SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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HAVANA DOCKS CORPORATION,)

Petitioner,)

v.) No. 24-983

ROYAL CARIBBEAN CRUISES, LTD.,)

ET AL.,)

Respondents.)

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Washington, D.C.

Monday, February 23, 2026

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:04 a.m.

APPEARANCES:

RICHARD D. KLINGLER, ESQUIRE, Washington, D.C.; on behalf of the Petitioner.

AIMEE BROWN, Assistant to the Solicitor General, Department of Justice, Washington, D.C.; for the United States, as amicus curiae, supporting the Petitioner.

PAUL D. CLEMENT, ESQUIRE, Alexandria, Virginia; on behalf of the Respondents.

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P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 24-983, Havana Docks versus Royal Caribbean Cruises.

Mr. Klingler.

ORAL ARGUMENT OF RICHARD D. KLINGLER

ON BEHALF OF THE PETITIONER

MR. KLINGLER: Mr. Chief Justice, and may it please the Court:

Confiscated property is defined to include property Cuba seized control of. As the Commission observed, Cuban officials physically occupied the dock facilities, making them confiscated property. Stopping trafficking in such facilities locks them up as tainted until Cuba pays for what it took. It's a takings remedy. Those are the core -- I'm sorry -- and -- sorry -- it stops money flowing to Cuba in the interim. It's an anti-fencing remedy as well. Those are the core statutory objectives. They require an ongoing remedy.

Because trafficking is in facilities, not property interests, term limits on interest have no effect on the remedy's duration.

Instead, that remedy's duration is set out in the definition of "confiscated" and ends when the claim is resolved or democracy comes to Cuba. It's also true if confiscated property is viewed instead as an interest, the control of the docks taken and extinguished in 1960.

Title III is at the core of the foreign commerce power. Yet the Eleventh Circuit shrunk Title III by viewing the issue as though no confiscation had occurred.

But that gives little or no effect to future contingent life, leasehold, and the many expired interests, including patents, and places an "open for business" sign on property taken from Americans, all contrary to why Title III was enacted.

The cruise lines acted in concert with Cuba and paid state security forces a hundred and thirty million dollars to make a billion dollars without seeking our authorization. They relied on the suspension of the private right of action but now would have this case be all about Cuban property law.

But the Claims Commission conclusively resolved those issues and gave courts all the

guidance needed regarding the claim and confiscated property at issue in Title III cases.

I welcome the Court's questions.

JUSTICE THOMAS: What exactly is the property here that has been confiscated?

MR. KLINGLER: The interests that were taken from us are the equivalent of a leasehold and comprised the docks, the land, the rights to operate those, the concession and machinery.

Confiscated property, though, in terms of the anti-trafficking prohibition, is the docks themselves.

JUSTICE THOMAS: The -- I thought your claim had to do with the usufruct rights that you had.

MR. KLINGLER: That's correct. The claim reflects the particular interests that were taken from us. Those include two usufructs, the first of which gave rights over an area that allowed us to construct the works and operate them. That's plenary control. The Eleventh Circuit indicated the usufruct is for all uses and for all fruits. And the other usufruct was in relation to the areas between

streets on the land. That was granted later, and that's, again, a plenary commercial control in relation to that.

JUSTICE THOMAS: So it seems as though you are treating the usufruct interests that you have almost as a actual ownership of the property itself, so --

MR. KLINGLER: I wouldn't say that, no. We're treating it as essentially ownership of a leasehold, a set of interests related to the facilities. The facilities themselves are what was seized and are set off limits, but that's the underlying property. We don't own the docks other than in the sense of having held a leasehold interest in relation to those.

JUSTICE THOMAS: But you normally don't think of someone as confiscating a lease or a leasehold.

MR. KLINGLER: That's right. That's exactly our -- our principal argument, is that we don't naturally think of trafficking or confiscating necessarily being the interests, that it's the underlying property that is the sort of subject of the anti-trafficking prohibition, and then the taken interests are

reflected in the claim.

JUSTICE JACKSON: Counsel, isn't --

CHIEF JUSTICE ROBERTS: What --

JUSTICE JACKSON: -- isn't the other answer to Justice Thomas and the concerns about what is the nature of this property taken care of by the statute itself? Because it seems to me that "property" is a defined term here and that the statute itself includes the kinds of interests that you're talking about, not just real property but also things like the leasehold interest you're describing.

MR. KLINGLER: Absolutely. The -- I mean, leasehold and any other interests are included in the statutory definition. And I would say that the property definition is so broad that it includes both the underlying things, the res and the interests themselves.

And it has two parts. The first part is, as you say, the sort of real mixed and personal property, the things --

JUSTICE JACKSON: Yeah.

MR. KLINGLER: -- the underlying things. And then the second part is the interests, and that can be, you know, present,

future, contingent --

JUSTICE JACKSON: And I guess my point is that we have defined terms in this statute that tell us what Congress intended when they said you are trafficking in confiscated property. The words "trafficking," "confiscated," "property," all of those things are in the statute. So it's a little confusing how the Eleventh Circuit got to essentially redefine what it means to be trafficking in confiscated property in light of this statute.

MR. KLINGLER: That's absolutely true, particularly if we focus on the word "confiscated." "Confiscated" has the effect of indicating that stolen property remains stolen until three things happen.

It's the claim, the underlying claim, is settled by the international claims process, the property is returned, or, particularly, adequate compensation is paid.

JUSTICE KAGAN: Well, Mr. Klingler, whatever the definition of "property" is, I mean, you can't sue for property that you're unconnected to, right? You can't just say, you know, they -- they -- the Cuban government

seized a -- a piece of property across the street someplace and I didn't -- I saw it, I didn't have anything to do with it, I think I'll go bring a lawsuit about it.

MR. KLINGLER: Yeah.

JUSTICE KAGAN: You can't do that.

MR. KLINGLER: That's -- that's absolutely right.

JUSTICE KAGAN: So -- so what -- what the statute is saying is that the person can -- can sue for property that has been confiscated from that person, correct?

And once the -- once you read the statute like that, it seems as though that the property that was confiscated from that person is here not the docks, the docks is the physical thing, but the property that the person had was just an interest in that physical thing.

It was, you know, a stick in the bundle, whatever you want to call it, but the property that the person had was a -- a concession.

MR. KLINGLER: If you view the confiscated property as just the interest, that

is something that produces almost the same result. And as you saw in the briefing, we believe that even that model operates to our benefit and requires that the cause of action be upheld. But --

JUSTICE KAGAN: Well, I guess I don't see why that's true. I mean, if you see it that way and the property that you have a right to sue about is the concession, that was the thing that was confiscated from you, I mean, the concession expired.

MR. KLINGLER: Yeah.

JUSTICE KAGAN: And -- and so you could have sued from 1960 for however long the concession lasted 'til, but once the concession expired, I mean, you no longer have a property interest. You're just like that bystander that I was telling you about which is like, you know, there was property that was confiscated all over Cuba, but that doesn't mean that I have a right to be here in court.

MR. KLINGLER: So if I could go back to your --

JUSTICE BARRETT: So could you talk just a little bit louder? Maybe adjust the

mic. Thank you.

MR. KLINGLER: I'm sorry. Yeah. I'm sorry.

Let me take one crack at the seized property as confiscated before moving on to why the remedy continues even if it's seen as an interest in that that's -- the nexus that you're looking for is, I think, broader than what you're suggesting, that you need to have a claim in the property that's the property which was confiscated and that is defined, more broadly, it's defined as the property that was seized, and it reflects Congress indicating that any, you know, the facility, the mine, the factory, that if that's what's seized, that that's off limits from trafficking, that that is the enforcement mechanism for having the takings component enforced and it stops money flowing from Cuba from the exploitation of that property.

The linkage is that once Cuba seizes, say, the docks, that that takes a whole series of interests. And Congress is giving each claimant to that property --

JUSTICE KAGAN: I -- I -- I -- I guess

I understand that, but it doesn't seem to me to fit with the statutory language very well because the statutory language does not talk about trafficking in claims. The statutory language talks about trafficking in property. And, clearly, the property that it's referring to is the property that the person who's suing owned.

And your property is not the entire docks. Your property is a concession in the docks that was time-limited.

MR. KLINGLER: But the statutory language indicates that ties trafficking into the -- to the property which was seized. I'm not arguing that our claim is the basis for trafficking. It's trafficking in the underlying property to which we have a claim.

So any number of claimants can enforce the anti-trafficking provision as it applies to the underlying facilities, the dock facilities. However, if you view the plaintiff's interest as the taken property, it is still the -- the remedy is not tied to the duration of that interest. It's like a takings claim.

If my leasehold is taken, whether

before or after the leasehold ends, I have an ongoing remedy to be paid for it. And that's the gist of what is being -- Congress is providing here.

JUSTICE KAGAN: I guess I wonder why that's true, and this will be my -- my last one. Like, if -- suppose that the docks were split up physically, you know, so that there was a blue half and there was a yellow half, and you only had the concession on the blue half.

Then, if you came in and said, you know, the -- the yellow half is being used and I want compensation for that, I think -- tell me if -- if you would disagree -- but I think we would all say, well, no, you can't have that because there's -- there are -- there's a spatial boundary that applies to your property interest.

And -- and -- and -- and so too here there's a boundary. It's not spatial, so it's not as natural to think about it. It's temporal. But it's still a boundary on your property interest. You know, once it's over, it's over. And you have nothing to complain

about anymore, any more than you would have had anything to complain about if you were arguing about the yellow part of the dock.

MR. KLINGLER: The Commission's determination would let you know what confiscated property was. If you held an interest just in the yellow portion, presumably, the Commission would have said the confiscated property is the yellow portion.

But -- but be that as it may, that even if you are claiming trafficking in, you know, the blue portion, that it's still a -- a takings-related remedy, that it wouldn't mean that you don't have the ability to pursue your remedy, get a remedy to be paid for what was taken from you, just because there's a time limit on the particular interest.

JUSTICE BARRETT: Well, if you put the time limit aside, let's look about -- let's talk about the use limit. So, as I understand it, you had a cargo -- usufruct, right? Your concession was only for cargo, and the cruise ships used it for passenger? Am I understanding that correctly?

