries’] financial matters, reporting, control, treasury, tax, mergers, acquisitions, investor relations, legal affairs and internal audit from its headquarters.” *Id.* While coordination of that sort could be used to build a case that WPP’s U.S. subs are mere alter egos of WPP, we don’t think that the plaintiffs’ allegation standing alone is enough. In *Herederos*, we said that consolidation of financial statements was insufficient to establish alter-ego

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status where the parent and subsidiary observed other corporate formalities. *See* 43 F.4th at 1312. That WPP performs some coordinating functions for its subsidiaries doesn't show that it wholly controls the subs or that they don't observe other corporate formalities.

Finally, presence. Standing alone, the plaintiffs' allegation that WPP has dual headquarters in London and New York is not enough to establish that asserting personal jurisdiction is reasonable here. There are no allegations that WPP engaged in conduct at its New York office that had any relationship to the conduct on which the plaintiffs' trafficking claims are predicated.⁵ And, the plaintiffs abandoned the theory that WPP had a principal place of business in New York and therefore had a presence sufficiently continuous to subject it to general jurisdiction in that state. *See* Tr. of Hr'g on Pers. Jurisdiction at 167, Dkt. No. 341. Thus, WPP's presence in the United States looks nothing like the PLO's and PA's "longstanding" presence here. *Fuld*, 606 U.S. at 24.⁶

5. One might posit that because the *Fuld* Court concluded that the Fifth Amendment Due Process Clause is more forgiving, the Fourteenth Amendment's "specific jurisdiction" requirement that in-forum contacts bear some relationship to the alleged harm shouldn't apply in the Fifth Amendment context. *See Bristol-Myers Squibb*, 582 U.S. at 262. Perhaps. But we don't think we have clear enough warrant in *Fuld* to decree that new rule. In any event, when weighed alongside and against the lack of notice, etc., we don't think that any "presence" indicated by the dual headquarters tips the scale.

6. Another key difference: Unlike WPP, the PLO and PA aren't just commercial businesses, but rather political

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ii

For similar reasons, we conclude that the burden on Imperial would be “severe.” *Asahi*, 480 U.S. at 114.

Like WPP, Imperial lacked clear statutory notice that it could be haled into U.S. courts. The plaintiffs contend that Imperial was on notice that it could be sued under the Helms-Burton Act because in a 2007 “Response” to an inquiry from the U.S. Securities and Exchange Commission, the company acknowledged that its business in Cuba “will become more significant as a result of Altadis’ 50% ownership interest in Corporacion Habanos S.A.” and that “Altadis’ cigar operations in Cuba could be materially limited by the operation of . . . [the Helms-Burton Act].” Second Am. Compl. Ex. 4 at 3, Dkt. No. 208-4. Certainly, Imperial acknowledged that the Helms-Burton Act could affect its Cuban business operations, but we don’t think Imperial’s acknowledgement serves as evidence that it was on notice it could be sued in U.S. courts for the conduct at issue in this case.

Likewise, there is no contention that Imperial had any offices in the United States or itself engaged in conduct in this country. Instead, the plaintiffs seek to impute to Imperial the actions of WPP’s U.S. subsidiaries because, the plaintiffs say, those subs acted as “agents” of Habanos,

organizations that are recognized by some nations as sovereign and have created substantial global connections through the “maintain[ence of] embassies, missions, and delegations around the world.” *Fuld*, 606 U.S. at 24.

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which they claim was a “joint venture” of Imperial and Tabacuba. But Habanos was controlled by Cuba, not by Imperial. Even if the plaintiffs could establish that WPP’s U.S. subsidiaries acted as agents for Habanos, they haven’t alleged enough to establish that those subs acted as Imperial’s agents, and the fact that the subs helped market Habanos’ products through U.S.-based platforms doesn’t change that.

* * *

Under the particular circumstances presented, we hold that subjecting WPP and Imperial to jurisdiction in the United States would impose an unreasonable burden on both companies. The Helms Burton Act gave neither clear notice that they could be sued in U.S. courts; neither engaged in any conduct related to the trafficking claims that had a meaningful relationship to the United States; and neither had any significant presence in this country.

IV

Without quite holding as much, the Supreme Court in *Fuld* strongly suggested that the Fifth Amendment imposes a “reasonableness” limitation on a federal court’s exercise of personal jurisdiction over foreign defendants. 606 U.S. at 23. Any reasonableness assessment necessarily entails consideration of several factors, is context-dependent, and operates on a case-by-case basis. *See id.* at 24. In the particular circumstances presented here, we hold that it would be unreasonable to subject WPP

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and Imperial to jurisdiction in this case. Accordingly, we **AFFIRM** the district court's dismissal of the plaintiffs' complaint for lack of personal jurisdiction.⁷

7. Again, because we affirm on jurisdictional grounds, we needn't address the alternative grounds for dismissal that WPP and Imperial assert on appeal.

**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA, MIAMI DIVISION,
FILED APRIL 8, 2024**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 20-cv-23287-GAYLES

LUIS MANUEL RODRIGUEZ, *et al.*,

Plaintiffs,

v.

IMPERIAL BRANDS PLC, *et al.*,

Defendants.

Filed April 8, 2024

ORDER

THIS CAUSE comes before the Court upon Defendant Corporación Habanos, S.A.’s (“Habanos”) Motion to Dismiss the Second Amended Complaint (hereafter, “Habanos’ Motion to Dismiss”) [ECF No. 225]; Defendant Imperial Brands plc’s (“Imperial”) Motion to Dismiss the Second Amended Complaint (hereafter, “Imperial’s Motion to Dismiss”) [ECF No. 226]; Defendants WPP plc (“WPP”), Young & Rubicam LLC (“Y&R”), and BCW LLC’s (“BCW”) (WPP, Y&R, and BCW, together, “WPP

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Defendants”) Motion to Dismiss the Second Amended Complaint (hereafter, “WPP Defendants’ Motion to Dismiss”) [ECF No. 229]; and Imperial, Habanos, and WPP Defendants’ Motion to Dismiss the Second Amended Complaint (hereafter, “Joint Motion to Dismiss”) [ECF No. 227]. The action was referred to Magistrate Judge Alicia M. Otazo-Reyes, pursuant to 28 U.S.C. § 636(b)(1) (B), for a ruling on all pretrial, non-dispositive matters, and for a Report and Recommendation on any dispositive matters. [ECF No. 234].

On November 2, 2022, Judge Otazo-Reyes issued her Report (the “2022 Report”) recommending that Habanos’ Motion to Dismiss be granted for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3) and that Imperial’s Motion to Dismiss, WPP Defendants’ Motion to Dismiss, and the Joint Motion to Dismiss be denied as moot. [ECF No. 286]. The Plaintiffs timely objected to the 2022 Report [ECF No. 294]. On March 31, 2023, the Court adopted the 2022 Report as to Judge Otazo-Reyes’ finding that venue is improper as to Habanos but remanded the case “for further proceedings and a report and recommendation as to whether Imperial and the WPP Defendants waived the defense of improper venue” and to “address other issues if warranted.” [ECF No. 307 at 5–6].

Judge Otazo-Reyes subsequently ordered the parties to brief the issues on remand. [ECF No. 316]. The WPP Defendants and Imperial filed their post-remand briefs on May 19, 2023, [ECF Nos. 318, 319, 320]. Plaintiffs filed their Responses on July 22, 2023, to which Defendants subsequently replied on August 11, 2023. [ECF Nos. 328, 329, 330, 333, 334, 335].

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On September 28, 2023, Judge Otazo-Reyes held a Post-Remand Hearing. [ECF Nos. 340, 341]. After the hearing, Plaintiffs filed a Notice of Supplemental Authority to which Defendants responded. [ECF Nos. 342, 343, 344]. On November 28, 2023, Judge Otazo-Reyes entered her Supplemental Report and Recommendation (“Supplemental Report”) which vacated the recommendations in her 2022 Report except as to Habanos’ Motion to Dismiss. [ECF No. 345]. In her Supplemental Report, Judge Otazo-Reyes recommended that Imperial’s Motion to Dismiss and the WPP Defendants’ Motion to Dismiss be granted in part for lack of personal jurisdiction and that the Joint Motion to Dismiss be granted in part for failure to state a claim. *Id.* Plaintiffs subsequently filed their objections to the Supplemental Report, and Defendants’ filed responses to those objections. [ECF Nos. 347, 350, 351, 352]. Plaintiffs filed their reply in support of the objections to the Supplemental Report on February 2, 2024. [ECF No. 357].

A district court may accept, reject, or modify a magistrate judge’s report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objection is made are accorded *de novo* review, if those objections “pinpoint the specific findings that the party disagrees with.” *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which *no* specific objection is made are reviewed only for clear error. *Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C.*, 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001); *accord Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006).

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Upon *de novo* review, the Court agrees with Judge Otazo-Reyes' well-reasoned analysis and conclusion that the exercise of personal jurisdiction over Imperial and WPP Defendants would be improper. Given that the Court previously dismissed the claims against Defendant Habanos on improper venue grounds and because the Court finds that it lacks jurisdiction over the remaining defendants, it need not reach Judge Otazo-Reyes' additional recommendations. *See Posner v. Essex*, 178 F.3d 1209, 1214 n. 6 (11th Cir. 1999) ("A court without personal jurisdiction is powerless to take further action."); *Courboin v. Scott*, 596 F. App'x 729, 735 (11th Cir. 2014) (vacating portion of district court's order addressing merits after finding lack of personal jurisdiction). Defendants' Joint Motion to Dismiss is therefore denied as moot.

