

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
“THE THEFT, ILLEGAL POSSESSION, SALE, TRANSFER AND EXPORT OF TRIBAL CULTURAL
ITEMS.”**

OCTOBER 18, 2016

Senator Heinrich and Senator Udall, and members of the Committee, my name is Cheryl Andrews-Maltais, and I am the Senior Advisor to the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for holding this field hearing and for the opportunity to provide testimony before this Committee on the “Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items.”

Tribal cultural heritage is at the heart of tribal identity. When we say “cultural heritage” we mean not only the Ancestors, funerary items, sacred items, and items of cultural patrimony but also the relationships of these items to the community, both tangible and intangible. Native American cultural roots are America’s deepest cultural roots. In the words of the National Historic Preservation Act, this heritage gives spirit and direction to tribes and to America.

Tribal cultural heritage belongs to the tribal community of its origin as a whole and must not be alienated from that community by any individual or group without the expressed prior and informed consent of that tribe. No individual person or group has a right to possess, transfer, or trade tribal cultural heritage and to do so is against tribal customs, practices, and laws.

Unfortunately cultural appropriation and a desire for the collection of items that are uniquely Indian and have cultural significance to tribes has become a very lucrative industry. These influences have opened the door for illegal activities regarding the acquisition, transport, and sale of tribal cultural heritage. Tribal cultural heritage is being stolen on a regular basis and is turning up on the internet, in auction houses both domestically and in foreign countries, and in private collections.

The Department is committed to combatting the theft, illegal possession, sale, and transfer of tribal cultural heritage. We are also committed to combatting the export of illicitly acquired cultural items and to helping tribes repatriate their cultural heritage from abroad.

A number of tribes have cultural heritage of concern housed in foreign museums or being sold in foreign markets. For instance, since 2013 there have been a series of sales by Paris auction houses involving tribal cultural heritage, including sacred items. At the request of concerned

tribes, the federal government has intervened with the auction houses and the French government in a number of these cases.

We have assisted the Department of State with efforts to raise awareness of the sensitivity of these items with auction houses, the French government, and the public. In December 2015, Secretary of the Interior Sally Jewell met with France's Minister of Justice to seek cooperation in preventing such sales and working to repatriate these sacred items back to their proper homes. And this past May, Secretary Jewell issued a public statement objecting to a scheduled auction of cultural items, noting that “[a]uctioning off tribal sacred objects is extremely troubling not only because tribal law precludes the sale of these objects by individuals, but because items held by a dealer or collector are likely the result of wrongful transfer and may be for sale illegally.” She called upon the French government to work with the United States government and with tribes to address this problem. Illustrating the challenges before us, only this past May did a tribe succeed in delaying the sale of an item of concern.

In light of the continuing sales and holdings of tribal cultural heritage in foreign museums, Secretary Jewell has instructed Department staff to cooperate with tribes and other federal agencies, including the Departments of State, Homeland Security, and Justice, to review the circumstances by which sacred items and other important tribal cultural patrimony are making their way into foreign markets, and explore ways of improving federal support for tribes’ efforts at repatriation. Within the Department, many offices and bureaus have responsibilities relating to this effort, including not only the Office of the Assistant Secretary for Indian Affairs but also the Office of International Affairs, Office of the Solicitor, the National Native American Graves Protection and Repatriation Act (NAGPRA) Program and the cultural resources and law enforcement staff of the land management agencies.

To this end, in addition to several listening sessions, the Department has launched government-to-government consultations with tribes on international repatriation issues. The first session was held September 27, 2016, at the White House Tribal Nations Conference in Washington, D.C. and we conducted the second last week at the Annual Convention of the National Congress of American Indians in Phoenix, AZ. Additional sessions are planned for October 21, 2016, at the annual convention of the Alaska Federation of Natives in Fairbanks, AK, and October 26, 2016, at the meeting of the United South & Eastern Tribes in Cherokee, NC. I am happy to report that other federal agencies, such as the Departments of State, and Justice, are involved in this process. We are seeking input, ideas, information and views relating broadly to Native American cultural heritage, including that of Native Hawaiians.

Examples of ideas under discussion that have been raised during these sessions include: seeking bilateral agreements with key foreign countries; developing a guidance publication for customs officials and foreign governments to help them recognize potentially sensitive items; and raising public sensitivity and awareness about the difference between tribal cultural heritage and authentic artworks produced and marketed for sale by artists who are members of federally-recognized tribes.

