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

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2021

Mr. HEINRICH (for himself, Ms. MURKOWSKI, Ms. CORTEZ MASTO, Mr. CRAPO, Mr. LUJÁN, Mr. DAINES, Ms. SINEMA, Mr. ROUNDS, Ms. ROSEN, Mr. LANKFORD, Ms. BALDWIN, and Mr. SULLIVAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

JULY 28, 2021

Reported by Mr. SCHATZ, without amendment

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safeguard Tribal Ob-
5 jects of Patrimony Act of 2021”.

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
9 States Code, as added by that Act), in order to
10 strengthen 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
14 Graves Protection and Repatriation Act (25 U.S.C.
15 3001 et seq.) (including section 1170 of title 18,
16 United States Code, as added by that Act) and ar-
17 chaeological resources prohibited from being traf-
18 ficked by the Archaeological Resources Protection
19 Act of 1979 (16 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 agree-
25 ments or provisional measures to prevent irre-

1 mediable damage to Native American cultural
2 heritage;

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

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

21 (6) to establish a Native working group of In-
22 dian Tribes and Native Hawaiian organizations to
23 assist in the implementation of this Act, the Native
24 American Graves Protection and Repatriation Act
25 (25 U.S.C. 3001 et seq.) (including section 1170 of

1 title 18, United States Code, as added by that Act),
 2 the Archaeological Resources Protection Act of 1979
 3 (16 U.S.C. 470aa et seq.), and other relevant Fed-
 4 eral laws;

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

8 (A) information submitted by Indian
 9 Tribes or Native Hawaiian organizations pursu-
 10 ant to this Act; and

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

15 (8) to encourage buyers to purchase legal con-
 16 temporary art made by Native artists for commercial
 17 purposes.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) **ARCHAEOLOGICAL RESOURCE.**—The term
 21 “archaeological resource” means an archaeological
 22 resource (as defined in section 3 of the Archae-
 23 ological Resources Protection Act of 1979 (16
 24 U.S.C. 470bb)) that is Native American.

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

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

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

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

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

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

1 (ii) any other Federal law or treaty;

2 and

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

8 (i) subsections (b) and (c) of section
9 6 of the Archaeological Resources Protec-
10 tion Act of 1979 (16 U.S.C. 470ee); or

11 (ii) any other Federal law or treaty.

12 (6) ITEM REQUIRING EXPORT CERTIFI-
13 CATION.—

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

16 (i) a cultural item; and

17 (ii) an archaeological resource.

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

1 (7) NATIVE AMERICAN.—The term “Native
2 American” means—

3 (A) Native American (as defined in section
4 2 of the Native American Graves Protection
5 and Repatriation Act (25 U.S.C. 3001)); and

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

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

12 (9) SECRETARY.—The term “Secretary” means
13 the Secretary of the Interior.

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

16 (A) Native American human remains; or

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

21 **SEC. 4. ENHANCED NAGPRA PENALTIES.**

22 Section 1170 of title 18, United States Code, is
23 amended—

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

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

3 **SEC. 5. EXPORT PROHIBITIONS; EXPORT CERTIFICATION**
4 **SYSTEM; INTERNATIONAL AGREEMENTS.**

5 (a) EXPORT PROHIBITIONS.—

6 (1) IN GENERAL.—It shall be unlawful for any
7 person—

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

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

13 (C) to conceal an activity described in sub-
14 paragraph (A).

15 (2) PENALTIES.—Any person who violates
16 paragraph (1) and knows, or in the exercise of due
17 care should have known, that the Item Prohibited
18 from Exportation was taken, possessed, transported,
19 or sold in violation of, or in a manner unlawful
20 under, any Federal law or treaty, shall be fined in
21 accordance with section 3571 of title 18, United
22 States Code, imprisoned for not more than 1 year
23 and 1 day for a first violation, and not more than
24 10 years for a second or subsequent violation, or
25 both.