CONCLUSION

After careful consideration, it is **ORDERED AND ADJUDGED** as follows:

- (1) Judge Otazo-Reyes' Supplemental Report and Recommendation, [ECF No. 345], is **ADOPTED in part**; and
- (2) Imperial's Motion to Dismiss [ECF No. 226] is **GRANTED IN PART** for lack of personal jurisdiction;
- (3) WPP Defendants' Motion to Dismiss [ECF No. 229] is **GRANTED IN PART** for lack of personal jurisdiction; and

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(4) The Joint Motion to Dismiss [ECF No. 227]
is DENIED as moot.

(5) This action is DISMISSED without
prejudice.

(6) This case is CLOSED.

DONE AND ORDERED in Chambers at Miami,
Florida, this 8th day of April, 2024.

/s/ Darrin P. Gayles
Darrin P. Gayles
United States District Judge

**APPENDIX C — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA, FILED MARCH 31, 2023**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:20-cv-23287-GAYLES/OTAZO-REYES

LUIS MANUEL RODRIGUEZ, *et al.*,

Plaintiffs,

v.

IMPERIAL BRANDS PLC, *et al.*,

Defendants.

Filed March 31, 2023

ORDER

THIS CAUSE comes before the Court on Defendant Corporación Habanos, S.A.’s (“Habanos”) Motion to Dismiss the Second Amended Complaint [ECF No. 225]; Defendant Imperial Brands plc’s (“Imperial”) Motion to Dismiss the Second Amended Complaint [ECF No. 226]; Defendants WPP plc (“WPP”), Young & Rubicam LLC (“Y&R”), and BCW LLC’s (“BCW”) (collectively, the “WPP Defendants”) Motion to Dismiss the Second Amended Complaint [ECF No. 229]; and Imperial, Habanos, and WPP Defendants’ (collectively, the “Defendants”) Motion

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to Dismiss the Second Amended Complaint [ECF No. 227]. Defendants’ Motions to Dismiss, [ECF Nos. 225, 226, 227, 229], were referred to Magistrate Judge Alicia M. Otazo-Reyes, pursuant to 28 U.S.C. § 636(b)(1)(B), for a Report and Recommendation. [ECF No. 167]. Judge Otazo-Reyes held a hearing on Defendants’ Motions to Dismiss on July 26, 2022, [ECF No. 273], and on November 2, 2022, she issued her Report and Recommendation. (“Report”), [ECF No. 286]. Plaintiffs timely objected to the Report (the “Objections”), [ECF No. 294], and Defendants filed responses to the Objections, [ECF Nos. 295, 296].

I. BACKGROUND¹

Plaintiffs Luis Manuel Rodriguez, Maria Teresa Rodriguez, Alfredo Ramon Forns, Ramon Alberto Rodriguez, Raul Lorenzo Rodriguez, Christina Conroy, and Francisco Ramon Rodriguez (collectively, the “Plaintiffs”) filed this action following the Trump Administration’s activation of Title III of the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. § 6021, *et seq.* (the “Helms-Burton Act”). Plaintiffs seek compensation under the Helms-Burton Act from Defendants, alleging that they have profited from using property in Cuba that Plaintiffs owned before the Cuban revolution.

Plaintiffs’ property consists of a building known as the Partagás factory and a modern mixed-use building

1. The Court incorporates the Report’s Procedural and Factual Background. [ECF No. 286 at 2–4].

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adjacent to the Partagás factory (the “Confiscated Property”). Plaintiffs allege that Defendants trafficked in the Confiscated Property in violation of the Act. Plaintiffs claim that Defendants have used and continue to use the Confiscated Property without compensation or authorization from Plaintiffs. These uses include the production and shipment of millions of hand-rolled cigars manufactured and processed at the Confiscated Property and their marketing through online portals on the United States-based social media platforms Twitter, YouTube, and Instagram.

As fully detailed in the Report, the parties’ roles in the alleged trafficking scheme are as follows: Habanos and non-party Tabacuba, the Cuban tobacco monopoly company, used the Confiscated Property in Cuba to manage, produce, store, and ship hand-rolled cigars and other tobacco products without authorization from Plaintiffs; Imperial and Habanos marketed and publicized Habanos’ products; Imperial and Tabacuba retained agents to market and publicize Habanos’ products, including WPP through its advertising agency subsidiaries, Y&R and BCW; and Defendants established social media accounts on Twitter, YouTube, and Instagram to facilitate the marketing of Habanos’ products. [ECF No. 286 at 9].

Following jurisdictional discovery, a hearing on Defendants’ Motions to Dismiss, and post-hearing briefing, Judge Otazo-Reyes issued her Report. The Report recommends dismissal as to all Defendants because venue is not proper in the Southern District of Florida and because the Second Amended Complaint does not contain sufficient allegations to transfer the action to

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a particular district. [ECF No. 286]. In particular, the Report made the following findings:

- I. Venue is improper in the Southern District of Florida under 28 U.S.C. § 1391(f)(4), as that section provides for venue against a foreign state or political subdivision thereof in the District of Columbia;
- II. Under 28 U.S.C. §§ 1391(f)(1) and 1391(b)(2), venue is improper in the Southern District of Florida because Plaintiffs do not allege that any of the Defendants undertook these alleged activities in the Southern District of Florida; and
- III. Transfer of this case to New York is not warranted, and it should be dismissed under Federal Rule of Civil Procedure 12(b)(3) because Plaintiffs' Second Amended Complaint is devoid of allegations establishing that Defendants' purported tortious conduct occurred in New York, or that a substantial part of the events or omissions giving rise to the claims occurred in New York for venue purposes under 28 U.S.C. §§ 1391(f)(1) or 1391(b)(2).

Id. at 6–7.

Plaintiffs do not object to the Report's finding that venue in the Southern District of Florida is improper as to Habanos. However, in their Objections, Plaintiffs

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argue that Judge Otazo-Reyes erred by (1) recommending dismissal against the Imperial and the WPP Defendants because they waived venue and only Habanos moved to dismiss for improper venue; (2) raising the issue of venue *sua sponte* as to Imperial and the WPP Defendants; (3) not addressing all of Imperial's and the WPP Defendants' arguments for dismissal; and (4) recommending dismissal of the action as to Imperial and the WPP Defendants, rather than transfer of the action against them to the Southern District of New York, as the remedy for improper venue. *See* [ECF No. 294]. In response, Imperial and the WPP Defendants contend that (1) Plaintiffs had fair notice and a full opportunity to oppose dismissal of the entire action; (2) the Report correctly recommends dismissal rather than transfer to another venue; and (3) Plaintiffs' objection that the Court erred by not addressing all their arguments does not constitute a valid objection. [ECF No. 296 at 2–4].

II. LEGAL STANDARD

A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objection is made are accorded *de novo* review if those objections "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which *no* specific objection is made are reviewed only for clear error. *Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C.*, 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001); *accord Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).

*Appendix C***III. DISCUSSION**

In her Report, Judge Otazo-Reyes finds that the Southern District of Florida is not the proper venue for this action and that this case should be dismissed without prejudice. Although Imperial and the WPP Defendants did not move to dismiss for improper venue, Judge Otazo-Reyes found that Habanos' venue argument was dispositive as to all Defendants. [ECF No. 286 at 6 n. 3]. However, the Report does not specifically address whether Imperial and the WPP Defendants waived the improper venue issue by failing to raise it in their initial motions to dismiss. See *Lipofsky v. N.Y. State Workers Comp. Bd.*, 861 F.2d 1257, 1259 (11th Cir. 1988). Indeed, the Court may consider dismissal of this case *sua sponte* for lack of venue as to the WPP Defendants as long as the parties are given an opportunity to present their views on the issue. [ECF No. 286 at 6 n. 3]; *Algodonera De Las Cabezas, S.A. v. Am. Suisse Cap., Inc.*, 432 F.3d 1343, 1345 (11th Cir. 2005) (citing *Lipofsky*, 861 F.2d at 1259). However, the Eleventh Circuit Court of Appeals held that a district court may dismiss a suit *sua sponte* for lack of venue only "in the absence of a waiver." *Lipofsky*, 861 F.2d at 1259.

Based on its *de novo* review of the record, including the Report, Plaintiffs' objections, and Defendants' responses, this Court agrees with Judge Otazo-Reyes's analysis and finding that venue is improper as to Habanos. However, the Court finds that remand is appropriate to give the Magistrate Judge an opportunity to consider whether Imperial and the WPP Defendants have waived the improper venue issue.

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IV. CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Magistrate Judge Alicia M. Otazo-Reyes's Report and Recommendation, [ECF No. 286], is **AFFIRMED and ADOPTED in part** and incorporated into this Order by reference;
2. Defendant Habanos' Motion to Dismiss, [ECF No. 225], is **GRANTED**;
3. This matter is **REMANDED** to Magistrate Judge Otazo-Reyes for further proceedings and a report and recommendation as to whether Defendant Imperial and the WPP Defendants waived the defense of improper venue. The Magistrate Judge may address other issues if warranted; and
4. This case is **STAYED** pending a Report and Recommendation on the remanded issues.

DONE AND ORDERED in Chambers at Miami, Florida, this 31st day of March, 2023.

