

Miscellaneous Action No. 18-mc-51358
Criminal Action No. 17-cr-20274

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

– v. –

JUMANA NAGARWALA, et al.,

Defendants.

**BRIEF OF *AMICI CURIAE* EQUALITY NOW, WESPEAKOUT,
SAHIYO, AND SAFE HANDS FOR GIRLS
IN SUPPORT OF THE UNITED STATES**

Shelby Quast
Counsel for Equality Now
EQUALITY NOW
125 Maiden Lane B
New York, NY 10038
212-586-0906
squast@equalitynow.org

Schona Jolly QC
Of Counsel
CLOISTERS
1 Pump Court
London, EC4Y 7AA
United Kingdom

Lucy Martinez
Of Counsel

Luke A. Sobota
Counsel of Record
Jessica Ji
Amelia Keene
Philipp Kotlaba
Kimberly Larkin
Ana Lenard
Laura Pereira
Nastasja Suhadolnik
Of Counsel
THREE CROWNS LLP
3000 K Street NW, Suite 101
Washington, DC 20007
(202) 540-9477
luke.sobota@threecrownsllp.com

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<i>Flores-Villar v. U.S.</i> , 131 S.Ct. 2312 (2011).....	2
<i>Garcia v. San Antonio Transit Auth.</i> , 469 U.S. 528, 557 (1985).....	13
<i>Katzenbach v. McClung</i> , 379 U.S. 294 (1964).....	13
<i>National League of Cities v. Usery</i> , 426 U.S. 833 (1976).....	13
<i>Nguyen v. I.N.S.</i> , 533 U.S. 53 (2001).....	2
<i>Sessions, Attorney General v. Morales Santana</i> , 137 S.Ct. 1678 (2017).....	2
<i>U.S. v. Lopez</i> , 514 U.S. 546, 562 (1995).....	13
<i>Williamson v. Lee Optical</i> , 348 U.S. 483, 487 (1955).....	13

Statutes and Rules

18 U.S.C. § 116.....	1, 4, 5, 11, 12, 13, 14, 22, 23
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Congressional Findings, Pub. L. 104-208, Div. C, § 605(a)	13

U.S. CONST. art. 1 § 8, cl. 3.....	4
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International Materials

Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Oct. 21, 1994,) 1465 U.N.T.S. 85 (adopted by the United States Dec. 10, 1984)	11, 20
European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, E.T.S. 5	20
European Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13	5, 11
Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Nov. 5, 2011, C.E.T.S. No. 210	19, 20
International Covenant on Civil & Political Rights, June 8, 1992, 999 U.N.T.S. 171 (adopted by the United States Sept. 8, 1992)	12, 20
Protocol to the African Charter on Human & Peoples’ Rights on the Rights of Women in Africa (<i>Maputo Protocol</i>), Sept. 13, 2000, OAU Doc. CAB/LEG/66.6.....	1, 18, 20
U.N. Convention on the Rights of the Child, Sept. 2, 1990	11

Interpretive Materials

Rep. of the U.N. Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008).....	21
Rep. of the U.N. Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. EN.4/1986/15 (Feb. 19, 1986)	21

Rep. of the U.N. Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016)	21
U.N. Committee Against Torture, Conclusion & Recommendations: Cameroon, Doc. CATFGM/CFGM/CR/31/6 (Feb. 11, 2004)	21
U.N. Committee Against Torture, Concluding Observations on the Initial Report of Mauritania adopted by the Committee at Its Fiftieth Session (6–31 May 2013), Doc. CAT/C/MRT/CO/1 (June 18, 2013).....	21
U.N. Committee Against Torture, General Comment No. 2, Doc. CATFGM/C/GC/2 (Jan. 24, 2008)	21
U.N. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 14: Female Circumcision, Doc. A/45/38 (1990)	5
U.N. Committee on the Elimination of Discrimination Against Women, Gen. Rec. No. 19: Violence Against Women (1992), http://www.refworld.org/docid/52d920c54.html	9
U.N. Human Rights Comm., General Comment No. 28: Article 3, The Equality of Rights Between Men & Women, U.N. Doc. CCPRFGM/C/21/Rev.1/Add.10 (Mar. 29, 2000).....	12

International Law Cases

<i>Collins & Akaziebe v. Sweden</i> , Eur. Ct. H.R. Case No. 23944/05, (Mar. 8, 2007)	20
<i>Izevbekhai v. Ireland</i> , Eur. Ct. H.R. Case No. 43408/08, ¶73 (May 17, 2011)	20
<i>Omerodo v. Austria</i> , Eur. Ct. H.R. Case No. 8969/10 (Sept. 2011).....	20
<i>Sow v. Belgique</i> , Eur. Ct. H.R. Case No. 27081/13, ¶62 (Jan. 19, 2016)	20

Foreign Legal Materials

Canada

Criminal Code, R.S.C. 1985, c C-46, §268(3).....	16
Criminal Code, R.S.C. 1985, c C-46, §273(3).....	16
Criminal Code, R.S.C. 1985, c C-46, §21(1).....	16
Ontario Human Rights Commission, Policy on Female Genital Mutilation (FGM): FGM in Canada (Apr. 9, 1996), http://www.ohrc.on.ca/en/policy-female-genital-mutilation-fgm/4-fgm-canada	16

Germany

German Criminal Code, § 226a	16
German Parliament, Seventeenth Legislative Period, <i>Draft Criminal Law Amendment – Effective Campaign Against Female Genital Mutilation</i> , Doc. No. 17/12374 (Feb. 19, 2013).....	17
German Parliament, Eighteenth Legislative Period, <i>Twelfth Report of the Federal Government on Its Human Rights Politics</i> , Doc. No. 18/10800 (Dec. 22, 2016)	17

United Kingdom

Prohibition of Female Circumcision Act 1985 (re-enacted under the Female Genital Mutilation Act 2003), §§4, 5 (Eng.).....	14
Stmt. by Lord Alton of Liverpool, 792 Parl. Deb. H.L. col. 1424 (July 20, 2018).....	15
UNITED KINGDOM HOME OFFICE, FGM PROTECTION ORDERS: A GUIDE TO THE COURT PROCESS (1st ed. 2015)	15

Kenya

Children Act (No. 8 of 2001) (2017 rev.)	18
Kenyan Penal Code (2014 rev.)	18
Prohibition of Female Genital Mutilation Act (No. 32 of 2011) (2012 rev.)	18
Protection Against Domestic Violence Act (No. 2 of 2015)	18
OFFICE OF THE ATTORNEY GENERAL & DEPARTMENT OF JUSTICE, RESPONSE TO THE QUESTIONNAIRE FOR MEMBER STATES, H.R.Council Res. 27/22 (Apr. 21, 2015)	19

New Zealand

Crimes Amendment Act 1995 (1995 No 49), §204A(1)	15
Alec Neill (Waitaki) Crimes Amendment Bill (No. 2) (second reading) 1995, Hansard vol. 547	15

South Africa

Children’s Act 38 of 2005, §§12(3), 305(1), 305(6) BSRSA (updated through 2012)	17
Children’s Act 38 of 2005, §12(1)	17

Other Authorities

<i>Burkina Faso botched FGM leaves 50 girls in hospital</i> , BBC News (Sept. 17, 2018), https://www.bbc.co.uk/news/world-africa-45551615	10
---	----

EQUALITY NOW, FACTSHEET ON FEMALE GENITAL MUTILATION/CUTTING WITHIN THE UNITED STATES (Sept. 2018), https://d3n8a8pro7vmtx.cloudfront.net/equalitynow/pages/216/attachments/original/1536875107/FGMintheUS_factsheet_Sept2018.pdf?1536875107	24
Howard Goldberg et al., <i>Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women & Girls at Risk, 2012</i> , CENTERS FOR DISEASE CONTROL & PREVENTION PUBLIC HEALTH REPORTS 1 (MAR.-APR. 2016), https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Special%20Situations/fgmutilation.pdf	6
Kate Hodal, <i>Somalia under renewed scrutiny over FGM after two more young girls die</i> , THE GUARDIAN (Sept. 17, 2018), https://www.theguardian.com/global-development/2018/sep/17/somalia-under-renewed-scrutiny-over-female-genital-mutilation-after-two-more-young-girls-die	10
NORWEGIAN KNOWLEDGE CENTRE FOR HEALTH SERVICES, IMMEDIATE HEALTH CONSEQUENCES OF FEMALE GENITAL MUTILATION/CUTTING (2014), https://fhi.no/globalassets/dokumenterfiler/rapporter/2014/rapport_2014_8_immediate_fgm.pdf	9
POPULATION REFERENCE BUREAU, FEMALE GENITAL MUTILATION/CUTTING IN THE UNITED STATES (2016) https://www.prb.org/us-fgmc/	22
U.N. CHILDREN’S FUND, FEMALE GENITAL MUTILATION/CUTTING: A GLOBAL CONCERN (Dec. 2016), https://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD.pdf	6
United Nations, <i>Transforming Our World: The 2030 Agenda for Sustainable Development</i> , U.N. Doc. A/Res/70/, https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf	7

U.N. Population Fund, Calling for the End of the Medicalization of Female Genital Mutilation (June 2018), https://www.unfpa.org/sites/default/files/resource-pdf/FGM_Policy_Brief_On_Medicalization_Brochure__PDF_June_18.pdf....10

U.N. Special Rapporteur on Violence Against Women, 15 Years of the United Nations Special Rapporteur on violence against women, its causes & consequences 1994–2009 – A Critical Review (Nov. 25, 2008), <https://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>21

U.N. World Health Organization *et al.*, Eliminating Female Genital Mutilation: An Inter-Agency Statement, (2008), <http://www.who.int/reproductivehealth/publications/fgm/9789241596442/en/>.....8, 9

U.N. World Health Organization, Female Genital Mutilation & obstetric outcome: WHO Collaborative prospective study in six African countries (2006), <http://www.who.int/reproductivehealth/publications/fgm/fgm-obstetric-study-en.pdf>9