An essential element to combat this cultural heritage theft is vigorous enforcement of laws such as NAGPRA and ARPA. As an example, in 2009, federal law enforcement partners (Bureau of Land Management, Federal Bureau of Investigation, U.S. Marshals) concluded a two-year undercover operation that rounded up a ring of archeological grave robbers who looted pristine sites in the Southwest, desecrated ancient American Indian burials and stole priceless artifacts, selling them to dealers and collectors who were associated with the network. Departmental law enforcement worked with the Department of Justice to prosecute those found guilty of violating cultural heritage laws.

At that time this was the United States' largest investigation of archeological and cultural artifact thefts. The investigation involved officers from BLM, FBI, and the U.S. Marshals, who were joined by local and state law enforcement partners. These agencies executed nearly two dozen search warrants in four states resulting in the indictment of approximately 30 individuals from Utah, New Mexico, and Colorado. During the undercover investigations, just over 250 stolen artifacts were trafficked, with an estimated value exceeding \$335,000, including decorated pottery, burial and ceremonial masks, a buffalo headdress, and ancient sandals known to be associated with Native American burials.

The then-Assistant Secretary for Indian Affairs, Larry Echo Hawk, said at the time that “[l]ooters robbing tribal communities of their cultural patrimony is a major law enforcement issue for federal agencies enforcing historic preservation laws in Indian Country,” and the “action should give American Indians and Alaska Natives assurance that the Obama Administration is serious about preserving and protecting their cultural property.”

The ring was charged with multiple counts of violating ARPA and NAGPRA as well as theft of government property, depredation of government property, and theft of Indian tribal property. Nearly all of the defendants pled guilty to charges, and as a condition of the plea agreements, relinquished their Native American artifacts collections. Approximately 40,000 artifacts were recovered. However, no one was required to serve any jail time.

Through our ongoing outreach, listening sessions and consultations on international repatriation of tribal cultural items, the federal government is receiving and sharing information about existing training and models. For example, after receiving information from the Grand Ronde Tribe about how Oregon State Police are trained in looting and trafficking to improve apprehension and prosecution, that information was referred to Department of Justice training officials to incorporate into their materials. The Department also continues to provide training on compliance and enforcement of NAGPRA and ARPA internally and with other federal agencies.

It is also important to improve public awareness of why it is not only illegal to remove or traffic in cultural items and archeological resources, but also morally wrong. Examples of efforts to build awareness include a full-day seminar titled “Going Home: 25 Years of Repatriation Under the National Museum of the American Indian (NMAI) Act,” at the Smithsonian’s National Museum of the American Indian on November 19, 2014. And more recently, in May 2016, the National Museum of the American Indian hosted a panel discussion and press conference in

advance of a May 2016 Paris auction that included tribal cultural items and received great media coverage. The art and museum communities are, as a general matter, more sensitive to the special nature of Native American cultural items and the constraints of federal law, but even within the museum and collections community there is a need to continually reinforce the strict requirement that no items with unknown provenance or title should be sold or brought into a collection, for any reason.

Currently, our best enforcement mechanisms to prevent theft, illegal possession, sale, transfer and export of cultural patrimony within the United States are ARPA, the Antiquities Act and NAGPRA.

We are exploring ways for the Department and federal government as a whole to strengthen the implementation of both ARPA and NAGPRA to protect tribal cultural items to the fullest extent under existing law. These efforts could include, for example –

- Creating more regular training opportunities for federal law enforcement officers, prosecutors, and customs agents on NAGPRA, ARPA, and the Antiquities Act, as well as the application of laws against theft and depredation of federal or Indian property;
- Requiring more robust and frequent training for federal archeologists on the preparation of damage assessment reports;
- Providing additional training for Customs officers on the recognition of Native American cultural property;
- Using tribal monitors on federal lands to provide an additional level of protection for archeological sites, and the overall increased capacity for federal agencies to monitor archeological sites on public lands;
- Developing a special panel or federal-tribal task force to evaluate the issue of international and domestic repatriation challenges and develop specific regulatory language and recommendations.

Additionally, the Department would like to work with the Committee to explore ways to address the limitations in treatment of Native American cultural heritage. Examples include --

- Exploring new ways for repatriating Native American or Native People's worldwide items of cultural heritage, and requiring documentation for items identified as potentially sacred;
- Working with the Department of State to explore potential ways that tribes could be empowered to address international repatriation issues; and

- Providing legal protection from disclosure of sensitive information that is provided by tribes to support the investigation and repatriation of culturally sensitive items.

Conclusion

Thank you for providing the Department the opportunity to provide a statement on “The Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items.” I am available to answer any questions the Committee may have.