

**Calendar No. 608**116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 2165****[Report No. 116–308]**

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

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## IN THE SENATE OF THE UNITED STATES

JULY 18, 2019

Mr. HEINRICH (for himself, Ms. MURKOWSKI, Ms. BALDWIN, Mr. DAINES,  
Mr. SCHATZ, Ms. MCSALLY, Mr. UDALL, Mr. LANKFORD, Ms. SINEMA,  
Mr. SULLIVAN, Ms. CORTEZ MASTO, Mr. CRAPO, and Ms. ROSEN) intro-  
duced the following bill; which was read twice and referred to the Com-  
mittee on Indian Affairs

DECEMBER 9, 2020

Reported by Mr. HOEVEN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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**A BILL**

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 2019”.

4 **SEC. 2. PURPOSE.**

5 It is the purpose of this Act—

6 (1) to carry out the United States trust respon-  
7 sibility 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 the Native American  
13 Graves Protection and Repatriation Act), in order to  
14 strengthen deterrence;

15 (3) to make internationally applicable the Na-  
16 tive American Graves Protection and Repatriation  
17 Act (25 U.S.C. 3001 et seq.) (including section 1170  
18 of title 18, United States Code, as added by the Na-  
19 tive American Graves Protection and Repatriation  
20 Act), the Archaeological Resources Protection Act of  
21 1979 (16 U.S.C. 470aa et seq.), and the Antiquities  
22 Act under section 1866(b) of title 18, United States  
23 Code, to facilitate the international repatriation of  
24 Native American cultural items, Native American  
25 archaeological resources, and Native American ob-  
26 jects of antiquity;

1           (4) to access other countries' domestic laws and  
2 law enforcement mechanisms to facilitate inter-  
3 national repatriation by explicitly prohibiting the ex-  
4 portation of Native American cultural items obtained  
5 in violation of the Native American Graves Protec-  
6 tion and Repatriation Act (25 U.S.C. 3001 et seq.)  
7 (including section 1170 of title 18, United States  
8 Code, as added by the Native American Graves Pro-  
9 tection and Repatriation Act), Native American ar-  
10 chaeological resources obtained in violation of the  
11 Archaeological Resources Protection Act of 1979 (16  
12 U.S.C. 470aa et seq.), and Native American objects  
13 of antiquity obtained in violation of the Antiquities  
14 Act under section 1866(b) of title 18, United States  
15 Code, and by creating an export certification system;

16           (5) to confirm the authority of the President to  
17 request from foreign nations agreements or provi-  
18 sional measures under the Convention on the Means  
19 of Prohibiting and Preventing the Illicit Import, Ex-  
20 port, and Transfer of Ownership of Cultural Prop-  
21 erty (823 U.N.T.S. 231 (1972)), to facilitate the re-  
22 turn of Native American cultural items obtained in  
23 violation of the Native American Graves Protection  
24 and Repatriation Act (25 U.S.C. 3001 et seq.) (in-  
25 cluding section 1170 of title 18, United States Code,

1 as added by the Native American Graves Protection  
2 and Repatriation Act); Native American archae-  
3 ological resources obtained in violation of the Ar-  
4 chaeological Resources Protection Act of 1979 (16  
5 U.S.C. 470aa et seq.); and Native American objects  
6 of antiquity obtained in violation of the Antiquities  
7 Act under section 1866(b) of title 18, United States  
8 Code;

9 (6) to establish a Federal framework in order  
10 to support individuals' and organizations' voluntary  
11 return of items of tangible cultural heritage, which  
12 need not be obtained in violation of the Native  
13 American Graves Protection and Repatriation Act  
14 (25 U.S.C. 3001 et seq.) (including section 1170 of  
15 title 18, United States Code, as added by the Native  
16 American Graves Protection and Repatriation Act);  
17 the Archaeological Resources Protection Act of 1979  
18 (16 U.S.C. 470aa et seq.); or the Antiquities Act  
19 under section 1866(b) of title 18, United States  
20 Code;

21 (7) to establish an interagency working group  
22 to ensure communication between all Federal agen-  
23 cies to successfully implement the Native American  
24 Graves Protection and Repatriation Act (25 U.S.C.  
25 3001 et seq.) (including section 1170 of title 18,

1 United States Code, as added by the Native Amer-  
2 ican Graves Protection and Repatriation Act), the  
3 Archaeological Resources Protection Act of 1979 (16  
4 U.S.C. 470aa et seq.), and the Antiquities Act under  
5 section 1866(b) of title 18, United States Code;

6 (8) to establish a Tribal working group to pro-  
7 vide recommendations regarding implementation of  
8 the Native American Graves Protection and Repatri-  
9 ation Act (25 U.S.C. 3001 et seq.) (including section  
10 1170 of title 18, United States Code, as added by  
11 the Native American Graves Protection and Repatri-  
12 ation Act), the Archaeological Resources Protection  
13 Act of 1979 (16 U.S.C. 470aa et seq.), and the An-  
14 tiquities Act under section 1866(b) of title 18,  
15 United States Code; and

16 (9) to create a Freedom of Information Act ex-  
17 emption for information submitted by Indian Tribes  
18 pursuant to this Act.

19 **SEC. 3. DEFINITIONS.**

20 In this Act, the following definitions apply:

21 (1) **CULTURAL AFFILIATION.**—The term “cul-  
22 tural affiliation” has the meaning given the term in  
23 section 2 of the Native American Graves Protection  
24 and Repatriation Act (25 U.S.C. 3001).

1           (2) INDIAN TRIBE.—The term “Indian  
2 Tribe”—

3           (A) has the meaning given the term “In-  
4 dian tribe” in section 2 of the Native American  
5 Graves Protection and Repatriation Act (25  
6 U.S.C. 3001); and

7           (B) includes “Native Hawaiian organiza-  
8 tion” as that term is defined in section 2 of the  
9 Native American Graves Protection and Repa-  
10 triation Act (25 U.S.C. 3001).

11           (3) ITEM REQUIRING EXPORT CERTIFI-  
12 CATION.—The term “Item Requiring Export Certifi-  
13 cation” means—

14           (A) a Native American “cultural item” as  
15 defined in section 2 of the Native American  
16 Graves Protection and Repatriation Act (25  
17 U.S.C. 3001);

18           (B) a Native American “archaeological re-  
19 source” as defined in section 3 of the Archae-  
20 ological Resources Protection Act of 1979 (16  
21 U.S.C. 470bb); or

22           (C) a Native American “object of antiq-  
23 uity” within the meaning of section 1866(b) of  
24 title 18, United States Code.

1 (4) ITEM PROHIBITED FROM EXPORTATION.—

2 The term “Item Prohibited from Exportation”  
3 means—

4 (A) a Native American “cultural item” as  
5 defined in section 2 of the Native American  
6 Graves Protection and Repatriation Act (25  
7 U.S.C. 3001) and obtained in violation of the  
8 Native American Graves Protection and Repa-  
9 triation Act (25 U.S.C. 3001 et seq.) (including  
10 section 1170 of title 18, United States Code, as  
11 added by the Native American Graves Protec-  
12 tion and Repatriation Act);

13 (B) a Native American “archaeological re-  
14 source” as defined in section 3 of the Archae-  
15 ological Resources Protection Act of 1979 (16  
16 U.S.C. 470bb) and obtained in violation of the  
17 Archaeological Resources Protection Act of  
18 1979 (16 U.S.C. 470aa et seq.);

19 (C) a Native American “object of antiq-  
20 uity” within the meaning of and obtained in  
21 violation of the Antiquities Act under section  
22 1866(b) of title 18, United States Code; or

23 (D) a Native American “cultural item” as  
24 defined in section 2 of the Native American  
25 Graves Protection and Repatriation Act (25

1 U.S.C. 3001), Native American “archaeological  
 2 resource” as defined in section 3 of the Archae-  
 3 ological Resources Protection Act of 1979 (16  
 4 U.S.C. 470bb), or Native American “object of  
 5 antiquity” within the meaning of the Antiq-  
 6 uities Act under section 1866(b) of title 18,  
 7 United States Code, that is under active Fed-  
 8 eral investigation.

