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 IN OPPOSITION

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QUESTION PRESENTED

Petitioner mistakenly frames the Question Presented as pertaining only to the agencies or instrumentalities of the Cuban Government. Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, which establishes liability for "traffic[king]" in "confiscated" Cuban property, 22 U.S.C. § 6082(a)(1), is expressly applicable to the agencies or instrumentalities of *any* government. *See* 22 U.S.C. § 6023(11) ("'[P]erson' means any person or entity, including any agency or instrumentality of a foreign state."). Thus, if Petitioner's interpretation prevails, the instrumentalities of third-country governments, no less than those of the Cuban Government, would be subject to Title III actions in United States courts without regard to the immunity provisions of the Foreign Sovereign Immunities Act, which allows suit only on the conditions specified in its enumerated exceptions to the immunity it otherwise categorically confers. *See* 28 U.S.C. §§ 1604, 1605.

Accordingly, the Question Presented is properly framed as follows:

Whether Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, by establishing the liability of foreign state instrumentalities as well as private parties for trafficking in confiscated Cuban property, abrogates the immunity provisions of the Foreign Sovereign Immunities Act ("FSIA") and allows a Title III action against an instrumentality of a foreign state (whether third-country or Cuban) regardless of whether the action satisfies the conditions specified in the FSIA's exceptions to the immunity it otherwise categorically confers, 28 U.S.C. §§ 1604, 1605.

RULE 29.6 DISCLOSURE

Respondent Corporación Cimex, S.A. (Panama) owns a majority of the shares of Corporación Cimex, S.A. (Cuba). There are no parent corporations of Respondent Corporación Cimex, S.A. (Panama) or Respondent Unión Cuba-Petróleo. No publicly held company owns 10% or more of the stock, if any, of Respondents.

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BRIEF FOR RESPONDENTS IN OPPOSITION

INTRODUCTION

The Petition presents a question concerning the interplay of two statutes, Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. §§ 6021 *et seq.* ("Helms-Burton Act"), and the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1602 *et seq.* The court of appeals correctly found they are not in conflict and easily harmonized. Under the decision below, Title III, which does not speak of immunity from suit, provides a cause of action that can be pursued against foreign instrumentalities on conditions set by Congress in the FSIA's enumerated exceptions to immunity, but not otherwise. 28 U.S.C. §§ 1604, 1605. *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42 (2024) and its line fully support this result: when statutes establishing liability of an immune defendant have been found to abrogate immunity, immunity would have negated the cause of action entirely, a far cry from here.

Petitioner's unsupported argument to the contrary—that, by establishing the liability of instrumentalities as well as private persons, Title III sweeps the FSIA aside and abrogates immunity, eliminating the need to meet the conditions set by Congress in the FSIA—rests on the assumption that Congress pursued its putative goals at all costs, without balancing other considerations. The Court has repeatedly warned of the fallacies and perils of this approach to statutory interpretation.

The need for far firmer ground is compelling here, where the complex, competing considerations that

Congress balances when considering foreign sovereign immunity are so evidently present. At issue is whether foreign instrumentalities—*both* third-country and Cuban alike—should be subject to suit in U.S. courts on an exceptionally broad cause of action, not recognized and controversial elsewhere, in the absence of the territorial nexus thought necessary by Congress in the FSIA commercial and expropriation exceptions and, additionally for the expropriation exception, without rights in property taken in violation of international law being in issue.

Far from a judicially manufactured obstacle thwarting the will of the political branches, as Petitioner charges, the decision below both respects and safeguards Congressional judgment in this sensitive area.

Petitioner is wrong that the court below erred. But even aside from this, the Petition should not be granted.

Petitioner's own interests do not require certiorari at this juncture, when it still may be able to proceed under the FSIA's commercial activity exception. Petitioner and *amici*'s conjecture that would-be plaintiffs will be deterred by the decision below from suing Cuban instrumentalities, with a meaningful loss in Helms-Burton's efficacy, ignores that the slim to non-existent chance of recovering on any judgment will discourage all but the rarest of plaintiffs from suing Cuban instrumentalities.

To satisfy FSIA's exceptions to execution immunity, plaintiffs need to establish the same circumstances that would satisfy the FSIA exceptions to immunity from suit. This makes the question of Title III abrogation of immunity from suit largely academic.

The decision below has no doctrinal significance. It does not conflict with or undermine *Kirtz*, or any circuit (or district court) decision on the interplay of statutory causes of action with the FSIA or any other immunity regime. It adheres to settled principles of statutory interpretation. Petitioner has not shown that the court's holding that the FSIA applies to Title III threatens disruption of other statutory schemes, let alone disruption so certain, urgent, and important as to warrant certiorari here, and it does not. The question presented is *sui generis*; it is framed by the unique interplay of two specific statutes, Title III and the FSIA.

STATUTORY PROVISIONS INVOLVED

Respondents' Appendix ("App.") provides relevant provisions of the Helms-Burton Act and the FSIA omitted by Petitioner.

STATEMENT OF THE CASE

Petitioner's treatment of Helms-Burton Act's Title III is deficient in important respects, as is its account of the procedural history and the decisions below.

1. Title III, 22 U.S.C. § 6082(a)(1), provides that persons who "traffic[]" in "confiscated" Cuban property are "liable" to the U.S. national who "owns the claim to" the property. Title III does not mention immunity from suit, nor the FSIA immunity provisions.

In July 1960, the Republic of Cuba expropriated an oil refinery, terminals and service stations owned by Esso Standard Oil, S.A. ("Essosa"), Petitioner's then

Panamanian subsidiary. Petitioner alleges that Cuba transferred the oil refinery and terminals to Respondent Unión Cuba-Petróleo ("CUPET") and the stations to Respondent Corporación Cimex, S.A. (Cuba) ("CIMEX"). Respondent Corporación Cimex, S.A. (Panama) is sued as CIMEX's alter ego. Pet. 5-6, 53a-54a, 57a-59a.

Petitioner invokes two FSIA exceptions to immunity, 28 U.S.C. §§ 1605(a)(2) (commercial activity) and 1605(a)(3) (expropriation). In a ruling on which Petitioner has not sought review, the court of appeals held that, for reasons particular to it, Petitioner cannot satisfy the latter's requirement that its action puts in issue "rights in property taken in violation of international law": the confiscated property was owned by a third-country subsidiary with assets outside of Cuba that continued in operation. Pet. 18a-24a. Whether Petitioner can satisfy the commercial activity exception has not been decided.

Without awaiting resolution of that question, Petitioner seeks certiorari on its alternative position that Congress, by establishing instrumentality as well as private liability, swept aside the FSIA's requirements and abrogated sovereign immunity for Title III actions. The court of appeals, with Judge Randolph dissenting, rejected this proposition, as did the district court. Pet. 8a-15a, 62a-70a.

Petitioner's position would eliminate the FSIA's territorial nexus requirements: for the commercial activity exception, as relevant here, that suit is allowed on commercial activities outside the United States if it "causes a direct effect in the United States"; for the expropriation exception, that suit is allowed if the instrumentality owning or operating expropriated

property "is engaged in a commercial activity in the United States" or the expropriated property (or property exchanged for it) is here. Petitioner's position would also eliminate the expropriation exception's further condition that the suit put in issue rights in property taken in violation of international law.

These conditions for suit would be eliminated for the instrumentalities of *any* foreign state; Title III applies to "any agency or instrumentality of a foreign state," 22 U.S.C. § 6023(11). Their exposure is extraordinary: "trafficking" is not confined to ownership but includes, *inter alia*, "use[]" of confiscated property; "engag[ing] in a commercial activity using or otherwise benefiting from confiscated property"; or "caus[ing], direct[ing], participat[ing] in, or profit[ing] from" "trafficking … by another person, or otherwise engag[ing] in trafficking … through another person." 22 U.S.C. § 6023(13).

