

NOTE

RECLAIMING WHAT'S RIGHTFULLY MINE: REMOVING PROCEDURAL HURDLES IN HOLOCAUST ART RESTITUTION CLAIMS

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INTRODUCTION

Fritz and Thea Goldschmidt were ostracized, persecuted, and murdered by the German National Socialist regime in the Holocaust because, as German-Jews, they were considered enemies of the state according to Nazi racial doctrine and law.¹ Mr. and Mrs. Goldschmidt suffered the same fate as over 180,000 German Jews whose homes and belongings were stripped from them, whose livelihoods were destroyed, and whose lives ended in ghettos and concentration camps.² Their descendants, including their granddaughter Gila Dekay, continue to grapple with the myriad aftereffects of this tragedy today.³ I had the pleasure of speaking with Ms. Dekay about her grandparents, their lives, deaths, and how her family's lifelong attempt to achieve emotional closure has been stifled by the innumerable procedural hurdles she has had to face in trying to reclaim their stolen property.⁴

According to Ms. Dekay, Fritz and Thea were proud German-Jews living in Breslau who owned an expansive art collection, including pieces by prominent European artists such as Lesser Ury, Max Liebermann, Maurice de Vlaminck, Hans Purrmann, and Käthe Kollwitz.⁵ In 1939, Nazis began targeting Jewish art collections in Breslau for seizure.⁶ By 1940, the Gestapo had confiscated the Goldschmidts' art collection, taken control of their home, and deported the couple to Theresienstadt – a concentration camp and ghetto used as an intermediary space for Jews and other prisoners of the Nazis before they were sent to Auschwitz and

1. Telephone Interview with Gila Dekay, granddaughter of Fritz & Thea Goldschmidt, (Nov. 7, 2021). See Robert Philpot, *Paints Auction House into a Corner*, TIMES OF ISRAEL (Sept. 27, 2021, 3:32 AM), <https://www.timesofisrael.com/familys-battle-to-recover-nazi-looted-art-paints-auction-house-into-a-corner/> [<https://perma.cc/CYT3-YBJL>]; *Enemies of the State*, U.S. HOLOCAUST MEM'L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/enemies-of-the-state> [<https://perma.cc/6PHZ-VVY8>].

2. See *German Jews During the Holocaust*, U.S. HOLOCAUST MEM'L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/german-jews-during-the-holocaust> [<https://perma.cc/HA3Y-YS5H>].

3. Dekay, *supra* note 1.

4. *Id.*

5. Dekay, *supra* note 1; Philpot, *supra* note 1.

6. Philpot, *supra* note 1.

other death camps of Eastern Europe.⁷ After a short period surviving in squalor-like conditions, the Goldschmidts were sent to the Auschwitz death camp and ruthlessly murdered alongside the 1.1 million people whose lives ended there.⁸ The rest of their property, including their art collection, was taken by the Nazi Party and sold to non-Jewish German citizens.⁹

From 1956 through the 20th century, the Goldschmidts' sons searched for their parents' stolen artworks.¹⁰ They compiled lists of paintings from memory and cold-called museums and auction houses.¹¹ Unfortunately, like so many other descendants of Holocaust victims who have attempted to achieve some semblance of justice for their families, the sons were unable to reclaim many of their parents' paintings.¹²

However, in 2008, sixty-three years after the Goldschmidts were murdered, one of their paintings, "*Tirolerin mit Katze*," by Lovis Corinth, resurfaced in an Austrian auction house and was sold for 60,000 Euros.¹³ The Goldschmidts grandchildren immediately contacted the auction house and provided documented proof that they were the rightful owners of this painting.¹⁴ They hoped the buyer would return the painting out of moral obligation, but the auction house refused to reveal the name of the buyer thereby effectively blocking all possible litigation.¹⁵ The auction house offered the grandchildren the opportunity to purchase the stolen painting for a discount—50,000 Euros—but the grandchildren, according to an article written about the sale, "weren't about to pay a nickel for something that was stolen . . .

7. See *The Gestapo: Overview*, U.S. HOLOCAUST MEM'L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/gestapo> [<https://perma.cc/KH7V-G4RV>] (defining "Gestapo" as the "political police force of the Nazi state."); Philpot, *supra* note 1; *Theresienstadt*, U.S. HOLOCAUST MEM'L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/theresienstadt> [<https://perma.cc/7UC7-8ZZU>].

8. Dekay, *supra* note 1; Philpot, *supra* note 1.

9. Dekay, *supra* note 1; Philpot, *supra* note 1.

10. Dekay, *supra* note 1; Philpot, *supra* note 1.

11. Dekay, *supra* note 1; Philpot, *supra* note 1.

12. Dekay, *supra* note 1; Philpot, *supra* note 1.

13. Dekay, *supra* note 1; Philpot, *supra* note 1.

14. Dekay, *supra* note 1; Philpot, *supra* note 1.

15. Dekay, *supra* note 1; Philpot, *supra* note 1.

.”¹⁶

If the Goldschmidts do not act quickly, they may never reclaim their painting. Under current United States law, if the Goldschmidts wish to recover their stolen painting through the United States’ court system, they must file their claim before December 16, 2022.¹⁷ If they are unable to file their claim prior to this deadline, they will have the burden of proving that they did not have “actual knowledge” of their claim on or before December 16, 2016.¹⁸ This could be a barrier because a future court may hold that the Goldschmidts had actual knowledge of their stolen painting in 2008 when the painting was put up for auction.¹⁹ Even worse, if the Goldschmidts wait until after January 1, 2027 to file their claim, it will be automatically dismissed as untimely, and they may have no other legal recourse to reclaim their stolen property.²⁰

In 2016, Congress passed the Holocaust Expropriated Art Recovery Act (HEAR) “[t]o ensure that claims to artwork and other property stolen or misappropriated by the Nazis [we]re not unfairly barred by statutes of limitations but [we]re resolved in a just and fair manner.”²¹ Before the HEAR Act, claimants were subject to most states’ three-year statute of limitations period thereby discouraging claimants from bringing suit against wrongful possessors.²² Those claimants who pursued such action often discovered that their state’s statute of limitations would have required them to bring forth their claim before the conclusion

16. Dekay, *supra* note 1; Philpot, *supra* note 1.

17. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 3(2), 130 Stat. 1524, 1526 (2016).

18. See *id.*

19. See *Orkin v. Taylor*, 487 F.3d 734, 742 (9th Cir. 2007) (finding the claim untimely because the claimants had “knowledge” of their claim when the painting was purchased at a public auction in 1963).

20. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, 130 Stat. 1524 (2016).

21. *Id.*

22. Nicholas O’Donnell, *Restitution Legislation: HEAR Act and Foreign Cultural Exchange Jurisdictional Clarification Act Move Forward*, JDSUPRA (Sept. 19, 2016), <https://www.jdsupra.com/legalnews/restitution-legislation-hear-act-and-70297/> [<https://perma.cc/2Z9D-LWQX>].

of World War II.²³ Attempting to fix this problem, the HEAR Act established a uniform federal statute of limitations allowing claimants to pursue their claim no later than six years after the plaintiff could identify, locate, and establish a possessory interest in their stolen property.²⁴ For preexisting claims, the HEAR Act stated that those six years would begin on December 16, 2016, the day the Act was enacted.²⁵ After this six-year grace period concludes on December 16, 2022, the burden falls on the claimants to establish that they did not have knowledge of their claim before the HEAR Act was enacted.²⁶ Additionally, the HEAR Act includes a sunset provision which states that the HEAR Act will expire on January 1, 2027.²⁷ Therefore, all claims made after such date will be subject once again to their state's statutes of limitations and will likely be dismissed as untimely.²⁸

The HEAR Act attempted to alleviate procedural hurdles for claimants; however, this Note argues that the HEAR Act does not go far enough to ensure restitution for survivors and their descendants. It has been estimated that over 100,000 paintings looted by the Nazi Party are still missing today.²⁹ The Goldschmidts are certainly not the only family attempting to reclaim their family's property today.³⁰ Therefore, as more archives are uncovered and more paintings are registered in stolen art databases, claimants will be presented with the opportunity,

23. See, e.g., *Detroit Inst. of Arts v. Ullin*, No. 06-10333, 2007 WL 1016996, at *3 (E.D. Mich. Mar. 31, 2007).

24. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, § 5(a), 130 Stat. 1524, 1526 (2016).

25. *Id.* (The HEAR Act was enacted on December 16, 2016, therefore claimants who had actual knowledge of their stolen property before December 16, 2016, have until December 16, 2022, before a court may dismiss their claim as untimely under the HEAR Act).

26. See *id.*

27. *Id.*

28. See *id.*

29. Stuart E. Eizenstat, *Art stolen by the Nazis is still missing. Here's how we can recover it.*, WASH. POST (Jan. 2, 2019), https://www.washingtonpost.com/opinions/no-one-should-trade-in-or-possess-art-stolen-by-the-nazis/2019/01/02/01990232-0ed3-11e9-831f-3aa2c2be4cbd_story.html [<https://perma.cc/7BRT-C72H>].

