



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 27 2022

Dear Tribal Leader:

The Departments of the Interior, State, Justice, and Homeland Security, in conjunction with the White House Council on Native American Affairs, will be hosting a virtual Tribal engagement session to provide Tribes an update on the draft interagency charter that outlines roles and responsibilities for each department regarding international repatriation of Native American cultural heritage. The draft charter (enclosed for your review) also responds to the Government Accountability Office's report of August 6, 2018, (GAO-18-537) entitled *Native American Cultural Property: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions*.

In addition to outlining roles and responsibilities, this draft interagency charter addresses outcomes and objectives for the interagency working group, and the final charter will serve as a reference regarding the group's purpose and direction. By implementing leading collaboration practices, the charter will help ensure the collective participation of the named departments assisting Tribes in their efforts to repatriate Native American cultural heritage from international institutions.

This virtual Tribal engagement session is not formal consultation and the actions taken in adopting this interagency agreement are a request for Tribal feedback. This is a collaboration focused on sharing Federal agency efforts to strengthen the nation-to-nation relationship and continue to support Tribal efforts on international repatriation.

My colleagues and I invite you to attend the following virtual Tribal engagement session regarding the draft interagency charter:

Friday, August 5, 2022

1:00 p.m. - 2:00 p.m. Eastern Time (US and Canada)

Please register in advance at:

<https://doitalent.zoomgov.com/meeting/register/vJItceyspjwiHT0ZiLdGgBhbjvvpceQeAQI>

You may also provide written comments to consultation@bia.gov by 11:59PM ET on Wednesday, August 10, 2022. If you have questions regarding this consultation, please contact Ashley Fry, Senior Advisor for International Affairs, at Ashley.Fry@bia.gov.

Sincerely,

Brian Newland
Assistant Secretary — Indian Affairs

Enclosed: Draft Charter

DRAFT FOR TRIBAL ENGAGEMENT AND INPUT

Interagency Working Group for the Protection and International Repatriation of Native American Cultural Heritage DRAFT Charter

July 2022

Purpose of Charter

This Charter describes the mission, membership, roles, responsibilities, and goals of the Interagency Working Group for the Protection and International Repatriation of Native American Cultural Heritage (IWG). This Charter is developed to outline roles and responsibilities, adopt practices and principles, and state goals and objectives for the IWG.

The IWG is formally established through this Charter.

Background on Interagency Efforts

Prior to the adoption of this Charter, the Department of Justice (DOJ) facilitated an interagency working group on NAGPRA/ARPA (the Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act). This staff-level interagency working group coordinated issues related to the protection of Native American cultural resources, with a frequent emphasis on international issues. Membership in the group included participants from multiple DOJ components, including the Office of Tribal Justice, the Criminal Division, the FBI Art Crime Program, the Executive Office for U.S. Attorneys, and the Environment and Natural Resources Division. Also participating were staff from the Department of the Interior's (DOI) Office of International Affairs, the Solicitor's Office, Bureau of Indian Affairs, and the National NAGPRA Program; the Department of State's (DOS) Cultural Heritage Center and the Office of the Legal Adviser; the Department of Homeland Security's (DHS) Immigration and Customs Enforcement, U.S. Customs and Border Protection, Transportation Security Administration, the Office of the Chief Readiness Support Officer, and Tribal affairs program in its Office of Partnership and Engagement; and the Department of Agriculture's Office of the General Counsel.

The working group met regularly to provide agency updates on activities related to Tribal cultural property, including sharing information related to legislative proposals, training opportunities, enforcement actions, international auctions, and agency efforts to support Tribes in the repatriation of items from foreign auction houses and museums. The group was also in contact periodically over email to provide information members may find relevant. The group works at a staff level to identify current challenges with existing U.S. legal authorities and discusses proposals to address these issues.