U.N. World Health Organization, Female genital mutilation: Fact Sheet (Jan. 2018), <http://www.who.int/mediacentre/factsheets/fs241/en/>6, 9, 14

U.N. World Health Organization, It’s Our Job as Health Workers to Do No Harm, (May 16, 2016), <http://www.who.int/mediacentre/commentaries/fgm-do-no-harm/en/>10

U.N. World Health Organization *et al.*, Female genital mutilation: a joint WHO/UNICEF/UNFPA statement, (1997).....8

U.N. World Health Organization *et al.*, Regarding the “Policy Statement – Ritual Genital Cutting of Female Minors” from the American Academy of Pediatrics (2010), http://www.who.int/reproductivehealth/topics/fgm/fgm_app_statement.pdf8

U.S. Agency for Int’l Development, <i>United States Global Strategy to Empower Adolescent Girls</i> (2016), https://www.state.gov/documents/organization/254904.pdf	13
U.S. Agency for Int’l Development, <i>United States Strategy to Prevent & Respond to Gender-Based Violence Globally</i> (2012), https://pdf.usaid.gov/pdf_docs/PDACT888.pdf	13
U.S. Immigration and Customs Enforcement, <i>ICE fights to protect girls & women from mutilation & abuse</i> (Nov. 20, 2017) https://www.ice.gov/news/releases/ice-fights-protect-girls-and-women-mutilation-and-abuse	25
WESPEAKOUT, <i>FEMALE GENITAL MUTILATION – A GUIDE TO ELIMINATING THE PRACTICE OF FGM IN INDIA</i> (Mar. 2017), http://wespeakout.org/site/assets/files/1359/fgm_lawyers_collective_doc.pdf	3
WESPEAKOUT, <i>THE CLITORAL HOOD – A CONTESTED SITE: KHAFID OR FEMALE GENITAL MUTILATION/CUTTING IN INDIA</i> (2018), http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf	3, 9

INTEREST OF *AMICI CURIAE*

Equality Now is an international human rights organization that advocates for the protection and promotion of the rights of women and girls worldwide, with a membership network of individuals and organizations in more than 160 countries. Founded in 1992, one of Equality Now’s first global campaigns called on the United Nations to dedicate more resources to end female genital mutilation (*FGM*),¹ and it played a critical role in adoption of the “Maputo Protocol” to the African Charter on Human and Peoples’ Rights, a regional women’s rights treaty which explicitly recognizes FGM as a human rights violation.²

At the national level, Equality Now has been at the forefront of efforts to eradicate FGM, pushing for laws that protect girls and criminalize the practice, and supporting grassroots activists working to end FGM in their communities. Although laws such as 18 U.S.C. § 116 are an important step forward, much work remains to be done to fully stamp out FGM. Equality Now has advocated for laws to fully protect girls and ban FGM in countries including the United Kingdom, the

¹ In this brief, *Amici* use the term “FGM” as adopted by the United States in its brief in opposition to describe the practice of partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons. The acronym is intended to be inclusive of other terms referencing the practice, such as female genital cutting (*FGC*), female circumcision, and *khafz* or *khatna*.

² Protocol to the African Charter on Human & Peoples’ Rights on the Rights of Women in Africa (*Maputo Protocol*), Sept. 13, 2000, OAU Doc. CAB/LEG/66.6, http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.

United States, Kenya, Liberia, Mali, and Tanzania, and has been active in mobilizing support for the United Nation’s 2030 Agenda for Sustainable Development target to eliminate FGM. In Kenya, Equality Now appears as an interested party in an ongoing litigation concerning the Prohibition of FGM Act of 2011, and has partnered with the Director of Public Prosecutions and the anti-FGM Board to that end. In the United States, Equality Now has successfully advocated for anti-FGM laws at state and federal levels, and in 2016 co-sponsored the “End Violence Against Girls Summit on FGM,” the first-ever such summit held in the United States. Equality Now has also submitted *amicus* briefs before various bodies, including the United States Supreme Court.³

Sahiyo is a non-governmental organization that empowers Asian communities—including the Bohra community—to end FGM through dialogue, education and collaboration based on community involvement. In 2015, Sahiyo pioneered a global study on FGM among the Bohra. The results, released in 2017, contained insights from 384 women (the highest number of which reside in India and the United States). Virtually the same percentage of respondents who had undergone FGM (80%) wanted to see the practice stopped (81%). Sahiyo’s other programming includes storytelling initiatives from hundreds of FGM survivors,

³ See e.g., *Sessions, Attorney General v. Morales Santana*, 137 S.Ct. 1678 (2017); *Flores-Villar v. U.S.*, 131 S.Ct. 2312 (2011); *Nguyen v. INS*, 533 U.S. 53 (2001); *Agency for Int’l Devp’t v. Alliance for Open Society International*, 133 S.Ct. 2321 (2013).

digital story videos, photo-campaigns, and support groups in which people from FGM-practicing communities can speak openly without fear of reprisal.

WeSpeakOut is the largest FGM survivor-led organization of Bohra women in India, where the practice is also known as *khafz* or *khatna*. WeSpeakOut also has members belonging to the Bohra diaspora based in countries including the United States, Australia, Canada, and the United Kingdom. Since its formation in 2015, WeSpeakOut has published a detailed legal report on FGM in India that surveys international and national laws with respect to children's and women's rights,⁴ and has also disseminated documentation of the prevalence of FGM within India and in the Bohra community.⁵ Its founder represents WeSpeakOut in pending litigation before the Supreme Court of India concerning the practice.

Safe Hands for Girls was founded in 2013 to help eradicate FGM and other forms of gender-based violence. Through programs in the Gambia and the United States., the organization supports FGM survivors, mobilizes young people, and advocates at the national level for laws and policies to end FGM. Its founder, Jaha Dukureh, is a United Nations Women Regional Goodwill Ambassador to Africa.

⁴ WESPEAKOUT, FEMALE GENITAL MUTILATION – A GUIDE TO ELIMINATING THE PRACTICE OF FGM IN INDIA (Mar. 2017), http://wespeakout.org/site/assets/files/1359/fgm_lawyers_collective_doc.pdf

⁵ WESPEAKOUT, THE CLITORAL HOOD – A CONTESTED SITE: KHAFID OR FEMALE GENITAL MUTILATION/CUTTING IN INDIA (2018), http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf.

SUMMARY OF ARGUMENT

Female genital mutilation and cutting (*FGM*) is a serious human rights abuse which occurs across the United States and around the world. An abhorrent practice, FGM has serious physical and psychological effects on its victims that stay with them their entire lives. Keenly aware that FGM is a global and commercial phenomenon which transcends state lines, “beyond the ability of any single State or local jurisdiction to control,” the United States enacted 18 U.S.C. § 116 (*Section 116*) to stop FGM throughout its territory and at its borders.

With Section 116, the United States joined scores of countries that have also condemned FGM at the national level. At least 59 countries have passed laws against FGM in line with their international treaty commitments to combat the practice, which intersects with prohibitions of child abuse, gender discrimination, violence against women and girls, and/or torture. As the examples of criminal statutes set out below demonstrate, the United States’ enactment of Section 116 fully accords with international practice.

Congress thus acted reasonably in considering that the Treaty Power and the Commerce Clause afford it Article I competence to enact Section 116, particularly where a partial, state-by-state approach would gravely undermine the vindication of international rights which the United States is legally bound to protect. The charges under Section 116 at issue in the instant motion should be brought to trial.

ARGUMENT

I. FGM IS A SERIOUS HUMAN RIGHTS VIOLATION THAT AFFECTS GIRLS AND WOMEN IN THE UNITED STATES AND WORLDWIDE

Female genital mutilation is, fundamentally, a human rights issue. Directed at women and girls, the practice crosses race, religious, ethnic, socio-economic, education and geographic lines. Internationally, it is recognized as a violation of the rights of women and girls to physical integrity, health, and equality, and has long been classified by the United Nations as a form of violence against women.⁶ FGM is a form of gender-based violence and child abuse—no matter the degree, severity, or motivation. Although the reasons underlying its practice are numerous and varied, FGM has no legitimate justification but instead contributes to the oppression of women and girls worldwide. It today stands universally condemned in the legal, medical, and scientific communities.

Despite this condemnation, FGM continues to affect millions of women and girls around the world, including in the United States. The United Nations

⁶ Convention on the Elimination of All Forms of Discrimination against Women, arts. 1, 2(f), 5(a), 1249 U.N.T.S. 13 (entry into force, 3 September 1981). The U.S. signed the Convention on 17 July 1980, but has not ratified it. The Committee on the Elimination of Discrimination Against Women confirmed in 1990 that FGM/C is a form of discrimination against women that States must act to eliminate. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 14: Female Circumcision, Doc. A/45/38, Corrigendum, Preamble and ¶(a) (1990).

Children’s Fund (*UNICEF*) has estimated that over 200 million women and girls currently live with the physical and emotional complications of FGM, with 8,000 more at risk every day.⁷ In the United States, the Center for Disease Control and Prevention in 2016 estimated that 513,000 women and girls had undergone or were at risk of undergoing FGM.⁸

The implications of this case are thus not confined to the Dawoodi Bohra community in Michigan, Minnesota, and Illinois. FGM is instead a global issue. There is a strong global movement of survivors, activists, community leaders, healthcare providers, educators, law- and policy-makers, and international organizations working together to end the practice.

Laws protecting girls’ rights are a critical step toward eliminating FGM. They can accelerate social change, especially when effectively implemented and rigorously enforced. In contrast, without proper legal prohibitions, millions of girls will continue to be subject to this horrific practice. Recognizing this basic

⁷ U.N. Children’s Fund, *Female Genital Mutilation/Cutting: A Global Concern* (Dec. 2016), https://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD.pdf. *See also* World Health Organization, “Female genital mutilation: Fact Sheet”, (Jan. 2018), <http://www.who.int/mediacentre/factsheets/fs241/en/>.

