

U.S. Supreme Court Construes LIBERTAD (Helms-Burton) Act Requirements for Claims on Property Confiscated by Cuba

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On May 21, 2026, the U.S. Supreme Court issued its ruling in one of two cases before it this term involving the LIBERTAD (Helms-Burton) Act, which creates a private right of action for U.S. nationals against those who “traffic” in property that was confiscated by the Cuban Government after the Cuban Revolution.¹ In an 8-1 decision (Justice Kagan dissenting), the Court adopted the broader reading of “trafficking” before it, and held that the cruise lines could still be liable under the LIBERTAD Act for using confiscated docks, even though the at-issue concession expropriated by Cuba had expired before defendants’ trafficking activity began.

The Supreme Court’s ruling lowers one potential barrier to LIBERTAD Act claims, although various other constraints remain which will need to be sorted out by the lower courts following remand of this case. Whatever the lower courts decide, no claimholder has yet received a monetary judgment under the LIBERTAD Act, and plaintiffs must overcome numerous obstacles whether bringing suit against a private party, the Cuban government, or a state-owned enterprise. The Supreme Court’s forthcoming decision in *Exxon Mobil Corp. v. Corporación Cimex, S.A.*² may further influence the likelihood of recovery on claims against a sovereign or its agencies and instrumentalities. Recent political developments are also likely to affect the future of LIBERTAD Act claims, given increasing U.S. focus on Cuba.

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¹ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd., et al.*, No. 24-983 (U.S. 2026) (“*Havana Docks*”).

² *Exxon Mobil Corp. v. Corporación Cimex, S.A. (Cuba), et al.*, No. 24-699 (U.S., argued Feb. 23, 2026) (“*Exxon Mobil*”).
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Background

Following the 1959 Cuban Revolution, the Cuban Government, led by Fidel Castro, passed a series of laws nationalizing private property and enterprises, including property belonging to U.S. nationals. The Foreign Claims Settlement Commission (“FCSC”), part of the U.S. Department of Justice, established two programs, in 1964 and 2005, to adjudicate and certify expropriation claims of U.S. nationals.³ The FCSC’s Cuba program was “unfunded,” meaning that, unlike some other FCSC programs, there was no pre-established pool of settlement funds to compensate the claimants. Instead, the claims were certified to the U.S. State Department for use in negotiations with Cuba over a settlement agreement that would offer compensation for the expropriation claims. No such agreement has been negotiated to date.

In 1996, the United States passed the LIBERTAD Act, under which any person or entity 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.”⁴ The statutory definition of “trafficking” includes, among other things, that the defendant “knowingly and intentionally . . . uses, or otherwise acquires or holds an interest in confiscated property,” or “engages in a commercial activity using or otherwise benefitting from confiscated property.”⁵ Where the LIBERTAD Act’s requirements are met, treble damages are available.⁶

The U.S. President can suspend the LIBERTAD Act’s private right of action in six-month increments, if

necessary to further the national interests of the United States and expedite a transition to democracy in Cuba.⁷ Presidents Clinton, Bush, and Obama suspended it consecutively until 2019, when President Trump allowed the suspension to expire. On January 14, 2025, President Biden restored the suspension, which would have been effective on January 29, 2025; however, before the suspension could take effect, the Trump Administration issued a letter revoking the suspension.⁸

From 2019 to the present, nearly 100 plaintiffs have brought claims under the LIBERTAD Act in at least 39 cases. Two cases have been brought against Cuban state-owned entities,⁹ and two cases have been brought against the U.S. Office of Foreign Assets Control (“OFAC”) and the U.S. Treasury Department.¹⁰ The vast majority of the cases under the LIBERTAD Act—including the *Havana Docks* case—have been brought against private party defendants.

Plaintiff Havana Docks Corporation (“Havana Docks”) acquired a “usufructuary concession” from the Cuban Government, which gave it a 99-year right to use and build upon docks in the Port of Havana from 1905 to 2004. In the early years of its concession, Havana Docks built a terminal building and three main piers that today serve several purposes, including cruise tourism, storing container loads, and ship repairs. In 1960—44 years before the concession would have expired—the Cuban Government “seized the docks . . . and confiscated ‘all’ of Havana Docks’ ‘assets.’”¹¹ The FCSC certified Havana Docks’ claim in 1971 at \$9 million in principal amount, with interest accruing at six percent annually.¹²

³ *Completed Programs – Cuba*, Foreign Claims Settlement Comm’n, <https://www.justice.gov/fcsc/claims-against-cuba> (last visited June 1, 2026).

