No.

IN THE

Supreme Court of the United States

HAVANA DOCKS CORPORATION,
Petitioner,

v.

ROYAL CARIBBEAN CRUISES, LTD.,
NORWEGIAN CRUISE LINE HOLDINGS,
LTD., CARNIVAL CORPORATION,
MSC CRUISES S.A., AND
MSC CRUISES (USA), INC.,
Respondents.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER LANDAU
Counsel of Record
RICHARD KLINGLER
ELLIS GEORGE LLP
1201 Connecticut Ave. N.W.
Suite 513
Washington, DC 20036
(202) 249-6900
clandau@ellisgeorge.com
VINCENT H. LI
ELLIS GEORGE LLP
152 West 57th Street, 28th fl.
New York, NY 10019

March 6, 2025

QUESTION PRESENTED

The LIBERTAD Act is an essential pillar of United States foreign policy toward Cuba's hostile and anti-American regime. Title III of that Act creates a private right of action for United States nationals who have a claim to property confiscated by that regime against persons who traffic in that property. 22 U.S.C. § 6082(a)(1). The Act specifies that such trafficking "undermines the foreign policy of the United States" by, among other things, "provid[ing] badly needed financial benefit" to the Cuban regime. *Id.* § 6081(6).

The question presented here applies in every case brought under Title III, and will determine whether that provision continues to advance U.S. foreign policy toward Cuba: whether a plaintiff must prove that the defendant trafficked in property confiscated by the Cuban government as to which the plaintiff owns a claim (as the statute requires), or instead that the defendant trafficked in property that the plaintiff would have continued to own at the time of trafficking in a counterfactual world "as if there had been no expropriation" (as the divided Eleventh Circuit panel held below).

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Havana Docks Corporation was appellee in the Eleventh Circuit.

Respondents, Royal Caribbean Cruises, Ltd., Norwegian Cruise Line Holdings, Ltd., Carnival Corporation, MSC Cruises S.A., and MSC Cruises (USA), Inc., were appellants in the Eleventh Circuit.

The Eleventh Circuit decided the various appeals at issue here under its docket numbers 23-10151 and 23-10171.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner Havana Docks Corporation states that it has no parent corporation and that no publicly owned company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW ii

APPENDIX CONTENTS iv

TABLE OF AUTHORITIES v

INTRODUCTION 1

OPINIONS BELOW 6

JURISDICTION 6

PERTINENT STATUTORY PROVISIONS 6

STATEMENT OF THE CASE 6

A. Background 6

B. Proceedings Below 13

REASONS FOR GRANTING THE WRIT 16

I. The Decision Below Undermines U.S. Foreign Policy Toward Cuba. 16

II. The Decision Below Is Manifestly Incorrect. 24

CONCLUSION 33

APPENDIX CONTENTS

Eleventh Circuit opinion,
Oct. 22, 2024 .... 1a

Eleventh Circuit order denying rehearing,
Dec. 20, 2024 .... 41a

District court order denying motion to dismiss,
Aug. 28, 2019 .... 43a

District court order granting motion to dismiss,
Jan. 6, 2020 .... 54a

District court order granting reconsideration of order granting motion to dismiss,
Apr. 15, 2020 .... 66a

District court order granting summary judgment (excerpts),
Mar. 21, 2022 .... 104a

Certified Claim (Final),
Sept. 28, 1971 .... 131a

Certified Claim (Proposed),
Apr. 21, 1971 .... 135a

Cuban Liberty and Democratic Solidarity (LIBERTAD) Act,
Pub. L. No. 104-114, 110 Stat. 785 (excerpts)
Mar. 12, 1996 .... 148a

TABLE OF AUTHORITIES

Page(s)

Cases

Banco Nacional de Cuba v. Sabbatino,
376 U.S. 398 (1964)........................... 5, 22, 23, 24

Bank Markazi v. Peterson,
578 U.S. 212 (2016)... 24

Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.,
333 U.S. 103 (1948)... 22

Crosby v. Nat'l Foreign Trade Council,
530 U.S. 363 (2000)... 24

Gustafson v. Alloyd Co.,
513 U.S. 561 (1995)... 28

Havana Docks Corp. v. Carnival Corp.,
No. 19-cv-21724, 2019 WL 8895241
(S.D. Fla. Aug. 28, 2019)............................... 6, 13

Havana Docks Corp. v. Carnival Corp.,
592 F. Supp. 3d 1088 (S.D. Fla. 2022).......... 6, 14

Havana Docks Corp. v. Carnival Corp.,
No. 19-cv-21724, 2022 WL 3910707
(S.D. Fla. Aug. 31, 2022)................................... 14

Havana Docks Corp. v. MSC Cruises SA Co.,
455 F. Supp. 3d 1355 (S.D. Fla. 2020).............. 14

Havana Docks Corp. v. MSC Cruises SA Co.,
431 F. Supp. 3d 1367 (S.D. Fla. 2020).......... 6, 13

Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.,
454 F. Supp. 3d 1259 (S.D. Fla. 2020).......... 6, 14

TABLE OF AUTHORITIES
(continued)

Page(s)

Havana Docks Corp. v.
Norwegian Cruise Line Holdings, Ltd.,
431 F. Supp. 3d 1375 (S.D. Fla. 2020)............. 13

Havana Docks Corp. v.
Royal Caribbean Cruises, Ltd.,
119 F.4th 1276 (11th Cir. 2024) ....*passim*

King v. Burwell,
576 U.S. 473 (2015)... 28

Marti v.
Iberostar Hoteles y Apartamentos S.L.,
54 F.4th 641 (11th Cir. 2022) 16

Ministry of Defense & Support for the
Armed Forces of Iran v. Elahi,
556 U.S. 366 (2009)... 24

Underhill v. Hernandez,
168 U.S. 250 (1897)... 23

Constitution, Statutes, and Regulations

U.S. Const. art. I § 8, cl. 3 1

22 U.S.C. § 1622g 25-26

22 U.S.C. § 1623(h).. 26

22 U.S.C. § 1643 8

22 U.S.C. § 6021 1

22 U.S.C. § 6022(1)-(3) 20-21

22 U.S.C. § 6023(4)(A).. 31

22 U.S.C. § 6023(12).. 17, 27

22 U.S.C. § 6023(13)(A)............................... 9, 17, 25

TABLE OF AUTHORITIES
(continued)

Page(s)

22 U.S.C. § 6081(6).......................... 3, 5, 9, 17-18, 20

22 U.S.C. § 6081(11).................................... 3, 16, 26

22 U.S.C. § 6082(a).. 13

22 U.S.C. § 6082(a)(1) 4, 10, 17

22 U.S.C. § 6082(a)(1)(A) 25

22 U.S.C. § 6082(a)(1)(A)(i)(I) 21, 31

22 U.S.C. § 6082(a)(2) 31

22 U.S.C. § 6082(a)(3)(C)(ii) 21

22 U.S.C. § 6082(a)(4)(B) 17, 25

22 U.S.C. § 6083(a).. 32

22 U.S.C. § 6083(a)(1) 4, 10, 17, 19, 25

22 U.S.C. § 6085 .... 10, 16

22 U.S.C. § 6085(c)(1)(B)....................................... 12

22 U.S.C. § 6085(c)(3).. 12

28 U.S.C. §1254(1).. 6

35 U.S.C. § 154 27

Pub. L. 88-666, 78 Stat. 1110 (Oct. 16, 1964).......... 8

Pub. L. No. 104-114, 110 Stat. 785 (Mar. 12, 1996) ....*passim*

31 C.F.R. § 515.201 8

Other Authorities

32 Weekly Comp. Pres. Doc. 1265, 1996 WL 396122 (July 16, 1996)................. 10-11

TABLE OF AUTHORITIES
(continued)

Page(s)

Ashby, Timothy,
U.S. Certified Claims Against Cuba,
40 U. Miami Inter-Am. L. Rev. 413
(2009) 1

Ellsworth, Brian,
U.S. Judge Orders Norwegian Cruise Line to Pay $110 Million For Use of Cuba Port, Reuters (Dec. 30, 2022),
available at https://tinyurl.com/53t6vb7k........ 22

European Union Council Regulation
No. 2271/96,
1996 O.J. (L309) 1 (EC) 16

Gámez Torres, Nora,
Cruise Lines Ordered to Pay Over $400 Million for "Trafficking" in Confiscated Property in Cuba, Miami Herald (Jan. 1, 2023),
available at
https://tinyurl.com/3zv6hpk6............................ 21

Letter to the Chairman & Chair of Certain Congressional Committees on the Suspension of the Right to Bring an Action Under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Jan. 14, 2025),
available at
https://tinyurl.com/4p9cwdm5.......................... 12

TABLE OF AUTHORITIES (continued)

Page(s)

McBride, Courtney,
First Suits are Filed Over Seized Cuban Properties After U.S. Lifts a Waiver, The Wall Street Journal (May 2, 2019), available at https://tinyurl.com/39tttb6v 22

Mora, Michael A., *Big Law Clients Take $440M LIBERTAD Act Hit That Could Chill Investment in Cuba*, Fla. Bus. Rev. Online (Jan. 3, 2023), available at https://tinyurl.com/mtuet6vt 22

Resolution No. 3 (Oct. 24, 1960) 8

U.S. Bureau of Labor Statistics, *CPI Inflation Calculator*, available at https://tinyurl.com/3t6dtmzs 8

U.S. Dep't of State Press Statement, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), available at https://tinyurl.com/2mrrv726 .... 2, 12, 24

INTRODUCTION

This is the most important case involving U.S. foreign policy toward Cuba to reach this Court in the past sixty years.

In 1960, shortly after Communist revolutionaries seized power in that country, the Cuban government confiscated the property of U.S. nationals as part of "the largest uncompensated taking of American property by a foreign government in history." Timothy Ashby, *U.S. Certified Claims Against Cuba*, 40 U. Miami Inter-Am. L. Rev. 413, 414 (2009). Since then, Congress has exercised its authority under the Foreign Commerce Clause, U.S. Const. art. I § 8, cl. 3, to subject Cuba to the Nation's most comprehensive economic sanctions program.

A pillar of that program is the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (Mar. 12, 1996), *codified at* 22 U.S.C. § 6021 *et seq.* Title III of that statute created a private right of action for U.S. nationals who own a claim to property confiscated by the Cuban regime against persons who "traffic" in that property, *i.e.*, knowingly use in commerce the confiscated property without the claimant's authorization. *See* Appendix (App.) 148-69a (excerpts). From its inception, Title III has been politically and diplomatically controversial. Presidents suspended the private right of action from 1996 to 2019, when President Trump allowed the suspension to lapse (thereby authorizing this action). In his final week in office, President Biden sent Congress a letter announcing the prospective renewal of the suspension, but Secretary of State Rubio withdrew that letter before the proposed suspension took effect.

There can be no question, in other words, that the Nation's political branches consider the Title III right of action to be a potent weapon in the arsenal of U.S. sanctions against Cuba's hostile Communist regime. As Secretary Rubio affirmed in ensuring the ongoing operation of the Title III private right of action, "The Trump Administration is committed to U.S. persons having the ability to bring private rights of action involving trafficked property confiscated by the Cuban regime." U.S. Dep't of State Press Statement, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), available at https://tinyurl.com/2mrrv726.

This is the textbook case for liability under Title III. Petitioner Havana Docks Corporation, a U.S. national, built the port of Havana's docks at its own expense in the early 20th century in exchange for a concession to operate those docks for 99 years. In 1960, however, Cuba's Communist government extinguished the concession (which still had 44 years to run), and thereby Havana Docks' property interest in the docks. The Foreign Claims Settlement Commission thereafter certified Havana Docks' claim against the Cuban government for the confiscation of its property interest in the Havana docks. With knowledge of that certified claim, the respondent cruise lines nonetheless moored their massive ships at the confiscated docks without Havana Docks' authorization. From 2015 to 2019, the cruise lines disembarked nearly one *million* tourists on those docks, and paid Cuba's cash-strapped Communist regime at least *$130 million* in hard currency without paying a penny to either Havana Docks or any Cuban person or entity unaffiliated with the regime. As a result of their complicity with the regime, the cruise

lines ultimately netted over one *billion* dollars from their Cuban cruises.

The cruise lines thus engaged in precisely the conduct Title III's private right of action aims to deter. As that provision specifies, "'trafficking' in confiscated property provides badly needed financial benefit, including hard currency …, to the current Cuban Government *and thus undermines the foreign policy of the United States*." 22 U.S.C. § 6081(6), App. 153a (emphasis added); *see also id.* § 6081(11), App. 154a ("To deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures."). Because the undisputed facts established that each of the defendant cruise lines knew that the Havana docks were encumbered by Havana Docks' certified claim but proceeded to use those docks to deliver tourists into the Cuban government's open arms, the district court granted Havana Docks summary judgment and entered a statutory treble-damages award of more than $100 million against each defendant.

But a divided panel of the Eleventh Circuit reversed, and thereby effectively nullified Title III's private right of action and stripped the Nation's political branches of a powerful foreign policy tool. According to the panel majority, the cruise lines could not have trafficked in Havana Docks' confiscated property from 2015 to 2019 because Havana Docks' property interest in the Havana docks "expired in 2004" under the terms of the original 99-year

concession. App. 23a. But it is undisputed that the Cuban government *extinguished* the original 99-year concession upon confiscation in 1960, when it still had 44 years to run. As a matter of law and logic, the long-dead concession could not and did not "expire" in 2004. Rather, like all confiscated property subject to the Act, it was replaced by a claim against the Cuban government that continues to encumber the confiscated property—which is precisely why the LIBERTAD Act prohibits trafficking in property to which a U.S. national "owns the *claim*." 22 U.S.C. § 6082(a)(1), App. 154-55a (emphasis added). Indeed, the Act provides that courts must "accept as *conclusive* proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission." *Id.* § 6083(a)(1), App. 165a (emphasis added). Given that the Commission certified Havana Docks' claim to the very docks concededly used by the respondent cruise lines, and that claim remains unsatisfied, that should have been the end of the matter.

The panel majority below completely ignored that a plaintiff's claim against the Cuban government, which continues to encumber the confiscated property until satisfied, defines the "property" that cannot be trafficked without incurring liability under Title III. Rather, without any textual support, the panel majority declared that courts must "view the property interest at issue in a Title III action *as if there had been no expropriation* and then determine whether the alleged conduct constituted trafficking in that interest." App. 20a (emphasis added).

But neither Havana Docks nor any other victim of expropriation can possibly prove that, had there been no expropriation, it would have continued to own the confiscated property at the time of trafficking. Not even the most gifted psychic could establish who would have owned particular property in Cuba (or anywhere else) sixty years after it was expropriated "if there had been no expropriation." *Id.* Thus, the panel majority saddled Title III plaintiffs with an impossible burden to prove a fiction: the ongoing ownership of property in an alternate universe where no expropriation occurred. A more implausible and counterproductive result is hard to fathom.

While this Court obviously does not devote itself to error correction, and might be content to let even egregious errors stand in routine disputes between private parties, this is not such a case. As noted above, Congress avowedly authorized LIBERTAD Act lawsuits as a vehicle for advancing "the foreign policy of the United States." 22 U.S.C. § 6081(6), App. 153a. This Court should not allow a divided panel of the Eleventh Circuit the last word on this important foreign policy issue, especially without any input from the political branches. Indeed, this Court has not hesitated to grant review of a wide range of disputes implicating U.S. foreign policy without awaiting a circuit split, including (specifically with respect to disputes arising out of Cuba's wholesale confiscation of U.S. nationals' property) the landmark decision in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964). Accordingly, this Court should grant review, or at the very least call for the views of the Solicitor General.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 119 F.4th 1276, and reprinted at App. 1-40a. The district court's order denying a motion to dismiss by respondent Carnival is reported at 2019 WL 8895241, and reprinted at App. 43-53a. The district court's order granting a motion to dismiss by respondent MSC is reported at 431 F. Supp. 3d 1367, and reprinted at App. 54-65a. The district court's order granting reconsideration is reported at 454 F. Supp. 3d 1259, and reprinted at App. 66-103a. The district court's order granting Havana Docks summary judgment against all respondents is reported at 592 F. Supp. 3d 1088, and relevant excerpts thereof are reprinted at App. 104-30a.

JURISDICTION

The Eleventh Circuit entered judgment on October 22, 2024, App. 1-40a, and denied a timely petition for panel rehearing or rehearing *en banc* on December 20, 2024, App. 41-42a. This Court has jurisdiction under 28 U.S.C. §1254(1).

PERTINENT STATUTORY PROVISIONS

Relevant provisions of the LIBERTAD Act are reprinted at App. 148-69a.

STATEMENT OF THE CASE

A. Background

In the early years of the last century, petitioner Havana Docks Corporation, an American company, built the docks in Havana harbor, which remain in use today. App. 8-12a. It did so at its own expense in exchange for an usufructuary concession from the Cuban government. *See id.* The "usufruct" (a civil-

law concept) granted Havana Docks the exclusive possession of, and the right to receive the economic benefits from, the physical property subject to the concession (*i.e.*, the docks, terminal building, and associated land) for a term of 99 years starting in 1905. *Id.* at 10-11a. The concession explicitly recognized that the 99-year term was consideration for Havana Docks' enormous upfront capital investment by specifying that, if the Cuban government expropriated the works before the concession was due to expire, the government "shall indemnify the concession holder for the value of all works built by the latter." App. 9-10a n.2.

This photograph shows the three piers and terminal building constructed by Havana Docks pursuant to that concession:

In 1959, rebels led by Fidel Castro seized control of Cuba. In October 1960, the new revolutionary

government decreed the "nationalization by means of forced expropriation … [of] all the properties and enterprises" in Cuba owned by "nationals of the United States of North [*sic*] America," specifically including "Havana Docks Corp." Resolution No. 3 (Oct. 24, 1960); *see also* App. 12a. On November 21, 1960, the Cuban government forcibly seized the premises and expelled Havana Docks. *See id.* At that point, the concession still had 44 years left to run. From that day to this, Havana Docks has never received a penny in compensation from the Cuban government or anyone else. App. 12-13a.

The United States responded to the Cuban government's hostile actions by imposing its own sanctions, including an embargo on all trade with Cuba. In 1963, the Kennedy Administration promulgated the Cuban Assets Control Regulations, which broadly prohibit all transactions involving money or property in which Cuba or any national thereof has any interest, unless "specifically authorized by the Secretary of the Treasury" or a delegee. 31 C.F.R. § 515.201.

In 1964, Congress authorized the Foreign Claims Settlement Commission to adjudicate claims by U.S. nationals against the Cuban government related to its confiscation of property. *See* Pub. L. 88-666, 78 Stat. 1110 (Oct. 16, 1964); *see generally* 22 U.S.C. § 1643. Havana Docks thereafter filed such a claim, which the Commission ultimately certified in 1971 in the amount of $9,179,700.88 at the time of confiscation in 1960. *See* App. 134a; *see also* App. 13-15a. (Adjusted for inflation, that certified amount is tantamount to just under $100 million as of January 2025. *See* U.S. Bureau of Labor Statistics, *CPI Inflation Calculator*,

available at https://tinyurl.com/3t6dtmzs.) As part of the certification, the Commission specifically determined that the Cuban government had confiscated Havana Docks' property consisting of "a concession for the construction and operation of wharves and warehouses in the harbor of Havana," including "the real property with all improvements and appurtenances" located on the block where the terminal is located and from which the piers extend. App. 138a; *see also* App. 14a.

In 1996, a bipartisan majority in Congress tightened the U.S. economic embargo on Cuba by enacting the LIBERTAD Act. In Title III of the Act, Congress provided the owners of claims to property confiscated by the Cuban regime with a private right of action against persons who prop up that regime by "trafficking" in the property subject to such claims. As relevant here, the Act defines "trafficking" as "knowingly and intentionally … engag[ing] in a commercial activity using or otherwise benefiting from confiscated property … without the authorization of any United States national who holds a claim to the property." 22 U.S.C. § 6023(13)(A), App. 150-51a. Such trafficking, the Act explains, "provides badly needed financial benefit … to the current Cuban Government, and thus undermines the foreign policy of the United States." *Id.* § 6081(6), App. 153a.

Because the victims of Castro's confiscations by definition no longer have a *present* interest in the confiscated property at the time of trafficking, the Act defines the property that can give rise to trafficking liability by reference to the property subject to a "claim," which in turn describes the property that the claimant owned, and the interest that was

extinguished, *at the time of confiscation*. Thus, the Act's operative provision specifies that "any person that … traffics in property which was confiscated by the Cuban Government … shall be liable to any United States national who owns the *claim* to such property for money damages …." *Id.* § 6082(a)(1), App. 154-55a (emphasis added). And where, as here, the claim has been certified by the Foreign Claims Settlement Commission, it is "*conclusive* proof of ownership of an interest in" the confiscated property described in that claim. *Id.* § 6083(a)(1), App. 165a (emphasis added).

Recognizing the Act's far-reaching foreign policy implications, both with respect to Cuba and with respect to other countries whose nationals do business in Cuba, Congress authorized the President to suspend either (1) Title III as a whole, or (2) Title III's private right of action. *See id.* § 6085, App. 167-69a. President Clinton chose the latter course, and warned companies that they were therefore subject to significant liability for trafficking in confiscated property:

> I will allow Title III to come into force. As a result, *all companies doing business in Cuba are hereby on notice that by trafficking in expropriated American property, they face the prospect of lawsuit and significant liability in the United States*. This will serve as a deterrent to such trafficking, one of the central goals of the LIBERTAD Act. … *[W]ith Title III in effect, liability will be established irreversibly during the suspension period*

> and suits could be brought immediately
> when the suspension is lifted.

Statement on Action on Title III of the Cuban Liberty & Democratic Solidarity (LIBERTAD) Act of 1996, 32 Weekly Comp. Pres. Doc. 1265, 1996 WL 396122 (July 16, 1996) (emphasis added). Presidents George W. Bush and Obama continued to suspend the private right of action at regular six-month intervals.

The Obama Administration, however, authorized maritime travel to Cuba from American ports (although it could not, and did not, lift the statutory proscription on tourism in Cuba). The respondent cruise lines wasted no time in organizing cruises to Cuba. Although Havana Docks notified each of them of its certified claim to the Havana docks, all four cruise lines proceeded to moor their ships and disembark their passengers on the very same piers and the very same terminal described in Havana Docks' certified claim. None of them ever sought Havana Docks' authorization as required by the LIBERTAD Act.

These trips were big business for both the Cuban government and the cruise lines. Each of the cruise lines paid the Cuban government between $24 million and $47 million in hard currency, for a total of some $130 million. *See* App. 121-26a; *see also* CA11 App. Dkt. 19-21724 No. 445-7. At the same time, Carnival's *net* revenue from its Cuba cruises exceeded $112 million; MSC's exceeded $272 million; Royal's reached almost $330 million; and Norwegian's reached almost $300 million. *See* App. 127-29a. And the cruise lines' use of the confiscated Havana docks was extensive. From May 2016 through May 2019, Carnival used those docks 83 times, carrying nearly 130,000

passengers. *See* App. 118a. Royal's ships used the docks 198 times between 2017 and 2019, carrying nearly 350,000 passengers, and Norwegian's ships used them 166 times during that period, carrying nearly 200,000 passengers. App. 120-21a; *see also* CA11 App. Dkt. 19-21724 No. 445-7. Between December 2015 and June 2019, MSC's ships used the confiscated Havana docks on 190 voyages, carrying more than 250,000 passengers. *See* App. 119-20a. Altogether, thus, the cruise lines carried almost one *million* tourists to the confiscated Havana docks from 2015 to 2019 and deposited them into the hands of Cuban government agents for shore tours.

President Trump lifted the suspension of Title III's private right of action effective May 2, 2019, and all of the cruise lines halted their Cuba cruises by the following month.*

---

* In his final week in office, former President Biden notified Congress that he would renew the suspension of the private right of action pursuant to 22 U.S.C. § 6085(c)(1)(B) effective January 29, 2025. *See* Letter to the Chairman & Chair of Certain Congressional Committees on the Suspension of the Right to Bring an Action Under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Jan. 14, 2025), available at https://tinyurl.com/4p9cwdm5. On January 29, 2025, however, Secretary of State Rubio withdrew that letter, thereby preventing the proposed renewed suspension from taking effect. U.S. Dep't of State Press Statement, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), available at https://tinyurl.com/2mrrv726. Even if the proposed renewed suspension had taken effect, it would have had no effect on any pending lawsuits. *See* 22 U.S.C. § 6085(c)(3), App. 169a ("The suspensions of actions … shall not affect suits commenced before the date of such suspension, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same

B. Proceedings Below

After the suspension was lifted in 2019, Havana Docks filed four separate actions against respondents, which were eventually consolidated in the district court and on appeal. Early in the proceedings, respondent Carnival filed a motion to dismiss on the ground that it could not have trafficked in Havana Docks' confiscated property from 2015 to 2019 because Havana Docks' rights in that property had expired in 2004 under the terms of the concession. The district court (Bloom, J., S.D. Fla.) denied the motion, explaining in relevant part that "the plain language of the Libertad Act" creates a right of action for "'any United States national who owns the *claim* to [confiscated] property,'" and thus "does not expressly make any distinction whether such trafficking needs to occur while a party holds a property interest in the property at issue." App. 52a (quoting 22 U.S.C. § 6082(a); emphasis modified); *see also* App. 53a ("[E]ven considering the timed-concession, such would not 'negate' a valid claim to the subject property.").

In considering related motions to dismiss filed by MSC and Norwegian, however, the district court changed course, and held that Havana Docks' concession had "expired in 2004" and that the cruise lines thereafter could not have trafficked in Havana Docks' confiscated property as a matter of law. App. 57-65a (MSC order) *see also* 431 F. Supp. 3d 1375 (Norwegian order).

On Havana Docks' motion for reconsideration of those orders, the district court reverted to its original

---

manner and with the same effect as if the suspension had not occurred.").

conclusion, explaining that the confiscation in 1960 had "extinguished" Havana Docks' property interest in the Havana docks as a matter of law, and that the scope of the property subject to trafficking thereafter was defined by Havana Docks' certified claim against the Cuban government, which included a property interest in the physical piers and terminal that the cruise lines had used in commerce on their cruises to Havana. App. 82-100a (Norwegian order); *see also* 455 F. Supp. 3d 1355 (MSC order).

After two years of extensive discovery, the parties cross-moved for summary judgment. The district court granted Havana Docks' motion, concluding that the uncontested facts established trafficking liability under Title III as a matter of law. *See* 592 F. Supp. 3d 1088 (S.D. Fla. 2022), App. 148-69a (excerpts). The court awarded default statutory damages against each of the four cruise lines, explaining that each cruise line had separately and independently injured Havana Docks by failing to seek or obtain the authorization required by the LIBERTAD Act before using the property encumbered by Havana Docks' certified claim. *See* 2022 WL 3910707 (S.D. Fla. Aug. 31, 2022). After applying statutory interest and trebling, the judgment against each cruise line exceeded $100 million.

The cruise lines appealed. As a threshold matter, the Eleventh Circuit panel unanimously rejected the cruise lines' argument that Havana Docks (a Delaware corporation headquartered in Kentucky) was not a "United States national" entitled to sue under the Act. App. 4-8a. However, the panel majority then proceeded to hold that the cruise lines could not have trafficked in Havana Docks'

confiscated property as a matter of law, because "[w]hen [its] concession expired in 2004, any property interest that Havana Docks had by virtue of that concession ended." App. 23a. Although the Act expressly defines the property subject to trafficking by reference to the property described in the plaintiff's "claim" against the Cuban government, and indeed requires courts to accept a certified claim as "conclusive" proof of ownership of the confiscated property described therein, the panel majority held that courts must "view the property interest at issue in a Title III action *as if there had been no expropriation* and then determine whether the alleged conduct constituted trafficking in that interest." App. 20a (emphasis added). Because Havana Docks had not proven that it would have owned an interest in the docks at the time of trafficking but for the confiscation, the panel majority reversed the judgments in its favor without reaching the cruise lines' other grounds for appeal. App. 3a & n.1, 27-28a.

Judge Brasher dissented, explaining that the panel majority's "counterfactual analysis—asking what would have happened to [the plaintiff's property] if [it] had not been confiscated in 1960—is incompatible with the text of the Act and undermines its remedial purpose." App. 30a (dissenting opinion). "Nothing in the statute requires that a claimant establish that, absent the confiscation, it would have a current, present day property interest in its stolen property." *Id.* Indeed, no claimant could possibly know or prove what would have happened to the property in such an alternate universe.

The Eleventh Circuit denied Havana Docks' motion for rehearing or rehearing *en banc*. App. 41-42a. This petition follows.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Undermines U.S. Foreign Policy Toward Cuba.

Until the divided panel decision below, Title III of the LIBERTAD Act was a potent weapon in the U.S. foreign policy arsenal. Its promise of significant civil liability for trafficking in confiscated property provided a substantial deterrent to doing business in Cuba and thereby propping up that country's hostile Communist regime. So powerful was this legal tool, in fact, that Congress gave the Executive Branch the extraordinary authority to suspend it prospectively, *see* 22 U.S.C. § 6085, App. 167-69a, and the European Union even enacted a "blocking" regulation to prevent its nationals from participating in proceedings under the Act, *see* Council Regulation No. 2271/96, arts. 5, 11, annex, 1996 O.J. (L 309) 1 (EC); *see generally Marti v. Iberostar Hoteles y Apartamentos S.L.*, 54 F.4th 641, 644 (11th Cir. 2022).

Title III, in short, is a pillar of U.S. economic sanctions on Cuba, and hence a pillar of U.S. foreign policy. And the core of Title III, in turn, is the scope of the "property" subject to trafficking. If such property is defined narrowly, then obviously the Title III proscription on trafficking is narrowed accordingly, and the door opened accordingly for companies to do business in Cuba and prop up its anti-American regime. The successful and intended operation of Title III depends on its application to *all* property confiscated from U.S. nationals by that regime and subject to an unsatisfied claim. *See* 22

U.S.C. § 6081(11), App. 154a ("United States nationals who were the victims of [Cuba's] confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures.").

Congress left no doubt on this score by (1) adopting an all-inclusive definition of "property," which encompasses "*any property*," 22 U.S.C. § 6023(12), App. 150a (emphasis added), and (2) specifying that Title III applies to any such property to which a U.S. national has a "claim," *id.* § 6082(a)(1), App. 154-55a, *see also id.* §§ 6023(13)(A), App. 150-51a, 6082(a)(4)(B), App. 158a, and indeed that a *certified* claim is "conclusive proof" of ownership of an interest in the property described in that claim, *see id.* § 6083(a)(1), App. 165a.

