No. 19-942

IN THE

Supreme Court of the United States

LAUREL ZUCKERMAN, AS ANCILLARY ADMINISTRATIX OF THE ESTATE OF ALICE LEFFMANN,
Petitioner,

v.

THE METROPOLITAN MUSEUM OF ART,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* ARMENIAN BAR ASSOCIATION AND ARMENIAN LEGAL CENTER FOR JUSTICE AND HUMAN RIGHTS IN SUPPORT OF PETITIONER

SEEPAN V. PARSEGHIAN
Counsel of Record
OWEN MCGOVERN
MARY KATE RAFFETTO
BECK REDDEN LLP
1221 McKinney, Suite 4500
Houston, TX 77010
(713) 951-3700
sparseghian@beckredden.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTERESTS OF *AMICI CURIAE*[1]

Pursuant to Supreme Court Rule 37, the Armenian Bar Association ("ArmenBar") and Armenian Legal Center for Justice and Human Rights ("ALC") submit this brief in support of the petition for writ of certiorari.

ArmenBar was founded in 1989 to provide a forum for lawyers and legal scholars of Armenian heritage to address legal and public policy issues of importance to the Armenian-American community, including a just resolution of losses incurred during the Armenian Genocide. In furtherance of this objective, ArmenBar created the Armenian Genocide Reparations Committee to devise and implement legal strategies to account for the loss of property by Armenian Genocide victims, locate and collect documents relevant to claims involving reparations and recovery of property, and ultimately, bring and support recovery claims before the courts. ArmenBar has also filed *amicus* briefs in support of property recovery claims made by families of Armenian Genocide victims in *Movsesian v. Victoria Versicherung AG,* 670 F.3d 1067 (9th Cir. 2012) (en banc), and *Arzoumanian*

---

[1] Counsel for *Amici* authored this brief in whole. No party's counsel authored any part of this brief. No party or party's counsel contributed money to fund preparing or submitting this brief. No persons or entities other than *Amici* or its counsel contributed money that was intended to fund preparing or submitting the brief. Counsel of record received 10-day notice of the intent to file this brief. Consent to file this brief was granted by all parties.

v. Munchener Ruckversicherungs-Gesellschaft Aktiengesellschaft AG, 569 U.S. 1029 (2013).

The ALC was launched in 2016 as an international legal institute dedicated to addressing human rights violations stemming from the Armenian Genocide of 1915. Part of its mission involves reparations and restitution for the families of Armenian Genocide victims and survivors. This effort has entailed documenting the expropriation and theft of Armenian national, community, and personal properties during the Armenian Genocide, including artwork, antiquities, books, and manuscripts. The ALC also seeks to identify potential claimants, coordinate their claims, and investigate the underlying human rights violations.

The outcome of the questions presented in this case will directly inform the efforts of ArmenBar and the ALC to assist the Armenian-American community in bringing property recovery claims related to losses incurred during the Armenian Genocide. Given that these losses occurred over a century ago, ArmenBar and the ALC have an interest in clarifying whether their claims are vulnerable to limitations and laches defenses, and whether these defenses can be overcome through legislation. Thus, *amici curiae* have a compelling interest in the outcome of this case and submit this brief to urge the Court to grant certiorari.

SUMMARY OF ARGUMENT

The Second Circuit invoked the equitable defense of laches to dismiss Petitioner's claims against The Metropolitan Museum of Art (the "Met") to recover art

that her family sold under duress during the Holocaust. But there is nothing equitable about the Second Circuit's legalistic application of laches: it ignores the complex set of obstacles that impeded efforts by Petitioner, as well as other Holocaust victims and later generations of their families, to reclaim art that is rightfully theirs.

Congress recognized these obstacles when it passed the Holocaust Expropriated Art Recovery Act in 2016 (the "HEAR Act"), observing that "[t]hose seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide." Pub. L. 114-308, 130 Stat. 1525, § 2(6). In establishing a six-year statute of limitations to bring Holocaust-era art recovery claims, Congress further reasoned that "[t]his costly process often cannot be done within the time constraints imposed by existing law." *Id*. By passing the HEAR Act, Congress gave Holocaust victims and their families a necessary tool to overcome these obstacles by availing themselves of the courts and moving towards justice and restitution for wrongs committed during the Holocaust.

