



NATIONAL ASSOCIATION
OF TRIBAL HISTORIC
PRESERVATION OFFICERS

Repatriation Update

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Thank you to Valerie, the NATHPO board, and the Reno-Sparks Indian Community for the opportunity to talk about my favorite topic: repatriation.

I will be covering four areas of repatriation practice:

- 1) section 3 of NAGPRA dealing with inadvertent discoveries and planned excavations on federal and tribal lands
- 2) Section 4 of NAGPRA dealing with illegal trafficking of Native American cultural items
- 3) Section 7 of NAGPRA dealing with the repatriation of cultural items from museum and federal agency collections
- 4) The National Museum of the American Act dealing with the repatriation of cultural items from the NMAI, NMNH, and NMAH.

I will be presenting a lot of data very, very quickly, so if you would like

a copy of these slides write me at repatriation@nathpo.org.

Major Events of 2024-2025

Jan. 10, 2024: The Smithsonian Human Remains Task Force issues its report recommending that all human remains in its collections that were obtained without the consent should be returned to their descendants and descendant communities, organizations, and institutions, or interred, by 2030.

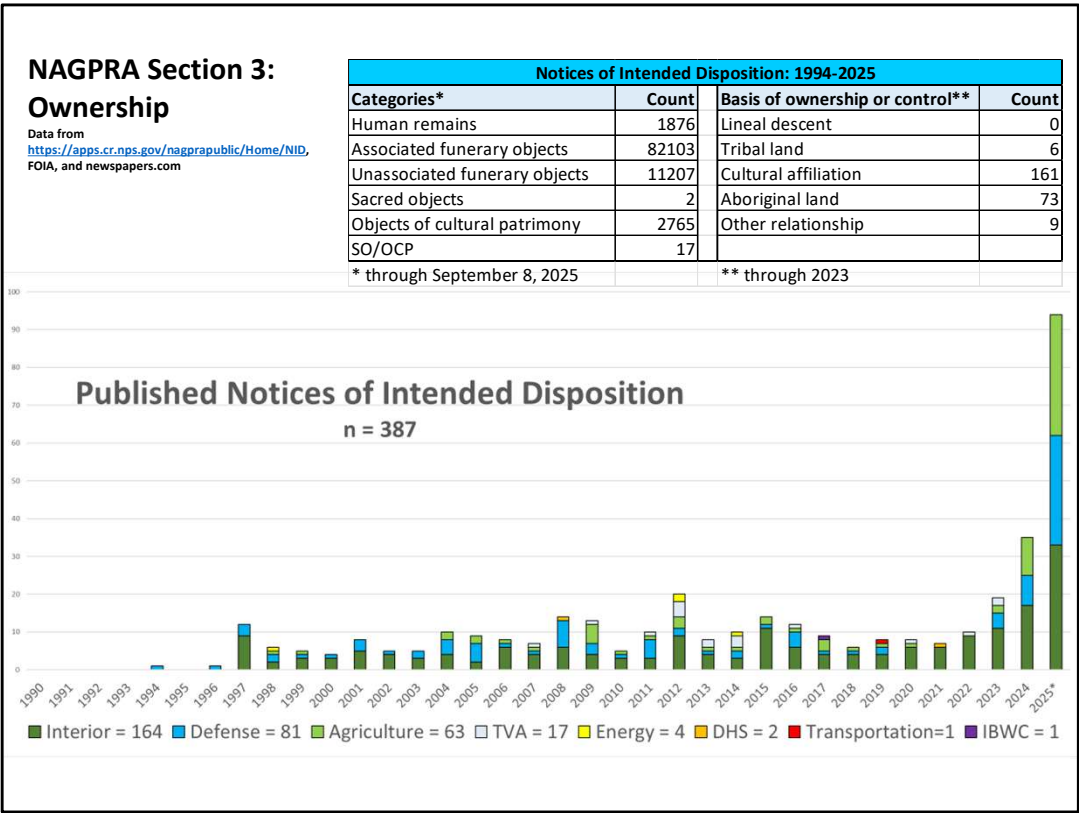
Jan. 12, 2024: New regulations implementing NAGPRA go into effect.

