

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
Alan PHILIPP,)	
)	
Gerald G. STIEBEL, and)	
)	
Jed R. LEIBER,)	
Plaintiffs,)	
)	
v.)	Case No. 15-cv-00266 (CKK)
)	
FEDERAL REPUBLIC OF GERMANY, a foreign)	
state,)	
)	
and)	
)	
STIFTUNG PREUSSISCHER KULTURBESITZ,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS’ STATEMENT ON THE HOLOCAUST
EXPROPRIATED ART RECOVERY ACT AS IT RELATES TO U.S. POLICY**

Pursuant to the Court’s Minute Order dated January 4, 2017 (no docket number), Plaintiffs Alan Philipp (“Philipp”), Gerald G. Stiebel (“Stiebel”), and Jed R. Leiber (“Leiber,” together with Philipp and Stiebel, the “Plaintiffs”), by their undersigned counsel, respectfully submit this Statement on the Holocaust Expropriated Art Recovery Act as it Relates to U.S. Policy.

The passage of the Holocaust Expropriated Art Recovery Act of 2016, H.R. 6130, Pub L. No. 114-308 (the “HEAR Act”) late last year was an explicit rebuke to the litigation tactics that Defendants Federal Republic of Germany (“Germany”) and Stiftung Preussischer Kulturbesitz (“SPK,” together with Germany the “Defendants”) continue to employ. The HEAR Act confirms that Plaintiffs’ claims are supported by—not in conflict with—the policy of the United States. The HEAR Act was passed, quite literally, to bolster individual claimants (like the

Plaintiffs) in their pursuit of justice after efforts (like those that Germany and the SPK continue to advance here) to avoid the substance of these claims. Defendants' contention that the HEAR Act somehow slammed the courthouse door on plaintiffs seeking to recover for Nazi Germany's genocidal property takings is exactly backwards.

Plaintiffs set forth the relevant U.S. policy at the time the HEAR Act was passed in their prior papers, and will not repeat it here. Suffice it to say, however, that since banding together to stop Germany's conquest of Europe, the United States and its Allies made crystal clear that the restitution of the art plundered by the Nazis—whether through national-level exchange, litigation, or otherwise—was among their goals. Various sovereign defendants have nonetheless suggested over the years¹ that U.S. policy was limited to national-level restitution, and contentions that have been rejected by every court in which they were raised.²

A. The Plain Meaning of the HEAR Act Confirms the Availability of Private Claims.

The first and only authority that the Court need consider on this question is the text of the statute itself. As is well-settled, a statute's meaning should be interpreted in its usual and

¹ Defendants made much of the fact that the London Declaration referenced in Plaintiffs' Notice of Supplemental Authority is "more than 70 years old," eliding the fact that United States policy on looted art has, in fact, never changed since this declaration made in 1943. As recently as 2013, for example, the United States Special Envoy for Holocaust Issues, noted that "it is, in addition, the view of the United States Department of State that the public good is best served when institutions return cultural property looted or spoliated by the National Socialist regime, including by transfers that appear to have been voluntarily effected but were not, to those from whom it can be shown to have been unlawfully or forcibly taken or to their heirs." See Douglas Davidson, Special Envoy for Holocaust Issues, Bureau of European and Eurasian Affairs, Symposium on "Should Stolen Holocaust Art be Returned?" at the New York County Law Association, New York City, March 25, 2013, available at <https://www.state.gov/p/eur/rls/rm/2013/mar/206719.htm>.

² See *Republic of Aus. v. Altmann*, 541 U.S. 677, 681 (2004); *Von Saher v. Norton Simon Museum of Art*, 754 F.3d 712, 721 (9th Cir. 2014); *de Csepel v. Republic of Hung.*, 808 F. Supp. 2d 113, 139 (D.D.C. 2011), *aff'd*, 714 F.3d 591 (D.C. Cir. 2013); *Cassirer v. Thyssen-Bornemisza Collection Found.*, 737 F.3d, 613, 618-19 (9th Cir. 2013); see also *Bernstein v. N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 210 F.2d 375 (2d Cir. 1954).

ordinary sense. *Hardt v Reliance Std. Life Ins. Co.*, 560 US 242, 251 (2010). As Plaintiffs noted in their Notice of Supplemental Authority alerting the Court to the passage of the HEAR Act (and as Defendants concede in their letter filing), the law states as follows in subsection eight:

(8) While litigation may be used to resolve claims to recover Nazi-confiscated art, it is the sense of Congress that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner.

Most relevant is the very first clause of the paragraph: “litigation may be used to resolve claims to recover Nazi-confiscated art.” Defendants now suggest in effect that the phrase “litigation may be used” actually means “litigation may not be used.” This interpretation is at odds with plain English and accepted means of statutory construction, and should be rejected. *See Hardt*, 560 US at 251.

The statute’s encouragement of cooperative resolution is understandable and irrelevant to the viability of the Plaintiffs’ claims. While the HEAR Act most certainly encourages parties to disputes over Nazi looted art to seek private resolution either directly with each other or through some other alternative dispute resolution forum, suggesting one option as favorable necessarily means the other option is available. Indeed the parties to this case did seek to resolve the matter but could not, leaving the Plaintiffs no other recourse.

B. The Congressional Record Confirms Overwhelmingly that the HEAR Act was Passed to Protect Claimants Like the Plaintiffs from Defendants Like These.

As noted above, no additional context is necessary to understand what the HEAR Act means. But to the extent that the Court deems any such context to be relevant, what it shows is that Congress acted because it had had enough of defendants like Hungary and Germany avoiding the substance of Holocaust restitution claims.

1. The Law's Draftsmen Had Private Claimants Specifically in Mind.

If the Court concludes that the text of the HEAR Act does not resolve the issue, then it may consider certain extrinsic material to illuminate the law's meaning. *Oklahoma v New Mexico*, 501 US 221, 235, n 5 (1991). That material makes the answer even more conclusive in the Plaintiffs' favor.

The HEAR Act was first introduced by a bipartisan coalition in the Senate in April of last year, co-sponsored by Senators Ted Cruz and John Cornyn (both R-Texas), and Senators Charles Schumer (D-NY) and Richard Blumenthal (D-CT). In a joint press release issued by Senator Cornyn's office (a true and accurate copy of which is attached hereto as Exhibit 1), Senator Cruz stated:

The phrase 'never forget' is more than a slogan,...'Never forget' means working to right all the terrible injustices of the Holocaust, even if many decades have passed. The HEAR Act will empower the victims of this horrific persecution, and help ensure that our legal system does everything it can to redress the widespread looting of cultural property by the Third Reich as part of its genocidal campaign against the Jewish people and other groups.

Senator Schumer added (emphasis added):

When a family discovers a piece of art that was stolen by the Nazis they deserve their day in court. This legislation helps provide these families their day in court, ensuring that the heirs of holocaust victims are given the opportunity to bring their art back home.

For his part, Senator Cornyn left no doubt that the bill (now law) was intended to expand courthouse access for claimants:

While nothing can right the wrongs of the Holocaust, ensuring that victims and their families have the opportunity to recover art confiscated by the Nazis is one modest way to help provide closure for those who endured this dark period in history.

The fourth sponsor, Senator Blumenthal, later added that:

This bill may provide some measure of peace to families whose property was stolen by the Nazis. . . . It is long past time to return their owners the ill-gotten gains of a long-ago war.

In sum, there can be no doubt that the bill's authors had private litigants in mind when they drafted the bill.

2. Committee Testimony and Reports Focused on the Need to Aid Individual Litigants Facing Delaying Tactics.

Nearly everything in connection with the proposal, consideration and passage of the HEAR Act focused on the need to assist litigants like the Plaintiffs who had been subjected to delaying tactics and procedural defenses. The ability of Plaintiffs like these to have their day in court is the very heart of the HEAR Act.

After the HEAR Act was introduced in the Senate, the Senate Judiciary Committee held a hearing. The written testimony submitted by Dame Helen Mirren, former Ambassador and current World Jewish Congress President Ronald Lauder, heir Simon Goodman, Monica Dugot of Christies, and Agnes Peresztegi of the Commission for Art Recovery is attached as Exhibits 2-6 hereto, respectively.³ Of particular note was Ms. Peresztegi's testimony (which itself cited to Military Government Law No. 59, on which Plaintiffs relied in opposition to the Motion to Dismiss):

The United States has been committed to assist with the restitution of Nazi era confiscated artwork for over 70 years, and I commend you for introducing a bill that is the next step to uphold that commitment in the spirit of the Washington Conference Principles.

Ex. 5. Similarly, as the law's purpose, Ambassador Lauder testified (emphasis added):

The HEAR Act's purpose is to advance the cause of justice before the law. The bill's aim is not to inflict punishment or pass judgment on any individual who may have unsuspectingly acquired artwork that was confiscated during the

³ The written version of their individual testimony was made available by the Commission for Art Recovery, available at <http://www.commartrecovery.org/hear-act>.

Holocaust. Rather, the HEAR Act's goal is to ensure that people with claims are afforded an opportunity to have their cases heard on the merits.

Ex. 2.

After consideration, the Senate Judiciary Committee recommended the HEAR Act unanimously. Chairman Charles Grassley (R-IA) issued a statement in reporting the bill to the full Senate, in which he stated on no uncertain terms that the point of the proposed law was to “aid the recovery of artwork and other property stolen by the Nazi regime and return it to its rightful owners and families.” *See* Exhibit 7 hereto. Senator Grassley’s statement succinctly states, once again, the purpose of the Hear Act:

The HEAR Act thus serves two purposes: first, to ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration; and second, to ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner.