⁸ Howard Goldberg et al., *Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women & Girls at Risk, 2012*, CENTERS FOR DISEASE CONTROL & PREVENTION PUBLIC HEALTH REPORTS 1 (MAR.-APR. 2016), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Special%20Situations/fgmutilation.pdf>

truth, at least 59 countries currently ban or criminalize FGM. In 2015, 193 countries, including the United States, called for the global elimination of FGM by 2030, declaring this to be “of critical importance for humanity and the planet.”⁹ The U.N. General Assembly has likewise urged “all necessary measures, including enacting and enforcing legislation, to prohibit female genital mutilations . . . and to end impunity.”¹⁰

Survivors are courageously breaking the silence around FGM. They are raising awareness of the harms caused by FGM and are speaking out in their families, communities, and globally about the serious physical and psychological consequences of FGM—consequences which last a lifetime. By bravely sharing their stories, these women and girls are dispelling the “myths” that FGM is a religious issue or something that happens only in a small handful of countries. Their testimonies are included in **Annex 1**.

The World Health Organization (*WHO*), UNICEF, and the United Nations Population Fund (*UNFPA*) jointly define FGM as comprising “all procedures

⁹ Transforming Our World: The 2030 Agenda for Sustainable Development, setting a metric to “[e]liminate all harmful practices, such as child, early and forced marriage, and female genital mutilation”, Doc. A/Res/70/1, <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

¹⁰ U.N.G.A. Res.67/146, Intensifying global efforts for the elimination of female genital mutilations, U.N. Doc. A/RES/67/146 (Dec. 20, 2012), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/146.

involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.”¹¹ According to this definition, FGM may be classified into four degrees of severity.¹² All classifications, however, are recognized as harmful, gender-based violence. A joint statement issued by the WHO, UNICEF, UNFPA and the United Nations Development Fund for Women, puts it plainly: “Performing FGM of any type on girls compromises their human rights.”¹³

FGM is a public health issue. All forms can cause serious and well-documented complications and pathologies, both immediately after the mutilation

¹¹ World Health Organization, UNICEF, & UNFPA, *Female genital mutilation: a joint WHO/UNICEF/UNFPA statement*, p. 2 (1997), <http://apps.who.int/iris/handle/10665/41903>.

¹² World Health Organization, *Eliminating Female Genital Mutilation: An Inter-Agency Statement*, (2008), <http://www.who.int/reproductivehealth/publications/fgm/9789241596442/en>. The types are defined as follows: “Type I: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy). Type II: Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision). Type III: Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation), Type IV: all other harmful procedures to the female genitalia for non-medical purposes, including pricking, piercing, incising, scraping and cauterization.”

¹³ World Health Organization, UNICEF, UNFPA, UNIFEM, *Regarding the “Policy Statement – Ritual Genital Cutting of Female Minors”* from the American Academy of Pediatrics (2010), http://www.who.int/reproductivehealth/topics/fgm/fgm_app_statement.pdf.

and over the long term.¹⁴ The procedure of FGM itself is traumatic, and girls are usually physically held down during the procedure. Other immediate complications include pain, excessive bleeding, swelling, and problems with wound healing and urinal retention. Notably, researchers have found that FGM Type IV, trivialized as “nicking” by its practitioners, presents a substantially similar risk of immediate health complications as do Types I and II.¹⁵ All types have health risks, including infections, complications during childbirth, sexual dysfunction, psychological consequences,¹⁶ and adverse obstetric outcomes.¹⁷ And

¹⁴ World Health Organization, Female genital mutilation: Fact Sheet (Jan. 31, 2018), <http://www.who.int/mediacentre/factsheets/fs241/en>; *see also* U.N. Committee on the Elimination of Discrimination against Women (*CEDAW Committee*), Gen. Recommendation 19: Violence Against Women (1992), <http://www.refworld.org/docid/52d920c54.html>.

¹⁵ Norwegian Knowledge Centre for Health Services, Immediate health consequences of female genital mutilation/cutting (2014), https://fhi.no/globalassets/dokumenterfiler/rapporter/2014/rapport_2014_8_immediate_fgm.pdf.

¹⁶ World Health Organization, Eliminating Female Genital Mutilation: An Inter-Agency Statement, (2008) <http://www.who.int/reproductivehealth/publications/fgm/9789241596442/en>. *See also* LAKSHMI ANANTNARAYAN, SHABANA DILER, NATASHA MENON, THE CLITORAL HOOD: A CONTESTED SITE – KHAFF OR FEMALE GENITAL MUTILATION/CUTTING IN INDIA (Jan. 2018), http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf.

¹⁷ World Health Organization, Female Genital Mutilation and obstetric outcome: WHO Collaborative prospective study in six African countries (2006). The study outcomes are classified by type of FGM, and reveal that women who have undergone FGM are significantly more likely than those without FGM to have adverse obstetric outcomes. Though it found that that the risks seem to be greater with more extensive FGM, even Type I FGM was found to result in higher

FGM has no known health benefits—only lifelong physical and mental consequences for the women and girls on whom it is performed.

Efforts to sanitize FGM by claiming it is performed in a medical setting have been vigorously rejected by medical associations around the world.¹⁸ As the WHO has explained, health workers who carry out the practice are actively causing physical and psychological harm, and helping to perpetuate an abhorrent form of discrimination against women and girls.¹⁹

FGM exacts a tragic price. This month alone (September 2018), three girls are known to have died in Somalia²⁰ (local advocates suggest the true figure is much higher), and fifty girls have been hospitalized in Burkina Faso after undergoing FGM.²¹ This is the stark reality underlying these proceedings, and it is

risk of postpartum haemorrhage, prolonged labour, difficult delivery, obstetric tears/lacerations, longer maternal hospital stay, and higher still birth rates.

¹⁸ UNFPA, Brief on Medicalization (June 2018). “Medicalization” is a term that describes the practice of FGM by health-care providers, whether in a public or private clinic, at home, or elsewhere.

¹⁹ World Health Organization, *It’s our job as Health Workers to Do No Harm*, (May 16, 2016), <http://www.who.int/mediacentre/commentaries/fgm-do-no-harm/en>.

²⁰ Kate Hodal, *Somalia under renewed scrutiny over FGM after two more young girls die*, THE GUARDIAN (Sept. 17, 2018), <https://www.theguardian.com/global-development/2018/sep/17/somalia-under-renewed-scrutiny-over-female-genital-mutilation-after-two-more-young-girls-die>.

²¹ Burkina Faso botched FGM leaves 50 girls in hospital (Sept. 17, 2018), <https://www.bbc.co.uk/news/world-africa-45551615>

this reality which *Amici* urge the Court to bear in mind when considering Defendants’ facial challenge to Section 116.

II. THE U.S. GOVERNMENT’S CRIMINALIZATION OF FGM FALLS SQUARELY WITHIN ITS TREATY POWER AND COMPORTS WITH THE INTERNATIONAL CONSENSUS

FGM is a human rights violation of manifold character. The practice has been recognized as a public safety issue and has been condemned as a form of child abuse, gender discrimination, violence against women and girls, and even torture. It is therefore unsurprising that any number of international human rights treaties encompass the practice of FGM: the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention Against Torture, to name but a few. *See* Section III.C.

As relevant here, the U.S. Government has explained that Section 116 “rationally relates to implementing” the International Covenant on Civil and Political Rights (*ICCPR*), an international treaty to which the United States is party, “because FGM is an abuse encompassed within the treaty’s broad goals and prohibitions.” Gov’t at 18. The *ICCPR* is of foundational importance, comprising one of three conventions known as the International Bill of Human Rights. A central aim of the *ICCPR* is to afford freedom from discrimination and violence to women and girls, and this aim is furthered by domestic legislation targeting

individual conduct that violates the human rights guaranteed by the ICCPR. Section 116—duly enacted by the U.S. legislative and executive branches after specific findings about the need for a federal response to the practice—marks a proper exercise of the Treaty Power.

A. Congress’s Enactment of 18 U.S.C. § 116 Rationally Relates to the United States’ Treaty Commitments and Is Owed Substantial Deference

The ICCPR establishes the right for individuals to be protected against torture and inhuman treatment, for women and girls to be protected against violence, and for any child to have “such measures of protection as are required by his [or her] status as a minor.”²² Signed by the President and ratified by the Senate, the ICCPR has legally binding effect within the United States. U.S. CONST., art. II, § 2, cl. 2; *Medellin v. Texas*, 552 U.S. 491, 504-05 (2008). To implement the ICCPR, the United States has criminalized individual acts that violate the human right to be free from discrimination and violence in Section 116 and guaranteed by the ICCPR.

²² International Covenant on Civil & Political Rights, June 8, 1992, 999 U.N.T.S. 171 (adopted by the United States Sept. 8, 1992), arts. 2(1), 3, 7, 24, 26 (*ICCPR*). See also U.N. Human Rights Committee (*UNHRC*), General Comment No. 28: Article 3, The Equality of Rights Between Men and Women, Doc. CCPRFGM/C/21/Rev.1/Add.10, ¶11 (Mar. 29, 2000) (*General Comment No. 28*). Decisions and Comments of the UNHCR are not binding but are considered persuasive authority for the United States and other signatories when interpreting their duties under the ICCPR.

As reflected in the congressional findings accompanying Section 116, FGM is a grave human rights abuse that demands a federal response. Congress determined that the practice of FGM leaves “physical and psychological health effects that harm the women involved.” The “unique circumstances” surrounding the practice of FGM, moreover, “place it beyond the ability of any single State or local jurisdiction to control.”²³ Reflecting the considered judgment of the legislative and executive branches as to how best to implement the treaty commitments of the United States, Section 116 is owed substantial deference by this Court.²⁴

²³ Congressional Findings, Pub. L. 104-208, Div. C, § 605(a). Consistent with the enactment of Section 116, U.S. AID has encouraged other countries to criminalize FGM/C. U.S. DEPARTMENT OF STATE, USAID, UNITED STATES GLOBAL STRATEGY TO EMPOWER ADOLESCENT GIRLS 20 (Mar. 2016). *See also* U.S. DEPARTMENT OF STATE, USAID, UNITED STATES STRATEGY TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE GLOBALLY (2012).