In dismissing Petitioner's claims, the Second Circuit failed to consider the purpose behind the HEAR Act. It also failed to recognize that the obstacles families of victims of other genocides face in recovering property parallel, both in their severity and complexity, the difficulties faced by Petitioner and Holocaust victims. Indeed, in the case of the Armenian Genocide, which occurred over a century ago, the passage of time and the active denialist

campaign by the Republic of Turkey—the successor state to the Ottoman Empire, which organized and perpetrated the genocide that killed an estimated 1.5 million Armenians starting in 1915—has magnified the obstacles frustrating efforts by victims' families to discover and recover their looted property.

Relying on a California statute—which has been called a "template" for the HEAR Act—that recognized these obstacles for Armenian Genocide victims' families and tolled the limitations period to bring such claims, the Armenian Church sued the J. Paul Getty Museum (the "Getty Museum") in 2010 to recover illuminated manuscripts lost during the Armenian Genocide. Second Am. Compl., *Western Prelacy of the Armenian Apostolic Church of America v. The J. Paul Getty Museum, et al.*, Cause No. BC438824 (Ca. Super. Ct., filed Aug. 1, 2011); Michael J. Bazyler & Rajika L. Shah, *The Unfinished Business of the Armenian Genocide: Armenian Property Restitution in American Courts*, 23 Sw. J. Int'l L. 223, 277 (2017). The Getty Museum sought to dismiss the Armenian Church's claims on limitations grounds, which the California Superior Court summarily rejected. General Dem. to Second Am. Compl., *Western Prelacy*, *supra*. Pursuant to the parties' subsequent settlement of the lawsuit, the Getty Museum acknowledged that the manuscripts were owned by the Armenian Church, which then donated the manuscripts to the Getty Museum. *See* Mike Boehm, *Legal settlement with Armenian church lets Getty Museum keep prized medieval Bible pages*, L.A. Times, Sept. 21, 2015.

As scholars of the Armenian Genocide have demonstrated, there are likely untold other instances of art and other property owned by Armenian families that were plundered, confiscated, or lost during the genocide. *See, e.g.*, Heghnar Zeitlian Watenpaugh, The Missing Pages: The Modern Life of a Medieval Manuscript, from Genocide to Justice 159-66 (2019); Bedross Der Matossian, *The Taboo within the Taboo: The Fate of "Armenian Capital" at the End of the Ottoman Empire*, Eur. J. of Turkish Studies at ¶¶ 11-27 (2011), available at: https://journals.openedition.org/ejts/4411. As descendants of these families discover their rightful ownership to property against seemingly insurmountable odds, legislation similar to the HEAR Act would enable them to resort to the courts to recover looted art now displayed in various museums, galleries, and collections. Such recovery is a necessary step towards achieving justice for victims of the Armenian Genocide, the Holocaust, and other atrocities including those that occurred during the Gulf War, the Cambodian Civil War, and the rise of ISIL.

The Second Circuit's ruling contravenes the spirit and plain language of the HEAR Act and calls into doubt the future of such legislation. If allowed to stand, it would represent a major step backward in the pursuit of restorative justice for victims of genocide. For these reasons, this case satisfies the criteria for review as an issue of nationwide importance concerning a federal statute—importance that is augmented because of the potential for future similar legislation concerning other mass atrocities. It also presents the Court with a ripe opportunity to

clarify whether a procedural hurdle like laches can overcome clear Congressional intent and American policy designed to rectify past wrongs committed as a result of the most heinous crimes against humanity.

REASONS FOR GRANTING CERTIORARI

Certiorari should be granted for two reasons.

1. The Second Circuit's decision contravenes the plain language of the HEAR Act and Congressional intent to toll the limitations period and provide victims of the Holocaust with an opportunity to avail themselves of the judicial system to recover art lost or stolen during the Holocaust. Thus, the Court should grant review and consider whether a laches defense that fails to recognize the impact of the Holocaust on victims' ability to discover and claim their rights can override the HEAR Act's statute of limitations.