9 (5) NATIVE AMERICAN.—The term “Native  
 10 American”—

11 (A) has the meaning given the term in sec-  
 12 tion 2 of the Native American Graves Protec-  
 13 tion and Repatriation Act (25 U.S.C. 3001);  
 14 and

15 (B) includes “Native Hawaiian” as that  
 16 term is defined in section 2 of the Native Amer-  
 17 ican Graves Protection and Repatriation Act  
 18 (25 U.S.C. 3001).

19 (6) SECRETARY.—The term “Secretary” means  
 20 the Secretary of the Interior.

21 (7) TANGIBLE CULTURAL HERITAGE.—The  
 22 term “tangible cultural heritage” means—

23 (A) Native American human remains; or

24 (B) culturally, historically, or  
 25 archaeologically significant objects, resources,



1           patrimony, or other items that are affiliated  
2           with a Native American culture.

3 **SEC. 4. ENHANCED NAGPRA PENALTIES.**

4           Section 1170 of title 18, United States Code, is  
5 amended by striking “5 years” each place it appears and  
6 inserting “10 years”.

7 **SEC. 5. EXPORT PROHIBITION AND CERTIFICATION SYS-**  
8                                   **TEM AND INTERNATIONAL AGREEMENTS.**

9           (a) **EXPORT PROHIBITIONS.—**

10           (1) **IN GENERAL.—**It shall be unlawful for any  
11 person to export or otherwise transport from the  
12 United States any Item Prohibited from Expor-  
13 tation.

14           (2) **PENALTIES.—**Any person who violates  
15 paragraph (1) shall be fined in accordance with sec-  
16 tion 3571 of title 18, United States Code, and shall  
17 be imprisoned for not more than 1 year for a first  
18 violation and not more than 10 years for a second  
19 or subsequent violation.

20           (b) **EXPORT CERTIFICATION SYSTEM.—**

21           (1) **EXPORT CERTIFICATION REQUIREMENT.—**

22           (A) **IN GENERAL.—**No Item Requiring Ex-  
23 port Certification may be exported from the  
24 United States without first having obtained an

1 export certification in accordance with this sub-  
2 section:

3 (B) PUBLICATION.—The Secretary shall,  
4 in consultation with Indian Tribes, publish in  
5 the Federal Register a notice that includes—

6 (i) a description of characteristics typ-  
7 ical of Items Requiring Export Certifi-  
8 cation, which shall be sufficiently specific  
9 and precise to ensure an export certifi-  
10 cation is required only of such Items Re-  
11 quiring Export Certification and that fair  
12 notice is given to exporters and other per-  
13 sons as to which items require an export  
14 certification under this paragraph; and

15 (ii) a description of characteristics  
16 typical of items that do not qualify as  
17 Items Requiring Export Certification and  
18 therefore do not require an export certifi-  
19 cation under this paragraph, which shall—

20 (I) clarify that objects made for  
21 commercial purposes generally do not  
22 qualify as an Item Requiring Export  
23 Certification; and

24 (II) clarify that in some cir-  
25 cumstances receipts or certifications

1 issued by Indian Tribes may be used  
2 as evidence to demonstrate a par-  
3 ticular item does not qualify as an  
4 Item Requiring Export Certification.

5 (2) ELIGIBILITY FOR EXPORT CERTIFI-  
6 CATION.—An Item Requiring Export Certification is  
7 not an Item Prohibited from Exportation and is  
8 therefore eligible for an export certification if it is  
9 not under ongoing Federal investigation and it—

10 (A) was not obtained within the time and  
11 location provenance parameters of the Native  
12 American Graves Protection and Repatriation  
13 Act (25 U.S.C. 3001 et seq.) (including section  
14 1170 of title 18, United States Code, as added  
15 by the Native American Graves Protection and  
16 Repatriation Act); the Archaeological Resources  
17 Protection Act of 1979 (16 U.S.C. 470aa et  
18 seq.); or the Antiquities Act under section  
19 1866(b) of title 18, United States Code, and  
20 the export of the Item Requiring Export Cer-  
21 tification would not otherwise violate any other  
22 provision of law;

23 (B) was excavated or removed pursuant to  
24 a permit issued under section 4 of the Archae-  
25 ological Resources Protection Act of 1979 (16

1 U.S.C. 470cc) or section 320302 of title 54,  
 2 United States Code, or in compliance with see-  
 3 tion 3(e) of the Native American Graves Pro-  
 4 tection and Repatriation Act (25 U.S.C.  
 5 3002(e)), if the permit for excavation or re-  
 6 moval authorizes export, and the export of the  
 7 Item Requiring Export Certification would not  
 8 otherwise violate any other provision of law; or

9 (C) is accompanied by written confirmation  
 10 from an Indian Tribe that the exporter has a  
 11 right of possession, as defined in section 2 of  
 12 the Native American Graves Protection and Re-  
 13 patriation Act (25 U.S.C. 3001), or that the In-  
 14 dian Tribe has relinquished title or control, as  
 15 provided for in section 3 of the Native Amer-  
 16 ican Graves Protection and Repatriation Act  
 17 (25 U.S.C. 3002), of the Item Requiring Ex-  
 18 port Certification, and the export of the Item  
 19 Requiring Export Certification would not other-  
 20 wise violate any other provision of law.

21 (3) EXPORT CERTIFICATION APPLICATION AND

22 ISSUANCE PROCEDURES.—

23 (A) APPLYING FOR EXPORT CERTIFI-  
 24 CATION.—

25 (i) ATTESTATION.—

1 (I) IN GENERAL.—With respect  
2 to each Item Requiring Export Cer-  
3 tification to be exported from the  
4 United States, the exporter shall  
5 make an attestation (on an attestation  
6 form described in subclause (III))  
7 that, to the best of the exporter’s  
8 knowledge and belief, the exporter is  
9 not exporting an Item Prohibited from  
10 Exportation.

11 (II) CONSEQUENCES OF FALSE  
12 STATEMENT.—Any willful or knowing  
13 false statement made on an attesta-  
14 tion form under subclause (I) shall—

15 (aa) subject the exporter to  
16 criminal penalties pursuant to  
17 section 1001 of title 18, United  
18 States Code; and

19 (bb) prohibit the exporter  
20 from receiving an export certifi-  
21 cation for any Item Requiring  
22 Export Certification through at-  
23 testation alone in the future.

24 (III) ATTESTATION FORM.—An  
25 attestation form shall describe and

1 provide pictures of each Item Requir-  
2 ing Export Certification. The Sec-  
3 retary shall consult with Indian  
4 Tribes in designing the attestation  
5 form.

6 (ii) ~~ADDITIONAL EVIDENCE.~~—If attes-  
7 tation alone is no longer permitted or an  
8 export certification is delayed or denied,  
9 notice shall be given to the exporter, who  
10 may provide the Secretary with evidence to  
11 establish that the Item Requiring Export  
12 Certification is not an Item Prohibited  
13 from Exportation.

14 (B) ~~AVAILABILITY OF APPLICATIONS.~~—  
15 The Secretary shall make each export certifi-  
16 cation application available to Indian Tribes via  
17 a secure website immediately after each export  
18 certification application has been submitted.

19 (C) ~~ISSUANCE OF EXPORT CERTIFI-~~  
20 ~~CATION.~~—The Secretary, in consultation with  
21 Indian Tribes, may issue an export certification  
22 for an Item Requiring Export Certification that  
23 is not an Item Prohibited from Exportation and  
24 is therefore eligible for export.

1           (D) REVOCATION OF EXPORT CERTIFI-  
2           CATION.—If credible evidence is provided that  
3           indicates an item that received an export certifi-  
4           cation qualifies as an Item Prohibited from Ex-  
5           portation, the Secretary may immediately re-  
6           voke the export certification. In making a deter-  
7           mination about whether revocation is war-  
8           ranted, Indian Tribes shall be consulted.

9           (4) SEIZURE, FORFEITURE, AND RETURN.—

10           (A) SEIZURE.—Any Item Requiring Ex-  
11           port Certification that an exporter attempts to  
12           export without an export certification shall be  
13           subject to seizure by the U.S. Customs and  
14           Border Protection.

15           (B) FORFEITURE.—An item found to qual-  
16           ify as an Item Prohibited from Exportation  
17           shall be forfeited, consistent with chapter 46 of  
18           title 18, United States Code, to the Federal  
19           Government and repatriated to the Indian  
20           Tribe pursuant to the process provided for  
21           under the law under which it is found to be ob-  
22           tained in violation.