30. See *id.*

often for the first time, to reclaim their family's stolen artwork.³¹

This Note explores some of the most significant procedural hurdles facing Holocaust survivors and their heirs in the future as they attempt to locate and recover what was rightfully theirs. Part I provides a historical background of World War II by detailing the ways in which the Nazis dehumanized the Jewish people in confiscating their property and destroying their livelihoods.³² Part I also provides a chronological history of the United States' attempts to locate stolen art and reunite those properties with their rightful owners.³³ Part II details the shortcomings of the HEAR Act by analyzing the procedural barriers that future claimants will face if the HEAR Act is not sufficiently amended.³⁴ Part III argues that the HEAR Act should be amended in two ways to best accomplish its goals.³⁵ First, the HEAR Act should be amended to waive all statute of limitations for restitution claims of property stolen by the Nazi regime or as a result of their policies. Second, Congress should strike the sunset provision of the HEAR Act and allow future generations to reclaim their family's property after the January 1, 2027, final deadline.

I. BACKGROUND

A. *The Greatest Displacement of Art in Human History*

The National Socialist German Workers' Party (Nazi Party) rose to power in 1933 when Adolf Hitler was appointed to serve as Chancellor of Germany.³⁶ The Nazi Party used the term "Final Solution" to refer to their plan to annihilate the Jewish people³⁷

31. See Jason Barnes, *Holocaust Expropriated Art Recovery (HEAR) Act of 2016: A Federal Reform to State Statutes of Limitations for Art Restitution Claims*, 56 COLUM. J. TRANSNAT'L L. 593, 599 (2018).

32. See *infra* Part I.

33. See *infra* Part I.

34. See *infra* Part II.

35. See *infra* Part III.

36. See *The Nazi Rise to Power*, U.S. HOLOCAUST MEM'L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/the-nazi-rise-to-power> [<https://perma.cc/89VE-AANV>].

37. See *Final Solution: Overview*, U.S. HOLOCAUST MEM'L MUSEUM, [ushmm.org/collections/bibliography/nazi-racial-science](https://collections.bibliography.nazi-racial-science) [<https://perma.cc/XTG3-BVVX>].

and engage in ethnic cleansing³⁸ of Europe's population. The goal of the Final Solution was to answer the "Jewish Question"³⁹ and accomplish Hitler's goal of eradicating the Jewish population in Europe.⁴⁰ Although the Final Solution was Hitler's last effort to eradicate the Jewish population, the Nazi Party implemented policies years before the Final Solution with the purpose of dehumanizing the Jewish people.⁴¹

The Nazi Party implemented the Nuremberg Laws in 1935 to strip Jews of their basic citizen rights and "institutionalized many of the racial theories underpinning Nazi ideology."⁴² One of the Nuremberg Laws implemented in April of 1938 required "all Jews in both Germany and Austria to register any property or assets valued at more than 5,000 *Reichsmarks*"⁴³ Within three months, German officials had collected registration information from 700,000 Jewish citizens with assets totaling 7 billion *Reichsmarks*.⁴⁴ The Nazi Party engaged in what they called the

38. See *Nazi Racial Science*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/collections/bibliography/nazi-racial-science> [<https://perma.cc/GL2Y-6D5S>]; *The Holocaust: Non-Jewish Victims*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/non-jewish-victims-of-the-holocaust> [<https://perma.cc/R5C4-N5GH>] (The Nazi Party murdered 6 million Jews, but they also murdered 5 million victims of non-Jewish heritage; such individuals were: Jehovah's Witnesses, homosexuals, Gypsies, the physically and mentally disabled, political opponents, etc.).

39. See *Adolf Hitler Issues Comment on the "Jewish Question"*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/learn/timeline-of-events/before-1933/adolf-hitler-issues-comment-on-the-jewish-question> [<https://perma.cc/E9TA-SQCB>] (Hitler and the Nazi Party discussed solutions to the "Jewish Question" or "Jewish Problem" by establishing the most efficient and effective methods to eradicate the Jewish population of Europe).

40. See *id.*

41. *Anti-Jewish Legislation in Prewar Germany*, U.S. HOLOCAUST MEM'L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/anti-jewish-legislation-in-prewar-germany> [<https://perma.cc/X3D9-XVPJ>].

42. Greg Bradsher, *Archives Receives Original Nazi Documents That "Legalized" Persecution of Jews*, NAT'L ARCHIVES (2010), <https://www.archives.gov/publications/prologue/2010/winter/nuremberg.html> [<https://perma.cc/8HLL-FXNR>].

43. Lorraine Boissoneault, *A 1938 Nazi Law Forced Jews to Register Their Wealth—Making It Easier to Steal*, SMITHSONIAN MAG. (Apr. 26, 2018), <https://www.smithsonianmag.com/history/1938-nazi-law-forced-jews-register-their-wealthmaking-it-easier-steal-180968894/> [<https://perma.cc/SL24-2GUA>] (entitled the "Decree for Reporting of Jewish-Owned Property").

44. *Id.*

“Aryanization” of Europe by confiscating property from Jewish citizens and giving it to non-Jewish citizens, or “Aryans.”⁴⁵ The looting of Jewish property was designed to enrich the Third Reich as well as contribute to the goal of eliminating any semblance of Jewish life and culture in Europe.⁴⁶ Scholars have argued that “[t]he failure of law to protect their property was one of the first steps toward the erasure of both the present and future identities of . . . Jews.”⁴⁷

The Nazi Party was particularly interested in plundering works of art.⁴⁸ It has been estimated that the Nazi Party looted “600,000 paintings from Jews, at least 100,000 of which are still missing”⁴⁹ and “up to 10,000 works of art are still hidden in public collections and private property worldwide”⁵⁰ This has been described as “the greatest displacement of art in human history.”⁵¹

B. The United States’ Involvement in Holocaust-Era Restitution Conferences

It was not until fifty years after the conclusion of World War II that “nations and civil society groups expressed a renewed interest in addressing the restitution of art lost in the Holocaust.”⁵² The United States supported this heightened interest and “led the effort to seek a measure of justice in the form of restitution or compensation for individuals whose assets were stolen during the Holocaust.”⁵³

45. See *Anti-Jewish Legislation in Prewar Germany*, *supra* note 41; “Aryanization”, U.S. HOLOCAUST MEM’L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/anti-jewish-legislation-in-prewar-germany> [https://perma.cc/4QF7-RCSA].

46. Eizenstat, *supra* note 29.

47. Boissoneault, *supra* note 43.

48. Eizenstat, *supra* note 29.

49. *Id.*

50. Stefan Dege, *Nazi-looted art: Germany Struggles with Restitution*, DEUTSCHE WELLE (June 21, 2021), <https://www.dw.com/en/nazi-looted-art-germany-struggles-with-restitution/a-57953848> [https://perma.cc/Z8WB-QWS2].

51. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 2(1), 130 Stat. 1524, 1524 (2016).

52. S. REP. NO. 114–394, at 3 (2016).

53. *The Role of The United States in Pursuing Compensation for Holocaust Victims and Heirs, and the Historical Bases for U.S. Leadership* WORLD JEWISH

To assist Holocaust survivors and their descendants in locating and reclaiming their stolen assets, the United States hosted the Washington Conference on Holocaust-Era Assets (Washington Conference) in 1998.⁵⁴ The Washington Conference hosted 44 governments and 13 non-governmental agencies as “[i]t took over 50 years for the world to come to grips with the fact that the biggest murder of the century. . . was also . . . the biggest robbery in history.”⁵⁵ The purpose of the Washington Conference was to encourage countries involved in the war to commit to principles which would help survivors and their descendants relocate and reclaim their stolen property.⁵⁶ These principles included establishing a central registry of Holocaust stolen work, creating commissions or other bodies which could help identify stolen work, and developing a national process to implement these principles as they relate to resolving issues of ownership.⁵⁷

In response, Congress enacted the Holocaust Victims Redress Act to encourage governments to “undertake good faith efforts to facilitate the return of private and public property, such as works of art, to their rightful owners”⁵⁸ However, despite these attempts to reunite rightful owners with their stolen property, defendants in the United States relied upon technical defenses, like statute of limitations, to avoid defending such claims on their merits.⁵⁹ By allowing defendants to assert a statute of limitations affirmative defense, the United States failed to uphold the principles of the Washington Conference, for such a defense

RESTITUTION ORG., 3 (Sept. 3, 2020), <https://www.claimscon.org/wp-content/uploads/2020/09/The-U.S.-Role-in-Holocaust-Compensation-Sept.-3-2020.pdf> [<https://perma.cc/H9HK-KFUS>].

54. See *Holocaust Restitution: Summary of the Washington Conference on Holocaust-Era Assets*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/summary-of-the-washington-conference> [<https://perma.cc/PQ6D-E2DJ>] [hereinafter *Holocaust Restitution*].

55. Miles Lerman, Opening Ceremony Remarks at the United States Holocaust Memorial Museum 3 (1998), <https://fcit.usf.edu/holocaust/resource/assets/heac1.pdf> [<https://perma.cc/YX3J-79N5>].

