



August 2018

# NATIVE AMERICAN CULTURAL PROPERTY

## Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions

# GAO Highlights

Highlights of [GAO-18-537](#), a report to congressional requesters

## Why GAO Did This Study

Recently, overseas auction house sales of Native American cultural items have raised concerns among tribes and the U.S. government that the items may have been taken without tribes' consent. While no comprehensive data exist on the world market for Native American cultural items, several tribes have identified items in at least 15 auctions in Paris, France, since 2012. Some tribes have sought to repatriate these items with help from the Departments of Homeland Security, the Interior, Justice, and State. GAO was asked to review federal agency repatriation efforts. This report examines (1) federal agencies' actions to assist tribes in repatriating cultural items being auctioned overseas and (2) the laws that address the export, theft, and trafficking of cultural items and any challenges in proving violations of these laws.

GAO reviewed federal and tribal documentation on international repatriation; compared federal actions with selected leading collaboration practices; analyzed laws and legal proceedings; and interviewed agency, tribal, and international organization officials selected for their involvement in international repatriation.

## What GAO Recommends

GAO made 12 recommendations, 3 to each of the 4 agencies, including implementing leading collaboration practices and assessing the U.S. legal framework governing the export, theft, and trafficking of these cultural items. The agencies agreed, except Justice disagreed with the recommendation to assess the U.S. legal framework. GAO believes this recommendation is still valid, as discussed in the report.

View [GAO-18-537](#). For more information, contact Anne-Marie Fennell at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov).

August 2018

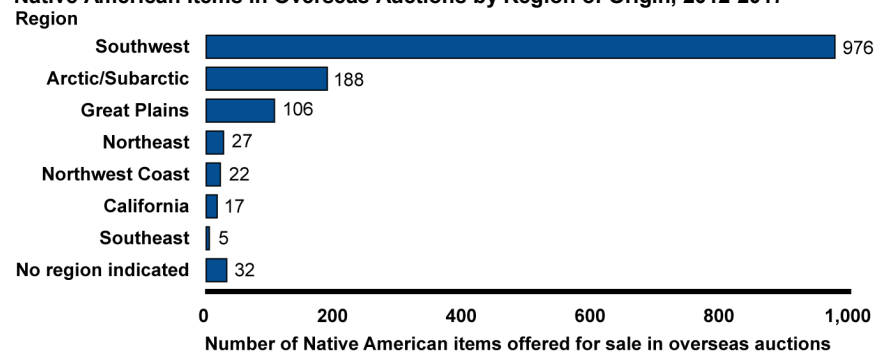
## NATIVE AMERICAN CULTURAL PROPERTY

### Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions

## What GAO Found

Federal agencies have taken several actions in response to Native American tribes' requests for assistance in repatriating cultural items from overseas auctions. For example, the Departments of the Interior and State have facilitated communication and arranged meetings between U.S. and foreign government officials, and in one case, the Department of Justice obtained a warrant for the forfeiture of a Native American cultural item being auctioned overseas. In addition, in 2015, the Departments of Homeland Security, the Interior, Justice, and State established a staff-level interagency working group to discuss issues and share information related to Native American cultural property. However, the working group has not adopted selected leading collaboration practices, such as developing outcomes and objectives or clarifying participants' roles and responsibilities. Working group officials GAO interviewed cited the benefits of working informally, including enabling them to respond more quickly to tribal requests. Some tribal officials told GAO that the informal nature of the working group has been challenging to navigate for tribes seeking assistance. Adopting leading collaboration practices could enhance the working group's ability to assist tribes in facilitating the return of cultural items from overseas auctions.

**Native American Items in Overseas Auctions by Region of Origin, 2012-2017**



Source: GAO analysis of auction catalog data. Regions were derived from Clark Wissler, *The American Indian: An Introduction to the Anthropology of the New World* (Gloucester, Mass.: Peter Smith, 1957 [orig. 1917]). | GAO-18-537

No federal law explicitly prohibits the export of Native American cultural items, creating a challenge for tribes because they cannot easily prove that the items were exported from the United States illegally. In addition, several federal laws address the theft and sale of Native American cultural items, but they are limited in scope, creating a challenge for tribes to prove that a violation of these laws has occurred. Federal standards for internal control call for agencies to identify, assess, and respond to risks related to achieving the defined objectives. However, agency officials said they have not assessed whether and how federal laws could be amended to address these challenges, because the sale of cultural items at overseas auctions is a recent issue and the agencies' direct legal involvement has been limited. Since amending laws would require congressional action, the working group could assist Congress by assessing whether and how to amend the existing legal framework governing the export, theft, and trafficking of Native American cultural items and reporting its findings to Congress.

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## Abbreviations

ARPA	Archeological Resources Protection Act
CVV	Conseil de Ventes Volontaires
Homeland Security	Department of Homeland Security
Interior	Department of the Interior
Justice	Department of Justice
MLAT	Mutual Legal Assistance Treaty
NAGPRA	Native American Graves Protection and Repatriation Act
State	Department of State
UNESCO	United Nations Educational, Scientific and Cultural Organization
USAO	U.S. Attorney's Office

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August 6, 2018

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
House of Representatives

The Honorable F. James Sensenbrenner  
Chairman  
Subcommittee on Crime, Terrorism, Homeland Security, and  
Investigations  
Committee on the Judiciary  
House of Representatives

The Honorable Stevan Pearce  
House of Representatives

In 2007, the United Nations General Assembly adopted the nonbinding Declaration of the Rights of Indigenous Peoples, which affirmed the need to respect indigenous peoples' human rights and protect items of their cultural heritage.<sup>1</sup> Specifically, the declaration states that indigenous people have the right to the use and control of their ceremonial objects and that states shall provide redress to indigenous people for cultural property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs.<sup>2</sup> In the United States, the Native American Graves Protection and Repatriation Act (NAGPRA) defines cultural items for purposes of the law as including funerary objects, sacred objects, and objects of cultural patrimony.<sup>3</sup> These items

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<sup>1</sup>G.A. Res. 295, U.N. GAOR, 61st Sess., U.N. Doc. A/Res/61/295 (2007). The United Nations Declaration of the Rights of Indigenous Peoples is a comprehensive statement addressing the human rights of indigenous peoples worldwide. In 2010, the United States endorsed the declaration after initially opposing it.

<sup>2</sup>In its statement of support of the declaration in 2010, the White House said that the United States will continue to implement the many U.S. laws that require the agreement of federally recognized tribes or indigenous groups before certain actions can be taken or that require redress for takings of property.

<sup>3</sup>25 U.S.C. § 3001(3). We use this definition of cultural item for this report.

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are distinct from other items created for sale or everyday use.<sup>4</sup> Recently, the foreign sale of Native American cultural items in overseas auctions, including those in Paris, France, has raised concerns among numerous Native American tribes and the U.S. government that some cultural items may have been taken without the consent of the tribes or in violation of tribal laws and traditions. According to many tribal laws and traditions, cultural items are typically viewed as belonging to the tribe as a whole, rather than the property of one individual, and cannot be transferred, sold, conveyed, or removed from a tribe's jurisdiction without permission. Native Americans view their cultural items as priceless because of their importance to tribal heritage and identity and, in many cases, their role in religious or healing practices.

Tribes have taken a variety of actions when seeking the return—or repatriation—of cultural items they have identified in overseas auction catalogs. In some instances, tribes have filed lawsuits to suspend overseas auctions to allow time to assess whether items being offered for sale are their cultural items. In other instances, tribes have purchased cultural items directly from the auction houses, sometimes with the assistance of nonprofit organizations. Tribes have also sought assistance from federal agencies in repatriating their cultural items, including the Departments of Homeland Security (Homeland Security), the Interior (Interior), Justice (Justice), and State (State). Tribes may need the assistance of multiple federal agencies because each agency has different roles and responsibilities related to international relations and the enforcement of the laws that address the export, theft, and trafficking of cultural items. For example, in 2016, the Pueblo of Acoma sought assistance from Interior, Justice, and State to repatriate a cultural item known as the Acoma Shield, a painted shield made for ceremonial use that the tribe said was stolen in the 1970s. However, as of July 2018, federal agencies have not been able to secure the return of the Acoma Shield.

You asked us to review federal agencies' response to overseas auctions of Native American cultural items. This report examines (1) actions federal agencies have taken to assist tribes in repatriating Native American cultural items being auctioned overseas and (2) the laws addressing the export, theft, and trafficking of Native American cultural

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<sup>4</sup>When we refer to "other items" as distinct from cultural items, we mean Native American objects offered for sale that do not fit into one of the categories of cultural items defined in NAGPRA.

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items and any challenges federal agencies and tribes face in proving violations of these laws.