/s/ Darrin P. Gayles
Darrin P. Gayles
United States District Judge

cc: All Counsel of Record

**APPENDIX D — SUPPLEMENTAL REPORT AND
RECOMMENDATION OF THE UNITED STATES
DISTRICT COURT SOUTHERN DISTRICT OF
FLORIDA, FILED NOVEMBER 28, 2023**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-23287-CIV-GAYLES/OTAZO-REYES

LUIS MANUEL RODRIGUEZ, *et al.*,

Plaintiffs,

v.

IMPERIAL BRANDS PLC, *et al.*,

Defendants.

Filed November 28, 2023

**SUPPLEMENTAL REPORT
AND RECOMMENDATION**

THIS CAUSE came before the undersigned upon the Court's Order on Report and Recommendation [D.E. 307], which the undersigned had issued on November 2, 2022, with respect to the following submissions:

- Defendant Corporación Habanos, S.A.'s ("Habanos") Motion to Dismiss the Second

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Amended Complaint (hereafter, “Habanos’ Motion to Dismiss”) [D.E. 225];

- Defendant Imperial Brands plc’s (“Imperial”) Motion to Dismiss the Second Amended Complaint (hereafter, “Imperial’s Motion to Dismiss”) [D.E. 226];
- Defendants WPP plc (“WPP”), Young & Rubicam LLC (“Y&R”), and BCW LLC (“BCW”) (WPP, Y&R, and BCW, together, “WPP Defendants”)’s Motion to Dismiss the Second Amended Complaint (hereafter, “WPP Defendants’ Motion to Dismiss”) [D.E. 229]; and
- Imperial, Habanos, and WPP Defendants’ Motion to Dismiss the Second Amended Complaint (hereafter, “Joint Motion to Dismiss”) [D.E. 227].

See Report and Recommendation [D.E. 286]. Therein, the undersigned recommended that Habanos’ Motion to Dismiss be granted for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3); that this action be dismissed without prejudice to Plaintiffs Luis Manuel Rodriguez, Maria Teresa Rodriguez, Alfredo Ramon Forns, Ramon Alberto Rodriguez, Raul Lorenzo Rodriguez, Christina Conroy, and Francisco Ramon Rodriguez (together, “Plaintiffs”) refiling their action in a proper venue; and that Imperial’s Motion to Dismiss, WPP

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Defendants’ Motion to Dismiss, and the Joint Motion to Dismiss be denied without prejudice as moot. *Id.*

On March 31, 2023, the Court affirmed and adopted in part the Report and Recommendation and granted Habanos’ Motion to Dismiss. *See* Order on Report and Recommendation [D.E. 307 at 5]. However, the Court remanded the case to the undersigned “for further proceedings and a report and recommendation as to whether Defendant Imperial and the WPP Defendants waived the defense of improper venue”; and to “address other issues if warranted.” *Id.* at 5–6. Based on this directive, the undersigned permitted Imperial and the WPP Defendants (together, “Defendants”) to brief the issue of whether they had waived the defense of improper venue, as well as proffer any arguments for dismissal that they wished to assert. *See* Order [D.E. 316].

On May 19, 2023, in compliance with the undersigned’s instructions: the WPP Defendants filed a Post-Remand Brief in Support of their Motion to Dismiss (hereafter, “WPP Defendants’ Post-Remand Brief”) [D.E. 318]; Imperial filed a Supplemental Brief in Support of its Motion to Dismiss (hereafter, “Imperial’s Post-Remand Brief”) [D.E. 319]; and Defendants filed a Supplemental Brief in Further Support of the Joint Motion to Dismiss (hereafter, “Joint Post-Remand Brief”) [D.E. 320] (collectively, “Defendants’ Post-Remand Briefs”), arguing as follows:

- Defendants did not waive the defense of improper venue and the undersigned’s Report and Recommendation correctly

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recommended dismissal of the entire action without prejudice to refiling in a proper venue;

- The WPP Defendants’ alleged jurisdictional contacts cannot be imputed to Imperial and, in any event, the Second Amended Complaint fails to sufficiently allege that this Court has personal jurisdiction over the WPP Defendants and Imperial under the Florida long-arm statute and Federal Rule of Civil Procedure 4(k)(2) (hereafter, “Rule 4(k)(2)”), thereby requiring dismissal pursuant to Federal Rule of Civil Procedure 12(b)(2) (hereafter, “Rule 12(b)(2)”); and
- The Second Amended Complaint fails to state a claim under Title III of the Helms-Burton Act, 22 U.S.C. §§ 6081–6085 (hereafter, “Title III”), thereby requiring dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) (hereafter, “Rule 12(b)(6)”).

See Defendants’ Post-Remand Briefs [D.E. 318–20].¹

1. The undersigned continues to hold in abeyance and does not discuss herein the argument challenging the constitutionality of Title III set forth in Imperial’s Motion to Dismiss. *See* Imperial’s Motion to Dismiss [D.E. 226]; Supplemental Statement of Interest [D.E. 271]; Paperless Order [D.E. 272].

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On July 22, 2023, Plaintiffs filed their Responses to Defendants' Post-Remand Briefs (hereafter, "Post-Remand Response Briefs") [D.E. 328–30]. On August 11, 2023, Imperial filed its Supplemental Reply Brief (hereafter, "Imperial's Reply Brief") [D.E. 333]; Defendants filed their Supplemental Reply Brief (hereafter, "Joint Reply Brief") [D.E. 334]; and the WPP Defendants filed their Reply in Support of their Post-Remand Brief (hereafter, "WPP Defendants' Reply Brief") [D.E. 335] (together, "Post-Remand Reply Briefs"). On September 28, 2023, the undersigned held a Post-Remand Hearing [D.E. 340]. On October 18, 2023, Plaintiffs filed a Notice of Supplemental Authority [D.E. 342]; and on October 23, 2023, Defendants responded to Plaintiffs' Notice of Supplemental Authority [D.E. 343–44].

As more fully discussed below, the undersigned concludes that Defendants *did* waive the defense of improper venue. Moreover, upon consideration of the Post-Remand Briefs, Post-Remand Response Briefs, and Post-Remand Reply Briefs, as well as the parties' arguments at the Post-Remand Hearing, the undersigned: vacates her prior recommendations that this action be dismissed without prejudice to Plaintiffs refiling their action in a proper venue and that Imperial's Motion to Dismiss, WPP Defendants' Motion to Dismiss, and the Joint Motion to Dismiss be denied without prejudice as moot; and respectfully recommends that Imperial's Motion to Dismiss be GRANTED IN PART for lack of personal jurisdiction, WPP Defendants' Motion to Dismiss be GRANTED IN PART for lack of personal jurisdiction, and the Joint Motion to Dismiss be GRANTED IN PART for failure to state a claim.

*Appendix D***SUMMARY OF DEFENDANTS’
ARGUMENTS ON REMAND**

As noted above, Defendants initially argue that they did not waive the defense of improper venue and that the Report and Recommendation correctly recommended dismissal of the entire action without prejudice to refile in a proper venue. The undersigned finds this contention to be erroneous. Defendants further argue that the Second Amended Complaint should be dismissed for lack of personal jurisdiction and failure to state a Title III claim. The undersigned finds merit in some of these arguments.

WAIVER OF DEFENSE OF IMPROPER VENUE

In its Motion to Dismiss the Second Amended Complaint, Habanos argued that venue as to Habanos was improper in this district under 28 U.S.C. § 1391(f). *See* Habanos’ Motion to Dismiss [D.E. 225 at 14]. Habanos explained that 28 U.S.C. § 1391(f) governed venue as to Habanos because Plaintiffs had alleged that Habanos was an “agency or instrumentality of the Cuban government” under the Foreign Sovereign Immunities Act (“FSIA”) and that 28 U.S.C. § 1391(f) “controls venue in every case where a foreign state is named as a defendant.” *Id.* (internal quotation marks and citations omitted). Habanos further argued that Plaintiffs had failed to allege that “a substantial part of the events or omissions giving rise to the claim occurred” in this district as required by 28 U.S.C. § 1391(f)(1) (hereafter, “Section 1391(f)(1)”). *Id.* at 14–18. Alternatively, Habanos argued that, if it was not deemed an agency or instrumentality of Cuba and the FSIA did

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not apply, venue was likewise improper under the similar standard set forth in 28 U.S.C. § 1391(b)(2) (hereafter, “Section 1391(b)(2)”), pursuant to which Plaintiffs had alleged that venue in this district was proper as to all the defendants. *Id.*

In the prior Report and Recommendation, the undersigned found that “the allegations in the Second Amended Complaint ‘reveal[] that no events giving rise to the claim[] occurred in this District and, as a consequence, venue does not properly lie’ here under Section 1391(f)(1) or Section 1391(b)(2).” *See* Report and Recommendation [D.E. 286 at 9] (alterations in original) (citations omitted). The undersigned also found that:

Although the other [d]efendants did not move to dismiss for improper venue, Habanos’ venue argument is dispositive as to all [the defendants] *See, e.g.,* Habanos’ Motion to Dismiss [D.E. 225 at 15–18] (discussing impropriety of venue in the Southern District of Florida as to all [d]efendants). The parties also had an opportunity at the [hearing on the Motions to Dismiss, *see* Paperless Minute Entry [D.E. 273],] to present their arguments about venue in this district and their respective positions on transferring or dismissing the case. *See, e.g.,* Corrected Hearing Tr. [D.E. 285 at 10:25–17:21, 49:7–50:16, 92:5–93:8, 110:11–19, 144:4–146:20]. Thus, the Court may also consider dismissal of this case *sua sponte* for lack of venue as to the non-moving [d]efendants. *See Algodonera*

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De Las Cabezas, S.A. v. Am. Suisse Cap., Inc., 432 F.3d 1343, 1345 (11th Cir. 2005) (“[W]hile a district court may dismiss a suit *sua sponte* for lack of venue, it may not do so ‘without first giving the parties an opportunity to present their views on the issue.’”) (quoting *Lipofsky v. N.Y. State Workers Comp. Bd.*, 861 F.2d 1257, 1259 (11th Cir. 1988)).

