

## SECOND CIRCUIT REVIEW

## Second Circuit Explores Statutes of Repose vs. Statutes of Limitations

By Martin Flumenbaum and Brad S. Karp

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**T**he Helms-Burton Act, Pub. L. No. 104-114 (1996) (the Act), allows U.S. nationals with claims to property confiscated by the Cuban Castro regime to bring civil suits for damages against any person who “traffic[ed]” in such “confiscated” property. In *Moreira v. Société Générale, S.A.*, — F.4th —, 2025 WL 37146 (2d Cir. 2025), the U.S. Court of Appeals for the Second Circuit considered whether the time bar provision in the Act, 22 U.S.C. §6084, is a statute of repose or a statute of limitations.

In a unanimous opinion authored by Circuit Judge Robert D. Sack and joined by Circuit Judges Dennis Jacobs and Richard J. Sullivan, the Second Circuit held that Section 6084 is a statute of repose without legislative exceptions, and thus many of plaintiffs’ allegations are time-barred.

In so holding, the Second Circuit unequivocally stated the rule that absent a legislative exemption, statutes of repose create an absolute time bar to bring a claim, even when (as is the case here) a plaintiff is *unable* to bring a claim prior to the time bar for reasons beyond her control.



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**The Helms-Burton Act and Its Time Bar Provision**

In 1996, congress enacted the Cuban Liberty and Democratic Solidarity Act, also known as the Helms-Burton Act. The Act creates a cause of action that authorizes U.S. nationals holding claims in property confiscated by the Cuban government on or after Jan. 1, 1959 to bring a private civil action against “any person that . . . traffics” in such “confiscated property.”

However, Section 6084 of the Act limits the time to bring an action to “2 years after the trafficking giving rise to the action has ceased to occur.” At the same time, Section 6085(c) permits the president of the United States to suspend the private right of action if the president determines “that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.”

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From the Act's passage in 1996 to 2019, the president suspended this private right of action, until, in May 2019, President Donald Trump lifted the suspension.

### **Factual Background and the District Court Decisions**

The plaintiffs are successors-in-interest to assets seized by Cuba's Castro regime in 1960, which were then absorbed into the Banco Nacional de Cuba (BNC), the country's centralized financial institution.

In three separate actions, all filed in 2019 or 2020, and within two years of Trump lifting the suspension on suits under the Act, plaintiffs alleged that Société Générale, S.A. (SocGen) and BNP Paribas, S.A. (Paribas), two French multina-

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tional banks, trafficked in their seized property by engaging in various financing and business activities with BNC and other Cuban banks. Plaintiffs alleged that some of these activities occurred until 2010 (and were partially admitted to in criminal pleas in 2017), while others occurred in 2018 and 2020.

All three actions eventually were brought before Judges Vyskocil and Furman of the District Court for the Southern District of New York, and were dismissed. While the district courts held that plaintiffs had standing to bring suit, they also held that plaintiffs' claims based on alleged activities extending only through 2010 were time-barred under Section 6084, because Section 6084 was a statute of repose not subject to equitable tolling.

Further, the district courts held that plaintiffs failed to state a plausible claim based on the alleged conduct from 2018 and 2020. Plaintiffs' appeals were consolidated before the Second Circuit.

### **The Second Circuit Opinion**

The Second Circuit affirmed the judgments. First, the Second Circuit held that plaintiffs had alleged sufficient facts to support Article III standing. In particular, the court found the defendants' alleged conduct—that SocGen and Paribas had used, and profited from BNC's use of, confiscated assets—constituted an ongoing and tangible financial harm that was sufficiently concrete, and could be analogized to the harms under common law unjust enrichment.

Additionally, the court found that plaintiffs' alleged injuries were "fairly traceable" to SocGen's and Paribas's alleged credit and financing arrangements involving BNC, as the conduct giving rise to the injuries was the banks' alleged trafficking in seized property, which violated the Act, *not* the initial seizure by BNC. Finally, the court concluded that there was no dispute that plaintiffs' injuries could be redressed by the money damages plaintiffs sought.

