Nos. 19-351, 18-1447

In the Supreme Court of the United States

FEDERAL REPUBLIC OF GERMANY, ET AL., PETITIONERS,

v.

ALAN PHILIPP, ET AL.

REPUBLIC OF HUNGARY, ET AL., PETITIONERS,

v.

ROSALIE SIMON, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

BRIEF FOR SOCIÉTÉ NATIONALE SNCF SA AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY AND SUPPORTING REVERSAL

R. REEVES ANDERSON
ARNOLD & PORTER
KAYE SCHOLER LLP
1144 Fifteenth Street
Suite 3100
Denver, CO 80202
(303) 863-1000

JOHN B. BELLINGER, III
Counsel of Record
SALLY L. PEI
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000
John.Bellinger@arnoldporter.com

RULE 29.6 STATEMENT

Société Nationale SNCF SA ("SNCF") is a "foreign state" as defined by 28 U.S.C. § 1603(a). SNCF has no parent corporation. No publicly held corporation holds 10% or more of its stock. SNCF is wholly owned by the Republic of France.

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae is Société Nationale SNCF SA ("SNCF"), the French government-owned national railway. SNCF is the successor in interest to Société Nationale des Chemins de Fer Français, the state-owned railway that was formed in 1937 upon the nationalization of the French railroad industry.

SNCF has a direct and critical interest in whether U.S. courts may abstain from exercising jurisdiction under the expropriation exception to the Foreign Sovereign Immunities Act as a matter of international comity. France has long been committed to providing compensation and reparations for victims of Holocaust-era wrongs committed in France. SNCF is currently a defendant in a suit filed by relatives of Holocaust victims under the expropriation exception of the FSIA. The case is pending in the Seventh Circuit after dismissal by the U.S. District Court for the Northern District of Illinois, on the ground that the plaintiffs had not first applied for compensation from a commission in France created to hear claims for Holocaust-era spoliations.

Beginning in 1948, France established several administrative compensation programs for Holocaust victims in France and their heirs. They include compensation for persons deported during the Holocaust who survived; a pension program for children who lost one or both parents in the Holocaust; and a compensation program for property taken in France during the Holocaust pursuant to

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[1] Pursuant to Rule 37.6 of the Rules of this Court, the undersigned hereby states that no counsel for a party wrote this brief in whole or in part, and no one other than amicus curiae or its counsel contributed money to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a) of the Rules of this Court, counsel for all parties have filed with the Clerk letters of blanket consent to the filing of amicus briefs in these cases.

anti-Semitic laws. These compensation programs are more extensive than those offered by many other European countries and have been formally endorsed by the French Jewish community. France's efforts to provide compensation to Holocaust victims have also received the support of the United States government. Indeed, the United States has publicly acknowledged on numerous occasions France's deep commitment to providing fair and equitable compensation to Holocaust victims and their families, and in 2014 entered into a binding international agreement with France recognizing that French programs should serve as the "exclusive" means for redressing claims arising from Holocaust-era injuries in France. The United States agreed that "France should not be asked … to satisfy further claims in connection with deportations from France during the Second World War before any court or other body of the United States."

Notwithstanding the availability of suitable compensation through these remedial programs, over the past two decades, plaintiffs have initiated three class-action suits against SNCF in U.S. courts for its role in transporting Holocaust victims from France to the then-German border en route to Nazi extermination camps. Two of those cases involved allegations that SNCF personnel expropriated property from persons deported on SNCF trains commandeered by the German military.

The historical record is clear that SNCF did not itself confiscate property from deportees. Any property taken from deportees on SNCF trains, or during embarkation or disembarkation therefrom, was taken by Nazi SS and/or Vichy authorities, not by SNCF personnel. Regardless of the merits (or lack thereof) of the specific claims against SNCF, however, SNCF recognizes that Holocaust victims and their heirs deserve compensation for property seized in France during deportations. While

no amount of compensation could wholly redress the injuries suffered by Holocaust victims, the Republic of France is committed to ensuring that the victims and their families are afforded at least some measure of justice. But SNCF has a strong interest in ensuring that Holocaust victims and their heirs seek compensation for their injuries through the procedures and mechanisms that France has established for that purpose, rather than pursuing compensation through lawsuits in U.S. courts. For these reasons, the United States has submitted statements of interest urging federal courts to dismiss litigation brought against SNCF and other French entities arising out of Holocaust-era spoliations.

SNCF therefore submits this brief to describe the French compensation systems and explain the critical importance of international comity in ensuring that robust remedial programs established by foreign sovereigns are accorded the deference and respect that they deserve. France has accepted its moral duty to provide relief to those injured—and to the heirs of those murdered—during the Holocaust. U.S. courts should not be used to circumvent those measures that France has voluntarily established.

SNCF respectfully urges this Court to reverse the decisions of the D.C. Circuit, which adopted an erroneous interpretation of the FSIA by holding that U.S. courts are categorically precluded from applying the doctrine of international comity in deciding whether or not to exercise jurisdiction over a foreign sovereign. Left uncorrected, the D.C. Circuit's rule would mean that U.S. courts would be required to hear claims regarding Holocaust-era expropriations that occurred on French territory, even though France is ready, willing, and able to address such claims and to provide fair and expeditious relief. SNCF

otherwise takes no position on the merits of the claims in these cases.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The first Justice Harlan cautioned that "it is the duty of all courts of justice to take care, for the general good of the community, that hard cases do not make bad law." *United States* v. *Clark,* 96 U.S. 37, 49 (1878) (Harlan, J., concurring in the judgment). The D.C. Circuit below failed to heed that adage. Focused on the facts before it, the court below could not conceive of circumstances in which a U.S. court could or should abstain from adjudicating an international takings claim against a foreign sovereign until the plaintiffs exhaust available relief in that sovereign's territory. This brief demonstrates that such circumstances do exist, illustrating the dangers of the D.C. Circuit's rigid and short-sighted approach.

Like many other European nations, France has had to come to terms with the role that it played during the Holocaust. But perhaps unlike many of its counterparts, in the wake of World War II, the French government has established extensive programs to provide broad remedies for Holocaust-era injuries. Those programs are a paragon of the fair and appropriate remedies to which U.S. courts should defer as a matter of international comity.

The unspeakable tragedies of the Holocaust are an indelible stain on French history. Between 1940 and 1944, the Nazi occupying forces, with the collaboration of the Vichy government, deported 75,721 Jews—and tens of thousands of others—from France. The vast majority never returned.

The Nazis forcibly co-opted SNCF in this cruel enterprise. In June 1940, when Nazi Germany occupied France,

one of the German authorities' first actions was to commandeer SNCF, the French national railway, for the German *Wermachtverkehrsdirektion* (the German Army Transportation Department or "WVD"). SNCF was thus forced into the daily machinery of the Reich. Tragically, that role included the use of SNCF equipment and personnel to transport French and other European Jews—including some of the 2,229 SNCF employees murdered by the Nazis—to internment camps in France, and subsequently to the then-French-German border for deportation to extermination camps. SNCF's role was limited to the physical operation of the trains; the WVD organized the deportation trains and the German Feldgendarmerie (military police) escorted the convoys. At the French internment camps, Nazi SS and/or Vichy authorities—not SNCF—searched internees and confiscated valuables. Nevertheless, for its connection to the horrors committed by the Nazis, SNCF officials have publicly and without qualification expressed "profound sorrow and regret." *Statement by Guillaume Pepy, Chairman of SNCF, Regarding SNCF's Role in World War II*, PR Newswire (Nov. 4, 2010), https://prn.to/2QIom1X. SNCF continues to be saddened and shocked by the horrors perpetuated by Nazi Germany, and has sought to raise awareness of the tragedies of the Holocaust in France. SNCF has opened its archives from the World War II period, and they are available online for public consultation. The company also sponsors educational and research programs, including about deportations from France during the Holocaust.

In the decades since World War II, France has sought to reckon with this dark period in its history. Critical in acknowledging and atoning for its role in the horrors perpetuated by the Nazis has been France's commitment to providing compensation to individuals and their

heirs for injuries suffered in France during the Holocaust. France's efforts in that regard have received strong diplomatic support from the United States government, as well as the approval of the Jewish community in France.

Despite France's conscientious efforts to provide redress for the wrongs committed against Jews on its territory during World War II, SNCF has been sued in the United States on three occasions since 2000 for its connection to the atrocities perpetuated by the Nazis. Two lawsuits were dismissed because the plaintiffs had not demonstrated that any exception to the Foreign Sovereign Immunities Act applied. See *Freund* v. *Republic of France*, 592 F. Supp. 2d 540, 561 (S.D.N.Y. 2008), aff'd sub nom. *Freund* v. *Société Nationale des Chemins de Fer Français*, 39 F. App'x 939 (2d Cir. 2010); *Abrams* v. *Société Nationale des Chemins de Fer Français*, 175 F. Supp. 2d 423, 446 (E.D.N.Y. 2001), aff'd, 389 F.3d 61, 65 (2d Cir. 2004).

Another suit remains pending. *Scalin* v. *Société Nationale SNCF SA*, No. 18-1887 (7th Cir.). In that case, heirs of deportees sued SNCF in the Northern District of Illinois for allegedly expropriating property from deportees aboard trains that were transporting them from France to extermination camps. SNCF submitted extensive declarations and evidence regarding the scope of remedies available in France, including an affidavit from the chairman of the French commission that provides compensation for property confiscated during the Holocaust, who stated that the commission is "willing and competent" to hear the plaintiffs' claims and to recommend compensation where warranted. See Supplemental Decl. of Michel Jeannoutot, CIVS Chairman, *Scalin*, Case No. 15-cv-3362 (N.D. Ill.), ECF No. 56-1 ¶ 10 [hereinafter Suppl. Jeannoutot Decl.], attached hereto as Addendum B.

The United States, as well as the Conseil Représentatif des Institutions juives de France (CRIF)—an umbrella organization that includes more than 70 institutions that represent the Jewish community of France—submitted briefs in support of SNCF attesting to the comprehensiveness of France's compensation programs. In its statement of interest, the United States urged dismissal, including on the basis of international comity and that the plaintiffs had failed to exhaust remedies in France. Statement of Interest of the United States, *Scalin* v. *Société Nationale des Chemins de Fer Français*, Case No. 15-cv-3362 (N.D. Ill.), ECF No. 63 [U.S. Statement of Interest]. The district court determined that France offers adequate remedies for the plaintiffs' claims, and that, under established Seventh Circuit precedent, the plaintiffs should be required to pursue such remedies in France before they may sue SNCF in the United States under the FSIA's expropriation exception. *Scalin* v. *Société Nationale des Chemins de Fer Français*, Case No. 15-cv-3362, 2018 WL 1469015, at *3 (N.D. Ill. March 26, 2018); see *Fischer* v. *Magyar Államvasutak Zrt.*, 777 F.3d 847, 859–61 (7th Cir. 2015); *Abelesz* v. *Magyar Nemzeti Bank*, 692 F.3d 661, 679–82 (7th Cir. 2012).[2] The plaintiffs appealed that decision to the Seventh Circuit, which has stayed proceedings pending this Court's disposition of *Philipp* and *Simon*.