Id. at 6 n.3. Ultimately, the undersigned declined to recommend a transfer of the action to “another district where venue in that district is not affirmatively established in the [Second Amended] Complaint.” *Id.* at 10 (alteration in original) (internal quotation marks and citation omitted). Therefore, the undersigned recommended that the entire action be dismissed without prejudice to Plaintiffs refiling the case in a proper venue. *Id.* at 11.

In its Order on Report and Recommendation [D.E. 307], the Court adopted the undersigned’s finding that venue was improper as to Habanos and granted Habanos’ Motion to Dismiss [D.E. 225]. *See* Order on Report and Recommendation [D.E. 307 at 5]. However, the Court noted that the Report and Recommendation “[did] not specifically address whether Imperial and the WPP Defendants waived the improper venue issue by failing to raise it in their initial motions to dismiss.” *Id.* The Court further noted that, although it “may consider dismissal of this case *sua sponte* for lack of venue as to [Imperial and] the WPP Defendants as long as the parties are given an opportunity to present their views on the issue . . . the Eleventh Circuit Court of Appeals [has] held that a district

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court may dismiss a suit *sua sponte* for lack of venue only ‘in the absence of a waiver.’” *Id.* (citing *Algodonera*, 432 F.3d at 1345; *Lipofsky*, 861 F.2d at 1259). As a result, the Court remanded the matter to the undersigned for “an opportunity to consider whether Imperial and the WPP Defendants have waived the improper venue issue.” *Id.*

In their Joint Post-Remand Brief, Defendants contend that the Report and Recommendation correctly recommended dismissal of the entire action for improper venue because “the Court did not raise venue *sua sponte*, the parties presented their views on the issue, and the venue defense was not waived.” *See* Joint Post-Remand Brief [D.E. 320 at 8–9]. At the Post-Remand Hearing, Imperial argued that “the [C]ourt did not raise venue *sua sponte*[,] Habanos did[,], [a]nd the parties had the opportunity to advocate their positions”, stating:

[Defendants] opposed transfer and advocated for dismissal. . . . Of course, the [P]laintiffs too had the opportunity to argue what disposition should flow from success on Habanos’ unique [FSIA] venue argument. They asked, of course, that the case remain in Florida, but their request was that if that didn’t work, then the entire case be transferred somewhere else. So a unitary disposition is what the [P]laintiffs requested. . . . What the Eleventh Circuit [has] said is [that] . . . you have to allow the parties time to advocate. Perhaps the defendant wants to accept venue in an improper venue; perhaps the plaintiff wants to argue about why venue

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was improper. That was all permitted here. So we are not even within the scope and coverage of this waiver rule that [Plaintiffs] are invoking.

See Post-Remand Hearing Tr. [D.E. 341 at 11:14–12:15].² Defendants also argue that they “could not have asserted the Habanos-specific FSIA venue defense” and, as such, could not “have waived a defense that was never theirs to assert.” *See* Joint Post-Remand Brief [D.E. 320 at 11]; Joint Reply Brief [D.E. 334 at 6]; *see also* Post-Remand Hearing Tr. [D.E. 341 at 14:14–18] (“Imperial and [the WPP Defendants] did not have [an FSIA] venue defense to make; therefore, they had no such defense; therefore, they cannot possibly have waived it because they couldn’t have made it in the first place.”).

Plaintiffs countered at the Post-Remand Hearing that discussing the matter of venue *sua sponte* at a hearing does not provide sufficient notice to the parties. *See* Post-Remand Hearing Tr. [D.E. 341 at 20:14–22] (referencing

2. With regard to the unitary disposition argument, Imperial further contends that, although Plaintiffs had alluded to a possible severance of Habanos should the Court find that venue as to Habanos was improper in this district, *see* Response to Habanos’ Motion to Dismiss [D.E. 263 at 6], Plaintiffs’ Amended Objections to Report and Recommendation [D.E. 294 at 4], Plaintiffs never formally moved the Court for a severance pursuant to Federal Rule of Civil Procedure 21. *See* Joint Post-Remand Brief [D.E. 320 at 10]. However, the undersigned need not consider the issue of severance at this juncture, given that the Court has already dismissed Habanos for improper venue, *see* Order on Report and Recommendation [D.E. 307 at 5], and the undersigned is recommending dismissal of Defendants.

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McIntosh v. Royal Caribbean Cruises, Ltd., 5 F.4th 1309, 1312 (11th Cir. 2021)) (“Of course, before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions.”) (quoting *Day v. McDonough*, 547 U.S. 198, 210 (2006)). More importantly, Plaintiffs correctly argue that “[f]ailure to raise the issue of improper venue in an initial motion to dismiss waives such defense.” See Post-Remand Response Brief [D.E. 330 at 1] (citing *Aero Techs., LLC v. Lockton Cos. Intern. Ltd.*, 406 F. App’x 440, 441 (11th Cir. 2010)) (“Federal Rule of Civil Procedure 12(h)(1) states that some Rule 12 defenses are waived by failing to raise them in the initial Rule 12 motion, including improper venue[.]”). Plaintiffs note that Defendants did not raise the defense of improper venue in their respective Motions to Dismiss the Second Amended Complaint or in their earlier motions to dismiss the Complaint [D.E. 1] and First Amended Complaint [D.E. 82]. See Post-Remand Response Brief [D.E. 330 at 1] (referencing the prior Motions to Dismiss [D.E. 71–72, 74, 88, 91, 94]). Indeed, Defendants limited their initial dismissal arguments to, in relevant part, lack of personal jurisdiction, lack of standing, and failure to state a claim. See Motions to Dismiss the Complaint [D.E. 71–72, 74].³ Thus, Plaintiffs posit that “only Habanos was dismissed for lack of venue, and the remaining defendants do not get dismissed for lack of venue because they did not plead it” and, therefore, waived the defense. See Post-Remand Hearing Tr. [D.E. 341 at 24:24–25:2].

3. In contrast, Habanos raised its improper venue defense in its initial motion to dismiss the First Amended Complaint [D.E. 89] as well as in its Motion to Dismiss the Second Amended Complaint [D.E. 225].

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Given that Defendants did not assert the defense that venue in this district was improper in their initial, much less any of their Motions to Dismiss, the undersigned concludes that Defendants *did* waive the defense of improper venue. *See Aero Techs.*, 406 F. App'x at 441 (“Our circuit has never recognized extraordinary circumstances as grounds for overlooking a defendant’s waiver of venue and we decline to do so here.”). In light of that waiver, dismissal of the action with respect to Defendants was improper. *See* Order on Report and Recommendation [D.E. 307 at 5]. Therefore, the undersigned vacates her prior recommendations that this action be dismissed without prejudice to Plaintiffs refiling their action in a proper venue; and that Imperial’s Motion to Dismiss, WPP Defendants’ Motion to Dismiss, and the Joint Motion to Dismiss be denied without prejudice as moot.

In accordance with the Court’s directive to “address other issues if warranted”, *id.* at 6, the undersigned proceeds to consider Defendants’ arguments regarding lack of personal jurisdiction and failure to state a claim.

PERSONAL JURISDICTION

The WPP Defendants argue that this Court cannot exercise personal jurisdiction over them under Florida’s long-arm statute or Rule 4(k)(2). *See* WPP Defendants’ Post-Remand Brief [D.E. 318 at 7–13]. Moreover, Imperial argues that “Plaintiffs have pleaded no basis to impute [] the WPP Defendants’ alleged jurisdictional contacts to Imperial.” *See* Imperial’s Post-Remand Brief [D.E. 319 at 7–8]. Imperial further argues that, even if the WPP

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Defendants' alleged jurisdictional contacts are imputed to Imperial, they are likewise insufficient under the Florida long-arm statute and Rule 4(k)(2); and that it would be constitutionally unreasonable to exercise personal jurisdiction over Imperial. *Id.* at 9–14.

At the Post-Remand Hearing, Plaintiffs abandoned their theory of specific personal jurisdiction under the Florida long-arm statute as to all Defendants. *See* Post-Remand Hearing Tr. [D.E. 341 at 6:11–14, 156:4–6]. Plaintiffs also abandoned their argument that Y&R and BCW are subject to personal jurisdiction under Rule 4(k)(2). *Id.* at 158:3–5. Therefore, the undersigned limits the current jurisdictional analysis to whether the Second Amended Complaint sufficiently alleges personal jurisdiction over WPP and Imperial pursuant to Rule 4(k)(2).

