

No. 24-652

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**In the Supreme Court of the United States**

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DAVID CASSIRER, *et al.*,  
*Petitioners,*

v.

THYSSEN-BORNEMISZA COLLECTION  
FOUNDATION,

*Respondent.*

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*On petition for a Writ of Certiorari to the United  
States Court of Appeals for the Ninth Circuit*

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**BRIEF FOR COMUNIDAD JUDÍA DE MADRID  
AND FEDERACIÓN DE COMUNIDADES  
JUDÍAS DE ESPAÑA AS *AMICI CURIAE* IN  
SUPPORT OF PETITIONERS**

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Bernardo M. Cremades Román ([bcr@bcremades.com](mailto:bcr@bcremades.com))\*

*\*Counsel of Record*

Patrick T. Byrne ([p.byrne@bcremades.com](mailto:p.byrne@bcremades.com))

B. CREMADES & ASOCIADOS

Calle Goya, 18 – Planta 2

28001, Madrid, Spain

Tel.: (+34) 914-237-200

*Counsel for Amici Curiae*

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### INTEREST OF THE *AMICI CURIAE*<sup>1</sup>

*Comunidad Judía de Madrid* (“**CJM**”) is the main Jewish institution of the Province of Madrid, Spain. CJM’s main purposes are to facilitate and promote the development of Judaism in Madrid in order to guarantee its continuation, to maintain the traditional Jewish values and to strengthen the Jewish community in a plural, open and democratic context. Among its activities are to maintain and promote the memory of the Holocaust (*Shoah*), contribute to the reparation of the wrongs committed against the victims of the Holocaust, and in general resist anti-Semitism.

*Federación de Comunidades Judías de España* (“**FCJE**”) is the organization that comprises most of the Jewish communities and other local Jewish organizations in Spain. The main mission of the FCJE is to officially represent the Spanish Jews and their local communities before national and international authorities. Among its activities are to maintain and promote the memory of the Holocaust (*Shoah*), contribute to the reparation of the wrongs committed against the victims of the Holocaust, and in general resist anti-Semitism.

The Preamble of Spanish Law 25/1992 refers to FCJE as the “representative entity” of all Jewish communities in Spain *vis-à-vis* the Spanish State, and

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<sup>1</sup> In compliance with Supreme Court Rule 37.6, *Amici* confirm that neither counsel for Petitioners nor for Respondent have authored this brief either in whole or in part, and that no monetary contributions have been made to fund the preparation or submission of the brief other than by *Amici*, its members, or its counsel. *Amici* further confirm that pursuant to Supreme Court Rule 37.2, counsel of record for all parties received timely notice of *Amici*’s intent to file this brief.

Article 13 of such Law provides that “[t]he State and [FJCE] shall cooperate in the maintenance and promotion of the Jewish historic, artistic and cultural heritage...”

Pursuant to Article 5 of Spanish Organic Law 7/1980, of July 5, 1980, religious communities and their federations have legal personality if registered with the Ministry of Justice of the Kingdom of Spain. Both CJM and FCJE currently have legal personalities.

At the core of the *Amici*’s goals and objectives is to seek full reparation for the wrongs and crimes committed against the victims of the Holocaust. This case relates to the recovery by the Petitioners of the painting “*Rue St. Honoré, Après midi, Effet de pluie*” by Camille Pissarro (1897) (the “**Painting**”). It is not in dispute that the Painting was looted from Lilly Cassirer Neubauer in 1939. 824 F. App’x 452, 454 (9th Cir. 2020) (“**Cassirer IV**”); *Cassirer v. Thyssen-Bornemisza Collection Found.*, 2019 WL 13240413, at \*20 (C.D. Cal. April 30, 2019).

*Amici*, as leaders of the Jewish Community in Spain, and more locally in Madrid, are devoted to ensuring that redress is provided to victims of the Holocaust and their descendants. The Respondent, as a leading publicly-funded art institution in Spain, is in possession of an artistic work that was stolen by the Nazis. The Respondent’s continuing possession of the Painting is therefore of great concern to the citizens of Spain, and more particularly to the Jewish communities in Spain and Madrid. *Amici* seek to give a voice to the Jewish community that is still recovering from one of the largest genocides in history, and the effects of the crimes committed during this period which linger to this day. Further harm and



offense is caused to the Jewish population of Spain when a Government-funded institution publicly displays and claims rightful ownership over an artistic work looted by Nazis during the Holocaust. *Amici* believe that the Respondent is required to return the Painting to its rightful owner.

