

116TH CONGRESS
2D SESSION

S. 2165

AN ACT

To enhance protections of Native American tangible cultural heritage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Safeguard Tribal Ob-
3 jects of Patrimony Act of 2020”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

6 (1) to carry out the trust responsibility of the
7 United States to Indian Tribes;

8 (2) to increase the maximum penalty for actions
9 taken in violation of the Native American Graves
10 Protection and Repatriation Act (25 U.S.C. 3001 et
11 seq.) (including section 1170 of title 18, United
12 States Code, as added by that Act), in order to
13 strengthen deterrence;

14 (3) to stop the export, and facilitate the inter-
15 national repatriation, of cultural items prohibited
16 from being trafficked by the Native American
17 Graves Protection and Repatriation Act (25 U.S.C.
18 3001 et seq.) (including section 1170 of title 18,
19 United States Code, as added by that Act) and ar-
20 chaeological resources prohibited from being traf-
21 ficked by the Archaeological Resources Protection
22 Act of 1979 (16 U.S.C. 470aa et seq.) by—

23 (A) explicitly prohibiting the export;

24 (B) creating an export certification system;

25 and

1 (C) confirming the authority of the Presi-
2 dent to request from foreign nations agree-
3 ments or provisional measures to prevent irre-
4 mediable damage to Native American cultural
5 heritage;

6 (4) to establish a Federal framework in order
7 to support the voluntary return by individuals and
8 organizations of items of tangible cultural heritage,
9 including items covered by the Native American
10 Graves Protection and Repatriation Act (25 U.S.C.
11 3001 et seq.) (including section 1170 of title 18,
12 United States Code, as added by that Act) and the
13 Archaeological Resources Protection Act of 1979 (16
14 U.S.C. 470aa et seq.);

15 (5) to establish an interagency working group
16 to ensure communication between Federal agencies
17 to successfully implement this Act, the Native Amer-
18 ican Graves Protection and Repatriation Act (25
19 U.S.C. 3001 et seq.) (including section 1170 of title
20 18, United States Code, as added by that Act), the
21 Archaeological Resources Protection Act of 1979 (16
22 U.S.C. 470aa et seq.), and other relevant Federal
23 laws;

24 (6) to establish a Native working group of In-
25 dian Tribes and Native Hawaiian organizations to

1 assist in the implementation of this Act, the Native
2 American Graves Protection and Repatriation Act
3 (25 U.S.C. 3001 et seq.) (including section 1170 of
4 title 18, United States Code, as added by that Act),
5 the Archaeological Resources Protection Act of 1979
6 (16 U.S.C. 470aa et seq.), and other relevant Fed-
7 eral laws;

8 (7) to exempt from disclosure under section 552
9 of title 5, United States Code (commonly known as
10 the “Freedom of Information Act”)—

11 (A) information submitted by Indian
12 Tribes or Native Hawaiian organizations pursu-
13 ant to this Act; and

14 (B) information relating to an Item Re-
15 quiring Export Certification for which an export
16 certification was denied pursuant to this Act;
17 and

18 (8) to encourage buyers to purchase legal con-
19 temporary art made by Native artists for commercial
20 purposes.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) **ARCHAEOLOGICAL RESOURCE.**—The term
24 “archaeological resource” means an archaeological
25 resource (as defined in section 3 of the Archae-

1 ological Resources Protection Act of 1979 (16
2 U.S.C. 470bb)) that is Native American.

3 (2) CULTURAL AFFILIATION.—The term “cul-
4 tural affiliation” means that there is a relationship
5 of shared group identity that can be reasonably
6 traced historically or prehistorically between a
7 present day Indian Tribe or Native Hawaiian orga-
8 nization and an identifiable earlier group.

9 (3) CULTURAL ITEM.—The term “cultural
10 item” means any 1 or more cultural items (as de-
11 fined in section 2 of the Native American Graves
12 Protection and Repatriation Act (25 U.S.C. 3001)).

13 (4) INDIAN TRIBE.—The term “Indian Tribe”
14 has the meaning given the term “Indian tribe” in
15 section 2 of the Native American Graves Protection
16 and Repatriation Act (25 U.S.C. 3001).

17 (5) ITEM PROHIBITED FROM EXPORTATION.—
18 The term “Item Prohibited from Exportation”
19 means—

20 (A) a cultural item prohibited from being
21 trafficked, including through sale, purchase, use
22 for profit, or transport for sale or profit, by—

23 (i) section 1170(b) of title 18, United
24 States Code, as added by the Native Amer-

1 ican Graves Protection and Repatriation
2 Act (25 U.S.C. 3001 et seq.); or

3 (ii) any other Federal law or treaty;
4 and

5 (B) an archaeological resource prohibited
6 from being trafficked, including through sale,
7 purchase, exchange, transport, receipt, or offer
8 to sell, purchase, or exchange, including in
9 interstate or foreign commerce, by—

10 (i) subsections (b) and (c) of section
11 6 of the Archaeological Resources Protec-
12 tion Act of 1979 (16 U.S.C. 470ee); or

13 (ii) any other Federal law or treaty.