Title III's breadth is illustrated by *North American Sugar Indus., Inc. v. Xinjiang Goldwin Sci. & Tech. Co., Ltd,* 124 F.4th 1322, 1334-36 (11th Cir. 2025) (third-country exporter's use of confiscated piers to offload cargo constitutes trafficking). *See also Havana Docks Corp. v Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276, 1288 (11th Cir. 2024) (carrier landing planes at airport on confiscated land constitutes trafficking).

The dissent waved away the difficulties in supposing that Congress abrogated the immunity of third-country as well as Cuban instrumentalities *sub silentio* as without practical effect. Pet. 47a, n.3. It cited no authority for ignoring as meaningless what Congress expressly provided. Further, the breadth of activities

covered by Title III, combined with the extent of Cuban expropriations, make it possible to claim no exposure only by assuming that third-country instrumentalities have no relations with Cuba. Yet, state-owned enterprises account for a substantial part of transnational commercial activity[1] and even a cursory review of publicly available material shows that the instrumentalities of numerous countries—including Argentina, Brazil, China, Italy, Qatar, Poland, Russia and Singapore—have, *inter alia*, exported goods to Cuba, used Cuban airports and provided financing for projects in Cuba.[2]

Congress had the FSIA very much in mind when enacting Title III: *inter alia*, it expressly amends the FSIA's execution immunity provisions. *See* 28 U.S.C. § 1611(c). In contrast, Title III is silent on immunity from suit. This was not always so: as reported out by subcommittee, Title III expressly amended the FSIA to add Title III actions to FSIA § 1605's enumerated exceptions to immunity from suit, but the provision was withdrawn when the bill reached the full House Committee on International Relations. *See* App. 16a-22a for the withdrawn provision. Title III eliminates the Act of State doctrine as a barrier to Title III actions, 22 U.S.C. § 6082(a)(6), while remaining silent on immunity from suit.

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1. Przemyslaw Kowalski, *On Traits of Legitimate Internationally Present State-Owned Enterprises*, in Luc Bernier et al., The Routledge Handbook of State-Owned Enterprises 145-48 (Routledge 2020).

2. Simply for airlines, there is Argentina (Aerolineas Argentinas); China (Air China); Poland (LOT Polish Airlines); Qatar (Qatar Amiri Flight) and Russia (Aeroflot). *See, e.g.,* AirNavRadar, https://www.airnavradar.com (last visited March 24, 2025).

Title III does not provide a new grant of subject-matter jurisdiction. 28 U.S.C. § 1330(a), which the Court has repeatedly held to be the sole source of subject-matter jurisdiction for actions against instrumentalities, is limited to actions for which there is no immunity under FSIA §§ 1604, 1605. This places actions resting on Title III's purported abrogation beyond § 1330's reach, and there is no other source of subject-matter jurisdiction for Title III actions.

Title III leaves intact the FSIA execution provisions. To satisfy the FSIA exceptions to execution immunity, a Title III judgment creditor needs to establish the same circumstances that would place its action within the FSIA's commercial activity or expropriation exceptions to immunity from suit in the first place. *Compare* FSIA §§ 1605(a)(2), 1605(a)(3) *with* FSIA §§ 1610(a)(2), 1610(a)(3), 1610(b)(2).

2. Respondents moved to dismiss Petitioner's action pursuant to Fed. R. Civ. P. 12(b)(1). Ruling on the parties' proofs the district court found the FSIA's commercial activity exception satisfied with respect to CIMEX. Pet. 75a-88a, 108a. On interlocutory cross-appeals, the circuit held that CIMEX's use of a limited number of Essosa service stations for collection of U.S.-origin remittances and sale of U.S-imported foodstuffs would satisfy the commercial activity exception's "direct effect" requirement, provided it caused a difference in total U.S. remittances or exports. It reversed and remanded for fact-finding on that issue. Pet. 24a-40a. As to CUPET, the district court found that Petitioner had not established "direct effect" but allowed "limited" discovery. Pet. 88a-94a, 104a. Discovery on these issues remains underway. No. 19-cv-01277 (D.D.C.), ECF Nos. 86-97. Litigation of personal jurisdiction has

been deferred pending determination of subject-matter jurisdiction. Pet. 60a.

On the merits, there is, *inter alia*, the question whether Petitioner "owns the claim to" the confiscated property, 22 U.S.C. § 6082(a)(1) (the question turns on Panamanian and Cuban law, given the ruling that Petitioner does not as a shareholder own a claim to Essosa property under international law), and determination of which (if any) of the Essosa properties are operated by Respondents and their value.

3. The court of appeals found that Petitioner's Title III abrogation theory must be rejected because "Title III harmoniously coexists with the FSIA" since "it allows for actions" against instrumentalities "who traffic in expropriated property in those circumstances in which the FSIA allows for jurisdiction over the foreign sovereign—*i.e.*, when an FSIA exception applies." Pet. 10a.

It found further support for its conclusion in, *inter alia*, the FSIA specifically and comprehensively addressing immunity from suit but Title III only addressing "liability;" Congress being well aware of the FSIA immunity from suit provisions when enacting Title III yet not addressing them; and Congress' choice to amend the FSIA expressly in other ways. Pet. 11a-13a.

The court found that, since a "host of sensitive diplomatic and national-security judgments … pervade waivers of sovereign immunity," "Congress's balancing of those considerations" in the FSIA "must be respected" absent Congress unambiguously making a new judgment in Title III. It found there was no ambiguity, and further held that any ambiguity must be resolved in favor of preserving immunity. Pet. 12a, 14a.

ARGUMENT

I. The Decision Below Is Correct

Petitioner asks the courts to do by interpretation that which it cannot show Congress did by legislation, and what Congress deliberately chose not to do. The court of appeals correctly rejected Petitioner's invitation to rewrite Title III.

A. The Decision Below Does Not Conflict with *Kirtz*

Petitioner argues that *Kirtz* "directly controls," claiming that the "language of Title III" providing a cause of action against instrumentalities "is substantively identical to the language of" the Fair Credit Reporting Act ("FCRA"). Pet. 17. What Petitioner and the dissent below ignore is that the statutory restrictive immunity regime of the FSIA at issue here differs fundamentally from the common law, absolute immunity involved in *Kirtz*. The differences are dispositive.

Kirtz held that the FCRA abrogated the federal government's immunity because otherwise its conferral of a cause of action against the government would have been "negate[d]." *Kirtz*, 601 U.S. at 49-51 (internal quotations omitted). *Kirtz* relied heavily on *Fin. Oversight and Mgmt Bd. for P.R. v. Centro De Periodismo Investigativo, Inc.*, 598 U.S. 339 (2023) ("*FOMB*"), which described the circumstances where a statutory action against the government abrogates immunity as follows: "recognizing immunity would have negated those authorizations: The very suits allowed against

governments would *automatically* have been dismissed." *Id.* at 348 (emphasis added). *Kirtz* expressly quoted and applied this "negation" standard to explain why it was "unmistakably clear" that the FCRA authorizing suit against government agencies amounted to waiver of immunity. *Kirtz*, 601 U.S. at 49-50 (internal quotations omitted).

In sharp contrast, Title III suits would not be "automatically" dismissed. Far from it: suits, including this one, may proceed if the FSIA's requirements are met. Notably, the *Kirtz*/*FOMB* "negation" standard has *never* been applied outside the circumstances present in *Kirtz* (and dispositively absent here) of an otherwise *absolutely* immune defendant.