This statute is written to make doing business in Communist Cuba about as secure as strolling through a minefield. To be sure, only "knowingly and intentionally" using confiscated property can trigger liability. But U.S. nationals' certified claims to property in Cuba are publicly available to anyone tempted to do business in Cuba, and many such claimants (including Havana Docks) have put those engaging in such business on actual notice of their claims. The prospect of incurring treble-damages liability for trafficking in confiscated property while doing business in Cuba is not a bug in the system; it is a principal feature. *See* 22 U.S.C. § 6081(6), App. 153a ("'[T]rafficking' in confiscated property provides badly needed financial benefit, including hard currency …, to the current Cuban Government and

thus undermines the foreign policy of the United States.”).

The panel majority below, however, took a totally different approach, effectively flinging open the door to trafficking in confiscated property in Cuba. By saddling Title III plaintiffs with the impossible burden of proving that they would have continued to own their long-confiscated properties at the time of trafficking “as if there had been no expropriation,” App. 20a, the decision effectively guts the statute.

Obviously, there *was* an expropriation, which is why the statute refers to the plaintiff's “claim” to the expropriated property, which in turn defines the plaintiff's property interests *at the time of expropriation*. Any temporal limitations on the confiscated property interest are not temporal limitations on the claim: an unsatisfied claim has no expiration date, and does not magically evaporate when a confiscated property interest would have expired but for the confiscation. To the contrary, an unsatisfied claim continues to encumber the property unless and until the claim is satisfied. Thus, Havana Docks' unsatisfied claim against the Cuban government is just as much alive today as it was when certified in 1971. Even the cruise lines have never contended that Havana Docks' unsatisfied claim against the Cuban government expired in 2004. That simple point controls this case: as long as Havana Docks continues to have an unsatisfied claim against the Cuban government, the property encumbered by that claim continues to be off-limits to trafficking under the LIBERTAD Act.

As a matter of law and logic, moreover, no plaintiff can possibly prove that it would have continued to

own any particular property more than *six decades* after expropriation "as if there had been no expropriation." App. 20a. Individuals and companies buy, sell, give, encumber, and inherit property all the time; how could anyone prove that it still would have possessed long-confiscated property at the time of trafficking in an alternate universe where the property had never been confiscated? Conversely, there is no way to know if any plaintiff might have expanded or improved the property in such a counterfactual scenario; for example, Havana Docks might have agreed to upgrade the piers and terminal in exchange for an extension of its concession (as it received in the early twentieth century when the Cuban government extended the original concession from 50 to 99 years). So many imponderables prevent anyone from proving in a court of law, subject to the rules of evidence, what would have happened to any particular property over the course of sixty years "if there had been no expropriation." App. 20a. That is why nothing in the LIBERTAD Act remotely turns on such a counterfactual inquiry.

Indeed, the property interest set forth in a certified claim cannot possibly be "conclusive" under the Act, 22 U.S.C. § 6083(a)(1), App. 165a, if the Act separately requires a counterfactual inquiry into what the property interest might have been at the time of trafficking "if there had been no expropriation," App. 20a. A "conclusive" presumption in favor of the property interest described in a certified claim simply cannot be squared with the counterfactual inquiry mandated by the panel majority below.

By construing the Act to mandate an atextual and impossible counterfactual inquiry, the decision below

undermines the Act's deterrent effect. Under the Eleventh Circuit's rule, companies may now use confiscated property in Cuba at will; if they are sued under Title III, they can simply assert (as the cruise lines did here) that the plaintiff cannot prove that it would have owned the property at the time of trafficking "if there had been no expropriation." App. 20a. As a result, the decision grants *carte blanche* to companies to enter into commercial ventures with, and pay, the Cuban government to exploit confiscated property (as the cruise lines did here) without paying any heed to U.S. nationals who own an unsatisfied claim to that property. By focusing on the plaintiff's property interest at the time of *trafficking*, as opposed to the time of *confiscation*, the panel majority turned Title III on its head.

As a result, the decision below thwarts the broad range of policy objectives that Congress designed the Act to achieve. Through Title III, Congress sought to deter businesses from using confiscated property in Cuba, thereby preventing them from "provid[ing] badly needed financial benefit, including hard currency … and productive investment and expertise, to the current Cuban Government and thus undermin[ing] the foreign policy of the United States." 22 U.S.C. § 6081(6), App. 153a. Trafficking in confiscated property in Cuba "undermines the foreign policy of the United States" in two specific respects: those financial dealings make it harder (1) "to bring democratic institutions to Cuba through the pressure of a general economic embargo," and (2) "to protect the claims of U.S. nationals who had property wrongfully confiscated by the Cuban government." *Id.* Limiting trade with Cuba through the robust operation of Title III also furthers Congress' purposes of "assist[ing] the

Cuban people in regaining their freedom and prosperity," "strengthen[ing] international sanctions against the Castro government," and "provid[ing] for the continued national security of the United States in the face of continuing threats from [that] government." 22 U.S.C. §§ 6022(1)-(3), App. 148a. The Act highlights the importance of these foreign policy goals by authorizing potentially significant liability (including treble damages) for trafficking in confiscated property subject to a claim against the Cuban government. *See id.* § 6082(a)(1)(A)(i)(I), App. 154-55a; § 6082(a)(3)(C)(ii), App. 157a. As the trebling provision underscores, Congress did not want LIBERTAD Act suits to be a mere cost of doing business in Cuba; it wanted to deter businesses from using confiscated property in Cuba altogether.

This case perfectly illustrates the subversion of these foreign policy objectives. The cruise lines took a calculated business risk to use property in Cuba that they knew had been confiscated from Havana Docks and was encumbered by a certified claim against the Cuban government. They put nearly one *million* tourists into the hands of agents of the Cuban regime and rewarded that regime with over *$130 million* in hard currency. Although they earned over one *billion* dollars in net revenue from their Cuba cruises, not one of the cruise lines ever offered or paid a penny to either Havana Docks or any Cuban person or entity unaffiliated with the regime.

Indeed, the judgments in this case were heralded as a warning against doing business in Cuba. *See, e.g.*, Nora Gámez Torres, *Cruise Lines Ordered to Pay Over $400 Million for "Trafficking" in Confiscated Property in Cuba*, Miami Herald (Jan. 1, 2023), available at

https://tinyurl.com/3zv6hpk6 (judgments send a "chilling message to potential investors and those wanting to do business with the Cuban government on properties whose ownership is contested"); Brian Ellsworth, *U.S. Judge Orders Norwegian Cruise Line to Pay $110 Million For Use of Cuba Port*, Reuters (Dec. 30, 2022), available at https://tinyurl.com/53t6vb7k (judgments "may … serve as a reminder to multinational firms of the complications that can come with doing business in Cuba"); Michael A. Mora, *Big Law Clients Take $440M LIBERTAD Act Hit That Could Chill Investment in Cuba*, Fla. Bus. Rev. Online (Jan. 3, 2023), available at https://tinyurl.com/mtuet6vt (judgments "could have a chilling effect on businesses seeking to expand to Cuba, particularly because insurers could legally deny coverage"); *see also* Courtney McBride, *First Suits are Filed Over Seized Cuban Properties After U.S. Lifts a Waiver*, The Wall Street Journal (May 2, 2019), available at https://tinyurl.com/39tttb6v ("Most economists and analysts believe the threat of lawsuits could be devastating to Cuba's attempts to get foreigners to invest in Cuba …. 'It's a nuclear bomb … [t]he number of lawsuits won't be overwhelming, but it will have a wide chilling impact on new investment.'").

By undermining a pillar of U.S. economic sanctions against Cuba, the panel majority below usurped the role of the political branches, and overrode their policy choices. Needless to say, the judiciary must tread with special caution in matters touching on foreign affairs. *See*, *e.g.*, *Sabbatino*, 376 U.S. at 427-28; *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.,* 333 U.S. 103, 111 (1948). Although the panel majority below described the question presented here

as "not easy," App. 16a, it sought no input from the political branches.

Given the impact of the decision below on U.S. foreign policy, this Court's review is warranted even in the absence of a circuit conflict. Here again, *Sabbatino* is instructive. That case, like this one, arose out of Cuba's wholesale expropriation of U.S. nationals' property in 1960. 376 U.S. at 401. In the wake of that expropriation, an agency of the Cuban government sued in federal court to assert rights in the expropriated property and was met with a defense that the expropriation could not be given legal effect because it violated international law. *Id*. This Court granted certiorari not because of any circuit split (there was none), but "because the issues involved bear importantly on the conduct of the country's foreign relations and, more particularly, on the proper role of the Judicial Branch in this sensitive area." 376 U.S. at 407.

So too here. *Sabbatino* reaffirmed the "act of state doctrine" whereby "'the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory.'" *Id.* at 416 (quoting *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897)). But *Sabbatino* also recognized that such judicial restraint is warranted precisely because it falls to "the political branches" of the Federal Government to respond to foreign expropriations, including by imposing an "economic embargo" on an expropriating government. *Id*. at 435-36. Obviously, the foreign policy implications of undermining such an embargo are at least as grave as the foreign policy implications of refusing to recognize the validity of such expropriations. As noted above, Secretary of

State Rubio recently reaffirmed that the Executive Branch is "committed" to the Title III right of action as part of "Restoring a Tough U.S.-Cuba Policy." U.S. Dep't of State Press Statement, *Restoring a Tough U.S.-Cuba Policy* (Jan. 31, 2025), available at https://tinyurl.com/2mrrv726.

Indeed, this Court has not hesitated to review cases that impact U.S. foreign policy, like this one and *Sabbatino*, without awaiting a conflict among the federal courts of appeals. *See*, *e.g., Bank Markazi v. Peterson*, 578 U.S. 212, 225 (2016); *Ministry of Defense & Support for the Armed Forces of Iran v. Elahi*, 556 U.S. 366, 375 (2009); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 371-72 (2000). At a minimum, it is appropriate for this Court to call for the views of the Solicitor General—especially because the United States, as a non-party, has not previously expressed its views on the issue presented here. *See, e.g.*, *Bank Markazi*, 575 U.S. 948 (2015) (order calling for the views of the Solicitor General on petition touching on foreign policy); *Elahi*, 552 U.S. 1176 (2008) (same).

II. The Decision Below Is Manifestly Incorrect.

Apart from undermining United States foreign policy, the decision below is manifestly incorrect. As Judge Brasher noted in his dissent, this case presents a "very simple" question of statutory interpretation that the panel majority performed interpretive somersaults to avoid answering correctly. App. 32a (dissenting opinion). The Act's plain text specifies that the property subject to "trafficking" is the property described in a "claim," and a "claim" to confiscated property defines the claimant's property *at the time of confiscation*. Unless and until the claim

is satisfied, it continues to encumber the confiscated property, which cannot be trafficked without giving rise to liability under the Act. No one disputes that Havana Docks' certified claim against the Cuban government involves the very same piers and the very same terminal that the cruise lines used to moor their ships and disembark their passengers in Havana harbor. And no one disputes that Havana Docks' certified claim has not been satisfied, or that the claim thus remains as alive today as on the day it was certified in 1971. Those simple points should be the beginning and the end of the analysis.

a. The Act's plain language directs courts to focus on the plaintiff's "claim" to property confiscated by the Cuban government, and such a "claim" of course reflects the plaintiff's property interest as it existed when extinguished by the confiscation. Anyone who "traffics in property which was confiscated by the Cuban Government … shall be liable to any United States national who owns the *claim* to such property." 22 U.S.C. § 6082(a)(1)(A), App. 154-55a (emphasis added). Likewise, trafficking is defined in part as using confiscated property in commerce "without the authorization of any United States national who holds a *claim* to the property," *id.* § 6023(13)(A), App. 151a (emphasis added), and Title III trafficking actions are brought "on a *claim* to the confiscated property." *Id.* § 6082(a)(4)(B), App. 158a (emphasis added). Indeed, claims certified by the Foreign Claims Settlement Commission provide "conclusive proof" of the plaintiff's ownership of the property described in the claim, both under the LIBERTAD Act and under the Commission's organic statute. *See id.* § 6083(a)(1), App. 165a; *id.* § 1622g ("The decisions of the Commission with respect to claims shall be final and

conclusive on all questions of law and fact, and shall not be subject to review by … any court by mandamus or otherwise."); *see also id.* § 1623(h) (similar).

The Act, in other words, makes it clear that the property subject to trafficking liability is the property described in the plaintiff's claim against the Cuban government. The panel majority below, however, broke this statutory nexus between the property subject to trafficking liability and the claim. According to the panel majority, courts must "view the property interest at issue in a [LIBERTAD Act] action as if there had been no expropriation and then determine whether the alleged conduct constituted trafficking in that interest." App. 20a.

The panel majority offered no textual support for this conclusion, and made no attempt to reconcile it with the explicit statutory language focused on the property encumbered by the plaintiff's "claim." As Judge Brasher noted, "[t]he text of the statute says that the trafficking must occur when a plaintiff 'owns the *claim*,' not when the plaintiff would have owned the *property*." App. 33a (dissenting opinion) (emphasis modified). By its plain terms, Title III allows every U.S. national with an unsatisfied claim against the Cuban government to pursue a private right of action for trafficking in the property encumbered by the claim; because Havana Docks has such an unsatisfied claim, it may pursue a Title III trafficking action. *See* 22 U.S.C. § 6081(11), App. 154a ("United States nationals who were the victims of [Cuba's] confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures.").

And just as the Act links the property subject to trafficking liability with the scope of the plaintiff's "claim," the Act defines "property" as broadly as is possible within the constraints of the English language. "The term 'property' means *any* property (including patents … and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or *other interest* therein, including any leasehold interest." 22 U.S.C. § 6023(12), App. 150a (emphasis added). This definition conspicuously encompasses far more than plenary, perpetual property interests; rather, it plainly encompasses time-limited property interests like the concession to the Havana docks at issue here. *Id.*

As Judge Brasher explained, the majority's rule not only fails to give effect to the statutory focus on the property encumbered by the plaintiff's "claim," but also "nullifies myriad property interests that are expressly protected by the … Act." App. 38a (dissenting opinion). In particular, the Act's definition of "property" expressly includes "patents … and any other form of intellectual property," as well as "future" and "contingent" rights. The panel majority's holding, whereby a Title III plaintiff must prove that it would have owned the property at the time of trafficking "as if there had been no expropriation," App. 20a, is categorically inconsistent with these various forms of property.

When the Cuban government seized U.S. property in Cuba in 1960, for example, patents generally were limited to 17 years, *see* 35 U.S.C. § 154 (1960), so by definition would have expired twice over by the time Congress enacted the LIBERTAD Act in 1996.

Similarly, the panel majority's approach makes it impossible for any "contingent" or "future" interest to be trafficked, because by definition such interests had not ripened into a present possessory interest at the time they were extinguished by the confiscation, so no plaintiff could ever prove that it would have owned any such interest at the time of trafficking.

The panel majority made no attempt to grapple with these inconsistencies between its approach and the Act's text. Instead, the panel majority breezily asserted in a footnote that "this case does not require us to address such interests." App. 19a n.5. But that is no answer at all. A court's job is to make sense of a statute *as a whole*. *See, e.g., King v. Burwell*, 576 U.S. 473, 486 (2015); *Gustafson v. Alloyd Co.*, 513 U.S. 561, 568 (1995). An interpretation of a statute that nullifies part of its text cannot possibly be correct, regardless of whether the part that would be nullified happens to be at issue in a particular case. As Judge Brasher put it, "[t]he words of a statute can't be ignored just because they are inconvenient." App. 38a (dissenting opinion).

The LIBERTAD Act, in short, poses a simple question: did the defendant traffic in property in Cuba as to which the plaintiff has a confiscation claim against the Cuban government? The answer to that question has nothing to do with a counterfactual inquiry into what could have/should have/would have happened to that property had it not been confiscated—like gazing into a crystal ball to conjure up a future that never materialized. Rather, as Judge Brasher explained, the Act looks to the claim, which represents a snapshot of the property interest extinguished by the Cuban government. App. 30a,

37a (dissenting opinion). Whatever property the plaintiff owned at the moment of confiscation is memorialized in the claim and cannot be used commercially without incurring trafficking liability under the Act.

b. Rather than providing a textual basis for its holding that courts must "view the property interest at issue in a [LIBERTAD Act] action as if there had been no expropriation and then determine whether the alleged conduct constituted trafficking in that interest," App. 20a, the panel majority invoked policy concerns. Allowing the owner of a time-limited property interest to sue for trafficking in confiscated property in Cuba beyond that time limit, the panel majority declared, would "expand[] the nature of a limited property interest in a Title III action," allowing the owner of a time-limited property interest to sue "in 2025, 2050, 2075, 2100, and so on,"—to "infinity and beyond." App. 22a, 25a, 27a (internal quotation omitted). Such policy concerns of course provide no basis for ignoring a statute's plain text, but even so the panel majority's concerns are baseless.

The concern about "expanding the nature of a limited property interest in a Title III action," App. 25a; *see also id.* at 22-24a, reveals a fundamental misunderstanding of the statute. Until satisfied, a claim against the Cuban Government for the confiscation of property continues to encumber the property subject to the claim. Thus, no one is "expanding" anything by following the statutory text and defining the property subject to trafficking liability by reference to the property at the time it was confiscated by the Cuban government. Rather than "expanding" the claimant's property interest, that

straightforward point recognizes that the claim (which has no time limitation until satisfied) has replaced the claimant's right to the underlying property (which may or may not have had a time limitation). An unsatisfied claim to a concession that had 44 years to run when confiscated is not itself limited to 44 years—the claim endures until satisfied, regardless of any time limitation on the underlying concession.

It is simply not true, thus, that "Havana Docks' usufructuary concession ended, for purposes of Title III, in 2004 when the 99-year term would have expired by its own terms." App. 18-19a. Havana Docks' usufructuary concession ended for *all* purposes in 1960, when it was extinguished without compensation by the Cuban regime and replaced by a claim against that regime that remains unsatisfied to this day. *See* App. 19a ("No one disputes that the 1960 expropriation by the Cuban government extinguished Havana Docks' usufructuary concession under Cuban law."). The panel majority identified no basis in law or logic for its assertion that a property interest concededly extinguished in 1960 "under Cuban law" nonetheless remained alive to expire 44 years later "for purposes of Title III." App. 18-19a.

Congress anticipated and provided for differences in the scope of confiscated property rights in the Act's treatment of damages. As Judge Brasher explained, any time limitation on the underlying property interest "goes to the *value* of the claim, not the scope of the property subject to trafficking." App. 35a (dissenting opinion) (emphasis added). A time-limited property interest is obviously less valuable than a perpetual property interest. A claim to a property

interest scheduled to expire a year after confiscation is worth less than a claim to a property interest scheduled to expire 44 years after confiscation, which in turn is worth less than a claim to a perpetual property interest. Under the Act, the value of the plaintiff's claim provides the default measure of statutory damages, *see* 22 U.S.C. §§ 6082(a)(1)(A)(i)(I), 6082(a)(2), App. 155-56a, and thus accounts for any limitations (temporal or otherwise) on the confiscated property interest. Indeed, as Judge Brasher noted, the cruise lines themselves acknowledged below that the Foreign Claims Settlement Commission "'would award only a small amount for a leasehold set to expire shortly after the expropriation.'" App. 35a (dissenting opinion; quoting Defs.' Joint Br. 42).

The panel majority below likewise took the wrong cue from popular culture by justifying its approach by reference to a concern about allowing plaintiffs to sue to "'infinity and beyond.'" App. 22a, 27a (quoting *Toy Story* (Pixar Animation Studios/Walt Disney Pictures 1995)). As noted above, the Act's plain text establishes liability for trafficking in any property confiscated by, and thus encumbered by a "claim" against, the Cuban government. The statute expressly provides that such encumbrance continues unless and until the claimant receives "adequate and effective compensation," whereupon the Act no longer deems the property to be "confiscated" and thus no longer subject to trafficking liability. 22 U.S.C. § 6023(4)(A), App. 149a (defining "confiscated"). As long as property remains encumbered by an unsatisfied claim against the Cuban government, however, the Act subjects it to trafficking liability,

regardless of how many years, decades, or centuries have passed.

c. This case presents a perfect vehicle to address the divergent views of Title III's operation and to restore Title III as a meaningful tool in the Nation's foreign policy toolkit.

Havana Docks is the textbook Title III plaintiff. The company has maintained itself active for the past sixty-five years to pursue its certified claim against the Cuban government—the type of "conclusive" claim that occupies the most privileged position under the LIBERTAD Act. 22 U.S.C. § 6083(a), App. 165a. In those sixty-five years, the Cuban government has not paid Havana Docks a penny or otherwise satisfied the company's claim. Havana Docks built and operated the docks at its own expense in exchange for a 99-year concession that was extinguished after only 55 years. The cruise lines indisputably used in commerce the property described in Havana Docks' unsatisfied claim against the Cuban government, and paid the Cuban government handsomely for, and made vast sums of money from, that use. This is exactly the complicity between the private sector and the Cuban regime that Title III seeks to prevent.

In contrast, the Eleventh Circuit's interpretation of Title III blesses commercial partnerships with the Cuban regime that exploit confiscated property encumbered by an unsatisfied claim. The resulting harm to U.S. foreign policy is particularly acute because, for manifest geographic, demographic, and economic reasons, the Eleventh Circuit is the epicenter of legal developments involving the U.S.-Cuba relationship. If the LIBERTAD Act is to remain effective as an instrument of U.S. foreign policy, this

Court should review and reverse the divided and manifestly erroneous panel decision below.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for writ of certiorari or, at the very least, call for the views of the Solicitor General.

Respectfully submitted,

CHRISTOPHER LANDAU
RICHARD KLINGLER
ELLIS GEORGE LLP
1201 Connecticut Ave. N.W.
Suite 513
Washington, DC 20036
(202) 249-6900
clandau@ellisgeorge.com

VINCENT H. LI
ELLIS GEORGE LLP
152 West 57th Street, 28th fl.
New York, NY 10019

March 6, 2025

APPENDIX

APPENDIX CONTENTS

Eleventh Circuit Opinion,
Oct. 22, 2024 .... 1a

Eleventh Circuit order denying rehearing,
Dec. 20, 2024 .... 41a

District court order denying motion to dismiss,
Aug. 28, 2019 .... 43a

District court order granting motion to dismiss,
Jan. 6, 2020 .... 54a

District court order granting motion for reconsideration,
Apr. 15, 2020 .... 66a

District court order granting summary judgment (excerpts),
Mar. 21, 2022 .... 104a

Certified Claim (Final),
Sept. 28, 1971 .... 131a

Certified Claim (Proposed),
Apr. 21, 1971 .... 135a

Cuban Liberty and Democratic Solidarity (LIBERTAD) Act,
Pub. L. No. 104-114, 110 Stat. 785 (excerpts)
Mar. 12, 1996 .... 148a

FILED 10/22/2024 [PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10171

HAVANA DOCKS CORPORATION,
Plaintiff-Appellee
v.
ROYAL CARIBBEAN CRUISES, LTD.,
Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Florida,
D.C. Docket No. 1:19-cv-23590-BB

No. 23-10151

HAVANA DOCKS CORPORATION,
Plaintiff-Appellee
Cross Appellant,
v.
ROYAL CARIBBEAN CRUISES, LTD.,
NORWEGIAN CRUISE LINE HOLDINGS, LTD.
CARNIVAL CORPORATION,
A foreign corporation doing business as
Carnival Cruise Lines,
MSC CRUISES S.A. CO.,
MSC CRUISES (USA), INC., et al.
Defendants-Appellants
Cross Appellees.

Appeal from the United States District Court
for the Southern District of Florida,
D.C. Docket No. 1:19-cv-23591-BB

Before WILLIAM PRYOR, Chief Judge, and JORDAN and BRASHER, Circuit Judges.

JORDAN, Circuit Judge.

Title III of the Cuban Liberty and Democratic Solidarity Act, known as the Helms-Burton Act, provides a private cause of action for certain U.S. nationals against anyone who "traffics" in "property which was confiscated by the Cuban Government on or after January 1, 1959. 22 U.S.C. § 6082(a)(1)(A). For over 20 years, Title III of the Act remained dormant because the right to bring an action under Title III was suspended by Presidential decree. *See* 22 U.S.C. § 6085(c)(1)(B) (granting the President the authority to suspend the right to bring an action under Title III if, among other things, the President determines the suspension is "necessary to the national interests of the United States and will expedite a transition to democracy in Cuba"). Title III has been fully effective since May of 2019, *see Garcia-Bengochea v. Carnival Corp.*, 57 F. 4th 916, 920 (11th Cir. 2023), and trafficking cases filed since then have posed a number of issues of first impression.

In these consolidated cases, the district court entered Title III judgments of over $100 million against each of four cruise lines (Royal Caribbean Cruises, Norwegian Cruise Line Holdings, Carnival Corporation, and MSC Cruises) for trafficking in the confiscated property of Havana Docks at the Port of

Havana (now known as the Havana Cruise Port Terminal) from 2016 to 2019. The court ruled at summary judgment that the cruise lines had engaged in trafficking by having their ships dock at the Terminal and one of its piers, by using that property to embark and disembark passengers, and by having that property serve as the starting and ending point for shore excursions for cruise travelers. *See Havana Docks Corp. v. Carnival Corp.*, 592 F. Supp. 3d 1088, 1153-55 (S.D. Fla. 2022).

Havana Docks' confiscated property, however, was not a fee simple ownership interest in real property at the Port of Havana. It was, instead, a 99-year usufructuary concession that would have expired in 2004 were it not for the Cuban Government's expropriation in 1960. So we must decide whether the cruise lines engaged in trafficking under Title III when they used the Terminal and one of its piers from 2016 to 2019.

After a review of the record, and with the benefit of oral argument, we hold that Havana Docks' limited property interest had expired, for purposes of Title III, at the time of the alleged trafficking by the cruise lines. We therefore set aside the judgments in favor of Havana Docks and remand for further proceedings as to its other claims against Carnival.[1]

I

These cases come to us in a summary judgment posture. That means we view the evidence in the light most favorable to the cruise lines and determine

---

[1] Given our resolution, we need not and do not address other issues raised by the cruise lines.

whether Havana Docks was entitled to summary judgment on its trafficking claims as a matter of law under Rule 56. *See, e.g., Tolan v. Cotton*, 572 U.S. 650, 651 (2014); *Benning v. Comm'r, Ga. Dept. of Corr.*, 71 F. 4th 1324, 1328 (11th Cir. 2023).

II

Title III allows a "[U.S.] national who owns the claim to [confiscated] property" to bring an action for trafficking. *See* 22 U.S.C. § 6082(a)(1)(A). The district court ruled, at summary judgment, that Havana Docks is a U.S. national under Title III and could therefore assert claims for trafficking. *See Havana Docks*, 592 F. Supp. 3d at 1161-65. The cruise lines contend that this constituted error, but we disagree.

Under Title III a U.S. national is "(A) any United States citizen" or "(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States. 22 U.S.C. § 6023(15)(A)-(B). It is undisputed that Havana Docks satisfies the first part of this second definition, as it is (and has been) organized under the laws of Delaware since the early part of the 20th century. The parties' main dispute centers around Havana Docks' principal place of business. Because we agree with the district court that Havana Docks is a U.S. national under § 6023(15)(B), we need not address § 6023(15)(A).

Havana Docks was incorporated in Delaware in 1917 and was a U.S. national in 1960 when the Cuban Government expropriated its usufructuary concession. Indeed, its corporate nationality was a significant reason for the confiscation. *See In re*

Havana Docks Corp., Foreign Cl. Settlement Comm'n No. 2492, Proposed Decision, at 2 (Apr. 21, 1971) (later finalized in *In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Final Decision (Sept. 28, 1971)); Carnival D.E. 73-8 at 6. *See also* Ada Ferrer, Cuba: An American History 347-48 (2021) (describing the Castro regime's expropriation of assets and property belonging to U.S. nationals and U.S. companies in the 1960s).

For purposes of diversity jurisdiction under 28 U.S.C. § 1332(c)(1), the principal place of business of a corporation is its "nerve center. "[I]n practice" that is "normally ... the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, i.e., the 'nerve center,' and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion)." *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010). A corporation's nerve center is a "single place." *Id.*

Although *Hertz* was a diversity jurisdiction case, we think its nerve-center test should apply to determine a company's principal place of business for purposes of § 6023(15)(B) of Title III. Both § 1332(c)(1)—the diversity provision at issue in Hertz—and § 6023(15)(B)—the Title III provision at issue here—use the term "principal place of business," and Hertz manifests a preference for "simple jurisdictional tests. *Holston Ines., Inc. B.V.I. v. LanLogistics Corp.*, 677 F.3d 1068, 1071 (11th Cir. 2012).

Here's how the district court described the record evidence on the issue of Havana Docks' principal place of business:

The only corporate address associated with Havana Docks is in Lexington, Kentucky. Havana Docks has only two functions: to exist and manage its income-producing assets. Indeed, Havana Docks has no employees. [Jerry] Johnson, who operates out of Kentucky, is tasked with performing both of those functions. It is undisputed that [Mr.] Johnson has performed duties to, among other things, maintain Havana Docks' corporate status active and in good standing; coordinate the filing of Havana Docks' taxes; and maintain Havana Docks' ledger, balance sheets, [and] income statements.

> Mickael Behn, Havana Docks' President, testified that "[a]ll decisions are executed by [Mr.] Johnson, and that Johnson could do "[p]retty much everything" without his input. [Mr.] Behn added that [Mr.] Johnson "has authority ... to do what he needs to do for Havana Docks. It's a certified claim. And to keep the company running. [Mr.] Johnson similarly testified that although he reports to [Mr.] Behn as President, [he] is "largely responsible" for "the day-to-day business decisions for Havana Docks. [Mr.] Johnson further stated at deposition that [Mr.] Behn does not conduct any Havana Docks business in England.

Havana Docks, 592 F. Supp. 3d at 1163-64 (record citations omitted).

The cruise lines base their challenge on the fact that Mr. Behn lives in London, England. In their view, Mr. Behn directs Havana Docks' corporate affairs from there—for example, approving Mr. Johnson's hiring of an accountant and counsel—and as a result the company's "nerve center" is located outside of the

United States. *See* Joint Br. for RC, NCL, and MSC Cruises at 65-69; Br. for Carnival at 46-60. We see things differently.