To identify actions federal agencies have taken to assist tribes in repatriating Native American cultural items being auctioned overseas, we reviewed relevant documents, including summaries of actions taken and other documentation from federal agencies and correspondence and other documentation from Native American tribal associations and tribes, including the National Congress of American Indians and the Hopi Tribe. We also reviewed documentation from other groups and individuals involved in international repatriation efforts, such as the Antique Tribal Art Dealers Association. We conducted interviews with officials from Homeland Security, Interior, Justice, and State; representatives of Native American tribal associations and 11 Native American tribes; and representatives of Survival International, which provided repatriation assistance to a tribe.<sup>5</sup> We identified the Native American associations and tribes through an Internet search and referrals from interviewees to identify those that had been involved in repatriation efforts. We also compared actions federal agencies have taken with selected leading practices to enhance and strengthen interagency collaboration identified in our prior work.<sup>6</sup> Of the eight leading collaboration practices, we focused on the two that were most relevant to our work—defining outcomes and objectives and agreeing on roles and responsibilities.<sup>7</sup>

To describe the laws that address the export, theft, and trafficking of Native American cultural items and any challenges federal agencies and tribes face in proving violations of these laws, we conducted a literature search and reviewed academic studies and law review articles related to international trafficking in cultural property and international repatriation of Native American cultural items. We reviewed documents associated with

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<sup>5</sup>Survival International is an international organization founded in 1969 that advocates for tribal peoples' rights

<sup>6</sup>GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

<sup>7</sup>The leading practices we did not evaluate include establishing mutually reinforcing or joint strategies; identifying and addressing needs by leveraging resources; establishing compatible policies, procedures, and other means to operate across agency boundaries; developing mechanisms to monitor, evaluate, and report on results; reinforcing agency accountability for collaborative efforts through agency plans and reports; and reinforcing individual accountability for collaborative efforts through agency performance management systems.

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legal proceedings overseas that federal officials, attorneys involved in repatriation efforts, and tribes provided. We also reviewed reports and other published information from Native American tribes and associations, including the National Congress of American Indians and the Association on American Indian Affairs. We interviewed federal agency officials; representatives from Native American tribes and associations; representatives from international organizations, including the European Commission;<sup>8</sup> individuals involved in previous repatriation cases; and independent experts focused on trafficking in cultural items. We identified relevant experts through our literature search and referrals from federal agencies and Native American associations and tribes. In these interviews, we discussed the laws addressing the export, theft, and trafficking of cultural items and any challenges the federal agencies and tribes have experienced.

To provide background information on Native American cultural items being auctioned overseas, we compiled and analyzed catalogs and reported sales data from recent auctions of these items in Paris, France—where several tribes have identified cultural items being offered for sale since 2012. Based on interviews with federal officials who have been involved in efforts to support tribes’ requests for repatriation assistance, we determined that Native American cultural items appeared at auctions conducted primarily by five auction houses in Paris. We examined these auction houses’ websites and online auction catalog data and compiled a list of Native American cultural and other items offered and sold at these auctions from 2012 through 2017—the most current information available at the time of our review.<sup>9</sup> We included items described as affiliated with U.S. tribes or historical periods and excluded items described as affiliated with locations or tribes outside the United States. We made modifications to correct for errors. We analyzed the data to provide descriptive information about the magnitude and composition of the overseas auction sales from 2012 through 2017. We did not independently verify the tribal or cultural affiliation ascribed to the items in the auction catalogs.

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<sup>8</sup>The European Commission is the executive arm of the European Union. It helps develop the European Union’s overall strategies, proposes new laws and policies, and monitors their implementation.

<sup>9</sup>We did not distinguish between cultural and other items in our analysis. Therefore, our results likely include both cultural items and other items created for legitimate sale or everyday use that are not covered by NAGPRA.

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We conducted this performance audit from January 2017 to August 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Native American cultural items have a long history of being taken from tribes to add to private or institutional collections or for commercial sale, sometimes through coercion, fraud, looting, or theft, according to federal agency officials and representatives of tribal associations. In the late 19th and early 20th centuries, in part to preserve parts of Native American cultures that they believed were disappearing, there was an increase in expeditions by universities, museums, and private collectors to obtain Native American cultural items. In some instances, these groups acquired sacred objects from Native American tribes that were experiencing epidemics, drought, and food shortages. At the same time, Native American artisans have long created pottery, baskets, rugs, and other types of arts and crafts for sale to wholesalers, retailers, or the public, and there is a legitimate market in these items.<sup>10</sup> Native American cultural items being trafficked—or illegally obtained, transported, or sold—have appeared alongside these legitimate arts and crafts in overseas auctions and other marketplaces.

According to tribal leaders, they are in the best position to determine what may be considered an item of cultural importance to a tribe and whether they would like to pursue the repatriation of the item. However, making this determination can be difficult for tribes once the cultural items have been intermingled with legitimate arts and crafts, according to the Conference of the Parties to the United Nations Convention against Transnational Organized Crime.<sup>11</sup> Further, tribes may have limited time to make this determination because auction catalogs can be published

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<sup>10</sup>GAO has previously reported on the market for Indian arts and crafts. See GAO, *Indian Arts and Crafts: Size of Market and Extent of Misrepresentation Are Unknown*, [GAO-11-432](#) (Washington, D.C.: Apr. 28, 2011).

<sup>11</sup>United Nations, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Use of the United Nations Convention against Transnational Organized Crime for Protection against Trafficking in Cultural Property: Note by the Secretariat*, para. 11 (2010)

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within a week of the actual auction. In some instances, tribes have decided not to pursue repatriation of a cultural item because of these time constraints or because of the belief that the item has lost its sacred properties or cultural significance after leaving the possession of the tribe, according to tribal and agency officials.

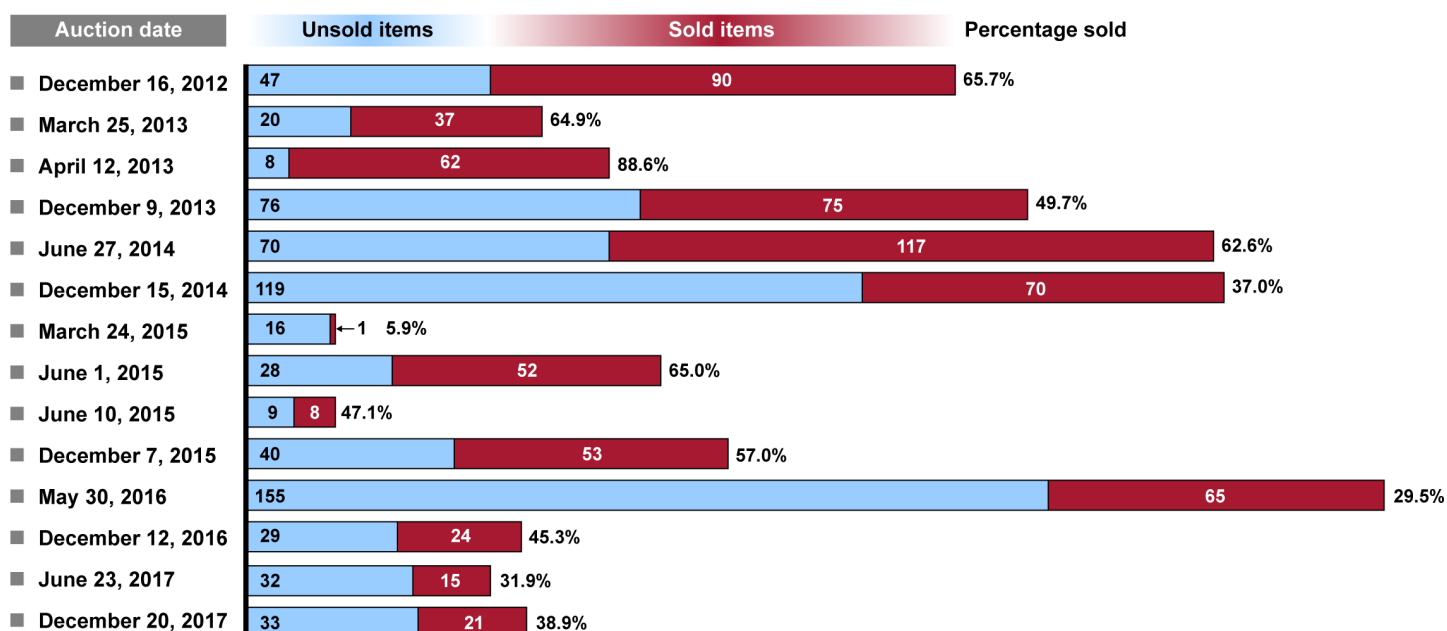
While no comprehensive data on the world market for Native American cultural items exist,<sup>12</sup> some federal officials and repatriation experts identified several auction houses in Paris, France, as the primary market for such items. Almost 1,400 items described as being affiliated with U.S. tribes or having origins within the United States were offered for sale in these auctions, and about half of these items sold for a total of nearly \$7 million from 2012 through 2017. It is unclear how many of these items tribes would consider important cultural items. However, at least 13 Native American tribes and Alaska Native entities have identified important cultural items for sale at the Paris auctions, including tribes from the Pacific Northwest, Plains, and Alaska.<sup>13</sup> The majority of items being auctioned were described in the catalogs as having tribal affiliations in the southwest United States. Figure 1 shows the number and percentage of Native American items offered and sold at each of the Paris auctions from 2012 through 2017.