Petitioner misreads *Kirtz* to apply because "at least *some*" Title III suits would be dismissed were the FSIA to govern. Pet. 20 (emphasis in original). This plainly does not "negate" Title III, as *Kirtz* and *FOMB* require. In looking for support, Petitioner misstates *Kirtz*'s text; nowhere to be found is a statement that immunity is abrogated if "some" suits against instrumentalities would be negated, or anything like it. When the Court said that allowing immunity would entail "[d]ismissing" suits "like Mr. Kirtz's," *Kirtz*, 601 U.S. at 51, it plainly meant suits against government, as distinct from private, parties. Further, Petitioner's reading would place *Kirtz* at odds with the Court's precedents on implied repeals, discussed below, as *some* Title III actions being barred does not deprive Title III of "any meaning at all," *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662-63 (2007).

Petitioner is also foreclosed by the principle, repeatedly invoked in the *Kirtz* line, that "'[w]here a statute is susceptible of multiple plausible interpretations,' we will not read it to strip immunity." *FOMB*, 598 U.S.

at 346, *quoting Sossamon v. Texas*, 563 U.S. 277, 287 (2011); *see also Kirtz*, 601 U.S. at 49 ("[a]ny ambiguities in the statutory language are to be construed in favor of immunity.") (internal quotations omitted); *United States v. Miller*, 604 U.S. _, _, No. 23-824, slip op. at 12 (March 26, 2025) (same). That Title III suits may proceed where the FSIA's requirements are met suffices to defeat Petitioner's argument: it is plausible (and undoubtedly correct) that Congress left the FSIA's requirements intact.

Petitioner's only answer is to invoke the fallacious assumption that Congress pursued its goals at all costs. The Court has repeatedly warned against this reasoning. "It is quite mistaken to assume[] … that any interpretation of a law that does more to advance a statute's putative goal must be the law." *Luna Perez v. Sturgis Pub. Sch.*, 598 U.S. 142, 150 (2023) (internal quotations omitted); *see also Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) ("[N]o statute yet known 'pursues its stated purpose at all costs.'") (internal alterations omitted), *quoting Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam).

B. Because Title III Can Co-Exist with the FSIA, Effect Must Be Given to Both

The *Kirtz* decision, and its application below, are consistent with the Court's ample precedent that a later statute will not be held to impliedly repeal a prior statute unless they are completely irreconcilable. *Carcieri v. Salazar*, 555 U.S. 379, 395 (2009); *Kirtz*, 601 U.S. at 63. That "repeals by implication are disfavored," *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 133 (1974), is a longstanding, "'cardinal rule,'" *Morton v. Mancari*, 417 U.S. 535, 549 (1974), *quoting Posadas v. Nat'l City Bank*, 296 U.S. 497, 503 (1936). It holds that where, as here, a later statute contains no express repeal language,

both statutes are given effect unless no interpretation is possible that gives effect to each. *Id.* at 551 (courts have "duty" to give effect to both statutes when they are "capable of co-existence"). The rule applies "whether th[e] alteration is characterized as an amendment or a partial repeal." *Defs. of Wildlife*, 551 U.S. at 664 n.8. Petitioner thus bears a "heavy burden" to show the "statutes cannot be harmonized" in light of the "strong presumption" against implied repeals. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (internal quotations and alterations omitted).

The Court has strictly defined the required "irreconcilable conflict" to exist only where the later statute "expressly contradicts the original act" in substance or where "such a construction is absolutely necessary in order that the words of the later statute shall have any meaning at all." *Defs. of Wildlife*, 551 U.S. at 662-63 (internal quotations and alterations omitted).

Dispositively, nothing in Title III "expressly contradicts" the FSIA's immunity regime, nor is repeal of the FSIA "absolutely necessary" for Title III to have "any meaning." Title III simply creates a cause of action, assertable against instrumentalities, which can be pursued under the FSIA's restrictive, not absolute, immunity regime. As found below, Title III thus "harmoniously coexists with the FSIA" because the latter "allows for actions against foreign sovereign entities." Pet. 10a.

Petitioner rails against the strawman that an earlier Congress cannot bind a later Congress or control how its statutes are interpreted, Pet. 25, but this undisputed proposition sidesteps whether Title III meets the

requirements for an implied repeal. Nor can Petitioner escape these requirements by characterizing Title III as "more specific than the general FSIA," *id.* This begs the question: it *assumes* that Title III addresses immunity. Since it does not, the two statutes address different subjects and the specific/general canon has no relevance. Petitioner transparently asks the Court to "pick and choose among congressional enactments"—which it is "not at liberty" to do. *Epic Sys.*, 584 U.S. at 510 (internal quotations omitted).

In accord with the decision below, the Fourth and Ninth Circuits, along with the D.C. Circuit in an additional decision, have applied the FSIA to post-FSIA statutory causes of action, including where, as in *Broidy*, the statute explicitly includes actions against foreign states. *See Broidy Capital Mgmt., LLC v. State of Qatar*, 982 F.3d 582, 588 (9th Cir. 2020) (Computer Fraud and Abuse Act); *France.com, Inc. v. French Republic*, 992 F.3d 248, 251 (4th Cir. 2021) (Anticybersquatting Consumer Protection Act); *Rodriguez v. Pan Am. Health Org.*, 29 F.4th 706, 710 (D.C. Cir. 2022) (Trafficking Victims Protection Act). There are no circuit or district court decisions to the contrary.

C. There Would Be No Subject-Matter Jurisdiction for Actions Resting on Petitioner's Posited Title III Abrogation of Immunity

The sole grant of federal subject-matter jurisdiction for actions against states and instrumentalities is 28 U.S.C. § 1330(a). It "work[s] in tandem" with FSIA §§ 1604, 1605, and "confers jurisdiction on district courts" only when the foreign state "is *not* entitled to immunity"

under those provisions. *Republic of Austria v. Altmann*, 541 U.S. 677, 699 (2004) (emphasis in original; internal quotations omitted).

Petitioner apparently claims that § 1331 provides jurisdiction for Title III actions, Pet. 22, but it is foreclosed by *Argentine Republic v. Amerada Hess Shipping Corp*, 488 U.S. 428, 437 (1989), which expressly held that § 1330 displaced every other existing grant of subject-matter jurisdiction in suits against foreign states—including, specifically, 28 U.S.C. § 1331. "In light of the comprehensiveness of the statutory scheme in the FSIA, we doubt that even the most meticulous draftsman would have concluded that Congress also needed to amend *pro tanto*" other sources of subject-matter jurisdiction to exclude actions against foreign states. *Id.*, citing § 1331 among the subject-matter jurisdiction provisions displaced by the FSIA. No other grant of jurisdiction could apply in an action against a foreign state because the FSIA "sets forth the sole and exclusive standards" for adjudicating immunity and jurisdiction in such actions. *Id.* at 435 n.3.

The Court has repeatedly reiterated that § 1330(a) is the sole source of subject-matter jurisdiction for actions against foreign states and instrumentalities. *See, e.g.*, *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488, 493 (1983); *Saudi Arabia v. Nelson,* 507 U.S. 349, 354 (1993); *Republic of Argentina v. Weltover, Inc.* 504 U.S. 607, 610-11 (1992); *Altmann*, 541 U.S. at 699; *Permanent Mission of India to the United Nations v. City of New York*, 551 U.S. 193, 197 (2007); *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141 (2014); *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 30 (2015); *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 278 (2023); *Republic of Hungary v. Simon*, 145 S. Ct. 480, 488 (2025).

Petitioner's position thus requires that Title III be read as itself a source of subject-matter jurisdiction or a restoration of section 1331 jurisdiction that the Court has held the FSIA made inapplicable to actions against foreign states, but there is no such provision in Title III. Establishing a cause of action, including against governments, does not provide jurisdiction. *See Califano v. Sanders*, 430 U.S. 99, 105 (1977) (APA right to judicial review waived immunity but did not confer jurisdiction); *see also Lightfoot v. Cendant Mortg. Corp.*, 580 U.S. 82, 90-95 (2017) (applying demanding standard for finding conferral of subject-matter jurisdiction in statutory text). Therefore, even if Petitioner's argument that *Kirtz* requires that *any* statutory cause of action automatically precludes *any* governmental immunity is correct—which it is not—Petitioner's theory confronts a problem not at issue in *Kirtz*, and one it cannot overcome.

