UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JUAN B. PUJOL MOREIRA, in his personal capacity, and as Personal Representative and Administrator of the ESTATE OF NIEVES PUJOL, a/k/a NIEVES MOREIRA MARTINEZ, MARIA JULIA PUJOL MOREIRA, INÉS MARIA PUJOL FAGET, as Personal Representative and Executor of the ESTATE OF ARCADIO JOAQUIN PUJOL IZQUIERDO, SARA L. PUJOL, as Personal Representative and Administrator of the ESTATE OF LAUREANO PUJOL ROJAS, LUIS R. PUJOL ROJAS, ANA H. FRAGA, LORENZO PÉREZ PUJOL, FRANCISCO PUJOL MENESES, PILAR M. PUJOL MENESES, and RAÚL PUJOL MENESES,

Plaintiffs,

v.

SOCIÉTÉ GÉNÉRALE, S.A. and BNP PARIBAS, S.A.,

Defendants.

Case No. 20 Civ. 9380 (JMF)

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

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INTRODUCTION

In 1960, the Cuban Government directed the state-controlled bank Banco Nacional de Cuba ("BNC") to seize a flourishing bank, Banco Pujol, from members of the Pujol family. BNC continues to possess, manage, and use the property it confiscated from Banco Pujol's rightful owners, and for the past two decades, Defendants Société Générale, S.A. ("SocGen") and BNP Paribas, S.A. ("Paribas") have earned over $1 billion in profits by participating in BNC's exploitation of that property. The rightful owners of Banco Pujol, meanwhile, have never been compensated for the benefits BNC and Defendants derived from the exploitation of that property. Through this suit, the Pujol family seeks their just compensation.

SocGen's and Paribas's conduct constitutes trafficking in confiscated property under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act ("Helms-Burton Act" or "Act"). That statute creates a cause of action against anyone who traffics in confiscated property. *See* 22 U.S.C. § 6082(a)(1). It imposes liability for knowingly and intentionally (i) "us[ing]" confiscated property; (ii) "engag[ing] in a commercial activity using or otherwise benefiting from confiscated property"; and (iii) "participat[ing] in" or "profit[ing] from" trafficking "by another person," without the rightful owner's consent. *Id.* § 6023(13)(A). As the Amended Complaint alleges, SocGen and Paribas violated that prohibition. They, for example, (illegally) profited from BNC's exploitation of the banking enterprise confiscated from the Pujol family. Seeking to escape liability, SocGen and Paribas urge a narrower construction of the statute with no basis in the text.

Other efforts to escape liability fare no better. SocGen and Paribas contend that their trafficking in Banco Pujol did not inflict a cognizable injury in fact on the Banco Pujol's rightful owners. But the continued, uncompensated exploitation of Plaintiffs' property is as much an injury as its initial confiscation. That injury is directly traceable to SocGen's and Paribas's conduct. SocGen and Paribas also invoke the statute's two-year limitations period. But that affirmative

defense cannot be raised at the pleadings stage, and the action is timely regardless. Nor is there any merit to the argument that Banco Pujol must have been owned by U.S. citizens when it was confiscated. The statute imposes no such requirement. Finally, Defendants' arguments about whether certain plaintiffs are the proper parties here lack merit and raise factual questions.

BACKGROUND

I. THE UNITED STATES ENACTS THE HELMS-BURTON ACT IN RESPONSE TO CASTRO

On January 1, 1959, Fidel Castro seized power in Cuba. His new communist regime had two main goals: "to concentrate the means of production in the hands of the Cuban Government and to restrict greatly the role of foreign enterprises in the Cuban economy." *Banco Nacional de Cuba v. Chase Manhattan Bank*, 658 F.2d 875, 878 (2d Cir. 1981). Almost immediately, the regime began "trampl[ing] on the fundamental rights" of individuals by confiscating their property. 22 U.S.C. § 6081(3). In response, the U.S. imposed a near-complete embargo on all commercial, economic, and financial transactions with Cuba. *See Regan v. Wald*, 468 U.S. 222, 225-26 (1984) (explaining the embargo's breadth); *see also* Dkt. 29 ("Am. Compl.") ¶35. The embargo prevented (among other things) financial institutions subject to the jurisdiction of the United States from conducting business involving Cuban parties or property. *See Regan*, 468 U.S. at 225-26; 31 C.F.R. § 515.201(b). The embargo significantly limited Cuba's ability to access international markets. *See Regan*, 468 U.S. at 225-26; Am. Compl. ¶35.

In the mid-1990s, Congress expressed renewed concern over the Cuban Government's "wrongful confiscation" and "exploitation" of property, including property confiscated from "thousands" of Cubans who "later became naturalized citizens of the United States." 22 U.S.C. § 6081(2), (3)(B)(iii). Congress observed that Castro's regime had been circumventing the U.S. embargo by using confiscated property to raise "badly needed" financing and hard, freely convertible currency for international markets. *Id.* § 6081(6). For example, the regime was offering

non-Cubans opportunities to participate in ventures using confiscated property. *Id.* § 6081(5). That not only "undermin[ed]" the U.S. "economic embargo," but also "unjust[ly] enrich[ed]" those using confiscated property at the expense of its rightful owners. *Id.* § 6081(6), (8). "To deter" that "trafficking in wrongfully confiscated property," to strengthen sanctions against Cuba, and to provide victims a judicial remedy, Congress enacted the Helms-Burton Act. *Id.* § 6081(6), (11).

Title III of the Helms-Burton Act provides that "any person 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 for money damages." 22 U.S.C. § 6082(a)(1). For purposes of that title, trafficking includes "knowingly and intentionally" (i) "manag[ing]," "possess[ing]," "obtain[ing] control of," "us[ing]," or "acquir[ing]" an "interest in confiscated property"; (ii) "engag[ing] in a commercial activity using or otherwise benefiting from confiscated property"; or (iii) "caus[ing]," "participat[ing] in, or profit[ing] from" trafficking "by another person" without the consent of the property's rightful owners. *Id.* § 6023(13)(A). A person must be a U.S. national—a U.S. citizen—who "acquire[d] ownership" of a claim to confiscated property before March 12, 1996, to bring an action. *Id.* § 6082(a)(4)(B).

Title III of the Act provides that an action "may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur." 22 U.S.C. § 6084. When Congress enacted Title III, however, it gave the President authority to suspend the right to bring actions. *Id.* §§ 6082(h), 6085(b)-(c). That right was suspended until May 2, 2019. Am. Compl. ¶ 56.

II. THE CUBAN GOVERNMENT CONFISCATES BANCO PUJOL

Founded in 1893, Banco Pujol was a flourishing Cuban bank owned by five cousins of the Pujol family. Am. Compl. ¶ 25. It had 14 branches and a physical presence in three of Cuba's six provinces. *Id.* On December 31, 1958, the day before the Cuban Revolution, Banco Pujol was the seventh largest Cuban-owned bank. *Id.*; *see* Dkt. 29-1 ("Am. Compl. Ex. 1").

After Fidel Castro seized power in Cuba, the Cuban Government began nationalizing both local and foreign banks on the island, absorbing them into the state-controlled entity Banco Nacional de Cuba ("BNC"). Am. Compl. ¶26. Cuban Law Nos. 851 and 891 declared banking a public function and "order[ed] BNC to confiscate all national and international banks in Cuba." *Id.* ¶27. BNC thus became Cuba's sole financial institution with responsibility for conducting or overseeing all monetary policy, commercial banking, borrowing, and lending. *Id.* ¶26. BNC's confiscation of the entire Cuban banking industry was "well known to the international banking community," becoming the subject of numerous cases, high-profile lawsuits, and proceedings. *Id.* ¶27; *see, e.g.*, *First Nat'l City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611, 614 (1983); *Chase Manhattan*, 658 F.2d at 878-79. For example, the Foreign Claims Settlement Commission—a U.S. agency that adjudicates claims against foreign governments—granted relief for claims arising from the Cuban Government's nationalization of banks. Am. Compl. ¶27.

Banco Pujol was among the banks confiscated under Cuban Law Nos. 851 and 891. Am. Compl. ¶¶26-27. On October 14, 1960, it was absorbed into BNC. *Id.* At the time, Banco Pujol controlled $25.1 million in assets, including $10.1 million in loans, $6.4 million in cash, and over $1 million in equity. *Id.* ¶¶25, 28; Am. Compl. Ex. 1. Banco Pujol accounted for about 1.4% of the banking equity BNC confiscated in 1960. Am. Compl. ¶28. BNC immediately began using "Banco Pujol's property (including its banking infrastructure and equity) in its own banking operations." *Id.* ¶¶29, 39, 47. That use continues. *Id.* ¶29. But the Pujol family never received any compensation for the confiscation and exploitation of their property. *Id.*

After Banco Pujol was confiscated, Banco Pujol's owners fled Cuba to the United States and became U.S. citizens. Am. Compl. ¶30. Three of them died in the 1970s and 1980s, leaving their entire interests in Banco Pujol to their heirs. *Id.* Other Banco Pujol owners died in 1990s

and 2000s. *Id.* ¶¶6, 9-10, 30. Their interests in Banco Pujol are part of their estates. *Id.*

III. SOCGEN AND PARIBAS TRAFFIC IN BANCO PUJOL

After Congress enacted the Helms-Burton Act, French banks SocGen and Paribas engaged in thousands of financial transactions with BNC—the Cuban bank holding, managing, and using Banco Pujol property—through their respective New York branches. Am. Compl. ¶¶21-22, 34-49. Those transactions violated the U.S. embargo of Cuba and provided liquidity to BNC in the form of U.S. dollars, allowing BNC and its clients to conduct billions of dollars' worth of international business they would not have otherwise been able to conduct. *Id.* ¶¶35-49. The Amended Complaint alleges that those same transactions—which came to light through criminal investigations into SocGen and Paribas—violate the Helms-Burton Act. *Id.* ¶¶34, 39-40, 47-48.

As SocGen admitted in a deferred-prosecution agreement, SocGen "knowingly and willfully" provided BNC and other Cuban entities access to U.S. dollars and the U.S. financial system in violation of the U.S. embargo. Am. Compl. ¶34; Dkt. 29-2 ("Am. Compl. Ex. 2"). With BNC acting as the counterparty, SocGen opened more than 20 credit facilities denominated in U.S. dollars for the benefit of Cuban entities. Am. Compl. ¶36. SocGen's credit facilities provided those entities access to U.S. dollars—which, in turn, allowed Cuba to import oil, supported Cuba's state-owned airlines, and financed the production and export of Cuban commodities. *Id.* ¶¶35-36. Through those facilities, SocGen earned over $880 million in profits. *Id.* ¶38.

