UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

XAEL CHARTERS, INC.,

Plaintiff,

v.

MIAMI-DADE COUNTY TAX COLLECTOR and DARIEL FERNANDEZ, in his official and individual capacities,

Defendants.

Case No. 1:25-cv-26091-KMM

DEFENDANTS' MOTION TO DISMISS VERIFIED AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT

Defendants Miami-Dade County Tax Collector ("TCO") and Dariel Fernandez move to dismiss Xael Charters, Inc.'s ("Xael") Verified Amended Complaint. D.E. 13.

INTRODUCTION AND FACTUAL BACKGROUND

For decades, Xael enriched itself and Cuba's communist regime by facilitating travel between the U.S. and Cuba, all while the dictatorship denied millions of Cubans basic human rights. And the Cuban government has celebrated Xael and its success. Indeed, Cuba's state-owned media praised Xael and its founder for their unwavering support of the Castro regime. *See Fallece la Empresaria Cubana Residente en Estados Unidos, Xiomara Almaguer-Levy*, NACIÓN Y EMIGRACIÓN (Mar. 31, 2021), https://nacionyemigracion.cu/es/node/322. When Xael's founder died, Cuba's foreign minister praised her defense of the dictatorship and efforts on its behalf throughout the world. *See* Bruno Rodriguez (@BrunoRguezP), X (Mar. 31, 2021), https://x.com/BrunoRguezP/status/1377364894404632576.

In general, trade and commerce between the U.S. and Cuba have been prohibited since President Eisenhower first imposed an embargo in 1960, later codified as the Cuban Liberty and Democratic Solidarity Act of 1996 ("Helms Burton"). 22 U.S.C. §§ 6021–6091. However, individuals from the U.S. may engage in limited trade with Cuba pursuant to certain exceptions administered by the Department of State, the Department of the Treasury's Office of Foreign Asset Control ("OFAC"), and the Department of Commerce's Bureau of Industry and Security ("BIS").

Xael purports to operate in Miami-Dade County within the exceptions to the embargo. *See generally* Letter from Xael to TCO (Dec. 23, 2025) (attached as Exhibit 1).[1] However, until

[1] "A document attached to a motion to dismiss may be considered by the court without converting the motion into one for summary judgment only if the attached document is: (1) central to the

recently, Xael advertised the Hotel Grand Aston La Habana on its website. *See id*. Federal law generally prohibits persons subject to U.S. jurisdiction from paying, or making any reservation, for lodging at a property owned or controlled by the dictatorship. *See* 31 C.F.R. § 515.210 (2020) (identifying properties on the State Department's "Cuba Prohibited Accommodations List"). The Grand Aston is on the Cuba Prohibited Accommodations List, *see id.*, so Xael may not book stays there for its clients.

In November 2024, Dariel Fernandez became the first person in over sixty years to be elected to lead the independent, constitutional Office of the Miami-Dade County Tax Collector.[2] Before the election, the office had been long subsumed by county government bureaucracy under the authority of the mayor. The TCO subsequently determined the county had not diligently performed its statutory obligation to collect a local business tax from each business operating within the county and, in return, issue a business tax receipt ("BTR"). The TCO also reviewed businesses' compliance with a county ordinance that *requires* the TCO to revoke or not renew the BTR[3] of any entity doing business with Cuba in violation of federal law, *see* Miami-Dade Cty. Code of Ordinances § 8A-175.1 ("Cuba Ordinance"), which is similar to a statute that *permits* a

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plaintiff's claim; and (2) undisputed." *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002).

[2] In 2018, voters adopted Amendment 10 to the Florida Constitution, creating independent county TCO offices. *See* Fla. Const. art. VIII, § 1(d); *see also Constitutional Offices*, https://www.miamidade.gov/global/management/constitutional-offices.page.

[3] In 2006, the Legislature replaced the term "local occupational license tax" with "local business tax," clarifying that Chapter 205 authorizes issuance of a revenue-producing tax and not a license to engage in a particular occupation or business. *See* Op. Att'y Gen. Fla. 2019-04 (2019).

county tax collector's revocation or non-renewal of a BTR held by an entity doing business with Cuba. § 205.0532, Fla. Stat. ("Cuba Statute"). In conducting his review, the TCO requested each entity within the county doing business with Cuba to identify the exception to the Cuban embargo pursuant to which it engaged in trade with the dictatorship. The TCO's review was coordinated with federal authorities with direct jurisdiction over Cuba sanctions, export controls, and aviation security. Following the TCO's enforcement actions, U.S. Representatives Gimenez, Diaz-Balart, and Salazar sent a joint letter to OFAC and BIS in February 2026 demanding a comprehensive review of Cuba licenses, specifically citing the TCO's work. *See* U.S. Congressman Gimenez, Press Release, https://tinyurl.com/JointCongressionalLetter. The TCO's actions have been widely embraced by local municipalities, including the Cities of Miami, Miami Beach, Coral Gables, and Hialeah. The Miami-Dade County Board of County Commissioners adopted a resolution formally praising the TCO's "recent actions" and acknowledging the office brought "regulatory concerns" to light. *See* Res. No. R-65-26 (Jan. 21, 2026).

On October 2, 2025, the TCO's enforcement officer visited Xael's offices and requested payment for licensing of all three of Xael's business classifications. D.E. 13 ¶ 53. Later that day, the TCO asked Xael to identify the embargo exception under which it does business with Cuba. D.E. 13-3 at 2–3. Xael specified that it operates under a general license from OFAC and, therefore, it is not required to obtain a specific license from OFAC before offering any of its commercial services to the public. *Id.* at 2. However, a general license does not permit Xael to book stays at the Grand Aston—an accommodation identified on the Cuba Prohibited Accommodations List—for its U.S.-based clientele.

On December 22, the TCO announced revocations of BTRs for twenty entities, including Xael. *See* D.E. 13 ¶ 2. Under the Cuba Ordinance, the TCO was required to revoke Xael's BTR

upon determining that Xael advertised offering travel reservation services involving a prohibited accommodation. *Compare* Cuba Ordinance *and* 31 C.F.R. § 515.210, *with* Ex. 1. On December 23, Xael confirmed it had removed all references to the Grand Aston from its website. *See* D.E. 13 ¶¶ 76–77; *see also* Ex. 1. The TCO, despite its closure from December 24 through 27 for the Christmas holiday, reinstated Xael's BTR on Saturday, December 27. D.E. 13 ¶ 12.

