No. 24-699

IN THE

Supreme Court of the United States

EXXON MOBIL CORPORATION,

Petitioner,

v.

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

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF ATLANTIC LEGAL FOUNDATION & DRI CENTER FOR LAW AND PUBLIC POLICY AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE* [1]

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[1] No counsel for a party authored this brief in whole or part, and no party, counsel for a party, or person other than the *amici curiae* and their counsel made a monetary contribution intended to fund preparation or submission of this brief.

in the civil justice system; and anticipating and addressing substantive and procedural issues germane to defense lawyers and the fairness of the civil justice system. The Center participates as *amicus curiae* in this Court, federal courts of appeals, and state appellate courts in an ongoing effort to promote fairness, consistency, and efficiency in the civil justice system. *See* dri.org.

* * *

The subject of this case—U.S.-based corporations' ability under the Helms-Burton Act to obtain just compensation for the Castro regime's ruthless confiscation and nationalization of their business property—squarely aligns with ALF's and DRI's common mission of advocating for the interests of American business in civil litigation. As discussed in this brief, the D.C. Circuit's majority opinion, which mistakenly engrafts the Foreign Sovereign Immunities Act (FSIA) onto the Helms-Burton Act, creates a formidable, costly, and burdensome obstacle for obtaining the long-overdue just compensation that Congress has authorized federal courts to award.

SUMMARY OF ARGUMENT

Title III of the Helms-Burton Act, 22 U.S.C. §§ 6081-6085 (Protection of Property Rights of United States Nationals), expressly recognizes that the "fundamental right to own and enjoy property . . . is enshrined in the United States Constitution." *Id.* § 6081(1). This statement refers, of course, to the Fifth Amendment's Takings/Just Compensation Clause, U.S. Const. amend. V., cl. 4, under which "'a

property owner acquires an irrevocable right to just compensation immediately upon a taking'" by the government. *DeVillier v. Texas*, 601 U.S. 285, 291 (2024) (citation omitted).

The same equitable principle underlies the Cuba-specific cause of action that Congress created in Title III of the Helms-Burton Act, 22 U.S.C. § 6082. Indeed, the fundamental right to just compensation for a governmental taking of private property applies with as much, and perhaps even more, force under the Helms-Burton Act than for a U.S. Government taking. This is because Fidel Castro's brutal regime seized and nationalized the assets of thousands of American businesses—including Petitioner Exxon's—without anything resembling due process, much less payment of just compensation. As the Foreign Claims Settlement Commission explained in its 1972 report on Cuba's expropriation of U.S.-owned property:

> The Castro regime has appropriated over $1 billion worth of property of United States nationals in total disregard for their rights. These unlawful seizures violated every standard by which the nationals of the free world conduct their affairs.

Foreign Claims Settlement Commission of the United States, *Section II, Completion of the Cuban Claims Program Under Title V of the International Claims Settlement Act* 69 (1972); *see also Garcia-Bengochea v. Carnival Corp.*, 57 F.4th 916, 920 (11th Cir. 2023)

("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"). This includes Exxon's certified loss of $ 71.6 million (in 1969 dollars). *See* App-124a.

The text and legislative history of the Helms-Burton Act demonstrate that by enacting Title III, Congress intended to establish an expeditious, straightforward, and effective judicial process for U.S. businesses, whose property was confiscated, to obtain compensation from Cuba-owned instrumentalities such as Respondents, as well as from other entities that traffic in confiscated property. *See* 22 U.S.C. §§ 6022(6), 6023(11), 6081, 6082. But as a practical matter, the D.C. Circuit's 2 to 1 decision interposes a high hurdle, and for some potential Title III plaintiffs erects an insurmountable barrier, to pursuit and fulfillment of the statute's compensation remedy.

