

United States Senate

WASHINGTON, DC 20510-6450

April 20, 2023

Via U.S. mail and electronic mail

Michael V. Drake, President
University of California
Office of the President
1111 Franklin Street, 12th Floor
Oakland, CA 94607

Dear President Drake:

As Senators and Members of the U.S. Senate Committee on Indian Affairs,¹ we write to express our grave concern over recent reports that institutions of higher learning such as yours have failed their statutory mandate to “expeditiously return” cultural items and ancestral remains of Native Americans pursuant to the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).²

Delayed repatriation is delayed justice for Native peoples. For too long, Native ancestral remains and cultural items have been unconscionably denied their journey home by institutions, desecrated by scientific study, publicly displayed as specimens, left to collect dust on a shelf, or simply thrown in a box and forgotten in a museum storeroom.

At the time of passage, Congress envisioned that NAGPRA repatriation activity would be complete, or nearly complete, within five years.³ But three decades years later, “a daunting amount of work remains,”⁴ and experts reportedly estimate that it could take as many as 70 *more*

¹ The U.S. Senate Committee on Indian Affairs has broad jurisdiction to study and conduct oversight on issues facing Tribal governments and American Indian, Alaska Native, and Native Hawaiian peoples. The Committee has exercised oversight authority repeatedly on implementation of NAGPRA. *See, e.g.*, OVERSIGHT HEARING, A CALL TO ACTION: NATIVE COMMUNITIES’ PRIORITIES IN FOCUS FOR THE 117TH CONGRESS, S. Hrg. 117-8 (Feb. 24, 2021); OVERSIGHT HEARING NATIVE AMERICAN GRAVES PROTECTION ACT, S. Hrg. 106-57 (Apr. 20, 1999); OVERSIGHT HEARING TO PROVIDE FOR THE PROTECTION OF NATIVE AMERICAN GRAVES, S. Hrg. 106-708 (July 25, 2000); OVERSIGHT HEARING TO RECEIVE TESTIMONY ON THE APPLICATION OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT IN THE STATE OF HAWAII, S. Hrg. 108-768 (Dec. 8, 2004); OVERSIGHT HEARING ON AMENDMENT TO THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT, S. Hrg. 109-297 (July 28, 2005); OVERSIGHT HEARING ON FINDING OUR WAY HOME: ACHIEVING THE POLICY GOALS OF NAGPRA, S. Hrg. 112-157 (June 16, 2011); OVERSIGHT HEARING ON THE LONG JOURNEY HOME: ADVANCING THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT’S PROMISE AFTER 30 YEARS OF PRACTICE, S. Hrg. 117-339 (Feb. 2, 2022).

² 25 U.S.C. § 3005.

³ 25 U.S.C. §§ 3003(b)(B).

⁴ NATIVE AMERICAN GRAVES PROTECTION & REPATRIATION REVIEW COMMITTEE, ANNUAL REPORT TO CONGRESS, 10 (2020-2021). As of FY2021, “over 117,576 Native American individuals are still in collections and 94% of those have not been culturally affiliated with any present-day Indian tribes or [Native Hawaiian organizations]. *Id.* at 15.

years before NAGPRA’s directive of expeditious repatriation is fulfilled.⁵ This is simply unacceptable.

Congress passed NAGPRA to address long-standing concerns over the mistreatment and disposition of American Indian, Alaska Native, and Native Hawaiian cultural items and ancestral remains possessed by federally-funded institutions and federal agencies. While NAGPRA has had positive and far-reaching impacts, such as improved relationships between museums, institutions, federal agencies, and Native peoples, and significant, successful repatriation of many cultural items and ancestral remains, Congress continues to receive troubling testimony detailing ongoing issues related to the timely completion of NAGPRA repatriations. These issues include insufficient consultation with Tribes, poor curation practices, misidentification of items, disrespect for traditional knowledge, and allegations of malfeasance to avoid or slow repatriation efforts.

Accordingly, we request an update on your institution’s current process and pace of repatriation, as well as information on its repatriation policies and practices pursuant to NAGPRA. We also specifically request responses to the following questions within 60 days:

- 1) Please describe in detail how your institution determines if there is “a relationship of shared group identity that may be reasonably traced”⁶ when your institution is determining the cultural affiliation of NAGPRA-eligible items or ancestral remains, and explain how your institution interprets and applies the terms “totality of the circumstances”⁷ and “preponderance of the evidence” when making such determinations.⁸
- 2) Please describe the process your institution undertakes to determine—
 - a. When there is sufficient evidence to proceed with repatriation; and
 - b. When a cultural item or ancestral remain is culturally unidentifiable.
- 3) Please describe the processes and methods your institution uses to gather and utilize Native traditional knowledge when determining the cultural affiliation of NAGPRA-eligible items or ancestral remains.
- 4) Please provide examples of when your institution has used only Native traditional knowledge to culturally affiliate NAGPRA-eligible items or ancestral remains.
- 5) Please describe each allegation filed with the National NAGPRA Program regarding your institution’s failure to comply with NAGPRA, including a summary of the circumstances and outcomes of the allegation(s).
 - a. If your institution requested an informal discussion with the Secretary pursuant to 43 C.F.R. § 10.12(f)(1) in response to an allegation, please provide copies of all documents provided to, or received from, the Secretary in connection with the request.