On Christmas Eve, Xael filed this action and sought emergency injunctive relief. After the TCO reinstated Xael's BTR, Xael amended its complaint, asserting claims against Fernandez, individually, and seeking an award of punitive damages. The Court should dismiss the Complaint because, stripped of hyperbole and legal conclusions, it concedes that the TCO acted appropriately in discharging its official duties. In addition, Fernandez enjoys immunity from suits like Xael's, which are designed to intimidate and harass government officials from carrying out their duties. And Fernandez is protected by the First Amendment when speaking out against businesses—like Xael—that enrich the Cuban dictatorship from the comfort of the United States. Despite Xael's attempts to cast the TCO as a rogue government official, the actions resulting in the revocation of Xael's BTR are lawful and have been coordinated with support from the federal government.

ARGUMENT

Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." While a court must consider the allegations of a complaint as true, that rule "is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678 (citations omitted).

I. The Court should dismiss Xael's constitutional challenges to the Cuba Statute (Counts I, II, III, and V) as moot and because it does not conflict with federal law.

a. The "as applied" challenge of the Cuba Statute is moot.

Counts I through III and V must be dismissed as moot because there is no actual, present controversy between the parties. Counts I through III seek judgments declaring the Cuba Statute, as applied to Xael, unconstitutional and unenforceable, and injunctive relief enjoining the TCO from enforcing the statute against Xael. D.E. 13 at 44–46. Similarly, Count V seeks a judgment declaring the TCO's revocation of Plaintiff's BTR as "invalid, *ultra vires* and done without authority" because the Cuba Statute is unconstitutional as applied to Xael. *Id.* ¶¶ 150–51, 155. However, Xael admits the TCO reinstated its BTR on Saturday, December 27, (*id.* ¶ 12), so there is no present controversy between the parties under the Cuba Statute, rendering Xael's legal challenges to the Cuba Statute moot.

"The test for determining whether a complaint seeking declaratory relief survives a mootness challenge is whether there exists 'a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Nat'l Parks Conservation Ass'n v. U.S. Army Corps of Eng'rs*, 574 F. Supp. 2d 1314, 1327 (S.D. Fla. 2008) (quoting *Super Tire Eng'g Co. v. McCorkle*, 416 U.S. 115, 122 (1974)). "A request for declaratory relief should be dismissed as moot if the challenged action has no continuing adverse effects on the parties." *Id.* And the "continuing controversy may not be conjectural, hypothetical, or contingent; it must be real and immediate, and create a definite, rather than speculative threat of future injury." *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1347 (11th Cir. 1999) (quoting *Emory v. Peeler*, 756 F.2d 1547, 1552 (11th Cir. 1985)).

Xael suffers no continuing adverse effect under the Cuba Statute. The TCO revoked Xael's BTR on December 22. D.E. 13 ¶ 2. The following evening, on December 23, Xael sent the TCO a

letter clarifying that it complied with the Cuba Prohibited Accommodations List. *Id.* ¶ 77; Ex. 1. Despite the TCO's office closure from December 24 through 27 in observance of the Christmas holiday, Xael concedes its BTR was reactivated by Saturday, December 27. *Id.* ¶ 12; *see* Exec. Order No. 14,371, 90 Fed. Reg. 60,545 (Dec. 23, 2025) (establishing federal holiday). Also, there is no active controversy between the parties relating to the application of the Cuba Statute. "'The remote possibility that a future injury may happen is not sufficient to satisfy the 'actual controversy' requirement for declaratory judgments.'" *Malowney*, 193 F.3d at 1347 (citation omitted). In this instance, "any declaration regarding [the Cuba Statute's] legality would constitute an advisory opinion, which federal courts are not empowered to provide." *Nat'l Parks Conser. Ass'n*, 574 F. Supp. 2d at 1328. The Court should dismiss Counts I through III and V as moot.

Additionally, the TCO's actions are independently authorized by the Cuba Ordinance, which Xael does not challenge. *See generally* D.E. 13. As a charter county, Miami-Dade can enact independent ordinances that are not inconsistent with general state law. Fla. Const. art. VIII, §1(g). The Cuba Ordinance provides the TCO a completely independent basis for revoking Xael's BTR, rendering the challenge to the Cuba Statute moot on an "as applied" basis.

b. The Cuba Statute is harmonious with federal law.

The Cuba Statute is not preempted by federal law because it does not impede the federal framework regulating business with Cuba.[4] The statute provides the TCO the authority to "revoke or refuse to renew such [BTR] if the individual, business, or entity, or parent company of such individual, business or entity, is doing business with Cuba." *See* Cuba Statute. The Cuba Ordinance, which the Complaint conveniently relegates to a footnote, is critical in understanding

[4] To date, Xael has not indicated whether it provided notice to the State of Florida of its constitutional challenge as required by Federal Rule of Civil Procedure 5.1.

how the TCO applies the Cuba Statute. Specifically, the Cuba Ordinance mandates "the tax collector shall revoke or refuse to renew the local business tax receipt of any individual, business, or entity, or the parent company of such individual, business, or entity which is doing business with Cuba in violation of federal law." *See* Cuba Ordinance (emphasis added). Indeed, the TCO expressly referenced the Cuba Ordinance in its official statement concerning the revocations of Xael and others' BTRs ("Official Statement"). D.E. 13 at 18.

