Case No. 20-12407

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Mario Del Valle, Enrique Falla, and Angelo Pou, As Individuals and on Behalf of All Others Similarly Situated
Plaintiffs-Appellants,

v.

Expedia Group, Inc., Hotels.com L.P., Hotels.com GP, Orbitz, LLC, Booking.com B.V., Booking Holdings Inc.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
No. 1:19-cv-22619-RNS
Hon. Robert N. Scola, Junior

BRIEF OF AMICUS CURIAE
CRUISE LINES INTERNATIONAL ASSOCIATION
IN SUPPORT OF DEFENDANTS-APPELLEES AND URGING AFFIRMANCE
OF THE DISTRICT COURT'S FINAL ORDER OF DISMISSAL

Darren Friedman
FOREMAN FRIEDMAN
2 S Biscayne Boulevard
Suite 2300
Miami, FL 33131
Phone: (305) 358 6555

Bradley M. Rose
KAYE, ROSE & PARTNERS, LLP
723 Palisades Beach Road,
Suite 108
Santa Monica, CA 90402
Phone: (310) 551-6555

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

CRUISE LINES INTERNATIONAL ASSOCIATION ("CLIA") files this Certificate of Interested Persons and Corporate Disclosure Statement, listing in alphabetical order the parties and entities interested in this appeal, as required by Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Eleventh Circuit Rules:

1. Aguila, M. Paula, Esq. (counsel for Plaintiffs–Appellants)
2. Akerman LLP (counsel for Defendants–Appellees Expedia Group, Inc., Hotels.com, L.P., Hotels.com GP, LLC, and Orbitz, LLC)
3. Arellano, Elena del Valle (former plaintiff and alleged owner of the claim to one of the allegedly confiscated properties)
4. Baker & McKenzie LLP (counsel for Defendants–Appellees Booking.com B.V. and Booking Holdings, Inc.)
5. Bloom, Hon. Beth (United States District Judge)
6. Booking Holdings, Inc. BKNG (Defendant–Appellee)
7. Booking.com B.V. (Defendant–Appellee)
8. Carnival Corporation (Interested Party)
9. Cruise Lines International Association (Amicus Curiae)
10. Del Valle, Elena (sister of Plaintiff–Appellant Mario Del Valle and

alleged owner of interest in one of the allegedly confiscated properties)

11. Del Valle, Mario (Plaintiff–Appellant)

12. Duffy, Michael A. (counsel for Defendants–Appellees Booking.com B.V. and Booking Holdings, Inc.)

13. Echevarria, Mario (former plaintiff and alleged owner of the claim to one of the allegedly confiscated properties)

14. Expedia, Inc., a Washington corporation (subsidiary of Expedia Group, Inc. and indirect parent company of Defendants–Appellees Hotels.com L.P., Hotels.com GP, LLC, and Orbitz, LLC)

15. Expedia Group, Inc. EXPE (Defendant–Appellee)

16. Falla, Enrique (Plaintiff–Appellant)

17. Falla, Laureano (former plaintiff and alleged owner of the claim to one of the allegedly confiscated properties)

18. Fernandez, Carolina (former plaintiff and alleged owner of the claim to one of the allegedly confiscated properties)

19. Fernandez, Luis (former plaintiff and alleged owner of the claim to one of the allegedly confiscated properties)

20. Fernandez, Mario (former plaintiff and alleged owner of the claim to one of the allegedly confiscated properties)

21. Foreman Friedman (Counsel for Amicus Curiae Cruise Lines International Association)
22. Friedman, Darren (Counsel for Amicus Curiae Cruise Lines International Association)
23. Hotels.com GP, LLC (Defendant–Appellee and parent of Defendant–Appellee Hotels.com)
24. Hotels.com L.P. (Defendant–Appellee)
25. HRN 99 Holdings, LLC (indirect subsidiary of Defendant–Appellee Expedia Group, Inc., and parent of Defendant–Appellee Hotels.com GP, LLC)
26. Kaye, Rose & Partners, LLP (Counsel for Amicus Curiae Cruise Lines International Association)
27. Law Office of Manuel Vazquez, P.A. (counsel for Plaintiffs– Appellants)
28. Mathy, Patricia (counsel for Defendants–Appellees Booking.com B.V. and Booking Holdings, Inc.)
29. McCutcheon, Michael C. (counsel for Defendants–Appellees Booking.com B.V. and Booking Holdings, Inc.)
30. Mestre, Jorge (counsel for Plaintiffs–Appellants)
31. Moreno, Hon. Federico A. (United States District Judge)

32. MSC Cruises SA Co. (Interested Party)

33. MSC Cruises (USA) Inc. (Interested Party)

34. Norwegian Cruise Line Holdings Ltd. (Interested Party)

35. Olson, Kyle R. (counsel for Defendants–Appellees Booking.com B.V. and Booking Holdings, Inc.)

36. Orbitz, Inc. (parent of Defendant–Appellee Orbitz, LLC and indirect subsidiary of Defendant–Appellee Expedia Group, Inc.)

37. Orbitz, LLC (Defendant–Appellee)

38. Orbitz Worldwide, Inc. (indirect parent of Defendant–Appellee Orbitz, LLC and indirect subsidiary of Defendant–Appellee Expedia Group, Inc.)

39. Orbitz Worldwide, LLC (indirect parent of Defendant–Appellee Orbitz, LLC and indirect subsidiary of Defendant–Appellee Expedia Group, Inc.)