The panel majority erred in holding that a Title III suit against a Cuba-owned corporation that operates or profits from confiscated property cannot proceed unless the plaintiff first can demonstrate that its compensation claim satisfies one of the exceptions to FSIA's presumption of immunity, 28 U.S.C. § 1605(a). The dichotomy that the majority opinion creates between Title III suits against Cuba-owned defendants and other defendants that traffic in confiscated American business property conflicts with the Helms-Burton's Act broad definition of a "person" that can be sued for compensation. *See* 22 U.S.C. § 6023(11). Further, although Exxon's business

property indisputably was expropriated by the Castro regime, *see* App-3a-4a, the majority's narrow interpretation of the FSIA expropriation exception, 28 U.S.C. § 1605(a)(3), excludes virtually any corporation whose business activities in pre-Castro Cuba were conducted through a subsidiary. Along the same lines, as this case illustrates, the majority's constricted, fact-intensive interpretation and application of the phrase "direct effect in the United States" for purposes of the FSIA commercial-activity exception, *id.* § 1605(a)(2), results in seemingly endless jurisdictional discovery. *See* Pet. for a Writ of Cert. at 33.

Circuit Judge Randolph's dissenting opinion gets it right: There is no basis for subjecting Helms-Burton Act Title III compensation suits to a threshold FSIA-exception determination. This Court should reverse the D.C. Circuit so that the judicial relief that Title III affords can become at last a reality for victims of Cuba's massive confiscation of U.S. business property.

ARGUMENT

Requiring Title III Plaintiffs To Prove That They Satisfy a FSIA Exception Would Defeat the Purpose of the Helms-Burton Act

A. The Act's overarching purpose is to provide an effective compensation remedy for the Castro regime's unlawful confiscation of American business property

1. The right to own and enjoy private property is one of the pillars of our republic. "The Founders recognized that the protection of private property is

indispensable to the promotion of individual freedom." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021).

> The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right . . . . [A] fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized.

Lynch v. Household Finance Corp., 405 U.S. 538, 552 (1972) (citations omitted).

The Court long has explained that the right to just compensation for a governmental taking of private property is rooted in fairness.

> Due protection of the rights of property has been regarded as a vital principle of republican institutions. Next in degree to the right of personal liberty . . . is that of enjoying private property without undue interference or molestation. . . . The requirement that the property shall not be taken for public use without just compensation is but an affirmance of a great doctrine established by the common law for the protection of private property. *It is founded in natural equity, and is laid*

> *down as a principle of universal law*. Indeed, in a free government, almost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen.

Chicago, Burlington & Quincy R.R. Co. v. City of Chicago, 166 U.S. 226, 235-36 (1897) (internal quotation marks omitted) (emphasis added); *see also United States v. Fuller*, 409 U.S. 488, 490 (1973) ("The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness as it does from technical concepts of property law.") (citation omitted). In fact

> [t]he principle reflected in the [Takings] Clause goes back at least 800 years to Magna Carta. . . . The colonists brought the principles of Magna Carta with them to the New World, including that charter's protection against uncompensated takings of personal property.

Horne v. Dep't of Agric., 576 U.S. 350, 358 (2015).

2. "Channeling that spirit, Congress responded to Fidel Castro's widespread confiscation of property in Cuba by enacting the Helms-Burton Act into law in 1996." *Glen v. American Airlines, Inc.*, 7 F.4th 331, 333 (5th Cir. 2021). Title III of the Act addresses Castro's "personal despotism," 22 U.S.C. § 6081(3)(B), specifically his "confiscat[ion] [of] the property of thousands of United States nationals."

Id. § 6081(3)(B)(ii). Section 6081 begins with "a series of congressional findings regarding the fundamental right of individuals to hold and enjoy property, the U.S. Government's obligation to protect its citizens against illegal confiscations, and the absence of effective remedies in international law." H. Rep. No. 104-468, at 57 (1996) (Conference Report).

