

Clients & Friends Memo

Supreme Court Expands Trafficking Liability Under Title III of the Helms-Burton Act in *Havana Docks*

June 24, 2026

The Supreme Court's recent decision in *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.* significantly expands potential liability for companies doing business with or involving Cuba, including through commercial arrangements that involve Cuban property.¹ In an 8-1 decision authored by Justice Thomas, the Court held that liability under Title III of the Helms-Burton Act attaches to the use of physical property in which a claimant held an interest—not merely to interference with the claimant's specific property interest. This clarification underscores that Title III is fundamentally an anti-trafficking statute, and companies with even indirect Cuba-related operations must reassess their exposure.

Two key takeaways from *Havana Docks* establish the breadth of “confiscated property” covered under the Helms-Burton Act.² First, “property which was confiscated” under Section 6082(a)(1)(A) can refer to the physical property in which a plaintiff held an interest, and not just the interest itself—meaning that companies may be liable for trafficking in property even beyond the term or period of the confiscated property interest.³ Second, confiscated property encompasses both physical property and intangible interests therein, such that a claimant who held only a concession, lease, or license can assert trafficking claims based on a defendant's use of the underlying physical asset.⁴ Both holdings create more potential touchpoints for liability under the Helms-Burton Act. Given the availability of treble damages and interest, exposure in Title III cases can reach hundreds of millions of dollars per claimant, and even non-U.S. companies may face liability where there is a sufficient U.S. nexus, including U.S. financing, operations, or distribution channels.⁵

¹ No. 24-983, 2026 WL 1423365, at *3 (U.S. May 21, 2026).

² 22 U.S.C. §§ 6023(13).

³ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 24-983, slip op. at 11-13 (U.S. May 21, 2026).

⁴ *Id.*, slip op. at 9-11 (citing 22 U.S.C. §§ 6023(12)(A), 6082(a)(1)(A)).

⁵ See, e.g., *Del Valle v. Trivago GMBH*, 56 F.4th 1265 (11th Cir. 2022) (finding personal jurisdiction existed over interactive travel website companies, including a Dutch corporation).

I. Title III: A Privately Enforced Anti-Trafficking Statute

Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996⁶—commonly referred to as the Helms-Burton Act—establishes that any entity that traffics in property that was confiscated by the Cuban government is liable to any U.S. national who owns a claim to such property. Although the expropriation of property is the source of claimant’s harm, the statute imposes liability based on trafficking conduct, which includes the control, use, sale, or purchase of such property, as well as indirectly engaging in or profiting from such trafficking by or through another person.

Congress passed the Helms-Burton Act in 1996, but Title III was suspended by presidential action from that time until 2019, when President Trump became the first president to allow Title III to take effect.⁷ Title III’s suspension was temporarily reinstated at the end of the Biden administration; however, the current Trump Administration again ended the suspension to further advance its Cuba policy priorities by allowing claimants to file new claims.⁸ U.S. persons and entities that hold claims to expropriated property may bring suit in U.S. courts against any person or entity that traffics in the confiscated property. Under the Helms-Burton Act, property includes intangible property interests as well as “any present, future, or contingent right, security, or other interest therein.”⁹ Because both persons and entities with property interests can have viable claims, “the Helms-Burton Act allows shareholders to recover from defendants who unlawfully traffic in corporate assets.”¹⁰

Penalties under Title III can be significant. Damages are calculated as the higher of the amount certified by the Foreign Claims Settlement Commission (“FCSC”) or the fair market value of the property, plus interest.¹¹ In addition to that amount, traffickers may be liable for treble damages as well as costs and attorneys’ fees. Critically, independent traffickers may be separately liable to a claimant, so damages are not reduced by settlements with or successful actions against other

⁶ 22 U.S.C. §§ 6021-6091.

⁷ Alex Daugherty and Michael Wilner, *Trump will allow Cuban Americans to sue for confiscated property in Cuba*, MIAMI HERALD, Apr. 17, 2019, <https://www.miamiherald.com/news/nation-world/world/americas/cuba/article229321599.html>.

⁸ See 22 U.S.C. § 6085(c)(1), (2) (authorizing the President to suspend Title III after the effective date); President Joseph R. Biden, Letter to the Chairmen and Chair of Certain Congressional Committees on the Suspension of the Right to Bring an Action Under Title III of the [LIBERTAD] Act of 1996, Jan. 14, 2025, <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2025/01/14/letter-to-the-chairmen-and-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/> (establishing a six month suspension); Secretary of State Marco Rubio, Restoring a Tough U.S.-Cuba Policy, Jan. 31, 2025, <https://www.state.gov/restoring-a-tough-u-s-cuba-policy/> (rescinding the Biden administration’s suspension).

⁹ 22 U.S.C. § 6023(12)(A).