40. Perez, Lorayne (counsel for Defendants–Appellees Expedia Group, Inc, Hotels.com L.P., Hotels.com GP, LLC, and Orbitz, LLC)

41. Pou, Angelo (Plaintiff–Appellant)

42. Riccio, L Andrew S. (counsel for Defendants–Appellees Booking.com B.V. and Booking Holdings, Inc.)

43. Rivero Mestre LLP (counsel for Plaintiffs–Appellants)

44. Rivero, Andres (counsel for Plaintiffs–Appellants)

45. Rodriguez, Carlos A. (counsel for Plaintiffs–Appellants)

46. Rolnick, Alan (counsel for Plaintiffs–Appellants)

47. Rose, Bradley M. (Counsel for Amicus Curiae Cruise Lines International Association)

48. Royal Caribbean Cruises, Ltd. (Interested Party)

49. Scola, Hon. Robert N., Jr. (United States District Judge)

50. Scott Douglass & McConnico LLP (counsel for Defendants–Appellees Expedia Group, Inc, Hotels.com L.P., Hotels.com GP, LLC, and Orbitz, LLC)

51. Shank, David (counsel for Defendants–Appellees Expedia Group, Inc, Hotels.com L.P., Hotels.com GP, LLC, and Orbitz, LLC)

52. Sosa, Lolita (counsel for Defendants–Appellees Expedia Group, Inc, Hotels.com L.P., Hotels.com GP, LLC, and Orbitz, LLC)

53. Valle, Hon. Alicia O. (United States Magistrate Judge)

54. Vazquez, Manuel (counsel for Plaintiffs–Appellants)

55. Webre, Jane (counsel for Defendants–Appellees Expedia Group, Inc, Hotels.com L.P., Hotels.com GP, LLC, and Orbitz, LLC)

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, amicus curiae make the following disclosures:

Cruise Lines International Association ("CLIA") is a non-profit corporation organized under the laws of the District of Columbia. CLIA operates under Section 501(c)(6) of the Internal Revenue Code. It has no parent corporation and, as it has no stock, no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT C-1

CORPORATE DISCLOSURE STATEMENT C-6

TABLE OF AUTHORITIES ii

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS 1

AUTHORITY TO FILE AMICUS BRIEF 2

CLIA'S IDENTITY AND INTEREST IN THE PRESENT CASE 2

STATEMENT OF ISSUES 3

SUMMARY OF ARGUMENT 3

ARGUMENT 6

A. Title III of Helms-Burton is a remarkable statute, purporting to give plaintiffs the right to recover the full value of their property (or, as asserted here, even three times that value) from individual defendants because the Cuban government confiscated the property in the early 1960s 6

B. The basic requirements of standing under Article III are Constitutional minimums 10

C. Plaintiffs' do not plead that defendants caused them a concrete injury in fact 13

D. Plaintiffs have no standing because defendants did not cause the only concrete injury alleged: the confiscation of the properties by the Cuban government in the early 1960s 16

E. The Helms-Burton Act does not suffice to provide plaintiffs with Constitutional standing. And neither history nor the judgment of Congress can override plaintiffs' lack of Article III standing 19

CONCLUSION 27

TABLE OF AUTHORITIES

Page(s)

Cases:

Adkins v. State,
576 So. 2d 392 (Fla. Dist. Ct. App. 1991).....22

AT&T Mobility, LLC v. Nat'l Ass'n for Stock Car Auto Racing, Inc.,
494 F.3d 1356 (11th Cir. 2007).....6

Blum v. Yaretsky,
457 U.S. 991, 102 S. Ct. 2777, 73 L. Ed. 2d 534 (1982).....24

Bochese v. Town of Ponce Inlet,
405 F.3d 964 (11th Cir. 2005).....6

DaimlerChrysler Corp. v. Cuno,
547 U.S. 332, 126 S. Ct. 1854, 164 L. Ed. 2d 589 (2006).....25

Garcia-Bengochea v. Carnival Corp.,
No. 1:19-CV-21725-JLK, 2020 WL 4590825
(S.D. Fla. July 9, 2020).....2

Garcia-Bengochea v. Royal Caribbean Cruises, Ltd.,
No. 1:19-CV-23592-JLK, 2020 WL 6081658
(S.D. Fla. Oct. 15, 2020).....2

Gladstone, Realtors v. Village of Bellwood,
441 U.S. 91, 99 S. Ct. 1601, 60 L. Ed. 2d 66 (1979).....12

Glen v. Am. Airlines, Inc.,
No. 4:20-CV-482-A, 2020 WL 4464665 (N.D. Tex. Aug. 3, 2020).....15

Glen v. Club Mediterranee, S.A.,
450 F.3d 1251 (11th Cir. 2006).....18

Havana Docks Corp. v. MSC Cruises SA Co.,
455 F. Supp. 3d 1355 (S.D. Fla. 2020).....3

Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.,
454 F. Supp. 3d 1259 (S.D. Fla. 2020).....2

Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.,
No. 19-CV-23590, 2020 WL 1905219 (S.D. Fla. Apr. 17, 2020).....3

In re Johnson & Johnson Talcum Powder Prod. Mktg., Sales Practices & Liab. Litig.,
903 F.3d 278 (3d Cir. 2018) 24

Kawa Orthodontics, LLP v. Sec'y, U.S. Dept. of the Treasury,
773 F.3d 243 (11th Cir. 2014) 17

Lewis v. Casey,
518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996) 17

Lujan v. Defs. of Wildlife,
504 U.S. 555, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) 3, 11, 13, 17

Malley-Duff & Assocs., Inc. v. Crown Life Ins. Co.,
792 F.2d 341 (3d Cir. 1986), *aff'd sub nom. Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 107 S. Ct. 2759, 97 L. Ed. 2d 121 (1987).....21

MSP Recovery Claims, Series LLC v. QBE Holdings, Inc.,
965 F.3d 1210 (11th Cir. 2020) 18

Muransky v. Godiva Chocolatier, Inc.,
__ F.3d __, No. 16-16486, 2020 WL 6305084
(11th Cir. Oct. 28, 2020)..... *passim*

Odebrecht Const., Inc. v. Sec'y, Fla. Dep't of Transp.,
715 F.3d 1268 (11th Cir. 2013) 23

Raines v. Byrd,
521 U.S. 811, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997) 12, 19

Simon v. Eastern Ky. Welfare Rights Organization,
426 U.S. 26, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976) 11