Senator Grassley’s report could scarcely be more specific that the policy of the United States is (and has always been) the return of ill-gotten Nazi plunder.

Shortly thereafter, the HEAR Act was introduced in the House of Representatives, once again with broad bipartisan support. Co-sponsors Bob Goodlatte (R-VA) and Jerrold Nadler (D-NY) issued a joint release (Exhibit 8 hereto) confirming the explicit purpose of the bill—which is necessarily about private litigation:

The legislation will ensure that American law encourages the resolution of claims related to Nazi-confiscated art on the merits, in a fair and just manner. Doing so is consistent with long-standing U.S. foreign policy, as demonstrated in the 1998 Washington Conference Principles on Nazi-Confiscated Art and the 2009 Terezin Declaration.

CONCLUSION

The Senate, and then the House of Representatives, passed the HEAR Act unanimously. President Obama signed it into law on December 16, 2016. The drafters and supporters of the HEAR Act would be astonished at the suggestion that what their law actually means is that art coercively pried from Jewish owners by the Nazi state and bequeathed to modern Germany should somehow be beyond judicial review. For the foregoing reasons, Plaintiffs respectfully request that because Plaintiffs' claims are consistent with United States policy for more than 70 years as confirmed by the HEAR Act, the Court DENY the Motion to Dismiss.

January 11, 2017

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*Attorneys of record for plaintiffs Alan Philipp,
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Exhibit 1



Cornyn, Cruz, Schumer and Blumenthal Introduce Bill to Help Recover Nazi-Confiscated Art

In: All News (/newsroom) Posted 04/07/2016

Share:  (<https://www.facebook.com/sharer/sharer.php?u=https://www.cornyn.senate.gov/content/cornyn-cruz-schumer-and-blumenthal-introduce-bill-help-recover-nazi-confiscated-art>)  (<https://twitter.com/home?status=Cornyn%2C+Cruz%2C+Schumer+and+Blumenthal+Introduce+Bill+to+Help+Recover+Nazi-Confiscated+Art%20https://www.cornyn.senate.gov/content/cornyn-cruz-schumer-and-blumenthal-introduce-bill-help-recover-nazi-confiscated-art>)  (mailto:?subject=Cornyn, Cruz, Schumer and Blumenthal Introduce Bill to Help Recover Nazi-Confiscated Art&body=https://www.cornyn.senate.gov/content/cornyn-cruz-schumer-and-blumenthal-introduce-bill-help-recover-nazi-confiscated-art)

WASHINGTON – U.S. Senators John Cornyn (R-TX) and Ted Cruz (R-TX), along with Senators Chuck Schumer (D-NY) and Richard Blumenthal (D-CT), today introduced the *Holocaust Expropriated Art Recovery Act* to help facilitate the return of artwork stolen by Nazis during the Holocaust to their rightful owners or heirs. The *Holocaust Expropriated Art Recovery Act* would ensure that American law encourages the resolution of claims on Nazi-confiscated art on the merits, in a fair and just manner. Doing so is consistent with long-standing U.S. foreign policy, as demonstrated in the 1998 Washington Conference Principles on Nazi-Confiscated Art and the 2009 Terezin Declaration.

“While nothing can right the wrongs of the Holocaust, ensuring that victims and their families have the opportunity to recover art confiscated by the Nazis is one modest way to help provide closure for those who endured this dark period in history,” Sen. Cornyn said.

"The phrase 'never forget' is more than a slogan," Sen. Cruz said. "'Never forget' means working to right all the terrible injustices of the Holocaust, even if many decades have passed. The HEAR Act will empower the victims of this horrific persecution, and help ensure that our legal system does everything it can to redress the widespread looting of cultural property by the Third Reich as part of its genocidal campaign against the Jewish people and other groups.

"Moreover, while this legislation is designed to help recover artwork that the Nazis stole during the Holocaust, it reminds us that the need to protect our cultural history in our own time is as urgent as ever," Sen. Cruz continued. "Terrorist groups from the Taliban to ISIS, seeking nothing less than the destruction of Western civilization, long to walk in the footsteps of their genocidal, thieving forebears. The HEAR Act will make it clear that the United States takes a strong stand against the looting and trafficking of antiquities and other artifacts. I am proud to have worked closely with my colleagues from both sides of the aisle to introduce this bill."

"71 years after the end of the holocaust and Hitler's terrifying regime, victims are still identifying possessions that have been missing all these years," Sen. Schumer said. "When a family discovers a piece of art that was stolen by the Nazis they deserve their day in court. This legislation helps provide these families their day in court, ensuring that the heirs of holocaust victims are given the opportunity to bring their art back home."

"Decades and generations after the horrors of the Holocaust, this bill may provide some measure of peace to families whose property was stolen by the Nazis," Sen. Blumenthal said. "It is long past time to return their owners the ill-gotten gains of a long-ago war."

Background on the Holocaust Expropriated Art Recovery Act:

- The American government has long worked with other nations to ensure that victims and their families are able to recover art tragically stolen by the Nazis.
- To effectuate that policy, the *HEAR Act* gives claimants an opportunity to have their case decided on the merits by establishing a nationwide window of time within which such claims can be brought.

Contact Senator Cornyn  (/contact)

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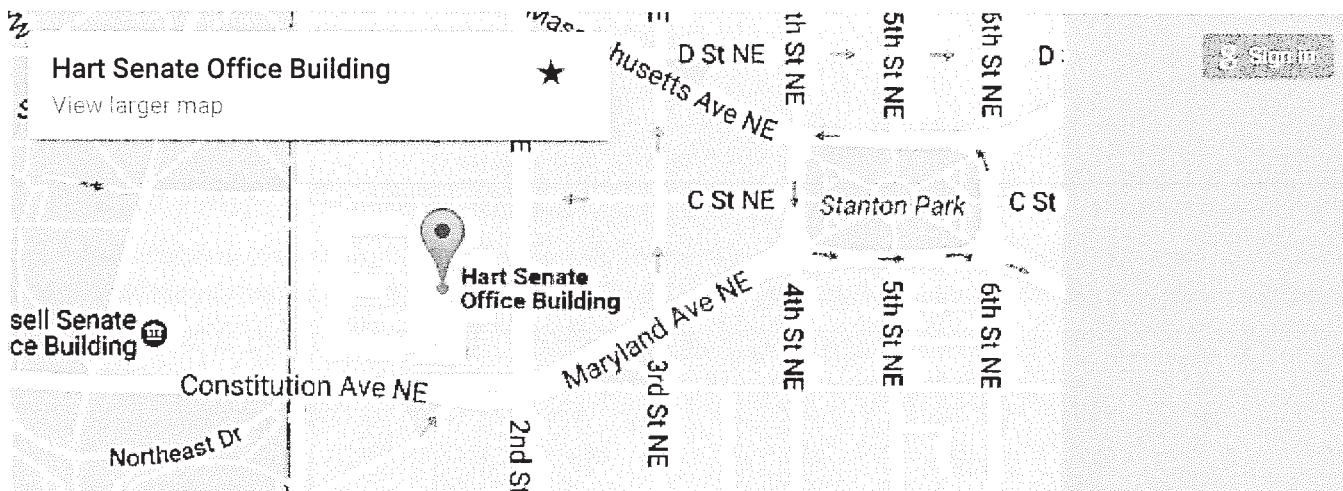
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Exhibit 2

Testimony of Dame Helen Mirren
Before the Subcommittee on the Constitution
&
Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts
Committee on the Judiciary
United States Senate
June 7, 2016

Chairman Cornyn, Senator Durbin, Chairman Cruz, Senator Schumer, Senator Coons, Members of the Committee. Thank you for this opportunity to testify in support of S.2763, "The Holocaust Expropriated Art Recovery Act of 2016."

My name is Helen Mirren. I am an actor who portrayed the role of Maria Altman in the 2015 film *Woman in Gold*. In the film, I portrayed Maria Altmann. The film is the remarkable true story of a woman who overcame great odds and righted a wrong that had stood for decades. Sixty years after fleeing Vienna during World War II, Altmann, an elderly Jewish woman, began a years-long journey to reclaim family possessions seized by the Nazis. Among them was Gustav Klimt's famous painting, Portrait of Adele Bloch Bauer I – a family painting of Altmann's Aunt Adele – as known as the Woman in Gold. The fight to reclaim what was rightfully hers forced her to fight the Austrian establishment and to take her case to the U.S. Supreme Court. On a more personal level, Maria had to confront vivid memories of her family life in Vienna, returning to the country she'd been forced to flee by the Nazis and reliving the pain of having everything she held dear ripped away from her and the people she loved murdered in death camps.

Portraying Maria Altmann opened my eyes to mankind's capacity for indifference and it turned my attention to and fueled a personal resolve to do my part to try to open the eyes of others and help make people aware of the sad fact that - more than 70 years later - victims of the Holocaust and their families are still contemplating whether to seek restitution for what was stolen from them and lost under the most horrible of circumstances. But a lack of transparency, access to information concerning the location of stolen art, and legal assurance that these cases will be resolved on the merits, discourages them from taking action.

When considering the issue at hand, it's essential to understand what is preventing victims of the Nazis from reclaiming what is rightfully theirs. Logically, I think we could all agree that the right thing to do in every instance is to return the art to its rightful owners. The very act of Nazi expropriation was not only unjust but it was inhumane. And yet, still today, it seems there are still some out there who lack the will to recognize the victims and their families as rightful owners.