SocGen concealed its Cuba-related transactions from U.S. regulators. Am. Compl. ¶37. In January 2006, SocGen directed another bank to route payments for a Cuban credit facility through SocGen's New York branch " 'without including any mention or reference to Cuba, any Cuban entity or to the Caribbean, either in the correspondence (electronic, paper or fax), the SWIFT messages or the fund transfer SWIFTS.' " *Id.* (quoting Am. Compl. Ex. 2 ¶36). Similarly, in July 2002, SocGen described the measures it would take to conceal that the credit facilities were

for Cuban entities:

> We are going to receive transfer orders in USD in favor of certain suppliers in non-Cuban banks. In this case, the USD transfer must not in any case mention the name of the [the joint venture] or its country of origin, Cuba. The clearing will indeed be carried out in NY. I have explicitly asked [the joint venture] to write on its transfer request the instructions to be included.

Id. (quoting Am. Compl. Ex. 2 ¶15) (alterations in original). SocGen's deferred prosecution agreement was not publicly announced until November 19, 2018. *Id.* ¶58.

Like SocGen, Paribas admitted in a criminal plea agreement to "conspir[ing] with numerous Cuban banks" to evade U.S. economic sanctions that restrict BNC's (and other sanctioned entities') access to critical U.S. dollars. Am. Compl. ¶42 (quoting Dkt. 29-3 ("Am. Compl. Ex. 3") ¶¶14, 49). As Paribas's guilty plea explains, from at least 2000 to 2010, Paribas offered U.S. dollar financing to Cuban entities. *Id.* ¶43. Most of the financing was provided through eight credit facilities operated with the involvement of Cuban banks, including BNC. *Id.* Paribas also opened U.S. dollar accounts with Cuban banks to give them access to U.S. dollars. *Id*. For its activities with BNC, Paribas earned "significant profits." *Id.* ¶46.

Paribas, too, went to great lengths to conceal its illicit activities with Cuba. Am. Compl. ¶45. In an April 2000 credit application, Paribas acknowledged the "'risk linked to the American embargo' and explained that the risk had been 'resolved' through the use of a 'fronting' structure that layered the U.S. dollar transactions using accounts at a different French bank . . . and concealed the involvement of Cuban entities." *Id.* (quoting Am. Compl. Ex. 3 ¶¶53-54). Similarly, in January 2006, a Paribas employee wrote: "'I think we need to point out to [French Bank 1] that they should not mention CUBA in their transfer order.'" *Id.* (quoting Am. Compl. Ex. 3 ¶54 (alteration in original)). Another employee responded that French Bank 1 "'knows very well that Cuba or any other Cuban theme must not be mentioned in the transfer orders and I reminded them about this over the phone this morning.'" *Id.* (quoting Am. Compl. Ex. 3 ¶54).

After SocGen and Paribas were caught, they did not stop providing credit facilities to BNC. Am. Compl. ¶59. They instead switched from using U.S. dollars to other currencies. *Id.*

IV. THE CLAIMS AGAINST SOCGEN AND PARIBAS FOR TRAFFICKING

On May 2, 2019, President Trump lifted the "suspension period" that had held all Helms-Burton claims in abeyance since the Act's effective date. Am. Compl. ¶57. On November 9, 2020, claimants to Banco Pujol brought this action against SocGen and Paribas for trafficking in Banco Pujol property. *Id.* ¶¶34, 59. The complaint was amended on February 26, 2021. Dkt. 29.

The Amended Complaint alleges that SocGen and Paribas violated the Helms-Burton Act by knowingly and intentionally "'participat[ing] in'" and "'profit[ing] from'" trafficking by BNC. Am. Compl. ¶¶39-40, 47-48 (quoting 22 U.S.C. §6023(13)(A)(iii)). BNC is a known trafficker. *Id.* A public law directed BNC to confiscate Banco Pujol, and BNC has held, possessed, managed, and used the Banco Pujol enterprise ever since. *Id.* ¶¶29, 39-40, 47-48. It also has engaged in commercial banking activities benefitting from and using that confiscated property. *Id.* Since at least 2004, SocGen and Paribas have participated in and profited from BNC's trafficking in confiscated Banco Pujol property. *Id.* ¶¶34, 39-40, 47-48. They have aided the banking operations of a known trafficker by providing BNC with access to U.S. dollar credit facilities that BNC by itself could not provide to clients or access. *Id.* Together, SocGen and Paribas earned more than $1 billion in profit through their activities with BNC. *Id.* ¶4.

The Amended Complaint also alleges that SocGen and Paribas violated the Helms-Burton Act by knowingly and intentionally "engag[ing] in" "commercial activit[ies]" that "use[d]" and "benefit[ed]" from confiscated Banco Pujol property. Am. Compl. ¶¶34, 39-40, 47-48 (quoting 22 U.S.C. §6023(13)(A)(ii)). Their credit facilities used or benefited from confiscated Banco Pujol property. *Id.* That property, for instance, made BNC a more stable, less risky, and more desirable counterparty, potentially allowing for "more substantial loans, more favorable terms, or

greater profitability." *Id.* Defendants' trafficking is alleged to be ongoing. *Id.* ¶¶ 54, 58.

Defendants filed a joint motion to dismiss. Dkt. 40. This opposition timely follows.

ARGUMENT

On a motion to dismiss, courts must "accept as true all well-pled factual allegations in the complaint" and draw "all reasonable inferences in favor of the plaintiff." *Fed. Defs. of N.Y., Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 125 (2d Cir. 2020). Those allegations and inferences need only establish that the claim to relief "'is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). That standard is amply satisfied here. Well-pleaded facts plausibly establish that Plaintiffs have suffered constitutionally cognizable injuries that are fairly traceable to Defendants' trafficking in Banco Pujol property; that Defendants' conduct constitutes trafficking under the Helms-Burton Act; and that the Act's other requirements are satisfied.[1]

I. PLAINTIFFS HAVE ARTICLE III STANDING TO BRING SUIT

Standing under Article III of the U.S. Constitution requires the plaintiff to have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Defendants' motion rests on the erroneous premise that the sole cognizable injury in this case was the initial seizure of Banco Pujol. Dkt. 41 ("MTD") 2-3, 10. That is one injury. But Plaintiffs also suffer injuries when others use, exploit, and derive benefits from their confiscated property, without their permission and without compensating them for the

[1] To the extent the Court rules that any allegations are lacking, Plaintiffs respectfully request leave to amend. Rule 15 states that courts "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). That permissive standard reflects a "'strong preference for resolving disputes on the merits.'" *Williams v. Citigroup Inc.*, 659 F.3d 208, 212-13 (2d Cir. 2011). "'The rule in this Circuit has been to allow a party to amend its pleadings in the absence of a showing . . . of prejudice or bad faith.'" *Pasternack v. Shrader*, 863 F.3d 162, 174 (2d Cir. 2017). Defendants do not even try to make that required showing.

property's use. Defendants thus miss the point in arguing that any injuries are not fairly traceable to them because they did not confiscate Banco Pujol. *See id.* 3, 10-11. They ignore the injuries Plaintiffs suffer from the exploitation of their confiscated property without their consent and without affording them compensation—injuries directly traceable to Defendants.

A. Plaintiffs' Injuries Are Fairly Traceable to Defendants' Trafficking

1. *Defendants' Trafficking Inflicts a Cognizable Injury*

Plaintiffs of course suffered a cognizable injury when the Cuban Government wrongfully confiscated their property. *See* Am. Compl. ¶¶25-29. But they also suffer injuries from the wrongful exploitation of that property by, and with the participation of, Defendants, without Plaintiffs' consent and without affording them compensation. *Id.* ¶¶29, 34-39. Defendants pretend that second injury does not exist. *See* MTD 2-3. But it is an injury in fact. It is an "invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." *Spokeo*, 136 S. Ct. at 1548. As several recent decisions have held, "the subsequent unjust enrichment and economic exploitation of [confiscated] property by foreign investors at the expense of the rightful owners" constitutes a distinct, cognizable injury in fact. *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724, 2020 WL 5517590, at *7 (S.D. Fla. Sept. 14, 2020); *see also Glen v. Trip Advisor LLC*, No. 19-cv-1809, 2021 WL 1200577, at *6-7 (D. Del. Mar. 30, 2021) ("*Trip Advisor*"); *Havana Docks Corp. v. MSC Cruises SA Co.*, No. 19-cv-23588, 2020 WL 5367318, at *8 (S.D. Fla. Sept. 8, 2020); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, 2020 WL 5217218, at *6 (S.D. Fla. Sept. 1, 2020); Order at 16-18, Dkt. 55, *Cueto v. Pernod Ricard*, No. 20-cv-20157 (S.D. Fla. Aug. 17, 2020).

Those holdings find ample support in both "history and the judgment of Congress." *Spokeo*, 136 S. Ct. at 1549. Under traditional common-law principles, a "person who obtains a benefit" by interfering with another person's property interests is "liable in restitution to the victim."

Restatement (Third) of Restitution and Unjust Enrichment § 40 (2011); *see id.* § 53 (also liable for profits, rents, and consequential gains). Thus, if someone uses another person's property without authorization, that person "is liable to [the o]wner in restitution for the benefit wrongfully obtained." *Id.* § 53 illus. 1 (equipment operator who uses a crane without authorization must pay the owner rent even if the operator is not liable for conversion). Moreover, "all who aid, command, advise, or countenance the commission of a tort by another, or who approve of it after it is done, are liable, if [it was] done for their benefit, in the same manner as if they had done the tort with their own hands." 2 Francis Hilliard, *The Law of Torts or Private Wrongs* 442 (1859); *see* 7 Stuart M. Speiser et al., *American Law of Torts* § 24:8 (2020) ("a person may be liable for assisting another in a conversion even though acting innocently"). It is well within the common-law tradition to hold that persons who use confiscated property or participate in such trafficking, without the rightful owners' consent and without paying for that exploitation, harm the rightful owners.