²⁴ Congressional Findings, Pub. L. 104-208, Div. C, § 605(a); *Williamson v. Lee Optical*, 348 U.S. 483, 487 (1955) (holding that although the law at issue may have been “needless,” it was “for the legislature, not the courts, to balance the advantages and disadvantages of the new requirement”); *Abbott v. Abbott*, 560 U.S. 1, 12 (2010) (referring to the “well-established canon of deference” to “the Executive Branch’s interpretation of a treaty”); *Katzenbach v. McClung*, 379 U.S. 294 (1964) (deferring to congressional factfinding in respect of Title II of the Civil Rights Act of 1964). *Cf.* *United States v. Lopez*, 514 U.S. 546, 562 (1995) (striking down legislation for which no “congressional findings regarding the effects upon interstate commerce” were available); *Garcia v. San Antonio Transit Auth.*, 469 U.S. 528, 557 (1985) (noting that “[d]ue respect for the reach of congressional power within the federal system” requires overruling *National League of Cities v. Usery*, 426 U.S. 833 (1976), in which the Court had attempted to distinguish between “integral” and non-integral governmental functions in interpreting the law on state immunity).

B. Numerous Countries Have Passed National Level Bans in Furtherance of the International Condemnation of FGM

With Section 116, the United States stands alongside numerous other countries that have also condemned FGM at the national level. Consistent with the international consensus that FGM is a human rights abuse that violates women's equality and the right to be free from discrimination and violence, at least 59 countries have passed laws against FGM.²⁵ A few examples of the criminal statutes that other states enacted to prevent FGM are outlined below. As these examples demonstrate, the enactment of 18 U.S.C. § 116 fully accords with international practice.

1. United Kingdom

The United Kingdom has long banned FGM as one of the most egregious breaches of human rights. England and Wales first criminalized FGM from 1985.²⁶ Since then, its Parliament has continued to pass amendments extending the severity and scope of this criminal offense. For instance, in 2003, it increased the maximum penalty associated with FGM, and extended the scope of the law to

²⁵ World Health Organization, Factsheet – Female Genital Mutilation, January 2018, <http://www.who.int/en/news-room/fact-sheets/detail/female-genital-mutilation>.

²⁶ Prohibition of Female Circumcision Act 1985 (re-enacted under the Female Genital Mutilation Act 2003), §§ 4, 5 (Eng.).

apply extra-territorially.²⁷ In 2015, it also introduced court-issued protection orders for girls at risk of FGM, and obligated health and social workers and teachers to report all suspected cases of FGM.²⁸ Such far-reaching measures have been enacted in response to FGM's fundamental breach of human rights, as described by English Members of Parliament:

FGM violates a litany of human rights, including the right to security and physical integrity, the right to be free from torture and cruel, inhumane or degrading treatment, and potentially also the right to life.²⁹

2. New Zealand

FGM is a criminal offense in New Zealand.³⁰ This proscription flows from both the need to protect human rights and New Zealand's international obligations:

[FGM] is widely condemned by the international community. It is condemned by the United Nations. This legislation has been brought in because of our responsibilities of being part of the United Nations community.³¹

²⁷ *Id.*

²⁸ UNITED KINGDOM HOME OFFICE, FGM PROTECTION ORDERS: A GUIDE TO THE COURT PROCESS (1st ed. 2015).

²⁹ Stmt. by Lord Alton of Liverpool, 792 Parl. Deb. H.L. col. 1424 (July 20, 2018).

³⁰ Crimes Amendment Act 1995 (1995 No 49), §204A(1), <http://www.legislation.govt.nz/act/public/1961/0043/137.0/DLM329734.html>.

³¹ Alec Neill (Waitaki) Crimes Amendment Bill (No. 2) (second reading) 1995, Hansard vol. 547.

3. Canada

Performing FGM is a criminal offense in Canada,³² as is transporting a child outside of Canada for the purposes of FGM.³³ A parent who performs FGM on their child may be charged with aggravated assault.³⁴ Furthermore, a parent who agrees for another person to perform FGM on their child can also be convicted as a party to the offense.³⁵

The Human Rights Commissions of Canadian provinces have recognized the practice of FGM as a “violation of human rights.”³⁶ In addressing this “internationally recognized health and human rights concern,”³⁷ Canada has acknowledged its international law obligations, including under the ICCPR.

4. Germany

The Federal Republic of Germany has criminalized FGM since 2013.³⁸ Early discussions on criminalizing FGM drew attention to the “severe

³² Criminal Code, R.S.C. 1985, c C-46, §268(3).

³³ *Id.* at § 273(3).

³⁴ *Id.*

³⁵ *Id.* at § 21(1).

³⁶ *See, e.g.*, Ontario Human Rights Commission, Policy on Female Genital Mutilation (FGM): FGM in Canada (Apr. 9, 1996), <http://www.ohrc.on.ca/en/policy-female-genital-mutilation-fgm/4-fgm-canada>.

³⁷ *Id.*

³⁸ German Criminal Code, § 226a provides “Mutilation of Female Genitalia. (1) Whoever mutilates the outer genitalia of a female person is to be imprisoned

pain, high rate of complications, as well as physical and psychological consequences for affected girls and women.”³⁹ Section 226a of the German Criminal Code criminalizes all forms of FGM. The bill’s sponsors noted that failing to combat FGM would “violate international standards,”⁴⁰ and successive government reports have considered Germany’s criminalization to be consonant with its international human rights commitments with respect to women and girls.⁴¹

5. South Africa

FGM is a criminal offense in South Africa under the Children’s Act of 2005.⁴² The Act expressly states that “[e]very child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being.”⁴³ This Act reflects the obligation found in Article 5 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which specifically obliges state parties to enact legislation

for not less than one year. (2) In less severe instances a prison sentence of six months up to five years is to be recognized.”

³⁹ German Parliament, Seventeenth Legislative Period, *Draft Criminal Law Amendment – Effective Campaign Against Female Genital Mutilation*, Doc. No. 17/12374 (Feb. 19, 2013).

⁴⁰ *Id.* at p. 2.

⁴¹ German Parliament, Eighteenth Legislative Period, *Twelfth Report of the Federal Government on Its Human Rights Politics*, Doc. No. 18/10800 (Dec. 22, 2016)

⁴² Children’s Act 38 of 2005, §§12(3), 305(1), 305(6) BSRSA (updated through 2012).

⁴³ *Id.* at §12(1).

prohibiting FGM, to engage in public awareness against FGM, and to provide victim support for women affected by FGM.⁴⁴

6. Kenya

FGM is criminalized in Kenya under the 2011 Prohibition of Female Genital Mutilation Act, which also prohibits a number of FGM-related offenses.⁴⁵ Like the prohibition of FGM in South Africa's Children's Act, this Act reflects the obligation found in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Kenya's fight against FGM is further strengthened by its proscription under the Children Act 2001,⁴⁶ the Protection Against Domestic Violence Act 2015,⁴⁷ and its Penal Code.⁴⁸

Kenya also uses legislation to encourage a cultural shift regarding the perception and practice of FGM. It has established the Anti-FGM Board, a semi-autonomous government agency that advises the government on matters relating to FGM; designs, supervises, and coordinates FGM-related policy and public

⁴⁴ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (*Maputo Protocol*), Sept. 13, 2000, OAU Doc. CAB/LEG/66.6, art. 5, http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.

⁴⁵ Prohibition of Female Genital Mutilation Act (No 32 of 2011) (revised in 2012) [hereinafter FGM Act 2011].

⁴⁶ Children Act (No. 8 of 2001), art. 14. (revised in 2017).

⁴⁷ Protection Against Domestic Violence Act (No. 2 of 2015), art. 3(1)(ii).

⁴⁸ Kenyan Penal Code (revised in 2014), arts. 4 (definition of "grievous harm"), 234.

awareness programs; and provides support to institutions and agencies working to eradicate FGM.⁴⁹

C. The ICCPR Is One of Several International Treaties Condemning FGM As A Fundamental Human Rights Violation

This is just a sampling of the anti-FGM laws that have been enacted and implemented by countries around the world as an expression of their international human rights commitments. These laws have been justified by reference to a number of international treaties, including the ICCPR. Because FGM violates a number of fundamental human rights—including the rights of women and girls, the right to privacy and bodily integrity, the prohibition against torture, and the prohibition against discrimination—it is condemned in a host of international human rights instruments.

On the regional level, human rights instruments in Europe⁵⁰ and Africa⁵¹ have characterized FGM as a discriminatory violation of women and girls' human

⁴⁹ Kenya Office of the Attorney General and Department of Justice, Response to the Questionnaire for Member States – H.R.Council Res. 27/22, (Apr.21, 2015). *See* FGM Act, *supra* note __, pt. II.

⁵⁰ In Europe, the Convention on Preventing & Combating Violence Against Women And Domestic Violence specifically requires the criminalization of FGM/C. The Council of Europe Convention on Preventing & Combating Violence Against Women And Domestic Violence, Apr. 7, 2011, C.E.T.S. No. 210. The United States participated in this treaty's development and the treaty is open to accession by non-European States, although the U.S. is not currently a party to it. The European Court of Human Rights has repeatedly recognized that FGM/C may amount to illegal torture. *Izevbekhai v. Ireland*, Eur. Ct. H.R. Case No. 43408/08,

rights. Likewise, FGM has been characterized as a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*CAT*),⁵² a treaty to which the United States is party. Article 1(1) of that Treaty defines torture as any act in which “severe pain or suffering” is “intentionally inflicted on a person . . . for any reason based on discrimination of any kind.”⁵³

¶73 (May 17, 2011); *Omerodo v. Austria*, Eur. Ct. H.R. Case No. 8969/10 (Sept. 2011); *Collins and Akaziebe v. Sweden*, Eur. Ct. H.R. Case No. 23944/05, (Mar. 8, 2007); *Sow v. Belgique*, Eur. Ct. H.R. Case No. 27081/13, ¶62 (Jan. 19, 2016). The European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, E.T.S. 5, art. 3 provides: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”, E.T.S. 5.

