

# The Washington Times

## **BANDOW: Obama's ivory-trade regulatory overkill**

**Turning antique collectors into criminals will boost the black market**

By [Doug Bandow](#)  
February 18, 2014

The [Obama administration](#) is preparing to treat virtually every antique collector, dealer and auctioneer in America as a criminal. In the name of saving elephants, the [administration](#) is effectively banning the sale of all ivory objects, even if acquired legally decades ago.

Doing so will weaken conservation efforts and enrich those engaged in the illegal ivory trade.

Elephants are being killed in Africa. Under the Convention on the International Trade in Endangered Species of Wild Fauna and Flora, only ivory from before 1989 can be sold. Unfortunately, ivory-sale prohibition has not stopped the slaughter.

The greatest demand for new ivory comes from Asia. Most ivory in America arrived legally, many years ago. The owners followed the rules as they invested hundreds, thousands or tens of thousands of dollars in art objects.

Until now, the rules were simple and sensible. Ivory imported legally — that is, prior to 1989 or after 1989 with convention certification — could be sold. Older ivory usually can be identified by coloring, stains, style, wear, quality, subject and more. Most of the older work simply isn't replicated today.

Moreover, the burden of proof fell on the government, which had to prove that an individual violated the law to convict him of violating the law. That's the way America normally handles both criminal and civil offenses.

However, in mid-February the [administration](#) issued what amounted to a ban on ivory sales. In practice, virtually every collector, dealer, auctioneer and other person in America is prohibited from selling ivory items — even if acquired legally, owned for decades, and worth hundreds or thousands of dollars.

Every flea market, junk shop, estate sale, antique store, auction showroom and antique show is at risk of raids, confiscations and prosecutions.

First, no imports are allowed, not even of antiques, which before could be brought to America with a convention certificate.

Second, all exports are banned, except antiques (defined as more than a century old) in what the [U.S. Fish and Wildlife Service](#) says are “exceptional circumstances.”

At best, the [administration](#) is raising the administrative and cost burdens of exporting to countries that already limit ivory imports to items with appropriate documentation. Or the new rule may restrict the sale of items previously allowed, thereby hindering Americans in disposing of their legal collections.

Third, interstate transactions are prohibited, except for antiques. Explains Fish and Wildlife: “Sellers of antiques in interstate commerce must prove through documented evidence that items qualify as bona fide antiques.” Unfortunately, such evidence rarely exists. Thus, the sale of almost all ivory across state lines is effectively banned.

Fourth, intrastate commerce, said the agency, is “prohibited unless seller can demonstrate item was lawfully imported prior to” 1990, when the international ban took effect.

But how does someone “demonstrate” when, say, a gift from his parents was imported? Without such proof, the item is not marketable — even though brought to America legally.

By any standard, the administration rule is grossly unfair to thousands of Americans. Why is the [administration](#) penalizing the law-abiding?

The U.S. officials complained about the difficulty in distinguishing ivory imported legally and illegally. No doubt, banning everything eases enforcement, but the policy fails to distinguish between guilt and innocence.

Moreover, much older ivory, given its manifold unique characteristics, is easily distinguishable from new work.

The illegal ivory supply also is small compared with that of legal ivory. Rather than ban the latter in an attempt to limit the former, the government should concentrate resources on aiding African countries in protecting their elephants, better interdicting illegal imports, and identifying sellers who specialize in new ivory.

In fact, targeting owners of legal ivory will perversely undermine such enforcement efforts. Making most ivory in America illegal will vastly expand the ivory black market and dramatically dilute enforcement resources.

Ivory commerce will continue, only more often underground. More objects will privately pass among dealers and collectors, never reaching public view.

The interstate ban, too, will be flouted. Owners also may hand-carry items to other nations without similar restrictions. Moreover, documentation will be faked.

Collectors and dealers will turn to those already participating in the illegal market, helping criminals expand their networks and increase their profits. Finally, overtaxed federal Fish and Wildlife agents may prefer to go after easy targets, such as local antique flea markets, rather than secretive smugglers.

If the [administration](#) does not withdraw its rules, Congress should overturn this unfair attack on the law-abiding. Washington should penalize poachers and their seller allies — not collectors and dealers who have followed the rules.

The [administration](#)'s new regulations will divert enforcement resources, and push owners of legal ivory into the illegal trade, meaning more elephants are likely to die.

*Doug Bandow is a senior fellow at the Cato Institute and a former special assistant to President Reagan.*