Congress's judgments confirm as much. As the Supreme Court has repeatedly held, Congress "'has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.'" *Spokeo*, 136 S. Ct. at 1549; *see also Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). Congress's exercise of that power in the Helms-Burton Act removes any doubt that trafficking inflicts cognizable injuries in fact. *See Trip Advisor*, 2021 WL 1200577, at *6 ("Congress provided the rightful owners . . . with the right to be compensated from those who have economically exploited the[ir] properties"). The Act recognizes that both the "wrongful confiscation" of property and its "subsequent exploitation" harm the property's rightful owner. 22 U.S.C. § 6081(1)-(2). Thus, Congress created a cause of action against persons who "traffic[]" in property ***after*** its confiscation, such as against persons who later "acquire[]" confiscated property, "use[]" it, or "engage[] in a commercial activity . . . benefiting from

confiscated property." *Id.* §§ 6023(13)(A)(i)-(ii), 6082(a)(1)(A). Congress, moreover, recognized that traffickers may harm the rightful owners of confiscated property even if traffickers do not make direct use of that property. That is why Congress also imposed liability on persons who do not use confiscated property but "participate[ ] in" or "profit[ ] from . . . another person['s]" trafficking. *Id.* § 6023(13)(A)(iii). That confirms any participation in using or exploiting confiscated property without the rightful owner's consent harms the owner.

2. *Plaintiffs' Injuries Are Fairly Traceable to Defendants' Conduct*

Given Plaintiffs' injuries are associated with the wrongful exploitation of their confiscated property, those injuries are fairly traceable to Defendants' conduct. An injury is "fairly traceable" if there is a "causal connection" between the defendant's conduct and the injury. *Carter v. HealthPort Techs., LLC*, 822 F.3d 47, 55, 59 (2d Cir. 2016). That standard is not "onerous," and is "lower than that of proximate causation." *Id.* at 55. Ordinarily, courts " 'recognize standing' " whenever " 'the defendants have engaged in conduct that ***may have contributed*** to causing the injury.' " *Nat. Res. Def. Council, Inc. v. U.S. Food & Drug Admin.*, 710 F.3d 71, 85 (2d Cir. 2013), as amended (Mar. 21, 2013) (emphasis added). That is true even if conduct "injures a plaintiff . . . indirectly, after intervening conduct by another person." *Carter*, 822 F.3d at 55-56. At the pleading stage, the "fairly traceable" standard imposes a "relatively modest" burden. *Bennett v. Spear*, 520 U.S. 154, 171 (1997).

Plaintiffs meet that burden. As the Amended Complaint explains, SocGen and Paribas extended credit facilities to BNC that "use[d]" and "benefit[ed] from" confiscated Banco Pujol property. Am. Compl. ¶¶ 39-40, 47-48. That uncompensated exploitation of Plaintiffs' property is fairly traceable—indeed, directly traceable—to Defendants. Defendants also "participate[d] in" and "profit[ed] from" BNC's "use[ ]," "manage[ment]," and operation of confiscated property. *Id.* Defendants' credit facilities enabled BNC to further exploit a confiscated banking enterprise by

providing BNC with "U.S. dollar credit facilities . . . that BNC by itself could not provide" to its clients "or access." *Id.* ¶¶39-40, 44, 47-48, 52. In short, Defendants "contributed to causing" the injuries that BNC inflicted through its trafficking. *Nat. Res. Def. Council*, 710 F.3d at 85.

While the case law interpreting the Helms-Burton Act is not exhaustive, courts considering this issue have reached this common-sense conclusion. Several decisions recognize "there exists a causal link between a [Helms-Burton] claimant's injury" and a "trafficker's unjust enrichment from its use of that confiscated property." *Carnival*, 2020 WL 5517590, at *9; *see also Trip Advisor*, 2021 WL 1200577, at *7; *MSC Cruises*, 2020 WL 5367318, at *8; *Norwegian Cruise*, 2020 WL 5217218, at *8. "[A]ny argument" that a plaintiff's injuries were caused only by the Cuban Government "falls short." *Carnival*, 2020 WL 5517590, at *10. Moreover, in enacting the Helms-Burton Act, Congress recognized that even a person who "participates in" or "profits from" another person's trafficking contributes to a plaintiff's injuries. 22 U.S.C. §6023(13)(A)(iii). "Congress did not intend for the causal link to stop at the Cuban government's confiscation." *Trip Advisor*, 2021 WL 1200577, at *7. That judgment is "instructive and important," especially as Congress may "'articulate chains of causation that will give rise to a case or controversy where none existed before.'" *Spokeo*, 136 S. Ct. at 1549.

Simply put, Defendants have no right to exploit or benefit from Plaintiffs' property without their consent and without compensating them. Accordingly, the injury suffered when Defendants did so is directly traceable to Defendants' conduct.

B. Defendants' Contrary Arguments Lack Merit

In arguing that any injury is not traceable to them, MTD 9-11, Defendants ignore the injuries stemming from the exploitation of Plaintiffs' property. They assert that the "only" injury Plaintiffs suffered was "the confiscation of [their] property by the Cuban Government" and hence that Plaintiffs' injuries would not be any different absent Defendants' conduct. *Id.* at 2-3, 10-11

(emphasis omitted). Were that so, there would be no need for a separate claim based on trafficking. Congress determined that trafficking in confiscated property inflicts a distinct, cognizable injury. Defendants overlook the similarities between the injuries Plaintiffs suffered here and ones long recognized at common law. And they ignore the injuries actually pleaded. As explained above (pp. 9-11, *supra*), Plaintiffs' injuries did not end with the confiscation of their property. They continue in a slightly different but equally real form through Defendants' conduct. Plaintiffs' injuries thus are not solely due to the "'independent action of some third party not before the court.'" MTD 9-10. They are directly traceable to Defendants.

Defendants assert that trafficking in confiscated property constitutes a bare "statutory violation." MTD 11-12. As other decisions have held, however, the exploitation of confiscated property deprives its rightful owners of "the benefit of [their property] interest." *Carnival*, 2020 WL 5517590, at *7, *12 & n.4; *see also Trip Advisor*, 2021 WL 1200577, at *6; *MSC Cruises*, 2020 WL 5367318, at *6; *Norwegian Cruise*, 2020 WL 5217218, at *6. Those holdings are consistent with the common-law tradition that the rightful owners of property are entitled to any rents, profits, or benefits derived from its wrongful use. *See, e.g.*, *Restatement (Third) of Restitution and Unjust Enrichment* § 53. Federal courts, moreover, have long recognized that plaintiffs have standing to sue for profits made or benefits gained from the wrongful exploitation of property. *See, e.g.*, *Gollust v. Mendell*, 501 U.S. 115, 121-122, 125-127 (1991) (standing to sue for disgorgement of profits); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 n.11 (1978) ("additional exploitation" of subpoenaed tapes constituted an "injury in fact" beyond the tapes' initial release). The property-related harms asserted here bear no resemblance to "bare procedural violation[s], divorced from any concrete harm." *Spokeo*, 136 S. Ct. at 1549.[2]

[2] *Spokeo* recognized that legal violations (including of procedural rights) "can be sufficient in some

Glen v. American Airlines, Inc., No. 20-cv-482, 2020 WL 4464665 (N.D. Tex. Aug. 3, 2020) (cited MTD 11-12), does not change this result. That decision held a plaintiff asserting a Helms-Burton claim against websites that allowed travelers to book reservations at hotels built on confiscated property had "not pleaded . . . an injury in fact." 2020 WL 4464665, at *2. But the decision did not give any weight to the factors—history and the judgment of Congress—*Spokeo* deemed "instructive." 136 S. Ct. 1549. Every other court to consider *Glen*'s reasoning—including a court in another action by the same plaintiff—has accordingly rejected it. *See Trip Advisor*, 2021 WL 1200577, at *6-*7; *Carnival*, 2020 WL 5517590, at *8; *MSC Cruises*, 2020 WL 5367318, at *7; *Norwegian Cruise*, 2020 WL 5217218, at *7.

II. THE AMENDED COMPLAINT PLAUSIBLY ALLEGES THAT SOCGEN AND PARIBAS TRAFFICKED IN PLAINTIFFS' CONFISCATED PROPERTY

The Helms-Burton Act makes "any person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, . . . liable to any United States national who owns the claim to such property for money damages." 22 U.S.C. § 6082(a)(1)(A). As the Amended Complaint alleges, Defendants trafficked in property confiscated from the Pujol family. Their efforts to manipulate the plain meaning of the statute to avoid liability fail.

A. Defendants Trafficked in Property Confiscated from the Pujol Family

1. *The Broad Definition of "Traffics" Embraces Defendants' Conduct*

The Helms-Burton Act defines "traffics" broadly. That term encompasses "knowingly and

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circumstances to constitute injury in fact" without proof of further harm. 136 S. Ct. at 1549; *see also Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 799 (2021) (explaining the "common law inferred damages whenever a legal right was violated"). Retaining or helping another party to retain benefits from the wrongful use of property necessarily inflicts injury. Although Defendants claim they did not keep "income" to which Plaintiffs were entitled, MTD 11 n.4, they have no answer for the fact that participating in someone else's commission of a property tort is alone a traditional basis for liability. *See* pp. 9-10, *supra*. Besides, Defendants ignore allegations that Defendants' credit facilities reaped a benefit from Plaintiffs' property. Am. Compl. ¶¶34, 39-40, 47-48.

intentionally" engaging in a wide range of activities without the rightful property owner's authorization. 22 U.S.C. § 6023(13)(A). Activities that constitute trafficking include "receiv[ing], possess[ing], obtain[ing] control of, manag[ing], us[ing], or otherwise acquir[ing] or hold[ing] an interest in confiscated property," *id.* § 6023(13)(A)(i), as well as "engag[ing] in a commercial activity" that "us[es] or otherwise benefit[s] from confiscated property," *id.* § 6023(13)(A)(ii). Anyone who "causes, directs, participates in, or profits from" trafficking "by another person" commits trafficking as well. *Id.* § 6023(13)(A)(iii).

That definition does not require that the trafficking concern "only" a claimant's "specific 'interest in property.'" *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 454 F. Supp. 3d 1259, 1277 (S.D. Fla. 2020). "[N]otably absent" is a requirement that trafficking concern the claimant's particular property interest. *Id.* Rather, any knowing and intentional prohibited exploitation of confiscated property (or participation in it) renders a defendant a trafficker subject to suit by claimants to that property. *Id.*; *see also Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 19-cv-23590, 2020 WL 1905219, at *10 (S.D. Fla. Apr. 17, 2020).