14 (6) ITEM REQUIRING EXPORT CERTIFI-
15 CATION.—

16 (A) IN GENERAL.—The term “Item Re-
17 quiring Export Certification” means—

18 (i) a cultural item; and

19 (ii) an archaeological resource.

20 (B) EXCLUSION.—The term “Item Requir-
21 ing Export Certification” does not include an
22 item described in clause (i) or (ii) of subpara-
23 graph (A) for which an Indian Tribe or Native
24 Hawaiian organization with a cultural affili-

1 ation with the item has provided a certificate
2 authorizing exportation of the item.

3 (7) NATIVE AMERICAN.—The term “Native
4 American” means—

5 (A) Native American (as defined in section
6 2 of the Native American Graves Protection
7 and Repatriation Act (25 U.S.C. 3001)); and

8 (B) Native Hawaiian (as so defined).

9 (8) NATIVE HAWAIIAN ORGANIZATION.—The
10 term “Native Hawaiian organization” has the mean-
11 ing given the term in section 2 of the Native Amer-
12 ican Graves Protection and Repatriation Act (25
13 U.S.C. 3001).

14 (9) SECRETARY.—The term “Secretary” means
15 the Secretary of the Interior.

16 (10) TANGIBLE CULTURAL HERITAGE.—The
17 term “tangible cultural heritage” means—

18 (A) Native American human remains; or

19 (B) culturally, historically, or
20 archaeologically significant objects, resources,
21 patrimony, or other items that are affiliated
22 with a Native American culture.

23 **SEC. 4. ENHANCED NAGPRA PENALTIES.**

24 Section 1170 of title 18, United States Code, is
25 amended—

1 (1) by striking “5 years” each place it appears
2 and inserting “10 years”; and

3 (2) in subsection (a), by striking “12 months”
4 and inserting “1 year and 1 day”.

5 **SEC. 5. EXPORT PROHIBITIONS; EXPORT CERTIFICATION**
6 **SYSTEM; INTERNATIONAL AGREEMENTS.**

7 (a) EXPORT PROHIBITIONS.—

8 (1) IN GENERAL.—It shall be unlawful for any
9 person—

10 (A) to export, attempt to export, or other-
11 wise transport from the United States any Item
12 Prohibited from Exportation;

13 (B) to conspire with any person to engage
14 in an activity described in subparagraph (A); or

15 (C) to conceal an activity described in sub-
16 paragraph (A).

17 (2) PENALTIES.—Any person who violates
18 paragraph (1) and knows, or in the exercise of due
19 care should have known, that the Item Prohibited
20 from Exportation was taken, possessed, transported,
21 or sold in violation of, or in a manner unlawful
22 under, any Federal law or treaty, shall be fined in
23 accordance with section 3571 of title 18, United
24 States Code, imprisoned for not more than 1 year
25 and 1 day for a first violation, and not more than

1 10 years for a second or subsequent violation, or
2 both.

3 (3) DETENTION, FORFEITURE, AND REPATRI-
4 ATION.—

5 (A) DETENTION AND DELIVERY.—The
6 Secretary of Homeland Security, acting through
7 the Commissioner of U.S. Customs and Border
8 Protection, shall—

9 (i) detain any Item Prohibited from
10 Exportation that is exported, attempted to
11 be exported, or otherwise transported from
12 the United States in violation of paragraph
13 (1); and

14 (ii) deliver the Item Prohibited from
15 Exportation to the Secretary.

16 (B) FORFEITURE.—Any Item Prohibited
17 from Exportation that is exported, attempted to
18 be exported, or otherwise transported from the
19 United States in violation of paragraph (1)
20 shall be subject to forfeiture to the United
21 States in accordance with chapter 46 of title
22 18, United States Code (including section
23 983(c) of that chapter).

24 (C) REPATRIATION.—Any Item Prohibited
25 from Exportation that is forfeited under sub-

1 paragraph (B) shall be expeditiously repatriated
2 to the appropriate Indian Tribe or Native Ha-
3 waiian organization in accordance with, as ap-
4 plicable—

5 (i) the Native American Graves Pro-
6 tection and Repatriation Act (25 U.S.C.
7 3001 et seq.) (including section 1170 of
8 title 18, United States Code, as added by
9 that Act); or

10 (ii) the Archaeological Resources Pro-
11 tection Act of 1979 (16 U.S.C. 470aa et
12 seq.).

