UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

Case No. 19-cv-21724
BLOOM/McAliley

NOTICE OF FILING CARNIVAL CORPORATION'S
INDIVIDUAL SUMMARY JUDGMENT MOTION PRESENTATION

Defendant CARNIVAL CORPORATION, by and through its undersigned counsel, hereby files this Notice of Filing Carnival Corporation's Individual Summary Judgment Motion Presentation pursuant to the Court's instructions. On January 18, 2022, the Court heard argument on the Parties' individual summary judgment motions related to Carnival. Following the Parties' presentations, the Court instructed that the Parties file their respective presentations on the docket for the Court's review. Based on the foregoing, Carnival files the attached presentation.

Dated: January 19, 2022

Respectfully submitted,

By: */s/ Stuart H. Singer*

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Attorneys for Carnival Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 19, 2022, the foregoing was filed with the Clerk of Court using CM/ECF, which will serve a Notice of Electronic Filing on all counsel of record.

By: /s/ *Stuart H. Singer*
Stuart H. Singer

CARNIVAL'S MOTION FOR SUMMARY JUDGMENT

Hearing on Continued to January 18, 2022
2:00 p.m.

Carnival's Specific License Application

Exhibit 18 to Carnival's Individual SUMF, ECF No. 326

CONFIDENTIAL

CARNIVAL
CORPORATION

ARNALDO PEREZ
Senior Vice President and General Counsel

CONFIDENTIAL – FOIA EXEMPT

BY ELECTRONIC SUBMISSION AND HAND DELIVERY

John Smith
Acting Director, Office of Foreign Assets Control
Attn: Davin Blackborow, Assistant Director for Licensing
U.S. Department of the Treasury - Second Floor Annex
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

VIA SNAP-R

Bureau of Industry and Security
Attn: Mark Salinas
U.S. Department of Commerce - Room 1099
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20044

June 11, 2015

Re: Supplemental Information Regarding Pending Requests for Authorization to Provide Carrier Services to Authorized Travelers to Cuba (OFAC Case No. CU-2015-319004-1) and to Export Passenger Vessel to Cuba on Temporary Sojourn (Z1449096)

Dear Sirs:

Carnival Corporation & Carnival plc (collectively "Carnival") hereby submit this letter to provide supplemental information in support of the original request for authorization submitted to the Office of Foreign Assets Control ("OFAC") on May 7, 2015, and related request for authorization submitted to the Bureau of Industry and Security ("BIS") on May 15, 2015 in connection with Carnival's proposed provision of carrier services to Cuba by vessel. Carnival has now publicly launched its new brand, Fathom, dedicated to purpose-driven social impact travel with a focus on transformative, holistic impact and long-term sustainable development. Fathom was launched on June 4, 2015 and detailed information regarding the new brand's first destination, the Dominican Republic, is available online at www.fathom.org. The website includes information regarding Fathom's vision and plans to provide passengers meaningful impact travel experiences to work alongside local individuals and

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Carnival Place, 3655 N.W. 87 Avenue, Miami, Florida 33178-2428
Tel: (305) 599-2600 Ext. 18018 Fax: (305) 406-4758 E-mail: aperez@carnival.com

CONFIDENTIAL HavanaDocks_0391163

C. Schedule of Activities

The itinerary for the proposed program, as well as other possible itineraries, is designed around full compliance with the general licenses for travel to Cuba, such as the general license for P2P exchanges. For example, for P2P programs that Carnival would support, each day ashore will be programmed with at least 8 hours of P2P activity for all 740 passengers. Itinerary development will be collaborative with existing operators in the country or through partnerships with other authorized travel services providers, such as a P2P Licensee or General Licensee to ensure proper compliance is programmed and maintained throughout each voyage.

Travelers will have the opportunity to engage in NGO participation with like-minded organizations such as The Nature Conservancy, Kiva, and others working towards progress for the Cuban people.

Please see the list of programs provided in **Attachment B** to this submission for a description of the kinds of guided activities that would be provided both on-shore and on board the vessel. We would be pleased to revise and refine these programs with your input.

D. Compliance Program

Carnival is prepared to implement a rigorous compliance program including the collection of individual passenger affidavits and providing any required attestations regarding non-discrimination that are required by the Treasury Department or other agency of the U.S. Government. Carnival is aware of and prepared to comply with recordkeeping and reporting requirements as outlined in the CACR, 31 C.F.R. § 515.601 and 501.601.

Carnival also plans to provide authorized travelers with information regarding limitations in effect on their travel activities while in Cuba, including prohibitions on investment in Cuban real estate, financial transactions with prohibited members of the Cuban government or Cuban Communist Party, and limitations on imports of Cuban-origin items, including alcohol and tobacco products.

OFAC Awards Carnival a Specific License

Exhibit 23 to Carnival's Individual SUMF, ECF No. 326

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

CUBAN ASSETS CONTROL REGULATIONS **License No. CU-2015-319004-1**

LICENSE

(Granted under the authority of 50 U.S.C. App. 5(b), 22 U.S.C. § 2370(a), 22 U.S.C. § 6001 et. seq., Proclamation 3447, and 31 C.F.R. Parts 501 and 515)

To: Carnival Corporation
c/o Hogan Lovells US LLP
555 13th Street N.W.
Washington, D.C. 20004
Attn: Beth Peters, Esq. and Stephen Propst, Esq.