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<sup>12</sup>The International Criminal Police Organization, INTERPOL, states on its website that accurate statistics on the number of items of cultural property and their value trafficked throughout the world are not currently available, in part, because statistics are based on the circumstances of the theft, rather than the type of object stolen.

<sup>13</sup>The tribes and other entities that have identified cultural items for sale at overseas auctions include the Pueblo of Acoma, Afognak Native Corporation, Chilkat Indian Village, Chugach Alaska Corporation, Hopi Tribe, Pueblo of Isleta, Hoopa Valley Tribe, Pueblo of Jemez, Pueblo of Laguna, Navajo Nation, Oglala Sioux Tribe, San Carlos Apache Tribe of the San Carlos Reservation, and White Mountain Apache Tribe of the Fort Apache Reservation.

**Figure 1: Native American Cultural and Other Items Offered and Sold in Auctions in Paris, France, 2012–2017**



Source: GAO analysis of auction catalogs and sales data. | GAO-18-537

In December 2016, citing the continued removal and international export of tribal cultural items for sale in both public and black markets in violation of federal and tribal laws, Congress passed a resolution condemning the trafficking of Native American cultural items. The resolution also called on certain federal agencies to take affirmative action to stop illegal trafficking and secure the repatriation of Native American cultural items.<sup>14</sup> In addition, several previously enacted laws address the theft and trafficking of Native American cultural items, as shown in table 1.

<sup>14</sup>H. Con. Res. 122, 114th Cong. (2016) (enacted).

**Table 1: Laws That Can Be Used to Address the Theft and Trafficking of Native American Cultural Items**

Year law was enacted	Law	Theft and trafficking provisions
1906	Antiquities Act of 1906	Criminalizes, among other things, the appropriation or excavation, without permission, of any historic or prehistoric ruin or monument or any other object of antiquity situated on land owned or controlled by the federal government.
1934	National Stolen Property Act	Criminalizes, among other things, the transport in interstate and foreign commerce of any good with a value of \$5,000 or more, knowing that the good was stolen or taken in fraud.
1979	Archaeological Resource Protection Act (ARPA)	Prohibits, among other things, the removal of archaeological resources from public or Indian lands without a permit. Prohibits trafficking in archaeological resources, the excavation or removal of which is wrongful under federal, state, or local law. Specifically, ARPA prohibits the sale, purchase, exchange, transport, receipt, or offer to sell, purchase, or exchange, any archaeological resources excavated or removed without authorization from public or Indian lands. ARPA also prohibits the trafficking in interstate or foreign commerce of archaeological resources, the excavation, removal, sale, purchase, exchange, transportation, or receipt of which is wrongful under state or local law. The law imposes criminal penalties for knowingly violating these prohibitions. Authorizes federal land managers to assess civil penalties for violations of the regulations implementing ARPA or a permit issued pursuant to ARPA.
1990	Native American Graves Protection and Repatriation Act (NAGPRA)	Prohibits the intentional removal from, or excavation of, Native American cultural items from federal or tribal lands unless an ARPA permit has been issued and other requirements are met. Prohibits the sale, purchase, use for profit, or transport for sale or profit of any Native American cultural items, including funerary objects, sacred objects, and objects of cultural patrimony, obtained in violation of the act. Imposes criminal penalties for knowingly violating this prohibition.

Source: GAO analysis of relevant laws. | GAO-18-537

Because tribes may pursue a range of different strategies to secure the repatriation of cultural items, they may seek the assistance of one or more federal agencies, including Homeland Security, Interior, Justice, and State. For example:

- **Homeland Security.** Within Homeland Security, U.S. Immigration and Customs Enforcement, Homeland Security Investigations may investigate cases involving the illegal exportation of goods, including Native American cultural items. In addition, Homeland Security's U.S. Customs and Border Protection enforces customs laws, identifies noncompliant imports and exports, and seizes prohibited goods.



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- **Interior.** Interior typically leads outreach to tribes and facilitates engagement between tribes and State. It also serves as a source of expertise on laws relating to cultural property, including NAGPRA and the Archaeological Resources Protection Act (ARPA), and on federal responsibilities to tribes. Interior's Office of International Affairs and Office of the Assistant Secretary for Indian Affairs together lead an informal network of offices that respond to tribal requests for assistance and may include other offices, such as the National NAGPRA program, the Bureau of Indian Affairs NAGPRA program, and the Office of the Solicitor.
  - **Justice.** Justice is the federal government's principal law enforcement agency and generally coordinates legal efforts between multiple jurisdictions, including tribes and foreign countries. Within Justice, the Federal Bureau of Investigation may investigate violations of federal law, including the theft and trafficking of Native American cultural items.
  - **State.** Within State, the Bureau of Educational and Cultural Affairs and U.S. embassies may facilitate contacts with overseas governments and institutions on behalf of tribes and other federal agencies, monitor overseas auction house activities, and conduct public awareness and social media campaigns in support of tribal repatriation efforts.

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## Federal Agencies Have Taken Several Types of Actions to Assist Tribes, but Have Not Adopted Selected Leading Collaboration Practices

Federal agencies have taken several types of actions to assist tribes with repatriating cultural items being auctioned overseas, including notifying tribes about auctions containing cultural items; formally requesting the suspension of auction sales; and in one case, taking legal action to repatriate an item. Homeland Security, Interior, Justice, and State have worked together on an ad hoc basis to support tribes seeking assistance with repatriating cultural items that are being auctioned overseas, but the agencies have not adopted selected leading collaboration practices to assist tribes.

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### Federal Agencies Have Taken Several Types of Actions to Assist Tribes

Federal agencies have taken several types of actions in response to Native American tribes' requests for assistance in repatriating cultural items from overseas, including the following:

- **Conducting listening sessions and consultations at regional and national meetings.** In 2016, Interior held five international repatriation listening sessions at meetings of regional and national Native American organizations in Alabama, Colorado, New Mexico, Oregon, and Washington. In addition, Interior held a second round of listening sessions at meetings with tribal organizations in Alaska, Arizona, New Mexico, North Carolina, and Washington, D.C. Interior then made a summary of the views of the tribal organizations and the comments it received available on its website.<sup>15</sup>
- **Monitoring foreign auctions and notifying tribes of auction catalogs containing Native American cultural items for sale.** Since December 2014, officials in Interior's Office of the Assistant Secretary for Indian Affairs and Office of International Affairs have monitored the websites of overseas auction houses known to sell Native American cultural items. When auction houses posted catalogs online—typically one to three weeks prior to the auction, according to Interior and State officials—Interior officials reviewed the catalogs and notified tribal leaders and cultural experts via phone or email when the auction appeared to include items with a tribal affiliation for sale. According to Interior's document summarizing the agency's activities, Interior has notified tribes of items in

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<sup>15</sup>This summary can be found at [https://www.doi.gov/sites/doi.gov/files/uploads/international\\_repatriation\\_summary\\_final\\_0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/international_repatriation_summary_final_0.pdf).

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seven auctions since the agency began reviewing catalogs. In four of these instances, tribes requested assistance in preventing an item or items from being sold at auction.

- **Formally requesting the suspension of auction sales and taking legal action.** U.S. government officials have written to overseas entities and foreign government officials requesting that an auction sale be suspended. For example, in June 2014, the U.S. embassy in Paris sent a letter to an auction house requesting a delay in the sale of certain Native American items so that a tribe could examine the items and any documentation related to their provenance to determine whether the items were trafficked in violation of U.S. law.<sup>16</sup> The U.S. embassy sent another letter to the auction house noting that some of the items included in the auction contained eagle feathers, which are generally illegal to possess in, export from, or import into the United States.

In another example, in May 2016, the Secretary of the Interior sent a letter to the President of the Conseil des Ventes Volontaires (CVV)—the French administrative entity responsible for overseeing auction houses.<sup>17</sup> In this letter, the Secretary of the Interior requested that the CVV halt the sale of a ceremonial shield from the Pueblo of Acoma, for which there was evidence of theft, and asked the CVV to identify the U.S. citizen attempting to sell the item. State, in conjunction with the National Museum of the American Indian and the Pueblo of Acoma, held a press conference to condemn the auction. The Pueblo of Acoma also contacted Justice for assistance. Justice referred the matter to the U.S. Attorney's Office in Albuquerque, which subsequently filed a complaint in and obtained a warrant for the forfeiture of the shield from the federal district court in New Mexico. To facilitate cooperation from the French government, Justice also invoked the Treaty on Mutual Legal Assistance in Criminal Matters between the United States and France.<sup>18</sup> The shield was subsequently removed from the auction but remains in France, according to representatives of the Pueblo of Acoma. The disposition of the shield is an ongoing legal matter as of July 2018.

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<sup>16</sup>Provenance is the history of ownership of a valued object or work of art or literature.

<sup>17</sup>The English translation of Conseil des Ventes Volontaires is Voluntary Sales Council.

<sup>18</sup>Mutual legal assistance treaties generally allow for the exchange of evidence and information in criminal and related matters between two or more countries. The Treaty on Mutual Legal Assistance in Criminal Matters between the United States and France became effective in December 2001.

