

No. ____

**IN THE
SUPREME COURT OF THE UNITED STATES**

DAVID CASSIRER, et. al.,
Applicants,

v.

THYSSEN-BORNEMISZA COLLECTION FOUNDATION,
Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

To the Honorable Elena Kagan, Associate Justice of the Supreme Court:

Pursuant to Supreme Court Rules 13.5, 22.3, and 30, Applicants David Cassirer, the Estate of Ava Cassirer, and the United Jewish Federation of San Diego County (“Applicants” or “Cassirers”) respectfully request an extension of time to and including December 6, 2024, in which to file a petition for writ of certiorari seeking review of the decision of the Ninth Circuit Court of Appeals in *Cassirer v. Thyssen-Bornemisza Collection Found.*, 89 F.4th 1226 (9th Cir. 2024) (“*Cassirer VII*”) (“Decision”). A copy of the Decision is attached as Exhibit 1.

The Ninth Circuit denied Petitioners’ Petition for Rehearing and Rehearing En Banc on July 9, 2024. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 107 F.4th 882 (9th Cir. 2024) (“*Cassirer VIII*”). A copy of the Order Denying Rehearing and Rehearing En Banc and the dissenting statement of Judges Graber and Paez is

attached as Exhibit 2. Absent the requested extension, Applicants’ petition for certiorari would be due October 7, 2024. The basis for this Court’s jurisdiction will be 28 U.S.C. §1254(1).

An extension is warranted, *inter alia*, because one week ago, on September 16, 2024, California Governor Gavin Newsom signed Assembly Bill 2867, which enacted a new provision of the California Code of Civil Procedure, section 338(c)(6). That statute mandates application of California substantive law as the rule of decision in pending and future cases involving stolen works of art held by a museum. The Decision, however, applied Spanish law, a result the Legislature has now foreclosed. Applicants need sufficient time to evaluate and address the issues raised by the statute for purposes of certiorari review.

DISCUSSION

The Cassirers return to this Court again seeking to correct an important but erroneous Ninth Circuit decision, as it did in *Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107 (2022) (“*Cassirer V*”).

This action was brought originally in 2005 by Holocaust survivor and long-time California resident Claude Cassirer to recover a masterpiece Impressionist painting by Camille Pissarro, *Rue St. Honoré, Afternoon, Rain Effect*. The Painting was looted by the Nazis in 1939 from Claude’s grandmother, Lilly Cassirer, and is now held by defendant Thyssen-Bornemisza Collection (“TBC”), a Spanish government museum. Although TBC concedes the Nazis’ theft, it has fought for over two decades to avoid returning the Painting to the Cassirers, its rightful owners.

At issue is the substantive law applicable to state law claims under the Foreign Sovereign Immunities Act (FSIA). In its prior decision, the Court applied 28 U.S.C. §1606 and *Erie* principles to vacate a Ninth Circuit ruling applying “federal common law” to determine choice-of-law, and remanded for application of California’s choice-of-law rules. *Cassirer V*, 596 U.S. at 117.

The choice of substantive law is case-dispositive. *See id.* at 114–16. Under California law, the Painting would belong to the Cassirers because a thief cannot convey good title, and rightful owners cannot be divested of title when they lack actual knowledge of an artwork’s whereabouts. But under Spain’s 1889 law of acquisitive prescription, TBC could keep the Painting because, as interpreted by the Ninth Circuit, title prescribes after three years’ possession of stolen art in good faith, and after six years, even if in bad faith and when the true owner is unaware of the artwork’s location. *See Cassirer VII*, 89 F.4th at 1229 & n.3 (cleaned up) (“Under California law, the plaintiff would recover the art while under Spanish law, the plaintiff would not.” “If California law applied, TBC would not have title to the Painting. The Cassirers would have title.”).

On remand from this Court, the Ninth Circuit applied California’s “governmental interests” framework for choice-of-law under *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal.4th 95, 107–08 (2006). That framework required the Panel to “carefully evaluate[] and compare[] the nature and strength” of each jurisdiction’s respective laws, policies, and interests “to determine which jurisdiction’s interests would be more severely impaired” if not applied “in the particular context presented

by the case,” and then apply the law of the jurisdiction whose interests would be “more impaired if ... not applied.” *Id.* at 100, 107–108; *see Cassirer VII*, 89 F.4th at 1234, 1236–37.

Purporting to apply that test, the Ninth Circuit ruled that “application of California's laws would significantly impair Spain’s governmental interests, whereas the application of Spain’s laws would only relatively minimally impair California's governmental interests.” *Cassirer VII*, 89 F.4th at 1245. Under Spanish law, the court held that TBC acquired title by prescription by holding the Painting for three years, even though Claude Cassirer did not know it even still existed, let alone where it was. *See id.* at 1229.