23           (C) RETURN TO EXPORTER.—An Item Re-  
24           quiring Export Certification that is seized  
25           under subparagraph (A) for which credible evi-

1           dence does not establish within 60 days that it  
2           is an Item Prohibited from Exportation shall be  
3           returned to the exporter but shall not receive an  
4           export certification at that time.

5           (5) ADMINISTRATIVE APPEAL.—If the Secretary  
6           denies an export certification or seizes an Item Re-  
7           quiring Export Certification under this subsection,  
8           the exporter shall upon request be given a hearing  
9           on the record under such rules and regulations as  
10          the Secretary may promulgate.

11          (6) FEES.—Reasonable fees may be collected  
12          for the processing of export certification applications  
13          under this subsection.

14          (7) TRAINING.—The Secretary of Homeland  
15          Security, acting through the Commissioner of U.S.  
16          Customs and Border Protection, shall require all ap-  
17          propriate personnel of U.S. Customs and Border  
18          Protection to participate in training to identify  
19          Items Requiring Export Certification for purposes of  
20          this Act and the amendment made by this Act. In-  
21          dian Tribes shall be consulted in developing and de-  
22          livering such trainings.

23          (8) VOLUNTARY RETURN.—Whoever seeks to  
24          export an Item Requiring Export Certification with-  
25          out a required export certification but voluntarily re-



1 turns it to the Indian Tribe with a likely cultural af-  
2 filiation prior to active Federal investigation shall  
3 not be prosecuted for such violation with respect to  
4 the Item Requiring Export Certification. The export-  
5 er's application to obtain an export certification does  
6 not qualify as triggering an active Federal investiga-  
7 tion.

8 (c) AGREEMENTS TO REQUEST RETURN FROM FOR-  
9 EIGN COUNTRIES.—The President is authorized to re-  
10 quest from a State Party agreements or provisional meas-  
11 ures pursuant to the Convention on the Means of Prohib-  
12 iting and Preventing the Illicit Import, Export, and Trans-  
13 fer of Ownership of Cultural Property (823 U.N.T.S. 231  
14 (1972)), subject to the limitations of Articles 6 and 9,  
15 under which the President may request the return from  
16 the State Party of Items Prohibited from Exportation.

17 (d) RULES AND REGULATIONS.—All rules and regu-  
18 lations necessary and appropriate to carry out the provi-  
19 sions of this section shall be prescribed by the Secretary  
20 and shall be made in consultation with Indian Tribes.

21 **SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL**  
22 **HERITAGE.**

23 (a) LIAISON.—The Secretary and the Secretary of  
24 State shall each designate a liaison to facilitate the vol-  
25 untary return of tangible cultural heritage.

1       (b) TRAININGS AND WORKSHOPS.—The individuals  
2 listed in subsection (a) shall hold trainings and workshops  
3 for representatives of Indian Tribes and collectors, deal-  
4 ers, and other individuals and organizations regarding the  
5 voluntary return of tangible cultural heritage.

6       (c) REFERRALS.—

7           (1) IN GENERAL.—The Secretary shall refer in-  
8 dividuals and organizations to one or more Indian  
9 Tribes with a likely cultural affiliation to tangible  
10 cultural heritage for the purpose of facilitating the  
11 voluntary return of tangible cultural heritage.

12           (2) REFERRAL REPRESENTATIVES.—The Sec-  
13 retary shall compile a list of representatives from  
14 each Indian Tribe for purposes of referral under  
15 paragraph (1).

16           (3) CONSULTATION.—The Secretary shall con-  
17 sult with Indian Tribes before making a referral  
18 under paragraph (1).

19           (4) THIRD-PARTY EXPERTS.—The Secretary  
20 may utilize third parties with relevant expertise, in-  
21 cluding universities, museums, dealers, collector or-  
22 ganizations, and others, in making determinations  
23 regarding to which Indian Tribe an individual or or-  
24 ganization should be referred under paragraph (1).

1       (d) **LEGAL LIABILITY.**—This section shall not impose  
2 additional penalties or legal liability.

3       (e) **TAX DOCUMENTATION.**—The Secretary’s vol-  
4 untary return facilitation shall include provision of tax  
5 documentation for a deductible gift to an Indian Tribe.

6       (f) **REPATRIATION UNDER NATIVE AMERICAN**  
7 **GRAVES PROTECTION AND REPATRIATION ACT.**—The vol-  
8 untary return provisions of this section shall apply to a  
9 specific item of tangible cultural heritage only to the ex-  
10 tent that the repatriation provisions under section 7 of the  
11 Native American Graves Protection and Repatriation Act  
12 (25 U.S.C. 3005) do not apply to such item of tangible  
13 cultural heritage.

14 **SEC. 7. INTERAGENCY WORKING GROUP.**

15       (a) **IN GENERAL.**—The Secretary shall convene an  
16 interagency working group consisting of representatives  
17 from the Departments of the Interior, Justice, State, and  
18 Homeland Security.

19       (b) **GOALS.**—The goals of the working group are—

20               (1) to facilitate repatriation to Indian Tribes of  
21 items that have been illegally removed or trafficked  
22 in violation of law;

23               (2) to protect such items still in Indian Tribes’  
24 possession; and

1           (3) to improve Federal agencies' implementa-  
2           tion of the Native American Graves Protection and  
3           Repatriation Act (25 U.S.C. 3001 et seq.) (including  
4           section 1170 of title 18, United States Code, as  
5           added by the Native American Graves Protection  
6           and Repatriation Act); the Archaeological Resources  
7           Protection Act of 1979 (16 U.S.C. 470aa et seq.);  
8           the Antiquities Act under section 1866(b) of title 18,  
9           United States Code; and other relevant laws.

10          (e) RESPONSIBILITIES.—The interagency working  
11          group shall aid in implementation of other provisions of  
12          this Act or the amendments made by this Act, including  
13          regarding voluntary return and halting international sales,  
14          and shall collaborate with the Tribal working group cre-  
15          ated pursuant to this Act.

16          **SEC. 8. TRIBAL WORKING GROUP.**

17          (a) IN GENERAL.—The Secretary shall convene a  
18          Tribal working group consisting of representatives of In-  
19          dian Tribes to advise the Federal Government.

20          (b) RECOMMENDATIONS.—The Tribal 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 in the~~  
4 ~~United States and foreign markets.~~

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

8 ~~(1) requesting the Department of Justice ini-~~  
9 ~~tiate judicial proceedings domestically or abroad to~~  
10 ~~aid in repatriation; and~~

11 ~~(2) requesting the Department of State initiate~~  
12 ~~dialogue through diplomatic channels to aid in repa-~~  
13 ~~triation.~~

14 ~~(d) AGENCY AND COMMITTEE ASSISTANCE.—~~

15 ~~(1) IN GENERAL.—The agencies and commit-~~  
16 ~~tees described in paragraph (2) shall provide infor-~~  
17 ~~mation and assistance to the Tribal working group~~  
18 ~~convened under subsection (a) upon request by the~~  
19 ~~Tribal working group.~~

20 ~~(2) AGENCIES AND COMMITTEES.—The agen-~~  
21 ~~cies and committees described in this paragraph are~~  
22 ~~the following:~~

23 ~~(A) The Department of the Interior.~~

24 ~~(B) The Department of Justice.~~

1           (C) The Department of Homeland Security.  
2

3           (D) The Department of State.

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

9           (F) Any other relevant Federal agency.

10 **SEC. 9. FREEDOM OF INFORMATION ACT EXEMPTIONS.**

11       (a) IN GENERAL.—Except as provided in subsection  
12 (b), information that a representative of an Indian Tribe  
13 submits to any Federal agency pursuant to this Act, or  
14 any amendment made by this Act, shall qualify for exemption  
15 from disclosure under the Freedom of Information  
16 Act pursuant to section 552(b)(3) of title 5, United States  
17 Code.