⁵¹ The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa requires “necessary legislative and other measures to be taken to eliminate “all forms” of FGM/C. African Charter on Human and Peoples’ Rights, Protocol on the Rights of Women in Africa, art. 5, July, 11 2003, <http://www.refworld.org/docid/3f4b139d4.html>. Forty African States have signed and ratified the Protocol, and a further 13 have signed but not yet ratified. 22 of the 28 African countries where FGM is practiced have passed laws banning the practice.

⁵² The United States signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85 (hereinafter *CAT*) on 18 April 1988 and ratified it on 21 October 1994. The United States signed the ICCPR on 5 October 1977, and ratified it on 8 June 1992.

⁵³ CAT art. 1(1) provides “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

The U.N. Committee against Torture (*CAT Committee*) has confirmed that FGM can constitute torture,⁵⁴ as have the U.N. Special Rapporteur on Violence Against Women⁵⁵ and the U.N. Special Rapporteur on Torture.⁵⁶ The CAT Committee regularly calls on States to outlaw FGM.⁵⁷

The broad condemnation of FGM in a variety of international treaties besides the ICCPR serves to strengthen the decision of the legislative and executive branches to enact Section 116. There can be no question that Section 116 reflects a proper exercise of the Treaty Power.

⁵⁴ CAT Committee, General Comment No. 2, Doc. CATFGM/C/GC/2, ¶18 (Jan. 24, 2008).

⁵⁵ Rep. of the U.N. Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008); Rep. of the U.N. Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. EN.4/1986/15 (Feb. 19, 1986) ¶ 38; Report of the Special Rapporteur on torture U.N. Special Rapporteur, *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/HRC/7/3, ¶¶50-54 (Jan. 15, 2008); Rep. of the U.N. Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016).

⁵⁶ Rep. of the U.N. Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016), ¶ 58.

⁵⁷ CAT Committee, General Comment No. 2, Doc. CATFGM/C/GC/2, ¶ 18 (Jan. 24, 2008). See, e.g., CAT Committee, Conclusion and recommendations of the Committee against Torture: Cameroon, Doc. CATFGM/CFGM/CR/31/6, ¶7(b) (Feb. 11, 2004); CAT Committee, Concluding Observations on the initial report of Mauritania adopted by the Committee at its fiftieth session (6–31 May 2013), reads “[i]n line with the commitment that it made during the universal periodic review in November 2010, the State party should urgently adopt a law prohibiting female genital mutilation”. Doc. CAT/C/MRT/CO/1, ¶24 (June 18, 2013)

III. THE UNITED STATES' ENACTMENT AND ENFORCEMENT OF 18 U.S.C. 116 IS JUSTIFIED UNDER THE COMMERCE CLAUSE

Section 116 is also an appropriate use of Congress' powers under the Commerce Clause. The act of mutilation is a commercial activity that often entails interstate travel, as in this case. A fragmented State response to FGM is no response at all; this is a quintessential area for federal intervention. Section 116 falls well within the powers afforded Congress in Article I, section 8, of the Constitution, and the propriety of Congress's decision to exercise the power is only strengthened by the fact that Section 116 accords with the international condemnation of FGM.

FGM is practiced by a number of communities within the United States. The Population Reference Bureau notes that although some of these communities are concentrated in a few large States, they have increasingly fanned out to new destinations across the country.⁵⁸ Individuals who wish to subject their children to the practice are often required, as in this case, to cross state borders in search of FGM's practitioners. This phenomenon is seen in the graphic below.

⁵⁸ Population Reference Bureau, Female Genital Mutilation/Cutting in the United States, 2016, <https://www.prb.org/us-fgmc>.

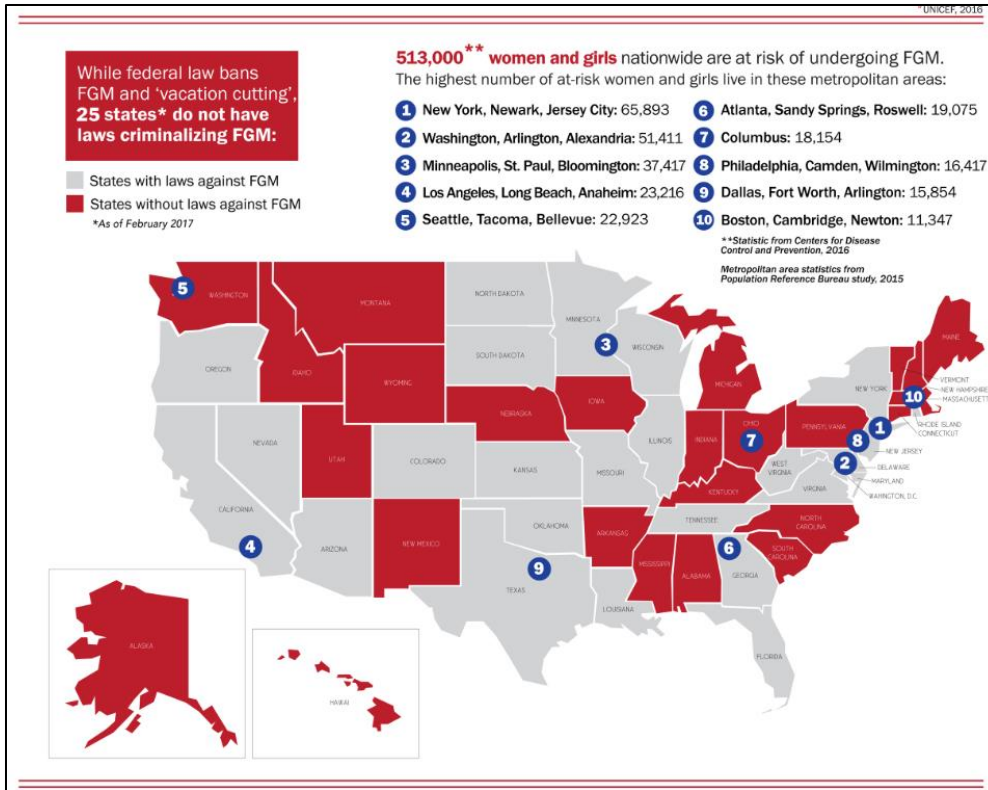


Figure 1: Top metropolitan areas within the United States for the prevalence of FGM. States without laws against FGM are shown in red. Since the date of this map, Michigan and New Hampshire have also passed FGM bans.

A patchwork of state-level bans is patently insufficient to eradicate the nationwide market for FGM services, which can generate substantial profits for its illicit practitioners. As Senator Wellstone remarked during Congress’s deliberations, Section 116 “would also send a clear message to American medical professionals,” who could otherwise earn “as much as \$3,000 to perform mutilations on young girls.” See Defs.’ Ex. I (141 Cong. Rec. S9912 (daily ed. July 13, 1995) (statement of Sen. Wellstone)). That perpetrators of FGM receive financial remuneration for their services is reflected in survivors’ testimonials, at **Annex 1**.

Today, only 27 States have laws against FGM. Of these 27 States, only 11 have specific provisions banning the transportation of a child out of the State to perform FGM which would be banned if performed within the State.⁵⁹ (A compilation of state laws against FGM is attached as **Annex 2.**) Without a federal prohibition, parents could simply transport their children to States with no prohibition on FGM, thereby perpetuating this extreme form of child abuse with impunity.

The practice of FGM transcends international as well as inter-state borders. As noted during legislative debate, the practice affects tens of millions of women around the world, and is prevalent in cities from New York to Seattle. See Defs.’ Ex. I (141 Cong. Rec. S9911 (daily ed. July 13, 1995) (statement of Sen. Wellstone)). In major airports, U.S Immigration and Customs Enforcement and Homeland Security officials educate individuals and families travelling to and from countries with a high prevalence rate of FGM that it is unlawful to take a girl outside the country to perform FGM.⁶⁰ U.S. Citizenship and Immigration Services

⁵⁹ Equality Now, Factsheet on Female Genital Mutilation/Cutting within the United States, September 2018, https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/216/attachments/original/1536875107/FGMintheUS_factsheet_Sept2018.pdf?1536875107.

⁶⁰ U.S. Immigration and Customs Enforcement, ICE fights to protect girls and women from mutilation and abuse, 20 November 2017, <https://www.ice.gov/news/releases/ice-fights-protect-girls-and-women-mutilation-and-abuse>.

also provides a notice with information on the legal status of FGM to immigrants entering the country, using Section 116 as a tool for prevention as well as enforcement.

For these reasons, FGM necessitates federal action. Given the commercial and cross-border nature of FGM, both the legislative and executive branches have rightly determined that only the U.S. Government is situated to effectively combat a practice which irreparably harms girls and women across the United States. The decision by Congress to exercise its power under the Commerce Clause is only strengthened by the fact that its intervention is necessary to provide a uniform and efficacious response to a human rights violation condemned by the numerous international instruments discussed above.

IV. CONCLUSION

For the reasons stated above, the defendants' Motion should be dismissed and counts one through five of the Indictment should be upheld.