2. Victims of other genocides like the Armenian Genocide are also stakeholders who will look to the Court's opinion in determining how to pursue the recovery of art and other property lost, stolen, or sold under duress during these atrocities. Thus, this Court is presented with an issue of nationwide importance and its review would provide these stakeholders with clarity to determine whether legislation similar to the HEAR Act is a viable vehicle through which their recovery claims can withstand limitations or laches defenses.

ARGUMENT

In passing the HEAR Act, Congress afforded Holocaust victims an opportunity to reclaim art lost, stolen, or sold under duress during the Holocaust by setting a six-year statute of limitations to bring such claims. Congress also recognized the trauma and obstacles faced by Holocaust victims that have impeded their and their families' efforts to recover lost property, observing that "[t]hose seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide." HEAR Act § 2(6). In establishing a six-year statute of limitations, Congress further reasoned that "[t]his costly process often cannot be done within the time constraints imposed by existing law." *Id.* For these survivors, some of whom were likely too young to even recall their families' plundered possessions—the Holocaust took place over 75 years ago—their priority was often finding safe harbor in a foreign land and slowly rebuilding a new life for themselves and their families. The trauma of witnessing and surviving genocide rendered it too painful for these survivors to recount the unimaginable cruelty they experienced to their children and grandchildren, who, in turn, may have gone decades or generations before learning that a piece of art hanging in a museum was once stolen from their family in the midst of genocide. The HEAR Act has enabled families to overcome these systemic, generations-long obstacles to reclaim what is rightfully theirs.

The HEAR Act has also served as a roadmap for victims of similar atrocities whose efforts to bring their own art recovery claims have also been stymied.

In the case of the Armenian Genocide, the aforementioned obstacles have been magnified both by the passage of time—over a century has passed since the Armenian Genocide began in 1915 and claimed the lives of over 1.5 million Armenians—and the aggressive denialist campaign by the Republic of Turkey—the successor to the Ottoman Empire, which organized and perpetrated the genocide. Studies by Armenian Genocide scholars reveal that the Armenian bourgeoisie in the Ottoman Empire collected modern fine art of local and European origin, while many modern Ottoman artists and art collectors at the turn of the twentieth century were Armenian. *See* Watenpaugh, *supra*, at 164-65. Armenian elites had also amassed collections of medieval art and antiquities. *Id*. But as the Ottoman regime carried out its wicked plans to exterminate the Armenian population, it implemented "Abandoned Properties" laws that led to the confiscation of Armenian-owned art and other property under the false pretense of safekeeping while the government displaced and deported Armenians en masse towards certain death. *Id*. at 165; *see also* Der Matossian, *supra*, at ¶ 12. This pattern was repeated throughout the Ottoman Empire, with deportations and death marches of entire Armenian populations into the Syrian desert allowing for the plunder of the art, jewelry, furniture, and other possessions that they were forced to leave behind, never to return. Der Matossian, *supra*, at ¶¶ 15-27. In one account to the American Embassy in Istanbul in July 1915, the American Consul in Trabzon, Oscar Heizer, reported that crowds of Turkish women and children would follow the police to seize any valuables that the police itself did not confiscate from the homes of Armenians who had been

deported. *Id.* at ¶ 16. The Ottoman regime would then sell the Armenians' confiscated property at cheap prices in bazaars. *Id.* at ¶ 24. Thus, it is no wonder that years later, in 1921, an Armenian priest in Erzerum, Father Ardavazt Surmeyan, felt he was "choking" when he noticed that a food vendor was wrapping olives in parchment that bore medieval *yergatakir* Armenian writing and observed junk dealers selling Armenian religious antiquities in the streets. Watenpaugh, *supra*, at 181. Father Surmeyan concluded that while the material loss of these artworks and antiquities were "irreplaceable, . . . the loss of their historic and artistic value is much more bitter." *Id.*