¹⁰ *Regueiro v. Am. Airlines, Inc.*, 147 F.4th 1281, 1287, 1290-91 (11th Cir. 2025) (citing *Fernandez v. Seaboard Marine LTD.*, 135 F.4th 939, 945-50 (11th Cir. 2025)).

¹¹ 22 U.S.C. § 6082(a)(1)(A).

traffickers.¹² As a result, each independent touchpoint in a commercial or supply chain involving confiscated Cuban property may give rise to liability under the statute.

II. The *Havana Docks* Litigation

At issue in *Havana Docks* was a concession granted by the Cuban government to build and operate docks owned by Cuba at the Port of Havana. Havana Docks acquired and held the concession, which was set to expire in 2004, from 1905 until it was expropriated by Cuba in 1960.¹³ Between 2016 and 2019, four commercial cruise lines—Royal Caribbean, Norwegian, Carnival, and MSC—transported nearly a million paid passengers to Cuba, using the docks that Havana Docks built to embark and disembark their passengers. These cruises operated pursuant to policies implemented by the Obama administration designed to allow for greater travel to Cuba. After President Trump ended the suspension of Title III in 2019, Havana Docks sued the cruise ship operators claiming their use of the confiscated docks amounted to trafficking under the Helms-Burton Act. Plaintiffs prevailed against the cruise ship operators at the district court level, obtaining a judgment for approximately \$110 million in trebled damages from each operator.¹⁴ On appeal, the Eleventh Circuit determined that because the property interest at issue—the concession—would have expired in 2004, the confiscated property was not being “trafficked” because the Cuban government did not confiscate an interest extending beyond 2004.¹⁵

a. Key SCOTUS Holdings

On May 21, 2026, the Supreme Court reversed the Eleventh Circuit. The Court rejected the Eleventh Circuit’s counterfactual analysis—which would require courts 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”—as difficult to understand and apply with the potential of foreclosing “liability in cases where the text demands it.” Instead, the Court emphasized, Title III “provides a right to compensation based on the plaintiff’s *former* property interest from those who later traffic in the property.”¹⁶ In short, plaintiffs need not establish that alleged trafficking violated their property interest, merely that alleged trafficking involved property in which they had an interest.

¹² *See id.* (authorizing actions against “any person that . . . traffics in property which was confiscated by the Cuban Government”) (emphasis added).

¹³ *Havana Docks Corp. v. Carnival Corp.*, 592 F. Supp. 3d 1088, 1117-1129 (S.D. Fla. 2022), rev’d and remanded sub nom. *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276 (11th Cir. 2024), vacated and remanded, No. 24-983 (U.S. May 21, 2026).

¹⁴ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276, 1278 (11th Cir. 2024), vacated and remanded, No. 24-983 (U.S. May 21, 2026).

¹⁵ *Id.* at 1286.

¹⁶ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 24-983, slip op. at 15 (U.S. May 21, 2026) (emphasis in original).

The Court also addressed the question of whether “property which was confiscated” referred only to the property interest taken from the plaintiff (*i.e.*, the concession allowing operation of the docks) or also to the underlying property in which the plaintiff had an interest (*i.e.*, the docks themselves). The Court reasoned that because the Helms-Burton Act referred separately to property and to interests in property, the “plain text” imposed liability for trafficking in both the physical property and other interests in the property. As the Court summarized, “confiscated property is, as it were, tainted—off limits—such that anyone who uses the property can be liable to those who had an interest in the tainted property.”¹⁷

Together, these holdings confirm the expansive scope of potential liability under Title III. Persons and entities that traffic in confiscated property can be liable to claimants even if the relevant activity would not have necessarily infringed upon the property interests confiscated by Cuba. The taint—so to speak—may outlive the property interest. Furthermore, trafficking in confiscated property can result in liability not just to the owner of such property but to all those who held an interest in such property.

III. The Future of Title III Litigation

Havana Docks leaves several important issues unresolved that the Eleventh Circuit may address on remand. One concerns the statute’s time-bar provision, which states claims “may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.”¹⁸ Whether the time-bar provision is a statute of limitations that is subject to equitable tolling or a statute of repose with no basis for tolling, the time bar is an open question in many jurisdictions. The Second Circuit has held that this provision is a statute of repose and, further, that Title III’s presidential suspension provisions did not legislatively toll actions during the period of suspension.¹⁹ But the Eleventh Circuit, where much Title III litigation occurs, has not yet addressed the issue and may do so on remand. Another open question involves the statutory exception for activities “incident to lawful travel to Cuba.”²⁰ Although cruise ship operators were warned by the U.S. Government that “their activities had to comply with applicable regulations and could not exceed the scope of the licenses provided to them,” Justice Sotomayor’s concurrence suggested that the Eleventh Circuit should consider whether U.S. Government assurances regarding the legality of cruise travel to Cuba raised due-process concerns.