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

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

12 (ii) deliver the Item Prohibited from
13 Exportation to the Secretary.

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

22 (C) REPATRIATION.—Any Item Prohibited
23 from Exportation that is forfeited under sub-
24 paragraph (B) shall be expeditiously repatriated
25 to the appropriate Indian Tribe or Native Ha-

1 waiian organization in accordance with, as ap-
 2 plicable—

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

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

11 (b) EXPORT CERTIFICATION SYSTEM.—

12 (1) EXPORT CERTIFICATION REQUIREMENT.—

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

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

22 (i) a description of characteristics typ-
 23 ical of Items Requiring Export Certifi-
 24 cation, which shall—

1 (I) include the definitions of the
2 terms—

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

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

11 (II) describe the provenance re-
12 quirements associated with the traf-
13 ficking prohibition applicable to—

14 (aa) cultural items under
15 section 1170(b) of title 18,
16 United States Code; and

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

22 (III)(aa) include the definitions
23 of the terms “Native American” and
24 “Native Hawaiian” in section 2 of the
25 Native American Graves Protection

1 and Repatriation Act (25 U.S.C.
2 3001); and

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

6 (IV) be sufficiently specific and
7 precise to ensure that—

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

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

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

22 (I) an item made solely for com-
23 mercial purposes is presumed to not
24 qualify as an Item Requiring Export
25 Certification, unless an Indian Tribe

1 or Native Hawaiian organization chal-
2 lenges that presumption; and

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

11 (2) ELIGIBILITY FOR EXPORT CERTIFI-
12 CATION.—An Item Requiring Export Certification is
13 eligible for an export certification under this sub-
14 section if—

15 (A) the Item Requiring Export Certifi-
16 cation is not under ongoing Federal investiga-
17 tion;

18 (B) the export of the Item Requiring Ex-
19 port Certification would not otherwise violate
20 any other provision of law; and

21 (C) the Item Requiring Export Certifi-
22 cation—

23 (i) is not an Item Prohibited from Ex-
24 portation;

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

10 (iii) is accompanied by written con-
11 firmation from the Indian Tribe or Native
12 Hawaiian organization with authority to
13 alienate the Item Requiring Export Certifi-
14 cation that—

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

21 (II) the Indian Tribe or Native
22 Hawaiian organization has relin-
23 quished title or control of the Item
24 Requiring Export Certification in ac-
25 cordance with section 3 of the Native

1 American Graves Protection and Re-
2 patriation Act (25 U.S.C. 3002).

3 (3) EXPORT CERTIFICATION APPLICATION AND
4 ISSUANCE PROCEDURES.—

5 (A) APPLICATIONS FOR EXPORT CERTIFI-
6 CATION.—

7 (i) IN GENERAL.—An exporter seek-
8 ing to export an Item Requiring Export
9 Certification from the United States shall
10 submit to the Secretary an export certifi-
11 cation application in accordance with
12 clause (iii).

13 (ii) CONSEQUENCES OF FALSE STATE-
14 MENT.—Any willful or knowing false state-
15 ment made on an export certification appli-
16 cation form under clause (i) shall—

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

20 (II) prohibit the exporter from
21 receiving an export certification for
22 any Item Requiring Export Certifi-
23 cation in the future unless the ex-
24 porter submits additional evidence in

1 accordance with subparagraph
2 (B)(iii)(I).

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

14 (I) describe, and provide pictures
15 of, each Item Requiring Export Cer-
16 tification that the applicant seeks to
17 export;

18 (II) include all available informa-
19 tion regarding the provenance of each
20 such Item Requiring Export Certifi-
21 cation; and

22 (III) include the attestation de-
23 scribed in subparagraph (B)(i).