In the decisions below, the D.C. Circuit departed from the Seventh Circuit, holding instead that the FSIA does not permit U.S. courts—under any circumstances whatsoever—to abstain from exercising jurisdiction

[2] SNCF also asserted immunity from suit under the FSIA and argued that the plaintiffs had not demonstrated a basis for personal jurisdiction, among other grounds for dismissal. See *Scalin*, 2018 WL 1469015, at *1. The district court did not reach those issues.

under the expropriation exception, even as a matter of international comity. This rule presumably would preclude abstention or dismissal even where the United States government submits a statement of interest to explain how the litigation interferes with the United States' foreign policy and urges dismissal. The D.C. Circuit's approach, which deprives foreign sovereigns of a common-law defense available to any non-sovereign party, was incorrect and should be reversed.

The D.C. Circuit's holding that U.S. courts lack the ability to require plaintiffs in expropriation cases to pursue the broad remedies that France offers before they may ask an American judge to order France to pay compensation for alleged violations of international law is both a misinterpretation of the FSIA and an affront to the sovereignty of the French state. The United States would be similarly affronted if foreign courts insisted on hearing claims against the U.S. government arising from events that took place in the United States, without first allowing the United States an opportunity to address those claims and provide appropriate remedies. Accordingly, where foreign sovereigns have created fair and comprehensive remedial systems to address wrongs committed within their territories, U.S. courts must have the flexibility and discretion to defer to such programs, as a matter of the mutual courtesy and respect that sovereigns afford to each other in international relations.

For centuries, the doctrine of international comity has provided that flexibility. Whether to abstain in a given case on the basis of international comity requires a fact-specific analysis, but the comprehensive and well-regarded programs that France has established to address Holocaust-era injuries, including expropriations, stand as a clear example of circumstances in which comity-based abstention is warranted.

I. France Has Established Comprehensive Remedial Programs To Provide Compensation To Holocaust Victims And Their Heirs

Beginning in 1948, French law has enshrined the fundamental principle that France shares responsibility for the consequences of atrocities committed in French territory, enabled by the collaboration of Maréchal Pétain and his government with the occupying Nazi forces. Shortly after the end of World War II, France made persons who were French nationals or residents on or before September 1, 1939 and who were deported from France to concentration and/or extermination camps eligible to acquire the title of "political deportee" and to receive compensation in the form of a pension. See Compensation and Restitution for Holocaust Victims in France, Mémorial de la Shoah, https://bit.ly/2YAUKbj.

France has since renewed and reinforced its commitment to providing reparations to the victims of the Holocaust and their heirs. In 1995, then-President Jacques Chirac publicly acknowledged the nation's "imprescriptible debt" to the 75,721 Jews deported from France. See *Le discours de Jacques Chirac au Vel d'hiv en 1995*, Le Figaro (March 27, 2014), https://bit.ly/31lYEp8. In recognition of that debt, France—with the support of the United States—expanded upon its original pension program and established additional programs to compensate Holocaust victims and their families. Those programs include a pension program for children whose parents died in extermination camps, a program to pay compensation for bank-related spoliations (established pursuant to the 2001 Washington Accords), see Decl. of Stuart E. Eizenstat, Statement of Interest of the United States, Ex. A, *Scalin*, Case No. 15-cv-3362 (N.D. Ill.), ECF No. 63-1, ¶¶ 12–16, attached hereto as Addendum C [hereinafter Eizenstat Decl.], and—of particular relevance here—the

Commission for Spoliation Resulting from the Anti-Semitic Legislation in Force during the Occupation ("CIVS"), Decl. of Michel Jeannoutot, CIVS Chairman, *Scalin*, Case No. 15-cv-3362 (N.D. Ill.), ECF No. 19-3 ¶ 5 [hereinafter Jeannoutot Decl.], attached hereto as Addendum A.

CIVS is the product of an extensive investigation conducted by the French government into the confiscation by the Nazis and the Vichy authorities of property and valuables belonging to Jews in France during the Holocaust. In 1997, France established a commission—headed by Jean Mattéoli, then-president of the Economic and Social Council, who had been a member of the French Resistance—to investigate such takings. The Mattéoli Working Party ultimately produced a 3,000-page report documenting many tens of thousands of spoliations. The investigation also led to a series of recommendations regarding how the French government should address these takings. On November 17, 1998, Mr. Mattéoli recommended that the government "create a body to examine individual claims by victims of anti-Semitic legislation established during the Occupation or their heirs. [Such a body] would ensure the monitoring of claims processing and would be charged with providing responses, which could take the form of compensation." *The Mattéoli Mission*, CIVS, https://bit.ly/3m85CYg.

France promptly acted on that recommendation. In 1999, the French government established CIVS "to investigate the confiscations carried out under the Anti-Semitic Legislation by the Nazi Occupation forces or the Vichy authorities during World War II and to compensate the victims for the confiscations," including for "property confiscated on arrival at the internment camps." Jeannoutot Decl. ¶ 4.

CIVS is an administrative body that reports to the Prime Minister. It has broad jurisdiction to consider claims for compensation arising from Holocaust-era takings. The decree that established CIVS charged it with "examining individual claims presented by the victims or their heirs to make reparations for damage resulting from spoliations of property that occurred due to the anti-Semitic laws passed during the Occupation, both by the occupant and by the Vichy authorities." Décret No. 99-778, art. 1, https://bit.ly/2XoQV8p; see also *Scope*, CIVS, https://bit.ly/3m9AI1F. The decree further charged CIVS with "researching and proposing appropriate measures of reparation, restitution, and compensation." Décret No. 99-778, art. 1.

Exercising this broad authority, CIVS considers that "[a]ll the spoliations that occurred on French territory during the deportations of Jews from France during World War II are … spoliations resulting from the Anti-Semitic laws that were in effect during the Occupation." Suppl. Jeannoutot Decl. ¶ 3. Accordingly, all persons (or descendants of such persons) who suffered such spoliations—regardless of current nationality or country of residence—are eligible to apply for compensation. See *Opening a case file*, CIVS, https://bit.ly/35lconD.

The CIVS compensation process is thorough, comprehensive, and accessible. As CIVS Chairman Michel Jeannoutot has explained, the claims process includes special archival research by an administrative unit, followed by an investigation by sitting or retired French judges known as "rapporteurs." Jeannoutot Decl. ¶¶ 33, 34. Claimants are permitted to have representatives assist them throughout the process, and victims' organizations render additional assistance in cases where claimants are outside France.

Based on the investigative findings, a rapporteur prepares a compensation proposal reflecting the type and extent of claimed and verified spoliations. See *id.* ¶ 39. Given the difficulties in gathering evidence of losses, CIVS can take into account claimants' good-faith claims that spoliation occurred, as well as their estimates of the value of expropriated property. *Id.* ¶ 14. Indeed, claimants are not required to present evidence of spoliations, and even where CIVS does not discover any evidence in the course of its research, CIVS frequently recommends compensation. Suppl. Jeannoutot Decl. ¶ 7.

A deliberative panel then conducts a hearing, where the claimant may participate with counsel, before issuing a compensation decision. Jeannoutot Decl. ¶¶ 45, 47. CIVS can recommend more compensation than the claimant requested, the rapporteur proposed, or the evidence in the archives shows. See Suppl. Jeannoutot Decl. ¶¶ 7–8. Once the Prime Minister approves the decision, it goes to the National War Veterans Administration for payment. Jeannoutot Decl. ¶ 50. The Prime Minister's approval or denial of a claim is subject to judicial review. *Ibid.* While "only a few" claimants have appealed their awards, French courts have deemed some of those appeals admissible, and in some instances, CIVS has revised its awards as a result. *Ibid.*

CIVS issues regular public reports describing its activities, and makes publicly available the method that it has developed for evaluating claims. CIVS has publicized the availability of its claims procedure and mechanisms to ensure that claimants around the world are aware of the remedies that CIVS offers.

Over the two decades of its existence, CIVS has awarded €538,201,871 to 29,693 claimants through February 2020—an average of €18,126 (approximately $21,569)

per claimant. See *Key figures (February 2020)*, CIVS, https://bit.ly/3mjVs78. "[T]here is no ceiling on the amount of compensation that CIVS can provide," Jeannoutot Decl. ¶ 13. To this day, claimants continue to submit claims to CIVS, and CIVS continues to process these claims and recommend compensation.

The CRIF—an umbrella organization whose members include more than 70 institutions that collectively represent the Jewish community of France—has expressed its approval of the way that the French government, and CIVS in particular, has handled claims for Holocaust-era injuries. In its amicus brief submitted in the *Scalin* case, the CRIF noted that "the range of programs implemented by France are quite satisfactory and are broader and more generous tha[n] those established by many other European countries." Amicus Brief of the Conseil Représentatif des Institutions juives de France, *Scalin*, Case No. 15-cv-3362 (N.D. Ill.), ECF No. 20-1, at 2. The CRIF further stated that it "finds [CIVS] to be suitable and fair and is an effective response for handling the compensation claims of persons who have been victims of theft, or their descendants. The CRIF is particularly satisfied with the manner in which the CIVS has conducted its work and believes it has consistently provided fair and benevolent compensation." *Id.* at 3.