Applicants filed a timely Petition for Rehearing and Rehearing En Banc on February 22, 2024. On July 9, 2024, the Court denied Applicants’ Petition, over a lengthy and vigorous dissenting statement by Judge Graber joined by Judge Paez. *Cassirer VIII*, 107 F.4th at 883–94. Judge Graber’s dissent meticulously dissected the Panel’s misapplication of California’s choice-of-law criteria,¹ and recognized that “the international community, including the United States and Spain, has coalesced around the principle that artwork stolen by Nazis should be returned to the rightful owner.” *Id.* at 893. Judge Graber described the case as “exceptionally important,”

¹ Judge Graber concluded: “In sum, applying Spanish law would completely eviscerate California’s interests in all realistic cases, whereas applying California’s law would impair Spain’s interests in only a few cases and, even in those cases, would be consistent with Spain’s national policy of allowing recovery of artwork stolen by Nazis. California law applies.” *Cassirer VIII*, 107 F.4th at 891.

and lamented that the Decision “has the unnecessary effect of perpetuating the harms caused by Nazis during World War II.” *Id.* at 884, 892.

The Decision reverberated throughout the State of California as well. On August 13, 2024, the California Legislature passed legislation (AB 2867), which mandates application of California substantive law in cases brought by California residents to recover stolen artworks in the possession of a museum, or cases to recover Nazi-looted art under the federal Holocaust Expropriated Art Recovery Act (HEAR Act), which applies in this case, *see Cassirer v. Thyssen-Bornemisza Collection Found.*, 862 F.3d 951, 960 (9th Cir. 2017) (“*Cassirer III*”). The law amends CCP §338(c) to add a new subsection (6):

(6) Notwithstanding any other law or prior judicial decision, in any action brought by a California resident, or by an heir, trustee, assignee, or representative of the estate of a California resident, involving claims relating to title, ownership, or recovery of personal property as described in paragraph (2) or (3) [involving, *inter alia*, stolen artwork], or in the Holocaust Expropriated Art Recovery Act of 2016 (HEAR) (Pub. L. No. 114-308), including claims for money damages, California substantive law shall apply.

The enrolled version of AB 2867 is attached to this Application as Exhibit 3.

Governor Gavin Newsom signed the bill into law on September 16, 2024, and by its terms the law became effective immediately and applies “to all actions pending” on the date of enactment, which includes cases where “the time for filing any appeal, including a petition for a writ of certiorari in the United States Supreme Court, has not expired, or, if filed, has not been decided.” *See* Exhibit 3, sections 2 (amended §338(c)(6)), 5 (immediate applicability). Accordingly, CCP §338(c)(6) applies to this case.

The new law references the Decision by name, finding that in applying California’s governmental interest test, the Ninth Circuit “refused to credit California’s laws and interests supporting owners of stolen art, including its rejection of ‘constructive discovery,’” and “applied Spain’s law of acquisitive prescription or adverse possession, which is based on the principle of constructive notice that the California courts and Legislature have rejected.” Exhibit 3, sections 1(d) and (e).

As noted, the requested extension is necessary to enable Applicants’ counsel to properly address the substantive and procedural ramifications of the new California statute and best present the arguments for this Court’s review, while also attending to other matters before this Court and other tribunals. In addition, the current due date for the Petition falls during the week of the Jewish High Holidays, which begin on the evening of October 2, 2024.

Further, the additional time is required to address the federal issues that Applicants have raised during the lengthy course of the litigation. Among other things, by interpreting California law to permit TBC to obtain “good title” to Nazi-looted art, the Decision failed to recognize the preemptive effect of numerous United States treaties, statutes, policies, and international agreements, which forbid seizure of works of art and call for restitution of looted property, particularly including Nazi looted art. These include the Hague Convention (1907), U.S. Military Laws Nos. 52 and 59 (1947), the UNESCO Convention (1970), the Holocaust Victims Redress Act (1998), the Washington Conference Principles (1998), the Terezin Declaration (2009), the Holocaust Expropriated Art Recovery (HEAR) Act (2016), and Executive Branch

actions, such as the State Department’s 1949 Tate Letter, and others. These authorities are summarized in the Petition for Rehearing and Rehearing En Banc, Docket Entry 155 in Case No. 19-55616 (Feb. 22, 2024), at 1–4,12–13, 24–25, 27–30.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that an extension of time to file a petition for certiorari be granted to and including December 6, 2024.

September 23, 2024

Respectfully submitted,

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