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(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R.

To amend title 18, United States Code, to clarify the criminalization of female genital mutilation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. JACKSON LEE (for herself and Mr. BACON) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 18, United States Code, to clarify the criminalization of female genital mutilation, 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 “Strengthening the Op-
5 position to Female Genital Mutilation Act of 2020” or the
6 “STOP FGM Act of 2020”.

7 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

8 The Congress finds the following:

1 (1) Female genital mutilation is recognized
2 internationally as a human rights violation and a
3 form of child abuse, gender discrimination, and vio-
4 lence against women and girls. Female genital muti-
5 lation is a global problem whose eradication requires
6 international cooperation and enforcement at the na-
7 tional level. The United States should demonstrate
8 its commitment to the rights of women and girls by
9 leading the way in the international community in
10 banning this abhorrent practice.

11 (2) Congress has previously prohibited the com-
12 mission of female genital mutilation on minors. Fe-
13 male genital mutilation is a heinous practice that
14 often inflicts excruciating pain on its victims and
15 causes them to suffer grave physical and psycho-
16 logical harm.

17 (3) Congress has the power under article I, sec-
18 tion 8 of the Constitution to make all laws which
19 shall be necessary and proper for carrying into exe-
20 cution treaties entered into by the United States.

21 (4) Congress also has the power under the
22 Commerce Clause to prohibit female genital mutila-
23 tion. An international market for the practice exists,
24 and persons who perform female genital mutilation

1 in other countries typically earn a living from doing
2 so.

3 (5) Those who perform this conduct often rely
4 on a connection to interstate or foreign commerce,
5 such as interstate or foreign travel, the transmission
6 or receipt of communications in interstate or foreign
7 commerce, the use of instruments traded in inter-
8 state or foreign commerce, or payments of any kind
9 in furtherance of this conduct.

10 (6) Amending the statute to specify a link to
11 interstate or foreign commerce would confirm that
12 Congress has the affirmative power to prohibit this
13 conduct.

14 **SEC. 3. AMENDMENTS TO CURRENT LAW ON FEMALE GEN-**
15 **ITAL MUTILATION.**

16 Section 116 of title 18, United States Code, is
17 amended—

18 (1) by amending subsection (a) to read as fol-
19 lows:

20 “(a) Except as provided in subsection (b), whoever,
21 in any circumstance described in subsection (d), know-
22 ingly—

23 “(1) performs, attempts to perform, or con-
24 spires to perform female genital mutilation on an-

1 other person who has not attained the age of 18
2 years;

3 “(2) being the parent, guardian, or caretaker of
4 a person who has not attained the age of 18 years
5 facilitates or consents to the female genital mutila-
6 tion of such person; or

7 “(3) transports a person who has not attained
8 the age of 18 years for the purpose of the perform-
9 ance of female genital mutilation on such person;

10 shall be fined under this title, imprisoned not more than
11 10 years, or both.”;

12 (2) in subsection (b)—

13 (A) in paragraph (1), by striking “or” at
14 the end;

15 (B) in paragraph (2), by striking the pe-
16 riod at the end and inserting “; or”; and

17 (C) by adding at the end the following:

18 “(3) for the purpose of sex reassignment re-
19 quested by the person on whom it is performed, and
20 is performed by a person licensed in the place of its
21 performance as a medical practitioner.”.

22 (3) by amending subsection (c) to read as fol-
23 lows:

24 “(c) It shall not be a defense to a prosecution under
25 this section that female genital mutilation is required as

1 a matter of religion, custom, tradition, ritual, or standard
2 practice.”;

3 (4) by striking subsection (d); and

4 (5) by adding at the end the following:

5 “(d) For the purposes of subsection (a), the cir-
6 cumstances described in this subsection are that—

7 “(1) the defendant or victim traveled in inter-
8 state or foreign commerce, or traveled using a
9 means, channel, facility, or instrumentality of inter-
10 state or foreign commerce, in furtherance of or in
11 connection with the conduct described in subsection
12 (a);