To rectify the "theft of property from United States nationals by the Castro government," 22 U.S.C. § 6022(3), Congress "provide[d] a means of compensation for some of the losses suffered as a result of the Castro regime's actions." *North Am. Sugar Indus., Inc. v. Xinjiang Goldwind Science & Tech. Co., Ltd.*, 124 F.4th 1322, 1327 (11th Cir. 2025) (internal quotation marks omitted); *see* 22 U.S.C. § 6082 (Liability for trafficking in confiscated property claimed by United States nationals).

This statutory right of action is intended in part to serve U.S. foreign policy objectives by "deter[ring] the exploitation of property confiscated from U.S. nationals," thereby depriving Cuba of "the capital generated by such ventures." H. Rep. No. 104-468, *supra*, at 58. At its core, "[p]assage of this legislation established a *specific*, *independent*, and *exclusive* cause of action for American nationals whose property the Cuban government had confiscated decades earlier." App-41a (Randolph, J., dissenting). Congress found that this private right of action was essential because "[t]he 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(8) (emphasis added).

The 1996 conference report accompanying the Helms-Burton Act (formally known as the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996) explained that"[t]he committee of conference expects that the existence of this remedy will make the recovery process *less complicated*." H.R. 104-468, *supra*, at 58 (emphasis added). The majority opinion here, however, makes the compensation recovery process significantly *more* complicated, if not impossible, by overlaying FSIA onto Title III of the Helms-Burton Act. As the United States explained in its petition-stage amicus brief, "the decision below erects an erroneous threshold hurdle for Title III plaintiffs who hold billions of dollars in potential claims." Br. for the United States as Amicus Curiae at 22, *Exxon Mobil Corp. v. Corporacion Cimex, S.A. (Cuba)*, No. 24-699 (U.S. Aug. 27, 2025).

B. The relevant FSIA exceptions are difficult and burdensome to satisfy

The majority opinion holds, albeit erroneously, that because Exxon is suing Cuba-owned entities, "jurisdiction in this case depends on the applicability of [a] FSIA exception." App-2a; *see* 28 U.S.C. § 1605(a) (General exceptions to the jurisdictional immunity of a foreign state). FSIA "creates a baseline presumption of immunity from suit." *Fed. Rep. of Germany v.*

Philipp, 592 U.S. 169, 176 (2021) (citing 28 U.S.C. § 1604). The multi-factor, fact-specific requirements for overcoming this presumption by satisfying one of the FSIA exceptions—*e.g.*, the expropriation exception, 28 U.S.C. § 1605(a)(3), or the commercial-activity exception, *id.* § 1605(a)(2)—can be daunting. Unless the Court reverses the D.C. Circuit's holding that at least one of these FSIA exceptions must apply to proceed with a Title III suit against a Cuba-owned corporation that traffics in confiscated property, the objectives underlying the Cuba-specific cause of action authorized by the later-enacted Helms-Burton Act will be defeated.

1. According to the panel majority, "insofar as Congress intended" for "Title III actions against foreign sovereigns to go forward only when FSIA allows for jurisdiction," its "reading . . . furthers—rather than frustrates—Congress's intentions." App-15a. As Judge Randolph observed in his dissenting opinion, however, the majority's circular reasoning is oblivious to the express congressional intent underlying enactment of the Helms-Burton Act. *See* App-50a (Randolph, J., dissenting) ("The majority . . . disregards the congressional findings and statements of purpose in the [Helms-Burton] Act."). He explained that "decisions dealing with jurisdiction under the FSIA without considering Title III cannot possibly control the issue posed in this case." App-45a.

2. Equally important, the majority opinion fails to consider the *practical* consequences of its holding that a FSIA exception must apply in order for a

confiscation victim like Exxon to proceed with a Helms-Burton Act damages suit against Cuban-owned corporations that operate or profit from Castro-confiscated American business property. The majority's holding frustrates, if not obstructs, the explicit reasons why Congress created Title III's private cause of action. *See* 22 U.S.C. § 6081 (Findings).

