

114TH CONGRESS
2D SESSION

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.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2016

Mr. CORNYN (for himself, Mr. CRUZ, Mr. SCHUMER, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Holocaust Expropri-
5 ated Art Recovery Act of 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) It is estimated that the Nazis confiscated or
9 otherwise misappropriated as many as 650,000

1 works of art throughout Europe as part of their gen-
2 ocidal campaign against the Jewish people and other
3 persecuted groups. This has been described as the
4 “greatest displacement of art in human history”.

5 (2) Following World War II, the United States
6 and its allies attempted to return the stolen
7 artworks to their countries of origin. Despite these
8 efforts, many works of art were never reunited with
9 their owners. Some of the art has since been discov-
10 ered in the United States.

11 (3) In 1998, the United States convened a con-
12 ference with 44 nations in Washington, DC, known
13 as the Washington Conference, which produced
14 Principles on Nazi-Confiscated Art. One of these
15 principles is that “steps should be taken expedi-
16 tiously to achieve a just and fair solution” to claims
17 involving such art that has not been restituted if the
18 owners or their heirs can be identified.

19 (4) The same year, Congress enacted the Holo-
20 caust Victims Redress Act (Public Law 105–158,
21 112 Stat. 15), which expressed the sense of Con-
22 gress that “all governments should undertake good
23 faith efforts to facilitate the return of private and
24 public property, such as works of art, to the rightful
25 owners in cases where assets were confiscated from

1 the claimant during the period of Nazi rule and
2 there is reasonable proof that the claimant is the
3 rightful owner.”.

4 (5) In 2009, the United States participated in
5 a Holocaust Era Assets Conference in Prague,
6 Czech Republic, with 45 other nations. At the con-
7 clusion of this conference, the participating nations
8 issued the Terezin Declaration, which reaffirmed the
9 1998 Washington Conference Principles on Nazi-
10 Confiscated Art and urged all participants “to en-
11 sure that their legal systems or alternative processes,
12 while taking into account the different legal tradi-
13 tions, facilitate just and fair solutions with regard to
14 Nazi-confiscated and looted art, and to make certain
15 that claims to recover such art are resolved expedi-
16 tiously and based on the facts and merits of the
17 claims and all the relevant documents submitted by
18 all parties.”. The Declaration also urged participants
19 to “consider all relevant issues when applying var-
20 ious legal provisions that may impede the restitution
21 of art and cultural property, in order to achieve just
22 and fair solutions, as well as alternative dispute res-
23 olution, where appropriate under law.”.

24 (6) Numerous victims of Nazi persecution and
25 their heirs have taken legal action to recover Nazi-

1 confiscated art. These lawsuits face significant pro-
 2 cedural obstacles partly due to State statutes of lim-
 3 itations, which typically bar claims within some lim-
 4 ited number of years from either the date of the loss
 5 or the date that the claim should have been discov-
 6 ered. In some cases, this means that the claims ex-
 7 pired before World War II even ended. (See, e.g.,
 8 The Detroit Institute of Arts v. Ullin, No. 06–
 9 10333, 2007 WL 1016996 (E.D. Mich. Mar. 31,
 10 2007).) The unique and horrific circumstances of
 11 World War II and the Holocaust make statutes of
 12 limitations and other time-based procedural defenses
 13 especially burdensome to the victims and their heirs.
 14 Those seeking recovery of Nazi-confiscated art must
 15 painstakingly piece together their cases from a frag-
 16 mentary historical record ravaged by persecution,
 17 war, and genocide. This costly process often cannot
 18 be done within the time constraints imposed by ex-
 19 isting law.