Carnival's Specific BIS License

Exhibit 22 to Carnival's Individual SUMF, ECF No. 326

Export License
D1020321
Validated: July 01, 2015
Expires: July 31, 2016

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

Unless limited by a condition set forth below, the export, reexport or transfer (in-country) authorized by this license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant is responsible for informing the other parties identified on the license, such as ultimate consignees and end-users, of the license's scope and of the specific conditions applicable to them. BIS has granted this license in reliance on representations the applicant made in the license application, letters of explanation, and other documents submitted.

Applicant Reference Number: CAR0001

APPLICANT: C706087
Carnival Corporation
C/O HOGAN LOVELLS US LLP
555 13TH STREET
WASHINGTON, DC 20004
United States

PURCHASER:

ULTIMATE CONSIGNEE:
Carnival Corporation
Port of Havana
Havana
Cuba

INTERMEDIATE CONSIGNEE:

Excursions Submitted to OFAC & Offered to Passengers

Walking Tour of Old Havana
Description Submitted to OFAC

Ashore in Havana – Day 1

Activity: Old City Walking Experience (Cultural Heritage and Micro-Enterprise Development)
Duration: 3 - 6 hours
Capacity: 10 groups of 25-40 passengers per guide in morning and afternoon (500-800 passengers per day)
Social Impact Opportunity: Connecting to the cultural heritage in Cuba and encouraging economic development and micro-enterprise through a focus on the local entrepreneurs and business leadership community.
Special Features: Havana's Old City is an UNESCO World Heritage Site. Walk lead by a preservationist expert, highlighting how this rich collection of architectural history will be preserved for future generations. Along the way, stop in at local businesses and meet the workers. Six-hour duration will feature lunch in the Old Town at a restaurant featuring traditional Cuban cuisine.

Walking Tour of Old Havana Excursion Offered

OLD HAVANA WALKING TOUR

Minimum Pax per bus: 25
Maximum Pax per bus: 42
Bus Capacity: Unlimited

Timing: Approx 6 Hours
Days Offered Monday
Times Offered: 12:00PM to 6:50PM (Start and End times vary based on disembarkation)

Bienvenidos a Havana!!! Today you'll discover the vibrant flavors, colors, and people of Old Havana on this walking tour with an authentic Cuban lunch at a local restaurant where you will learn about the flavors and cuisine of Cuba.

Built in the 16th Century, Old Havana is a recognized UNESCO World Heritage Site and provides a glimpse into deep and rich history of the city. During the walking tour, you will stop in the four main plazas of Old Havana, each with it's own unique sense of charm. In Plaza Vieja, marvel at the eclectic architecture that has populated this square over the centuries. Built in 1559 the "Old Square" has some of the most beautiful examples of stained glass in Cuba. A great space for engaging with local residents.

Directly across from the port, visit San Francisco de Assisi Square and practice your spanish discussing the role of religion on the island with patrons of the square's beautiful cathedral. Built in 1608, the church stands tall amid the cobblestones in the plaza, and over the years, has been joined by the fountain of lions and a statue of "El Caballero de Paris". Local residents will be happy to explain the stories behind "El Caballero", so take a moment to engage in an enlightening conversation.

In Havana's oldest square once named for the church that formerly stood there, further examples of Cuba's rich history can be found. Originally called Plaza de Iglesia and renamed Plaza de Armas when a 16th century governor began using the square for military practices, it is a perfect place to stumble upon the famous booksellers' market where you can explore literature and antiques with the local merchants. While King Ferdinand VII's statue has been replaced in the palm lined center of the square, the deep Spanish history of the plaza is evident in all of the surrounding buildings.

The newest square in Old Havana is Plaza de Catedral, aptly named for the Catedral de San Cristobal which dominates the plaza. The plaza has recently become home to some of Cuba's artists and entrepreneurs, who have set up shop in the surrounding corridors. During your guided tour of Old Havana, you will stop by Taller Experimental de Gráfica to learn more about how enterprising Cubans are creating cutting edge art techniques using aging technology

Concert and Interaction with Choir Members after Performance Description Submitted to OFAC

Activity: Cuba: A Cappella Today (Cultural Heritage, Music)
Duration: 2.5 hours
Capacity: 1 group of 120 passengers in morning and afternoon (120 -240 passengers per day)
Social Impact Opportunity: Connect with the Artist Entrepreneurs and encourage continued entrepreneurial activity. Offer workshop and brainstorm session for new development opportunities.
Special Feature: Enjoy a choral performance and discussion with a world-renowned a cappella group, the Choir of Cienfuegos. After the performance, enjoy coffee and traditional Cuban desserts as you get to know individuals of the group one-on-one.

Concert and Interaction with Choir Members after Performance Excursion Offered

PEARL OF THE SOUTH FEATURING PRIVATE MUSICAL CONCERT

Minimum Pax per bus: 25
Maximum Pax per bus: 42
Monday/Saturday Bus Capacity: Unlimited

Timing: Approx 4 Hours
Days Offered Thursday
Times Offered: 7:50AM to 11:50AM (Start and End times vary based on disembarkation)

With its remarkable collection of French-influenced Neoclassical buildings, wide seaside boulevards and sparkling bay, it is understandable why Cubans call Cienfuegos "La Perla Del Sur", The Pearl of the South.