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- **Facilitating communication and arranging meetings with foreign entities.** Federal agencies have also facilitated communication and arranged meetings between tribes, U.S. government officials, and foreign entities. For example, in June 2014, the U.S. embassy in Paris arranged meetings between French government officials and a U.S. federal court judge who was also a Hopi tribal member. The purpose of the meetings was to discuss the importance of cultural items to tribes, U.S. laws governing the disposition and transfer of cultural items, and steps French authorities were taking to respond to the sale of cultural items in their country. In another instance, in June 2015, State officials accompanied and provided translation services for a member of the Hopi Tribe to meet with an auction house about an upcoming sale of Hopi items in Paris. In addition, following a December 2015 meeting between the Secretary of the Interior and French government officials on cultural property issues, Interior, Justice, and State officials participated in an October 2016 videoconference about international repatriation with officials from the French government. The purpose of this meeting was to share information and explore avenues for cooperation to address the issue of illegal commerce in Native American cultural property.
  - **Conducting media outreach to raise public awareness.** Federal agencies have also engaged with the media to raise public awareness about the sale of tribal cultural items overseas. For example, in December 2013, the U.S. embassy in Paris initiated a public awareness campaign regarding an imminent auction of Native American cultural items, which included writing newspaper editorials to support the Native American position that the cultural items should be returned to the tribe. State has also used social media campaigns to denounce the sale of cultural items. For example, in December 2016, the U.S. embassy in Paris posted five entries on its Twitter account opposing a forthcoming auction that contained cultural items from the Hopi Tribe. However, the items were not removed from the sale and the auction proceeded as scheduled.
  - **Establishing an informal, staff-level interagency working group.** In late 2015, following several incidents in which cultural items were sold at foreign and domestic auctions, Homeland Security, Interior, Justice, and State officials established an informal, staff-level interagency working group to discuss issues and share information related to protecting Native American cultural property. Coordinated by a Justice official, the group meets monthly to provide agency updates on activities related to tribal cultural property. For example, the group has discussed and shared information regarding legislative proposals, enforcement actions, bilateral

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relations, and the future of national cultural property export controls and examples of permit requirements.

Appendix I includes a timeline of key actions agencies have taken to assist tribes regarding overseas auctions.

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## Federal Agencies Have Not Adopted Selected Leading Collaboration Practices to Assist Tribes in Repatriating Native American Cultural Items

Federal agencies have worked together to assist tribes with repatriating their cultural items from overseas auctions, in part, through the informal interagency working group established in late 2015. However, the working group has not adopted selected leading practices that we have identified in previous work that can help enhance and sustain collaborative mechanisms.<sup>19</sup> Specifically, while collaborative mechanisms, such as interagency working groups, can differ in complexity and scope, they all benefit from leading practices, including clearly defining outcomes and objectives and clarifying roles and responsibilities. In addition, the agencies' communications with tribes have not been consistent with federal internal control standards.<sup>20</sup>

Some officials participating in the working group said the group's goals broadly include working to protect the cultural resources of tribes and repatriating Native American cultural items. However, officials told us that the group does not have more clearly defined outcomes or objectives or a mechanism to monitor or report on its progress in achieving them. Interior, Justice, and State officials agreed that the group has been effective for facilitating communication and exchanging ideas, but participating officials differed in how they characterized the purpose of the group. For example, one Interior official said that the purpose of the working group was to return items to tribes; protect items still in tribes' possession; and improve agencies' implementation of NAGPRA, ARPA, and other relevant laws that protect cultural property. In contrast, a Justice official said that the working group was not intended to serve tribes directly or to have specific outcomes. State officials said that it would be useful for the group to clarify outcomes and objectives. In our prior work, we noted that absent effective collaboration, routine interagency meetings can occur without a joint agreement among the

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<sup>19</sup>GAO-06-15. GAO identified issues to consider when implementing these mechanisms in GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, GAO-12-1022 (Washington, D.C.: Sept. 27, 2012).

<sup>20</sup>GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 2014).

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agencies about what the group aims to achieve or how the group will operate. By establishing outcomes based on what the group shares in common, a collaborative group can shape its vision and define its purpose, providing its members with a reason to participate in the process.

In addition, the working group has not identified clear roles and responsibilities for the participating agencies. In our prior work on collaboration, we found that another leading practice that enhances collaboration is defining and agreeing on participating agencies' respective roles and responsibilities, including how the collaborative effort will be led. Justice has taken the lead for organizing the working group's regular meetings. However, some working group members said the group has not designated a central point of contact from the group or points of contact for Native American cultural property protection and international repatriation issues within each participating agency. Interior developed a list of contacts—including designating the International Affairs Coordinator in its Office of the Assistant Secretary for Indian Affairs as the agency's point of contact for tribes' international repatriation assistance requests—and posted the information on its website, but the position has been vacant since January 2017. Interior officials we interviewed said that others have assumed the responsibilities of the point of contact, but as of July 2018, Interior had not updated the point of contact information. In our previous work, we also reported that not all collaborative arrangements—particularly those that are informal—need to be documented through written guidance and agreements. However, we have found that at times it can be helpful to document key decisions related to the collaboration, such as which individuals and agencies will be responsible for what actions. Having a clear and compelling rationale for working together is a key factor in successful collaborations because it can help agencies overcome significant differences if they arise.

Further, according to Interior's summary of the listening sessions it conducted in 2016, most commenters requested a list identifying agencies' roles and responsibilities and points of contact so that tribes and their members would know whom to contact. Commenters also requested guidance on which agency to go to for assistance with international repatriation or overseas trafficking. Officials participating in the working group said that the group has established a network of government officials with various types of expertise that group members can contact as requests from tribes are received. However, some working group members said that the agencies have not made this contact information available to tribes and have not clearly communicated to the

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tribes the process for requesting assistance with international repatriation, which is not consistent with federal internal control standards.<sup>21</sup>

Specifically, these standards state that agency management should externally communicate the necessary quality information to achieve the entity's objectives.

Several members of the working group we interviewed said that the informal, ad hoc nature of the group provides them with the flexibility they need to respond quickly to tribal requests related to overseas auctions and allows them to meet to discuss issues as they arise. However, some tribal officials we interviewed said that the informal nature of the federal agencies' working relationship has been challenging to navigate. For example, officials from the Hopi Tribe told us they experienced challenges requesting federal assistance with repatriating items from a series of auctions beginning in 2013 and therefore pursued administrative and legal actions on their own in an attempt to suspend the auctions and reclaim their cultural items.<sup>22</sup>

Implementing leading collaboration practices within the working group, such as defining outcomes and objectives and identifying clear roles and responsibilities, as well as improving communication to tribes about whom to contact for assistance could enhance federal agencies' ability to assist tribes in repatriating cultural items. It could, for example, provide the tribes with points of contact; promote greater information sharing; and enable the agencies to leverage their authorities, expertise, and resources to enhance their ability to respond to tribes' repatriation requests.

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<sup>21</sup>GAO-14-704G.

<sup>22</sup>The tribe's actions did not result in suspending auction sales or in the return of the items to the tribe. In June 2017, more of the tribe's cultural items were auctioned in Paris, but tribal officials said they did not request federal assistance or pursue independent actions based on previous efforts being unsuccessful.

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## Federal Laws Do Not Explicitly Prohibit Exporting Native American Cultural Items, and Those That Address Theft and Trafficking Are Limited in Scope

No federal law explicitly prohibits the export of Native American cultural items, creating a challenge for tribes that request that foreign governments or overseas auction houses repatriate items because tribes cannot easily prove that the items were exported from the United States illegally. In addition, several federal laws address the theft and trafficking of Native American cultural items, but they are limited in scope. Tribes have faced challenges providing sufficient evidence to prove that these laws apply to the items being auctioned.

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## No Federal Law Explicitly Prohibits or Regulates the Export of Native American Cultural Items, Making It Challenging for Tribes to Prove Items Were Exported Illegally

No federal law, including NAGPRA, explicitly prohibits the export of Native American cultural items from the United States.<sup>23</sup> Also, federal law does not regulate the export of Native American cultural items through an export system that requires, for example, an export license or certificate when exporting such items. This means Native American cultural items can be exported from the United States without the exporter receiving permission from the federal government to do so.

Additionally, the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (Convention) does not apply to Native American cultural items because the United States has not implemented the Convention's export provisions.<sup>24</sup> Specifically, when the Senate ratified the 1970 UNESCO Convention, it reserved the right to determine whether to impose export controls over cultural property. When the United States enacted a law in 1983 to implement the 1970 UNESCO Convention, it did not designate any items as cultural property or authorize export controls on cultural

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<sup>23</sup>According to Homeland Security officials, exported cultural items obtained in violation of NAGPRA, ARPA, or the Antiquities Act of 1906 may be subject to seizure by U.S. Customs and Border Protection and forfeiture under 19 U.S.C. § 1595a(d).

<sup>24</sup>The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property is a treaty adopted by the UNESCO General Conference in November 1970.



