



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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REGARDING A FIELD HEARING ON

*“The Theft, Illegal Possession, Sale,
Transfer and Export of Tribal Cultural Items”*

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

Tuesday, October 18, 2016

**Indian Pueblo Cultural Center
Albuquerque, New Mexico**

Introduction

Chairman Barrasso, Vice Chairman Tester, Senator Udall, Senator Heinrich, and distinguished Members of the Committee:

Thank you for the opportunity to appear before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to protect cultural and religious items, property, art and antiquities, and mitigate their illicit trafficking both into and out of the United States.

As the largest investigative agency within the U.S. Department of Homeland Security (DHS), ICE investigates a wide range of domestic and international activities arising from the illegal movement of people, goods, and money with a nexus to the borders of the United States. Federal customs law regarding smuggling and trafficking, as well as customs border search authority provide ICE Homeland Security Investigations (HSI) with the capability and responsibility to take a leading role in investigating crimes involving the import and distribution of stolen or looted cultural property, and prosecuting those individuals and organizations responsible for these crimes.

ICE is the lead federal investigative agency with respect to export enforcement due to its jurisdiction over the investigation of crimes related to the U.S. border. However, investigations into the export of Tribal cultural items present challenges due to limitations on existing authorities and enforcement resources. To conduct its complex investigations, ICE may collaborate with Tribal, Federal, State and local law enforcement, private institutions, and foreign governments. ICE has the ability to work directly with cultural resources practitioners to support these collaborative investigations.

ICE's Cultural Property, Art and Antiquities (CPAA) Program

ICE has established the Cultural Property, Art and Antiquities (CPAA) program to oversee efforts related to the protection of cultural property. The mission of the CPAA program is three-fold: conduct training on the preservation, protection, and investigation of cultural heritage and property; coordinate and support investigations involving the illicit trafficking of cultural property from countries around the world; and facilitate the repatriation of illicit cultural items seized as a result of HSI investigations to the artifacts' lawful owners.

Education and Training

With funding provided by the Cultural Heritage Center (CHC) within the U.S. Department of State (DOS) and support from the Smithsonian Institution, ICE continues to train law enforcement officers on the handling, investigation, and seizure of items believed to be another nation's cultural property.

Since 2007, approximately 400 special agents, U.S. Customs and Border Protection (CBP) officers, prosecutors, and representatives of foreign law enforcement have been trained by experts in the fields of cultural property law, targeting, intelligence, archeology, and museum conservation. In recent years, part of the training was held at the National Museum of the American Indian, where participants received guided tours of exhibits by experts. Our goal is to train as many law enforcement officers as possible to broaden the base of expertise in cultural property investigations. Today, ICE is working more closely than ever with CBP to ensure the efforts of our agents and officers are fully integrated throughout the lifecycle of a case.

In Fiscal Year (FY) 2016, the CPAA program has also been represented in multiple conferences and workshops and the program is working with several different federal government agencies to develop more training and capacity-building workshops for FY 2017.

Education is not limited to law enforcement personnel directly involved in investigations and prosecutions. In less formal settings, ICE continues to educate potential brokers and purchasers of cultural property on the importance of provenance (history of ownership) and encourages individuals to report any encounters with individuals seeking to sell merchandise to the HSI Tip Line.

Investigations

The CPAA program plays a supporting role in cultural property investigations by identifying subject matter experts to authenticate items that may have indigenous cultural and religious significance, coordinating leads with other offices, and acting as a liaison to INTERPOL and law enforcement agencies. The program supports ICE's approximately 7,000 special agents in more than 200 domestic offices throughout the United States and 63 international attaché offices. While any ICE special agent may work a cultural property case at some time in his or her career, HSI New York has a team of special agents that works exclusively on cultural property cases. HSI Los Angeles has also recently established its own specialized team whose focus will include cultural property investigations.