Sky Four Realty Co. v. State,
134 Misc. 2d 810, 512 N.Y.S.2d 987 (N.Y. Ct. Cl. 1987).....21

Spokeo, Inc. v. Robins,
136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016)..... *passim*

Swann v. Sec'y, Georgia,
668 F.3d 1285 (11th Cir. 2012) 17

Thole v. U. S. Bank N.A,
140 S. Ct. 1615, 207 L. Ed. 2d 85 (2020)..... *passim*

Tokyo Gwinnett, LLC v. Gwinnett Cty., Georgia,
940 F.3d 1254 (11th Cir. 2019) 24

Trichell v. Midland Credit Mgmt., Inc.,
964 F.3d 990 (11th Cir. 2020) ..... *passim*

Statutes & Other Authorities:

U.S. Const. art. III ..... *passim*

U.S. Const. art. III, § 2 4

12 U.S.C. § 6018(b)(2)(A) 8

15 U.S.C. § 1692 20

22 U.S.C. § 6021-91 .....5, 6

22 U.S.C. § 6023(13)(A) 5, 8

22 U.S.C § 6023(13)(B)(iii) 18

22 U.S.C. § 6081-85 ..... 2, 7, 22

22 U.S.C. § 6082(a)(1)(A) 7

22 U.S.C. § 6082(a)(1)(A)(i) 8, 24

22 U.S.C. § 6082(b)(2)(A) 21

50 U.S.C. §§ 1–6 23

50 U.S.C. §§ 7–39 23

50 U.S.C. §§ 41–44 23

49 C.F.R. Part 515 23

Fed. R. App. P. 29(a)(3) 2

Pub. L. No. 104-114, 110 Stat. 785 ..... 2, 5, 6

Restatement (Second) of Torts § 328E(1965) 21

Restatement (Second) of Torts § 329 (1965) 21

Delegation of Authority to Suspend the Provisions of Title III of the
Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of
1996, 78 Fed. Reg. 9573 .....7, 8

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

The undersigned outside counsel for CLIA authored this amicus brief in its entirety. No financial contribution was made by any other entity toward the preparation or submission of this amicus brief.

AUTHORITY TO FILE AMICUS BRIEF

A motion for leave to file pursuant to Fed. R. App. P. 29(a)(3) is being filed contemporaneously with this brief.

CLIA'S IDENTITY AND INTEREST IN THE PRESENT CASE

Cruise Lines International Association ("CLIA") is a not-for-profit trade association whose membership includes fifty plus cruise lines, reflecting approximately ninety-seven percent of the cruise capacity in North America. CLIA represents the interests of its members before the courts, Congress, the Executive Branch, and international tribunals. To that end, CLIA files *amicus curiae* briefs in cases that raise issues of vital concern to the business cruise community. This is one of those cases.

CLIA considers this case to be of special significance in that cruise lines have been heavily involved in litigation under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, Pub. L. No. 104-114, 110 Stat. 785 (codified at 22 U.S.C. §§ 6081-85) (the "Helms-Burton Act," "Helms-Burton" or "Title III") after Secretary of State Pompeo allowed the statute to go into effect in 2019. *See, e.g., Garcia-Bengochea v. Royal Caribbean Cruises, Ltd.*, No. 1:19-CV-23592-JLK, 2020 WL 6081658 (S.D. Fla. Oct. 15, 2020); *Garcia-Bengochea v. Carnival Corp.*, No. 1:19-CV-21725-JLK, 2020 WL 4590825 (S.D. Fla. July 9, 2020); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 454 F. Supp.

3d 1259, 1264 (S.D. Fla. 2020); *Havana Docks Corp. v. MSC Cruises SA Co*., 455 F. Supp. 3d 1355, 1358 (S.D. Fla. 2020); *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 19-CV-23590, 2020 WL 1905219 (S.D. Fla. Apr. 17, 2020). Title III raises important and unique Constitutional standing issues. CLIA has a strong interest in lending its voice to the development of these issues, especially as there is currently a dearth of any appellate authority interpreting or applying Title III.

STATEMENT OF ISSUES

Do plaintiffs-appellants have standing under Article III of the Constitution to bring this claim under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act?

SUMMARY OF ARGUMENT

The Supreme Court has made it perfectly clear for decades that the three minimum requirements for standing in federal court (a concrete injury in fact, an injury which was caused by the defendant, and redressability) are based in the Constitution itself. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992); *Thole v. U. S. Bank N.A*, 140 S. Ct. 1615, 1618, 207 L. Ed. 2d 85 (2020). "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.'' *Spokeo, Inc. v. Robins*, 136 S.

Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016) (citation and quotation marks omitted). "Article III of the Constitution limits federal courts to deciding 'Cases' or 'Controversies.' U.S. Const. art. III, § 2. The existence of a case or controversy is a 'bedrock requirement' of our jurisdiction; we cannot exercise judicial power without it." *Muransky v. Godiva Chocolatier, Inc.,* __ F.3d __, No. 16-16486, 2020 WL 6305084, at *4 (11th Cir. Oct. 28, 2020) (en banc) (citations omitted).

In the instant case, plaintiffs are individuals who claim interests in parcels of real property in Cuba, which they allege were confiscated by the Fidel Castro regime in the early 1960s, after the Cuban Revolution. They are suing two travel booking companies, Expedia and Booking.com, for three times the value of the real property itself, plus interest over decades, based on the allegation that these companies made reservations available on the Internet to stay at structures subsequently built on the properties.

Nowhere in the complaint is there any allegation that defendants' actions caused any concrete harm to plaintiffs, that defendants owe any funds to plaintiffs, or that defendants' actions decreased any property values. The only concrete harm alleged in the complaint is that of the Cuban government in the 1960s, not defendants. Thus, plaintiffs lack Article III standing as against these defendants.