Art lost in the Holocaust is not just important for its aesthetic and cultural value, and restitution is more – so much more – than reclaiming a material good. Restoring physical parts of lost heritage to Holocaust victims and their families is a moral imperative. For me, for Maria Altmann, and for many families fighting to reclaim what rightfully belongs to them, art restitution has little to do with potential financial gains. Art restitution is about preserving the fundamental human condition. It gives Jewish people – and other victims of the Nazi terror – the opportunity to reclaim their history, their culture, their memories, and most importantly their families.

The generation of Jewish people that were burdened by the cruel acts of the Nazi regime had little choice but to carry on with their lives. After what they had experienced – tremendous loss, and deep sorrow – moving forward was the only viable path. It brings me pleasure to know that today we live in a freer world, where a new generation has emerged with the resources and time to finally begin to deal with this issue and pursue justice. It's incredible to see how many people have approached me sharing that Maria's story in the *Woman in Gold* is just like their mothers and grandmothers.

For what it's worth, Maria Altmann's story is one of noble justice, one that I believe is important to be told, and one that should continue to be told by future generations. It is a story that is not made possible without the United States. These are American stories, stories that capture the integrity and power of the United States, its justice system and the rule of law. Maria Altmann's story is as a refugee in the United States, who was finally granted justice through retaining what was rightfully hers, at the hands of the U.S. Supreme Court. But victims of Nazi theft should not have to demonstrate the boldness and capacity to commit the resources of Maria Altmann in order to recover what is rightfully theirs.

Art is a reflection of memories that are shared across familial and cultural lines. When the Jewish people were dispossessed of their art, they lost some of their heritage. Memories were taken along with the art, and to have no memories is like having no family, and that is why art restitution is so imperative. The lives of so many people could be rejuvenated through the actions and leadership of the U.S. Congress to insure that fair and equitable solutions in these cases are assured.

As humans, we are incapable of changing the past, but fortunately we have the ability to make change today. Thank you for your leadership and efforts to address this issue - in the modest reforms contained in THE HEAR Act – by ensuring that, at least here in the United States, access to justice and the courts will be ensured.

Thank you for this opportunity.

Exhibit 3

Testimony of Ronald S. Lauder
Before the Senate Judiciary Committee
Subcommittees on The Constitution
&
Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts
June 7th, 2016

Chairman Cornyn, Ranking Member Durbin, Chairman Cruz, Ranking Member Coons, Senator Schumer, Senator Blumenthal, Members of the Committee.

Thank you for this opportunity to testify in support of S.2763, "The Holocaust Expropriated Art Recovery Act of 2016."

For many Americans, the fall of Nazi Germany and the end of World War II is a matter for history books. We know about the mass industrial murder of millions of human beings, but few people know about the mass theft of the victims' property. And even fewer know about the systematic confiscation of priceless works of art by Nazi leaders, including Hitler, Göring, and other top officials.

What makes this particular crime even more despicable is that this art theft, probably the greatest in history, was continued by governments, museums and many knowing collectors in the decades following the war. This was the dirty secret of the post-war art world, and people who should have known better, were part of it. In many cases, legal barriers like arbitrary statutes of limitations were imposed on families that had not been aware that their father's painting was hanging in a private home or state museum.

That is the issue which brings us together today... How do we find the best way to render fair and just decisions with the art works that are still in dispute and those still missing?

Make no mistake ... this crime continues to stain the world of art.

I commend Helen Mirren for bringing this massive crime to the public's attention with the wonderful film, *Woman in Gold*.

Unfortunately, most stolen art cases do not end as positively as Maria Altman's long struggle to retrieve her uncle's painting, *Portrait of Adele Bloch Bauer I* from the Austrians.

In spite of everything, this remains a very complex problem. While each of us here today would like to see every piece of stolen art returned to the rightful owner, we recognize that what a victim might decide is an equitable outcome is often quite different from what a respected

possessor of stolen artwork believes is fair. In many cases, a confiscated piece of art may have been purchased with all good intentions since the buyer was unaware that the work was stolen.

Eighteen years ago, in 1998, those of us committed to restitution concluded that international cooperation and standards were necessary to help govern how stolen art cases are handled. Along with representatives from 45 Nations, we developed what are today referred to as the "Washington Principles."

Eleven years later, in 2009, 46 nations, including the United States, issued the Terezin Declaration, which urged the signatories "to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims."

When the United States endorsed the Washington Principles in 1998 and the Terezin Declaration in 2009, the U.S. committed itself to the recovery of art that was confiscated by the Nazis¹ during the Holocaust. Our adherence to this commitment requires that resolution of such cases be based on the merits of each case and not on procedural technicalities or the capacity of one party to outspend, or outwait, the other.

There are museums here in the United States that have been waiting out the clock to pass the Statute of Limitations. This also forces claimants to spend enormous amounts of money on legal fees – another strategy to make them give up.

This is not justice. Stalling claims is an abuse of the system. Sadly, there are museums that feel no need to uphold the Washington Principles. Many other institutions do the very least that is required and not much more.

The fundamental question posed by the HEAR Act is, have we here in the United States done enough to ensure fair and equitable solutions? I believe we have done a great deal, but we still could and should do much more.

The HEAR Act creates a uniform national statute of limitations rule for claims to Nazi-confiscated artwork.

¹ [1] The term "by the Nazis" includes the Nazis, their allies and any unscrupulous individuals regardless of their location, who took advantage of the dire state of the persecutees, and the term "confiscation" includes any taking, seizure, theft, forced sale, sale under duress, flight assets, or any other loss of an artwork that would not have occurred absent persecution during the Nazi era.

The bill provides that existing legal claims should not be denied simply because of the passage of time, especially if the claimant did not have actual knowledge of the artwork's location and the facts necessary to make a claim. Once a claimant does have the requisite knowledge, he or she cannot, and should not, sit on their rights. We are suggesting that once a claimant has actual knowledge, they must bring the case to court within six years.

This bill is also important for what it DOES NOT do – it does not prejudice the merits of each case one way or the other. It simply allows claimants to have their day in court, and not be thwarted by procedural technicalities. The bill does not create a new legal theory or rule of liability under which a case can be brought. In other words, it does not create any new causes of action.

The HEAR Act's purpose is to advance the cause of justice before the law. The bill's aim is not to inflict punishment or pass judgment on any individual who may have unsuspectingly acquired artwork that was confiscated during the Holocaust. Rather, the HEAR Act's goal is to ensure that people with claims are afforded an opportunity to have their cases heard on their merits.

Mr. Chairman, some may ask, why should we care now? This grand larceny of artwork by Nazis was part and parcel of the evil what was the Holocaust and it took place before most people alive today were born.

But I believe we should care deeply, because denying victims of the Holocaust and their families access to a just hearing based on the merits of each case is wrong, plain and simple. There's another reason as well. Denying the justice continues the crimes of the Nazis and that is unconscionable. It gives a victory to the Nazis 71 years after their unconditional defeat.

We must always keep in mind that for practically every piece of stolen art, a murder was committed. Seven decades after the end of World War II and the Holocaust, resolving this problem is long overdue. If people are truly interested in justice, if they really want to solve this issue, then they should support this legislation.

We cannot go back and change what happened. All we can do is stop the continuation of this crime. After more than 70 years, it is time to put these ghosts to rest. It is, in fact, long past time.

Thank you, Mr. Chairman, for this opportunity to speak before the Committee today. I want to personally commend you, Mr. Chairman, and Senator Schumer, Senator Cruz and Senator Blumenthal for introducing this important, bipartisan legislation.

I am happy to answer any questions you may have.

Exhibit 4

Testimony of Simon Goodman
Before the Subcommittee on the Constitution
&
Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts
Committee on the Judiciary
United States Senate
June 7, 2016

Chairman Cornyn, Senator Durbin, Chairman Cruz, Senator Schumer, Senator Blumenthal, Members of the Committee. Thank you for this opportunity to testify in support of S.2763, "The Holocaust Expropriated Art Recovery Act of 2016."

My name is Simon Goodman and for the last twenty years I have dedicated my life to recovering my grandfather Fritz Gutmann's art collection, lost between 1940-1945. Fritz Gutmann was murdered in Theresienstadt in April, 1944. But it was not until 1994 when my father died, and I inherited his correspondence, that I became aware of my father's solitary, and largely unsuccessful, quest to regain his own father's dispersed collection.

My father survived the war in Britain. As soon as victory was declared he returned to the Netherlands only to find his parents gone and the family home stripped bare. In addition, almost all my grandfather's letters, documents and photos, concerning the Gutmann art collection, had been destroyed by the Nazis. His library was also shipped to Germany. My father's only recourse was to try to sketch an inventory from memory.

Meanwhile, the governments effecting my family the most: i.e. those of the Netherlands, France and West Germany erected bureaucratic barriers making restitution next to impossible. The Dutch usually insisted on being paid before returning anything, but more often they simply absorbed artworks into their own National collection. The West Germans denied knowledge of any pieces from my family's collection, and suggested my father look behind the "Iron Curtain".

Today we know that many works were, in fact, smuggled through Switzerland at the end of the war, and gradually filtered into the world art market, including the United States.

My quest began, in earnest, in 1995, when, fifty years after the war, the Allies began to declassify WWII documents, including thousands relating to art looting. Gradually

the U.S. archives, and those of Britain, France, Holland and Germany, began to make available transcripts of the depositions major Nazi looters gave to the Allies at the end of the war. Only in 2002 was I able to uncover the room-by-room inventories Hitler's art agents made of my grandparent's home.