24 (B) EVIDENCE.—

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

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

16 (iii) ADDITIONAL REQUIREMENTS.—

17 (I) IN GENERAL.—The Secretary
18 shall give notice to an exporter that
19 submits an export certification appli-
20 cation under subparagraph (A)(i) that
21 the exporter is required to submit ad-
22 ditional evidence in accordance with
23 subclause (III) if the Secretary has
24 determined under subparagraph
25 (A)(ii) that the exporter made a will-

1 ful or knowing false statement on the
2 application or any past export certifi-
3 cation application.

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

12 (aa) delayed pursuant to the
13 examination by the Secretary of
14 the eligibility of the Item Requir-
15 ing Export Certification for an
16 export certification; or

17 (bb) denied by the Secretary
18 because the Secretary determined
19 that the Item Requiring Export
20 Certification is not eligible for an
21 export certification under this
22 subsection.

23 (III) ADDITIONAL EVIDENCE.—
24 On receipt of notice under subclause
25 (I), an exporter shall, or on receipt of

1 a notice under subclause (II), an ex-
2 porter may, provide the Secretary
3 with such additional evidence as the
4 Secretary may require to establish
5 that the Item Requiring Export Cer-
6 tification is eligible for an export cer-
7 tification under this subsection.

8 (C) DATABASE APPLICATIONS.—

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

17 (ii) COLLABORATION REQUIRED.—The
18 Secretary shall collaborate with Indian
19 Tribes, Native Hawaiian organizations,
20 and the interagency working group con-
21 vened under section 7(a) in the design and
22 implementation of the database.

23 (iii) AVAILABILITY.—Immediately on
24 receipt of an export certification applica-
25 tion, the Secretary shall make the export

1 certification application available on the
2 database.

3 (iv) DELETION FROM DATABASE.—On
4 request by an Indian Tribe or Native Ha-
5 waiian organization, the Secretary shall de-
6 lete an export certification application from
7 the database.

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

17 (D) ISSUANCE OF EXPORT CERTIFI-
18 CATION.—On receipt of an export certification
19 application for an Item Requiring Export Cer-
20 tification that meets the requirements of sub-
21 paragraphs (A) and (B), if the Secretary, in
22 consultation with Indian Tribes and Native Ha-
23 waiian organizations with a cultural affiliation
24 with the Item Requiring Export Certification,
25 determines that the Item Requiring Export Cer-

1 tification is eligible for an export certification
2 under paragraph (2), the Secretary may issue
3 an export certification for the Item Requiring
4 Export Certification.

5 (E) REVOCATION OF EXPORT CERTIFI-
6 CATION.—

7 (i) IN GENERAL.—If credible evidence
8 is provided that indicates that an item that
9 received an export certification under sub-
10 paragraph (D) is not eligible for an export
11 certification under paragraph (2), the Sec-
12 retary may immediately revoke the export
13 certification.

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

21 (4) DETENTION, FORFEITURE, REPATRIATION,
22 AND RETURN.—

23 (A) DETENTION AND DELIVERY.—The
24 Secretary of Homeland Security, acting through

1 the Commissioner of U.S. Customs and Border
2 Protection, shall—

3 (i) detain any Item Requiring Export
4 Certification that an exporter attempts to
5 export or otherwise transport without an
6 export certification; and

7 (ii) deliver the Item Requiring Export
8 Certification to the Secretary, for seizure
9 by the Secretary.

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

16 (C) REPATRIATION OR RETURN TO EX-
17 PORTER.—

18 (i) IN GENERAL.—Not later than 60
19 days after the date of delivery to the Sec-
20 retary of an Item Requiring Export Cer-
21 tification under subparagraph (A)(ii), the
22 Secretary shall determine whether the Item
23 Requiring Export Certification is an Item
24 Prohibited from Exportation.