MR. KLINGLER: No, we -- we completely

disagree with that. We think that we had plenary commercial control as a result of being granted each of the usufructs. What an usufruct is is the equivalent of a leasehold. That's the closest translation. It -- as the Eleventh Circuit said, it provides for all uses and all --

JUSTICE BARRETT: So there was no finding below that your usufruct was for cargo only?

MR. KLINGLER: Correct. In fact, Judge Bloom considered the full range of arguments and found that to not be the case. She rejected that cargo limitation. And, in fact, we've charged for, you know, passenger ships and cargo ships, and there is no there there to the argument, that the other side cannot point to a single instance where we did not exercise complete plenary control over the docks and the land.

JUSTICE BARRETT: So -- so what happens -- this is a question that's somewhat like Justice Kagan's question about divisibility. Your claim that was certified includes not just the docks but also some

office supplies, some office buildings.

And I don't know whether those were attached to the docks or not, but in this hypothetical, let's just assume they're farther away and the cruise ships never use them, but they are part of the valuation that you got from the Commission.

Are they liable for that even if they never touched that property and even if it was at some removed from the docks themselves?

MR. KLINGLER: They are because that's the property interests that underlie the claim. And the property confiscated was taken when -- I'm sorry -- and the control over those -- components --

JUSTICE BARRETT: What if you had a grocery store too in the middle of the island that has nothing to do with the docks, but it's also part of your claim? Are they liable for that?

MR. KLINGLER: The claim sets forth certain value. The trafficking just needs to be in the property that's taken, that's right, from you. As long as it's your property, as long as one portion of it is, that would extend

to both trafficking --

JUSTICE BARRETT: I don't understand -- I don't understand that. Is -- is there -- I mean, the way this Commission worked, would you have had to go for separate -- go and get separate valuations for different parts of the property?

In this hypothetical I'm giving you, the grocery store is completely unrelated to the docks, cruise ship hasn't touched it, and it is the way that it would work that you could get it all valued in one single claim? Because I guess I don't understand why they trafficked in the grocery store in my hypothetical.

MR. KLINGLER: That is right. You would -- the -- the owner of those taken interests would come before the Claims Commission and say: Here are my taken interests, and I want this claim certified.

And whether they are near or far, those would be the ones that the Commission would pass on.

JUSTICE JACKSON: And then the question of trafficking, who is trafficking in those interests, is the sort of later question,

but the Commission has determined the scope of your property interests. I guess I'm -- I'm a little confused about the questions related to the limitations on your property interests because I thought that was what the statute was saying was the purpose of the Commission, that when you say I have my -- I've had my property interests taken, you go to the Commission, and they decide whether or not the extent of your interest is just the blue part of the dock or the yellow part of the dock.

The later question becomes, who is trafficking or is someone trafficking in the yellow part or the blue part? And I think you would say, obviously, in this situation, when the yellow part is the dock and the cruise line is using it, they've absolutely trafficked in the property interest that the Commission has identified and told us we own.

MR. KLINGLER: Told you -- told us we own and indicated is off limits for trafficking. And, you know, here --

JUSTICE JACKSON: I mean, and the statute only -- the statute says anyone who owns a property interest as certified as the --

by the Commission can make a claim that someone is trafficking in it and get relief or get the money that is associated to -- with that activity in the statute. So it seems pretty straightforward to me. I'm -- I'm --

MR. KLINGLER: I -- I --

JUSTICE JACKSON: -- struggling.

MR. KLINGLER: I -- I think that's right. There's -- there's land and there's the three piers. If the cruise lines only used one of the piers, the fact that the other piers didn't get used doesn't mean that they're off limits from trafficking and it doesn't mean that the certified claims damage amount doesn't encompass all of those. Each of -- they're all --

JUSTICE JACKSON: And your other point, I think, is that the fact that you might have limited property interests in some way, like the property interest that was taken was temporary or whatnot, doesn't impact whether or not you have a claim. And all you need is a claim in order to trigger this kind of cause of action in the statute.

MR. KLINGLER: That's -- that's

correct. And that's necessary to get the statute to work as Congress clearly intended, that if the -- the takings component of the remedy, which, like any takings remedy, continues until there's actually a payment for the taken property, that if the locking up of the docks doesn't continue until that remedy's provided, Cuba has no incentive to pay. That's the whole point of the -- of the statute. And your stolen property is exploited.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Justice Thomas, anything further?

Justice Alito?

JUSTICE ALITO: On the time question, when the Foreign Claims Settlement Commission calculated the value of what was -- confiscated from you, did they calculate how much you were likely to have owned -- to have received as a result of your concession during the time period of the concession, or did they calculate how much you would have received if the concession had remained in effect up to the time when they made the calculation?

MR. KLINGLER: The -- if I understand the question correctly, the Commission noted that the docks and related rights were to be turned over and -- after an additional 44 years, and that presumably factored into their valuation calculation.

It's not entirely clear that that's the case because of the methodologies that they used in terms of book value and the -- you know, the concession and the land, they sort of treated that as having almost a market value at the time. But I can't say that they didn't take into account because I think they probably did. They treated it as a time-limited leasehold essentially.

JUSTICE ALITO: As to the extent of the concession, I think you said that the district court found that it applied to passengers as well as cargo?

MR. KLINGLER: They rejected -- Judge Bloom rejected an argument that there was this cargo limitation. She viewed the Commission decision as foreclosing that. But she went further. She allowed the full presentation of argument based on the, you know, legal expert.

She considered that, found it to be of no value, and there would be no reason to disregard the Commission. But then she went further and she looked at the legal --

JUSTICE ALITO: Was that -- was that factual question or that question of sort of contract interpretation challenged on appeal in the Eleventh Circuit? Do you regard it as settled, or is it something that would remain open if the case were remanded?

MR. KLINGLER: I -- I -- the Eleventh Circuit expressly left that open. And that's open for remand. It did not reach that.

JUSTICE ALITO: If we think of the -- these piers as -- and the property -- the property that these piers constitute as a bundle of rights, did the Cuban government, from the beginning, have what would be the equivalent of a fee simple interest in the pier?

MR. KLINGLER: Yes.

JUSTICE ALITO: They -- did they have a fee -- fee simple --

MR. KLINGLER: "Yes" is the short answer.

JUSTICE ALITO: And you had basically --

MR. KLINGLER: They were like the lessor, and we were like the -- the long-term lessee for the leasehold.

JUSTICE ALITO: So what other rights are -- are there in this -- what other rights are there in this bundle of rights besides that?

MR. KLINGLER: Besides --

JUSTICE ALITO: The interests that the -- the right that the Cuban government retains, your concession. What else is there?

MR. KLINGLER: There's the physical property itself, the -- the docks. There's the land. There's the concession --

JUSTICE ALITO: The Cuban government owned the land from the beginning, right, or not?

MR. KLINGLER: Yes. And -- and they essentially leased it to us, would be our analogy. That's right. We had complete plenary control at the time it was taken, and our -- then our interest was extinguished. And it's that taken interest that is locked into

place and continues over time.

JUSTICE ALITO: And now you want to recover a certain amount of money from this one cruise ship line. Were there other cruise ship lines that used these docks during the period, and would you be entitled to receive the same amount from every cruise ship line that used the docks?

MR. KLINGLER: There were four judgments entered against each of four cruise lines. And if, in the future, a cruise line used docks that have been set off by Congress as off limits from trafficking without our authorization, yes, they would be violating the law and subject to the very extensive penalties that Congress imposed in relation to anyone who traffics in property without authorization.

JUSTICE ALITO: Okay. Last question. Do you think this scheme is primarily a compensatory scheme, or do you think it is at least equally and perhaps even to a greater extent a scheme that is intended to tell people stay away from Cuba because we want to put maximum pressure on the Cuban government to democratize?

MR. KLINGLER: I think the latter is the overwhelming impetus from this. They -- Congress clearly also wanted to give claim holders a remedy because they didn't have one in court in the claims -- the international claims settlement process, but this is a -- has a punitive component to it, and, you know, Congress is presuming or wants this property not to be trafficked because that's what funds the communist regime. That's what continues the regime in power and --

JUSTICE ALITO: Thank you.

MR. KLINGLER: -- achieving --

JUSTICE ALITO: Thank you.

CHIEF JUSTICE ROBERTS: Justice Sotomayor?

JUSTICE SOTOMAYOR: I'm not sure I understood your answer to Justice Barrett, but I'm more concerned about your last point because I do think the Due Process Clause would have something to say about a tying of any kind of recovery where the most you would have been entitled to was reasonable compensation at the time of -- of the Cuban government taking over, correct? And you can put --

MR. KLINGLER: No --

JUSTICE SOTOMAYOR: -- three level -- or you might. It hasn't been decided yet. You were entitled to compensation for the value of what you had at the moment of confensation, correct, at -- of confiscation?

MR. KLINGLER: If there's use of the property -- I'm sorry. If -- if Cuba --

JUSTICE SOTOMAYOR: Forget about the property.

MR. KLINGLER: If Cuba --

JUSTICE SOTOMAYOR: When it was compensated, you were -- when it was confiscated, you were entitled to its reasonable value?

MR. KLINGLER: That's the -- yes. If Cuba paid just an adequate amount of compensation --

JUSTICE SOTOMAYOR: Now, if they didn't pay --

MR. KLINGLER: -- then that would release the claim.

JUSTICE SOTOMAYOR: -- you're entitled to interest up until you receive payment, correct?

MR. KLINGLER: Correct.

JUSTICE SOTOMAYOR: But what you're seeking is something dramatically different. You're seeking now not one compensation with interest; you're seeking infinite confensation forever. I think that's might -- what might have troubled the court below, because it's one thing to say: I am entitled to my value from either the Cuban government or from its proxy, the cruise lines. But I don't know what entitles you to ad nauseam compensation for use by everyone forever --

MR. KLINGLER: All right. With --

JUSTICE SOTOMAYOR: -- because that's not an interest in that property. You didn't have an interest in that property forever.

MR. KLINGLER: With respect, the infinity-and-beyond point is one that is in Cuba's control. It had the --

JUSTICE SOTOMAYOR: It doesn't matter whose control it is. There's a due process problem in thinking that you're entitled to multiple recovery from infinite number of people who might use this dock that far exceeds by I don't know how much -- what proportion the

amount that you were owed.