"Title III of the 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.'" *Regueiro v. American Airlines, Inc.*, 147 F.4th 1281, 1287 (11th Cir. 2025) (quoting 22 U.S.C. § 6082(a)(1)(A)). The Act's broad definition of "person" includes, but is not limited to, "any agency or instrumentality of a foreign state." 22 U.S.C. § 6023(11). And as used in Title III, "traffics" means, *inter alia*, a "person [that] knowingly and intentionally . . . engages in commercial activity using or otherwise benefiting from confiscated property." *Id.* § 6023(13)(A)(ii); *see North Am. Sugar Indus.*, 124 F.4th at 1334 ("The Act defines 'traffics' to encompass a broad array of activities . . . .").

Under the panel's holding a Title III suit filed against a defendant that is *not* a state-owned agency or instrumentality, *e.g.*, a suit against an American corporation that in some manner traffics in property that was confiscated by the Cuban government, can proceed without having to satisfy a FSIA exception. For example, in *Regueiro* the plaintiff alleged that by

operating flights to and from a Cuban airport in which he inherited an ownership interest, American Airlines traffics in confiscated property. *See* 147 F.4th at 1285. Holding (without any mention of FSIA) that the plaintiff "has pleaded the elements of a Title III claim," *id.* at 1290, the Eleventh Circuit in *Regueiro* reversed the district court's dismissal of the suit and remanded the case for further proceedings. *Id.* at 1291.

Although the panel majority here acknowledged that FSIA "poses no obstacle to Title III suits against non-sovereign parties who traffic in confiscated property," App-15a, it held that Title III plaintiffs "must satisfy one of FSIA's exceptions," *id.*, in order to seek compensation from a corporation owned and operated by the Cuban communist government that stole American business property. Interposing the formidable obstacle of having to satisfy a FSIA exception cannot be what Congress intended by explicitly including "any agency or instrumentality of a foreign state" in the subsequently enacted Helms-Burton Act's definition of a "person" that can be sued under Title III. *See* 22 U.S.C. § 6023(11).

3. Analyzing FSIA's expropriation and commercial-activity exceptions, the panel majority concluded that "FSIA's expropriation exception is inapplicable," and that "the district court needed to undertake additional analysis before determining that jurisdiction exists under [the commercial-activity] exception." App-2a. Regardless of whether the majority's lengthy analyses of these FSIA

exceptions have merit, they demonstrate that the statutory and fact-specific requirements for establishing that either applies are demanding.

a. This Court has "interpreted the expropriation exception narrowly." Karen Sokol, Cong. Rsch. Serv., LSB11361, The Foreign Sovereign Immunities Act's Expropriation Exception 4 (2024) (discussing recent Supreme Court decisions concerning the expropriation exception).[2] The exception applies where, *inter alia*, "rights in property taken in violation of international law are in issue." 28 U.S.C. § 1605(a)(3). To determine whether the facts of a case meet this prong of the exception, a court must undertake an analysis of "the international law of expropriation" as of the time the property was taken. *Philipp*, 592 U.S. at 180; *see, e.g., id.* (citing Restatement (Second) of Foreign Relations Law of the United States (1965)).

The D.C. panel majority held that this first prong of the expropriation exception is dispositive here. *See* App-23a ("[B]ecause Exxon does not assert a right recognized by the international law of property, it cannot satisfy the expropriation exception."). Relying in part on decisions of the International Court of Justice, the panel held that the exception does not apply because the confiscated Exxon property at issue was held by an Exxon subsidiary. *See* App-19a ("Decisions by the International Court of Justice

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[2] Available at https://tinyurl.com/5n6jjb4k.

confirm that international law generally does not recognize a shareholder's right in property owned by the corporation" whose property was seized).