13 (b) EXPORT CERTIFICATION SYSTEM.—

14 (1) EXPORT CERTIFICATION REQUIREMENT.—

15 (A) IN GENERAL.—No Item Requiring Ex-
16 port Certification may be exported from the
17 United States without first having obtained an
18 export certification in accordance with this sub-
19 section.

20 (B) PUBLICATION.—The Secretary, in con-
21 sultation with Indian Tribes and Native Hawai-
22 ian organizations, shall publish in the Federal
23 Register a notice that includes—

1 (i) a description of characteristics typ-
2 ical of Items Requiring Export Certifi-
3 cation, which shall—

4 (I) include the definitions of the
5 terms—

6 (aa) “cultural items” in sec-
7 tion 2 of the Native American
8 Graves Protection and Repatri-
9 ation Act (25 U.S.C. 3001); and

10 (bb) “archaeological re-
11 source” in section 3 of the Ar-
12 chaeological Resources Protection
13 Act of 1979 (16 U.S.C. 470bb);

14 (II) describe the provenance re-
15 quirements associated with the traf-
16 ficking prohibition applicable to—

17 (aa) cultural items under
18 section 1170(b) of title 18,
19 United States Code; and

20 (bb) archaeological resources
21 under subsections (b) and (c) of
22 section 6 of Archaeological Re-
23 sources Protection Act of 1979
24 (16 U.S.C. 470ee);

1 (III)(aa) include the definitions
2 of the terms “Native American” and
3 “Native Hawaiian” in section 2 of the
4 Native American Graves Protection
5 and Repatriation Act (25 U.S.C.
6 3001); and

7 (bb) describe how those terms
8 apply to archaeological resources
9 under this Act; and

10 (IV) be sufficiently specific and
11 precise to ensure that—

12 (aa) an export certification
13 is required only for Items Requir-
14 ing Export Certification; and

15 (bb) fair notice is given to
16 exporters and other persons re-
17 garding which items require an
18 export certification under this
19 subsection; and

20 (ii) a description of characteristics
21 typical of items that do not qualify as
22 Items Requiring Export Certification and
23 therefore do not require an export certifi-
24 cation under this subsection, which shall
25 clarify that—

1 (I) an item made solely for com-
2 mercial purposes is presumed to not
3 qualify as an Item Requiring Export
4 Certification, unless an Indian Tribe
5 or Native Hawaiian organization chal-
6 lenges that presumption; and

7 (II) in some circumstances, re-
8 cepts or certifications issued by In-
9 dian Tribes or Native Hawaiian orga-
10 nizations with a cultural affiliation
11 with an item may be used as evidence
12 to demonstrate a particular item does
13 not qualify as an Item Requiring Ex-
14 port Certification.

15 (2) ELIGIBILITY FOR EXPORT CERTIFI-
16 CATION.—An Item Requiring Export Certification is
17 eligible for an export certification under this sub-
18 section if—

19 (A) the Item Requiring Export Certifi-
20 cation is not under ongoing Federal investiga-
21 tion;

22 (B) the export of the Item Requiring Ex-
23 port Certification would not otherwise violate
24 any other provision of law; and

1 (C) the Item Requiring Export Certifi-
2 cation—

3 (i) is not an Item Prohibited from Ex-
4 portation;

5 (ii) was excavated or removed pursu-
6 ant to a permit issued under section 4 of
7 the Archaeological Resources Protection
8 Act of 1979 (16 U.S.C. 470cc) and in
9 compliance with section 3(c) of the Native
10 American Graves Protection and Repatri-
11 ation Act (25 U.S.C. 3002(c)), if the per-
12 mit for excavation or removal authorizes
13 export; or

14 (iii) is accompanied by written con-
15 firmation from the Indian Tribe or Native
16 Hawaiian organization with authority to
17 alienate the Item Requiring Export Certifi-
18 cation that—

19 (I) the exporter has a right of
20 possession (as defined in section 2 of
21 the Native American Graves Protec-
22 tion and Repatriation Act (25 U.S.C.
23 3001)) of the Item Requiring Export
24 Certification; or

1 (II) the Indian Tribe or Native
2 Hawaiian organization has relin-
3 quished title or control of the Item
4 Requiring Export Certification in ac-
5 cordance with section 3 of the Native
6 American Graves Protection and Re-
7 patriation Act (25 U.S.C. 3002).

8 (3) EXPORT CERTIFICATION APPLICATION AND
9 ISSUANCE PROCEDURES.—

10 (A) APPLICATIONS FOR EXPORT CERTIFI-
11 CATION.—

12 (i) IN GENERAL.—An exporter seek-
13 ing to export an Item Requiring Export
14 Certification from the United States shall
15 submit to the Secretary an export certifi-
16 cation application in accordance with
17 clause (iii).