MR. KLINGLER: The due process concerns are taken care -- account of by notice. Congress, through the statute, and the Commission, through defining what confiscated property was, ruled those off limits. Unless there's a substantive problem with that, Congress said --

JUSTICE SOTOMAYOR: There might well be. There's a substantive excessive fines problem, excessive punishment problem. I mean, this just -- this is something that could be left for another day, I understand that, because that's not what -- what is before us. What's before us is did you have an interest in the docks, and the answer is yes, correct?

MR. KLINGLER: Correct.

JUSTICE SOTOMAYOR: You're admitting that that interest was time-limited, correct? You didn't own the docks.

MR. KLINGLER: It -- it would have been time-limited to 2004 had there been no confiscation, but our time limit on that interest was 1960. It ended there.

JUSTICE SOTOMAYOR: It ended there,

but it wouldn't have -- it wouldn't have gone forever. It went to a defined period of time. So the Commission's charge was to value that interest at the moment of -- of confiscation, right?

MR. KLINGLER: That's completely true. And for takings analysis --

JUSTICE SOTOMAYOR: All right. For takings, it's what was that interest then?

MR. KLINGLER: I agree with that.

JUSTICE SOTOMAYOR: All right. Now you said to Justice Barrett that you were entitled to this even if they used a piece of land that wasn't a part of the dock. If it was a store in the middle of the island --

JUSTICE BARRETT: No, he meant if they didn't use it.

JUSTICE SOTOMAYOR: Oh.

JUSTICE BARRETT: Like, he -- well --

JUSTICE SOTOMAYOR: Yeah. No, no, no.

JUSTICE BARRETT: Yeah.

JUSTICE SOTOMAYOR: Did you say, if the cruise line had used that store in the middle of the island and it wasn't a part of the dock, you would be entitled to

compensation?

MR. KLINGLER: Correct. That is what is ruled off limits. That's the seized property that resulted in the --

JUSTICE SOTOMAYOR: The dock was the seized property, not the store.

MR. KLINGLER: Well, our --

JUSTICE SOTOMAYOR: And what did the store have to do with the dock? That's what I'm trying to get to.

MR. KLINGLER: Well, our -- the store would have been seized as well, and that's where you look to the FCSC's decision.

JUSTICE SOTOMAYOR: Oh, now you're talking about that the contract at issue would have included the store as well? Is that the assumption you're making?

MR. KLINGLER: If -- if the FCSC had considered and ruled that Cuba's confiscation extended to the grocery store as well and was part of our claim, then yes, just as if there had been --

JUSTICE SOTOMAYOR: It was part of what was seized from you?

MR. KLINGLER: Correct.

JUSTICE SOTOMAYOR: Okay.
MR. KLINGLER: And so I'm assuming that our grocery store got seized as well.
JUSTICE SOTOMAYOR: Because Justice Kagan's question was, if that store had not been part of what was seized, you would not be entitled to compensation.
MR. KLINGLER: Well, there's two issues. We would be entitled to compensation according to the scope of the damages set forth in the FCSC's claim. There's a separate issue about whether trafficking in that interest would give rise to liability.
JUSTICE SOTOMAYOR: Thank you.
CHIEF JUSTICE ROBERTS: Justice Kagan?
Justice Gorsuch?
Justice Kavanaugh?
JUSTICE KAVANAUGH: So pick up on Justice Sotomayor's questions, what is the theory you have of why Congress would enact a statute that allows you to obtain compensation from a variety of American businesses potentially that vastly exceeds the value of your property?
MR. KLINGLER: Because Congress had at

least dual objectives, and the principal one was to rule off limits from trafficking property that Cuba had seized or the property interest, however way you wish to think about it, because that was what was fueling or stopping the transition to democracy in Cuba.

And that -- that -- the taking is -- the payment in relation to the taking is only going to happen if Cuba has the incentive to do that, and that's why there's an anti-fencing component too that is matched to the taking remedy. But they are recognizing the taking remedy and providing an unusual and an unusually large disincentive to be trafficking in property.

There's no American company right to be violating the embargo and to be dealing in Cuba. There's no countervailing interest. All the companies, wherever they're domiciled, are on notice of what the scope of the property is. And they have actually -- if they need to use it or justify, they can negotiate with the claim holder. They can just seek authorization through a negotiation or they could just not use it. I mean, those are the choices Congress

is presenting to them for extremely important foreign policy reasons.

This is the -- the sanctions and claim settlement portions of the Cuban embargo broadly that are at the heart of the commerce power, and the Eleventh Circuit gave an extremely narrow reading to those foreign policy interests and to the remedy that Congress had provided.

JUSTICE KAVANAUGH: On the lawful travel issue that several of the amicus briefs raise, I assume that remains open even if you prevail here on this issue? And is there anything else you want to say about that at this point? And it's fine if you don't.

MR. KLINGLER: It does remain open, but I'll just point out that almost all the trafficking took place during the Trump administration, and even during the Obama administration, there was -- the regulation they rely on expressly prohibited activities that are primarily tourism.

JUSTICE KAVANAUGH: And -- and last thing. Anything on the briefing at least that you disagree with the Solicitor General on?

MR. KLINGLER: No. We agree with the Solicitor General's positions, although, of course, we went on to argue at considerable length that even if the property interest is what the confiscated property is, subject to the trafficking prohibition, that we would still prevail and it's an ongoing remedy rather than one truncated by the 2004 limit that was extinguished and doesn't exist any more than the benefits we received.

JUSTICE KAVANAUGH: Thank you.

CHIEF JUSTICE ROBERTS: Justice Barrett?

JUSTICE BARRETT: Just one question and it's about valuation of the claim. So I know, when you have the Commission having valued the claim, that's presumptively the value, but let's -- let's say that liability is established. The cruise lines come back and they can establish, they can challenge that, right?

MR. KLINGLER: They can challenge the valuation amount?

JUSTICE BARRETT: They can challenge the valuation amount.

MR. KLINGLER: No, they cannot.

JUSTICE BARRETT: I thought they could.

MR. KLINGLER: Congress made it clear that all determinations of law and fact that the Commission determines in the claims process is conclusive and final, not subject to review in any court by mandamus or otherwise. That's Section 20 -- 1623(h).

JUSTICE BARRETT: Okay. I thought there was an ability by, you know, some heightened evidentiary standard. I don't have it right in front of me, though.

MR. KLINGLER: Yes. No, what you're referring to is that there are three types of valuation. One is the amount of the claim. Another is if a special master has made the determination or the Commission in the course of considering a claim that's not certified. And then the third is a fair market value -- valuation.

But it's the higher of any of those. So that's really only a plaintiff's right to secure --

JUSTICE BARRETT: So the defendant has

no rights in that. And, I mean, I'll tell you where I'm going with this. I mean, it's just kind of unbelievable to me that in the grocery store hypothetical, that if you have these disparate interests all over the island and your claim -- you know, and that was the property taken, that someone who uses the docks is going to be liable for the value of the grocery store and let's say you also have gas stations, let's say you have lots of things because you just happen to be someone with wide-ranging property interests.

You're saying there's no way for the defendant to get out from under that huge liability which is just because of the chance that you happen to have wide-ranging interests on the island. It could just as easily have been docks and somebody who owned nothing but the docks.

MR. KLINGLER: That's right. But the chance they have to get out from under that liability is to not traffic in confiscated property deemed off limits at all or without our authorization.

JUSTICE BARRETT: Okay. Thank you.

CHIEF JUSTICE ROBERTS: Justice Jackson?

JUSTICE JACKSON: Just to follow up on your response to Justice Barrett, the chance they have is to say we're not trafficking as the statute defines it in those particular property interests. So it's fine. The person might have a grocery store and a, you know, set of other interests and this is the cruise line and they're only using the docks.

The cruise line's response is: We're not trafficking in the grocery store per the statute. And someone like us would say, you're right. But, here, the cruise lines are trafficking in the sense -- and, you know, there's a definition of traffic, sells, transfers, distributes, dispenses, uses, whatever, right?

So the -- the argument, I think, is that the cruise lines are trafficking in the ownership of the property at issue here, as determined by the FCSC, which is the ownership of the dock interest. Is that right?

MR. KLINGLER: That's absolutely -- our claim relates to the docks themselves, the

confiscated property, and the extra --

JUSTICE JACKSON: Which you own the claim to because the FCSC said you're the owner of the use of the docks.

MR. KLINGLER: That's exactly right. And the -- the point that you're making about the "trafficking" definition more broadly, I was using shorthand in talking about authorization. But the "trafficking" definition excludes from the traffic -- from liability or from trafficking any use of property when the person undertaking the actions that are otherwise prohibited secures the authorization of the former owner.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Ms. Brown.

ORAL ARGUMENT OF AIMEE BROWN

FOR THE UNITED STATES, AS AMICUS CURIAE,

SUPPORTING THE PETITIONER

MS. BROWN: Thank you, Mr. Chief Justice, and may it please the Court:

In 1960, the Cuban government seized the docks that Petitioner built without paying

a penny. When Respondents then paid the Cuban government around a hundred and thirty million dollars to use those same docks, Respondents trafficked in property which was confiscated. And Congress gave Petitioner the right to seek damages from Respondents because Petitioner owns the certified claim to the docks.

Petitioner's suit can proceed regardless of whether you think of the relevant property as the physical docks or as the right to 44 years of possession, control, and operation of the docks.

Either way, Respondents were complicit in Cuba's exploitation of property before Cuba either provided compensation or returned the property to Petitioner.

The court of appeals rejected that analysis by considering the confiscated property as if there had been no expropriation and then asking whether Petitioner would have had an interest in the property at the time of the trafficking.

That test undermines the scheme that Congress enacted, which expressly protects time-limited interests and which is aimed at

providing a remedy for Cuba's expropriations, not pretending they never happened.

I welcome the Court's questions.

JUSTICE THOMAS: Who owns the docks?

MS. BROWN: So, at all times relevant here, the Cuban government had the underlying ownership of the docks, but they had -- they had -- provided for control of the docks and possession of the docks to go to Petitioner for the term of the usufruct --

JUSTICE THOMAS: So --

MS. BROWN: -- the term of the concession.

JUSTICE THOMAS: -- how could Cuba confiscate docks that it owned?