II. The United States Supports France's Efforts To Provide Reparations For Holocaust Victims

The United States has repeatedly expressed its support for the compensation programs that France has established to redress Holocaust-era injuries, and has "engage[d] in diplomatic efforts aimed at supporting an improving these alternative fora." *Freund*, 592 F. Supp. 2d at 569. This is in line with the United States' general policy that "concerned parties, foreign governments, and non-

governmental organizations should act to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation, and cooperation, rather than subject victims and their families to the prolonged uncertainty and delay that accompany litigation." Eizenstat Decl. ¶ 3. The United States' preference for negotiated solutions is rooted in its belief—which France shares—that "available funds should be spent on the victims and not on litigation, and, importantly, also because the number of victims who can be covered by a negotiated settlement is often greater than can be achieved through litigation." *Ibid.*

Most recently, in December 2014, the United States and France signed an Executive Agreement on Compensation for Certain Victims of Holocaust-Related Deportation from France Who Are Not Covered by French Programs. Statement of Interest of the United States, Ex. B, *Scalin*, Case No. 15-cv-3362 (N.D. Ill.), ECF No. 63-2. That agreement expanded France's pension program to include relief for U.S. citizens and other foreign nationals who had not previously been eligible to receive compensation. *Id.* pmbl. Specifically, France provided the United States with a lump sum of $60 million to administer a compensation program for U.S. citizens and others who are not covered by the original French pension programs for deportee, or by international agreements between France and other countries. *Id.* arts. 3, 4(1).

The 2014 Executive Agreement specifically recognizes that France has "implemented extensive measures to restore the property of and to provide compensation for victims of anti-Semitic persecution carried out during the Second World War by the German Occupation authorities or the Vichy Government," and that the French government "remains committed to providing compensation for the wrongs suffered by Holocaust victims deported from

France through such measures to individuals who are eligible under French programs." *Id.* pmbl.

The Executive Agreement further states that "France, having agreed to provide fair and equitable compensation to [certain Holocaust victims] under this Agreement, should not be asked or expected to satisfy further claims in connection with deportations from France during the Second World War before any court or other body of the United States of America or elsewhere." *Ibid.* The United States and France expressed their shared intent "that this Agreement should, to the greatest extent possible, secure for France an enduring legal peace regarding any claims or initiatives related to the deportation of Holocaust victims from France." *Ibid.* In other words, the United States and France both recognized that the extensive administrative programs established in France (and supplemented by the 2014 Executive Agreement) to cover the claims arising from Holocaust-era injuries in France are to serve as the *exclusive* mechanisms for resolving such claims.

The United States has reiterated these views on subsequent occasions. In its submissions in the district court and the court of appeals in the *Scalin* litigation, the United States emphasized that "[t]he administrative fora created by the French government to redress Holocaust-era claims, including the CIVS, provide benefits to the public interest that reach beyond the scope of any single litigation. … The policy of the United States is that these fora present the best opportunity to provide Holocaust victims redress as quickly as possible." U.S. Statement of Interest at 21; see also Br. for the United States as Amicus Curiae at 18, Case No. 18-1887 (7th Cir.), ECF No. 39 [U.S. Amicus Br.] ("[T]he United States has a longstanding policy supporting the resolution of such claims through reparation mechanisms established by the

foreign states in which the claims arose … .”). The United States highlighted its understanding—shared by France—“that parties who are eligible to assert claims through programs established by France should seek relief in the French administrative fora rather than in U.S. courts.” U.S. Statement of Interest at 15.

With respect to CIVS in particular, the United States considers CIVS to be the appropriate forum for Holocaust victims and their heirs to pursue claims for Holocaust-era takings that occurred in France. See U.S. Amicus Br. 10, 18; U.S. Statement of Interest at 15. The United States praised the accessibility and transparency of CIVS, and has highlighted the relaxed standards of evidence that CIVS applies to compensation claims. U.S. Amicus Br. 18; see also U.S. Statement of Interest at 11. The United States has explained that CIVS has made “speedy, dignified payments to many deserving victims and is designed to provide comprehensive relief to a broader class of victims than would be possible in United States judicial proceedings.” U.S. Statement of Interest at 11. The United States has further reiterated its support for France’s efforts to “provide a redress process and compensation for victims in a manner that serves the vital interest of compensating Holocaust victims more quickly and efficiently than the litigation process.” *Id.* at 13.

III. Comity-Based Abstention Permits U.S. Courts To Defer To Robust Remedial Programs Such As CIVS

1. CIVS is a paradigm example of the kind of foreign remedial program to which U.S. courts should defer before adjudicating expropriation claims against a foreign sovereign occurring within its territory. Two federal courts have closely examined the features of CIVS and determined that the program offers comprehensive remedies that plaintiffs should be required to pursue before a

U.S. court exercises jurisdiction under the FSIA over claims arising from Holocaust-era spoliations.

In *Freund* v. *Republic of France*, 592 F. Supp. 2d 540, plaintiffs brought claims against SNCF for the alleged spoliation of property during deportation from France. While the district court held (and the Second Circuit agreed, 391 F. App'x at 941) that the plaintiffs had not established that the expropriation exception to the FSIA applied to their claims against SNCF, the district court also held, in the alternative, that it would abstain based on the political question doctrine and international comity. 592 F. Supp. 2d at 551–52.

In reaching that alternative conclusion, the district court determined the compensation programs in France are "appropriate and adequate alternative fora for the pursuit of the eligible Plaintiffs' claims" arising from Holocaust-era takings. *Id.* at 576. The district court noted in particular the accessibility of CIVS and the relaxed standards of proof that it applies. The district court specifically observed, moreover, that the United States had opined that CIVS would "without question, provide benefits to more victims, and will do so faster and with less uncertainty than would litigation, with its attendant delays, uncertainty, and legal hurdles." *Id.* at 577. The district court declined to second-guess the wish of CIVS's creators (as well as the United States) to "focus on flexible and expedient recovery for as broad a class of victims as possible." *Id.* at 577–78.

Addressing claims materially identical to those in *Freund*, the district court in *Scalin* likewise held that the plaintiffs should be required to pursue their spoliation claims through the CIVS process in the first instance, before a U.S. court exercises subject-matter jurisdiction under the FSIA. 2018 WL 1469015, at *12. The court

carefully reviewed all of the evidence before it regarding the CIVS compensation program. The district court credited the declarations of CIVS Chairman Michel Jeannoutot, the U.S. statement of interest, and the views of the CRIF, all of which demonstrated that the remedies CIVS offers are accessible, fair, and comprehensive. The district court was satisfied that plaintiffs seeking compensation for Holocaust-era spoliations that occurred during deportations from France would receive fair treatment before CIVS. *Id.* at *11.

In particular, the district court highlighted Mr. Jeannoutot's statement in his declaration that "if items belonging to Plaintiffs' relatives were seized during the boarding of deportation trains or on the trains in French territory, CIVS is willing and competent to entertain their claims and recommend compensation."[3] *Id.* at *6. And the plaintiffs had not "show[n] convincingly that [remedies available through CIVS] are clearly a sham or inadequate or that their application is unreasonably prolonged." *Id.* at *8.

The district court noted that the fact "that CIVS is a non-judicial forum and does not operate exactly as a U.S. court … does not mean that it is inadequate." *Id.* at *9. On the contrary, "there appear to be many aspects of the Commission's framework that arguably make it a more favorable forum than [U.S. courts]." *Id.* at *11. "There is no statute of limitations or deadline for the submission of

[3] The district court noted that even if CIVS had not paid compensation for claims for property taken on deportation trains in the past, that may be "because there is no evidence (in the possession of potential claimants or in the archives consulted by CIVS) that SNCF expropriated deportees' property—not because if SNCF did so, CIVS would not compensate claimants appropriately." *Scalin*, 2018 WL 1469015, at *9.

claims," and the relaxed evidentiary standards CIVS applies "fall[] short of the preponderance of the evidence standard that would be applied [in U.S. court]." *Id.* at *10. Accordingly, the Court saw no "legally compelling reason" to exercise jurisdiction over the plaintiffs' claims, at least until they had pursued the remedies available to them through CIVS. *Id.* at *8.

The court's conclusion that abstention out of deference to CIVS was further bolstered by the United States' position that CIVS "is meant to provide the exclusive remedy for claims such as Plaintiffs' claims," *id.* at *11, as well as the United States' consistent support for French efforts to provide compensation for Holocaust-era takings, U.S. Statement of Interest at 2, 5–7; *see also* 2018 WL 1469015, at *11. The views of the United States in this regard represent "the considered judgment of the Executive of a particular question of foreign policy." *Republic of Austria* v. *Altmann*, 541 U.S. 677, 702 (2004); *Sosa* v. *Alvarez Machain*, 542 U.S. 692, 733 n.21 (2004) (noting the "strong argument that federal courts should give serious weight to the Executive Branch's view of [a given] case's impact on foreign policy"). The district court appropriately gave serious consideration to the United States' views. *Scalin*, 2018 WL 1469015, at *11. As the district court explained, "the fact that the United States and France continue to work together to enhance the French compensation programs suggests that to allow these claims to proceed [in U.S. courts] would undermine, or potentially interfere with, the two countries' efforts to create programs that are more effective and efficient than litigation." *Ibid.*

2. The foregoing demonstrates the wisdom of recognizing that U.S. courts have the discretion to abstain, in appropriate cases, from exercising jurisdiction under the FSIA's expropriation exception as a matter of

international comity. See *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 128–29 (2013) (Breyer, J., concurring) (emphasizing that the exercise of jurisdiction "must, in my view, also be consistent with those notions of comity that lead each nation to respect the sovereign rights of other nations by limiting the reach of its own laws and their enforcement") (citing *Sosa*, 542 U.S. at 761 (Breyer, J., concurring in part and concurring in the judgment)).

As the Seventh Circuit has recognized, international comity—a general principle recognized in international law as well as in the common law—provides a basis for a prudential abstention requirement. See *Fischer*, 777 F.3d at 859; *Abelesz*, 692 F.3d at 681 (noting "the comity and reciprocity concerns underpinning the domestic exhaustion rule"). The common-law doctrine of international comity recognizes that courts, giving "due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws," may defer to the "legislative, executive or judicial acts of another nation." *Hilton* v. *Guyot*, 159 U.S. 113, 164 (1895). Comity with regard to foreign courts recognizes that "[t]he dignity of a foreign state is not enhanced if other nations bypass its courts without good cause." *Republic of Philippines* v. *Pimentel*, 553 U.S. 851, 866 (2008). Accordingly, the doctrine of international comity permits courts to dismiss claims so that another sovereign with an interest in adjudicating those claims may do so within its own territory and legal system. See, e.g., *Mujica* v. *AirScan*, 771 F.3d 580, 614–15 (9th Cir. 2014).

Certain elements of the comity analysis may be intertwined with a *forum non conveniens* inquiry, see *Cooper* v. *Tokyo Elec. Power Co.*, 860 F.3d 1193, 1210–11 (9th Cir. 2017). But the concerns that international comity serves are not merely a matter of convenience; they are a matter of respect and consideration for sovereign interests,

which other doctrines do not fully address. Courts thus have long recognized international comity as a standalone concept and a distinct basis for dismissal in appropriate cases. See *id.* at 1290–10; see also *Mujica*, 771 F.3d at 598.