18       (b) EXCEPTION.—An Indian Tribe may request and  
19 shall receive its own information, as described in subsection (a), from the Federal agency to which it submitted  
20 its information.  
21

22 **SECTION 1. SHORT TITLE.**

23       *This Act may be cited as the “Safeguard Tribal Objects  
24 of Patrimony Act of 2020”.*

1 **SEC. 2. PURPOSES.**

2 *The purposes of this Act are—*

3 *(1) to carry out the trust responsibility of the*  
4 *United States to Indian Tribes;*

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

11 *(3) to stop the export, and facilitate the inter-*  
12 *national repatriation, of cultural items prohibited*  
13 *from being trafficked by the Native American Graves*  
14 *Protection and Repatriation Act (25 U.S.C. 3001 et*  
15 *seq.) (including section 1170 of title 18, United States*  
16 *Code, as added by that Act) and archaeological re-*  
17 *sources prohibited from being trafficked by the Ar-*  
18 *chaeological Resources Protection Act of 1979 (16*  
19 *U.S.C. 470aa et seq.) by—*

20 *(A) explicitly prohibiting the export;*

21 *(B) creating an export certification system;*

22 *and*

23 *(C) confirming the authority of the Presi-*  
24 *dent to request from foreign nations agreements*  
25 *or provisional measures to prevent irremediable*  
26 *damage to Native American cultural heritage;*

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

10           (5) to establish an interagency working group to  
11 ensure communication between Federal agencies to  
12 successfully implement this Act, the Native American  
13 Graves Protection and Repatriation Act (25 U.S.C.  
14 3001 et seq.) (including section 1170 of title 18,  
15 United States Code, as added by that Act), the Ar-  
16 chaeological Resources Protection Act of 1979 (16  
17 U.S.C. 470aa et seq.), and other relevant Federal  
18 laws;

19           (6) to establish a Native working group of In-  
20 dian Tribes and Native Hawaiian organizations to  
21 assist in the implementation of this Act, the Native  
22 American Graves Protection and Repatriation Act  
23 (25 U.S.C. 3001 et seq.) (including section 1170 of  
24 title 18, United States Code, as added by that Act),  
25 the Archaeological Resources Protection Act of 1979



1       (16 U.S.C. 470aa et seq.), and other relevant Federal  
2       laws;

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

6               (A) information submitted by Indian Tribes  
7       or Native Hawaiian organizations pursuant to  
8       this Act; and

9               (B) information relating to an Item Requir-  
10       ing Export Certification for which an export cer-  
11       tification was denied pursuant to this Act; and

12              (8) to encourage buyers to purchase legal contem-  
13       porary art made by Native artists for commercial  
14       purposes.

15   **SEC. 3. DEFINITIONS.**

16       *In this Act:*

17              (1) **ARCHAEOLOGICAL RESOURCE.**—*The term*  
18       *“archaeological resource” means an archaeological re-*  
19       *source (as defined in section 3 of the Archaeological*  
20       *Resources Protection Act of 1979 (16 U.S.C. 470bb))*  
21       *that is Native American.*

22              (2) **CULTURAL AFFILIATION.**—*The term “cul-*  
23       *tural affiliation” means that there is a relationship*  
24       *of shared group identity that can be reasonably traced*  
25       *historically or prehistorically between a present day*

1 *Indian Tribe or Native Hawaiian organization and*  
2 *an identifiable earlier group.*

3 (3) *CULTURAL ITEM.*—*The term “cultural item”*  
4 *means any 1 or more cultural items (as defined in*  
5 *section 2 of the Native American Graves Protection*  
6 *and Repatriation Act (25 U.S.C. 3001)).*

7 (4) *INDIAN TRIBE.*—*The term “Indian Tribe”*  
8 *has the meaning given the term “Indian tribe” in sec-*  
9 *tion 2 of the Native American Graves Protection and*  
10 *Repatriation Act (25 U.S.C. 3001).*

11 (5) *ITEM PROHIBITED FROM EXPORTATION.*—*The*  
12 *term “Item Prohibited from Exportation” means—*

13 (A) *a cultural item prohibited from being*  
14 *trafficked, including through sale, purchase, use*  
15 *for profit, or transport for sale or profit, by—*

16 (i) *section 1170(b) of title 18, United*  
17 *States Code, as added by the Native Amer-*  
18 *ican Graves Protection and Repatriation*  
19 *Act (25 U.S.C. 3001 et seq.); or*

20 (ii) *any other Federal law or treaty;*  
21 *and*

22 (B) *an archaeological resource prohibited*  
23 *from being trafficked, including through sale,*  
24 *purchase, exchange, transport, receipt, or offer to*

1           *sell, purchase, or exchange, including in inter-*  
 2           *state or foreign commerce, by—*

3                     *(i) subsections (b) and (c) of section 6*  
 4                     *of the Archaeological Resources Protection*  
 5                     *Act of 1979 (16 U.S.C. 470ee); or*

6                     *(ii) any other Federal law or treaty.*

7           (6) *ITEM REQUIRING EXPORT CERTIFICATION.—*

8                     (A) *IN GENERAL.—The term “Item Requir-*  
 9                     *ing Export Certification” means—*

10                             *(i) a cultural item; and*

11                             *(ii) an archaeological resource.*

12                     (B) *EXCLUSION.—The term “Item Requir-*  
 13                     *ing Export Certification” does not include an*  
 14                     *item described in clause (i) or (ii) of subpara-*  
 15                     *graph (A) for which an Indian Tribe or Native*  
 16                     *Hawaiian organization with a cultural affili-*  
 17                     *ation with the item has provided a certificate*  
 18                     *authorizing exportation of the item.*

19           (7) *NATIVE AMERICAN.—The term “Native*  
 20           *American” means—*

21                     (A) *Native American (as defined in section*  
 22                     *2 of the Native American Graves Protection and*  
 23                     *Repatriation Act (25 U.S.C. 3001)); and*

24                     (B) *Native Hawaiian (as so defined).*

1           (8) *NATIVE HAWAIIAN ORGANIZATION*.—*The term*  
 2           *“Native Hawaiian organization” has the meaning*  
 3           *given the term in section 2 of the Native American*  
 4           *Graves Protection and Repatriation Act (25 U.S.C.*  
 5           *3001).*

6           (9) *SECRETARY*.—*The term “Secretary” means*  
 7           *the Secretary of the Interior.*

8           (10) *TANGIBLE CULTURAL HERITAGE*.—*The term*  
 9           *“tangible cultural heritage” means—*

10                   (A) *Native American human remains; or*

11                   (B)     *culturally, historically, or*  
 12                   *archaeologically significant objects, resources,*  
 13                   *patrimony, or other items that are affiliated*  
 14                   *with a Native American culture.*

15 **SEC. 4. ENHANCED NAGPRA PENALTIES.**

16           *Section 1170 of title 18, United States Code, is amend-*  
 17           *ed—*

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

20                   (2) *in subsection (a), by striking “12 months”*  
 21                   *and inserting “1 year and 1 day”; and*

22                   (3) *in subsection (b), by striking “one year” and*  
 23                   *inserting “1 year and 1 day”.*

1 **SEC. 5. EXPORT PROHIBITIONS; EXPORT CERTIFICATION**  
2 **SYSTEM; INTERNATIONAL AGREEMENTS.**

3 (a) *EXPORT PROHIBITIONS.*—

4 (1) *IN GENERAL.*—*It shall be unlawful for any*  
5 *person—*

6 (A) *to export, attempt to export, or other-*  
7 *wise transport from the United States any Item*  
8 *Prohibited from Exportation;*

9 (B) *to conspire with any person to engage*  
10 *in an activity described in subparagraph (A); or*

11 (C) *to conceal an activity described in sub-*  
12 *paragraph (A).*

13 (2) *PENALTIES.*—*Any person who violates para-*  
14 *graph (1) and knows, or in the exercise of due care*  
15 *should have known, that the Item Prohibited from Ex-*  
16 *portation was taken, possessed, transported, or sold in*  
17 *violation of, or in a manner unlawful under, any*  
18 *Federal law or treaty, shall be fined in accordance*  
19 *with section 3571 of title 18, United States Code, im-*  
20 *prisoned for not more than 1 year and 1 day for a*  
21 *first violation, and not more than 10 years for a sec-*  
22 *ond or subsequent violation, or both.*

23 (3) *DETENTION, FORFEITURE, AND REPATRI-*  
24 *ATION.*—

25 (A) *DETENTION AND DELIVERY.*—*The Sec-*  
26 *retary of Homeland Security, acting through the*

1           *Commissioner of U.S. Customs and Border Pro-*  
2           *tection, shall—*