Dated: Washington, D.C.
September 24, 2018

Respectfully Submitted,

Shelby Quast
Jacqui Hunt
Divya Srinivasan
EQUALITY NOW
125 Maiden Lane B
New York, NY 10038

Mariya Taher
SAHIYO
45 Prospect Street
Cambridge, MA 02139

Jaha Dukureh
SAFE HANDS FOR GIRLS
225 Peachtree Street, NE
Atlanta, GA 30303

Zehra Patwa
WESPEAKOUT
Tara Mahal, Plot No. 756
5th Road
Khar West, Mumbai
Maharashtra 4000055
India

Luke A. Sobota
Counsel of Record
Jessica Ji
Amelia Keene
Philipp Kotlaba
Kimberly Larkin
Ana Lenard
Laura Pereira
Nastasja Suhadolnik
Of Counsel
THREE CROWNS LLP
3000 K Street NW, Suite 101
Washington, DC 20007
(202) 540-9477
luke.sobota@threecrownsllp.com

Lucy Martinez
Of Counsel

Schona Jolly QC
Of Counsel
CLOISTERS
1 Pump Court
London, EC4Y 7AA
United Kingdom

Attorneys for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2018, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

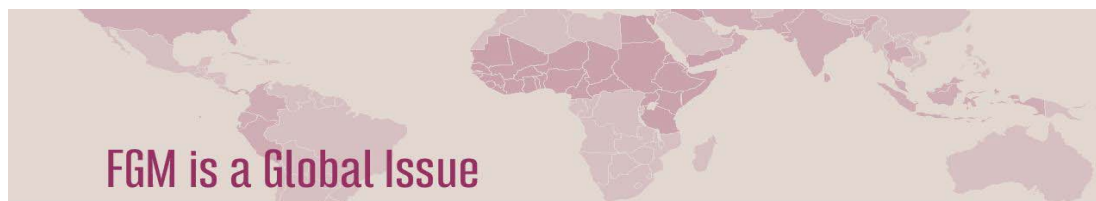
Dated: September 24, 2018

/s/ Luke A. Sobota
Luke A. Sobota

ANNEX 1

Testimonies and Survivor Stories – The Impact of FGM/C

FGM is a Global Issue¹



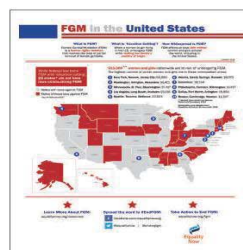
[UNICEF reports](#) over 200 million girls alive today, living in 30 countries have undergone FGM/C. FGM/C is not confined to a handful of regions in Africa as once believed but is happening on every continent, including communities in Asia and the Middle East and in Central, South and North America, and in Australia. Estimates show [500,000](#) women and girls in the European Union have undergone FGM/C and [513,000](#) women and girls have undergone or are at risk of FGM/C in the United States.

The global Sustainable Development Goal (SDG) compact, adopted in 2015 by 193 Member States, calls for an end to FGM by 2030. Goal 5 on gender equality has a specific target to eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation. The SDG target requires every country to measure FGM/C prevalence, which will present a more reliable and complete picture. As the available data on the extent of FGM/C increases, so will the number of girls and women known to have undergone the practice. FGM/C is a reality for many girls across many communities.

[UNICEF](#) reports that the majority of people in countries with data think the practice should end.

US MAP

The highest number of women and girls who have undergone or are at risk of FGM/C in the US live in the 10 metropolitan areas highlighted in red.



“Unfortunately, my story isn’t included in the global statistics on FGM/C because I am a woman born in the U.S., who at the age of seven, underwent the procedure in India. In a 2015 study, Sahiyo found that 80% of the Dawoodi Bohra Indian community had been cut and that 81% did not want the practice to continue. Sahiyo aims to break the silence of FGC in South Asian communities.”

—MARIYA TAHER, Founder Sahiyo

“FGM happened to me in white, Midwest America. A Christian doctor removed my clitoris when I was three years old as a ‘cure’ for masturbation, [writes Renee Bergstrom](#). “FGM is not my shame, it is my story. I witnessed Christian religions declaring masturbation a sin, “some Christian leaders and doctors” recommending circumcision to prevent it, physicians carrying out the practice and our American culture first accepting this form of sexual abuse and then denying it ever occurred.”

—RENEE BERGSTROM at the Summit



¹ End Violence Against Girls: Summit on FGM/C, December 2016, https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/319/attachments/original/1527600493/2016_Violence_Against_Girls_Summit_on_FGM_C_report_web_cmprsdv4_0.pdf?1527600493.

“I got her back from the hands of death” - Durraiya, 41-year-old mother living in a medium sized Indian city²

“My daughter is eight years old. In May 2017 I had her Khatna done. I had taken her to a traditional cutter. Once back home I made her sleep on the bed. After some time, around 4:00 p.m. I took her to the bathroom, she was bleeding as if she had started her menses. It seemed like she was urinating blood. I was worried so I called the circumciser. She said sometimes some kids bleed a little more but it will soon stop. She had kept some cotton and had used the blade just like the doctors do. By 6:00 p.m. my daughter had been bleeding so heavily, the blood had soaked three bed sheets and I was very worried. The circumciser kept saying apply some Soframycin. I called my friend. The next day was a Sunday and my husband and son were not at home. What would I do? And my daughter was quiet and she also kept asking me if she will be fine. By 8:00 p.m. I was getting really worried. There were clots of blood that were falling out and I didn't know what to do. Then I told my husband and he also assured me that things will be fine. The previous day I had told him that I would get her Khatna done. I began to worry that my daughter may just bleed herself to death during the night. I felt as if I had put my own daughter in danger by doing this procedure. My husband also started getting worried. Then I told my friend to call up the circumciser and come along with us to the doctor since her bleeding would just not stop. I was sure that it would be made into a police case. I told the circumciser to come with me to Burhani hospital. Then we took my daughter to the hospital at 12:00 a.m. in the night. They did her dressing and then gave me some medicine to give her that would stop the bleeding. They assured me that she would become fine after the medicine. We gave her the medicine twice after an interval of four hours but the blood still did not stop. It was 8:00 a.m. the next morning. I now felt that we will have to take her to a bigger hospital and a surgeon. I was completely shattered. We then

² Lakshmi Anantnarayan, Shabana Diler, Natasha Menon, The Clitoral Hood: A Contested Site – Khafd or Female Genital Mutilation/Cutting in India, January 2018, p. 43, http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf.

contacted a family friend who knew a surgeon who could help us. The circumciser also went with us to the hospital because she now accepted that maybe my girl must have moved a little and so a little more of her part had been cut. She said that in her experience of 35 years, this was the first case that had been spoilt. My friend had recommended this woman to me because she had taken some five or six other persons to her and there had never been an issue. Then we took our child to a second hospital. Once the doctor came he started the treatment. He first tried to fix the skin together with some kind of an instrument but that was extremely painful and it was burning her and it just didn't work. She bore all the pain. Finally they had to stitch her in that place. Then they made her sleep for a while and finally her bleeding stopped. She has healed now. She struggles with a deep fear of injections and doctors and is terrified of hospitals since the incident.”

I am grateful I was able to talk to a therapist about my khatna by *Anonymous, Age: 30,*
Country: United States

“I was not more than seven years old when I recall going into a medical complex on a quiet Sunday afternoon accompanied by my mother and our family friend. My mother told me it was time for my “khatna” or circumcision. She explained it as a rite of passage, something all the little girls in our Dawoodi Bohra community had to do. I remember feeling scared but I didn't know exactly why. I just had a feeling something terrible was about to happen to me as our friend unlocked the building with her keys and we continued into her desolate practice. We went into one of the brightly colored rooms where alphabet wallpaper boarded me in. I started crying before it even happened while she crooned, “*all I'm going to do is remove a liiiittle piece of skin.*” Totally exposed, I was asked to relax and read the wallpapered alphabet

backwards. My mother helped hold me still while I was flat on my back and in hysterics. The snip which took maybe half a second was followed by a sharp-shooting pain that seemed to last in that moment, for eternity. I bled for three days and then it was over.

It wasn't until I was nineteen, the end of my freshman year in college that I stumbled upon an article from one of my classes, describing the experience of a woman who had been a victim of FGM, or female genital mutilation. After reading the article once, I was immediately reminded of that Sunday afternoon twelve years prior. There was no way the same thing could have been done to me. My seven-year-old perspective of a little piece of skin being removed was analogous to that of a piece of skin from the top layer of the palm of a hand. My cousin used to stick a needle through that top layer and tell me it was magic that the needle was sticking there. She eventually revealed her secret and showed me the protective top layer that separated her hand from the skin. I guess like that layer, I always figured it would grow back. Still, the feeling of uncertainty drove me to call a couple of peers and academics in my community to ask whether our "khatna" was in fact, a partial removal of my clitoris. Their answer confirmed the worst of my fears. My next concern of "*how much?*" tormented me, and after a frantic visit to the school nurse, I got my answer: "*There's only a remnant left,*" said the nurse practitioner who examined me.

I don't believe my discovery was adequately addressed the first time as the rest of my college experience was consumed by bouts of grief, rage, frustration, insecurity, and depression. My feelings only grew stronger as I got older and had more encounters with the opposite sex. My overcompensating, defensive attitude permeated all aspects of my life—friends, family, work, and academics. It wasn't until my mid-20s when I shared with my gynecologist during a routine visit what happened to me, that I was given three names of specialized therapists in

the area with whom I could speak about my concerns. My insurance provider at the time would not cover therapy. Fortunately, one of three therapists agreed to see me for a discounted out-of-pocket fee because she was interested in my case.

To this day, I am so grateful for the opportunity I had to talk through what happened to me in a safe space as such resources and treatment were unavailable to me at home or in my community. I learned it was ok to talk about sex, explore my sexuality, and sexual feelings. I was even prescribed homework to assist me in doing so. At the time of the therapy, I had been sexually active and my partner, who was incredibly supportive, was also invited to participate in one of my sessions. When growing up, I never thought I would have sex before marriage. The idea behind the circumcision was to curb any sexual appetite I might have. Ironically, once I learned this had happened, I wanted nothing more than to have sex to see what my capabilities were. While I was incredibly nervous and insecure about having sex, I was more open to losing my virginity in the context of a serious relationship, which is how it happened for me.

