3 Rulings Show High Court's Transnational Litigation Stance

By **David Bowker and Alyson Zureick** (August 11, 2026)

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The U.S. Supreme Court's 2025-2026 term closed with three consequential decisions for transnational litigation in U.S. courts: two potentially expanding opportunities for private litigants to maintain claims under Title III of the Cuban Liberty and Democratic Solidarity Act of 1996, commonly known as the Helms-Burton Act, and one narrowing the scope of permissible private claims under the Alien Tort Statute and the Torture Victim Protection Act.

In the Helms-Burton Act cases — Havana Docks Corp. v. Royal Caribbean Cruises Ltd. and Exxon Mobil Corp. v. Corporacion CIMEX SA — the court read Title III of the act expansively in its May 21 decision.

In Havana Docks, the court made clear that private companies and other defendants could be held liable for trafficking in property that was confiscated by the Cuban government, even for trafficking that occurred after a plaintiff's interest in the trafficked property had expired.[1]

Next, in Exxon Mobil, the court held that the Helms-Burton Act abrogates the sovereign immunity of Cuban agencies and instrumentalities that allegedly traffic in expropriated property, such that plaintiffs need not establish a separate exception to sovereign immunity under the Foreign Sovereign Immunities Act, or FSIA.[2]

In contrast, the court narrowed the scope of permissible private causes of action for overseas human rights abuses, holding on June 23 in Cisco Systems Inc. v. Doe that federal courts may not create new Alien Tort Statute, or ATS, causes of action and that the Torture Victim Protection Act, or TVPA, does not give rise to aiding-and-abetting liability.[3]

The practical result of these decisions is to expand opportunities for U.S. national plaintiffs with expropriation claims to maintain suits against Cuban entities or private companies that traffic or use property or property interests expropriated by Cuba — although significant challenges remain in such cases — while the scope of potential claims against private companies for human rights violations under the ATS and TVPA continues to narrow.

The Decisions

Title III of the Helms-Burton Act creates a private right of action for U.S. nationals against anyone who traffics in property confiscated by the Cuban government on or after Jan. 1, 1959. Trafficking is broadly defined in the act to include most commercial use of confiscated property, with some enumerated exceptions.

In Havana Docks, the Supreme Court held that the cruise line defendants could be liable for using docks at the Port of Havana even though the plaintiff's time-limited concession over those docks had expired before the alleged trafficking occurred.

Justice Clarence Thomas, writing for eight justices in the majority, reasoned that the physical property — not merely the plaintiff's particular property interest — is the object of the statute. Thus, the cruise line defendants could be held liable for commercial use of the docks — property that never belonged to the plaintiffs — even though the plaintiffs' property interest, a concession over the docks, had expired at the time the defendants used the docks.

In Exxon Mobil, the court held that Title III of the Helms-Burton Act creates its own exception to sovereign immunity, such that a plaintiff suing Cuban state-owned entities need not separately satisfy an FSIA exception to foreign sovereign immunity.

In a 6-3 opinion by Justice Brett Kavanaugh, the court concluded for the first time that foreign sovereign immunity had been abrogated by a statute other than the FSIA, which the court had previously stated was the sole basis for U.S. courts to obtain jurisdiction over foreign sovereigns.[4]

The decisions in both Havana Docks and Exxon Mobil appear intended to give practical effect to the cause of action that Congress created in the Helms-Burton Act.

In Havana Docks, the court expressed concern that if it construed the statutory term "property which was confiscated" to "refer only to the plaintiff's interest in the property," this would "read out of the Act obvious ways in which people can traffic in confiscated property" that were explicitly contemplated in the statute — such as "'us[ing]' confiscated property."[5]

And in Exxon Mobil, the court based its ruling in part on the principle that "Congress does not ordinarily enact self-defeating statutes," noting that plaintiffs could "almost never" meet the FSIA's exceptions to sovereign immunity because of the United States' "comprehensive economic embargo" against Cuba.[6]

Justice Elena Kagan questioned this reasoning in her dissent, pointing out that the district court had concluded that it had jurisdiction over the Cuban entities under the FSIA's commercial activity exception.[7]

In contrast, the court in Cisco held that courts may not create new causes of action under the ATA for violations of international norms, thereby closing the door that the court had left ajar in 2004 in Sosa v. Alvarez-Machain, which had expressly recognized the possibility of such new causes of action under the ATA.[8]

In Cisco, the court emphasized that it is Congress' role to create such causes of action, in part because judicially created causes of action could "have detrimental foreign policy consequences."[9]

As to the TVPA, the court held in Cisco that Congress did not provide a cause of action for aiding and abetting liability.