Although Xael spends much of its complaint analyzing a 33-year-old administrative order, AO 3-13 does not apply to the TCO. Rather, administrative orders "establish operating methods and administrative procedures, and/or delineate organizational responsibility for identified procedures, for County departments under the authority of the Mayor." *Administrative & Implementing Orders (AO's/IO's)*, https://www.miamidade.gov/global/policies/orders-search.page (last visited Feb. 17, 2026) (emphasis added). The TCO ceased operating as a "department under the authority of the Mayor" upon Fernandez's election in November 2024. *See supra* at n.2. Consequently, the elected TCO is not a division under the authority of the mayor, and AO 3-13 does not apply to or govern the TCO.[5]

"[S]tate laws are pre-empted when they conflict with federal law." *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012) (citing *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). "Conflict preemption covers 'cases where compliance with both federal and state

[5] In September 2025, the TCO mistakenly referenced AO 3-13 in a press release relating to its intention to revoke the BTRs of "businesses that illegally engage in commerce" with Cuba pursuant to section 205.0532. D.E. 13-2 at 2 (citing Cuba Statute) (emphasis added). A single reference to AO 3-13 in a press release does not render it applicable to the office.

regulations is a physical impossibility'" and "the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Odebrecht Constr. v. Sec'y, Fla. Dep't of Trans.,* 715 F.3d 1268, 1274 (11th Cir. 2013) (quoting *Arizona*, 132 S. Ct. at 2492). Here, the TCO's application of Florida law and county ordinance with respect to Xael does not implicate a conflict with federal law. The TCO consistently maintained it would revoke the BTRs of businesses it finds are "illegally engaged in commerce with the murderous communist regime in Cuba." D.E. 13-2 at 2. In doing so, the TCO indicated it would "do everything in [its] power to enforce the laws of the United States of America, the State of Florida, and Miami-Dade County, to protect our community and to put an end to these unlawful practices." *Id.* (emphasis added).

The TCO's actions under the Cuba Statute did not conflict with federal law but, rather, worked in harmony with the federal government's regulations on doing business with Cuba. The Eleventh Circuit's ruling in *Odebrecht* is instructive on this point. There, the appellate court affirmed this Court's preliminary injunction because there was a substantial likelihood on the merits, given that the challenged state law imposed penalties in excess of those permitted by federal law. *Odebrecht,* 715 F.3d at 1281 (discussing Ch. 2012-196, § 2, Laws of Fla. (amending § 287.135, Fla. Stat.)). The statute challenged in *Odebrecht* imposed a "'civil penalty equal to the greater of $2 million or twice the amount of the contract' and a three-year ban on public contracting if a company files a false certification about its business relations with Cuba." *Id.* at 1283. The court noted this was "considerably greater than the federal regime's civil penalty of up to $50,000," and that the challenged statute stood "in sharp contrast to the federal calibration of appropriate penalties." *Id.* The court also found that the statute was preempted by federal law because it did not make any exceptions or provide carve-outs like those provided by the federal sanctions regime.

Id.[6]

In contrast, in *Yifan Shen v. Commissioner*, the Eleventh Circuit found that although a property registration and affidavit requirement "may implicate foreign affairs to some degree, the two provisions piggyback on the federal government's own determinations of countries of concern and do not clash sharply with federal law or policy." 158 F.4th 1227, 1266 (11th Cir. 2025) (cleaned up). Likewise, the Eleventh Circuit upheld a Florida statute in *Faculty Senate of Fla. Int'l Univ. v. Winn* that restricted the use of state funds for travel by state employees to countries the federal government listed as a State Sponsor of Terrorism. 616 F. 3d 1206, 1207 (11th Cir. 2010). There, the court held that the state law complemented federal law and there was "[n]o clear conflict between federal policy and state law." *Id.* at 1211.

Here, the TCO's application of Florida law "piggybacks" on the federal law and does not clash with federal policy. First, the TCO's enforcement of the Cuba Ordinance is limited to those doing business with Cuba in violation of federal law. *See* D.E. 13 ¶ 58 (quoting Official Statement ("Pursuant to Section 205.0532, Florida Statutes[,] and Section A-175.1 of the Miami-Dade County Code, the Tax Collector is authorized to revoke or refuse the [BTR] of any individual, business or entity . . . that is doing business with Cuba <u>in violation of federal law</u>.")) (emphasis added); *see also* D.E. 13 ¶¶ 62, 83; D.E. 13-2. The TCO's application of Florida law complements (and adheres to) federal law relating to Cuba, unlike the statute challenged in *Odebrecht*. The

[6] The *Odebrecht* court also criticized the breadth of the challenged statute for penalizing a subsidiary whose parent company engaged in business with Cuba. 715 F.3d at 1282. Here, Xael brings an *as applied* challenge to the Cuba Statute, and there is no dispute that the TCO addressed Xael's own actions—not the actions of a parent company.

TCO's application of the Cuba Statute strictly adheres to the federal government's carve-outs and exceptions and does not impose harsher penalties than those imposed by the United States. Additionally, there is a strong state policy in allowing Florida to establish its own local business tax laws. The statute is clearly in harmony with federal law, so Xael's claims to invalidate the statute (Counts I , II, III and V) fail.

II. Counts IV & V should be dismissed because Xael's non-fundamental interests lack substantive due process protection and it received adequate procedural protections.

a. Xael concedes it was never deprived of its property interest in a general license from OFAC, so a due process inquiry is moot.

Xael's interests in holding, and conducting business pursuant to, a general license from OFAC and a BTR from the TCO are not fundamental rights warranting substantive due process protections. "The usual due process analysis is two-fold: determining whether a constitutionally protected property or liberty interest is at stake, and if so, then assessing the appropriate measure of procedural protection due." *Pollgreen v. Morris*, 496 F. Supp. 1042, 1051 (S.D. Fla. 1980) (subsequent history omitted) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). As to the first prong of the two-part due process inquiry, the substantive component of the Due Process Clause protects rights that are "fundamental" and "implicit in the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325, 327 (1937). For instance, most—but not all—of the rights enumerated in the Bill of Rights are fundamental. *McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir. 1994) (en banc). On the other hand, neither the right to conduct a private business nor one's right to earn a profit from a private business is a fundamental right warranting substantive due process protections. *See College Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675 (1999).

