No. 24-699

IN THE

Supreme Court of the United States

EXXON MOBIL CORPORATION,

Petitioner,

v.

CORPORACIÓN CIMEX, S.A. (CUBA), *et al.*,

Respondents.

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

BRIEF OF *AMICI CURIAE* KING RANCH INC., VERTIENTES-CAMAGUEY SUGAR COMPANY, AND GRANT MANHEIM IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are owners of claims to property in Cuba that was confiscated by the Cuban Government after Fidel Castro came into power. Their claims either have been or could be brought against instrumentalities of the Cuban Government, seeking compensation for damages due to trafficking in the confiscated property.

King Ranch Inc. ("King Ranch") is based in Texas and holds a certified claim from the Foreign Claims Settlement Commission ("FCSC") for confiscated property that was expropriated by the Castro regime in 1960, including a cattle ranch and associated land and other assets, which are still in use today even though King Ranch has never received any compensation for it. King Ranch is the plaintiff in an ongoing civil action against various Cuban state-owned entities that are trafficking in and benefitting from the confiscated property. *See King Ranch Inc. v. Empresa Agropecuaria Nuevitas, et al.*, No. 1:21-cv-00594 (D.D.C.).

Vertientes-Camaguey Sugar Company ("VCSC") is currently based in Florida but previously operated in Cuba starting in 1942, where it engaged in the business of growing sugar cane and manufacturing and selling raw sugar, refined sugar, blackstrap molasses, and alcohol.

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1. Pursuant to Rule 37.2, all parties' counsel of record received timely notice of the intent to file this *amicus curiae* brief. In accordance with Rule 37.6, neither a party nor party's counsel authored this brief, in whole or in part, or contributed money that was intended to fund its preparation or submission. No person (other than the *Amici* or their counsel) made a monetary contribution intended to fund its preparation or submission.

It also raised cattle. All of its assets were confiscated by the Cuban Government in 1960, including its factories, approximately 179,897 acres of land, its 270 miles of railway, associated roads and supply lines, and the Port of Santa Maria. Many of VCSC's shareholders obtained certified claims from the FCSC. VCSC has reason to believe that Cuban instrumentalities are currently trafficking in its confiscated property, and it is actively considering whether the Helms-Burton Act provides a path to recover value for its shareholders.

Grant Manheim is one of the VCSC shareholders. He is a U.S. national who led an effort to acquire and consolidate the claims of other VCSC shareholders through a tender offer in 1993. Cuban state-owned entities and their business partners are currently trafficking in the property confiscated from VCSC.

SUMMARY OF ARGUMENT

The decision below imposes yet another in a long line of barriers to recovery for victims of the Castro government's confiscation of property beginning in 1959 during the Cuban Revolution. More than 60 years later, Castro's victims here in the U.S. still have not received any compensation for the rampant confiscation of their property. The Cuban Government, on the other hand, continues to use and benefit from the confiscated property through state-owned entities and their foreign business partners. Lucrative oil and mining operations, agricultural land developments, luxury hotel properties, and profitable port facilities all operate on confiscated property, generating profits for the communist Cuban Government and its allies at the expense of the rightful owners.

In 1996, Congress sought to remedy this injustice by enacting the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, also known as the Helms-Burton Act. Title III of the Act creates a private right of action for U.S. nationals who "own[] the claim" to property "confiscated by the Cuban Government on or after January 1, 1959." 22 U.S.C. § 6082(a)(1)(A). Such claimants may sue "any person" who "traffics in" the confiscated property. *Id.*

For twenty-three years, the Executive Branch exercised its prerogative to suspend Title III's private right of action. That suspension ended in May 2019, but now a divided panel of the D.C. Circuit has erected a new barrier to recovery, holding that Title III claims may proceed against Cuban instrumentalities only if the suit falls within one of the exceptions to foreign sovereign immunity contained in the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1602 *et seq.* Requiring Title III claims to also satisfy the FSIA framework will deny many claimants the "judicial remedy" that Congress promised, 22 U.S.C. § 6081(11), because many instances of trafficking by Cuban-owned enterprises may not satisfy any FSIA exception. Moreover, the sheer cost and burden of establishing jurisdiction under the FSIA will discourage many claimants from even trying.