MS. BROWN: The statutory definition of "confiscated" refers to seizure of ownership or control of the property. And so, while the Cuban government owned the -- the property at this time, they did not have control of the property. That's why, in order to effectuate the expropriation here, they had to send government agents, armed soldiers, out to the property to take back control of the physical docks from Petitioner.

We think that qualifies as a seizure of control under the -- the statutory definitions here. You could imagine this like a car lease, for example. So say I have a -- a lease of a car for a term of two years from a dealership. The dealership decides at year -- after one year that it wants to take the car back. I think it's perfectly natural to say that they seized the car even though they had the underlying ownership of the car at all times.

CHIEF JUSTICE ROBERTS: Do you agree with Petitioner's position on the grocery store hypothetical?

MS. BROWN: No, we don't. We don't think that you have to just take the certified claim and every interest that's reflected in the claim as given. I think the -- the -- the --the Claims Commission does lay out, as Justice Barrett noted, that there are facilities here, there are office space, there's equipment. Each of those is valued separately. And so you have to be trafficking in whatever interest or in -- in whatever property is at issue, and -- and you don't get

to just kind of bundle everything together necessarily just because of -- of the way that the claim was set out or the way it was certified.

JUSTICE KAGAN: So, if we're not looking to the Commission's understanding of what the claim is and we're just focusing on what it means to traffic in the property which was confiscated, again, I would think the property which is confiscated is the property which was confiscated from you, the plaintiff, and -- and that's a time-limited concession. And the time -- it's gone. It's gone by now. It doesn't exist.

MS. BROWN: So I do think that it -- that it is relevant that the property which was confiscated doesn't say that it has to be the property which was confiscated from you. It's the property which was confiscated to which you hold the claim. And we know the claim reflects an interest in the property.

JUSTICE KAGAN: Oh, no, I don't think it does say that. I mean, you could have easily written a statute which said, you know, the property in which you hold an interest, and

that would have directed everybody to say, okay, they're not talking about the property interest that you own; they're talking about sort of like the underlying piece of land --

MS. BROWN: Mm-hmm.

JUSTICE KAGAN: -- in which you have some more limited interest.

But that's not the way this statute is written. This statute is not the property in which you have an interest. This statute is the property that's confiscated. It has to be the property that's confiscated from you. And that's, like, not the docks. It's just the time-limited interest.

MS. BROWN: So I do think that a claim reflects the interest, right, and the confiscated property can be confiscated even if you didn't have the ownership of it. So I think putting those two things together, you can get to where I was suggesting, which is that you have to own the interest in the property which was confiscated.

But, even if you disagree with me, I do think that we get to the same place, and that's because you look at the property which

was confiscated at the time of the confiscation. So that is the 44 years of the right to possess and control and operate the docks.

Those 44 years don't continue to run because -- they -- they disappeared at the date of the expropriation. It's like Cuba here is cutting in line in front of Petitioner and exercising the rights that Petitioner was supposed to be able to exercise for another 44 years, and Respondents are complicit in that by paying the Cuban government for the exercise of those rights.

JUSTICE KAGAN: But, if that's true, I mean, I do think that the Eleventh Circuit is right that you're converting a time-limited interest into a perpetual interest because of the seizure.

A seizure -- like, nobody's defending the seizure here, right? But the question is, like, what does this compensation scheme entitle you to as a result of that seizure? And -- and you didn't have a perpetual interest, and now you're saying, because of the seizure, because, you know, your -- your

interest was interrupted, we're going to treat you as if you did.

MS. BROWN: I don't think that's right. I think, at the time of the confiscation, this 44-year interest is distilled into a claim, and that claim entitles you to recover for those 44 years or to get those 44 years back. And until you either get the compensation for the 44 years or you get 44 years returned, you do have the right to sue anybody who interferes with that. And Cuba and Respondents are acting in concert to interfere with the right for those 44 years.

JUSTICE GORSUCH: Ms. -- Ms. Brown, I -- I understand your point that the interest isn't the docks; it's the use of those docks for 44 years that are reduced to a claim in -- in value.

Mr. Klingler suggested, though, that I can recover that amount over and over and over again. You've handled the grocery store hypothetical. How about that one?

MS. BROWN: So, before the court of appeals, the Respondents here have argued that the statute should be read to incorporate a

single -- a -- a single recovery kind of rule so that Petitioners here could only receive the value of their claim a single time.

That argument is still open on remand. Judge Brasher, in his dissent, appeared to adopt the argument, although he didn't explain any of the basis for that. So that is an argument that you don't need to resolve today.

But, to the extent that I think there's a multiple recovery possibility here, I don't think that that should dissuade you from reversing in this case because that does reflect that this is not a purely compensatory regime. It's a foreign policy tool that Congress is -- is using in order to deter trafficking and to impose harsh economic pressure on the Cuban government.

JUSTICE GORSUCH: So let me see if I've got it right. I don't have to touch it, for which I am truly grateful --

MS. BROWN: Correct.

JUSTICE GORSUCH: -- but the government does believe it allows multiple recoveries?

MS. BROWN: We haven't taken a

position --

JUSTICE GORSUCH: Okay.

MS. BROWN: -- expressly in the briefing on this.

JUSTICE GORSUCH: Okay. Okay.

MS. BROWN: But -- but, to the extent that that's a possibility, I do think that that's just reflective of the foreign policy -- the significant foreign policy interests here.

JUSTICE GORSUCH: Got it. Thank you.

JUSTICE KAVANAUGH: Do you have a position?

JUSTICE GORSUCH: No.

JUSTICE KAVANAUGH: You say the briefing doesn't expressly take a position. Does the government have a position? It would be odd if the government didn't have a position on such a significant foreign policy question.

MS. BROWN: So we do think that the foreign policy interests here do suggest that Congress wasn't particularly concerned with multiple recoveries in this -- in this instance, and I think that that is because, if you look at the congressional findings as to foreign policy in Section 6081, in particular

paragraph (6) and paragraph (11) -- this is 10a and 11a of the appendix to our brief -- Congress sets out that "trafficking in confiscated property provides the Cuban government with badly needed financial benefits, including hard currency," and that that provision of those resources undermines the foreign policy that's -- that's encompassed within the economic embargo, that pressure that we're trying to apply to the Cuban government in order to persuade it to return to democratic regimes.

And I -- I think that allowing for somebody -- the fact that some companies have paid off the claim to mean that then they can continue business with Cuba and continue paying Cuba millions of dollars, that really undermines that foreign policy interest.

This isn't supposed to be a cost of doing business for companies. It's supposed to be a poison pill that essentially deters them from ever operating with Cuba, at least with respect to the confiscated property, unless and until the Cuban government returns that property, provides compensation for that

property, or otherwise returns to democracy.

JUSTICE JACKSON: Could we also glean from the enactment history here what Congress was really trying to do? And that is not necessarily set up a -- compensation scheme, as has been said, but, you know, the fact that the Cuban Claims Act, which initially created the Foreign Claims Settlement Commission in 1964, just a few years after all this property was taken but didn't give a remedy, suggests to me what Congress was doing was -- was really freezing and trying to highlight the fact that this property is taken, that it has a lot of value, and we're going to set up a system to prevent Cuba from trafficking in it.

It did not at that time, sort of the initial thrust of this, focus on how much anybody was going to get or the people whose property had been stolen, what is the avenue for recovery. That wasn't the focus.

It was to try to keep Cuba from trafficking in this property.

MS. BROWN: I think that's exactly right. That's reflected specifically in Section 6081 and -- and paragraph 11. Congress

notes there that there is no existing judicial remedy for the victims of these confiscations and that it wanted to provide such a remedy in the federal courts of the United States.

JUSTICE JACKSON: And then, when the remedy comes along, I mean, it may seem pretty draconian to suddenly give multiple recoveries to all these people, but if you think of it in light of Congress's intention to really, really make it hard for Cuba to traffic in these properties, that kind of a sanction makes at least some sense.

MS. BROWN: Yes, that's exactly right. This -- this was intended to be a -- a huge deterrent. It wasn't intended to be something that people actually ended up paying because it was supposed to make them think twice about ever getting involved in these kinds of transactions at all.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Justice Thomas?

JUSTICE THOMAS: The -- how far can -- is there any limit to how far Congress can go

with this sort of poison pill remedy?

MS. BROWN: As -- as Justice Sotomayor mentioned, there are some due process concerns, I suppose, that -- that could be raised to the extent that the -- that the recovery so far outweighs something else. I think that nobody would kind of bat an eye at this if the recovery was just going to the Treasury instead of going to Petitioners.

Respondents here have raised due process concerns as to the remedy as well. That is another issue that will be open on remand to the -- to the extent that the Court has -- has further concerns with that there.

CHIEF JUSTICE ROBERTS: Justice Alito?

JUSTICE ALITO: When the -- the Commission was calculating -- excuse me -- the amount due, was it supposed to calculate how much Petitioner would have received during the 44-year period or a longer period, or what does the statute say about that, or does it say nothing about it and leave it to the Commission?

MS. BROWN: So it says that the Commission is supposed to understand or figure

out what the property interest here was and then value that in the way that's the most equitable, to undertaking considerations of fair market value, book value, replacement value, things like that.

I think you can see from the Commission decision that they were very well aware that this was a 44-year time-limited interest and that that -- there's every indication that that was taken into account in the way that they were valuing it.

JUSTICE ALITO: Thank you.

CHIEF JUSTICE ROBERTS: Justice Sotomayor?

JUSTICE SOTOMAYOR: I -- I'm not sure you're answering the question.

Your answer earlier made it seem as it wasn't 44 years, that was it -- it was infinite until the Cuban government gave the property back, it gave back 44 years.

So how could the Commission value it on 44 years when it -- by your claim, it's infinite?

MS. BROWN: So the claim --

JUSTICE SOTOMAYOR: Until Cuba acts.

MS. BROWN: The claim continues to exist and the claim continues to be able to be enforced until then.

JUSTICE SOTOMAYOR: You know something, that --

MS. BROWN: But the value of the interest --

JUSTICE SOTOMAYOR: When I think of claim, I think of like a lien, all right? And I thought that analogy in one of the briefs was very useful.

I lend someone money. Sometimes I lend it for purposes of that property, but often I lend it for the person to use it on something else. But I take a lien on property.

That mean that that lien exists until somebody pays it off, all right? And if someone buys that property and knowing the lien exists, they have to pay me even if though they may have given the full value to the -- to the owner, the original -- the -- the full owner.