Investigations into indigenous cultural property trafficking could result from a variety of leads, including: a direct request from Tribal leadership; CBP as a result of border searches, interdictions; foreign country notification of a sale at an auction house; the CPAA program; ICE Attachés; as well as lines of inquiry generated by a special agent. ICE enforces the cultural artifact import restrictions of bilateral agreements the United States (through DOS) has with 15 countries (Belize, Bolivia, Bulgaria, Cambodia, China, Colombia, Cyprus, El Salvador, Greece, Guatemala, Honduras, Italy, Mali, Nicaragua and Peru), as well as import restrictions for Iraq

and Syria. These bilateral agreements help protect cultural property by imposing U.S. import restrictions on certain categories of archeological and/or ethnological material. Even with import restrictions in place, a single cultural property investigation can result in complex cases involving multiple domestic and international ICE offices, as well as other law enforcement agencies, and can last for years. For example, one of ICE's largest, ongoing cultural property investigations, Hidden Idols, began in 2007 and has resulted in the seizure of more than \$150 million in artifacts. In FY 2015, ICE worked 239 domestic and 102 international cultural property investigations.

Investigating Cases with a Nexus to Tribal Cultural Items

ICE enforces an extremely broad set of federal laws and regulations with jurisdiction over the investigation of crimes related to the U.S. border. While ICE is the lead investigative agency for the illegal *import or export* of cultural property, ICE would not typically be the lead investigatory agency for the theft and illegal transport of Tribal cultural items *within* the United States. For example, if customs officers were to discover that Tribal cultural items were transported into or out of the United States in violation of existing import or export law, ICE would have authority and jurisdiction to conduct an investigation.

Buyers and sellers of illicitly obtained antiquities, cultural, and religious items often do not limit themselves to one type of artifact. As a result, ICE has worked cases involving smuggled antiquities from foreign sources only to find Tribal cultural items are also part of a criminal's cache of artifacts. For example, as part of an ongoing investigation of the illicit sale of pre-Columbian artifacts, ICE discovered that Tribal cultural items were also being offered for purchase by the same seller.

In another case, an individual in the Southwest collected both Tribal and Egyptian cultural items, resulting in a case requiring involvement by ICE, the Department of Justice, and the Department of the Interior. A further example of collaboration with other law enforcement agencies was an investigation involving the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the U.S. Forest Service. In this case, ICE worked with the other agencies to search a residence in Arizona and seize Tribal cultural items as well as controlled substances and weapons. ICE's authorities related to the protection of Tribal cultural items also extend to intellectual property rights, such as the selling of imported goods being fraudulently marketed as Native American jewelry.

Cultural Repatriation

Cultural property investigations often result in the seizure of cultural property, which must be repatriated to its lawful owners through a legal forfeiture process. The CPAA program oversees these cultural repatriations, which can be a small exchange after the legal process is completed or it can include a grand ceremony that commemorates the items' return at the country's embassy in Washington, D.C. or even within the country itself. Repatriation of Tribal cultural and religious items could occur on Tribal lands and within the Tribal customs and traditions as required by the Tribe itself. Whatever the venue, returning a piece of a country's history and heritage to its people is a celebration, and an event in which ICE is particularly proud to participate.

ICE has returned a wide variety of items including paintings, pottery, sculptures, fossils, and sarcophagi. In FY 2016 alone, we repatriated a first edition of Charles Darwin's book, *Origin of the Species*, to Canada; terra cotta figures, jade implements, and a 115 million year-old

microraptor fossil to China; a dinosaur skull to Mongolia; imperial decrees to Russia; and several million dollars in statuary and sculptures to the Prime Minister of India during his official visit to the United States. Since 2007, we have returned more than 7,750 items to more than 30 countries.

Conclusion

Thank you again for the opportunity to testify here in Albuquerque and for your continued support of ICE and its law enforcement mission. ICE remains committed to working with this committee and Tribal governments to continue our strong relationship going forward to help prevent and combat the illicit trafficking of Tribal cultural and religious items.

I would be pleased to answer any questions.