Inexplicably, Petitioner invokes *Turkiye,* Pet. 27, but *Turkiye* reaffirmed that the FSIA "govern[s] claims of immunity in every civil action," 598 U.S. at 272 (internal quotations omitted); *see also id.* at 278 (*Amerada Hess* "made clear that the FSIA displaces general grants of subject-matter jurisdiction in Title 28.") (internal quotations omitted). Under *Turkiye*, as before, post-FSIA statutes "remain squarely in the realm of the 'circumstances that [*Amerada Hess*] was … considering'—i.e., jurisdiction over civil, as opposed to criminal, liability." *Schansman v. Sberbank of Russia PJSC*, 128 F.4th 70, 87 (2d Cir. 2025) (quoting *Turkiye*).

To avoid its position on immunity leading to a dead end, Petitioner is forced to characterize the Court's rulings that § 1330(a) is exclusive as based on "unconsidered dicta" in *Amerada Hess*, Pet. 29, inviting the Court to reconsider

whether FSIA § 1330(a) displaced § 1331. It is far too late in the day for any such suggestion. And, it ignores that, as the Court has found and the court below recognized, Pet. 8a-9a, the FSIA's text compels the Court's repeated conclusion that the FSIA is the only source of subject-matter jurisdiction in claims against foreign states. Nor is the Court's insistence on this dictum: it was the basis for the Court's holding that 28 U.S.C. §§ 1333 (admiralty) and 1350 (Alien Torts) did not provide jurisdiction in *Amerada Hess*. If § 1330(a) was not exclusive, there would have been jurisdiction under § 1331 *in Altmann* and *Simon*, and § 1332 in *Nelson*, *Sachs, Weltover, Altmann and Simon*. The Court meant it when it said "[w]e *hold* that the FSIA provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country" in *Amerada Hess*, 488 U.S. at 443 (emphasis added).

D. Congress Deliberately Chose to Leave the FSIA's Comprehensive Immunity Regime Intact for Title III Actions

Petitioner ignores that it is "normally assume[d] that Congress is 'aware of relevant judicial precedent' when it enacts a new statute," *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 233-34 (2020), *quoting Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010); *see also Ryan v. Gonzales*, 568 U.S. 57, 66 (2013)—here, that the FSIA provided the sole exceptions to immunity and source of subject-matter jurisdiction. Petitioner also ignores that the provision which would have done exactly as Petitioner contends was withdrawn.

When Congress enacted Title III in 1996, this Court had already issued four decisions that the FSIA

provided the sole exceptions to immunity and sole source of subject-matter jurisdiction. This triggers the "normal[] assum[ption]" that Congress legislated against this backdrop. Further, Congress was undisputedly focused upon the FSIA: Title III references the FSIA several times and amends the FSIA execution provisions. Congress was "placed … on prospective notice of the language necessary and sufficient to confer jurisdiction," *Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247, 252 (1992), but it was not included in Title III.

Of course, as Petitioner and the dissent note, Pet. 27, 44a-45a, the decisions which gave Congress notice pre-date Title III, but this entirely misses the point. They, along with the clear FSIA text, demonstrate that Congress would not have amended the FSIA without mention.

Moreover, Congress expressly overrode the Act of State doctrine. 22 U.S.C. § 6082(a)(6). That Congress removed one important obstacle to Title III actions but did not mention another further demonstrates that Congress did not intend to override the FSIA. *See POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 114 (2014) ("By taking care" expressly to mandate pre-emption of some state laws, Congress "if anything indicated it did not intend the FDCA to preclude requirements arising from other sources."); *Wyeth v. Levine*, 555 U.S. 555, 574-75 (2009) (express preemption for medical devices provides "powerful evidence" that Congress did not intend *sub silentio* to preempt prescription drugs regulations).

In addition to its being on notice of the language required for Title III abrogation but not including it,

Congress affirmatively *withdrew* the needed provision. The bill reported out of subcommittee amended FSIA § 1605 to add a Title III exception to immunity; the amendment did away with the territorial nexus and other requirements found in the commercial activity and expropration exceptions. App. 16a-22a. The provision was deleted by the bill's sponsor, Rep. Burton, when the bill reached the full House Committee on International Relations, which approved the bill without the exception to FSIA immunity, and Title III was enacted without it.[3]

"Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded[.]" *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987) (internal quotations omitted); *see also NLRB v. SW Gen., Inc.*, 580 U.S. 288, 306-07 (2017) (change in language from "original draft" of bill is necessarily meaningful); *Russello v. United States*, 464 U.S. 16, 23-24 (1983) ("Where Congress includes limiting [here, expanding] language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation [expansion] was not intended."). Moreover, Title III as enacted references the FSIA repeatedly, *see, e.g.*, 22 U.S.C. §§ 6023(1), 6023(3), 6082(c)(2), expressly amending it where intended, 28 U.S.C. § 1611(c). To read an additional

3. *See Markup Before the Subcomm. on the Western Hemisphere of the Comm. on Int'l Relations on H.R. 927*, 104th Cong. 1st Sess., pp. 8-9, 56-59 (March 22, 1995); *Markup Before the Comm. on Int'l Relations on H.R. 927*, 104th Cong., 1st Sess. pp. 115-17, 172, 232-33 (June 30 and July 13, 1995). Title III of the Senate bill, which contained the same amendment to the FSIA, *see* S. 381, 104th Cong., 1st Sess. § 302(c), (b) (introduced on Feb. 9, 1995), never reached conference.

amendment into the text under these circumstances would simply be overriding Congress' choices. *Cf. Epic Sys.*, 584 U.S. at 511 ("[I]t's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them.").

The unbroken history of FSIA amendment powerfully confirms this point. Congress has amended the FSIA multiple times, and always expressly. By the time Title III was enacted, Congress had altered the immunity regime twice—both times by *expressly* amending FSIA § 1605's exceptions to immunity. *See* Pub. L. No. 100-640, § 1, 102 Stat. 3333 (1988) (admiralty exception); Pub. L. No. 100-669, § 2, 102 Stat. 3969 (1988) (arbitration exception), codified at FSIA §§ 1605(b) and 1605(a)(6), respectively. In the same session that adopted Title III, Congress, a mere month later, enacted the state sponsor of terrorism exception to immunity by *express* amendment of § 1605. Pub. L. No. 104-132, § 221(a), 110 Stat. 1214, 1241 (1996), codified at FSIA § 1605(a)(7). As with the construction rejected in *Thompson v. United States*, 604 U.S.__, __, No. 23-1095, slip op. (March 21, 2025), "[t]he language of these other statutes shows that when Congress intended to cover [immunity], it knew how to do so," and that it did not use that language "confirms" that the statute does not "reach" immunity. *Thompson*, slip op. at 7 (internal quotations omitted).

To the same effect, where, as here, Congress "did not adopt [a] ready alternative," *Advocate Health Care Network v. Stapleton*, 581 U.S. 468, 477 (2017)—an alternative it used every other time it amended the FSIA, before, during and since enactment of Title III—the "natural implication is that they did not intend" the alternative, *Lozano v. Montoya Alvarez*, 572 U.S. 1, 16

(2014). *See also Azar v. Alina Health Servs.*, 587 U.S. 566, 577 (2019) ("doubtful … that Congress sought to accomplish in a surpassingly strange manner what it could have accomplished in a much more straightforward way.") (internal quotations omitted).