3                     *(i) detain any Item Prohibited from*  
4                     *Exportation that is exported, attempted to*  
5                     *be exported, or otherwise transported from*  
6                     *the United States in violation of paragraph*  
7                     *(1); and*

8                     *(ii) deliver the Item Prohibited from*  
9                     *Exportation to the Secretary.*

10            *(B) FORFEITURE.—Any Item Prohibited*  
11            *from Exportation that is exported, attempted to*  
12            *be exported, or otherwise transported from the*  
13            *United States in violation of paragraph (1) shall*  
14            *be subject to forfeiture to the United States in ac-*  
15            *cordance with chapter 46 of title 18, United*  
16            *States Code (including section 983(c) of that*  
17            *chapter).*

18                     *(C) REPATRIATION.—Any Item Prohibited*  
19                     *from Exportation that is forfeited under sub-*  
20                     *paragraph (B) shall be expeditiously repatriated*  
21                     *to the appropriate Indian Tribe or Native Ha-*  
22                     *waiian organization in accordance with, as ap-*  
23                     *plicable—*

24                     *(i) the Native American Graves Protec-*  
25                     *tion and Repatriation Act (25 U.S.C. 3001*

1 *et seq.) (including section 1170 of title 18,*  
 2 *United States Code, as added by that Act);*

3 *or*

4 *(ii) the Archaeological Resources Pro-*  
 5 *tection Act of 1979 (16 U.S.C. 470aa et*  
 6 *seq.).*

7 *(b) EXPORT CERTIFICATION SYSTEM.—*

8 *(1) EXPORT CERTIFICATION REQUIREMENT.—*

9 *(A) IN GENERAL.—No Item Requiring Ex-*  
 10 *port Certification may be exported from the*  
 11 *United States without first having obtained an*  
 12 *export certification in accordance with this sub-*  
 13 *section.*

14 *(B) PUBLICATION.—The Secretary, in con-*  
 15 *sultation with Indian Tribes and Native Hawai-*  
 16 *ian organizations, shall publish in the Federal*  
 17 *Register a notice that includes—*

18 *(i) a description of characteristics typ-*  
 19 *ical of Items Requiring Export Certifi-*  
 20 *cation, which shall—*

21 *(I) include the definitions of the*  
 22 *terms—*

23 *(aa) “cultural items” in sec-*  
 24 *tion 2 of the Native American*

1                   *Graves Protection and Repatri-*  
2                   *ation Act (25 U.S.C. 3001); and*  
3                   (iii) “archaeological re-  
4                   source” in section 3 of the *Archae-*  
5                   *ological Resources Protection Act*  
6                   *of 1979 (16 U.S.C. 470bb);*  
7                   (II) describe the provenance re-  
8                   quirements associated with the traf-  
9                   ficking prohibition applicable to—  
10                  (aa) cultural items under  
11                  section 1170(b) of title 18, *United*  
12                  *States Code; and*  
13                  (bb) archaeological resources  
14                  under subsections (b) and (c) of  
15                  section 6 of *Archaeological Re-*  
16                  *sources Protection Act of 1979 (16*  
17                  *U.S.C. 470ee);*  
18                  (III)(aa) include the definitions of  
19                  the terms “Native American” and “Na-  
20                  tive Hawaiian” in section 2 of the *Na-*  
21                  *tive American Graves Protection and*  
22                  *Repatriation Act (25 U.S.C. 3001);*  
23                  and



1           (bb) describe how those terms  
2 apply to archaeological resources under  
3 this Act; and

4           (IV) be sufficiently specific and  
5 precise to ensure that—

6           (aa) an export certification  
7 is required only for Items Requir-  
8 ing Export Certification; and

9           (bb) fair notice is given to  
10 exporters and other persons re-  
11 garding which items require an  
12 export certification under this  
13 subsection; and

14           (ii) a description of characteristics  
15 typical of items that do not qualify as Items  
16 Requiring Export Certification and there-  
17 fore do not require an export certification  
18 under this subsection, which shall clarify  
19 that—

20           (I) an item made solely for com-  
21 mercial purposes is presumed to not  
22 qualify as an Item Requiring Export  
23 Certification, unless an Indian Tribe  
24 or Native Hawaiian organization chal-  
25 lenges that presumption; and

1                   (II) *in some circumstances, re-*  
2                   *ceipts or certifications issued by In-*  
3                   *Indian Tribes or Native Hawaiian orga-*  
4                   *nizations with a cultural affiliation*  
5                   *with an item may be used as evidence*  
6                   *to demonstrate a particular item does*  
7                   *not qualify as an Item Requiring Ex-*  
8                   *port Certification.*

9                   (2) *ELIGIBILITY FOR EXPORT CERTIFICATION.—*

10                  *An Item Requiring Export Certification is eligible for*  
11                  *an export certification under this subsection if—*

12                    (A) *the Item Requiring Export Certification*  
13                    *is not under ongoing Federal investigation;*

14                    (B) *the export of the Item Requiring Export*  
15                    *Certification would not otherwise violate any*  
16                    *other provision of law; and*

17                    (C) *the Item Requiring Export Certifi-*  
18                    *cation—*

19                      (i) *is not an Item Prohibited from Ex-*  
20                      *portation;*

21                      (ii) *was excavated or removed pursu-*  
22                      *ant to a permit issued under section 4 of*  
23                      *the Archaeological Resources Protection Act*  
24                      *of 1979 (16 U.S.C. 470cc) and in compli-*  
25                      *ance with section 3(c) of the Native Amer-*

1            *ican Graves Protection and Repatriation*  
 2            *Act (25 U.S.C. 3002(c)), if the permit for*  
 3            *excavation or removal authorizes export; or*  
 4            *(iii) is accompanied by written con-*  
 5            *firmation from the Indian Tribe or Native*  
 6            *Hawaiian organization with authority to*  
 7            *alienate the Item Requiring Export Certifi-*  
 8            *cation that—*

9                    *(I) the exporter has a right of pos-*  
 10                   *session (as defined in section 2 of the*  
 11                   *Native American Graves Protection*  
 12                   *and Repatriation Act (25 U.S.C.*  
 13                   *3001)) of the Item Requiring Export*  
 14                   *Certification; or*

15                   *(II) the Indian Tribe or Native*  
 16                   *Hawaiian organization has relin-*  
 17                   *quished title or control of the Item Re-*  
 18                   *quiring Export Certification in accord-*  
 19                   *ance with section 3 of the Native*  
 20                   *American Graves Protection and Repa-*  
 21                   *triation Act (25 U.S.C. 3002).*

22                   *(3) EXPORT CERTIFICATION APPLICATION AND*  
 23                   *ISSUANCE PROCEDURES.—*

24                   *(A) APPLICATIONS FOR EXPORT CERTIFI-*  
 25                   *CATION.—*

1           (i) *IN GENERAL.*—*An exporter seeking*  
2           *to export an Item Requiring Export Certifi-*  
3           *cation from the United States shall submit*  
4           *to the Secretary an export certification ap-*  
5           *plication in accordance with clause (iii).*

6           (ii) *CONSEQUENCES OF FALSE STATE-*  
7           *MENT.*—*Any willful or knowing false state-*  
8           *ment made on an export certification appli-*  
9           *cation form under clause (i) shall—*

10                   (I) *subject the exporter to crimi-*  
11                   *nal penalties pursuant to section 1001*  
12                   *of title 18, United States Code; and*

13                   (II) *prohibit the exporter from re-*  
14                   *ceiving an export certification for any*  
15                   *Item Requiring Export Certification in*  
16                   *the future unless the exporter submits*  
17                   *additional evidence in accordance with*  
18                   *subparagraph (B)(iii)(I).*

19           (iii) *FORM OF EXPORT CERTIFICATION*  
20           *APPLICATION.*—*The Secretary, in consulta-*  
21           *tion with Indian Tribes and Native Hawai-*  
22           *ian organizations, and at the discretion of*  
23           *the Secretary, in consultation with third*  
24           *parties with relevant expertise, including*  
25           *institutions of higher education, museums,*

1            *dealers, and collector organizations, shall*  
2            *develop an export certification application*  
3            *form, which shall require that an appli-*  
4            *cant—*