The decision below imposes the FSIA's burdens and barriers on Title III actions, which is a significant factor considered by *Amici* in deciding whether and how to pursue their Title III claims. Frankly, the prospect of many years of litigation and multiple appeals is a daunting reality that has an outsized influence in the decision whether to bring a claim at all. This Court should grant review on this important question, which has real consequences for U.S. nationals who own claims.

ARGUMENT

I. The Helms-Burton Act Is Intended To End The Cuban Government's Stonewalling Of Compensation Owed To U.S. Nationals.

The confiscation of *Amici's* properties occurred in the early 1960s, but like thousands of other claimants, they have never been compensated. The Cuban Government has every incentive to continue its six-decade campaign of denying compensation to U.S. nationals through any and every means possible. One of its most effective delay tactics, on display in this case, is the FSIA.

The effort to achieve compensation began shortly after Castro seized power. In 1964, Congress authorized the FCSC "to gather information for an eventual negotiation on claims of confiscated properties in Cuba." *Garcia-Bengochea v. Carnival Corp.*, 57 F.4th 916, 920 (11th Cir. 2023). This claim review process occurred twice, with the first Cuba program continuing through July 6, 1972 and the second transpiring in 2005-2006; in total, the FCSC certified "nearly 6,000 claims valued at about $1.9 billion."[2] *Id.* (citing Sylvia M. Becker & Patrick Hovakimian, *Foreign Claims Settlement Commission of*

2. This value includes only certified claims; because the Helms-Burton Act also permits actions by anyone who "owns the claim"—whether certified or not—the total value of all outstanding claims is certainly higher. 22 U.S.C. § 6082(a)(1)(A); *see also id.* § 6082(a)(5)(C) ("A United States national, other than a United States national bringing an action under this section on a claim certified [by the FCSC] . . . may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.").

the U.S., United States Department of Justice (updated April 21, 2022) (available at https://www.justice.gov/fcsc/claims-against-cuba)). "Cuba and the United States, however, have never reached a settlement on these claims (or, for that matter, on claims by Cuba against the United States)." *Id.* (citing Richard E. Feinberg, *Reconciling U.S. Property Claims in Cuba: Transforming Trauma into Opportunity*, Latin America Initiative at Brookings, at 2-15 (December 2015)).

Because Cuba never agreed to settle the claims of U.S. nationals, Congress passed the Helms-Burton Act to provide a remedy for the "wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner." 22 U.S.C. § 6081(2). Congress expressly found that "[s]ince Fidel Castro seized power in Cuba in 1959 . . . he has trampled on the fundamental rights of the Cuban people; and . . . through his personal despotism, he has confiscated the property of" Cuban citizens, U.S. nationals, and Cubans who have sought asylum in the United States. *Id.* § 6081(3). Congress further announced that "the foreign policy of the United States" includes "protect[ing] the claims of United States nationals who had property wrongfully confiscated by the Cuban Government." *Id.* § 6081(6). Accordingly, Congress sought to "provid[e] 'United States nationals who were the victims of th[o]se confiscations . . . with a judicial remedy in the courts of the United States.'" *Valle v. Trivago GmbH*, 56 F.4th 1265, 1270 (11th Cir. 2022) (quoting 22 U.S.C. § 6081(11)) (alteration in original).

II. For The First Time In 60 Years, U.S. Nationals Have An Opportunity To Obtain Compensation Via The Remedy Created By Title III Of The Helms-Burton Act.

This judicial remedy is found in Title III of the Helms-Burton Act. *See* 22 U.S.C. § 6082(a). It was supposed to be an antidote to the ineffective remedies under international law. *See Valle*, 56 F.4th at 1270; *see also* 22 U.S.C. § 6081(8) ("[T]he international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property."). This has not stopped some defendants from invoking international law as a defense to a Title III action, although courts typically have rejected those attempts. *See de Fernandez v. CMA CGM S.A.*, 683 F. Supp. 3d 1309, 1329 (S.D. Fla. 2023) ("Requiring a confiscation to violate international law would rewrite the statute's language, which the Court will not do."); *see also Sierra v. Trafigura Trading LLC*, 2024 U.S. Dist. LEXIS 160441, *38 (D. Del. Sept. 6, 2024) (rejecting argument that the "domestic takings rule" is a defense to Title III actions); *Sucesores de Don Carlos Nuñez Y Doña Pura Galvez, Inc. v. Société Générale, S.A.*, 577 F. Supp. 3d 295, 308 (S.D.N.Y. 2021) (same). As Petitioner notes, however, the decision below invokes international law to support its finding that the FSIA's expropriation exception was not satisfied. Pet. at 20 n.2. This is one of the barriers to compensation that Congress sought to eliminate via Title III's remedy.