18 (ii) CONSEQUENCES OF FALSE STATE-
19 MENT.—Any willful or knowing false state-
20 ment made on an export certification appli-
21 cation form under clause (i) shall—

22 (I) subject the exporter to crimi-
23 nal penalties pursuant to section 1001
24 of title 18, United States Code; and

1 (II) prohibit the exporter from
2 receiving an export certification for
3 any Item Requiring Export Certifi-
4 cation in the future unless the ex-
5 porter submits additional evidence in
6 accordance with subparagraph
7 (B)(iii)(I).

8 (iii) FORM OF EXPORT CERTIFICATION
9 APPLICATION.—The Secretary, in consulta-
10 tion with Indian Tribes and Native Hawai-
11 ian organizations, and at the discretion of
12 the Secretary, in consultation with third
13 parties with relevant expertise, including
14 institutions of higher education, museums,
15 dealers, and collector organizations, shall
16 develop an export certification application
17 form, which shall require that an appli-
18 cant—

19 (I) describe, and provide pictures
20 of, each Item Requiring Export Cer-
21 tification that the applicant seeks to
22 export;

23 (II) include all available informa-
24 tion regarding the provenance of each

1 such Item Requiring Export Certifi-
2 cation; and

3 (III) include the attestation de-
4 scribed in subparagraph (B)(i).

5 (B) EVIDENCE.—

6 (i) IN GENERAL.—In completing an
7 export certification application with respect
8 to an Item Requiring Export Certification
9 that the exporter seeks to export, the ex-
10 porter shall attest that, to the best of the
11 knowledge and belief of the exporter, the
12 exporter is not attempting to export an
13 Item Prohibited from Exportation.

14 (ii) SUFFICIENCY OF ATTESTATION.—
15 An attestation under clause (i) shall be
16 considered to be sufficient evidence to sup-
17 port the application of the exporter under
18 subparagraph (A)(iii)(III), on the condition
19 that the exporter is not required to provide
20 additional evidence under clause (iii)(I).

21 (iii) ADDITIONAL REQUIREMENTS.—

22 (I) IN GENERAL.—The Secretary
23 shall give notice to an exporter that
24 submits an export certification appli-
25 cation under subparagraph (A)(i) that

1 the exporter is required to submit ad-
2 ditional evidence in accordance with
3 subclause (III) if the Secretary has
4 determined under subparagraph
5 (A)(ii) that the exporter made a will-
6 ful or knowing false statement on the
7 application or any past export certifi-
8 cation application.

9 (II) DELAYS OR DENIALS.—The
10 Secretary shall give notice to an ex-
11 porter that submits an export certifi-
12 cation application under subparagraph
13 (A)(i) that the exporter may submit
14 additional evidence in accordance with
15 subclause (III) if the issuance of an
16 export certification is—

17 (aa) delayed pursuant to the
18 examination by the Secretary of
19 the eligibility of the Item Requir-
20 ing Export Certification for an
21 export certification; or

22 (bb) denied by the Secretary
23 because the Secretary determined
24 that the Item Requiring Export
25 Certification is not eligible for an

1 export certification under this
2 subsection.

3 (III) ADDITIONAL EVIDENCE.—

4 On receipt of notice under subclause
5 (I), an exporter shall, or on receipt of
6 a notice under subclause (II), an ex-
7 porter may, provide the Secretary
8 with such additional evidence as the
9 Secretary may require to establish
10 that the Item Requiring Export Cer-
11 tification is eligible for an export cer-
12 tification under this subsection.

13 (C) DATABASE APPLICATIONS.—

14 (i) IN GENERAL.—The Secretary shall
15 establish and maintain a secure central
16 Federal database information system (re-
17 ferred to in this subparagraph as the
18 “database”) for the purpose of making ex-
19 port certification applications available to
20 Indian Tribes and Native Hawaiian organi-
21 zations.

22 (ii) COLLABORATION REQUIRED.—The
23 Secretary shall collaborate with Indian
24 Tribes, Native Hawaiian organizations,
25 and the interagency working group con-

1 vened under section 7(a) in the design and
2 implementation of the database.

3 (iii) AVAILABILITY.—Immediately on
4 receipt of an export certification applica-
5 tion, the Secretary shall make the export
6 certification application available on the
7 database.

8 (iv) DELETION FROM DATABASE.—On
9 request by an Indian Tribe or Native Ha-
10 waiian organization, the Secretary shall de-
11 lete an export certification application from
12 the database.

13 (v) TECHNICAL ASSISTANCE.—If an
14 Indian Tribe or Native Hawaiian organiza-
15 tion lacks sufficient resources to access the
16 database or respond to agency communica-
17 tions in a timely manner, the Secretary, in
18 consultation with Indian Tribes and Native
19 Hawaiian organizations, shall provide tech-
20 nical assistance to facilitate that access or
21 response, as applicable.

