

Repatriation Policy for the Center for Archaeological Research

Center for Archaeological Research

The University of Texas at San Antonio

INTRODUCTION

The University of Texas at San Antonio-Center for Archaeological Research (UTSA-CAR) recognizes the rights of federally recognized American Indians to assert possession of human remains and cultural items specified under the Native American Graves Protection and Repatriation Act NAGPRA (25 U.S.C. §3001 et seq.). In attempting to strike a balance between scientific research, moral and ethical responsibilities, and the interests of the American Indian community, UTSA-CAR seeks to establish a repatriation policy that will lead to a working relationship with federally recognized American Indians. We view repatriation as a collaborative process in which both CAR staff and American Indian peoples become involved in determining the future of human remains and cultural items. Where cultural affiliation can be demonstrated, repatriation claims will be honored.

Under the guidelines of 25 U.S.C. §3005, federally recognized Native American Indians and Native Hawaiian peoples may assert the right of possession and determine the disposition of culturally affiliated human remains, funerary objects, sacred objects and objects of cultural patrimony in the collections of American museums and universities.

PROCEDURES

25 U.S.C. §3003, establishes that each museum and/or curation facility that has possession of or control over Native American Indian human remains and associated funerary objects shall conduct an inventory and assess the cultural origins of collections potentially affiliated with modern Native American Indians and Native Hawaiian groups. To this extent, UTSA-CAR seeks to uphold federal law and shall expeditiously return culturally affiliated human remains and funerary objects to federally recognized Native American Indian and Native Hawaiian groups, or individuals who can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric oral tradition, historical or other relevant information or expert opinion.

Implementation of the Summary and Inventory Process

In accordance with 25 U.S.C. §3001 et seq., UTSA-CAR completed the summaries of its NAGPRA inventory and submitted a list to the National Park Service in November 1995. Future inventories will include any new findings and/or acquisitions as they become available. Summary lists of culturally identifiable human remains, cultural items and artifacts will be forwarded to the appropriate culturally affiliated federally recognized Native American Indian group(s), and Native Hawaiian group(s).

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A summary of culturally unidentifiable human remains and cultural items was forwarded to the National Park Service Departmental Consulting Archaeologist, Washington D.C. Documentation to determine the cultural affiliation of remains or cultural items considers biological, geographical, historical (both written and oral), genealogical, archeological, linguistic, folkloric, ethnological, and archival information, expert opinion, or any other relevant sources of information.

Artifacts

Because of the difficulty in identifying which cultural items may be funerary, sacred or patrimonial, the summary lists will provide a general description, geographic location and collection history of cultural items. Cultural affiliation will be determined based on a preponderance of the evidence; however, the absence of evidence does not a priori assume cultural affiliation and/or shared identity with a specific group. The inventory lists will serve as a starting point for consultations on collections.

Human Skeletal Remains

Because of the complex relationship between biological and cultural affiliation and the difficulty in determining specific cultural identities, the summary lists will provide a general description of the remains, geographic location, collection information, potential cultural affiliation, and temporal context divided into three broad categories: Mission, Historic, and Prehistoric. An attempt will be made to establish cultural affiliation; however, the absence of evidence cannot and should not be used to demonstrate cultural affiliation and a relationship of shared identity with a specific group. The inventory lists will serve as a starting point for consultations on collections.

Initiating a Consultation

Any group or individual may initiate a consultation for access to a specific collection. If a collection is held-in-trust, the controlling agency will make the final determination of any request for access; however, UTSA-CAR should be initially contacted. The UTSA-CAR NAGPRA committee under the guidelines set forth in the Collections Management Policy will determine the merits of any such request. If access is denied, the group or individual may petition the controlling agency to overrule the decision made the UTSA-CAR NAGPRA committee.

Communication and collaboration is the foundation of the repatriation process at UTSA-CAR. This process begins with consultations between the group or individual and the Director of UTSA-CAR. Only representatives of permitting agencies, ordained representatives, lineal descendants of named individuals, federally recognized Native American Indians, and Native Hawaiian groups, may initiate a consultation for a repatriation request.