Plaintiffs' sole cause of action is based on a highly unusual and internationally controversial statute, Title III of the Cuban Liberty and Democratic Solidarity

(LIBERTAD) Act, Pub. L. No. 104-114, 110 Stat. 785 (codified at 22 U.S.C. §§ 6021-91) (the "Helms-Burton Act"), passed in 1996 but only allowed to become effective twenty-three years later, in 2019. The heart of the statute is its allowance, with certain enumerated exceptions, of a claim against "any person" who "*traffics*" in property confiscated by the Castro regime—a term which is defined to include, for instance, "*using or otherwise benefitting from*" the property, with no requirement that any plaintiff be injured. 22 U.S.C. § 6023(13)(A) (emphasis added).

Although historical practice and the judgment of Congress should be examined by federal courts before finding an absence of standing in the face of a statutory claim (*Spokeo,* 136 S.Ct. at 1549), the Helms-Burton Act is an odd historical anomaly, untethered to any related common law claims. Moreover, the findings of Congress accompanying the statute do not support any theory that would make up for the obvious Article III standing deficiencies. As this Court stated a few months ago, in finding plaintiffs lacked standing even though a statutory claim might have been stated, "federal courts must decide for themselves whether applicable statutes are consistent with the Constitution." *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 999 (11th Cir. 2020). Congress has a "limited authority to provide legal process relating to actual harms, not a blanket power to authorize suit in the absence of harm… ." *Muransky,* 2020 WL 6305084, at *5. Here, plaintiffs have alleged no actual harm, so they have no standing under Article III of the Constitution,

and this case should be dismissed for lack of subject matter jurisdiction.

ARGUMENT

Although the district court granted dismissal of this case on personal jurisdictional grounds and did not address the standing issues disputed by the parties,[1] "standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." *AT&T Mobility, LLC v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 494 F.3d 1356, 1359–60 (11th Cir. 2007) (citation and quotation marks omitted). As this Court has stated, "we are obliged to consider standing *sua sponte* even if the parties have not raised the issue because an appellate court 'must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review.'" *Id*. (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005).)

A. Title III of Helms-Burton is a remarkable statute, purporting to give plaintiffs the right to recover the full value of their property (or, as asserted here, even three times that value) from individual defendants because the Cuban government confiscated the property in the early 1960s.

The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, Pub. L. No. 104-114, 110 Stat. 785 (codified at 22 U.S.C. §§ 6021-91) (the "Helms-Burton Act," or "Helms-Burton") was enacted in 1996. It is Title III of the statute, entitled

[1] See Docket Entry ("DE") 71; DE 46, 53 at 10-12; DE 52 at 12-14; DE at 4-6; DE 69 at 8-10; DE 70 at 6-7.

"Protection of Property Rights of US Nationals," which is at issue in this appeal. 22 U.S.C. §§ 6081-6085. Title III was meant to become effective on August 1, 1996. *Id.*, § 6085(a). Congress, however, gave the president the authority to suspend the effective date of the statute in six-month increments. *Id.,* § 6085(b)(1)-(2). Presidents Bill Clinton, George W. Bush, and Barack Obama all continuously exercised this option, keeping the statute in abeyance for nearly twenty-five years.[2] But that changed in April 2019, when the secretary of state announced that Title III would go into effect, which it did on May 2, 2019. See https://www.state.gov/remarks-to-the-press-11/ (last visited Nov. 5, 2020).

Title III of Helms-Burton is an extraordinary statute. With certain exceptions, it states 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… ." 22 U.S.C. § 6082(a)(1)(A) (emphasis added).

And, while using the loaded term "trafficking," Helms-Burton defines it in a sense that requires the *plaintiff* to have suffered no injury at all. 22 U.S.C. § 6023(13)(A). With certain exceptions, "any person" who "*use[s]*," or who "enters

[2] President Obama delegated the right to suspend Helms-Burton to the Secretary of State. See Delegation of Authority to Suspend the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 78 Fed. Reg. 9573, 2013 WL 458806 (Jan. 31, 2013).

into a commercial arrangement *using or otherwise benefitting from*" property taken by the Cuban government—or even any person who "participates in" or "profits from" such actions by any other person—may be held liable. *Id.;* 12 U.S.C. § 6018(b)(2)(A) (emphasis added).

More than this, Title III of Helms-Burton does not provide for a plaintiff to recover what could in any sense resemble traditional *damages* in the amount that a defendant may have harmed plaintiff. Instead, a plaintiff can recover the *greater* of the amount certified by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest; the current *fair market value of the property* which was taken by the Cuban government or the fair market value at the time of confiscation (whichever is itself greater), plus interest; or the amount determined by a court appointed special master in the case of uncertified claims. 22 U.S.C. §§ 6082(a)(1)(A)(i); 6083(a)(1). In certain situations (as plaintiffs attempted in this case), this amount can be *tripled*. *Id.* § 6082(a)(3). Interest, attorney fees, and court costs are also available. *Id.* §§ 6082(a)(1)(A)(ii); 6082(a)(1)(B).

Passage of Helms-Burton and the 2019 decision to activate Title III created an international stir. Several foreign governments, including the European Union, Canada, and Mexico, adopted so-called "blocking statutes" to Helms-Burton which employ legal devices to deter enforcement actions under Title III, going so far as to prohibit compliance with United States court orders and giving the ability to recoup

any Title III judgments in foreign courts.[3]

The nature of this statute is shown by the relief sought in this case. Plaintiffs Mario Del Valle, Enrique Falla, and Angelo Pou bring a single claim under Title III against Expedia and Booking.com. DE 50, Second Amended Class Action Complaint, ¶¶ 83-90.[4] They ask that defendants pay them triple the full value of the property as computed under the statute, plus attorney fees and costs. *Id.*, ¶ 89; Prayer