The FSIA does not displace this well-established common-law doctrine. "Congress is understood to legislate against a background of common-law principles, and when a statute covers an issue previously governed by the common law, we interpret the statute with the presumption that Congress intended to retain the substance of the common law." *Samantar* v. *Yousuf*, 560 U.S. 305, 320 n.13 (2010) (ellipsis, internal citations, and quotation marks omitted). Accordingly, when Congress wishes to eliminate foreign-policy abstention doctrines related to sovereign immunity, it does so expressly. For example, Congress in 1964 enacted the "Second Hickenlooper Amendment," 22 U.S.C. § 2370(e)(2), expressly barring reliance on the act-of-state doctrine to abstain from adjudicating claims of expropriation by a foreign state in violation of international law. But Congress has taken no such measures with respect to the doctrine of international comity.

On the contrary, this Court has expressly recognized that, even as Congress created in the FSIA a "comprehensive set of legal standards governing claims of *immunity* in every civil action against a foreign state," *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 141 (2014) (emphasis added), Congress did not disturb federal courts' ability to apply "other sources of law" in considering whether to exercise jurisdiction over foreign sovereigns, *id.* at 146 n.6. This Court made clear that courts "may appropriately consider comity interests" and decline to exercise jurisdiction under the FSIA. *Ibid.* Indeed, "limiting principles such as exhaustion, *forum non conveniens*, and comity" help to "minimize international friction" and may be appropriate bases to decline

jurisdiction. *Kiobel*, 569 U.S. at 133 (Breyer, J., concurring); see also *Fischer*, 777 F.3d at 859 (noting that *NML Capital* did not address foreign sovereigns' ability to rely on comity and other doctrines designed to avoid international friction).

The D.C. Circuit's conclusion to the contrary in *Philipp* not only misread *NML Capital*; it also ignored that, in enacting the FSIA, Congress preserved foreign sovereigns' ability to invoke international comity as a basis for dismissal of claims brought against them in U.S. court. Specifically, 28 U.S.C. § 1606 provides, in relevant part, that a foreign state not immune from jurisdiction "shall be liable in the same manner and to the same extent as a private individual under like circumstances." Private litigants routinely argue in their defense that a U.S. court should dismiss claims against them on the basis of international comity. *Mujica*, 771 F.3d at 615 (claims against private defendants are "nonjusticiable under the doctrine of international comity"); *JP Morgan Chase Bank* v. *Altos Hornos de Mexico, S.A. de C.*V., 412 F.3d 418, 429 (2d Cir. 2005); *Ungaro-Benages* v. *Dresdner Bank AG*, 379 F.3d 1227, 1237–41 (11th Cir. 2004). The same defense should therefore be available to foreign sovereigns. Indeed, it is implausible that Congress intended to make it "easier to sue foreign sovereigns than to sue private entities in a United States court." *Fischer*, 777 F.3d at 859.

3. Permitting courts to abstain from exercising jurisdiction under the FSIA as a matter of international comity is particularly appropriate in cases arising from events or actions of national significance, where foreign sovereigns have made consistent and diligent efforts to redress historical wrongs. That is particularly so where the resulting mechanisms, like CIVS, are indisputably accessible and effective, and have been designed—with the support of the United States—to serve as the exclusive remedy for

claimants' injuries. See *Altmann*, 541 U.S. at 714 (Breyer, J., concurring) ("[T]he United States may enter a statement of interest counseling dismissal. Such a statement may refer, not only to sovereign immunity, but also to other grounds of dismissal, such as the presence of superior alternative and exclusive remedies … .") (internal citation omitted). Due respect for foreign sovereigns requires that, "absent governmental policies or evidence that … discrimination is barring access to or punishing resort to domestic remedies, United States courts should not take the step of hearing these claims without first giving the [foreign sovereign's] courts a chance to rule on them. To hold otherwise would imply that United States courts should presume that the courts of other nations cannot fairly hear claims brought by historically persecuted groups." *Fischer*, 777 F.3d at 864–65. U.S. courts should not lightly presume that foreign sovereigns are unable or unwilling to address serious grievances fairly and impartially.

Comity-based abstention also allows U.S. courts to remain sensitive to the reciprocity and other foreign policy concerns inherent in the treatment of foreign sovereigns within the U.S. judicial system. Many cases brought against foreign sovereigns have specific implications for U.S. foreign policy—implications that, in the view of the United States government, may counsel strongly against exercising jurisdiction. See *Sosa*, 542 U.S. at 733 n.21. The D.C. Circuit's approach leaves no room to consider these consequences, even where the United States has expressed its views by filing a statement of interest in the litigation urging abstention or dismissal. As the Seventh Circuit has pointed out, the United States would be greatly insulted if a foreign court were to order the United States to pay enormous sums to plaintiffs "based on events that happened generations ago in the United

States itself, without any efforts to secure just compensation through U.S. courts. If U.S. courts are ready to exercise jurisdiction to right wrongs all over the world, including those of past generations, we should not complain if other countries' courts decide to do the same." *Abelesz*, 692 F.3d at 682.

Comity-based abstention may not be appropriate in every situation. It is incumbent upon U.S. courts to scrutinize the nature and adequacy of foreign remedial measures before deferring to them. But the D.C. Circuit's inflexible, bright-line rule risks undermining the integrity of legitimate compensation mechanisms that foreign sovereigns have designed for the precise purpose of affording claimants fair and expeditious relief—and that, by virtually all accounts, have achieved that purpose. Neither the FSIA nor any compelling policy reason supports that result.

CONCLUSION

For the foregoing reasons, the decisions below should be reversed.

Respectfully submitted.

R. REEVES ANDERSON
ARNOLD & PORTER
KAYE SCHOLER LLP
1144 Fifteenth Street
Suite 3100
Denver, CO 80202
(303) 863-1000

JOHN B. BELLINGER, III
Counsel of Record
SALLY L. PEI
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000
John.Bellinger@arnoldporter.com

SEPTEMBER 2020

ADDENDA

ADDENDUM A

KAREN SCALIN, JOSIANE PIQUARD and ROLAND CHERRIER,	)	
Plaintiffs,	)	
v.	)	Case No. 15-cv-3362
SOCIÉTÉ NATIONALE DES CHEMINS DE FER FRANÇAIS,	)	[N.D. Ill.]
Defendant.	)	

DECLARATION OF MICHEL JEANNOUTOT
IN SUPPORT OF MOTION TO DISMISS OF
SOCIÉTÉ NATIONALE DES
CHEMINS DE FER FRANÇAIS

I, the undersigned, Michel Jeannoutot, declare that:

1. I have been the Chairman of the Commission for the Compensation of Victims of Spoliations Resulting from the Anti-Semitic Legislation in Force During the Occupation, or "CIVS," since September 10, 2011. I am authorized to file this declaration in support of Société Nationale des Chemins de fer Français' motion to dismiss.

2. I am also an Honorary Judge of the Court of Cassation, the highest court in the French judiciary. I was also Chief Justice of the Bastia, Chambery and then the Dijon Courts of Appeal between 1998 and 2009.

3. As Chairman of CIVS, I am familiar with all the aspects: the reasons it was formed, its purpose, the categories of claims that can entitle a claimant to compensation and its procedures. I am also familiar with the institutional responsibilities of CIVS and its fundamental role of compensating the victims of the Nazi Occupation in France.

4. The French Republic established CIVS by decree of September 10, 1999 to investigate the confiscations carried out under the Anti-Semitic Legislation by the Nazi Occupation forces or the Vichy authorities during World War II and to compensate the victims for the confiscations. As of December 31, 2014, the victims of the Holocaust or their children, grandchildren and all other legal heirs or assigns, had filed 28,829 claims with CIVS. Of those, 19,174 claims were for "material spoliations," most of which were for property confiscated on arrival at the internment camps; 9,655 claims were for "bank-related spoliations," in other words, seizures of assets in banks or contents of safety deposit boxes. France has not set a ceiling for the amount of compensation. As of December 31, 2014, nearly 500 million euros in compensation (483,472,740 euros) have been recommended for claims for material spoliations and 51,372,860 euros for bank-related spoliations. Nor has France set a deadline for filing claims with CIVS. All spoliations committed on territory where French sovereignty was exercised can obtain compensation. For the remainder, as of today, regardless of the nationality of the spoliation victims, 20.5 percent of the claims that were submitted to CIVS during the first 10 years of its operations came from other countries, and 7.5 percent of those came from the United States.

History and Purpose of CIVS

5. The French Republic has established several programs to compensate the victims of the Holocaust and/or

their legal heirs or assigns. On July 16, 1995, President Jacques Chirac spoke of the "unremitting debt" of the Nation to the Jews of France (about 300,000 in 1939, 40 percent of whom were French citizens), including the 76,000 Jews deported by the Nazi Occupation forces or the Vichy regime.

6. In 1997, the French government created the Mattéoli Working Party. This working party conducted a thorough investigation into the confiscations of property and all valuables in France occupied by the Nazis Resulting from the Anti-Semitic Legislation, including legislation on persons deported from France. The working party produced an exhaustive 3,000-page report that included recommendations for the government to repair these wrongs promptly and decisively. One such recommendation was that the government establish a body charged with examining claims that were submitted by the victims of the Anti-Semitic legislation passed by France under the Nazi occupation.

7. The French Republic followed the Mattéoli Working Party recommendation and created CIVS on September 10, 1999. Its role is "to review individual claims submitted by victims or their legal heirs or assigns to receive reparations for losses caused by the spoliations of property Resulting from Anti-Semitic Legislation in Force During the Occupation, either by the occupying authorities or the Vichy Authorities," and "to draft and propose suitable reparation or compensation measures."

Organizational Overview of CIVS

8. CIVS is an administrative commission of the French government under the Prime Minister. The Commission is not a court. It investigates claims, determines the nature and extent of material losses and submits recommendations for compensation to the Prime Minister or any other institution involved, and to banks in particular.

Action has always been taken on the recommendations that are issued in accordance with the commitments made by the Prime Minister and the banks.

9. CIVS consists of three divisions. The first is the Administrative Unit, which initiates the process by logging in the claim, contacting the claimants and conducting research in specialized archives. The second is the Rapporteurs, who are judges in one of the French judicial or administrative jurisdictions. They review the claims and propose an assessment of losses after the Principal Rapporteur of CIVS approves the reports. The third division is the Hearings Secretariat, which organizes the hearings of the Deliberative Panel and then issues a recommendation on the claim and proposes the amount of compensation.