One of my main insecurities about sex was that I felt like I was driving without the headlights on. Often times, I didn't know where to go or how to guide my driver. I felt like a failure. To this day, I still have not experienced orgasm. While sex is enjoyable for me and I could describe what I can achieve as a "mini-climax", I am bothered by the fact that I may never get to experience this wonderful part of life. While it's no secret many women who have not been "circumcised" struggle with the same issues, a part of me will always wonder if that would have been true for me had this not happened. I will never know."³

³ Sahiyo Stories, 30 November 2016, <https://sahiyo.com/2016/11/30/i-am-grateful-i-was-able-to-talk-to-a-therapist-about-my-khatna>.

They were going to take a worm from my body by Name: Alifya Sulemanji, Age: 42, City: New York, United States

“I, Alifya Sulemanji went through the atrocity of FGM. It’s been 35 years but I haven’t forgotten that day of my life even today.



One morning my mom told me we were going to visit my aunt who lives in Bhindi Bazaar in Mumbai where many of the Bohras live. In the midst of the day my mom, aunt and her daughter (my cousin) told me that they were taking me somewhere to remove a worm from me. I was barely 7 years old then and didn’t know what they were really talking about. I blindly followed them. We entered some building and went up the stairs and got into this lady’s house. I had no clue what was going on.

They told me to lay down on the floor assuring me that it was so they could take out a worm from my body and it was going to be very simple. My mom told me she was so devastated, she decided to leave the room and wait outside. They took off my underpants and I saw the lady remove a brand new sharp Topaz blade from the wrapper. They caught my legs and hands so I couldn't move. I was watching them innocently, not knowing what's going on. In a few moments, I was screaming in pain. My private part was in terrible shooting pain and I was crying. They told me to be quiet and I would be fine. The lady dabbed some black power on my cut area to stop me bleeding. After the procedure was done I was told to keep quiet; it was a secret not to be told to anyone. But today I am sharing my experience with the world.

My life has been different since then. Not that I am not happy and successful, but it has left some everlasting effects on me. I have two lovely daughters. Most of the time I am paranoid about their safety and protection. I keep getting bad thoughts that someone might harm them. People have judged me as an over-protective and possessive mom, but they don't know where it's coming from. My husband told me that sometimes at night when we are sleeping, he hears me cry in my sleep. Many times I get nightmares about my daughters being in trouble and I wake up screaming. I have unknown fears and phobias. I have seen a psychologist regarding this.

Today, I am happy and proud for standing up for myself.”⁴

⁴ Sahiyo Stories, 16 March 2016, <https://sahiyo.com/2016/03/16/they-were-going-to-take-a-worm-from-my-body>.

Khatna: A mother's pain and a son's search for retribution *By: Anonymous, Age: 31,*

Country: United States

“My mother is a woman of faith. The innate cultism of the Bohra community has never dissuaded her from being a part of it, attending every function on the bright, colorful Hijri calendar. For decades, that bright calendar has served as a façade to hide inexcusable darkness. I've been distant from this community for some time. I've often voiced some of the blatant ironies of our sect, particularly with the Hijri calendar. Lailatal Qadr, the most holy night in Ramadan, is now a minor blip on it, largely overshadowed by the birthday of his holiness, Mufaddal Saifuddin, which falls on the same day. She does not take my criticisms lightly and always tells me to have an open mind. She pleads with me to forget the cultism for a minute and focus on the community, the spirituality, and the power of prayer. She's always been pious to a fault, ignoring the many uncomfortable truths of a community that has so many.

It made it shocking a couple months ago, when she expressed her anger and hostility towards Khatna. Sahiyo has cast a large spotlight on this tribal and destructive practice. Growing up in a household of all boys and in a community that's kept Khatna so hidden, I only learned of the practice through Sahiyo and the articles by so many women who have had the courage to discuss its indignities and the havoc it has caused in their lives.

But it hit home, when my mom told me about her own experiences. This deeply religious woman, who has been an advocate for the Bohra community her entire life and encouraged her children to look past certain practices, was not willing to overlook this one. She told my brother and I that if she had a daughter she would never have them undergo this procedure. She told us in excruciating detail about her own experience at the tender age of seven, when she was taken to a dark basement at a neighbor's home in India. The pain, anger, and sexual

frustrations she has suffered since then were self-evident from the tears building up in her eyes. I couldn't hold back the tears in my own. The anger I felt when reading the stories of other women, rose to a fever pitch when I realized how much it hurt the woman that brought me in this world. A woman I have loved my entire life. She forgave this community and encouraged me to be a part of it. Because, for her generation, community is everything and the thought of becoming an outcast – that fear of being shunned from family and friends – makes you swallow your pain, frustration, and anger and accept the status quo.

No more.

The only beauty in the ugly underbelly surrounding Khatna, is the powerful options we have to confront it and other injustices of the Bohra community. For the first time in thirty years the powers that be are scared to the core. And it's not just the fear of legal repercussions they will inevitably face in facilitating and encouraging genital mutilation. Their real fear lies in losing the plethora of financial benefits they have always valued – the envelopes filled with bundles of cash, the millions of dollars in Ziyafats, the houses, the cars, and financial control over thousands of small Bohri businesses. The more these injustices are pointed out, the more Bohris – specifically millennials – will go elsewhere for spiritual enlightenment. And with that financial loss, they can never sustain the lavish lifestyle they've grown so accustomed to.

But actions always speak louder than words. The first step, and it is imperative, is to find a special woman in your life affected by this practice. Sit down with that woman, talk to her, and understand what she's been through. It will fill you with the same rage it filled me.

And that's what we need – a whole lot of rage. We need people in our generation to be angry and to boycott this community unless it returns to serve the spiritual needs of the people it's tasked with serving. That's what a religious community can and should be.

I will never forget the pain I saw in my mother's eyes the night she told me about her experience with Khatna. I will carry it with me moving forward and fight to make sure this practice ends. If we all do our part, it will stop, along with the other immoral practices of a community that has so many. All millennials should exercise the same vengeance. They can't threaten to destroy our lives like they did to our parents. We hold all the cards here. We shouldn't be afraid to play our collective strong hand.”⁵

Testimonies on the commercial nature of the practice of FGM/C within the Bohra community:

“This doctor charges Rs. 1200/-. There are also other traditional cutters who charge Rs. 500/- Usually the doctor makes the child lie down and then two people from the child's family hold the child down and then she cuts the thin skin layer which is right on top. I am not sure what they do with the skin that is cut. Usually the child is crying at the end, and so there is hardly any time to do anything.”

- Munira, Medium city⁶

“It was this one lady who did it (Khafd) and she knew the girls who were seven. It's money for her no? So she would have made it her business to tell everybody, “For those girls I have not done Khatna still.” Because obviously, she is going to earn some money... It is somebody's livelihood. The lady who is doing it makes it her business to see that everybody else in the society knows if your daughter's is not done.”

- Dr. Fatima, 48-year-old from a medium city⁷

⁵ Sahiyo Stories, 30 June 2017, <https://sahiyo.com/2017/06/30/khatna-a-mothers-pain-and-a-sons-search-for-retribution>.

⁶ Lakshmi Anantnarayan, Shabana Diler, Natasha Menon, The Clitoral Hood: A Contested Site – Khafd or Female Genital Mutilation/Cutting in India, January 2018, p. 41, http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf.

⁷ Lakshmi Anantnarayan, Shabana Diler, Natasha Menon, The Clitoral Hood: A Contested Site – Khafd or Female Genital Mutilation/Cutting in India, January 2018, p. 24, http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf.



FGM IN THE US: WHAT IS FEMALE GENITAL MUTILATION (FGM)?

Female genital mutilation and cutting (FGM) is a harmful traditional practice that involves the removal of part or all of the female genitalia. The World Health Organization (WHO) classifies it into four categories:

- **Clitoridectomy:** partial or total removal of the clitoris and/or the prepuce;
- **Excision:** partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;
- **Infibulation:** the most extreme form, the removal of all external genitalia and the stitching together of the two sides of the vulva;
- **Other:** all other harmful procedures done to the female genitalia for nonmedical purposes, for example, pricking, piercing, incising, scraping and cauterizing.

FGM can have short and **lifelong health consequences**, including:

- Chronic infection
- Complications during childbirth
- Psychological trauma
- Hemorrhage
- Increased risk of newborn deaths
- Severe pain during urination, menstruation, and sexual intercourse

While cases of death as a direct or indirect result of FGM are occasionally reported, there is currently no statistical data on how many girls die from the procedure.

FGM is recognized internationally as a human rights violation, constituting torture and an extreme form of discrimination against women and girls. The reasons underlying its practice are numerous and varied and ultimately serve to control women and girls' sexuality.

FGM is a global issue. In 2016 UNICEF reported that **over 200 million women and girls are currently living with FGM**. 193 countries, including the U.S., agreed in the Sustainable Development Goals to work to eliminate FGM by 2030.

What is the prevalence of FGM in the U.S.?

More detailed statistics on FGM are needed. In January 2016, in response to advocacy by Equality Now, Safe Hands for Girls, and other civil society partners, the Centers for Disease Control and Prevention (CDC) published a [study](#) on the number of women and girls in the U.S. who are at risk of or have been subjected to FGM. According to it, the **number is estimated to be 513,000**, more than three times higher than an earlier estimate based on 1990 data.

What is the history of FGM in the U.S.?

Equality Now was founded in 1992 to address the lack of attention FGM received from international human rights organizations and in 1996 launched a campaign in the U.S. against the detention of 17-year-old Fauziya Kassindja, who had escaped from Togo fleeing FGM and a forced marriage in 1994. In a landmark decision, Fauziya was granted asylum in the U.S. and her case helped establish FGM as a form of gender-based persecution on the basis of which women could receive asylum in the U.S.

More recently, news [articles](#) have highlighted [cases](#) of [girls](#) born in the U.S. being subjected to FGM either while on [vacation](#) in their parents' countries of origin, referred to as "vacation cutting."