We first consider the "nature of [Havana Docks'] activities, as it is difficult to locate a corporation's brain without first identifying its body." *Johnson v. SmithKline Beecham Corp.*, 724 F. 3d 337, 356 n.21 (3d Cir. 2013). In this respect Havana Docks' only purposes are to maintain its corporate existence and manage its income-producing assets (e.g., its Title III trafficking claims). We must therefore look to where those activities are "controlled and directed." *Id.* Mr. Johnson, though an unpaid director, keeps Havana Docks' corporate status active and in good standing, coordinates the filing of Havana Docks' taxes, and maintains Havana Docks' ledger, balance sheets, and income statements. And he does all of those things in Kentucky, the place where Havana Docks has its only corporate address.

That Mr. Behn made some strategic corporate decisions from London does not call for that location to be Havana Docks' nerve center. Mr. Johnson made decisions about "paying taxes, investments, administration ... [p]retty much everything. Carnival D.E. 508-17 at 39. Indeed, Mr. Behn testified that Mr. Johnson has full "authority" and "autonomy" to keep Havana Docks going and to protect its certified claim. *See id.*; NCL D.E. 279-1 at 8. For his part, Mr. Johnson testified without contradiction that he could "bind the company" on any decision without Mr. Behn's authorization. *See* Carnival D.E. 318-2 at 21.

The cruise lines point to evidence indicating that Mr. Behn could override Mr. Johnson if the two disagreed, but there is no evidence that there has been

any such disagreement on a matter of importance. The nerve center test, as articulated in *Hertz*, focuses on the actual management of a company and not theoretical possibilities. *See Hertz*, 559 U.S. at 80 (explaining that the focus is on the "place where the corporation's high-level officers direct, control, and coordinate the corporation's activities"). *See also* 13F Arthur R. Miller, Fed. Prac. & Pro. § 3625 (3d ed. & June 2024 update) ("If ... managerial control, as well as the company's actual operations, is dispersed among several states or is located in the same state as the executive offices, then there is a substantial amount of judicial precedent for the proposition that the site of executive and administrative offices should be relied upon to determine a corporation's principal place of business for purposes of diversity jurisdiction.").

The fact that Havana Docks is not registered or licensed to do business in Kentucky does not tip the scales in favor of England as the company's principal place of business. That is because Havana Docks does not do any substantive business and because it is also not registered or licensed to do business in England. At best, this matter is a wash.

In sum, Havana Docks is incorporated in Delaware and has its principal place of business—its nerve center—in Kentucky. On this record, no reasonable jury could have found otherwise. The district court correctly ruled that Havana Docks is a U.S. national under Title III.

III

Havana Docks is the owner of an interest in, and claim to, certain commercial waterfront real property in the Port of Havana (now known as the Havana

Cruise Port Terminal). Here's what that property interest consists of and how it came to be.

A

In 1905, the Cuban Government issued Decree No. 467 granting a concession to Compañia del Puerto (as the successor to the interest of Sylvester Scovel) for a 50-year term. The concession, issued pursuant to the provisions of the Law of Public Works and the Law of Ports, allowed Compañia del Puerto to build at its own expense a pier at the Port of Havana—which constituted state property—under the control and supervision of the Cuban Government. The pier, which was to have mechanical installations, was to be used in the docking, loading, and unloading of vessels. Once the construction was completed, Compañia del Puerto could operate a cargo service on the premises subject to the regulations, fees, and tariffs of the Cuban Government. The concession granted Compañia del Puerto a "usufruct" in certain public areas on which the installed works were located, and in the public spaces between the streets that were established as public thoroughfares between certain jetties. *See Havana Docks*, 592 F. Supp. 3d at 1121 (quoting Carnival D.E. 73-3 at 3); Carnival D.E. 331-1 at 7—8, 10, 14 (Declaration of Ambar Diaz, Esq.); Decree No. 467, Condition No. 4 Nov. 29, 1905, Gaceta Oficial [G.O.] (Cuba). *See also* Carnival D.E. 331-4 at 12 (English translation of Decree No. 467).[2]

---

[2] The concession granted to Compañia del Puerto contained a provision concerning expropriation. The provision stated that "[i[f at any time during the term of the concession the works were to be expropriated ... by virtue of the application of the [Law of Ports], the Government or its agencies shall indemnify the concession holder for the value of all works built by the latter,

In civil law or mixed law jurisdictions, a "concession" is a "franchise, license, permit, [or] privilege[.]" Henry Saint Dahl, Dahl's Law Dictionary 79 (3d ed. 1999). A "usufruct" is "the right to enjoy a thing owned by another person and to receive all the products, utilities, and advantages produced thereby, under the obligation of preserving its form and substance, unless the deed constituting [the] usufruct or the law otherwise decrees." *Id.* at 496¬97. *Accord* 2 Butterworths Spanish-English Legal Dictionary 659 (1991) (defining "usufruct" as a "right of enjoyment of or right to use another's property and to take the fruits therefrom without altering its substance," and explaining that it is "[u]sually temporary and may be gratuitous or for consideration"); Black's Law Dictionary 1712 (4th ed. 1951) (defining "usufruct," in "the civil law," as the "right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing").

In 1910, the Cuban Government issued Decree 1022. This law allowed Compañia del Puerto to build four piers and set an approved fee schedule for use of the piers once constructed. *See* Carnival D.E. 331-1 at 9; Decree No. 1022, Nov. 19, 1910, Gaceta Oficial [G.O.] (Cuba). *See also* Carnival D.E. 331-4 at 21-24 (English translation of Decree No. 1022).

Compañia del Puerto assigned its rights and interests under the concession to Port of Havana

---

including the Customs Inspectors Department and the dock on the north side of the jetty." *Havana Docks*, 592 F. Supp. 3d at 1121.

Docks Company. Decree No. 184 approved this assignment in 1911, with all of the terms of the initial concession remaining in place. *See* Carnival D.E. 331-1 at 9; Decree No. 184, Mar. 13, 1911, Gaceta Oficial [G.O.] (Cuba). *See also* Carnival D.E. 331-4 at 3 (English translation of Decree No. 184). In 1920, the Cuban Government issued Decree No. 1944, which amended the concession so that two of the piers would become a single pier of larger capacity for cargo handling. Decree No. 1944 also extended the term of the concession from 50 years to 99 years (with the term beginning in 1905). *See* Decree No. 1944, Dec. 13, 1920, Gaceta Oficial [G.O.] (Cuba); Carnival D.E. 331-1 at 18-19. *See also* Royal Caribbean D.E. 31-4 at 2-4 (English translation of Decree No. 1944).[3]

Under the Law of Public Works, concessions could only be granted for a maximum term of 99 years, and any rights granted to the beneficiary would expire when the fixed term ended. This meant, effectively, that the beneficiary's property at the Port of Havana would revert back to the Cuban Government at the end of the 99-year term. *See* Carnival D.E. 331-1 at 11, 18-19. *See also* Ley General de Obras Públicas de la Isla de Cuba y Reglamento Para Su Ejecucion 15 (1891), *translated* in General Law of Public Works of the Island of Cuba and Regulations for its Execution 15 (U.S. Customs and Insular Affs., War Dep't, 1899). The concession did not provide the beneficiary with exclusive rights to the piers, and the Law of Ports provided that the concession could be unilaterally

---

[3] In one of its submissions to the Foreign Claims Settlement Commission in 1959, Havana Docks' appraisal expert stated that the concession —ran for 99 years, to the year 2004.— Carnival D.E. 331-1 at 20 (quoting Luis Parajon's appraisal report).

terminated by the Cuban Government at any time with the beneficiary having the exclusive recourse of seeking compensation for the work performed and the materials used. *See* Carnival D.E. 331-1 at 15-16, 20-21. *See generally* Ley de Puertos de la Isla de Cuba (1890), *translated* in The Law of Ports in Force in the Island of Cuba 11-12 (U.S. Customs and Insular Affs., War Dep't, 1900).

In 1928, Port of Havana Docks Company sold all of its corporate stock to Havana Docks, which as noted was and is a Delaware corporation. The deed was notarized in Cuba that same year, and Havana Docks thereby acquired the concession at the Port of Havana. The construction of the piers finished in 1930, and four years later the Cuban Government approved the assignment of the concession from Port of Havana Docks Company to Havana Docks. In doing so, the Cuban Government noted that the concession's purpose was to serve the public interest. *See* Carnival D.E. 331-1 at 10.

B

Shortly after coming to power in 1959, the Castro regime began nationalizing and expropriating property owned or held by U.S. nationals and U.S. companies. *See generally* Ferrer, Cuba: An American History, at 347-48. In 1960, through Resolution No. 3 and pursuant to Law No. 851, the Castro regime confiscated (i.e., expropriated) the concession held by Havana Docks and forcibly took possession of its premises at the Port of Havana. *See* Carnival D.E. 73-6 at 7 & D.E. 337 at 6; NCL D.E. 367 at 29-30; Law No. 851, Oct. 24, 1960, Gaceta Oficial [G.O.] (Cuba). Havana Docks has never received any compensation from the Cuban Government for the expropriation of

its concession or the taking of its property. *See* Carnival D.E. 318-1 at 17.

"In response to the takings of American property in Cuba by the Castro regime, Congress amended the International Claims Settlement Act of 1949 with the Cuban Claims Act of 1964, 22 U.S.C. §§ 1643-1643k. The Cuban Claims Act authorized the Foreign Claims Settlement Commission to gather information for an eventual negotiation on claims of confiscated properties in Cuba." *Garcia-Bengochea*, 57 F. 4th at 920 (citations omitted). The Commission "reviewed the applications of U.S. corporate and individual claimants and certified as legitimate nearly 6,000 claims valued at about $1.9 billion." *Id.* "In 2005 and 2006 the Commission, pursuant to a subsequent grant of statutory authority, conducted a second round of claims review. *See* Pub. L. 105-277, § 2211, 112 Stat. 2681-812. 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.*

Havana Docks filed a claim with the Foreign Claims Settlement Commission. The Commission issued a proposed decision on the claim in April of 1971. It then rendered a final decision September of 1971 which affirmed the proposed decision except for an increase in some land values. *See In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Proposed Decision (Apr. 21, 1971); *In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Final Decision (Sept. 28, 1971); Carnival D.E. 73-8.

First, the Commission found that Havana Docks was a U.S. national within the meaning of the Cuban Claims Act. This was because more than 50% of its

stock was held by persons who were U.S. nationals. *See In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Proposed Decision, at 2 (Apr. 21, 1971) (later finalized in *In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Final Decision (Sept. 28, 1971)).

Second, the Commission made a number of findings about Havana Docks' concession and the Cuban Government's expropriation. It found that (a) Havana Docks had a concession which was renewed in 1934 for the construction and operation of wharves and warehouses in the Port of Havana and which was set "to expire in 2004, at which time [it] had to deliver the piers to the [Cuban Government] in good state of preservation;" (b) Havana Docks acquired at the same time certain real property facing the Bay of Havana; (c) Havana Docks owned certain installation machinery, loading and unloading equipment, vehicles, furniture, and fixtures at the Port of Havana and at its corporate offices; (d) in June of 1946 Havana Docks' property was encumbered with a $1.6 million mortgage in favor of certain bondholders; and (e) in 1960 the Cuban Government nationalized and expropriated Havana Dock's property and assets in Cuba. *See id.* at 3.

Third, the Commission certified that Havana Docks suffered a loss as a result of the Cuban Government's actions and valued its "concession and tangible assets" at $8.684 million and its securities, accounts receivable, and government debts collectively at $495,340. The certified loss, then, totaled $9.179 million with interest to accrue at 6% per year from the respective dates of loss to the date of settlement. *See In re Havana Docks Corp.*, Foreign Cl. Settlement

Comm'n No. 2492, Final Decision, at 3 (Sept. 28, 1971).

C

Title III establishes a private right of action for "any United States national who owns the claim to [confiscated] property" against "any person that ... traffics in [such] property." 22 U.S.C. § 6082(a)(1)(A) ("Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this subchapter, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages."). Under Title III, "confiscated" means "the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959, ... without ... adequate and effective compensation provided." 22 U.S.C. § 6023(4)(A)(i). The term "property" is defined as "any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest." 22 U.S.C. § 6023(12)(A). It also includes some, but not all, real property used for residential purposes. *See* 22 U.S.C. § 6023(12)(B).

Under Title III, a certification by the Foreign Claims Settlement Commission pursuant to the International Claims Settlement Act, 22 U.S.C. §§ 1643 et seq., constitutes "conclusive proof of ownership of an interest in property." 22 U.S.C. § 6083(1). As set out earlier, Havana Docks has a

claim certified by the Commission. But due to the operative language of § 6082(a)(1)(A)—"traffics in property which was confiscated by the Cuban Government"—the trafficking must be in the property that was confiscated, and not in the claim held by the U.S. national based on that confiscated property.[4]

The issue presented here is one of first impression, and it is not easy. Indeed, the district court was of two minds about the effect of the concession's 99-year term on Havana Docks' trafficking claims against the cruise lines.

The district court first denied a motion to dismiss by Carnival and rejected the argument that Havana Docks could not sue because it no longer had a property interest at the time of the alleged trafficking from 2016 to 2019. The court explained that Title III "does not expressly make any distinction whether [the] trafficking needs to occur while a party holds a property interest in the property at issue," and agreed with Havana Docks that Carnival was "incorrectly conflat[ing] a claim to a property and a property interest. *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724, 2019 WL 8895241, at *4 (S.D. Fla. Aug. 28, 2019).

Then the district court reversed course and granted motions to dismiss filed by MSC Cruises and NCL on the ground that Havana Docks' concession had expired in 2004, well before the alleged trafficking by the cruise lines. *See Havana Docks Corp. v. MSC Cruises SA Co.*, 431 F. Supp. 3d 1367, 1371-74 (S.D. Fla. 2020); *Havana Docks v. Norwegian Cruise Line*

[4] We limit our discussion to the property interest at issue here—a 99-year usufructuary concession at the Port of Havana.

Holdings, Ltd., 431 F. Supp. 3d 1375, 1378¬80 (S.D. Fla. 2020). The court noted that Havana Docks admitted that its concession "expired in 2004. MSC, 431 F. Supp. 3d at 1372. Havana Docks, moreover, "d[id] not appear to dispute that the Cuban Government's confiscation extinguished [its] property rights." *NCL*, 431 F. Supp. 3d at 1379. The court ruled that a property interest "involving a time-limited concession ... does not give [Havana Docks] the right to sue for activities that took place years after it no longer has an interest in the property. *MSC*, 431 F. Supp. 3d at 1373. A cruise line "could only 'traffic' in [Havana Docks'] confiscated property if it undertook one of the prohibited activities before [Havana Docks'] interest in the property expired. *NCL*, 431 F. Supp. 3d at 1380. Turning to the purposes of Title III—to deter trafficking and to provide a remedy for trafficking—the court explained that "there is nothing to suggest that Congress intended to grant victims of property confiscations more rights to the property than they would otherwise have simply by virtue of the confiscation. *MSC*, 431 F. Supp. 3d at 1374.

Havana Docks moved for reconsideration. The district court changed its mind again and reverted to the rationale it employed in denying Carnival's motion to dismiss in 2019. The court explained that it had made a factual error in the *MSC* and *NCL* cases by determining, at the Rule 12(b)(6) stage, that Havana Docks' concession expired in 2004. According to the court, Havana Docks had a 99-year concession, and not a concession which was to end in 2004. The court also stated that its finding that the concession ended in 2004 was contrary to the language in the certified claim because the Foreign Claims Settlement

Commission only stated that the concession was set to expire in 2004. *See Havana Docks Corp. v. Norwegian Cruise Line Holdings*, Ltd., 454 F. Supp. 3d 1259, 1271-72 (S.D. Fla. 2020). The court noted as well that Havana Docks had more than the concession itself; it owned the fixtures and equipment it had installed at the Port of Havana. *See id.* at 1272. Finally, the court concluded that though the Cuban Government's expropriation extinguished the property rights of victims like Havana Docks, the Eleventh Circuit's decision in *Glen v. Club Mediterranee S.A.*, 450 F.3d 1251 (11th Cir. 2006), indicated that victims of trafficking could bring Title III actions based on claims to the confiscated property. *See NCL*, 454 F. Supp. 3d at 1273. "[T]he Cuban Government's expropriation" extinguished "all rights Havana Docks had to the remaining concession term of 44 years," but as no trafficking could occur on property already confiscated, Havana Docks could maintain its Title III claim. *See id.* at 1274.

In its summary judgment order, the district court adopted the reasoning set out in *NCL*, 454 F. Supp. 3d at 1272-73. It rejected the cruise lines' argument that because Havana Docks' concession would have expired in 2004 there could be no trafficking from 2016 to 2019. *See Havana Docks*, 592 F. Supp. 3d at 1255.

2

We conclude that the district court correctly assessed the limited nature of Havana Docks' property interest when it granted the motions to dismiss filed by MSC Cruises and NCL. *See MSC*, 431 F. Supp. 3d at 1373; *NCL*, 431 F. Supp. 3d at 1379. Havana Docks' usufructuary concession ended, for

purposes of Title III, in 2004 when the 99-year term would have expired by its own terms. As a result, when the cruise lines used the Terminal and one of its piers from 2016 to 2019, they did not traffic in property that had been confiscated by the Cuban Government.[5]

No one disputes that the 1960 expropriation by the Cuban Government extinguished Havana Docks' usufructuary concession under Cuban law. *See Glen*, 450 F.3d at 1255. The district court correctly noted in one of its orders that a Title III plaintiff, following expropriation, no longer owns property that can be trafficked because that property now belongs to the Cuban Government (or whomever else it has conveyed the property to). *See NCL*, 454 F. Supp. 3d at 1274.

There is a reasonable argument that the Cuban Government's expropriation of Havana Docks' usufructuary concession—i.e., the taking of the property of a national of another country—without payment of compensation violated international law. *See Comparelli v. Republica Bolivariana de Venezuela*, 891 F.3d 1311, 1326 (11th Cir. 2018)

---

[5] Title III's definition of "property" includes "future" and "contingent" interests, 22 U.S.C. § 6023(12)(A), but this case does not require us to address such interests. At the time of the Cuban Government's confiscation, Havana Docks' usufructuary concession was fully vested and was therefore not contingent on the occurrence of any future events. *See generally* Restatement (Third) of Property § 25.3 (Am. Law Inst. 2011) ("A future interest is either contingent or vested. A future interest is contingent if it might not take effect in possession or enjoyment."); 31 C.J.S. Estates § 185 (May 2024 update) (explaining that a "contingent right is one that only comes into existence on an event or condition which may not happen until another event prevents vesting").

("[U]nder the third prong of the [expropriation] exception [of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(3)], there are three ways in which a taking may violate international law: (1) when it does not serve a public purpose; (2) when it discriminates against those who are not nationals of the country; or (3) when it is not accompanied by provision for just compensation."); Restatement (Third) of Foreign Relations § 712 (Am. Law Inst. 1987) ("A state is responsible under international law for injury resulting from ... a taking by the state of the property of a national of another state that (a) is not for a public purpose, or (b) is discriminatory, or (c) is not accompanied by provision for just compensation."). But a Title III claim is an action against a third party for trafficking in "property which was confiscated by the Cuban Government," and not an action against the Cuban Government for expropriating that property decades ago. *See Exxon Mobil Corp. v. Corporacion CIMEX S.A.*, 534 F. Supp. 3d 1, 16 (D.D.C. 2021) ("Trafficking in expropriated property is the 'gravamen' of a Title III claim, not Cuba's expropriation of the property"), *vacated on other grounds and remanded*, 111 F.4th 12 (D.C. Cir. 2024).

In our view, the way to give effect to the statutory language ("traffics in property which was confiscated"), and to acknowledge that not all property rights are the same, is to view the property interest at issue in a Title III action as if there had been no expropriation and then determine whether the alleged conduct constituted trafficking in that interest. We set out our reasoning below.

"A common idiom describes property as a 'bundle of sticks'—a collection of individual rights which, in certain combinations, constitute property." *United* States *v. Craft*, 535 U.S. 274, 278 (2002). An "interest in real property is defined by the metes and bounds that describe its geographic dimensions and the term of years that describes the temporal aspect of the owner's interest." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 331-32 (2002).

Interests in real property are as varied as the colors and shades on a paint wheel. At one end are freehold estates like an estate in fee simple absolute, which is ownership "not subject to a special limitation ... or a condition subsequent ... or an executory limitation." Restatement (First) of Property § 15 (Am. Law Inst. 1936). "If one conceives of property as likened thus to a bundle of rights, privileges, immunities and liabilities adaptable to any physical thing, the fee simple absolute is the largest segment thereof that the political philosophy of the time and place permits any private individual to obtain. 2 David A. Thomas, Thompson on Real Property, Thomas Editions § 14.04(c)(1) (Matthew Bender Apr. 2024 update). At the other end are limited possessory rights like those created by a tenancy at will, which endures "only so long as both the landlord and the tenant desire. Restatement (Second) of Property—Landlord and Tenant § 1.6 (Am. Law Inst. 1977).

Congress, we think, understood the varied nature of property interests when it drafted Title III. For example, 22 U.S.C. § 6023(12)(A) includes "leasehold interests" in the definition of property, and a leasehold interest is necessarily restricted in terms of location and duration. *See generally* Restatement

(Second) of Property—Landlord and Tenant § 1.1 (Am. Law Inst. 1977) ("The landlord-tenant relationship exists only with respect to a space that is intended to have a fixed location for the duration of the lease.").

We do not believe that Congress, in enacting Title III, meant to convert property interests which were temporally limited at the time of their confiscation into fee simple interests in perpetuity such that the holders of such limited interests could assert trafficking claims through what Buzz Lightyear called "infinity and beyond." *Toy Story* (Pixar Animation Studios /Walt Disney Pictures 1995). In the words of the district court, "there is nothing to suggest that Congress intended to grant victims of property confiscations more rights to the property than they would otherwise have simply by virtue of the confiscation." *MSC*, 431 F. Supp. 3d at 1374. *Cf. Alamo Land & Cattle Co. v. Arizona*, 424 U.S. 295, 303 (1976) ("[T]he holder of an unexpired leasehold interest in land is entitled, under the Fifth Amendment, to just compensation for the value of that interest when it is taken upon condemnation by the United States."); *Lafayette Airport Comm'n v. Roy*, 328 So.2d 182, 186 (La. App. 3d Cir. 1976) (once the value of a parcel of land taken by the government through eminent domain is established for just compensation purposes, it is the burden of the usufructuary, "as a claimant of a portion of that total award, to prove the value of her interest").

For purposes of Title III, therefore, we treat Havana Docks' property interest—the concession—as if the Cuban Government had never expropriated it, i.e., without the distorting effect of the confiscation. To

recap, Havana Docks did not have any fee simple ownership rights in any real property at the Port of Havana; it had only a usufructuary concession, i.e., a "personal servitude granting the right to use another's property and take its 'fruits' or profits." 8 Thompson on Real Property, Thomas Editions § 64.03 n.23. By its own terms the concession had a 99-year term and was to end in 2004. Havana Docks, moreover, had no option for unilateral renewal of the concession and had to return the property and piers to the Cuban Government in a state of good preservation when the term expired.

In statutory terms, what the Cuban Government confiscated from Havana Docks in 1960 was its "control" and enjoyment of the property at the Port of Havana through a time-limited usufructuary concession. *See* 22 U.S.C. § 6023(4)(A). When that concession expired in 2004, any property interest that Havana Docks had by virtue of that concession ended. Thus, the cruise lines' conduct from 2016 to 2019 did not constitute trafficking in Havana Docks' confiscated property. Two contrasting examples will help explain our holding.

Imagine that in October of 1965 the Cuban Government confiscated a private airport for small aircraft which was owned (land and all) by a corporation that was (and remains) a U.S. national. Imagine also that the Cuban Government has since been operating the airport as its own and collecting fees for its use. If the corporation owned the airport in fee simple at the time of its expropriation, an airline which landed its planes on that airport today and paid the Cuban Government a fee for the privilege of doing so would be engaged in trafficking and the corporation

could (assuming other statutory requisites were satisfied) sue that airline under Title III. That is because a fee simple interest, if not for the expropriation, would have continued unabated into the future without any inherent temporal limitation.

On the other hand, imagine that the same U.S. corporation had only a five-year lease to operate the same airport, which was owned (land and all) by a Cuban national. Imagine also that the Cuban Government confiscated the corporation's leasehold interest and took over the airport in October of 1965, when the lease had only two months left to go in its five-year term. If an airline landed its planes on the airport today and paid the Cuban Government a fee for the privilege of doing so, the corporation could not sue the airline for trafficking under Title III. The reason is that its leasehold interest, if not for the expropriation, would have expired by its own terms in December of 1965. The airline would not have trafficked in the corporation's confiscated property by using the airport today.

3

Havana Docks, defending the district court's final decisions on this issue, *see* NCL, 454 F. Supp. 3d at 1271-74, and *Havana Docks,* 592 F. Supp. 3d at 1255, maintains that it can assert trafficking claims against the cruise lines for conduct taking place from 2016 to 2019. At the end of the day, we are not convinced by its arguments.

First, Havana Docks is wrong in asserting that the certified claim from the Foreign Claims Settlement Commission in 1971 establishes that the cruise lines trafficked in its confiscated property. *See* Br. for Appellee at 39-45. Title III provides that a

certification of a claim by the Commission constitutes "conclusive proof of ownership of an interest in property," 22 U.S.C. § 6083(a)(1), and we accept that Havana Docks owned a property interest in the usufructuary concession at the time of the confiscation. But Title III's conclusive presumption of Havana Docks' ownership interest at some point in the past does not speak to the nature of the interest today. Nor does it tell us whether trafficking in the concession can occur beyond its scheduled end date in 2004.

Though a U.S. national with a certified claim has a basis for seeking compensation in any future settlement proceedings between the United States and Cuba, and has to some degree monetized the value of the property (or property interest) confiscated by the Cuban Government, the certified claim is not a means for expanding the nature of a limited property interest in a Title III action. And to the extent that its decision is relevant to the issue before us, the Commission recognized that Havana Docks' concession was set to expire in 2004, at which point Havana Docks had to return the property and piers to the Cuban Government in a good state of preservation. *See In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Proposed Decision, at 5 (Apr. 21, 1971) (later finalized in *In re Havana Docks Corp.*, Foreign Cl. Settlement Comm'n No. 2492, Final Decision (Sept. 28, 1971)).

Second, we disagree with Havana Docks that the nature of its usufructuary concession allows it to assert trafficking claims against the cruise lines for conduct which took place from 2016 to 2019. *See* Br. for Appellee at 45-46. Havana Docks cites *Boggs v.*

Boggs, 520 U.S. 833, 836 (1997), for the proposition that a "lifetime usufruct is the rough equivalent of a common-law life estate," but that citation is misplaced because the concession here was limited to 99 years and did not give Havana Docks any unilateral rights of renewal.

Third, we reject Havana Docks' argument that a Title III claim can be brought against the cruise lines because the interest in the usufructuary concession—having been extinguished in 1960 by the Cuban Government's confiscation, *see* Glen, 450 F.3d at 1255—has been replaced with a certified claim for compensation against the Cuban Government. *See* Br. for Appellee at 52-57. Havana Docks is right that it now holds a certified claim from the Commission for the value of the confiscated property interest, but under the language of Title III that claim does not provide the basis for a trafficking action. As explained earlier, Title III provides that "any person" who "traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages. 22 U.S.C. § 6082(a)(1)(A). As this language indicates, the trafficking must be in the "property which was confiscated," and not in the claim later certified by the Commission. A U.S. national who owns "the claim to such property" can bring a Title III action for trafficking, but the existence of the claim does not do away with the requirement that the trafficking be in the confiscated property.

Fourth, contrary to Havana Docks' contention, the use of the past tense in § 6082(a)(1)(A) ("was confiscated") does not point to a different result. We

recognize that the Cuban Government's confiscations of property belonging to U.S. nationals largely took place in the 1960s. And we understand that through the Title III remedy Congress sought to both deter the use of confiscated properties by third parties and to compensate the owners of such properties for their use (i.e., their exploitation). *See* 22 U.S.C. § 6081(1)¬(11) (congressional findings). But Havana Docks does not offer any persuasive support for its assertion that "[a]ny temporal limitations on [confiscated] property interests are reflected in the value of the claim, not the scope of the property subject to trafficking." Br. for Appellee at 54. Accepting Havana Docks' position would mean that a U.S. national with a temporally-limited and now-expired property interest would (a) have that interest turned into a fee simple interest of infinite duration as a result of the Cuban Government's confiscation, and (b) be allowed to sue any third party which used or benefited from any portion of that expired property interest in 2025, 2050, 2075, 2100, and so on. Congress conceivably could have created such a scheme, but we do not think that it did.

4

Our resolution does not dispose of all of Havana Docks' trafficking claims. Havana Docks also alleged that Carnival trafficked in its concession from 1996 to 2001 through its interests in two other companies, Airtours and Costa. The district court did not separately address these claims given its ruling in favor of Havana Docks on the 2016-2019 trafficking claims.

Havana Docks and Carnival agree that we should remand the 1996-2001 claims for further proceedings.

See Br. for Carnival at 17 n.2; Br. for Appellee at 51 n.6. We concur in their assessment. Because Havana Docks' concession would not have expired until 2004, our holding today does not preclude claims for trafficking based on conduct taking place before then.

IV

We affirm the district court's ruling that Havana Docks is a U.S. national under Title III of the Helms-Burton Act but reverse the judgments in favor of Havana Docks and against the cruise lines for conduct taking place between 2016 and 2019. We remand for further proceedings as to the trafficking claims against Carnival based on conduct taking place from 1996 to 2001.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

BRASHER, Circuit Judge, dissenting:

When Fidel Castro came to power in 1959, the Cuban Government confiscated all property in Cuba owned by United States nationals. After nearly four decades of those nationals receiving no compensation from the Cuban Government for their stolen property, Congress passed the Helms-Burton Act as another way for those nationals to seek compensation for their losses. To that end, Title III of the Act creates a private cause of action for any U.S. national who owns a "claim" to "property which was confiscated" against anyone who commercially benefits from the stolen property.

Havana Docks is a U.S. national that owned a concession to construct and operate piers and terminal facilities at the Port of Havana for a term of 99 years beginning in 1905. Under the auspices of that concession, it constructed multiple piers and docks in Havana. The Cuban Government ended that concession and confiscated its docks in 1960. Even though the Foreign Claims Settlement Commission certified the value of Havana Docks' stolen property and recognized its claim against the Cuban Government, the Cuban Government has not paid for confiscating Havana Docks' property. Nonetheless, over the last ten years, various cruise lines have been coordinating with the Cuban Government to deliver passengers to its confiscated docks.