22 (D) ISSUANCE OF EXPORT CERTIFI-
23 CATION.—On receipt of an export certification
24 application for an Item Requiring Export Cer-
25 tification that meets the requirements of sub-

1 paragraphs (A) and (B), if the Secretary, in
2 consultation with Indian Tribes and Native Ha-
3 waiian organizations with a cultural affiliation
4 with the Item Requiring Export Certification,
5 determines that the Item Requiring Export Cer-
6 tification is eligible for an export certification
7 under paragraph (2), the Secretary may issue
8 an export certification for the Item Requiring
9 Export Certification.

10 (E) REVOCATION OF EXPORT CERTIFI-
11 CATION.—

12 (i) IN GENERAL.—If credible evidence
13 is provided that indicates that an item that
14 received an export certification under sub-
15 paragraph (D) is not eligible for an export
16 certification under paragraph (2), the Sec-
17 retary may immediately revoke the export
18 certification.

19 (ii) DETERMINATION.—In deter-
20 mining whether a revocation is warranted
21 under clause (i), the Secretary shall con-
22 sult with Indian Tribes and Native Hawai-
23 ian organizations with a cultural affiliation
24 with the affected Item Requiring Export
25 Certification.

1 (4) DETENTION, FORFEITURE, REPATRIATION,
2 AND RETURN.—

3 (A) DETENTION AND DELIVERY.—The
4 Secretary of Homeland Security, acting through
5 the Commissioner of U.S. Customs and Border
6 Protection, shall—

7 (i) detain any Item Requiring Export
8 Certification that an exporter attempts to
9 export or otherwise transport without an
10 export certification; and

11 (ii) deliver the Item Requiring Export
12 Certification to the Secretary, for seizure
13 by the Secretary.

14 (B) FORFEITURE.—Any Item Requiring
15 Export Certification that is detained under sub-
16 paragraph (A)(i) shall be subject to forfeiture
17 to the United States in accordance with chapter
18 46 of title 18, United States Code (including
19 section 983(c) of that chapter).

20 (C) REPATRIATION OR RETURN TO EX-
21 PORTER.—

22 (i) IN GENERAL.—Not later than 60
23 days after the date of delivery to the Sec-
24 retary of an Item Requiring Export Cer-
25 tification under subparagraph (A)(ii), the

1 Secretary shall determine whether the Item
2 Requiring Export Certification is an Item
3 Prohibited from Exportation.

4 (ii) REPATRIATION.—If an Item Re-
5 quiring Export Certification is determined
6 by the Secretary to be an Item Prohibited
7 from Exportation and is forfeited under
8 subparagraph (B), the item shall be expe-
9 ditiously repatriated to the appropriate In-
10 dian Tribe or Native Hawaiian organiza-
11 tion in accordance with, as applicable—

12 (I) the Native American Graves
13 Protection and Repatriation Act (25
14 U.S.C. 3001 et seq.) (including sec-
15 tion 1170 of title 18, United States
16 Code, as added by that Act); or

17 (II) the Archaeological Resources
18 Protection Act of 1979 (16 U.S.C.
19 470aa et seq.).

20 (iii) RETURN TO EXPORTER.—

21 (I) IN GENERAL.—If the Sec-
22 retary determines that credible evi-
23 dence does not establish that the Item
24 Requiring Export Certification is an
25 Item Prohibited from Exportation, or

1 if the Secretary does not complete the
2 determination by the deadline de-
3 scribed in clause (i), the Secretary
4 shall return the Item Requiring Ex-
5 port Certification to the exporter.

6 (II) EFFECT.—The return of an
7 Item Requiring Export Certification
8 to an exporter under subclause (I)
9 shall not mean that the Item Requir-
10 ing Export Certification is eligible for
11 an export certification under this sub-
12 section.

13 (5) PENALTIES.—

14 (A) ITEMS REQUIRING EXPORT CERTIFI-
15 CATION.—

16 (i) IN GENERAL.—It shall be unlawful
17 for any person to export, attempt to ex-
18 port, or otherwise transport from the
19 United States any Item Requiring Export
20 Certification without first obtaining an ex-
21 port certification.

22 (ii) PENALTIES.—Except as provided
23 in subparagraph (D), any person who vio-
24 lates clause (i) shall be—

1 (I) assessed a civil penalty in ac-
2 cordance with such regulations as the
3 Secretary promulgates pursuant to
4 section 10; and

5 (II) subject to any other applica-
6 ble penalties under this Act.

7 (B) ITEMS PROHIBITED FROM EXPOR-
8 TATION.—Whoever exports an Item Prohibited
9 from Exportation without first securing an ex-
10 port certification shall be liable for a civil
11 money penalty, the amount of which shall equal
12 the total cost of storing and repatriating the
13 Item Prohibited from Exportation.

