

Prepared Statement of Michael “NaNa Ping” Garcia

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Before the U.S. House of Representatives Committee on Natural Resources

Legislative Hearing on the Indian Arts and Crafts Amendments Act of 2009 (H.R.725)

December 2, 2009

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#### INTRODUCTION

Good morning Chairman Rahall and Ranking Member Hastings. My name is Michael “NaNa Ping” Garcia, and I am the President of the Indian Arts and Crafts Association (“IACA”) based in Albuquerque, NM. I am an artist and an enrolled member of the Pascua Yaqui Tribe. I specialize in lapidary inlay jewelry in both silver and gold. I have served as President of IACA for the past five years. I live with my family on the Nambe Pueblo Indian Reservation. I have a degree in business and spent many years in the graphic and printing business before becoming a full-time artist. My Indian name, NaNa Ping, was given to me in ceremony. It means Aspen Mountain and translates as strength and leadership. I also serve as President for the Indian Arts Education Association and have served on the Board of the Southwest Association for Indian Arts, including four years as Vice-President. My art work is sold on an international level from Paris to Australia. I just returned from my fourth cultural exchange with the aboriginal peoples of Australia.

On behalf of the Indian artists and craftsmen of the IACA, I thank you for the opportunity to appear before you today to give you an idea of the current difficulties presented by the illicit trade in counterfeit Indian arts and crafts.

#### BACKGROUND ON THE INDIAN ARTS AND CRAFTS ASSOCIATION

Established in 1974, the IACA is an international, not-for-profit trade association whose mission is to support the effective protection, ethical promotion and preservation of American Indian arts and crafts. Headquartered in Albuquerque, NM, IACA was formed by American Indian artists and reputable businesses when imitation goods began flooding the marketplace. The founders of the IACA realized that by joining forces they could work more effectively to promote authenticity and find ways to educate the buyers and public about American Indian art.

Today, IACA is a well-respected trade association which represents all facets of the American Indian arts and crafts industry – artists, retailers, wholesalers, cottage industry, museums, other related organizations and businesses (such as suppliers, educational institutions, book publishers, studio photographers), as well as collectors. IACA promotes ethical business standards within the Indian art market through education, publicity, authentication, and use of its logo to certify reputable businesses. As a member, each artist or business agrees to honestly and ethically represent their merchandise and to abide by all state and Federal laws.

Federal legal authority governing the industry and the labeling of authentic arts and crafts produced by Native Americans has been a tremendous asset for our industry and we are proud that the State of New Mexico has enacted similar legislation to give further protections.

#### HOW COUNTERFEIT GOODS HARM INDIAN ARTISTS AND THE INDIAN ART MARKET

The arts and crafts industry is critical to American Indian economies and small businesses. Income from a single artist often provides the only income for their family and, more often than not, to an extended family. In addition to providing primary and supplemental income, the arts are a source of strength and pride, reinforcing our cultures and traditions within our communities.

Misrepresentation is one of the biggest barriers to the integrity of the American Indian art industry and its market. Not only does our industry have to compete with the larger market, but we must compete with those who copy and counterfeit the work of American Indian artists. According to a June 2005 report by the Inspector General for the U.S. Department of the Interior, the annual loss in revenues to Indian artisans as a result of counterfeit Indian arts and crafts is between \$400 and \$500 million or up to half of the total value of the Indian arts and crafts market.<sup>1</sup>

Improvements in transportation and increased world trade combine and enable the process by which original Indian art is duplicated offshore for less cost and passed off as authentic products. For example, dealers can send an original, Indian-made piece or a photograph to locations such as the Philippines and Thailand and have the pieces duplicated or mass-produced for a fraction of the cost of the original. The U.S. Customs Service and Border Patrol have estimated that an average of \$30 million in Indian-style arts and crafts is imported annually from countries such as the countries above and Mexico, Pakistan, and China.<sup>2</sup>

Reputable businesses and artists cannot compete with imports, and the loss of revenue is putting the artists and small business owners out of business – out of their livelihood. Fakes and imports damage the overall image of American Indian arts, hurting not only the tribes, but also the nearby communities whose economies are dependent on Native arts. In Santa Fe, NM, the Downtown Business Association and IACA have begun holding Town Hall Meetings on Authenticity to help educate the retailers and customers about the laws and to encourage the support of authentic American Indian arts.