To this day these archives are still being up-dated and digitized. Just two months ago, the Dutch archives finally made available an actual image of a painting that has eluded my family for over 75 years, since being removed from our home in 1940 during the Nazi occupation. After twenty years of research I have by no means finished tabulating the (well over) thousand artworks and antiques lost by my family during the Holocaust.

All of which brings me to the concept of "statute of limitations" and any potential delay implied by the legal precept of "laches". After my father died, the first painting I found was in Chicago, at the end of 1995. In the case that followed (*Goodman v. Searle*) the defendant claimed the statute of limitation had expired, even though the painting had been hidden from view for thirty years - then exhibited briefly twice - and hidden again from view for another twenty years. They also claimed we should have acted sooner after the painting was first exhibited, despite the fact that they had also changed the painting's title. Another defense was that my family had not been "duly diligent", my father's five decade search notwithstanding.

In contrast, no particular diligence is required from the purchaser of an artwork. The mere assumption of good faith is often sufficient for declaring a buyer to be in "good faith". Furthermore, under Swiss law (for instance), a "good faith" purchaser of stolen property automatically acquires good title. In addition, it was not until the 1990s that the art trade began to track seriously the provenance of artworks.

I would like to think that I represent all claimant families in saying that the removal of any unfair restrictions, which hinder the claims of Holocaust victims and their heirs, would be long overdue but most welcome. I am truly grateful to the Senate Judiciary Subcommittee for enabling me to voice the difficulties a claimant family, such as mine, has endured ever since the end of WWII.

For further information, please see "The Orpheus Clock: The Search for My Family's Art Treasures Stolen by the Nazis" by Simon Goodman - published by Simon & Schuster.

Exhibit 5

Congressional Panel Testimony, June 7, 2016, 1:00pm

**Monica Dugot, International Director of Restitution,
Senior Vice President, Christie's**

Good afternoon. I'm Monica Dugot, International Director of Restitution at Christie's, the world's largest auction house, and for the last twelve years I have overseen the company's responsibilities for dealing with the continued circulation of Nazi-looted art by doing our best to keep looted objects off the market. Before that, I spent eight years as Deputy Director of the Holocaust Claims Processing Office in New York, also working on art restitution. I have been privileged to have been involved in finding amicable solutions to title claim issues caused by the continuing legacy of Nazi looting since the mid-1990s.

I have been asked to appear today in my individual capacity as a specialist who deals with Nazi looted art issues on a daily basis to offer what context and insight I can into the current state of restitution matters in this country. While Christie's as a corporate entity takes no position on the proposed legislation at hand, it is broadly supportive of measures that enable and promote the fair and just resolution of restitution claims as per the 1998 Washington Conference Principles on Nazi-Confiscated Art. Today my goal is to provide what help I can from personal experience and perspective by explaining three key concepts: 1) why restitution issues persist in the art market today, 2) how Christie's navigates these issues through our own due diligence and research processes, and 3) how we aim to resolve resolution disputes when a title claim arises.

Let me start with a bit of background from the market perspective. For many reasons art restitution was a closed chapter for many decades after World War II. Nazi-looted or questionable art may have been in plain sight in museum and national collections and much, much more was quietly absorbed into private collections in Europe and the United States or passed from dealer-to-dealer over time. This looted art became unshackled from its history, especially for historically or financially modest artworks, and poorly documented works, such as Judaica and works on paper. So the circulation of looted art work, by which I mean not just paintings, but drawings, objects, books and so on, on the art market has been inevitable. I wish to emphasize that this is not just a problem for Jews, but is much broader; even many

people who were not or did not consider themselves Jewish, were persecuted on one basis or another. Just as the scope of Nazi looting was enormous to the point of being unimaginable, the scope of these legacy issues is also enormous. Estimates range from as little as a few hundred thousand objects to as high as several million. The monetary value of each of these objects ranges from tens of dollars to tens of millions of dollars. The emotional value to the rightful owners and their families who view these objects as part of their heritage may be beyond estimate.

So how then does Christie's navigate sales of artwork, given these legacy issues? Christie's handles a large volume of art and collectibles and has been involved in Nazi-era restitution for about twenty years. We have a dedicated restitution team and there is also a strong thread of responsibility running through our entire business operation. As the global market leader, we set high standards for the profession and act in a self-policing capacity, through an internal system of checks and balances. We conduct thorough due diligence as a service to our consignors and buyers to protect Christie's good reputation in the commercial market. But we also engage with the issue of art restitution because we have a moral and ethical responsibility to do so. We respect the heirs and claimants to looted collections and we equally respect the position of collectors and future collectors buying and selling through Christie's.

It is important to understand that Christie's role in the marketplace is that of an intermediary or broker; we do not take title to the art we sell, we act on behalf of our consignors. Claimants in these matters may include the victim or their direct heirs. Consignors are generally good-faith purchasers who have no direct connection to any theft or forced sale in the past. Therefore, on a practical level we need to ensure, as far as we are able, that we are not taking on a consignment of an artwork or object for which there is an unresolved Nazi-era ownership claim.

If through our research, we find that we cannot convey good title to an individual artwork, we will decline to sell it. In cases where it becomes clear that there is an outstanding ownership claim, Christie's can act as a neutral third party, working through the facts of the case toward an amicable resolution. A resolution may involve a physical return of the work or

a negotiated settlement agreement, which sometimes results in a sale of the restituted item and a division of proceeds. By remaining a neutral intermediary, and by being committed to promoting solutions to restitution matters, Christie's helps to maintain a safe and trusted market-place, where buyers, sellers and heirs all know that we are committed to addressing, to the best of our ability, any Nazi-era issue in the provenances of the works we offer.

Let me take a moment to explain the provenance research process. Christie's vets almost every pre-1945 artwork consigned to us for sale for possible issues. We do this across many types of art and objects and regardless of estimated value. This means we are looking at 100,000 items a year. In our due diligence work, we look for "sensitive names" in the provenance of artworks – names indicating an artwork may have been in a victim's collection, or in the possession of a notorious Nazi collector, or it may have passed through the hands of complicit dealers. We look for physical signs of confiscation, markings, labels, and other signs that a work changed hands at this sensitive time. We check artworks against up to a dozen databases on looted and stolen artwork for possible matches and our own records. Where we find a potential issue, we undertake whatever research we think necessary to allay or address concerns.

The growth in research and publications including open online databases and resources, generally referred to in the field as provenance research (the study of the history of ownership or possession of a work) means that there is more information available than ever before about the losses of the Nazi era. In publishing Christie's sale catalogues online, there is also an accessible trail for claimants and researchers trying to trace looted artwork. Provenance research has developed as its own discipline in the last few years. This newly increased availability of awareness, information and expertise has led to a substantial increase in the number of claims over the past few years. Unfortunately complete information is rarely available and the fragmented presentation and lack of centralization of information greatly increases the challenge to our limited resources.

Even with due time and attention, it can be very difficult to establish a complete and unbroken chain of ownership for certain artworks. This is especially the case with modest works, those works which have not been written about or exhibited publicly. Indeed the art collections of

many pre-war families fit this profile. It is certainly the case for books, prints, multiples or works on paper. It is also important to note that not every work with gaps or lacunae in its provenance is immediately suspicious, as recordkeeping practices in the past were often spotty.

In our efforts to identify looted art, Christie's broadly follows the Washington Conference Principles and the 2009 Terezin Declaration. Based on these precedents, Christie's published our own guidelines on claims handling also in 2009. In the last decade we have handled over 200 claims, the majority for financially modest artworks which nonetheless had real emotional, sentimental or cultural resonance for the claimants.

When these claims do arise as a result of our research findings, Christie's follows a preferred approach, which is to advocate for a negotiated settlement between parties based on the facts of the case, rather than potentially costly and time-consuming litigation. Essentially our approach is to act as an informed and expert intermediary between the claimant and the current holder of the claimed artwork. We try to help each party understand the other's position and to help interpret or contextualise information, especially at a sensitive and often upsetting time. Our goal is to establish a fair, amicable, transparent and practical dialogue to bring about a fair, amicable, transparent and practical claims resolution.

More often than not these are non-litigious discussions and they work out well. In our experience a 'soft law' approach, that is, having an ethical, moral and practical discussion, is often the most productive route. There is often some legal, ethical and moral correctness on each side, as well as a high degree of emotionality. We try to navigate these troubled waters acting as a neutral party to protect the market and to bring some semblance of fairness, and perhaps closure, to both sides.

I hope this overview gives you a sense of the scale of the legacy issues active in the art market today and how Christie's seeks to navigate them with care and attention and work with parties on both sides of disputes to reach fair and equitable agreements. I thank you for inviting me to join this distinguished panel here today and for continuing to draw attention to the issues that affect all of us in the international Restitution community.

Exhibit 6

Testimony of Agnes Peresztegi
Commission for Art Recovery
Before the Senate Judiciary Committee Subcommittees on
The Constitution
&
Oversight, Agency Action, Federal Rights and Federal Courts
June 7th, 2016

Chairman Cornyn, Ranking Member Durbin, Chairman Cruz, Ranking Member Coons, Senator Schumer, Senator Blumenthal, Members of the Committee. I would like to join the other members of the panel in thanking you for the opportunity to testify in support of S.2763, “The Holocaust Expropriated Art Recovery Act of 2016.”

The United States has been committed to assist with the restitution of Nazi era confiscated artwork for over 70 years, and I commend you for introducing a bill that is the next step to uphold that commitment in the spirit of the Washington Conference Principles.