1. Applicable law

For a claim arising under federal law, a party may seek to establish personal jurisdiction pursuant to Rule 4(k)(2) if “the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction” and “exercising jurisdiction is consistent with the United States Constitution and laws.” *See* Fed. R. Civ. P. 4(k)(2)(A)–(B). “[W]hen, as here, a federal statute provides the basis for jurisdiction, the constitutional limits of due process derive from the Fifth, rather than the Fourteenth, Amendment.” *S.E.C. v. Marin*, 982 F.3d 1341, 1349 (11th Cir. 2020) (internal quotation marks omitted) (quoting *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d

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935, 942 (11th Cir. 1997)). “[T]he personal-jurisdiction analysis under the Fifth Amendment is the same as that under the Fourteenth”, except the applicable forum is the United States. *Herederos De Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 43 F.4th 1303, 1308 (11th Cir. 2022) (evaluating personal jurisdiction under Rule 4(k)(2) in Helms-Burton Act case). As such, “[t]he exercise of personal jurisdiction comports with due process when (1) the nonresident defendant has purposefully established minimum contacts with the [United States] and (2) the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice.” *Marin*, 982 F.3d at 1349 (internal quotation marks omitted) (quoting *U.S. S.E.C. v. Carrillo*, 115 F.3d 1540, 1542 (11th Cir. 1997)).

To establish sufficient minimum contacts with the United States, the defendant’s contacts must satisfy three criteria:

First, the contacts must be related to the plaintiff’s cause of action or have given rise to it. Second, the contacts must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum . . . , thus invoking the benefits and protections of its laws. Third, the defendant’s contacts with the forum must be such that [the defendant] should reasonably anticipate being haled into court there.

See Carrillo, 115 F.3d at 1542 (citing *Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1546 (11th Cir.

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1993)). Moreover, where the defendant is alleged to have committed an intentional tort specifically aimed at a plaintiff who was injured in the forum, due process may also be satisfied under the “effects test” established by the Supreme Court in *Calder v. Jones*, 465 U.S. 783, 789–90 (1984), which provides that jurisdiction over a defendant is proper when the “effects” of its out-of-state conduct—in this case, the intentional tort of trafficking—are felt in the forum. *See, e.g., Garcia v. Gravity Interactive, Inc.*, No. 10-62162-Civ, 2012 WL 13005342, at *6–*7 (S.D. Fla. Jan. 17, 2012) (applying *Calder* “effects” test to assess Rule 4(k)(2) jurisdiction).

2. Rule 4(k)(2) personal jurisdiction over Defendants

As to the initial requirement for triggering the application of Rule 4(k)(2), WPP argues that the “[Second Amended Complaint] itself defeats Rule 4(k)(2) jurisdiction by pleading that ‘WPP . . . maintains a principal place of business in *New York*.’” *See* WPP Defendants’ Post-Remand Brief [D.E. 318 at 13] (emphasis in original) (quoting Sec. Am. Compl. [D.E. 208 ¶ 36]). However, notwithstanding Plaintiffs’ allegation in the Second Amended Complaint, WPP contends that it is not subject to general jurisdiction in New York. *See* Post-Remand Hearing Tr. [D.E. 341 at 167:11–12] (“So WPP, we are not conceding general jurisdiction in New York.”). Indeed, WPP has consistently taken issue with Plaintiffs’ allegation that it maintains a principal place of business in New York. *See* WPP Defendants’ Motion to Dismiss [D.E. 229 at 20 n.8] (“[The] WPP Defendants do not agree with this assertion[.]”); *see also* Joint Motion to Dismiss

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[D.E. 227 at 13] (“WPP [is] a company incorporated in the Bailiwick of Jersey and with its principal place of business in London[.]”). Moreover, the parties concede that WPP and Imperial are not subject to general jurisdiction in Florida. *See* WPP Defendants’ Reply in Support of Motion to Dismiss [D.E. 266 at 6] (“WPP Defendants established that the exercise of general . . . jurisdiction in Florida is improper over each of the WPP Defendants—all of which are headquartered and incorporated outside of Florida. Plaintiffs fail to respond substantively to much of WPP Defendants’ personal jurisdiction argument.”); Imperial’s Post-Remand Brief [D.E. 319 at 5] (“Plaintiffs rightly have never argued that Imperial, a foreign-incorporated, foreign-headquartered corporation, is subject to general personal jurisdiction in this forum.”). Therefore, given that the parties do not identify a state where WPP and Imperial are amenable to general jurisdiction, the first requirement for application of Rule 4(k)(2) to Defendants is satisfied. *See* Fed. R. Civ. P. 4(k)(2)(A) (requiring that “the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction”).⁴

4. At the Post-Remand Hearing, Plaintiffs indicated that if “WPP [were to] pivot[] and argue[] . . . that [] jurisdiction for WPP is appropriate in New York and the court accepts that argument . . . then [Plaintiffs’] position would be that [they] would want the matter [as to the WPP Defendants] transferred to New York.” *See* Post-Remand Hearing Tr. [D.E. 341 at 159:6–16]. Plaintiffs limited this proposition to the WPP Defendants. *Id.* at 159:17–20 (“The Court: So then you don’t know what is going to happen to Imperial, but you’re not asking that Imperial be transferred. Counsel: Not at this point.”). However, WPP did not pivot its argument along the lines described by Plaintiffs’ counsel. *Id.* at 160:3–4. In any event, a transfer of the action as to the WPP Defendants

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As to the second element of the Rule 4(k)(2) analysis, Defendants argue that Plaintiffs fail to establish that Defendants have “minimum contacts” with the United States to satisfy specific personal jurisdiction under Rule 4(k)(2). *See* WPP Defendants’ Post-Remand Brief [D.E. 318 at 12]; Imperial’s Post-Remand Brief [D.E. 319 at 9]; *see also* Fed. R. Civ. P. 4(k)(2)(B) (requiring that “jurisdiction is consistent with the United States Constitution and laws”).⁵ As set forth in the prior Report and Recommendation,

Plaintiffs allege that [the] [d]efendants have trafficked in Plaintiffs’ property, which was confiscated by the Cuban government in 1961, and are therefore liable to them under [Title III]. *See* Sec. Am. Compl. [D.E. 208 ¶¶ 3, 19]. Plaintiffs’ property consists of a building known as the Partagás factory and a modern mixed-use building adjacent and connected

would be difficult to justify in light of the Court’s prior finding that venue in the case is improper in New York. *See* Report and Recommendation [D.E. 286 at 10] (“Plaintiffs’ Second Amended Complaint is devoid of allegations affirmatively establishing that venue would be proper in New York.”).

5. In a footnote, WPP argues that this Court also lacks general personal jurisdiction over Defendants under Rule 4(k)(2). *See* WPP Defendants’ Post-Remand Brief [D.E. 318 at 12 n.2]. However, Plaintiffs appear to have abandoned this theory of personal jurisdiction. *See generally* Post-Remand Response Brief [D.E. 328]. Accordingly, the undersigned limits the Rule 4(k)(2) analysis to assessing whether Plaintiffs have sufficiently alleged specific personal jurisdiction over Defendants under Rule 4(k)(2).

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to the Partagás factory (collectively, “the Property”). *Id.* ¶¶ 1–2. Specifically, Plaintiffs allege that Imperial, through Habanos, other joint-venture entities, and Non-party Tabacuba, has used and continues to use the Property without compensation to or authorization from Plaintiffs. *Id.* ¶¶ 17–18. These alleged uses include the production and shipment of millions of hand-rolled cigars manufactured and/or processed at the Property and their marketing through online portals on the U.S.-based social media platforms Twitter, YouTube, and Instagram. *Id.* ¶¶ 17–18, 22–23. . . .

See Report and Recommendation [D.E. 286 at 2–3]. To that end, Plaintiffs claim that “WPP through the WPP Group that it controls, including BCW and Y&R[,] used US Services, including Internet, email, and other networking and telecom services, the YR.com, BM.com, and Ogilvy.com Internet domains, and U.S. social media portals for the [] marketing, advertising, and promotion of Cuban tobacco products and the Habanos brand name.” *See* Post-Remand Response Brief [D.E. 328 at 6] (citing Sec. Am. Compl. [D.E. 208 ¶¶ 54–56, 61]). Plaintiffs contend that this conduct relates or gives rise to their Title III claim because “[WPP’s] trafficking [] was complete when WPP’s US Services were used to transmit advertising and promotional materials . . . by routing all such communications [through servers in] the United States.” *Id.* at 16.⁶ Plaintiffs further argue that WPP

6. As to this criterion for minimum contacts, WPP asserts that its Spanish subsidiaries created the web content at issue in

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purposefully availed itself of conducting activities within the United States by directing its alleged promotional conduct into the United States; and thereby caused harm to Plaintiffs in the United States. *Id.* at 16–17. As for Imperial, Plaintiffs assert that “[j]urisdiction over Imperial is based on the trafficking of Plaintiffs’ confiscated Property completed in the United States by [WPP].” *See* Post-Remand Response Brief [D.E. 329 at 1]. Thus, personal jurisdiction over Imperial hinges entirely on personal jurisdiction over WPP. *See* Post-Remand Hearing Tr. [D.E. 341 at 212:9–12] (“The Court: So you are piggybacking on WPP for your personal jurisdiction allegation as to Imperial; is that accurate? Counsel: Yes.”). In turn, personal jurisdiction over WPP entirely hinges on the websites that advertise Habanos’ products. *Id.* at 193:11–13 (“Here, [WPP’s] trafficking was based upon the conduct, the activity through the internet, through U.S. servers, through U.S. domain names, through U.S. social media companies.”).