And that's what I think this was like -- this law is like, correct?

MS. BROWN: I think that that's a helpful analogy, yes. We think that the

property interest is reduced to the claim.

JUSTICE SOTOMAYOR: So what the Commission did was value that lien, correct?

MS. BROWN: Yes. They valued the -- the -- the 44 years.

JUSTICE SOTOMAYOR: All right. When I read the law or the snippets of it that were given to me, it seemed to say that you -- the Respondent could challenge -- that the value was presumptive that the Commission gave but that they could fight it if it was invalid -- if it was not ripe, correct?

MS. BROWN: So I don't think that that's correct. The way that I read that is that the presumption is that the Claims Commission's valuation is going to be the amount that you recover. You can't challenge what their valuation was, but you can challenge whether that is the right amount to recover or whether you should --

JUSTICE SOTOMAYOR: That's what I mean.

MS. BROWN: -- instead recover fair market value.

JUSTICE SOTOMAYOR: Yes, exactly.

MS. BROWN: Yes. That is correct.

JUSTICE SOTOMAYOR: Okay. So that's still open to -- the other side said no, that it's --

MS. BROWN: So I -- I -- to the extent that that's what -- that's what my friend said, I -- I think that that's incorrect, but I -- but I do think that you would to have show that the fair market value is the greater of the amounts because the -- the recovery is for the greater of the claim's certified amount, the other amount that the special master determines, which isn't relevant here, or the fair market value.

But, if you can show that the fair market value is greater and is the appropriate amount to be applied in this situation, then that's what's going to apply.

JUSTICE SOTOMAYOR: I see. So he's right. Okay. That's what I needed to know.

CHIEF JUSTICE ROBERTS: Justice Kagan?

JUSTICE SOTOMAYOR: And --

CHIEF JUSTICE ROBERTS: Oh, I'm sorry.

JUSTICE SOTOMAYOR: No.

CHIEF JUSTICE ROBERTS: Justice Kagan?

Justice Gorsuch?

Justice Kavanaugh?

JUSTICE KAVANAUGH: Do you want to say anything on lawful travel? In particular, you know, the story on the other side and in the amicus briefs is that they did this at the encouragement of the United States Government and that they consulted with the United States Government, who told them they were good to go. I'm paraphrasing.

MS. BROWN: Yeah.

JUSTICE KAVANAUGH: And they say that's lawful travel. And I notice in your brief you don't take a position on that.

Do you have a position on the lawful travel in this case?

MS. BROWN: So the government has not made a determination in this case as to whether the particular activities here constituted lawful travel, whether they were within, I think, the general license that -- that Respondents were purporting to operate under.

We have in other cases --

JUSTICE KAVANAUGH: They were told that previously, weren't they, by the

government?

MS. BROWN: They say that they were. Again, we haven't taken -- we haven't made any kind of determination that that is correct.

To the extent that Respondents received assurances from appropriate government officials that what they were doing was lawful and authorized, we do think that that would raise due process concerns.

To the extent that the Eleventh Circuit wants the --

JUSTICE KAVANAUGH: Like, huge ones, wouldn't it?

MS. BROWN: To the extent that the Eleventh Circuit wants the government's position and determination on those issues, the Eleventh Circuit has in prior cases involving lawful travel asked for the United States' views on those kinds of questions, and -- and we would be happy to provide them at that point.

We haven't provided them here simply because it's not a part of the question presented.

JUSTICE KAVANAUGH: Thank you.

CHIEF JUSTICE ROBERTS: Justice Barrett?

JUSTICE BARRETT: So you agree that would be open on remand?

MS. BROWN: Yes, definitely.

JUSTICE BARRETT: Okay. And then just -- just one question. Let's say that I agree with you about the time question and I think it has to be engaged at the time of the confiscation. I just want to go back to that use question I raised before. So there's this dispute about whether it was cargo-only or if it was passengers too.

I mean, the statute repeatedly talks about "the property," "the property that was taken." And I -- I took you to agree with that insofar as you distanced yourself from your friend's answer to the grocery store hypothetical.

If it turns out on, let's say it's open on remand, on remand that really it was just cargo, then does that mean that the cruise lines did not traffic in the property if they didn't use it for cargo purposes?

MS. BROWN: So not necessarily. I do

think it depends on first what you think of the property is because, if the property here is the docks and they had an interest in the docks and someone trafficked in the docks, then their interest would reflect that their -- that their interest was limited just to cargo uses and not to passenger uses, and that would be connected to the valuation, but it would still qualify.

But I also -- I -- I think the cargo-versus-passenger thing here is kind of a red herring because even Respondents have acknowledged that if Petitioners had the exclusive control of this particular piece of property, if someone used it for a different purpose than they did, that would still be infringing, I think, on -- on their right to use.

This is the hypothetical with, like, the -- the -- the building where one floor, where you lease it out and there's a use restriction and it can only be used for office space and then someone comes and uses it for a restaurant. Everyone agrees, I think, that that's still trafficking in confiscated property.

So the real question here is whether this was an exclusive right to the docks or a non-exclusive right. And on that, we see nothing in the record that would indicate that it was non-exclusive. Certainly, the court of appeals didn't take that position. Otherwise, there would have been no need to remand for further consideration of the trafficking that had occurred before 2004 if this was a completely non-exclusive interest that -- that could have allowed for -- for others to use it in the same way.

JUSTICE BARRETT: And isn't it the case that part of the value is that they had invested in building the docks, so it's not just like the car lease where I was going to have to keep paying monthly and then you take the car and -- and then what are -- you know, what have you really lost?

But, here, it was like their consideration was that they kept -- they had a lot of money invested that they never got back because Cuba confiscated it.

MS. BROWN: That's exactly right. They built the docks. The payment for the

docks was supposed to be the right to operate and commercially benefit from them.

CHIEF JUSTICE ROBERTS: Justice Jackson?

JUSTICE JACKSON: Can I just get you to quickly explain the role of the certified claim in your analysis?

I'm concerned that we might be led to reason from first principles about property law in general when, really, the certified claim process which is in this statute is doing very important work.

MS. BROWN: I certainly agree with that. The certified claim is going to set out what the property interest was under the appropriate law, which I assume would be taking into account the Cuban law that defined the scope of the property interest.

They looked at all the record documents that explained the extent of what the usufruct here was, the extent of the concession, the time limits remaining on that, and then they valued that based on the remaining life of the concession and what value was supposed to be able to come out of that.

JUSTICE JACKSON: And what they gave as a claim, I -- as I understand it, never said this terminates or evaporates or something happens to it in the same way that the property interest would have expired?

MS. BROWN: Yes. That's exactly right. The claim --

JUSTICE JACKSON: The claim doesn't have any sort of termination provision in it. They were just valuing what the underlying property interest is and giving them a claim.

MS. BROWN: That's exactly right.

JUSTICE JACKSON: And then the statute here says, if you have a claim, you get to make this kind of -- you have this kind of cause of action, right?

MS. BROWN: That's correct. The claim essentially encumbers the property as the lien analogy goes, and that property is treated as tainted. Anyone who transacts with, engages with, benefits from that property is then trafficking in that property, and the claim holder has the right to -- to pursue that.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you,

counsel.

Mr. Clement.

ORAL ARGUMENT OF PAUL D. CLEMENT

ON BEHALF OF THE RESPONDENTS

MR. CLEMENT: Mr. Chief Justice, and may it please the Court:

Title III of the Helms-Burton Act provides an action against someone who traffics in property which was confiscated from the Cuban government. "Property" is a defined term in the statute that includes any property interest, including a time-limited one like a leasehold. And then the Act gives a cause of action to someone who has the claim to such property, i.e., the property that was confiscated.

The plain text of the statute requires a one-to-one correspondence between what was confiscated, the property interest that was confiscated, and the property interest that was trafficked. So, if all that was confiscated was the mining interest in a property, only somebody who traffics in the mining interest, not somebody who harvests timber on the property, is trafficking in the property

interest that was confiscated.

The same principles apply to time limits on the property. So, if someone had a 50-year leasehold in the property, anyone who traffics during the leasehold traffics in confiscated property. But someone who arrives after the leasehold has run might have a -- might be subject to a claim by the landlord but not to the leaseholder.

And basic principles of property law reflect those same distinctions. Tahoe-Sierra says that both the spatial and the temporal limits define the metes and bounds of the property interests.

And so, with respect to what's at issue here, I think it's clear, as suggested in the response to Justice Kagan's hypo, that with respect to the spatial limits, this is obvious. You can't -- if somebody traffics in your neighbor's property, you don't have a trafficking claim against them.

But the same things apply temporally. And, here, it should be common ground that the only interest that Petitioner had in these docks was a concession that expired in 2004.

Someone who arrives later is not in a position to traffic in the -- the property interest that was confiscated. There's not the one-to-one correspondence the statute requires.

I welcome the Court's questions.

JUSTICE THOMAS: If I had a lease in property, if I leased the property and -- how would that lease be confiscated?

MR. CLEMENT: So the lease would be confiscated in the sense that I -- I mean, I assume that what would happen is that the Cuban authorities would come in and they would take control over the facilities, and then, in the process, you would say they confiscated the leasehold. That's the way it works in domestic takings law. And in domestic takings law, there is such a thing as a taking of a lease, but, of course, the value of the lease is -- reflects its time limit.

And what we don't have in domestic takings law is this idea that under certain limited circumstances, there is a substitute payor that pays the person who had their property taken in lieu of the government. And that's the unusual regime that Helms-Burton

creates.

But the only person who is in a position to be that substitute payor is the person who traffics in the very property interest that was confiscated by the Cuban government. If there's a mismatch --

JUSTICE THOMAS: But the statute doesn't say "property interest." It says "traffics in property which was confiscated." You would more naturally think that it was speaking to the property that was the basis of the lease.

MR. CLEMENT: Here's the problem with that, Justice Thomas: "Property" is a defined term in the statute. So, when you read "property," you go to the definition and it says any interest in the property, including leaseholds, including future interests.

So we're clearly talking about sticks in the bundle, and that makes sense. I mean, if any stick in the bundle is confiscated, then it makes sense that you get compensation. And under this unusual regime where you put somebody as a substitute payor, it makes sense that you put the substitute payor in that

position only if they traffic in the stick in the bundle that was confiscated.

