ALERT MEMORANDUM

U.S. Supreme Court Rules LIBERTAD Act Eliminates Sovereign Immunity of Cuban Agencies and Instrumentalities

July 7, 2026

On June 23, 2026, the U.S. Supreme Court issued its second ruling this term construing the LIBERTAD (Helms-Burton) Act, which creates a private right of action for U.S. nationals against those who traffic in property confiscated by the Cuban Government after the Cuban Revolution. The 6-3 decision holds that the LIBERTAD Act itself confers jurisdiction over Cuban state-owned agencies and instrumentalities, displacing the need to show an exception to sovereign immunity under the Foreign Sovereign Immunities Act (FSIA) when bringing a LIBERTAD Act claim.[1]

The Supreme Court's ruling is significant because it eliminates one potential defense that Cuban agencies and instrumentalities have raised in prior LIBERTAD claim suits based on sovereign immunity where plaintiffs have had a difficult time establishing the "commercial activity" exception to the FSIA because of the longstanding U.S. embargo against Cuba. Although the Supreme Court's ruling clears a substantial hurdle for LIBERTAD Act claims against Cuban agencies and instrumentalities, there are still substantial barriers to collection even if a judgment can be obtained, as the FSIA separately confers immunity from execution on foreign sovereign property. Political developments in the U.S.-Cuba relationship will remain a significant factor in determining the likelihood of recovery on such claims.

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[1] *Exxon Mobil Corp. v. Corporación CIMEX S.A. (Cuba)*, No. 24-699 (U.S. argued Feb. 23, 2026) ("*Exxon*").

Background

Exxon was one of two cases before the U.S. Supreme Court this term involving the LIBERTAD Act. As discussed in more detail in our recent alert on the other case, *Havana Docks*, the LIBERTAD Act 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. Enacted in 1996, the private right of action was consecutively suspended by U.S. presidents until 2019.

Since then, nearly 100 plaintiffs have brought claims under the LIBERTAD Act in at least 39 cases. The vast majority of those cases have been brought against private defendants, given the difficulty of establishing jurisdiction over sovereign entities in U.S. courts and collecting on judgments rendered against sovereigns. *Exxon* is one of the few cases under the LIBERTAD Act that has been brought against Cuban state-owned entities.[2]

In 1959, Exxon Mobil Corporation, then known as Standard Oil, owned several subsidiaries in Cuba. Through one of them, Exxon owned and operated an oil refinery, multiple product terminals and packaging plants, and over 100 service stations. In 1960, the Cuban government transferred this property to two Cuban state-owned enterprises—Unión Cuba-Petróleo (CUPET) and Corporación CIMEX S.A. (Cuba) (CIMEX)—without compensation. The U.S. Foreign Claims Settlement Commission (the FCSC) certified Exxon's claim in 1969, determining that Exxon had suffered a loss of $71.6 million plus interest—a figure that, with statutory treble damages, is now claimed at around $1 billion.

On May 2, 2019, Exxon filed suit under the LIBERTAD Act against CUPET and CIMEX, both Cuban state-owned entities, and Corporación CIMEX S.A. (Panama), CIMEX's alleged Panamanian alter ego. Under the FSIA, a foreign state, its political subdivisions, agencies, or instrumentalities are presumptively immune from the jurisdiction of U.S. courts unless one of the FSIA's enumerated exceptions applies.[3] Exxon argued that it did not need to show applicability of an FSIA exception because the LIBERTAD Act itself abrogated sovereign immunity. In the alternative, Exxon also argued that two FSIA exceptions were in any event satisfied.

First, Exxon asserted there was commercial activity with a direct effect in the United States (as the FSIA's "commercial activity" exception requires), pointing to remittances from U.S. citizens to Cuba processed at CIMEX service stations and the sale of U.S.-imported food and consumer goods at those stations. *Second*, Exxon argued that the FSIA's expropriation exception applied because the taking of its subsidiary's property without just compensation violated customary international law and the defendants engaged in the requisite commercial activity in the United States.