Upon receiving an inventory of human remains and cultural items, Native groups are asked to review the lists and use them to verify cultural affiliation and initiate

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consultations with UTSA-CAR. The purpose of this consultation will be to determine a course of action towards repatriation, reburial or a mutually agreeable alternative.

UTSA-CAR welcomes the suggestions from Native groups regarding the display and care of collections. Decisions about implementing such suggestions will be made on a case-by-case basis. In order to ensure that a UTSA-CAR staff member is available, appointments for visits should be made at least two weeks in advance. Confirmation of an access request and other inquiries can be made over the telephone. Requests can be mailed to:

Director, Center for Archaeological Research University of Texas at San Antonio, 1 UTSA Circle, San Antonio, TX 78249

Initiating a Repatriation Request

Upon receiving information about UTSA-CAR collections, a Native American group may wish to make a request for repatriation. This process officially begins with a letter to UTSA-CAR at the above address requesting the return of specific remains or cultural items subject to repatriation under the law. Parties making requests for repatriation are asked to identify themselves and the basis of their claim (see Section D: Who May Make a Repatriation Request). Upon receipt of a written request from a lineal descendant or a recognized group's leaders, the individual's and/or group's standing as a qualified requesting party is reviewed to determine if the party is qualified. A case file is established and a joint effort is initiated to investigate the claim.

The Director of UTSA-CAR is the contact person for the Native group that initiated the claim. He or she is responsible for the documentation of the human remains or cultural items in question, the distribution of the case report resulting from this process, and the handling of the arrangements for the actual return. In response to the request, a report is produced that provides an assessment of the cultural affiliation of the collections involved, summarizes all relevant details concerning the requested material, and recommends a course of action. The report is reviewed by the UTSA-CAR NAGPRA Committee and submitted to the Provost for institutional review. After the institutional review is completed, the report is sent to members and representatives of culturally affiliated groups. The case report represents UTSA-CAR's official response to a group's repatriation request.

A party making a request under NAGPRA may have access to collection documentation during the repatriation process. In addition, Native groups may conduct independent research. Collaborative arrangements with UTSA-CAR for the purpose of gathering information are encouraged. Such collaborative efforts may include work with Native community scholars and traditional experts, internships, and other types of informal research arrangements. Resources and support for such arrangements are not part of the regular operating budget of UTSA-CAR, but the NAGPRA Committee (see Section H) will, to the extent possible, assist in supporting tribal visits.

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The policy of UTSA-CAR is to make information on the origin and identity of requested cultural items available to the requesting group as early in the repatriation process as possible. Native groups are invited to make appointments to view the collections in the care of UTSA-CAR. UTSA-CAR staff will provide as many as two Native American representatives with access to the collections, associated photographs and archaeological records and offer instruction on the use of facility resources. Both individuals must be present and work together during the access phase of the repatriation request process.

Who May Make a Repatriation Request

Requests for the repatriation of Native American human remains and cultural items may be made by: (1) lineal descendants of named individuals; (2) federally recognized Native American tribes; (3) Native Hawaiian organizations; (4) a representative of a non-federal entity or permitting agency, and in certain cases, (5) state-recognized Native American tribes.

Lineal descendants of named individuals

The closest living descendants of named individuals whose remains are held by UTSA-CAR may make a request for the return of those remains. An accurate family genealogy must be provided.

Federally recognized Native American tribes

Native Hawaiian organizations

A representative of a non-federal entity or permitting agency for which UTSA-CAR is custodian of the collection.

This applies to any collection whose excavation was permitted by a specific agency not regulated by 25 NAGPRA. These may include the Texas Historical Commission or the Catholic Archdiocese of Texas.

State-recognized Native American tribes

Requests from state recognized tribes will be reviewed on a case-by-case basis.