In so holding, it rejected the plaintiffs' argument that the statutory language imposing liability on an individual who "subjects" another to torture was sufficiently broad to incorporate such a cause of action. The Cisco decision continues the Supreme Court's trend of strictly limiting causes of action under the ATS and emphasizes that the court will not read secondary liability into statutes like the TVPA absent clear language from Congress.

A Statute-Specific Approach To Transnational Litigation

Taken together, these decisions show that the Supreme Court is taking a statute-specific approach to transnational litigation in U.S. courts. The court's decisions have focused on whether Congress clearly created a cause of action and if so, whether Congress intended to displace ordinary limits on suit, such as foreign sovereign immunity.

Cisco reflects the court's skepticism of judge-made causes of action, especially in areas of the law with potential foreign-policy consequences. The court's recent ATS cases had already narrowed the path for overseas human rights claims against corporate defendants.

Kiobel v. Royal Dutch Petroleum Co., in 2013, applied the presumption against extraterritorial application of U.S. law to ATS claims.[10] Jesner v. Arab Bank PLC, in 2018, declined to extend ATS liability to foreign corporations.[11] And Nestle USA Inc. v. Doe, in 2021, held that allegations of general domestic corporate activity were not enough to maintain suit against a U.S. corporation for human rights abuses abroad.[12]

The Cisco decision goes further by eliminating any judicial temptation to create new ATS causes of action, while at the same time requiring a clear statement from Congress to recognize secondary liability causes of action under the TVPA.

Havana Docks and Exxon Mobil illustrate a different application of the same principle, i.e., giving effect to the will of Congress. The Helms-Burton Act expressly creates a private right of action for U.S. nationals whose property was confiscated by Cuba to recover money damages from "any person" who knowingly and intentionally traffics in that confiscated property — including agencies and instrumentalities of a foreign state.

Unlike the ATS, the Helms-Burton Act does not require courts to infer a remedy in an area with foreign policy consequences. Congress supplied the remedy and identified the defendants it wanted to reach. The court's decisions in Havana Docks and Exxon Mobil seek to give effect to the remedy Congress supplied.

At the same time, plaintiffs continue to face real hurdles to succeeding in their Helms-Burton claims.

For instance, in the Havana Docks case, the court left a number of defenses for the lower courts to decide, such as whether the cruise lines' use of the docks fell within Helms-Burton's exception for uses of property "incident to lawful travel to Cuba," given that the U.S. government under President Obama had appeared to previously take the position that these cruises were lawful, including issuing licenses for such activity — a point that Justice Sonia Sotomayor highlighted in her concurrence.

Moreover, in Exxon Mobil, the court concluded that the FSIA still governs execution immunity — meaning, plaintiffs would have to establish an exception to immunity under the FSIA to be able to execute on foreign sovereign property to satisfy any judgment against a Cuban agency or instrumentality under the Helms-Burton Act.

Practical Implications

For companies with transnational business, the decisions bring into relief two different litigation risk profiles.

Helms-Burton Act exposure is now broader for business with activities connected to confiscated Cuban property. However, ATS/TVPA exposure is narrower for corporate defendants in U.S. human rights suits. In short, the level of cross-border risk will depend on the statute at issue, the defendant's relationship to the challenged conduct, and whether Congress has expressly opened U.S. courts to certain types of claims.

Helms-Burton risk is potentially broader and more durable.

Havana Docks confirms that the Helms-Burton Act can reach commercial use of confiscated Cuban property long after the original confiscation, and even after the expiration of any time-limited interest held by the plaintiff. Exxon Mobil compounds the risk by confirming that Cuban state-owned entities are not shielded by jurisdictional immunity.