The majority opinion holds that Havana Docks cannot sue those cruise lines for using its confiscated property in the present day because its 99-year right to operate the docks (that it built) ended in 2004. But the majority opinion is wrong. The Cuban Government ended Havana Docks' concession in 1960

when that concession still had 44 years left to run. The majority's counterfactual analysis—asking what would have happened to Havana Docks' docks if they had not been confiscated in 1960—is incompatible with the text of the Act and undermines its remedial purpose. Nothing in the statute requires that a claimant establish that, absent the confiscation, it would have a current, present day property interest in its stolen property. Accordingly, I respectfully dissent.

I.

Congress enacted the Helms-Burton Act to provide a comprehensive remedial regime for the property that the Cuban Government confiscated in 1959. The Act explains that it seeks to resolve "the claims of United States nationals who had property wrongfully confiscated by the Cuban Government." 22 U.S.C. § 6081(6)(B). And a certified claim from the Foreign Claims Settlement Commission—like the one Havana Docks has obtained—is "conclusive proof of ownership of an interest in property" that was confiscated and entitles the owner to compensation under the Act. *Id.* § 6083(a)(1). In other words, the Act recognizes that a U.S. national's pre-1959 property interests are no more; they have been replaced by claims against the Cuban Government. We have explained that, under the Act, "former owners of confiscated property now have ... ownership of a 'claim to such property,'" instead of any rights in the property itself *Glen v. Club Mediterranee, S.A.*, 450 F.3d 1251, 1255 (11th Cir. 2006) (quoting 22 U.S.C. § 6082(a)(1)(A)).

In an ideal world, the Cuban Government would pay the claims for the property it confiscated in 1959. But, because the Cuban Government has no intention of doing so, the Act provides another path to

compensation through a private right of action for claim-holding U.S. nationals to obtain the value of their claim from any person that traffics in the property that underlies their claim. 22 U.S.C. § 6082(a)(1)(A). Specifically, the Act creates a cause of action against "any person that ... traffics in property which was confiscated by the Cuban Government" in favor of "any United States national who owns the claim to such property." *Id.* The Act broadly defines "property" as "any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest. 22 U.S.C. § 6023(12)(A). And the Act broadly defines "traffics" as engag[ing] in a commercial activity using or otherwise benefiting from confiscated property" without the authorization of a U.S. national who owns a claim to the property. 22 U.S.C. § 6023(13)(A)(ii).

As damages, a successful Title III plaintiff is entitled to the value of its "claim." The Act provides three different ways to measure that value: (1) the amount of a certified claim from the Foreign Claims Settlement Commission, plus interest, (2) the amount determined by a special master, plus interest, or (3) the fair market value at present or at the time of confiscation, whichever is greater, plus interest. 22 U.S.C. § 6082(a)(1)(A)(i). A successful plaintiff is also entitled to court costs and reasonable attorneys' fees. Id. § 6082(a)(1)(A)(ii).

Before Castro came to power, Havana Docks owned a concession to construct piers and terminal facilities at the Port of Havana and to own, maintain, and

operate those facilities for a term of 99 years beginning in 1905 and expiring in 2004. By the time Castro took control, Havana Docks had finished construction and begun operating those facilities. Because Havana Docks is a U.S. national, the Cuban Government confiscated the docks and ended its concession and all related rights in 1959.

After the confiscation, Havana Docks sought restitution with the Foreign Claims Settlement Commission, which has the authority to issue a "final and binding decision[] with respect to claims by United States nationals against" the Cuban Government. *Dames & Moore v. Regan*, 453 U.S. 654, 680 (1981); *see also* 22 U.S.C. §§ 1621, 1643. The Commission agreed with Havana Docks that it was owed money from the Cuban Government and certified a claim for Havana Docks against the Cuban Government for over $9 million.

Between 2015 and 2019, the defendant cruise lines brought almost a million tourists to Cuba through the Port of Havana—using the very same piers in the very same terminal that the Cuban Government confiscated from Havana Docks. The district court held that the cruise lines trafficked in property to which Havana Docks "owns [a] claim." The cruise lines appealed.

II.

The parties' briefs raise several questions, and some of them are difficult. But the question the majority opinion answers is, to me, very simple. The Cuban Government stole Havana Docks' property—its docks, piers, and other things that it had the right to operate under its concession. And the cruise lines have—all agree—commercially benefited by

depositing paying customers on those docks and piers. Accordingly, the district court was correct that the cruise lines trafficked in confiscated property to which Havana Docks owns a claim.

To avoid this straightforward analysis, the cruise lines argue that they didn't traffic in confiscated property because their activity took place between 2015 and 2019, and Havana Docks' concession would have ended in 2004 if the docks had not been confiscated. The majority opinion agrees. In the words of the majority opinion, we should "view the property interest at issue in a Title III action as if there had been no *expropriation* and then determine whether the alleged conduct constituted trafficking of that interest. In other words, to prevail under the Act, a Title III plaintiff must establish a counterfactual—that the defendant trafficked in property that it *would have had* a present interest in at the time of the trafficking if the Cuban Government had not confiscated the property.

In my view, there are three problems with this judicially created prove-a-counterfactual requirement. First, it is not supported by the statute's text. The text of the statute says that the trafficking must occur when a plaintiff "owns the claim," not when the plaintiff *would have owned the property*. Second, the majority is focused on the wrong confiscated property. Here, Havana Docks argues that the cruise lines trafficked by using the physical docks that the Cuban Government confiscated, not by using its concessionary interest in those docks. Third, this test effectively voids many of the property interests that are expressly protected by the statute. The statute was enacted in 1994 and it expressly protects

interests that were contingent, future, and time limited when the underlying property was confiscated in 1959, but none of those interests are protectible under the majority's rule. I'll address each of these issues in turn.

A.

Let's start with the statute's text. At its most basic level, there are two elements to the Act's cause of action: (1) the defendant used confiscated property and (2) a U.S. national owns a claim to that confiscated property. As we have explained elsewhere, the Act replaces U.S. citizens' property interests with new claims against the Cuban Government because it confiscated that property. *Glen*, 450 F.3d at 1255. Then, the Act says that anyone who benefits commercially from "property which was confiscated by the Cuban Government" is liable to "any United States national who owns the claim to such property," unless that person has permission from the U.S. national. 22 U.S.C. § 6082(a)(1)(A).

I think Havana Docks has established that it meets these statutory elements. Did the cruise lines benefit commercially from "property which was confiscated by the Cuban Government?" Of course they did. They used the docks and piers that Havana Docks built and had the right to operate when they were taken in 1960. Does Havana Docks own a "claim to such property?" Of course it does. The Commission's judgment on that point is "conclusive proof" under the terms of the statute. 22 U.S.C. § 6083(a)(1). But, even without the Commission's judgment, it can hardly be contested that Havana Docks' claim arises from the confiscation of the same piers and docks that the cruise lines used.

Under the text of the Act, there is no requirement that the plaintiff would have owned a present interest in the property at the time of the trafficking if its property had not been confiscated. Instead, the timing that matters is that a U.S. national "owns the claim" to confiscated property at the time of the trafficking. Unlike Havana Docks' original concessionary interest in the docks, its claim is not time limited. The claim persists until the plaintiff recovers in full either directly from the Cuban Government or indirectly by bringing an action under the Act. *See BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1276 (11th Cir. 2008) (explaining the general rule that "a plaintiff is entitled to only one satisfaction for a single injury").

To be sure, that an interest in confiscated property was limited in duration is not irrelevant under the text of the Act. But any temporal limitation on an interest in confiscated property—such as the 44 years remaining on Havana Docks' concession when the docks were confiscated—goes to the value of the claim, not the scope of the property subject to trafficking. A one-day leasehold interest in property that was confiscated would presumably be less valuable than a fee simple interest in that same property. The cruise lines acknowledge as much throughout their arguments. They recognize that the International Claims Settlement Act of 1949, which authorized the Foreign Claims Settlement Commission to certify these types of claims against foreign governments, "focuses on the temporal dimensions of the property interest and would award nothing for a leasehold that expired just before expropriation" and "[t]he Act similarly would award only a small amount for a leasehold set to expire shortly after expropriation." And that is exactly what the Commission did when it

certified Havana Docks' claim: it expressly noted that the concession would have expired in 2004 had it not been confiscated and valued the claim at $9 million in light of this limited term.

In short, nothing in the text of the Act requires a plaintiff to prove a counterfactual to succeed on its trafficking claim. The defendant must have used confiscated property and the plaintiff must "own the claim" at the time of the trafficking. But those are the only two elements in the statute's text.

B.

Moving to the second problem with the majority's rule: it is directed at the wrong "confiscated property." Havana Docks isn't suing the cruise lines on the theory that they are trafficking by using its intangible concessionary interest. Its theory is not, for example, that the cruise lines are trading its old lease among themselves as a security. Instead, Havana Docks' theory is that the cruise lines are using *the docks*—which still exist, are still in use, and have not expired, ended, or fallen into the sea.

A claim can represent a wide range of interests in confiscated property. 22 U.S.C. § 6082(a)(1)(A). The Act defines "property" as any "real, personal, or mixed" property, 22 U.S.C. § 6023(12)(A), which covers the physical docks and their surroundings. To be sure, the definition also covers "any present, future, or contingent right, security, or other interest [in any property], including any leasehold interest." *Id.* But Havana Docks alleges trafficking through the use of the physical property itself, not trafficking in a lease. As Havana Docks explains in its brief, it "filed a claim to the Havana docks—the very terminal and piers used by the cruise lines—in 1967, see Dkt. 331-

14 (Tab B), the Commission certified that claim in 1971, see Dkt. 1-1 (Tab C), and that certified claim facially and conclusively establishes that the cruise lines used Havana Docks' 'property' confiscated by the Cuban government." Br. for Havana Docks at 105.

The majority opinion focuses on temporal limitations in Havana Docks' concession, but those temporal limits have nothing to say about whether the cruise lines are trafficking in the physical docks. All Havana Docks' property rights—whatever they were ceased to exist the moment the Cuban Government confiscated the docks. *See Glen*, 450 F.3d at 1255. From that day forward Havana Docks no longer had any enforceable rights in the docks. The same is true for anyone else who ever had a property interest of any kind that the Cuban Government confiscated. As we have recognized, those original property interests are gone. *See Glen*, 450 F.3d at 1255. They cannot be vindicated by, for example, bringing a trespass or unjust enrichment action. Instead of owning property interests, former property owners have claims. And the Helms-Burton Act provides legal recourse for those former property owners to seek compensation for those claims from the people who are benefiting from the property that underlies that claim.

The issue in this case is not whether a plaintiff can sue someone who profits from an intangible concession or lease. Instead, this case is about real physical property. Havana Docks argues that the defendants have trafficked in "confiscated property" by using the docks and piers that the Cuban Government seized, Havana Docks has a claim against people who use that property, and there is no time limit on that claim.

C.

The third problem with the majority's rule is that it nullifies myriad property interests that are expressly protected by the Helms-Burton Act. The Act expressly covers certain property like "patents" and certain interests in property, such as "future" and "contingent" interests, that the majority's rule wouldn't protect. 22 U.S.C. § 6023(12)(A). Under the majority's view, it would not be possible to traffic in some of these interests at all. Consider patents—any patents that were confiscated in 1959 would have necessarily "expired" before the Act outlawed trafficking in 1996. For interests that were "contingent" or "future" in 1959, the majority's rule would require a trip to the multiverse to see how Cuban history would have developed—and whether these interests would have realized into present interests—but for their confiscation.

The majority opinion says it need not address these problems with its rule, because these kinds of interests aren't present in this appeal. But the words of a statute can't be ignored just because they are inconvenient. Congress would not have written the Act expressly to cover "patents" if, under the majority opinion's rule, it did not, in fact, cover any patents. Likewise, if a statute expressly covers contingent and future interests, it doesn't make sense to hold, as the majority opinion does, that the statute protects only present interests. *See* Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts 174* (2012) (explaining that "every word and every provision is to be given effect").

The majority opinion suggests some hypothetical problems with the district court's understanding of

the Act. But they are easily resolved by recognizing that a temporal limitation on a property interest at the time of confiscation determines the value of a Title III "claim," not the existence of one. Consider the majority opinion's two hypothetical airport owners: one who owned a fee simple interest to the airport in 1959, and another who owned a five-year leasehold interest in the airport with two months remaining at the time of confiscation. Because both owners had a cognizable property interest that was confiscated by the Cuban Government, both own a claim to that confiscated property under the Act. 22 U.S.C. § 6082(a)(1)(A). So both can sue someone who is using the airport in Cuba without their permission. The previous owner of the fee simple interest will likely have a more valuable claim—because a fee simple interest in 1959 was more valuable than the remaining two months on a lease—but the higher value of that claim doesn't mean the former owner of the leasehold interest has no claim at all. See 22 U.S.C. § 6082(a)(1)(A)(i) (explaining damages).

Unless and until the property confiscation claims of U.S. nationals are paid, those claims continue to exist and are enforceable under the Helms-Burton Act. But the majority opinion's interpretation means that the Act provides no remedy for U.S. nationals with property interests that were confiscated in 1959 but, absent confiscation, would have "expired" before the present day. It does so even though there is no textual support for that result and even though the Act expressly protects interests that were contingent or time-limited when they were confiscated. And it adopts that rule even though there is a perfectly rational alternative that better conforms to the Act—that the time-limited nature of an interest in

confiscated property goes to the value of a claim, not to the claim's existence.

III.

I believe the district court correctly interpreted the Act in this respect, and I would go on to address the other issues in the appeal. Because the majority opinion instead reverses on this ground, I respectfully dissent.

DATE FILED 12/20/2024

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10151

HAVANA DOCKS CORPORATION,

Plaintiff-Appellee,

versus

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19-cv-23590-BB

No. 23-10171

HAVANA DOCKS CORPORATION,

Plaintiff-Appellee
Cross Appellant,

versus

ROYAL CARIBBEAN CRUISES, LTD.,
NORWEGIAN CRUISE LINE HOLDINGS, LTD.,
CARNIVAL CORPORATION,
a foreign corporation doing business as
Carnival Cruise Lines,

MSC CRUISES S.A. CO.,
MSC CRUISES (USA), INC., et al.,

Defendants-Appellants
Cross Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19cv-23591-BB

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

Before WILLIAM PRYOR, Chief Judge, and JORDAN and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

Entered on FLSD Docket 08/28/2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-21724-BLOOM/McAliley

HAVANA DOCKS CORPORATION

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.

ORDER

THIS CAUSE is before the Court upon Defendant Carnival Corporation's ("Carnival" or "Defendant") Motion to Dismiss, ECF No. [17] (the "Motion"). The Court has considered the Motion, the opposing and supporting briefs, the record and applicable law, and is otherwise fully advised. For the reasons that follow, the Motion is denied.

I. BACKGROUND

On May 2, 2019, Plaintiff Havana Docks Corporation ("Havana Docks") filed this action against Defendant Carnival ("Carnival") pursuant to Title III of the Cuban Liberty and Democratic Solidarity Act ("the Libertad Act"). ECF No. [1] ("Complaint"). "One of the Libertad Act's purposes was to 'protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro Regime.'" *Id.* at 1 (citing 22 U. S.C. § 6022(6)).

Plaintiff is a United States national as defined by 22 U.S.C. § 6023(15). *Id.* at 116. In the Complaint, Plaintiff alleges that it is the rightful owner of the certain commercial waterfront real property in the Port of Havana, Cuba, identified as the Havana Cruise Port Terminal ("Subject Property"). *Id.* Plaintiff claims that it owned the Subject Property until the Cuban Government confiscated it on October 24, 1960. *Id.* At ¶¶ 7-8. Plaintiff further alleges that since its confiscation, the Subject Property has not been returned and adequate and effective compensation has not been provided. *Id.* at ¶ 9. Plaintiff's ownership interest in the Subject Property has been certified by the Foreign Claims Settlement Commission under the International Claim Settlement Act of 1949. *Id.* at ¶ 11. Plaintiff has attached the Certified Claim to its Complaint. *See* ECF No. [1-1].

According to the Complaint, on or about May 1, 2016, Carnival "knowingly and intentionally commenced, conducted, and *promoted* its commercial cruise line business to Cuba using the Subject Property by regularly embarking and disembarking its passengers on the Subject Property without authorization of Plaintiff or any U.S. national who holds a claim to the Subject Property." *Id.* at ¶ 12. At that time, Carnival is alleged to have participated in and profited from the Cuban Government's possession of the Subject Property without Plaintiffs authorization. *Id.* at ¶ 13. Plaintiff claims that Carnival's knowing and intentional conduct relating to the Subject Property is "trafficking" as defined in 22 U. S.C. § 6023(13)(A), and Defendant is liable to Plaintiff for all money damages allowed by statute. *Id.* at ¶¶ 14, 15.

Carnival has now moved to dismiss the Complaint for failing to state a claim under Federal Rule of Civil Procedure 8(a). *See* ECF No. [17].

II. LEGAL STANDARD

Rule 8 of the Federal Rules of Civil Procedure requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although a complaint "does not need detailed factual allegations," it must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007); *see Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (explaining that Rule 8(a)(2)'s pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation"). In the same vein, a complaint may not rest on 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal,* 556 U.S. at 678 *(quoting Twombly,* 550 U.S. at 557 (alteration in original)). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly,* 550 U.S. at 555. These elements are required to survive a motion brought under Rule 12(b)(6), which requests dismissal for "failure to state a claim upon which relief can be granted."

III. DISCUSSION

In the Motion, Defendant's argument for dismissal is two-*fold*. First, Defendant argues that Plaintiff has failed to plead a claim entitling it to relief because it failed to allege that Carnival's use of the Subject Property was not "incident to lawful travel." ECF No. [17], at 3-11. Second, Defendant argues that Plaintiff has failed to plead a claim since the face of the Complaint and its accompanying exhibits indicate

that the Plaintiff did not have an ownership interest in the Subject Property at the time Carnival began utilizing the Subject Property. *Id.* at 11-15. The Court will address each argument in turn.

A. Statutory Exception

As set forth in 22 U.S.C. § 6082(a)(1), a defendant can be found liable under Title III of the Libertad Act if (1) after November 1, 1996; (2) it traffics; (3) in property which was confiscated by the Cuban Government on or after January 1, 1959. *See* 22 U.S.C. § 6082(a)(1).

As to its first argument, Carnival contends that it was insufficient for Plaintiff to plead that the Defendant was using the confiscated Cuban property, and that the Plaintiff "must go a step further and plead facts stating a plausible allegation that the use of the property was not incident to lawful travel." ECF No. [17], at 11. Specifically, Carnival argues that it did not traffic in the Subject Property because it is subject to the carve out provision outlined in the Libertad Act's definitions section. ECF No. [17], at 10. Carnival contends that dismissal is warranted because "Plaintiff has not plead that Carnival's use of the docks was not 'incident to lawful travel to Cuba,' or not 'necessary to the conduct of such travel.' ECF No. [17], at 5. Carnival further argues that even if Plaintiff has adequately plead a claim under the Libertad Act, this attempt would fail because Carnival's use of the Subject Property was "incident to lawful travel to Cuba," and "necessary to the conduct of such travel." *Id.* at 5. Plaintiff responds that the application of Defendant's argument—that Plaintiff is required to plead the trafficking was not incident to lawful travel—would require it to allege a

negative. ECF No. [33], at 4. Further, Plaintiff contends that the lawful travel statutory exception is not an element of the offense, but rather an affirmative defense on which the Defendant bears the burden of proof. *Id.* at 5.

The Libertad Act defines "trafficking" as follows:

> As used in subchapter III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—
>
> (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
>
> (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
>
> (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.
>
> (B) The term "traffics" does not include—
>
> ...
>
> (iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

22 U.S.C. § 6023. In reviewing the text of the statute, "Congress expressed a clear intent to make the travel provision an *exception* to unlawful trafficking. Moreover, because this statutory exception requires proof of new facts ... it fits the mold of a traditional affirmative defense." *Javier Garcia-Bengochea v. Carnival Corporation,* Case No. 19-cv-21725-ILK, at ECF No. [41], at 6-7.

Based on the language of the Libertad Act, the Court agrees with the Plaintiff that the "lawful travel exception" is an affirmative defense to trafficking. Affirmative defenses generally admit the matters in a complaint but nevertheless assert facts that would defeat recovery. "Plaintiffs are not required to negate an affirmative defense in their complaint." *La Grasta v. First Union Sec., Inc.,* 358 F.3d 840, 845 (11th Cir. 2004). Therefore, this exception must be established by Carnival and Plaintiff was not required to negate this exception in its Complaint. While it may very well be that Carnival's conduct falls within the scope of the exception, such argument is not appropriate at this stage of the litigation.

In its Motion, Defendant argues that "[c]ourts in this Circuit have routinely required a plaintiff pursuing a statutory claim to plead facts that plausibly meet the statutory definition." ECF No. [17], at 4. Specifically, Defendant cites cases which allege claims under Computer Fraud and Abuse Act, Fair Debt Collection Practices Act, and Driver's Privacy Protection Act. ECF No. [17], at 4-5; ECF No. [39], at 5-7. However, reliance on such cases cited by the Plaintiff is misplaced.

For example, in *Arko Plumbing Corp. v. Rudd,* 2013 WL 12059615, at *3 (S.D. Fla. Sept. 26, 2013), the Court found that a plaintiff adequately plead that a

"loss" was incurred as defined by the Computer Fraud and Abuse Act. However, the Act applied in *Arko Plumbing Corp.* did not apply nor concern a definitional exception and thus its application to the instant case is inapposite. *See generally id.*

In *Brown v. Regions Mortg. Corp.,* 2012 WL 13013583, at *3 (N.D. Ga. Dec. 3, 2012), the district court dismissed a plaintiff's claims pursuant to the Fair Debt Collection Practices Act ("FDCPA"). *Brown v. Regions Mortg. Corp.,* 2012 WL 13013583, at *3 (N.D. Ga. Dec. 3, 2012), *report and recommendation adopted,* 2012 WL 13013984 (N.D. Ga. Dec. 31, 2012). One of the elements expressly required to state a claim pursuant to the FDCPA is that the defendant is a "debt collector." *Id.* In *Brown,* the Court dismissed the plaintiff's claims because she did not "compl[y] with [the] foundational FDCPA requirements," and had not alleged any facts showing that either defendant was a debt collector or attempted to collect a debt under the Act. *Id.* Such is not the case here, where the Plaintiff has directly alleged the conduct alleged to have been committed by Carnival, *see* ECF No. [1], at ¶12, and that such conduct constitutes "trafficking as defined in 22 U.S.C. § 6023(13)(A)." ECF No. [1], at 1114.

Lastly, in its Reply, the Defendant argues that *Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, & Stevens, P.A.,* 525 F.3d 1107 (11th Cir. 2008), further supports its contention that definitional exceptions are material elements and not affirmative defenses. ECF No. [39], at 4-5. In *Thomas,* the Eleventh Circuit Court of Appeals held that the Driver's Privacy Protection Act ("DPPA") required the plaintiff to show that his personal information was obtained "for a

purpose not permitted" by the statute and rejected the plaintiffs argument that the permissible uses listed in the statute should be viewed as affirmative defenses. *Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, & Stevens, P.A.,* 525 F.3d 1107, 1112 (11th Cir. 2008). However, claims pursuant to DPPA are markedly different from the claim alleged in the instant case. The plain language of the DPPA prohibits obtaining a driver's personal information "for a purpose not permitted under this chapter." *Id.* at 1110-1111. In *Thomas,* the Eleventh Circuit noted that the statute itself articulates fourteen permissible uses, *see id.* at 1110-12, and the court thereafter concluded that a plaintiff must establish that the defendant's purpose was *not* among those expressly permitted by the DPPA. *Id.* Here, the language of the Libertad Act does not dictate such a reading. Rather, the Libertad Act sets forth what does and does not constitute unlawful trafficking and frames the travel provision as an exception to otherwise unlawful conduct. The decision in *Thomas* provides little support for the Defendant's contention here.

To plausibly plead a claim, a complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory."' *Fin. Sec. Assur., Inc. v. Stephens, Inc.,* 500 F.3d 1276, 1282-83 (11th Cir. 2007) (quoting *Roe v. Aware Woman Ctr. for Choice, Inc.,* 253 F.3d 678, 683 (11th Cir. 2001)). Carnival argues that Plaintiff has failed to state all material elements under the Libertad Act. The Court disagrees. Plaintiff has sufficiently plead all such allegations. Indeed, Plaintiff alleges that it holds a certified claim to the Subject Property, which was confiscated by the Cuban Government in 1960. ECF

No. [1], at ¶¶ 8, 11. Plaintiff further alleges that the Defendant "knowingly and intentionally commenced, conducted, and promoted its commercial cruise line business to Cuba using the Subject Property by regularly embarking and disembarking its passengers on the Subject Property," and that such conduct "is trafficking as defined in 22 U.S.C. § 6023(13)(A)." ECF No. [1], at ¶¶ 12-14.

The Court further rejects the notion that Plaintiff was required "to go a step further" beyond the elements articulated in the statute and state that the alleged trafficking was not "incident to" or "necessary for" lawful travel. Plaintiff alleges that the trafficking that occurred was "as defined in 22 U.S.C. § 6023(13)(A)." ECF No. [1], at ¶ 14. To the extent the Defendant disagrees with this allegation, it may deny it, and assert an appropriate affirmative defense.

Carnival also argues that even if Plaintiff has attempted to adequately plead trafficking, such attempt would fail because Carnival's use of the Subject Property was "incident to" or "necessary for" lawful travel. ECF No. [17], at 5-8. However, this argument is also inappropriate at this stage, as it calls into question a direct issue of fact in dispute. Such question is not suitable for disposition upon a motion to dismiss. *See Int'l Village Ass'n, Inc. v. AmTrust N. Am., Inc.*, 2015 WL 3772443, at *4 (S.D. Fla. June 17, 2015) ("[Defendant's] contrary assertion... raises an issue of fact inappropriate for resolution on a motion to dismiss.").

B. *Plaintiffs Claim to the Subject Property*

As for its second argument, Carnival argues that the Complaint should be dismissed because Plaintiff

did not have a property interest in the Subject Property at the time Carnival was alleged to have committed the trafficking. ECF No. [17], at 18-19. Specifically, the Defendant does not refute that the Plaintiff owns the claim to the Subject Property, but rather that such claim was a "time limited concession." *Id.* at 18. Defendant further contends that this concession expired in 2004. *Id.* Therefore, Carnival argues that it cannot be found liable because, as stated in the Complaint, its conduct is alleged to have commenced in 2016. *Id.* Plaintiff responds that this argument "conflates ownership interest in property with ownership of a claim to such property." ECF No. [33], at 17. And further, that the Libertad Act creates a cause of action to the owner of a *claim* with respect to the confiscated property. *Id.* at 19.

First, the plain language of the Libertad Act states that "any person ... that traffics in property which was confiscated by the Cuban Government ... shall be liable to any United States national *who owns the claim* to such property." 22 U.S.C. § 6082(a) (emphasis added). Thus, the Libertad Act does not expressly make any distinction whether such trafficking needs to occur while a party holds a property interest in the property at issue. To this extent, the Court agrees with the Plaintiff that the Defendant incorrectly conflates a claim to a property and a property interest. Accordingly, the Court finds that the Complaint sufficiently alleges that the Plaintiff owns a claim to the Subject Property.

Further, the Defendant argues that the Claim Certification attached as an exhibit to the Complaint negates the Plaintiff's claim because it identifies that

it maintained only a timed-concession to the Subject Property. ECF No. [17], at 15. As such, the Court should consider the exhibit as grounds to dismiss the instant lawsuit. However, even considering the timed-concession, such would not "negate" a valid claim to the subject property, and thus is also not a valid argument supporting dismissal at this stage.

IV. CONCLUSION

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

> 1. Defendant Carnival Corporation's Motion to Dismiss, **ECF No. [17],** is **DENIED.** Defendant Carnival Corporation shall file its Answer to the Complaint *no later than September 6, 2019.*

DONE AND ORDERED in Chambers, at Miami, Florida, on August 27, 2019.

/s/________________
BETH BLOOM
UNITED STATES DISTRICT JUDGE

Entered on FLSD Docket 01/06/2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-23588-BLOOM/Louis

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

MSC CRUISES SA CO, and
MSC CRUISES (USA) INC.,

Defendants.

ORDER ON MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendants MSC Cruises SA Co. and MSC Cruises (USA) Inc.'s (together, "Defendants") Motion to Dismiss, ECF No. [24] ("Motion"). Plaintiff Havana Docks Corporation ("Havana Docks" or "Plaintiff") filed a Response, ECF No. [34] ("Response"), to which Defendants filed a Reply, ECF No. [39] ("Reply"). The Court has carefully considered the Motion, the Response and Reply, the record in this case and the applicable law, and is otherwise fully advised. For the reasons that follow, the Motion is granted.

I. BACKGROUND

On August 27, 2019, Havana Docks filed this action against Defendants pursuant to Title III of the Cuban Liberty and Democratic Solidarity Act (the "LIBERTAD Act" or "Act"). ECF No. [1] ("Complaint"). "One of the LIBERTAD Act's purposes is to 'protect

United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro Regime.'" *Id.* ¶ 7 (citing 22 U.S.C. § 6022(6)).

Plaintiff is a United States national as defined by 22 U.S.C. § 6023(15). *Id.* 118. In the Complaint, Plaintiff alleges that it is the rightful owner of an interest in, and claim to, certain commercial waterfront real property in the Port of Havana, Cuba, identified as the Havana Cruise Port Terminal ("Subject Property"). *Id.* Plaintiff claims that it owned the Subject Property until the Cuban Government confiscated it in 1960. *Id.* ¶¶ 9-10. Plaintiff further alleges that since its confiscation, the Subject Property has not been returned and adequate and effective compensation has not been provided. *Id.* ¶ 11. Plaintiff's ownership interest in and claim to the Subject Property has been certified by the Foreign Claims Settlement Commission ("Commission") under the International Claim Settlement Act of 1949. *Id.* ¶ 13.