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property.<sup>25</sup> Under this law, the United States implements the 1970 UNESCO Convention by entering into bilateral agreements with other parties to the treaty.<sup>26</sup> As of July 2018, the United States had 17 bilateral agreements in effect with other countries to protect their cultural property, but none include provisions addressing the export of U.S. cultural property.<sup>27</sup> State officials said such reciprocity provisions were not included in these agreements because the law implementing the 1970 UNESCO Convention only provides a mechanism to protect other countries' cultural heritage. However, these officials noted that the United States has entered into reciprocal cultural property agreements outside of the 1970 UNESCO Convention framework that address theft of certain archaeological, historical, or cultural property from the United States.<sup>28</sup> State officials said that they have used the Convention's moral principles supporting a mutual interest in protecting cultural property among member states in their bilateral communications to convey that the United States is a nation that is also losing cultural property.

Because there is no federal law explicitly prohibiting the export of Native American cultural items or regulating their export, it is challenging for tribes to prove that an item was illegally exported from the United States, according to attorneys involved in repatriation cases and agency officials we interviewed. For example, in a case involving the Hopi Tribe, the French administrative body ruled that the tribe had not established that items had been exported from the United States illegally, according to an attorney involved in the case. The French administrative body also ruled

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<sup>25</sup>Some officials we interviewed said that this may have been because at the time, the United States was viewed primarily as a destination country for imported cultural property from other countries.

<sup>26</sup>In addition to bilateral agreements, the law as amended authorizes the President to take emergency action in certain circumstances to implement import restrictions on cultural property.

<sup>27</sup>As of July 2018, the United States has bilateral agreements with Belize, Bolivia, Bulgaria, Cambodia, Colombia, China, Cyprus, Egypt, El Salvador, Greece, Guatemala, Honduras, Italy, Libya, Mali, Nicaragua, and Peru. In 1997, at the request of Canada, the United States entered into a bilateral agreement under the Convention on Cultural Property Implementation Act that included a provision requiring Canada to take reasonable steps to prohibit the importation into Canada of Native American cultural items that were illegally removed from the United States. This agreement expired after 5 years, as required by the act, and was not renewed.

<sup>28</sup>These agreements either predate the enactment of the Cultural Property Implementation Act or the other country becoming a party to the 1970 UNESCO Convention, according to State officials.

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that the tribe had not demonstrated that the 1970 UNESCO Convention applied because it did not show that the items for auction had been illegally exported from the United States.<sup>29</sup> Federal officials knowledgeable about the Hopi and Acoma Tribes' efforts to repatriate items from France said that a requirement for an export certificate or license would be helpful in clearly demonstrating to overseas authorities that an item was legally exported from the United States. According to Justice officials we interviewed, French officials said they could take action to stop the auctions and return the items if the United States required export certificates for Native American cultural items, but they cannot take action without such a requirement.<sup>30</sup> In addition, in a November 2017 congressional statement, a Justice official said that an explicit export control system might make it easier for the United States to seek assistance for repatriation efforts from other parties to the 1970 UNESCO Convention.<sup>31</sup> An explicit export control system would require statutory authorization.

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<sup>29</sup>Conseil des ventes volontaires de meubles aux enchères publiques [Voluntary Auction Sales Council], No. DP 2014-61, June 25, 2014 (Fr.).

<sup>30</sup>Under a French law enacted in July 2016, the importation of cultural objects as defined in the 1970 UNESCO Convention, which could include Native American cultural items, into France would be prohibited without an export certificate or license if the United States had a law requiring such documentation.

<sup>31</sup>*Hearing on S. 465 and S. 1400 Before S. Comm. on Indian Affairs*, 115th Cong. (2017) (statement of Tracy Toulou, Director, Department of Justice Office of Tribal Justice).

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## Federal Laws That Address the Theft and Trafficking of Native American Cultural Items Are Limited in Scope, Making It Challenging for Tribes to Provide Sufficient Evidence of Violations

Several federal laws address the theft and trafficking of Native American cultural items. However, these laws are limited in scope and only apply to the theft or trafficking of certain items. For example, ARPA and NAGPRA include prohibitions on theft, but these prohibitions only apply to specific types of items that are removed from certain lands. Specifically, the theft prohibition in ARPA only applies to the removal of archaeological resources from public or Indian lands without a permit.<sup>32</sup> Further, the theft prohibition in NAGPRA only applies to the removal of Native American cultural items from federal lands without consultation with the appropriate Indian tribe, or from tribal lands without the tribe's consent, among other things.<sup>33</sup> ARPA and NAGPRA are also limited in scope because they generally apply only to items taken after the enactment of the laws in 1979 and 1990, respectively, and do not apply retroactively.

ARPA and NAGPRA also prohibit the trafficking of certain Native American cultural items, but these prohibitions do not apply to all cultural items.<sup>34</sup> For example, NAGPRA only prohibits trafficking of Native American cultural items obtained in violation of NAGPRA, and more specifically, only those items obtained from federal or tribal lands. In contrast, ARPA prohibits trafficking of archaeological resources obtained in violation of federal law and prohibits the trafficking in interstate or foreign commerce of archaeological resources obtained in violation of

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<sup>32</sup>Public lands are lands owned and administered by the United States as part of the national park system, national wildlife refuge system, or national forest system and all other lands the fee title to which is held by the United States other than lands on the Outer Continental Shelf and lands under the jurisdiction of the Smithsonian Institution. 16 U.S.C. § 470bb(3). Indian lands are lands of Indian tribes or individuals which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States. 16 U.S.C. § 470bb(4).

<sup>33</sup>Federal lands are any land other than tribal lands which are controlled or owned by the United States. 25 U.S.C. § 3001(5). Tribal land means all lands within the exterior boundaries of any Indian reservation, all dependent Indian communities, and certain lands administered for the benefit of Native Hawaiians. 25 U.S.C. § 3001(15).

<sup>34</sup>Trafficking is defined as the sale, purchase, or transport of a prohibited item or an item obtained illegally. Under ARPA and NAGPRA, people are potentially subject to criminal penalties for knowingly violating these laws' provisions prohibiting trafficking and removal of archaeological resources or cultural items, respectively.

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state or local law.<sup>35</sup> However, ARPA does not prohibit the trafficking of archaeological resources obtained in violation of tribal law, unlike another federal law that addresses the illegal trafficking of wildlife.<sup>36</sup>

Moreover, in situations where the theft or trafficking of an item falls within the scope of ARPA or NAGPRA, agency and tribal officials said it can be challenging to provide sufficient evidence to prove the violation in court. For example, to prove a NAGPRA violation, Justice or the tribe must be able to provide evidence that the item in question was removed from federal or tribal land and was taken after NAGPRA was enacted. Homeland Security and Justice officials said that it is very difficult to prove when and from where an item was taken and that additional evidence, such as a police report, can help make a case that a crime had occurred. However, according to agency and tribal officials we interviewed, tribes often do not report the theft of cultural items to police because they do not want to disseminate information about their sacred objects and other cultural items outside of the tribe. Without proof of when and from where an item was obtained, it is difficult to prosecute violators because it is difficult to distinguish between an illegally obtained item and an object legally obtained prior to ARPA's or NAGPRA's enactment, according to Justice officials.

Further, when attempting to prove theft of a Native American cultural item under ARPA, NAGPRA, or general federal criminal laws,<sup>37</sup> agency officials said it can be challenging for tribes to provide sufficient evidence to prove tribal ownership and possession of the item. This may be

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<sup>35</sup>16 U.S.C. § 470ee(c). Under this provision, the archaeological resources must have been taken in violation of state or local law and then either trafficked in interstate or foreign commerce, which means commerce between a point in one state and a point in another state, between points in the same state through another state or foreign country, between points in a foreign country or countries through the United States, and commerce between a point in the United States and a point in a foreign country, but only insofar as such commerce takes place in the United States.

<sup>36</sup>The Lacey Act prohibits, among other things, the transportation, sale, and export of wildlife taken in violation of tribal law, in addition to wildlife taken in violation of state or local law. 16 U.S.C. § 3372(a)(1).

<sup>37</sup>Certain general criminal laws prohibit theft, which would cover the theft of Native American cultural items. For example, it is a federal crime to steal property that belongs to an Indian tribal organization or is intrusted to the custody or care of such an organization's officers, employees, or agents. 18 U.S.C. § 1163. In addition, exported cultural property obtained in violation of NAGPRA, ARPA, or the Antiquities Act of 1906 may be subject to seizure by U.S. Customs and Border Protection and forfeiture under 19 U.S.C. § 1595a(d).

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difficult, according to tribal officials we interviewed, because their traditional and religious practices may prevent photographing or documenting cultural items in ways that would allow them to furnish evidence of ownership and possession. Cultural items are typically handed down through family lines, clans, or positions within the community, and information about the items' significance is shared orally. Tribal officials we interviewed said that this is their way of preserving and protecting items and traditions for future generations. Homeland Security, Justice, and Federal Bureau of Investigations officials said that not having documentation is problematic because oral statements are generally insufficient to claim in federal court that an item belongs to the tribe.

