

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:20-cv-23287-DPG
District Judge Darrin P. Gayles

LUIS MANUEL RODRIGUEZ, *et al.*,

Plaintiffs,

v.

IMPERIAL BRANDS PLC, *et al.*,

Defendants.

STATEMENT OF INTEREST OF THE UNITED STATES

The United States of America, by and through undersigned counsel, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517¹ to set forth the interests of the United States (the “Government”) as they relate to the above-captioned lawsuit. The Government is not a party to this matter and takes no position on the merits of Plaintiffs’ claims. However, the Government received a notice, pursuant to Federal Rule of Civil Procedure 5.1,² that Defendants Imperial Brands PLC (“Imperial”) and Corporación Habanos, S.A. (“Habanos”) have challenged the constitutionality of Title III of the Cuban Liberty and Democratic Solidarity (Libertad) Act, 22 U.S.C. §§ 6081–6085 (“Title III”) in their pending motions to dismiss. *See* ECF Nos. 88, 89

¹ This statute provides the United States with a statutory right to advise the Court of its interest here. Specifically, Section 517 authorizes the Attorney General to send “any officer of the Department of Justice . . . to attend to the interests of the United States in a suit pending in a court of the United States.” 28 U.S.C. § 517.

² Rule 5.1 provides that “the attorney general may intervene within 60 days after the notice [of a constitutional challenge] is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.” Fed. R. Civ. P. 5.1(c).

(collectively, the “Motions”).

The Government became aware of the constitutional challenge to Title III in April 2021 after Imperial and Habanos served notices of constitutional questions on the Attorney General of the United States pursuant to Rule 5.1. ECF Nos. 92, 94; *see* Fed. R. Civ. P. 5.1(a). As framed by Imperial, “[t]he constitutional question raised is: does the Due Process Clause of the Fifth Amendment to the United States Constitution prohibit the extraterritorial application of Title III to Imperial’s concededly ‘non-U.S.’ Cuban-cigar business under the circumstances alleged in the Complaint due to lack of legislative jurisdiction.” ECF No. 92 at 1; *see also* ECF No. 94 at 2 (same). The Court has not yet certified the constitutional challenge. *See* Fed. R. Civ. P. 5.1(b) (“The court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.”). Nonetheless, the Government files this Statement of Interest upon the completion of the parties’ briefing on the Motions, including supplemental briefing filed on August 18, 2021, *see* ECF Nos. 123–24, to respectfully request that the Court decide the personal jurisdiction issues before reaching the constitutional question and, only if the Court finds it necessary to reach and certify the constitutional question, to respectfully request that the Court provide the Government an opportunity to participate at that stage.

The Government has reviewed the parties’ arguments on the Motions and notes that Imperial and Habanos raise several arguments in support of dismissal that do not depend on the constitutionality of Title III or other Title III issues. In particular, the Government believes that the defendants’ arguments concerning lack of personal jurisdiction raise substantial questions, similar to those that three courts in this district have already addressed. *See Iglesias v. Pernod Ricard*, No. 20-20157-CIV, 2021 WL 3083063, at *3 (S.D. Fla. June 17, 2021) (no personal jurisdiction over French company with French principle place of business even where subsidiary

did business in Florida); *Herederos de Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, No. 20-21630-CIV, 2021 WL 1648222, at *3–4 (S.D. Fla. Apr. 27, 2021) (no personal jurisdiction over foreign defendant with foreign principle place of business in Title III action where plaintiff “fail[ed] to explain how its claim for unlawful trafficking in Cuba is related to [the plaintiff’s] activities in Florida”), *reconsideration denied*, No. 20-21630-CIV, 2021 WL 3054908 (S.D. Fla. Jul. 20, 2021); *Del Valle v. Trivago GmbH*, No. 19-22619-CIV, 2020 WL 2733729, at *2–4 (S.D. Fla. May 26, 2020) (same), *appeal filed*, 20-12407 (11th Cir. Jun. 24, 2020).

Ordinarily, courts “will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.” *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring); *see also Santamorena v. Ga. Mil. Coll.*, 147 F.3d 1337, 1343 (11th Cir. 1998) (“A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.”). The Government therefore declines to intervene at this stage of the litigation but will continue to actively follow developments in this case as it progresses, particularly regarding the constitutional question concerning Title III, should the Court decide not to dismiss this matter on other grounds. If the Court does find it necessary to address the constitutional question, the Government requests a further opportunity to consider whether to provide its views at that time.

The Government thanks the Court for its consideration of the Government’s views at this stage.

Dated: August 31, 2021

Respectfully submitted,

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