*Amici's* interest in this matter has already been established, being previously recognized by the district court, the Ninth Circuit Court of Appeals (six times), and this very Court (twice). More precisely, the Ninth Circuit accepted *Amici's* brief on its initial consideration of Petitioners' appeal in 2017 and on the Respondent's petition for a hearing and a rehearing *en banc*, also in 2017. Order of the Ninth Circuit Court of Appeals dated July 5, 2017; Order of the Ninth Circuit Court of Appeals dated December 4, 2017. In its 2017 decision, the Ninth Circuit made reference to and relied upon *Amici's* brief. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 862 F.3d 951, 964, 970 (9th Cir. 2017) ("***Cassirer III***").

This Court then granted *Amici* leave to file an amicus brief in deciding whether to grant the Respondent's petition for *certiorari*. *Thyssen-Bornemisza Collection Found. v. Cassirer*, 138 S. Ct. 1992 (Mem) (2018). The U.S. District Court for the Central District of California then granted *Amici* leave to file an amicus brief on matters of Spanish law pertinent to the ownership of the underlying property, and this brief was cited in the district court's April 30, 2019 decision. *Cassirer*, 2019 WL 132404413, at \*30-31. On Petitioners' subsequent appeal, the Ninth Circuit granted *Amici* leave to file an amicus brief on similar matters, and referred to the amicus brief in its August 17, 2020 decision. *Cassirer IV*, 824 F. App'x at 455. The Ninth Circuit then granted *Amici* leave to

file an amicus brief on Petitioners' petition for a hearing *en banc*. Order of the Ninth Circuit Court of Appeals dated December 11, 2020. D.E. 70.<sup>2</sup>

This Court then accepted an amicus brief from *Amici* in determining the applicable choice-of-law rules in this case. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107 (2022) (“**Cassirer V**”). The Ninth Circuit then granted *Amici* leave to file an amicus brief on its consideration of choice-of-law under California law. D.E. 105. *Amici* then provided a letter to the California Supreme Court in support of the Ninth Circuit's request that it answer a certified question concerning the application of California's choice-of-law rules. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 69 F.4<sup>th</sup> 544, 571-72 (9th Cir. 2023) (“**Cassirer VI**”). Finally, the Ninth Circuit granted *Amici* leave to file an amicus brief in support of Petitioners' petition for a hearing *en banc* in the issue of choice-of-law under California choice-of-law rules. D.E. 167.

This case was first subjected to Spanish law, with, in *Amici's* opinion, the district court and the Ninth Circuit misapplying Spanish law in determining that the Painting belonged to the Respondent.

Now subjected to California's choice-of-law rules, the Ninth Circuit has incorrectly gauged Spain's interest in having Spanish law apply to this case. *Amici* can provide the Court with an accurate analysis of Spain's interest in applying its legal regime in the context of California's choice-of-law rules.

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<sup>2</sup> Citations to “D.E” refer to rocket entries in the Ninth Circuit appeal of this case, No. 19-55616.

### SUMMARY OF ARGUMENT

Spain has no significant interest in applying Spanish law to this dispute, including Article 1955 of the Spanish Civil Code.

The operation of California law results in the Painting being returned to the rightful heirs, an outcome in line with Spanish government policy for the past 50+ years, unequivocally displayed as recently as December 2024.

Article 1955 of the Spanish Civil Code, on the other hand, was enacted in 1889, over 50 years before the Holocaust, and has never been amended to reflect current times, including to mirror the Spanish government's public, explicit views concerning restitution of artworks stolen by the Nazis.

Spain's interest in returning looted art to the rightful heirs is reflected in the numerous international agreements and commitments to which Spain is a party, as well as Spain's own recent efforts in returning looted art to rightful owners. This consistently reinforced interest should outweigh an outdated article of the Spanish Civil Code that was never designed to apply to such unique circumstances.

