



Department of Justice

STATEMENT OF

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U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

FOR A HEARING ENTITLED

**CULTURAL SOVEREIGNTY SERIES: MODERNIZING THE INDIAN
ARTS AND CRAFTS TO HONOR NATIVE IDENTITY AND
EXPRESSION**

PRESENTED ON

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**Statement of Gretchen C.F. Shappert, Assistant Director of the Indian, Violent and Cyber
Crime Staff in the Executive Office for the U.S. Attorneys
U.S. Department of Justice
Committee on Indian Affairs
United States Senate
July 7, 2017**

My name is Gretchen Shappert, and I am the Assistant Director of the Indian, Violent and Cyber Crime Staff in the Executive Office for U.S. Attorneys. On behalf of the Department of Justice and on behalf of my colleagues in the United States Attorney's Office (USAO) here in the District of New Mexico, I want to thank the Committee, Chairman Hoeven, and Vice-Chairman Udall for convening this important oversight field hearing. I also wish to thank the Santa Fe Indian School for hosting us today.

The Indian Arts and Crafts Act was enacted to protect Native American artists and artisans who rely on the creation and sale of traditional and contemporary art and craftwork to support their economic livelihood, preserve their unique heritage, and transfer their extraordinary culture and values to succeeding generations. Under the Act, it is illegal to sell art or craft products in a manner that falsely suggests that those products were produced by American Indians and Alaska Natives.

A [2011 Government Accountability Office Report](#) concluded that the size of the Indian arts and crafts markets and the extent of misrepresentation are unknown, in part because no national database specifically tracks Indian arts and crafts sales or misrepresentations. Furthermore, the GAO Report noted that U.S. federal and state laws protecting intellectual property do not explicitly include Native American and Alaska Native traditional knowledge and cultural expressions—such as processes for weaving baskets—and therefore provide little legal protection for them. Native American artisans have voiced concerns that the traditional knowledge of how to create Native arts and crafts—often passed down from generation to generation within the tribes—will not be carried forward by younger generations if they cannot make a living producing these goods. Hence, enforcement and education about the current Act is vital to ensuring the integrity of Native arts and crafts.

Here in the District of New Mexico, my colleagues in the USAO have used the criminal provisions of the Act, together with other federal criminal statutes, to prosecute misrepresentations of inauthentic items as genuine Indian arts and crafts. Two criminal prosecutions will demonstrate the significance of these cases. Andrew Gene Alvarez of Wofford Heights, California, was a prominent jeweler who alternatively represented himself as Mescalero Apache, Colville, and Mayo Indian. He also used an alias, "Andrew 'Red Horse' Alvarez." He came to the attention of federal law enforcement, because he was misrepresenting that the jewelry he was selling at an art show in the Santa Fe Convention Center was made by an Indian.

Mr. Alvarez was prosecuted under the Act, entered a guilty plea and was sentenced to 30 months of probation to be followed by a year of supervised release. As part of his sentence, he was prohibited from representing that any of the jewelry he produced was of Indian origin. According to federal law enforcement officials in New Mexico, this prosecution was widely noted in the Native arts and crafts market, thereby serving as a potential deterrent to other potential fraudsters, who might be tempted to engage in similar conduct.

A second example of a criminal prosecution here in the District of New Mexico was the case of Rose Morris, who was sentenced to a probationary sentence of five years, following her guilty plea to two counts of misrepresentation of Indian produced goods and products. Ms. Morris falsely claimed that the rugs she was selling were made by Native Americans, when in fact she randomly purchased the rugs from miscellaneous sources with no connection to Native craftsmen. In other cases, federal prosecutors have used a variety of federal statutes, such as wire fraud and mail fraud, to apprehend criminal offenders engaged in similar fraudulent conduct involving the misrepresentation of supposedly Indian arts and crafts.

Criminal prosecutions are not the only way that federal prosecutors support enforcement of the Indian Arts and Crafts Act. Representatives of the New Mexico USAO have engaged in frequent outreach initiatives to tribal leaders and community members to inform them about the purpose and provisions of the Act. As part of their training and outreach, U.S. Attorney representatives encourage tribal leaders and citizens to report violations of the Act to federal law enforcement for possible prosecution. USAO leadership has routinely discussed the Act and its consequences at District-wide Tribal Consultations and during the more than 50 training seminars and programs conducted throughout the District by the USAO during the past two years.

The scope of the Indian Arts and Crafts Act has changed dramatically over the years. The Act has been amended several times since its initial enactment in 1935. Amendments in 1990, 2000, and 2010 increased penalties, [expanded enforcement from exclusive FBI jurisdiction to include any federal law enforcement agency, and strengthened enforcement provisions](#). Application of the Act is not limited to retail sales of misrepresented goods. The Act can be used to address large-scale importations by corporate distributors. The 1990 amendment also added civil remedies and authorized civil suits by an Indian tribe on behalf of itself, an individual Indian who is a member of the tribe, or an Indian arts and crafts organization. The 2010 [amendments](#) expanded civil enforcement by authorizing Indian arts and crafts organizations, as well as individual Indians, to file civil suits on their own. It also provided for civil law suits against manufacturers, wholesalers, and others involved in the distribution of the misrepresented product. Enabling Native Americans to pursue civil remedies independent from federal law enforcement enhances the scope and deterrence effects of the Act.

U.S. Customs and Border Protection (CBP) also has a role in maintaining the authenticity of Indian-style arts and crafts. Since 1990, [CBP regulations](#) require that imported Native American-style arts and crafts must generally be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping or some other comparable permanent

identification. Investigations in these cases may require international assistance from foreign governments and the commitment of significant law enforcement resources.

Another means of protecting the integrity of Native-made arts and crafts is through trademarks used in commerce, which can be registered with the U.S. Patent and Trademark Office or a state by Indian artists, tribes, or arts and crafts organizations to identify authentic Indian products.

Finally, at least a dozen states—including New Mexico—have enacted laws prohibiting the sale of items falsely labelled as Indian arts and crafts. [Under the state law of New Mexico](#), the sale or attempted sale of products falsely described as Indian labor or workmanship may be [prosecuted as a misdemeanor or felony](#), depending upon the value of the items, or may be the basis for permanent injunctive relief and court-ordered restitution.

Of course, one of the reasons for today's hearing is to discuss possible ways to modernize and improve the effectiveness of the Indian Arts and Crafts Act. The Department of Justice is always receptive to more effective legislative tools to help us protect the rights and public safety of Americans. We look forward to working with Congress to improve the Act.

Second, violations of the Indian Arts and Crafts Act cannot currently be prosecuted through the federal money-laundering statutes, because these violations do not meet the statutory definition of specified unlawful activities under the money-laundering statutes. The federal money-laundering statutes are powerful tools to address the proceeds derived from criminal activity.

Finally, for felony prosecutions under the Act, the sale or price of the misrepresented good or product must be "a total price of \$ 1,000 or more". Because of the nature of the Indian arts and crafts business, many fraudulent dealers sell large quantities of misidentified products where each individual items sells for significantly less than \$ 1,000, although gross sales of the misidentified arts and crafts far exceed the \$ 1,000 threshold. Allowing for an aggregation of individual transactions would enable federal prosecutors to more effectively prosecute large-scale distributors who violate the Act. An example of this approach is Title 18 USC § 641, the Theft of Public Money statute, which allows for an aggregation of the value of property, money or things of value to reach the \$ 1,000 threshold for felony prosecutions.

On behalf of the Department of Justice, I wanted to thank the Committee for the opportunity to appear before you this morning.

