

NAGPRA Questions
from the September 10, 2025, NATHPO Panel
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At the recent annual meeting in Reno, we solicited questions from attendees for the repatriation session and the following were submitted by Mervin Wright. The panel was able to address several of the questions, but not all during the session. I've taken the opportunity to address all the questions here.

1. After a NAGPRA claim process is successfully complete, and repatriation does not occur why is there no ability to enforce compliance?

I think there are three questions here: 1) when is the claim process "complete"; 2) what constitutes "repatriation"; and 3) what mechanisms are available to enforce compliance.

Regarding the "claim" or repatriation request process, the statute requires museum and Federal agencies to repatriate "expeditiously" following receipt of a written repatriation request from a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization. Prior to 2024, the regulations defined expeditiously as 90 days following receipt of the repatriation request, but no sooner than 30 days following publication of the required notice in the Federal Register. However, there was no publicly available way to know when repatriation had occurred. The new regulations extend that time -- the museum or Federal agency now has 90 days to respond to the repatriation request, then 30 days to submit the required notice to NPS which then has 21 days to approve (or return) the notice; and an unspecified time for the approved notice to make its way from the NPS to publication in the Federal Register. No earlier than 30 days and no later than 90 days following publication of the notice the museum or Federal agency must send a notice relinquishing control of the requested human remains or cultural items. In both the pre- and post-2024 regulations, the request process is not "complete" until repatriation occurred.

So what constitutes repatriation? The new regulations define repatriation to mean "when a museum or Federal agency relinquishes possession or control of human remains in a holding or collection to a lineal descendant, Indian tribe or Native Hawaiian organization." While museums and Federal agencies are required to consult with lineal descendants, Indian tribes, and Native Hawaiian organizations regarding custody or physical transfer of repatriated human remains and cultural items, the time, place, and method of any physical transfer is largely at the recipient's discretion.

From 1990-1995 and now again since 2024, completion of inventories of human remains and associated funerary objects was/is driven by a statutory or regulatory deadline even if no lineal descendant, tribe, or Native Hawaiian organization has filed a repatriation request. The statute required all museums and Federal agencies to complete inventories by November 16, 1995, and provided museums (but not Federal agencies) the opportunity to request an extension, the last of which ended in 2000. The new regulations require all museums and Federal agencies to consult and update their inventories of any human remains and associated funerary objects still in their possession or control no later than January 10, 2029. No later than six months after updating its inventory, a museum or Federal agency must submit a notice of inventory completion for publication in the Federal Register.

The repatriation process for unassociated funerary objects, sacred objects, and objects of cultural patrimony is different. Museums and Federal agencies were required to submit summaries of collections that may include such items to Indian tribes and Native Hawaiian organizations by November 16, 1993. Summaries were required to be followed by consultation which could then lead to submission of a repatriation request. As a result, publication of a notice of intended repatriation for unassociated funerary objects, sacred objects, or objects of cultural patrimony are almost always directly linked to receipt of repatriation request.

The regulations require that requests for repatriation be in writing and confirm that either it is from a lineal descendant, Indian tribe, or Native Hawaiian organization identified in the published notice, or if not, that the requestor shows by a preponderance of the evidence that is from a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization.

There is no systematic publicly available data prior to January 12, 2024, to identify if repatriation occurred. However, since that date the NPS lists receipt of the newly required repatriation statement on its website.

<https://apps.cr.nps.gov/nagprapublic/Home/Notice>

In the 628 days between January 12, 2024, to October 1, 2025, 827 notices of inventory completion were published in the Federal Register. Of these, 254 notices (30.7%) have corresponding repatriation statements that were sent at least thirty days after publication of the notice of inventory completion and 90 days following publication as required by the new regulations. One repatriation statement sent prior to publication of the corresponding notice of inventory completion and seven others sent within the 30-day period following publication of their corresponding notices of inventory completion appear to represent violations of the regulatory requirements. One hundred and nineteen repatriation

statements were sent more than 90 days after their corresponding notice of inventory completion was published. Another 466 notices of inventory completion have no corresponding repatriation statement, with the time elapsed since publication ranging from two to 628 days and counting. Notices of inventory completion from which no repatriation statement has been sent after 90 days indicate that either: 1) the museum or Federal agency had not received a repatriation request prior to publishing the notice; 2) the museum or Federal agency applied one of the statutory exemptions to repatriation; or 3) the museum or Federal agency is failing to comply with the regulatory requirements.

Days elapsed after NIC publication	To posted repatriation notice	No repatriation notice as of 10/01/2025
<0	1	0
0-29	7	55
30-90	254	86
91-200	85	126
201-300	25	17
301-400	7	59
401-500	1	38
501-600	1	50
601-700	0	15
	381	446

A similar situation exists for notices of intended repatriation for unassociated funerary objects, sacred objects, and objects of cultural patrimony. In the 628 days between January 12, 2024, to October 1, 2025, 394 notices of intended repatriation were published in the Federal Register. Of these, 183 notices (46.4%) have corresponding repatriation statements that were sent at least thirty days after publication of the notice of intended repatriation and 90 days following publication as required by the new regulations. Two repatriation statements sent prior to publication of the corresponding notice of intended repatriation and seven others sent within the 30-day period following publication of their corresponding notices of intended repatriation appear to represent violations of the regulatory requirements. Thirty-five repatriation statements were sent more than 90 days after their corresponding notice of intended repatriation was published. Another 164 notices of intended repatriation have no corresponding repatriation statement, with the time elapsed since publication ranging from two to 624 days and counting. Notices of intended repatriation for which no repatriation statement has been sent after 90 days indicate that either: 1) the museum or Federal agency had not received a request prior to publishing the notice; 2) the museum or Federal agency applied one of the statutory exemptions to repatriation; or 3) the museum or Federal agency is failing to comply with the regulatory requirements.

