

Comments on MOU Renewal Request from the Republic of Italy

June 29, 2020

The Global Heritage Alliance (“GHA”) is pleased to comment on a proposed renewal of a Memorandum of Understanding (“MOU”) with the Republic of Italy.

GHA believes that recent events, which have seen academics associated with the Archaeological Institute of America (“AIA”), the Antiquities Coalition, and ATHAR project, justify, or even incite mob violence to tear down historic statues of Columbus, St. Junípero Serra, the Hispanic founder of California missions, and others, exposes the fundamental truth that their advocacy is not really about “conservation,” but rather “control.”¹ Under the circumstances, GHA submits that a new paradigm, one that facilitates lawful trade, and holds archaeologists and State Parties accountable for preservation efforts, should be adopted.

Here, GHA writes to focus CPAC’s attention on the need to facilitate lawful trade.

¹ See *Professor of ‘Art Crime’ Instructs Protesters on Better Way to Topple Statues that Offend Them*, The College Fix (June 11, 2020) (describing Prof. Erin Thompson’s advice to tear down a Columbus statue and Prof. Sarah Parcak’s advice to tear down a memorial obelisk to Confederate troops in Birmingham, Ala.), available at <https://www.thecollegefix.com/professor-of-art-crime-instructs-protesters-on-better-way-to-topple-statues-that-offend-them/> (last visited June 26, 2020). Both Prof. Thompson and Prof. Parcak are associated with the Antiquities Coalition. See <https://theantiquitiescoalition.org/?s=Thompson+> (last visited June 26, 2020); <https://theantiquitiescoalition.org/?s=+Parcak> (last visited June 26, 2020). Prof. Parcak also serves as an AIA trustee. See <https://www.archaeological.org/about/governance/board/> (last visited June 26, 2020). Recently, Katie Paul of the ATHAR Project told *Al-Monitor*, “The statues toppled in the United States and Europe are symbolic representations that deify slave owners and genocidal leaders. They are being removed or vandalized today because they idolize figures who committed the worst kind of oppression,... The Pyramids were not constructed to idolize slavery or genocide nor do they serve as monuments to revere an era of oppression.” See Shahira Amin, *Archaeologists, Activists Alarmed by Online Calls to Demolish Pyramids*, *Al-Monitor* (June 17, 2020), available at <https://www.al-monitor.com/pulse/originals/2020/06/blm-black-lives-matter-activists-pyramids-george-floyd.html#ixzz6QUBJ5omn> (last visited June 26, 2020). Of course, despite Ms. Paul’s spin, the Pyramids were constructed by conscripted labor, and the Ancient Egyptian ruling elite maintained large numbers of slaves, chiefly captured prisoners of war, who were used for forced labor, including monumental construction projects. Paul has also defended violent tear downs of statues to former President Grant and Fr. Serra. See <https://twitter.com/AnthroPaulicy/status/1274348319913816064> (Grant, last visited June 26, 2020) and <https://twitter.com/AnthroPaulicy/status/1274341913647341568> (Fr. Serra, last visited June 26, 2020). Grant’s contributions as a war winning Civil War General and anti KKK President are well known. For alternate views of Columbus and Fr. Serra statues, see John M. Viola, *Tearing Down Statues of Columbus Also Tears Down My History*, *The New York Times* (Oct. 9, 2017), available at https://link.edgepilot.com/s/f0db2f9f/SjQ3TxG_FkqtUpUovO0xBO?u=https://www.nytimes.com/2017/10/09/opinion/christopher-columbus-day-statue.html (last visited June 26, 2020); *Boycott Richmond*, *Primo Magazine*, available at <http://www.onlineprimo.com/> (last visited June 26, 2020); Paul Kengore, *Taking Down St. Junípero Serra*, *National Catholic Register* (June 25, 2020) available at <https://www.ncregister.com/daily-news/taking-down-st-junipero-serra> (last visited June 26, 2020).). GHA submits that any decision to remove a statue from public view must be handled peacefully, consistent with federal, state, and local law.