So it's the example I used with mineral rights. And that's a real-world example. Some people, their only interest in property that was taken over by the Cuban government was a mineral interest. Well, if --

JUSTICE THOMAS: What would -- what would be the interests if you owned it fee simple?

MR. CLEMENT: Then it's easy. You own the whole thing. And then you do have the perpetual ability to go after people who later traffic on the property. But, as the Eleventh Circuit held here, if you ignore the time limits on concessions or leaseholds, you end up sort of treating relatively small sticks in the bundle as if they're the whole kit and caboodle.

And that doesn't make any sense, and it really doesn't make sense particularly if you understand that nothing about our position makes the confiscation end or goes away -- makes the -- the claim against the Cuban government go away.

JUSTICE THOMAS: But it also seems quite difficult to pinpoint the interest, the particular interest, in property. It could be a very small interest. I could lease a closet in -- in -- in a huge dock facility and somehow I would have to pinpoint that.

MR. CLEMENT: Well, in theory, it could be difficult. In practice, what you principally see, if you look at the claims, is you do have some leaseholds but only a handful. I mean, this whole case is about -- like, the government in their brief at page 29 identifies a grand total of five time-limited interests among the claims, three leases and two patents. So we're talking about a pretty small universe here of the time-limited ones.

But the time limits are crystal-clear. If you went and looked at the Claims Commission order here, you would say that -- you would see that it ends in 2004. So there are ones where you would have very clear notice.

I do want to talk about Justice Barrett's hypo because it's not a hypo. If you look at the claim here, it didn't just cover the docks. It also covered a thousand shares

of Cuban telephone stock, and it also covered about $300,000 in repudiated debts.

Now the district court awarded them the whole 9 million even though there's no question that we didn't traffic in Cuban telephone stock and there's no question that we didn't telephone -- traffic in the confiscated debts.

And the confiscated debts are important for another reason, because I don't think it's actually possible to traffic in confiscated debts. Yet that is probably the single-most recurring claim that's reflected in the Claim Commission's decisions, because what happened is not only, when Cuba owed money to U.S. companies, it wasn't going to pay, so you have all those repudiated debts, but then you had the other problem, which is a lot of American companies had accounts receivables from other American companies that were expropriated.

JUSTICE GORSUCH: Mr. Clement --

MR. CLEMENT: All of that's part of the confiscated property. I'm sorry.

JUSTICE GORSUCH: -- I'm -- I'm --

I'm -- I'm following you, but I struggle just a little bit. The docks were confiscated, right?

MR. CLEMENT: Well, the -- the Petitioner's time-limited interests --

JUSTICE GORSUCH: No, no, no, no.

MR. CLEMENT: -- in the docks were confiscated.

JUSTICE GORSUCH: The docks were confiscated.

MR. CLEMENT: I can't agree to that, with all due respect --

JUSTICE GORSUCH: Really?

MR. CLEMENT: -- because Cuba owned the docks. So the only thing that was confiscated --

JUSTICE GORSUCH: Okay. They -- they -- they confiscated control of the docks.

MR. CLEMENT: -- is the part of the documents they didn't control, which is the time interest.

JUSTICE GORSUCH: They confiscated control of the docks, right?

MR. CLEMENT: They confiscated the concessionary interest. They actually -- with all respect, I'm not trying to be difficult,

though I know I am being difficult, but --

JUSTICE GORSUCH: You -- just a little bit, but that's okay.

MR. CLEMENT: Yeah. No, no, but the things is we don't concede -- the government comes up here and said they had a right to control the docks. That is directly contrary to the position that we took in the district court and that we appealed to the Eleventh Circuit.

JUSTICE GORSUCH: All right. Let me -- Mr. Clement, let me --

MR. CLEMENT: Our position is they had no control of the docks. They just had a non-exclusive --

JUSTICE GORSUCH: Fine.

MR. CLEMENT: -- cargo concession.

JUSTICE GORSUCH: There's a -- there's a disagreement over exclusivity. I understand that, but for purposes of this question, let's put that aside.

There is confiscation of a property interest in the docks. Let's -- how about that? Can we agree on that?

MR. CLEMENT: We're together.

JUSTICE GORSUCH: Okay. And there's no question that your client has used the docks.

MR. CLEMENT: We have used the docks.

JUSTICE GORSUCH: Okay.

MR. CLEMENT: I agree with you.

JUSTICE GORSUCH: All right.

MR. CLEMENT: We just haven't trafficked in that which was confiscated --

JUSTICE GORSUCH: Well --

MR. CLEMENT: -- which was a time-limited concession.

JUSTICE GORSUCH: And there's a claim with respect to those docks.

MR. CLEMENT: There is. The claim reflects the time limit. And if you look at the claim --

JUSTICE GORSUCH: And the claim reflects the time limit, okay. All right. So we have -- we have confiscation, we have trafficking, and we have a claim. What's missing?

MR. CLEMENT: What's missing is the overlap between the property interest that was confiscated and the property interest that was

trafficked. So the property interest that was confiscated was a time-limited interest --

JUSTICE GORSUCH: Well, where do you get that from? It says "traffics in" -- "traffics in property which was confiscated."

MR. CLEMENT: Right.

JUSTICE GORSUCH: Any -- any property of any kind in which -- was confiscated, yeah. Got that.

MR. CLEMENT: Right, but then you keep reading.

JUSTICE GORSUCH: We have trafficking. Got that.

MR. CLEMENT: And when you keep reading, you see --

JUSTICE GORSUCH: I -- I got it right all -- I've read it -- and read it.

MR. CLEMENT: Yeah, yeah. I do too. I do too. And if you keep reading, it says that you "shall be liable to any United States national who owns 'the,'" not "a," "the claim to such property." And the "such property" is plainly referring back to the property which was confiscated.

JUSTICE GORSUCH: Yeah.

MR. CLEMENT: QED. With all due respect, this statute requires a one-to-one correspondence between what was confiscated and what was trafficked in, and that makes sense.

JUSTICE GORSUCH: I think I follow all of it except for the QED.

MR. CLEMENT: What's that?

JUSTICE GORSUCH: I think I follow all of that except for the QED.

MR. CLEMENT: I -- I thought that might be your response, Your Honor, but I really do think that if you read the statute, it says that the person who can bring the action is the person with the claim to such property.

JUSTICE JACKSON: But, Mr. Clement --

MR. CLEMENT: "Such property" has to refer back to the property which was confiscated.

JUSTICE JACKSON: -- why -- why isn't the -- why isn't the claim --

JUSTICE BARRETT: It was --

JUSTICE JACKSON: Oh.

MR. CLEMENT: Sorry.

JUSTICE BARRETT: It refers to

property which was confiscated, and so that kind of goes back to Justice Gorsuch's point because property -- the "such property" refers back to property that doesn't have an article in front of it. It doesn't say "the property that was confiscated." It says "property that was confiscated," making it seem broader.

MR. CLEMENT: No, I don't think so because, again, "property's" a defined term in the statute, and so property includes any property interest that you have in the property. And then it --

JUSTICE BARRETT: No, but it doesn't say that, though. It says "any property," and then, when it gives the long list of kinds of property, I read that definition to say essentially any kind of property. So it can be intangible, it can be a patent, it can be a leasehold, et cetera.

But it doesn't say -- a couple times you put in "interest" before it, any interest in property, but it doesn't say any interest in property. It says any property.

MR. CLEMENT: So, with respect, it says any property, and then it talks about

specific --

JUSTICE BARRETT: Right.

MR. CLEMENT: -- limited interests in property. And so I'm reading it, and I don't think it's a leap, to say that it's being inclusive and it's saying any interest in the property.

JUSTICE JACKSON: Mr. Clement, where I --

MR. CLEMENT: And -- and then -- and then --

JUSTICE JACKSON: Right. Sorry. Yeah.

JUSTICE BARRETT: Can you just finish, if you could finish for me.

MR. CLEMENT: Yeah. And then it says that the person with the claim to such property gets to bring the action, and that's important because, otherwise, you -- you could certainly have a situation where different people have different property interests in the same property, the same physical location, and you don't want to let one of them bring a claim for the other person's claim in the property. And the statute would kind of be chaotic if you did

that because it allows you to traffic if you have authorization.

Well, presumably, you need to get authorization from the person who has the exact interest in the property that you plan to traffic in. And, similarly, there's a -- a provision in the statute, (a)(5)(D), that's worth a look because that provision suggests that basically, once somebody brings one of these actions, it's exclusive to anybody else bringing an action in the property.

Now, again, if "property" means a specific slice of the bundle, a specific stick in the bundle, statute works great. If I have a leasehold and somebody traffics during my leasehold, I can bring an action for my leasehold, but I don't get to give authorization for trafficking years later and -- and interfere with somebody else --

JUSTICE JACKSON: But -- but, Mr. Clement --

MR. CLEMENT: -- who's got the fee interest. I'm sorry.

JUSTICE JACKSON: -- Mr. Clement, why -- why doesn't the statute also work great

if we understand that it has a provision that gives some authority to the FCSC to tell us what the person's property interest is?

It seems to me that your analysis has at least -- I -- I -- I counted two problems, but that's really the main one in -- in -- in -- in that you're trying to get us to evaluate what the person's property interest is when this statute gives that responsibility to that agency.

That is, in fact, all that agency is supposed to be doing is listening to the arguments that you're talking about and deciding what this company's -- Havana Docks's property interest is. And once they've decided that, they said, you have a claim to -- to enforce the interest as we've defined it.

And the statute then appears to say: Anybody who has a claim can come in and try to recover in this way. And the -- the thing -- the other thing that I think is missing from your analysis is that nothing about the statute says that the scope or extent of that claim is tied to a -- whether their property interest was temporary or limited or anything like that,

and that's the way you seem to want us to read it.

You cut out the FC -- FCSC in the analysis, and you say but they only had a limited property interest, so -- and that expired before we arrived and so they don't get to press their claim. There's nothing in the statute that says the claim should be evaluated based on what the property interest was.

The S -- the FCSC does that. They tell us this person has a claim. They evaluate all of the limitations. And then the statute operates perfectly.

