Dear Secretary Sweeney:

Thank you for the opportunity to submit comments on DOI’s interagency summary of legal options responsive to the recommendation in the August 2018 Government Accountability Office (GAO) Report Native American Cultural Property: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions that select agencies assess the U.S. legal framework governing the export, theft, and trafficking of Native American cultural items and their repatriation from auctions overseas. The National Association of Tribal Historic Preservation Officers (NATHPO) is a nonprofit organization whose members are the Tribal government officials (THPOs) implementing the National Historic Preservation Act (NHPA) as delegates of the Secretary of the Interior on tribal land. NATHPO serves THPOs by providing training, coordination, advocacy, and elevation of their collective voices.

We support DOI’s commitment to helping protect Native American cultural heritage, recognizing that it is an essential element for tribal self-determination and for the identity of Native American communities. Tribal tangible and intangible cultural heritage is within the realm of inherent tribal sovereignty that has never been extinguished. Tribal Nations have extensive authority over their own property. Ancestors, their burial belongings, cultural, religious and sacred property are within a Tribe’s jurisdiction to protect. This options memorandum and even the proposed Safeguard Tribal Objects of Patrimony (STOP) Act do not expressly acknowledge the protection of this inherent Tribal sovereign authority.

The current legal scheme to protect Native American cultural heritage creates a checkerboard of protections based on the status of the land where an item was taken, or the time period when it was taken without the authority of the Tribe. By contrast, U.S. laws provide complete prohibition on the possession and sale of certain birds and animals, regardless of where they are found or what type of entity holds them. Such holistic protection could easily be created for Native American cultural heritage.

NATHPO would endorse any or all the options listed in the memo, as may be most feasible in the current political climate. We recommend three key changes:
1. Any option pursued should include the two items in bold above: expressly acknowledge the protection afforded by inherent Tribal sovereign authority, and completely prohibit the possession and sale of Native American remains and cultural items, regardless of where they are found or what type of entity holds them.

2. In the summary assessment, all options are inconsistent on including the Antiquities Act in the list of relevant current legislation. We recommend the inclusion of the Antiquities Act wherever NAGPRA and ARPA are mentioned.

3. An additional option should be added for the United States to ratify and accede to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995). Thus far, 48 states have either signed, ratified, or acceded. The U.S. participated in the negotiations but did not sign.

Thank you for considering our comments, and for all your efforts to help protect Tribal cultural heritage.

Sincerely,

Valerie J. Grussing, PhD
Executive Director