In a January 2016 decision, the D.C. Circuit found that clarification was still needed regarding Holocaust era property looting. In *Simon v. Republic of Hungary*, the court went as far as to state that the illicit taking of art during the Holocaust, “did more than effectuate genocide or serve as a means of carrying out genocide. Rather, we see the expropriation *as themselves genocide*.”¹

Just like the prosecution of genocide should never be barred by statute of limitations, in the same manner works of art and valued property taken during a campaign of genocide should be deemed as forever tainted. These works of art need to be restituted without further delay to their rightful owners. No one has the right to benefit from the crimes committed as part and parcel of the horrifying campaign to eliminate the Jews of Europe.

In this specific case, the passage of time, does not have any of its healing attributes. On the contrary, the passage of time imposes on our leaders the obligation to take measures not only to correct, to the extent possible, the crimes of the past, but also to send a clear message to future generations that certain events cannot just be forgotten. I wish to thank Senators Cornyn, Cruz, Schumer and Blumenthal for their leadership on this issue and their recent

¹ *Simon*, 812 F.3d at 147

work with respect to The Holocaust Expropriated Art Recovery Act of 2016 (HEAR Act).

Since the establishment of the Washington Conference Principles, current possessors of Nazi era confiscated artworks have repeatedly attempted to mischaracterize applicable U.S. policy, although this policy has been clear and consistent for over 70 years². It is important that in working to address concerns raised by others that the HEAR Act retain the main elements of this policy. A bill aimed at insuring claimants to have access to justice should not become a vehicle to federally protect those who have been fighting all along to keep these cases out of the courts.

1. Nazi era confiscated art should be returned to the rightful owner, lack of knowledge or good faith acquisition should not defeat restitution.
2. Nazi era confiscated art, or Holocaust era looted art, or all of the other terms generally used to describe the cultural annihilation of Jews during a campaign of genocide, means all types of property loss by people persecuted during the Nazi era, regardless of the geographical location.³

The Committee should consider that the HEAR Act would not achieve its purpose of enabling claimants to come forward if it eliminates one type of procedural obstacle in order to replace it with another. To cite some concerns: narrowing the definition of looted art, shifting the burden of proof unnecessarily in some instances to the claimant; and generally adding or confirming other procedural obstacles. Cases related to Holocaust looted art, should only be adjudicated on the merits. For a case based on a genocide campaign to fail because of a mere procedural technicality would be an insult to the memory of the millions of people who lost their lives and property during one of the darkest periods in human history.

² For example, Military Law 59, applicable to the US military zone in Germany after WWII unequivocally states: "It shall be the purpose of this Law to effect to the largest extent possible the speedy restitution of identifiable property ... to persons who were wrongfully deprived of such property within the period from 30 January 1933 to 8 May 1945 for reasons of race, religion, nationality, ideology or political opposition to National Socialism." and "Property shall be restored to its former owner or to his successor ... in accordance with the provisions of this Law even though the interests of other persons who had no knowledge of the wrongful taking must be subordinated. Provisions of law for the protection of purchasers in good faith, which would defeat restitution, shall be disregarded." (Article 2.)

³ It should not matter whether the loss occurred (i) by a Nazi soldier taking the art from a Jewish family's apartment, (ii) by the Einsatzstab Reichsleiter Rosenberg (ERR), the Nazi art looting unit, systematically robbing French collectors, (iii) whether the art was sold to pay the so-called flight-tax, or (vi) was forcefully auctioned off, or (v) whether a Jewish persecutee has sold the art below market value while fleeing for his life.

Any and all types of dispossession are covered.

The cases where the owner sold the work for consideration during the period of Nazi persecution should also be adjudicated on the merits. A court should have to determine whether such a sale was truly voluntary and not coerced in any way, and that a market price was offered and the consideration was received in a freely disposable way.

Statute of limitations and laches are intended to abort the adjudication of “stale” claims. These procedural doctrines were not designed to deal with the greatest art theft in history. One of the main justifications for statute of limitations and laches concerns the unfair burden of imposing on the current possessor the obligation to conserve evidence of legitimate ownership for many decades. In the case of Nazi era looted art, the burden is on the claimant to produce evidence of legitimate ownership that may be decades old, a task dramatically complicated by the fact that the original owner often disappeared along with the proof of ownership. Provenance research was almost impossible right after liberation, but today there is much more information available.⁴

In the United States, statute of limitations and laches are procedural bars to having the case heard on the merits, which hopefully will be made more equitable by the HEAR Act,⁵ at least for a period of time. To be clear, the HEAR Act will not create a new cause of action and is not retroactive in nature. All civil claims or causes of action, which have been finally adjudicated are outside of the scope of the current bill. However, those claims that have not been adjudicated, should now be heard on their merits only. For example, take the cases where under applicable state law, statute of limitations has already passed before the end of World War II. Is it really reasonable to deny a restitution case because the victim failed to file a case while he or she were enslaved in a Nazi death camp?

Some states have statute of limitations rules that are more favorable to claimants. The HEAR Act should not operate to extinguish claims that are valid under the laws of these States. I therefore urge the Senators to ensure that this is also reflected in the final version of the Act.

⁴ Collecting proof of ownership was very difficult if not outright impossible right after World War II. Archives were not easily accessible, no information was digitized, inter-library loans took several months if not years, travel was difficult and expensive; over all the costs of doing research were prohibitive. Today, there are digital databases, which can be accessed from one’s desk, there is google translate to navigate through even foreign language sites. Not to mention the now accessible archives in Eastern Europe, just NARA has declassified hundreds of thousands of pages of relevant documents, and today, even local libraries can provide access to official artist catalogues.

⁵ Unlike the United States where statute of limitations only creates a procedural obstacle, in most European jurisdictions, statute of limitations is prescriptive and cannot be amended once it had expired. In order to overcome this problem, many European countries chose to establish alternative forums to address restitution claims. This was made possible by the fact that most museums are government owned. The difference is that in Europe, once the statute of limitations expires, the possessor becomes the owner, and the former owner loses the title. These alternative forums issue recommendations to government entities to restitute works of art despite the fact that title has vested on the museum that possesses them. The U.S. however, has always had a policy that as a matter of law no one can ever get legitimate title on stolen property, while there is no central government body that can direct museums to act in certain ways, i.e. to waive statute of limitations and laches as a defense. In the United States, an artwork, even if its recovery is barred by statute of limitations or laches, will never become the rightful property of the current possessor, and will always be tainted

The purpose of the HEAR Act is to enable additional claimants to come forward but not at the expense of barring existing claims.

□

Under the proposed Act claimants will have 6 years from the time of actual knowledge of the identity and location of the claimed artwork to commence action. However, it is important to mention that knowledge cannot be construed as possessed by all family members if not all family members actually have the knowledge. It is not the fault of the descendants of Holocaust survivors not to be close to each other. Families, who, but for the Holocaust, would have lived their lives in close proximity to each other, were decimated and dispersed around the world. Therefore, it is important that the right to benefit from the HEAR Act is allocated to individual claimants and not to groups of heirs, who may not even know about each other's existence.

The six-year rule comes after decade long discussions on the practical aspects of restitution among museums, art professionals and claimant representatives. It is long enough to facilitate negotiation and the amicable resolution of restitution claims. It should also propel museums to complete the provenance research of their holdings and to actively engage in the restitution of Nazi era looted artworks.

Before the Prague Conference, a review⁶ of the different countries' implementation of the Washington Conference Principles was compiled, and unfortunately, the United States was not listed among the countries that made major progress towards such implementation. By enacting the HEART Act, the United States will confirm its unwavering support of restituting Nazi era confiscated art to its rightful owners and will be rightly viewed as a country that made major progress towards implementing the Washington Conference Principles on Nazi-Confiscated Art.

I thank the Committee for this opportunity to share my experience and knowledge in support of the HEAR Act today. I hope to serve as a resource to the Committee as you consider this legislation, and I hope we can all celebrate the 20th anniversary of the Washington Conference together with the passage of the HEAR Act.

⁶ In June 2009, at the Prague Conference on Holocaust Era Looted Assets the Claims Conference and the WJRO presented a World-Wide Preliminary Overview on the implementation of the Washington Conference Principles. Under that review, the United States was classified as a country that made substantial, but not major progress towards implementing the Washington Conference Principles on Nazi-Confiscated Art.
<http://www.claimscon.org/forms/prague/looted-art.pdf>

Exhibit 7

Calendar No. 654

114TH CONGRESS } <i>2d Session</i>	SENATE	{ REPORT 114-394
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HOLOCAUST EXPROPRIATED ART RECOVERY ACT OF 2016

DECEMBER 6, 2016.—Ordered to be printed

Mr. GRASSLEY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 2763]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 2763) to provide the victims of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

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I. BACKGROUND AND PURPOSE OF THE HOLOCAUST EXPROPRIATED ART RECOVERY ACT OF 2016

From 1933, when Hitler and his National Socialist German Workers Party, the “Nazis,” took power in Germany, until 1945, when the Allied Forces vanquished the Third Reich, the Nazis stole hundreds of thousands of artworks from museums and private collections throughout Europe. This systematic looting of the artwork and other cultural property of Jews and other persecuted groups—one of the Nazis’ many crimes against humanity—has been de-

scribed as the “greatest displacement of art in human history.”¹ According to the American Alliance of Museums:

the Nazi regime orchestrated a system of theft, confiscation, coercive transfer, looting, pillage, and destruction of objects of art and other cultural property in Europe on a massive and unprecedented scale. Millions of such objects were unlawfully and often forcibly taken from their rightful owners, who included private citizens, victims of the Holocaust; public and private museums and galleries; and religious, educational, and other institutions.²

Since World War II ended, the United States has pursued policies to help restore artwork and other cultural property lost in the Holocaust to its rightful owners.³ The Holocaust Expropriated Art Recovery (HEAR) Act is the latest step in that pursuit.