The district court ruled that the LIBERTAD Act does not displace the FSIA analysis and that the FSIA's expropriation exception did not apply, but found that the FSIA's commercial activity exception may be satisfied for at least one of the defendants.[4]

In a 2-1 decision, the D.C. Circuit agreed that the LIBERTAD Act did not eliminate (or in "legal speak" abrogate) sovereign immunity and that the expropriation exception did not apply, but vacated the district court's ruling on the commercial activity exception and remanded for jurisdictional discovery.[5] Judge Randolph dissented, finding that the LIBERTAD Act itself abrogates sovereign immunity.[6]

The U.S. Supreme Court granted certiorari on the question of whether the LIBERTAD Act itself abrogates

[2] *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). *See also Del Riego Ponte v. Instituto de Planificacion Fisica*, No. 1:22-CV-3347-RCL, 2025 WL 722045, at *1 (D.D.C. Mar. 6, 2025) (dismissing for lack of jurisdiction over foreign sovereign defendant based on sovereign immunity under the FSIA).

[3] 28 U.S.C. §§ 1602–1611.

[4] *Exxon Mobil Corp. v. Corporación CIMEX S.A.*, 534 F. Supp. 3d 1, 14–29 (D.D.C. 2021); *Exxon Mobil Corp. v. Corporación CIMEX S.A.*, 567 F. Supp. 3d 21 (D.D.C. 2021) (denying defendants' motion for reconsideration).

[5] *Exxon Mobil*, 111 F.4th at 19–20.

[6] *Exxon Mobil*, 111 F.4th at 39–42 (Randolph, J., dissenting).

foreign sovereign immunity or whether a plaintiff must still show that an exception to the FSIA applies.[7] The U.S. Government submitted an amicus brief in the Supreme Court proceedings, arguing that the LIBERTAD Act expressly authorizes suits against Cuban sovereign agencies and instrumentalities that traffic in expropriated property, and therefore unambiguously abrogates their sovereign immunity under the FSIA.[8] The government also argued that U.S. foreign policy interests strongly favor allowing LIBERTAD Act suits to hold the Cuban government accountable for "continuing to benefit from its illegal expropriations."[9]

The Supreme Court's Decision

In a 6-3 decision authored by Justice Kavanaugh, the majority reversed the D.C. Circuit and held that the LIBERTAD Act itself abrogates the sovereign immunity of Cuban agencies and instrumentalities. The majority gave four principal reasons for its decision, largely in line with the arguments from the U.S. Government's amicus brief.

- Under Supreme Court precedent, the fact that the LIBERTAD Act's cause of action "expressly applies against Cuban agencies and instrumentalities . . . signals that Congress waived sovereign immunity" of those entities.[10]
- Requiring satisfaction of the FSIA would largely negate the "meaningful remedy" the LIBERTAD Act was meant to provide. That is because the FSIA's "only potentially relevant exceptions" have requirements of commercial activity with a U.S. nexus that are "difficult if not impossible to meet" given the "simultaneous embargo prohibiting American commercial activity with Cuba."[11]
- The fact that subject matter jurisdiction for LIBERTAD Act claims lies under the federal question statute rather than the FSIA reinforces this conclusion.
- The President's authority to suspend the LIBERTAD Act private right of action tracks the pre-FSIA sovereign immunity regime.

Justice Kagan, joined by Justices Sotomayor and Jackson, dissented. She reasoned that the "FSIA is a comprehensive law, applying no matter the substantive law the plaintiff's claim invokes"[12] and any abrogation of its immunity must be "clearly discernible."[13] According to the dissent, there was no such abrogation here for multiple reasons:

- Although not dispositive, there is "not one word" in the LIBERTAD Act's text on abrogation of jurisdictional immunity (and by contrast, the LIBERTAD Act is explicit about a change to FSIA execution immunity).[14]
- A previous draft of the LIBERTAD Act did explicitly abrogate all FSIA immunity, but Congress removed that provision after the U.S. Department of Justice objected to such a "sweeping" extension of jurisdiction over foreign sovereigns.[15]
- Critically, reading the LIBERTAD Act "as written"—not to abrogate jurisdictional immunity—would not negate the cause of action it provides. The FSIA exceptions can be met, even if only in limited circumstances, and in any event claims can be brought against private defendants.[16]

Among other disputes with the majority's reasoning, the dissent noted that the majority had not achieved its goal of providing "fully effective