According to the Complaint, on or about December 10, 2018, Defendants "knowingly and intentionally commenced, conducted, and promoted their commercial cruise line business to Cuba using the Subject Property by regularly embarking and disembarking their passengers on the Subject Property without the authorization of Plaintiff or any U.S. national who holds a claim to the Subject Property. *Id.* ¶ 14. At that time, Defendants participated in and profited from the communist Cuban Government's possession of the Subject Property without Plaintiff's authorization. *Id.* ¶ 15. Plaintiff claims that Defendants' knowing and

intentional conduct with regard to the confiscated Subject Property is "trafficking" as defined in 22 U.S.C. § 6023(13)(A), and Defendants are liable to Plaintiff for all money damages allowed by statute. *Id.* ¶¶ 16-17.

Defendants have now moved to dismiss the Complaint under Rule 12(b)(6).

II. LEGAL STANDARD

A pleading in a civil action must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although a complaint "does not need detailed factual allegations," it must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007); *see Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (explaining that Rule 8(a)(2)'s pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation"). Nor can a complaint rest on 'naked assertion[s]' devoid of 'further factual enhancement.' *Iqbal,* 556 U.S. at 678 (quoting *Twombly,* 550 U.S. at 557 (alteration in original)). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' *Id.* (quoting *Twombly,* 550 U.S. at 570).

When reviewing a motion to dismiss, a court, as a general rule, must accept the plaintiff's allegations as true and evaluate all plausible inferences derived from those facts in favor of the plaintiff. *See Chaparro v. Carnival Corp.,* 693 F.3d 1333, 1337 (11th Cir. 2012); *Miccosukee Tribe of Indians of Fla. v. S. Everglades Restoration Alliance,* 304 F.3d 1076, 1084 (11th Cir. 2002); *AXA Equitable Life Ins. Co. v. Infinity Fin. Grp.,*

LLC, 608 F. Supp. 2d 1349, 1353 (S.D. Fla. 2009) ("On a motion to dismiss, the complaint is construed in the light most favorable to the non-moving party, and all facts alleged by the non-moving party are accepted as true."); *Iqbal,* 556 U.S. at 678. A court considering a Rule 12(b) motion is generally limited to the facts contained in the complaint and attached exhibits, including documents referred to in the complaint that are central to the claim. *Wilchombe v. TeeVee Toons, Inc.,* 555 F.3d 949, 959 (11th Cir. 2009); *see Maxcess, Inc. v. Lucent Techs., Inc.,* 433 F.3d 1337, 1340 (11th Cir. 2005) ("[A] document outside the four corners of the complaint may still be considered if it is central to the plaintiff's claims and is undisputed in terms of authenticity.") (citing *Horsley v. Feldt,* 304 F.3d 1125, 1135 (11th Cir. 2002)). Although the court is required to accept as true all allegations contained in the complaint, courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly,* 550 U.S. at 555; *Iqbal,* 556 U.S. at 678.

III. DISCUSSION

In their Motion, Defendants argue that the Complaint should be dismissed for four reasons: 1) Plaintiff fails to include sufficient allegations regarding Defendants' alleged trafficking in Plaintiff's property and impermissibly groups both Defendants together; 2) Plaintiff's claim of trafficking fails as a matter of law; 3) Title III of the LIBERTAD Act violates the Due Process Clause of the Fifth Amendment; and 4) Title III's remedy provision violates the Due Process Clause. Because the Court finds the second issue to be dispositive, the Court considers it first.

Defendants argue that Plaintiff's "property" as defined in the LIBERTAD Act is not at issue in the Complaint because Plaintiff's property interest in the Subject Property is a leasehold that expired in 2004. As such, Defendants reason that Plaintiff can only assert claims under Title III for trafficking that allegedly took place prior to the expiration of Plaintiff's leasehold in the Subject Property. The Defendants correctly point out that the Complaint does not allege that the Defendants ever trafficked in, profited from, or infringed upon the confiscated leasehold interest which expired in 2004. In response, Plaintiff argues that the Court has already considered and rejected the same argument made previously by Carnival Corporation in a related case. *See Havana Docks Corp. v. Carnival Corp.,* Case No. 19-cv-21724, ECF No. [47]. The Court in *Carnival* agreed with Plaintiff that the interpretation suggested by Carnival (and Defendants here) conflates a claim to a property and a property interest. *Id.* However, upon further review and analysis, the Court reconsiders its previous interpretation of the statute given the time-limited nature of Plaintiff's claim, a fact not in dispute.

"The first rule in statutory construction is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute. If the statute's meaning is plain and unambiguous, there is no need for further inquiry." *U.S. v. Silva,* 443 F.3d 795, 797-98 (11th Cir. 2006) (internal quotations omitted). "This is so because [t]he plain language is presumed to express congressional intent and will control a court's interpretation."' *Moss v. GreenTree-Al, LLC,* 378 B.R. 655, 658 (S.D. Ala. 2007) (quoting *U.S.* v. *Fisher,* 289 F.3d 1329, 1338

(11th Cir. 2002) (alterations in the original)). It is a court's duty "to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker,* 533 U.S. 167, 174 (2001) (citations omitted). And, "[w]hen interpreting a statute, words must be given their `ordinary or natural' meaning[.]" *Leocal v. Ashcroft,* 543 U.S. 1, 8 (2004) (citation omitted). In any event, "[a] court 'should not interpret a statute in a manner inconsistent with the plain language of the statute, unless doing so would lead to an absurd result.'" *Moss,* 378 B.R. at 658 (quoting *Silva,* 443 F.3d at 798). With these concepts in mind, the Court considers Defendants' argument.

The Act defines "property" broadly as "any property ... whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest." 22 U.S.C. § 6023(12)(A). The plain language of the LIBERTAD Act states that "any person ... that traffics in property that was confiscated by the Cuban Government ... shall be liable to any United States national who owns the claim to *such* property." 22 U.S.C. § 6082(A) (emphasis added). Thus, for example, if the interest at issue is a leasehold, following the plain language of the statute, a person would have to traffic in the leasehold in order for that person to be liable to the owner of the claim to the leasehold.

In this case, Plaintiff does not dispute that the property interest at stake is a concession that expired in 2004. *See* ECF No. [24-1] ("The terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation."). Accordingly, the property interest in

this case is time-limited by its terms, and the claim that Plaintiff owns is a claim covering the time-limited interest, which expired in 2004. *Id.* [1] Indeed, although "claim" is not a term defined in the statute, the certification by the Commission relates only to the specific interest held by a particular party—"the court shall accept as conclusive proof of ownership of *an* interest in property a certification of a claim to ownership of *that* interest that has been made by the ... Commission ...." 22 U. S.C. § 6083(a)(1). Any other interpretation of the Act would require the Court to ignore the definition of "property," and the qualifying words "such" and "that" out of the liability imposing language and conclusiveness of certified claims language, respectively—which would run afoul of basic canons of statutory interpretation. As a result, Plaintiff's claim can only extend as far as its property interest at the time of the Cuban Government's wrongful confiscation.

This interpretation is also in keeping with fundamental principles of property, which view property as a "bundle of rights." *United States v. Shotts,* 145 F.3d 1289, 1296 (11th Cir. 1998). Under this formulation, a person's interest in property can only extend as far as the particular right from the

---

[1] This is consistent with the International Claims Settlement Act of 1949, 22 U.S.C. § 1643, *et seq.*, which empowered the Foreign Claims Settlement Commission ("Commission") to certify the amount and validity of claims "for losses resulting from the nationalization, expropriation, intervention, or other taking of ... property including any rights or interests therein owned wholly or partially, directly or indirectly *at the time* by nationals of the United States ...." 22 U.S.C. § 1643b(a) (emphasis added). Here, the property interest held by Plaintiff at the time was a time-limited concession that by its own terms expired in 2004.

bundle that the person has acquired. The context of takings is instructive here. For example, if the government takes a person's property, be it a fee simple or lease, the government must pay just compensation for the interest that has been taken. *United States v. Gen. Motors* Corp. 323 U.S. 373, 382 (1945). Thus, if a person has a lease, that person is entitled to the value of the lease during its applicable term. *Id.* ("When [the government] takes the property, that is, the fee, the lease, whatever he may own, terminating altogether his interest, under the established law it must pay him for what is taken, *not more ....")* (emphasis added); *see also Alamo Land & Cattle Co., Inc. v. Arizona,* 424 U.S. 295, 304 (1976) ("The measure of damages is the value of the use and occupancy of the leasehold *for the remainder of the tenant's term* ....") (quoting *United States v. Petty Motor Co.*, 327 U.S. 372, 381 (1946)) (emphasis added). As a result, reading the Act in the manner suggested by Defendants is consistent with established principles of property law.

Plaintiff's argument suggests that the plain language of the Act provides a cause of action to the owner of any claim to confiscated property regardless of when the trafficking took place. However, accepting Plaintiff's argument would ignore the fact that the claim in this case is limited by its own terms as the claim relates to nothing more than the time-limited concession Plaintiff had at the time the property was confiscated by the Cuban Government. Plaintiff also contends that Defendants' interpretation disregards that expropriation extinguished all property rights previously held by victims of Castro's confiscation. However, this contention does not withstand scrutiny. First, Defendants do not appear to dispute that the

Cuban Government's confiscation extinguished Plaintiff's property rights, which is consistent with case law. *See Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 414-15 (1964) (determining that confiscation by Cuba "constituted an effective taking of the sugar, vesting in Cuba [the] property right in it."); *see also Glen v. Club Mediterranee S.A.,* 365 F. Supp. 2d 1263, 1269 (S.D. Fla. 2005) ("Titles III and IV of the Helms-Burton Act[] do not provide that those whose property was taken by the Cuban Government retain *legal title* to that property. Rather, Title III permits any U.S. national 'who owns a claim to such [confiscated] property for money damages' to sue those who traffic in such property.") (citation omitted) (emphasis in original), *aff'd,* 450 F.3d 1251 (11th Cir. 2006). Second, it is not necessary to find that there is retention of any property rights for the statute to have meaning in its application. Third, applying the interpretation suggested by Plaintiff would lead to impermissibly broadening Plaintiff's property rights.

Even though there is no identified fee simple owner and it appears that the property reverted to the Cuban Government by the terms of the concession itself, Plaintiff's claim involving a time-limited concession nevertheless does not give Plaintiff the right to sue for activities that took place years after it no longer has an interest in the property. A broader interpretation would in effect give Plaintiff additional rights from the bundle to which it is not otherwise entitled. This reading is further bolstered in the statute, where it specifies that "[a]n interest in property for which a United States national has a claim certified ... may not be the subject of a claim in an action under this section by any other person." 22 U.S.C. § 6082(a)(5)(D).

Moreover, the interpretation suggested by Plaintiff does not align with the Act's definition of "trafficking," which is defined in pertinent part as follows:

> As used in subchapter III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—
>
> (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
>
> (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
>
> (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.
>
> 22 U.S.C. § 6023(13)(A).

Thus, Defendants could only "traffic" in Plaintiff's confiscated property if they undertook one of the prohibited activities before Plaintiff's interest in the property expired. Otherwise Defendants are "trafficking" in confiscated property for which someone else would properly own a claim. Plaintiff's claim certifies only a time-limited concession. Finally, the interpretation suggested by Defendants does not require that the Court ignore the purposes of the Act.

"In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress." United States v. Am. Trucking Ass 'ns, 310 U.S. 534, 543 (1940). The Act seeks to deter trafficking and provide a remedy for such trafficking, but only as against rightful owners:

> This "trafficking" in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States—
>
> [...]
>
> to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.
>
> [...]
>
> The international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property.

22 U.S.C. § 6081(6)(B), (8). However, there is nothing to suggest that Congress intended to grant victims of property confiscations more rights to the property than they would otherwise have simply by virtue of the confiscation. Plaintiff is the rightful owner only of a time-limited concession that expired in 2004. Interpreting the statute in this manner does not deprive Plaintiff of a remedy for trafficking. Rather, it ensures that persons like Plaintiff may recover for any

trafficking of their confiscated property, which in this case is a concession that but for the Cuban Government's confiscation in 1960 would have been Plaintiff's concession to enjoy until 2004. Thus, if Defendants' alleged activities had taken place between 1960 and 2004, they would have "trafficked" in Plaintiff's confiscated property under the Act. However, because there is no dispute that Defendants' allegedly unlawful conduct began in 2018, they did not traffic in Plaintiff's confiscated property.

As a result, Plaintiff fails to state a claim for trafficking under Title III as a matter of law, and the Court does not consider Defendants' remaining arguments.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion, ECF No. [24], is **GRANTED**, and the Complaint is **DISMISSED WITH PREJUDICE**. The Clerk of Court is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Miami, Florida on January 3, 2020.

/s/________________
BETH BLOOM
UNITED STATES DISTRICT JUDGE

Entered on FLSD Docket 04/15/2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-23591-BLOOM/Louis

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

NORWEGIAN CRUISE LINE
HOLDINGS, LTD.,

Defendant.

ORDER

THIS CAUSE is before the Court upon Plaintiff Havana Docks Corporation's ("Havana Docks" or "Plaintiff") Motion for Reconsideration and Leave to Amend, ECF No. [44] ("Motion"), and its accompanying Notice of Filing the Declaration of Aziza Elayan-Martinez in Support of Plaintiff's Motion, ECF No. [43] ("Notice"). Defendant Norwegian Cruise Line Holdings, Ltd. ("NCL") filed a response in opposition, ECF No. [48] ("Response"), to which Plaintiff replied, ECF No. [51] ("Reply"). On March 9, 2020, the Court held a hearing on the Motion, during which the parties argued their respective positions. The Court has carefully considered the Motion, all supporting and opposing submissions, the arguments presented at the hearing, the record in this case, the applicable law, and is otherwise fully advised. For the reasons set forth below, Plaintiff's Motion is granted.

I. BACKGROUND

On August 27, 2019, Havana Docks initiated this action against NCL pursuant to Title III of the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. § 6021, *et seq.* (the "LIBERTAD Act," "Title III," or the "Act"), which is commonly referred to as the Helms-Burton Act. ECF No. [1] ("Complaint"). The Court briefly reiterates the facts alleged in the instant case.

Havana Docks is a U.S. national, as defined by 22 U.S.C. § 6023(15), and "is the rightful owner of an interest in and claim to certain commercial waterfront real property in the Port of Havana, Cuba," identified as the Havana Cruise Port Terminal (the "Subject Property"). *Id.* ¶ 7. In addition, the Complaint alleges that Plaintiff continuously owned, possessed, and used the Subject Property from 1917 until the Cuban Government confiscated it in 1960, *id.* ¶ 8, and that, since the confiscation, the Subject Property has not been returned, nor has Havana Docks received adequate and effective compensation for the confiscation of the Subject Property, *id.* ¶ 10.

Plaintiff's ownership interest in and claim to the Subject Property has been certified by the Foreign Claims Settlement Commission (the "FCSC") pursuant to the International Claims Settlement Act of 1949, 22 U. S.C. § 1621, *et seq.* (the "Claims Settlement Act"). *Id.* ¶ 12.[1] In the Certified Claim, which is central to the dispute between the parties in

---

[1] The Court will refer to Havana Docks' claim to the Subject Property, ECF No. [43-8], as the "Certified Claim" for the remainder of this Order.

this action, the FCSC found, based on the record before it, that:

> [Havana Docks] obtained from the Government of Cuba the renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana, formerly granted to its predecessor concessionaire, the Port of Havana Docks Company; that claimant acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana; ... and that claimant corporation also owned the mechanical installations, loading and unloading equipment, vehicles and machinery, as well as furniture and fixtures located in the offices of the corporation.

ECF No. [43-8] at 7. Critically, the FCSC also stated that "[t]he terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation." *Id.* at 9.

Moreover, according to the Complaint, beginning on or about March 2017, and continuing for at least two years thereafter, NCL "knowingly and intentionally commenced, conducted, and promoted its commercial cruise line business to Cuba using the Subject Property by regularly embarking and disembarking its passengers on the Subject Property without the authorization of Plaintiff or any U.S. national who holds a claim to the Subject Property." ECF No. [1] ¶ 13. Thus, NCL is alleged to have participated in, and profited from, the Cuban Government's

confiscation and possession of the Subject Property without Plaintiff's authorization. *Id.* ¶ 14. Plaintiff claims that NCL's knowing and intentional conduct relating to the Subject Property constitutes "trafficking," as defined under 22 U. S.C. § 6023(13)(A), and that NCL is liable to Plaintiff for all money damages allowed by statute. ECF No. [1] ¶¶ 15-16.

A. The LIBERTAD Act

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

In 1996, Congress passed the LIBERTAD Act "to strengthen international sanctions against the Castro government" and, relevant to the instant case, "to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime." 22 U.S.C. §§ 6022(2), (6). To that end, under Title III of the Act, Congress denounced the Cuban government's history of confiscating property of Cuban citizens and U.S. nationals, explaining that "[t]he wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the

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

> [t]his "trafficking in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States—
>
> (A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure; and
>
> (B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.
>
> *Id. §§* 6081(6)(A)-(B).

Further, the lack of effective international remedies for the wrongful confiscation of property and for unjust enrichment from the use of that property by foreign governments at the expense of the rightful owners left U.S. citizens without protection against wrongful confiscations by foreign nations and their citizens. *Id. §* 6081(10). Congress therefore concluded

that, "[t]o deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro' s wrongful seizures." *Id. §* 6081(11); *see also* 22 U.S.C. § 6082(a)(1)(A). As a result, in passing Title III of the LIBERTAD Act, "Congress created a private right of action against any person who 'traffics' in confiscated Cuban property." *Garcia-Bengochea v. Carnival Corp.,* 407 F. Supp. 3d 1281, 1284 (S.D. Fla. 2019) (citing 22 U.S.C. § 6082(a)(1)(A); 22 U.S.C. § 6023(13)(A)). As that court observed:

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

Id.

B. Relevant Proceedings

On the same day that the suspension of Title III was lifted, Havana Docks filed one of the first actions in the nation asserting a claim under the Act for trafficking against Carnival Corporation ("Carnival").

See generally Complaint, *Havana Docks Corp. v. Carnival Corp.,* No. 19-cv-21724 (S.D. Fla. May 2, 2019), ECF No. [1] *("Carnival").* The Complaint in *Carnival* alleged substantially similar facts as those alleged in the instant case, except that the trafficking alleged in *Carnival* began in May 2016. *See generally id.; id. 1112.* On May 30, 2019, Carnival filed a Motion to Dismiss, arguing in relevant part that Havana Docks failed to state a claim under the LIBERTAD Act because the Complaint and the Certified Claim attached as an exhibit indicated that Havana Docks did not have an ownership interest in the Subject Property at the time Carnival began utilizing it. *See* Motion to Dismiss, *Carnival,* No. 19-cv-21724 (S.D. Fla. May 30, 2019), ECF No. [17] at 11-15 ("Carnival's Motion to Dismiss"). This Court rejected the argument and agreed with Havana Docks that Carnival's interpretation conflated ownership of an interest in property and ownership of a certified claim to such property, noting that the Act does not contain any requirement that the trafficking occur during the time in which a claimant holds its interest in the property. *See* Order, *Carnival,* No. 19-cv-21724 (S.D. Fla. Aug. 28, 2019), ECF No. [47] at 8 *("Carnival* Order"). Ultimately, the Court denied Carnival's Motion to Dismiss. *Id.*

On August 27, 2019, Havana Docks filed three additional actions under the LIBERTAD Act against: (1) MSC Cruises SA Co. and MSC Cruises (USA) Inc. (collectively, "MSC") for trafficking that began in December 2018, *see generally* Complaint, *Havana Docks Corp. v. MSC Cruises SA Co.,* No. 19-cv-23588 (S.D. Fla. Aug. 27, 2019), ECF No. [1] *("MSC Cruises");* (2) Royal Caribbean Cruises, Ltd. ("Royal Caribbean") for trafficking that began in April 2017,

see generally Complaint, *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.,* No. 19-cv-23590 (S.D. Fla. Aug. 27, 2019), ECF No. [1] *("Royal Caribbean");* and (3) NCL in this case, *see generally* ECF No. [1].[2]

Regarding those three cases, NCL and MSC both moved to dismiss Havana Docks' Complaint in their respective cases and attached the Certified Claim, arguing in relevant part that Plaintiffs claim failed as a matter of law because Havana Docks' interest in the Subject Property was a leasehold interest that expired in 2004, and Havana Docks therefore could only assert a claim under Title III for trafficking that occurred prior to the expiration of its leasehold interest. *See* ECF No. [31] at 17-21 ("NCL' s Motion to Dismiss"); Motion to Dismiss, *MSC Cruises,* No. 19-cv-23588 (S.D. Fla. Oct. 11, 2019), ECF No. [24] at 9-10 ("MSC's Motion to Dismiss").[3] In its responses in both cases, Havana Docks relied heavily on the Court's holding in the *Carnival* Order in arguing that it had sufficiently alleged a claim for relief under Title III.

In ruling on MSC's Motion to Dismiss and NCL's Motion to Dismiss, the Court found it necessary to reconsider its ruling in the *Carnival* Order. The Court determined that the issue regarding the nature of

---

[2] Unlike the Complaint in *Carnival,* the Complaints in *MSC Cruises, Royal Caribbean,* and the instant case did not attach the Certified Claim as an exhibit. *See generally* ECF No. [1]; Complaint, *MSC Cruises,* No. 19-cv-23588 (S.D. Fla. Aug. 27, 2019), ECF No. [1]; Complaint, *Royal Caribbean,* No. 19-cv-23590 (S.D. Fla. Aug. 27, 2019), ECF No. [1].

[3] Royal Caribbean, on the other hand, filed an Answer in response to Havana Docks' Complaint in *Royal Caribbean. See* Answer to the Complaint, *Royal Caribbean,* No. 19-cv-23590 (S.D. Fla. Oct. 4, 2019), ECF No. [17].

Havana Docks' underlying ownership interest was dispositive, reasoning that because the Certified Claim was predicated on Plaintiff's time-limited leasehold interest, Havana Docks could not, as a matter of law, state a claim for relief under the Act based on trafficking that occurred after Plaintiff's leasehold interest expired. *See Havana Docks v. MSC Cruises SA Co.,* No. 19-cv-23588, 2020 WL 59637, at *3 (S.D. Fla. Jan. 6, 2020) *("MSC Cruises"); Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.,* No. 19-cv-23591, 2020 WL 70988, at *3 (S.D. Fla. Jan. 7, 2020) *("NCL").* The Court explained that any contrary result would improperly entitle Plaintiff to recover for trafficking in other property interests, thereby granting Havana Docks more rights to the Subject Property than it otherwise would have had by virtue of the confiscation. *MSC Cruises,* 2020 WL 59637, at *4-5; *NCL,* 2020 WL 70988, at *5. Thus, the Court granted MSC's Motion to Dismiss and NCL's Motion to Dismiss, and dismissed both cases with prejudice, as based upon the facts as alleged, Havana Docks could not state a claim against either MSC Cruises or NCL as a matter of law. *MSC Cruises,* 2020 WL 59637, at *5; *NCL,* 2020 WL 70988, at *5.

Plaintiff now moves, pursuant to Federal Rules of Civil Procedure 59(e) and 60(b), for reconsideration of the Court's dismissal with prejudice in its Order on NCL's Motion to Dismiss, ECF No. [42] *("NCL* Order"), and requests leave to file an Amended Complaint, ECF No. [44-1] ("Amended Complaint"), to further clarify the scope of its Certified Claim and to allege additional facts that the Court has not

considered, but that are relevant to its claim. NCL opposes Plaintiff's requests.[4]

On March 9, 2020, the Court held a consolidated hearing on the motions pending in *MSC Cruises, Royal Caribbean,* and this case, which was attended by Plaintiff's counsel, NCL's counsel, MSC's counsel, and Royal Caribbean's counsel. During this hearing, Havana Docks argued that the Court should reconsider its dismissal with prejudice based on errors of fact and law, and permit Plaintiff to file the Amended Complaint curing the deficiencies noted in the *NCL* Order. NCL, MSC, and Royal Caribbean collectively argued that neither reconsideration nor amendment is warranted because the Court concluded that Havana Docks' claim failed as a matter of law.

II. LEGAL STANDARD

A. Motion for Reconsideration

"While Rule 59(e) does not set forth any specific criteria, the courts have delineated three major

---

[4] Havana Docks, in *MSC Cruises,* filed the same motion for reconsideration as the Motion presently before the Court in this case. *See* Motion for Reconsideration and Leave to Amend, *MSC Cruises,* No. 19-cv-23588 (S.D. Fla. Jan. 31, 2020), ECF No. [42]. Likewise, after the Court ruled on the motions to dismiss in *MSC Cruises* and in this case, Royal Caribbean moved for judgment on the pleadings in *Royal Caribbean. See* Motion for Judgment on the Pleadings, *Royal Caribbean,* No. 19-cv-23590 (S.D. Fla. Jan. 10, 2020), ECF No. [26]. Havana Docks also moved for leave to amend its Complaint in *Royal Caribbean,* asserting nearly identical arguments as those presented in the instant Motion and the motion for reconsideration in *MSC Cruises. See* Motion for Leave to File First Amended Complaint, *Royal Caribbean,* No. 19-cv-23590 (S.D. Fla. Feb. 12, 2020), ECF No. [32].

grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." *Williams v. Cruise Ships Catering & Serv. Int'l, N.V.,* 320 F. Supp. 2d 1347, 1357-58 (S.D. Fla. 2004) (citing *Sussman v. Salem, Saxon & Nielsen, P.A.,* 153 F.R.D. 689, 694 (M.D. Fla. 1994)); *see also Burger King Corp. v. Ashland Equities, Inc.,* 181 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002). A motion for reconsideration requests that the Court grant "an extraordinary remedy to be employed sparingly." *Burger King Corp.,* 181 F. Supp. 2d at 1370. A party may not use a motion for reconsideration to "relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe v. TeeVee Toons, Inc.,* 555 F.3d 949, 957 (11th Cir. 2009) (quoting *Michael Linet, Inc. v. Vill. of Wellington, Fla.,* 408 F.3d 757, 763 (11th Cir. 2005)). "This prohibition includes new arguments that were `previously available, but not pressed.'" *Id.* (quoting *Stone v. Wall,* 135 F.3d 1438, 1442 (11th Cir. 1998) (per curiam)).

A motion to reconsider is "appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Kapila v. Grant Thornton, LLP,* No. 14-61194-CIV, 2017 WL 3638199, at *1 (S.D. Fla. Aug. 23, 2017) (quoting *Z.K. Marine Inc. v. M/V Archigetis,* 808 F. Supp. 1561, 1563 (S.D. Fla. 1992)) (quotation marks omitted). A motion for reconsideration "is not an opportunity for the moving party ... to instruct the court on how the court 'could have done it better' the

first time." *Hood v. Perdue,* 300 F. App'x 699, 700 (11th Cir. 2008) (citation omitted).

Under Rule 60(b), a party may seek relief from a final judgment. Fed. R. Civ. P. 60(b). "The first five provisions of Rule 60(b) provide relief in specific circumstances, including in the event of mistake, fraud, or newly discovered evidence. Rule 60(b)(6) provides a catch-all, authorizing a court to grant relief from a judgment for 'any other reason that justifies relief.'" *Aldana v. Del Monte Fresh Produce, N.A., Inc.,* 741 F.3d 1349, 1355 (11th Cir. 2014) (quoting Fed. R. Civ. P. 60(b)(6)). "By its very nature, the rule seeks to strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the 'incessant command of the court's conscience that justice be done in light of all the facts.'" *Seven Elves, Inc. v. Eskenazi,* 635 F.2d 396, 401 (5th Cir. 1981) (quoting *Bankers Mortg. Co. v. United States,* 423 F.2d 73, 77 (5th Cir. 1970)).[5] Thus, a movant seeking relief under Rule 60(b) "must demonstrate a justification so compelling that the [district] court was required to vacate its order." *Cano v. Baker,* 435 F.3d 1337, 1342 (11th Cir. 2006) (per curiam) (quoting *Cavaliere v. Allstate Ins. Co.,* 996 F.2d 1111, 1115 (11th Cir. 1993)).

"Rule 60(b)(6) motions must demonstrate that the circumstances are sufficiently extraordinary to warrant relief." *Aldana,* 741 F.3d at 1355 (quotation marks and citations omitted). "It is well established ...

---

[5] In *Bonner v. City of Prichard,* 661 F.2d 1206, 1207 (11th Cir. 1981), the Court of Appeals for the Eleventh Circuit adopted as binding precedent decisions of the Court of Appeals for the Fifth Circuit handed down prior to September 30, 1981.

that relief under Rule 60(b)(6) is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances." *Griffin v. Swim-Tech Corp.,* 722 F.2d 677, 680 (11th Cir. 1984) (quotation marks and citation omitted); *see also Frederick v. Kirby Tankships, Inc.,* 205 F.3d 1277, 1288 (11th Cir. 2000) ("Federal courts grant relief under Rule 60(b)(6) only for extraordinary circumstances."). Relief under Rule 60(b)(6), however, only applies to cases that do not fall into any other category of Rule 60(b). *United States v. Route 1, Box 111, Firetower Rd.,* 920 F.2d 788, 791 (11th Cir. 1991). In any event, whether to grant relief pursuant to Rule 60(b) is ultimately a matter of discretion. *Aldana,* 741 F.3d at 1355 (quoting *Cano,* 435 F.3d at 1342).

B. Motion to Amend

Apart from initial amendments permissible as a matter of course, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). A plaintiff should be afforded the opportunity to test their claim on the merits as long as the underlying facts or circumstances may properly warrant relief. *Foman v. Davis,* 371 U.S. 178, 182 (1962). However, "[a] district court need not ... allow an amendment (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." *Bryant v. Dupree,* 252 F.3d 1161, 1163 (11th Cir. 2001). "In this circuit, these 'same standards apply when a plaintiff seeks to amend after a judgment of dismissal has been

entered by asking the district court to vacate its order of dismissal pursuant to Fed. R. Civ. P. 59(e)." *Spanish Broad. Sys. of Fla., Inc. v. Clear Channel Commc'ns, Inc.,* 376 F.3d 1065, 1077 (11th Cir. 2004) (quoting *Thomas v. Town of Davie,* 847 F.2d 771, 773 (11th Cir. 1988)). In any event, "the grant or denial of an opportunity to amend is within the discretion of the District Court." *Foman,* 371 U.S. at 182.