10. When it was established, CIVS launched an international campaign in the print and radio media to notify potential claimants of their right to compensation and to inform institutions that deal with matters related to the Holocaust and the key Jewish organizations about the Commission. CIVS also maintains a telephone line to provide assistance to potential claimants and interested third parties, as well as a web site in French, English, German and Hebrew. The web site contains information about the Commission, answers to the most frequently asked questions, claim forms and other documents on the reparation measures for the Holocaust in France. Each year CIVS publishes a public report of its activity and it has published a special report on the first ten years of its operations.

Principles Underlying the Claim Process

11. CIVS operates according to three principles, and underlie its approach to compensating Holocaust victims: equity, pragmatism and promptness.

12. CIVS must answer claimants promptly, who may be elderly or in a difficult financial situation. Therefore, CIVS expedites the proceedings of direct victims of spoliations and those who are elderly or in a financially or otherwise difficult situation.

13. CIVS seeks to provide full compensation to each claimant for his or her losses, or at least to get as close to full compensation as possible. Moreover, there is no ceiling on the amount of compensation that CIVS can provide.

14. CIVS considers that claimants are acting in good faith when they apply for compensation for the losses they sustained. In many cases, it is impossible to gather evidence of losses sustained during deportations, internments or other events in Nazi Occupied France. Therefore, reflecting its pragmatic approach, CIVS has often relied on good-faith estimates in lieu of specific evidence of losses sustained when such evidence did not exist. Estimates may also suffice to prove material losses that occurred as part of everyday life or other plausible losses, so long as the claim is based on a coherent statement. Compensation decisions based on a claimant's supposed good faith also follow the principle that similarly-situated victims should receive the same treatment.

15. Claimants may apply for compensation from CIVS and there is no opposition based on the statute of limitations. CIVS is not subject to provisions of the law that deals with the statute of limitations, which would have resulted in the dismissal of the great majority of claims. Moreover, France has not set a deadline to submit claims to CIVS, unlike some programs in other European countries.

16. Finally, the CIVS process lightens the burden of proof on claimants, whose declarations are always presumed to be made in good faith. Personnel and rapporteurs frequently communicate with claimants and their

representatives to assist them in managing each step of the claims process.

Eligibility for CIVS Compensation

A. Eligible claimants

17. Claimants of any nationality are eligible to submit a claim for compensation to CIVS. While most claimants reside in France, a certain number reside in the United States, Israel or other countries. Most spoliation victims were born in European countries other than France, although many of these victims were born in France, Germany, Ukraine, Hungary and in a number of Eastern European countries.

18. Direct victims of spoliations may apply for compensation, as may their children, grandchildren, spouses, brother, sisters, nieces, nephews, great nephews and great nieces, in addition to all other legal heirs or assigns, whether they are family members or not, according to the rules of the governing law of succession.

19. All victims of spoliations that resulted from the Anti-Semitic Legislation in Force During the Occupation can receive compensation. Therefore, only the application of these laws is taken into consideration as a cause of spoliation, and not just the fact that the victim is Jewish.

B. Eligible claims

20. CIVS was established to review individual claims submitted by the victims or by their legal heirs or assigns to repair losses caused by the spoliations of property that occurred due to the Anti-Semitic Legislation in Force During the Occupation, by the Occupier and by the Vichy authorities. Claims for "material spoliations" and "bank-related spoliations," as provided for in the Washington Agreement between France and the United States of January 18, 2001, can be compensated by CIVS. Damages of

a physical or moral nature are not included in the scope of compensation.

i. Material spoliations

21. CIVS processes claims from persons that sustained material losses that resulted from the Anti-Semitic Legislation in Force During the Occupation, attributable to the French or Nazi Occupying authorities on French territory and assimilated territories. CIVS compensates spoliations perpetrated by public or private entities, such as insurance companies, banks or the Caisse des Dépôts et Consignations (CDC). To my knowledge, CIVS has never logged in a claim for compensation for spoliations attributable to the Société nationale des chemins de fer français ("SNCF") or to any transportation company. If such claims were filed, they would be eligible for compensation by CIVS according to the current laws. The confiscations that have resulted in compensation to date are confiscations that were made during arrests or upon arriving in the camps.

22. It is possible to obtain compensation through CIVS for a wide variety of material losses, including but not limited to:

- confiscation of money, personal property or liquid assets
- lootings of family residences or apartments
- work-related losses (such as merchandise inventory, raw materials, machines and equipment as well as losses of customer base and businesses)
- confiscation of money or personal property in the French internment camps, on the occasion of transport to a destination or upon departure from the internment camps
- confiscation of vehicles

- confiscation of works of art or other cultural property
- confiscation of real estate
- money paid to human smugglers to leave Nazi Occupied France to then enter Switzerland or Spain or, before 1943, to move from the occupied zone to the unoccupied zone
- confiscation of personal effects and furniture items located in residences that were used to hide victims during the Nazi Occupation
- unpaid veterans' pensions.

23. The claims for material spoliations that are filed most often with CIVS are claims for confiscation of money, jewelry, valuables, liquid assets or personal property of the victims at the time of their arrest, entry or detention at French internment camps, and in particular Drancy, Mérignac and others. According to the records of the Mattéoli Working Party, the victims' property was confiscated by French police and gendarmes or by the SS and German military personnel.

24. Indeed, based on the findings of the Mattéoli Working Party and records of police searches at internment camps, CIVS has observed that the average amount of cash confiscated from the victims in these cases was roughly 3,000 francs at that time, i.e. the equivalent of 930 euros today. This amount of 930 euros is used when the amount confiscated is unknown or less than this amount. When the amount is known and is higher, the recommended compensation is the known amount revalued in euros. Compensation has already been paid for much greater confiscated amounts.

25. Between 2000 and 2010, 60 percent of all case files for material losses that were submitted to CIVS, or nearly 9,000 claims, were entitled to compensation for losses caused by the confiscations from victims when they were

transferred to or arrived at French internment camps. In 2010, CIVS had already issued recommendations for a total amount of 18,530,000 euros in compensation for confiscations.

ii. Bank-related spoliations

26. Pursuant to the Washington Agreement between France and the United States, certain financial institutions have established two compensation funds for bank-related claims. The first fund, in the amount of $50,000,000, has compensated victims whose assets have been identified. The second fund, in the amount of $22,500,000, has paid compensation in the form of a "lump sum" for certain bank-related claims for which CIVS procedures were insufficient to determine the amount of the loss. To date, CIVS has recommended 51,372,860 euros in compensation for bank-related spoliations.

The Claims Process

A. Filing a claim

27. Any person, regardless of country of residence, can file a claim with CIVS, either in person or through an appointed representative (an attorney, family member or an organization that advocates on behalf of victims of the Holocaust, such at the Holocaust Claims Processing Office in New York, for example). The claimant simply sends a letter, fax or email. A claim form is also available on CIVS web site. The process is free of charge and no special formal procedure is required. The Administrative Unit logs in the claim upon receipt. It then notifies the claimant that the claim has been received and also sends the claimant a questionnaire and power of attorney form to authorize CIVS to conduct the necessary searches concerning the victims and the spoliated property, at no charge.

28. A claimant is advised to mention as much information as possible on the claim form, and in particular the claimant's status, the type of property confiscated and where, the capacity of other persons involved, etc. However, the Administrative Unit contacts claimants directly to assist them to complete the questionnaire or retrieve information that is essential for processing the claim. Such communications are strictly confidential.

B. Researching a claim

29. After the questionnaire is logged in, the Administrative Unit forwards the claim to CIVS "Control Network" for research in the archives.

30. Research in the archives is an essential part of the claim compensation process. For material losses, it would be practically impossible to assess the property at issue without such research. Research in the archives can also uncover spoliations that were unknown at that time and then they can be included in the claim.

31. In addition, research in the archives is important because, according to one of the Mattéoli Working Party's recommendations, CIVS does not provide compensation for claims that have previously received compensation under another program, such as the German Federal Compensation Act (BRüG) or the French law on war damages, unless the compensation recommended under these arrangements did not really provide compensation for the value of the spoliated property. Thus, prior to 2009, CIVS sent more than 16,000 files to its Berlin office. Nearly 60 percent of these claims had already been compensated by Germany to some extent. CIVS supplements the compensation paid by Germany or the compensation paid for war damages if it deems this compensation insufficient.

32. The Control Unit reviews the claim and identifies the various possible types of property reported confiscated, and it also uses the documents in the file as a basis.

CIVS case officers forward copies of the relevant documentation to relevant sources of archives for research. These include:

- National Archives of France (CIVS satellite office) and the archives in the French departments
- Paris Archives (CIVS satellite office)
- Berlin Archives (CIVS satellite office)
- Ministry of Culture, Department of Museums of France
- Ministry of Foreign Affairs, Department of Archives
- Paris Police Headquarters
- Center of Contemporary Jewish Documentation
- Caisse des Dépôts et Consignations
- French Federation of Insurance Companies

33. Persons who submit a claim for compensation for material spoliations that took place during arrest or internment at French camps may especially benefit from research performed in certain collections of archives. For example, CIVS has searched the files of the Caisse des Dépôts et Consignations and found conclusive answers about consignments of property that was confiscated from persons detained at Drancy internment camp for over 3,600 claims. The CIVS research team that works at the National Archives of France consults digitized records at the Paris Police Headquarters of those arrested and detained at the Drancy, Pithiviers and Beaune-la-Rolande internment camps.

C. Investigating the Claim

34. The Minister of Justice appoints sitting or retired judges, known as "rapporteurs," to investigate CIVS claims. In general, these judges are part of French judicial, administrative or financial jurisdictions and they

spend several days a week investigating files that are submitted to CIVS.

35. The rapporteurs are responsible for conducting an investigation for any claim at the conclusion of the research in the archives and they are to assemble all information to determine the existence and extent of spoliations. The rapporteurs may summon any person whose testimony is deemed relevant and may request their opinion or the advice of certain government bodies or a qualified third party.

36. At this time there are 14 rapporteurs and one Principal Rapporteur, who is also a judge and who oversees and coordinates the rapporteurs' work.

37. A rapporteur assigned to a claim contacts the claimant or the person representing the claimant to arrange a meeting. This meeting can be conducted in person, at the Commission's offices or at the claimant's (or representative's) residence if the claimant has health issues. The claimant may also request a meeting by telephone or letter correspondence.

