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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Holocaust Expropriated Art Recovery Act of 2016”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) It is estimated that the Nazis confiscated or otherwise misappropriated as many as 650,000...
works of art throughout Europe as part of their genocidal campaign against the Jewish people and other persecuted groups. This has been described as the “greatest displacement of art in human history”.

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

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

(4) The same year, 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.”.

(5) In 2009, the United States participated in
a Holocaust Era Assets Conference in Prague,
Czech Republic, with 45 other nations. At the con-
clusion of this conference, the participating nations
issued the Terezin Declaration, which reaffirmed the
1998 Washington Conference Principles on Nazi-
Confiscated Art and urged all participants “to en-
sure that their legal systems or alternative processes,
while taking into account the different legal tradi-
tions, 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 expedi-
tiously 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 var-
ious 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 res-
olution, where appropriate under law.”.

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

(7) Federal legislation is needed because the
only court that has considered the question held that
the Constitution prohibits States from making ex-
ceptions to their statutes of limitations to accommo-
date claims involving the recovery of Nazi-con-
fiscated art. In Von Saher v. Norton Simon Museum
of Art, 592 F.3d 954 (9th Cir. 2009), the United States Court of Appeals for the Ninth Circuit invalidated a California law that extended the State statute of limitations for claims seeking recovery of Holocaust-era artwork. The Court held that the law was an unconstitutional infringement of the Federal Government’s exclusive authority over foreign affairs, which includes the resolution of war-related disputes. In light of this precedent, the enactment of a Federal law is the best way to ensure that claims to Nazi-confiscated art are adjudicated on their merits.

SEC. 3. PURPOSES.

The purposes of this Act are the following:

(1) To ensure that laws governing claims to Nazi-confiscated art 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.

(2) To ensure that claims to artwork stolen or misappropriated by the Nazis are not barred by statutes of limitations and other similar legal doctrines but are resolved in a just and fair manner on the merits.

SEC. 4. DEFINITIONS.

In this Act—
(1) the term “actual discovery” does not include any constructive knowledge imputed by law;

(2) the term “artwork or other cultural property” includes any painting, sculpture, drawing, work of graphic art, print, multiples, book, manuscript, archive, or sacred or ceremonial object;

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

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

SEC. 5. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of Federal law, any provision of State law, or any defense at law or equity relating to the passage of time (including the doctrine of laches), a civil claim or cause of action against a defendant to recover any artwork or other cultural property unlawfully lost because of persecution during the Nazi era or for damages for the taking or detaining of any artwork or other cultural property un-
lawfully lost because of persecution during the Nazi era may be commenced not later than 6 years after the actual discovery by the claimant or the agent of the claimant of—

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

(2) information or facts sufficient to indicate that the claimant has a claim for a possessory interest in the artwork or cultural property that was unlawfully lost.

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

(c) APPLICABILITY.—

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

(A) pending on the date of enactment of this Act; or
(B) filed during the period beginning on
the date of enactment of this Act and ending on
December 31, 2026.

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

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

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