Further, the Eleventh Circuit has explained that, "when a motion to amend is filed after a scheduling order deadline, Rule 16 is the proper guide for determining whether a party's delay may be excused." *Sosa v. Airprint Sys., Inc.,* 133 F.3d 1417, 1418 n.2, 1419 (11th Cir. 1998). Federal Rule of Civil Procedure 16 states that requests for leave to amend after the applicable deadline, as set in a court's scheduling order, require a showing of "good cause." Fed. R. Civ. P. 16(b)(4). "This good cause standard precludes modification unless the schedule cannot be met despite the diligence of the party seeking the extension." *Sosa,* 133 F.3d at 1418 (quotation marks omitted). Good cause exists when "evidence supporting the proposed amendment would not have been discovered in the exercise of reasonable diligence until after the amendment deadline passed." *Donahay v. Palm Beach Tours & Transp., Inc.,* 243 F.R.D. 697, 699 (S.D. Fla. 2007) (citation omitted). "[E]ven if the opposing party would not be prejudiced by the modification of a scheduling order, good cause is not shown if the amendment could have been timely made." *Id.* If the party seeking relief "was not diligent, the [good cause] inquiry should end." *Sosa,* 133 F.3d at 1418 (quoting *Johnson v. Mammoth Recreations, Inc.,* 975 F.2d 604, 609 (9th Cir. 1992)). Thus, a plaintiff "must establish good cause for their delay in

seeking to amend the pleadings after the Court's deadline for amendment before the Court may consider whether to grant leave to amend under Rule 15." *Remington v. Newbridge Sec. Corp.,* No. 13-cv-60384, 2014 WL 505153, at *12 (S.D. Fla. Feb. 7, 2014).

III. DISCUSSION

Plaintiff's Motion requests that the Court reconsider its dismissal with prejudice and permit Havana Docks to file the Amended Complaint, which will cure the deficiencies discussed in the *NCL* Order and sufficiently allege facts that support a claim against NCL under Title III. Specifically, Plaintiff argues that the Court made errors of fact and law in dismissing the case with prejudice without giving Havana Docks a single opportunity to amend its Complaint to allege that: (1) Under the Eleventh Circuit's opinion in *Glen v. Club Mediterranee S.A.*,[6] the Certified Claim itself is the property interest that remains after the confiscation of the Subject Property and this interest is not time limited; (2) Plaintiff's concession agreement included a 99-year leasehold interest that was cut short by 44 years due to the confiscation, and therefore never expired; (3) The concession agreement included an indemnity right to be paid by the Cuban Government to Havana Docks that was triggered by expropriation, which was not time limited and was included in the valuation of the loss in the Certified Claim; and (4) The Certified Claim recognizes ownership of property interests

---

[6] *Glen v. Club Mediterranee S.A.,* 450 F.3d 1251 (11th Cir. 2006) *("Glen II"); see also Glen v. Club Mediterranee S.A.,* 365 F. Supp. 2d 1263 (S.D. Fla. 2005) *("Glen I"), aff'd,* 450 F.3d 1251.

beyond the concession itself and the FCSC included the losses of these other property interests in its valuation. Thus, Plaintiff contends that reconsideration is warranted because, if permitted to replead, Havana Docks can allege facts sufficient to state a claim under Title III.

In its Response, NCL argues that reconsideration is unwarranted in this case because Plaintiff is simply attempting to relitigate its previous arguments. NCL asserts that Plaintiff has not shown good cause supporting its untimely request for leave to amend because the "new" facts alleged in the Amended Complaint were available to Plaintiff before it filed the initial Complaint, and thus could have been alleged before dismissal. Further, NCL argues that Havana Docks' request for leave to amend nonetheless should be denied because any amendment is futile, as Plaintiff cannot allege any facts sufficient to cure the fundamental timing defect discussed in the *NCL* Order. As such, NCL argues that Plaintiff's Motion should be denied.

In its Reply, Plaintiff contends that reconsideration is procedurally proper where, as here, it is necessary to cure errors of fact and law. Havana Docks asserts that such errors exist in this case because the Court's *NCL* Order did not accept Plaintiff's allegations as true, as required at the dismissal stage, and instead made improper findings of fact with regard to the nature of the concession and the Certified Claim that were adverse to Plaintiff and were contrary to the LIBERTAD Act's plain text and the Eleventh Circuit's reasoning in *Glen II.* Further, Havana Docks contends that there was no undue delay in seeking leave to amend because Plaintiff was relying on this Court's

ruling in the *Carnival* Order regarding the sufficiency of the claims alleged, and could not have anticipated that the Court would reverse course. Plaintiff also argues that amendment is not futile here and that the futility issues NCL raises present factual challenges that are inappropriate for determination at the dismissal stage. Therefore, Plaintiff contends that amendment is warranted in this case.

Following an extensive review of the arguments presented in the parties' briefs and in the arguments addressed at the hearing, the issues raised in each of Havana Docks' cases under Title III, and the limited relevant caselaw concerning the LIBERTAD Act, the Court agrees with Plaintiff that reconsideration of its *NCL* Order is warranted to correct errors of fact and law that, when compounded, led the Court to incorrectly dismiss the instant action with prejudice.

A. Errors of Fact

First, the Court agrees with Havana Docks that instead of accepting the well-pleaded factual allegations in the Complaint as true, as required on a motion to dismiss under Rule 12(b)(6),[7] the Court in

---

[7] *See Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555-56 (2007) (To survive a motion to dismiss under Rule 12(b)(6), the complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." (citations omitted) (footnote omitted)); *see also Neitzke v. Williams,* 490 U.S. 319, 327 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations"); *AXA Equitable Life Ins. Co. v. Infinity Fin. Grp., LLC,* 608 F. Supp. 2d 1349, 1353 (S.D. Fla. 2009) (At the dismissal stage, "the complaint is construed in the light most favorable to the non-moving party, and all facts alleged by the non-moving party are accepted as true. The

its *NCL* Order made impermissible findings of fact. In particular, the Court made one finding of fact which served as the foundation for the subsequent errors in the *NCL* Order:

> In this case, Plaintiff does not dispute that the property interest at stake is a concession that expired in 2004. Accordingly, the property interest in this case is time-limited by its terms, and the claim that Plaintiff owns is a caim covering the time-limited interest which expired in 2004. [n.1]
>
> > [n.1] .... Here, the property interest held by Plaintiff at the time was a time-limited concession that by its own terms expired in 2004.

NCL, 2020 WL 70988, at *3 & n. 1. The finding that the concession expired in 2004 was premised upon the language in the Certified Claim that "[t]he terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation." ECF No. [43-8] at 9. Yet, in its consideration of NCL' s Motion to Dismiss, the Court only had the benefit of reviewing the Certified Claim and the resulting erroneous factual finding that the concession expired in 2004 was premised upon the record available to it at that time.[8]

---

threshold is 'exceedingly low' for a complaint to survive a motion to dismiss for failure to state a claim upon which relief can be granted." (citations omitted)).

[8] While NCL argues that Plaintiff could have timely alleged the 99-year leasehold interest but failed to do so, the Court is cognizant of the fact that Havana Docks could not have anticipated that its previously sufficient allegations would fail in this case. Thus, the Court finds that Plaintiff's failure to clarify

Regardless, the Court now recognizes that this finding was incorrect. In fact, Havana Docks' concession agreement reflects that Plaintiff was granted a 99-year leasehold interest, not a leasehold interest ending on a date certain. ECF No. [44-1] at 6-7, ¶ 15. Further compounding the error was the fact that this specific characterization of the concession as a 99-year leasehold interest was notably absent from the briefing in *Carnival, MSC Cruises,* and in the instant action. Indeed, the Court was first apprised of the fact that Plaintiff's interest was a 99-year leasehold interest in the instant Motion.[9]

Plaintiff also rightfully notes that the Court's conclusion that the concession expired in 2004 is inconsistent with the actual text of the Certified Claim. After a close reading of the Certified Claim, the Court agrees with Havana Docks that the Certified Claim did not place a temporal limitation on Plaintiff's claim that expired in 2004. Instead, the FCSC noted that "[t]he terms of the concession granted by the Cuban Government *were* to expire in

---

the nature of its leasehold interest under these circumstances is excusable.

[9] Similarly, Plaintiff first clarified the nature of its property interest in the Subject Property in its Motion for Leave to File First Amended Complaint in *Carnival,* its Motion for Reconsideration and Leave to Amend in *MSC Cruises,* and its Motion for Leave to File First Amended Complaint in *Royal Caribbean*. *See* Motion for Leave to File First Amended Complaint, *Carnival,* No. 19-cv-221724 (S.D. Fla. Feb. 3, 2020), ECF No. [74]; Motion for Reconsideration and Leave to Amend, *MSC Cruises,* No. 19-cv-23588 (S.D. Fla. Jan. 31, 2020), ECF No. [42]; Motion for Leave to File First Amended Complaint, *Royal Caribbean,* No. 19-cv-23590 (S.D. Fla. Feb. 12, 2020), ECF No. [32].

the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation." ECF No. [43-8] at 9 (emphasis added). The distinction between the language in the Certified Claim that the concession terms *were* to expire and the Court's incorrect factual finding that the property interests at issue *actually did* expire in 2004 is critical, and this misinterpretation of the text of the Certified Claim served as the foundation for the Court's resulting analysis in the *NCL* Order. Ultimately, the nature of Havana Docks' leasehold interest, and the Court's mistaken designation of the same in its *NCL* Order, compel the conclusion that the Court engaged in improper fact finding, rather than accepting Plaintiff's factual allegations as true for the purposes of NCL' s Motion to Dismiss.

Additionally, from the limited allegations in Plaintiff's Complaint that it owned an interest in "certain commercial waterfront *real* property in the Port of Havana, Cuba," ECF No. [1] 117 (emphasis added), coupled with the language in the Certified Claim quoted above, ECF No. [43¬8] at 9, the logical inference was that Havana Docks' Certified Claim was "limited by its own terms because ... [it relates] to nothing more than the time-limited concession that Plaintiff had at the time of confiscation by the Cuban Government," *NCL,* 2020 WL 70988, at ***4;** *see also id.* at *5 ("Plaintiff is the rightful owner only of a time-limited concession that expired in 2004."). The Certified Claim, however, contradicts the conclusion that Havana Docks only had an interest in real property, which the Court overlooked. *See generally* ECF No. [43-8]. Further, these additional property interests reflected in the Certified Claim, such as the ownership interests in fixtures and equipment, are

not time limited. The Court's analysis in the *NCL* Order overlooked these additional certified property interests and instead relied entirely on the language in the Certified Claim with regard to the concession's expiration in 2004. As delineated above, the Court agrees with Havana Docks that it made errors of fact in its *NCL* Order that warrant reconsideration here.

B. Errors of Law

1. *Glen I* and *Glen II*

Through the lens of these admittedly improper — and incorrect — factual findings, the Court concluded that Havana Docks was the owner of only a time-limited concession that expired in 2004. Further, based on this understanding, the Court made an error of law in its subsequent analysis. Importantly, the true nature of Havana Docks' interest in the concession (i.e., a 99-year leasehold interest) elucidates why the Court's ultimate holding in its *NCL* Order is at odds with the Eleventh Circuit's reasoning in *Glen II* and the district court's reasoning in *Glen I,* which the Eleventh Circuit affirmed.

Specifically, the district court in *Glen I* explained that:

> the [United States] Supreme Court in *Sabbatino* recognized the power of the Cuban government to expropriate property within its borders and to vest the property right in Cuba. *See Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 414-15 (1964) (Cuba's confiscation vested in Cuba the "property right in" and "dominion over" sugar expropriated by Cuba, even though Cuba failed to compensate the former owners). ... [Further], Titles III and IV of the Helms-Burton Act, do not

> provide that those whose property was taken by the Cuban government retain *legal title* to that property. Rather, Title III permits any U.S. national "who owns a claim to such [confiscated] property for money damages" to sue those who traffic in such property. 22 U.S.C. §§ 6082(a)(1)(A). Title IV provides sanctions against those who traffic in "confiscated property, a claim to which is owned by a United States national." 22 U.S.C. §§ 6082(a)(2). Titles III and IV simply imply that people like the Glens may own a *claim* for compensation under U.S. law, but they do not *own* the expropriated land itself.

Glen I, 365 F. Supp. 2d at 1269-70 (footnote omitted). In affirming the district court's reasoning, the Eleventh Circuit emphasized that "[t]he Helms-Burton Act refers to the property interest that former owners of confiscated property now have as ownership of a 'claim to such property.'" *Glen II,* 450 F.3d at 1255 (quoting 22 U.S.C. § 6082(a)(1)(A)); *see also id.* (noting that actions brought under Title III are "actions brought 'on a claim to the confiscated property' against traffickers in the property" (quoting 22 U.S.C. § 6082(a)(4))). As such, the reasoning in *Glen I* and *Glen II* stands for the notion that the Cuban Government's confiscation of property extinguished any ownership rights of those who owned the property prior to the expropriation. *See Glen II,* 450 F.3d at 1255; *Glen I,* 365 F. Supp. 2d at 1269-70. Moreover, obtaining a claim certified by the FCSC allows the victim of such a confiscation to memorialize the *value* of the property interest lost and to put other actors on notice of the victim's outstanding right to compensation based on the now-extinguished

property interest taken.[10] This certified claim is *not* an interest in the confiscated property itself; rather, it represents the dollar amount that the victim has suffered by being deprived of its property interests — a point that NCL concedes. *See* ECF No. [48] at 7; *see also Glen I,* 365 F. Supp. 2d at 1270.

In accordance with *Glen I* and *Glen II,* the Cuban Government's expropriation of the Subject Property extinguished all rights Havana Docks had to the remaining concession term of 44 years. Thus, in lieu of its property interest in the remaining 44 years of the concession to the Subject Property, which the Cuban Government confiscated, Plaintiff now owns an interest only in the Certified Claim, which reflects the right to compensation for the value of loss Plaintiff sustained due to the expropriation. Moreover, because the Cuban Government's wrongful confiscation extinguishes any property interests a rightful owner previously had in the expropriated property, this Court's holding in its *NCL* Order is at odds with *Glen I* and *Glen II.* In particular, the NCL Order essentially

---

[10] Under the Claims Settlement Act, the FCSC is tasked with certifying "the amount and validity of claims by [U.S.] nationals ... against the Government of Cuba ... for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property ...." 22 U.S.C. § 1643b(a). In determining the "value of properties, rights, or interests taken, the [FCSC] shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to, (i) fair market value, (ii) book value, (iii) going concern value, or (iv) cost of replacement." *Id.; see also* 22 U.S.C. § 1643f(a) ("The Commission shall certify to each individual who has filed a claim under this subchapter the amount determined by the Commission to be the loss or damage suffered by the claimant which is covered by this subchapter.").

forecloses any recovery under the Act for trafficking because no trafficking could ever possibly occur in a *claimant's* property interest after confiscation — and thus complete extinguishment — of any interest in the property previously owned. Limiting the allowable period of recovery to the term of the underlying property interest, in effect, nullifies Title III entirely because the Cuban Government's confiscation extinguished all of Plaintiff's property interests in the Subject Property. As such, requiring that Plaintiff only recover damages for trafficking occurring within the 44 years after confiscation is untenable, given that, under *Glen I* and *Glen II,* Plaintiff's interest in the remaining 44 years was extinguished at the time of expropriation. In addition, as discussed in more detail below, the Court concludes that the statutory interpretation of the language of Title III in its *NCL* Order was incorrect and that its conclusions in the *NCL* Order were contrary to the Act's express purpose.

2. Liability for Trafficking Under Title III

Based upon its erroneous factual findings, the Court in its *NCL* Order construed the liability provision of § 6082(a)(1)(A) too narrowly—a construction which it now concludes is not in keeping with the Act. Instead, the Court's ruling in the *Carnival* Order was consistent with the language and purpose of the Act. As such, the reasoning in the *NCL* Order incorrectly conflates the Certified Claim with Havana Docks' former interests in the Subject Property.

Title III of the LIBERTAD Act states that "any person that ... traffics in property which was

confiscated by the Cuban Government ... shall be liable to any United States national who owns the claim to such property for money damages ....” 22 U.S.C. § 6082(a)(1)(A).[11]

> Finding that the Castro government was “offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures” involving confiscated property in order to obtain “badly needed financial benefit, including hard currency, oil, and productive investment and expertise,” 22 U.S.C. § 6081(5), (6), Congress established a civil remedy for any United States national owning a claim to “property” confiscated by the Cuban government after January 1, 1959, against “any person” who “traffics” in such property, *id.* § 6082(a)(1)(A) ....

Havana Club Holding, S.A. v. Galleon S.A., 203 F.3d 116, 125 (2d Cir. 2000). Thus, the Act aims “to deter third-party foreign investors from trafficking in confiscated property ... [and] [t]his purpose is achieved through the establishment of a new statutory remedy available ... to ‘United States nationals who were the victims of these confiscations ... [to] deny traffickers any profits from economically exploiting Castro’ s wrongful seizures.’ *Glen II,* 450 F .3d at 1255 (quoting 22 U.S.C. § 6081(11)); *see also id.* at 1255 n.3 (citing

[11] The amount of money damages available under Title III is the greater of: “(a) the amount certified by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, (b) the amount determined by a special master pursuant to § 6083(a)(2), or (c) the fair market value of the property.” *Garcia-Bengochea,* 407 F. Supp. 3d at 1284 n.1 (citing § 6082(a)(1)(A)(i)).

22 U.S.C. § 6081(5), (6) (defining "'trafficking' in confiscated property" as transactions in "property and assets some of which were confiscated from United States nationals."); 22 U.S.C. § 6081(11) ("United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States ....")).

The LIBERTAD Act provides an expansive definition of "property," stating: "The term `property' means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest." 22 U.S.C. § 6023(12)(A). Moreover, the definition of "confiscated" incorporates the Act's broad definition of "property."

(4) Confiscated

As used in subchapters I and III, the term "confiscated" refers to—

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

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

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

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

> (i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;
>
> (ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or
>
> (iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

Id. § 6023 (4).

"The Castro government has utilized from its inception and continues to utilize ... confiscation ... and other forms of terror and repression, as means of retaining power." 22 U.S.C. § 6021(15). "The view long held by the United States is that an alien whose property is expropriated is entitled to 'prompt, adequate, and effective' compensation." *Banco Nacional de Cuba v. Chase Manhattan Bank,* 658 F.2d 875, 888 (2d Cir. 1981). "The wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development." 22 U.S.C. § 6081(2).

As such, Congress has found that trafficking in confiscated property by foreign investors "undermines the foreign policy of the United States ... to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government," and the transfer of these confiscated properties "would complicate any attempt to return them to their original owners." *Id. §§* 6081(6)(B), (7). Because "[t]he

international judicial system ...lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property," Congress has sought "to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies." *Id.* *§§* 6081(8), (10). As such, "[t]o deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations [are] endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." *Id.* *§* 6081(11). In enacting Title III, "Congress intended `to create a "chilling effect" that [would] deny the current Cuban regime venture capital, discourage third-country nationals from seeking to profit from illegally confiscated property, and help preserve such property until such time as the rightful owners can successfully assert their claim.' *Havana Club Holding,* 203 F.3d at 125 (citation omitted) (emphasis omitted); *see also* 22 U.S.C. § 6022(6) ("The purposes of this [Act] are ... to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.").

Accordingly, the LIBERTAD Act defines "traffics" as follows:

> **(13) Traffics**
>
> (A) As used in [Title] III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally —

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

22 U.S.C. § 6023(13)(A).

Thus, under the Act, the definition of "traffics" relates to offending conduct in the broad concept of "confiscated property" — i.e., in any property that was nationalized, expropriated, or otherwise seized by the Cuban Government to obtain ownership or control, without the property having been returned or adequate and effective compensation — "without the authorization of any United States national who holds a claim to the property." *Id. §* 6023(13); *see also id. §* 6023(4).

"[O]ne of the most basic interpretive canons [is] that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Patel v. U.S. Att'y Gen.,* 917 F.3d 1319, 1326 n.5 (11th Cir. 2019) (quoting *Rubin v. Islamic Republic of Iran,* 138 S. Ct.

816, 824 (2018)). Likewise, in construing a statute, a court is "not allowed to add or subtract words from [the] statute." *Friends of the Everglades v. S. Fla. Water Mgmt. Dist.,* 570 F.3d 1210, 1224 (11th Cir. 2009). Yet, notably absent from the definition of "traffics" is any limitation on the scope of "trafficking" to only a specific "interest in property." Instead, subsection (i) explicitly includes in "traffics" obtaining "an interest in confiscated property," which strongly contradicts any interpretation limiting "traffics" based on a claimant's property interest. 22 U.S.C. § 6023(13)(A)(i). Further contradicting any need to constrict the definition of "traffics" is the fact that each reference to "trafficking" in the substantive provisions of Title III concerns trafficking in "confiscated property," rather than in any "interest in confiscated property."[12] Thus, the Court's narrow construction of "traffics" in its *NCL* Order was improper because it inserted "an interest" into each statutory reference to "confiscated property."

Further, as discussed above, Title III states that "any person that ... traffics in property which was confiscated by the Cuban Government ... shall be liable to any United States national who owns the claim to such property for money damages …." 22 U.S.C. § 6082(a)(1)(A). Reading the liability language in a way that gives effect to each of the definitions above establishes that the Court's limiting construction was in error. Taken together, these

---

[12] *See, e.g.,* 22 U.S.C. § 6081(11) ("To deter trafficking in wrongfully confiscated property ...."); *id.* § 6082(a)(1)(A) ("any person that ... traffics in property which was confiscated by the Cuban Government ...."); *id. §* 6082(a)(3)(A) ("Any person that traffics in confiscated property ....").

provisions state that "any person that ... traffics in," *id.* § 6082(a)(1)(A), "any property ... whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest," *id.* § 6023(12)(A), "which was confiscated by the Cuban Government," *id.* § 6082(a)(1)(A), through "the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property ... without the property having been returned or adequate and effective compensation provided," *id.* § 6023(4), "shall be liable to any United States national who owns the claim to such property for money damages," *id.* § 6082(a)(1)(A). Further, "such property" in the phrase "the claim to such property" refers to "property which was confiscated by the Cuban Government." *See Such,* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/such (last visited Mar. 29, 2020) (defining the adjective "such" as "of the character, quality, or extent previously indicated or implied").

Additionally, the Court's construction of Title III's liability provision in its *NCL* Order overlooked the fact that other provisions of the Act refer specifically to "[a]n *interest in property* for which a United States national has a claim certified ...." *See, e.g.,* 22 U.S.C. § 6082(a)(5)(D) (emphasis added).[13] "It is well settled

[13] Section 6082(a)(5)(D) states, in full, that:

> An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose

that [w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."' *Duncan v. Walker,* 533 U.S. 167, 173 (2001) (quoting *Bates v. United States,* 522 U.S. 23, 29-30 (1997); *Russello v. United States,* 464 U.S. 16, 23 (1983)). Accordingly, limiting the meaning of "traffics in [confiscated] property" to trafficking only in the specific "interest in property for which a United States national has a claim certified" is contrary to the express language used in various parts of the Act. Instead, Title III's plain language creates liability for trafficking in the broadly defined "confiscated property"—i.e., in any property that was nationalized, expropriated, or otherwise seized by the Cuban Government to obtain ownership or control, without the property having been returned or

---

> claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

Id.; see also 22 U.S.C. § 6083(a)(1) ("In any action brought under this subchapter, the court shall accept as conclusive proof of ownership of *an interest in property* a certification of a claim to ownership of *that interest* that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 ...." (emphasis added)). Notably, even the definition of "traffics" under Title III refers to "an interest in property." 22 U.S.C. § 6023(13)(A) ("a person `traffics' in confiscated property if that person knowingly and intentionally ... purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds *an interest in confiscated property ...."* (emphasis added)).

adequate and effective compensation—not in a particular interest in confiscated property.

Further, the *NCL* Order essentially concluded that any recovery by Plaintiff on its Certified Claim (i.e., the monetized amount of the loss incurred by Plaintiff from the confiscation) for trafficking in the Subject Property that occurred after the concession was set to expire would allow Havana Docks in effect to recover additional *monetary remedies* beyond those to which it was entitled. The amount of monetary damages memorialized in the Certified Claim, however, is the dollar value of the remainder of the leasehold term that Plaintiff was deprived of, coupled with the value of the other itemized property interests delineated in the Certified Claim, and this discrete amount would not change depending on the timing of the trafficking. *See* 22 U.S.C. §§ 1643, 1643b(a), 1643f(a). Any recovery for the trafficking alleged in this action would not, as NCL argues and as the *NCL* Order held, entitle Plaintiff to recover compensation for an interest in the Subject Property that it did not own, nor would it effectively treat Havana Docks' interest as a fee simple interest. *See* ECF No. [48] at 9-10; *NCL,* 2020 WL 70988, at *4-5. The amount of damages Plaintiff is entitled to recover under the Certified Claim would still be the certified value of its confiscated interests in the Subject Property that were expropriated, not the value of the fee simple interest or any other property interest that it did not own. Thus, permitting Havana Docks' cause of action in this case to proceed allows Plaintiff to attempt to recover only the amount of compensation for its interests in the Subject Property that were confiscated.

In the *NCL* Order, the Court further took issue with Plaintiffs reading of the Act because it would give Plaintiff "the right to recover compensation for trafficking in property interest[s] that the plaintiff never owned," and determined that recovery was precluded in this case because, as in the context of takings, Havana Docks was only entitled to receive just compensation for the interest in property that was taken. *NCL,* 2020 WL 70988, at *3. Yet, as explained above, the amount of compensation Plaintiff can recover under the Certified Claim is the value of the losses it sustained *for the property interest confiscated. See* 22 U.S.C. §§ 1643, 1643b(a), 1643f(a). However, the issue of the amount of compensation that Plaintiff is entitled to recover in this case is entirely distinct from the issue of the trafficking that creates liability under the Act. Here, the recovery itself "only extend[s] as far as the particular rights from the bundle that [Havana Docks] has acquired." *NCL,* 2020 WL 70988, at *3.[14] The liability provision, on the other hand, imposes liability for trafficking in the more broadly defined "confiscated property" — a term that, as discussed above, is not limited solely to the interest Plaintiff originally owned in the Subject Property. Thus, consistent with established takings principles under property law, which require payment

---

[14] This is also consistent with the Act's requirement that "the court shall accept as conclusive proof of ownership of *an interest in property* a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 ...." 22 U.S.C. § 6083(a)(1) (emphasis added). Therefore, the recovery amount under the Certified Claim is limited to the particular rights from the bundle that Havana Docks owned.

of just compensation for the property interest taken, any recovery Plaintiff obtains pursuant to the Certified Claim in this case would be for the value of its confiscated property interests, not for the value of any other interests in the Subject Property that Havana Docks did not own. *See, e.g., United States v. Gen. Motors Corp.,* 323 U.S. 373, 382 (1945) ("When [the government] takes the property, that is, the fee, the lease, whatever he may own, terminating altogether his interest, under the established law it must pay him for what is taken, not more ...."); *Alamo Land & Cattle Co., Inc. v. Arizona,* 424 U.S. 295, 304 (1976) ("The measure of damages is the value of the use and occupancy of the leasehold for the remainder of the tenant's term ...." (quoting *United States v. Petty Motor Co.,* 327 U.S. 372, 381 (1946))).

In sum, after having had the benefit of full briefing on the issues presented by all parties and the parties' oral arguments at the hearing, the Court agrees with Plaintiff that the *NCL* Order was incorrect because it was premised upon errors of fact and law.

C. Leave to Amend

Based on the errors in the Court's *NCL* Order, the Court concludes that good cause exists to vacate its *NCL* Order, reopen this case, and permit Havana Docks to file its Amended Complaint. Allowing Plaintiff to file the Amended Complaint is warranted because Havana Docks reasonably relied on the Court's holding in its *Carnival* Order in gauging the sufficiency of the allegations plead in the instant action.[15] Additionally, the errors of fact and law in the

---

[15] As the Supreme Court has explained,

Court's *NCL* Order also support permitting Havana Docks to file its Amended Complaint.

Moreover, the Court disagrees with NCL regarding the futility of permitting Plaintiff to file its Amended Complaint. Instead, the Court finds that Havana Docks can sufficiently allege a claim under Title III, in light of the Court's discussion above with regard to the express language and purpose of the Act and the additional allegations in the Amended Complaint regarding Havana Docks' various property interests. Plaintiff's Amended Complaint would also not fail as a matter of law because, contrary to the Court's previous conclusion in its *NCL* Order, the liability provision of Title III does not contain any temporal limitation. Likewise, the Court finds the allegations in the Amended Complaint to be sufficient to assert a claim under Title III because Plaintiff has adequately

---

> Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is ... inconsistent with the spirit of the Federal Rules.

Foman, 371 U.S. at 182 (citation omitted).

alleged that it owned a Certified Claim to an interest in the Subject Property that was wrongfully confiscated and that NCL knowingly trafficked in the confiscated Subject Property. ECF No. [44-1] ¶¶ 12-27.[16] Thus, the Court concludes that allowing Havana Docks to file its Amended Complaint would not be futile in this case. *See Bryant,* 252 F.3d at 1164 (concluding that the district court's finding of futility

---

[16] *See Glen II,* 450 F.3d at 1255 ("The Helms-Burton Act refers to the property interest that former owners of confiscated property now have as ownership of a `claim to such property.' When (or if) the portion of Title III that allows private litigants to bring lawsuits becomes effective, actions brought pursuant to the new statutory scheme would be actions brought `on a claim to the confiscated property' against traffickers in the property." (citations omitted)); *Glen I,* 365 F. Supp. 2d at 1269-70 ("Title III permits any U.S. national `who owns a claim to such [confiscated] property for money damages' to sue those who traffic in such property." (citation omitted)); *Garcia-Bengochea,* 407 F. Supp. 3d at 1288 ("The Helms-Burton Act also requires the plaintiff to show that he `owns the claim' to the confiscated property." (quoting § 6082(a)(1)(A))); *Gonzalez v. Amazon.com, Inc.,* No. 19-23988-CIV, 2020 WL 1169125, at *2 (S.D. Fla. Mar. 11, 2020) (discussing the insufficiency of allegations regarding an actionable ownership interest); *see also Havana Club Holding,* 203 F.3d at 125 ("Finding that the Castro government was 'offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures' involving confiscated property in order to obtain `badly needed financial benefit, including hard currency, oil, and productive investment and expertise,' Congress established a civil remedy for any United States national owning a claim to 'property' confiscated by the Cuban government after January 1, 1959, against `any person' who `traffics' in such property, and broadly defined 'property' ...." (citations omitted)); *Lamb v. ITT Corp.,* No. 8:09CV95, 2010 WL 376858, at *4 (D. Neb. Jan. 26, 2010) (Title III "creates a civil cause of action for damages in the amount that was certified by the Foreign Claims Settlement Commission." (footnote omitted)).