5                    *(I) describe, and provide pictures*  
6                    *of, each Item Requiring Export Certifi-*  
7                    *cation that the applicant seeks to ex-*  
8                    *port;*

9                    *(II) include all available informa-*  
10                   *tion regarding the provenance of each*  
11                   *such Item Requiring Export Certifi-*  
12                   *cation; and*

13                   *(III) include the attestation de-*  
14                   *scribed in subparagraph (B)(i).*

15            *(B) EVIDENCE.—*

16                    *(i) IN GENERAL.—In completing an ex-*  
17                    *port certification application with respect*  
18                    *to an Item Requiring Export Certification*  
19                    *that the exporter seeks to export, the ex-*  
20                    *porter shall attest that, to the best of the*  
21                    *knowledge and belief of the exporter, the ex-*  
22                    *porter is not attempting to export an Item*  
23                    *Prohibited from Exportation.*

24                    *(ii) SUFFICIENCY OF ATTESTATION.—*  
25                    *An attestation under clause (i) shall be con-*

1            *sidered to be sufficient evidence to support*  
2            *the application of the exporter under sub-*  
3            *paragraph (A)(iii)(III), on the condition*  
4            *that the exporter is not required to provide*  
5            *additional evidence under clause (iii)(I).*

6            *(iii) ADDITIONAL REQUIREMENTS.—*

7                    *(I) IN GENERAL.—The Secretary*  
8                    *shall give notice to an exporter that*  
9                    *submits an export certification appli-*  
10                   *cation under subparagraph (A)(i) that*  
11                   *the exporter is required to submit addi-*  
12                   *tional evidence in accordance with sub-*  
13                   *clause (III) if the Secretary has deter-*  
14                   *mined under subparagraph (A)(ii) that*  
15                   *the exporter made a willful or knowing*  
16                   *false statement on the application or*  
17                   *any past export certification applica-*  
18                   *tion.*

19                   *(II) DELAYS OR DENIALS.—The*  
20                   *Secretary shall give notice to an ex-*  
21                   *porter that submits an export certifi-*  
22                   *cation application under subparagraph*  
23                   *(A)(i) that the exporter may submit*  
24                   *additional evidence in accordance with*

1           subclause (III) if the issuance of an ex-  
2           port certification is—

3                   (aa) delayed pursuant to the  
4                   examination by the Secretary of  
5                   the eligibility of the Item Requir-  
6                   ing Export Certification for an  
7                   export certification; or

8                   (bb) denied by the Secretary  
9                   because the Secretary determined  
10                  that the Item Requiring Export  
11                  Certification is not eligible for an  
12                  export certification under this  
13                  subsection.

14           (III) ADDITIONAL EVIDENCE.—On  
15           receipt of notice under subclause (I),  
16           an exporter shall, or on receipt of a no-  
17           tice under subclause (II), an exporter  
18           may, provide the Secretary with such  
19           additional evidence as the Secretary  
20           may require to establish that the Item  
21           Requiring Export Certification is eligi-  
22           ble for an export certification under  
23           this subsection.

24           (C) DATABASE APPLICATIONS.—

1           (i) *IN GENERAL.*—*The Secretary shall*  
2           *establish and maintain a secure central*  
3           *Federal database information system (re-*  
4           *ferred to in this subparagraph as the “data-*  
5           *base”)* for the purpose of making export cer-  
6           *tification applications available to Indian*  
7           *Tribes and Native Hawaiian organizations.*

8           (ii) *COLLABORATION REQUIRED.*—*The*  
9           *Secretary shall collaborate with Indian*  
10           *Tribes, Native Hawaiian organizations,*  
11           *and the interagency working group con-*  
12           *vened under section 7(a) in the design and*  
13           *implementation of the database.*

14           (iii) *AVAILABILITY.*—*Immediately on*  
15           *receipt of an export certification applica-*  
16           *tion, the Secretary shall make the export*  
17           *certification application available on the*  
18           *database.*

19           (iv) *DELETION FROM DATABASE.*—*On*  
20           *request by an Indian Tribe or Native Ha-*  
21           *waiian organization, the Secretary shall de-*  
22           *lete an export certification application from*  
23           *the database.*

24           (v) *TECHNICAL ASSISTANCE.*—*If an*  
25           *Indian Tribe or Native Hawaiian organiza-*



1            *tion lacks sufficient resources to access the*  
2            *database or respond to agency communica-*  
3            *tions in a timely manner, the Secretary, in*  
4            *consultation with Indian Tribes and Native*  
5            *Hawaiian organizations, shall provide tech-*  
6            *nical assistance to facilitate that access or*  
7            *response, as applicable.*

8            *(D) ISSUANCE OF EXPORT CERTIFI-*  
9            *CATION.—On receipt of an export certification*  
10           *application for an Item Requiring Export Cer-*  
11           *tification that meets the requirements of sub-*  
12           *paragraphs (A) and (B), if the Secretary, in*  
13           *consultation with Indian Tribes and Native Ha-*  
14           *waiian organizations with a cultural affiliation*  
15           *with the Item Requiring Export Certification,*  
16           *determines that the Item Requiring Export Cer-*  
17           *tification is eligible for an export certification*  
18           *under paragraph (2), the Secretary may issue an*  
19           *export certification for the Item Requiring Ex-*  
20           *port Certification.*

21           *(E) REVOCATION OF EXPORT CERTIFI-*  
22           *CATION.—*

23           *(i) IN GENERAL.—If credible evidence*  
24           *is provided that indicates that an item that*  
25           *received an export certification under sub-*

1 paragraph (D) is not eligible for an export  
2 certification under paragraph (2), the Sec-  
3 retary may immediately revoke the export  
4 certification.

5 (ii) *DETERMINATION.*—In determining  
6 whether a revocation is warranted under  
7 clause (i), the Secretary shall consult with  
8 Indian Tribes and Native Hawaiian orga-  
9 nizations with a cultural affiliation with  
10 the affected Item Requiring Export Certifi-  
11 cation.

12 (4) *DETENTION, FORFEITURE, REPATRIATION,*  
13 *AND RETURN.*—

14 (A) *DETENTION AND DELIVERY.*—The Sec-  
15 retary of Homeland Security, acting through the  
16 Commissioner of U.S. Customs and Border Pro-  
17 tection, shall—

18 (i) detain any Item Requiring Export  
19 Certification that an exporter attempts to  
20 export or otherwise transport without an ex-  
21 port certification; and

22 (ii) deliver the Item Requiring Export  
23 Certification to the Secretary, for seizure by  
24 the Secretary.

1           (B) *FORFEITURE.*—*Any Item Requiring*  
2 *Export Certification that is detained under sub-*  
3 *paragraph (A)(i) shall be subject to forfeiture to*  
4 *the United States in accordance with chapter 46*  
5 *of title 18, United States Code (including section*  
6 *983(c) of that chapter).*

7           (C) *REPATRIATION OR RETURN TO EX-*  
8 *PORTER.*—

9           (i) *IN GENERAL.*—*Not later than 60*  
10 *days after the date of delivery to the Sec-*  
11 *retary of an Item Requiring Export Certifi-*  
12 *cation under subparagraph (A)(ii), the Sec-*  
13 *retary shall determine whether the Item Re-*  
14 *quiring Export Certification is an Item*  
15 *Prohibited from Exportation.*

16           (ii) *REPATRIATION.*—*If an Item Re-*  
17 *quiring Export Certification is determined*  
18 *by the Secretary to be an Item Prohibited*  
19 *from Exportation and is forfeited under*  
20 *subparagraph (B), the item shall be expedi-*  
21 *tiously repatriated to the appropriate In-*  
22 *Indian Tribe or Native Hawaiian organiza-*  
23 *tion in accordance with, as applicable—*

24                   (I) *the Native American Graves*  
25                   *Protection and Repatriation Act (25*

1 U.S.C. 3001 et seq.) (including section  
2 1170 of title 18, United States Code, as  
3 added by that Act); or

4 (II) the Archaeological Resources  
5 Protection Act of 1979 (16 U.S.C.  
6 470aa et seq.).

7 (iii) RETURN TO EXPORTER.—

8 (I) IN GENERAL.—If the Secretary  
9 determines that credible evidence does  
10 not establish that the Item Requiring  
11 Export Certification is an Item Pro-  
12 hibited from Exportation, or if the Sec-  
13 retary does not complete the deter-  
14 mination by the deadline described in  
15 clause (i), the Secretary shall return  
16 the Item Requiring Export Certifi-  
17 cation to the exporter.