56. See *Holocaust Restitution*, *supra* note 54.

57. See *id.*

58. Holocaust Victims Redress Act, Pub. L. No. 105–158, § 202, 112 Stat. 15, 18 (1998).

59. S. REP. NO. 114–394, at 4 (2016).

prevents claims from being heard in a “just and fair” manner.⁶⁰

In 2009, the Prime Minister of the Czech Republic invited forty-six nations, including the United States, to build upon the principles discussed at the Washington Conference by hosting the Holocaust Era Assets Conference.⁶¹ The participating nations called for “a coherent and more effective approach by States and the international community to ensure the fullest possible, relevant archival access with due respect to national legislation.”⁶² It was further discussed that the process by which participating nations address the private property claims of Holocaust survivors, and their heirs, “should be expeditious, simple, accessible, transparent, and neither burdensome nor costly to the individual claimant”⁶³ The Terezin Declaration codified these ideals and was signed by forty-seven countries at the conclusion of the Holocaust Era Assets Conference.⁶⁴ The United States signed the Terezin Declaration in 2009, yet Congress did not take substantial steps to implement its policies until 2016 with the passage of the HEAR Act.⁶⁵

C. *The Temporary Success of the HEAR Act*

To date, the HEAR Act has been successful in eliminating the first procedural hurdle facing claimants who wish to pursue their claim for restitution in United States’ courts.⁶⁶ For example, in *Cassirer v. Thyssen-Bornemisza Collection Foundation*,⁶⁷ the

60. See *Holocaust Restitution*, *supra* note 54 (principles of the Washington Conference include allowing claimants the opportunity to litigate their claims on the merits).

61. *Prague Holocaust Era Assets Conference: Terezin Declaration*, U.S. DEP’T OF STATE, <https://2009-2017.state.gov/p/eur/rls/or/126162.htm> [https://perma.cc/6678-4ZL2].

62. *Id.*

63. *Id.*

64. *Terezin Declaration*, WORLD JEWISH RESTITUTION ORG., <https://wjro.org.il/our-work/international-declarations-resolutions/terezin-declaration/> [https://perma.cc/D75Z-9NUW].

65. See Holocaust Expatriated Art Recovery Act of 2016, Pub. L. No. 114–308, 130 Stat. 1524 (2016).

66. Mark I. Labaton, *Restoring Lost Legacies*, 41 L.A. L. 34, 37 (2018) (“[T]he HEAR Act has already been proven useful in pending cases.”).

67. *Cassirer v. Spain*, 616 F.3d 1019 (9th Cir. 2010), *rev’d sub nom.* *Cassirer*

district court held that the plaintiffs' claim was untimely under California's statute of limitation at the time the plaintiffs filed suit.⁶⁸ However, this decision was made before the passage of the HEAR Act, before there was a uniform federal statute of limitation for such claims.⁶⁹ The United States Court of Appeals for the Ninth Circuit took the case up on appeal and held that the HEAR Act applied, thereby reviving Cassirer's claim and allowing the claim to be heard on its merits.⁷⁰ The Supreme Court of the United States recently granted certiorari in this case to determine whether a federal court hearing state law claims under the Foreign Sovereign Immunities Act should apply federal common law or the forum state's choice of law.⁷¹ Although the Cassirers have yet to be reunited with their painting, the HEAR Act allows them to litigate their claim on its merits in front of the Supreme Court of the United States.⁷²

Similarly, in *de Csepel v. Republic of Hungary*, heirs of a Jewish Hungarian art collector filed suit to reclaim their family's collection of more than "two thousand paintings, sculptures, and other artworks."⁷³ The claim was initially dismissed in 2013.⁷⁴ However, in light of the HEAR Act, petitioners requested to amend their claim and the court granted their request.⁷⁵ The District Court for the District of Columbia held that the HEAR Act revived their preexisting claim for conversion, thereby allowing the claimant to litigate their claim on its merits in 2020.⁷⁶ The claimant successfully reclaimed twenty-three of their stolen paintings from the Hungarian government after the court held

v. Thyssen-Bornemisza Collection Found., 862 F.3d 951 (9th Cir. 2017).

68. *Cassirer*, 862 F.3d at 959.

69. *Id.*

70. *Id.* at 960.

71. *Cassirer v. Thyssen-Bornemisza Collection Foundation*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/cassirer-v-thyssen-bornemisza-collection-foundation/> [<https://perma.cc/29PF-TWDA>].

72. *See Cassirer v. Thyssen-Bornemisza Collection Found.*, 142 S. Ct. 1502 (2022).

73. *De Csepel v. Hung.*, 714 F.3d 591, 594 (D.C. Cir. 2013).

74. *Id.*

75. *De Csepel v. Hung.*, 106 Fed. R. Serv. 3d (West) 1090 (D.C.C. 2020).

76. *Id.*

their claim as timely under the HEAR Act.⁷⁷

In *Gowen v. Helly Nahmed Gallery, Inc.*, claimants in 2018 filed to reclaim their family's painting, Amadeo Modigliani's *Seated Man with a Cane*, which was taken by the Nazis during the occupation of Paris.⁷⁸ The court cited the HEAR Act and prevented the defendant from asserting a statute of limitations affirmative defense under United States law.⁷⁹ The plaintiff will now have the opportunity to litigate their claim on its merits because the court dismissed the defendant's motion for summary judgement for untimeliness.⁸⁰

These cases illustrate the consistency of the HEAR Act from 2016 to 2021. The success of these cases can be attributed to Congress's bright-line no statute of limitations rule for all Holocaust art restitution claims filed from 2016 to 2022. Therefore, this begs the question: what will happen to claims made on and after December 16, 2022?

D. Procedural Hurdles Facing Claimants In 2022

On December 16, 2022, the six-year federal statute of limitations will no longer automatically preempt state statute of limitations under the HEAR Act.⁸¹ After such date, the HEAR Act will require judges to determine, on a case-by-case basis, if the claim is timely under the HEAR Act and therefore privy to the six-year federal statutes of limitation.⁸² Therefore, the judge will determine if a claim was made no later than six years after the claimant actually discovered the artwork or when the claimant identified, located, and established a possessory interest in the property.⁸³ Courts in December of 2022 and beyond will have discretion in deciding if a claimant properly filed their claim

77. *Id.*

78. *Gowen v. Helly Nahmed Gallery, Inc.*, 77 N.Y.S.3d 605, 611 (N.Y. Sup. Ct. 2018).

79. *Id.* at 623–24.

80. *Id.* at 632.

81. *See* Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 5(e)(2), 130 Stat. 1524, 1527 (2016).

82. *See id.*

83. *Id.*

within this six-year statute of limitations period.⁸⁴ This will turn into a fact-dependent analysis allowing judges to determine when claimants had knowledge of their artwork and forcing claimants to prove that they did not discover their claim until after the HEAR Act was passed.⁸⁵ It is difficult to know whether courts will uphold the spirit and purpose of the HEAR Act when they have more discretion in deciding if a claimant can prove their burden and subsequently if their claim is timely.⁸⁶

Additionally, the HEAR Act includes a sunset provision which states that it will expire on January 1, 2027.⁸⁷ Therefore, claimants in 2027 will be automatically barred from bringing forth their claims, even if they can prove they had actual knowledge of their claim after the HEAR Act was passed. This is because such claimants will no longer be privy to the HEAR Act's federal statute of limitations and, therefore, their claims will likely be barred under their state's statute of limitations.⁸⁸

Accordingly, this Note argues in the next section that Congress should create a bright-line rule and amend the HEAR Act to waive all statutes of limitations for Holocaust restitution claims.⁸⁹ Before doing so, it is worth noting that in addition to the HEAR Act, Congress passed the Justice for Uncompensated Survivors Today (JUST) Act in 2017.⁹⁰ However, as will be shown, the JUST Act is insufficient as it does not alleviate any procedural hurdles for current and future claimants.⁹¹

84. See *De Csepel v. Hung.*, 106 Fed. R. Serv. 3d (West) 1090 (D.C.C. 2020) (“Determining when accrual occurs in a specific case is a question of fact.”) (citing *Lee v. Wolfson*, 265 F. Supp. 2d 14, 19 (D.D.C. 2003)).

85. See *infra* Part II.

86. See *infra* Part II.

87. Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 5(g), 130 Stat. 1524, 1527–28 (2016).

88. See *id.*

89. Simon J. Frankel & Sari Sharoni, *Navigating the Ambiguities and Uncertainties of the Holocaust Expropriated Art Recovery Act of 2016*, 42 COLUM. J.L. & ARTS 157, 161 (2019).