Xael concedes it was never deprived of its property interest in a general license from OFAC or its liberty interest in operating pursuant to that license. *See, e.g.*, D.E. 13 ¶¶ 75, 81, 85. At most,

Xael claims its interests in its general license were conceptually "jeopardized" by the temporary revocation of its BTR. *See id.* ¶ 98. Of course, hypothetically jeopardizing an interest is not the same as *depriving* a person of a right or interest, which is a requisite element of a claim arising from the Due Process Clause of the Fourteenth Amendment. *See College Sav. Bank*, 527 U.S. at 675 ("To sweep within the Fourteenth Amendment . . . elusive property interests . . . would violate our frequent admonition that the Due Process Clause is not merely a 'font of tort law.'") (citing *Paul v. Davis*, 424 U.S. 693, 701 (1976)). Because Xael's asserted property and liberty interests in a general license from OFAC, or in conducting a business and earning a profit pursuant to a general license from OFAC, are not "at stake" in this action, the due process inquiry concerning those interests ends there. *See Pollgreen*, 496 F. Supp. at 1051.

b. Xael's interests in its BTR are not subject to substantive due process protections, and the TCO afforded Xael adequate procedural due process.

Xael asserts that it has substantive due process rights in receiving and maintaining a BTR from the TCO without interruption, and in conducting a business and earning a profit pursuant to a BTR. D.E. 13 ¶¶ 134–35, 142. However, even where a substantive right—such as the right to own private property—is created by state law, the right is not subject to substantive due process protections because "substantive due process rights are created only by the Constitution." *McKinney*, 20 F.3d at 1556 (quoting *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 229 (1985)). Consequently, rights based in state law may be properly "rescinded so long as the elements of procedural—not substantive—due process are observed." *Id.*

A BTR "merely [grants] the privilege, accorded by the state or its subdivisions, to conduct business at a particular location. The denial of such a license does not prevent a business owner from pursuing a lawful occupation; it merely prevents the business from operating at a particular location." *Ammons v. Okeechobee Cty.*, 710 So. 3d 641, 645 (Fla. 4th DCA 1998), *quoted by Beach Blitz Co. v. City of Miami Beach*, No. 1:17-cv-23958, 2018 WL 11260453, at *24 (S.D. Fla. Feb.

5, 2018). A temporary revocation of a BTR merely prevents the business from operating at a particular location temporarily. Because BTRs are state law creations that convey only a limited property interest (if any), they "do not receive the protection of substantive due process." *Id.* (citing *McKinney*, 20 F.3d at 1556; *Artistic Entm't, Inc. v. City of Warner Robins*, 134 F. App'x 306, 309 (11th Cir. 2005) ("[Plaintiff] has shown no more than deprivation of a license, a property interest created by state law, and therefore has failed to establish a substantive due process violation.")). For the same reason, Xael's assertions of the right to receive and maintain a BTR, and to conduct a business and earn a profit under a BTR, are not fundamental rights warranting substantive due process protections. *See College Sav. Bank*, 527 U.S. at 675 ("*the activity of doing business*, or *the activity of making a profit* is not property in the ordinary sense") (emphasis in original).

"[P]rocedural due process violations do not become complete unless and until the state refuses to provide process." *McKinney*, 20 F.3d at 1562. Although the Cuba Ordinance does not expressly provide a procedure to challenge a revocation or refusal to renew a BTR, that is not the only avenue for Xael to pursue a remedy under Florida law. *See generally* Cuba Ordinance. For instance, Xael could have sought a declaratory judgment from a state court concerning the constitutionality of the Cuba Ordinance, the Cuba Statute, or the TCO's implementation of those laws. *See generally* § 86.011, Fla. Stat. In addition, Xael could have sought a state court's issuance of a writ of mandamus directing the TCO to reinstate its BTR. *See, e.g.*, *Alvarez v. Dep't of Prof. Regul.*, 546 So. 2d 726, 727 (Fla. 1989) (holding that state courts have mandamus power to order state entities to issue licenses); *Kessler v. City of Key West*, No. 21-11069, 2022 WL 590892, at *3 & n.3 (11th Cir. Feb. 28, 2022) (holding the availability of mandamus relief provides adequate process). Both state remedies were available to Xael, and either remedy would have provided an adequate process to Xael. *See McKinney*, 20 F.3d at 1565 ("The fact that [plaintiff] failed to avail

himself of the full procedures provided by state law . . . does not constitute a sign of their inadequacy. Since the Florida courts possess the power to remedy any deficiency in the process . . . [plaintiff] cannot claim that he was deprived of procedural due process.") (cleaned up).

Xael pursued exactly zero state law remedies before filing this lawsuit and has not alleged that Florida refuses to provide a process to seek a remedy. *See generally* D.E. 13 (omitting allegations that Xael pursued, but was refused, a state law remedy before commencing this litigation on Christmas Eve). Additionally, any alleged procedural deprivation was cured by providing a later procedural remedy—the reinstatement of the BTR upon receipt of Xael's clarifying letter. *See Ratlieff v. City of Fort Lauderdale*, 748 F. Supp. 3d 1202, 1239 (S.D. Fla. 2024) ("Only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise."). Xael has failed to state a claim for relief under the Due Process Clause, and the Court should dismiss Count IV. Likewise, to the extent Xael seeks a declaration that the TCO's revocation of the BTR was unconstitutional under the Due Process Clause, Xael has failed to state a claim for declaratory relief, so the Court should also dismiss Count V.

c. Xael was not deprived of its property interests in its reputation or goodwill.

Xael asserts a due process claim arising from Fernandez's public statements allegedly accusing Xael of "engaging in illegal conduct, including . . . unlawful commerce with the Cuban government or the 'Cuban communist dictatorship,' and . . . operating in violation of federal law." D.E. 13 ¶ 140. According to Xael, Fernandez's statements "regarding Xael and the reasons [he] revoked Xael's BTR . . . caused significant harm to [its] reputation, its business[,] and . . . goodwill that it has worked almost three decades to develop." *Id.* ¶ 142. Yet Fernandez only mentioned Xael by name once, (D.E. 13 at 18–19), and his statements mostly refer to the TCO's compliance program as a whole. *See* discussion *infra* § V. Nevertheless, even taking Xael's allegations as true,

Xael has failed to state a due process claim based on reputational harm or lost goodwill.

Although the Supreme Court has recognized—albeit in the trademark infringement context—that "[t]he assets of a business (including its good will) unquestionably are property, and any state taking of those assets is unquestionably a 'deprivation' under the Fourteenth Amendment," *College Sav. Bank*, 527 U.S at 675, it has also recognized that neither a reputational injury nor a plaintiff's feeling of state-propagated stigmatization in the community, taken alone, constitutes a deprivation of a liberty or property interest protected by the Fourteenth Amendment. *See Paul*, 424 U.S. at 701–702, 712; *accord Siegert v. Gilley*, 500 U.S. 226, 233–34 (1991) (rejecting notion that defamation by a government actor that causes injury to a professional reputation violates a right to due process).