18 (II) EFFECT.—The return of an  
19 Item Requiring Export Certification to  
20 an exporter under subclause (I) shall  
21 not mean that the Item Requiring Ex-  
22 port Certification is eligible for an ex-  
23 port certification under this subsection.

24 (5) PENALTIES.—

1           (A) *ITEMS REQUIRING EXPORT CERTIFI-*  
2           *CATION.—*

3                   (i) *IN GENERAL.—It shall be unlawful*  
4                   *for any person to export, attempt to export,*  
5                   *or otherwise transport from the United*  
6                   *States any Item Requiring Export Certifi-*  
7                   *cation without first obtaining an export cer-*  
8                   *tification.*

9                   (ii) *PENALTIES.—Except as provided*  
10                   *in subparagraph (D), any person who vio-*  
11                   *lates clause (i) shall be—*

12                           (I) *assessed a civil penalty in ac-*  
13                           *cordance with such regulations as the*  
14                           *Secretary promulgates pursuant to sec-*  
15                           *tion 10; and*

16                           (II) *subject to any other applica-*  
17                           *ble penalties under this Act.*

18           (B) *ITEMS PROHIBITED FROM EXPOR-*  
19           *TATION.—Whoever exports an Item Prohibited*  
20           *from Exportation without first securing an ex-*  
21           *port certification shall be liable for a civil money*  
22           *penalty, the amount of which shall equal the*  
23           *total cost of storing and repatriating the Item*  
24           *Prohibited from Exportation.*

1           (C) *USE OF FINES COLLECTED.*—Any  
2 amounts collected by the Secretary as a civil  
3 penalty under subparagraph (A)(ii)(I) or (B)—

4           (i) may be used by the Secretary—

5           (I) for fines collected under sub-  
6 paragraph (A)(ii)(I), to process export  
7 certification applications under this  
8 subsection; and

9           (II) for fines collected under sub-  
10 paragraph (B), to store and repatriate  
11 the Item Prohibited from Exportation;

12           (ii) shall supplement (and not sup-  
13 plant) any appropriations to the Secretary  
14 to carry out this subsection; and

15           (iii) shall not be covered into the  
16 Treasury as miscellaneous receipts.

17           (D) *VOLUNTARY RETURN.*—

18           (i) *IN GENERAL.*—Any person who at-  
19 tempts to export or otherwise transport  
20 from the United States an Item Requiring  
21 Export Certification without first obtaining  
22 an export certification, but voluntarily re-  
23 turns the Item Requiring Export Certifi-  
24 cation, or directs the Item Requiring Ex-  
25 port Certification to be returned, to the ap-

1           *appropriate Indian Tribe or Native Hawaiian*  
2           *organization in accordance with section 6*  
3           *prior to the commencement of an active*  
4           *Federal investigation shall not be prosecuted*  
5           *for a violation of subparagraph (A) with re-*  
6           *spect to the Item Requiring Export Certifi-*  
7           *cation.*

8           *(ii) ACTIONS NOT COMMENCING A FED-*  
9           *ERAL INVESTIGATION.—For purposes of*  
10          *clause (i), the following actions shall not be*  
11          *considered to be actions that commence an*  
12          *active Federal investigation:*

13                 *(I) The submission by the exporter*  
14                 *of an export certification application*  
15                 *for the Item Requiring Export Certifi-*  
16                 *cation under paragraph (3)(A)(i).*

17                 *(II) The detention of the Item Re-*  
18                 *quiring Export Certification by the*  
19                 *Secretary of Homeland Security, act-*  
20                 *ing through the Commissioner of U.S.*  
21                 *Customs and Border Protection, under*  
22                 *paragraph (4)(A)(i).*

23                 *(III) The delivery to the Secretary*  
24                 *of the Item Requiring Export Certifi-*  
25                 *cation by the Secretary of Homeland*

1                   *Security, acting through the Commis-*  
2                   *sioner of U.S. Customs and Border*  
3                   *Protection, under paragraph (4)(A)(ii).*

4                   (IV) *The seizure by the Secretary*  
5                   *of the Item Requiring Export Certifi-*  
6                   *cation under paragraph (4)(A)(ii).*

7                   (6) *FEES.—*

8                   (A) *IN GENERAL.—The Secretary may col-*  
9                   *lect reasonable fees to process export certification*  
10                  *applications under this subsection.*

11                  (B) *AVAILABILITY OF AMOUNTS COL-*  
12                  *LECTED.—Any amounts collected by the Sec-*  
13                  *retary under subparagraph (A)—*

14                   (i) *shall supplement (and not sup-*  
15                   *plant) any appropriations to the Secretary*  
16                   *for the activities described in subparagraph*  
17                   *(A); and*

18                   (ii) *shall not be covered into the Treas-*  
19                   *ury as miscellaneous receipts.*

20                  (7) *ADMINISTRATIVE APPEAL.—If the Secretary*  
21                  *denies an export certification or an Item Requiring*  
22                  *Export Certification is detained under this sub-*  
23                  *section, the exporter, on request, shall be given a hear-*  
24                  *ing on the record in accordance with such rules and*



1       *regulations as the Secretary promulgates pursuant to*  
2       *section 10.*

3           (8) *TRAINING.*—

4               (A) *IN GENERAL.*—*The Secretary, the Sec-*  
5       *retary of State, the Attorney General, and the*  
6       *heads of all other relevant Federal agencies shall*  
7       *require all appropriate personnel to participate*  
8       *in training regarding applicable laws and con-*  
9       *sultations to facilitate positive government-to-*  
10       *government interactions with Indian Tribes and*  
11       *Native Hawaiian Organizations.*

12           (B) *U.S. CUSTOMS AND BORDER PROTEC-*  
13       *TION TRAINING.*—*The Secretary of Homeland Se-*  
14       *curity, acting through the Commissioner of U.S.*  
15       *Customs and Border Protection, shall require all*  
16       *appropriate personnel of U.S. Customs and Bor-*  
17       *der Protection to participate in training pro-*  
18       *vided by the Secretary of the Interior or an In-*  
19       *Indian Tribe or Native Hawaiian organization to*  
20       *assist the personnel in identifying, handling, and*  
21       *documenting in a culturally sensitive manner*  
22       *Items Requiring Export Certification for pur-*  
23       *poses of this Act.*

24           (C) *CONSULTATION.*—*In developing or*  
25       *modifying and delivering trainings under sub-*

1            paragraphs (A) and (B), the applicable heads of  
2            Federal agencies shall consult with Indian Tribes  
3            and Native Hawaiian organizations.

4            (c) *AGREEMENTS TO REQUEST RETURN FROM FOR-*  
5 *EIGN COUNTRIES.*—*The President may request from foreign*  
6 *nations agreements that specify concrete measures that the*  
7 *foreign nation will carry out—*

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

10            (2) *to encourage the voluntary return of tangible*  
11 *cultural heritage; and*

12            (3) *to expand the market for the products of In-*  
13 *dian art and craftsmanship in accordance with sec-*  
14 *tion 2 of the Act of August 27, 1935 (49 Stat. 891,*  
15 *chapter 748; 25 U.S.C. 305a) (commonly known as*  
16 *the “Indian Arts and Crafts Act”).*

17 **SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL HER-**  
18 **ITAGE.**

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

22            (b) *TRAININGS AND WORKSHOPS.*—*The liaisons des-*  
23 *ignated under subsection (a) shall offer to representatives*  
24 *of Indian Tribes and Native Hawaiian organizations and*  
25 *collectors, dealers, and other individuals and organizations*

1 *trainings and workshops regarding the voluntary return of*  
2 *tangible cultural heritage.*

3 (c) *REFERRALS.*—

4 (1) *IN GENERAL.*—*The Secretary shall refer indi-*  
5 *viduals and organizations to 1 or more Indian Tribes*  
6 *and Native Hawaiian organizations with a cultural*  
7 *affiliation to tangible cultural heritage for the pur-*  
8 *pose of facilitating the voluntary return of tangible*  
9 *cultural heritage.*