MR. CLEMENT: So, with respect, Justice Jackson, we're not fighting what the Commission certified. What the Commission certified was actually a -- a time-limited interest. And if you look at the -- I mean, that's obviously Joint Appendix 259 because they say it expires in -- in -- in 2004. But it's even more obvious if you look at page 256 of the Joint Appendix, where they say that the -- the whole claim to ownership and control of the docks is "on the basis of a concession."

JUSTICE JACKSON: Right. But what

they don't say --

MR. CLEMENT: And nobody doubts that --

JUSTICE JACKSON: -- but what they don't say is that the claim that we are certifying today has the same limitations as the limited property interest that we are evaluating. That's the thing you're missing, I think, in order to make your argument work.

MR. CLEMENT: I don't think so with respect. And I think it's no different if I can take Justice Kagan's hypo. If the Claims Commission looked at this thing, and I forget whether it was the blue or the yellow, but if the Claims Commission said you got the blues, that's great. And then, if somebody traffics in the blues, I have a claim.

Now I want to say, if -- if you traffic in the blues, you don't get the claim to the Cuban telephone stock, but that's a separate issue. But you get what is specified in the claim, but you don't get a claim over the yellows just because you -- they're near it and --

JUSTICE JACKSON: So why didn't you

traffic in the blues? I -- I -- I understood you to be trafficking in the blues for the purpose of this hypothetical.

MR. CLEMENT: Well, but what I'm saying is, by parity of reasoning, what happens for the spatial limits of the property interests have to apply to the temporal interests in the property.

So think if there were, like, two stacked leases of 50 years and then another 50 years. If you traffic in year 45, you have a trafficking claim against the person who owned the first leasehold. But, if you traffic in year 55, you have a claim against -- the -- the person who owns the second leasehold has the claim against you, but the first one doesn't.

And keep in mind there's nothing terrible about that. This statute, Congress didn't think it was giving a trafficking claim to everybody who had a claim against Cuba. There are lots and lots of claims that, by the nature of the property, you're not going to have a trafficking claim.

JUSTICE ALITO: No, it didn't think it was -- it didn't think it was giving a claim to

everybody who had a claim -- giving a -- a claim that could be asserted in court to anybody who had property confiscated by the Cuban government, but isn't what it -- what Congress said this as applied to this case?

Havana Docks had a concession for 44 more years and that had a value, and the Cuban government has not compensated them for what they've taken, and, therefore, nobody is to use that concession in the future, that nobody is to use the property interest that was the subject of that concession in the future until there's compensation from the Cuban government. It's not -- so, you know, you go into this with your -- with your eyes open.

Now maybe you were misled by the -- by the government, and that's another -- another story, but, you know, if your client came to you and said we're -- we're thinking of docking our cruise ships and, you know, what does that -- what's the Helms-Burton Act going to mean for us, I mean, a -- a lawyer like you would say: Whoa, you know, you're -- you're taking a big risk.

MR. CLEMENT: Well, I would say, yeah,

it's -- it's a close question, we might end up in the Supreme Court of the United States.

(Laughter.)

MR. CLEMENT: But I would say -- I'll tell you what my best view --

JUSTICE ALITO: Now, I would bet -- I would bet you would not -- you know, you would not advise them full speed ahead and we'll -- we'll litigate this in the United -- in -- in the Supreme Court.

MR. CLEMENT: I would -- what I would tell them is there might be reasons to be somewhat cautious, but my best reading of the statute is you don't have anything to worry about after 2005.

And the reason I say that is because, first of all, the statutory text specifically says that you have to compensate -- you have to traffic in the property interest that was confinscate, like -- confiscated. Now, obviously, I've pieced together some pieces of the statute, but I think that is the best reading, that you need the one-to-one correspondence.

And then I would say: Look, I pulled

the claim, and when I pulled the claim, I saw that the only basis for a claim to ownership of the docks was "on the basis of the concession." That's Joint Appendix 256. And then I'd keep paging through, and at Joint Appendix 259, it says that expires in 2004.

So I would say: Look, I'm -- you know, there's a lot of money under the statute the way the Petitioners interpret it. There's an enormous amount of money under the statute. So you may get sued. But, if you want my best answer, my best answer is you're in the clear after 2005.

And like I said, that doesn't really distinguish it from a whole bunch of other property that Cuba confiscated. From the Sabbatino case, they -- they -- they -- they confiscated sugar. It's a perishable good. The sugar that was confiscated in 1960 is not available for trafficking anymore. That doesn't mean that the claim to the perishable good is -- it doesn't mean that it wasn't confiscated. It doesn't mean that the people in Sabbatino don't have a claim against the Cuban government.

It just means that in the nature of certain property interests, there will either be very little sort of window for trafficking in that same property interest or there will be none at all. As I said, the big --

JUSTICE ALITO: Well, if your -- if your reading of the -- of the statute is correct, it's argued it would make hash of the coverage of patents, and that does seem to me to be correct. Why is it not?

MR. CLEMENT: Well, it's not for two reasons. One is because the universe of confiscations didn't stop in 1960. So, as a -- as at -- as at least a theoretical matter, and that's what you should be looking at if you're worried about deeming terms superfluous in a statute, you could confiscate patents going forward.

But the second reason is not --

JUSTICE ALITO: As a theoretical matter, Congress included patents because it thought that even though all the patents that had been issued to Americans in Cuba before the Cuban revolution had expired after 17 years, somebody here might go to Cuba after the

enactment of the -- of the Helms-Burton Act and get a patent on something under Cuban law and then the Cuban government might subsequently confiscate that patent? That's why Congress included patents in the statute?

MR. CLEMENT: So I think -- in fairness, I think Cuba -- Congress included patents in the statute because it wanted to be comprehensive of all interests in the -- in property. But I don't think it's a farfetched hypothetical to say that somebody might have, like, illegally left Cuba, from the Cuban government standpoint, had a patent, and that patent was canceled, and that might be something that they could give a -- bring an action to.

The other thing I will say is, look, the government looked through all these claims, and they found -- even in 1960, they found only two claims that involved patents. And I do think this does underscore the point that Justice Barrett alluded to, which is it just can't be right that if you traffic in anything that's covered by one of these claims that you get to recover the full amount of the claim

because, like, one of the two patent claims that they point to on page 29 of their brief -- I looked it up -- it's ITT. So IT&T was one of the largest sort of confiscees, if you will, and the total amount of their claim is $500 million. The value of the patents that were confiscated is $7,000.

Now, first of all, I think the reason we're right about patents is because, like, I think it's weird to create a perpetual patent. But, if you assume that that's the right answer and so that patent becomes the super-patent and it continues to apply and somebody infringes on one of IT&T's patents in 2026, they can't be entitled to the full $500 million in the claim, or, if they are, I'm going to stop doing what I'm doing and move on to something else --

(Laughter.)

MR. CLEMENT: -- because that is an unbelievable windfall. So it has to be that it's not the claim, the claim, the claim. It's the property interest, the property interest, the property interest.

And you need to have that one-to-one correspondence between that which was

confiscated and that which you trafficked in. If you don't have that, it doesn't mean the claim goes away. It doesn't mean the property's not confiscated. It just means that the particular person who arrived at a neighbor's property or arrived at the docks five years too late, they are somebody who is now going to be put in the extraordinary position of being the substitute payor of just compensation for the Cuban government.

JUSTICE SOTOMAYOR: Why not? Putting aside the multiple recovery issue, which I agree with you gives rise for concern, okay? Putting that aside, why isn't this like a lien?

You buy the property. You know that you have to pay someone who owned the use of the docks before. Now, whether it was exclusive or not, you're a cruise line, you know that the Commission has said that they had a lease interest that was at least for unloading cargo, I'll concede that, why aren't you liable?

MR. CLEMENT: Because that's not the statute that Congress wrote. I mean, I too enjoyed the part --

JUSTICE SOTOMAYOR: If I -- if I disagree with your construction of the statute, if I see that all you have to have is a claim in confiscated property, and the lease is a claim on the docks, whether you want it to be a claim on the docks or not, it is because the lease is of the docks.

MR. CLEMENT: So I just can't find that in the statute. And, I -- like, I too enjoyed their brief and I enjoyed the reference to lien and I enjoyed the reference to encumbrance. And if I found either of those words in this statute, I might think --

JUSTICE SOTOMAYOR: It defines --

MR. CLEMENT: -- they had a pretty good point.

JUSTICE SOTOMAYOR: -- "property" as liens.

MR. CLEMENT: What's that?

JUSTICE SOTOMAYOR: It defines -- the statute defines "property."

MR. CLEMENT: It might include liens --

JUSTICE SOTOMAYOR: Legal.

MR. CLEMENT: -- but it doesn't make

the claims liens. It doesn't make a Claim Commission -- a claim a lien on the property. It doesn't make it an encumbrance on the property. It doesn't do all of those things.

And, of course, I -- I don't need to tell you, like, you know, liens are, like, interesting creatures. They don't require you to have any real interest in the property. If I have a mechanic's lien on a property, I don't have to have any interest in the property.

So I think, if Congress wanted to come up with a lien regime, then, you know, it would have written a different statute, and I would have given different advice to the client in -- in Justice Alito's hypothetical. I would say, yeah, that's the same address.

JUSTICE SOTOMAYOR: All right. Thank you.

MR. CLEMENT: And --

JUSTICE BARRETT: Mr. Clement, why wouldn't -- so part of the intuitive appeal of your argument is it feels unjust, right? Putting aside the statutory language, I mean, it feels unjust because of the multiple recoveries possibility and -- and because this

was a time-limited interest.

But the time-limited nature of it is presumably accounted for in the valuation. And I don't see what's wrong with Justice Alito's description of saying that if something is taken at the time, so in 1960, Castro takes it, that it then becomes kryptonite. For purposes of trafficking, nobody can touch it. And it wasn't just the lease because they paid for these improvements and they were never compensated for those improvements.

So I guess I just don't see in the statute, which does talk -- I agree with you that it requires a one-to-one insofar as you have to traffic in "the property" and not "the grocery store," right? "The property."

But it seems like "the property" is the docks, the use of the docks. I guess I don't understand why that's crazy.

MR. CLEMENT: Well, it's not crazy, but it's -- with all due respect, it's wrong because it needs to be the particular property interest that was confiscated. And so let's take the hypo with the -- the mineral rights and the timber rights. Maybe it's easier to

understand because it's the same parcel.