That remedy is inclusive and broad. It imposes liability on "any person" that "traffics" in confiscated property by, *inter alia*, having an interest in confiscated property, engaging in any commercial use of or benefit

from confiscated property, or doing either of these things by or through another person. 22 U.S.C. §§ 6023(13)(A), 6082(a); *see also Moreira v. Société Générale, S.A.*, 2025 U.S. App. LEXIS 250, *4 (2d Cir. Jan. 7, 2025) (Title III uses a "capacious definition of 'trafficking'"); H.R. Rep. No. 104-468, 58 (1996) (Conf. Rep.), reprinted in 1996 U.S.C.C.A.N. 558, 573 ("The purpose of this civil remedy is, in part, to discourage persons and companies from engaging in commercial transactions involving confiscated property. . . ."). The remedy applies to individuals, entities, and agencies and instrumentalities of foreign states. 22 U.S.C. § 6023(11). This is important because most commercial activity in Cuba involves entities that are owned or controlled by the Cuban Government. For example, the State Department has identified dozens of Cuban entities, across all sectors of the economy, that are under the control of the Cuban military.[3] The list includes entities like CIMEX (a respondent here) and its subsidiaries, Grupo de Administración Empresarial (a conglomerate that runs large parts of Cuba's economy), Almacenes Universales (responsible for importing food), Terminal de Contenedores de Mariel (runs Cuba's largest port), Gaviota (manages tourism in Cuba), and dozens of resort hotels. As Petitioner rightly argues, those entities were not intended to be immunized from trafficking liability.

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3. *See* List of Restricted Entities and Subentities Associated With Cuba Effective June 12, 2020—United States Department of State available at https://2017-2021.state.gov/cuba-sanctions/cuba-restricted-list/list-of-restricted-entities-and-subentities-associated-with-cuba-effective-june-12-2020/ (last accessed Jan. 24, 2025). The list was rescinded on January 14, 2025 by the direction of former President Biden, but it remains available on the State Department's website.

The Trump Administration's decision to lift the suspension of Title III beginning in May 2019 was intended to remove barriers to compensation and hold the Cuban Government accountable. *See Garcia-Bengochea*, 57 F.4th at 920. Remarks by then Secretary Pompeo re-affirmed the commitment of the United States to stand with the Cuban people and against the communist Cuban Government, which "continues to deprive its own people of the fundamental freedoms of speech, press, assembly, and association" and which "undermines the security and stability of countries throughout the [Western Hemisphere], which directly threatens United States national security interests." Michael R. Pompeo, Secretary of State, *Remarks to the Press* (Apr. 17, 2019) (available at https://2017-2021.state.gov/remarks-to-the-press-11/). The Secretary concluded, "[t]oday we are holding the Cuban Government accountable for seizing American assets." *Id.*

Unfortunately, this May will mark the sixth anniversary of "today," and accountability remains out of reach for most claimants. Further delay threatens to run out the clock entirely. This is because defendants have argued successfully that Title III prohibits claims from being transferred or devised after March 12, 1996. *See* 22 U.S.C. § 6082(a)(4)(B); *see also Garcia-Bengochea*, 57 F.4th at 931 ("A U.S. national whose property was confiscated before March 12, 1996, cannot recover damages for another person's unlawful trafficking of that property unless 'such national'—*i.e.*, the specific person bringing suit—acquired the claim to the property before March 12, 1996."); *id.* at 931-939 (Jordan, J. concurring) (explaining the untimely acquisition issue in detail, concluding that "the language of §6082(a)(4)(B) was the result of sloppy

drafting," and "urg[ing] Congress to fix it."). A few defendants have even argued—albeit unsuccessfully thus far—that a claim is extinguished if the claimant dies during the pendency of a Title III action. *E.g.*, *Fernandez v. Trafigura Trading, LLC*, 2022 U.S. Dist. LEXIS 205909, *4 (D. Del. Nov. 14, 2022) (rejecting defendants' argument against intervention by the deceased plaintiff's personal representative and finding that "the claims brought under the Helms-Burton Act are not extinguished upon the death of a party").