90. Justice for Uncompensated Survivors Today Act of 2017, Pub. L. No. 115–171, § 447, 132 Stat. 1288 (2017).

91. *Id.*

E. Justice for Uncompensated Survivors Today Act of 2017

The JUST Act requires the “Secretary of State [to] submit a report to the appropriate congressional committees that assesses and describes the nature and extent of national laws and enforceable policies of covered countries regarding the identification and return of, or restitution for wrongfully seized or transferred Holocaust era assets”⁹² The covered countries included “participants in the 2009 Holocaust Era Assets Conference that are determined by the Secretary of State . . . to be countries of particular concern relative to the” restitution of Holocaust-era assets.⁹³ The JUST Act requires Congress to submit reports detailing the contributions of “covered countries”⁹⁴ and their progress in implementing the principles of the Terezin Declaration.⁹⁵ Despite Congress’s good intentions in passing the JUST Act, it is a nonbinding and arguably symbolic Act that does not set forth real steps towards restitution.⁹⁶ Therefore, this Note will focus on amending the HEAR Act to better support future claimants by waiving all statutes of limitations for Holocaust restitution claims.

II. CONGRESS SHOULD WAIVE ALL STATUTES OF LIMITATIONS FOR HOLOCAUST ART RESTITUTION CLAIMS

To best accomplish the goals of the Washington Conference, the Terezin Declaration, the HEAR Act, and the JUST Act, Congress should amend the HEAR Act to waive all statutes of

92. *Id.*

93. *Id.*

94. Covered Countries refers to those countries which participated in the Holocaust Era Assets Conference, and therefore, have agreed to abide by the goals of Conference, yet have been deemed by the Secretary of State to be countries of particular concern due to their actions or lack thereof regarding restitution of property stolen during the Holocaust.

95. Justice for Uncompensated Survivors Today Act of 2017, Pub. L. No. 115–171, § 447, 132 Stat. 1288 (2017) (detailing the goals of the Terezin Declaration and how the JUST Act allows Congress to meet those goals).

96. U.S. DEP’T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., THE JUST ACT REPORT 4 (2020), <https://www.state.gov/wp-content/uploads/2020/02/JUST-Act5.pdf> [<https://perma.cc/HG9S-F982>] (“Overall, the report is descriptive rather than prescriptive.”).

limitations for claims pertaining to stolen property from the Holocaust.⁹⁷ If Congress fails to amend the HEAR Act to waive all statutes of limitations, courts after the year 2022 may dismiss claims as untimely and not within the HEAR Act's six-year statute of limitations.⁹⁸

A cornerstone of the American legal system and the Due Process Clause of the Fourteenth Amendment protects an injured claimant's right to have their claim heard on its merits.⁹⁹ Therefore, to impose any statute which could hinder a claimant's right to their day in court, seems entirely un-American and contrary to the ideals of the Due Process Clause.¹⁰⁰ However, the federal government has justified the use of statutes of limitations as "an important part of the American legal system."¹⁰¹ Statutes of limitation are "designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."¹⁰² The government has ensured that statutes of limitation are necessary to promote "three major purposes: providing fairness to the defendant, promoting efficiency, and

97. See Frankel & Sharoni, *supra* note 89, at 161 (noting that the Terezin Declaration and Washington Conference "urged signatories to ensure their legal systems facilitate just and fair resolutions to Nazi-confiscated and looted art, with claims resolved 'on their merits.' . . . [W]as meant to suggest that nations should not allow domestic statutes of limitations . . .").

98. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, § 5(a)(1)-(2), 130 Stat. 1524, 1526 (2016) (noting the two-step tests courts must engage in beginning December 16, 2022).

99. *Truax v. Corrigan*, 257 U.S. 312, 332 (1921) ("The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."); Suzette M. Malveaux, *Statutes of Limitations: A Policy Analysis in the Context of Reparations Litigation*, 74 GEO. WASH. L. REV. 68, 82 (2005).

100. Malveaux, *supra* note 99, at 83 ("So entrenched is this notion of entitlement that deprivation of access to the court system on procedural grounds seems practically un-American.").

101. Neil Sobol, *Determining Limitation Periods for Actions Arising Under Federal Statutes*, 41 SW. L.J. 895, 897 (1987).

102. *Wood v. Elling Corp.*, 572 P.2d 755, 760 (Cal. 1977).

ensuring institutional legitimacy.”¹⁰³ Such statutes are “intended to run against those who are neglectful of their rights, and who fail to use reasonable and proper diligence” in filing their claim.¹⁰⁴ Statutes of limitation have been efficient in establishing reliable rules that courts can use to dismiss a claim without hearing it on its merits.¹⁰⁵ Therefore, if Congress is to suspend or extend the statutes of limitation for certain claims, Congress must decide which party’s rights they wish to prioritize: an injured plaintiff or a defendant potentially in the wrong.¹⁰⁶

In the context of Holocaust restitution claims specifically, the disadvantages of statutes of limitation outweigh the benefits.¹⁰⁷ Although statutes of limitation protect a defendant’s right not to litigate a stale claim in court by effectively punishing a plaintiff for failing to diligently file their claim, the results are much more complicated for Holocaust restitution claims.¹⁰⁸ Congress has strong moral and ethical interests in allowing victims of this genocide and their descendants to have their day in court, for these individuals likely have no other legal recourse to undo the wrongs the Nazi Party committed against them and their families.¹⁰⁹

103. Malveaux, *supra* note 99, at 74–75.

104. *Pashley v. Pacific Elec. Co.*, 153 P.2d 325, 326 (Cal. 1944).

105. Malveaux, *supra* note 99, at 74–75.

106. *Id.* (“Here, the tradeoff is between two countervailing goals: permitting claimants to resolve all claims substantively on the merits, on the one hand, and prohibiting untimely claims from being heard, on the other. Numerous policies are served by each goal.”).

107. *See* Frankel & Sharoni, *supra* note 89, at 163 (“[U]nder many states’ statutes of limitations, heirs’ claims to artworks lost during the Holocaust might generally fail as a matter of course given the many decades since World War II and the greater availability of provenance information since the Washington Conference.”).

108. *See, e.g., id.* at 164 (“Congress concluded that, for some decades after World War II, many families were not comfortable seeking recovery of seized works or did not even know the extent of their families’ losses under the Nazis.”).

109. *See* Sarah Cascone, *A New Polish Law Will Make It Practically Impossible to Pursue Restitution Claims for Nazi-Looted Artworks*, ARTNET (Aug. 16, 2021), <https://news.artnet.com/art-world/polish-restitution-law-nazi-looted-art-1999351> [<https://perma.cc/625G-Y9UA>] (explaining that Poland’s new law will block all claims for Holocaust restitution and “lead to the dismissal of thousands of cases that have been under litigation for years” Therefore, claimants in the United States who wish to reclaim their stolen art located in Poland will need to pursue their claim in United States courts if they wish to proceed with their claim for restitution); Ron Kampas, *Trump administration*

Furthermore, due to the difficulties of locating and identifying stolen art from the Holocaust, the rationale for imposing any statute of limitation on such claims is arguably unjust.¹¹⁰

A. Holocaust Art Restitution Claims Must Be Treated Differently

There is a general five-year statute of limitation imposed on all non-capital federal offenses.¹¹¹ However, this general standard is not without exception.¹¹² Congress has extended or waived the statute of limitations for certain non-capital crimes involving “child abuse, the concealment of the assets of an estate in bankruptcy, wartime fraud against the government, dismissal of original charges, fugitives, foreign evidence, or DNA evidence.”¹¹³ The rationale for suspending or expanding the statutes of limitations for such offenses has been justified on grounds of “[i]nvestigative difficulties or the seriousness of the crime”¹¹⁴ Therefore, if we apply these same justifications to Holocaust restitution claims, the only just solution would require Congress to waive the statute of limitations for all such claims and amend the HEAR Act to reflect this rationale.

As discussed in Part I, thousands of artworks looted by the

calling for Holocaust restitution cases outside U.S. meets with skepticism, SUNSENTINEL (Dec. 9, 2020), <https://www.sun-sentinel.com/florida-jewish-journal/fl-jj-trump-administration-holocaust-restitution-skepticism-20201209-bbma555npvadzofrvoh4c3rp5m-story.html> [<https://perma.cc/9FXN-Q9FE>] (“If Jewish victims of the Holocaust were deemed noncitizens, stripped of their citizenship, at least in Germany, why should they then have to go exhaust remedies elsewhere’ than the United States? Gorsuch wondered.”).

110. See U.S. DEP’T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96, at 4 (noting the difficulties of locating and identifying stolen art for some countries, such as Russia, refuse to publicize their archives); William D. Cohan, *Five Countries Slow to Address Nazi-Looted Art, U.S. Expert Says*, N.Y. TIMES (Nov. 26, 2018), <https://www.nytimes.com/2018/11/26/arts/design/five-countries-slow-to-address-nazi-looted-art-us-expert-says.html> [<https://perma.cc/NEX6-Q2RW>] (“100,000 [paintings] remain missing.”).

111. See 18 U.S.C. § 3282 (1948).

112. See CHARLES DOYLE, CONG. RESEARCH SERV., RL31253, STATUTE OF LIMITATION IN FEDERAL CRIMINAL CASES: AN OVERVIEW, 3–4 (2017) (listing the types of federal crimes in which Congress waived all statutes of limitation).

113. See, e.g., 18 U.S.C. § 3283 (2006); 18 U.S.C. § 3284 (1978), 18 U.S.C. § 3287 (2009); 18 U.S.C. § 3288 (1988); 18 U.S.C. § 3289 (1990); 18 U.S.C. § 3290 (1948); 18 U.S.C. § 3292 (1984); 18 U.S.C. § 3297 (2006); DOYLE, *supra* note 112, at 3–4.