June 28, 2024: The Supreme Court overturns its 1984 “Chevron” precedent to preclude courts from deferring to an agency interpretation of the law simply because a statute is ambiguous.

Jan. 13, 2025: Federal agencies and DHHL must submit list of unclaimed human remains and cultural items. Museums must submit statement of Federal human remains and cultural items in their custody. Museums must submit statements of human remains and cultural items for which possession or control cannot be identified.

The last two years have witnessed four extremely important repatriation events.

- First, and the one we are all most familiar with was enactment of new regulations implementing the Native American Graves Protection and Repatriation Act on January 12, 2024.
- Two days before the new NAGPRA regulations went into effect, a task force announced its recommendations regarding disposition of over 30,000 human remains in the collections of the Smithsonian Institution.
- Third, and in some ways the most significant, on June 28 the Supreme Court issued an opinion that precludes Courts from deferring to agency interpretations of law.
- And fourth, in January of this year, museums were required to notify Federal agencies of Federal collections in their custody.



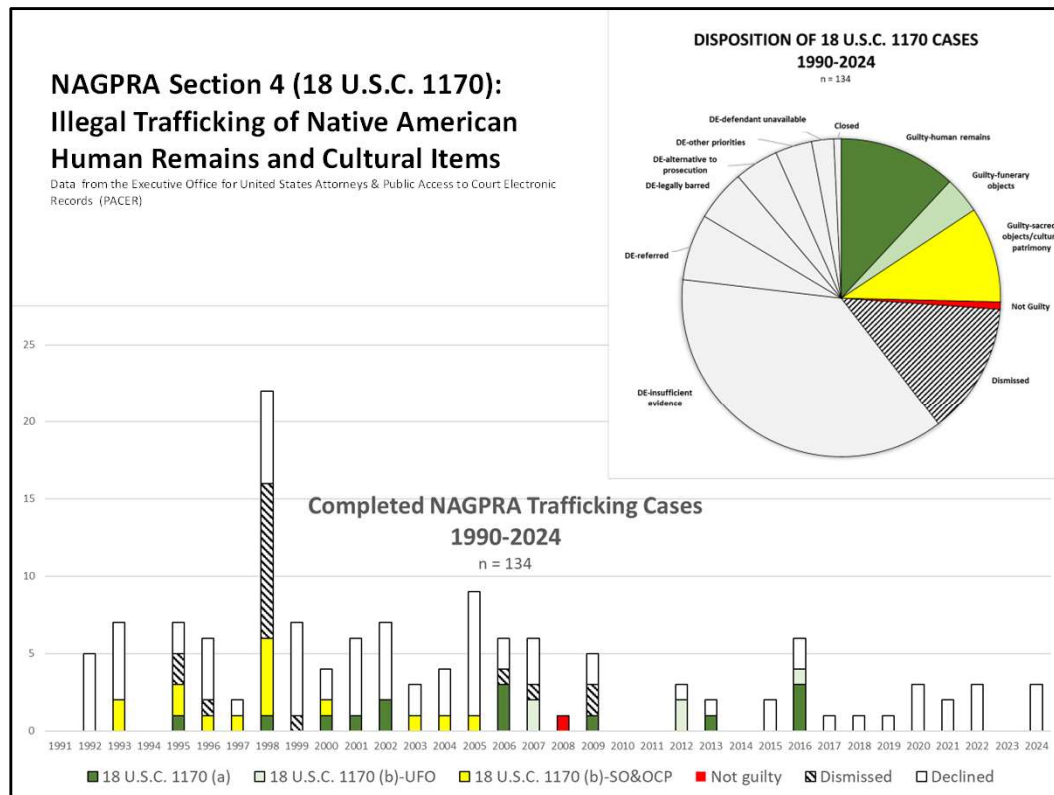
The Section 3 of NAGPRA requires federal land managers to take certain actions whenever Native cultural items are inadvertently discovered or excavated on Federal or tribal lands, or when cultural items are anticipated.

