

USA: Judge voids federal female genital mutilation law

By Jonathan Stempel

Reuters (21.11.2018) – <https://reut.rs/2BpI0cj>– A federal judge in Detroit on Tuesday declared unconstitutional a U.S. law banning female genital mutilation, and also dismissed several charges against two doctors and others in the first U.S. criminal case of its kind.

U.S. District Judge Bernard Friedman said Congress lacked authority under the Commerce Clause to adopt the 1996 law, and that the power to outlaw female genital mutilation, or FGM, belonged to individual states.

“As despicable as this practice may be, it is essentially a criminal assault,” Friedman wrote. “FGM is not part of a larger market and it has no demonstrated effect on interstate commerce. The Commerce Clause does not permit Congress to regulate a crime of this nature.”

Gina Balaya, a spokeswoman for U.S. Attorney Matthew Schneider in Detroit, said that office would review the decision before deciding whether to appeal.

The decision removed the main charges against Jumana Nagarwala, a doctor who performed the procedure on nine girls

from Michigan, Illinois and Minnesota at another doctor's clinic in the Detroit suburb of Livonia.

FGM is a religious custom performed on girls from her Muslim sect, the Dawoodi Bohra.

Four of the eight defendants were dismissed from the case, including three of the four mothers accused of subjecting their daughters to FGM.

The government said one girl, age 7, had told investigators that she and another girl had been taken to Detroit for what they thought was a "special girls' trip," and was told not to discuss the FGM procedure after it was completed.

Molly Blythe, a lawyer for Nagarwala, said in an email: "We are very excited about today's ruling, although the victory is bittersweet given we fully anticipated our client to be vindicated at trial on those charges."

FGM typically involves the partial or total removal of the clitoris.

It is a common practice in many northern and central African countries including Egypt, Ethiopia, Somalia and Sudan, but several international treaties forbid it.

Twenty-seven U.S. states also ban the procedure, according to civil rights groups. Michigan joined the list last year.

The World Health Organization estimates that more than 200 million girls and women alive today have undergone FGM.

Nagarwala pleaded not guilty last month to the two remaining charges she faces. Those charges are obstructing an official proceeding, and conspiracy to travel with intent to engage in illicit sexual conduct.

The case is U.S. v. Nagarwala, U.S. District Court, Eastern District of Michigan, No. 17-20274.

HRWF Note: See text of the law 'H.R.941 – Federal Prohibition of Female Genital Mutilation Act of 1995' here.

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