"ignore[d] the fact that the district court earlier had found the complaint sufficient, thus justifying, until [the Eleventh Circuit's] opinion, the plaintiffs' belief that they did not need to include any further allegations in the Amended Complaint"). Finally, given the significant factual and legal errors contained within the *NCL* Order, the Court believes it necessary to vacate its *NCL* Order in its entirety.

IV. CONCLUSION

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

1. Plaintiff's Motion, **ECF No. [44]**, is **GRANTED**.
2. The Court's Order on Motion to Dismiss, **ECF No. [42]**, is **VACATED**.
3. The Clerk of Court is directed to REOPEN the above-styled case. The Court will enter a separate order resetting all trial and pre-trial deadlines.
4. Plaintiff must separately refile its Amended Complaint, **ECF No. [44-1], by no later than April 21, 2020**.

DONE AND **ORDERED** in Chambers at Miami, Florida on April 14, 2020.

/s/________________
BETH BLOOM
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HAVANA DOCKS CORPORATION, Plaintiff, v. CARNIVAL CORPORATION, Defendant.	**Case No. 19-cv-21724** **BLOOM/MCALILEY**
HAVANA DOCKS CORPORATION, Plaintiff, v. MSC CRUISES SA, MSC CRUISES SA CO, and MSC CRUISES (USA) INC., Defendants.	**Case No. 19-cv-23588** **BLOOM/LOUIS**
HAVANA DOCKS CORPORATION, Plaintiff, v. ROYAL CARIBBEAN CRUISES, LTD., Defendant.	**Case No. 19-cv-23590** **BLOOM/LOUIS**
HAVANA DOCKS CORPORATION, Plaintiff, v. NORWEGIAN CRUISE LINE HOLDINGS, LTD., Defendant.	**Case No.: 19-cv-23591** **BLOOM/LOUIS**

[ENTERED ON FLSD DOCKET 3/21/2022]

* * *

OMNIBUS ORDER

THIS CAUSE is before the Court upon ten (10) pending summary judgment motions filed in the four (4) above-styled cases. The Court conducted a hearing on each summary judgment motion over the course of two (2) days. *See, e.g., Havana Docks Corporation v. Carnival Corporation*, No. 19-cv-21724, ECF Nos. [442], [449]. The Court has reviewed the parties' memoranda and statements of facts, the record in each case, the applicable law, and is otherwise fully advised.

Plaintiff Havana Docks Corporation ("Havana Docks") filed separate actions to recover damages against Defendants Carnival Corporation d/b/a Carnival Cruise Line ("Carnival"); MSC Cruises S.A. ("MSC SA"), MSC Cruises SA Co. ("MSC Co."), and MSC Cruises (USA) Inc. ("MSC USA") (collectively, "MSC"); Royal Caribbean Cruises Ltd. ("Royal Caribbean"); and Norwegian Cruise Line Holdings Ltd. ("Norwegian"). The Defendants are four cruise operators whose ships used the Havana Cruise Port Terminal, also called the Sierra Maestra Terminal (the "Terminal"), when traveling to Havana, Cuba. Havana Docks claims each Defendant unlawfully trafficked in property confiscated by the Cuban Government—the Terminal and its piers—in violation of the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. §§ 6021, *et seq.*, referred to as the LIBERTAD Act or Helms-Burton Act.

* * *

I. STATUTORY AND REGULATORY BACKGROUND

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

The result is a "pervasive" economic embargo against Cuba. *Odebrecht Const., Inc. v. Sec)), Fla. Dept of Transp.*, 715 F.3d 1268, 1277 (11th Cir. 2013). But the federal regime governing the embargo "contains numerous exceptions, permitting certain kinds of transactions with Cuba through licensing as well as through complete exemptions." *Id.* The federal scheme "is designed to sanction strongly the Castro regime while simultaneously permitting humanitarian relief and economic transactions that will benefit the Cuban people." *Id.* at 1278. A brief description of the relevant legislative acts and executive regulations follows.

A. Relevant Statutes

1. *International Claims Settlement Act*

The International Claims Settlement Act ("Settlement Act"), 22 U.S.C. §§ 1621, et seq., established the Foreign Claims Settlement Commission ("FCSC") (formerly called the

International Claims Commission) to adjudicate claims against foreign governments that involve the expropriation of property belonging to nationals of the United States. *See Dames & Moore v. Regan*, 453 U.S. 654, 680-81 (1981) (discussing history of FCSC). In 1964, Congress amended the Settlement Act "to provide for the determination of the amount and validity of claims against the Government of Cuba ... which have arisen since January 1, 1959[.]" 22 U.S.C. § 1643. The Settlement Act tasks the FCSC with determining "the amount and validity of claims by nationals of the United States against the Government of Cuba ... arising since January 1, 1959 ... for losses resulting from the nationalization ... [of] property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States." 22 U.S.C. § 1643b(a). A claim certified by the FCSC under the Settlement Act serves as both conclusive proof of ownership of a property interest and as the presumptive measure of damage under the LIBERTAD Act. 22 U.S.C. §§ 6082(a)(2), 6083(a)(1). Since February 9, 2015, all FCSC Commission decisions issued under its Cuba claims program have been available online.2

2. *Cuban Democracy Act*

In 1992, Congress passed the Cuban Democracy Act of 1992 ("CDA"), 22 U.S.C. §§ 6001, et seq., which "ramped up economic sanctions against the Cuban government while simultaneously permitting humanitarian relief to the Cuban people." *Odebrecht*, 715 F.3d at 1276. Four years later, following an unprovoked attack by Cuban military jets on an American civilian aircraft, *see* 22 U.S.C. § 6046 (Congressional condemnation of the Brothers to the

Rescue incident), Congress passed the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. §§ 6021, *et seq.*, referred to as the LIBERTAD Act or Helms-Burton Act.

3. *LIBERTAD Act*

The LIBERTAD Act, effective March 12, 1996, aimed to address "the 36 years of communist tyranny and economic mismanagement by the Castro government" and improve "the welfare and health of the Cuban people." 22 U.S.C. § 6021(1), (2). Among the LIBERTAD Act's goals were "to assist the Cuban people in regaining their freedom and prosperity," § 6022(1), "to strengthen international sanctions against the Castro government," § 6022(2), and "to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime." § 6022(6).

To accomplish those goals, the LIBERTAD Act codified "[t]he economic embargo of Cuba" and "the regulatory sanctions that were in place on March 1, 1996." *Odebrecht*, 715 F.3d at 2 Final Opinions and Orders, United States Department of Justice, https://www.justice.gov/fcsc/final-opinions-and-orders-5#Cuba. (last visited Mar. 16, 2022). 1277; see 22 U.S.C. § 6032(h) (stating that "[t]he economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect on March 12, 1996, and shall remain in effect, subject to section 6064 of this title."); *see also* 22 U.S.C. § 6023(7)(A) (defining "economic embargo of Cuba" as "the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals

of Cuba have an interest) that was imposed against Cuba pursuant to section 2370(a) of this title, section 4305(b) of Title 50, the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law or any other provision of law[.]").

Title III of the LIBERTAD Act provides a private cause of action to victims of confiscations by the Cuban Government. *Glen v. Club Mediterranee, S.A.*, 450 F.3d 1251, 1255 (11th Cir. 2006). Specifically, the LIBERTAD Act states that "any person that ... traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages" and attorneys' fees and costs. 22 U.S.C. § 6082(a)(1)(A). But the LIBERTAD Act excludes from trafficking acts "transactions and uses of property incident to lawful travel to Cuba." 22 U.S.C. § 6023(13)(B)(iii). The LIBERTAD Act defines a "United States national" as "any United States citizen" or "any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States." 22 U.S.C. § 6023(15)(A)-(B).

The LIBERTAD Act grants the President the authority to suspend the right to bring a cause of action under Title III at six-month intervals. *Glen*, 450 F.3d at 1255; *see* 22 U.S.C. § 6085(c). Every President has done so from 1996 to May 2019, until President Donald J. Trump allowed the suspension to expire. *N. Am. Sugar Indus. Inc. v. Xinjiang Goldwind Sci. & Tech. Co.*, No. 20-CV-22471, 2021 WL 3741647, at *2 (S.D. Fla. Aug. 24, 2021).

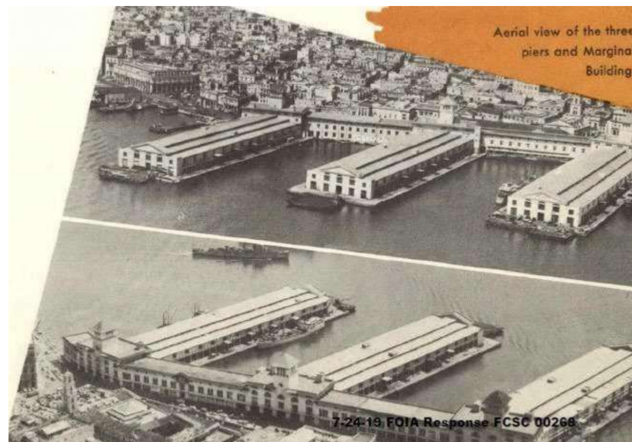
*   *   *

II. PROCEDURAL BACKGROUND

A. Havana Docks' Allegations

Havana Docks filed separate actions for damages under Title III of the LIBERTAD Act against each cruise operator (and some affiliates): (1) Carnival; (2) MSC SA, MSC Co., and MSC USA; (3) Royal Caribbean; and (4) Norwegian. *Carnival*, ECF No. [149]; MSC, ECF No. [104]; *Royal Caribbean*, ECF No. [46]; *Norwegian*, ECF No. [56]. In each case, Havana Docks alleges that it is "a U.S. national as defined by 22 U.S.C. § 6023(15)" and "the rightful owner of an interest in and certified claim to certain commercial waterfront real property in the Port of Havana, Cuba identified specifically by [Cuba] as the Havana Cruise Port Terminal." *E.g., Carnival*, ECF No. [149] ¶ 6. Havana Docks claims that it "and its predecessor in interest constructed and managed the [Terminal]," and that Havana Docks "owned, possessed, used and managed" the Terminal until its confiscation by the Cuban Government in 1960. *Id.* ¶ 7.

The picture below depicts the Terminal. *Id.*, ECF Nos. [337] ¶ 18, [367] ¶ 18.



The first pier is the San Francisco, the second pier is the Machina, and the third is the Santa Clara. *Id.*, ECF Nos. [331] ¶ 22, [331-1] at 3 n.1, [388] ¶ 22.

Havana Docks alleges that the FCSC certified its ownership interest in the Terminal under Certified Claim No. CU-2492 (the "Certified Claim"). E.g., id, ECF No. [149] ¶ 12. The most significant portion of the Certified Claim's valuation is a concession ("Concession") from the Cuban Government, which "granted [Havana Docks] a term of 99 years for the use of, improvement, construction upon, operation and management of the [Terminal]." *E.g., id.*, ECF No.[149] 15. Havana Docks contends that upon confiscation, 44 years remained on the Concession. Id. The Concession states that Havana Docks would be entitled to indemnification if its property was expropriated under Article 50 of the Law of Ports, but the Cuban Government did not pay the indemnity. Id. ¶¶ 15-18.

Havana Docks claims that Defendants "knowingly and intentionally commenced, conducted, and promoted [their] commercial cruise line business to Cuba using the [Terminal] by regularly embarking and

disembarking its passengers on the [Terminal] without the authorization of Plaintiff." Carnival, ECF No. [149] ¶ 40; *Royal Caribbean*, ECF No. [46] ¶ 22; *Norwegian*, ECF No. [56] 1121. Havana Docks' claim relative to MSC is slightly different; it alleges that MSC "knowingly and intentionally commenced, conducted, and promoted their commercial cruise line business from Miami to Cuba using the [Terminal][.]" MSC, ECF No. [104] 1123. Havana Docks alleges that Defendants "knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the [Terminal] without the authorization of Plaintiff" Carnival, ECF No. [149] ¶ 41; MSC, ECF No. [104] ¶ 24; *Royal Caribbean*, ECF No. [46] ¶ 23; *Norwegian*, ECF No. [56] 1122.

Havana Docks alleges that (1) Carnival used the Terminal from 2016 to 2019, *Carnival*, ECF No. [149] ¶¶ 40-44; (2) MSC used the Terminal from November 1,1996, to June 2019, MSC, ECF No. [104] ¶¶ 23-29; (3) Royal Caribbean used the Terminal for two years beginning on April 23,2017, *Royal Caribbean*, ECF No. [46] ¶ 22; and (4) Norwegian used the Terminal for two years beginning March 2017, *Norwegian*, ECF No. [56] ¶ 21.

Havana Docks further alleges that Carnival "knowingly and intentionally caused, directed, participated in, and/or profited from" trafficking by Airtours Plc ("Airtours"), or "otherwise engaged in" trafficking through Airtours, which used the Terminal from 1996 through 2001. *Carnival*, ECF No. [149] ¶¶ 24-30. Havana Docks similarly contends that Carnival engaged in the same conduct with Costa Crociere S.p.A. ("Costa"), a wholly-owned subsidiary that used the Terminal in 1997 and renovated and

managed the Terminal in a joint venture with the Cuban Government. *Id.* ¶¶ 31-39. In addition, Havana Docks alleges that Royal Caribbean controlled and operated four cruise brands, including Silversea Cruises. *Royal Caribbean*, ECF No. [46] ¶ 2.

* * *

B. Confiscation of the Terminal by the Cuban Government

On October 24, 1960, under Resolution No. 3, the Fidel Castro-led Cuban Government naturalized all property located in Cuba of United States nationals, including Havana Docks' assets. *Carnival*, ECF Nos. [337] ¶¶ 27-28, [367] ¶¶ 27-28; *see Carnival*, ECF No. [73-6]; MSC, ECF No. [41-6]; *Royal Caribbean*, ECF No. [31-6]; Norwegian, ECF No. [43-6].

Havana Docks contends that the Cuban Government never compensated Havana Docks for confiscating the Terminal. Carnival, ECF No. [337] 1131. Defendants do not dispute this; instead, Defendants contend that the Cuban Government has always owned the Terminal and thus did not confiscate it from Havana Docks by continuing to own it. *Id.*, ECF No. [367] ¶ 31.

C. The Concession and the Certified Claim

The Concession was established in 1905 when the Cuban Government awarded it to Compañia del Puerto for a term of 50 years. *Carnival*, ECF Nos. [337] ¶ 3, [367] ¶ 3. The Concession was published in 1905 in the Gaceta Oficial of the Republic of Cuba. *Carnival*, ECF No. [73-3]; *MSC*, ECF No. [41-3]; Royal Caribbean, ECF No. [31-3]; Norwegian, ECF No. [433]. The Concession was "for the construction of a jetty pier with

machinery, a building for the Customs Department, a special department to be used by customs inspectors, and devices for loading and offloading, and all other accessory works in the port of this capital city." *Carnival*, ECF No. [73-3] at 2. Per the Concession, "[t]he State assigns in usufruct[20] during the term of the concession that part of the San Francisco docks, as well as the public domain area, that will be occupied by the project's works." *Id.* at 3. The Concession states that

> [i]f at any time during the term of the concession the works were to be expropriated ... by virtue of the application of the aforesaid Article 50 of the Ports Act, the Government or its agencies shall indemnify the concession holder for the value of all works built by the latter, including the Customs Inspectors Department and the dock on the north side of the jetty[.]

Id at 5.

In addition, the Concession states:

> During the term of the concession, the concession holder shall, for its own account, maintain in good repair and in such condition the foundations, streets, buildings, and all other plant facilities that, upon the conclusion of said term, it may surrender the works to the Government in perfectly serviceable condition.

Id.

The Concession further provides:

---

[20] A right for a certain period to use and enjoy the fruits of another's property without damaging or diminishing it, but allowing for any natural deterioration in the property over time." Usufruct, Black's Law Dictionary (11th ed. 2019).

> This concession is understood to be granted with no prejudice to third parties, except as regards the right of ownership, and on the understanding that the concession holder is bound by such laws of a general nature as have been, or may in the future be, issued with respect to this class of concessions.

Id. at 8.

In 1911, the Cuban Government recognized Compañia del Puerto's transfer of the Concession to the Port of Havana Docks Company. *Id.*, ECF Nos. [337] 119, [367] 119. The Port of Havana Docks Company sold the Concession and all rights and interests in the Concession to Havana Docks. *Id.*, ECF Nos. [337] 1111, [367] 1111. In December 1920, the Cuban Government agreed to extend the Concession to 99 years. *Id.*, ECF Nos. [337] 1114, [367] 1114. In September 1934, the Cuban Government recognized the transfer of the Concession from the Port of Havana Docks Company to Havana Docks. *Id.*, ECF Nos. [337] 1120, [367] 1120. The Cuban Government confiscated Havana Docks' assets, which included the Concession, on October 24, 1960. *Id.*, ECF Nos. [337] ¶¶ 27-28, [367] ¶¶ 27-28.

On April 28, 1967, Havana Docks submitted a claim to the FCSC pursuant to the Settlement Act. Id., ECF Nos. [318-10], [337] 1133, [367] 1133. Havana Docks argued to the FCSC "that on the basis of a concession granted by the Government of Cuba, it owned and operated, at the entrance of the harbor of Havana three piers: the 'San Francisco', 'Machina' and 'Santa Clara' linked with a large marginal building." *Id.*, ECF No. [73-8] at 6. Havana Docks claimed losses of more than $9 million, submitting as evidence (1) a trial balance as

of the end of 1958; (2) balance sheets for years 1956 through 1959; (3) an auditor's report from the end of 1958; (4) an evaluation from a civil engineer and professional appraiser in Cuba; and (5) and an inventory of the equipment, furniture, and fixtures as of the end of 1959. *Id.* at 8.

On April 21, 1971, the FCSC issued its Final Decision No. CU-6165, Havana Docks' Certified Claim. *Carnival*, ECF No. [73-8]; *MSC*, ECF No. [41-8]; *Royal Caribbean*, ECF No. [31-8]; *Norwegian*, ECF No. [43-8]. The Certified Claim includes the following findings:

- Havana Docks was a "national of the United States" within § 1643a(1) because U.S. nationals owned more than 50 percent of the capital stock and, at the time of filing the claim, only approximately 3 percent of the shares were held by persons who were not U.S. nationals. *E.g., Carnival*, ECF No. [73-8] at 6.
- In 1934, the Cuban Government granted Havana Docks a "renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana, formerly granted to its predecessor concessionaire, the Port of Havana Docks Company." *Id.* at 7.
- Havana Docks "acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana." *Id.*
- In June 1946, "the property was encumbered with a mortgage in favor of certain bondholders for the amount of $1,600,000.00." *Id.*
- Havana Docks "also owned the mechanical installations, loading and unloading equipment,

vehicles and machinery, as well as furniture and fixtures located in the offices of the corporation." *Id.*

- "[T]he Cuban assets of [Havana Docks] were nationalized by Resolution No. 3, published in the Official Gazette of October 24, 1960." *Id.*

The FCSC certified that Havana Docks suffered a loss as a result of the actions of the Government of Cuba in the amount of $9,179,700.88, plus six percent annual interest from the date of the loss. *Id.* at 4. The certified loss amount accounted for four categories: (1) "Concession and tangible assets" ($8,684,360.18); (2) "Securities" ($184,005.70); (3) "Accounts Receivable" ($301,055.00); and (4) "Debt of Cuban Government" ($10,280.00). *Id.* at 3.

In determining that amount, the FCSC determined that Havana Docks' balance sheet for the year ending in 1959 represented "the valuation most appropriate to the property and equitable to the claimant." *Id.* at 9. The balance sheet provided a book value for "Land and Concession" ($2,000,000.00), "San Francisco and Machina Piers" ($4,758,829.00), and "Santa Clara Pier" ($2,110,845.00). *Id.* When describing the Concession, the FCSC stated: "[t]he terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation." *Id.* at 9. Havana Docks has always been the owner of the Certified Claim. Carnival, ECF Nos. [337] 40-41, [367] ¶¶ 40-41. The Certified Claim has been in the public records of the FCSC since 1971. *Id.*, ECF Nos. [337] 1143, [367] 1143.

* * *

F. Defendants' Use of the Terminal

Carnival's, MSC SA's, Royal Caribbean's, and Norwegian's ships docked at the Terminal's first pier, the San Francisco Pier, when they traveled to Havana. *Carnival*, ECF Nos. [331] ¶ 22, [388] ¶ 22. The following is a summary of the Defendants' activities:

1. *Carnival*

From May 2016 to April 2017, Fathom ship *Adonia* docked at the Terminal 31 times, listing 20,999 passengers on the manifests. *Id.*, ECF Nos. [332] ¶¶ 23-24, [374] ¶¶ 23-24. From December 2017 to April 2019, HAL ship *Veendam* docked at the Terminal 19 times, listing 30,401 passengers on the manifests. *Id.*, ECF Nos. [332] ¶¶ 25-26, [374] ¶¶ 25-26. From June 2017 to May 2019, CCL ships *Paradise* and *Sensation* docked at the Terminal 33 times, listing 76,213 passengers on the manifests. *Id.*, ECF Nos. [332] ¶¶ 27-28, [374] ¶¶ 27-28.

Carnival's ships docked at the Terminal to disembark and embark passengers. Id., ECF Nos. [332] ¶ 17, [374] ¶ 17. Carnival intentionally traveled to Havana, but Carnival submits that the Cuban Government required Carnival to embark and disembark passengers at the Terminal and repeatedly denied Carnival's requests to dock at other ports in Havana or to anchor and tender in Havana. *Id.*, ECF No. [374] ¶ 18. Havana Docks further contends that from 2018 to 2020, Carnival provided "recommendations and advice" for the renovation and enhancement of the Terminal. *Id.*, ECF No. [332] ¶ 34. Carnival disputes Havana Docks' characterization but admits that it "provided technical information about requirements for Carnival ships to safely dock at the Terminal." *Id.*, ECF No. [374] 1134.

2. *MSC*

Between 2016 and 2018, the *Armonia* made 65 voyages that started and ended in Havana and docked at Terminal. MSC, ECF Nos. [224] ¶ 41, [253] ¶ 41. From December 2018 through June 2019, the *Armonia* made 25 voyages from Miami to Havana, docking at the Terminal on 50 calendar days and listing in its manifests 51,908 passengers. *Id.*, ECF Nos. [224] ¶¶ 40, 48, [253] 40, 48. Between 2015 and 2019, the Opera made 100 voyages that began and ended in Havana and docked at the Terminal. *Id.*, ECF Nos. [224] ¶ 45, [253] ¶ 45. The *Opera* averaged 2,000 passengers for each call to Havana. *Id.*, ECF Nos. [224] 1161, [253] ¶ 61.

Between 2015 and 2019, the MSC ships docked at the Terminal on all their voyages to Havana. *MSC*, ECF Nos. [224] ¶ 34, [253] ¶ 34. During that period, the *Opera* docked at the Terminal to embark and disembark passengers in Havana in connection with Cuba-to-Cuba cruises. *Id.*, ECF Nos. [224] ¶ 35, [253] ¶ 35. The *Opera* used the Terminal as a homeport from 2015 to 2019. *Id.*, ECF Nos. [224] ¶ 37, [253] ¶ 37.

Between December 2018 and June 2019, the *Armonia* docked at the Terminal to embark and disembark passengers in Havana in connection with Miami-to-Cuba cruises. *Id.*, ECF Nos. [224] ¶¶ 36, 40, [253] ¶¶ 36, 40. The *Armonia* used the Terminal as a homeport in 2016, 2017, and 2018. *Id.*, ECF Nos. [224] ¶ 38, [253] ¶ 38. The *Opera* homeporting at the Terminal from 2015 through March 2019 in connection with Cuba-to-Cuba cruises overlapped with the *Armonia's* Miami-to-Cuba cruises. *Id.*, ECF Nos. [224] ¶ 39, [253] ¶ 39. The *Armonia* was the only MSC SA

ship to cruise from the U.S. to Cuba. Id., ECF Nos. [210] ¶ 15, [259] ¶ 15.

MSC SA disembarked passengers from the *Armonia* at the Terminal for shore excursions in Havana. *Id.*, ECF Nos. [224] ¶ 49, [253] ¶ 49. The shore excursions offered in Havana to passengers on the MSC ships began and ended at the Terminal. *Id.*, ECF Nos. [224] ¶ 50, [253] ¶ 50. MSC cruise passengers also cleared customs and immigration on the first floor of the Terminal. *Id.*, ECF Nos. [259] ¶ 48, [273] ¶ 48.

3. *Royal Caribbean*

Between 2017 and 2019, the *Quest*, *Journey*, *Empress of the Seas*, and *Majesty of the Seas* docked at the Terminal on 193 voyages for a total of 334 days, carrying a total of 347,008 passengers. *Royal Caribbean*, ECF Nos. [141] ¶¶ 29-30, [172] ¶¶ 29-30. The first ship to dock at the Terminal was the *Quest* on March 31, 2017. *Id.*, ECF No. [141] ¶ 28, [172] ¶ 28. The *Empress of the Seas* last docked at the Terminal on June 5, 2019. *Id.*, ECF No. [141] ¶ 32, [172] ¶ 32.

Royal Caribbean intentionally docked at the first pier of the Terminal to disembark and embark its passengers. *Id.*, ECF Nos. [141] ¶ 27, [172] ¶ 27. Many of Royal Caribbean's passengers boarded buses parked on the ground floor of the Terminal to take them on excursions, which Royal Caribbean claims are "people-to-people excursions." *Id.*, ECF Nos. [141] ¶ 34, [172] ¶ 34. Most shore excursions began and ended at the Terminal. *Id.*, ECF Nos. [141] ¶ 93, [172] ¶ 93.

4. *Norwegian*

Between 2017 and 2019, 10 different Norwegian ships collectively provided passenger carrier services to Havana 166 times, docking at the Terminal for a

collective total of 299 calendar days. *Norwegian*, ECF Nos. [228] ¶ 15, [282] ¶ 15. Norwegian intended to travel to Havana, and Norwegian docked at Pier 1 of the Terminal to disembark and embark its passengers. *Id.*, ECF Nos. [228] ¶ 14, [282] ¶ 14. Norwegian docked its ships at the Terminal on every voyage to Cuba. Id., ECF Nos. [284] ¶ 71, [309] ¶ 71. Some of Norwegian's passengers boarded buses parked on the ground floor of the Terminal to take them on shore excursions, which Norwegian states were people-to-people shore excursions. *Id.*, ECF Nos. [228] ¶ 18, [282] ¶ 18.

G. Defendants' Contracts and Payments to Cuban Entities

1. *Carnival*

From 2016 to 2018, Carnival contracted with three Cuban Government agencies to use the Terminal. *Carnival*, ECF Nos. [332] ¶¶ 29-31, [374] ¶¶ 29-31; see id, ECF Nos. [311-29], [311¬32], [322-6], [322-7], [322-8]. First, Carnival entered into a series of commercial contracts with Aries Transportes, S.A. ("Aries"), part of the Cuban Government's Ministry of Transportation serving as its port authority, for Carnival's ships to dock at the Terminal. *Id.*, ECF Nos. [332] 1129, [374] ¶ 29. Second, Carnival entered into a series of commercial contracts with Empresa Consignatoria Mambisa ("Mambisa"), part of the Cuban Government Ministry of Transportation serving as its port agent, for Carnival's ships to use the Terminal. *Id.*, ECF Nos. [332] 1130, [374] ¶ 30. Third, Carnival entered into a series of commercial contracts with Grupo Internacional de Turoperadores y Agencias de Viajes,

Havanatur S.A. ("Havanatur"),[22] part of the Cuban Government's Ministry of Tourism serving as its tour operator, related to Carnival's use of the Terminal. *Id.*, ECF Nos. [332] ¶ 31, [374] ¶ 31; *see id*, ECF Nos. [311-33], [322-7].

Carnival paid a total of $18,629,807.71 related to its cruises to Cuba, with $12,461,542.99 paid to Havanatur; $3,480,380.40 paid to Mambisa; and $2,605,429.34 paid to the Aries. *Id.*, ECF Nos. [332] ¶ 32, [374] ¶ 32. Carnival never made any payments in Cuba to anyone or any entity that was not affiliated with the Cuban Government. *Id.*, ECF Nos. [332] 1133, [374] 1133.

2. *MSC*

From 2015 to 2019, MSC SA entered into contracts with Aries to dock at the Terminal. *MSC*, ECF Nos. [224] 1151, [253] ¶ 51; *see id*, ECF Nos. [202-30], [202-31], [218-13]. In 2015, MSC SA entered into contracts with Agencia Maritima Mapor S.A. ("Mapor")[23] to act

[22] Carnival identifies Havanatur as "Havanatur Celimar ABG." *Carnival*, ECF No. [332] ¶ 31. The service contracts between Carnival and Havanatur, however, identified Havanatur as "Grupo Internacional de Turoperadores y Agencias de Viajes, Havanatur S.A." *See id.*, ECF Nos. [311-33], [322-7]. The name under the service contracts is also consistent with how other Defendants refer to the Cuban company.

[23] There is some dispute in the record as to whether the Cuban Government owns Mapor. In answers to requests for admissions, MSC could neither admit nor deny that Mapor is owned, or is a part of, the Cuban Government. *MSC*, ECF No. [2,18-4] at 44-45. Luigi Pastena, Vice President of Port Operations at an MSC-affiliated entity, *id.*, ECF No. [201-8] at 5, testified that Mapor was "a private agency," *id.* at 18. But Massimiliano Mio, MSC SA's chief legal officer, *id.*, ECF No. [201-6] at 4, testified at deposition that Mapor was one of the Cuban entities with which

as its port agent in Havana. *Id.*, ECF Nos. [224] 1152, [253] ¶ 52; *see id*, ECF No. [218-14]. MSC SA paid Aries indirectly through Mapor for fees charged for the use of the Terminal by MSC ships for docking and the embarkation and disembarkation of passengers. *Id.*, ECF Nos. [224] 1153, [253] 1153. MSC SA paid Mapor at least $9,314,386.41 related to Mapor's services as ship agent for MSC SA and for the use of the Terminal. *Id.*, ECF Nos. [224] ¶ 55, [253] ¶ 55.