Companies that directly or indirectly use assets nationalized by Cuba would be wise to reassess their potential exposure in light of these decisions.

The political environment further increases the stakes. The Helms-Burton Act's private right of action remains available unless suspended by the president, and companies should not assume that executive relief will be forthcoming.

At the same time, key questions regarding the scope of liability under the Helms-Burton Act remain open. Operations involving Cuban property therefore warrant renewed diligence, especially where activity depends on licenses, travel-related exceptions or assurances from U.S. agencies.

Traditional foreign-facing defenses may carry less force.

Under these decisions, Helms-Burton Act suits may face fewer threshold barriers than other U.S. litigation involving foreign government conduct. That is especially true for sovereign immunity after Exxon Mobil. But important limits remain.

Other international law doctrines such as the act-of-state doctrine, international comity and choice of law will remain case specific. The court also reserved whether Title III abrogates sovereign immunity for non-Cuban agencies or instrumentalities. And the FSIA's separate execution-immunity protections may still affect collection against state-owned defendants.

Damages exposure remains unsettled — and potentially vast.

The scope of damages under the Helms-Burton Act also remains unsettled.

Justice Sotomayor's concurrence in Havana Docks highlighted whether each use of confiscated property — each docking, voyage or transaction — could constitute a separate act of trafficking subject to an award of damages. Lower courts will need to determine how Title III damages operate and whether constitutional limits apply where a finite confiscation generates repeated claims.

Corporate ATS and TVPA exposure is narrower, but not eliminated.

Cisco is a significant defense-side decision for companies facing overseas human rights claims in U.S. courts. The court foreclosed new ATS causes of action and rejected aiding-and-abetting liability under the TVPA. Those holdings eliminate theories plaintiffs have relied on to pursue corporate defendants for conduct abroad.

At the same time, the TVPA still reaches individuals who directly subject victims to torture or order such torture. Additionally, Congress could amend the TVPA to include an aiding and abetting cause of action, much as it did for the Anti-Terrorism Act when it enacted the Justice Against Sponsors of Terrorism Act in 2016.

Steps Companies Should Consider

Companies with potential Cuba exposure should inventory whether current or recent operations involve property listed in the Foreign Claims Settlement Commission's certified-claims registry. They should also recognize that uncertified claims may support Title III suits. Companies should review counterparties and affiliates for indirect exposure. They should preserve government licensing and guidance materials. They should also reassess whether the value of relevant commercial activity justifies the litigation and enforcement risk.

More broadly, the decisions underscore that transnational litigation risk depends less on generalized assumptions about the foreign location of conduct than on specific statutory provisions. Where the Supreme Court believes Congress has created a cause of action for overseas conduct or displaced ordinary immunity rules, the court is prepared to enforce that choice. Where courts are asked to create or extend liability themselves, Cisco makes clear they generally will not.

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[1] Havana Docks Corp. v. Royal Caribbean Cruises, Ltd., 608 U.S. ___, No. 24-983 (2026).

[2] Exxon Mobil Corp. v. Corporación CIMEX, S.A., 609 U.S. ___, No. 24-699 (2026).

[3] Cisco Systems Inc. v. Doe, 609 U.S. ___, No. 24-856 (2026).

[4] Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 434 (1989).

[5] Havana Docks, 608 U.S., at ___ (slip op., at 10).

[6] Exxon Mobil, 609 U.S., at ___ (slip op., at 11).

[7] Id., at ___ (Kagan, J., dissenting) (slip op., at 6, n. 3).

[8] Sosa v. Alvarez-Machain, 542 U.S. 692 (2004).

[9] Cisco, 609 U.S., at ___ (slip op., at 8) (quoting Jesner v. Arab Bank PLC, 584 U.S. 241, 284 (2018) (Gorsuch, J., concurring)).

[10] Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108 (2013).

[11] Jesner v. Arab Bank PLC, 584 U.S. 241 (2018).

[12] Nestlé USA Inc. v. Doe, 593 U.S. 628 (2021).