A primary way to monitor implementation of section 3 is through notices of intended disposition which are required after discovery or excavation, and before disposition of the items to the appropriate Indian tribes.

The bottom timeline shows that the number of notices published each year has varied, largely dependent on the amount of construction or erosion events, and that the majority of notices have been published by bureaus of the Department of the Interior. Of note, the number of notices published after January 12, 2024, when the new regulations required publication in the Federal Register instead of in newspapers, has risen dramatically.

The table in the upper right-hand corner shows that the number of cultural items involved is

relatively small as compared to the number in museum and federal agency collections.



Section 4 established criminal penalties for illegal trafficking of Native American cultural items.

The timeline at the bottom shows data on all cases through 2024.

The dark green and light green columns represent convictions involving human remains and funerary objects, which occur from 1995 through 2016 and were filed in Federal District Courts across the country.

The yellow columns represent convictions involving sacred objects and objects of cultural patrimony, which are limited to the period from 1993 to 2004. All were filed in either New Mexico or Arizona.

The one red column represents a not guilty verdict in the Northern District of Illinois where the defendant argued the court couldn't prove the remains were "Native American," a la the Kennewick case.

The striped columns represent NAGPRA cases which were opened but subsequently dismissed in court, usually as part of a plea deal on other charges. The white columns represent NAGPRA cases which were opened by law enforcement but subsequently declined by DOJ.

The paucity of convictions after 2007, along with the reduction in the number of dismissals and declinations after 2009 correlates with a shift in law enforcement priorities as well as an apparent shift from domestic to overseas markets for sacred objects and objects of cultural patrimony.

The NAGPRA Review Committee has advocated that Congress:

- Amend 18 U.S.C. 1170 to require the government to only prove beyond a reasonable doubt that both Native American human remains and other cultural items were sold, purchased, used for profit, or transported for sale or profit without the right of possession, and eliminate the requirement that cultural items were obtained in violation of the Act.
- Establish a dedicated position within the Department of Justice, Environmental Crimes Section (ECS) to coordinate investigation and prosecution of violations of the NAGPRA, ARPA, and the STOP Act in collaboration with the Bureau of Indian Affairs, FBI Art Crime Program, and Homeland Security Investigations.

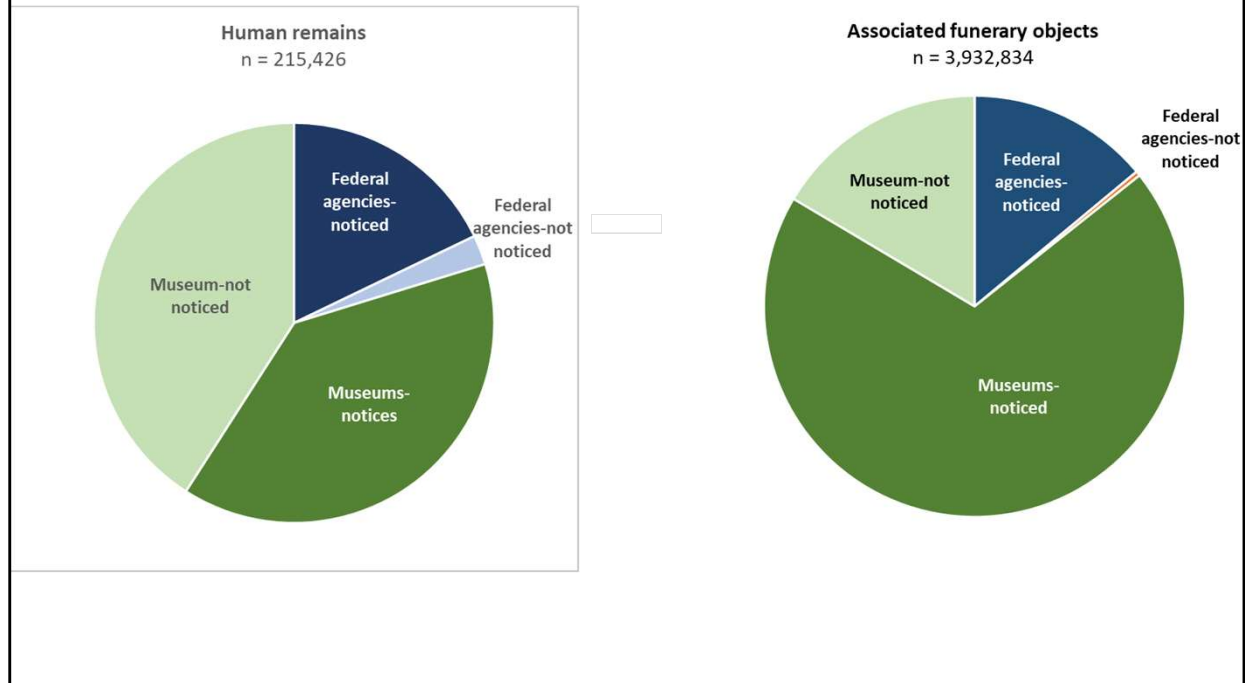
In late 2022, Congress enacted the first substantial amendment to NAGPRA by increasing the penalty for a first conviction of trafficking of Native American human remains from a misdemeanor to a felony and increasing the possible sentence for any second offense from five to ten years.