⁵ Logan Jaffe, Mary Hudetz, Ash Ngu, Graham Lee Brewer (NBC News), *America’s Biggest Museums Fail to Return Native American Human Remains*, ProPublica, (Jan. 11, 2023), <https://www.propublica.org/article/repatriation-nagpra-museums-human-remains>.

⁶ 25 U.S.C. 3003(2).

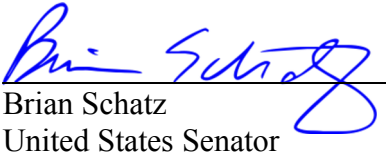
⁷ 43 C.F.R. § 10.8(f); 43 C.F.R. § 10.9(e)(ii)(iv); 43 C.F.R. § 10.14(d).

⁸ 25 U.S.C. § 3005(a)(4).

- b. If an allegation of your institution's failure to comply with NAGPRA resulted in a notice of a failure to comply, please describe –
 - i. the steps your institution took to address the allegation, including the date on which the institution was informed of the allegation;
 - ii. the reason for the allegation, whether or not a request for informal discussion was made or occurred;
 - iii. the final determination of the Department of the Interior and the reason or reasons given for the determination;
 - iv. the court's decision in any appeal your institution filed challenging the Department's determination;
 - v. a civil action, if any, instituted by the U.S. Attorney General against your institution to collect a penalty; and
 - vi. any corrective or remedial actions taken in response to an allegation or series of allegations, including but not limited to changes to applicable policies or procedures.
- 6) Please describe the process your institution undertakes to complete summaries and inventories pursuant to 43 C.F.R. § 10.8 and 43 C.F.R. § 10.9, including the average length of time for completion and the average length of time to send the required Notice of Intent to Repatriate to the Manager of the National NAGPRA program.
 - a. For each summary prepared by your institution, please explain whether the determination listed in the summary as sacred, possibly sacred, patrimonial or unassociated funerary objects was made by i) museum staff or ii) in consultation with tribal representatives or iii) some combination of (i) and (ii).
 - b. For each inventory prepared by your institution, please explain whether the determination of human remains or associated funerary objects as either culturally affiliated or unaffiliated was made by i) museum staff or ii) in consultation with tribal representatives or iii) some combination of (i) and (ii).
- 7) Please describe the process your institution undertakes to determine if cultural items or ancestral remains are not culturally affiliated, including the length of time, on average, it takes to notify the Manager of the National NAGPRA program.
- 8) Please explain any discrepancies between your institution's estimate of the number of cultural items and culturally unidentifiable remains in your institution's possession or control, and the number reported by the National NAGPRA Program.
- 9) Please provide an inventory of any human remains that are in your possession, but controlled by another agency or institution. Please also note what effort, if any, has been taken to ensure the possession of these items comply with NAGPRA.

We appreciate your attention to this important matter. Please direct any questions you may have to Senate Committee on Indian Affairs Majority Staff Director, Jennifer Romero (Jennifer_Romero@indian.senate.gov), or Amber Ebarb, Minority Staff Director (Amber_Ebarb@indian.senate.gov).

Sincerely,



Brian Schatz
United States Senator



Lisa Murkowski
United States Senator



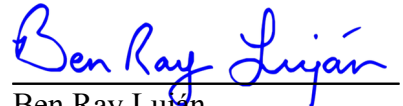
Catherine Cortez Masto
United States Senator



Martin Heinrich
United States Senator



Mazie K. Hirono
United States Senator



Ben Ray Lujan
United States Senator



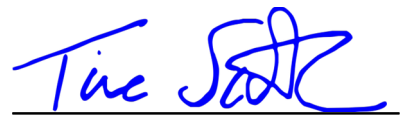
Patty Murray
United States Senator



Alex Padilla
United States Senator



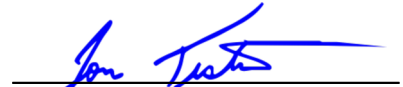
Kyrsten Sinema
United States Senator



Tina Smith
United States Senator



Dan Sullivan
United States Senator



Jon Tester
United States Senator



Elizabeth Warren
United States Senator

CC: Carol T. Christ, Chancellor, University of California, Berkeley
Michael T. Brown, Ph.D., Special Advisor to the President