10 (2) *REFERRAL REPRESENTATIVES.*—*The Sec-*  
11 *retary shall compile a list of representatives from*  
12 *each Indian Tribe and Native Hawaiian organization*  
13 *for purposes of referral under paragraph (1).*

14 (3) *CONSULTATION.*—*The Secretary shall consult*  
15 *with Indian Tribes, Native Hawaiian organizations,*  
16 *and the Native working group convened under section*  
17 *8(a) before making a referral under paragraph (1).*

18 (4) *THIRD-PARTY EXPERTS.*—*The Secretary may*  
19 *use third parties with relevant expertise, including*  
20 *institutions of higher education, museums, dealers,*  
21 *and collector organizations, in determining to which*  
22 *Indian Tribe or Native Hawaiian organization an*  
23 *individual or organization should be referred under*  
24 *paragraph (1).*

1       (d) *LEGAL LIABILITY.*—*Nothing in this section im-*  
2 *poses on any individual or entity any additional penalties*  
3 *or legal liability.*

4       (e) *TAX DOCUMENTATION.*—*In facilitating the vol-*  
5 *untary return of tangible cultural heritage under this sec-*  
6 *tion, the Secretary shall include provision of tax docu-*  
7 *mentation for a deductible gift to an Indian Tribe or Native*  
8 *Hawaiian organization, if the recipient Indian Tribe or*  
9 *Native Hawaiian organization consents to the provision of*  
10 *tax documentation.*

11       (f) *REPATRIATION UNDER NATIVE AMERICAN GRAVES*  
12 *PROTECTION AND REPATRIATION ACT.*—*The voluntary re-*  
13 *turn provisions of this section shall apply to a specific item*  
14 *of tangible cultural heritage only to the extent that the repa-*  
15 *triation provisions under section 7 of the Native American*  
16 *Graves Protection and Repatriation Act (25 U.S.C. 3005)*  
17 *do not apply to the item of tangible cultural heritage.*

18 **SEC. 7. INTERAGENCY WORKING GROUP.**

19       (a) *IN GENERAL.*—*The Secretary shall designate a co-*  
20 *ordinating office to convene an interagency working group*  
21 *consisting of representatives from the Departments of the*  
22 *Interior, Justice, State, and Homeland Security.*

23       (b) *GOALS.*—*The goals of the interagency working*  
24 *group convened under subsection (a) are—*

1           (1) to facilitate the repatriation to Indian Tribes  
2           and Native Hawaiian organizations of items that  
3           have been illegally removed or trafficked in violation  
4           of applicable law;

5           (2) to protect tangible cultural heritage, cultural  
6           items, and archaeological resources still in the posses-  
7           sion of Indian Tribes and Native Hawaiian organiza-  
8           tions; and

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

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

15           (B) the Archaeological Resources Protection  
16          Act of 1979 (16 U.S.C. 470aa et seq.); and

17           (C) other relevant Federal laws.

18          (c) *RESPONSIBILITIES.*—The interagency working  
19          group convened under subsection (a) shall—

20           (1) aid in implementation of this Act and the  
21          amendments made by this Act, including by aiding  
22          in—

23           (A) the voluntary return of tangible cultural  
24          heritage under section 6; and

1           (B) halting international sales of items that  
2           are prohibited from being trafficked under Fed-  
3           eral law; and

4           (2) collaborate with—

5           (A) the Native working group convened  
6           under section 8(a);

7           (B) the review committee established under  
8           section 8(a) of the Native American Graves Pro-  
9           tection and Repatriation Act (25 U.S.C.  
10          3006(a));

11          (C) the Cultural Heritage Coordinating  
12          Committee established pursuant to section 2 of  
13          the Protect and Preserve International Cultural  
14          Property Act (Public Law 114–151; 19 U.S.C.  
15          2601 note); and

16          (D) any other relevant committees and  
17          working groups.

18 **SEC. 8. NATIVE WORKING GROUP.**

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

1       (b) *RECOMMENDATIONS.*—*The Native working group*  
2 *convened under subsection (a) may provide recommenda-*  
3 *tions regarding—*

4           (1) *the voluntary return of tangible cultural her-*  
5 *itage by collectors, dealers, and other individuals and*  
6 *non-Federal organizations that hold such tangible cul-*  
7 *tural heritage; and*

8           (2) *the elimination of illegal commerce of cul-*  
9 *tural items and archaeological resources in the United*  
10 *States and foreign markets.*

11       (c) *REQUESTS.*—*The Native working group convened*  
12 *under subsection (a) may make formal requests to initiate*  
13 *certain agency actions, including requests that—*

14           (1) *the Department of Justice initiate judicial*  
15 *proceedings domestically or abroad to aid in the repa-*  
16 *triation cultural items and archaeological resources;*  
17 *and*

18           (2) *the Department of State initiate dialogue*  
19 *through diplomatic channels to aid in that repatri-*  
20 *ation.*

21       (d) *AGENCY AND COMMITTEE ASSISTANCE.*—

22           (1) *IN GENERAL.*—*On request by the Native*  
23 *working group convened under subsection (a), the*  
24 *agencies and committees described in paragraph (2)*

1       *shall make efforts to provide information and assist-*  
2       *ance to the Native working group.*

3               (2) *DESCRIPTION OF AGENCIES AND COMMIT-*  
4       *TEES.—The agencies and committees referred to in*  
5       *paragraph (1) are the following:*

6               (A) *The Department of the Interior.*

7               (B) *The Department of Justice.*

8               (C) *The Department of Homeland Security.*

9               (D) *The Department of State.*

10              (E) *The review committee established under*  
11       *section 8(a) of the Native American Graves Pro-*  
12       *tection and Repatriation Act (25 U.S.C.*  
13       *3006(a)).*

14              (F) *The Cultural Heritage Coordinating*  
15       *Committee established pursuant to section 2 of*  
16       *the Protect and Preserve International Cultural*  
17       *Property Act (Public Law 114–151; 19 U.S.C.*  
18       *2601 note).*

19              (G) *Any other relevant Federal agency,*  
20       *committee, or working group.*

21              (e) *APPLICABILITY OF FEDERAL ADVISORY COM-*  
22       *MITTEE ACT.—The Federal Advisory Committee Act (5*  
23       *U.S.C. App.) shall not apply to the Native working group*  
24       *convened under subsection (a).*



1 **SEC. 9. TREATMENT UNDER FREEDOM OF INFORMATION**  
2 **ACT.**

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

6 (1) *Information that a representative of an In-*  
7 *Indian Tribe or Native Hawaiian organization—*

8 (A) *submits to a Federal agency pursuant*  
9 *to this Act or an amendment made by this Act;*  
10 *and*

11 (B) *designates as sensitive or private ac-*  
12 *cording to Native American custom, law, culture,*  
13 *or religion.*

14 (2) *Information that any person submits to a*  
15 *Federal agency pursuant to this Act or an amend-*  
16 *ment made by this Act that relates to an item for*  
17 *which an export certification is denied under this Act.*

18 (b) *APPLICABILITY.*—*For purposes of subsection (a),*  
19 *this Act shall be considered a statute described in section*  
20 *552(b)(3)(B) of title 5, United States Code.*

21 (c) *EXCEPTION.*—*An Indian Tribe or Native Hawai-*  
22 *ian organization may request and shall receive its own in-*  
23 *formation, as described in subsection (a), from the Federal*  
24 *agency to which the Indian Tribe or Native Hawaiian orga-*  
25 *nization submitted the information.*

1 **SEC. 10. REGULATIONS.**

2       (a) *IN GENERAL.*—Not later than 1 year after the date  
3 of enactment of this Act, the Secretary, in consultation with  
4 the Secretary of State, the Secretary of Homeland Security,  
5 and the Attorney General, and after consultation with In-  
6 dian Tribes and Native Hawaiian organizations, shall pro-  
7 mulgate rules and regulations to carry out this Act.

8       (b) *INCLUSION.*—The regulations promulgated by the  
9 Secretary pursuant to subsection (a) shall include a reason-  
10 able deadline by which the Secretary shall approve or deny  
11 an export certification application under section 5(b).

12 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

13       There is authorized to be appropriated to carry out  
14 this Act \$3,000,000 for each of fiscal years 2021 through  
15 2026.



Calendar No. 608

116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2165**

[Report No. 116-308]

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## **A BILL**

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

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DECEMBER 9, 2020

Reported with an amendment