20 (7) Federal legislation is needed because the
 21 only court that has considered the question held that
 22 the Constitution prohibits States from making ex-
 23 ceptions to their statutes of limitations to accommo-
 24 date claims involving the recovery of Nazi-con-
 25 fiscated art. In *Von Saher v. Norton Simon Museum*

1 of Art, 592 F.3d 954 (9th Cir. 2009), the United
2 States Court of Appeals for the Ninth Circuit invali-
3 dated a California law that extended the State stat-
4 ute of limitations for claims seeking recovery of Hol-
5 ocaust-era artwork. The Court held that the law was
6 an unconstitutional infringement of the Federal Gov-
7 ernment’s exclusive authority over foreign affairs,
8 which includes the resolution of war-related disputes.
9 In light of this precedent, the enactment of a Fed-
10 eral law is the best way to ensure that claims to
11 Nazi-confiscated art are adjudicated on their merits.

12 **SEC. 3. PURPOSES.**

13 The purposes of this Act are the following:

14 (1) To ensure that laws governing claims to
15 Nazi-confiscated art further United States policy as
16 set forth in the Washington Conference Principles
17 on Nazi-Confiscated Art, the Holocaust Victims Re-
18 dress Act, and the Terezin Declaration.

19 (2) To ensure that claims to artwork stolen or
20 misappropriated by the Nazis are not barred by stat-
21 utes of limitations and other similar legal doctrines
22 but are resolved in a just and fair manner on the
23 merits.

24 **SEC. 4. DEFINITIONS.**

25 In this Act—

1 (1) the term “actual discovery” does not in-
2 clude any constructive knowledge imputed by law;

3 (2) the term “artwork or other cultural prop-
4 erty” includes any painting, sculpture, drawing,
5 work of graphic art, print, multiples, book, manu-
6 script, archive, or sacred or ceremonial object;

7 (3) the term “persecution during the Nazi era”
8 means any persecution by the Nazis or their allies
9 during the period from January 1, 1933, to Decem-
10 ber 31, 1945, that was based on race, ethnicity, or
11 religion; and

12 (4) the term “unlawfully lost” includes any
13 theft, seizure, forced sale, sale under duress, or any
14 other loss of an artwork or cultural property that
15 would not have occurred absent persecution during
16 the Nazi era.

17 **SEC. 5. STATUTE OF LIMITATIONS.**

18 (a) IN GENERAL.—Notwithstanding any other provi-
19 sion of Federal law, any provision of State law, or any
20 defense at law or equity relating to the passage of time
21 (including the doctrine of laches), a civil claim or cause
22 of action against a defendant to recover any artwork or
23 other cultural property unlawfully lost because of persecu-
24 tion during the Nazi era or for damages for the taking
25 or detaining of any artwork or other cultural property un-

1 lawfully lost because of persecution during the Nazi era
2 may be commenced not later than 6 years after the actual
3 discovery by the claimant or the agent of the claimant of—

4 (1) the identity and location of the artwork or
5 cultural property; and

6 (2) information or facts sufficient to indicate
7 that the claimant has a claim for a possessory inter-
8 est in the artwork or cultural property that was un-
9 lawfully lost.

10 (b) POSSIBLE MISIDENTIFICATION.—For purposes of
11 subsection (a)(1), in a case in which there is a possibility
12 of misidentification of the artwork or cultural property,
13 the identification of the artwork or cultural property shall
14 occur on the date on which there are facts sufficient to
15 determine that the artwork or cultural property is likely
16 to be the artwork or cultural property that was unlawfully
17 lost.

18 (c) APPLICABILITY.—

19 (1) IN GENERAL.—Subsection (a) shall apply to
20 any civil claim or cause of action (including a civil
21 claim or cause of action described in paragraph (2))
22 that is—

23 (A) pending on the date of enactment of
24 this Act; or

1 (B) filed during the period beginning on
2 the date of enactment of this Act and ending on
3 December 31, 2026.

4 (2) INCLUSION OF PREVIOUSLY DISMISSED
5 CLAIMS.—A civil claim or cause of action described
6 in this paragraph is a civil claim or cause of ac-
7 tion—

8 (A) that was dismissed before the date of
9 enactment of this Act based on the expiration
10 of a Federal or State statute of limitations or
11 any other defense at law or equity relating to
12 the passage of time (including the doctrine of
13 laches); and

14 (B) in which final judgment has not been
15 entered.

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