The expansive definition of trafficking reflects Congress's profound concerns regarding the "wrongful confiscation" and "exploitation" of property in Cuba. 22 U.S.C. § 6081(2), (11); *see id.* § 6022(6). The Cuban Government, Congress explained, had "trampled on the fundamental rights" of thousands of Cubans who "later became nationalized [U.S.] citizens" by taking their property. *Id.* § 6081(3). Many non-Cubans also had unjustly "profit[ed] from . . . Castro's wrongful seizures," such as by entering "into joint ventures using [confiscated] property and assets." *Id.* § 6081(5), (11). That "trafficking" provided the Cuban Government with "badly needed financial benefit," "undermin[ing]" U.S. efforts "to bring democratic institutions to Cuba through the pressure of a general economic embargo." *Id.* § 6081(6). Congress thus adopted a

definition calibrated to provide redress to victims and halt further trafficking. *Id.* § 6081(8), (11).

In doing so, Congress understood that the legislation could have far-reaching effects. Critics of the legislation observed that "'any person, corporation or state entity engaging in trade and investment in Cuba is likely to be "trafficking" with stolen property—since, by definition, virtually all economic activity in Cuba is based on confiscated property.'" 142 Cong. Rec. 3584 (Mar. 5, 1996); *see id.* at 3576 ("'It will also permit lawsuits in American courts against . . . foreign companies whose Cuban investments involve the use of expropriated property—a category broad enough to include virtually every activity in Cuba.'"). But Congress refused to dilute the broad definition of "traffics." Congress chose to carve out only a few, discrete activities (*e.g.*, providing services necessary for lawful travel to Cuba) from that definition. *See* 22 U.S.C. § 6023(13)(B).

The Amended Complaint plausibly alleges Defendants violated that prohibition against trafficking. First, Defendants "participate[d] in" and "profit[ed] from" trafficking "by another person." 22 U.S.C. § 6023(13)(A)(iii). It is undisputed that BNC has trafficked in property confiscated from Plaintiffs. Am. Compl. ¶¶ 27, 29, 39, 47. BNC, for example, has "'use[d]' Banco Pujol's property (including its banking infrastructure and equity) in [BNC's] own banking operations." *Id.* ¶¶ 39, 47. Defendants, in turn, participated in and profited from BNC's operation and exploitation of its confiscated banking business, earning over $1 billion in profits. *Id.* ¶¶ 4, 35-49. They extended to BNC "U.S. dollar credit facilities" needed for international transactions "that BNC by itself could not" access or "provide" to clients. *Id.* ¶¶ 39, 47; *see id.* ¶¶ 36-38, 42-44.

Second, by extending those credit facilities to BNC, Defendants "engage[d] in a commercial activity" with BNC that "use[d]" or "benefit[ed] from" confiscated Banco Pujol property. 22 U.S.C. § 6023(13)(A)(i), (ii). As the Amended Complaint explains, BNC uses infrastructure, assets, and other property confiscated from Banco Pujol (another bank) to conduct

banking operations. Am. Compl. ¶¶39-40, 47-48. That supports an inference that the inter-bank transactions Defendants conducted with BNC used confiscated Banco Pujol property. *Id.* Banco Pujol's confiscated property also benefited Defendants' credit facilities in other ways. *Id.* BNC obtained assets and about 1.3% of its equity from Banco Pujol. *Id.* ¶¶28, 40, 48. The confiscation of Banco Pujol thus made BNC a "more stable, less risky, and more desirable counterparty," lowering the credit facilities' risk and possibly affecting their size or terms. *Id.* ¶¶40, 48.

2. *Defendants' Efforts To Avoid the Definition of "Traffics" Fail*

Defendants cannot explain how the allegations here are insufficient. The Amended Complaint plausibly alleges that BNC traffics in confiscated property—BNC received confiscated Banco Pujol property, acquired an interest in it, and uses it to provide banking services. Am. Compl. ¶¶26, 39-40, 47-48. Defendants nowhere dispute that. Nor do they dispute that the Amended Complaint plausibly alleges they participated in and profited from BNC's provision of banking services. Defendants admitted as much in deferred prosecution and plea agreements. That renders Defendants traffickers too. They all but ignore that the Helms-Burton Act defines trafficking to include "participat[ing] in, or profit[ing] from, trafficking . . . by another person," here BNC. 22 U.S.C. § 6023(13)(A)(iii). Defendants also do not deny that the Amended Complaint plausibly alleges their credit facilities benefited from BNC's seizure of Banco Pujol, which rendered BNC a more desirable counterparty and gave them additional security. That, too, renders them traffickers. Defendants' efforts to rewrite the statute fall short.

a. *Defendants' Efforts To Change the Subject Fail*

Defendants argue at length that dismissal is required because the Helms-Burton Act does not "bar the conduct of any business in and with Cuba." MTD 23. That is beside the point. Plaintiffs are not seeking to hold Defendants liable for "merely do[ing] business with an arm of the Cuban Government" (MTD 20) but for profiting from BNC's exploitation of property

confiscated ***from the Pujol family*** and for engaging in activities benefiting from ***their property***. As explained above, the Amended Complaint specifically alleges that Defendants trafficked in "property confiscated ***from Banco Pujol***." Am. Compl. ¶¶39-40, 47-48 (emphasis added). Those allegations are not "boilerplate" (MTD 21) but rest on Defendants' specific transactions with BNC.

Defendants complain about being held liable under the Act for conduct that violated other statutes prohibiting them from doing various types of business in Cuba. MTD 23. But Defendants identify no conflict between the Act and other statutes curtailing business with Cuba. To the contrary, Defendants recognize that Congress enacted the Helms-Burton Act because other laws did not provide "fully effective remedies . . . for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners." 22 U.S.C. § 6081(8); *see also* MTD 23 n.11 (other laws provide "no private right of action"). "[S]o long as there is no 'positive repugnancy' between two laws, a court must give effect to both." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992) (internal citation omitted). Defendants cannot escape civil liability for trafficking in Plaintiffs' property by pointing out that their conduct also violated U.S. criminal laws prohibiting them from lending U.S. dollars to BNC.

b. *The Statute Precludes Defendants' Strained Interpretation*

Defendants also insist that the Amended Complaint fails to state a claim because ***they*** did not "use[] or benefit[] from the particular property claimed by Plaintiffs." MTD 18 (emphasis omitted). That is incorrect. As an initial matter, the Amended Complaint does allege Defendants benefited from the confiscation of Banco Pujol, enjoying greater security and profiting from BNC's use of that property. Am. Compl. ¶¶39-40, 47-48; *see also* pp. 16-17, *supra*. More fundamentally, however, Defendants misapprehend what constitutes trafficking. Trafficking includes—but does not require—the actual "use[]" of confiscated property ***by a defendant***. 22 U.S.C. § 6023(13)(A)(i). Persons also commit trafficking when they "engage in a commercial activity

using or benefiting from confiscated property." *Id.* § 6023(13)(A)(ii). That language focuses on whether the commercial activity—not the defendant—used or benefited from confiscated property. And the statute further provides that trafficking includes "participat[ing] in" or "profit[ing] from" trafficking "***by another person***." *Id.* § 6023(13)(A)(iii) (emphasis added). The statute is clear that persons can engage in trafficking even if they did not use or benefit from the confiscated property.

Although Defendants argue for a narrower definition based on "statutory findings" and "legislative history," MTD 19-20, 23-25, those cannot justify their atextual view of trafficking. Legislative history and statutory findings provide no warrant to disregard "'clear statutory language.'" *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1814 (2019). Although Congress offered examples of trafficking in legislative debates that involved the actual use of confiscated property, it "'chose to enact a more general statute'" that "'was not limited in application.'" *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 260 (1994). Congress, moreover, considered—and rejected—Defendants' policy concerns (MTD 21) about a broad definition. It declined to narrow the law based on concerns that anyone "'engaging in trade and investment in Cuba is likely to be "trafficking" with stolen property.'" 142 Cong. Rec. 3584 (Mar. 5, 1996); *see* pp. 15-16, *supra*. The statute forecloses Defendants' view that trafficking requires "the actual and meaningful use" of confiscated property "***by the defendant***." MTD 24 (emphasis added).

c. *Defendants' Factual Arguments Lack Merit*

Defendants fall back on arguing that it is not plausible to allege that their transactions "used . . . property confiscated from the [Pujol family] decades earlier." MTD 22. But Defendants overlook that BNC absorbed Banco Pujol in its entirety—including its "assets," "infrastructure," and "equity"—and used that confiscated property to conduct "banking operations." Am. Compl. ¶¶ 26-29, 39, 47. It would require drawing an impermissible inference against Plaintiffs to assume

that BNC used ***no property*** from Banco Pujol in the credit facilities.[3] Besides, even if those transactions did not use Banco Pujol property, that would not relieve Defendants of liability. Defendants do not deny that BNC's seizure of Banco Pujol benefited their commercial activities (and Defendants themselves) by making it less risky to extend BNC credit. Am. Compl. ¶¶40, 48. Nor do Defendants explain why it is implausible to allege they profited from BNC's use, operation, and management of Banco Pujol. *See id.* ¶¶39, 47.

B. Defendants Acted Knowingly and Intentionally

1. *Knowing and Intentional Action Is Adequately Alleged*

a. *The Statute Requires Knowing and Intentional Action*

Under the Helms-Burton Act, wrongdoers must act "knowingly and intentionally." 22 U.S.C. §6023(13)(A). But that does not require knowledge of every single fact relevant to liability. As a grammatical matter, "knowingly" and "intentionally" are most naturally read to modify only the verbs that follow them (*e.g.*, "uses," "engages," "participates in"). *See United States v. Cox*, 577 F.3d 833, 836 (7th Cir. 2009) (adopting same reading of 18 U.S.C. §2423(a) as *United States v. Griffith*, 284 F.3d 338 (2d Cir. 2002)). Wrongdoers need not be aware of other facts, such as who rightfully owns the wrongfully confiscated property. *See United States v. LaPorta*, 46 F.3d 152, 159 (2d Cir. 1994) (statute criminalizing "willful[] . . . depredation against

[3] In a parenthetical, Defendants suggest that BNC does not "still own[]" Banco Pujol property. MTD 22-23 (emphasis omitted). But no allegations support Defendants' assumption that BNC divested itself of all assets seized or derived from Banco Pujol. The allegations that BNC seized and did not return property are sufficient to establish continued possession of the property under a plausibility standard. *See Simon v. Republic of Hungary*, 812 F.3d 127, 147 (D.C. Cir. 2016); *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 689 (7th Cir. 2012). The case Defendants cite (MTD 22-23) does not hold otherwise. The plaintiffs in that case not only failed to allege that the defendant still "retained . . . property" seized from them but also affirmatively alleged that the property had passed into the hands of a different entity. *See Freund v. Republic of France*, 592 F. Supp. 2d 540 (S.D.N.Y. 2008), *aff'd* 391 F. App'x 939, 940-41 (2d Cir. 2010).

property of the United States" did not require knowledge the U.S. government owned the property); *United States v. Chin*, 981 F.2d 1275, 1279 (D.C. Cir. 1992) (Ginsburg, J.) (statute forbidding "knowingly and intentionally" employing a juvenile to avoid detection for drug offense does not require knowledge of age).