Even before California Code of Civil Procedure ("**CCP**") §338(c)(6) was enacted, and even without taking into consideration any U.S. federal laws, agreements or policy favoring the return of Nazi-looted art, Spain's lack of interest in applying Article 1955 was apparent, as its international agreements and commitments lined up with the resolution accomplished under California law (*i.e.*, the return of the Painting). Now with CCP §338(c)(6), and taking into consideration U.S. federal laws, agreements and policy, it is unquestionable that California substantive law should apply in this case.

## **ARGUMENT**

### **I. INTRODUCTION**

Spain simply does not have any significant interest in applying Article 1955 of the Spanish Civil Code to this case.<sup>3</sup> Since the Holocaust, continuing through present day, Spain has consistently made it clear through international agreements, international commitments, domestic laws and stated policy that it believes in the return of looted artwork to the rightful heirs, including art looted during one of the most heinous events in human history.

Spain's asserted interest in applying Article 1955 here contradicts every other aspect of the State's approach to this issue over the past 50+ years, and is simply being asserted herein an attempt to maintain control over a valuable piece of looted art.

Any reasonable review of the role of Article 1955 in the context of Spain's expressed policy in this type of matter leads to the inevitable conclusion that Spain has virtually no interest in applying its laws in this case.

### **II. SPAIN'S INTEREST IN THIS CASE IS FURTHERED BY CALIFORNIA LAW AND U.S. FEDERAL LAWS, AGREEMENTS AND POLICIES, AS REFLECTED IN ITS OWN INTERNATIONAL COMMITMENTS**

Over the past 50+ years, Spain has been unequivocal in its endorsements and ratifications of

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<sup>3</sup> English translation available at:  
[https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Spanish\\_Civil\\_Code\\_\(Codigo\\_Civil\\_Espanol\).PDF](https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Spanish_Civil_Code_(Codigo_Civil_Espanol).PDF), p. 347.

international agreements and proposals calling for the return of Nazi-looted artwork. Some of these are briefly addressed here.

### **A. The Washington Principles**

The district court correctly noted that in December 1998, forty-four countries, including Spain, committed to the Washington Principles on Nazi-Confiscated Art (the “**Washington Principles**”).<sup>4</sup> *Cassirer*, 2019 WL 132404313, at \*33. These principles:

“appeal to the moral conscience of participating nations and recognize: ‘If the pre-War owners of art is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing that this may vary according to the facts and circumstances surrounding a particular case.’”

*Id.*

This binding international commitment unequivocally calls for Spain to return the Painting in line with the application of California law.

### **B. The Terezin Declaration**

The district court also correctly noted that in 2009, forty-six countries, including Spain, reaffirmed their commitment to the Washington Principles by signing the Terezin Declaration on Holocaust Era

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<sup>4</sup> Available at <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.

Assets and Related Issues (the “**Terezin Declaration**”),<sup>5</sup> which:

“reiterated that the Washington Principles ‘were based upon the moral principle that art and cultural property confiscated by the Nazis from Holocaust (Shoah) victims should be returned to them or their heirs, in a manner consistent with national laws and regulations as well as international obligations, in order to achieve just and fair solutions.’ The Terezin Declaration also ‘encouraged all parties including public and private institutions and individuals to apply [the Washington Principles] as well.”

*Cassirer*, 2019 WL 132404413, at \*33. Spain’s signing of the Terezin Declaration reinforces its public policy that Nazi-looted art should be returned to the rightful heirs.

### C. The UNESCO Convention on Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property

The UNESCO Convention on Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was signed in Paris on November 17, 1970 (the “**Convention**”).<sup>6</sup> The Convention itself indicates the binding nature of its provisions, with Article 25

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<sup>5</sup> Available at <https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/>.

<sup>6</sup> Available at <https://www.unesco.org/en/fight-illicit-trafficking?hub=365>.

clarifying that any revised version of the Convention “shall, however, **bind** only the States which shall become Parties to the revising convention.” [Emphasis added]. The EU has referred to the Convention as the “most important” instrument “regulat[ing] the fight against illicit trafficking of cultural goods internationally.”<sup>7</sup>

Spain ratified the Convention in 1986, thus making it part of the Spanish legal system and binding itself to the principles contained therein.<sup>8</sup>

The Preamble to the Convention provides that “it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,” and that “cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles.” Spain has therefore committed itself in a *legally binding, ratified international agreement* to ensure that it acts, and that the cultural institutions located therein act, in accordance with the principles and rules contained within the Convention.