(ii) REPATRIATION.—If an Item Requiring Export Certification is determined by the Secretary to be an Item Prohibited from Exportation and is forfeited under subparagraph (B), the item shall be expeditiously repatriated to the appropriate Indian Tribe or Native Hawaiian organization in accordance with, as applicable—

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

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

(iii) RETURN TO EXPORTER.—

(I) IN GENERAL.—If the Secretary determines that credible evidence does not establish that the Item Requiring Export Certification is an Item Prohibited from Exportation, or if the Secretary does not complete the determination by the deadline described in clause (i), the Secretary

1 shall return the Item Requiring Ex-
2 port Certification to the exporter.

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

10 (5) PENALTIES.—

11 (A) ITEMS REQUIRING EXPORT CERTIFI-
12 CATION.—

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

19 (ii) PENALTIES.—Except as provided
20 in subparagraph (D), any person who vio-
21 lates clause (i) shall be—

22 (I) assessed a civil penalty in ac-
23 cordance with such regulations as the
24 Secretary promulgates pursuant to
25 section 10; and

1 (II) subject to any other applica-
2 ble penalties under this Act.

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

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

13 (i) may be used by the Secretary—

14 (I) for fines collected under sub-
15 paragraph (A)(ii)(I), to process export
16 certification applications under this
17 subsection; and

18 (II) for fines collected under sub-
19 paragraph (B), to store and repatriate
20 the Item Prohibited from Exportation;

21 (ii) shall supplement (and not sup-
22 plant) any appropriations to the Secretary
23 to carry out this subsection; and

24 (iii) shall not be covered into the
25 Treasury as miscellaneous receipts.

(D) VOLUNTARY RETURN.—

(i) IN GENERAL.—Any person who attempts to export or otherwise transport from the United States an Item Requiring Export Certification without first obtaining an export certification, but voluntarily returns the Item Requiring Export Certification, or directs the Item Requiring Export Certification to be returned, to the appropriate Indian Tribe or Native Hawaiian organization in accordance with section 6 prior to the commencement of an active Federal investigation shall not be prosecuted for a violation of subparagraph (A) with respect to the Item Requiring Export Certification.

(ii) ACTIONS NOT COMMENCING A FEDERAL INVESTIGATION.—For purposes of clause (i), the following actions shall not be considered to be actions that commence an active Federal investigation:

(I) The submission by the exporter of an export certification application for the Item Requiring Export

1 Certification under paragraph
2 (3)(A)(i).

3 (II) The detention of the Item
4 Requiring Export Certification by the
5 Secretary of Homeland Security, act-
6 ing through the Commissioner of U.S.
7 Customs and Border Protection,
8 under paragraph (4)(A)(i).

9 (III) The delivery to the Sec-
10 retary of the Item Requiring Export
11 Certification by the Secretary of
12 Homeland Security, acting through
13 the Commissioner of U.S. Customs
14 and Border Protection, under para-
15 graph (4)(A)(ii).

16 (IV) The seizure by the Secretary
17 of the Item Requiring Export Certifi-
18 cation under paragraph (4)(A)(ii).

19 (6) FEES.—

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

23 (B) AVAILABILITY OF AMOUNTS COL-
24 LECTED.—Any amounts collected by the Sec-
25 retary under subparagraph (A)—

1 (i) shall supplement (and not sup-
2 plant) any appropriations to the Secretary
3 for the activities described in subparagraph
4 (A); and

5 (ii) shall not be covered into the
6 Treasury as miscellaneous receipts.

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

14 (8) TRAINING.—

15 (A) IN GENERAL.—The Secretary, the Sec-
16 retary of State, the Attorney General, and the
17 heads of all other relevant Federal agencies
18 shall require all appropriate personnel to par-
19 ticipate in training regarding applicable laws
20 and consultations to facilitate positive govern-
21 ment-to-government interactions with Indian
22 Tribes and Native Hawaiian Organizations.