Legislation like the HEAR Act for art lost during the Armenian Genocide would help restore the "historic and artistic value" over which Father Surmeyan lamented by affording victims' families the time and legal forum to reclaim their property. The Second Circuit's determination that a non-statutory laches defenses bars claims under the HEAR Act undercuts both the plain language of the HEAR Act and Congress' nuanced appreciation for the need for such legislation. It also has serious ramifications for victims of genocide, such as the Armenian Genocide, that fall outside the HEAR Act's purview but may well become the subject of similar legislation in the future. Indeed, as recently as 2019, Congress reaffirmed its "proud history of recognizing and condemning the Armenian Genocide" and reiterated the "policy of the United States . . . to identify, prevent, and respond to the risk of atrocities by strengthening diplomatic response and the effective use of foreign assistance to support appropriate transitional justice measures,

including criminal accountability, for past atrocities." *See* H. Res. 296 (Oct. 29, 2019) (internal quotations omitted); S. Res. 150 (Dec. 12, 2019) (internal quotations omitted). Future legislation tolling the limitations period for families of Armenian Genocide victims to bring art recovery claims would thus promote American policy just as the HEAR Act has done for families of Holocaust victims.

However, the Second Circuit's ruling threatens to undo these efforts. Certiorari should be granted so that Congress can gain clarity as to whether a laches defense—detached from the goal of working towards restorative justice and providing legal recourse for victims of genocide and other atrocities—can undermine the plain language of the HEAR Act and Congressional intent.

I. The Second Circuit's Decision Will Impact Art Recovery Efforts of Victims of the Armenian Genocide.

The case of *Western Prelacy of the Armenian Apostolic Church of America v. The J. Paul Getty Museum, et al.* is just one example of a claim to recover fine art that was stolen during the Armenian Genocide. *See generally* Second Am. Compl., *Western Prelacy*, *supra*.

Invoking a California law that was "the template for a nearly identical federal statute" in the HEAR Act, the Western Prelacy of the Armenian Apostolic Church of America (the "Prelacy") sought to recover eight (8) folios containing what are known as the Canon Tables. Bazyler, *supra*, at 277; Second Am.

Compl., *Western Prelacy*, *supra*, at 1. These Tables were originally part of a sacred gospelbook known as the Zeyt'un Gospels ("Gospels"), which "were copied and illuminated by the master artist T'oros Roslin"—who is widely considered the "most prominent Armenian manuscript illuminator in the High Middle Ages." *Id*. at 1, 5. The journey of the Canon Tables from their place in the Gospels to the Getty Museum demonstrates the hurdles faced by genocide victims in their attempts to recover fine art and cultural artifacts stolen during genocide and the importance of statutes—such as the HEAR Act—to our society's efforts to grant these victims their day in court.

The Gospels, copied and illustrated by T'oros Roslin in 1256, were and continue to be a highly valued national treasure for the Armenian people. For over six centuries, the Gospels were "venerated by the Armenian people of Zeyt'un—especially during times of war," as they were believed to "wield supernatural powers that would protect and save all those associated with their creation and protection." *Id*. at 6.

During the Armenian Genocide, the Sourenian family—who, along with the Armenian Church, were joint possessors of the Gospels in their role as "Defenders of the Church"—was forced into exile in the Syrian desert. To protect the Gospels, they entrusted them to their friend, Dr. Der Ghazarian. The Sourenians, along with 1.5 million other Armenians, fell victim to the atrocities of the Armenian Genocide and never saw the Gospels again. *Id*.

Approximately four years later, in 1920, Der Ghazarian was also forced to flee his home, leaving the Gospels behind. The gospels were subsequently recovered by a Turk, who brought them to Mr. Melkon Atamian to sell. Atamian removed the Canon Tables from the Gospels, kept the Canon Tables for himself, and returned the Gospels to the Turk, stating that he "did not want to handle" the sale. *Id*. at 7. The Turk eventually returned the Gospels—without the Canon Tables—to the Church. Unbeknownst to the Church, the Canon Tables remained in the private collection of the Atamian family for over ninety (90) years, from the time of their removal from the Gospels until they were purchased by the Getty Museum. *Id*. at 8. It was not until 2006, when an Armenian attorney discovered the Canon Tables on display at the Getty Museum, that the Prelacy discovered that the pages were missing, much less that they had been stolen or were in the museum's possession.