E. Petitioner Would Overturn the Delicate Balance Congress Struck in the FSIA Without Demonstrating that Congress Came to a New Judgment

In the FSIA, Congress struck a "careful balance between respecting the immunity historically afforded to foreign sovereigns and holding them accountable[] in certain circumstances[.]" *Rubin v. Islamic Republic of Iran*, 583 U.S. 202, 208-09 (2018). Requiring a territorial nexus between an instrumentality's activities and the United States in both the commercial activity and expropriation exceptions, and the additional "rights in property taken in violation of international law" condition in the expropriation exception, are important to that balance. *See Verlinden B.V.*, 461 U.S. at 490 & n.15; *Simon*, 145 S. Ct. at 494-95; *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 89-90 (D.C. Cir. 2002).

The importance placed by Congress on territorial nexus is further evidenced by 28 U.S.C. § 1330(b), which Congress established as a "federal long-arm statute" setting "the requirements of minimum jurisdictional contacts" for actions against instrumentalities, H. R. Rep. No. 94-1487, p. 13 (1976). To establish personal jurisdiction, § 1330(b) requires that the FSIA § 1605 exceptions to immunity be established.

Petitioner would eliminate the requirements Congress has judged important in the commercial activity and expropriation exceptions without Congressional mention or indication that it had made a new judgment—for third-country and Cuban instrumentalities alike. In contrast, when it did decide to eliminate the territorial nexus requirement, in the FSIA's state sponsor of terrorism exception, Congress' judgment was unmistakably clear from the text. 28 U.S.C. § 1605(a)(7) (now codified with modifications at 28 U.S.C. § 1605A).

Finding that Congress made a new and different judgment on these issues requires far more than Petitioner has shown. The "respect" due "the delicate balance that Congress struck in enacting the FSIA" requires rejection of a "blanket abrogation" of immunity absent a "clearer indication of Congress' intent." *Rubin*, 583 U.S. at 215. *See also* Pet. 11a-12a. Also applicable is the related commitment to interpret "statutes affecting international relations" to avoid, where possible, "producing friction in our relations with [other] nations and leading some to reciprocate by granting their courts permission to embroil the United States in expensive and difficult litigation." *Fed. Republic of Germany v. Philipp*, 592 U.S. 169, 184 (2021) *quoting Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.* 581 U.S. 170, 183 (2017).

Even were Title III ambiguous, which it is not, abrogation could not be sustained. In this sensitive area of foreign relations, the rule that ambiguity is construed in favor of immunity applies with particular force.

F. Petitioner's Interpretation Would Create an Incoherent Statutory Scheme

1. Execution

Execution is possible only in the same circumstances that would satisfy a FSIA § 1605 exception to immunity from suit. FSIA § 1609 confers execution immunity unless a FSIA §§ 1610-1611 exception is met. Title III does not abrogate this execution immunity (indeed, it *added* to the FSIA's protection from execution, *see* 28 U.S.C. § 1611(c)). FSIA § 1610(b)(2) provides an exception to FSIA § 1609 execution immunity when "the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or [other section 1605 provisions]."

FSIA § 1610(a)(2), also applicable to instrumentalities, provides an exception to execution immunity when "the property is or was used for the commercial activity upon which the claim is based." If property in the United States is used "for" trafficking in Cuba, the trafficking has "cause[d] a direct effect" in the United States, satisfying FSIA § 1605(a)(2). Congress purposefully framed FSIA § 1610(a)(2) to match FSIA § 1605(a)(2) and other FSIA § 1605 provisions. *See* H. R. Rept. No. 94-1487, p. 28 (1976). The same holds true, *mutatis mutandis*, for FSIA § 1610(a)(3), which Congress framed to match FSIA § 1605(a)(3). *See* H. R. Rept. No. 94-1487, p. 28.

Title III liability, even if considered to abrogate the FSIA provisions on immunity from suit, FSIA §§ 1604, 1605, would not reach the FSIA's separate provisions on execution immunity. "The text of the Act confers on

foreign states two kinds of immunity." *NML Capital*, 573 U.S. at 142. Petitioner does not, Pet. 23, and could not, contend otherwise.

To require plaintiffs to establish at the end what Congress purportedly sought to relieve them of having to establish at the beginning produces, to say the least, a severely "mangled" statutory scheme that the Court refuses to attribute to Congress, particularly when, as here, a "better and more natural reading" is possible. *Turkiye,* 598 U.S. at 277; *see also Gomez v. United States*, 490 U.S. 858, 874 (1989) (rejecting "incongruous" interpretation of statute).

2. Personal Jurisdiction

Plaintiffs would not have to establish a FSIA § 1605 exception to overcome immunity from suit on Petitioner's reading, *but would* nonetheless have to establish a FSIA § 1605 exception to obtain personal jurisdiction. 28 U.S.C. § 1330(b), the exclusive provision for personal jurisdiction over instrumentalities, *Amerada Hess*, 488 U.S. at 435 n.3; *Verlinden, B.V.*, 461 U.S. at 485 n.5, is satisfied only by showing a FSIA § 1605 exception to immunity from suit. Title III does not provide for personal jurisdiction: there is no such provision; liability is different than personal jurisdiction; and Congress' judgment about "minimum jurisdictional contacts" in its "federal long-arm statute," § 1330(b), H. R. Rep. No. 94-1487, p. 13, must be respected. (Indeed, Petitioner only pleaded § 1330(b) for personal jurisdiction. No. 19-cv-01277 (D.D.C.), ECF No. 33, ¶¶ 11, 12.)

G. Petitioner Cannot Establish Its Argument in Title III's Text

Title III contains no "language referencing—much less departing from—the FSIA's prescription that 'a foreign state shall be immune from the jurisdiction of the courts … except as provided in' the FSIA's enumerated exceptions." Pet. 11a, *quoting* FSIA § 1604. To that textual silence, Petitioner and the dissent rely almost exclusively on Title's III's provision of a cause of action against instrumentalities but, as shown, this is not inconsistent with the FSIA's legislatively enacted regime of restrictive, rather than absolute, immunity.

Petitioner secondarily points to other Title III provisions, but they too do not address immunity. They cannot make up for what is lacking in Title III's text, or the flaws in Petitioner's *Kirtz* argument.

Petitioner argues that, by 22 U.S.C. § 6082(c)(1), Congress "made clear" that the FSIA does not apply to Title III actions, Pet. 22; it provides that: "Except as provided in this subchapter, the provisions of title 28 [U.S.C.], and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of title 28."

This provision, which does not speak of immunity at all, is far from the required "unmistakably clear" "waiver of sovereign immunity," *Kirtz*, 601 U.S. at 49, which cannot be "susceptible of multiple plausible interpretations," *FOMB*, 589 U.S. at 346 (internal quotations omitted); *see also Miller*, No. 23-824, slip op. at 12 ("Even if the language and logic of [statutory provisions] permitted

respondent's" construction, "our precedents would still foreclose that reading. 'Under long-settled law, Congress must use unmistakable language to abrogate sovereign immunity.'") (*citing and quoting FOMB*, 598 U.S. at 342).

Petitioner focuses on two phrases in this provision, but its reading does not rise to the level of plausibility on its own terms, much less, as required to abrogate, foreclose all other plausible interpretations. Moreover, both phrases serve other purposes ignored by Petitioner.

Petitioner argues the phrase "[e]xcept as provided" "confirmed that … departures" in Title III "from standard jurisdictional or procedural rules for suits in federal court" would "control." Pet. 21. This gets Petitioner nowhere: it still must identify statutory text in Title III that "departs" from the FSIA by abrogating immunity from suit. There is none. Further, Title III *did* explicitly articulate some departures—including from *other* FSIA provisions not addressing immunity from suit—which confirms that Congress left intact the FSIA's immunity from suit provisions. Pet. 11a-12a.[4] In short, this phrase ensures that those departures actually enumerated in Title III control but does not open the door to bootstrapping additional departures not provided in statutory text.