---

[3] See, *e.g.,* European Council Regulation No. 2271/96, OJ. L 309/1, *protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom*, Arts. 5-6 (1996) (available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996R2271&from=EN, last visited Nov. 6, 2020); Foreign Extraterritorial Measures Act (R.S.C., 1985, c. F-29), amended by 1996, c. 28, s. 7, 2001, c. 4, s. 86(F), §§ 8(1), 9(1) (available at https://laws-lois.justice.gc.ca/eng/acts/f-29/page-2.html#h-236235, last visited Nov. 6, 2020); Law of Protection of Commerce and Investments from Foreign Policies that Contravene International Law (*Ley de Protección al Comercio y la Inversión de Normas Extranjeras que Contravengan el Derecho Internacional*), available at http://www.diputados.gob.mx/LeyesBiblio/pdf/63.pdf (last visited, Nov. 6, 2020). There was additional reaction at the decision to allow Title III to go into effect. See *Joint Statement by High Representative/Vice President Federica Mogherini and Commissioner for Trade Cecilia Malmström on the decision of the United States to further activate Title II of the Helms-Burton (Libertad Act),* available at https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_19_2171 (last visited Nov. 5, 2020); *Position of the Mexican Government on Ending Suspension of Title III of the Helms-Burton Act,* available at https://www.gob.mx/sre/prensa/position-of-the-mexican-government-on-ending-suspension-of-title-iii-of-the-helms-burton-act (last visited Nov. 6, 2020).

[4] "Expedia.com" means defendants Expedia Group, Inc., Hotels.com, L.P., Hotels.com GP, LLC, and Orbitz, LLC. DE 50, ¶¶ 5-8. "Booking.com" refers to defendants Booking Holdings, Inc. and Booking.com B.V. *Id.*, ¶¶ 9-10.

for Relief (c)(i)-(iv). Plaintiffs also seek to represent a purported nationwide class against defendants. *Id.*, ¶ 62.

Falla and Del Valle claim they have interests in neighboring properties in Cuba taken by the Castro regime in the early 1960s. *Id.,* ¶¶ 19-27, 34, 40-41. Pou claims the same with regard to a separate property. *Id.,* ¶¶ 29-31, 37, 42. Plaintiffs claim that Florida residents can now reserve vacation packages through Expedia and Booking.com for structures on the property in Cuba, from which Expedia and Booking.com receive "commissions and fees" and, indirectly, advertising revenue. *Id.*, ¶¶ 13, 36, 39, 59. Nowhere do plaintiffs allege that any such undetermined sums would have been paid to them, and nowhere do plaintiffs allege that defendants have any funds which they are entitled to. Instead, plaintiffs allege that defendants have simply "used or benefitted, directly or indirectly" from the Cuban properties, by "offering, for economic benefit, reservations" on the property. *Id.*, ¶ 88.

B. The basic requirements of standing under Article III are *Constitutional* minimums.

In establishing the federal judiciary as one of three separate and independent branches of government, the Constitution speaks of extending the "judicial Power" to "Cases" and "Controversies." U.S. Const. art. III. And "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or

controversies.'' *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016) (citation and quotation marks omitted). "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood." *Id.*, 136 S.Ct. at 1547.

"Over the years, [the Supreme Court has] established that the *irreducible constitutional minimum* of standing contains *three elements*. First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992) (emphases added, citations and internal quotation marks omitted). "Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.'" *Id.* at 560-561 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). "Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan,* 504 U.S. at 561.

That each of these three elements is constitutionally based is without question. *See Thole v. U. S. Bank N.A*, 140 S. Ct. 1615, 1618, 207 L. Ed. 2d 85 (2020) ("To

establish standing *under Article III of the Constitution*, a plaintiff must demonstrate (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief.") (emphasis added).

Moreover, although Congress obviously has a role to play in providing and fashioning remedies (which will be discussed in more detail below), what Congress cannot do is give courts more power than the Constitution does. *See Raines v. Byrd*, 521 U.S. 811, 820, 117 S. Ct. 2312, 2318, 138 L. Ed. 2d 849 n. 3 (1997) ("It is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing."); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100, 99 S.Ct. 1601, 60 L.Ed.2d 66 (1979) ("In no event... may Congress abrogate the Art. III minima."). Congress has "limited authority to provide legal process relating to actual harms, not a blanket power to authorize suit in the absence of harm: Congress 'cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.'" *Muransky v. Godiva Chocolatier, Inc.,* __ F.3d __, No. 16-16486, 2020 WL 6305084, at *5 (11th Cir. Oct. 28, 2020) (en banc) (quoting *Spokeo*, 136 S. Ct. at 1548.)

C. Plaintiffs' do not plead that defendants caused them a concrete injury in fact.

"Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. Each element, in other words, must be alleged, and alleged "clearly." *Spokeo,* 136 S.Ct. at 1547.

To satisfy the first element, injury in fact, a plaintiff must clearly allege that "he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo,* 136 S.Ct. at 1549 (quoting *Lujan,* 504 U.S. at 560). What do plaintiffs allege that defendants did that caused them "concrete" harm?

It comes down to this: plaintiffs allege, on information and belief, that customers of Expedia and Booking.com traveled unlawfully to Cuba and stayed at the properties, and defendants benefitted from these reservations through commissions and indirect advertising revenues. DE 50, ¶¶ 50-51, 58-59. That is the sum total of the precise actions taken by defendants, as a matter of substantive fact, which plaintiffs allege harmed them.

Plaintiffs do not allege that they would have earned these commissions themselves, or that they were deprived of "advertising revenue." (Such an allegation would be purely speculative in any instance.) Instead, all that is alleged is that

defendants benefitted from offering opportunities for stays at buildings constructed on the property long after the real property is alleged to have been confiscated. In short, not only did plaintiffs not suffer an injury (economic or otherwise) by the defendants, plaintiffs cannot be said to have suffered an injury at all. Indeed, it is quite possible that Booking.com and Expedia's actions, if true, actually *increased* the value of the property to which plaintiffs lay claim.