In 2018, MSC SA contracted with Agencia Viajes Cubanacan S.A. ("Cubanacan") to operate shore excursions in Havana that MSC SA sold to passengers. *Id.*, ECF Nos. [224] ¶ 56, [253] ¶ 56; *see id*, ECF No. [218-9]. Cubanacan was a part of the Cuban Government's Ministry of Tourism. *Id.*, ECF Nos. [224] 1157, [253] 1157. Cubanacan provided ground and transportation services to and from the Terminal for MSC SA passengers going on excursions. *Id.*, ECF Nos. [224] ¶ 58, [253] ¶ 58. MSC SA paid Cubanacan $7,623,480.37 for shore excursions offered to MSC ship passengers. *Id.*, ECF Nos. [224] ¶ 59, [253] ¶ 59.

According to the Shore Excursion Agreement between MSC SA and Cubanacan, "VIAJES CUBANACAN is engaged in the business of organizing, promoting and selling tourist excursions in the Cuban national territory." *Id.*, ECF No. [218-9] at 3. The agreement states that Cubanacan is "capable and willing to assume the organization, promotion and sale of tourist excursions in the Cuban national territory," and that it would provide "tourist services

---

MSC SA contracted, *id.* at 38. The dispute does not change the analysis given that MSC SA paid Aries, a Cuban entity, through Mapor.

described below ... during the term of the operation of THE VESSELS [defined as the *Opera* and *Armonia*], between December 1, 2018 and November 30, 2019." *Id.* at 3-4. Part of Cubanacan's responsibilities included "[t]o assist ... the tourists before the authorities of the country and in all the necessary legal procedures during the agreed season, for the realization of [MSC SA's] shore excursions in Cuba." *Id.* at 5. MSC SA, in turn, had to, among other things, ensure that it communicated to Cubanacan the "[1]anguage of the tourists" who bought excursions and "guarantee that the tourists traveling on THE VESSELS and taking the tourist excursions with [Cubanacan] have a valid insurance policy." *Id.* at 7.

The only persons or entities in Cuba to which MSC SA made payments in connection with its U.S.-to-Cuba cruises were Comar (Cuba-based lawyers[24]), Mapor, and Cubanacan. *Id.*, ECF Nos. [259] ¶ 81, [273] ¶ 81.

3. Royal Caribbean

From 2016 to 2017, Royal Caribbean contracted with three Cuban Government agencies related to the use of the Terminal. *Royal Caribbean*, ECF Nos. [141] ¶¶ 37, 41, 45, [172] ¶¶ 37, 41, 45; *see also id.*, ECF Nos. [128-17], [128-20], [128-21]. First, Royal Caribbean entered into contracts with Aries to dock its ships at the first pier at the Terminal. *Id.*, ECF Nos. [141] ¶ 37, [172] ¶ 37. Second, Royal Caribbean entered into a series of contracts with Mambisa to act as port agent in Havana. *Id.*, ECF Nos. [133] ¶ 23, [141] ¶ 41, [172] ¶ 41, [183] ¶ 23. Third, Royal Caribbean entered into a series of

[24] MSC SA paid Comar, a Cuban law firm, $27,000.00 for legal services in connection with cruises to Cuba. MSC, ECF Nos. [201-6] at 38-39, [2,18-4] at 42.

contracts with Havanatur to operate shore excursions in Havana that were sold by Royal Caribbean to its passengers. *Id.*, ECF Nos. [141] ¶ 45, [172] ¶ 45. The Cuban Government owns Aries, Mambisa, and Havanatur. *Id.*, ECF Nos. [141] ¶¶ 39, 43, 46, [172] 39, 43, 46.

Royal Caribbean paid Aries $6,982,902.88 related to cruises to Cuba that sailed from March 2017 to June 2019. *Id.*, ECF Nos. [141] ¶ 40, [172] ¶ 40. Royal Caribbean also paid Mambisa $3,583,630.00 for its port agent services. *Id.*, ECF Nos. [141] ¶ 44, [172] ¶ 44. Royal Caribbean paid Havanatur $19,314,276.21 in connection with shore excursions for passengers in Cuba, most of which began and ended at the Terminal. *Id.*, ECF Nos. [141] ¶ 47, [172] ¶ 47. Royal Caribbean made payments only to Aries, Mambisa, Comar, and Havanatur. *Id.*, ECF Nos. [141] ¶ 36, [172] ¶ 36.

4. *Norwegian*

From 2016 to 2019, Norwegian contracted with three Cuban Government agencies related to the use of the Terminal. *Norwegian*, ECF Nos. [228] ¶¶ 21-23, 27-29, 31-32, [282] ¶¶ 21-22, 27-28, 31-32; *see id.*, ECF Nos. [282-2], [282-3], [282-4]. First, Norwegian entered into various agreements and supplements with Aries to provide port berthing operations services for Norwegian's passenger cruises at the Terminal's Pier 1. *Id.*, ECF Nos. [228] ¶ 21, [282] ¶ 21. Aries was the port authority that operated the Terminal, and it acted on behalf of the Cuban Government. ECF Nos. [228] ¶¶ 22-23, [282] ¶¶ 22-23. Second, Norwegian entered into an agreement and supplements with Mambisa to provide port agent services for Norwegian's passenger cruises the Terminal's Pier 1. *Id.*, ECF Nos. [228] 1127, [282] ¶ 27. Mambisa is the port agent that operated the

Terminal when Norwegian provided passenger carrier services to Cuba, and Mambisa acted on behalf of the Cuban Government. *Id.*, ECF Nos. [228] ¶¶ 28-29, [282] ¶¶ 28-29. Third, Norwegian entered into agreements and amendments/supplements with Havanatur—the excursion operator the Cuban Government assigned to Norwegian. *Id.*, ECF Nos. [228] ¶ 31, [282] ¶ 31. Havanatur provided excursions sold by Norwegian related to its passenger carrier services to Havana, which left from, and returned to, the Terminal. *Id.*

Norwegian signed the initial contracts with Aries, Mambisa, and Havanatur at Pier 1 of the Terminal. *Id.*, ECF Nos. [228] ¶ 36, [282] ¶ 36. Norwegian paid Aries and Mambisa through a third-party, Fuego Enterprises, Inc. ("Fuego"). *Id.*, ECF Nos. [228] ¶ 25, [282] ¶ 25. From August 2015 to July 2019, Norwegian paid Fuego $7,481,302.52 related to Norwegian's use of the Terminal, which included payments made to Aries and Mambisa related to Norwegian's use of the Terminal. *Id.*, ECF Nos. [228] ¶ 26, [282] ¶ 26. From February 2017 to July 2019, Norwegian also directly paid Mambisa $1,824,387.44 for its port agent operations services in Cuba, including services to be rendered at the Terminal. *Id.*, ECF Nos. [228] ¶ 30, [282] ¶ 30. Norwegian directly paid Havanatur $6,262,367.00 for Havanatur to provide shore excursions and other travel-related services to passengers in Cuba, including for shore excursions that left from and returned to the Terminal. *Id.*, ECF Nos. [228] ¶ 35, [282] ¶ 35.

K. Defendants' Revenues and Profits

1. *Carnival*

Havana Docks states that Carnival earned money, or profited from, its cruises to Cuba. *Carnival*, ECF No. [332] 1136. Carnival disputes that assertion, but Carnival's only counter-fact is that the *Adonia* was not profitable. *Id.*, ECF No. [374] ¶ 36. Based on Carnival's answers to requests for admissions, Havana Docks asserts Carnival earned total net revenue for the CCL ships that docked at the Terminal of $67,788,397.00 and revenues for Veendam cruises that docked at the Terminal of $44,496,253.86. Id., ECF No. [332] ¶¶ 37, 39; *see id.*, ECF No. [322-2] at 24, 38. Carnival disputes that those figures represent monies earned from the use of the Terminal, explaining that they represent revenues from every voyage that included a stop in Havana. *Id.*, ECF No. [374] ¶¶ 37-38.

Havana Docks also claims that Carnival earned $4,047,742.00 in revenue from the Adonia. ECF No. [332] ¶ 40. Carnival disputes that claim by stating that the Adonia was not profitable and by faulting Havana Docks for citing to 600 pages of documents without providing a pin citation. *Id.*, ECF No. [374] ¶ 40.

2. *MSC*

MSC denies that it profited from any of its cruises to Cuba. MSC, ECF No. [253] ¶ 69. MSC, however, admits that MSC SA earned approximately €247,000,000.00 in net cruise revenues from the *Armonia* and *Opera* cruises to the Terminal between 2015 and 2019. Id., ECF Nos. [224] ¶ 62, [253] ¶ 62. For cruises from the U.S. to Cuba on the *Armonia* that docked at the Terminal between December 2018 and June 2019, the net cruise revenue was €38,994,000.00,

and the net ticket revenue was €26,387,000.00. *Id.*, ECF Nos. [224] ¶¶ 63-64, [253] ¶¶ 63-64. MSC SA further admits that it earned revenues from *Opera* cruises that docked at the Terminal between December 2015 and March 2019, from *Opera* cruises that used the Terminal as the homeport, *Armonia* cruises that docked at the Terminal between November 2016 and June 2019, and *Armonia* ships that used the Terminal as the homeport, although neither party provides any figures. *See id.*, ECF Nos. [224] 65-68, [253] ¶¶ 65-68. In addition, from 2015 to 2019, MSC SA earned €21,614,000.00 from the sale of shore excursions to *Opera* and *Armonia* passengers. *Id.*, ECF Nos. [259] ¶ 70, [273] ¶ 70.

3. *Royal Caribbean*

From 2017 to 2018, Royal Caribbean earned $430,925,849.00 in gross revenue for its cruises to Cuba, of which $304,461,457.00 was for gross ticket revenue for cruises that docked at the Terminal. *Royal Caribbean*, ECF Nos. [141] ¶ 52, [172] ¶ 52; *see also id.* ¶¶ 48-50. Havana Docks contends that subtracting costs results in net revenues of $329,094,322.00. *Id.*, ECF No. [141] 1152. Royal Caribbean disputes that figure, explaining that it "does not track net revenue or profit on a cruise-by-cruise basis." *Id.*, ECF No. [172] 1152.

When addressing the recission of people-to-people travel in June 2019, Royal Caribbean's Chief Financial Officer, Jason Liberty, described Cuba as a "high yielding destination," *Id.*, ECF No. [131-32] at 6. Liberty added, "The result of this policy change has created a short-term impact to our guests, operations and earnings." *Id.* Liberty estimated that the regulatory change would affect Royal Caribbean's

earnings per share by $0.25 to $0.35 per share. *Id.* Cruises to Cuba earned a "premium"—meaning that they outperformed, on a yield basis, non-Cuba cruises. *Id.*, ECF Nos. [141]¶55, [172]¶55.

4. *Norwegian*

Norwegian admits that it earned money, or profited from, providing passenger carrier services on the vessels that docked at the Terminal. Norwegian, ECF Nos. [228] 1148, [282] 1148. Cruises to Cuba commanded a premium price due to pent-up demand and limited availability. *Id.*, ECF Nos. [228] ¶ 49, [282] ¶ 49. Norwegian earned $299,860,891.00 in total revenue for voyages to Cuba. Id., ECF Nos. [228] ¶ 50, [282] ¶ 50. Norwegian adds that its net revenue for voyages to Havana and excursions in Havana was $25,139,622.00. Id., ECF No. [282] ¶ 50.

* * *

4. *Expiration of the Concession*

Based on binding Eleventh Circuit precedent, this Court has already rejected the argument that Defendants could not have trafficked in a time-limited concession that expired in 2004. *See Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 19-CV-23590, 2020 WL 1905219, at *8 (S.D. Fla. Apr. 17, 2020); *see also Glen*, 450 F.3d at 1255. ("The Helms—Burton Act refers to the property interest that former owners of confiscated property now have as ownership of a "claim to such property." 22 U.S.C. § 6082(a)(1)(A). When (or if) the portion of Title III that allows private litigants to bring lawsuits becomes effective, actions brought pursuant to the new statutory scheme would be actions brought "on a claim to the confiscated property" against traffickers in the property. 22 U. S.C. § 6082(a)(4)"). Therefore, Havana Docks is entitled to

summary judgment on Carnival's fourteenth affirmative defense, MSC's thirteenth affirmative defense, Royal Caribbean's second affirmative defense, and Norwegian's twelfth affirmative defense. *Carnival*, ECF No. [160] at 20; MSC, ECF No. [115] at 18, [133] at 17; *Royal Caribbean*, ECF No. [59] at 5; *Norwegian*, ECF No. [107] at 16.

* * *

DONE AND ORDERED in Chambers at Miami, Florida on March 21, 2022.

/s/________________
BETH BLOOM
UNITED STATES DISTRICT JUDGE

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES WASHINGTON, D.C. 20579

CERTIFIED CLAIM (FINAL)

IN THE MATTER OF THE CLAIM OF HAVANA DOCKS CORPORATION **Under the International Claims Settlement Act of 1949. as amended**	**Claim No CU** -2492 **Decision No.CU -** 6165

Counsel for claimant: Davis Polk & Wardwell by Douglas M. Galin, Esquire.

Appeal and objections from a Proposed Decision entered April 12, 1971.
Oral hearing requested.

Oral argument September 15, 1971 by Douglas M. Galin, Esquire

---

FINAL DECISION

The Commission issued its Proposed Decision on this claim on April 21, 1971, certifying that claimant suffered a loss of $7,669,420.88 within the scope of Title V of the International Claims Settlement Act of 1949, as amended, resulting from actions of the Government of Cuba.

Claimant, through counsel, objected to the Proposed Decision, and requested an oral hearing which was held on September 15, 1971. In support of the objections claimant submitted an affidavit of John C. Hover, a member of counsel's firm.

In the objections, claimant stated that the concessions and dock facilities had a higher value than the amount determined by the Commission, and that an item of $10,280.00 for handling charges was improperly denied.

Full consideration having been given to claimant's objections, the supporting affidavit, counsel's argument at the hearing, and the entire record, the Commission now finds that in view of the considerable increase of land values along the Havana waterfront between 1934 and 1960, the value of claimant's concession and tangible assets should be increased from $7,184,360.18 to $8,684,360.18.

Regarding the appraisal of Luis Parajon who valued the above properties at $16,180,000.00, the Commission holds that this appraisal cannot be relied upon to the exclusion of other evidence of record because, inter alia, it does not specify the size and value of the land and improvements thereon separately and individually; and because its findings

are based on generalities, not appropriate in this type of evaluation of valuable improved real property.

The Commission further considered claimant's objections with respect to the item of $10,280.00 for handling charges, and finds that these are, in fact, storage charges for unclaimed merchandise, due and payable by the Government of Cuba, and that they should be included in the loss, which is restated as follows:

		Date of Loss
Concession and tangible assets	$8,684,360.18	October 24, 1960
Securities	184,005.70	August 6, 1960
Accounts receivable	301,055.00	October 24, 1960
Debt of Cuban Government	10,280.00	October 24, 1960
Total loss	$9,179,700.88	

The interest at the rate of 6% per annum will be included in the instant case as follows:

FROM	ON
August 6, 1960	$ 184,005.70
October 24, 1960	8,995,695.18

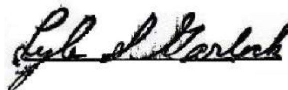
Accordingly, the Certification of Loss in the Proposed Decision is set aside; the following Certification of Loss will be entered; and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

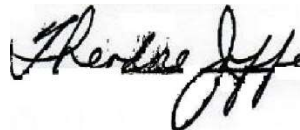
The Commission certifies that HAVANA DOCKS CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Million One Hundred Seventy-nine Thousand Seven Hundred Dollars and Eighty-eight Cents($9,179,700.88) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

SEP 28 1971



Lyle S. Garlock,
Chairman



Theodore Jaffe,
Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF HAVANA DOCKS CORPORATION **Under the International Claims Settlement Act of 1949. as amended**	**Claim No CU** -2492 **Decision No.CU -** 6165

Counsel for claimant: Davis Polk & Wardwell
By Peter H. Madden, Esq.

CERTIFIED CLAIM (PROPOSED)

This claim against the Government of Cuba, under Title V of the Inter-national Claims Settlement Act of 1949, as amended, was presented by HAVANA DOCKS CORPORATION for $9,915,879.00, based upon the asserted ownership and loss of its assets nationalized by the Government of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22

U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that in 1917 claimant corporation was organized under the laws of the State of Delaware. Claimant's Vice-President and Assistant Comptroller stated that at all times between August 14, 1917 and the presentation of the claim, more than 50 percent of the outstanding capital stock of all classes has been owned by persons who were United States nationals, and that at the time of filing the claim, of 35,505 outstanding. shares of stock of HAVANA DOCKS CORPORATION only 1,003 or approximately 3% of the total outstanding shares were held by persons who were not nationals of the United States. The Commission therefore holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that on the basis of a concession granted by the Government of Cuba, it owned and operated, at the entrance of the harbor of Havana three piers: the "San Francisco", "Machina" and "Santa Clara" linked with a large marginal building. The piers and buildings were used for warehousing purposes, cargo deposits, and for merchandise provisionally stored pending Customs clearance. Each pier consisted of a two-story concrete building with an apron equipped with platforms, and a double railroad track to permit direct unloading of cargo from ships to railroad cars and vice versa. All official port authorities were located within the marginal building, such as the Customs House of Havana, the Inspector General of the Port, the Immigration Department and other governmental agencies. Elevators, escalators, portable cranes, tractors, trailers, fork lift trucks, and other port and dock equipment were part of claimant's installations on the piers and in the warehouses,

which were located in the center of harbor activities of the port of Havana.

Based upon the record, the Commission finds that on September 7, 1934, claimant HAVANA DOCKS CORPORATION obtained from the Government of Cuba the renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana, formerly granted to its predecessor concessionaire, the Port of Havana Docks Company; that claimant acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana; that •it' June;-1946, the property was encumbered with a mortgage in favor of certain bondholders for the amount of $1,600,000.00 in accordance with Public Instrument of June 1, 1946, recorded in Havana on July 25, 1946; and that claimant corporation also owned the mechanical installations, loading and unloading equipment, vehicles and machinery, as well as furniture and fixtures located in the offices of the corporation.

The record further shows that the Cuban assets of claimant corporation were nationalized by Resolution No. 3, published in the Official Gazette of October 24, 1960, pursuant to Law No. 851 of July 6, 1960, and that the facilities of the company were physically occupied by agents of the Cuban Government on November 21, 1960. Accordingly, the Commission finds that the Cuban assets of HAVANA DOCKS CORPORATION were nationalized by the Government of Cuba on October 24, 1960CU-2492

Claimant states that the corporation suffered the following losses:

Land and Concession	$ 2,000,000.00
Buildings	6,892,557.00
Personal property, equipment, etc.	595,315.00
Securities (1000 common stock shares of Cuban Telephone Company)	100,000.00
Debts owed by nationalized enterprises and by the Government of Cuba.	328,007.00
	$ 9,915,879.00

In support of this valuation of losses claimant submitted, among other things, the following evidence:

(1) Trial balance as of December 31, 1958;

(2) Balance sheets for the years 1956, 1957, 1958 and 1959;

(3) Auditor's report as of December 31, 1958;

(4) An evaluation of the properties by Mr. Louis Parajon, a civil engineer and former professional appraiser in Cuba; and

(5) An inventory of the equipment, furniture and fixtures as of December 31, 1959.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record contains a report of the Office of the Property Register of Havana which shows that in 1928, the concession, then owned by the Port of Havana Docks Company, had an assessed market value of $600,000.00, and that a subsequent assessment established the value of the concession at $5,000,000.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the Balance Sheet for the year ended 1959, supported by the Trial Balance for December 31, 1958. These financial statements reflect the following book values adopted by claimant corporation:

Land and Concession	$ 2,000,000.00
San Francisco and Machina Piers	4,758,829.00
Santa Clara Pier	2,110,845.00
Equipment	419,056.00
Office Furniture and Fixtures	90,616.00
Railroad Tracks	22,883.00
Total	$9,402,229.00

The record indicates that the pier properties are stated at values appraised as of December 31, 1920, plus subsequent additions at cost. The terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation. The equipment, office furniture were acquired more recently and are stated at cost. The appraiser, Louis Parajon states in his report that in 1960 the concession, real property, office and general equipment had a value of $16,180,000.00 after depreciation, which is considerably more than what the claimant describes as the loss.

The Commission is aware that from 1920 to 1960 real property prices in Havana had increased, and that the values expressed in prices of the year 1920 may not have been realistic in 1960. The Commission, however, notes that during the prior years claimant corporation allowed for depreciation of the real property and amortization of the concession approximately 1-1/2 per cent per year; and that nothing was added to show any appreciation of the property.

The Commission, therefore, concludes that it would be equitable and appropriate to consider as basic the year 1934 when HAVANA DOCKS CORPORATION obtained the concession for the operation of the docks; to deduct from that year up to the year 1960 one per cent (1%) yearly for amortization of the concession and for the depreciation of the buildings; and further deduct 25% from the stated value of the equipment, furniture and fixtures for wear and tear, assuming that most equipment was in operation during an

average time of five years, when it was taken by the Government of Cuba.

The Commission finds that the amount of $2,000,000 includes not only the value of the concession but also the value of the land and of the piers alongside the property which, in the opinion of the Commission, had a value of $1,000,000 in the year 1960.

Amortization and depreciation is therefore applicable as follows;

(a) 1% per year from 1934 to 1960, or 26% on the following values:

Concession .... $ 1,000,000

San Francisco and Machina Piers ... 4,758,829 (structures only)

Santa Clara Pier .. 2,110,845 (structures only)

Railroad Tracks 22,883

Total .... $ 7,892,557

6% thereof .... $ 2,052,064.82

(b) 25% from the value of the equipment, office furniture and fixtures of $509,672 .... 127,418.00

Total depreciation $ 2,179,482.82

As stated above, the real property was encumbered with a mortgage of $1,600,000 in favor of certain bondholders, but the balance sheet for the year ended December 31, 1959 shows that this funded debt has been reduced to a balance of $38,386.00 as of that date. Consequently, from the value of the property of $ 9,402,229.00

must be deducted for depreciation $ 2,179,482.82

and the balance of the funded debt	38,386.00
	2,217,868.82

resulting in the net value of the tangible property, including concession, of	$ 7,184,360.18

The Commission further finds that claimant corporation was the owner of 1,000 shares of common stock of the Cuban Telephone Company. The Commission has held that the Cuban Telephone Company was nationalized on August 6, 1960 by Resolution No. 1 published by the Government of Cuba pursuant to Law 851, and that the loss sustained by the holders of common stock shares amounted to $184.0057 per share. (See Claim of International Telephone & Telegraph Corporation, Claim No. CU-2615.) Accordingly, claimant suffered a loss as the owner of 1,000 common stock shares in the aggregate amount of $184,005.70The Commission further finds that the amount claimed of $328,007 for debts owed by nationalized enterprises and by the Cuban Government, included a debt of $99,097 due from the Government of Cuba, and accounts receivable of $218,630 due to claimant corporation from trade enterprises nationalized, expropriated or intervened by the Government of Cuba. The Commission, therefore, concludes that claimant is entitled to an additional certification of losses for accounts receivable in the amount of $317,727.00.

The Commission does not deduct liabilities of United States corporations and other entities, except for taxes due to the Cuban Government. (See Claim of Simmons Company, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.) In the present claim the record shows

that taxes accrued at the end of 1959 due to the Cuban Government amounted to $16,672.00.

Therefore, from the sum of accounts receivable of $317,727.00

the tax indebtedness of 16,672.00

is deducted, leaving a net amount of receivables of $301,055.00

Included in the debt claim is also an amount of $10,280.00 for handling charges, but the evidence does not disclose that this amount was due from enterprises nationalized, expropriated, intervened or taken by the Government of Cuba, or that the amount was a charge on property which was nationalized, expropriated, intervened or taken by the Cuban Government, as required by Section 502(3) of the Act. Accordingly, the claim for $10,280.00 for handling charges is denied.

Summarizing, claimant corporation suffered the following losses within the meaning of Title V of the International Claims Settlement Act of 1949, as amended:

		Date of loss
Loss of concession and tangible assets	$7,184,360.18	October 24, 1960
Loss of securities	184,005.70	August 6, 1960

Loss of accounts receivable	301,055.00	October 24, 1960
Total loss	$7,669,420.88	

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered as follows:

FROM	ON
October 24, 1960	$7,485,415.18
August 6, 1960	184,005.70

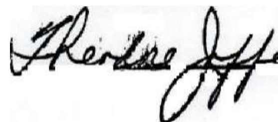
CERTIFICATION OF LOSS

The Commission certifies that HAVANA DOCKS CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Million Six Hundred Sixty-Nine Thousand Four Hundred Twenty Dollars and Eighty-Eight Cents ($7,669,420.88) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

APR 21 1971

Lyle S. Garlock,
Chairman



Theodore Jaffe,
Commissioner

The statute does not provide for the payment of claims against the government of Cuba. Provision is

only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receip0t of notice of this proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. []1.5(e) and (g), as amended (1970).)

Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, Pub. L. No. 104-114, 110 Stat. 785 (Mar. 12, 1996) (excerpts)

22 U.S.C. § 6022 – PURPOSES.

The purposes of this chapter are—

(1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;

(2) to strengthen international sanctions against the Castro government;

(3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;

(4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;

(5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and

(6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

22 U.S.C. § 6023 – DEFINITIONS.

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

* * *

(4) CONFISCATED.—As used in subchapters I and III, the term “confiscated” refers to—

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

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

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

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

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

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

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

* * *

(12) PROPERTY.—

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

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

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

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

(13) TRAFFICS.—

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

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

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

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

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

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

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

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

(iii) transactions and uses of property incident to lawful travel to Cuba,

to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

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

* * *

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS

22 U.S.C. § 6081 – FINDINGS.

The Congress makes the following findings:

(1) Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution.

(2) The wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development.

(3) Since Fidel Castro seized power in Cuba in 1959—

(A) he has trampled on the fundamental rights of the Cuban people; and

(B) through his personal despotism, he has confiscated the property of—

(i) millions of his own citizens;

(ii) thousands of United States nationals; and

(iii) thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States.

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

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

(6) This "trafficking" in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States—

(A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure; and

(B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.

(7) The United States Department of State has notified other governments that the transfer to third parties of properties confiscated by the Cuban

Government "would complicate any attempt to return them to their original owners."

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

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

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

(11) To deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures.

22 U.S.C. § 6082 - LIABILITY FOR TRAFFICKING IN CONFISCATED PROPERTY CLAIMED BY UNITED STATES NATIONALS

(a) CIVIL REMEDY.—

(1) LIABILITY FOR TRAFFICKING

(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this subchapter, traffics in property which was confiscated by the Cuban Government on or

after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949 [22 U.S.C. 1621 et seq.], plus interest;

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

(III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and

(ii) court costs and reasonable attorneys' fees.

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

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

(3) INCREASED LIABILITY.—

(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 [22 U.S.C. 1643 et seq.], be liable for damages computed in accordance with subparagraph (C).

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

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

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

at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the

30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

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

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

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

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

(i) shall be in writing;

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

(iii) shall contain—

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

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

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

(4) APPLICABILITY.—

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

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

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

(5) TREATMENT OF CERTAIN ACTIONS.—

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

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

Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

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

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

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

(7) LICENSES NOT REQUIRED.—

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

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

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

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

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

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

(c) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in this subchapter, the provisions of title 28 and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of title 28.

(2) SERVICE OF PROCESS.—In an action under this section, service of process on an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law, shall be made in accordance with section 1608 of title 28.

(d) ENFORCEABILITY OF JUDGMENTS AGAINST CUBAN GOVERNMENT

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

* * *

(f) ELECTION OF REMEDIES

(1) ELECTION.—Subject to paragraph (2)—

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of

Columbia, or any commonwealth, territory, or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

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

(2) TREATMENT OF CERTIFIED CLAIMANTS.—

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

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

national with respect to that claim;

(ii) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment under a claims agreement described in clause (i) but only to the extent of the difference between the amount of the recovery and the amount of the certified claim; and

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

(B) In the event some or all actions brought under this section are consolidated by judicial or other action in such manner as to create a pool of assets available to satisfy the claims in such actions, including a pool of assets in a proceeding in bankruptcy, every claimant whose claim in an action so consolidated was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 shall be entitled to payment in full of its claim from the assets in such

pool before any payment is made from the assets in such pool with respect to any claim not so certified.

(g) DEPOSIT OF EXCESS PAYMENTS BY CUBA UNDER CLAIMS AGREEMENT.—Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 [22 U.S.C. 1643 et seq.] that are in excess of the payments made on such certified claims after the application of subsection (f) shall be deposited into the United States Treasury.

(h) TERMINATION OF RIGHTS.—

(1) IN GENERAL.—All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government—

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

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

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

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

22 U.S.C. § 6083 - PROOF OF OWNERSHIP OF CLAIMS TO CONFISCATED PROPERTY.

(a) EVIDENCE OF OWNERSHIP.—

(1) CONCLUSIVENESS OF CERTIFIED CLAIMS.—In any action brought under this subchapter, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) CLAIMS NOT CERTIFIED.—If in an action under this subchapter a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this subchapter and do not constitute certifications under title V of the International Claims Settlement Act of 1949.

(3) EFFECT OF DETERMINATIONS OF FOREIGN OR INTERNATIONAL ENTITIES.—In determining the amount or ownership of a claim in an action under this subchapter, the court shall not accept as conclusive evidence any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

* * *

(c) RULE OF CONSTRUCTION.—Nothing in this chapter or in section 514 of the International Claims Settlement Act of 1949 [22 U.S.C. 1643l], as added by subsection (b), shall be construed—

(1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or

(2) as superseding, amending, or otherwise altering certifications that have been made under title V of the International Claims Settlement Act of 1949 before March 12, 1996.

* * *

22 U.S.C. § 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.

22 U.S.C. § 6085 – EFFECTIVE DATE.

(a) IN GENERAL.—

Subject to subsections (b) and (c), this subchapter and the amendments made by this subchapter shall take effect on August 1, 1996.

(b) SUSPENSION AUTHORITY.—

(1) SUSPENSION AUTHORITY.—The President may suspend the effective date under subsection (a) for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before such effective date that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) ADDITIONAL SUSPENSIONS.—The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the

United States and will expedite a transition to democracy in Cuba.

(c) OTHER AUTHORITIES.—

(1) SUSPENSION.—After this subchapter and the amendments of this subchapter have taken effect—

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

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

(2) ADDITIONAL SUSPENSIONS.—The President may suspend the right to bring an action under this subchapter for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the

United States and will expedite a transition to democracy in Cuba.

(3) PENDING SUITS.—The suspensions of actions under paragraph (1) shall not affect suits commenced before the date of such suspension, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension had not occurred.

(d) RESCISSION OF SUSPENSION.—The President may rescind any suspension made under subsection (b) or (c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

* * *