At the Post-Remand Hearing, WPP emphasized that “[t]he websites at issue were generally accessible, not just accessible in the U.S. or targeted at the U.S.” and that

this case, thereby eliminating any connection between Plaintiffs’ cause of action and WPP’s contacts. *See* WPP Defendants’ Post-Remand Brief [D.E. 318 at 8]. WPP further argues that the alleged conduct of its Spanish subsidiaries cannot be imputed to WPP under an alter ego theory. *Id.* at 13. At the Post-Remand Hearing, Plaintiffs clarified that “[they] are not concerned about the Spanish entity. [They] are concerned about the conduct of WPP.” *See* Post-Remand Hearing Tr. [D.E. 341 at 199:11–13]. Therefore, the undersigned limits her analysis to WPP’s activities.

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“[t]he websites did not allow for purchase of the product . . . anywhere [] in the United States [because] [i]t is illegal to do so”, thereby “demonstrat[ing] the absence of . . . targeting at the U.S.” *Id.* at 166:7–167:2.⁷ The Eleventh Circuit has found that “the mere existence of a website that is visible in a forum and that gives information about a company and its products is not enough, by itself, to subject a defendant to personal jurisdiction in that forum.” *Fraser v. Smith*, 594 F.3d 842, 847 (11th Cir. 2010) (internal quotation marks and citations omitted); *see also Frida Kahlo Corp. v. Pinedo*, No. 18-21826-Civ, 2021 WL 4147876, at *5 (S.D. Fla. Sept. 13, 2021) (“Courts across jurisdictions have held that activity on the Internet, by itself, is not a sufficient minimum contact to establish ‘purposeful availment’ under the Due Process Clause.”); *Michael Grecco Prods., Inc. v. Imageselect B.V.*, No. 21-21999-CIV, 2022 WL 18779105, at *6 (S.D. Fla. Sept. 27, 2022) (“Plaintiff completely neglects to address [the] holding [in *Frida Kahlo*] that the existence of a website, on its own, is insufficient to show that a nonresident ‘purposefully availed’ itself to the forum[.]”).

Plaintiffs’ arguments are further weakened by their failure to allege that WPP undertook additional steps to “show that [the alleged] online activity [was] ‘aimed’ at” the United States for purposes of satisfying the *Calder* “effects” test. *See Frida Kahlo*, 2021 WL 4147876, at *5.

7. WPP explains that “it is illegal to buy Cuban tobacco products in (or commercially ship them to) Florida or anywhere in the U.S.” *See* WPP Defendants’ Post-Remand Brief [D.E. 318 at 10] (citing U.S. Office of Foreign Assets Control, Cuba Sanctions FAQ (questions 731 and 769), <https://ofac.treasury.gov/faqs/topic/1541>).

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As in *Frida Kahlo*, the social media platforms on which Habanos' products are alleged to be advertised, *see* Sec. Am. Compl. [D.E. 208 ¶¶ 22 n.11], do not reference the United States; and Plaintiffs do not allege that the advertised products have ever been sold in the United States. *See Frida Kahlo*, 2021 WL 4147876, at *5; *cf. Del Valle v. Trivago GMBH*, 56 F.4th 1265, 1276–77 (11th Cir. 2022) (holding that both minimum contacts and “effects” test were satisfied by the defendants’ promotion of their websites via banner ads, follow-up emails directed at Florida residents, and efforts to maximize performance on search engine results pages; and that the defendants financially benefited from Florida residents’ bookings and web traffic).

Given that the Second Amended Complaint fails to sufficiently allege minimum contacts as well as that the “effects” of WPP’s conduct were felt in the United States, Plaintiffs have failed to establish that this Court has personal jurisdiction over WPP under Rule 4(k)(2). *See Frida Kahlo*, 2021 WL 4147876, at *5. Moreover, such failure extends to Imperial, given Plaintiffs’ imputation theory. Accordingly, the undersigned recommends that Imperial’s Motion to Dismiss and the WPP Defendants’ Motion to Dismiss be granted for lack of personal jurisdiction.

FAILURE TO STATE A CLAIM

Defendants also argue that the Second Amended Complaint fails to state a claim because “(i) the claim is barred by the statute of repose; (ii) the claim arises

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entirely from the alleged conduct of Cuban companies, which does not constitute trafficking; (iii) the [Second Amended Complaint] does not plead that Defendants acted knowingly and intentionally; and (iv) Plaintiffs fail to plead the ownership element of a Title III claim.” *See* Joint Post-Remand Brief [D.E. 320 at 12]. The undersigned addresses each of these arguments below.

1. The Helms-Burton Act and the failure to state a claim standard

Title III of the Helms-Burton Act provides, in relevant part, as follows:

[A]ny 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 [as set forth in subsections (i)–(ii).]

...

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.

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22 U.S.C. § 6082(a)(1)(A), (4)(B). Under Title III, “a person ‘traffics’ in confiscated property if that person knowingly and intentionally—(i) . . . uses . . . [the] confiscated property, (ii) engages in a commercial activity using or otherwise benefiting from [the] confiscated property, or (iii) causes, directs, participates in, or profits from, trafficking . . . by another person, or otherwise engages in trafficking . . . through another person, without the authorization of any United States national who holds a claim to the property.” *Id.* § 6023(13)(A).

“To survive a motion to dismiss brought pursuant to [Rule 12(b)(6)], a claim must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, meaning that it must contain factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Alexander v. Medley*, No. 21-cv-24386, 2022 WL 1102856, at *2 (S.D. Fla. Apr. 12, 2022) (quotation marks omitted) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “The Court must accept the plaintiff’s allegations as true and construe them in the light most favorable to the [p]laintiff”; however, “a Court need not take allegations as true if they are merely ‘threadbare recitals of a cause of action’s elements, supported by mere conclusory statements.’” *VSI Sales, LLC v. DiSimone*, No. 20-61119-CIV, 2021 WL 8972144, at *2 (S.D. Fla. Apr. 13, 2021) (citations omitted).

2. Time bar

Defendants first assert the affirmative defense that Plaintiffs’ claim is time-barred under the two-year repose

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period that bars Title III claims brought “more than 2 years after the trafficking giving rise to the action has ceased to occur.” *See* Joint Post-Remand Brief [D.E. 320 at 12] (internal quotation marks omitted) (quoting 22 U.S.C. § 6084). The Eleventh Circuit “commands that Rule 12(b)(6) dismissal on time limitations grounds is appropriate only if it is apparent from the face of the complaint that the claim is time-barred.” *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724, 2020 WL 5517590, at *12 (S.D. Fla. Sept. 14, 2020) (quotation marks and citation omitted).

Because Plaintiffs brought his action in 2020, the two-year Title III repose period extends only to 2018. In their pleading, Plaintiffs set forth the following purported timeline of Defendants’ trafficking:

The unauthorized use of the [] Property by Imperial and Habanos also extended to [Non-party] Tabacuba’s management of the day-to-day business of all or some Cuban tobacco products from offices it maintained in the [] Property at all times **from 2007 until at least October 29, 2020**. Both Habanos, and Imperial, through its financial interests in Habanos and the other Cuban Joint Ventures, benefitted from Tabacuba’s continuous use of the [] Property during the entire time that Imperial owned interests in the Cuban Joint Ventures. Imperial also benefitted from use of the [] Property for marketing of Habanos’ products.

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. . . Upon information and belief, Tabacuba and Habanos have continuously used the [] [P]roperty without authorization from the [Plaintiffs] **since at least 2010**, and likely for many years before that, until the present.

. . . Imperial and Habanos' trafficking also includes use of the [] Property for marketing and publicity of Habanos' products.

Habanos itself documented its possession, control of, management, and use of the [] Property. In a **February 2010** publicity piece entitled: "Cigar Factory Readings and Readers," Habanos referred to the factory (the [] Property) "Standing on famous 23rd Street in Havana's bustling Vedado neighborhood right between the 14th and 16th streets," as the "humongous and modern H. Upmann cigar factory." The continuous use of the [] Property includes the use of a portion of the [] Property by Imperial's joint venture partner, Tabacuba, for its executive offices for the management of the Cuban tobacco business, and the use of the loading dock and space for warehousing and shipping Habanos' products. Tabacuba's name appears prominently on the building.

See Sec. Am. Compl. [D.E. 208 ¶¶ 18, 78–80] (emphasis added). Plaintiffs also reference several photographs that purportedly illustrate Habanos' use of the Property: "Composite Exhibit 6 containing pictures published by the

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Habanos website of ‘visit the factories’ tours promoted by Habanos at the [] Property” and “Exhibit 7 [which] is a picture of the loading dock at the [] Property in operation.” *Id.* ¶ 79 n.39. However, Plaintiffs have stipulated to the fact that the photographs in Composite Exhibit 6 were taken in 2009; and that the photograph in Exhibit 7 was taken no later than January 2013. *See* Post-Remand Hearing Tr. [D.E. 341 at 61:25–62:2, 64:13–15]. Thus, Defendants argue that Habanos’ alleged use of the Property in 2009, 2010, and 2013 is conduct that significantly predates the two-year repose period under the Helms-Burton Act; and that Plaintiffs cannot impute Non-party Tabacuba’s alleged use of the Property through 2020 to WPP or Imperial. *See* Joint Post-Remand Brief [D.E. 320 at 13–14].