This core theory is repeated when plaintiffs allege the Title III claim itself: Property was confiscated by the Cuban government in the 1960s which plaintiffs now have some interest in – and defendants have benefitted "directly or indirectly" from offering reservations to travelers at the properties. DE 50, ¶ 88. This is simply not enough to establish a concrete injury. See *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 997 (11th Cir. 2020) (finding a lack of concrete injury where "neither plaintiff allege[d] that he made any payments in response to the defendants' letters—or even that he wasted time or money in determining whether to do so.")

Plaintiffs' complaint does generally refer to defendants' alleged violation of the statute by mimicking Title III's definition of "trafficking." DE 50, ¶ 88. But as the Supreme Court restated recently, the fact that Congress has provided a statutory claim does not end the standing inquiry or relieve plaintiffs of their burden to satisfy the inquiry's Constitutional requirements. "Injury in fact is a constitutional requirement, and it is settled that Congress cannot erase Article III's standing

requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Spokeo,* 136 S.Ct. at 1547-48 (citations and quotation marks omitted). "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.* at 1549 (quotation marks and citations omitted). Here, plaintiffs have failed to allege that defendants caused them any concrete harm—and any benefit flowing to defendants through commissions or otherwise is not damage to plaintiffs. As was stated recently by the Southern District of Texas in a Title III case:

> Plaintiff complains that defendant fails to compensate plaintiff when defendant earns commissions on reservations made at the Subject Hotels. It is unclear how plaintiff is injured by such an action. Defendant did not deprive plaintiff of the Properties or the profits he might make if he owned and operated hotels on the Properties. Instead, defendant merely does business with the Subject Hotels. It is unclear why plaintiff believes he should be entitled to defendant's commissions and is injured by not receiving such payment; plaintiff would not be entitled to a portion of defendant's commissions even if he owned the Properties and operated the Subject Hotels.

Glen v. Am. Airlines, Inc., No. 4:20-CV-482-A, 2020 WL 4464665, at *2 (N.D. Tex. Aug. 3, 2020) (appeal filed). The complaint in this case suffers from the same simple and straightforward deficiencies.

D. Plaintiffs have no standing because defendants did not cause the only concrete injury alleged: the confiscation of the properties by the Cuban government in the early 1960s.

The only concrete injury discussed in the complaint is one that plaintiffs here do not and cannot rely on to support standing: namely, the injury that occurred to the original property owners when the Cuban government took the subject properties in the 1960s.[5] The complaint alleges that the original owners' "use and enjoyment of their property …came to an abrupt end when Fidel Castro seized power and established a communist government in Cuba, which confiscated their property and forced much of the families to flee their native country for the United States." DE 50 at p. 2. See also DE 50, ¶ 34 ("On January 1, 1959, Fidel Castro took power in Cuba and instituted a communist regime. Shortly thereafter, in the early 1960's, the Cuban government confiscated the Del Valle and Falla Properties, as it ultimately did with all privately-owned property on the island"); ¶ 37 ("On or about 1959, the communist Cuban government confiscated the Muniz Property from the Muniz family. Shortly thereafter, many of the family members, including Angelo Pou, fled Cuba to the United States, where they lived ever since.")

This might suffice as an allegation of concrete injury against the Cuban government, but as plaintiffs surely acknowledge, it is not enough to state a concrete

[5] As explained in Appellees' Briefs, Plaintiffs here were not the original property owners, and thus could not assert this injury even if it would support standing, which it does not. Expedia Br. at 32 – 37.

injury caused by defendants. To "establish standing under Article III of the Constitution… a plaintiff must demonstrate… that the injury was *caused by the defendant*." *Thole,* 140 S.Ct. at 1618 (emphasis added). That is, plaintiffs must demonstrate that "[their] alleged injury is 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.'" *Kawa Orthodontics, LLP v. Sec'y, U.S. Dept. of the Treasury*, 773 F.3d 243, 247 (11th Cir. 2014) (quoting *Lujan*, 504 U.S. at 560). There is no standing when an "independent source" caused plaintiffs to suffer the alleged injury. See, e.*g., Swann v. Sec'y, Georgia*, 668 F.3d 1285, 1288 (11th Cir. 2012).

Needless to say, defendants were not involved, and are not alleged to have been involved, in the Cuban Revolution or its aftermath. The only concrete harm anywhere in the complaint was caused by an "independent source": the Castro regime. Plaintiffs cannot validly gain standing against one entity by piggybacking facts that can only be marshaled against another. "[S]tanding is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358, 116 S. Ct. 2174, 2183, 135 L. Ed. 2d 606 (1996).

Finally, the property confiscation of the early 1960s might constitute a concrete injury to those who owned the property at the time, but it is difficult to see how those actions can be resurrected decades later to assert standing against other defendants. Indeed, in a case decided before Title III became effective, this Court

rejected the argument that the Cuban government's actions "failed to extinguish the ownership rights" of the owners prior to the confiscations, and noted that Congress, in passing Helms-Burton, condemned the confiscations but did "not proclaim them ineffective." *Glen v. Club Mediterranee, S.A.,* 450 F.3d 1251, 1255 (11th Cir. 2006). Now that Title III has been allowed to take effect, nothing shields it from the standing inquiry required by the Constitution.

By the logic of the complaint, there is no theoretical reason why plaintiffs, given the right statute, could not assert standing against vendors dealing in 2020 with properties taken by the republicans during the French Revolution, by Oliver Cromwell's English Commonwealth after the overthrow and execution of Charles I in the 1600s, or by Henry VII's new Tudor dynasty after the defeat of Richard III at Bosworth Field in 1485. *Cf. MSP Recovery Claims, Series LLC v. QBE Holdings, Inc.*, 965 F.3d 1210, 1217 (11th Cir. 2020) ("Importantly, Article III standing must be determined as of the time that the plaintiff's complaint is filed.") (citation and quotation marks omitted).[6]

[6] That there are real and substantive exceptions to the coverage of the statute does not change the analytical nature of the standing analysis. *See, e.g.*, *See* 22 U.S.C. § 6082(a)(4)(B) ("In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996.") ; *Id.,* § 6023(13)(B)(iii) (exempting "transactions and uses of property incident to lawful travel to Cuba […]").