NATHPO's testimony to the Senate in 2022 requested an amendment to require the government to prove beyond a reasonable doubt that Native American human remains and cultural items were sold, purchased, used for profit, or transported for sale or profit without the right of possession; as well an appropriation to establish an interagency investigative effort to focus specifically on stopping illegal trafficking of Native American human remains and cultural items.

The Native American Graves Protection and Repatriation Review Committee has included these and other recommendations to improve enforcement of 18 U.S.C. 1170 in its reports to Congress for FY2023, FY2024, and FY2025.

NAGPRA Section 7: Repatriation

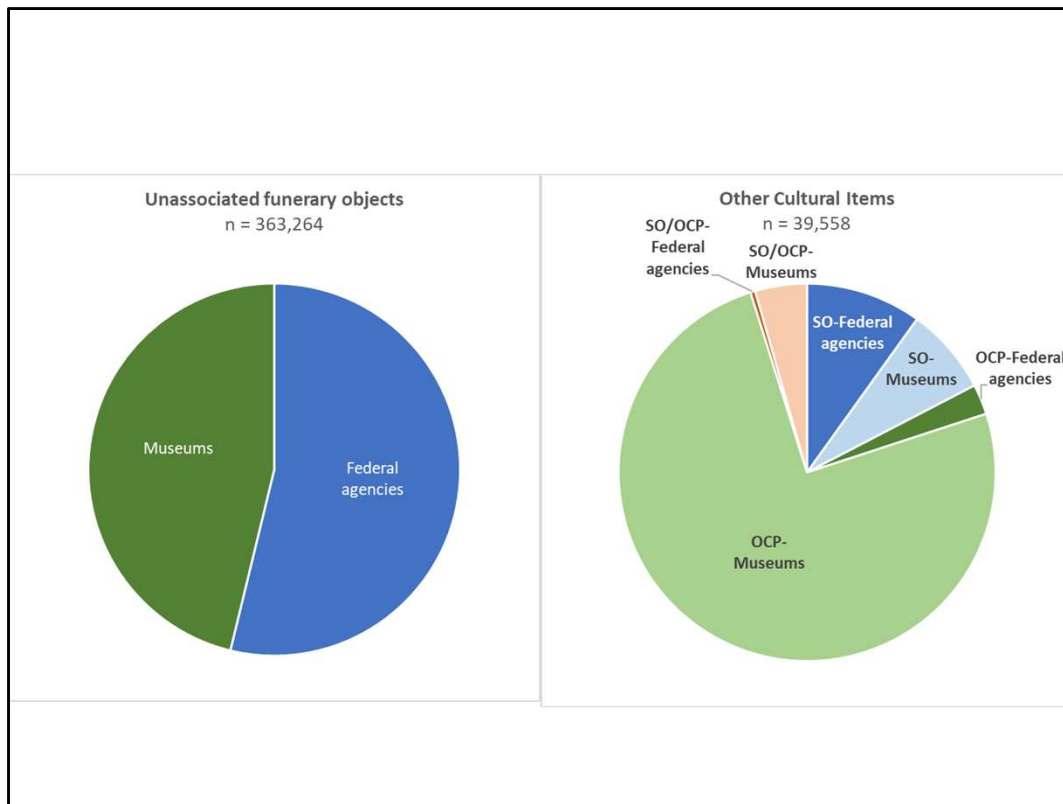
Effective January 12, 2024, all museums and Federal agencies are required to publish notices of inventory completion for all Native American human remains and associated funerary objects in their possession or control by January 24, 2029.