If, as the D.C. Circuit now has held, this is the expropriation exception test for pursuing a Title III suit against a Cuban-owned corporation that profits from confiscated American business property, no U.S.-based corporation that operated in pre-Castro Cuba through a subsidiary would qualify. Nothing in the Helms-Burton Act or its legislative history suggests that Congress intended there to be such a roadblock to filing a Title III suit for just compensation.[3]

b. Regardless of whether the FSIA expropriation exception applies, this case indisputably involves Exxon's expropriated business property. *See generally* Black's Law Dictionary (12th ed. 2024) (defining "expropriation" as "a governmental taking or modification of an individual's property rights"). The panel majority nonetheless emphasized that the FSIA commercial-activity exception, 28 U.S.C. § 1605(a)(2), is "'the most significant of the FSIA's exceptions.'"

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[3] An additional fact-specific requirement for satisfying the expropriation exception is that "the property (or any property 'exchanged for' the expropriated property) has a commercial nexus to the United States." *Rep. of Hungary v. Simon*, 604 U.S. 115, 118 (2025) (rejecting plaintiffs' "commercial nexus" theory that proceeds from liquidation of their confiscated property were comingled with other Hungarian funds and then used for commercial purposes in the United States).

App-24a (quoting *Rep. of Argentina v. Weltover, Inc.*, 504 U.S. 607, 611 (1992)).

The panel majority concluded that Exxon's suit satisfies the first two clauses of the commercial-activity exception since "CIMEX's alleged trafficking occurs in Cuba," and "trafficking in confiscated property for purposes of Title III constitutes commercial activity under the FSIA." App-24a-25a. But according to the majority, "[a]t issue here is the third clause, which withdraws immunity when a suit [is] 'based upon an act outside the territory of the United States' . . . that 'cause[d] a direct effect in the United States.'" App-24a (quoting 28 U.S.C. § 1605(a)(2)); *see CC/Devas (Mauritius) Limited v. Antrix Corp. Ltd.*, 605 U.S. 223, 233 (2025) (the commercial-activity exception "call[s] for considerable domestic nexus, such as . . . 'commercial activity of the foreign state [that] causes a direct effect in the United States'").

The meaning and scope of the "direct effect" requirement long has been the subject of judicial and scholarly debate. *See, e.g.*, Hadwin A. Card III, Note, *Interpreting the Direct Effect Clause of the FSIA's Commercial Activity Exception*, 59 Fordham L. Rev. 91 (Oct. 1990). As a result, courts have afforded themselves considerable leeway in applying the direct effect requirement. Here, the majority opinion devotes page after page to scrutinizing the factual record on appeal in an effort to determine whether Cuba's confiscation of Exxon's property has caused a direct effect in the United States. *See* App-25a-36a.

Analyzing the commercial-activity exception's direct effect requirement by dissecting the jurisdictional facts to the *nth degree* clashes with a "broad reading of the Helms-Burton Act," especially since the Act "broadly provides that trafficking includes 'commercial activity . . . benefiting from confiscated property.'" *North Am. Sugar Indus.*, 124 F.4th at 1335 (quoting 22 U.S.C § 6023(13)(A)(ii)).

Despite the majority's microscopic analysis of the "direct effect" prong of the FSIA commercial-activity exception, it vacated and remanded Exxon's suit "for the district court to further assess whether . . . CIMEX's actions cause a direct effect in the United States." App-25a. This type of exhaustive, seemingly interminable jurisdictional discovery requiring a district court to determine, as a threshold matter, whether a Title III suit satisfies the FSIA commercial-activity exception—assuming that a Title III plaintiff has the resources and stamina to endure such discovery—is costly, time consuming, and burdensome. This potential roadblock to recovery should be, and will be, eliminated if this Court rejects the D.C. Circuit's erroneous holding that a confiscation victim's ability to pursue a Title III suit for just compensation from a Cuba-owned corporation that traffics in confiscated property is dependent upon satisfying a FSIA exception.

CONCLUSION

The Court should reverse the D.C. Circuit's judgment.

Respectfully submitted,

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