The actions of the Cuban government in the 1960s may have constituted injury against the owners at the time, but against the named defendants, plaintiffs do not allege any concrete harm at all.

E. The Helms-Burton Act does not suffice to provide plaintiffs with Constitutional standing. And neither history nor the judgment of Congress can override plaintiffs' lack of Article III standing.

Plaintiffs do not come close to alleging an injury to support Article III standing beyond the bare violation of Helms-Burton. Instead, plaintiffs rely entirely on the theory that they have been seemingly granted the right to bring this lawsuit by Title III of Helms-Burton. In essence, plaintiffs assert that, if the statute is satisfied, they can recover three times of fair market value of the subject properties, even though no claim is made that defendants' actions ever caused any loss of money or property. See DE 50, ¶ 89; Prayer for Relief (c)(i)-(iv).

But as already explained, Article III's standing requirements are minimum *constitutional* requirements. *Thole,* 140 S. Ct. at 1618; *Spokeo, Inc.,* 136 S. Ct. at 1547; *Raines,* 521 U.S. at 820. The existence of a statutory "cause of action does not affect the Article III standing analysis." *Thole,* 140 S.Ct. at 1620. "The existence of a case or controversy is a 'bedrock requirement' of our jurisdiction; we cannot exercise judicial power without it." *Muransky,* 2020 WL 6305084, at *4.

Where the violation of a statute does not result in any tangible harm (or even a risk of tangible harm), standing exists only in two narrow circumstances. The first is where the alleged intangible harm is closely analogous to some injury that has traditionally supported lawsuits under a "pedigreed common-law cause of action." *Muransky*, 2020 WL 6305084 at *6. The second is where the statute itself "illuminate[s]" a concrete harm that previously fell short of an actionable injury—but "congressional judgment only goes so far, and does not relieve the judiciary of [its] constitutional duty to independently determine whether the plaintiff has suffered a concrete injury." *Id.* Congress has a "limited authority to provide legal process relating to actual harms, not a blanket power to authorize suit in the absence of harm… ." *Id.* at *5.

In looking to historical causes of action, courts consider "whether the alleged intangible injury bears a 'close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.'" *Trichell,* 964 F.3d at 997 (quoting *Spokeo*, 136 S. Ct. at 1549.) Recently, for example, this Court found that plaintiffs who had received misleading letters but had not relied on them had no standing, even though they undoubtedly stated a *statutory* claim under the Fair Debt Collection Practices Act (codified at 15 U.S.C. §§ 1692, *et seq*.). *Trichell,* 964 F.3d at 998. Looking at "centuries of tradition" and the common law torts of misrepresentation, this Court noted that reliance was a

required element, missing from the FDCPA. *Id.* Because the statutory claim "depart[ed] dramatically from… centuries of tradition" and had "no relationship to harms traditionally remediable in American or English courts…, [this] cut[] against Article III standing, for the purpose of that doctrine is to confine courts to their 'traditional role.'" *Id.*

It is difficult even to conjure a common-law comparison to Helms-Burton. There simply is no analog to this new grant of a statutory right, related to a governmental taking decades ago, to sue anyone who might have in some way benefitted, directly or indirectly, from dealings with the property today. Even the law of trespass has always required that the plaintiff be in possession of the property—and the definition of "possessor" even excluded those with an immediate right to occupy the property if someone else was in actual possession. *Restatement (Second) of Torts* §§ 328E, 329 (1965). See *Sky Four Realty Co. v. State*, 134 Misc.2d 810, 512 N.Y.S.2d 987, 989 (N.Y. Ct. Cl. 1987) (an "owner who is out of possession cannot maintain trespass.")

And no credence, in substance, should be given to the statute's use of the term "trafficking," as the statutory definition, with its inclusion of concepts such as "use" and "benefit," has no resemblance to a common-law tort. 22 U.S.C. § 6082(b)(2)(A). *Cf. Malley-Duff & Assocs., Inc. v. Crown Life Ins. Co.,* 792 F.2d 341, 351–52 (3d Cir. 1986), *aff'd sub nom. Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483

U.S. 143, 107 S. Ct. 2759, 97 L. Ed. 2d 121 (1987) (noting that actions for trafficking in contraband cigarettes or narcotics "simply do not correspond to private causes of action under common law.") Even modern statutes or causes of action using the term "trafficking" require some intent to actually transfer the property itself. See, e.g., *Adkins v. State*, 576 So. 2d 392, 393 (Fla. Dist. Ct. App. 1991) ("Conviction of the offense of trafficking in stolen property requires an evidentiary showing of an intent to traffic in the stolen property, as by disposing of it by *transfer to another* ..... One does not evidence an intent to 'dispose' of stolen property merely by putting it into his vehicle.")

Title III does not provide a claim "that 'has traditionally been regarded as providing a basis for a lawsuit.'" *Muransky,* 2020 WL 6305084, at **11 (quoting *Spokeo*, 136 S. Ct. at 1549.) Thrusting federal courts into this entirely unknown, expansive, and ill-defined cause of action can hardly be said to be keeping federal courts within their "traditional role." *See Trichell,* 964 F.3d at 998. Historical practice, therefore, offers little to aid plaintiffs on the question of standing.

Also to be considered is the judgment of Congress. *Spokeo,* 136 S.Ct. at 1549; *Trichell,* 964 F.3d at 997. The findings Congress inserted into Helms-Burton really do not speak at all to how an individual plaintiff would be concretely harmed by any one individual defendant. Instead, Congress emphasized such generalities as the wrongfulness of the Castro regime's actions after the Cuban Revolution. 22 U.S.C.

§ 6081. Congress found that it was "in the interest of the Cuban people that the Cuban Government respect equally the property rights of Cuban nationals and nationals of other countries." *Id.*, § 6081(3). "Trafficking in confiscated property," Congress found, provides "badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government." But the ultimate problem with such "trafficking," it continued, was that it undermined U.S. foreign policy goals of bringing "democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure, and.. to protect the claims of the United States nationals who had property wrongfully confiscated […]." *Id.*, § 6081(6).