Items at UTSA-CAR Potentially Subject to Repatriation

The categories of materials that a requesting group may claim are: (1) human remains of known individuals; (2) culturally affiliated human remains; (3) associated and unassociated funerary objects; (4) sacred objects; (5) objects of cultural patrimony; (6) cultural items transferred to or acquired by UTSA-CAR illegally or under circumstances that render invalid the facility's claim to them; and (7) human remains or artifacts controlled by a non-federal entity. See also Section F: Criteria for Repatriation.

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1. Known individuals

UTSA-CAR shall repatriate, upon request, any human remains of known identity to the closest living descendant of the named individual. The repatriation of named individuals to living descendants is an ongoing policy at UTSA-CAR established prior to the enactment of the NMAI Act and requests for the return of named individuals are given the highest priority.

2. Culturally affiliated human remains

UTSA-CAR shall repatriate, upon request, human remains that have been identified as being culturally affiliated with a particular Native American group or Native Hawaiian organization.

3. Associated and unassociated funerary objects

UTSA-CAR shall repatriate, upon request, any funerary object that, as part of a death rite or ceremony of a culture, is reasonably believed to have been intentionally placed with an individual of known affiliation at the time of death or later, to the living descendants of a named individual, or to the culturally affiliated Native American group or Native Hawaiian organization.

4. Sacred objects

UTSA-CAR shall repatriate, upon request, any specific ceremonial object that is needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

5. Objects of cultural patrimony

UTSA-CAR shall repatriate, upon request, cultural objects that have an on-going historical, traditional, or cultural importance central to the culturally affiliated Native American group.

6. Objects obtained illegally

In accordance with long-standing policy, UTSA-CAR may repatriate, upon request, any materials acquired by or transferred to UTSA-CAR illegally or under circumstances that render invalid the facility's claim to them. Each request for materials so acquired will take into account all relevant evidence submitted by a requesting party. It will also take into account information about acquisition that UTSA-CAR has available in its accession records.

7. Human remains or artifacts controlled by a non-federal entity

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UTSA-CAR may repatriate, upon request, any human remains or artifacts obtained during permitted excavations and/or under the authority of a non-federal entity.

Criteria for Repatriation

In order for human remains and cultural items to be repatriated, the requested items must fall into one of the categories of Section E of this policy. The requesting group must be legally, biologically, or culturally affiliated with the human remains and cultural items being requested. With regard to unassociated funerary objects, sacred objects, and objects of cultural patrimony the requesting party may also be required to present evidence that UTSA-CAR does not have right of possession to the material.

Cultural affiliation

For repatriation to occur, a relationship must exist between a claimant and the requested material. This relationship can be legal, lineal descent (biological) or cultural affiliation. In many cases, the evidence of affiliation may be indicated by collections records that can contain information on cultural affiliation. Affiliation can be established through the documentation process. The requesting party may also provide evidence of cultural affiliation based upon biological, geographical, historical (both written and oral), genealogical, archeological, linguistic, folkloric, ethnological, and archival information, expert opinion, or any other relevant information. It must be shown by a preponderance of the evidence that the materials requested be culturally affiliated with the requesting party.

Right of possession

The original acquisition by UTSA-CAR of a Native American unassociated funerary object, sacred object, or object of cultural patrimony from a Native group with the voluntary consent of an individual or group that had the authority to alienate the object at the time it was acquired gives the right of possession of that object to UTSA-CAR. If a culturally affiliated group seeking repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony presents evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that UTSA-CAR did not have right of possession of the object, then UTSA-CAR shall return such object unless it can prove that it has right of possession. If the curation facility and the claimants should disagree over whether their respective burdens have been proven, the federal NAGPRA Committee may be called upon to facilitate the resolution of the dispute.