[7] *Exxon Mobil Corp. v. Corporación CIMEX S.A. (Cuba)*, 146 S. Ct. 80 (2025).
[8] *See* Brief for the United States as Amicus Curiae at 16–17, *Exxon* (U.S. Aug. 27, 2025).
[9] *Id.* at 4; *see also id*. at 27.
[10] *Exxon,* at 8.
[11] *Id.*
[12] *Id.* at 1 (Kagan, J., dissenting).
[13] *Id.* at 2.
[14] *See id.* at 3–4.
[15] *See id.* at 4–5.
[16] *See id.* at 7.

remedies."[17] Even if abrogation of jurisdictional immunity allows a plaintiff to obtain a judgment against a Cuban sovereign defendant, that judgment is largely unenforceable, since the FSIA separately provides execution immunity to foreign sovereign property. In this context, the embargo similarly would make it nearly impossible to establish an exception to execution immunity and the majority's ruling did not abrogate execution immunity for LIBERTAD Act claims.

Key Takeaways

In both of the Supreme Court decisions involving the LIBERTAD Act this term—*Exxon* and *Havana Docks*, which was decided on May 21, 2026—the key motivating factor seems to be the desire for the LIBERTAD Act to provide a meaningful cause of action. Thus, in *Havana Docks* the Supreme Court adopted the broader of two definitions of "trafficking" before it. As to *Exxon*, satisfying the FSIA's requirements in the context of LIBERTAD Act claims is a difficult barrier to surmount, given the longstanding embargo preventing commercial activity between the U.S. and Cuba. The *Exxon* decision removes this barrier and could lead to an increase in LIBERTAD Act claims against Cuban agencies and instrumentalities. Lower courts could interpret the pair of Supreme Court rulings as a mandate to construe LIBERTAD Act claims favorably for a plaintiff. However, there is existing jurisprudence in which LIBERTAD Act requirements have been construed strictly that remains unchanged by the recent Supreme Court decisions.

Exxon also leaves open questions that may be addressed in future litigation. For example, since the LIBERTAD Act names only *Cuban* agencies and instrumentalities, the majority expressly did not reach the question of whether the FSIA still applies to foreign sovereign defendants of other nations. Its reasoning also would not apply to the Cuban government itself as a defendant.

Practically speaking, a plaintiff that establishes jurisdiction and obtains a judgment against a Cuban agency or instrumentality will likely find it difficult to collect. As a result of the embargo, the volume of assets in the United States available for judgment enforcement is extremely limited. Claimants could target assets held outside the United States, which some courts have permitted in certain circumstances. Such efforts could be affected by blocking statutes that were enacted by certain countries in response to the LIBERTAD Act, including in the European Union,[18] Canada,[19] and Mexico.[20] Although courts have generally declined to let these statutes impede claims,[21] they could complicate enforcement of judgments in those jurisdictions.

As the U.S. Government noted in its amicus brief, it is accepted in the context of foreign sovereign immunity that Congress could create a right without a remedy, and thus it is not unusual for FSIA jurisdictional immunity to be abrogated while execution immunity is preserved. The majority in *Exxon* acknowledged the barriers to judgment enforcement, responding that "there can be real value in obtaining a judgment against a Cuban government defendant, even if a plaintiff is unable to immediately collect on that judgment."[22]

Ultimately, while the Supreme Court's decisions in *Exxon* and *Havana Docks* have opened further avenues for potential plaintiffs to bring claims, political dynamics between the United States and Cuba are likely to remain a significant determinant of actual recoveries. In addition to presidential power to suspend the LIBERTAD Act, policy choices and developments regarding the embargo and the prospect of a negotiated settlement or other claim resolution agreement are likely to bear significantly on the future of claims in this context.

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[17] *See id.* at 8–9.
[18] Regulation (EC) No. 2271/96, arts. 4–6.
[19] Foreign Extraterritorial Measures Act §§ 7.1, 9.1.
[20] Law to Protect Trade and Investment from Foreign Laws that Contravene International Law (1996).
[21] *See, e.g.*, *Marti v. Iberostar Hoteles y Apartamentos S.L.*, 54 F.4th 641, 650 (11th Cir. 2022); *De Fernandez v. CMA CGM S.A.*, No. 21-CV-22778, 2022 WL 2713737, at *13 (S.D. Fla. July 12, 2022).
[22] *Exxon*, at 20–21 n.5.