Pointing to the descriptive phrase "any other action brought under section 1331," Petitioner reasons that

4. *See, e.g.*, 22 U.S.C. §§ 6083(a)(2) (departing from 28 U.S.C. § 798 on special masters); 6084 (departing from 28 U.S.C. § 1658 on limitations period); 6082(a)(1)(A)(ii) (departing from Fed. R. Civ. P. 54 on costs); 22 U.S.C. § 6082(e), codified at 28 U.S.C. § 1611 (departing from FSIA execution provision, 28 U.S.C. § 1611).

because § 1330 is the FSIA subject-matter jurisdiction provision, Congress would not have so described Title III suits unless it had made the FSIA inapplicable. This abrogation-by-implication theory suffers from the same problem: neither this, nor any other provision, speaks to immunity from suit, much less with the requisite clarity and certainty. Further, this provision is facially insufficient to effectuate such a sweeping change: the Court rejects attempts to alter "fundamental details of a regulatory scheme in vague terms or ancillary provisions" on the view that Congress "does not … hide elephants in mouseholes." *Epic Sys.*, 584 U.S at 515 (internal quotations omitted).

Even if this descriptive phrase were implausibly read as an opaque restoration of § 1331, it would not show Congress abrogated *immunity*: subject-matter jurisdiction and immunity are different, *see Altmann*, 541 U.S. at 699; *Dames & Moore v. Regan*, 453 U.S. 654, 684 (1981), and, additionally, FSIA § 1604 by its terms provides immunity regardless of the source of subject-matter jurisdiction. Further, the descriptor "any other action brought under section 1331" cannot even be read to accomplish that much. Section 6082(c)(1) does not reference actions against instrumentalities but contemplates the generality of Title III actions, which principally would be (and have been, *see infra*) brought against private enterprises.

Petitioner's reading of these isolated phrases, implausible on their face, is further rendered untenable when § 6082(c)(1) is considered in context. Congress was expressly concerned in 22 U.S.C. § 6082(c)(1) with "Procedural requirements," as seen in the heading and the

Conference Report, H.R. Rep. No. 104-468, p. 61 (1996) (§ 6082(c) "provides that an action under this section shall be subject to the same procedural requirements as any other 'federal question' action under title 28").

Of importance, *see Thompson*, No. 23-1095, slip op. at 7 (looking to Congress's use of the same phrases in other statutes to determine meaning), "procedural requirements" appears often in the U.S. Code, but *never* in defining subject-matter jurisdiction. *See, e.g.*, 26 U.S.C. § 6751; 29 U.S.C. § 464(c); 20 U.S.C. § 1415; 15 U.S.C. § 2688. Petitioner's position thus flies in the face of the "obligation to maintain the consistent meaning of words in statutory text." *United States v. Santos*, 553 U.S. 507, 523 (2008); *see also United States v. Wong*, 575 U.S. 402, 411 n.4 (2015) ("[J]urisdictional statutes speak about jurisdiction, or … about a court's powers."). In *Lightfoot*, 580 U.S. at 90-95, the Court insisted on unmistakable statutory text—not even close to present here—for conferral of subject-matter jurisdiction. Finally, Petitioner ignores that Congress adopted § 6082(c)(1) so that federal procedure would be followed in state court Title III actions. *See* H. R. Rep. No. 104-468, at 61 (deleting House provision vesting exclusive jurisdiction over Title III actions in federal courts and "substitut[ing]" § 6082(c)).

Petitioner's other textual arguments likewise fail. First, Petitioner claims that several Title III provisions "anticipate" actions against Cuban instrumentalities. Pet. 20-21. The issue, however, is whether those lawsuits can proceed without meeting the conditions set in the FSIA. Second, Petitioner argues § 6082(c)(2) is redundant if the FSIA applies. Pet. 22. But this ignores the work of that provision: It makes unmistakable on the face of the statute that the FSIA service provisions must be followed by state

courts in actions against instrumentalities (even when there is default), and also makes those service provisions applicable to actions against "individuals acting under color of law," not otherwise within the FSIA's ambit.

Separately or together, the cited provisions do not support Petitioner nor could they suffice. Even if they create ambiguity, which they do not, that is not enough.

II. Petitioner Presents No Practical or Doctrinal Reasons for Granting Certiorari

A. Petitioner's Own Interests Do Not Require Review at this Juncture

Petitioner's own interests do not require review before determination of whether it can proceed under the commercial activity exception. If Petitioner does not prevail on that exception, it can seek certiorari on Title III abrogation (together with the commercial activity exception ruling). If Petitioner prevails, that may moot the issue presented here.

Any delay in reaching final adjudication is no reason for certiorari. 22 U.S.C. § 6082(a)(1)(B) provides for interest from the date of confiscation, and judgment will not end Respondents' alleged trafficking. The prospects of execution on any judgment are remote at best. The burden and expense of litigating the commercial activity exception to completion is *de minimis* for Petitioner; further, it is not the only or most arduous of the issues to be litigated on the way to judgment.[5] Any delays or

5. These include whether Respondents are so closely tied to the State that they are not entitled under D.C. Circuit law to Due

burdens are insufficient reason for the Court to take an issue that may become moot and would be preserved for future review if it is not. "Sixty years is long enough," Pet. 33, rings hollow.

B. Supposed Would-Be Title III Plaintiffs Are Not Deterred by the Decision Below

Petitioner and *amici* argue review is required so that would-be plaintiffs will not be deterred by the decision below from bringing Title III actions against Cuban instrumentalities, with a meaningful loss in Helms-Burton's efficacy. However, the demonstrable fact is that the slim to non-existent chance of recovering on any judgment is more than sufficient to discourage all but the rarest of plaintiffs from suing Cuban instrumentalities.

Because of the comprehensive U.S. embargo, there is little, if any, property in the United States upon which to execute Title III judgments. 22 U.S.C. §§ 6032, 6064 provides that the embargo "shall remain in effect" until there is a "transition government" in Cuba. At that point, execution is *foreclosed* by 22 U.S.C. § 6082(d), which provides that, once there is a transition government, judgments against Cuban instrumentalities "shall not be enforceable." Unforeseeable developments would need to unfold for the President, without a "transition government" first coming to power, to exercise licensing authority so broadly that Cuban property upon which

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Process protections on personal jurisdiction; whether Panamanian or Cuban law provide a shareholder with a "claim" to Essosa's property that international law does not; and which of Essosa's properties (if any) are operated by Respondents and their value.

execution could be had might materialize in the United States.

Looking to property outside the United States would be futile. The E.U., U.K, Canada and Mexico enacted laws blocking enforcement of Title III judgments.[6] 187 states, with only 2 opposed (United States and Israel) and 1 abstention (Moldova), adopted U.N. General Assembly Resolution A/79/L.6 (October 10, 2024), which condemns the Helms-Burton Act for "affect[ing] the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation."[7]

That it is the remote prospects for recovery, not the FSIA, that deters plaintiffs is shown by their having brought 34 actions against U.S. companies *without* adding their Cuban counterparties on the alleged trafficking transactions as co-defendants. They have foregone the ready opportunity to invoke the commercial activity exception on the ground that the U.S. companies' activities were the "direct effect" of the Cubans' operation of confiscated hotels, airports and port facilities. Petitioner and *amici*'s conjecture is also belied by the substantial burden and expense plaintiffs have willingly incurred in the arduous and protracted prosecution of these and other Title III actions (more than 45 in total), many of which have involved appeals and remands,

6. *See* Clark, Dealing with U.S. Extraterritorial Sanctions and Foreign Countermeasures, 20 U. Pa. J. Int'l Econ. L. 61, 81-87 (1999).