Spend the day walking the streets of Cienfuegos passing through downtown, which has been designated as a UNESCO World Heritage Site, and stopover in one of the pharmacies, markets, or local ration stores to understand more about Cuba's dual currency system. Immersive travelers will enjoy the time to discuss the dual currency system and Cuba's rations program with one of the many residents of Cienfuegos

Finished in 1889 to honor Venezuelan industrialist Tomas Terry, the 950-seat auditorium takes its influence from French and Italian architects and is embellished with Carrara marble, hand-carved Cuban hardwoods and whimsical ceiling frescoes. Your morning in Cienfuegos will feature a private performance by a well-known choir, with an opportunity afterwards to hear directly from the musicians about life on the island, their path to this organization and what they are doing to teach and bring music to the lives of others.

Explore Rural Cuban Life and Community with Local Guides
Description Submitted to OFAC

Activity: Rural Cuba (Micro-Enterprise, Community Health + Medical Workshop)
Duration: 6 hours
Capacity: 5 groups of 25-40 passengers per guide per day (125-200 passengers per day)
Social Impact Opportunity: Get to know and support the local Cuban health workers. Support micro-entrepreneurs and answer questions about American techniques, sharing ideas and brainstorming session for future local business opportunities for the Cubans.
Special Features: Visit Las terrazas, a self-sustaining community and UNESCO Biosphere Reserve, surrounded by lush, forested hills. Get a rare glimpse into rural Cuba's medical services at a local clinic. Cross-cultural medical lecture exchange and workshop to share new technologies and findings amongst the American medical community. Sample coffee at Café Maria, where the owner and her family welcome visitors and explain the role of coffee in Cuba's culture. Learn about independent artist Lester Campa's unique paper recycling process at his private studio in this same area.

Explore Rural Cuban Life and Community with Local Guides Excursion Offered

EXPLORING BEYOND HAVANA: LAS TERRAZAS

Minimum Pax per bus: 25
Maximum Pax per bus: 42
Bus Capacity: 2 Buses

Timing: Approx 9 Hours
Days Offered: Tuesday
Times Offered: 8:00AM – 5:10PM (Start and End times vary based on disembarkation)

Outside the city of Havana lies the vast Cuban countryside famed for its production of coffee and sugar. In the 1960s, in an effort to provide basic services to the rural population, Cuba reforested nearly 850 miles of Pinar del Rio and developed the community of Las Terrazas. Recognized as a UNESCO Biosphere reserve, Las Terrazas has become well regarded as an ecotourism hotspot and the home of avocados and mangos the size of footballs, Las Terrazas has provided a sustainable community model for artists, farmers, and families utilizing organic farming and medicine as an approach to modern problems. Travelers looking to understand life outside the comforts of a city will enjoy this immersive experience which includes a welcome cocktail, a tour of the community project and time to meet and interact with local residents, and a visit to the community square to visit a doctor's office and community care center. Travelers will also interact with local artists in their workshops, enjoy a cup of locally grown coffee, and lunch at one of Las Terrazas locally sourced restaurants.

After departing the port of Havana by bus, travelers will be transported via air conditioned motor coach through Cuba's countryside on their way to Las Terrazas. Upon arrival, travelers will be welcomed to the community with a cool refreshing cocktail in the open air bar of Rancho Curujey. Travelers will meet their local guides and learn about the history and current impact of Las Terrazas, before being whisked away to begin their journey through the community of Las Terrazas.

In the community square, travelers will discover the social, cultural and commercial center of the community. Travelers will have the opportunity to learn from the community doctor while enjoying a cup of Maria's world famous coffee. The community square also includes community care centers, where, when available, travelers will be able to see firsthand how residents of this community have invested their energy into ensuring quality of life for both the old and the young.

Travelers will also visit the home and workshop of one of Las Terrazas world renowned artists. Inspired by the incredible nature around them, many artists have found refuge among the millions of trees planted in the region. Discovering for the first time the magic behind Ariel's recycled artwork and Lester Campa's landscapes, travelers will be able to see how the environment has influenced art in Las Terrazas.

Your visit to Pinar Del Rio will include an opportunity to snap photos from the beautiful Buena Vista Point. This incredible vantage point overlooks the Cuban countryside and provides a moment of reflection on your cultural experience in Cuba. Some travelers will appreciate the quiet tranquility of nature while others can participate inclined walk up a hill to the ruins of the Buena Vista Coffee Plantation.

Explore Cuban Art and Artists by taking a "Community Workshop" Description Submitted to OFAC

Activity: Casa Fuster and Fusterlandia (Art + Immersion + Micro-enterprise Development)
Duration: 2 hours
Capacity: 5 groups of 25-40 passengers per guide per day (125-200 passengers per day)
Social Impact Opportunity: Support the arts and understand how art is a vital bridge between people who do not share a common language or history otherwise.
Special Features: Meet famous contemporary Cuban artists Jose Rodriguez Fuster at his studio/residence/wild kingdom on the outskirts of Havana. Through vision and brightly colored mosaic tile, Fuster has transformed his neighborhood into a living art project beyond compare. Fuster will talk about his beginnings 30 years ago and how the art environment has changed over the years and where he sees things going.

Explore Cuban Art and Artists by taking a "Community Workshop" Excursion Offered

The last few decades have seen rise to a number of transformative community projects in Havana, where you will experience firsthand how vision and passion can change a neighborhood. Travelers will spend part of the day visiting local residents committed to community improvement projects. Representative examples include the home of Jose Fuster, who has turned his entire neighborhood into a mosaic maze inspired by the styles of Picasso and Gaudi, or the collective outdoor art exhibit at Muraleando, taking a community workshop on one of Cuba's many traditional art forms, or Cabildo Quisicuaba which promotes community involvement through town hall meetings, social involvement, and preservation of Cuban identity and traditions or Callejon de Hamel which is a comprehensive collection of eclectic traditional and folkloric art decorating a once decrepit alley.