As an industry, we fear the continuing loss of integrity that will ultimately result in the large-scale demise of authentic, American Indian arts. We must enable and encourage the current and future generations to continue the arts but today, artists have found little recourse when their designs and work is copied – and great frustration as they see imported items being

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<sup>1</sup> U.S. Department of the Interior, Office of Inspector General, Indian Arts and Crafts: A Case of Misrepresentation, Rpt. No. E-EV-OSS-0003-2005 (June 2005).

<sup>2</sup> Id.

misrepresented as American Indian handmade. Most importantly, Indian art is an expression of cultural pride and identity, so in addition to hurting the artists and reputable businesses, it damages the public by removing this educational connection and by the consumer unknowingly taking an imported item home.

#### ANALYSIS OF THE INDIAN ARTS AND CRAFTS AMENDMENTS ACT OF 2009 (H.R.725)

The IACA would like to thank Congressman Ed Pastor for introducing the *Indian Arts and Crafts Amendments Act of 2009* (H.R.725). IACA would also like to thank the Committee for holding this important hearing and assures Rep. Pastor and this Committee of its support for the legislation.

This legislation would amend the *Indian Arts and Crafts Act of 1990* to: (1) authorize any Federal law enforcement officer to conduct an investigation of an offense involving the sale of any good that is misrepresented as an Indian produced good or product that occurs within the jurisdiction of the United States; and (2) authorize the Indian Arts and Crafts Board to refer such an alleged offense to any Federal law enforcement officer for appropriate investigation. The measure would further permit a Federal law enforcement officer to investigate such an alleged offense regardless of whether such officer receives a referral from the Board.

H.R.725 would also require that the findings of an investigation of such an alleged offense by any Federal department or agency be submitted to: (1) a Federal or state prosecuting authority; or (2) the Board. The bill also revises the requirements for the initiation of civil actions for misrepresentation of Indian produced goods by authorizing the Board to recommend civil actions to the Attorney General and clarify the requirements for the initiation of civil actions, as well as penalties for the misrepresentations of such goods. In addition, H.R.725 proposes new penalties for goods offered or displayed for sale or sold for less than \$1,000 at a \$25,000 fine, a 1-year imprisonment, or both for individuals and for persons other than individuals a fine of \$100,000.

#### THE VALUE AND NECESSITY OF FEDERAL PROSECUTION AND CIVIL LAWSUITS

As far back as the early 1930s, Congress recognized the need to promote the economic welfare of Indian tribes and individual Indians by fostering the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship.

In 1935, therefore, Congress passed the *Indian Arts and Crafts Act of 1935* and created the Indian Arts and Crafts Board within the U.S. Department of the Interior to further these goals through market research to optimize product sales, technical research and technical advice, the creation of trademarks of genuineness and quality, and other undertakings.

Under the *Indian Arts and Crafts Act of 1990* (Pub.L. 101-644), as amended, the Board is authorized to refer complaints to the Federal Bureau of Investigation for investigation, and may also recommend to the U.S. Attorney General that criminal proceedings be initiated. The Board is also empowered to recommend that the U.S. Department of the Interior Secretary refer matters to the U.S. Attorney General for civil actions on behalf of a member of an Indian tribe, an Indian tribe, or an Indian arts and crafts organization.

The *Indian Arts and Crafts Enforcement Act of 2000* (Pub.L. 106-497) amended the 1990 Act to expand the pool of potential defendants by authorizing civil actions against persons who “directly or indirectly” offer or display for sale or sell goods in contravention of the Act. In addition, the Act authorizes Indian individuals to bring civil actions on behalf of himself or herself and Indian arts and crafts organizations to bring civil actions on behalf of itself.

Nearly three-quarters of a century after the federal government acted to protect the welfare of Indian artisans, their tribal communities, and the Indian art market, the U.S. government has failed to prevent the dilution of the market for legitimate arts. To-date, the Federal government has brought zero criminal prosecutions responsible for importing, advertising, and selling counterfeit goods. By all accounts, the U.S. Government has rendered the Act a failure by its own failure to take legal action. As is the case in other areas of the law, there is value of having a high-profile criminal case filed by the Department of Justice against a kingpin or importer of large volumes of fake goods. Such a case or cases would send the message that this behavior will not be tolerated. Other methods may have to be used by the Federal government to effectively tackle this problem including, for example, enforcing international trade laws.

#### CONCLUSION

Mr. Chairman, that completes my statement and at this point I would be happy to answer any questions the panel might have.