7. https://documents.un.org/doc/undoc/ltd/n24/289/99/pdf/n2428999.pdf; https://digitallibrary.un.org/record/4064910?ln=en

and 18 or more of which have included third-country defendants.[8]

Not surprisingly, only two actions in addition to Petitioner's have been pursued against Cuban instrumentalities. These plaintiffs, unlike others, presumably see something to gain. With that motivation, they manifestly have *not* been deterred by having to satisfy the FSIA, as they, like Petitioner, *rely* on FSIA exceptions to immunity—contrary to Petitioner's claim that Title III abrogation is needed to avoid deterring Title III actions.[9]

The decision below rejecting abrogation does not compromise Title III. It does not affect actions against private companies; deterring their commercial relations with Cuba by making them liable under Title III is a stated goal of the legislation. *See* 22 U.S.C. §§ 6081(5), 6081(6). It does not affect the FSIA exceptions to immunity, which provide meaningful avenues for suit against instrumentalities for trafficking that involves the United States. It does not alter the reach of statutory or Due Process personal jurisdiction for trafficking unrelated to U.S. territory. It does not alter the legal requirements for execution.

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8. For list of actions, *see* U.S.-Cuba Trade and Economic Council, Inc., https://static1.squarespace.com/static/563a4585e4b00d0211e8dd7e/t/67a76272f3637c18aa7bba27/1739022963100/Libertad+Act+Filing+Statistics.pdf

9. *See* Complaint in *King Ranch, Inc. v. Empresa Agropecuaria Nuevitas*, No. 21-cv-00594 (D.D.C.) pp. 3-4; *Del Riego Ponte v. Instituto de Planificacion Fisica*, No. 22-cv-3347, 2025 WL 722045 (D.D.C., March 6, 2025).

A few stray points made by *amici* need only brief comment. Abrogation will not free Title III actions from jurisdictional hurdles, *Amicus* Brief for King Ranch, Inc. et al. p. 12; plaintiffs would still need to establish personal jurisdiction under FSIA § 1330(b) and also either overcome the *Bancec* presumption of an instrumentality's separate status from the State (*First National City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611 (1983)) (arguably making Due Process protections inapplicable) or satisfy Due Process requirements. Suits against U.S companies will continue, contrary to the Chamber of Commerce's hope, *Amicus* Brief, pp. 12-19, as they have assets here. Title III abrogation will not compensate for difficulties in obtaining personal jurisdiction over third-country private companies, *id.*, pp. 13-14; plaintiffs will face the same difficulties in obtaining personal jurisdiction for trafficking unrelated to the United States in suits against Cuban instrumentalities.[10]

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10. Petitioner and *amici's* gross inflation of the number of persons who could bring Title III actions, even if willing to take the odds against realizing on any judgment, should not go uncorrected. Property not extant in *2023* cannot now be the subject of Title III actions; Title III only makes actionable trafficking within two years of an action's commencement. *See Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th at 1278-79. Plaintiffs must have acquired the claim to the property prior to March 12, 1996, excluding the large number of persons claiming through later inheritances. *See Garcia-Bengochea v. Carnival Corp.,* 57 F.4th 916, 930-31 (11th Cir. 2023). 22 U.S.C. § 6023(12)(B) excludes residential property that had been owned by Cuban nationals. 22 U.S.C. § 6082(b) requires more than $50,000 be in controversy (without interest or trebling), either by value at the time of taking or current market value.

C. FSIA Execution Immunity Makes the Question Presented Academic

Petitioner fails to reckon with the FSIA's execution provisions. To satisfy the FSIA exceptions to execution immunity, judgment creditors must demonstrate the circumstances that would satisfy the FSIA exceptions from immunity from suit, making the question Petitioner presents largely academic. Further, that this is so means plaintiffs cannot avoid the very burden and expense that Petitioner claims would be obviated by a decision that Title III abrogates immunity.

D. There Are No Doctrinal Implications of the Decision Below Warranting Certiorari

There is no circuit split on whether a post-FSIA statutory cause of action must satisfy the FSIA. Petitioner attempts to create a doctrinal issue meriting attention by claiming that the decision below rests on "the panel majority['s] … belie[f] that jurisdiction in a civil action against a foreign sovereign [can] arise only under the FSIA itself, not some other statute like Title III" and therefore Congress must "mention[] jurisdiction or … immunity *expressly* to depart from the FSIA baseline." Pet. 24-25 (quotations from decision below omitted; Petitioner's emphasis). Because of this, Petitioner asserts, the circuit "require[s] Congress to play by different rules when departing from the FSIA than from other statutes." Pet. 29.

What is "all wrong," Pet. 25, is not the decision below but Petitioner's reading of it. The circuit nowhere

held that Congress could not abrogate immunity or provide jurisdiction for actions against instrumentalities through statutes other than those amending the FSIA; it concluded that Title III was not such a statute. The circuit did not require that Congress, to abrogate immunity through another statute, mention immunity expressly. It acknowledged, in accordance with *Kirtz* and its line, that, if a cause of action would be nullified by immunity, there would be abrogation without express language. Pet 13a-15a. It considered the absence of express language in Title III to be "*significant*" and reasoned "we cannot *assume* that Congress abrogated these sovereign's immunity … without mentioning jurisdiction or their immunity expressly." Pet. 11a-12a (internal quotation omitted; emphasis added). It considered that "statutory *ambiguity* concerning a waiver of foreign immunity outside the FSIA must be resolved in favor of its preservation." Pet. 12a (internal quotation omitted; emphasis added). It considered all textual markers and the context of Title III's enactment. Pet. 11a-12a, 15a.

This is far from the "magic words" and "ultra-clear statement" requirements Petitioner wrongly attributes to the circuit decision. Pet. 14, 26.

Petitioner claims that the decision below places an "unwarranted thumb on the scale" in favor of immunity for other statutes applicable to instrumentalities because of the circuit's "magic words" and "ultra-clear statement" rule, a "spillover effect[]" warranting the Court's attention. Pet 29-30. But the decision below does not adopt any such rule.

In addition to its claim of a "spillover effect" resting on a misreading of the decision below, the three statutes

Petitioner cites, presumably the best it could come up with, do nothing to buttress its case for certiorari. As to two, acts implementing the Chemical Weapons and Nuclear Non-Proliferation Conventions, Petitioner oddly claims that the decision below would jeopardize the U.S. Government's ability to seek civil penalties against foreign instrumentalities operating in the United States for violating a facility's reporting and inspection obligations. Pet. 30. There are no such facilities (or at least none are claimed by Petitioner); rather, the statutes' definitional sections include instrumentalities because of provisions unrelated to the cited reporting and inspection obligations. As to the third statute, concerning traffickers in illicit opioids, Petitioner, at Pet. 30, misstates the definition of "person" subject to civil penalties under 21 U.S.C. § 2313(b); 21 U.S.C. § 2302(6) does not mention instrumentalities at all and excludes "government[s] of a foreign country." And, as to all three statutes, Petitioner does not offer any explanation why actions could not proceed under the FSIA's commercial activity exception.

The decision below also has no doctrinal significance in contexts outside of the FSIA. It does not conflict with or undermine *Kirtz*, or any circuit or district court decision on the interplay of statutory causes of action with any immunity regime. It adheres to settled principles of statutory interpretation. Petitioner has not shown that the court's holding that the FSIA applies to Title III threatens disruption of other statutory schemes, let alone disruption so certain, urgent, and important as to warrant certiorari here, and it does not.

The question presented here is framed by the unique interplay of two specific statutes, Title III and the FSIA,

and is *sui generis*. Petitioner does not explain why the Court should address, for the sake of avoiding supposed "spillover effects," when statutory causes of action alter immunity regimes in the abstract, shorn of all the aids and safeguards that come from considering specific text, context and history—-here, the distinctive aspects of Title III and the FSIA discussed in Point I—and, manifestly, it should not.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX — STATUTORY PROVISIONS

1. Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, § 302(e), codified as 28 U.S.C. § 1611, provides:

CERTAIN PROPERTY IMMUNE FROM EXECUTION.—Section 1611 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.".