Explore Hemingway's Fishing Village of Cojimar Description Submitted to OFAC

Activity: Hemingway (Literature and Micro-enterprise History)
Duration: 3 hours
Capacity: 10 groups of 25-40 passengers per guide in morning and afternoon (500-800 passengers per day)
Social Impact Opportunity: Understand historic micro-enterprise involvement and help envision new micro-enterprise opportunities for the Cuban people through workshop and brainstorm sessions.
Special Features: See the fishing village of Cojimar, the setting for Ernest Hemingway's book The Old Man and the Sea, and visit Finca Vigía, the mansion where he lived from 1939-1960. Enjoy fresh sugar cane and lemon, pressed in manual presses by locals as it has been done for centuries.

Explore Hemmingway's Fishing Village of Cojimar Excursion Offered

IN HEMINGWAY'S FOOTSTEPS

Minimum Pax per bus: 25
Maximum Pax per bus: 42
Monday/Saturday Bus Capacity: 3 Buses

Timing: Approx 5 Hours
Days Offered Monday
Times Offered: 11:50AM – 5:10PM (Start and End times vary based on disembarkation)

From the cobblestone streets of Old Havana to the shores of Cojimar, the spirit of Papa Hemingway still lingers in the Cuban air. Immortalized in busts and statues, museums and recipes, your imagination will easily reconstruct the beloved Pilar floating in the early morning mist. Follow in Ernest's spirit of adventure as you explore the streets that he once called home.

This ½ day long Hemingway inspired tour of Cuba includes stops at Hemingway's favorite haunts in Havana and Cojimar. Explore Old Havana and the famous El Floridita and La Bodeguita del Medio before traveling to Finca Vigia and Cojimar. Enjoy lunch in Cojimar where travelers will have the opportunity to learn more about the small fishing city that inspired the novel "The Old Man and the Sea".

Beyond Havana lies the small fishing village of Cojimar. Based on Hemingway's time fishing with the locals, in particular, Gregorio Fuentes, Hemingway's writings captured the spirit of Cojimar which remains unchanged since the days of Papa's fishing expeditions. A panoramic tour of Cojimar will pass the fishing docks and statue of Hemingway created by the local fishermen, before stopping for lunch in one of Hemingway's favorite eateries.

Travelers will also visit the home of Ernest Hemingway, La Finca Vigia, which has been preserved in museum fashion. Listed by the US National Trust for Historic Preservation as one of the 11 most endangered historic sites, Finca Vigia was gifted to the Cuban people by Mary Hemingway in honor of her husband and was subsequently turned into a museum in respect for Papa. Filled with hunting and war trophies, writing scraps and inspiration, and the final resting spot of the Pilar, Finca Vigia provides a glimpse into the world of this prolific writer.

People-to-People Regulation

(b) *General license for people-to-people travel.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to educational exchanges not involving academic study pursuant to a degree program are authorized, provided that:

(1) Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities;

(2) Each traveler has a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba;

Havana Club Holding, S.A. v. Galleon S.A.

By Law, OFAC Has Discretion To Issue Licenses And Regulate Foreign Travel

- "Given that the CACR are an **instrument of foreign policy**, OFAC's issuance of or failure to revoke a license rests upon foreign policy considerations and **judgments of the Executive Branch should not be disturbed by the courts**."

Havana Club Holding, S.A. v. Galleon S.A., 961 F.Supp. 498, 503 (S.D.N.Y. 1997)

Costa and Airtours

Claims Concerning Airtours and Costa Are Barred by the Statute of Repose

Title III Contains a Two-Year Statute of Repose

22 U.S.C. § 6084 Limitation of actions:

An action under section 6082 of this title may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.

Statute of Repose v. Statutes of Limitations

- Statutes of **Repose** run from the time that the ***defendant's*** wrongful conduct ***ceases***: "from the date of the last culpable act or omission of the defendant."

  CTS Corp. v. Waldburger, 573 U.S. 1, 7–8 (2014).

- Statutes of **Limitations** run from the time that the ***plaintiff's*** cause of action ***accrues***. *Id.*

The Two-Year Bar Is a Period of Repose

- A statute that "runs from the defendant's last culpable act . . . not from the accrual of the claim . . . is close to a ***dispositive indication*** that the statute is one of repose."

  California Pub. Emp.'s Ret. Sys. v. ANZ Sec., Inc., 137 S. Ct. 2042, 2049 (2017) (emphasis added).

Moreira v. Société Générale

- *Moreira* is the only case to address this issue of law. It holds that § 6084 is a period of repose.
- "Section 6084 is more naturally read to be a statute of repose."

Moreira v. Société Générale, S.A., No. 20-CV-9380, 2021 WL 5524484, at *7–9 (S.D.N.Y. Nov. 24, 2021)

Other indications also show that this is a period of repose

- **Categorical language with no exception:**
  - "[B]y bluntly providing that a trafficking action 'may not be brought' more than two years after a defendant's last culpable act, Section 6084 'admits of no exception and on its face creates a fixed bar against future liability.'"

    Moreira, 2021 WL 5524484, at *7 (quoting *ANZ*, 137 S. Ct. at 2049).