⁴ 22 U.S.C. §§ 6023(11), 6082(a)(1)(A).

⁵ 22 U.S.C. §§ 6023(13)(A)(i)–(ii).

⁶ 22 U.S.C. § 6082(a)(3).

⁷ 22 U.S.C. § 6085.

⁸ *U.S. Cuba Policy: Recent Developments and the 119th Congress*, CONG. RSCH. SERV. (Feb. 6, 2025), <https://www.congress.gov/crs-product/IN12499>.

⁹ *Exxon Mobil Corp. v. Corporación CIMEX, S.A.*, 111 F.4th 12 (D.C. Cir. 2024), cert. granted sub nom. *Exxon Mobil Corp. v. Corporación Cimex, S.A. (Cuba)*, 146 S. Ct.

80 (2025); *Del Riego Ponte v. Instituto de Planificación Física*, No. 22-CV-3347-RCL, 2025 WL 722045 (D.D.C. Mar. 6, 2025).

¹⁰ *Perez v. OFAC*, No. 24-CV-22050-DPG, 2024 WL 3518165 (S.D. Fla. July 17, 2024); *Perez v. OFAC*, No. 25-CV-21073-BLOOM/Reid, 2025 WL 2337070 (S.D. Fla. Aug. 13, 2025).

¹¹ *Havana Docks* at 3.

¹² *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)); *Havana Docks* at 4.

Between 2016 and 2019, four cruise lines—Royal Caribbean Cruises, Norwegian Cruise Line Holdings, Carnival Corporation, and MSC Cruises—used the docks to onload and offload nearly a million passengers to Cuba. Havana Docks sued these cruise lines in the Southern District of Florida under the LIBERTAD Act, shortly after the Act’s suspension expired in 2019. The district court held that each of the four cruise lines was independently liable to Havana Docks for \$110 million.¹³

On appeal, in a 2-1 decision, the Eleventh Circuit reversed the district court’s holding. It found that the LIBERTAD Act required it “to view the property interest at issue . . . as if there had been no expropriation and then determine whether the alleged conduct constituted trafficking in that interest.”¹⁴ There was no such trafficking, the Eleventh Circuit held, since Havana Docks’ concession already would have expired in 2004, before the alleged trafficking began in 2016. In dissent, Judge Brasher contended that trafficking in the underlying physical property (the docks) was sufficient, and there was no need to establish use by the defendants of the plaintiff’s specific property interest (the concession).

The U.S. Supreme Court granted certiorari on the question presented regarding interpretation of the “trafficking” requirement.

The Supreme Court’s *Havana Docks* Decision

In an 8-1 decision authored by Justice Thomas, the majority rejected the Eleventh Circuit’s conclusion that a plaintiff needed to show trafficking by the defendant in the property of the plaintiff actually confiscated by Cuba, *i.e.*, the concession. Rather, it was enough that the docks were confiscated; the cruise lines used the docks; and Havana Docks had an interest in the docks. Requiring trafficking in plaintiffs’ specific confiscated property interest “would read out of the Act obvious

ways in which people can traffic in confiscated property,” since “[o]ne uses land or other physical property, but one does not ordinarily use someone else’s property interests.”¹⁵ The LIBERTAD Act thus does not “requir[e] ‘a one-to-one correspondence between the property interest confiscated and the property interest trafficked.’”¹⁶

In dissent, Justice Kagan came to the opposite conclusion, holding that trafficking in the concession itself is required. Starting with the fact that a LIBERTAD Act claim requires trafficking in “confiscated” property, Justice Kagan reasoned that the concession was “the only property Havana Docks ever owned—and thus the only property Cuba could have confiscated from it.”¹⁷ The docks could not have been confiscated, because “Cuba owned the docks all along.”¹⁸ Justice Kagan also criticized the majority for ignoring the temporal boundary of the concession, instead treating “all property interests as if they were perpetual ones” that could be asserted “to infinity and beyond.”¹⁹

In concurrence, Justices Sotomayor and Kavanaugh joined the majority’s interpretation of the trafficking requirement, but wrote separately to “highlight two issues” that “raise[d] significant concerns” for future litigation.²⁰ *First*, the prevailing reading of “trafficking” and the ability to recover from “each” defendant engaged in trafficking meant that “someone who suffered a finite loss” could “reap infinite recoveries” under the LIBERTAD Act, potentially even in violation of the Due Process Clause of the U.S. Constitution.²¹ Together with the trebling of damages and accumulation of interest, this would authorize “repeatedly recovering the [FCSC]-certified amount” rather than the FCSC certification “supply[ing] a benchmark for adequate compensation,” as Congress intended.²² *Second*, the concurrence questioned whether the specific conduct at issue fell within an

¹³ *Havana Docks* at 1 (Sotomayor, J., concurring).