Similarly, in a lawsuit to stop the auction of Hopi cultural items in Paris, a French civil court raised the issue of whether there was sufficient evidence to prove that the cultural items being auctioned were owned by the tribe.<sup>38</sup> Tribal officials we interviewed said that a cultural item's presence outside of the tribe's care is sufficient evidence that it has been stolen because cultural items are inalienable and communal property in their culture, according to tribal law. However, in response to one of the actions brought in France to halt the sale of Hopi cultural items, the French civil court stated that the tribe's argument that the items in question were inalienable was not relevant. In a 2017 congressional statement, a Justice official said that legislation to prohibit the export of Native American cultural items obtained in violation of tribal cultural property laws, similar to the Lacey Act, may extend protections beyond those currently provided by ARPA and NAGPRA.<sup>39</sup>

Federal standards for internal control call for agencies to identify, assess, and respond to risks related to achieving the defined objectives.<sup>40</sup> In this context, House Concurrent Resolution 122 calls on federal agencies to consult with Native Americans to take affirmative action to stop the theft, illegal possession or sale, transfer, and export of cultural items and secure their repatriation.<sup>41</sup> While federal agencies have helped tribes

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<sup>38</sup>Tribunal de grande instance [T.G.I.] [ordinary court of original jurisdiction], Paris, June 27, 2014 (Fr.).

<sup>39</sup>*Hearing on S. 465 and S. 1400 Before S. Comm. on Indian Affairs*, 115th Cong. (2017) (statement of Tracy Toulou, Director, Department of Justice Office of Tribal Justice).

<sup>40</sup>GAO-14-704G.

<sup>41</sup>H. Con. Res. 122, 114th Cong. (2016) (enacted).

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remove two items from overseas auctions, neither item has been returned to the tribes using the existing legal framework, as of July 2018. Working group officials said that the participating federal agencies have not assessed whether amending federal laws would facilitate the repatriation of Native American cultural items from overseas auctions or provided an analysis of such an assessment to Congress. Agency officials said that this is, in part, because the agencies defer to each other on the interpretation of their own authorities. Additionally, these officials said that overseas auctions are a relatively recent issue and the federal government has only been directly involved in one legal case to recover a Native American cultural item. Agency officials also said that they were not familiar with foreign court decisions in cases in which they were not directly involved. Since amending laws would require congressional action, the working group could assist Congress by assessing whether and how amending the existing legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these items from auctions overseas and reporting their findings to Congress.

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## Conclusions

Native American tribes face challenges preventing the overseas sale of their cultural items, which are generally considered priceless because of their importance to tribal identity, religion, and healing practices. Homeland Security, Interior, Justice, and State officials have informally worked together to assist tribes with repatriating cultural items from overseas auctions through an interagency working group established in late 2015. However, the working group has not adopted selected leading collaboration practices, such as clearly defining outcomes and objectives or identifying the roles and responsibilities of its members. In addition, the working group has not identified and communicated to tribes points of contact within each agency. Incorporating selected leading collaboration practices, as well as improving communication to tribes about whom to contact for assistance, would enhance federal agencies' ability to assist tribes that request assistance with repatriating items from overseas auctions. Specifically, it would provide tribes with points of contact; promote interagency information sharing; and enhance agencies' ability to better leverage their authorities, expertise, and resources.

Tribes face challenges demonstrating that the sale of items in overseas auctions would be prohibited in the United States, in part, due to the limited scope of federal laws. In addition, foreign countries and overseas auction houses have been reluctant to approve tribes' or federal agencies' requests to halt the sale of Native American cultural items

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without proof that U.S. laws have been violated. House Concurrent Resolution 122 calls on federal agencies to consult with Native Americans to take affirmative action to stop the theft, illegal possession or sale, transfer, and export of cultural items and secure their repatriation. In addition, federal standards for internal control call for agencies to identify, assess, and respond to risks related to achieving agencies' defined objectives. However, officials from the working group said that participating agencies have not assessed whether and how federal laws should be amended and whether doing so would facilitate the repatriation of Native American cultural items from auctions overseas. Because amending these laws would require congressional action, the working group could assist Congress by assessing the existing legal framework governing the export, theft, and trafficking of Native American cultural items; considering the implications of amending these laws; and reporting their findings to Congress.

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## Recommendations for Executive Action

We are making a total of 12 recommendations, 3 recommendations each to Homeland Security, Interior, Justice, and State.

- The Secretary of Homeland Security should direct Homeland Security's members of the interagency working group for protection of Native American cultural property to implement selected leading collaboration practices, such as taking steps to agree on outcomes and objectives, clarify roles and responsibilities, and document these decisions. (Recommendation 1)
- The Secretary of the Interior should direct Interior's members of the interagency working group for protection of Native American cultural property to implement selected leading collaboration practices, such as taking steps to agree on outcomes and objectives, clarify roles and responsibilities, and document these decisions. (Recommendation 2)
- The Attorney General should direct Justice's members of the interagency working group for protection of Native American cultural property to implement selected leading collaboration practices, such as taking steps to agree on outcomes and objectives, clarify roles and responsibilities, and document these decisions. (Recommendation 3)
- The Secretary of State should direct State's members of the interagency working group for protection of Native American cultural property to implement selected leading collaboration practices, such as taking steps to agree on outcomes and objectives, clarify roles and responsibilities, and document these decisions. (Recommendation 4)

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- The Secretary of Homeland Security should direct Homeland Security's members of the interagency working group for protection of Native American cultural property to identify and externally communicate to tribes points of contact within the agency that are responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions. (Recommendation 5)
  - The Secretary of the Interior should direct Interior's members of the interagency working group for protection of Native American cultural property to identify and externally communicate to tribes points of contact within the agency that are responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions. (Recommendation 6)
  - The Attorney General should direct Justice's members of the interagency working group for protection of Native American cultural property to identify and externally communicate to tribes points of contact within the agency that are responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions. (Recommendation 7)
  - The Secretary of State should direct State's members of the interagency working group for protection of Native American cultural property to identify and externally communicate to tribes points of contact within the agency that are responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions. (Recommendation 8)
  - The Secretary of Homeland Security should direct Homeland Security's members of the interagency working group for protection of Native American cultural property to collaborate with the interagency working group members from other agencies to assess, in consultation with Indian tribes, whether and how amending the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these items from auctions overseas and report its findings to Congress. (Recommendation 9)
  - The Secretary of the Interior should direct Interior's members of the interagency working group for protection of Native American cultural property to collaborate with the interagency working group members from other agencies to assess, in consultation with Indian tribes, whether and how amending the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these items from auctions overseas and report its findings to Congress. (Recommendation 10)



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- The Attorney General should direct Justice's members of the interagency working group for protection of Native American cultural property to collaborate with the interagency working group members from other agencies to assess, in consultation with Indian tribes, whether and how amending the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these items from auctions overseas and report its findings to Congress. (Recommendation 11)
  - The Secretary of State should direct State's members of the interagency working group for protection of Native American cultural property to collaborate with the interagency working group members from other agencies to assess, in consultation with Indian tribes, whether and how amending the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these items from auctions overseas and report its findings to Congress. (Recommendation 12)

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## Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to the Departments of Homeland Security, the Interior, Justice, and State. Each of the agencies provided written comments that are reproduced in appendixes II, III, IV, and V, respectively. Homeland Security and Interior also provided technical comments that we incorporated in the report as appropriate.

Homeland Security, Interior, Justice, and State agreed with our recommendation to implement selected leading collaboration practices and indicated that they would work to develop and document outcomes and objectives and clarify roles and responsibilities. For example, Homeland Security stated that it would support the development of guiding documents and internal controls and coordinate with the U.S. Customs and Border Protection and the U.S. Immigration and Customs Enforcement, as appropriate. State stated it could foresee the interagency working group agreeing on outcomes and objectives for the group, clarifying State's roles and responsibilities, and documenting consensus in a working paper that is shared among members of the group.

Homeland Security, Interior, Justice, and State also agreed with our recommendation to identify and externally communicate agency points of contact to tribes. For example, Interior stated it has included key points of contact on the Office of International Affairs' International Repatriation Assistance website and will explore additional methods for sharing this information with tribes. Justice stated that it has identified its point of contact for tribes regarding law enforcement matters regarding

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repatriation of cultural items from overseas auctions and will publicize the information on its website.

For our recommendation on assessing the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items, Homeland Security, Interior and State agreed with the recommendation. For example, Homeland Security stated it will support a unified consultation with the tribes to conduct such an assessment. Interior stated it welcomes the opportunity to provide a formal assessment of options considering a range of policy factors, such as agency staffing needs and other resources required to implement new measures. State agreed and stated it could foresee contributing expertise regarding the 1970 UNESCO Convention to such an assessment.

In its written comments, Justice disagreed with our recommendation to assess the U.S. legal framework and report to Congress. Specifically, Justice stated that an assessment would be duplicative and inefficient because the agency provides Congress with technical assistance on legislative proposals upon request and, in November 2017, provided a written statement to the Senate Committee on Indian Affairs that outlined the ways the current U.S. legal authorities could be amended to better protect Native American cultural property.<sup>42</sup>

We recognize and appreciate Justice's efforts to provide Congress with this technical assistance. However, we do not share Justice's view that its November 2017 written statement prepared for the Senate Committee on Indian Affairs satisfies our recommendation or renders it duplicative and inefficient. Specifically, Justice's statement identified potential statutory changes but did not fully assess their implications. For example, the statement identified three entities, including a new commission that could potentially implement a new export permitting system for Native American cultural property. However, the statement did not specify what authority each would need to do so or assess the advantages and disadvantages of each entity implementing the system. Therefore, we continue to believe that a comprehensive assessment of whether and how the current U.S. legal framework can be amended to facilitate repatriation of Native American cultural property is necessary. In addition, our recommendation was intended for the members of the interagency working group to collaborate on the assessment because each agency has unique roles and responsibilities. According to Justice officials, in preparing its

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<sup>42</sup>*Hearing on S. 465 and S. 1400 Before S. Comm. on Indian Affairs, 115th Cong. (2017)* (statement of Tracy Toulou, Director, Department of Justice Office of Tribal Justice).

