To clarify the exception to foreign sovereign immunity set forth in section 1605(a)(3) title 28, United States Code.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2012

Mrs. FEINSTEIN (for herself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To clarify the exception to foreign sovereign immunity set forth in section 1605(a)(3) title 28, United States Code.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Foreign Cultural Ex-
change Jurisdictional Immunity Clarification Act”.

SEC. 2. CLARIFICATION OF JURISDICTIONAL IMMUNITY OF
FOREIGN STATES.

(a) In General.—Section 1605 of title 28, United
States Code, is amended by adding at the end the fol-
lowing:
“(h) JURISDICTIONAL IMMUNITY FOR CERTAIN ART EXHIBITION ACTIVITIES.—

“(1) IN GENERAL.—If—

“(A) a work is imported into the United States from any foreign country pursuant to an agreement providing for the temporary exhibition or display of such work entered into between a foreign state that is the owner or custodian of such work and the United States or 1 or more cultural or educational institutions within the United States;

“(B) the President, or the President’s designee, has determined, in accordance with Public Law 89–259 (79 Stat. 985; 22 U.S.C. 2459), that such work is of cultural significance and the temporary exhibition or display of such work is in the national interest; and

“(C) notice has been published in the Federal Register in accordance with Public Law 89–259,

any activity in the United States of such foreign state or any carrier associated with the temporary exhibit or display of such work shall not be considered to be commercial activity for purposes of subsection (a)(3).
“(2) NAZI-ERA CLAIMS.—Paragraph (1) shall not apply in any case in which—

“(A) the action is based upon a claim that the work was taken in Europe in violation of international law by a covered government during the covered period;

“(B) the court determines that the activity associated with the exhibition or display is commercial activity; and

“(C) a determination under subparagraph (B) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘work’ means a work of art or other object of cultural significance; and

“(B) the term ‘covered government’ means—

“(i) the Nazi government of Germany;

“(ii) any government in any area occupied by the military forces of the Nazi government of Germany;
“(iii) any government established with the assistance or cooperation of the Nazi government; and

“(iv) any government that was an ally of the Nazi government of Germany; and

“(C) the term ‘covered period’ means the period beginning on January 30, 1933, and ending on May 8, 1945.”.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to cases commenced after the date of the enactment of this Act.