Although *Havana Docks* broadens the scope of potential liability, traditional defenses remain intact, including lack of personal jurisdiction, lack of scienter, and invalid or exhausted claims. Justice

¹⁷ *Id.*, slip op. at 11.

¹⁸ 22 U.S.C. § 6084.

¹⁹ *Moreira v. Société Générale, S.A.*, 125 F.4th 371, 388-94 (2d Cir. 2025)

²⁰ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 24-983, slip op. at 3 (U.S. May 21, 2026) (quoting 22 U.S.C. § 6023(13)(B)(iii)).

Sotomayor's concurrence also identified additional unresolved issues, including whether the concession was nonexclusive and limited to cargo services (which could preclude liability for passenger cruise operations), and whether the FCSC's certification process satisfied due process. Furthermore, concerns about the statute's breadth—reflected in Justice Sotomayor's warning of an “infinite-recovery issue,” under which a claimant could potentially recover the full trebled award from every person who uses confiscated property²¹ and Justice Kagan's observation, in dissent, that Helms-Burton Act liability may extend “through what Buzz Lightyear called ‘infinity and beyond’”²²—may influence how courts interpret exceptions and defenses moving forward.

IV. Managing Helms-Burton Act Litigation Risk

The decision has significant practical implications for companies with Cuba-related operations or supply chains. U.S. companies with direct commercial links to Cuba face heightened exposure, and foreign or multinational companies with U.S. touchpoints are also at risk given the LIBERTAD Act's extraterritorial reach, which extends to U.S. corporations, their domestic and foreign subsidiaries, and any foreign company owned or controlled by a U.S. citizen. Commercial contracts involving the sale, use, or financing of confiscated Cuban property may trigger trafficking liability in the absence of claimant consent. Moreover, because each independent touchpoint in a supply or contract chain is a potential independent basis for liability under Title III, companies may face indirect exposure through contractual counterparties.

Companies with a known or potential nexus to Cuba should prioritize the following steps:

- (1) Ensure diligence efforts for Cuba-related transactions identify both physical and non-physical property interests, including expired concessions, licenses, and leases. Such interests should be screened against the FCSC's publicly available database of certified claims (online since 2015) as well as for FCSC-registered claimants or unregistered U.S. nationals with colorable claims.
- (2) Seek written consent from identified claimants to engage in commercial activity involving the confiscated interest.
- (3) Map contract-chain exposure by tracing upstream and downstream counterparties for any link that may hold, sell, or commercially benefit from confiscated Cuban property.
- (4) Strengthen contractual protections to ensure counterparties with exposure to Cuba conduct diligence, provide sufficient representations and warranties, and are obligated to disclose material risks.

²¹ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 24-983, slip op. at 2, 4 (U.S. May 21, 2026) (Sotomayor, J., concurring).

²² *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 24-983, slip op. at 6 (U.S. May 21, 2026) (Kagan, J., dissenting) (citations and quotations omitted).

- (5) Seek indemnification provisions allocating Title III risk among contractual counterparties.
- (6) Ensure internal compliance programs can adequately monitor Cuba exposure.
- (7) For travel and hospitality operators, preserve evidence that Cuba-related activities were incident to, and necessary for, lawful travel.

Litigation risk is also shaped by U.S. policy toward Cuba. Title III is statutory and cannot be repealed or modified without congressional action; however, the President can take several actions that affect Helms-Burton Act claims and the likelihood of future litigation. For one, President Trump (or a future administration), could re-suspend Title III, which would prevent new filings but would not affect pending cases. Because claims would not be tolled during any suspension, plaintiffs may accelerate filings if they anticipate policy changes. Relatedly, the State Department is empowered to negotiate with Cuba the settlement of claims certified by the FCSC, and successful negotiations could substantially affect the likelihood of future Title III suits.²³ More dramatically, should the President determine “that a democratically elected government in Cuba is in power,” all rights to bring an action under Title III “cease,” though pending suits would remain unaffected.²⁴

In light of *Havana Docks* and current U.S. policy favoring a transition to a democratically elected government in Cuba, Title III is likely to remain in effect for the foreseeable future. Accordingly, companies with any nexus to Cuba should treat *Havana Docks* as a prompt to proactively manage transaction risk, assess contractual exposure, and engage counsel to develop defensible positions as the scope of liability under the Helms-Burton Act continues to evolve. The decision materially increases litigation risk and reinforces the need for proactive compliance and transaction-level diligence.

* * *

If you have any questions, please feel free to contact either of the following Cadwalader attorneys.

Jared Stanisci	+1 212 504 6075	jared.stanisci@cwt.com
Kyle Mathews	+1 202 862 2378	kyle.mathews@cwt.com

²³ Foreign Claims Settlement Commission, <https://www.justice.gov/fcsc> (last visited May 28, 2026).

²⁴ 22 U.S.C. § 6082(h)(1)(B), (2).