38. The meeting between the rapporteur and the claimant is meant to facilitate the claims process and ensure that claimants receive the full compensation to which they are entitled. For example, the rapporteur may check that claimants did not inadvertently fail to mention the cases of spoliations in their claims. The rapporteur may also consider it necessary to ask claimants questions about their family, explain the rapporteur's work to them and solicit their opinion on the proposed compensation.

D. Rapporteur's proposed compensation for a claim

39. The rapporteur prepares a compensation proposal based on the type and extent of the verified spoliations. This amount is to include offsets, if any exist, for

prior compensation that has already been paid by the French or German authorities.

40. The rapporteurs calculate the loss based on the specific characteristics of spoliations where feasible.

- Spoliations of property taken from residences are appraised using criteria in the German BRüG Act (based on the type of building, number of rooms and occupants) or, if the property was insured, based on the insurance policy.
- Material and bank-related losses are appraised as of the date they occurred and are expressed at their updated value.
- Businesses or work-related assets that are confiscated are valued based on specialized reference work in the sector and following consultation with businesses.
- Works of art are assessed based on an appraisal by the Department of Museums of France or reference work specializing in prices for works of art.

When the details of these characteristics are not known, the rapporteur proposes lump-sum compensation.

41. Based on research in archives and the other relevant documents in the file, the rapporteur, in consultation with the claimant, determines who the legal heirs or assigns are for compensation so that the "reserve portions" are set aside for other legal heirs or assigns. This may require preparing the claimant's family tree beforehand.

42. The rapporteur sends a first draft of the compensation proposal to the claimant for his or her opinion. At that time the claimant may make comments or dispute the proposal. In most cases, the claimant has agreed with the rapporteur's proposal.

43. At this point in the process, the claimant receives a copy of the rapporteur's report as well as his request for

other documents or references in the claim file that may be of use in supporting the claim. Even if the claimant does not request them, in many cases the rapporteur sends the claimant a copy of documents that support his or her proposal or that may be of historical interest for the victim or the victim's family. Then the rapporteur submits his report and the claim file to the Principal Rapporteur who approves it and forwards it to the Hearings Secretariat.

44. If a claimant is not satisfied with the rapporteur's investigation, he or she may request that the rapporteur conduct an additional investigation if he or she finds, for example, that there is a material error in the first investigation, or if there is new evidence or information that has been updated. If the rapporteur determines that these conditions are not present, the claimant may contact the Chairman of CIVS or Principal Rapporteur to request a new investigation.

E. Hearings before the Deliberative Panel

45. Under the authority of the Chairman of CIVS, the Hearings Secretariat then schedules a review of the claim at a hearing of the Deliberative Panel. The panel is comprised of members with extensive and relevant professional and personal experience in the field; there are two sitting judges from the Court of Cassation, including the chief justice, two members of the Council of State [Conseil d'Etat], two senior advisors from the French Audit Office [Cour des Comptes], two university professors and two prominent persons active in Jewish rights organizations.

46. The Principal Rapporteur assigns claims to the Deliberative Panel either in plenary formation, with a quorum of six members, or to a sub-commission with three members, based on the complexity of the claim.

47. The claimant is invited to attend the hearing and may take the floor should he wish to do so. At the hearing, the claimant may also be represented by an attorney or any other person of his choosing, such as a family member.

48. CIVS has organized regular missions to Israel and the United States so that residents of those countries, who have submitted a substantial number of claims to CIVS, can participate in the hearings more easily and take part in the review of their claim, just like claimants residing in France. Nearly 75 percent of all claimants whose claims were on the agenda attended the hearings held in the United States and Israel. Total compensation for these claims has amounted to 20.7 millions euros.

49. The process for the Deliberative Panel hearing is generally as follows: 1) the rapporteur makes his report or it is read by the Hearings Secretary in the rapporteur's absence; 2) the claimant is invited to speak; 3) the Panel asks any questions they may have of the claimant or rapporteur; 4) the government's commissioner, appointed by order of the Prime Minister, and who represents the government, gives a simple opinion on how to handle the claim, although this opinion is not binding on the Deliberative Panel; and 5) the claimant may speak last. Then the Panel deliberates and issues a recommendation for the claim. The Principal Rapporteur attends all plenary sessions and some sub-commission sessions.

50. The Commission forwards the recommendation to the Compensation Unit of the Prime Minister, which contacts the claimant. Once approved by the Prime Minister, the compensation decision is sent to the National War Veterans Administration (ONAC) for payment. Recommendations for compensation for bank-related spoliations are forwarded to the two funds administered by the United Jewish Welfare Fund, which orders the CDC to pay the amount. Decisions of the Prime Minister may be

appealed to a French court of competent jurisdiction, but given the degree of satisfaction that the CIVS process provides for claimants, only a few claims have been appealed. Some appeals have been determined to be admissible, and then CIVS has proposed additional compensation.

51. When other potential legal heirs or assigns become known during the claims process, CIVS sets aside their portion of the compensation for spoliation claim. Such legal heirs or assigns, or their own legal heirs or assigns, are required to contact CIVS and submit the necessary documents to obtain their reserved share of compensation. CIVS has recommended compensation for several thousand claims for the reserved portion of compensations. As of December 31, 2014, the government has 26,514,811 euros and the banks have $1,650,376 that is set aside pending payment.

Results of the CIVS Compensation Program

52. As of December 31, 2014, 28,829 claims had been logged in at CIVS; of those, 19,174 were for material spoliations, including looting of apartments, commercial and industrial businesses, work-related property and confiscations of property in internment camps. The remaining 9,655 claims were for bank-related spoliations.

53. Between the time the Commission's mission was established and December 31, 2014, 483,472,740 euros have been recommended for compensation for material spoliations, and 51,372,860 euros for compensating bank-related spoliations. These figures are constantly increasing.

The Claims Submitted in this Lawsuit Are Covered Under CIVS

54. I have reviewed the allegations of the plaintiffs in this lawsuit. Unless I am mistaken due to confusion in

names, Mrs. Josiane Piquard and Mr. Fred Bender, son of Julius and Karolina Bender, have contacted CIVS previously to obtain reparations for spoliations of which their grandparents and parents were victims. At that time they received compensation according to CIVS recommendations. They did not dispute this compensation.

55. Plaintiffs Josiane Piquard and Karen Scalin are entitled to submit a new claim to CIVS based on facts that were not presented to CIVS at the time of the previous investigation, which is why no compensation was provided for those facts. If the plaintiffs were to submit new information, CIVS would review it in accordance with the principles and procedures indicated in this document. Since the acts described in the complaint took place on French territory, the claims made in this lawsuit are covered by CIVS.

56. Mr. Cherrier may file a claim with CIVS for spoliations committed in France, regardless of who the perpetrators of these spoliations are. The statute of limitations does not apply to him. There are no procedural rules that could prevent him from filing his claim with CIVS.

I declare, under penalty of perjury under the laws of the United States of America, that all of the foregoing is true and correct.

Signed on July 13, 2015, in Paris, France.

_____

Michel Jeannoutot

CERTIFICATION OF ACCURACY

Re: Translation of declaration of Michel Jeannoutot

I, Steven Sachs, hereby attest that I am a translator certified by the American Translators Association for French into English, that I have translated the attached document, and that to the best of my knowledge, ability, and belief this translation is a true, accurate, and complete translation of the original French document that was provided to me.

[original signature]

Steven Sachs, CT

August 20, 2015

[seal]

[original French text omitted]

ADDENDUM B

KAREN SCALIN, JOSIANE PIQUARD and ROLAND CHERRIER,	)	
Plaintiffs,	)	
v.	)	Case No. 15-cv-3362
SOCIÉTÉ NATIONALE DES CHEMINS DE FER FRANÇAIS,	)	[N.D. Ill.]
Defendant.	)	

DECLARATION OF MICHEL JEANNOUTOT IN SUPPORT OF MOTION TO DISMISS OF SOCIÉTÉ NATIONALE DES CHEMINS DE FER FRANÇAIS

I, the undersigned, Michel Jeannoutot, declare that:

1. I have been the Chairman of the Commission for the Compensation of Victims of Spoliations Resulting from the Anti-Semitic Legislation in Force During the Occupation, or "CIVS," since September 10, 2011. I am authorized to file this supplemental declaration in support of Société Nationale des Chemins de fer Français' motion to dismiss. The following declaration supplements my previous declaration dated July 13, 2015.

2. CIVS disagrees entirely with the statements about it that the plaintiffs submitted to the Court. This supplemental declaration does not aim to be a reply to these statements, which are contestable. This declaration provides in the most absolutely authoritative manner

additional information regarding CIVS procedures, practices and rules.

3. All the spoliations that occurred on French territory during the deportations of Jews from France during World War II are considered by CIVS as spoliations resulting from the Anti-Semitic laws that were in effect during the Occupation. Consequently, CIVS will cover claims for any spoliation that occurred during embarkation or on the trains or other means of transportation as part of these deportations, just as CIVS covers claims for spoliations that occurred during arrests and arrivals in the internment camps. The decisive factor is that the spoliation occurred on territories where French sovereignty was exercised.

4. CIVS is well aware that, for many victims and their heirs, it may be extremely difficult to obtain evidence of spoliations during the Occupation. For this reason, CIVS procedures apply somewhat flexible standards of evidence, for material spoliations and for bank-related claims as well. As of the end of 2014, CIVS had processed 28,829 claims that resulted in nearly 500 million euros in compensation for material spoliations, and more than 50 million euros for bank-related spoliations.

5. CIVS asks only for basic identification information that a potential claimant is required to provide in his or her claim. This information consists of the name of the deported person, the relationship between the claimant and victim, the existence of other potential heirs, the victim's place of residence if known, and a general description of the items the claimant believes were taken. If the claimant already has evidence of the spoliation, CIVS will use it in the more detailed research that it will conduct for the claim. However, such evidence is not required for filing a claim or for obtaining compensation, as described below.

6. CIVS enlists substantial means to support and investigate claims from its claimants. Six of its permanent employees work in the centers of the National Archives, the Paris Archives and in Berlin to find evidence on which these claims can be based or to update other spoliations. To this same end, the Commission has a relationship with the French Culture and Foreign Affairs Ministries, the Paris Police Headquarters, the Caisse des Dépots et Consignations (CDC), bank archives and other archives services already mentioned in my declaration of July 13, 2015. The research in the archives that CIVS has carried out has proven to be highly worthwhile. In more than three quarters of the claims for compensation for spoliations, through this research, at least one document has been discovered that provides circumstantial evidence of spoliation.