- **Legislative intent:**
  - "[O]ne of Congress's primary purposes in passing the Helms-Burton Act was to strengthen sanctions on the Cuban government by deterring foreign investors from doing business with Cuba. … That goal is better served by a statute of repose, which gives investors an incentive to cease doing business with Cuba by making them 'free from liability after the legislatively determined period of time.'"

    Id. (quoting *CTS,* 573 U.S. at 9).

No Alleged Trafficking from 2002-2015

1996
Carnival obtains a minority of shares of Airtours, a large UK touring company, with a small portion of its business offering cruising to Cuba.

1997
Costa, an Italian cruise company, ends its Cuba cruises upon Carnival's acquisition of nearly 50% of its shares.

2001
Carnival no longer holds any shares of Airtours.

May 1, 2016
The Fathom Adonia sails to Cuba.

1996	1997	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
			No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	No Trafficking Alleged	

A "Continuing Violation" does Not Encompass a 15-Year Cessation

- The Supreme Court requires evidence of "repeated conduct" to find a continuing violation.

  -*Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114–15 (2002)

- The Eleventh Circuit has held that "mere commonality" of the conduct, in that it involved the same property and the same defendant, is not sufficient; instead, there but be a "substantial nexus" between the two wrongs.

  –*Roberts v. Gadsden Mem'l Hosp.*, 835 F.2d 793, 800 (11th Cir. 1988)

- The *Roberts* Court explained: when "two incongruent events are separated by a substantial time hiatus," here, *15 years*, "the hiatus further supports the conclusion that the two incidents were discrete and unrelated." *Id*. at 801.

There is No "Repeated Conduct" and No "Substantial Nexus"

- Carnival's 2016 sailing was not a "continuation" of its minority interest in Airtours.
- Carnival's 20216 sailing was not a "continuation" of Costa's unwinding of its business in Cuba.
- There is no "substantial nexus" connecting the two time periods as required by the Eleventh Circuit.

Airtours plc

Carnival is Entitled to Summary Judgment

I. Costa and Airtours

1. Statute of Repose

II. Airtours:

1. 22 U.S.C. § 6023(13)(B)– Minority Ownership is not Trafficking
2. Plaintiff Cannot Pierce the Corporate Veil

III. Costa:

1. The 1997 OFAC License
2. Carnival Never took on Costa's Liabilities
3. Plaintiff Merely Seeks to Avoid Liability Under the Blocking Statute
4. There was No Disposition of Confiscated Property
5. Plaintiff's Interpretation Contravenes the Purpose of Helms-Burton

Holding a Minority of Securities Is Not Trafficking

The term "traffics" does not include--

i. the delivery of international telecommunication signals to Cuba;

ii. the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

iii. transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

iv. transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

22 U.S.C. § 6023(13)(B).

Carnival is Entitled to Summary Judgment

I. Costa and Airtours

1. Statute of Repose

II. Airtours:

1. 22 U.S.C. § 6023(13)(B)– Minority Ownership is not Trafficking
2. Plaintiff Cannot Pierce the Corporate Veil

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1. The 1997 OFAC License
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Costa Crocerie S.p.A.

Carnival is Entitled to Summary Judgment

I. Costa and Airtours

1. Statute of Repose

II. Airtours:

1. 22 U.S.C. § 6023(13)(B)– Minority Ownership is not Trafficking
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June 11 - Supplemental OFAC Letter

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 11, 2021

Corey Gray, Esq.
BOIES SCHILLER FLEXNER LLP
401 E. Las Olas Blvd. Suite 1200
Fort Lauderdale, FL, 33301

Re: *Havana Docks Corporation v. Carnival Corporation*, 19-cv-21724-X (S.D. Fla.)

Dear Mr. Gray:

This letter supplements our response of March 2, 2021 to your third-party subpoena dated January 4, 2021 (the "subpoena"), issued to the General Counsel of the U.S. Department of the Treasury, in connection with the above-captioned action. As described in our prior response, we understand you agreed to extend the deadline for your subpoena per your email of January 25, 2021 to our office, and subsequent phone conversations of February 8 and 15, 2021.

As outlined in our prior response, the subpoena seeks production of records regarding a license that the Office of Foreign Assets Control (OFAC) issued to Carnival Corporation ("Carnival") in 1997 concerning divestment of Cuban entity interests in relation to Carnival's acquisition of shares in the Italian entity, Costa Crociere S.p.A. ("Costa"), and the divestment of shares in the Cuban entity Silares. In particular, you seek production of the license that OFAC issued to Carnival and any instructions concerning divestment of Cuban entity interests in relation to Carnival's acquisition of shares in the Italian entity, Costa. Alternatively, if a copy of the license is not available, you request production of such documents showing that a license was entered, together with the number of that license. In your February 8, 2021, phone conversation with our office, you requested documents relating to correspondence between OFAC and Carnival in 1997.

We analyzed your request for the production or disclosure of information contained in Treasury documents in legal proceedings pursuant to regulations found at 31 C.F.R. §§ 1.8-1.12 (commonly known as Treasury's *Touhy* regulations, issued in accordance with *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)). Treasury's *Touhy* regulations state that demands for Treasury documents must comply with certain procedural requirements and that agency counsel must consider several enumerated factors in deciding whether to authorize the release of information.