Plaintiffs counter that Tabacuba’s status as a non-party is irrelevant because “according to the definition of the Helms-Burton Act[,] [t]he remaining defendants are trafficking if they are profiting or participating in trafficking by another person”, even if that other “person” is a non-party. *See* Post-Remand Hearing Tr. [D.E. 341 at 94:18–21]. However, even if the undersigned accepts as true Plaintiffs’ allegations about Tabacuba, the connection between Tabacuba’s alleged use of the Property and Defendants is far too attenuated. In fact, the Second Amended Complaint is devoid of allegations affirmatively connecting WPP or Imperial to Tabacuba’s use of the Property during the relevant actionable period. Rather, Plaintiffs allege in conclusory fashion that Imperial has simply “benefitted from” Tabacuba’s conduct; and entirely omit WPP from any allegation involving Tabacuba’s use of the Property. *See, e.g.,* Sec. Am. Compl. [D.E. 208

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¶¶ 18, 80]; *see also VSI Sales*, 2021 WL 8972144, at *2 (“[A] Court need not take allegations as true if they are merely threadbare recitals of a cause of action’s elements, supported by mere conclusory statements.”) (quotation marks omitted).

Given that Plaintiffs do not allege that Habanos’ trafficking occurred past 2013 or how WPP and Imperial are implicated by Non-party Tabacuba’s alleged use of the Property in 2020, it is apparent from the face of the Second Amended Complaint that Plaintiffs’ claim against Defendants is time-barred. Accordingly, the undersigned recommends that Defendants’ Joint Motion to Dismiss be granted on this ground.

3 “Trafficking”

Next, Defendants argue that “Habanos[’] and Tabacuba’s conduct does not qualify as trafficking”, hence, “neither does Imperial’s or WPP’s alleged participation in or profiting from that conduct.” *See* Joint Post-Remand Brief [D.E. 320 at 15]. Defendants rely on 22 U.S.C. § 6023(13)(B)(iv), which provides that “trafficking” does *not* include “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.” Defendants then seize on the Helms-Burton Act’s definition of a “person” as “any person or entity, including any agency or instrumentality of a foreign state”, *see id.* § 6023(11), to argue that Habanos and Tabacuba, as agencies or instrumentalities of a foreign state, namely, Cuba, are exempt from the

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definition of “trafficking.” *See* Joint Post-Remand Brief [D.E. 320 at 15]. However, Congress did not include agencies or instrumentalities of *Cuba* in the definition of “agency or instrumentality of a foreign state” for purposes of the Helms-Burton Act, *see id.* § 6023(1), and per the canon of statutory construction, this Court may not add words to a statute. *See De Fernandez v. CMA CGM S.A.*, 21-CV-22778, 2023 WL 4014730, at *14 (S.D. Fla. Apr. 30, 2023), *report and recommendation adopted*, 2023 WL 4633553 (S.D. Fla. Jul. 20, 2023) (citing *Friends of Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1224 (11th Cir. 2009)). Therefore, under a plain reading of the statute, Habanos and Tabacuba, as agencies or instrumentalities of Cuba, cannot be said to fall within the category of “persons” that are exempt from the definition of “trafficking” under the Helms-Burton Act. Moreover, as noted by Plaintiffs at the Post-Remand Hearing, exempting agencies or instrumentalities of Cuba would “eviscerate the actual intent of the [Helms-Burton] Act.” *See* Post-Remand Hearing Tr. [D.E. 341 at 110:2–14]; *see also* Post-Remand Response Brief [D.E. 330 at 6] (citing *Havana Club Holding, S.A. v. Galleon S.A.*, 203 F.3d 116, 125 (2d Cir. 2000)) (“Congress intended to create a chilling effect that will deny the current Cuban regime venture capital [and] discourage third-country nationals from seeking to profit from illegally confiscated property[.]”) (quotation marks and citations omitted). Accordingly, the undersigned recommends that Defendants’ Joint Motion to Dismiss not be granted on the basis that Habanos and Tabacuba are exempted from the definition of “trafficking.”

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WPP also individually argues that Plaintiffs have failed to allege that it “trafficked” in the Property because WPP “did not profit from or do anything with the [Property].” *See* WPP Defendants’ Post-Remand Brief [D.E. 318 at 13]. As noted above, to state a Title III claim, a plaintiff must allege that “a person ‘traffics’ in confiscated property [by] knowingly and intentionally—(i) . . . us[ing] . . . [the] confiscated property, (ii) engag[ing] in a commercial activity using or otherwise benefiting from [the] confiscated property, or (iii) caus[ing], direct[ing], participat[ing] in, or profit[ing] from, trafficking . . . by another person[.]” 22 U.S.C. § 6023(13)(A). With respect to WPP, Plaintiffs allege, in relevant part, that WPP, “by assisting Imperial, Habanos, and Tabacuba in marketing and publicizing the Habanos[] products manufactured, stored at or shipped from the [] Property, including through extensive use of US Services, [] causes, directs, participates in, or profits from, or otherwise engages in, trafficking in the [] Property by Imperial, Habanos, and Cuba”. *See* Sec. Am. Compl. [D.E. 208 ¶ 96]. Based on these allegations, the undersigned finds that the Second Amended Complaint plausibly alleges trafficking by WPP. *See de Fernandez v. Crowley Holdings, Inc.*, 593 F. Supp. 3d 1162, 1171 (S.D. Fla. Mar. 23, 2022) (“[T]he Court finds that Plaintiffs have sufficiently alleged a violation of the Act.”). Therefore, the undersigned recommends that the WPP Defendants’ Motion to Dismiss not be granted on the basis that Plaintiffs have failed to allege that WPP “trafficked” in the Property.

*Appendix D***4. “Knowingly and intentionally”**

Defendants further argue that Plaintiffs fail to plausibly allege that either WPP or Imperial “knowingly and intentionally trafficked in the confiscated [P]roperty without the authorization of a U.S. national who holds a claim to the [P]roperty.” *See* Joint Post-Remand Brief [D.E. 320 at 16] (citing 22 U.S.C. § 6023(13)). In response, Plaintiffs contend that they have pled “that information about the confiscated Property was available to Defendants in corporate . . . records” and that they placed Defendants on notice of the same via their March 31, 2020, pre-suit demand letter, including the following July 5, 1961, announcement in Cuba’s Official Gazette:

First: The Nationalization, by means of forced expropriation, is decreed, and consequently the Cuban State, in complete authority, is awarded all the interest in assets and business entities located in the national territory and the rights and actions arising from the exploitation of the same, whatever the interest, title or mode of their ownership, of the following natural persons or judicial entities:

. . . .

96. Ramón Rodríguez e Hijos, S. en C.

See Post-Remand Response Brief [D.E. 330 at 9–10] (citing Sec. Am. Compl. [D.E. 208 at Ex. 5A]). Plaintiffs further posit that “[t]here is no requirement in the statute that

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the trafficker knowingly acts ‘without the authorization of any United States national who holds a claim to the property.’” *Id.* at 11.

Notwithstanding the reference to “Ramón Rodríguez e Hijos, S. en C.” in Cuba’s Official Gazette, Plaintiffs fail to allege that Defendants knew or had reason to know that “Ramón Rodríguez e Hijos, S. en C.” was related in any way to the Property. Indeed, Defendants noted at the Post-Remand Hearing that the Gazette “doesn’t make any reference to the [P]roperty at this location”, that it “just refers to the limited partnership that allegedly owned the [P]roperty”, and that the reference could not have put “anyone on notice that the [P]roperty itself was confiscated.” *See* Post-Remand Hearing Tr. [D.E. 341 at 76:14–19]. Without more, the Second Amended Complaint fails to establish that Defendants acted “knowingly and intentionally” with respect to the Property at issue in Plaintiffs’ Title III claim.

Further, in addition to requiring that the alleged wrongdoer knowingly and intentionally “traffics” in confiscated property, a plain reading of the Helms-Burton Act clearly requires that the alleged wrongdoer also knowingly and intentionally act “without the authorization of any United States national who holds a claim to the property.” 22 U.S.C. § 6023(13); *see also Ruan v. United States*, 142 S. Ct. 2370, 2377 (2022) (“We have accordingly held that a word such as ‘knowingly’ modifies not only the words directly following it, but also those other statutory terms that ‘separate wrongful from innocent acts.’”). As such, Plaintiffs’ disavowal of their duty at the pleading

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stage to plausibly allege that Defendants knowingly and intentionally acted without their authorization is ineffective. Hence, the undersigned recommends that Defendants' Joint Motion to Dismiss be granted on these grounds.

5. Claim ownership

Finally, Defendants argue that the Second Amended Complaint fails to allege that Plaintiffs own the claim to the Property and that the Property was confiscated from a U.S. national. *See* Joint Post-Remand Brief [D.E. 320 at 19–21] (citing 22 U.S.C. §§ 6082(a)(1)(A), (4)(B)). As noted above, the Helms-Burton Act requires that “[i]n 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.” *See* 22 U.S.C. § 6082(a)(4)(B).