Roles and Responsibilities of Member Agencies

Department of the Interior. Upon request of a federally recognized Indian Tribe or Native Hawaiian organization, DOI works to support efforts to repatriate items of cultural heritage offered in foreign auctions or held in foreign museums. In addition to ancestral human remains,

items of concern may include funerary items, sacred objects, and objects of cultural patrimony as defined under NAGPRA. On international repatriation efforts, DOI can facilitate communication with other agencies such as DOS and can provide expertise and information on cultural heritage laws such as NAGPRA, ARPA, and the Antiquities Act. Any Tribe or Native Hawaiian Organization that would like assistance with international repatriation issues is encouraged to reach out as early as possible in the process to relevant contacts at DOI.

DOI, in consultation with interagency colleagues, developed a reference guide for federal officials to assist them in responding to international repatriation requests from Native American Community leaders. The reference guide lists questions that federal officials may ask to be able to best respond to these requests. The questions can assist the U.S. government in (1) identifying key details such as points of contact, and location of the cultural item(s), and timing considerations, such as planned auction dates; (2) assessing how U.S. and international laws may apply; and (3) understanding approaches preferred by the requesting Tribe or Native Hawaiian Organization. The information gathered also will help federal officials to engage effectively with relevant interagency, state/local, and international partners and authorities. The reference guide is posted on the DOI website.

Department of State. DOS's Cultural Heritage Center (CHC) and Office of the Legal Adviser provide expertise to the working group regarding the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property (1970 Convention) drawing upon other bureaus and offices, as well as the Native American Foreign Affairs Council, as resources when appropriate. DOS focuses largely on creating understanding and raising awareness about the damage to Tribal communities when items are bought and sold internationally in an effort to chill the market and encourage foreign governments to act with the tools they have.

Upon request from Tribes, the CHC works with U.S. embassies to facilitate engagement between foreign governments or foreign museums and Tribal representatives. Additionally, the CHC provides guidance to foreign museums on best practices for international repatriation and facilitates exchange programs between foreign museum personnel and Tribal officials. DOS provides official U.S. governmental communication, when necessary, to appropriate foreign offices and officials regarding cultural items and ancestral remains requested for repatriation by Tribes. DOS raises awareness overseas about the damage to Tribal communities when sacred items are bought and sold.

Department of Justice. DOJ is the federal government's principal law enforcement agency and generally coordinates legal efforts between multiple jurisdictions, including Tribes and foreign countries. Within DOJ, the FBI may investigate violations of federal law, including the theft and trafficking of Native American cultural items.

Department of Homeland Security. Subject matter experts within the DHS's Office of the Chief Readiness Support Officer's Sustainability and Environmental Programs, and Office of Partnership and Engagement's Tribal Affairs program provide DHS Tribal consultation and cultural resource program oversight and policy, primarily in the context of compliance with EO 13175, NAGPRA, ARPA, the National Historic Preservation Act, and other relevant statutes, regulations, and EOs. These offices also maintain lists of Tribal leadership

and Tribal Historic Preservation Officers and appropriate subject matter experts at various museums and universities, provide training, and hold regular working group meetings comprised of DHS and Component representatives. DHS components that have a direct nexus to the international repatriation of Native American cultural items and ancestral remains include the U.S. Custom and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the Office of the Chief Readiness Support Officer, and the Office of Partnership and Engagement.

Scope

The IWG is focused on supporting interagency information-sharing and coordination of federal efforts related to the protection of Tribal cultural resources and items with a focus on preventing illicit export and repatriating Tribal cultural heritage from abroad.

Relevant Authorities and References:

- NAGPRA
- ARPA
- Antiquities Act
- 1970 Convention

Organization and Membership

The IWG membership is composed of working level staff from various departments and agencies that have made a positive affirmation of their membership and participation in the group. Membership is demonstrated by the signatures of principals to this Charter. Participation by Department agencies or components is affirmed annually by the Chair through validation of participation. This affirmation should be made by senior-level officials with authority to commit resources of their programs.