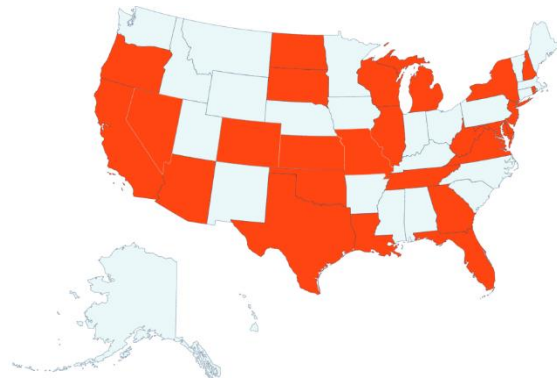
Additionally, recent [cases](#) indicate that U.S.-licensed doctors may be performing FGM on girls in the U.S.

How should we address FGM?

Ending FGM requires a multi-sectoral approach that brings together law enforcement, child protection professionals, educators, physicians, religious leaders, government agencies, advocates, and survivors. The approach must be holistic and always keep the best interest of the girl or woman who is either at risk of or a survivor of FGM at the center of its efforts.

What laws protect girls from FGM in the U.S.?

Federal law [18 U.S. Code § 116 'Female Genital Mutilation'](#) makes it illegal to perform FGM in the U.S. and was amended in 2013 to make it illegal to knowingly transport a girl out of the U.S. for the purpose of FGM.



Additionally, 27 states have laws against FGM.*

* States with laws against FGM highlighted in orange

State	Applicable law	Only applies to minors (under 18 unless otherwise specified)	Parent/Guardian and circumciser subject to prosecution	“Vacation provision” banning travel outside the state for FGM	Cultural/ritual reason and/or consent not a defense	Provisions for community education and outreach	Sentence
Arizona	A.R.S § 12-513, 13-705, 13-1214, 13-3620 Effective 4/24/2014	x		x			Imprisonment 5.25 - 35 years and fine up to \$25,000
California i	Cal. Pen. Code § 273a, 273.4 Passed in 1996; Effective 1/1/1997	x	x			x	Imprisonment 1 - 6 years
Colorado ii	Col. Rev. Stat. § 18-6-401 Effective 5/24/1999	Under 16	x		x	x	Imprisonment minimum 4 years
Delaware	Del. Code Tit. 11, § 780 Effective 7/3/1996	x	x		x		Imprisonment up to 5 years
Florida	Fla. Stat. § 794.08 Effective 10/1/2007	x	x	x	x		Imprisonment up to 30 years and/or fine up to \$10,000
Georgia iii	O.C.G.A. § 16-5-27 Effective 7/1/2005	x	x	x	x		Imprisonment 5 - 20 years
Illinois	720 Ill. Comp. Stat. 5/12-34 Effective 1/1/1998		x		x		Imprisonment 6 - 30 years
Kansas	K.S.A. § 21-5431 Enacted 4/10/2013	x	x	x	x		Imprisonment 60 - 68 months
Louisiana	La. R.S. 14:43.4 Effective 8/1/2012	x	x	x	x		Imprisonment up to 15 years
Maryland	Md. Code Health-Gen. § 20-601, 602 Effective 4/28/1998 Note: Proposed changes	x	x		x		Imprisonment up to 5 years and/or fine up to \$5,000

Michigan	1931 PA 328 § 136 1978 PA 368 § 9159 Effective 10/9/2017	x	x	x	x	x	Imprisonment up to 15 years	
Minnesota	Minn. Stat. § 144.3872, 609.2245 Passed in 1994; Effective 8/1/1995					x	x	Imprisonment up to life and/or fine
Missouri	Mo. Rev. Stat. § 568.065 Passed 7/13/2000; Effective 1/1/2017	Under 17	x				x	Imprisonment 5 - 15 years
Nevada	Nev. Rev. Stat. § 200.5083 Effective 6/26/1997	x	x	x	x			Imprisonment 2 - 10 years and/or fine up to \$10,000
New Hampshire	HB 1739 Effective Jan. 1, 2019	x	x	x	X			Type A felony
New Jersey	N.J. Stat. § 2C:24-10 Effective 1/17/2014	x	x	x	x			Imprisonment 3 - 4 years
New York	N.Y. Penal Law § 130.85 Passed 9/29/1997; Effective 45 days later N.Y. Public Health Law § 207(k) Effective 11/20/2015	x	x			x	x	Imprisonment up to 4 years
North Dakota	N.D. Cent. Code § 12.1-36-01 Effective 8/1/1995	x					x	Imprisonment up to 5 years and /or fine up to \$5,000
Oklahoma	21 Okl. St. § 760 Effective 11/1/2009						x	Imprisonment 3 years to life and /or fine up to \$200,000
Oregon	Or. Rev. Stat. § 163.207 Effective 7/15/1999	x	x			x	x	Imprisonment up to 20 years
Rhode Island iv	R.I. Gen. Laws § 11-5-2 Effective 7/3/1996							Imprisonment up to 10 years and /or fine up to \$20,000
South Dakota	S.D.C.L. §§ 22-18- 37, 22-18-38, 22- 18-39 Effective 3/10/2015	x	x	x	x			Imprisonment up to 10 years and fine up to \$20,000
Tennessee	Tenn. Code § 39-13-110 Effective 7/1/1996 Note: Proposed changes					x		Imprisonment 2 - 12 years and /or fine up to \$5,000
Texas	Tex. Health & Safety Code § 167.001 Effective 9/1/2017	x	x	x	x			Imprisonment 6 months-2 years and /or fine up to \$10,000
Virginia	Va. Code §§ 8.01- 42.5, 18.2-51.7 Effective July 1, 2017	x	x					Imprisonment up to one year and a fine up to \$2,500
West Virginia	W. Va. Code § 61-8D-3A Passed 2/23/1999; Effective 90 days later	x	x			x		Imprisonment 2 - 10 years & fine \$1-5,000
Wisconsin	Wis. Stat. § 146.35 Effective 5/28/1996	x					x	Imprisonment 5 years and/or fine up to \$10,000

i California: enhanced penalty for FGM under "Abandonment and Neglect of Children" (Penal Code).

ii Colorado: within child abuse law, and one of few states where doctor-patient and husband-wife privileges are inapplicable in prosecutions for FGM.

iii Georgia: One of few states where husband-wife and other statutory privileges are inapplicable in prosecutions for FGM.

iv Rhode Island: within assault statute

What is the history of laws and policies against FGM in the U.S.?

- **1996:** [18 U.S. Code § 116 'Female Genital Mutilation'](#) is enacted
- **2010:** The Girls' Protection Act (H.R. 5137), a bipartisan legislation introduced by Congressman Crowley and supported by Equality Now, is introduced to address "vacation cutting." It does not pass.
- **2011:** The Girls' Protection Act is re-introduced by Representative Crowley in the House and Senator Harry Reid in the Senate, but again does not pass.
- **2012:** Congress passes an FGM travel provision, "Transport for Female Genital Mutilation," as S. 1088 of the National Defense Authorization Act for Fiscal Year 2013 (H.R. 4310)
- **2013:** The Provision is signed into law making it illegal to knowingly transport a girl out of the U.S. for the purpose of inflicting FGM on her
- **August 2012:** the [U.S. Strategy to Prevent and Respond to Gender-Based Violence Globally](#) is introduced by the U.S. Department of State and the U.S. Agency for International Development. It defines FGM as a form of violence against women and girls.
- **2014:** The U.S. Department of State Human Rights country reports include, for the first time, a mandatory question on FGM.
- **July 2014:** An inter-agency working group, including the U.S. Departments of Health and Human Services (HHS), Education, Justice, and Immigration hosts a consultation with civil society on FGM in the U.S.
- **February 2015:** The [Zero Tolerance for FGM Act](#) is introduced by Congressman Crowley calling on the Administration to create and deliver a report to Congress on a national action plan to protect girls from FGM
- **2016:** [HHS' budget justifications for 2017](#) address FGM for the first time
- **March 2016:** The Department of State and USAID launch the first [Global Strategy to Empower Adolescent Girls](#), prominently highlighting the need to address FGM
- **May 2016:** The U.S. Government Accountability Office (GAO) issues a [report](#) on U.S. efforts to combat FGM abroad finding that although both the United Nations Population Fund (UNFPA) and USAID implement the Joint Program on FGM in 17 countries, funding is limited due to competing development priorities, including HIV/AIDS
- **June 2016:** The GAO issues a second [report](#) on domestic efforts and recommending that each federal agency document its domestic FGM awareness efforts
- **December 2016:** Equality Now co-organizes with Safe Hands for Girls and the U.S. Institute of Peace the first-ever End Violence Against Girls: Summit on FGM/C bringing together experts from across sectors and continents to discuss a multi-sectoral approach to ending FGM
- **April 2017:** U.S. doctor is arraigned on federal charges for performing FGM in Michigan
- **April 2017:** Final report and recommendations from the [End Violence Against Girls: Summit on FGM/C](#) are issued
- **2017:** The Department of Justice brings [charges](#) against Dr. Nargawala in the Eastern District of Michigan under [18 U.S. Code § 116 'Female Genital Mutilation'](#)
- **April 2018:** The US End FGM Network is launched.

Additionally, in collaboration with civil society several government agencies have guidance on the law against FGM:

- U.S. Department of Justice [brochure](#) and [factsheet](#)
- U.S. Department of Homeland Security's U.S. Citizen and Immigration Services (USCIS) [brochure](#), [factsheet](#), and a [strategy](#) in response to the GAO report recommendations
- Federal Bureau of Investigation (FBI) [statement](#)

We are encouraged by these initiatives, but **much more needs to be done**. Other countries are far ahead of the U.S. in their data collection, prevention and training programs, health services to survivors, and public awareness of women and girls affected by or at risk of FGM. Equality Now has worked closely with the U.S. government to inform policy on FGM and continues to advocate with FGM survivors in the U.S. for a comprehensive approach to effective implementation of U.S. laws and policies and greater public awareness of this human rights violation.