Article 2.1 of the Convention establishes that:

“[t]he State Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international

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<sup>7</sup> Available at <https://culture.ec.europa.eu/cultural-heritage/cultural-heritage-in-eu-policies/protection-against-illicit-trafficking>.

<sup>8</sup> Available at <https://en.unesco.org/countries/spain>.

cooperation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting there from."

Article 2.2 provides that, "[t]o this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations." The Convention therefore establishes a strong framework for the protection of stolen cultural property and the prevention of its export and import.

Specifically, the purchase of the Painting violates Article 13 of the Convention, which provides that:

"[t]he State Parties to this Convention also undertake, consistent with the laws of each State: (a) to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property; (b) to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner. . . ."

Accordingly, the Convention, as a ratified, legally binding international agreement, directly obligates Spain to facilitate the restitution of illicitly exported cultural property to the rightful owner. This is precisely how the application of California law would operate in this case.



#### **D. Parliamentary Assembly of the Council of Europe**

In 1999, the Parliamentary Assembly of the Council of Europe, of which Spain is a Member State, passed Resolution 1205, which specifically addressed looted Jewish cultural property.<sup>9</sup> Among other statements, Resolution 1205 provided:

“One essential part of the Nazi plan to eradicate the Jews was the destruction of the Jewish cultural heritage of movable and immovable property, created, collected or owned by Jews in Europe.”

“This involved the systematic identification, seizure and dispersal of the most significant private and communal Jewish property.”

“Bodies in receipt of government funds which find themselves holding looted Jewish cultural property should return it.”

This resolution also unquestionably calls for the Painting to be returned in line with California law, as well as relevant U.S. federal laws and agreements.

#### **E. Vilnius Forum on Holocaust Era Looted Cultural Assets**

In October 2000, the Vilnius International Forum took place under the auspices of the Council of Europe, of which Spain is a Member State, with the participating governments agreeing to a declaration

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<sup>9</sup> Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16726&lang=en>.

concerning Nazi-confiscated art.<sup>10</sup> This declaration included, *inter alia*, a call for “all governments to undertake every reasonable effort to achieve the restitution of cultural assets looted during the Holocaust era to the original owners or their heirs.”

This agreement is also consistent with the return of the Painting, which would be accomplished by application of California law.

#### **F. European Parliament Resolution of December 17, 2003**

Recognizing that litigants “have often been confronted with difficult problems due to conflicts of law, varying prescriptive periods and other difficulties”, this European Parliament resolution called on Member States (including Spain):

“to make all necessary efforts to adopt measures to ensure the creation of mechanisms which favour the return of [Nazi-looted property] and to be mindful that the return to rightful claimants of art objects looted as part of crimes against humanity is a matter of general interest for the purposes of Article 1 of Protocol 1 to the European Convention of Human Rights.”<sup>11</sup>

This again highlights the extent to which Spain has committed itself to the return of Nazi-looted art.

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<sup>10</sup> Available at <https://www.lootedartcommission.com/vilnius-forum>.

<sup>11</sup> Available at [https://www.europarl.europa.eu/doceo/document/TA-5-2003-12-17\\_EN.html?redirect](https://www.europarl.europa.eu/doceo/document/TA-5-2003-12-17_EN.html?redirect).

**G. Regulation (EU) 2019/880 of the  
European Parliament and the Council  
of 17 April 2019**

While this EU regulation addressed various aspects regarding the introduction and the import of cultural goods, it contained certain conclusions binding on the member-States, including Spain, such as:<sup>12</sup>

“As long as it is possible to engage in lucrative trade in illegally excavated cultural goods and to profit therefrom without any notable risk, such excavations and pillaging will continue.”

“The Union should accordingly prohibit the introduction into the customs territory of the Union of cultural goods unlawfully exported from third countries, with particular emphasis on cultural goods from third countries affected by armed conflict, in particular where such cultural goods have been illicitly traded by terrorist or other criminal organisations.”