13 “(2) the defendant used a means, channel, fa-
14 cility, or instrumentality of interstate or foreign
15 commerce in furtherance of or in connection with
16 the conduct described in subsection (a);

17 “(3) any payment of any kind was made, di-
18 rectly or indirectly, in furtherance of or in connec-
19 tion with the conduct described in subsection (a)
20 using any means, channel, facility, or instrumen-
21 tality of interstate or foreign commerce or in or af-
22 fecting interstate or foreign commerce;

23 “(4) the defendant transmitted in interstate or
24 foreign commerce any communication relating to or
25 in furtherance of the conduct described in subsection

1 (a) using any means, channel, facility, or instrumen-
2 tality of interstate or foreign commerce or in or af-
3 fecting interstate or foreign commerce by any means
4 or in manner, including by computer, mail, wire, or
5 electromagnetic transmission;

6 “(5) any instrument, item, substance, or other
7 object that has traveled in interstate or foreign com-
8 merce was used to perform the conduct described in
9 subsection (a);

10 “(6) the conduct described in subsection (a) oc-
11 curred within the special maritime and territorial ju-
12 risdiction of the United States, or any territory or
13 possession of the United States; or

14 “(7) the conduct described in subsection (a)
15 otherwise occurred in or affected interstate or for-
16 eign commerce.

17 “(e) For purposes of this section, the term ‘female
18 genital mutilation’—

19 “(1) means any procedure—

20 “(A) that involves partial or total removal
21 of the external female genitalia; or

22 “(B) which results in or is intended to re-
23 sult in partial or complete loss of sensation, or
24 in physical trauma or other physical alteration
25 to the female genitalia; and

1 “(2) includes—

2 “(A) a clitoridectomy or the partial or total
3 removal of the clitoris or the prepuce;

4 “(B) excision or the partial or total re-
5 moval of the clitoris or the labia minora (with
6 or without excision of the labia majora);

7 “(C) infibulation or the narrowing of the
8 vaginal opening through the creation of a cov-
9 ering seal by cutting and repositioning the labia
10 minora or the labia majora (with or without ex-
11 cision of the clitoris); or

12 “(D) other harmful procedures to the fe-
13 male genitalia, including pricking, incising,
14 scraping, or cauterizing the genital area.”.

15 **SEC. 4. REPORT.**

16 Not later than one year after the date of the enact-
17 ment of this Act, and annually thereafter, the Attorney
18 General, in consultation with the Secretary of Homeland
19 Security, the Secretary of State, the Secretary of Health
20 and Human Services, and the Secretary of Education,
21 shall submit to Congress a report that includes—

22 (1) an estimate of the number of women and
23 girls in the United States at risk of or who have
24 been subjected to female genital mutilation;

1 (2) the protections available and actions taken,
2 if any, by Federal, State, and local agencies to pro-
3 tect such women and girls; and

4 (3) the actions taken by Federal agencies to
5 educate and assist communities and key stake-
6 holders about female genital mutilation.

7 **SEC. 5. SENSE OF THE CONGRESS.**

8 It is the sense of the Congress that the United States
9 District Court for the Eastern District of Michigan erred
10 in invalidating the prior version of such section 116 (See
11 *United States v. Nagarwala*, 350 F. Supp. 3d 613, 631
12 (E.D. Mich. 2018)). The commercial nature of female gen-
13 ital mutilation (hereinafter in this section referred to as
14 “FGM”) is “self-evident,” meaning that the “absence of
15 particularized findings” about the commercial nature of
16 FGM in the predecessor statute did not “call into question
17 Congress’s authority to legislate” (*Gonzales v. Raich*, 545
18 U.S. 1, 21 (2005)). Nevertheless, the Congress has elected
19 to amend the FGM statute to clarify the commercial na-
20 ture of the conduct that this statute regulates. But, by
21 doing so, Congress does not hereby ratify the district
22 court’s erroneous interpretation in *Nagarwala*.