Among the relevant procedural requirements, Treasury's *Touhy* regulations state that a demand for production of documents must be "served in accordance with the ... Federal Rules of Civil Procedure." 31 C.F.R. §§ 1.11(d)(1) and (2). Without waiving any objections available under its *Touhy* regulation or other applicable law or rule, Treasury's Office of the Chief Counsel (Foreign Assets Control) has agreed to waive service of the subpoena.

PLF EXHIBIT
Perez 162

tion, pursuant to Treasury's *Touhy* regulations, agency counsel shall consider a number of in deciding whether to authorize the release of official information, including: whether uest or demand is unduly burdensome; the extent to which the time of employees for ting official business would be compromised; whether the request demonstrates that the ation requested is relevant and material to the action pending, genuinely necessary to the ding, unavailable from other sources, and reasonable in its scope; and whether the number lar requests would have a cumulative effect on the expenditure of agency resources. *See* R. §§ 1.11(e)(1)(i), (iv), (vi), and (vii). A disclosure will ordinarily not be made where onsive information is privileged, would reveal classified information or other matters from unrestricted disclosure, interfere with ongoing enforcement proceedings, reveal the of an intelligence source, disclose trade secrets or other confidential commercial or al information, or compromise the agency's administrative and deliberative processes. *Id.* e)(2). By email dated February 26, 2021, Carnival confirmed that it authorized release of the information pursuant to 18 U.S.C. § 1905.

OFAC conducted a search for records responsive to the subpoena in OFAC's case management system, called OASIS ("OFAC Administrative System for Investigations and Sanctions"), and in historical electronic Cuba licensing records located in the folder of a former Chief of the Cuba Licensing Division. The search was conducted using the following terms: "Carnival" or "C-18621." As a result of its search concerning the license and related instructions described in your subpoena, OFAC located certain information relating to licensing communications that were described in our prior letter of March 2, 2021. In addition, OFAC located other responsive records that are privileged or deliberative materials OFAC generally is not able to disclose under applicable laws and regulations. The responsive information confirmed that OFAC issued Cuba License Number C-18621 to Carnival and the issuance of that license was communicated to Carnival on February 12, 1997. OFAC also conducted a search of its unclassified hard-copy records and was unable to locate the final license or instructions as described in your subpoena because the documents corresponding to the licensing file were transferred to the National Archives and Records Administration and subsequently destroyed, in accordance with the regulation then found in 36 C.F.R. § 1228.170(b) (now found in 36 C.F.R. § 1233.20). The information provided herein was collected and maintained pursuant to the lawful activities of OFAC.

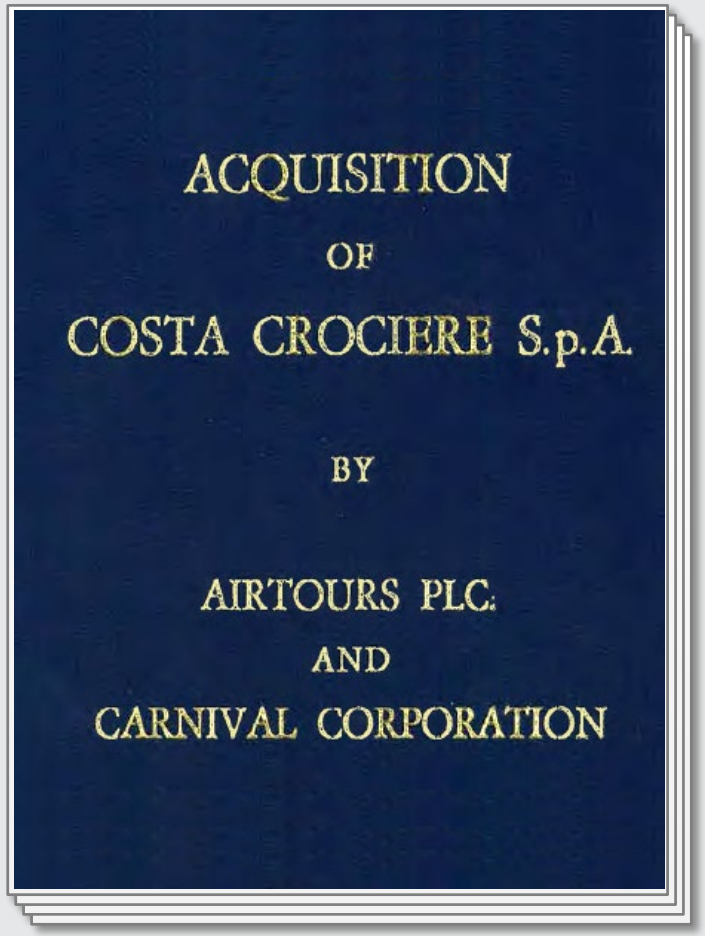
A determination by OFAC to "comply or not to comply with a demand is without prejudice as to any formal assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for noncompliance." 31 C.F.R. § 1.11(d)(3)(iii).

The principal point of contact regarding this matter is Maria van Wagenberg, who may be reached at 202-622-2410. We appreciate your cooperation in this matter.

/s/ Jason E. Prince
Jason E. Prince
Chief Counsel (Foreign Assets Control)
Office of the General Counsel

The responsive information confirmed that OFAC issued Cuba License Number C-18621 to Carnival and the issuance of that license was communicated to Carnival on February 12, 1997.