The first step was the post-war effort of the United States and its allies to return property that was stolen or misappropriated by the Nazis and their allies. At the Potsdam Conference in 1945, President Truman approved a policy of “external restitution,” under which the United States would return the looted art to the countries of origin—not directly to the individual owners. Those countries would then be responsible for returning the art. But, despite these efforts, many pieces were never reunited with their owners.⁴

In the aftermath of the war, many families whose property was misappropriated by the Nazis or lost during the Holocaust simply lacked the information, resources, and sometimes wherewithal to locate and pursue litigation to obtain their property.⁵ Even for those with the resources, determining the provenance of Nazi-looted art proved to be extremely difficult since many changes of ownership went undocumented, and many of the transactions took place on the black market.⁶ Adding to the difficulty, the Soviet Union also engaged in plundering. Responsible for the looted property in the territories they controlled, the Soviets often refused to provide any provenance information.⁷ The trauma of the Holocaust

¹ *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 957 (9th Cir. 2010) (quoting Michael J. Bazylar, *Holocaust Justice: The Battle for Restitution in America's Courts* 202 (NYU Press 2003)).

² American Alliance of Museums, *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*, <http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era>.

³ This policy is not limited to the theft of art by the Nazis. For instance, the FREEDOM Support Act, signed into law by President George H.W. Bush on October 24, 1992, prohibits assistance to an independent state of the former Soviet Union that refuses to comply with a final court judgment that it is “withholding unlawfully books or other documents of religious or historical significance that are the property of United States persons.” FREEDOM Support Act, Pub. L. 102-511, 106 Stat. 3320 (1992). That legislation, which responded to a refusal by the Russian government to return the stolen library of the Lubavitcher Rebbe in *Agudas Chasidei Chabad v. Russian Federation*, expressed the clear policy of the United States that items of religious and cultural significance taken in violation of international law should be returned to their rightful owners.

⁴ *Von Saher*, 592 F.3d at 957-58.

⁵ *The Holocaust Expropriated Art Recovery Act—Reuniting Victims with Their Lost Heritage: Hearing on S. 2763 The Holocaust Expropriated Art Recovery Act Before the S. Comm. on the Judiciary, Subcomm. on the Constitution and Subcomm. on Oversight, Agency Action, Federal Rights and Federal Courts*, 114th Cong., Hrg Tr. at 40 (2016) (statement of Agnes Peresztegi, President, Commission for Art Recovery); *id.* at 43-46 (statement of Simon Goodman).

⁶ *Von Saher*, 592 F.3d at 958.

⁷ *Review of the Repatriation of Holocaust Art Assets in the United States: Hearing Before the H. Comm. on Financial Services, Subcomm. on Domestic and International Monetary Policy, Trade, and Technology*, 109th Cong. 105-6 (2006) (statement of Stuart Eizenstat, Former Commissioner, Presidential Advisory Commission on Holocaust Assets in the U.S.).

also made it psychologically difficult for victims and their heirs to pursue lost property in the aftermath of the war.⁸

As the twentieth century came to a close, nations and civil society groups expressed a renewed interest in addressing the restitution of art lost in the Holocaust. The United States led these efforts. In 1998, over 50 years after the end of the war, the United States convened a conference with forty-three other nations to address the restitution of art lost in the Holocaust: the Washington Conference. The participating countries unanimously approved what are known as the Washington Conference Principles on Nazi-Confiscated Art, which, *inter alia*, declared that Holocaust victims and their heirs “should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted” and that “steps should be taken expeditiously to achieve a just and fair solution” to such claims.⁹

The same year, Congress enacted the Holocaust Victims Redress Act, which expressed the sense of Congress that “all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner.”¹⁰ Congress also enacted the U.S. Holocaust Assets Commission Act of 1998, which established the Presidential Advisory Commission on Holocaust Assets (PACHA) to conduct research on the fate of Holocaust-era property that came into the possession of the U.S. Government and to advise the President on policies to ensure the restitution of this property.¹¹

Following the Washington Conference, the Alliance of American Museums (AAM) adopted *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*. These non-binding standards were “intended to assist museums in addressing issues relating to objects that may have been unlawfully appropriated during the Nazi era (1933–1945) as a result of actions in furtherance of the Holocaust or that were taken by the Nazis or their collaborators.”¹² In order to facilitate the discovery and identification of misappropriated art, the Alliance, along with the Association of Art Museum Directors (AAMD) and the PACHA, agreed

that museums should strive to: (1) identify all objects in their collections that were created before 1946 and acquired by the museum after 1932, that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter, ‘covered objects’); (2) make currently available object and provenance (history of ownership) information on those objects acces-

⁸ *The Holocaust Expropriated Art Recovery Act—Reuniting Victims with Their Lost Heritage: Hearing on S. 2763 The Holocaust Expropriated Art Recovery Act Before the S. Comm. on the Judiciary, Subcomm. on the Constitution and Subcomm. on Oversight, Agency Action, Federal Rights and Federal Courts*, 114th Cong., Hr’g Tr. at 25, 27 (2016) (statement of Helen Mirren).

⁹ Washington Conference Principles on Nazi-Confiscated Art, Principles 7 & 8, Bureau of European & Eurasian Affairs (Dec. 3, 1998), <http://www.state.gov/p/eur/rt/hlcst/122038.htm>.

¹⁰ Pub. L. No. 105–158, 112 Stat. 15 § 202 (1998).

¹¹ Pub. L. No. 105–186, 112 Stat. 611 (1998).

¹² American Alliance of Museums, *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*.

sible; and (3) give priority to continuing provenance research as resources allow.¹³

The art museum community, in cooperation with the State Department, has established the Nazi-Era Provenance Internet Portal, which publishes provenance information on tens of thousands of Nazi-era works, to assist potential claimants. When a claim of ownership to a covered object is asserted, the standards provide that the claim “should be considered on its own merits.”¹⁴ Furthermore, “[w]hen appropriate and reasonably practical, museums should seek methods other than litigation (such as mediation) to resolve claims.”¹⁵ And the historical record reflects that many restitution claims made against museums result in amicable purchase or lending agreements, or voluntary restitutions.¹⁶

But if litigation results, the *Standards* state that “museums may elect to waive certain available defenses” in order to “achieve an equitable and appropriate resolution.”¹⁷ In his 2006 testimony before the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the House Committee on Financial Services, Stuart E. Eizenstat, former Deputy Secretary of the Treasury and former commissioner of the PACHA, testified that American museums choosing to litigate cases of art lost in the Holocaust should do so “on the merits, and not to rely upon technical defenses, like the statute of limitations.”¹⁸

In 2009, 48 nations, including the United States, participated in the Prague Holocaust Era Assets Conference to follow up on the work of the Washington Conference. Participants issued the Terezin Declaration, which urged the signatories

to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties.¹⁹

Several years later, in 2013, the State Department’s Special Envoy for Holocaust Issues, Douglas Davidson, explained that the intent of the Terezin Declaration and the Washington Principles was “to coax the parties to a particular dispute to seek to determine the facts of the matter and to avoid if possible resorting to legal arguments grounded in procedural matters.”²⁰ “[W]e believe,”

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Simon J. Frankel & Ethan Forrest, Museums’ Initiation of Declaratory Judgment Actions and Assertion of Statutes of Limitations in Response to Nazi-Era Art Restitution Claims—A Defense, 23 DePaul J. Art, Tech. & Intell. Prop. L. 279 (2013).

¹⁷ American Alliance of Museums, *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*.

¹⁸ *Review of the Repatriation of Holocaust Art Assets in the United States: Hearing Before the H. Comm. on Financial Services, Subcomm. on Domestic and International Monetary Policy, Trade, and Technology*, 109th Cong. 116 (2006) (statement of Stuart Eizenstat, Former Commissioner, Presidential Advisory Commission on Holocaust Assets in the U.S.).

¹⁹ Prague Holocaust Era Assets Conference: Terezin Declaration, Bureau of European & Eurasian Affairs (June 30, 2009), <http://www.state.gov/p/eur/rls/or/126162.htm>.