In 2010, the Prelacy filed suit against the Getty Museum in the Superior Court of California, seeking return of the Canon Tables. The Prelacy's demand was timely under Section 338(c) of the California Code of Civil Procedure, which is the "template" for the HEAR Act and provides for a "nearly identical" tolling of limitations in cases of stolen fine art. Bazyler, *supra*, at 277. Section 338(c) provides that:

> [A]n action for the specific recovery of a work of fine art brought against a museum, gallery, auctioneer, or dealer, in the case of an unlawful taking or theft . . . of a work of fine art, including a taking or theft by means of fraud or duress, shall be commenced within six years of

> the actual discovery by the claimant or his or her agent, of both of the following:
>
> (i) The identity and the whereabouts of the work of fine art. In the case where there is a possibility of misidentification of the object of fine art in question, the identity can be satisfied by the identification of facts sufficient to determine that the work of fine art is likely to be the work of fine art that was unlawfully taken or stolen.
>
> (ii) Information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest in the work of fine art that was unlawfully taken or stolen.

Cal. Civ. Proc. Code § 338(c)(3)(A)(i)–(ii).

Moreover, like the HEAR Act, Section 338 applies retroactively to include "all . . . actions commenced on or before December 31, 2017, including any actions dismissed based on the expiration of statutes of limitation in effect prior to the date of enactment of this statute." *Id.* § 338(c)(3)(B).

Despite this provision, the Getty Museum demurred, seeking dismissal of the Prelacy's claims based on its allegation that the Prelacy actually discovered its claims in the mid-1940s, and was therefore barred under the statute of limitations. General Dem., *Western Prelacy*, *supra*. This argument—which is the functional equivalent to a laches defense in that it sought to ignore an express

statute tolling limitations based on the Prelacy's alleged prior knowledge and failure to act—was rejected by the California Superior Court. The parties eventually settled the litigation, pursuant to which the Getty Museum acknowledged that the manuscripts were owned by the Armenian Church, which, in turn, donated the manuscripts to the Getty Museum. *See* Mike Boehm, *Legal settlement with Armenian church lets Getty Museum keep prized medieval Bible pages*, L.A. Times, Sept. 21, 2015.

Getty demonstrates that the impact of the Second Circuit's decision is not limited to the HEAR Act itself. While *Getty* is "the first successful settlement of an Armenian genocide-era art case," there remain "[d]ozens or more manuscripts [which] are known to exist in museum collections across the United States." Bazyler, *supra*, at 274. In addition, "[t]here are almost certainly more art and cultural objects stolen or taken during the Armenian genocide that have yet to be found and returned to their rightful owners," and it "is not at all clear that the rightful owner(s) are even aware of the existence of their art, much less the location and how it came to be at its present location." *Id.*; *see also* Watenpaugh, *supra*, at 159-66; Der Matossian, *supra*, at ¶¶ 11-27. Pursuant to the Second Circuit's decision, defendants may assert a non-statutory laches defense to contravene a legislature's express determination to toll limitations on certain types of claims. Such a rule will undoubtedly impact future art recovery litigation, as discussed further below, and deny justice to thousands of victims who have yet to discover their claims.

II. The Second Circuit's Decision Will Impact Victims of Violent Conflict Beyond the Holocaust and the Armenian Genocide.

The theft of art and cultural artifacts is not a cruelty unique to the Holocaust and the Armenian Genocide. *See* Christa L. Kirby, *Stolen Cultural Property: Available Museum Responses to an International Dilemma*, 104 Dick. L. Rev. 729, 730 (2000). Participants in armed conflicts have pillaged the communities of their opposition long before the twentieth century—from the sack of Constantinople in 1204 to the widespread theft of African art that began during the slave trade and continued throughout Africa's occupation by colonial Europe. *See* Ivan Lindsay, *From Napoleon to the Nazis: the 10 Most Nortorious Looted Artworks*, The Guardian, Nov. 13, 2014; *Reflecting on Past Sins*, The Economist, Mar. 28, 2019.