114. DOYLE, *supra* note 112, at 3.

Nazi Party remain missing today.¹¹⁵ Some of those missing pieces were stolen by Allied soldiers and brought to the United States at the conclusion of World War II.¹¹⁶ Other pieces of art remain in Russia as the Russian government “refused to return the train loads of art stolen by its soldiers, claiming that the art was compensation for the loss of human and cultural life in Eastern Europe as a result of Nazi war efforts.”¹¹⁷ Furthermore, because the Nazis conquered and “Aryanized” many countries including Poland, Denmark, Norway, Belgium, the Netherlands, Luxembourg, France, Yugoslavia, and Greece, Nazi stolen art has been scattered across Europe and the United States, making it uniquely difficult to locate the art and file a claim for restitution.¹¹⁸

The Western European nations established commissions to help victims reclaim their property.¹¹⁹ However, these commissions were unsuccessful.¹²⁰ The commissions failed to alleviate the following hurdles: “[1] most victims [do] not have evidence documenting property ownership because they were forced to flee in haste under life-threatening circumstances[,] [(2)] the Nazis archives of stolen property [are] in disarray, destroyed or still classified[,] and [(3)] the Nazis were not the only ones who stole before, during, and immediately following the war.”¹²¹ Additionally, most of the original owners of art seized from the Holocaust are not alive today.¹²² This has contributed to

115. See *supra* Part I; Cohan, *supra* note 110.

116. Jennifer A. Kreder & Virginia L. Schell, *The Constitutionality of the HEAR Act: Empowering American Courts to Return Holocaust-Era Artwork & Honor History*, 30 DEPAUL J. ART, TECH. & INTELL. PROP. L. 1, 9–10 (2020).

117. *Id.* at 9–10.

118. “Aryanization” is the process of stealing property from Jewish citizens and handing it over to German citizens. See “Aryanization”, U.S. HOLOCAUST MEM’L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/anti-jewish-legislation-in-prewar-germany> [<https://perma.cc/4QF7-RCSA>].

119. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, 130 Stat. 1524 (2016) (lists the different Holocaust art restitution commissions the United States established or participated in).

120. See Kreder & Schell, *supra* note 116, at 10 (noting the reasons why the commissions were unsuccessful).

121. See *id.*

122. See Herbert I. Lazerow, *Holocaust Art Disputes: The Holocaust Expropriated Art Recovery Act of 2016*, 51 INT’L LAW. 195, 196 (2018) (detailing the complications that arise when the individuals pursuing such claims for

complications in locating and identifying stolen art, and therefore there are fewer individuals with knowledge of the stolen art and who can provide documented proof that they are the rightful owners.¹²³ The United States Holocaust Memorial Museum stated that the Registry of Holocaust Survivors currently contains the names of “195,000 survivors and family members[,] . . . [a] growing number[,] . . . who registered their names and historical information over the last 15 years[] [but] are now deceased.”¹²⁴ Therefore, providing documented proof and tangible evidence to support a claim of restitution will only become more difficult as the world’s population of Holocaust survivors diminishes.¹²⁵

Finally, there is no comprehensive central registry documenting all stolen pieces of art.¹²⁶ However, there are various registries established in the United States, Canada, Israel, and Western and Eastern European countries, but due to the sheer amount of individual and uncomprehensive registries, it is difficult for claimants to know which registries will contain their stolen art.¹²⁷ This was particularly challenging before the invention of the Internet, for “[p]rior to the internet, provenance research was nearly impossible because records existed in various languages and were located in libraries, offices, and homes throughout Europe”¹²⁸ With “[m]ore and better evidence, increased scholarship, and new technology . . . claimants, sometimes for the first time, [can] establish title and bring claims for art restitution.”¹²⁹ Because of these foregoing reasons, it has

recovery are heirs of the victims and not the victims themselves).

123. *See id.* at 203.

124. *Frequently Asked Questions*, U.S. HOLOCAUST MEM’L MUSEUM, <https://www.ushmm.org/remember/resources-holocaust-survivors-victims/individual-research/registry-faq> [<https://perma.cc/ZQ7G-Y6G8>].

125. *See Lazerow, supra* note 122, at 196 (detailing the complications that arise when the individuals pursuing such claims for recovery are heirs of the victims and not the victims themselves).

126. *See id.* at 213 (“[T]here should be a registry naming the current owner of every artwork that potential purchasers can consult before buying art.”).

127. *Research Databases*, CLAIMS CONFERENCE/WJRO, LOOTED ART & CULTURAL PROP. INITIATIVE, <https://art.claimscon.org/resources/overview-of-worldwide-looted-art-and-provenance-research-databases/> [<https://perma.cc/9HPM-PRQ6>].

128. Barnes, *supra* note 31, at 559.

129. *Id.*

been uniquely difficult for victims to locate, identify, and reclaim their stolen property despite the goals of Holocaust restitution conferences.¹³⁰ Therefore, Congress should permanently waive the statute of limitations for Holocaust restitution claims just as Congress has done for other claims involving “[i]nvestigative difficulties”¹³¹

Congress has also suspended or extended statutes of limitation for claims deemed “serious” or “worthy enough.”¹³² There is little argument that claims arising from the Holocaust—the “systematic, state-sponsored persecution and murder of six million European Jews by the Nazi German regime and its allies and collaborators”—is certainly a “serious” and unprecedented crime that Congress should deviate from the traditional procedural rules imposed on most restitution claims.¹³³

B. The Unjust Burden That Will Be Placed on Claimants in the Year 2022

As we have now entered 2022, six years since the HEAR Act was passed, the burden for proving undue delay in response to a defendant’s statute of limitations affirmative defense will be placed on the plaintiff beginning on December 16, 2022.¹³⁴ The HEAR Act states that after December 16, 2022, a claimant must bring their claim within six years of “actual discovery” of their claim.¹³⁵ The HEAR Act defines knowledge as “actual knowledge of a fact or circumstance or sufficient information with regard to a relevant fact or circumstance to amount to actual knowledge thereof.”¹³⁶ Overall, this terminology is reflective of the discovery

130. See Kreder & Schell, *supra* note 116, at 10.

131. See DOYLE, *supra* note 112, at 3.

132. See *id.*

133. *Introduction to the Holocaust*, U.S. HOLOCAUST MEM’L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/introduction-to-the-holocaust> [<https://perma.cc/RWJ9-CJE3>].

134. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, 130 Stat. 1524 (2016).

135. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 5(a), 130 Stat. 1524, 1526 (2016).

136. Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 4(4), 130 Stat. 1524, 1526 (2016).

rule imposed by most states before the passage of the HEAR Act.¹³⁷ The discovery rule “places the burden on the owner to continue to search diligently for his lost works.”¹³⁸ Courts engage in a fact intensive analysis in which “[t]he focus is upon whether the plaintiff is aware of facts that would place a reasonable person on notice”¹³⁹

Because most courts have not been forced to grapple with defining the discovery rule in the context of the HEAR Act, courts may treat this analysis similarly to other art restitution claims.¹⁴⁰ In such other claims, it is up to the “discretion of the trial judge whether to conduct a preliminary hearing to determine whether [the plaintiff] is entitled to the benefit of the discovery rule.”¹⁴¹ Therefore, trial judges are given a significant amount of discretion, and claimants after the year 2022 will face an additional hurdle of convincing trial judges that their claims do not violate the HEAR Act’s six-year statute of limitations.¹⁴² Additionally, “[w]hen ‘discovery’ is written directly into a statute, courts have typically interpreted the word to refer not only to actual discovery, but also to the hypothetical discovery of facts a reasonably diligent plaintiff would know.”¹⁴³ As discussed above, Holocaust restitution claims should be treated differently than traditional claims for restitution, for how can courts apply any objective “reasonable person” standard to claims arising from a genocide? Claimants should not be forced to comply with an objective standard given the nature and trauma of the Holocaust as well as the substantial investigative difficulties in locating and asserting a possessory

137. *O’Keeffe v. Snyder*, 416 A.2d 862, 870 (N.J. 1980) (detailing the discovery rule and the ways in which a claimant must satisfy their burden).

138. Alexandra Minkovich, Note, *The Successful Use of Laches in World War II-Era Art Theft Disputes: It’s Only a Matter of Time*, 27 COLUM. J.L. & ARTS 349, 356 (2004).

139. *Wells v. First Am. Bank W.*, 598 N.W.2d 834, 838 (N.D. 1999).

140. Minkovich, *supra* note 138, at 355 (“The discovery rule has been adopted by most U.S. jurisdictions [It] is raised in cases where a defendant attempts to have the case dismissed by claiming that the suit is barred by the statute of limitations.”).

141. *O’Keeffe*, 416 A.2d at 870.

142. *Id.* (“We leave to the discretion of the trial judge whether to conduct a preliminary hearing to determine whether *O’Keeffe* is entitled to the benefit of the discovery rule.”).