23 (B) U.S. CUSTOMS AND BORDER PROTEC-
24 TION TRAINING.—The Secretary of Homeland
25 Security, acting through the Commissioner of

1 U.S. Customs and Border Protection, shall re-
2 quire all appropriate personnel of U.S. Customs
3 and Border Protection to participate in training
4 provided by the Secretary of the Interior or an
5 Indian Tribe or Native Hawaiian organization
6 to assist the personnel in identifying, handling,
7 and documenting in a culturally sensitive man-
8 ner Items Requiring Export Certification for
9 purposes of this Act.

10 (C) CONSULTATION.—In developing or
11 modifying and delivering trainings under sub-
12 paragraphs (A) and (B), the applicable heads of
13 Federal agencies shall consult with Indian
14 Tribes and Native Hawaiian organizations.

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

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

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

23 (3) to expand the market for the products of
24 Indian art and craftsmanship in accordance with
25 section 2 of the Act of August 27, 1935 (49 Stat.

1 891, chapter 748; 25 U.S.C. 305a) (commonly
2 known as the “Indian Arts and Crafts Act”).

3 **SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL**
4 **HERITAGE.**

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

8 (b) TRAININGS AND WORKSHOPS.—The liaisons des-
9 ignated under subsection (a) shall offer to representatives
10 of Indian Tribes and Native Hawaiian organizations and
11 collectors, dealers, and other individuals and organizations
12 trainings and workshops regarding the voluntary return
13 of tangible cultural heritage.

14 (c) REFERRALS.—

15 (1) IN GENERAL.—The Secretary shall refer in-
16 dividuals and organizations to 1 or more Indian
17 Tribes and Native Hawaiian organizations with a
18 cultural affiliation to tangible cultural heritage for
19 the purpose of facilitating the voluntary return of
20 tangible cultural heritage.

21 (2) REFERRAL REPRESENTATIVES.—The Sec-
22 retary shall compile a list of representatives from
23 each Indian Tribe and Native Hawaiian organization
24 for purposes of referral under paragraph (1).

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

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

13 (d) LEGAL LIABILITY.—Nothing in this section im-
14 poses on any individual or entity any additional penalties
15 or legal liability.

16 (e) TAX DOCUMENTATION.—In facilitating the vol-
17 untary return of tangible cultural heritage under this sec-
18 tion, the Secretary shall include provision of tax docu-
19 mentation for a deductible gift to an Indian Tribe or Na-
20 tive Hawaiian organization, if the recipient Indian Tribe
21 or Native Hawaiian organization consents to the provision
22 of tax documentation.

23 (f) REPATRIATION UNDER NATIVE AMERICAN
24 GRAVES PROTECTION AND REPATRIATION ACT.—The vol-
25 untary return provisions of this section shall apply to a

1 specific item of tangible cultural heritage only to the ex-
2 tent that the repatriation provisions under section 7 of the
3 Native American Graves Protection and Repatriation Act
4 (25 U.S.C. 3005) do not apply to the item of tangible cul-
5 tural heritage.

6 **SEC. 7. INTERAGENCY WORKING GROUP.**

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

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

13 (1) to facilitate the repatriation to Indian
14 Tribes and Native Hawaiian organizations of items
15 that have been illegally removed or trafficked in vio-
16 lation of applicable law;

17 (2) to protect tangible cultural heritage, cul-
18 tural items, and archaeological resources still in the
19 possession of Indian Tribes and Native Hawaiian or-
20 ganizations; and

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

23 (A) the Native American Graves Protection
24 and Repatriation Act (25 U.S.C. 3001 et seq.)

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

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

5 (C) other relevant Federal laws.

6 (c) RESPONSIBILITIES.—The interagency working
7 group convened under subsection (a) shall—

8 (1) aid in implementation of this Act and the
9 amendments made by this Act, including by aiding
10 in—

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

13 (B) halting international sales of items
14 that are prohibited from being trafficked under
15 Federal law; and

16 (2) collaborate with—

17 (A) the Native working group convened
18 under section 8(a);

19 (B) the review committee established under
20 section 8(a) of the Native American Graves
21 Protection and Repatriation Act (25 U.S.C.
22 3006(a));

23 (C) the Cultural Heritage Coordinating
24 Committee established pursuant to section 2 of
25 the Protect and Preserve International Cultural

1 Property Act (Public Law 114–151; 19 U.S.C.
2 2601 note); and

3 (D) any other relevant committees and
4 working groups.