14 (C) USE OF FINES COLLECTED.—Any
15 amounts collected by the Secretary as a civil
16 penalty under subparagraph (A)(ii)(I) or (B)—

17 (i) may be used by the Secretary—

18 (I) for fines collected under sub-
19 paragraph (A)(ii)(I), to process export
20 certification applications under this
21 subsection; and

22 (II) for fines collected under sub-
23 paragraph (B), to store and repatriate
24 the Item Prohibited from Exportation;

1 (ii) shall supplement (and not sup-
2 plant) any appropriations to the Secretary
3 to carry out this subsection; and

4 (iii) shall not be covered into the
5 Treasury as miscellaneous receipts.

6 (D) VOLUNTARY RETURN.—

7 (i) IN GENERAL.—Any person who at-
8 tempts to export or otherwise transport
9 from the United States an Item Requiring
10 Export Certification without first obtaining
11 an export certification, but voluntarily re-
12 turns the Item Requiring Export Certifi-
13 cation, or directs the Item Requiring Ex-
14 port Certification to be returned, to the ap-
15 propriate Indian Tribe or Native Hawaiian
16 organization in accordance with section 6
17 prior to the commencement of an active
18 Federal investigation shall not be pros-
19 ecuted for a violation of subparagraph (A)
20 with respect to the Item Requiring Export
21 Certification.

22 (ii) ACTIONS NOT COMMENCING A
23 FEDERAL INVESTIGATION.—For purposes
24 of clause (i), the following actions shall not

1 be considered to be actions that commence
2 an active Federal investigation:

3 (I) The submission by the ex-
4 porter of an export certification appli-
5 cation for the Item Requiring Export
6 Certification under paragraph
7 (3)(A)(i).

8 (II) The detention of the Item
9 Requiring Export Certification by the
10 Secretary of Homeland Security, act-
11 ing through the Commissioner of U.S.
12 Customs and Border Protection,
13 under paragraph (4)(A)(i).

14 (III) The delivery to the Sec-
15 retary of the Item Requiring Export
16 Certification by the Secretary of
17 Homeland Security, acting through
18 the Commissioner of U.S. Customs
19 and Border Protection, under para-
20 graph (4)(A)(ii).

21 (IV) The seizure by the Secretary
22 of the Item Requiring Export Certifi-
23 cation under paragraph (4)(A)(ii).

24 (6) FEES.—

1 (A) IN GENERAL.—The Secretary may col-
2 lect reasonable fees to process export certifi-
3 cation applications under this subsection.

4 (B) AVAILABILITY OF AMOUNTS COL-
5 LECTED.—Any amounts collected by the Sec-
6 retary under subparagraph (A)—

7 (i) shall supplement (and not sup-
8 plant) any appropriations to the Secretary
9 for the activities described in subparagraph
10 (A); and

11 (ii) shall not be covered into the
12 Treasury as miscellaneous receipts.

13 (7) ADMINISTRATIVE APPEAL.—If the Secretary
14 denies an export certification or an Item Requiring
15 Export Certification is detained under this sub-
16 section, the exporter, on request, shall be given a
17 hearing on the record in accordance with such rules
18 and regulations as the Secretary promulgates pursu-
19 ant to section 10.

20 (8) TRAINING.—

21 (A) IN GENERAL.—The Secretary, the Sec-
22 retary of State, the Attorney General, and the
23 heads of all other relevant Federal agencies
24 shall require all appropriate personnel to par-
25 ticipate in training regarding applicable laws

1 and consultations to facilitate positive govern-
2 ment-to-government interactions with Indian
3 Tribes and Native Hawaiian Organizations.

4 (B) U.S. CUSTOMS AND BORDER PROTEC-
5 TION TRAINING.—The Secretary of Homeland
6 Security, acting through the Commissioner of
7 U.S. Customs and Border Protection, shall re-
8 quire all appropriate personnel of U.S. Customs
9 and Border Protection to participate in training
10 provided by the Secretary of the Interior or an
11 Indian Tribe or Native Hawaiian organization
12 to assist the personnel in identifying, handling,
13 and documenting in a culturally sensitive man-
14 ner Items Requiring Export Certification for
15 purposes of this Act.

16 (C) CONSULTATION.—In developing or
17 modifying and delivering trainings under sub-
18 paragraphs (A) and (B), the applicable heads of
19 Federal agencies shall consult with Indian
20 Tribes and Native Hawaiian organizations.

21 (c) AGREEMENTS TO REQUEST RETURN FROM FOR-
22 EIGN COUNTRIES.—The President may request from for-
23 eign nations agreements that specify concrete measures
24 that the foreign nation will carry out—

1 (1) to discourage commerce in, and collection
2 of, Items Prohibited from Exportation;

3 (2) to encourage the voluntary return of tan-
4 gible cultural heritage; and

5 (3) to expand the market for the products of
6 Indian art and craftsmanship in accordance with
7 section 2 of the Act of August 27, 1935 (49 Stat.
8 891, chapter 748; 25 U.S.C. 305a) (commonly
9 known as the “Indian Arts and Crafts Act”).