Rather, "a plaintiff claiming a deprivation based on defamation by the government must establish the fact of the defamation 'plus' the violation of some more tangible interest before the plaintiff is entitled to invoke the procedural protections of the Due Process Clause." *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1302 (11th Cir. 2001) (citing *Paul*, 424 U.S. at 701–702). "This rule, labeled the 'stigma-plus' standard, requires a plaintiff to show that the government official's conduct deprived the plaintiff of a previously recognized property or liberty interest in addition to damaging the plaintiff's reputation." *Cypress Ins. Co. v. Clark*, 144 F.3d 1435, 1436–37 (11th Cir. 1998) (citation omitted). Thus, to state a due process claim based on reputational harm under the "stigma-plus" standard, Xael must allege a *stigma* to its reputation by the TCO's public statements, *plus* a resulting deprivation of a fundamental property or liberty interest. *Rehberg v. Paulk*, 611 F.3d 828, 852 (11th Cir. 2010).

As the "plus" element of Count IV, Xael alleges it was temporarily deprived of its BTR and adequate procedures to challenge the temporary revocation. D.E. 13 ¶ 135. However, as

discussed above, Xael does not allege it was deprived of its interests arising from a general license from OFAC, *see supra* § II(a), and Xael's rights to maintain a BTR and conduct a business under a BTR are not fundamental rights warranting substantive due process protections. *See supra* § II(b). As for procedural due process protections, Xael has not alleged that state law refused to provide it with a procedure to challenge the revocation. *See supra id.*; *see also* D.E. 13 (omitting allegations that Xael pursued, but was refused, a state law remedy before commencing this litigation on Christmas Eve). Because "procedural due process violations do not become complete unless and until the state refuses to provide process," *McKinney*, 20 F.3d at 1562, Xael has failed to state a due process claim based on reputational harm or lost goodwill, and the Court should dismiss Count IV. Likewise, to the extent Xael seeks a declaration that the TCO's statements were unconstitutional under the Due Process Clause, Xael has failed to state a claim for declaratory relief, so the Court should also dismiss Count V.

III. The claims against Fernandez in his individual capacity (Counts IV and V) must be dismissed because he is an elected official with qualified immunity.

The doctrine of qualified immunity compels dismissal of Counts IV and V with prejudice. "'[Q]ualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights [known by] a reasonable person.'" *Stanton v. Sims*, 571 U.S. 3, 5–6 (2013) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). The immunity recognizes the "strong public interest in protecting public officials from the costs associated with the defense of damages actions," *Crawford-El v. Britton*, 523 U.S. 574, 590 (1998), which can be insurmountable and implicate both life and career consequences. *See Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982); *see also Brown v. City of Huntsville*, 608 F.3d 724, 733 (11th Cir. 2010) (the immunity protects "from suit all but the plainly incompetent or one who is knowingly violating the federal law") (quotations omitted). It is "an *immunity from suit* rather than a mere defense to liability," which "is effectively lost if a case is

erroneously permitted to go to trial." *Scott v. Harris*, 550 U.S. 372, 376 (2007) (emphasis in original) (citation omitted). "The essence of qualified immunity analysis is the public official's objective reasonableness, regardless of his underlying intent or motivation." *Kingsland v. City of Miami*, 382 F.3d 1220, 1231 (11th Cir. 2004). "The protection of qualified immunity applies regardless of whether the government official's error is a 'mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'" *Pearson*, 555 U.S. at 231 (citation omitted).

a. Fernandez's conduct falls within his discretionary authority as TCO.

For qualified immunity to apply, the public official must first establish that actions were taken within the allowable scope of discretionary authority. *Gray v. Bostic*, 458 F.3d 1295, 1303 (11th Cir. 2006) (citations omitted). "The term 'discretionary authority' 'include[s] all actions of a governmental official that (1) were undertaken pursuant to the performance of his duties, and (2) were within the scope of his authority.'" *Fleuranville v. Miami-Dade County*, No. 1:23-cv-21797-KMM, 2023 WL 8268763, at *5 (S.D. Fla. Nov. 28, 2023) (alterations in original) (quoting *Moore v. Pederson*, 806 F.3d 1036, 1042 (11th Cir. 2015)).

Fernandez's actions were all clearly within the scope of his discretionary authority as TCO, whose duties include collecting all taxes shown on the tax roll and issuing a BTR for payment of the local business tax. §§ 197.332, 205.053, Fla. Stat. As TCO, Fernandez is explicitly *required* to revoke the BTR of any entity illegally doing business with Cuba. *See* Cuba Statute; Cuba Ordinance. Xael's claims against Fernandez in his individual capacity all arise from the temporary revocation of Xael's BTR (pursuant to the TCO's legal mandate) and public statements relating to the TCO's official acts, which were made in furtherance of the TCO's "legitimate job-related function" of informing the public about the office's activities. *See, e.g., O'Rourke v. Hayes*, 378 F.3d 1201, 1205 (11th Cir. 2004). Fernandez's conduct falls squarely within the scope of his duties and authority as TCO, satisfying the initial burden for qualified immunity to apply.

b. Fernandez's actions do not violate Xael's federal rights.

"After the defendant has established that he was acting in a discretionary capacity, the burden shifts to the plaintiff to show that qualified immunity is not appropriate." *Brooks v. Powell*, 800 F.3d 1295, 1306 (11th Cir. 2015) (quotations and citations omitted). "To meet this burden, a plaintiff must establish that (1) his complaint pleads a plausible claim that the defendant violated his federal rights (the 'merits' prong), and that (2) precedent in this Circuit at the time of the alleged violation 'clearly established' those rights (the 'immunity' prong)." *Carollo v. Boria*, 833 F.3d 1322, 1328 (11th Cir. 2016) (citations omitted). There are three ways a right may be "clearly established" for immunity purposes: "(1) case law with indistinguishable facts clearly establishing the constitutional right; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law." *Maddox v. Stephens*, 727 F.3d 1109, 1121 (11th Cir. 2013) (citations omitted). None applies here and dismissal with prejudice is appropriate. "To survive a defense of qualified immunity, it must be obvious to every reasonable person in the defendant's place that the defendant's conduct would violate federal law." *Bldg. Empowerment by Stopping Trafficking, Inc. v. Jacobo*, No. 12-cv-23925-FAM, 2013 WL 5435729, at *4 (S.D. Fla. Sept. 27, 2013) (cleaned up).