2. 22 U.S.C. § 6084 provides:

§6084. Limitation of actions

An action under section 6082 of this title may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.

3. 28 U.S.C. § 1330 provides:

§1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury

civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605–1607 of this title.

4. 28 U.S.C. § 1602 provides:

§1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and

of the States in conformity with the principles set forth in this chapter.

5. 28 U.S.C. § 1603 provides:

§1603. Definitions

For purposes of this chapter-

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity-

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

6. 28 U.S.C. § 1605A provides:

§1605A. Terrorism exception to the jurisdictional immunity of a foreign state

(a) In General.—

(1) No immunity.-A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

(2) Claim heard.-The court shall hear a claim under this section if—

(A)(i)(I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104–208) was filed;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by

the United States Government, acting within the scope of the employee's employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.

(b) Limitations.-An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104–208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c) Private Right of Action.-A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3),

for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d) Additional Damages.-After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e) Special Masters.—

(1) In general.-The courts of the United States may appoint special masters to hear damage claims brought under this section.

(2) Transfer of funds.-The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c),[1] to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f) Appeal.-In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g) Property Disposition.—

(1) In general.-In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any

defendant if such notice contains a statement listing such controlled entity.

(2) Notice.-A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(3) Enforceability.-Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

(h) Definitions.-For purposes of this section—

(1) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term "material support or resources" has the meaning given that term in section 2339A of title 18;

(4) the term "armed forces" has the meaning given that term in section 101 of title 10;

(5) the term "national of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

7. 28 U.S.C. § 1605B provides:

§1605B. Responsibility of foreign states for international terrorism against the United States

(a) Definition.-In this section, the term "international terrorism"—

(1) has the meaning given the term in section 2331 of title 18, United States Code; and

(2) does not include any act of war (as defined in that section).

(b) Responsibility of Foreign States.-A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for physical injury to person or property or death occurring in the United States and caused by—

(1) an act of international terrorism in the United States; and

(2) a tortious act or acts of the foreign state, or of any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, regardless where the tortious act or acts of the foreign state occurred.

(c) Claims by Nationals of the United States.-Notwithstanding section 2337(2) of title 18, a national of the United States may bring a claim against a foreign state in accordance with section 2333 of that title if the foreign state would not be immune under subsection (b).

(d) Rule of Construction.-A foreign state shall not be subject to the jurisdiction of the courts of the United States under subsection (b) on the basis of an omission or a tortious act or acts that constitute mere negligence.

8. 28 U.S.C. § 1608 provides:

§1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

> (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
>
> (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
>
> (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or
>
> (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by

> the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services-and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

> (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or
>
> (2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or
>
> (3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual

notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the

complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

9. 28 U.S.C. § 1609 provides:

§1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

Appendix

OTHER MATERIALS

10. An Amendment in the Nature of a Substitute to H.R. 927 reported out by the Subcommittee on the Western Hemisphere to the House Committee on International Relations on H.R. 927, Provision on Section 302, *from* Markup Before the Subcommittee on the Western Hemisphere of the Committee on International Relations on H.R. 927, 104th Cong. 11–12, 54, 56–59 (March 22, 1995)

APPENDIX
AN AMENDMENT IN THE NATURE OF A
SUBSTITUTE TO H.R. 927
OFFERED BY MR. BURTON

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. Definitions.

Appendix

TITLE I—SEEKING SANCTIONS AGAINST THE CASTRO GOVERNMENT

Sec. 101. Statement of policy.

Sec. 102. Enforcement of the economic embargo of Cuba.

Sec. 103. Prohibition against indirect financing of the Castro dictatorship.

Sec. 104. United States opposition to Cuban membership in international financial institutions.

Sec. 105. United States opposition to ending the suspension of the Government of Cuba from the Organization of American States.

Sec. 106. Assistance by the independent states of the former Soviet Union of the Government of Cuba.

Sec. 107. Television broadcasting to Cuba.

Sec. 108. Reports on assistance and commerce received by Cuba from other foreign countries.

Sec. 109. Importation sanction against certain Cuban trading partners.

Sec. 110. Authorization of support for democratic and human rights groups and international observers.

Appendix

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

Sec. 201. Policy toward a transition government and a democratically elected government in Cuba.

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Sec. 203. Coordination of assistance program; implementation and reports to Congress; reprogramming.

Sec. 204. Authorization of appropriations.

Sec. 205. Termination of the economic embargo of Cuba.

Sec. 206. Requirements for a transition government.

Sec. 207. Requirements for a democratically elected government.

TITLE III—PROTECTION OF AMERICAN PROPERTY RIGHTS ABROAD

Sec. 301. Exclusion from the United States of aliens who

have confiscated property of United States nationals.

Sec. 302. Liability for trafficking in property confiscated from United States nationals.

Sec. 303. Claims to confiscated property.

Sec. 304. Amendment of the Internal Revenue Code of 1986.

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1 **TITLE III—PROTECTION OF**
2 **AMERICAN PROPERTY**
3 **RIGHTS ABROAD**

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1 SEC. 302. LIABILITY FOR TRAFFICKING
IN PROPERTY CON-
2 FISCATED FROM UNITED STATES NATIONALS.
3 (a) CIVIL REMEDY.—(1) Effective on the day after
4 the date of enactment of this Act, and except as provided
5 in paragraphs (2) and (3), any person or government that
6 traffics in property confiscated by a foreign government

shall be liable to the United States person who owns the confiscated property or claim thereto for money damages in an amount which is the greater of—

(A)(i) the amount certified by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949:

(ii) interest at the commercially recognized normal rate: and

(iii) reasonable attorneys' fees:

(B) the amount determined under section 303(a)(2); or

(C) the fair market value of that property, calculated as being the then current value of the property, or the value of the property when confiscated plus interest at the commercially recognized normal rate, whichever is greater.

(2) Except as provided in paragraph (3), any person or government that traffics in confiscated property after having received (A) notice of a claim to ownership of the property by the United States person who owns the claim

to the confiscated property, and (B) a copy of this section, shall be liable to such United States person for money damages in an amount which is treble the amount specified in paragraph (1), excluding attorney's fees.

(3)(A) Actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of enactment of this Act.

(B) In the case of property confiscated before the date of enactment of this Act, no United States person may bring an action under this section unless such person acquired ownership of the claim to the confiscated property before such date.

(C) In the case of property confiscated on or after the date of enactment of this Act, in order to maintain the action, the United States person who is the plaintiff must demonstrate to the court that the plaintiff has taken reasonable steps to exhaust any available local remedies.

(b) JURISDICTION.—

(1) IN GENERAL—Chapter 85 of title 28, United States Code, is amended by inserting after section 1331 the following new section:

"§ 1331a. Civil actions involving confiscated property

"(a) The district courts shall have exclusive jurisdiction, without regard to the amount in controversy, of any

action brought under section 302 of the Cuban Liberty, and Democratic Solidarity (LIBERTAD) Act of 1995.

"(b) Service of a summons or filing a waiver of service with respect to claims arising under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 is effective to establish jurisdiction over the person of a defendant if made in any district where a defendant resides or may be found.".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 85 of title 28, United States

Code, is amended by inserting after the item relating to section 1331 the following:

"1331a. Civil actions involving confiscated property.".

(c) WAIVER OF SOVEREIGN IMMUNITY.—Section 1605(a) of title 28, United States Code, is amended—

(1) by striking "or" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; or": and

(3) by adding at the end the following:

"(7) in which the action is brought with respect to confiscated property under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.".

(d) ADDITIONAL RIGHTS OF ACTION.—The right of action created in this section is in addition to any right

that may exist under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any territory or possession of the United States, and nothing in this action shall act to adversely affect or derogate such other rights in any way.