Costa Share Purchase Agreement

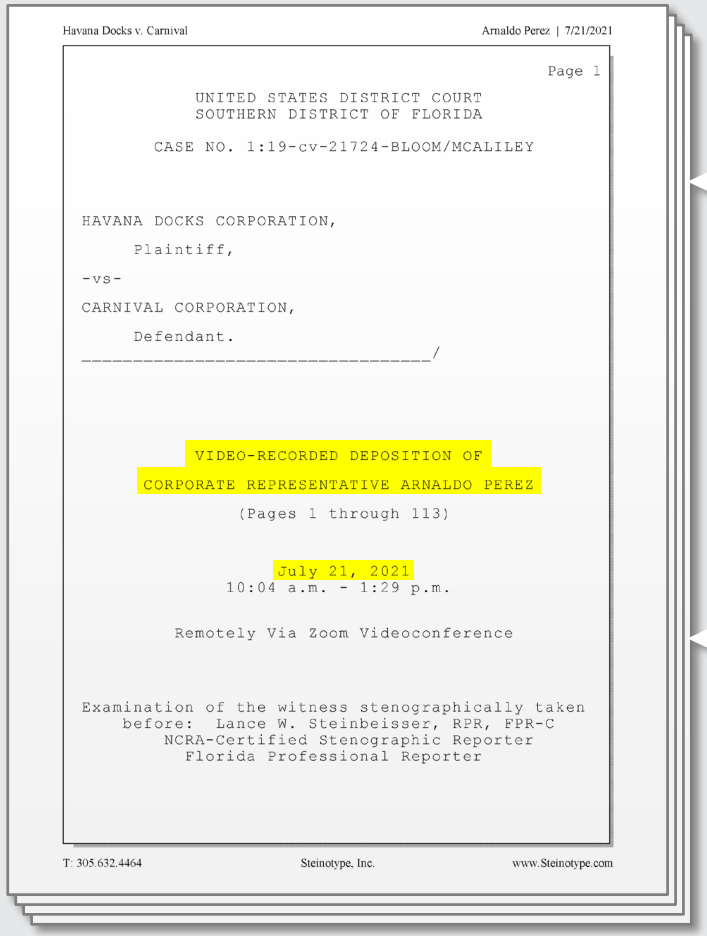


Airtours acknowledges that Carnival has obtained a license from the U.S. government to permit Carnival's acquisition of up to a fifty percent (50%) interest in Costa (the "License"). The License is conditioned upon the abandonment of the Cuba investment by Costa within six months of the closing of the Tender Offer.

Ex. 10, 1997 Costa Purchase Agreement, Sect. 5.4 [HD_0391668]

Deposition of Corporate Representative Arnaldo Perez

July 21, 2021



Havana Docks v. Carnival — Arnaldo Perez | 7/21/2021

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:19-cv-21724-BLOOM/MCALILEY

HAVANA DOCKS CORPORATION,
Plaintiff,
-vs-
CARNIVAL CORPORATION,
Defendant.
_____/

VIDEO-RECORDED DEPOSITION OF
CORPORATE REPRESENTATIVE ARNALDO PEREZ
(Pages 1 through 113)

July 21, 2021
10:04 a.m. - 1:29 p.m.

Remotely Via Zoom Videoconference

Examination of the witness stenographically taken
before: Lance W. Steinbeisser, RPR, FPR-C
NCRA-Certified Stenographic Reporter
Florida Professional Reporter

T: 305.632.4464 — Steinotype, Inc. — www.Steinotype.com

A. Yes. We were permitted to continue the operations but for the purpose of winding it down and completely abandoning/terminating by the end of the six-month period.

74:5-8

A. As I said, the license took into account all the operations of Costa at that time and permitted the continued operations for the purpose of winding down and eliminating them in the enumerated period.

74:22 – 75:1

Carnival is Entitled to Summary Judgment

I. Costa and Airtours

1. Statute of Repose

II. Airtours:

1. 22 U.S.C. § 6023(13)(B)– Minority Ownership is not Trafficking
2. Plaintiff Cannot Pierce the Corporate Veil

III. Costa:

1. The 1997 OFAC License
2. Carnival Never took on Costa's Liabilities
3. Plaintiff Merely Seeks to Avoid Liability Under the Blocking Statute
4. There was No Disposition of Confiscated Property
5. Plaintiff's Interpretation Contravenes the Purpose of Helms-Burton

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The EU Blocking Statute Prohibits Compliance with the Helms-Burton Act

- The European Community ("EC") enacted Council Regulation (EC) No. 2271/96, which prohibits compliance with ". . . any requirement . . . including requests of foreign courts, based on . . . [Helms-Burton] or from actions based thereon or resulting therefrom."
  - Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom, Council Regulation 2271/96, art. 5, 1996 O.J. (L 390) 1 (EC)
- It applies to "***any natural person being a resident*** in the Community and national of a Member State . . . ."
  - *Id.* at, art. 11 n.1, 1996 O.J. (L 390) 1 (EC).

The U.K. and Italy adopted the Blocking State and French Residents are also Subject to the Blocking Statute

- **United Kingdom** - Protecting Against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020, 2018 c.16 (No. 1660) (Legislation reaffirming its adoption *after* Brexit)

- **Italy -** Disposizioni di Carattere Sanzionatorioamministrativo in Attuazione del Regolamento, Decreto Legislativo 26 Agosto 1998, n. 346.

- **France –** RÉGLEMENT (CE) N° 2271/96 DU CONSEIL, du 22 novembre 1996, portant protection contre les effets de l'application extraterritoriale d'une législation adoptée par un pays tiers, ainsi que des actions fondées sur elle ou en découlant (JO L 309 du 29.11.1996, p. 1).