Days elapsed after NIR publication	To posted repatriation notice	No repatriation notice as of 10/01/2025
<0	2	0
0-29	10	27
30-90	183	26
91-200	31	40
201-300	3	8
301-400	1	13
401-500	0	26
501-600	0	19
601-700	0	5
	230	164

The publicly available data does clarify why museums and Federal agencies have not repatriated within the 90-day regulatory deadline. One possible explanation is that the museum or Federal agency published the notice prior to receiving a repatriation, meaning that the 90-day timeline for sending a repatriation statement has not been triggered. This situation is more likely for notices of inventory completion published since January 12, 2024, when the new regulations imposed a requirement for museums and Federal agencies to publish a notice of inventory completion for all human remains and associated funerary objects in their possession or control prior to January 10, 2029. This deadline driven approach to completion requires them to publish notices of inventory completion regardless of whether they have received a repatriation request from a lineal descendant, Indian tribe, or Native Hawaiian organization, and the repatriation statement cannot be sent without a request. Since notices of intended repatriation for unassociated funerary objects, sacred objects, or objects of cultural patrimony are request driven, not deadline driven, it is not surprising that a higher percentage result in repatriation statements within the 90-day window.

A second possible reason behind a museum or Federal agency not sending repatriation statements is if one of the three statutory exemptions to repatriation apply: 1) a court of competent jurisdiction enjoins it (this has happened, but rarely); 2) the museum or Federal agency has received competing requests (I am aware of a number of these); 3) the museum or Federal agency has received written concurrence that the human remains are indispensable for completion of a specific scientific study of major benefit to the United States (I am unaware that this has ever been invoked).

A third possible reason behind museums or Federal agencies not sending repatriation statements is if they are failing to comply with the requirement, which gets us to the

second part of the question. NAGPRA provides three mechanisms to enforce or encourage compliance.

One is to seek relief through the U.S. District Courts. the advantages are that the Courts deal with everything that is filed and a final Court order generally resolves the matter; the disadvantages are that this path is long and expensive. I am aware of two ongoing court cases, both of which were filed before the new regulations went into effect.

The second mechanism available to encourage compliance is through an allegation of failure to comply filed with the Department of the Interior. The advantages that this approach is that it is theoretically quicker than going to court; the disadvantages are that it can only be used against museums, not Federal agencies, and the statute gives the Secretary discretion on whether or not to address an allegation. The review committee's report to Congress for FY2025 points out that civil penalty enforcement by the Department of the Interior has been largely devoid of public scrutiny, that the few penalties assessed have typically been greatly mitigated or are unknown and have completely stopped since 2016, and that the National Park Service appears to be shielding state entities from investigation. <https://turtletalk.blog/2025/10/02/nagpra-review-committee-fy2025-report-to-congress/>

The third mechanism available to encourage compliance is to request that the review committee assist in resolving a dispute or by issuing a finding of fact. The advantage is that this approach is again theoretically quicker; the disadvantage is that the review committee's opinions are not binding. The review committee last considered a request for a finding of fact in 2021.

2. Why do the same museums and education institutions continue to defy NAGPRA and not comply with the law?

I'm not sure to which "same" museums and education institutions are being referred to, but in looking at the above data from the NPS website, there are 61 different entities that did not file one or more repatriation notices within 90 days of publishing a notice of inventory completion, including: 17 museums, 25 educational institutions, 4 state agencies, and 15 Federal agencies. Similarly, there are 98 different entities that did not file one or more repatriation notices within 90 days of publishing a notice of intended repatriation, including 44 museums, 36 educational institutions, 8 state agencies, and 10 Federal agencies.

3. Why are federal and state agencies that have massive burial collections, that have not completed inventories not required to disclose their collections?

Most museums and Federal agencies completed inventories of the human remains and associated funerary objects in their collections as required by the statute in 1995. They are

now engaged in reevaluating their initial inventories in light of the new regulatory requirements. While many state agencies also completed inventories back in the 1990s, some insist that they are not required to comply with NAGPRA. You may recall at the NATHPO meeting that representatives of one state agency stated that they follow their state law and not NAGPRA when Native American remains are found on state or private lands in the state. NAGPRA is clear that any entity that receives Federal funds, including state agencies, and has possession or control of Native American human remains and funerary objects must consult, prepare an inventory, and publish a notice of inventory completion. The new regulations also require them to send a repatriation notice. State entities are required to comply with both Federal and state law up until the point there is an actual conflict between the two in which case Federal law generally preempts state law. This situation is exacerbated by the National Park Service's apparent shielding of some States from civil investigation of failure to comply with NAGPRA.

4. Many repatriations have only included human remains. Sacred objects, burial items, and items of cultural patrimony, have not been repatriated. Why do you suppose nothing is being done to enforce compliance for these items?

I've dealt with the compliance issues above, but I should note that in the 628 days between January 12, 2024, and October 1, 2025, museums and Federal agencies repatriated 14,451 human remains, 1,890,910 associated funerary objects, 138,489 unassociated funerary objects, 3,578 sacred objects, 49,944 objects of cultural patrimony, and 5,348 items that fit both the sacred object and object of cultural patrimony categories.

5. Why do you suppose the mission of NAGPRA can have the perception of not repatriating burial collections and do you think this perception will change?

I think any perception that Native American human remains and other cultural items are not being repatriated is due in part to the fact that actual repatriations were not officially documented until January 12, 2024. Repatriations were happening, but only the museum or Federal agency and the repatriating lineal descendant, Indian tribe, or Native Hawaiian organization knew about it. Requiring museums and Federal agencies to send a repatriation statement definitely brings some clarity to the process.