

**Honor Keeler, Director, International Repatriation Project
Association on American Indian Affairs
Testimony before the U.S. Senate Committee on Indian Affairs
Oversight Field Hearing on
“The Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items”
October 18, 2016**

Thank you, Senator Udall, Senator Heinrich, and the U.S. Senate Committee on Indian Affairs for requesting testimony from the Association on American Indian Affairs (AAIA). My name is Honor Keeler. I am the founding Director of the International Repatriation Project at the AAIA and a citizen of Cherokee Nation. The AAIA is a 94-year-old Indian advocacy organization, which has long been engaged in sacred lands protection and repatriation. It helped to draft the National Museum of the American Indian Act¹ of 1989 (NMAI Act) and the Native American Graves Protection and Repatriation Act² of 1990 (NAGPRA). In 2014, the AAIA opened an International Repatriation Office and dedicated full time staff to this global Indigenous issue.

There are many important concerns that the AAIA has heard across Indian country and during our Indigenous International Repatriation Conferences in 2015 and 2016, regarding the looting of Native American sacred and burial places, and the sales, transfers, and exports of Native American Ancestors, funerary objects, sacred objects and cultural patrimony (“cultural items”) from tribal and traditional lands and the United States. All are intricately linked to the global issue of repatriation as a human rights issue and the necessity to investigate the private and international markets that may involve criminal elements and intricate illegal trafficking systems. It is estimated that one million Indigenous Ancestors and cultural items are located in auction houses, private collections, and international repositories throughout the world.³

American Indian tribes through Intertribal Resolutions on International Repatriation have been passed by the National Congress of American Indians (NCAI), the United South and Eastern Tribes (USET), the Intertribal Council of the Five Civilized Tribes, and the All Pueblo Governors Council, stating that the movement of our Ancestors and cultural items from burial and sacred places and outside of the country is a human rights issue, that it is pervasive, and that it violates tribal and traditional customs and laws.⁴

While current federal laws, such as the Archaeological Resources Protection Act (ARPA)⁵, the National Museum of the American Indian Act (NMAI Act), and the Native American Graves Protection and Repatriation Act (NAGPRA) have helped to create a federal process to prevent looting on federal and tribal lands, and to repatriate Native American Ancestors and cultural items from the Smithsonian Institution and federally funded agencies and museums, these laws do not address repatriation from private collections and international markets. In order to stop the looting of Native American sacred and burial places, and repatriate Indigenous Ancestors and cultural items back to their communities, the (AAIA) recommends the following.

¹ National Museum of the American Indian Act, Pub. L. No. 101-185, 103 Stat. 1336 (codified as amended at 20 U.S.C. §§ 80q to 80q-15 (2006)).

² Native American Graves Protection and Repatriation Act, Pub. L. No. 101-601, 104 Stat. 3048 (1990) (codified as amended at 25 U.S.C. §§ 3001-3013 (2006) and 18 U.S.C. § 1170 (2006)).

³ Resolution #SAC-12-008, Support for International Repatriation, National Congress of American Indians (October 21-26, 2012). Resolution No. 12-07, A Resolution on International Repatriation of the Five Civilized Tribes, The Inter-Tribal Council of the Five Civilized Tribes, October 12, 2012. Resolution #SD-15-074, Supporting the International Repatriation Project of the Association on American Indian Affairs (October, 2015). All Pueblo Governors Council Resolutions Nos. 2015-12 and 2015-13 (2015).

⁴ *Id.*

⁵ Archaeological Resources Protection Act, 16 U.S.C. § 470 cc (1979) (amended 1988).

With regard to current federal legislation and problems, the U.S. Congress should, through meaningful consultations with tribes:

1. Mandate centralized training across federal agencies for proper implementation and training of current federal laws, such as ARPA, NAGPRA, NHPA, NEPA, and U.S. Customs to avoid undue burdens on tribes;
2. Call for a full investigation into implementation of these laws and to reveal the extent of looting of Native American sacred and burial places, as well as the full extent of the paths through which these trafficking systems operate;
3. Call for a report to provide actionable steps for Congress and agencies to take to identify funding and appropriations gaps, as well as legislative gaps to be addressed to prevent trafficking and ensure that repatriation occurs from private and international collections;
4. Mandate that every agency, including the State Department, develop a “Tribal Consultation Policy” and fully understand what “meaningful consultations” are; and
5. Establish a federal landing page that serves as a single source of information for Native Nations that includes all current federal contacts, relevant laws and each agency’s current tribal consultation policies, and information on proposed developments that affect American Indian tribes.

American Indian tribes, Alaska Natives, and Native Hawaiians involved in international repatriation are experiencing many difficulties repatriating Ancestors and cultural items, including: locating them in private and international repositories; refusals by auction houses, collectors and international repositories to accept historically documented proof, to consult, and to repatriate; an excessive burden of proof to prove ownership of Ancestors and cultural items, rather than requiring auction houses, collectors, and repositories to produce documentation that the tribes have given free, prior, and informed consent to sales; the length of time it takes to repatriate internationally; and the failure of international courts, museums, auction houses, and foreign governments to recognize tribal courts and tribal laws, even though the United States, through its trust responsibility, statutory interpretations, government-to-government relationship, and political relationship with federally recognized tribes should support tribal governments.

The AAIA also recommends that Congress do the following:

1. Create funding and appropriations to establish Intertribal Investigative Units throughout the country;
2. Enact NAGPRA amendments to notify Native Nations of “missing and exchanged” collections from the Smithsonian Institution and federally funded institutions;
3. Establish a 30-day hold in U.S. Customs for Native American Ancestors and cultural items, so that Customs may notify tribes and have meaningful consultations over the held item to determine if it has been taken from a burial or sacred place or from the tribe;
4. Ensure that Native Nations can represent themselves at the U.N. and other international fora and are involved in any planning processes to develop mechanisms for international repatriation, including the development of databases, so that proper cultural protocols are put in place. Many tribes do not want photographs of their Ancestors and cultural items displayed, as they are sacred or integral parts to the exercise of their religious and cultural beliefs;
5. Mandate that the State Department create an office and assign staff to assist over 567 tribes with their International Repatriation efforts; and
6. Investigate entering into bilateral and multilateral agreements with other countries concerning the repatriation of Native American Ancestors and cultural items.

The Association on American Indian Affairs (AAIA) supports bipartisan efforts to stop the trafficking of Indigenous Ancestors and cultural items, such as H. Con. Res. 122 PROTECT Patrimony Resolution, which was passed by the House and Senate only a few weeks ago, and has been sent back to the House. However, we also advocate for the strengthening of current federal laws and increasing penalties in the NAGPRA and ARPA.

In addition, we support efforts by Congress and the General Accounting Office to investigate the theft, illegal possession, sale, transfer, and export of tribal cultural items, and urge them to look into the issues tribes are facing in illicit trafficking and international repatriation that we have explained here today and in our written testimony further.

We thank you for your time and attention to these important matters, and look forward to positive outcomes from Congress to assist Native Nations in legislation and assistance to repatriate their Native American ancestors and cultural items back home to their communities. Thank you.