Next, the court addressed the central issue in the case—whether plaintiffs' claims were timely. Agreeing with the district court judges, the court held that any claims predicated on alleged trafficking that had ceased more than two years before the defendants were named in the complaints were time-barred under section 6084, because Section 6084 constituted a statute of repose—not a statute of limitations—and therefore could not be equitably tolled.

The court began its analysis by defining the fundamental difference between a statute of limitations and a statute of repose. Statutes of limitations are designed to encourage plaintiffs to pursue diligent prosecution of known claims. As such, statutes of limitations begin to run once the plaintiff can file suit and obtain relief, and may be tolled "as a matter of fairness" where the plaintiff pursued her rights diligently but was thwarted from bringing a lawsuit by extraordinary circumstances.

Statutes of repose, however, protect a defendant's right to be free from liability after a legislatively determined period of time. Relying on *California Public Employees' Retirement System v. ANZ Securities, Inc.*, 582 U.S. 497, 505-06 (2016), the court defined a statute of repose as

a legislatively enacted period (i) beginning to run on the date on the last culpable act or omission by the defendant, which (ii) has no statutory exception, and (iii) creates a fixed bar against future liability.

Analyzing the text of Section 6084, the Second Circuit concluded that Section 6084 was a statute of repose because it explicitly states that “[a]n action . . . may not be brought more than 2 years after the trafficking ***giving rise to the action*** has ceased to occur.” The phrase “has ceased to occur,” the court concluded, cuts off liability two years after the defendant’s last culpable act, not when the claim has been discovered or when plaintiff can bring an action.

Further, the statute’s statement that “[a]n action . . . may not be brought,” allows no exceptions.

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Additionally, the court reasoned that reading Section 6084 as a statute of repose advanced the primary purposes of the Act—to foster regime change in Cuba and to incentivize traffickers in expropriated property to stop investing in Cuba by guaranteeing an end of liability two years after they cease their trafficking activities, not only to return wrongfully taken property.

Finally, the court concluded that there had been no legislative exception written into Section 6084 that provides any extensions of the two-year time bar. Presidential suspensions of the ability to bring a private right of action every six months from 1996 to 2019 did not qualify, because they

modified the plaintiff’s rights, not the statute of repose, which “protects a *defendant’s* right to be free from liability after a legislatively determined period of time.”

The court recognized “this interpretation cuts off the plaintiffs’ right to bring a Helms-Burton action before they ever had the ability to do so. But this result is entirely consistent with how statutes of repose are . . . supposed to operate. . . . In short, statutes of repose show no mercy to plaintiffs.”

Finally, the court held that plaintiffs failed to plausibly state a claim of unlawful trafficking under the Act, even for alleged actions within the statute of repose. The court concluded plaintiffs failed to plausibly allege that trafficking activities continued into 2019 and 2020, as plaintiffs’ allegations relied entirely on allegations pled on “information and belief,” but which plaintiffs were in a position to actually know, and therefore were conclusory.

And, as to the allegations of trafficking in plaintiffs’ property in 2020, the court concluded that plaintiffs failed to plausibly allege that any of the defendants’ transactions with BNC (for example, through the delivery of physical cash) included “confiscated property.”

### Conclusion

With this opinion, the Second Circuit unequivocally upheld the rule that absent a legislative exception, statutes of repose create an absolute time bar to bring a claim, even in circumstances where a plaintiff is unable to bring a claim prior to the time bar for reasons beyond its control.

For plaintiffs seeking relief under the Helms-Burton Act, this means that any claims tied to trafficking must be brought within two years of defendant’s acts, and all older trafficking allegations are time-barred. And, in other cases going forward, plaintiffs in the Second Circuit are on notice that claims subject to a statute of repose face absolute time bars without equitable exceptions, no matter the extenuating circumstances.