Plaintiffs allege that they are the “heirs and successors of Ramon Rodriguez Gutiérrez [(‘Gutiérrez’)] . . . and the owners of a 90% interest in Ramón Rodríguez e Hijos Sociedad en Comandita (‘RRHSC’).” *See* Sec. Am. Compl. [D.E. 208 ¶ 1]. Plaintiffs further allege that “[b]efore 1961, RRHSC owned and operated the [Property] in Havana” and that “[u]ntil the time that RRHSC and the [Property] were confiscated . . . [Gutiérrez] owned and controlled RRHSC.” *Id.* ¶¶ 1, 28. Plaintiffs detail their descentance from Gutiérrez and their inheritance of their respective interests. *Id.* ¶¶ 24–33. However, Defendants contend that Plaintiffs’ allegations just confirm “that Gutiérrez

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did not own the claim to the RRHSC Property—RRHSC did—and that Plaintiffs, as Gutiérrez’s descendants, do not own the claim.” *See* Joint Post-Remand Brief [D.E. 320 at 19]. Moreover, Defendants argue that Plaintiff Alfredo Ramon Forns (“Forns”) is entirely barred from recovering under the Helms-Burton Act; and that Plaintiffs Raul Lorenzo Rodriguez (“Lorenzo Rodriguez”), Francisco Ramon Rodriguez (“Ramon Rodriguez”), and Christina Conroy (“Conroy”) are partially barred from recovering under the Helms-Burton Act. *Id.* at 20 (noting that Forns is alleged to have inherited his claim in 2013; and that Lorenzo Rodriguez, Ramon Rodriguez, and Conroy inherited a portion of their claims in 2019 upon the death of Esther Beltran Rodriguez) (citing Sec. Am. Compl. [D.E. 208 ¶¶ 31, 33]).

Plaintiffs concede that Forns’ claim is subject to dismissal. *See* Post-Remand Response Brief [D.E. 330 at 13]; *see also Garcia-Bengochea v. Carnival Corp.*, 57 F.4th 916, 931 (11th Cir. 2023) (holding that the plaintiff’s claims failed because he inherited his interest in the confiscated property after March 12, 1996). However, the remaining Plaintiffs argue that their claims are viable. Plaintiffs rely on *De Fernandez v. CMA CGM S.A.*, 21-CV-22778, 2023 WL 4014730 (S.D. Fla. Apr. 30, 2023), *report and recommendation adopted*, 2023 WL 4633553 (S.D. Fla. Jul. 20, 2023), where the Court considered the defendants’ argument that the plaintiffs’ claims “must be dismissed because the [Helms-Burton] Act does not permit claims based on the indirect interests of shareholders.” *Id.* at *13. In *De Fernandez*, the plaintiffs had alleged that they “owned, in equal parts, the Cuban corporations Maritima

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Mariel SA, Compañía Azucarera Mariel S.A., and several other companies” and that “those companies owned the 70-Year Concession . . . that gave Maritima Mariel priority rights in the Bay of Mariel, as well as the extensive land holdings to the southeast, south, and west of the Bay of Mariel comprising the [c]onfiscated [p]roperty at issue.” *Id.* In concluding that the plaintiffs’ indirect ownership of the companies amounted to “ownership” of a claim under the Helms-Burton Act, the Court reasoned that “[t]he plain language of the [Helms-Burton] Act makes clear that plaintiffs who own *a claim* to confiscated property—not just plaintiffs who own or own a direct interest in the confiscated property—are entitled to relief”. *Id.* at *14. Thus, the Court found that the plaintiffs’ “allegation of ownership of claims to the [c]onfiscated [p]roperty by virtue of their ownership of shares of entities that owned the properties is sufficient to state a claim under Title III of the [Helms-Burton] Act.” *Id.* (recommending that the motion to dismiss be denied “to the extent it [was] based on the argument that the Helms-Burton Act does not permit claims based on the interests of shareholders”). Here, Plaintiffs specifically allege that they are “the heirs and successors of [Gutiérrez]”; that they are “the owners of a 90% interest in [RRHSC]”; and that “RRHSC owned and operated” the Property. *See* Sec. Am. Compl. [D.E. 208 ¶ 1]. Based on the holding in *De Fernandez*, the undersigned concludes that Plaintiffs have plausibly alleged that they “own” their Title III claim by virtue of their inheritance of Gutiérrez’s 90% ownership interest in RRHSC.

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Moreover, to the extent that Defendants argue that dismissal is required because the Second Amended Complaint does not allege that the Cuban Government confiscated the Property from a U.S. national, “the plain language of the [Helms-Burton] Act makes it clear that claimants and property owners need not be United States nationals at the time of confiscation to bring a claim.” *De Fernandez v. Crowley Holdings, Inc.*, No. 21-cv-20443, 2023 WL 2646346, at *2 (S.D. Fla. Mar. 27, 2023). “Rather, the plain language clearly provides a remedy for claimants whose property was confiscated by the Cuban government after the revolution and who—at the time the remedy is sought—are United States nationals.” *Id.* As a result, this argument for dismissal is also unavailing.

Hence, the undersigned recommends that Defendants’ Joint Motion to Dismiss be granted only as to Forns on the basis that he does not “own” a Title III claim.

SUPPLEMENTAL RECOMMENDATION

In accordance with the foregoing considerations, the undersigned hereby withdraws her prior recommendations that this action be dismissed without prejudice to Plaintiffs refiling their action in a proper venue and that Imperial’s Motion to Dismiss, WPP Defendants’ Motion to Dismiss, and the Joint Motion to Dismiss be denied without prejudice as moot; and RESPECTFULLY RECOMMENDS that:

- Imperial’s Motion to Dismiss [D.E. 226] be GRANTED IN PART for lack of personal jurisdiction;

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- WPP Defendants’ Motion to Dismiss [D.E. 229] be GRANTED IN PART for lack of personal jurisdiction; and
- The Joint Motion to Dismiss [D.E. 227] be GRANTED IN PART for failure to state a claim on the grounds that the Second Amended Complaint is time-barred, fails to allege that Defendants acted “knowingly and intentionally”, and fails to allege that Forns “owned” a Title III claim.

Pursuant to Local Magistrate Judge Rule 4(b), the parties have *fourteen days* from the date of this Report and Recommendation to file written objections, if any, with the Honorable Darrin P. Gayles, United States District Judge. Failure to file timely objections may bar the parties from attacking the factual findings contained herein on appeal. *See Resolution Tr. Corp. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993). Further, “failure to object in accordance with the provisions of [28 U.S.C.] § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions.” *See* 11th Cir. R. 3-1 (I.O.P. - 3).

RESPECTFULLY SUBMITTED in Chambers in
Miami, Florida, on this 28th day of November, 2023.

/s/ Alicia M. Otazo-Reyes
Alicia M. Otazo-Reyes
United States Magistrate Judge

cc: United States District Judge Darrin P. Gayles
Counsel of Record

**APPENDIX E — CONSTITUTIONAL, STATUTORY,
AND RULE PROVISIONS INVOLVED**

**UNITED STATES CONSTITUTION,
AMENDMENT V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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22 U.S.C. § 6081. Findings

The Congress makes the following findings:

- (1) Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution.
- (2) The 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.
- (3) Since Fidel Castro seized power in Cuba in 1959—
 - (A) he has trampled on the fundamental rights of the Cuban people; and
 - (B) through his personal despotism, he has confiscated the property of—
 - (i) millions of his own citizens;
 - (ii) thousands of United States nationals; and
 - (iii) thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States.

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(4) It is in the interest of the Cuban people that the Cuban Government respect equally the property rights of Cuban nationals and nationals of other countries.

(5) The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals.

(6) This “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.

(7) The United States Department of State has notified other governments that the transfer to third parties of properties confiscated by the Cuban Government “would complicate any attempt to return them to their original owners”.

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(8) The international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property.

(9) International law recognizes that a nation has the ability to provide for rules of law with respect to conduct outside its territory that has or is intended to have substantial effect within its territory.

(10) The United States Government has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.

(11) To 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.

(Pub. L. 104-114, title III, § 301, Mar. 12, 1996, 110 Stat. 814.)

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**22 U.S.C. § 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 [22 U.S.C. 1621 et seq.], 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

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(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 [22 U.S.C. 1643 et seq.], 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

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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;

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(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

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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 [22 U.S.C. 1643 et seq.] 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

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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.

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(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).

*Appendix E**(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

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(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 [22 U.S.C. 1643 et seq.]—

(i) if the recovery in the action is equal to or greater than the amount of the certified claim,

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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

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International Claims Settlement Act of 1949 [22 U.S.C. 1643 et seq.] 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 [22 U.S.C. 1643 et seq.] 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.

*Appendix E**(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.

(Pub. L. 104-114, title III, § 302, Mar. 12, 1996, 110 Stat. 815.)

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22 U.S.C. § 6023. Definitions

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

* * *

(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.

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- (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.

* * *

(Pub. L. 104-114, § 4, Mar. 12, 1996, 110 Stat. 789.)

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22 U.S.C. § 6085. Effective date

* * *

(c) Other authorities

(1) Suspension

After this subchapter and the amendments of this subchapter have taken effect—

(A) no person shall acquire a property interest in any potential or pending action under this subchapter; and

(B) the President may suspend the right to bring an action under this subchapter with respect to confiscated property for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) Additional suspensions

The President may suspend the right to bring an action under this subchapter for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under

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this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(3) Pending suits

The suspensions of actions under paragraph (1) shall not affect suits commenced before the date of such suspension, 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 had not occurred.

* * *

(Pub. L. 104-114, title III, § 306, Mar. 12, 1996, 110 Stat. 821.)

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FEDERAL RULE OF CIVIL PROCEDURE 4

Rule 4. Summons

* * *

(k) Territorial Limits of Effective Service.

(1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) *Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

* * *