As of January, 2024, museums and Federal agencies has prepared inventories of 215,426 Native American human remains and 3,932,834 associated funerary objects.

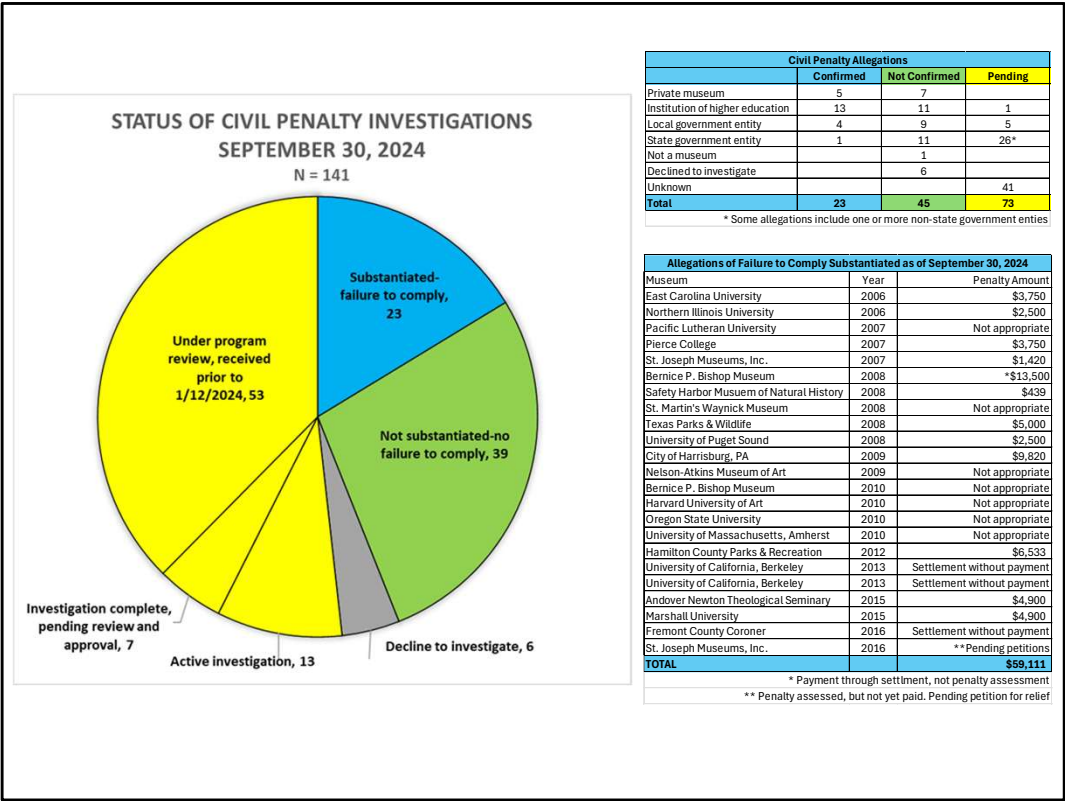
Museums had determined cultural affiliation of approximately half of those human remains while Federal agencies had determined cultural affiliation for most of those then identified as being in their possession or control.

The January 12, 2025, requirement to notify Federal agencies of human remains and associated funerary objects in their custody but believed to be in Federal possession or control is likely to shift this balance over the next year.