That is consistent with general tort principles and Congress's aims. Ordinarily, the only intent necessary to commit an intentional property tort is an intent to enter a piece of land or exercise control over chattels. *See Restatement (Second) of Torts* § 164 cmt. a (1965); *id.* § 244 cmt. c. A reasonable but mistaken belief that a tortfeasor is entitled to use a piece of property is no defense. *See Restatement (Second) of Torts* §§ 164, 244. Congress adopting a similar standard here makes sense. Congress wished to deter any wrongdoing and to "deny traffickers ***any*** profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. § 6081(11) (emphasis added). It rejected calls to narrow the statute based on concerns that " 'any person, corporation or state entity engaging in trade and investment in Cuba is likely to be "trafficking" with stolen property—since, by definition, virtually all economic activity in Cuba is based on confiscated property.' " 142 Cong. Rec. 3584 (Mar. 5, 1996); *see* pp. 15-16, *supra*. A statute under which persons traffic in confiscated property at their peril promotes Congress's aims.

b. *Knowledge of Additional Facts Is Not Required*

Defendants argue for a heightened scienter standard under which a wrongdoer must know that (1) the property at issue was confiscated, (2) the property's owners had not received compensation, and (3) the property was owned by a U.S. national "at the time of confiscation." MTD 25, 29 (emphasis omitted). But that reading—which invites wrongdoers to blind themselves to reality—departs from the most natural reading of the terms, the principles governing similar intentional property torts, and Congress's purpose. It is particularly difficult to read § 6023(13)(A) to require knowledge that the owner of wrongfully confiscated property did not receive

compensation and was a U.S. citizen at the time of the confiscation. Section 6023 nowhere says a trafficker must "know the rightful owner of property did not receive compensation" or that the owner was a "U.S. citizen at the time of confiscation."

Defendants try to impose additional scienter requirements from other sources. They observe (MTD 28) that a ***different statutory provision*** defines "confiscated property" to mean property that was taken without payment of compensation. 22 U.S.C. § 6023(4)(A). But that provision lacks a scienter requirement. Congress's decision to include a scienter requirement elsewhere but omit one from the section addressing compensation must be given effect. *See Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 777 (2020). Defendants also claim that the statute "incorporate[s]" an international-law principle that requires a property owner to have been a U.S. citizen "at the time of confiscation." MTD 29. As explained below, however, the text, structure, and purpose of the Helms-Burton Act foreclose that reading. *See* pp. 33-38, *infra*. In any event, there is nothing that requires ***knowledge*** of citizenship.

The two district-court decisions Defendants rely upon do not hold water. In *Glen*, the court held that "a person must know that the property was confiscated by the Cuban government and intend that such property be the subject of their commercial behavior." 2020 WL 4464665, at *6. The court stated its holding was necessary to avoid "render[ing] the 'knowingly and intentionally' language superfluous." *Id.* But nothing about Plaintiffs' construction denudes that language of meaning. Plaintiffs' construction still requires a wrongdoer to have engaged in conduct constituting trafficking "knowingly and intentionally." The reasoning in *Gonzalez v. Amazon.com, Inc.*, No. 19-cv-23988, 2020 WL 1169125 (S.D. Fla. Mar. 11, 2020), is no more persuasive. The basis for the court's holding regarding scienter was a floor statement from a single member of Congress. *Id.* at *2. That is hardly compelling evidence. *See NLRB v. SW Gen., Inc.*, 137 S. Ct.

929, 943 (2017) ("floor statements by individual legislators rank among the least illuminating forms of legislative history").[4]

In short, Congress enacted a statute under which a person may be held liable for knowingly and intentionally acting. The "[p]laintiff need not allege specific facts showing [a defendant's] state of mind when it allegedly 'trafficked' in the confiscated property." *Garcia-Bengochea v. Norwegian Cruise Line Holdings Ltd.*, No. 19-cv-23593, 2020 WL 5028209, at *2 (S.D. Fla. Aug. 25, 2020). The Amended Complaint's allegations that Defendants "knowingly and intentionally" engaged in activities constituting trafficking are thus adequate. Am. Compl. ¶¶ 39-40, 47-48.

2. *Scienter Is Adequately Alleged Even Under a Heightened Standard*

Even if the Helms-Burton Act requires knowledge of whether property was confiscated, that standard is met. Under the Act, "knowingly" means "with knowledge or having reason to know." 22 U.S.C. § 6023(9). Actual knowledge is not required. *See Veal v. Geraci*, 23 F.3d 722, 724-25 (2d Cir. 1994). A person has "reason to know" of a fact if a reasonable person "would infer" or, if exercising reasonable care, would "assum[e]" that fact exists. *Restatement (Second) of Torts* § 12(1) (1965); *see also Black's Law Dictionary* 873 (6th ed. 1990). Similarly, in the civil context, the term "intentionally" does not require specific intent but embraces acting notwithstanding the foreseeable consequences of the action. *AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202, 220-21 (2d Cir. 2000) (opinion of Oakes, J.). The traditional rule is that "a man is

[4] In a footnote, Defendants cite a ***criminal*** case for the proposition that an intentional act requires "knowledge of the facts that make the conduct prohibited." MTD 26 n.13; *see also TripAdvisor*, 2021 WL 1200577, at *10 & n.16 (relying on a similar proposition). But such knowledge is not a requirement for ***civil*** liability for intentional property torts. *See Restatement (Second) of Torts* §§ 164, 244. Nor is that proposition Defendants invoke absolute even in the criminal context. *See Elonis v. United States*, 575 U.S. 723, 736 (2015) ("In some cases, a general requirement that a defendant ***act*** knowingly is itself an adequate safeguard."); pp. 20-21, *supra*. Reading into the Act the heightened scienter standards required for criminal liability cannot be reconciled with Congress's decision to create a robust statute to deter wrongdoing and provide redress to victims.

held to intend the foreseeable consequences of his conduct." *Radio Officers' Union of Com. Telegraphers Union, A.F.L. v. NLRB*, 347 U.S. 17, 45 (1954). The Act's scienter requirement is thus not onerous, particularly at the pleading stage where the standard for alleging scienter is "'lenient.'" *In re DDAVP Direct Purchaser Antitrust Litig.*, 585 F.3d 677, 693 (2d Cir. 2009).

To the extent it is required to do so, the Amended Complaint adequately alleges that Defendants had reason to know that their transactions with BNC would use confiscated Banco Pujol property, benefit from it, and assist BNC in making further use of it. *See* Am. Compl. ¶¶39-40, 47-48. Critically, Banco Pujol was confiscated pursuant to public Cuban laws that declared banking a public function and ordered BNC to "confiscate ***all*** national and international banks." *Id.* ¶27 (emphasis added). That supports a reasonable inference that Defendants had reason to know that BNC was trafficking in Banco Pujol property. As banks operating in Cuba under Cuban law, *id.* ¶¶36, 43, SocGen and Paribas cannot plead ignorance of those public laws. Nor is it plausible to think BNC's actions escaped the notice of Defendants' many thousands of employees. BNC's confiscation of all banks in Cuba was "well known to the international banking community" and was the subject of numerous legal proceedings. *Id.*; *see also* p. 4, *supra*.

Despite knowing that BNC was exploiting property confiscated from Banco Pujol, however, SocGen and Paribas knowingly and intentionally provided credit facilities to BNC that allowed it to exploit that confiscated property in ways it otherwise could not. Am. Compl. ¶¶39, 47; *see* Am. Compl. Ex. 2 (admitting to "knowingly and willfully" violating U.S. sanctions regime against Cuba); Am. Compl. Ex. 3 (same). They also extended those facilities knowing that BNC had confiscated banks like Banco Pujol, rendering BNC a more attractive borrower than it otherwise would have been. Am. Compl. ¶¶40, 48. That Defendants intentionally profited from and assisted the banking operations of a trafficker known to be using property from confiscated

banks in those operations supports an inference of scienter. That is especially so to the extent Defendants continued to maintain credit facilities for BNC after the rightful owners of Banco Pujol "notified" Defendants that "they were trafficking in confiscated property." *Id.* ¶52.

Defendants disparage those allegations as "conclusory." MTD 26-27. But they never address a critical fact: that ***public*** laws specifically directed BNC to confiscate "***all*** national and international banks"—including Banco Pujol. Am. Compl. ¶27 (emphasis added). That alone was sufficient to put Defendants on notice. The public laws directing the confiscation of ***all*** banks also distinguishes this case from others in which only ***some*** property was confiscated.[5] Moreover, contrary to Defendants' assertion (MTD 27), what other, similarly situated persons knew about BNC reinforce inferences about what Defendants had reason to know. *See Hale v. Firestone Tire & Rubber Co.*, 756 F.2d 1322, 1331 (8th Cir. 1985) (what was "common knowledge" in industry could support inference plaintiff acted knowingly); Order at 18, 20, Dkt. 55, *Cueto v. Pernod Ricard*, No. 20-cv-20157 (S.D. Fla. Aug. 17, 2020) (publication of confiscation in Cuban newspapers and certain markings on brand materials supported an inference of knowledge).

Likewise, even if a trafficker must know the victims did not receive compensation or give consent, that knowledge is plausibly alleged here. The Amended Complaint plausibly alleges that Defendants knew Banco Pujol had been seized against the will of the rightful owners under a

[5] In *Glen* and *TripAdvisor*, the courts declined to impute knowledge to travel-booking websites that "specific" hotels were confiscated based on general allegations "that ***some*** properties in Cuba were confiscated." *TripAdvisor*, 2021 WL 1200577, at *10 (emphasis added); *see also Glen*, 2020 WL 4464665, at *6 (the Helms-Burton Act did not put "all potential defendants" on notice "that all real property in Cuba was confiscated"). Nothing in those decisions suggests that knowledge cannot be inferred based on what was manifest to other similarly situated parties or the contents of public laws. Defendants' other cases are even further afield. In *United States v. Figueroa-Ocasio*, 805 F.3d 360 (1st Cir. 2015), the court held that a "not clear" response to a "misdirected" question could not support a criminal conviction. *Id.* at 369. It did not address civil pleading standards. And, in *Atlas Assurance Co. v. Standard Brick & Tile Corp.*, 264 F.2d 440 (7th Cir. 1959), the court merely held that a witness's speculation was not "competent evidence." *Id.* at 445.

public law that did not afford them compensation. Am. Compl. ¶¶27, 29; pp. 24-25, *supra*. That is sufficient to support an inference of scienter absent any allegations suggesting the rightful owners had later received compensation or consented to their property's use. Moreover, to the extent Defendants continued trafficking in Banco Pujol after being notified of Plaintiffs' claim, Defendants' knowledge is undeniable. *See id.* ¶¶41, 49, 54.