Obtaining a money judgment on a Title III claim overcomes these problems. A judgment is typically both revivable and transferable. *See*, *e.g.*, Restat. 2d of Judgments, § 18 cmt. c ("the plaintiff can by appropriate proceedings revive the executability of the judgment or bring an action upon the judgment and obtain a new judgment upon which the limitations period will run again"); *see also Columbia Hosp. for Women Med. Ctr., Inc. v. NCRIC, Inc.*, 461 B.R. 648, 682 (D.D.C. Bankr. 2011) (under DC law, "judgments are freely assignable"); NY CLS Gen. Oblig. § 13-103 ("A judgment for a sum of money, or directing the payment of a sum of money . . . may be transferred. . . ."). Thus, a judgment continues to be enforceable even if the original claimant passes away (in the case of an individual) or dissolves (in the case of an entity).

Money judgments have been hard to obtain in Title III actions. At least 45 Title III lawsuits have been filed in the district courts,[4] but only one has resulted in a

4. The U.S.-Cuba Trade and Economic Council makes some Title III statistics available on its website. *See Libertad*

judgment in favor of the plaintiff—the *Havana Docks* case. As the name suggests, Havana Docks Corporation owns a certified claim to confiscated property at the Port of Havana, which was used by cruise lines when their ships docked at the Havana Cruise Port Terminal. *See Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276, 1278 (11th Cir. 2024). Havana Docks filed the first ever Title III lawsuit on the morning of May 2, 2019,[5] seeking damages against four cruise lines (Royal Caribbean Cruises, Norwegian Cruise Line Holdings, Carnival Corporation, and MSC Cruises) for trafficking in confiscated property. *Havana Docks*, 119 F.4th at 1278. The district court entered "judgments of over $100 million against each of the four cruise lines," but the Eleventh Circuit reversed, set aside those judgments, and remanded for further proceedings in October 2024. *Id.* at 1278-79. The case is now well into its sixth year of litigation.

Petitioner's Title III lawsuit was also filed on May 2, 2019, shortly after the *Havana Docks* lawsuit. It too is in its sixth year of litigation, but because of the FSIA issues, it has not yet progressed past the pleadings stage. *See* Pet. at 11.

Act Filing Statistics, available at https://static1.squarespace.com/static/563a4585e4b00d0211e8dd7e/t/664e2fe9347bf160c998fa81/1716400105412/Libertad+Act+Filing+Statistics.pdf.

5. U.S.-Cuba Trade and Economic Council, *After 43 Months, Florida District Court Judge Hands First Cuba Libertad Act Verdict-Four Cruise Lines Must Pay US$439,217,424.51 Plus US$11,707,484.31 In Legal Fees. Appeals Probable*, available at https://www.cubatrade.org/blog/2022/12/30/5ktq139s6hbx6zam2lse7uiiy193lz ("On 2 May 2022, Havana Docks Corporation, a certified claimant, was the first to file a Libertad Act Title III lawsuit in the United States Southern District Court in Miami, Florida.").

For many claimants, such protracted litigation is simply not an option because the value of their claims does not justify the expenditure of resources necessary to engage in years of litigation. *See*, *e.g.*, *In re Haskew*, Claim No. CU-0849 at 12 (FCSC June 26, 1968) (certified claim in the amount of $1,716.60 plus interest awarded to a VCSC shareholder).[6] *Amici's* own experience confirms this obstacle is real. Not a single VCSC shareholder has brought suit under Title III yet, even though many of them have certified claims. Moreover, it is telling that, of the dozens of claimants that have sued, most have chosen to assert their claims against defendants that are not agencies or instrumentalities of a sovereign, which suggests there is rampant concern about the cost, expense, and delay imposed by the FSIA (a concern that *Amici* share).