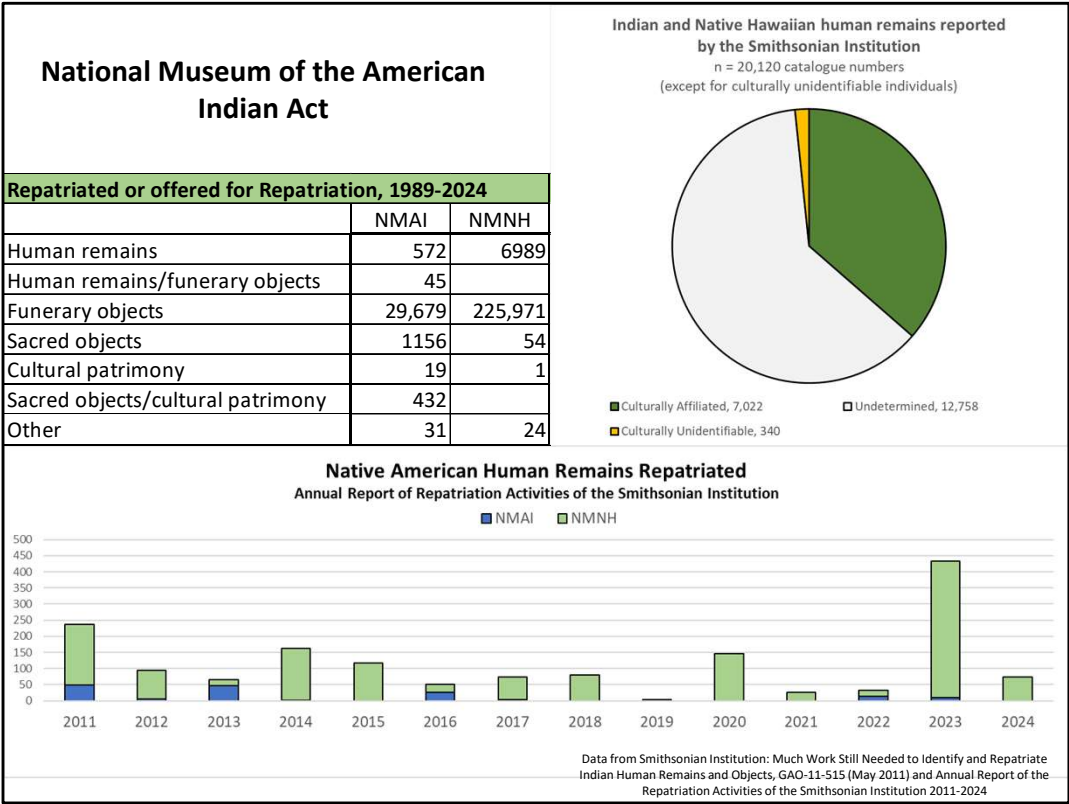


Regarding the other cultural items covered by NAGPRA, the chart on the left shows that 5.6 million funerary objects have been identified in museum and Federal agency collections, with well over half associated with “culturally unidentifiable” human remains.

Smaller numbers of sacred objects and objects of cultural patrimony have been identified for repatriation, with a significant number of items being identified as fitting both categories.



The Department of the Interior has been inconsistent in use of civil penalties to ensure compliance. A number of determinations of failure to comply and penalties were assessed from 2006 to 2016, but assessment of penalties became increasingly uncommon over time and no investigations have been completed since 2016 despite the large number of pending allegations.



The National Museum of the American Indian Act requires all Smithsonian museums to repatriate cultural items upon request from culturally affiliated Indian tribes and Native Hawaiian organizations.

The upper-left-hand chart shows the number of items repatriated by NMAI and NMNH through 2024.

The upper-right-hand figure puts the number of human remains repatriated into context of the total number of human remains held by NMAI and NMNH. These counts are approximate since some use MNI while others are catalogue numbers.

The bottom timeline shows the number of human remains repatriated by NMAI and NMNH each years from 2011-2024.



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Over the past year, NATHPO has been very active in analyzing shortcomings in the NMAI Act, NAGPRA, and the new NAGPRA implementing regulations.

For assistance in addressing repatriation issues under either NAGPRA or the NMAI Act please contact us at: repatriation@nathpo.org