10 **SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL**
11 **HERITAGE.**

12 (a) **LIAISON.**—The Secretary and the Secretary of
13 State shall each designate a liaison to facilitate the vol-
14 untary return of tangible cultural heritage.

15 (b) **TRAININGS AND WORKSHOPS.**—The liaisons des-
16 igned under subsection (a) shall offer to representatives
17 of Indian Tribes and Native Hawaiian organizations and
18 collectors, dealers, and other individuals and organizations
19 trainings and workshops regarding the voluntary return
20 of tangible cultural heritage.

21 (c) **REFERRALS.**—

22 (1) **IN GENERAL.**—The Secretary shall refer in-
23 dividuals and organizations to 1 or more Indian
24 Tribes and Native Hawaiian organizations with a
25 cultural affiliation to tangible cultural heritage for

1 the purpose of facilitating the voluntary return of
2 tangible cultural heritage.

3 (2) REFERRAL REPRESENTATIVES.—The Sec-
4 retary shall compile a list of representatives from
5 each Indian Tribe and Native Hawaiian organization
6 for purposes of referral under paragraph (1).

7 (3) CONSULTATION.—The Secretary shall con-
8 sult with Indian Tribes, Native Hawaiian organiza-
9 tions, and the Native working group convened under
10 section 8(a) before making a referral under para-
11 graph (1).

12 (4) THIRD-PARTY EXPERTS.—The Secretary
13 may use third parties with relevant expertise, includ-
14 ing institutions of higher education, museums, deal-
15 ers, and collector organizations, in determining to
16 which Indian Tribe or Native Hawaiian organization
17 an individual or organization should be referred
18 under paragraph (1).

19 (d) LEGAL LIABILITY.—Nothing in this section im-
20 poses on any individual or entity any additional penalties
21 or legal liability.

22 (e) TAX DOCUMENTATION.—In facilitating the vol-
23 untary return of tangible cultural heritage under this sec-
24 tion, the Secretary shall include provision of tax docu-
25 mentation for a deductible gift to an Indian Tribe or Na-

1 tive Hawaiian organization, if the recipient Indian Tribe
2 or Native Hawaiian organization consents to the provision
3 of tax documentation.

4 (f) REPATRIATION UNDER NATIVE AMERICAN
5 GRAVES PROTECTION AND REPATRIATION ACT.—The vol-
6 untary return provisions of this section shall apply to a
7 specific item of tangible cultural heritage only to the ex-
8 tent that the repatriation provisions under section 7 of the
9 Native American Graves Protection and Repatriation Act
10 (25 U.S.C. 3005) do not apply to the item of tangible cul-
11 tural heritage.

12 **SEC. 7. INTERAGENCY WORKING GROUP.**

13 (a) IN GENERAL.—The Secretary shall designate a
14 coordinating office to convene an interagency working
15 group consisting of representatives from the Departments
16 of the Interior, Justice, State, and Homeland Security.

17 (b) GOALS.—The goals of the interagency working
18 group convened under subsection (a) are—

19 (1) to facilitate the repatriation to Indian
20 Tribes and Native Hawaiian organizations of items
21 that have been illegally removed or trafficked in vio-
22 lation of applicable law;

23 (2) to protect tangible cultural heritage, cul-
24 tural items, and archaeological resources still in the

1 possession of Indian Tribes and Native Hawaiian or-
2 ganizations; and

3 (3) to improve the implementation by the appli-
4 cable Federal agencies of—

5 (A) the Native American Graves Protection
6 and Repatriation Act (25 U.S.C. 3001 et seq.)
7 (including section 1170 of title 18, United
8 States Code, as added by that Act);

9 (B) the Archaeological Resources Protec-
10 tion Act of 1979 (16 U.S.C. 470aa et seq.); and

11 (C) other relevant Federal laws.

12 (c) RESPONSIBILITIES.—The interagency working
13 group convened under subsection (a) shall—

14 (1) aid in implementation of this Act and the
15 amendments made by this Act, including by aiding
16 in—

17 (A) the voluntary return of tangible cul-
18 tural heritage under section 6; and

19 (B) halting international sales of items
20 that are prohibited from being trafficked under
21 Federal law; and

22 (2) collaborate with—

23 (A) the Native working group convened
24 under section 8(a);

1 (B) the review committee established under
2 section 8(a) of the Native American Graves
3 Protection and Repatriation Act (25 U.S.C.
4 3006(a));

5 (C) the Cultural Heritage Coordinating
6 Committee established pursuant to section 2 of
7 the Protect and Preserve International Cultural
8 Property Act (Public Law 114–151; 19 U.S.C.
9 2601 note); and

10 (D) any other relevant committees and
11 working groups.