5 **SEC. 8. NATIVE WORKING GROUP.**

6 (a) IN GENERAL.—The Secretary shall convene a Na-
7 tive working group consisting of not fewer than 12 rep-
8 resentatives of Indian Tribes and Native Hawaiian organi-
9 zations with relevant expertise, who shall be nominated by
10 Indian Tribes and Native Hawaiian organizations, to ad-
11 vise the Federal Government in accordance with this sec-
12 tion.

13 (b) RECOMMENDATIONS.—The Native working group
14 convened under subsection (a) may provide recommenda-
15 tions regarding—

16 (1) the voluntary return of tangible cultural
17 heritage by collectors, dealers, and other individuals
18 and non-Federal organizations that hold such tan-
19 gible cultural heritage; and

20 (2) the elimination of illegal commerce of cul-
21 tural items and archaeological resources in the
22 United States and foreign markets.

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

1 (1) the Department of Justice initiate judicial
2 proceedings domestically or abroad to aid in the re-
3 patriation cultural items and archaeological re-
4 sources; and

5 (2) the Department of State initiate dialogue
6 through diplomatic channels to aid in that repatri-
7 ation.

8 (d) AGENCY AND COMMITTEE ASSISTANCE.—

9 (1) IN GENERAL.—On request by the Native
10 working group convened under subsection (a), the
11 agencies and committees described in paragraph (2)
12 shall make efforts to provide information and assist-
13 ance to the Native working group.

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

17 (A) The Department of the Interior.

18 (B) The Department of Justice.

19 (C) The Department of Homeland Secu-
20 rity.

21 (D) The Department of State.

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

1 (F) The Cultural Heritage Coordinating
 2 Committee established pursuant to section 2 of
 3 the Protect and Preserve International Cultural
 4 Property Act (Public Law 114–151; 19 U.S.C.
 5 2601 note).

6 (G) Any other relevant Federal agency,
 7 committee, or working group.

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

12 **SEC. 9. TREATMENT UNDER FREEDOM OF INFORMATION**
 13 **ACT.**

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

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

19 (A) submits to a Federal agency pursuant
 20 to this Act or an amendment made by this Act;
 21 and

22 (B) designates as sensitive or private ac-
 23 cording to Native American custom, law, cul-
 24 ture, or religion.

1 (2) Information that any person submits to a
2 Federal agency pursuant to this Act or an amend-
3 ment made by this Act that relates to an item for
4 which an export certification is denied under this
5 Act.

6 (b) APPLICABILITY.—For purposes of subsection (a),
7 this Act shall be considered a statute described in section
8 552(b)(3)(B) of title 5, United States Code.

9 (c) EXCEPTION.—An Indian Tribe or Native Hawai-
10 ian organization may request and shall receive its own in-
11 formation, as described in subsection (a), from the Federal
12 agency to which the Indian Tribe or Native Hawaiian or-
13 ganization submitted the information.

14 **SEC. 10. REGULATIONS.**

15 (a) IN GENERAL.—Not later than 1 year after the
16 date of enactment of this Act, the Secretary, in consulta-
17 tion with the Secretary of State, the Secretary of Home-
18 land Security, and the Attorney General, and after con-
19 sultation with Indian Tribes and Native Hawaiian organi-
20 zations, shall promulgate rules and regulations to carry
21 out this Act.

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

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated to carry out
3 this Act \$3,000,000 for each of fiscal years 2021 through
4 2026.

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[Report No. 117-33]

A BILL

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

JULY 28, 2021

Reported without amendment