Here, Xael alleges two federal claims against Fernandez, individually: (1) a due process violation under 42 U.S.C. § 1983 (Count IV); and (2) a claim under 28 U.S.C. § 2201 for a declaration "that the [TCO's] purported revocation of Xael's BTR was invalid, *ultra vires*, and done without authority" (Count V). D.E. 13 ¶¶ 133–47, 155. The sole "federal rights" at issue are Xael's due process rights. First, Plaintiff's due process claims lack merit and should be dismissed independently. *See supra* § II. Second, Fernandez's actions are not *ultra vires* and, instead, are based on the Cuba Statute and the Cuba Ordinance, which are constitutional and work in harmony

with federal law. *See supra* § I(b). Third, and finally, it is not "obvious to every reasonable person" that a temporary suspension of Xael's BTR—which is authorized by law and was undertaken based on the TCO's good faith belief that Xael was illegally doing business with Cuba—would violate Xael's due process rights. *See Jacobo*, 2013 WL 5435729, at *4; *see also* Ex. 1.

"That qualified immunity protects government actors is the usual rule; only in exceptional cases will government actors have no shield against claims made against them in their *individual capacities*." *Rose v. Harris*, No. 24-cv-81247-RLR, 2025 WL 1880311, at *20 (S.D. Fla. July 7, 2025) (emphasis in original) (quotations and citations omitted). This is not one of those "exceptional cases." The Court should grant Fernandez qualified immunity and dismiss Counts IV and V.

IV. Xael's state law claims (Counts VI through VIII) are barred by sovereign immunity.

The Court should dismiss Xael's state law tort claims[7] (Counts VI through VIII) because Fernandez cannot be held personally liable in tort under Florida's sovereign immunity. Xael alleges three tort claims against Fernandez, individually: (1) defamation *per se* (Count VI); (2) gross negligence (Count VII); and (3) tortious interference (Count VIII). In order to overcome state law immunity and sue Fernandez in his individual capacity, Xael must demonstrate that Fernandez acted "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." § 768.28(9)(a), Fla. Stat. Actionable conduct is "much more reprehensible and unacceptable than mere intentional conduct." *Richardson v. City of Pompano Beach*, 511 So. 2d 1121, 1123 (Fla. 4th DCA 1987).

[7] If the Court dismisses the federal claims (Counts I–V) for the reasons set forth above, it should decline to exercise jurisdiction over the remaining state law claims (Counts VI–VIII). *See Bonilla v. Simon Librati*, 631 F. Supp. 3d 1237, 1248 (S.D. Fla. 2022) (Moore, J.) (citation omitted).

Xael's gross negligence claim (Count VII) fails to meet this standard as a matter of law. *See Ondrey v. Patterson*, 884 So. 2d 50, 54 (Fla. 2d DCA 2004) (the "conduct must be something greater than gross negligence in order to be actionable under section 768.28(9)(a)"); *accord Betterson v. Town of Cutler Bay*, No. 25-11638, 2026 LX 92406, at *11 (11th Cir. Feb. 6, 2026); *Loving v. Miami-Dade County*, No. 19-cv-21351-JEM, 2025 LX 226740, at *7 (S.D. Fla. June 27, 2025). As such, the Court should dismiss Count VII.

As for Xael's claims for defamation *per se* and tortious interference, the complaint's conclusory allegations that Fernandez "act[ed] maliciously," "wanton[ly]," and "in bad faith," (D.E. 13 ¶¶ 160, 184, 186), are insufficient to survive a motion to dismiss. *See Brivik v. Law*, 545 F. App'x 804, 807 (11th Cir. 2013) ("Brivik's allegation that Officer Law acted maliciously and in bad faith is conclusory and therefore insufficient to survive a motion to dismiss.") (citing *Iqbal*, 556 U.S. at 662); *Smith v. Lopez*, No. 24-cv-21845-RAR, 2025 WL 2598416, at *14 (S.D. Fla. Aug. 6, 2025) (a "conclusory recitation of the statute's requirements is insufficient to survive a motion to dismiss") (citation omitted). Moreover, Fernandez was acting in his official capacity as TCO—applying valid Florida law—and had a good faith reason to believe Xael was violating federal law by advertising an accommodation on the Cuba Prohibited Accommodations List. *See* Ex. 1. Based on this good faith belief, Xael's BTR was temporarily revoked for a handful of days. D.E. 13 ¶ 12, 58. The BTR was reinstated on Saturday, December 27—merely four days after Xael clarified it was "not conducting business in violation of any federal restrictions relating to Cuba." *See id.* ¶ 12; *see also* Ex. 1. In addition, Fernandez's public statements concern the TCO's compliance program as a whole, and do not reference Xael by name or individually. The TCO identified Xael by name only once, in the Official Statement.

At all relevant times, Fernandez acted within the scope of his authority as TCO, and Xael

has not demonstrated that Fernandez's actions were malicious or made in bad faith. Consequently, the Court should find that Florida's sovereign immunity doctrine bars these state law tort claims against Fernandez, individually, and dismiss Counts VI through VIII with prejudice.

V. Xael's defamation claim (Count VI) fails as a matter of law and must be dismissed.

a. Xael fails to specifically identify the statement at issue.

For defamation, a "plaintiff 'must allege certain facts such as the identity of the speaker, a description of the statement, and provide a timeframe within which the publication occurred.'" *Morrison v. Morgan Stanley Props.*, No. 06-cv-80751-EGT, 2008 LX 96551, at *10 (S.D. Fla. Apr. 15, 2008) (citation omitted). Xael, however, broadly describes statements within various "press releases, social media post, televised interviews, online videos, and written statements," (D.E. 13 ¶ 157), without ever identifying the statements purportedly giving rise to Count VI. *See generally id.* ¶¶ 156–62. Xael's kitchen-sink approach warrants dismissal of Count VI. *See Five for Entm't S.A. v. Rodriguez*, 877 F. Supp. 1321, 1328–29 (S.D. Fla. 2012) (dismissing defamation claim for failing to include a sufficient description of the statements).

b. Xael's allegations fail to satisfy the required elements for defamation.