12 **SEC. 8. NATIVE WORKING GROUP.**

13 (a) IN GENERAL.—The Secretary shall convene a Na-
14 tive working group consisting of not fewer than 12 rep-
15 resentatives of Indian Tribes and Native Hawaiian organi-
16 zations with relevant expertise, who shall be nominated by
17 Indian Tribes and Native Hawaiian organizations, to ad-
18 vise the Federal Government in accordance with this sec-
19 tion.

20 (b) RECOMMENDATIONS.—The Native working group
21 convened under subsection (a) may provide recommenda-
22 tions regarding—

23 (1) the voluntary return of tangible cultural
24 heritage by collectors, dealers, and other individuals

1 and non-Federal organizations that hold such tan-
2 gible cultural heritage; and

3 (2) the elimination of illegal commerce of cul-
4 tural items and archaeological resources in the
5 United States and foreign markets.

6 (c) REQUESTS.—The Native working group convened
7 under subsection (a) may make formal requests to initiate
8 certain agency actions, including requests that—

9 (1) the Department of Justice initiate judicial
10 proceedings domestically or abroad to aid in the re-
11 patriation cultural items and archaeological re-
12 sources; and

13 (2) the Department of State initiate dialogue
14 through diplomatic channels to aid in that repatri-
15 ation.

16 (d) AGENCY AND COMMITTEE ASSISTANCE.—

17 (1) IN GENERAL.—On request by the Native
18 working group convened under subsection (a), the
19 agencies and committees described in paragraph (2)
20 shall make efforts to provide information and assist-
21 ance to the Native working group.

22 (2) DESCRIPTION OF AGENCIES AND COMMIT-
23 TEES.—The agencies and committees referred to in
24 paragraph (1) are the following:

25 (A) The Department of the Interior.

1 (B) The Department of Justice.

2 (C) The Department of Homeland Security.
3

4 (D) The Department of State.

5 (E) The review committee established
6 under section 8(a) of the Native American
7 Graves Protection and Repatriation Act (25
8 U.S.C. 3006(a)).

9 (F) The Cultural Heritage Coordinating
10 Committee established pursuant to section 2 of
11 the Protect and Preserve International Cultural
12 Property Act (Public Law 114–151; 19 U.S.C.
13 2601 note).

14 (G) Any other relevant Federal agency,
15 committee, or working group.

16 (e) APPLICABILITY OF FEDERAL ADVISORY COM-
17 MITTEE ACT.—The Federal Advisory Committee Act (5
18 U.S.C. App.) shall not apply to the Native working group
19 convened under subsection (a).

20 **SEC. 9. TREATMENT UNDER FREEDOM OF INFORMATION**
21 **ACT.**

22 (a) IN GENERAL.—Except as provided in subsection
23 (c), the following information shall be exempt from disclo-
24 sure under section 552 of title 5, United States Code:

1 (1) Information that a representative of an In-
2 dian Tribe or Native Hawaiian organization—

3 (A) submits to a Federal agency pursuant
4 to this Act or an amendment made by this Act;
5 and

6 (B) designates as sensitive or private ac-
7 cording to Native American custom, law, cul-
8 ture, or religion.

9 (2) Information that any person submits to a
10 Federal agency pursuant to this Act or an amend-
11 ment made by this Act that relates to an item for
12 which an export certification is denied under this
13 Act.

14 (b) APPLICABILITY.—For purposes of subsection (a),
15 this Act shall be considered a statute described in section
16 552(b)(3)(B) of title 5, United States Code.

17 (c) EXCEPTION.—An Indian Tribe or Native Hawai-
18 ian organization may request and shall receive its own in-
19 formation, as described in subsection (a), from the Federal
20 agency to which the Indian Tribe or Native Hawaiian or-
21 ganization submitted the information.

22 **SEC. 10. REGULATIONS.**

23 (a) IN GENERAL.—Not later than 1 year after the
24 date of enactment of this Act, the Secretary, in consulta-
25 tion with the Secretary of State, the Secretary of Home-

1 land Security, and the Attorney General, and after con-
2 sultation with Indian Tribes and Native Hawaiian organi-
3 zations, shall promulgate rules and regulations to carry
4 out this Act.

5 (b) INCLUSION.—The regulations promulgated by the
6 Secretary pursuant to subsection (a) shall include a rea-
7 sonable deadline by which the Secretary shall approve or
8 deny an export certification application under section 5(b).

9 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated to carry out
11 this Act \$3,000,000 for each of fiscal years 2021 through
12 2026.

Passed the Senate December 17, 2020.

Attest:

Secretary.

116TH CONGRESS
2^D SESSION

S. 2165

AN ACT

To enhance protections of Native American tangible
cultural heritage, and for other purposes.