It would be one thing if Congress were justifying unquestioned federal power to enact an embargo against Cuba with penalties paid into the federal treasury as a penalty for a violation of a nationwide policy choice. Indeed, the Cuba embargo was first put into place fifty-seven years ago, in 1963, by the Cuban Assets Control Regulations (49 C.F.R. Part 515), promulgated under the Trading with the Enemy Act of 1917 (Ch. 106, 40 Stat. 411 (1917) (codified as amended at 50 U.S.C. app. §§ 1–6, 7–39, 41–44). See *Odebrecht Const., Inc. v. Sec'y, Fla. Dep't of Transp.,* 715 F.3d 1268, 1275 (11th Cir. 2013).

No one questions the authority of Congress to conduct this policy as it sees fit. But Congress' findings in Helms-Burton make perfectly clear that Title III private defendants are being drafted into this foreign policy by having to pay to *plaintiffs,* as some kind of private-citizen attorneys general, amounts that are completely untethered to any degree of harm suffered, indeed when no direct injury has even been alleged.[7]

The findings in Helms-Burton betray no effort to conduct the kind of particular, concrete, defendant-specific injury requirement that Article III requires. Plaintiffs can point to no finding by Congress that, absent such a private right of action, individual plaintiffs would likely incur a risk of harm. See *Muransky,* 2020

[7] Another sign of the unusual nature of Helms-Burton is that it allows for recovery based on the full value of the disputed property. 22 U.S.C. § 6082(a)(1)(A)(i). This is not a damages-style recovery, but is more akin to full restitution to the plaintiff for actions taken by the Cuban government. This too creates standing difficulties as the mere fact that a plaintiff is entitled to one form of relief does not mean standing exists for another. As the Supreme Court has stated, "nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject." *Blum v. Yaretsky,* 457 U.S. 991, 999, 102 S.Ct. 2777, 2783, 73 L.Ed.2d 534 (1982). If a plaintiff seeks damages, that requires one standing inquiry, restitution another, and injunctive relief yet another – each type of relief must be judged on its own for constitutionally minimum standing. See, *e.g., In re Johnson & Johnson Talcum Powder Prod. Mktg., Sales Practices & Liab. Litig.*, 903 F.3d 278, 284–85 (3d Cir. 2018); see also *Tokyo Gwinnett, LLC v. Gwinnett Cty., Georgia*, 940 F.3d 1254, 1262 (11th Cir. 2019) ("Because a plaintiff must establish standing for each type of relief sought, we must separately assess these forms of relief.") In enacting Title III, Congress made no distinction whatsoever between damages as they are customarily calculated and full restitution.

WL 6305084 at *7. [8] This highly attenuated, society-wide guesswork may be appropriate for a policy Congress wants to enact by means of a traditional embargo statute, but giving plaintiffs the right to sue individual defendants in an Article III court is an entirely different matter.

Rather than a determination by Congress that plaintiffs under the statute would suffer a "concrete, particularized" injury "caused by the defendant" in a Title III claim (*Thole,* 140 S.Ct. at 1618), the statute and its findings instead offer the converse of a well-known rule of Constitutional standing. Citizens or taxpayers generally have no standing to challenge government actions or expenditures if their interest is "shared with millions of taxpayers" or "comparatively minute and indeterminable." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 343–44, 126 S. Ct. 1854, 1862, 164 L. Ed. 2d 589 (2006). With Helms-Burton, however, Congress has seemingly made the opposite determination: having found the Cuba embargo represents sound U.S. policy, it decided that individual defendants can, in fact, be drafted into paying penalties to individual plaintiffs who do not claim to have been harmed in a way that is discernible, concrete, or individualized—or even recognized by a prior law adjudicated in our nation's Article III courts. Tellingly, Congress did

[8] And, even if Congress had identified some risk, that risk would have to be "significant or substantial," subject to a "high standard for… risk-of-harm analysis," which this Court would exercise a "robust…role in assessing…" *Muransky,* 2020 WL 6305084 at *7.

not even attempt to explain how a Title III private cause of action satisfied Article III's standing requirements. So, while Congress' judgment should be considered, its statements weigh against plaintiffs' assertions of standing.

In any event, "[i]n enacting statutory causes of action, Congress must assess for itself whether these constitutional requirements have been met. And in adjudicating cases or controversies (or determining whether they exist), federal courts must decide for themselves whether applicable statutes are consistent with the Constitution." *Trichell,* 964 F.3d at 999 (citations omitted). At least as presented by the facts of this case, the mere fact that plaintiffs may have stated a claim under Helms-Burton does nothing to make up for their lack of standing under Article III.

/ / / /

/ / / /

/ / / /

/ / / /

CONCLUSION

By invoking Title III of the Helms-Burton Act, plaintiffs do not satisfy the minimum requirements of standing under Article III of the Constitution. This appeal should be dismissed for lack of subject matter jurisdiction.

Dated: November 9, 2020

Respectfully submitted,

By: */s/ Darren Friedman*

Darren Friedman
Foreman Friedman
2 S Biscayne Boulevard
Suite 2300
Miami, FL 33131

Counsel for Amicus Curiae, Cruise Lines International Association

Bradley M. Rose
Kaye, Rose & Partners, LLP
723 Palisades Beach Rd., Suite 108
Santa Monica, CA 90402

Counsel for Amicus Curiae, Cruise Lines International Association

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5), 32(a)(7)(B)(i), and 11 Cir. R. 32-4 because it contains 6,260 words, excluding the parts of the brief exempted by Rule 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. Rule 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) and 11 Cir. R. 32-3 because it has been prepared in a proportionally spaced typeface using Microsoft Word (14-point Times New Roman) and is double-spaced.

/s/ Darren Friedman
Darren Friedman

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on November 9, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Darren Friedman
Darren Friedman