Mr. Behn (+ his family member shareholders) are Subject to the Statute

- Mickael Behn, President, CEO, shareholder, and ***only*** employee of HDC, is subject to the blocking statute as he controls HDC from his home in London.
- Mr. Behn's relatives, the other shareholders, in the South of France are subject to the Blocking Statute.

Mr. Behn would be Personally Liable for bringing an Action against Costa

- Under the EU Blocking Statute, Costa could "recover any damages, including legal costs, caused [] by the application of the [Helms-Burton Act] or by actions based thereon or resulting therefrom."
  - Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom, Council Regulation 2271/96, art. 6, 1996 O.J. (L 390) 1 (EC).

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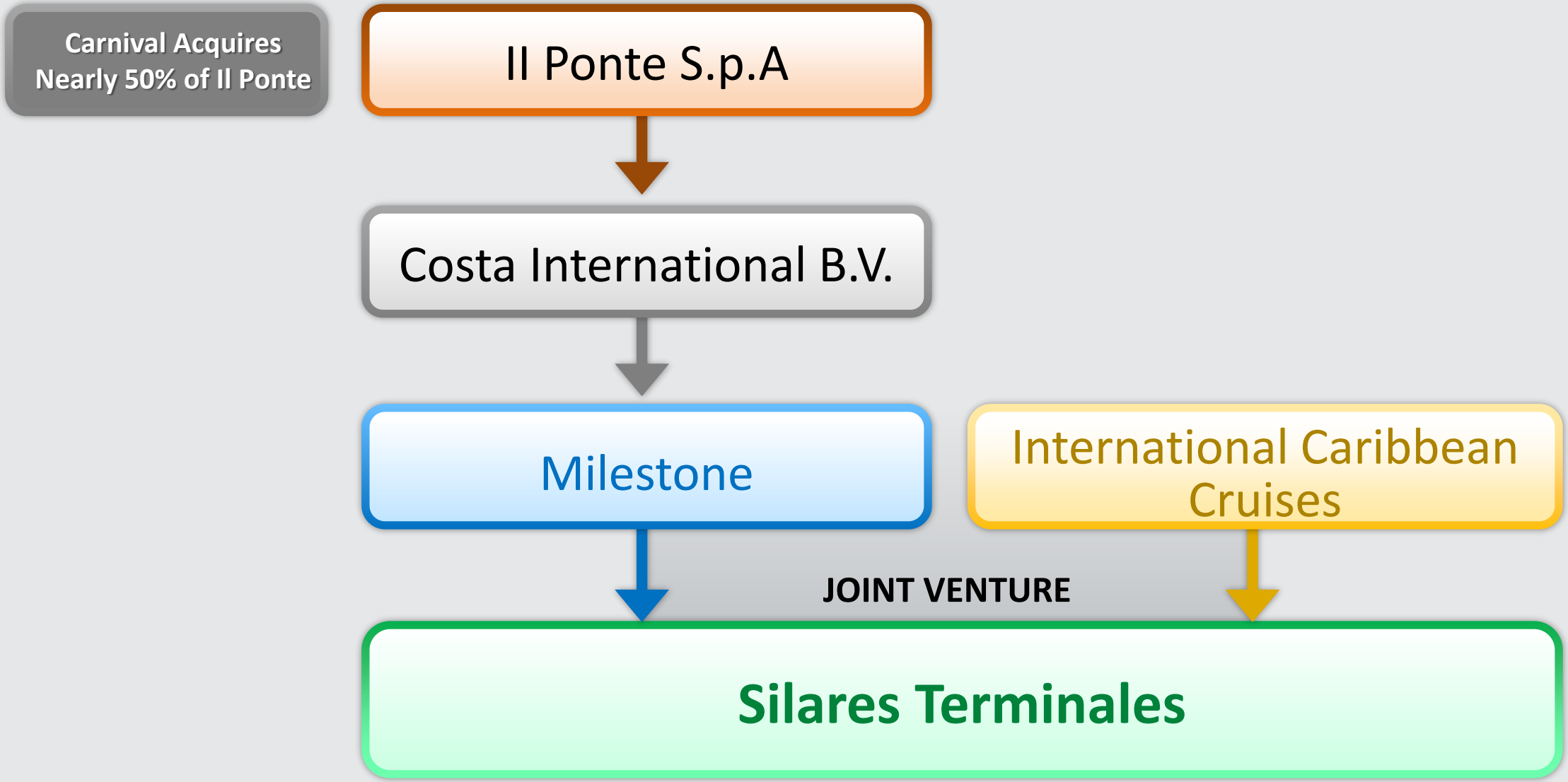
Abandoning an Indirect Interest in Silares is Not the Disposal of Confiscated Property



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Carnival Furthered the Purpose of the Helms-Burton Act

Congress passed the Helms-Burton Act to "reaffirm" the United States policy of "encourag[ing] foreign countries to restrict trade and credit relations with Cuba."

142 Cong. Rec. H1645-02, 142 Cong. Rec. H1645-02, H1656, 1996 WL 90487

Trafficking Definition

A person "traffics" in confiscated property if that person knowingly and intentionally--

i. sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

ii. engages in a commercial activity using or otherwise benefiting from confiscated property, or

iii. causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,

without the authorization of any United States national who holds a claim to the property. 22 U.S.C. § 6023(13)(A).