To state a claim for defamation *per se*, a plaintiff must allege " the defendant (1) published, (2) to a third party, (3) a false statement about the plaintiff, (4) that rises to the level of defamation per se." *Fontainebleau Fla. Hotel, LLC v. Botach*, No. 1:25-cv-20251-KMM, 2025 WL 3282568, *10 (S.D. Fla. Sept. 16, 2005) (citation omitted). As to the third element, Florida's "substantial truth doctrine" provides that a "statement does not have to be perfectly accurate" to be considered a "substantial truth;" instead, "if the 'gist' or the 'sting' of the statement is true," it is non-defamatory. *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234 (Fla. 3d DCA 2021) (citation omitted).

Here, Xael vaguely identifies statements that Xael engaged in "unlawful commerce with the Cuban government or the Cuban communist dictatorship" as defamatory. D.E. 13 ¶ 157 (internal quotations omitted). Xael, however, has acknowledged it displayed an image of the Grand

Aston—a hotel on the Cuba Prohibited Accommodations List—on its website. *See* Ex. 1. In response to the TCO's inquiries, Xael removed the reference to the Grand Aston from its website, and then the TCO swiftly reinstated Xael's BTR. *See* D.E. 13 ¶¶ 12, 76–77. Accordingly, the "gist" of the alleged defamatory statements concerning Xael's engagement in unlawful commerce with Cuba is demonstrably and substantially true because Xael was advertising its commercial relationship with a prohibited accommodation. Because Xael has not satisfied the requirement for a false statement, Count VI fails.

Xael likewise fails to satisfy the requirement that the statement be about the plaintiff. Xael complains about any time Fernandez comments about the BTR, but these statements are not in fact about Xael. Xael concedes Fernandez only mentioned Xael by name once, in the Official Statement. *See id.* ¶ 58. Plus the Official Statement was not truly "about" Xael, but about the BTR compliance program generally, listing Xael among several other entities with revoked BTRs. *Id.* Thus the allegedly problematic statements fail because they are about general non-compliance and not specifically about Xael.

c. Plaintiff's allegations do not rise to the level of defamation per se.

Xael fails to state a claim for defamation *per se* as a matter of law. At the motion to dismiss stage, courts' evaluation of a claim for defamation *per se* is limited to the four corners of the publication. *Trujillo v. Banco Central del Ecuador*, 17 F. Supp. 2d 1334, 1339 (S.D. Fla. 1998). The rationale for the limited assessment is that no additional explanation is needed "to prove the defamatory nature of the statement." *Scobie v. Taylor*, No. 13-cv-60457-RNS, 2013 WL 3776270, at *5 (S.D. Fla. July 17, 2013). Indeed, the "injurious nature of the statement is apparent from the words in the statement itself and the court consequently takes notice of that fact." *Fontainebleau,* 2025 WL 3282568, at *10 (citation omitted).

As discussed above, Xael concedes that Fernandez only mentioned Xael by name once, in

the Official Statement. *See* D.E. 13 ¶ 58. For Count VI, Xael asks the Court to look beyond the four corners of Fernandez's statement to make a finding for defamation. *See id.* ¶ 160 ("Fernandez publicly stated and repeatedly *implied* that Xael was illegally operating, lacked proper federal authorization, and was engaging in prohibited commerce with the Cuban government") (emphasis added). That is impermissible. *See Scobie*, 2013 WL 3776270, at *5. The Court must only consider the four corners of the alleged defamatory statement and refrain from innuendos or considering any implication from statements.

A statement amounts to defamation *per se* when "it imputes to another a criminal offense amounting to a felony." *Madsen v. Buie*, 454 So. 2d 727, 729–30 (Fla. 1st DCA 1984). At best, Xael alleges that Fernandez accused it of illegally doing business with Cuba in violation of federal law. D.E. 13 ¶ 1. But the penalty for an entity's violation of federal prohibitions in conducting business with Cuba is a monetary fine, not a felony charge. *See* 31 C.F.R. §§ 501.701, 501.703. As a result, Fernandez's statements—which omit any accusation that Xael committed an infamous crime or a felony for that matter, and must be considered without implication or innuendo—do not qualify as *per se* defamation.

Xael also appears to claim defamation *per se* on the grounds that the statements tend to injure Xael's trade or profession. To qualify the "statement must, without innuendo, strike at 'professional competence and fitness to engage in a given profession." *Fontainebleau,* 2025 WL 3282568, at * 11. But Fernandez's statements do not say anything at all about Xael's services, business practices, or treatment of customers, nor do they single out Xael. *See generally* D.E. 13 ¶¶ 58–70 (no accusations injurious to Xael's trade or profession). To be defamatory *per se* the statements must "do more than merely harm the person or entity in its trade or business—the statements must impute fraud, want of integrity, or actual misconduct." *Fontainebleau,* 2025 WL

3282568, at * 11 (citation omitted). None of Xael's allegations meet this standard and thus fail as a matter of law.

d. Qualified privilege applies to Fernandez's statements.

Finally, even if Xael's allegations were sufficient to state a claim for defamation (they are not), Fernandez's statements enjoy a qualified privilege. "Statements that would otherwise be actionable as defamatory are subject to qualified privilege from a defamation claim if they were communicated in good faith on any subject matter by one having an interest or duty therein to a person having a corresponding interest or duty." *Wiener v. Boca W. Country Club.*, No. 25-cv-80039-BER, 2025 LX 446818, at *10 (S.D. Fla. Sept. 23, 2025). "The elements of qualified privilege from a defamation action are: (1) good faith; (2) an interest in the subject by the speaker or a subject in which the speaker has a duty to speak; (3) a corresponding interest or duty in the listener or reader; (4) a proper occasion; and (5) publication in a proper manner." *Id*., at *10–*11 (quoting *Block v. Matesic*, 789 F. Supp. 3d 1131, 1183 (S.D. Fla. 2025)).