143. *Merck & Co., Inc., v. Reynolds*, 559 U.S. 633, 633–34 (2010).

interest in such artwork.¹⁴⁴

Before the passage of the HEAR Act, courts applied objective standards to Holocaust art restitution claims upon determining whether the claim was made within the state's statute of limitations and therefore in accordance with the state's discovery rule.¹⁴⁵ In *Museum of Fine Arts, Boston v. Seger-Thomschitz*, the sole surviving heir of an Austrian-Jewish art collector, filed suit to reclaim her family's valuable oil painting, Oskar Kokoschka's *Two Nudes (Lovers)* painting held by the Museum of Fine Arts, Boston, after her heir was "forced to sell the Painting under duress after Austria was annexed by Nazi Germany in 1938"¹⁴⁶ However, the court dismissed the claim as "time-barred" under the discovery rule.¹⁴⁷ The court held "under Massachusetts law . . . [t]he party seeking the benefit of the discovery rule has the burden of showing (1) that she lacked actual knowledge of the basis for her claim and (2) that her lack of knowledge was objectively reasonable."¹⁴⁸ Therefore, the court dismissed the claim as untimely and held the claimant to the "reasonable person" standard in holding that the claimant did not use "reasonable diligence," and that her delay was not objectively reasonable.¹⁴⁹

In *Orkin v. Taylor*, descendants of a Jewish art collector brought action against the actress, Elizabeth Taylor, to assert ownership over their family's Van Gogh painting.¹⁵⁰ The United States Court of Appeals for the Ninth Circuit punished the claimant in 2007 for failing to bring forth their claim when "they first reasonably could have discovered, through investigation of

144. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, § 2(6), 130 Stat. 1524, 1525 (2016) ("The unique and horrific circumstances of World War II and the Holocaust make statutes of limitations 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.").

145. See *id.* (noting that claimants before 2016 were subject to their state's statute of limitations).

146. *Museum of Fine Arts, Bos. v. Seger-Thomschitz*, 623 F.3d 1, 2 (1st Cir. 2010).

147. *Id.* at 3.

148. *Id.* at 6-7.

149. *Id.* at 9.

150. *Orkin v. Taylor*, 487 F.3d 734, 735-36 (9th Cir. 2007).

sources open to them, their claim to and the whereabouts of the [V]an Gogh painting.”¹⁵¹ The court dismissed the claim by holding the plaintiffs could and should have discovered their claim much earlier and therefore, the discovery rule blocked their ability to recover.¹⁵² The court held the claimants should have brought this claim as early as 1963 when it was sold in a public auction.¹⁵³ Notably, the court rejects the argument that technological advancements allowed them the opportunity to locate their painting for the first time in 2002.¹⁵⁴

Similarly, in *Toledo Museum of Art v. Ullin*, the court dismissed a claim for holocaust art restitution holding that “a reasonable and prudent person would have made further inquiry . . .”¹⁵⁵ In 1999, the American Association of Museums promulgated “Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era” which required museums to post artwork “having a Nazi-era provenance.”¹⁵⁶ However, the court failed to take into account the investigative difficulties in locating such stolen art as well as the mental trauma faced by claimants pursuing such claims.¹⁵⁷ If the HEAR Act is not amended before the year 2022, courts may engage in analyses like the cases listed above. Such analyses involving the use of objective standards are unjust because one should not compare a “reasonable” claimant to that of a claimant seeking restitution because of a genocide.

C. *The Defense of Laches Should Replace Statutes of Limitation*

Scholars have argued that Congress must impose some form of statute of limitations to ensure that plaintiffs diligently file their claim and protect defendants from unfair prejudice.¹⁵⁸

151. *Id.* at 741.

152. *Id.* at 741–42.

153. *Id.* at 742.

154. *Id.*

155. *Toledo Museum of Art v. Ullin*, 477 F. Supp. 2d 802, 807 (N.D. Ohio 2006).

156. *Id.* at 805.

157. *Id.* (arguing that the public debate surrounding holocaust art restitution claims should have encouraged claimants to pursue their claims at an earlier date).

158. See Jane Kallir, *Holocaust-era art restitution: more complex than you*

However, there are other remedies to solve this problem without depriving a plaintiff of their day in court.¹⁵⁹ For example, equitable defenses, including the defense of laches, are not prohibited by the HEAR Act.¹⁶⁰ The defense of laches “is an equitable defense available to a defendant who can show ‘that the plaintiff has inexcusably slept on [their] rights so as to make a decree against the defendant unfair,’ and that the defendant ‘has been prejudiced by the plaintiff’s unreasonable delay in bringing the action.’”¹⁶¹ Prejudice can be proven by arguing the “loss of evidence or a material change in position due to reliance on the plaintiff’s delay”¹⁶² Notably, the defense of laches places the burden on the defendant to prove the claimant’s lack of diligence and the prejudice experienced by the defendant in light of such a delay.¹⁶³ This differs from a statute of limitations, which places the burden on the plaintiff to prove their filed claim is timely.¹⁶⁴

When the HEAR Act was discussed in Congress, it was initially proposed with a clause that would have prevented the use of equitable defenses, including the defense of laches.¹⁶⁵ However, the Act was rewritten to strike that clause, thereby proving that

think, ART NEWSPAPER 3 (Feb. 22, 2019), <https://www.theartnewspaper.com/2019/02/22/holocaust-era-art-restitution-more-complex-than-you-think> [<https://perma.cc/5WGP-VH3Q>] (“Given that, with time, evidence vanishes and witnesses die, all Western nations impose some form of limitation on theft claims. Yet since many Holocaust claims would be time-barred under existing statutes, claimant advocates tend to recommend suspending the standard limitations. Unfortunately, this often means that works are judged guilty until proven innocent.”).

159. See Minkovich, *supra* note 138, at 361–62 (noting the use of laches as an equitable defense in Holocaust art restitution cases).

160. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, 130 Stat. 1524 (2016) (The HEAR Act does not include a clause which prohibits such equitable defenses as the defense of laches); Zuckerman v. Metro. Museum of Art, 928 F.3d 186, 196–97 (2d Cir. 2019) (holding that the defense of laches can be applied to block claims even when a claim is considered timely as filed within the HEAR Act’s statute of limitations).

161. *Id.* at 190 (citing *Merrill Lynch Inv. Managers v. Optibase Ltd.*, 337 F.3d 125, 132 (2d Cir. 2003)).

162. Minkovich, *supra* note 138, at 361.

163. See *Museum of Fine Arts Bos. v. Seger-Thomschitz*, 623 F.3d 1, 9–10 (1st Cir. 2010); *Vineberg v. Bissonnette*, 529 F. Supp. 2d 300, 308 (D.R.I. 2007).

164. Minkovich, *supra* note 138, at 361–62.

165. S. 2763, 114th Cong. § 5(a) (2016).

Congress intended for such equitable defenses to be available for defendants in these claims.¹⁶⁶ Additionally, the Second Circuit has made clear that the HEAR Act does not prevent a defendant from asserting a laches defense.¹⁶⁷ Therefore, if a defendant can prove the plaintiff unreasonably delayed bringing forth their claim, courts have and will grant this defense preventing the claimant from asserting ownership over their property.¹⁶⁸ Of course, the defense of laches, as a timely defense, does not encompass the spirit of the Washington Conference or the Terezin Declaration.¹⁶⁹ However, the defense of laches, unlike statute of limitations, does not prevent a claimant their day in court for the defense of laches is a fact intensive analysis which generally requires litigation.¹⁷⁰

If Congress's goal in implementing statute of limitations is to prevent untimely claims and encourage claimants not to "sleep on their rights," the defense of laches can serve this purpose just as well as a statute of limitation affirmative defense.¹⁷¹ However, the key difference between the two affirmative defenses is that if a defendant wishes to assert the defense of laches, the burden will be placed on the defendant to prove that the plaintiff unreasonably delayed in filing their claim.¹⁷² This is more in line with the goals of the HEAR Act for it alleviates the procedural hurdles faced by claimants, but it will not prevent defendants from asserting an

166. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 5(a), 130 Stat. 1524, 1526 (2016).

167. *Zuckerman v. Metro. Museum of Art*, 928 F.3d 186, 197 (2d Cir. 2019).

168. See *id.* at 193–94; see also *Reif v. Nagy*, 80 N.Y.S. 3d 629, 634–35 (N.Y. Sup. Ct. 2018) (holding that the defense of laches applies and the claim will not be heard on its merits).

169. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 3, 130 Stat. 1524, 1525–26 (2016) (discusses how the HEAR Act was established to embody the ideals of the Washington Conference and Terezin Declaration by allowing claims to be decided in a "just and fair" manner).

170. See *Menominee Indian Tribe of Wis. v. United States*, 614 F.3d 519, 532 (D.C. Cir. 2010) ("Laches may be the "legal cousin" of the statute of limitations, *Daingerfield Island Protective Soc'y v. Babbitt*, 40 F.3d 442, 448 (D.C. Cir. 1994) (Wald, J., dissenting), but it "involves more than the mere lapse of time and depends largely upon questions of fact.").