¹⁴ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276, 1287 (11th Cir. 2024).

¹⁵ *Havana Docks* at 10.

¹⁶ *Id.*

¹⁷ *Id.* at 3 (Kagan, J., dissenting).

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 1 (Sotomayor, J., concurring).

²¹ *Id.* at 2–3.

²² *Id.* at 3.

exception to the LIBERTAD Act for “transactions and uses of property incident to lawful travel to Cuba.”²³

Next Steps & Key Takeaways

The Supreme Court remanded the *Havana Docks* case for the lower courts to decide remaining issues, including the applicability of the LIBERTAD Act’s “lawful travel” exception, other defenses regarding the scope of the concession, the sufficiency of allegations of trafficking that took place before the concession expired, and constitutional considerations.

While the specific issue of a property interest with a temporal limitation may not be present in other LIBERTAD Act cases, the Supreme Court’s adoption of the broader of the two constructions of the term “trafficking” presented to it could affect future litigation. But even with that gate opened, there still may not be a flood, as there are various other constraints on LIBERTAD Act claims based on the statutory requirements and the political context:

- **Jurisdiction (Private Party Defendant).**

Unless the private party defendant is subject to general jurisdiction because its place of incorporation or principal place of business is in the forum of the court, a plaintiff would need to show a basis for personal jurisdiction over the defendant related to the claim at issue. This could prove challenging in light of the longstanding U.S. embargo against Cuba, which limits potentially relevant activity. In LIBERTAD Act cases, personal jurisdiction often turns on whether the defendant engaged in qualifying “trafficking” activity within the forum (generally sufficient for personal jurisdiction) or merely caused “effects” of its Cuba-based activities to be felt in the United

States without any further contacts with the jurisdiction (generally insufficient).²⁴

- **Jurisdiction (Foreign Sovereign Defendant).**

Given the nature of expropriation claims, many entities allegedly trafficking in confiscated property are likely to be foreign state-owned and, therefore, presumptively immune from the jurisdiction of U.S. courts, unless a stated exception to immunity under the FSIA applies.²⁵ The FSIA exceptions most likely to be invoked here center on whether the defendant engaged in “commercial activity . . . in the United States,”²⁶ which would be challenging to demonstrate given the longstanding U.S. embargo against Cuba. Alternatively, the second LIBERTAD Act case currently pending before the Court offers an easier path toward jurisdiction: *Exxon Mobil* presents the question of whether the LIBERTAD Act itself abrogates foreign sovereign immunity or whether plaintiffs must still show that an enumerated exception to the FSIA applies in cases against sovereign defendants.²⁷ A decision in the affirmative would allow plaintiffs to sidestep the FSIA analysis. The Court heard oral argument in *Exxon Mobil* alongside the *Havana Docks* case, and could decide the question presented in *Exxon Mobil* imminently.

- **Acquisition of Claim before 1996.** The LIBERTAD Act requires that the plaintiff acquired its claim in confiscated property prior to March 12, 1996.²⁸ Courts have enforced this requirement strictly, including where a claim was inherited or assigned.²⁹ There are

²³ *Id.*; 22 U.S.C. § 6023(13)(B)(iii).

²⁴ See, e.g., *Del Valle v. Trivago GmbH*, 56 F.4th 1265, 1271–74, 1276–77 (11th Cir. 2022); *De Fernandez v. CMA CGM S.A.*, No. 21-CV-22778, 2023 WL 4014730, at *23–29 (S.D. Fla. Apr. 30, 2023); *Herderos De Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 43 F.4th 1303, 1310–11 (11th Cir. 2022).

²⁵ See 28 U.S.C. §§ 1604–1605.

²⁶ See 28 U.S.C. §§ 1605(a)(2)–(3).

²⁷ Petition for Writ of Certiorari, *Exxon Mobil*.

²⁸ 22 U.S.C. § 6082(a)(4)(B).