7. CIVS may recommend compensation even in the absence of evidence submitted by the claimant or by its own research. To establish compensation, CIVS may consult its archives and the recommendations for compensation it has issued over the last 15 years for the 28,829 claims received. The recommendations made by CIVS to address these cases for which there is no evidence and for the other cases are based on principles of equity among the claimants. For example, when a victim was deported, it is presumed in all cases that the victim's residence was looted, and the recommended corresponding compensation is determined using a scale established by the German Federal Compensation Act (BRüG), and taking into account the number of rooms in the residence, its geographic location and its level of comfort, and the number of occupants. There is a second example: the amount of compensation paid for the confiscation of property during internment or an arrest. A lump sum of 930 euros per person is recommended by the Commission if there is no evidence, or if the archives show that the amount of a

confiscation was lower than this. This lump sum was set by reference to the average of the confiscations established by the work of the Mattéoli Working Party. This information is recorded in the claimant's file, which is always accessible throughout the procedure and after it has been concluded.

8. CIVS may also recommend compensation that exceeds the claimant's expectations or the amount proposed by the rapporteur. Hence, based on the Commission's opinion, the Prime Minister decided to compensate a close relative of one of the plaintiffs, Mrs. Karen Scalin, for an amount of 76,300 euros, whereas the amount requested was for a claim of USD 30,000 (which is slightly more than 28,000 euros).

9. As in any administrative decision, decisions of the Prime Minister based on a CIVS recommendation can be appealed before the administrative tribunal and appeals before the administrative court of appeals are possible, as well as final appeals before the Council of State [Conseil d'Etat]. Likewise, a recommendation for dismissal issued by CIVS can be appealed before the administrative judge because there is a complaint. For all of these appeals, claimants may obtain total or partial legal aid based on their income.

10. I have reviewed the allegations of Mrs. Scalin, Mrs. Piquard and Mr. Cherrier, the plaintiffs. Based on my experience as Chairman of CIVS, I conclude that if items of the relatives of the plaintiffs were seized during the boarding of deportation trains or on these trains in French territory, CIVS is willing and competent to entertain these claims, and this also applies to spoliations during arrests, transfers and internment, and to recommend compensation to which the claimant may be entitled.

I declare, under penalty of perjury under the laws of the United States of America, that all of the foregoing is true and correct.

Signed on November 17, 2015, in Paris, France.

_____

Michel Jeannoutot

CERTIFICATION OF ACCURACY

Re: Translation of supplemental declaration of Michel Jeannoutot

I, Steven Sachs, hereby attest that I am a translator certified by the American Translators Association for French into English, that I have translated the attached document, and that to the best of my knowledge, ability, and belief this translation is a true, accurate, and complete translation of the original French document that was provided to me.

[original signature]

Steven Sachs, CT

November 24, 2015

[seal]

[original French text omitted]

ADDENDUM C

DECLARATION OF STUART E. EIZENSTAT

I, Stuart E. Eizenstat, hereby declare and state as follows:

1. I am currently the Deputy Secretary of the Treasury, as well as the Special Representative of the President and the Secretary of State on Holocaust Issues, positions I have held since July 1999. Prior to my current position, I served as Under Secretary of State for Economic Affairs, and before that as Under Secretary of Commerce and as U.S. Ambassador to the European Union. Since 1995, I have been the Secretary of State's Special Envoy on Property Restitution in Central and Eastern Europe.

2. A number of lawsuits have been filed against French and other banks that operated in France during World War II on behalf of Holocaust survivors, other victims of the Nazi era, and their heirs to recover, among other things, looted property and assets deposited in dormant or confiscated bank accounts in France.

3. As a matter of policy, the United States Government believes that concerned parties, foreign governments, and non-governmental organizations should act to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation, and cooperation, rather than subject victims and their families to the prolonged uncertainty and delay that accompany litigation. This is because the U.S. supports efforts to bring some measure of justice to these victims in their lifetimes, and because the U.S. believes that available funds should be spent on the victims and not on litigation, and, importantly, also because the number of victims who can be covered by a negotiated settlement is often greater than can be achieved through litigation. Much of my work over

the past five years has been devoted to effectuating this policy.

4. Most recently, and most relevant to this litigation, I led an inter-agency United States Government team in negotiations resulting in the creation of a fund, and improvements to a French governmental commission, each of which will make payments to victims of French banks during World War II. This declaration sets forth the history of those negotiations, information about France's efforts in creating the commission and a related foundation, and the basis upon which the United States Government has concluded that it would be in its foreign policy interest for that fund, commission, and foundation to be the exclusive remedies and fora for all claims against French banks arising out of their activities in France during World War II, including those raised in this litigation.

Background of French Banks Negotiations

5. The background of these negotiations encompasses three sets of simultaneous developments: the activities of the government of France, the activities of attorneys representing claimants against French banks, and the activities of the United States Government.

6. In 1995, President Jacques Chirac of France publicly recognized France's unremitting debt to the victims of the German occupation and the Vichy Regime in France, and pledged that the French Government would take efforts to address all remaining vestiges of that period. One of those efforts was the creation, in January 1997, of the Study Mission on the Spoliation of Jews in France, known as the "Mattéoli Mission," the aim of which was to study the conditions under which property belonging to French Jews was confiscated by the Nazis and Vichy authorities during the period 1940-1944. In April 2000, the Mattéoli Mission issued a 3,000 page report detailing various types of property spoliation that occurred and

attempting to quantify the extent of such spoliation. With respect to banking assets, the Mattéoli Mission found that approximately 64,000 people, holding approximately 80,000 bank accounts, were deprived, either temporarily or permanently, of over seven billion francs in assets. While it was able to determine that some of that amount was restituted, the fate of significant portions of the spoliated bank assets remains unknown.

7. The Mattéoli Mission made several recommendations for addressing these deprivations, two of which are particularly relevant here. First, it recommended creation of a commission to hear claims by individuals who lost property or are heirs to those who lost property that was never restituted. That commission, the Commission for the Compensation of the Victims of Acts of Despoilment Committed Pursuant to Anti-Semitic Laws in Force During the Occupation ("Drai Commission"), was created in September, 1999. Second, it recommended the creation of a foundation to support Holocaust education and memory and to-provide financial support to victims of persecution and their families. That foundation, the Foundation for Memory of the Shoah ("Foundation"), was created in December 2000. An orphan's fund was also created for the children of those killed during the Holocaust.

8. Meanwhile, in December 1997 and again in December 1998, attorneys representing individuals with World War II era claims against French and other banks filed class action law suits in the United States against those banks to, among other things, recover unrestituted assets belonging to them or their antecedents. Those cases proceeded to the point where, on August 31, 2000, a United States District Court denied a motion to dismiss two of the cases, indicating that they would be allowed to proceed.

9. Finally, and also simultaneously, from the Fall of 1998 through the Summer of 2000, I led an inter-agency

United States Government team that facilitated a resolution of class action lawsuits filed in U.S. courts against German companies arising from slave and forced labor and other wrongs by those companies during the Nazi era. Those negotiations resulted, in July 2000, in the creation of a German Foundation, "Remembrance, Responsibility, and the Future," to make payments to victims of slave and forced labor and all others who suffered at the hands of German companies during the Nazi era.

10. While the German negotiations were proceeding, I also led an inter-agency United States Government team facilitating similar talks revolving around the role of the Republic of Austria and Austrian companies in the Nazi era and World War II. In October, 2000, those talks resulted in the creation of a foundation in Austria to make payments to those who worked as slave and forced laborers on the present day territory of the Republic of Austria.

11. Subsequent to the conclusion of the German negotiations, I was approached separately by the French Government and by attorneys representing individuals with claims against French banks arising out of the Holocaust. Each of them sought U.S. Government assistance in facilitating a resolution of the pending class action litigation against French and other banks, following the models established in the German and Austrian negotiations.

The Negotiations and Resolution

12. These negotiations commenced in November, 2000, with a set of meetings in Washington, D.C. Subsequent meetings were held in December in Washington, in January in Paris, France, and most recently, on January 17-18 in Washington. The participants have included the government of France, attorneys representing French banks, attorneys representing claimants against the banks, the Simon Wiesenthal Center of Paris, and the

Conseil Representatif des Institutions Juives de France ("CRIF"), an umbrella organization of French Jewish groups. Through these participants, the victims' interests and those of the banks were broadly and vigorously represented.

13. The negotiations centered on the question of whether the existing institutions created by the French - the Drai Commission and Foundation - could sufficiently ensure fair compensation for those who suffered losses at the hands of French and other banks during the Holocaust. At the outset, the parties were far apart on both this question, and on the amount of money necessary to provide such compensation.

14. One of the key issues for the attorneys representing the victims was to establish a mechanism for compensation to those people who, despite the impressive and exhaustive historical work of the Mattéoli Mission, could not point to specific evidence of the existence and fate of their or their families' banking assets. Although the Drai Commission would make compensation awards to claimants on very relaxed standards of proof, there could be no guarantee that all victims would receive some measure of justice.

15. At a negotiating session that lasted well into the night of January 8-9, 2001, the parties reached a major breakthrough. The French banks agreed to create a supplemental fund (the "Fund"), which would make payments to people with little or no documentation of their claims, in addition to maintaining its commitment to pay all well-documented claims through the workings of the Drai Commission. In return, the plaintiffs, through their attorneys, agreed that they would voluntarily dismiss with prejudice all lawsuits currently pending against French banks. In a lengthy negotiating session all night on January 17 and during the day on January 18, we hammered out an agreement satisfactory to all parties.

16. On January 18, 2001, the parties to the negotiations gathered in Washington to sign a Joint Statement concluding the negotiations, and expressing their support for the Fund, the Drai Commission, and the Foundation. See Exh. A. Secretary of State Albright personally congratulated the parties on the successful conclusion of the negotiations. On the same day, the United States and France signed an Executive Agreement, in which France committed that the operation of the Fund, the Drai Commission, and the Foundation would be governed by principles agreed by the parties to the negotiations, and the United States committed to take certain steps to assist French banks1 in achieving "legal peace" in,the United States for claims arising out of their activities in France during World War II. See Exh. B.