Through the Official Statement, Fernandez communicates on matters in which he, as author, and the public, as audience, share a common right, duty, or interest. Because "the publication is true and is made in good faith," was shared with the public in a public statement, and otherwise "under such circumstances as properly to serve the rights of others," it is privileged. *Cooper v. Miami Herald Pub. Co.*, 159 Fla. 296, 300 (Fla. 1947) (citation omitted).

Count VI fails for the additional reason that Xael failed to allege the "primary motivation for the [Official Statement] . . . was express malice," which is required to overcome a qualified privilege. *Mastaw v. W. Fla. Med. Ctr. Clinic, P.A.*, No. 3:20-cv-5888, 2022 WL 2517207, at *18 (N.D. Fla. Apr. 26, 2022) (express malice, in the form of "ill will, hostility[,] and evil intention to defame and injure," must be shown) (citation omitted). At most, Xael claims Fernandez published the Official Statement with knowledge of its falsity or with willful disregard for the truth, *see* D.E.

13 ¶¶ 159–160, but that does not suffice to demonstrate express malice. *See Crestview Hosp. Corp. v. Coastal Anesthesia, P.A.,* 203 So. 3d 978, 982 (Fla. 1st DCA 2016) ("The mere fact that a statement is untrue and made with knowledge of its falsity, or made recklessly without regard to its truth or falsity is not the test."). Because the Official Statement enjoys qualified immunity, and for the additional reasons set forth above, the Court should dismiss Count VI with prejudice.

e. There is no cause of action for unrelated third-party republication.

In Florida, a claim of "defamation by republication" does not exist. *Rodriguez v. Lewis*, No. 24-cv-80983-WM, 2026 WL 156780, at *5–*6 (S.D. Fla. Jan. 20, 2026). To the extent Xael claims it was injured by third parties' republications of Fernandez's alleged defamatory statement, (*see* D.E. 13 ¶¶ 60–61, 91, 93), such claims are inactionable, and Count VI should be dismissed with prejudice. *See Klayman v. City Pages*, No. 5:13-cv-143, 2015 WL 1546173, at *12 (M.D. Fla. Apr. 3, 2015) (finding no authority "for the proposition that providing links to statements already published, without more, republishes those statements").

VI. The single publication rule mandates dismissal of Counts VII and VIII.

Under the single publication rule, if a defamation count fails, all other causes of action arising from the same set of facts likewise fail. *Callaway Land & Cattle Co. v. Banyon Lakes C. Corp.*, 831 So. 2d 204, 208 (Fla. 4th DCA 2002). "The rule is designed to prevent plaintiffs from circumventing a valid defense to defamation by recasting essentially the same facts into several causes of action all meant to compensate for the same harm." *Id.* (citation omitted). Counts VII and VIII are based on identical allegations of facts as Xael's defamation claim, which fails as discussed above, and thus Counts VII and VIII must be dismissed.

VII. Fernandez is entitled to protection under Florida's Anti-SLAPP Statute.

Xael's defamation claim is a classic Strategic Lawsuit Against Public Participation ("SLAPP"), seeking to chill and punish Fernandez's speech on issues of public concern. "The harm the statute seeks to prevent is the *filing* of the lawsuit for the purpose of suppressing the

exercise of First Amendment rights." *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 561 (Fla. 4th DCA 2019). This is why the SLAPP statute "provides a procedural mechanism for SLAPPs to be 'expeditiously disposed of by the court.'" *Id*. at 558 (citation omitted). The statute's intent is clear—"to protect the right in Florida to exercise the rights of free speech in connection with public issues"—like the one at issue here. § 768.295(1), Fla. Stat.

The SLAPP statute prohibits a person from filing a cause of action (1) without merit and (2) primarily because the person exercised his constitutional right of free speech regarding a public issue. *Bongino v. Daily Beast Co*., 477 F. Supp. 3d 1310, 1321 (S.D. Fla. 2000). As set forth *supra*, Xael's defamation claim is without merit, satisfying the first prong and it also meets the second prong as it was filed "primarily" because Fernandez exercised his constitutional right to free speech.

Xael alleges Fernandez's statements were made in an individual capacity. *See* Counts VI–VIII. Accordingly, Fernandez is entitled to First Amendment protection for all statements about Xael (or that Xael claims are about it) because they are all "in connection with a public issue." *See* § 768.295(2)(a), Fla. Stat. Xael's defamation claim violates Section 768.295(3), Florida Statutes, because Fernandez exercised his constitutional right of free speech with a public issue. *McQueen v. Baskin*, 377 So. 3d 170, 176, 181 (Fla. 2d DCA 2023) (applying SLAPP analysis to statements made online). Therefore, Count VI must be dismissed with prejudice and Fernandez is entitled to the mandatory award of fees under Florida's SLAPP statute.

CONCLUSION

For these reasons, Defendants request this Court dismiss the Verified Amended Complaint (D.E. 13) in its entirety.

Date: February 17, 2026.

Respectfully submitted:

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Exhibit 1

Xael Charters Inc.
5345 S.W. 8th St., Miami, FL 33134
Charter:
Phone: (305) 643-4800
Travel:
Phone: (305) 643-2200

December 23, 2025

Dear Mr. Gomez

We write to clarify that Xael Charters, Inc. ("Xael") is not conducting business in violation of any federal restrictions relating to Cuba.

To the extent Xael's website displayed an image of the Gran Aston hotel, that image was legacy content on the website from prior years and was used solely for general illustrative purposes. Xael is not in the business of hotel accommodation to Cuba. To avoid any doubt Xael is in the process of removing any references to hotels from its website. In the past Xael made available limited hotel accommodation options, and to ensure compliance would monitor the current CPA List to prevent any booking in those hotels.

Xael is committed to operating fully within applicable federal, state, and local laws and regulations. The company takes its compliance obligations seriously and is attentive to ensuring that its operations align with all applicable requirements. Should any content be identified as potentially confusing or outdated, Xael is prepared to address it promptly.

Please let me know if there is any additional information you may need to reinstate our business tax receipt to avoid harm to passengers during the peak holiday season.

Sincerely,

Mercy Casals
President