Multiple or Competing Requests

UTSA-CAR may receive multiple or competing requests for the return of culturally affiliated remains or cultural items. Responsibility for the actual transfer and final disposition of remains and materials often presents a challenge to communities,

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requiring difficult and sometimes protracted negotiations within and between groups to arrive at a consensus regarding such disposition. It is UTSA-CAR policy to encourage all affiliated groups to reach a mutually acceptable solution and to propose a unified position to the facility. UTSA-CAR will consult with all claimants but will not interfere with the internal political or religious affairs of Native groups nor compel a solution. If requesting parties fail to reach a resolution, the federal NAGPRA Committee can be asked to review the case.

UTSA-CAR NAGPRA Review Committee

The UTSA-CAR NAGPRA Review Committee is established under the UTSA-CAR Collections Management Policy. The committee consists of the curator, the NAGPRA representative, the director of CAR, the chair of the Department of Anthropology, and the academic dean. The committee was established to control access and review the inventory, acquisition, and return of human remains, funerary objects, sacred objects, and objects of cultural patrimony. The committee's purpose is to ensure that fair and objective consideration and assessment of all relevant evidence with respect to access, inventory and identification has been made by UTSA-CAR. They may, upon the request of any affected party, review any findings relating to the origin or the return of human remains and cultural items.

Notification

UTSA-CAR makes every attempt to ensure that all parties with a potential interest in the collections under consideration are aware of UTSA-CAR's intent to repatriate. Once the recommendations for a return have been agreed upon, a notification must be published in the Federal Register and a one-month waiting period must take place to allow any interested parties to contact the facility. The notification process is designed to ensure that all other parties with a potential interest in the return are informed of the pending action and have an opportunity to obtain further information or consult with UTSA-CAR prior to the repatriation of the collection. The goal of UTSA-CAR is to ensure a broad dissemination of the information and to initiate arrangements for a return only after a consensus has been reached within the group about the manner of the return and the representatives to be involved.

Arrangements for Returns

Once the requesting party and UTSA-CAR have reached an agreement regarding the disposition of the human remains or cultural items, arrangements may be made for a return. These arrangements shall include a mutually convenient date for the return. As many as two representatives of the group must be present at UTSA-CAR to prepare the remains and cultural items for repatriation.

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International Requests

The scope of current repatriation laws is restricted to Native groups residing in the United States and its territories. Efforts are made to coordinate requests for returns from groups in Canada and Mexico whose membership occupies both sides of the international border, with their United States counterparts. Repatriation decisions for groups other than these must await international agreements, unless the materials in question are found to have been acquired illegally or under circumstances which render UTSA-CAR's claim of title invalid.

Alternatives to Repatriation

In addition to the repatriation of culturally affiliated human remains and cultural items, Native groups may wish to examine alternatives to repatriation or reburial. Native groups may wish to allow human remains and cultural items to be retained by UTSA-CAR under the existing policies of access and curation, or may wish to consider the retention of the materials at the facility with tribal input on care and preservation. Native groups may determine that it is in their best interest to delay a request for the repatriation of remains or cultural items. Any decision by a Native group not to make a repatriation request at the present time in no way precludes the possibility of making a request for return at a future date. The Director of UTSA-CAR reserves the right to challenge any repatriation request.

Disposition of Human Remains and Artifacts not Under the Authority of 25 U.S.C.

Whereas the authority of NAGPRA is set forth under 25 U.S.C. §3003, UTSA-CAR will recognize reburial claims of non-federal entities such as the Texas Historical Commission and the Catholic Archdiocese of Texas, for which UTSA-CAR is the custodian of a specific collection or collections. Where collections are held-in-trust, the permitting agency is recognized as the clear and rightful owner and will control the final disposition of any human remains and artifacts. The guidelines set forth in this policy will apply, where specified, to these non-federal entities not recognized under 25 U.S.C. An exception is made with regard to human remains and artifacts that have been legally accessioned by UTSA-CAR, and UTSA-CAR is therefore the rightful owner of the collection. In such cases, UTSA-CAR will determine the final disposition of its accessioned collections.