17. The role played by the United States in this negotiation was as a facilitator. The Executive Agreement negotiated is not a government-to-government claims settlement agreement, and the United States has not extinguished the claims of its nationals or anyone else. Instead, the intent of our participation was to bring together the victims' constituencies on one side and the French Government and banks on the other, to bring expeditious justice to the widest possible population of survivors, and to help facilitate legal peace. Among these parties, the United States facilitated the essential arrangement by which the French side would establish the Fund, and make certain enhancements to the Drai Commission and Foundation, to compensate those who suffered at the hands of banks operating in France during World War II, and the class action representatives in pending United

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[1] The term "French banks" includes several non-French banks as well - in the agreements of the parties, the word "Banks" is defined to include all banks that are defendants in the litigation over World War II era activities, as well as all banks that are members of a French bank trade association.

States litigation agreed to give up their claims. The United States further contributed its own commitment to advise U.S. courts of its foreign policy interests, described in detail below, in the Fund, the Drai Commission, and the Foundation being treated as the exclusive remedies for Holocaust-related claims against French banks, and, concomitantly, in current and future litigation being dismissed.

The French Institutions

18. Taken together, the Fund, the Drai Commission, and the Foundation are intended to accomplish a complete disgorgement of any unjust enrichment and assets never restituted to their rightful owners by the French government, banks, and other financial institutions, and will result in compensation to persons who suffered at the hands of French banks during World War II.

19. The Drai Commission will operate as follows. It will undertake a program to publicize world-wide its existence and the availability of its claims procedure and to make its forms and application procedures easily available to claimants at no cost to them. It will also cooperate with organizations representing victims to ensure that potential claimants have knowledge of and access to the Commission. In addition, it will set up offices or contact centers in the United States, in Israel, and in any other countries in which a significant number of potential claimants live, to allow claimants to contact the Commission and make their claims without travel to France.

20. The Drai Commission will investigate and consider all claims by any person for compensation for any bank or financial institution doing business in France during World War II and, if an account can be verified, determine the amount designed to compensate fully the claimants for any material damages. It will do so based on relaxed standards of proof. It can recognize as sufficient to

authorize payment any of various standards of evidence, including not only proof but also presumptions, indications, and even the "intimate conviction" of the Commission. Claimants can be represented by counsel or others at every stage of the process, even if they cannot personally appear.

21. Once the Commission determines an award should be made, it will refer that award to the French banks. There is no monetary limit on such awards. The banks have committed, in writing, to make full and prompt payment of all awards recommended by the Commission, at current value, regardless of the eventual total amount. As good faith evidence of that commitment, the banks agreed during our negotiations to establish an escrow account, initially capitalized at $50 million and to be replenished so as to ensure the amount in the account never falls below $25 million, to be used to promptly pay all Drai Commission awards.

22. The Commission has agreed to establish an appeals process. Claimants whose claims are decided by a panel of Commission members are entitled to appeal to the full Commission, while those whose claims are decided in the first instance by the full Commission will be entitled to seek reconsideration of such decisions, in each case on the basis of new facts, new evidence, or material error These internal appeals are in addition to whatever administrative and judicial appeals may exist under French law.

23. The Commission will also issue regular public reports that detail its activity as well as the criteria established through Commission decisions and the procedures for processing claims. It will also provide a confidential report on the case-by-case disposition of banking claims. That report will be shared with the United States Government. The Drai Commission will also welcome representatives of Holocaust victims and the United States Government for exchanges of information, and it will operate with

the maximum transparency provided for under French law.

24. Individuals whose claims cannot be substantiated by the Drai Commission, and whose names cannot be matched to the list of 64,000 account holders prepared by the Mattéoli Mission, but who submit credible evidence that suggests they or their antecedents may have had bank assets that were not subject to restitution, will be referred by the Drai Commission to the Fund. The Fund, capitalized at $22.5 million contributed by the French banks, will make per capita payments of up to $3,000 to all persons referred to it by the Drai Commission. The Fund is also permitted to make supplemental payments to individuals who receive awards from the Drai Commission that are lower than the Fund's per capita payment floor. Interest on the Fund will be used for administrative expenses, and for the costs of an organization selected by plaintiffs' counsel to help facilitate claims, and will accrue to the benefit of the Fund. Any unused portion of the Fund at the end of the claims period will be contributed to the Foundation.

25. The Foundation serves as the primary mechanism to achieve full disgorgement by French banks and other French institutions of any remaining assets that were not subject to restitution. The endowment of the Foundation, which is over 2.5 billion Francs, or approximately $375 million at current exchange rates, was set at the amount recommended by the Mattéoli Mission, and represents the current value of the amount of assets that cannot be conclusively shown to have been reactivated by the rightful owners. Approximately $100 million of that was contributed by French banks.

26. The Foundation will have among its objectives the development of research and dissemination of knowledge about the Holocaust and the victims of the Holocaust, as well as other genocides and crimes against

humanity, and support for initiatives to give moral, technical, and financial support to those who have suffered from persecution and their families. A significant amount of the Foundation's funds will be used for grants to organizations outside France, including in the United States.

27. The Foundation will be run by a 25 member Board of Directors, chaired by a Holocaust survivor, Simone Weil. Eight directors will represent the French government, ten will represent Jewish groups in France, including the CRIF, and seven will be eminent persons chosen by the other directors and can include non-French nationals.

28. A key point regarding these institutions is that all victims who suffered injury at the hands of French banks are eligible to apply for restitution. Indeed, during the negotiations, attorneys representing the victims vigorously represented not only the named plaintiffs in their cases, but also the interests of heirs and others who are similarly situated.

The United States' Interests

29. The creation and successful operation of the Fund, the Drai Commission, and the Foundation is in the enduring and high interests of the United States. The United States Government believes, for the reasons set forth below, that all claims against French banks arising from their activities in France during World War II, including but not limited to claims relating to aryanization and damage to or loss of property, including banking assets, should be pursued through the Drai Commission and the Foundation instead of the courts.

30. First, it is an important policy objective of the United States to bring some measure of justice to Holocaust survivors and other victims of the Nazi era, who are elderly and are dying at an accelerated rate, in their lifetimes. Over one hundred thousand Holocaust survivors,

including many who emigrated from France, live in the United States. As noted earlier, the United States believes the best way to accomplish this goal is through negotiation and cooperation.

31. The Drai Commission, the Fund, and the Foundation are an excellent example of how such cooperation can lead to a positive result. These fora will, without question, provide benefits to more victims, and will do so faster and with less uncertainty than would litigation, with its attendant delays, uncertainty, and legal hurdles. Moreover, the Drai Commission and the Fund will employ standards of proof that are far more relaxed than would be the case with litigation. Litigation, even if successful, could only benefit those able to make out a claim against a bank over which they could obtain jurisdiction in the United States. By contrast, the Drai Commission, the Fund, and the Foundation will benefit all those with claims against banks that were active in France during World War II, regardless of whether such banks are still in existence today. The creation of the Fund by the banks, the commitment by the French banks to pay all awards recommended by the Commission, and the participation in the Foundation not only by the French banks but by the Government of France and other financial institutions, allow comprehensive relief for a broader class of victims than would be possible in United States judicial proceedings.

32. All participants in the negotiations accepted the level of the Foundation's funding, which was intended to accomplish full disgorgement of any assets never restituted to their rightful owners, the level of funding of the Fund, and the procedures adopted by the Drai Commission for prompt resolution of all claims brought before it. In addition, the Foundation will be dedicated in part to efforts to ensure that crimes like those perpetrated during the Holocaust never happen again.

33. The United States, together with the participating lawyers for the victims and all other parties to the negotiations, therefore believes that the resolution of these cases through the Drai Commission, the Fund, and the Foundation is fair under all the circumstances. This resolution, like the previous resolutions in Germany and Austria, the United States hopes, will serve as an example to other nations and in other cases where resolution of claims by victims of the Nazi era for restitution and compensation has not yet been achieved.

34. Second, establishment of the Fund, and recognition of the Drai Commission and the Foundation, helps further the close cooperation between the United States and its important European ally and economic partner, France. One of the reasons the United States took an active role in facilitating a resolution of the issues raised in this litigation is that we were asked by the French Government to work as partners with them in helping to make their efforts a success. In recent years, French-American cooperation on these and other issues has been very close, culminating in the joint effort to resolve these complex issues. This has helped solidify the ties between our two countries, ties which are central to U.S. interests in Europe and the world.

35. France is the oldest ally of the United States, and a major political partner on the international scene. As a member of the United Nations Security Council, NATO, the European Union, the Organization on Security and Cooperation in Europe, and the Council of Europe, France plays a critical role on issues that directly affect U.S. national interests. France has collaborated closely with the United States in critical areas such as the Middle East peace process, the Balkans, and reform of the United Nations. France is a major component of the European Union, with which the U.S. has trading relations amounting to more than a trillion dollars a year. We work closely

with our French allies over a broad agenda -- political, economic and social -- and need their cooperation in achieving many of our goals, including with respect to Holocaust assets. Given the many challenges the U.S. will face in the future and the importance of the relationship with France, it is essential that we work to diminish any potential irritants between the two countries.

36. Third, the participating plaintiffs' counsel, the defendants, victims' representatives, and the French government are united in seeking dismissal of this litigation in favor of the remedy provided by the Fund, the Drai Commission, and the Foundation, and the United States strongly supports this position. The alternative would be years of litigation whose outcome would be uncertain at best, and which would last beyond the expected life span of the large majority of survivors. Ongoing litigation could lead to conflict among survivors' organizations and between survivors and French banks, conflicts into which the United States and French governments would inevitably be drawn. There would likely be threats of political action, boycotts, and legal steps against corporations from France, setting back European-American economic cooperation.

37. Dismissal of all pending litigation in the United States in which Holocaust-related claims are asserted against French banks was accepted by all as a precondition to allowing the Fund to make payments to victims. The United States strongly supports the creation of the Fund, and wants its benefits to reach victims as soon as possible. Therefore, in the context of the Fund, it is in the enduring and high interest of the United States to vindicate that forum by supporting efforts to achieve dismissal of (i.e., "legal peace" for) all Holocaust-related claims against French banks.

38. Fourth, and finally, the Fund, the Drai Commission, and the Foundation are a fulfillment of a half-century

effort to complete the task of bringing justice to victims of the Nazi era. Since the liberation of France in 1944, France has made compensation and reconciliation for wrongs committed during the occupation and Vichy regime an important part of its political agenda. Although no amount of money will ever be enough to make up for all Nazi-era crimes, the French Government has over time created significant compensation and restitution programs for Nazi-era acts. The Fund and the Foundation add another $400 million to that total, over and above whatever claims are ultimately paid through the Drai Commission, and complement these prior programs.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: *1/19/01*

[original signature]

Stuart E. Eizenstat

Deputy Secretary of the Treasury and Special Representative of the President and Secretary of State on Holocaust Issues