

Testimony before the U.S. Senate Committee on Indian Affairs  
Modernizing the Indian Arts and Crafts Act to Honor Native Identity and Expression  
Damon Martinez, Former U.S. Attorney for New Mexico

Good morning. Chairman Hoeven, Vice Chairman Udall, Senator Heinrich, and members of the Committee on Indian Affairs, it is a great honor to testify before the Committee regarding the Indian Arts and Crafts Act.

In New Mexico, we are very privileged to have Native American art and craftwork that reflects generations of unique culture and a rich heritage. In the 1990s, as an Assistant Attorney General for the State of New Mexico, I gained an appreciation for the difference that government can make when I watched then Attorney General Tom Udall protect Native American artists and artisans from dishonest practices.

Now, after having served as the U.S. Attorney for New Mexico, I submit it is important for law enforcement, including the U.S. Attorney's Office, to prioritize its' limited resources on prosecuting those who knowingly counterfeit Native American art and craftwork. To accomplish this effectively, federal law needs to provide the necessary tools to investigate and prosecute those who exploit and undermine the cultural heritage of Native Americans.

In modernizing the Indian Arts and Crafts Act (the "Act"), I respectfully propose the following recommendations for your consideration to make the law a more comprehensive and effective tool.

First, the Act should consider the importation of Native American-style merchandise into the commerce of the United States separate from the sale of Native American-style merchandise in the United States.

Second, the Act should require clearly and simply that Native American-style merchandise imported into the commerce of the United States must have an indelible country-of-origin marking. Currently, a prosecutor must look to 19 C.F.R. 134.43(c) ("Method and Location

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of Marking Imported Articles”), and 18 U.S.C. §§ 542 (“Entry of goods by means of false statements”) and 545 (“Smuggling goods into the United States”) to establish this requirement.

Third, the Act should require that the seller of Native American-style merchandise in the United States have a basis for representing that such merchandise is actually Native American produced.

Fourth, the Act should have a specific forfeiture section. Currently, a prosecutor must look to 18 U.S.C. §§ 1341 (Fraud and Swindles), and 1342 (Fraud by wire, radio, or television) to seek forfeiture.

Fifth, 18 U.S.C. § 1956 (Laundering of monetary instruments) should be amended to include a violation of 18 U.S.C. § 1159 (Misrepresentation of Indian produced goods and products) as a specified unlawful activity.

Sixth, 18 U.S.C. § 2516(1)(c) (Authorization for interception of wire, oral, or electronic communications) should be amended to include 18 U.S.C. § 1159 (Misrepresentation of Indian produced goods and products) as an offense for investigation.

And finally, the U.S. Department of Homeland Security should be encouraged to flag or seize during custom inspections Native American-style merchandise imported into the commerce of the United States that does not have an indelible country-of-origin marking on each item of merchandise.

Thank you for your consideration of my recommendations and I stand ready to answer any questions the Committee members may have.

Sincerely,

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DISTRICT OF NEW MEXICO