Currently, the IWG consists of representatives of the following department offices:

- Department of Homeland Security
 - Customs and Border Protection
 - Office of Intergovernmental Partner Liaison
 - Office of Field Operations
 - Immigration and Customs Enforcement
 - Office of Partnership and Engagement
 - Homeland Security Investigations
 - Transportation Security Administration
 - Civil Rights & Liberties, Ombudsman and Traveler Engagement Office
 - Office of Partnership and Engagement
 - Office of Chief Readiness Support Officer
- Department of the Interior
 - Office of the Assistant Secretary for Indian Affairs
 - Office of International Affairs
 - National NAGPRA Program (NPS)

- Office of the Solicitor
 - Bureau of Indian Affairs, Office of Tribal Justice, Cultural Property Unit
- Department of Justice
 - Office of Tribal Justice
 - Criminal Division
 - FBI Art Crime Program
 - Executive Office for U.S. Attorneys
 - Environment and Natural Resources Division
- Department of State
 - Bureau of Educational and Cultural Affairs
 - Cultural Heritage Center
 - Office of the Assistant Legal Adviser/Public Diplomacy and Public Affairs
 - Native American Foreign Affairs Council (NAFAC) Affinity Group (participation will be limited to serving as a resource for the IWG)

Guiding Principles

The IWG operates according to the following principles:

- **Overarching Philosophy:** The IWG exists to aid Tribal Nations and Native Hawaiian Organizations in their efforts to protect and repatriate their cultural resources and to ensure that federal agencies are fulfilling their respective responsibilities. The IWG is a resource to amplify and coordinate efforts and foster a whole of government approach to international repatriation. Nothing in the IWG supplants various departmental authorities or responsibilities.
- **Collaborative Management:** The IWG operates in a collaborative manner; its group members work together to develop and achieve specific goals or tasks. IWG members engage in dialogue, make recommendations or decisions (as appropriate), take actions, and strive for ongoing process improvement.
- **Transparency and Communication:** The IWG serves as a platform to communicate across federal executive agencies. IWG members should share information with other members on engagements of interest that they have had regarding the IWG, subject to appropriate limitations, (e.g., protection of information involving sensitive cultural matters or law enforcement investigations).
- **Integration:** The IWG will benefit from efficiencies through a greater understanding of each of the members' roles, partnering in information sharing and coordinated outreach, and collaborative Tribal consultation efforts. Efforts will be made to streamline and integrate approaches.

Goals and Objectives

The IWG has identified the following goals and implementing objectives:

- *Goal 1:* To share among its members information relevant to federal efforts to support repatriation of Tribal cultural heritage from abroad, and to combat illicit international trade in Tribal cultural heritage, including trade in violation of NAGPRA and other federal laws.

- *Objective*: Relevant federal efforts taken by a member of the working group should be shared with the rest of the working group within five (5) business days, subject to appropriate limitations, e.g., protection of information involving sensitive cultural matters or law enforcement investigations.
 - *Responsible*: All member agencies, consistent with their respective authorities.
- *Goal 2*: To catalyze prompt and effective notification of, and coordination among, agencies in support of specific Tribal requests for assistance with their international repatriation efforts.
 - *Objective*: For cases brought before the working group, ensure notification of relevant agencies and staff within three (3) business days of the need for action, or one (1) day in emergency situations. (Note: as a practical matter, not all Tribal requests come before the working group, but may be addressed by the relevant subset of agencies through other channels.)
 - *Responsible*: All member agencies
- *Goal 3*: To serve as an informal setting to discuss related issues of mutual interest, such as proposals to strengthen laws, regulations, or policies, or to coordinate on training programs or programs for outreach or education of the public, stakeholders, or Tribes.
 - *Objective*: Meet at least quarterly to share information
 - *Responsible*: The Chair, or their designated representative, is responsible for convening meetings, and all Members are responsible for ensuring that appropriate staff attend.

Meetings

The IWG will meet at least quarterly, and as needed monthly or at the call of the Chair, or their designated representative. These meetings will generally be held telephonically or virtually. The IWG Chair, or their designated representative, will determine meetings dates/times and agendas.

Records

The Chair, or their delegated representative, shall maintain summaries of meetings that are a short synopsis of the discussion, as well as any action items. The Chair, or their designated representative, will keep a record of membership. A representative from each of the departments in the IWG will serve on a yearly rotating basis as Chair of the IWG.

Duration

This Charter shall be reviewed, and a new Chair will be chosen annually.