171. See *Tenneco Inc. v. Amerisure Mut. Ins. Co.*, 761 N.W.2d 846, 863 (Mich. Ct. App. 2008) (noting that "laches is viewed as the equitable counterpart to the statute of limitations.").

172. *Minkovich*, *supra* note 138, at 361–62.

equitable defense if the facts so permit.¹⁷³ Because Congress and the Supreme Court have determined that the defense of laches can be used in Holocaust restitution cases, the rationale for implementing any statute of limitations on such claims is moot.

III: NOW OR NEVER: THE SUNSET PROVISION

At the bottom of the HEAR Act, it states:

This Act shall cease to have effect on January 1, 2027, except that this Act shall continue to apply to any civil claim or cause of action . . . that is pending on January 1, 2027. Any civil claim or cause of action commenced on or after that date to recover artwork or other property described in this Act shall be subject to any applicable Federal or State statute of limitations or any other Federal or State defense at law relating to the passage of time.¹⁷⁴

This provision should not have been included in the HEAR Act for it is misleading, arbitrary, and unjust.

The purpose of the HEAR Act is to allow claimants an opportunity to have their claim heard on its merits.¹⁷⁵ However, the addition of the sunset provision to the HEAR Act implies two false narratives. First, the provision implies that the hurdles facing claimants in 2016 will cease to exist in 2027.¹⁷⁶ Second, it implies that the United States will no longer be bound by the promises made at international Holocaust restitution conferences the moment the calendar year changes to 2027.¹⁷⁷ If Congress does

173. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 2(5), 130 Stat. 1524, 1526–27 (2016). (noting the United States’ goal to “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.”).

174. Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 5(g), 130 Stat. 1524, 1527–28 (2016).

175. Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 3(1)–(2), 130 Stat. 1524, 1525–26 (2016). (noting the rationale for the passage of the HEAR Act).

176. See *id.*; See U.S. DEP’T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96 (noting the difficulties claimants will continue to face in locating their stolen art for the foreseeable future).

177. See *Holocaust Restitution*, *supra* note 54 (noting no indication of an end

not amend the HEAR Act to strike the sunset provision, the HEAR Act will not fulfill Congress's original intent as the Act will certainly block worthy claims.¹⁷⁸

A. *The Hurdles Facing Claimants Will Not Disappear in the Year 2027*

Some have argued that because the HEAR Act has served its purpose in allowing claimants to bypass state statute of limitations and assert their claim, there is no need to extend the HEAR Act past the year 2026.¹⁷⁹ These opponents have argued that the generation of Holocaust survivors is dying out and therefore, there will be less evidence which can be used to support these claims after the year 2026.¹⁸⁰ However, as discussed above, the invention of the internet and digital registries have allowed claimants the opportunity, often for the first time, to efficiently search for their stolen property.¹⁸¹ The registries are not comprehensive and many registries continue to be updated as more evidence of stolen property is uncovered.¹⁸² Additionally, it was not until after the Iron Curtain fell that many Eastern European countries, previously under the Soviet regime, began to open their archives and catalog Nazi-stolen property from World War II.¹⁸³ Therefore, the process for cataloging stolen property continues today and it is not within Congress's interest to halt

date in which nations will no longer be bound by the principle of the Washington Conference).

178. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, § 3(1)-(2), 130 Stat. 1524, 1525-26 (2016). (noting the rationale for the passage of the HEAR Act).

179. See Fallon S. Sheridan, *The Sunset of the Holocaust Expropriated Art Recovery Act and the Rise of the Demand and Refusal Rule*, 89 FORDHAM L. REV. 2841 (2021).

180. See *id.*

181. See *infra* Part II.

182. See *infra* Part II.

183. See *Art Stolen in World War II*, C-SPAN (July 14, 1998), <https://www.c-span.org/video/?108768-1/art-stolen-world-war-ii> [<https://perma.cc/ZGD7-EYSE>] ("That light, shone only after the fall of the Iron Curtain, has opened many long-suppressed documents to scholars. After the declassification of a host of national archives occurred, we see a fifty year time level after the war, and scholars responded quickly.").

future claims for reasons entirely outside the claimant's control.¹⁸⁴ Ultimately, once a registry is updated past the year 2026 and a claimant can pursue their claim for the first time, they will be forbidden from pursuing their claim through the United States' court system if Congress does not amend the HEAR Act to strike the sunset provision.¹⁸⁵

Congress also has a strong policy interest for removing the sunset provision. To conclude otherwise would encourage immoral and illegal behavior on behalf of private collectors.¹⁸⁶ As the HEAR Act currently stands, Congress has essentially granted illegal possessors of Holocaust art legal immunity after the year 2026.¹⁸⁷ Therefore, private collectors are encouraged to conceal their stolen art until the year 2026 to avoid litigation in United States courts.¹⁸⁸ This result is contrary to the spirit of the HEAR Act and the principles of both the Washington Conference and the Terezin Declaration for the United States vowed to assist Holocaust survivors and their heirs in locating stolen art and providing a legitimate legal pathway to reclaim their stolen property.¹⁸⁹

Furthermore, the JUST Act of 2017 requires Congress to produce reports detailing the progress of the United States and

184. See U.S. DEP'T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96, at app., A (noting the importance of "systematic provenance research" and encouraging countries to include "ongoing updates, available via the internet" regarding stolen property from the Holocaust).

185. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 5(g), 130 Stat. 1524, 1527–28 (2016).

186. See, e.g., Diana Wierbicki & Amanda A. Rottermund, *Freeports for the Art World: A Guide to Their Uses*, WEALTH MGMT. (Feb. 19, 2016), <http://www.wealthmanagement.com/art-auctions-antiquesreport/freeports-art-world> [<https://perma.cc/9V6R-AZ8E>] (detailing how art collectors can easily hide artwork when there is a reduced level of oversight).

187. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 5(g), 130 Stat. 1524, 1527–28 (2016) (once the HEAR Act expires, claimants will be required to adhere to their state's statutes of limitations); *Detroit Inst. of Arts v. Ullin*, No. 06-10333, 2007 WL 1016996, at *3 (E.D. Mich. Mar. 31, 2007) (noting that the statute of limitations expired before World War II ended) (not sure this case is properly cited – is it unreported?).

188. See Wierbicki & Rottermund, *supra* note 186.

189. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308, § 2(5), 130 Stat. 1524, 1524–25 (2016) (discusses how the HEAR Act was established to embody the ideals of the Washington Conference and Terezin Declaration by allowing claims to be decided in a "just and fair" manner).

other countries in locating, cataloging, and returning stolen property during the Holocaust to their rightful owners.¹⁹⁰ Notably, the JUST Act does not include a sunset provision.¹⁹¹ Therefore, the reports administered by Congress after the year 2026 will be paradoxical in that the reports will encourage other countries to do their part in the field of Holocaust art restitution while blocking restitution for claimants in the United States.

IV. THE UNITED STATES MAY BE A CLAIMANT'S LAST CHANCE FOR RESTITUTION

The United States has a strong moral interest in amending the HEAR Act and insuring claimants their day in court because the United States' court system may be the only avenue a claimant can use to seek redress.¹⁹² This Note highlights the difficulties claimants face if they pursue their claims in Poland, Hungary, Russia, Italy, and Croatia. This emphasizes the necessity of United States law to protect the interests of its wronged citizens.

In August 2021, Poland's President "signed a controversial law reducing the statute of limitations on all challenges to allegedly stolen property, making Nazi-looted art restitutions practically impossible."¹⁹³ The new law permits the litigation of claims made thirty years after the cause of action arose.¹⁹⁴ However, World War II ended over seventy-seven years ago, therefore, these claims, under current Polish law have already expired.¹⁹⁵ Poland's President justified this controversial law by stating that the "legislation would put an end to an 'era of legal chaos' and 'reprivatization mafias.'"¹⁹⁶ Before World War II, Poland hosted Europe's largest Jewish community at 3.5 million people, therefore

190. U.S. DEP'T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96.

191. *Id.* (no indication of a Sunset provision or end date in which Congressional reports will no longer be required).

192. *See* U.S. DEP'T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96 (for a detailed analysis of the progress of over 50 countries in locating and returning stolen art from the Holocaust, see the JUST Act Report of 2017 prepared by Congress in compliance with the JUST Act).

193. Cascone, *supra* note 109.

194. *Id.*

195. *Id.*

196. *Id.* at 2.