The practice is far from a side effect of humanity's most violent events; it is a feature of them. *See* Patty Gerstenblith, *The Destruction of Cultural Heritage: A Crime Against Property or A Crime Against People?*, 15 J. Marshall Rev. Intell. Prop. L. 336, 388–89 (2016). It is a feature designed to not only inflict barbarism on its victims, but to further and fund its perpetration. *Id.* Indeed, the international community recognizes that "when viewed within a broader context of genocide, [destruction of cultural heritage] becomes an act of genocide, as well as evidence of genocidal intent." *Id.* Courts have adopted this same view. *See, e.g.*, *Simon v. Republic of Hungary*, 812 F.3d 127, 142 (D.C. Cir. 2016) (explaining that property takings do "more than

effectuate genocide" and that the D.C. Circuit viewed them "as themselves genocide").

Even today, the looting of cultural treasures remains at the forefront of global violence. *See* Gerstenblith, *supra*, at 354–62 (discussing recent events in Mali and Syria). Its prevalence only heightens the need for guidance from the Court on the issues presented by the Second Circuit's decision in *Zuckerman*. As genocide and terrorism continue to involve the destruction of artifacts, Congress may well seek to craft additional legislative solutions—both to equip survivors to recover what has been lost and to serve as a deterrent against terror. *See* Kirby, *supra*, at 740–41 (discussing the challenges created by discrepancies in applicable law and the art world's response to the problem), 744–45 (lamenting that for some plaintiffs, attempting to recover their lost art "represents a costly entrance into the American legal system without any certainty of success").

Three modern conflicts highlight the need for guidance from the Court: (1) the Gulf War; (2) the Cambodian Civil War; and (3) ISIL's insurgence in Iraq and Syria.

A. The Gulf War

Iraqi forces returned thousands of works of art to Kuwait following Iraq's seven-month occupation of the country during the Gulf War. Harvey E. Oyer III, *The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict - Is It Working? A Case Study: The Persian Gulf War Experience*, 23 Colum.-VLA J.L. & Arts 49 (1999). But

Iraq's cultural property did not find a similar, safe fate. *Id.*

Prior to the Gulf War, Saddam Hussein devoted significant resources to the Iraqi Antiquities Department, working to guard archeological sites and establish regional art museums. Marion Forsyth, *Casualties of War: The Destruction of Iraq's Cultural Heritage As A Result of U.S. Action During and After the 1991 Gulf War*, 14 DePaul-LCA J. Art & Ent. L. 73, 76–78 (2004). But these efforts were gutted upon Iraq's invasion of Kuwait, leaving museums and other cultural cites unprotected. *Id.* at 78–79.

At the conclusion of the war, upheaval in the country driven by opposition to Hussein's regime led to the looting of several museums, including both regional museums and the contents of the Iraq National Museum. Oyer, *supra*, at 49. Scholars estimate 4,000 works were destroyed or stolen—with "about half" likely destroyed and the rest entering the world's private art markets. *Id.* (citing *Stolen Artifacts From Iraq for Sale: Plunder from Gulf War Showing Up in Art Markets*, San Francisco Examiner, Mar. 22, 1992). Most of the artifacts found their way to antiquities dealers in the United States and Europe. *Id.* (citing McGuire Gibson & Augusta McMahon, *Lost Heritage: Antiquities Stolen from Iraq's Regional Museums*, Fascicle 1 (American Assoc. for Research in Baghdad 1992), at vi.).

Despite their provenance, some of the works looted during the Gulf War ended up in public auction houses in New York and London. *Id.* For instance, among the stolen Iraqi art for sale out in the open

were twelve 2,700-year-old wall reliefs (sculptures) from the Palace at Nineveh, that were unfortunately altered at some point after their theft. *Id.*; *see also* Forsyth, *supra*, at 82–83 (explaining that "many Mesopotamian antiquities surfaced on the art market" after the war).

Experts have maintained that the looting that took place in Iraq after the Gulf War was due in part to "laws that vary widely in substance and even more widely in enforcement across national borders." *Id.* It may be that future legislation will seek to remedy these concerns, making the need for clarification from the Court on the issues presented in *Zuckerman* all the more apparent.