III. The FSIA Should Not Pose Yet Another Impediment To The Remedy That Congress Bestowed Upon U.S. Nationals.

One solution to the quagmire facing Title III plaintiffs should be litigation against the Cuban Government and its agencies and instrumentalities. All that is required to pursue an action against a foreign sovereign is effective service of process plus an exception to immunity. *See* 28 U.S.C. § 1330. If the Helms-Burton Act provides the exception, then there should be no need to wade into the more time-consuming factual inquiries attendant to other immunity exceptions under the FSIA. *See* 28 U.S.C. §§ 1605-07. Moreover, personal jurisdiction is typically established by effecting service of process on the foreign

6. The decision is available at https://www.justice.gov/fcsc/cuba/documents/1-1500/0849.pdf.

sovereign and/or its instrumentalities. *See* 28 U.S.C. §§ 1330(b), 1603(a). This solves the problem inherent in attempting to establish personal jurisdiction over foreign companies that traffic in confiscated property through joint ventures with the Cuban Government. *See*, *e.g.*, *Sierra v. Trafigura Trading LLC*, 2024 U.S. Dist. LEXIS 144600, *36 (D. Del. Aug. 14, 2024) (dismissing Title III action and finding insufficient basis for general or specific jurisdiction over Singapore-based Trafigura Group).

Amici agree with Petitioner that forcing Title III claims into the FSIA framework will deny many claimants the "judicial remedy" that Congress promised, 22 U.S.C. § 6081(11), because many instances of trafficking by Cuban-owned enterprises may not satisfy any FSIA exception. Moreover, the sheer cost and burden of establishing jurisdiction under the FSIA will discourage many claimants from even trying. A Title III action against a Cuban instrumentality should be straightforward because the relevant trafficking activities are likely to be identifiable from public sources, as they were in this case. *See Exxon Mobil Corp. v. Corporación CIMEX S.A.*, 534 F. Supp. 3d 1, 9 (D.D.C. 2021) (describing the trafficking activities set forth in the complaint and supporting declaration from counsel). Injecting the FSIA exceptions into the mix adds layers of additional discovery that, in turn, add cost, time, and complexity that unnecessarily impedes the remedy afforded by the Helms-Burton Act.

Discovery of Cuban state-owned enterprises and their activities is particularly difficult because Cuba has criminalized the provision of information in aid of a Title III claim. On December 24, 1996, the National Assembly

of People's Power in Cuba approved Law No. 80,[7] Law for the Reaffirmation of Cuban Dignity and Sovereignty, in reaction to the enactment of the Helms-Burton Act. Law 80 makes it a criminal act to, among other things, seek, supply, request, receive, accept, or facilitate information that would favor the application of the Helms-Burton Act. On February 16, 1999, the National Assembly of People's Power in Cuba approved Law No. 88,[8] Law for the Protection of National Independence and the Economy, which amended the 1988 Penal Code and punished acts aimed at supporting, facilitating, or collaborating with the application of the Helms-Burton Act. Under Law 88, providing information that supports a Helms-Burton Act claim carries a penalty of imprisonment from 7 to 15 years or more if aggravating circumstances exist such as the involvement of two or more persons. Any person who even seeks information that may be used in a Helms-Burton Act case is subject to imprisonment from 3 to 8 years or more if aggravating circumstances exist.

In this context, Judge Randolph's approach makes eminent sense and shows how straightforward a Title III action can be. He would have held that "Title III, considered alone, deprives the Cuban defendants of immunity from suit," leaving no need for plaintiffs to

7. An English description of Law 80 can be found on the Library of Congress' website at https://maint.loc.gov/law/help/sovereign-immunity/cuba.php.

8. An English description of Law 88 and its enforcement by the Cuban Government can be found on Amnesty International's website at https://www.amnesty.org/en/wp-content/uploads/2021/06/amr250182005en.pdf.

fit their claims within an exception to the FSIA. *Exxon Mobil Corp. v. Corporación Cimex, S.A.*, 111 F.4th 12, 39 (D.C. Cir. 2024). Judge Randolph found "scarcely a difference between" the law at issue in *Kirtz* and Title III "in terms of language or function," and saw no reason to give foreign sovereigns greater solicitude than federal or state governments in determining whether Congress has superseded a background rule of immunity. *Id.* at 40 (discussing *Department of Agriculture Rural Development Rural Housing Service v. Kirtz*, 601 U.S. 42, 49-50 (2024)). As Judge Randolph explained, the notion that "Cuban agencies enjoy more protection from lawsuits than agencies of the United States . . . would be a shock" to the Congress that wrote Title III. *Id.*

Congress intended the Helms-Burton Act to create a clear path to compensation for claimants against the Cuban Government and its instrumentalities. The decision below wrongly obstructs this path and threatens to close the courthouse doors to many Title III plaintiffs. It should be reversed.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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