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statement, it did not include input from other federal agencies involved in facilitating repatriation of Native American cultural property, or enforcing customs laws. To clarify that the assessment and report we are recommending should be undertaken as a collaborative effort among the agencies of the interagency working group, we made minor modifications to the recommendation language.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees and the Secretary of the Department of Homeland Security, the Secretary of the Department of the Interior, the Attorney General, the Secretary of the Department of State, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.

A handwritten signature in black ink that reads "Anne-Marie Fennell". The signature is written in a cursive style with a large, looping initial "A" and a horizontal line underlining the name.

Anne-Marie Fennell  
Director, Natural Resources and Environment

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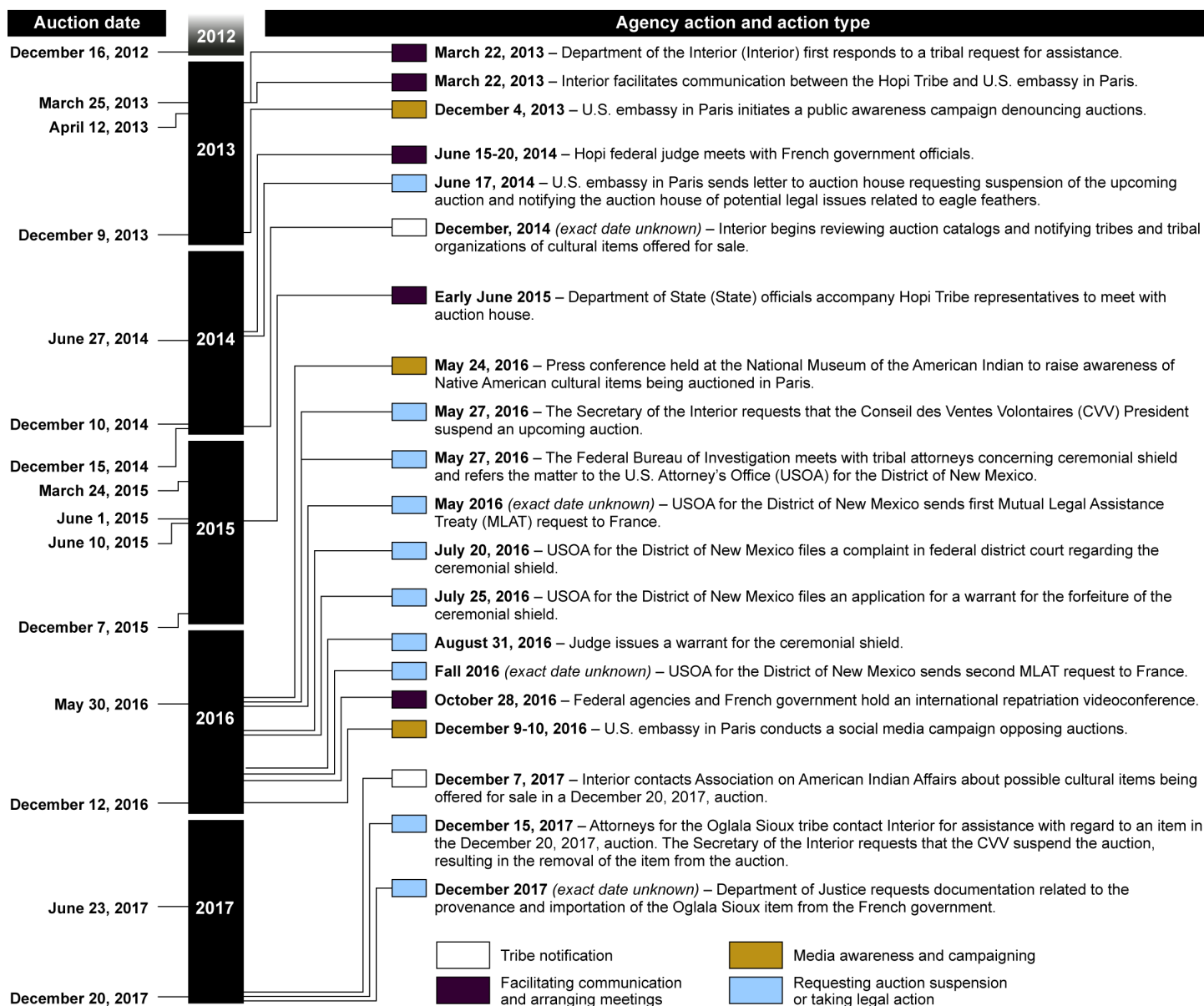
# Appendix I: Timeline of Key Actions Federal Agencies Have Taken to Assist Tribes regarding Overseas Auctions

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According to our analysis of Department of the Interior and Department of State documents, federal agencies have taken several types of actions in response to Native American tribes' requests for assistance in repatriating cultural items from overseas. Key actions that agencies have taken to assist tribes regarding overseas auctions are shown in the timeline in figure 2.

**Appendix I: Timeline of Key Actions Federal Agencies Have Taken to Assist Tribes regarding Overseas Auctions**

**Figure 2: Timeline of Overseas Auctions and Key Actions Federal Agencies and Tribes Have Taken in Response to Them**



Source: GAO analysis of agency and tribal information. | GAO-18-537

# Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

July 17, 2018

Ms. Anne-Marie Fennell  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Management's Response to Draft Report GAO-18-537, "NATIVE AMERICAN CULTURAL PROPERTY: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions"

Dear Ms. Fennell:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition of DHS's actions to assist Tribal governments with their repatriation efforts of Native American cultural items from overseas auctions. For example, during the past three years, DHS Office of Partnership Engagement (OPE) staff contributed to the U.S. Department of Justice's (DOJ) lead on the *Native American Graves Protection and Repatriation Act* and *Archaeological Resources Protection Act* (NAGPRA/ARPA) interagency working group in a supportive role as subject matter experts. DHS remains committed to continuing work with its interagency partners on efforts to assist tribes in repatriating items from overseas auctions.

The draft report contained 12 recommendations, including three for DHS and with which the Department concurs. Attached find our detailed response to each recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,



JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendations  
Contained in GAO-18-537**

GAO recommended that the Secretary of Homeland Security:

**Recommendation 1:** Direct its members of the interagency working group for protection of Native American cultural property to implement selected leading collaboration practices, such as taking steps to agree on outcomes and objectives, clarify roles and responsibilities, and document these decisions.

**Response:** Concur. DHS OPE agrees that implementing appropriate practices to help enhance and sustain collaboration among federal agencies and considering implementing interagency collaborative mechanisms would be useful if this informal working group is to become more formal. DHS, not unlike many other agencies that might be asked for subject matter expertise in repatriation of cultural items continues to see itself in a support role to the DOJ-led NAGPRA/ARPA interagency working group. OPE will (1) support the development of guiding documents, processes, and internal controls, and (2) coordinate along these lines with U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, as appropriate.

Estimated Completion Date (ECD): June 30, 2019

**Recommendation 5:** Direct its members of the interagency working group for protection of Native American cultural property to identify and externally communicate to tribes points of contact within each agency that are responsible for responding to for example, tribes' requests for assistance with repatriating cultural items from overseas auctions.

**Response:** Concur. The Department will continue to provide contact information to tribal leaders and tribal staff through its efforts in supporting the DOJ-led NAGPRA/ARPA interagency working group. For example, DHS OPE will continue to attend annual international repatriation conferences sponsored by the Association of American Indian Affairs and other major Tribal organization meetings where the Department presents to Tribes and Tribal leaders. These meetings will include those hosted by the Affiliated Tribes of Northwest Indians, the Alaska Federation of Natives, the National Congress of American Indians, the United South and Eastern Tribes. OPE will also review its outward facing points of contact and information and identify potential improvements that might assist tribal leaders in contacting the Department.

ECD: October 30, 2018.

3



**Recommendation 9:** Direct its members of the interagency working group for protection of Native American cultural property to assess, in consultation with Indian tribes, whether and how amending the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these items from auctions overseas, and report its findings to Congress.

**Response:** Concur. In its supportive role to the DOJ-led NAGPRA/ARPA interagency working group, DHS OPE will support a unified consultation with Indian tribes in addressing how the U.S. legal framework might be amended to further support protection of Native American cultural items from auctions overseas. This will include supporting DOJ-led reporting to Congress about these issues, as appropriate.

ECD: June 30, 2019.