“the law will lead to the dismissal of thousands of cases that have been under litigation for years”¹⁹⁷ In Poland, “approximately half of the 5,500 Jewish communal property claims filed under a 1997 restitution law remain unresolved, and approximately half of the adjudicated claims were rejected.”¹⁹⁸ Because of Poland’s unwillingness to entertain Holocaust restitution claims, the United States now has a greater responsibility to establish justice for Holocaust survivors and their heirs. Poland’s new law may be the strongest anti-Holocaust restitution law passed by a European country; however, Poland is not the only country hindering a claimant’s opportunity for redress.¹⁹⁹

Hungary currently hosts major works of art looted by the Nazi regime, yet Hungary has not returned these paintings to their rightful owners despite encouragement from participant countries in the Washington Conference.²⁰⁰ Mr. Eizenstat, an adviser to the United States’ State Department, recently criticized Hungary’s restitution efforts in stating “[u]nfortunately, I cannot report any change of attitude by the current Hungarian government. They have refused to return these artworks to their rightful owners. They have refused to take their historic responsibility for the systematic looting of art from their Jewish citizens.”²⁰¹ In fact, some Hungarian museums have researched their archives to determine which paintings were looted by the Nazis during World War II, however such information has not been made public and only claimants of non-Jewish origin have been reunited with such paintings in Hungary.²⁰²

Russia is another example of a country providing empty promises to Holocaust survivors and their heirs seeking restitution.²⁰³ Russia announced a plan in 1998 to begin uncovering archives and return paintings to their rightful owners, however, “there has been no restitution of any Nazi-looted art’ . .

197. *Id.*

198. *See* U.S. DEP’T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96, at 7.

199. *See* Cohan, *supra* note 110.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

. ‘nor any process for their identification or handling of claims.’”²⁰⁴ “Despite having the requisite legal framework in place for return of religious property, restitution of such property to the Jewish community has been slow in practice and few claims have been submitted.”²⁰⁵ Additionally, it is difficult to access Russia’s archival documents pertaining to the Holocaust, therefore, it is practically impossible to locate Nazi-confiscated art residing in Russia.²⁰⁶

Italy also agreed to abide by the principles of the Washington Conference in 1998, yet “there has been no provenance research or listing of possible Nazi-looted art in their public museums by the Italian government.”²⁰⁷ Additionally, the “Italian legal principle of acquisitive prescription, by which citizens rightfully own certain immovable assets not claimed within twenty years, limits the scope of possible restitution at this point.”²⁰⁸ Therefore, because most claims for Holocaust art restitution fall under acquisitive prescription, such claims have already expired in Italy for it has been over twenty years since the Nazis pillaged Jewish artwork.²⁰⁹

In Croatia, “[m]ost Holocaust survivors and heirs have not been able to file private property claims under Croatia’s restitution law because of citizenship restrictions and other procedural hurdles, and there is a general lack of political will to address the issue.”²¹⁰ In 1941, Croatia established a concentration camp, “adopted racial laws that stripped Jews and Roma of all legal protection and began systematically seizing private and communal Jewish property.”²¹¹ Despite the United States’ efforts to encourage Croatia to return this confiscated property to their rightful owners, the “Croatian government has expressed concern about the potential cost of full restitution, as well as the precedent

204. *Id.*

205. *See* U.S. DEP’T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96, at 153.

206. *Id.* at 155.

207. *See* Cohan, *supra* note 110, at 3.

208. *See* U.S. DEP’T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96, at 96.

209. *See id.*

210. *Id.* at 6.

211. *Id.* at 45.

that resolving Jewish property claims could set for other victimized groups to claim compensation.”²¹²

Ultimately, the countries discussed above are only a few examples of European countries’ overall lack of progress in providing restitution for survivors and their heirs.²¹³ Congress quoted Elie Wiesel’s statement at the Prague Conference in the JUST Act Report and entitled this quote a call to action: “They suffered enough. And enough people benefitted from their suffering. Why not do everything possible, and draw from all available funds, to help them live their last years with a sense of security, in dignity and serenity?”²¹⁴ Elie Wiesel’s statement supports the argument that these are not just claims for restitution, but they are claims for justice.

When speaking about their grandparents’ painting, granddaughter of Fritz and Thea Goldschmidt, Gila DeKay, stated: “It’s everything. It’s really a memorial to our grandparents . . . Our grandparents’ story isn’t unique to the upper-middle class Jewish bourgeoisie in Germany. They were people of note. They were dedicated to their community. They were good people.”²¹⁵ If the United States wishes to abide by Elie Wiesel’s statement, provide justice for claimants like Ms. DeKay, and remain recognized as a “world leader” on Holocaust-era restitution, Congress must amend the HEAR Act to allow claimants to successfully bring their claims in the United States.²¹⁶

V. PROPOSAL

Congress should amend the HEAR Act to waive all statutes of limitations for Holocaust-era restitution claims. As the HEAR Act currently stands, Congress waived all statutes of limitations for claims discovered on or before December 16, 2016.²¹⁷ The HEAR

212. *Id.*

213. *Id.* (details the shortcomings and progresses of 46 countries, none of which were given a perfect report).

214. *Id.* at 5.

215. Philpot, *supra* note 1; see Part I Introduction.

216. See U.S. DEP’T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96, at 5 (qualifying the United States as a “world leader” on Holocaust restitution and remembrance).

217. Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308,

Act has been successful in allowing claimants their day in court to date.²¹⁸ However, this is only because we have not reached December 16, 2022.²¹⁹ Claimants who file their claims on or after December 16, 2022 will be required to prove they did not have actual knowledge of their claim before the Act was enacted on or before December 16, 2016.²²⁰ The burden will be placed on the claimant to prove the claim was timely.²²¹ Courts are given much discretion in deciding whether a claimant acted “reasonably” in filing their claim.²²² Congress must prevent courts from applying an objective “reasonable person” standard to claims arising from the Holocaust, for the Holocaust was an international war crime, and out of respect to the survivors and victims of the Holocaust, Congress has a moral and ethical duty to treat such claims differently and apply a subjective standard.²²³ Therefore, Congress should waive all statutes of limitations for such claims and not allow the courts to engage in the same unjust analyses as seen before the passage of the HEAR Act.²²⁴

However, waiving the statute of limitations for all Holocaust restitution claims does not necessitate preventing defendants from asserting *any* timely defense.²²⁵ The Second Circuit and Congress have made clear that defendants are permitted to assert equitable defenses, such as the laches defense when defending a Holocaust restitution claim.²²⁶ Indeed, defendants should be permitted to continue asserting the laches defense.²²⁷ The key difference between a statute of limitations defense and a laches defense is that the defendant bears the burden of proving a claimant was

§ 5(g), 130 Stat. 1524, 1527–28 (2016).

218. *See supra* Part I The Temporary Success of the HEAR Act.

219. *See supra* Part I The Temporary Success of the HEAR Act.

220. *See supra* Part I The Unjust Burden Placed on Claimants After the Year 2022.

221. *See supra* Part I The Unjust Burden Placed on Claimants After the Year 2022.

222. *See supra* Part I The Unjust Burden Placed on Claimants After the Year 2022.

223. *See supra* Part II.

224. *See supra* Part II.

225. *See supra* Part II.

226. *See supra* Part II.

227. *See supra* Part II.

untimely in a laches defense.²²⁸ The defendant will be required to prove the plaintiff unreasonably delayed in filing their claim, and that the defendant suffered unfair prejudice as a result.²²⁹ This is a much more fact-intensive approach than a statutes of limitations defense, and notably, the claimant will not be automatically blocked from their day in court.²³⁰ Ultimately, much of Congress's concerns in implementing statutes of limitations for Holocaust restitution claims can be equally served through the laches defense.²³¹

Congress must also amend the HEAR Act to strike the sunset provision and allow claimants the opportunity to bring their claim past the date January 1, 2027.²³² The JUST Act has made it clear that many countries, including the United States, are consistently updating their stolen property databases.²³³ Therefore, it is almost guaranteed that claimants who discover the location of their family's stolen property after January 1, 2027 will be forever barred from bringing forth their claims for restitution in the United States.²³⁴ This is particularly immoral given the lack of legal recourse in many European countries which houses much Nazi-confiscated property today.²³⁵ If the United States is to uphold the promises made at the Washington Conference and the Holocaust Era Assets Conference, Congress must amend the HEAR Act to allow claimants past January 1, 2027, to have their day in court and an opportunity to seek justice for themselves and their family.²³⁶

VI. CONCLUSION

The HEAR Act has been successful in allowing claimants their

228. *See supra* Part II.

229. *See supra* Part II.

230. *See supra* Part II.

231. *See supra* Part II.

232. *See supra* Part III.

233. *See* U.S. DEP'T OF STATE, BUREAU OF EUR. AND EURASIAN AFF., *supra* note 96.

234. *See supra* Part III.

235. *See supra* Part IV.

236. *See supra* Part III; Part IV.

day in court and this success should not come to an end.²³⁷ Congress has a strong moral interest in ensuring justice for future claimants. If Congress amends the HEAR Act to waive all statutes of limitation and strike the sunset provision, the HEAR Act will allow future claimants to reclaim their rightful possessions with fewer procedural hurdles.

The Goldschmidt family has not given up on their quest for restitution.²³⁸ Gila DeKay indicated that her family has just scraped the surface when it comes to locating their grandparents' extensive stolen artwork collection.²³⁹ Given the HEAR Act's deadlines, the Goldschmidt family has just a few years to bring forth their claims to achieve emotional closure and place a proverbial band-aid on the trauma that will forever exist in their family. When discussing the HEAR Act's impending deadline, Ms. DeKay hopelessly remarked, "We are going to be timed out again."²⁴⁰

237. *See supra* Part I.

238. DeKay, *supra* note 1.

239. *Id.*

240. *Id.*