We would request: (1) that should the MOU be renewed, that such renewal not be used to expand import restrictions further—in particular there should be no effort to expand import restrictions to include widely and legally collected late Roman Republican, Roman Imperial, and later coins; and (2) that any renewal require U.S. Customs and Border Protection (“CBP”) to accept export permits or evidence of legal export from sister European Union (EU) countries as evidence of a legal import of artifacts on the designated list for Italy.

The Cultural Property Implementation Act (“CPIA”), 19 U.S.C. §§ 2601 *et seq.* contains significant procedural and substantive constraints on the executive authority to impose import restrictions on archaeological and ethnological objects. CPAC is to provide the executive with useful advice about this process. The Committee’s report shall include, “terms and conditions which it considers necessary and appropriate to include within such agreement, or apply with respect to such implementation, for purposes of carrying out the intent of the Convention.” 19 U.S.C. § 2605 (f) (4) (A).

If the MOU is renewed, the designated list should not be extended further, particularly with regard to late Roman Republican and Roman Imperial coins. We understand that the International Association of Professional Numismatists has produced substantial academic evidence that only a minority of such coins are found in Italy as opposed to other countries, especially market countries of the United Kingdom, France, Germany, and Switzerland. Under the circumstances, it makes no sense for U.S. authorities to assume such coins are Italian cultural patrimony.

CPAC should also make every effort to facilitate lawful trade. CPIA import restrictions only apply to cultural goods subject to the export control of a particular country. 19 U.S.C. § 2601 (2). However, U.S. Customs and Border Protection (“CBP”) has failed to acknowledge that EU member countries are part of a common market that allows for the export of archaeological and ethnological objects with or without a license according to the local law of the exporting EU member.² Allowing entry of objects legally exported from the EU that are found on “designated lists” for EU member countries like Bulgaria, Cyprus, Greece and Italy would greatly facilitate lawful trade in a situation that could not have been specifically contemplated by the CPIA, which predates the EU’s export control regime. This can be simply accommodated by modifying Art. I of any renewal to make any import restrictions inapplicable to cultural objects legally exported from another E.U. country, with or without a formal export permit under local law.

This proposed modification is consistent with not only EU law as set forth above, but the UNESCO Convention and Italian law as well. Art. 6 of the 1970 UNESCO convention contemplates that member states will create a system of export permits for cultural goods. While

² See Council Regulation (EC) No 116/2009, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0116> (last visited May 21, 2020). It is IAPN’s understanding that a number of E.U. countries have construed Article 2.2 of the Regulation to allow for the export of ancient coins without an E.U. export certificate as objects of limited archaeological or scientific interest.

Italy issues its own export certificates,³ Italy also recognizes the force EU export permits under its own law.⁴ Here, it makes little sense to for CBP not to accept such EU exports, or legal exports from EU. countries without a certificate under local law, when Italy itself recognizes those certificates under its own law.

In light of the above, Global Heritage Alliance also respectfully requests that CPAC require that CBP accept legal exports from sister E.U. countries, with or without export permits under local law, as a legal import into the U.S. under any renewal.

³ We understand from dealers trying to export coins from Italy, that despite provisions in past MOU's promoting the ease of acquiring export permits, in fact the opposite has happened and it has become even more difficult to secure export permits.

⁴According to a recent analysis of Italian cultural heritage law, "The provisions contained in [such] Regulations were transposed in the Italian Code of Cultural and Landscape Heritage under Arts. 73 seq. and the Directive was ratified by means of Legislative Decree 7 January 2016, no. 2." GLOBAL ART AND HERITAGE LAW SERIES: ITALY & THE EU REPORT at 16 (Committee for Cultural Policy and Trustlaw May 2020), available at <https://seureservercdn.net/198.71.233.41/446.70d.myftpupload.com/pdf/CCP-Global-Art-and-Heritage-Law-Series-Italy-And-The-EU.pdf> (last visited June 18, 2020).