²⁰ Douglas Davidson, Remarks at Bureau of European & Eurasian Affairs Symposium on “Should Stolen Holocaust Art be Returned?” at the New York County Law Association, “Should Nazi-Looted Art Works Be Returned? The View from the State Department” (Mar. 25, 2013), <http://www.state.gov/p/eur/rls/rm/2013/mar/206719.htm>.

he went on to say, “that the best way to arrive at a just and fair solution to a dispute over Nazi-confiscated art is for the parties to resolve it where appropriate, based on the facts of the claims.”²¹

Despite these representations and commitments, the United States has not fulfilled its promise to ensure that claims to art lost in the Holocaust are resolved on their merits. As the U.S. Court of Appeals for the Ninth Circuit observed, “[m]any obstacles face those who attempt to recover Holocaust-era art through lawsuits,” including “procedural hurdles such as statutes of limitations” that prevent the merits of claims from being adjudicated.²²

Each State has different rules governing the operation of their statutes of limitations, with varying periods and different triggering circumstances—e.g., the loss of the property or discovery of the identity and location of the stolen art, among other things. A victim’s knowledge may also be imputed to the victim’s heirs. As a practical matter, many statutes of limitations operate to bar modern claimants seeking restitution of art lost in the Holocaust.²³

Because of the unique and horrific circumstances of World War II and the Holocaust, State statutes of limitations can be an unfair impediment to the victims and their heirs, contrary to United States policy. Yet states have been unable to remedy this injustice because the regulation of war-related disputes is within the powers of the Federal Government.²⁴ In *Von Saher*, the U.S. Court of Appeals for the Ninth Circuit invalidated a California law that extended the State limitations period specifically for Nazi-confiscated-art claims.²⁵ The court held that the law was unconstitutional because it infringed on the Federal Government’s exclusive authority over foreign affairs, including its authority to resolve war-related claims.²⁶

A Federal limitations period, appropriately tailored to the unique circumstances of Holocaust-era claims, is therefore needed to guarantee that the United States fulfills the promises it has made to the world to “facilitate just and fair solutions with regard to Nazi-

²¹ *Id.*

²² *Von Saher*, 592 F.3d at 958.

²³ See, e.g., *Toledo Museum of Art v. Ullin*, 477 F. Supp. 2d 802, 806–07 (N.D. Ohio 2006) (explaining that the limitations period for a restitution or conversion claim in Ohio begins “when the claimant ‘discovers or, in the exercise of reasonable care, should have discovered the complained-of injury’”); *Museum of Fine Arts, Boston v. Seger-Thomschitz*, Civ. Action No. 08–10097–RWZ, 2009 WL 6506658, *7 (D. Mass. June 12, 2009) (same for Massachusetts). New York is an outlier in that its statute of limitations does not begin to run until a demand for the return of the allegedly stolen property is refused. *Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 316–18 (1991) (“The rule in this State is that a cause of action for replevin against the good-faith purchaser of a stolen chattel accrues when the true owner makes demand for return of the chattel and the person in possession of the chattel refused to return it” (citation omitted)). In some cases, application of the statute of limitations may result in the expiration of claims before the Holocaust even ended. In *Detroit Institute of Arts v. Ullin*, for instance, the court held that the discovery rule did not apply and that Michigan’s three-year limitations period began to run in 1938—when the alleged unlawful taking occurred—and expired well before the conclusion of the war. *Detroit Institute of Arts v. Ullin*, No. 06–1033, 2007 WL 1016996, at *3 (E.D. Mich. Mar. 31, 2007).

²⁴ Cf., e.g., *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 421 (2003) (“Vindicating victims injured by acts and omissions of enemy corporations in wartime is thus within the traditional subject matter of foreign policy in which national, not state, interests are overriding, and which the National Government has addressed.”).

²⁵ *Von Saher*, 592 F.3d at 957.

²⁶ *Id.* at 965–68. In the wake of the *Von Saher* decision, the California legislature extended the State statute of limitations from three to six years for *all* stolen art claims, not just Holocaust-era claims. Because the statute, on its face, had nothing to do with the foreign affairs power and there was no “evidence in the record” that the State was attempting to carry out its own foreign policy with respect to the resolution of war-related claims, the Ninth Circuit upheld the law. See *Cassirer v. Thyssen-Bornemisza Collection Foundation*, 737 F.3d 613, 619 (9th Cir. 2013).

confiscated and looted art” and to “make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims.”²⁷ The HEAR Act thus serves two purposes: first, to ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration; and, second, to ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner.

The HEAR Act is not intended to displace other forms of dispute resolution for Holocaust-era claims. The legislation expresses the sense of Congress that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

On April 7, 2016, Senator Cornyn introduced S. 2763, the Holocaust Expropriated Art Recovery Act of 2016. Senators Cruz, Schumer and Blumenthal were original cosponsors. The bill was referred to the Committee on the Judiciary.

The Committee’s Subcommittees on the Constitution and Oversight, Agency Action, Federal Rights and Federal Courts held a hearing on S. 2763 entitled “S. 2763, the Holocaust Expropriated Art Recovery Act—Reuniting Victims with Their Lost Heritage” on June 7, 2016. Testimony was received from Ambassador Ronald S. Lauder, Chairman of the Council of the World Jewish Restitution Organization; Dame Helen Mirren; Ms. Monica Dugot, International Director of Restitution at Christie’s, Inc.; Ms. Agnes Peresztegi, President of the Commission for Art Recovery; and Mr. Simon Goodman. Additional material was submitted by Laura L. Lott, President and CEO of American Alliance Museums; Brian J. Ferriso, President, Association of Art Museum Directors; Richard T. Foltin, Director of National and Legislative Affairs, AJC Global Jewish Advocacy; Carla Shapreau, Senior Fellow, Institute of European Studies, University of California, Berkeley; Karen Silberman, Executive Director, Federal Bar Association; Robert Singer, Chief Executive Officer, World Jewish Congress; and Gideon Taylor, Chair of Operations, World Jewish Restitution Organization.

The Committee considered S. 2763 on September 15, 2016. Senator Cornyn offered an amendment in the nature of a substitute, which was adopted by voice vote. The amendment adds a sense of Congress favoring the resolution of disputed art claims without litigation and using alternative dispute resolution mechanisms involving experts in art research. It specifies the kinds of artwork covered by the operative language of the bill, discussed *infra*. The amendment broadens the knowledge standard that triggers the running of the limitations period established in Section 5(a). It

²⁷ Prague Holocaust Era Assets Conference: Terezin Declaration, Bureau of European & Eurasian Affairs (June 30, 2009), <http://www.state.gov/p/eur/rls/or/126162.htm>.

clarifies that members of any group persecuted by the Nazis may avail itself of the benefits of S. 2763. The amendment removes the reference precluding the availability of equitable defenses and the doctrine of laches. It further enables claims previously barred to be brought within the period established by the bill. The amendment creates an exception that bars claims known on or after January 1, 1999 and for which the claimant (or the claimant's predecessor in interest) could have brought a claim, because the claim was not time barred under the then-applicable statute of limitations, but failed to do. Finally, the amendment clarifies that the bill sunsets in ten years.

The amendment was accepted by voice vote without objection.

The Committee then voted to report the Holocaust Expropriated Art Recovery Act, with the amendment in the nature of a substitute, favorably to the Senate by voice vote.

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title

This section provides that the legislation may be cited as the "Holocaust Expropriated Art Recovery Act of 2016."

Section 2. Findings

This section makes findings about the historical basis of and the need for the legislation.

Congress finds that the Nazis, as part of the Holocaust, carried on a massive campaign to expropriate art and other cultural property from Jews and other persecuted groups, which one historian dubbed the "greatest displacement of art in human history."

It finds that, while the United States and its allies attempted to return the art and other cultural property to its rightful owners after World War II, some was not returned. Some of the art and other cultural property expropriated by the Nazis has since been discovered in the United States.

Congress finds that, in 1998, the United States and forty-three other nations convened in Washington, D.C. for the "Washington Conference," which produced principles on Nazi-Confiscated Art. One of the principles stated that "steps should be taken expeditiously to achieve a just and fair solution" to claims involving art or other cultural property lost by the victims of the Holocaust.

It finds that, also in 1998, Congress enacted the Holocaust Victims Redress Act (Public Law 105-158, 112 Stat. 15), which expressed the sense of Congress that "all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner."

Congress finds that, in 2009, the United States participated in a Holocaust Era Assets Conference in Prague, Czech Republic, with forty-five other nations, Serbia, and the Holy See. At the conclusion of this conference, almost all of the participating nations (including the United States) issued the Terezin Declaration, which reaffirmed the 1998 Washington Conference Principles and urged all participants "to ensure that their legal systems or alternative proc-

esses, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties.” The Declaration also urged participants to “consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.”

Congress finds that victims of Nazi persecution and their heirs have taken legal action in the United States to recover art and other cultural property lost in the Holocaust. While most such claims are settled amicably, lawsuits that proceed may face procedural obstacles due to State statutes of limitations. The unique and horrific circumstances of World War II and the Holocaust make time-based defenses especially burdensome to the victims and their heirs. Those seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law.

Congress finds that Federal legislation is needed because the only court that has considered the question held that the U.S. Constitution prohibits States from making exceptions to their statutes of limitations to accommodate claims involving the recovery of Nazi-confiscated art.²⁸ In light of this precedent, the enactment of a Federal law is necessary to ensure that claims to Nazi-confiscated art are adjudicated in accordance with United States policy as expressed in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.

Finally, Congress expresses its sense that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner than litigation.

Section 3. Purposes of the Act

This section establishes the purposes of the legislation: (i) first, to ensure that laws in the United States governing claims to art and cultural property confiscated by the Nazis further United States policy, as expressed in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act and the Terezin Declaration; and (ii) second, to ensure that such claims are not unfairly barred by statutes of limitations and are resolved in a just and fair manner.

Section 4. Definitions

Subsection (1) defines “actual discovery” to mean knowledge, which in subsection (4) is defined as having actual knowledge of a fact or circumstance or sufficient information with regard to a rel-

²⁸ See *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954 (9th Cir. 2009).

evant fact or circumstance to amount to actual knowledge thereof. For purposes of the limitations period established in Section 5(a), this is intended to require more than access to the information with regard to relevant facts and circumstances. The party must have the knowledge itself or have sufficient information to constitute actual knowledge.

Subsection (2) defines with specificity what “artwork and other property” sought by plaintiffs are subject to the legislation. The definition extends to include not only fine art, but applied art, written texts, musical art and Judaica.