²⁹ See, e.g., *Mata v. Expedia Grp. Inc.*, No. 19-22529-CIV, 2025 WL 4098278, at *6–7 (S.D. Fla. Nov. 10, 2025); *Del Valle v. Trivago GMBH*, No. 23-12966, 2025 WL 1443951, at *2 (11th Cir. May 20, 2025); *Glen v. Trip Advisor LLC*, 529 F.Supp. 3d 316, 328–31 (D. Del. 2021); *Sucesores de Don Carlos Nuñez y Doña Pura Galvez, Inc. v. Soci  t  *

additional plaintiff-side requirements, including status as a U.S. national and, where the claim at issue was certified by the FCSC, that the plaintiff is the certified claimholder.³⁰

- **Statute of Repose.** A LIBERTAD Act claim “may not be brought more than 2 years after the trafficking . . . has ceased to occur.”³¹ This time-bar provision has been held to be a statute of repose that cannot be equitably tolled.³²
- **Scienter.** The LIBERTAD Act requires that a defendant engages in the trafficking “knowingly and intentionally.”³³ Courts have reached different conclusions on whether this requires knowing and intentional engagement in the conduct, versus knowing and intentional dealings with the confiscated property, with many adopting the latter view.³⁴

To date, no plaintiff has obtained a monetary judgment on a LIBERTAD Act claim (although there have been private settlements).³⁵ During the February 23 oral arguments, various Justices referenced a need to interpret the LIBERTAD Act in a way that does not render it a “dead letter.” Particularly if the Supreme Court is not inclined to rule in *Exxon Mobil* that the LIBERTAD Act displaces the FSIA, that concern may have been a reason to accept the broader of the two definitions of “trafficking” presented in *Havana Docks*.

Conversely, as highlighted by the concurrence, in a scenario where the LIBERTAD Act’s requirements are met, there is potential for significant recovery, well-

above the original certified claim amount. It remains to be seen whether such concerns will be asserted in future litigation, and how they will be weighed against the statute’s stated purpose of “deter[ing] trafficking in wrongfully confiscated property.”³⁶

Separate from recourse through litigation, the next chapter for claims against Cuba may be diplomatic. The Trump administration has restored Cuba’s designation as a state sponsor of terrorism, escalated the U.S. sanctions program against Cuba (see our [previous alert](#) for more details), and secured the indictment of former Cuban President Raúl Castro based on the same events that prompted the LIBERTAD Act’s passage. As economic conditions on the island worsen, the U.S. State Department has engaged in discussions with the Cuban Government and Castro family. Historically, the State Department has negotiated claim settlements as part of a larger diplomatic bargain to restore relations—for example, with China and Vietnam. A similar agreement with Cuba could affect the future of LIBERTAD Act cases.

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Générale, S.A., 577 F.Supp. 3d 295, 304–05 (S.D.N.Y. 2021).

³⁰ See 22 U.S.C. § 6082(a)(5)(D). While no federal court has opined on this provision, the U.S. government has expressed a view that it permits suit by the person that “filed the claim in the Commission or a subsequent owner of the claim.” Brief for the United States as Amicus Curiae, *Del Valle v. Trivago GmbH*, No. 20-12407, at *21 (11th Cir. Apr. 11, 2022).

³¹ See 22 U.S.C. § 6084.

³² See *Moreira v. Societe Generale, S.A.*, 125 F.4th 371, 388–91 (2d Cir. 2025).

³³ See 22 U.S.C. § 6023(13).

³⁴ *Compare Havana Docks Corp. v. Carnival Corp.*, 592 F.Supp. 3d 1088, 1160 (S.D. Fla. 2022) (“[U]nder the plain

terms of the statute, the term ‘knowingly and intentionally’ modifies only the listed trafficking acts.”), with *Sucesores*, 577 F.Supp. 3d at 311 (“[A] defendant must at least have had reason to know that the property in which it allegedly trafficked was confiscated by the Cuban government.”).

³⁵ See, e.g., Order of Dismissal, *Marti v. Iberostar Hoteles y Apartamentos S.L.*, No. 1:20-cv-20078, ECF No. 241 (S.D. Fla. Sept. 9, 2025); Order Dismissing Case, *De Fernandez et al. v. Crowley Maritime Corp. et al.*, No. 1:21-cv-20443, ECF No. 194 (S.D. Fla. Apr. 28, 2026); Order of Dismissal, *De Fernandez v. Seaboard Marine Ltd.*, No. 1:20-cv-25176, ECF No. 400 (S.D. Fla. Apr. 7, 2026).

³⁶ 22 U.S.C. § 6081(11).