This is yet another example of how Spain’s interests, as a member-State of the EU, align perfectly with the application of California law in this case, and would actually be hampered by application of Spanish civil code provisions from the 19<sup>th</sup> century.

Together, these consistent agreements, commitments and proposals calling for the return of looted art, all of which include Spain’s endorsement or

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<sup>12</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0880>.

ratification, demonstrate Spain's true interest in this case. The Ninth Circuit's conclusion that Spain's interests would be impaired by restitution of the Painting thus flies in the face of its formal policy on this issue for at least the past half century.

#### **H. Hague Convention of 1899**

On September 4, 1900, eleven years after the enactment of Article 1955 of the Spanish Civil Code, Spain ratified the Hague Convention of 1899 (the "Hague Convention").<sup>13</sup>

The Hague Convention contained certain articles that displayed Spain's unequivocal commitment to the prevention of the transfer of title in cases such as this one, despite the existence of Article 1955 for application in wholly distinguishable scenarios involving ordinary chattel. A few such articles are worth reproducing here. Articles 46, 47 and 56 provide as follows:

Article 46 - Family honors and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.

Private property can not be confiscated.

Article 47 - Pillage is formally prohibited.

Article 56 - The property of the communes, that of religious, charitable, and educational institutions, and those of arts and

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<sup>13</sup> Available at [https://dn790003.ca.archive.org/0/items/hagueconventions00inte\\_0/hagueconventions00inte\\_0.pdf](https://dn790003.ca.archive.org/0/items/hagueconventions00inte_0/hagueconventions00inte_0.pdf).

science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.

Spain's decision to ratify the Hague Convention after its enactment of Article 1955 evidences the reality that Article 1955 was never intended to be used to claim good title over Nazi-looted artwork, obtained through pillage. The Hague Convention instead makes it clear that such property should be enjoy a heightened level of protection.

It is completely disingenuous for Spain to now claim that it has a significant interest in applying Article 1955 to achieve a result that flies in the face of every international commitment and agreement it has made since its enactment, including the Hague Convention.

### **III. SPAIN'S RECENT ACTIONS WITH RESPECT TO OTHER LOOTED ARTWORK DEMONSTRATES THAT ITS INTERESTS ARE FURTHERED BY APPLICATION OF CALIFORNIA SUBSTANTIVE LAW**

Aside from its official international commitments and agreements, Spain's own domestic actions in recent years only confirm that its interests in this case are served by the application of California law and the return of the Painting.

**A. Spain's Current Minister of Culture  
Admitted That the Painting Should be  
Returned in Line with Spanish Policy**

Mere days after the Ninth Circuit published its January 9, 2024 decision affirming that the TBC is the rightful owner to the Painting, Spain's current Minister of Culture (the individual responsible for the management of the TBC) openly acknowledged that he "would have handled differently" the dispute surrounding the Painting.<sup>14</sup> More specifically, the Ministry of Culture team "considers that the case could have been handled differently within the framework of international agreements on seizures of works of art by the Nazi regime. . . ."<sup>15</sup>

This acknowledgement conclusively demonstrates that ensuring good title for those in possession of Nazi-looted art directly contradicts Spanish public policy as interpreted by the very governmental entity entrusted with the management of Defendant. Moreover, this statement confirms that Spain is taking a public stance that is contrary to TBC's position in this case.

**B. Spain is Returning Artwork Stolen  
During the Spanish Civil War**

Consistent with its international commitments and the approach of California substantive law, Spain has embarked on an effort to return artwork and other assets seized during the Spanish Civil War.

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<sup>14</sup> Available at [https://www.elespanol.com/el-cultural/20240229/urtasun-dias-picota-polemicas-ministro-cultura-colonialismo-toros/836166635\\_0.html](https://www.elespanol.com/el-cultural/20240229/urtasun-dias-picota-polemicas-ministro-cultura-colonialismo-toros/836166635_0.html).

<sup>15</sup> *Id.*

Specifically, in 2022, the world famous, government-run Museo del Prado launched an initiative designed to identify artwork in its possession that had been looted during the Spanish Civil War for return to the rightful owners.<sup>16</sup> At the time, this initiative was expected to possibly reach 62 pieces of valuable art, including the return of pieces by painters Joaquín Sorolla and François Boucher.