In response, Defendants assert (without citation) that "Cuba has entered into settlements resulting in payments to citizens of Canada, France, the U.K., Spain and Switzerland." MTD 28-29. But factual assertions outside the pleadings cannot be considered. *See Goel v. Bunge, Ltd.*, 820 F.3d 554, 559 (2d Cir. 2016). Nor does Defendants' assertion help their cause. While Cuba may have compensated certain property owners, it has refused to pay any compensation to Cubans or Cuban Americans like those owning Banco Pujol. *See* 142 Cong. Rec. 3572 (Mar. 5, 1996).[6]

III. PLAINTIFFS' CLAIMS ARE TIMELY

A. Plaintiffs Need Not Plead Timeliness, But They Have Plausibly Done So

Section 6084 of the Act cannot be used to dismiss this action at the pleadings stage. Where a timeliness issue is raised in a Rule 12(b)(6) motion, dismissal is inappropriate unless "'the face of the complaint'" establishes the claims are time-barred. *Conn. Gen. Life Ins. Co. v. BioHealth Labs., Inc.*, 988 F.3d 127, 131-32 & n.2 (2d Cir. 2021); *see also Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724, 2020 WL 5517590, at *12 (S.D. Fla. Sept. 14, 2020). Here, however, no allegations "conclusively establish" that Defendants' trafficking ceased more than two years before the suit was filed. *In re GSE Bonds Antitrust Litig.*, 396 F. Supp. 3d 354, 368 (S.D.N.Y. 2019). The Amended Complaint alleges that Defendants' trafficking in "Plaintiffs' confiscated

[6] Defendants note that the term "intentionally" imposes a distinct scienter requirement from "knowingly." MTD 26 n.13. But they do not explain how that alters the result here. *See id.* at 26-29. The fact that Defendants acted despite the "foreseeable consequences of [their] conduct" is sufficient to establish that Defendants acted intentionally. *Radio Officers'*, 347 U.S. at 45.

property" is "continu[ing]" and "ongoing." Am. Compl. ¶¶54, 59.

Defendants belittle that allegation because they have not expressly admitted to conducting "transactions" with BNC "in the two-year period before the Complaint was filed." MTD 17. But Plaintiffs are not required to plead that ongoing trafficking because §6084 is an affirmative defense. *Havana Docks*, 2020 WL 5517590, at *12; *see also Conn. Gen.*, 988 F.3d at 131-32 & n.2; *Baxter v. Sturm, Ruger & Co. Inc.*, 13 F.3d 40, 41 (2d Cir. 1993). The absence of allegations that Defendants have stopped trafficking alone precludes dismissal. *See Fargas v. Cincinnati Mach., LLC*, 986 F. Supp. 2d 420, 427 (S.D.N.Y. 2013) ("no information" precludes dismissal); *Pearce v. Manhattan Ensemble Theater, Inc.*, 528 F. Supp. 2d 175, 182 (S.D.N.Y. 2007) (similar).

Regardless, Defendants' own admissions support an inference of continued trafficking. Through at least 2010, Defendants provided U.S. dollar credit facilities to BNC, trafficking in Pujol family property. Am. Compl. ¶¶37, 43. By Defendants' own admissions, they disregarded U.S. criminal law barring that conduct and hid their crimes in pursuit of massive profits. *Id.* ¶¶35-38, 42-46, 58. When SocGen grew concerned about U.S. prosecution in 2010, it did not stop providing "Cuban Credit Facilities" altogether but "renewed facilities in Euros." Am. Compl. Ex. 2, Ex. C ¶¶32-33, 37. Similarly, after being pressured by compliance personnel, Paribas "convert[ed] . . . Cuban Credit Facilities into Euros." Am. Compl. Ex. 3, Statement of Facts ¶¶66, 69. It is a plausible inference that Defendants continued providing credit facilities to BNC rather than "suddenly" stopping their conduct of business so lucrative they broke the law. *Cohen v. S.A.C. Trading Corp.*, 711 F.3d 353, 360 (2d Cir. 2013).

Other allegations further support that inference. To this day, BNC maintains a Paris presence to conduct business with French commercial banks. Am. Compl. ¶55. That shows BNC is still doing substantial business with French banks, which based on BNC's past course of

dealings, very likely include SocGen and Paribas. Also, when Plaintiffs demanded Defendants cease trafficking in confiscated property, Defendants did not say they would stop—even though continued trafficking could expose them to treble damages under § 6082(a)(3)(B). Am. Compl. ¶¶ 52-53; *see Duverny v. Hercules Med. P.C.*, No. 18-cv-7652, 2020 WL 6465443, at *1 (S.D.N.Y. Nov. 3, 2020) (permitting "adverse inference from a party's silence"). Ongoing trafficking is plausibly alleged even though Plaintiffs need not rebut Defendants' timeliness defense.

Defendants also argue that, if their continued provision of non-U.S. dollar credit facilities is what renders this action timely, this Court lacks personal jurisdiction over them. MTD 18. That makes no sense. Specific personal jurisdiction depends on whether "[t]he plaintiff's ***claims*** . . . 'arise out of or relate to'" a defendant's contacts with the forum. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024-25 (2021) (emphasis added); *see also* N.Y. Banking Law § 200(3). That standard is satisfied here. Plaintiffs' claim for trafficking in Banco Pujol relates to transactions Defendants conducted through their New York branches. *See* Am. Compl. ¶¶ 4, 21-24, 37, 44. That additional transactions occurring outside of New York could be relevant to whether Defendants can raise a timeliness ***defense*** does not destroy that relationship.

B. The Limitations Period Was Tolled—Both Statutorily and Equitably

Even if it were conclusively established that Defendants ceased trafficking in Plaintiffs' property more than two years before this action was filed, this action would still be timely. Defendants claim that § 6084 is a "statute of repose" that admits no exceptions. MTD 12-16. But the Act itself creates an exception: It permits the President to suspend the filing of claims—an action that pauses the running of the limitations period. The President's imposition of a suspension until May 2, 2019, less than two years before this action was filed, renders it timely. Defendants, moreover, are incorrect to characterize § 6084 as a statute of repose. It is instead a statute of limitations that was equitably tolled until less than two years before suit was filed here.

1. *The Limitations Period Was Statutorily Suspended*

Whether a provision limiting the time for suit is subject to suspension or tolling is a question of statutory construction. *See Cal. Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2050 (2017) ("*CalPERS*"). Even statutes of repose are subject to "'legislatively created exceptions.'" *Police & Fire Ret. Sys. of City of Detroit v. IndyMac MBS, Inc.*, 721 F.3d 95, 106 (2d Cir. 2013). Here, § 6084 announces a general rule that "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." But the very next section of the Act provides that "the President may ***suspend*** the right to bring an action under this subchapter with respect to confiscated property," and if he determines that it "will expedite a transition to democracy in Cuba," "***rescind*** any suspension." 22 U.S.C. § 6085(c)(1)-(2), (d) (emphasis added). The statutory text, structure, and purpose all make clear that a suspension under § 6085 pauses the running of the limitations period.

By its terms, a suspension temporarily pauses—but does not destroy—the right to pursue claims that have accrued under Title III. "Suspend" means "[t]o ***temporarily*** keep (a person) from . . . exercising a right." *Black's Law Dictionary* (11th ed. 2019) (emphasis added) (also defining it as "[t]o interrupt; postpone; defer"). The term is used "interchangeably" with the word "toll" to evoke a "pause[ ]." *Artis v. Dist. of Columbia*, 138 S. Ct. 594, 601-02 (2018). Concomitantly, "rescind" means to wind the clock back, to "put an end to [the matter] as though it never were." *In re Trusteeship Created by JER CRE CDO 2005-1, Ltd.*, No. 13-cv-2239, 2013 WL 6916912, at *4 (S.D.N.Y. Dec. 31, 2013) (quoting *Black's Law Dictionary* 1306 (6th ed. 1990)). Together, the terms Congress used in § 6085 make clear that a suspension merely "delay[s] litigation" over accrued claims without causing those claims to expire. H.R. Rep. No. 104-468, at 65 (1996).

Where Congress wished to cut off liability for accrued claims, it used terms other than "suspend." In § 6082(h), for example, Congress provided that "[a]ll rights created under this

section to bring an action for money damages with respect to property confiscated by the Cuban Government . . . shall cease" upon a determination "that a democratically elected government in Cuba is in power." 22 U.S.C. § 6082(h)(1)(B). Until such a transition occurs, however, Congress limited the President to "suspend[ing]" litigation under Title III. *Id.* §§ 6082(h)(1)(A), 6085(c). The "careful" distinction Congress drew between actions that delay enforcement and those that cut off liability reinforces that accrued claims do not wither away during a suspension of Title III. *Everytown for Gun Safety Support Fund v. ATF*, 984 F.3d 30, 44 (2d Cir. 2020).

The President recognized as much when the Act was enacted. In 1996, the President "allow[ed] Title III to come into force" but "suspend[ed] the right to file suit for six months." *President Statement on Helms-Burton Waiver Exercise*, 1996 WL 396122, at *1-2 (July 16, 1996). He explained that "liability would be established ***irreversibly*** during the suspension period." *Id.* (emphasis added); *see also Briefing on Helms-Burton Title III Suspension*, 1996 WL 396125, at *5 (July 16, 1996) (During the suspension period, "liability accrues . . . . It can't be extinguished subsequently."). That interpretation is due "significant" consideration given that "the Executive Branch participated in the negotiation of" the suspension provision. *United States v. Story*, 891 F.2d 988, 994 (2d Cir. 1989); *see Briefing*, 1996 WL 396125, at *13.