Subsection (3) defines a “covered period,” within which losses are covered by the legislation. That period is defined as the period beginning on January 1, 1933 and ending on December 31, 1945. This period covers the rise of the Nazis to power in Germany and concludes following the Allied victory in World War II.

Subsection (5) defines the Nazi persecution that may cause the loss of art or other cultural property caused by the bill. It applies to “any persecution of a specific group of individuals based on Nazi ideology by the Government of Germany, its allies or agents, members of the Nazi Party, or their agents and associates, during the “covered period.” The Nazis persecuted many groups, and that persecution was executed by the Nazi Party, the government of Germany at the time, governments allied with Germany, private agents and others. This definition is intended to be broad, to facilitate the restitution of art and other cultural property lost during the covered period.

Section 5. Statute of limitations

Subsection (a) is the focus of the legislation, a uniform, national, limitations period for covered claims to recover artwork and other cultural property. It applies to claims in Federal or State court and applies notwithstanding any other provision of Federal or State law, or any defense at law relating to the passage of time. Subsection (a) states that “a civil claim or cause of action against a defendant to recover any artwork or other property that was lost during the covered period because of Nazi persecution” can be brought within six years after the actual discovery by the claimant or their agent of two pieces of information:

- (1) the identity and location of the artwork or other cultural property; and
- (2) a possessory interest of the claimant in the artwork or other cultural property.

The purpose of this section is to open courts to claimants to bring covered claims and have them resolved on the merits, consistent with the Terezin Declaration. While defenses at law related to the passage of time are not merely procedural, the special circumstances created by Nazi persecution necessitate an opportunity for their temporary waiver. The legislation provides that claims may be brought within six years of actual knowledge by the claimant or the claimant’s agent of the identity and location of the artwork, as well as the claimant’s possessory interest.

Subsection (b). Possible misidentification

Subsection (b) addresses the situation where works of art are produced in multiples, such as a print of which several virtually-

identical copies are made. It states that, for cases in which the “artwork or other cultural property is one of a group of substantially similar multiple artworks or other cultural property,” “actual discovery” is deemed to occur when there are facts sufficient to form a basis to believe the work discovered is the work that was lost. Thus, if a claimant sees an identical print to one that was expropriated by the Nazis from the claimant or the claimant’s predecessor in interest, the six years period will only start to run when the claimant has sufficient knowledge that the particular version of the artworks is the one that was taken.

Subsection (c). Preexisting claims

Because much information about art lost to the Nazis surfaced only decades after the fact and because of the historical, psychological and other barriers that prevented claims from having been brought, subsection (c) gives an opportunity to claimants to resuscitate claims that may have been barred in the past. It states that claims are deemed to have been “actually discovered” on the date of enactment if, before that date, the claimant had knowledge of the identity and location of the property and the possessory interest but the claim was barred by an applicable statute of limitations. Subsection (2) makes clear that claims that were not barred under preexisting law on the date of enactment can also be brought within the limitations period established under Section 5. Claims that were dismissed pursuant to, or litigated to, a final judgment from which no appeal lies on the date of enactment are unaffected by this provision.

Subsection (d). Applicability

Subsection (d) establishes that Section 5 applies to claims pending on the date of enactment but that it ceases to apply to claims commenced after December 31, 2026.

Subsection (e). Exception

While the Holocaust Expropriated Art Recovery Act is animated by clear United States policy to facilitate the return of artwork and other cultural property lost in the Holocaust, Congress also recognizes the importance of quieting title in property generally and the importance that claimants assert their rights in a timely fashion. Because the events surrounding and including the Washington Conference occurred decades after the Holocaust and led to the publication of information about artwork and other cultural property that may have been expropriated by the Nazis, subsection (e) bars the application of the subsection (a) national limitations period in instances in which claimants acquired the requisite knowledge but failed to bring claims within a defined period. Subsection (e) states that claims do not benefit from the HEAR Act limitations period if the claimant had the relevant actual knowledge on or after January 1, 1999, not less than six years have passed from the date the claimant (or the claimant’s predecessor in interest) had such knowledge, during any portion of that time the claim was timely and, nonetheless, the claimant failed to bring it. Nothing, however, bars the claimant from asserting claims that remain timely under applicable State law.

The six year period in subsection 5(e) reflects that in subsection 5(a), but it is not intended to extend shorter limitations periods that came and went prior to the enactment of the HEAR Act. For instance, if the relevant conditions are met and the claim arose after 1999; the applicable limitations period was three years; and three years elapsed before the HEAR Act was enacted, the claim would fall under the 5(e) exception. The claimant must have had, however, an opportunity to bring a claim that was not time-barred during that six year period.

Subsection (f). Rule of construction

This subsection clarifies that nothing in the legislation should be construed to create a cause of action, under Federal or State law.

Subsection (g). Sunset

This subsection states that the limitations period established by the legislation comes into effect on January 1, 2017, and ends on January 1, 2027. After the ten-year window created by the legislation, claims that could have been brought under it are governed by applicable preexisting Federal or State law.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S, 2763, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

NOVEMBER 21, 2016.

Hon. CHUCK GRASSLEY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2763, the Holocaust Expropriated Art Recovery Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

S. 2763—Holocaust Expropriated Art Recovery Act of 2016

S. 2763 would create a new statute of limitations for filing civil claims in state or federal courts to recover artwork and other items misappropriated or stolen by the German government, or its allies or agents, between 1933 and 1945 in connection with the persecution of a specific group of individuals based on Nazi ideology. Under the bill, individuals could file such claims for up to six years after they discover the location of such items or, if discovery occurred prior to enactment of this bill, six years after enactment of S. 2763. This statute of limitations would remain in effect until January 1, 2027, at which point new claims to recover such artwork would be subject to any other applicable statutes of limitations.

Based on information provided by the Administrative Office of the United States Courts, CBO estimates that implementing S.

2763 would have no significant effect on the federal budget in any year.

Enacting the bill could increase the number of civil cases filed in federal courts and increase the collection of civil filing fees, which are recorded in the budget as revenues. A portion of those revenues would be spent without further appropriation. CBO estimates that any additional fees collected would not exceed \$500,000 in any year because of the small number of anticipated additional case filings under the bill. Furthermore, because such amounts would be partially offset by a corresponding increase in direct spending, CBO estimates that enacting the bill would have a negligible net effect on future deficits. Because enacting S. 2763 could affect revenues and associated direct spending, pay-as-you-go procedures apply.

CBO estimates that enacting the legislation would not increase net-direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2763 would preempt state laws governing the passage of time for certain civil claims. The preemption would be a mandate as defined by the Unfunded Mandates Reform Act (UMRA) and may result in a higher number of civil claims in state courts. However, because of the small number of claimants for such civil cases, CBO estimates that the cost of the mandate would be well below the threshold established in UMRA (\$77 million in 2016, adjusted annually for inflation).

The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Rachel Austin (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 2763.

VI. CONCLUSION

The Holocaust Expropriated Art Recovery Act, S. 2673, addresses the need to provide the victims of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis or lost during the Holocaust.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds no changes in existing law made by S. 2673, as ordered reported.

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Exhibit 8

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Goodlatte and Nadler Introduce Legislation to Help Recover Art Confiscated During the Holocaust

Sep 22, 2016 | Issues: Foreign Affairs/Israel

WASHINGTON, D.C. -- Today, House Judiciary Committee Chairman Bob Goodlatte (R-Va.) and House Judiciary Committee Member Rep. Jerrold Nadler (D-N.Y.) introduced the *Holocaust Expropriated Art Recovery Act* (H.R. 6130) to help return to the victims' artwork and other cultural property that was stolen by the Nazis during the Holocaust.

By establishing a six-year federal statute of limitations for these claims, the bill will help facilitate the return of Nazi-confiscated artwork to its rightful owners or heirs. The legislation will ensure that American law encourages the resolution of claims related to Nazi-confiscated art on the merits, in a fair and just manner. Doing so is consistent with long-standing U.S. foreign policy, as demonstrated in the 1998 Washington Conference Principles on Nazi-Confiscated Art and the 2009 Terezin Declaration.

Companion legislation, S. 2763, was introduced in the Senate by Senators John Cornyn (R-Texas) and Charles Schumer (D-N.Y.).

Chairman Goodlatte and Rep. Nadler issued the following statements upon the introduction of the bill:

Chairman Goodlatte: "Over 70 years have passed since the horrors of the Holocaust ended, but the survivors and their families are still trying to recover some of their most prized possessions. During the Holocaust, the Nazis stripped so many priceless works of art and heritage from the homes of so many across Europe.

"While we can never erase the horrors of the Holocaust from human history, we can do our part to bring these treasures back to the families of those who suffered and sacrificed so much during that dark time."

Congressman Nadler: "I am pleased to join Chairman Goodlatte in introducing this bill to help facilitate the return of stolen artwork and heritage lost to the Nazis. This legislation will ensure that the rightful owners and their decedents can have their claims properly adjudicated. Among the many horrific crimes and atrocities committed during the Holocaust, the Nazis also engaged in comprehensive, systematic theft of art and property all across Europe. The scope of their deeds was massive, and the damaging effects remain with us today – still seeking justice and some form of recompense. While no legislation or act of contrition will ever reverse the many horrors committed by the Nazis, one thing we can do is establish a fair judicial process so that claims can be properly addressed."

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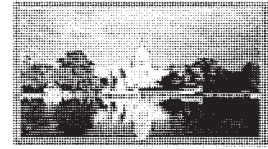
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