B. The Cambodian Civil War

A large portion of Cambodia's cultural heritage was lost to looters during the Cambodian Civil War in the 1970s. Abby Seiff, *Looted Beauty*, 100-JUL A.B.A. J. 32, 35, July 2014. For years, smugglers were able to move stolen pieces out of the war-torn nation at will. *See* Julia Jacobs and Tom Mashberg, *Antiquities Expert Charged with Trafficking in Cambodian Artifacts*, N.Y. Times, Nov. 27, 2019.

These works eventually found their way to some of the most prestigious auction houses and museums in Europe and the United States. *See* Seiff, *supra*, at 34–35. Famously, two monumental statues known as the *Kneeling Attendants* once guarded the entrance to the Southeast Asian galleries of the Met. *Id.* The statues were returned to Cambodia in 2013, after it was discovered they were stolen from the Koh Ker temple

in Cambodia, where they had stood since the 10th century before being cleaved from their bases during the war. *Id.*

Repatriation stories like those of the *Kneeling Attendants* have been part of a "slow change." *Id.* at 38. But thousands of stolen Khmer antiquities continue to flood the market, for reasons familiar to those who have studied art stolen during the Holocaust and Armenian Genocide: "a decade of turmoil made them an easy target." *Id.* at 67.

Cambodia's challenges in recovering the lost works are similarly familiar. When the pieces first arrived in the United States and Europe, "Cambodia—still struggling to recover from its civil war and political instability—was unlikely to press a case over the antiquities." *Id.* at 35. Now, as the country continues to recover, resolution of legal issues like those presented in *Zuckerman* will determine whether Cambodians may pursue claims for the works lost decades ago.

C. ISIL's Reign of Violence

Finally, the Islamic State of Iraq and the Levant ("ISIL") has regularly employed the theft and destruction of art and cultural artifacts as part of its terrorist strategy. Gerstenblith, *supra*, at 372. Often the terror involves broadcasting elaborate explosions of important cultural sites, like the Nebi Yunus mosque that stood for centuries until ISIL destroyed it in July 2014. *Id.*

But ISIL also regularly pillages archeological sites, like the Dura-Europos and Mari, and then sells the looted goods on the black or gray market. *Id.* at 375. In many ways, the illegal antiquities trade helps fund ISIL—via "taxation, control of smuggling routes and direct selling of artifacts." *Id.* Some scholars have explained that ISIL's operations in this space constitute an "unprecedented level of looting" "on an industrial scale." *Id.* at 376.

These activities violate the 1954 Hague Convention, but prosecution would prove difficult. *Id.* Meanwhile, the sale of one stolen antiquity can bring in a profit of more than $1 million for ISIL. Laina Rose Boris, *Looters and Traffickers and Destroyers, Oh My: Criminals Must Be Held Liable for Violating Jus Cogens and Prosecuted by the International Criminal Court*, 30 N.Y. Int'l L. Rev. 33, 59–61 (2017). Ending this source of income for the terrorist organization may involve legislation aimed at deterring sales, making the Court's decision on the issues presented in *Zuckerman* of interest both to the rightful owners of such antiquities and the national security community.

CONCLUSION

The Second Circuit's ruling undermines federal legislation and policy that seeks restorative justice for victims of the Holocaust, Armenian Genocide, and other atrocities. Accordingly, both the HEAR Act and future Congressional legislation designed to assist victims of these atrocities in recovering their art and other property will benefit from the Court's review of the issue presented here—whether a laches defense

can bar recovery of claims brought under the HEAR Act. This case presents this Court with a historically and morally significant opportunity to review and provide clarity on an issue of nationwide importance. Absent such clarification from this Court, genocide victims and their families who have yet to discover their claims may be denied their day in court. *Amici* the Armenian Bar Association and the Armenian Legal Center for Justice and Human Rights urge the Court to grant certiorari.

Respectfully submitted,

SEEPAN V. PARSEGHIAN
Counsel of Record
OWEN MCGOVERN
MARY KATE RAFFETTO
BECK REDDEN LLP
1221 McKinney Street, Suite 4500
Houston, Texas 77010
sparseghian@beckredden.com
(713) 951-3700

Counsel for Amici Curiae
Armenian Bar Association and Armenian Legal Center for Justice and Human Rights