This Prado initiative followed the return earlier that same year of two other prominent paintings seized during the Civil War. In that particular case, 85 years after the illegal seizure of paintings by artists Vicente López y Portaña and Frans Pourbus the Younger, they were returned to the great-great-grandson of the original victim of the wartime theft.<sup>17</sup>

Further, in June 2024, the Spanish Ministry of Culture (which again operates the TBC) published an online list of more than 5,126 works of art stolen by the regime of Francisco Franco to help people reclaim their family property which had ended up in various museums, collections and institutions.<sup>18</sup> These items include paintings, sculptures and jewelry.<sup>19</sup>

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<sup>16</sup> Example available at <https://www.reuters.com/world/europe/prado-lists-artworks-seized-during-spanish-civil-war-eyes-restitution-2022-09-20/>.

<sup>17</sup> News coverage available at <https://www.theartnewspaper.com/2022/09/23/spains-prado-museum-releases-list-of-works-with-murky-civil-war-and-francoist-provenance>.

<sup>18</sup> Example news coverage available at <https://www.theguardian.com/world/2024/dec/15/spanish-artwork-seized-by-franco-regime-returned-to-rightful-owners#:~:text=Spain's%20culture%20ministry%20has%20begun,ago%20to%20its%20rightful%20owners>.

<sup>19</sup> *Id.*

In early December 2024, the first of these looted works was returned in a ceremony held at the National Library of Spain. In doing so, the Spanish Minister of Culture (again the individual responsible for the management of TBC), said “[w]e’re opening the doors to returning those pieces that can be identified to their rightful owners.”<sup>20</sup>

These efforts by the very entity in charge of the TBC unequivocally demonstrate that Spain lacks any meaningful interest in applying a 19<sup>th</sup> century law in a manner as to prevent the rightful owners of Nazi-looted art from recovering their property. Not only has the Ministry of Culture made this abundantly clear, but it showcased such efforts in a public ceremony at a prominent Spanish landmark.

Simultaneously arguing in this isolated case that it has a significant interest in accomplishing the exact *opposite* goal weakens Respondent’s credibility on this issue.

### **C. Spain Recently Returned Artwork Stolen from Poland During WWII**

In 2019, two paintings stolen from Poland during World War II were discovered in the Provincial Museum of Pontevedra in Spain.<sup>21</sup> In December 2022, the Spanish Ministry of Culture (again, the entity responsible for the management of the TBC), granted a restitution request. This despite the fact that the museum had received the paintings from one of its

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<sup>20</sup> *Id.*

<sup>21</sup> News coverage available at <https://apnews.com/article/poland-government-germany-ec1c7672f3ca80c46096cebdbaabaf3f>; <https://notesfrompoland.com/2023/01/26/spain-returns-historical-paintings-stolen-from-poland-during-wwii/>.



major benefactors, who had reportedly acquired them at a gallery in Madrid or Barcelona in the 1970s. The director of the museum said at the time that the illegal origin of the paintings had been “completely unknown,” and that he was glad that “justice” was being done by having them returned to their rightful owner.<sup>22</sup>

This case obviously has a striking resemblance to the case at hand, where a museum operated by the Spanish Ministry of Culture acquires Nazi-looted art through a major benefactor, with the illicit origins ultimately coming to light. The only differences, however, are: (1) the illicit nature of the Painting in this case was apparent from the start, as the district court acknowledged the presence of numerous “red flags,” including one that it agreed was “like filing off the serial number on a stolen gun,” *Cassirer*, 2019 WL 13240413, at \*21-22; and (2) despite confirming the illicit nature, the Spanish Ministry of Culture in this case has so far refused to return the Painting.

In doing so, the Spanish government has not provided a single reason why this is the one case where an admitted Nazi-looted painting should remain in a Spanish museum, in violation of Spain’s own policy and international obligations.