A suspension of the limitations period is consistent with the statutory purpose. In Title III, Congress sought to help "bring democratic institutions to Cuba" by creating a damages action that would "deter trafficking in wrongfully confiscated property" and "deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. § 6081(6), (11). Congress saw no conflict between that "fundamental purpose" and permitting claims to accrue against defendants during a suspension of Title III. *Briefing*, 1996 WL 396125, at *1-2. Permitting liability to ***irreversibly*** "***accru[e]***" against defendants was instead the mechanism by which Congress sought

to promote democracy. *Id.* (emphasis added). The specter of accumulating liability would pressure businesses to cease working with Cuba "***immediately***." *President Statement*, 1996 WL 396122, at *2 (emphasis added). "[T]he only sure way" that Congress thus gave businesses "to avoid future lawsuits," *id.*, was to cease trafficking in confiscated property during a "three-month grace period built into Title III," *Briefing*, 1996 WL 396125, at *4-5.

Defendants claim that § 6085(c)(3)—which exempts pending lawsuits from the effect of a suspension—implies that a suspension does not pause the limitations period. MTD 16. It shows the opposite. Suspensions freeze the status quo until rescinded. An express exemption for pending lawsuits was necessary to allow "proceedings [to] be had, appeals [to be] taken, and judgments rendered" in pending cases during a presidential suspension. 22 U.S.C. § 6085(c)(3). Had Congress wished to enact another exemption that would permit Title III's limitations period to run against unfiled claims ***despite*** a suspension, "Congress could easily have said so." *Kucana v. Holder*, 558 U.S. 233, 248 (2010). It did not.

2. *The Limitations Period Was Equitably Tolled*

The limitations period in § 6084 was also equitably tolled. "As a general matter, equitable tolling pauses the running of, or 'tolls,' a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action." *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014). Here, Plaintiffs faced two such circumstances. First, the President's suspension of Title III imposed an absolute bar to bringing suit until May 2019, less than two years before this action was filed. Am. Compl. ¶57. Second, SocGen actively concealed its wrongdoing. *Id.* ¶¶37, 58; *see City of Philadelphia v. Bank of Am. Corp.*, No. 19-cv-1608, 2020 WL 6430307, at *13 (S.D.N.Y. Nov. 2, 2020) ("fraudulent concealment" tolls limitations period). Its wrongdoing was not made public until less than two years before this suit was filed. Am. Compl. ¶58. That renders the claims timely.

Nonetheless, Defendants argue that § 6084 is not subject to equitable tolling. MTD 12. But they mistake a statute of limitations for one of repose. Generally, "statutes of repose are enacted to give more . . . certain protection to defendants"—to give them "peace." *CalPERS*, 137 S. Ct. at 2049, 2052. "Statutes of limitations," by contrast, "are designed to encourage . . . 'diligent prosecution of known claims.' " *Id.* at 2049. Section 6084 falls in the latter category. It was not enacted to give wrongdoers comfort that they could escape liability by trafficking in secret and then laying low. It instead was to encourage diligence.

First, § 6084 addresses when an action "may . . . be brought." It sets a limit "on the commencement of an action"; it does not "speak[ ] of a discharge of liability." *Underwood Cotton Co. v. Hyundai Merch. Marine (Am.), Inc.*, 288 F.3d 405, 408 (9th Cir. 2002). That points to it being a statute of limitations. *See CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014).

Second, § 6084 ties the limitations period to the date on which the plaintiff last suffered an injury, *i.e.*, the date on which the trafficking "giving rise to the action . . . cease[s]." That connection to the plaintiff's injury points towards it being a statute of limitations. *See CTS*, 573 U.S. at 8. Where a provision is intended to give repose, by contrast, " 'the injury need not have occurred' " before repose is given. *Id.* To be sure, the last date on which a Helms-Burton plaintiff's injury occurs is also the date of the "defendant's last culpable act." MTD 13. But that is because violations may persist. *See, e.g.*, 22 U.S.C. § 6023(13)(A)(i) (trafficking includes "possess[ing]" and "hold[ing] an interest in confiscated property"). In such situations, it is not unusual for limitations periods to run from the last injury inflicted. *See, e.g.*, 42 U.S.C. § 3613(a)(1)(A) (from "occurrence or termination of an alleged discriminatory practice"); 29 U.S.C. § 2617 (from "the last event"); 28 U.S.C. § 2501 (from "the termination" of activities). That, however, does not transform those statutes of limitations into statutes of repose. *See, e.g.*,

Stefanowicz v. SunTrust Mortg., 765 F. App'x 766, 769 (3d Cir. 2019); *Porter v. N.Y. Univ. Sch. of Law*, 392 F.3d 530, 531 (2d Cir. 2004); *LaFont v. United States*, 17 Cl. Ct. 837, 840 (1989); *cf. Short v. Belleville Shoe Mfg. Co.*, 908 F.2d 1385, 1391 (7th Cir. 1990) (statute saying from "the date of the last transaction that is the subject of the violation" indicates "a statute of limitations").

Third, § 6084 has a relatively "short fuse" of only two years. *Underwood*, 288 F.3d at 408. While Congress sometimes enacts statutes of repose with short limitations periods, MTD 15 n.7, "[o]ne typically expects to see a longer period in true statutes of repose," like "18 years," *Underwood*, 288 F.3d at 408. It is "common" for a statute of repose to be on the "longer" side and "pair[ed]" with an "shorter statute of limitations." *CalPERS*, 137 S. Ct. at 2049. Here, there is only a single, short limitations period.

Fourth, § 6084 omits the emphatic, categorical language found in true statutes of repose. The statute, for example, does not state that "in no event" can claims be brought after a given date. *Cf. CalPERS*, 137 S. Ct. at 2047; *United States ex rel. Wood v. Allergan, Inc.*, No. 19-cv-4029, 2020 WL 3073293, at *3 (S.D.N.Y. June 10, 2020). To the contrary, the statute permits presidential suspensions of Title III that pause the running of the limitations period. *See* pp. 29-31, *supra*.

Fifth, reading § 6084 as a statute of limitations is most consistent with Congress's objectives of providing "victims . . . a judicial remedy" and halting trafficking ***immediately***. 22 U.S.C. § 6081(6), (11); *see* pp. 30-31, *supra*. Even Defendants admit Congress sought to halt trafficking "forthwith." MTD 14. It would undermine that goal to give a free pass to persons who, like Defendants, continued trafficking in confiscated property after the three-month grace period built into Title III but successfully concealed their activities for a time.

IV. PLAINTIFFS ARE QUALIFYING U.S. NATIONALS UNDER THE HELMS-BURTON ACT

A. U.S. Nationals May Bring Suit Regardless of When They Became Citizens

Defendants' argument that Helms-Burton Act's "cause of action was only intended to

apply to property that was confiscated from persons who were U.S. nationals at the time of confiscation" defies the plain language of the Act. MTD 29. "As in any statutory construction case," this Court must "start, of course, with the statutory text." *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013) (quotation marks omitted). Here, the text provides that someone who "traffics" in confiscated property "shall be liable to ***any United States national who owns*** the claim to such property." 22 U.S.C. § 6082(a)(1)(A) (emphasis added). That provision speaks in the present tense and cannot be read to require a U.S. national to have "owned" (past tense) the property when it was confiscated. "[T]he present tense generally does not include the past." *Carr v. United States*, 560 U.S. 438, 448 (2010). When Congress "intend[s]" specific time limitations, it usually "varie[s] the verb tenses" or supplies additional language "to convey [that] meaning." *Id.* at 450. Congress did that elsewhere in the Helms-Burton Act. 22 U.S.C. § 6082(a)(4)(B) ("before March 12, 1996"). And Congress has done so in many other statutes.[7] Congress, by contrast, "intentionally" omitted similar language here. *Intel*, 140 S. Ct. at 777.

The statutory definition of "United States national," 22 U.S.C. § 6023(15), underscores that Congress did not limit the right to bring a cause of action to persons who were U.S. nationals when property was confiscated. That definition, like § 6082(a)(1)(A), speaks in the present tense. It defines "United States national" to mean "***any*** United States citizen." *Id.* § 6023(15) (emphasis added). It also uses the word "any," which gives a phrase "expansive meaning" that embraces "one or some ***indiscriminately of whatever kind***." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quotation marks omitted, emphasis added). That precludes Defendants' interpretation.

The Act's findings and history support the text. Congress expressly sought to provide a

[7] *See, e.g.*, 22 U.S.C. § 1643c(a) (requiring U.S. nationality "on the date of the loss . . . [and] thereafter"); *id.* §§ 1643d(b) & (c), 1644d(b) & (c), 1645d(b) & (c) ("on the date of the loss" and "at the time of the loss"); 50 U.S.C. §§ 4132(a) & (c), 4135(b) & (c) (similar).

remedy to individuals "who were not United States citizens at the time their property in Cuba was confiscated but who subsequently became United States citizens." H.R. Rep. No. 104-202, at 31; *see* 22 U.S.C. § 6081(3)(B)(iii) (expressing concern that the Cuban Government confiscated property from "Cubans" who "later became naturalized citizens of the United States"). The legislative history—including congressional reports and hearings,[8] letters,[9] debates,[10] and related publications[11]—is replete with references to the fact that the Act would permit persons to sue even if they were not U.S. nationals when confiscation occurred.[12]

B. Defendants' Invocation of International Law Fails

Defendants contend that a "claim" under Helms-Burton "must be cognizable under inter-

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[8] *See, e.g.*, H.R. Rep. No. 104-202, at 40 (U.S. nationals include those "naturalized after" confiscation); *id*. at 55 (remedy available "regardless of when [the plaintiff] became a U.S. citizen"); *Hearing Before the Subcomm. on W. Hemisphere and Peace Corps Affairs of the Comm. on Foreign Relations, U.S. Senate*, at 26, 38, 101, 127, 133, 139, 204, 210 (May 22 & June 14, 1995).

[9] *See, e.g.*, *Hearing Before the Subcomm. on W. Hemisphere and Peace Corps Affairs of the Comm. on Foreign Relations, U.S. Senate*, at 9 (July 30, 1996) (Letter sent by Senator Dodd, Hatfield, *et al.*, to President Clinton on July 10, 1996) ("The definition of 'U.S. claimant' would also be significantly broadened to any person who is presently a U.S. citizen or a business entity incorporated in the United States (regardless of citizenship or incorporation at the time of expropriation)."); *see also* 141 Cong. Rec. 27518 (Oct. 11, 1995).

[10] 141 Cong. Rec. 25925, 25929 (Sept. 20, 1995); *id*. at 27515, 27521-22 (Oct. 11, 1995); *id*. at 27723-24, 27733, 27756, 27758 (Oct. 12, 1995); *id*. at 28064 (Oct. 17, 1995); 142 Cong. Rec. 3579, 3580, 3590, 3593, 3595-96 (Mar. 5, 1996).