But, if somebody goes there and all that was ever confiscated was the mineral rights, and, you know, some company goes there and it takes all the timber and takes the lumber away, I wouldn't think they trafficked in the confiscated property. And I don't know why it's different from the -- the time limits.

And to the extent the government is sort of suggesting this sort of suspension or tolling rationale, there's two things wrong with that. One is my friends on the other side, at page 9 of their reply brief, expressly disclaim suspension or tolling.

And the other thing is it's just wrong as a factual matter because we know from the experience with this particular concession where, from 1906 to 1910, the Cuban government had a spat with, you know, Scovel or whoever was the original developer, and they couldn't move forward for four years, and it didn't tack on four extra years to the concession. The concession ends -- you know, the first one was 50 years. It got extended 49 years, which is the maximum, by the way, that Cuban law

allowed. So it was always like it's not a tolling, it's not like -- it really isn't 44 years. It really is until 2004.

But the bottom line is Congress could have written a different statute. They could have made it clear that it's a lien, it's an encumbrance. They could have said no, no, it's -- it's just the parcel.

Now they would have really had to write a different statute because I think then, if you go to 6082(a)(5)(D), that provision would be written differently if that's the way they conceptualized. And then the provision about authorization I think would have been written differently because it doesn't make sense. If -- like, if somebody had the mining rights and somebody had the timber rights and somebody wants to harvest the lumber, if the person with the mining rights gave permission to the person who took all the lumber, like, that doesn't make any sense. It's got to be the specific property interest.

And if that's true spatially or for mining versus timber, there's no reason that's not the right answer for the basis of time.

JUSTICE JACKSON: Mr. Clement, what's your response to it would have been written differently and in the way that you describe if Congress's aim was compensation? But, if Congress's aim is to do what Justice Alito suggested, which is put pressure on the Cuban government, create a sanctions regime, and keep people from trafficking in foreign property or stolen property in this way, I don't understand why the statute wouldn't be written exactly as it is, giving anybody whose property was -- was taken, as certified by the FCSC, the ability to say, however many years later, nobody should be using my property until I get compensation for it.

MR. CLEMENT: Well, it I -- I mean, first of all, it all depends on what we mean by "my property." And I would say "my property" --

JUSTICE JACKSON: No. Can you answer the purpose question?

MR. CLEMENT: -- is that which was confiscated, which was --

JUSTICE JACKSON: Can -- can you -- can you answer the -- the extent to which what

we expect to see in the statute, the structure? You keep saying Congress would have written it a different way, but I'm saying Congress would have written it the way you're talking about if they were trying to compensate people.

JUSTICE KAGAN: But you're not saying it has to be compensation, right? I mean, there were 44 more years left in which these kinds of suits could have been brought. And that doesn't have anything to do with compensation or not. The -- the -- the suits could have gone wildly over the amount that was -- that -- that you had at -- at issue, correct?

MR. CLEMENT: Absolutely. And -- and indeed, like --

JUSTICE KAGAN: The only thing you're saying -- you're not saying tie it to compensation. You're saying tie it to the nature of the property interest.

MR. CLEMENT: And -- and --

JUSTICE KAGAN: And at some point, a temporal property interest runs out and you don't have it anymore.

MR. CLEMENT: That -- that's exactly

right. And what the -- what Congress clearly wrote this statute is they put not everybody, but they put a very specific person in this unusual role as the substitute payor for a just compensation for the Cuban government, and it's the person who traffics in the property interest that was confiscated.

Now, in this case, even one of the Respondents, there's an argument that they went there before 2004. So this is not like -- this is not an argument that nobody gets compensation for this -- this interest, but, you know -- and if you have some, like, amazing sugar that can still be used in 2027, well, then that's something where you can traffic in that which was confiscated.

But there are plenty of interests. And I -- and I do want to say, like, the single largest element of all of these claims when I looked at them are these forgiven debts or repudiated debts or destroyed accounts receivable because they expropriated the other U.S. company. I don't see how anybody traffics in any of those.

So Congress wasn't trying to pass a

statute that says we don't want anybody to go anywhere near Cuba and we want to provide a trafficking remedy for everybody who has a claim against Cuba.

It's a more limited statute. And this is the other thing, Justice Jackson. Like, if you look at the statute, I mean, my friends want you to sort of say this is the most punitive statute ever, so you should interpret every word in it to be as punitive as possible.

That's actually not the statute that Congress wrote. There are things like anybody who was there before gets a grace period. There's a two-year statute of limitations, so if nobody sues you within two years of trafficking, there's an amount in controversy requirement. So --

JUSTICE JACKSON: Why doesn't that go to deterrence? I mean, the last thing the SG said was it's not remedial, that -- that the point of it is to make this scheme be so that cruise lines in the future will not use property that has been confiscated by the Cuban government in this way.

MR. CLEMENT: So can I say two things

in response to that?

JUSTICE JACKSON: Yes.

MR. CLEMENT: One is that everything I just said about the statute not being maximally punitive means that it's also not maximally deterrent. It's a balanced statute. There are provisions in there. Presumably, it was a compromise.

The other thing is, if you take a step back, this is at some level a statute about compensation because what makes what Cuba did unlawful is not that they took U.S. nationals' property. It's that they did it without providing just compensation.

So the whole theory of this statute is, I don't know whether we're ever going to get just compensation from Cuba, but if we can get substitute payors who actually trafficked in the confiscated property, that's good enough. I'm sorry.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Justice Thomas?

Justice Alito?

Justice Sotomayor?

Justice Gorsuch, anything further?

JUSTICE KAVANAUGH: Just critical to your whole case and the answers to everyone is the exact parsing of the definition of "property." So you just want to walk through the definition of "property"? Because you keep -- you -- you said to Justice Alito: We're piecing together various parts of the statute.

MR. CLEMENT: Sure.

JUSTICE KAVANAUGH: But I think it boils down to those -- those words in the -- in the property definition, I think, and, if so, can you just walk us through and summarize your position on that?

MR. CLEMENT: Sure. I mean, to -- for me, it's most helpful to start with 682(a)(1)(A) that says, "any person" -- and I'm going to skip over "after the end of the three-month period" -- "any person that traffics in property which was confiscated."

JUSTICE KAVANAUGH: Mm-hmm.

MR. CLEMENT: So then it's a defined term in the statute, so, of course, like any good textualist, I'm going to go to the

definition of "property" in the statute, which is in sub 12, it's in 11A of the blue -- the appendix to the blue brief.

And then it says "the term 'property' means any property." And that seems to me almost the most important thing, but, to me, what makes this kind of easy is then it says including any leasehold interest.

Okay. So I know that the concession's not exactly a leasehold interest because a leasehold gives you control and we desperately say they didn't have control of the docks, they just had a concession. But it's -- it's at least like a leasehold and then it's time-limited.

And then I pop back to 682(a)(1)(A) and I say: Okay, who has the cause of action here? It's the -- it's the "U.S. national who owns the claim," not a claim, which -- I mean, I know -- I know, like, you don't always get too excited about definite versus indefinite articles, but this would be a much better statute for the other side if it said "a" instead of "the."

It says "the claim," but here's the

killer, "to such property." And so the "such property" has to refer back to the property that was confiscated, and that isn't like the street address or the dock says facilities. That's the property that was confiscated, and that includes a leasehold, but when the leasehold's over, you're not going to be in a position to find somebody who trafficked in that which was confiscated.

JUSTICE KAVANAUGH: Thank you.

MR. CLEMENT: That's all I got.

CHIEF JUSTICE ROBERTS: Justice Barrett?

JUSTICE BARRETT: No.

CHIEF JUSTICE ROBERTS: Justice Jackson?

Thank you, counsel.

MR. CLEMENT: Thank you, Your Honors.

CHIEF JUSTICE ROBERTS: Rebuttal, Mr. Klingler?

REBUTTAL ARGUMENT OF RICHARD D. KLINGLER
ON BEHALF OF THE PETITIONER

MR. KLINGLER: Just a couple of points. First, the claim. The -- it doesn't stand in isolation. Section 682 requires proof

of "ownership of the claim." And Congress used "the claim" rather than "a claim" because that can be contested, that if you look at (a)(5)(D), particularly if you don't have a certified claim, you're asserting "the claim" in the particular litigation, you still need to show that there's ownership to it, and if someone else has a certified claim that is covering the same interests, that you don't have "the claim."

So Congress had to use "the claim" there. But, in (a)(3), it talks about liability arising from someone who traffics, and the liability is in relation to anyone who holds "a claim." Same with (a)(4), it talks about bringing an action on "a claim."

Second, Justice Alito's advice question isn't a hypothetical. The cruise line association was asked as it appeared that suspension may be lifted for the private right of action, they were asked: Do we have exposure here? And the answer wasn't: Oh, no, there may be some litigation risk, but 2005 on you're fine. It was: Oh, my gosh, you have a tremendous amount of risk, and they gave the

certain reasons that might be defenses, but the -- the gist of it was hardly that the statute's clear and in some way relieves you of the obligation.

And when the cruise lines were lobbying to keep the suspension -- or to keep the private right of action suspended, they said: Please, President Trump, don't implement the private right of action because we're liable for hundreds of millions of dollars.

They knew exactly what had happened. They'd been advised by their lawyers. We have the Cleo memo in the Joint Appendix, and the -- the 2005 issue didn't even feature at least prominently. It was -- a lot were mentioned. You can throw one of the -- well, and then a third is I just want to tie the foreign policy interest to the scope of the remedy here.

I think that -- I mean, kryptonite was a better example. I wish I had used that. But this is designed by Congress to put property that had been seized off limits from trafficking. That's what fueled the -- the communist regime. That's what was trying to be prohibited here, in addition to giving an

incentive for Cuba to make a remedy, but I don't think that was actually expected.

But, if you take the Eleventh Circuit's approach here, almost nothing is left of the statute in this regard, that it's not just a few time-limited interests, it's leases, almost all business leases over a 65-year period will have evaporated by now. It's life interests. Every day another interest holder dies, then their -- that property is freed up for exploitation under the --

CHIEF JUSTICE ROBERTS: You can finish your sentence.

MR. KLINGLER: Freed up for exploitation under the Eleventh Circuit's view.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

The case is submitted.

(Whereupon, at 11:37 a.m., the case was submitted.)

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