# Appendix III: Comments from the Department of the Interior



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

JUL 17 2018

Ms. Anne-Marie Fennell  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Fennell:

Thank you for providing the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Native American Cultural Property: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions* (GAO-18-537). We appreciate GAO's review of the actions taken by different Federal agencies in response to Native American tribes' request for assistance in repatriating cultural items from overseas auctions.

GAO issued three recommendations to the Department.

**Recommendation 2: The Secretary of the Interior should direct its members of the interagency working group for protection of Native American cultural property to implement selected leading collaboration practices, such as taking steps to agree on outcomes and objectives, clarify roles and responsibilities, and document these decisions.**

Response: Concur. The Department agrees that applying selected leading collaboration practices can improve the effectiveness of the interagency working group for protection of Native American cultural property.

The Department's Office of International Affairs co-leads an informal internal working group for international repatriation of Native American cultural heritage, and maintains the International Repatriation Assistance website at <https://www.doi.gov/intl/-international-repatriation-assistance>, with information on the Department's roles and responsibilities in support of international repatriation. In addition, the Department will work with the other interagency working group participants to develop and document objectives, outcomes, roles and responsibilities, and other relevant leading collaboration practices for the interagency group.

**Recommendation 6: The Secretary of the Interior should direct its members of the interagency working group for protection of Native American cultural property to identify and externally communicate to tribes points of contact within each agency that are responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions.**

Response: Concur. The Department's Office of International Affairs' International Repatriation Assistance website has included key points of contact since March 3, 2017. While this recommendation is already implemented, the Department will explore additional methods for distributing this information to tribal leaders and other interested parties.

**Recommendation 10: The Secretary of the Interior should direct its members of the interagency working group for protection of Native American cultural property to assess, in consultation with Indian tribes, whether and how amending the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these items from auctions overseas and report its findings to Congress.**

Response: Concur. The Department conducted internal assessments of the U.S. legal framework through the tribal listening sessions and consultations held on international repatriation from May 17, 2016 through December 12, 2016. Based on these internal reviews, the Department believes that the GAO report accurately describes limitations in the existing legal framework which constrain the ability of tribes and the Federal government to prevent trafficking and achieve repatriation of Native American cultural items, including the lack of an explicit prohibition on export of such items that are wrongfully taken and the lack of a requirement for export certificates for such items. The Department welcomes the opportunity to provide a formal assessment of options for amending the existing legal framework for consideration by Congress, in collaboration with interagency working group members. Such an assessment will require consideration of a range of policy factors, including staffing and other resources required to implement new measures and the burdens they might impose on legitimate commerce. As such, it would likely require involvement of additional offices beyond the existing working group members.

The enclosure contains technical comments for your consideration when finalizing the report.

If you have any questions or need additional information, please contact David Downes at david\_downes@ios.doi.gov.

Sincerely,



Scott J. Cameron  
Principal Deputy Assistant Secretary  
for Policy, Management and Budget  
Exercising the Authority of the  
Assistant Secretary for Policy,  
Management and Budget

Enclosure

# Appendix IV: Comments from the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

JUL 09 2018

Anne-Marie Fennell  
Director  
Natural Resources and Environment  
Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Fennell:

The Department of Justice (the Department or DOJ) has reviewed the recommendations contained in the Government Accountability Office (GAO) draft report entitled "Native American Cultural Property: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions" (GAO-18-537), received on June 15, 2018. The Department agrees with two of the three recommendations made to the Department. Our response to the recommendations is below.

**Recommendation 3: The Attorney General should direct its members of the interagency working group for protection of Native American cultural property to implement selected leading collaboration practices, such as taking steps to agree on outcomes and objectives, clarify roles and responsibilities, and document those decisions.**

The Department concurs with the recommendation and in response agrees to produce a document to GAO that describes the roles and responsibilities for each DOJ member office represented on the working group. DOJ will also provide a document containing the objectives of the working group, which is intended to function primarily to share information among and between staff from government agencies on an informal basis. DOJ agrees to publicize this information by posting the documents on DOJ's Office Tribal Justice (OTJ) website.

**Recommendation 7: The Attorney General should direct members of the interagency working group for protection of Native American cultural property to identify and externally communicate to tribes points of contact within each agency that are responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions.**

Anne-Marie Fennell

2


The Department concurs with this recommendation. DOJ's OTJ has already been identified as DOJ's point of contact for tribes regarding requests for assistance in law enforcement matters associated with repatriating cultural items from overseas auctions. DOJ agrees to publicize this information on the website for DOJ's Office of Tribal Justice.

**Recommendation 11: The Attorney General should direct its members of the interagency working group for protection of Native American cultural property to assess, in consultation with Indian tribes, whether and how amending the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these from auctions and report its findings to Congress.**

The Department does not concur with this recommendation. On November 7, 2017, DOJ provided Congress with a detailed written statement to the Senate Committee on Indian Affairs, in which it outlined the ways that current U.S. legal authorities could be amended to better protect Native American cultural property. In addition, DOJ provides technical assistance to Congress in response to requests concerning legislative proposals such as the Safeguarding Tribal Objects of Patrimony Act of 2017, S. 1400. An additional report would be duplicative and inefficient in the absence of new legislative proposals implementing DOJ's identified suggestions.

If you have any questions, please do not hesitate to contact Richard P. Theis, DOJ Audit Liaison on 202-514-0469, or me on 202-514-3101.

Sincerely,

  
for Lee J. Lofthus  
Assistant Attorney General for Administration  
Justice Management Division

# Appendix V: Comments from the Department of State



United States Department of State

Washington, D.C. 20520

July 17, 2018

Thomas Melito  
Managing Director  
International Affairs and Trade  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-0001

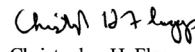
Dear Mr. Melito:

We appreciate the opportunity to review your draft report, "NATIVE AMERICAN CULTURAL PROPERTY: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions GAO Job Code 101290.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Allison Davis, Cultural Property Researcher, Office of Cultural Heritage Center, Bureau of Educational and Cultural Affairs at (202) 632-6305.

Sincerely,

  
Christopher H. Flaggs

Enclosure:  
As stated

cc: GAO – Anne-Marie Fennell  
ECA – Rick Ruth  
OIG - Norman Brown

**Department of State Comments on GAO Draft Report**

**NATIVE AMERICAN CULTURAL PROPERTY: Additional Agency Actions Needed to  
Assist Tribes with Repatriating Items from Overseas Auctions**  
(GAO-18-537, GAO Code 101290)

Thank you for providing the Department the opportunity to respond to the GAO draft report, *"Native American Cultural Property: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions."* The Department of State welcomes GAO's interest in the protection of Native American cultural items that are offered for commercial sale overseas.

As a foreign affairs agency, the Department of State's emphasis in cultural property matters has centered on helping other countries better preserve and protect their cultural patrimony under the 1983 Convention on Cultural Property Implementation Act (the "CPIA"), which implements parts of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("the 1970 UNESCO Convention").

The Department welcomes the opportunity to support Indian tribes' efforts to repatriate items from foreign countries. However, the Department regrets that GAO's draft report neither acknowledges the lack of dedicated financial resources for the Department's engagement with tribes, auction houses, and foreign governments nor recommends additional support to address an increase in these activities that would likely result from GAO's recommendations.

**RESPONSE TO GAO RECOMMENDATIONS**

**Recommendation 4:** The Secretary of the Department of State should direct its members of the interagency working group for the protection of Native American cultural property to implement selected leading collaboration practices, such as taking steps to agree on outcomes and objectives, clarify roles and responsibilities, and document these decisions.

**Response:** The Department concurs. The Department could foresee the interagency working group agreeing on outcomes and objectives for the group and clarifying the roles and responsibilities of the Department of State. The Department could foresee documenting consensus in a working paper that is shared among members of the group.

**Recommendation 8:** The Secretary of the Department of State should direct its members of the interagency working group for the protection of Native American cultural property to identify and externally communicate to tribes points of contact within each agency that are responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions.

**Response:** The Department concurs to the extent that State could identify and communicate to tribes a point of contact in the Department of State who is responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions. The Department could foresee making such contact information available on a Department website.

2

**Recommendation 12:** The Secretary of the Department of State should direct its members of the interagency working group for the protection of Native American cultural property to assess, in consultation with Indian tribes, whether and how amending the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items would facilitate the repatriation of these items from auctions overseas and report its findings to Congress.

**Response:** The Department concurs. The Department could foresee its members contributing expertise regarding the 1970 UNESCO Convention to an assessment led by members of the interagency working group who are experts in the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items. The Department could foresee drawing upon information gained through Department of Interior-led consultations with tribes that were carried out in 2016. The Department of State would also consider participating in future consultations organized by other agencies and reporting its findings to Congress as appropriate.



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# Appendix VI: GAO Contact and Staff Acknowledgments

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## GAO Contact

Anne-Marie Fennell, at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Casey L. Brown (Assistant Director), Jeffrey Malcolm (Assistant Director, in memoriam), Jamie Meuwissen (Analyst in Charge), John Delicath, Justin Fisher, Erik Kjeldgaard, Danny Royer, Jeanette Soares, Jay Still, and Paul Sturm made key contributions to this report.

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