[11] Att'y Gen. Order No. 2029-96, Dep't of Justice, Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 61 Fed. Reg. 24955, 24955 (May 17, 1996) ("Title III of the Act discourages foreign investment in properties that were expropriated . . . from persons who are now United States nationals.").

[12] The authorities cited by Defendants (MTD 29-30) cannot rescue their argument. As Defendants concede, the legislative history they cite simply stands for the proposition that the Act protects against "confiscation or taking of property belonging to United States nationals." 22 U.S.C. § 6081(2) (cited MTD 30). And none of it specifies ***when*** Helms-Burton claimants must have become U.S. nationals. *Glen v. Club Méditerranée, S.A.*, 450 F.3d 1251, 1255 n.3 (11th Cir. 2006) (cited MTD 31-32), simply poses, without analyzing or answering, the question of whether former Cuban nationals may sue. And the district court cases on which Defendants rely (MTD 30-31) similarly provide no analysis—let alone holdings—related to the issue.

national law," MTD 32, which in turn bars claims "based on a government's taking of property from its own nationals," *id.* at 29. That is not what the statute says. It is "'***fundamental*** that [an undefined term] will be interpreted as taking [its] ordinary, contemporary, common meaning.'" *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 424 (2d Cir. 2005) (emphasis added). As "contemporary dictionary definitions" attest, "claim" ordinarily refers to "'a demand for something rightfully or allegedly due'" or "'a right or title to something.'" *Garcia-Bengochea v. Carnival Corp.*, 407 F. Supp. 3d 1281, 1289 (S.D. Fla. 2019). It does not mean a claim "valid under international law."

Defendants respond by pointing to 22 U.S.C. § 6082(a)(5)(B). MTD 32-34. Because it states that "denial[s]" of claims by the Foreign Claims Settlement Commission ("FCSC") will be "dispositive under Helms-Burton," and because the FCSC denies claims by individuals who were Cuban nationals at the time of confiscation, Defendants argue that same limitation applies under the Helms-Burton Act. *Id.* As Defendants concede, however, the "statute authorizing the FCSC to certify Cuba-related confiscation claims ***expressly***" forbids the FCSC from certifying claims for "domestic takings" (*i.e.*, takings from Cuban nationals). MTD 33 (emphasis added). That express prohibition contrasts with Congress's decision to omit a similar prohibition from the Helms-Burton Act. Besides, § 6082(a)(5)(B) merely says that the FCSC's "***findings***" will be "***conclusive in***" a Helms-Burton action. 22 U.S.C. § 6082(a)(5)(B) (emphasis added). It nowhere says that the FCSC is authorized to define what "claim" means for civil actions brought under the Helms-Burton Act.

Defendants' attempt to define "claim" as the sort of "claim recognized in a FCSC decision" (MTD 32) makes no sense. Elsewhere, the Act refers to "claims to property" that exist "***in addition to*** those claims certified" by the FCSC. 22 U.S.C. § 6067(a)(1) (emphasis added). That sentence makes plain that "claim" carries its ordinary meaning; it would be gibberish if "claim" referred to

only claims that the FCSC would recognize. Defendants' view defies the "'cardinal principle of interpretation that courts must give effect, if possible, to every clause and word of a statute.'" *Liu v. SEC*, 140 S. Ct. 1936, 1948 (2020).

More broadly, Defendants assert that the Helms-Burton Act "incorporates" international-law principles that bar claims "based on a government's taking of property from its own nationals." MTD 29, 31-34. But that is no warrant to disregard the plain meaning of "claim." Courts must "'give effect to an unambiguous exercise by Congress of'" its legislative power "'***even if such an exercise would exceed the limitations imposed by international law***.'" *United States v. Yousef*, 327 F.3d 56, 109 (2d Cir. 2003) (emphasis in original)). Defendants identify no "indication" that Congress intended international law "to act as [an] extra-textual limiting principle[]" on the Helms-Burton Act's plain text. *Al-Bihani v. Obama*, 590 F.3d 866, 871 (D.C. Cir. 2010).

To the contrary, Congress found the "international judicial system" to "lack[] fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property." 22 U.S.C. § 6081(8). Congress thus created a cause of action for claimants to confiscated property and forbade any "court of the United States" from "declin[ing], based upon the act of state doctrine, to make a determination" in a Helms-Burton case. *Id.* § 6082(a)(1), (a)(6). Where Congress has wished adjudicators to follow the "applicable principles of international law," it has directed them do so expressly. *Id.* § 1623(a)(2)(B). It did not include such a direction here.

Defendants fail to muster any authority for their unfounded assertion that international law must limit the reach of Helms-Burton. That dearth of support is unsurprising. The international-law principles Defendants invoke "reflect[]" the "'reluctance of nations to involve themselves in

the domestic politics of other sovereigns.'" *Luxexpress 2016 Corp. v. Gov't of Ukraine*, No. 18-cv-812, 2020 WL 1308357, at *3 (D.D.C. Mar. 19, 2020). The Helms-Burton Act, by contrast, manifested Congress's ***intent*** to interfere with domestic Cuban politics. The language, structure, history, and policy of the Act thus align: Congress intended to, and did, provide a cause of action for Cuban nationals who later became U.S. citizens.

V. THE CLAIMS OF THE ESTATES SHOULD NOT BE DISMISSED

Defendants' argument (MTD 34-39) that the personal representatives of three deceased owners of Banco Pujol—Nieves Pujol, Laureano Pujol Rojas, and Arcadio Joaquin Pujol Izquierdo—cannot bring Helms-Burton claims lacks merit. The Helms-Burton Act provides a cause of action for whoever "owns the claim" to confiscated property. 22 U.S.C. § 6082(a)(1)(A). In this case, the Amended Complaint alleges that the proper parties to pursue Helms-Burton claims to Banco Pujol held by Nieves Pujol, Laureano Pujol Rojas, and Arcadio Joaquin Pujol Izquierdo are their personal representatives because those claims are part of the decedents' estates, *i.e.*, the property of the decedent. Am. Compl. ¶¶ 6, 9-10.

Defendants contend that allegation is wrong because a decedent's property "vest[s] with his heirs immediately upon his death." MTD 37-38. But the passing of title from a decedent to his heirs is "subject to the administration of the estate" by his personal representative. *In re Est. of Slater*, 437 So. 2d 1110, 1112 (Fla. Dist. Ct. App. 1983); *see also* Fla. Stat. Ann. § 733.607(1) ("every personal representative has a right to, and shall take possession or control of, the decedent's property"). The administration of the estates of Nieves Pujol, Laureano Pujol Rojas, and Arcadio Joaquin Pujol Izquierdo is ongoing. *See* Am. Compl. ¶¶ 6, 9-10. The Florida courts opened or reopened their estates because of a discovery that the decedents held Helms-Burton claims to Banco Pujol that had not been distributed. *See id.* As a result, the personal

representatives can assert claims to Banco Pujol for the decedents.[13]

Defendants try to rebut that allegation with court documents from the 2000s in which the personal representatives of Laureano Pujol Rojas and Arcadio Joaquin Pujol Izquierdo state that they had finished distributing the decedents' property. MTD 37-38. But those documents cannot be viewed in insolation. After the personal representatives distributed the decedents' property in the 2000s, they discovered claims to Banco Pujol under the Helms-Burton Act were still part of or held by the estate. *See* Am. Compl. ¶¶ 6, 9-10. Thus, the Florida courts reopened the decedents' estates to permit the personal representatives to pursue those claims. *See id.*; Dkt. 32-3; Dkt. 32-4; *see also* Fla. Stat. Ann. § 733.903 ("the final settlement of an estate and the discharge of the personal representative shall not prevent further administration"); Fla. Prob. R. 5.460 (permitting estate to be reopened if "additional property of the decedent is discovered"). Defendants' argument amounts to a disagreement with a determination by the Florida courts.

Defendants' other argument—that any claims were not acquired until after March 12, 1996—also lacks merit. Under the Helms-Burton Act, "a U.S. national may not bring an action" on a claim to confiscated property "unless such national acquires ownership of the claim before March 12, 1996." 22 U.S.C. § 6082(a)(4)(B). That deadline was intended "to eliminate any incentive that might otherwise exist to transfer claims to confiscated property to U.S. nationals in order to take advantage of the remedy." H.R. Rep. No. 104-202, at 40 (1995). It poses no barrier here.

[13] Defendants' argument regarding the claims owned by Laureano Pujol Rojas and Arcadio Joaquin Pujol Izquierdo also raises factual issues that cannot be resolved on the pleadings. Under Florida law, those individuals were entitled to specify in their wills that an "event must happen before a devise vests." Fla. Stat. Ann. § 732.514. That is why the Defendants' own authority recognizes that an heir may acquire equitable but not legal title at the time of a decedent's death. *See Rice v. Greene*, 941 So. 2d 1230, 1231 (Fla. Ct. App. 2006). In the Amended Complaint, however, there are no allegations from which the Court could determine whether an event had to occur before any devises by Laureano Pujol Rojas and Arcadio Joaquin Pujol Izquierdo vested.

The three decedents involved in this case—Nieves Pujol, Laureano Pujol Rojas, and Arcadio Joaquin Pujol Izquierdo—were all U.S. nationals who acquired claims to Banco Pujol before the statutory deadline of March 12, 1996. Am. Compl. ¶¶6, 9-10. Because those individuals cannot act from beyond the grave, personal representatives are acting in their stead. But any claims to Banco Pujol are still part of their estates for the reasons stated above.

Defendants try to treat the decedents' estates as having acquired claims from the decedents. MTD 35. But an estate is "the property ***of a decedent*** that is the subject of administration." Fla. Stat. Ann. § 731.201(14) (emphasis added). Defendants cite no authority to support their assumption that an estate acquires title to a decedent's property from the decedent. Nor do Defendants cite any authority to support their assertion that the decedents' claims to Banco Pujol changed hands when "personal representative[s] w[ere] appointed." MTD 35. The supposed "concession" that Plaintiffs made is merely a description of ***when*** personal representatives were appointed to act for the decedents. *See* Am. Compl. ¶6; Dkt. 37, at 2-3. Plaintiffs have never conceded that someone else "acquire[d]" claims to Banco Pujol from those decedents.

In sum, the Amended Complaint adequately alleges that certain claims are part of the estates of three decedents. Defendants challenge that allegation. But their arguments at most raise factual questions that cannot be resolved until summary judgment or trial. All "well-pled factual allegations in the complaint" must be taken "as true." *Fed. Defs. of N.Y.*, 954 F.3d at 125.

CONCLUSION

Defendants' motion to dismiss should be denied.

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Respectfully submitted,

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