#### **IV. SPAIN HAS NO INTEREST IN BECOMING A SAFE HAVEN FOR LOOTED ARTWORK**

By concluding that Spain has any considerable interest in assuring that recipients of artwork stolen during violent atrocities are granted clear title after only a minimal period of possession, the Ninth Circuit’s reasoning was in essence that Spain has an

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<sup>22</sup> Available at <https://notesfrompoland.com/2023/01/26/spain-returns-historical-paintings-stolen-from-poland-during-wwii/>.

interest in positioning itself as one of the global centers for stolen art – including the many pieces looted during wartime aggression. It is unquestionably *not* the case that Spain has *any* interest in assuming this role.

The European Commission has recognized that the looting of art is a common, unfortunate tactic used by those engaged in terrorism and wartime aggression. This has been seen in conflicts in the Middle East (*e.g.*, Syria, Iraq and Libya), and is currently being witnessed in Ukraine. The European Commission’s recent recognition of this fact was in the context of an EU plan to “deter criminals effectively, to address evolving security threats and to protect cultural heritage.”<sup>23</sup>

It would be completely unreasonable to conclude that Spain, as a proud democratic country in the European Union, has any interest in providing a safe haven for artwork looted through terrorism, war or genocide. However, under the Ninth Circuit’s reasoning, Spain has an interest in just that. Specifically, the Ninth Circuit’s analysis would ensure that looters of artwork through violent aggression can quickly and safely profit from such heinous acts by finding willing buyers in Spain – buyers that can feel secure in their ability to obtain good title with relative ease.

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<sup>23</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52022DC0800> (“Trafficking in cultural goods is a lucrative business for organised crime, and in some cases for conflict parties and terrorists. This is due in particular to the low risk of detection, the potential for high margins, and the attractive size of the licit and illicit markets, driven by a stable to increasing global demand from collectors, investors and museums.”).

Outside of the context of this single, isolated case, Spain as a State has made clear to the world that this is not what it stands for, and no court can reasonably conclude otherwise.

**V. SPAIN HAS NO STRONG INTEREST IN APPLYING ARTICLE 1955 OF THE SPANISH CIVIL CODE IN THIS CASE**

Despite the overwhelming evidence to the contrary, the Ninth Circuit ultimately determined that Spain had a sufficient interest in applying Article 1955 of the Spanish Civil Code in this case, an archaic law enacted in 1889, over 50 years before the Holocaust and 120 years before Spain reaffirmed its commitment to the Washington Principles. In the 135 years since Article 1955 was enacted, *it has never been amended*. It is thus clear that this statute was not enacted to deal with the historically unique circumstances of the devastating massacre and widespread looting displayed by the Nazi regime, or the atrocities subsequently committed by terrorist organizations and other wartime aggressors which would result in additional illicit pieces entering Spain under this outdated provision.

Critically, Spain's failure to amend Article 1955 should not be taken as a sign that the State, in any role other than the actual defendant in a case, endorses the use of Article 1955 in permitting a recipient of Nazi-looted art to retain possession despite the rightful heirs being known. Until this dispute, Article 1955 had never been used to justify a property right claim based on wartime looting, as this was obviously not the purpose of this statute. This conclusion is buttressed by the fact that eleven years after enacting Article 1955, Spain ratified the 1899

Hague Convention, which prohibits seizure of works of art in conflict, and provides that seized art “should be subject of proceedings.” *See* pp. 14-15, *supra*.

Spain’s policies over the past half century have acknowledged the distinction between everyday chattel, to which Article 1955 was meant to apply, and items looted during terrorism, genocide and wartime aggression. Applying Article 1955 in this case would directly contradict Spain’s stated public policy, which instead very conveniently aligns perfectly with California substantive law.

### CONCLUSION

For the foregoing reasons, *Amici* support Petitioners’ petition for a writ of certiorari.

Respectfully submitted,

Bernardo M. Cremades Román<sup>24\*</sup>

([bcr@bcremades.com](mailto:bcr@bcremades.com))

*\*Counsel of Record*

Patrick T. Byrne ([p.byrne@bcremades.com](mailto:p.byrne@bcremades.com))

B. CREMADES & ASOCIADOS

Calle Goya, 18 – Planta 2

28001, Madrid

Spain

Tel.: (+34) 914-237-200

*Counsel for the Amici Curiae*

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<sup>24</sup> Also admitted to practice law in Madrid, Spain (C80963).