

115TH CONGRESS
2D SESSION

S. 2903

To address foreign threats to higher education in the United States.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2018

Mr. CRUZ introduced the following bill; which was read twice and referred to
the Committee on the Judiciary

A BILL

To address foreign threats to higher education in the United
States.

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 “Stop Higher Education
5 Espionage and Theft Act of 2018”.

6 **SEC. 2. DESIGNATION OF FOREIGN INTELLIGENCE**
7 **THREATS TO HIGHER EDUCATION.**

8 (a) IN GENERAL.—Chapter 33 of title 28, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

1 **“§ 540D. Designation of foreign intelligence threats to**
2 **higher education**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘classified information’ has the
5 meaning given that term in section 1(a) of the Clas-
6 sified Information Procedures Act (18 U.S.C. App.);

7 “(2) the term ‘Director’ means the Director of
8 the Federal Bureau of Investigation, acting in con-
9 sultation with the Attorney General, Secretary of
10 Education, and the Director of National Intelligence;

11 “(3) the term ‘foreign actor’ means—

12 “(A) a foreign government or its auxiliary
13 territories, or any component thereof, whether
14 or not recognized by the United States;

15 “(B) a foreign-based political organization,
16 not substantially composed of United States
17 persons;

18 “(C) a faction of a foreign nation or na-
19 tions, not substantially composed of United
20 States persons;

21 “(D) an entity that is openly acknowledged
22 by a foreign government or governments to be
23 directed and controlled by such foreign govern-
24 ment or governments;

25 “(E) any partnership, association, corpora-
26 tion, organization, or other combination of per-

1 sons who acts as an agent, representative, em-
2 ployee, or servant of, or whose activities are di-
3 rectly or indirectly supervised, directed, con-
4 trolled, financed, or subsidized in whole or in
5 major part by a government, organization, fac-
6 tion, or entity described in subparagraph (A),
7 (B), (C), or (D); or

8 “(F) any individual who acts as an agent,
9 representative, employee, or servant of, or
10 whose activities are directly or indirectly super-
11 vised, directed, controlled, financed, or sub-
12 sidized in whole or in major part by a govern-
13 ment, organization, faction, or entity described
14 in subparagraph (A), (B), (C), or (D), unless
15 such individual is a citizen of and domiciled
16 within the United States;

17 “(4) the term ‘institution’ means any institu-
18 tion of higher education, as defined under section
19 101 of the Higher Education Act (20 U.S.C. 1001);

20 “(5) the term ‘national security’ means the na-
21 tional defense, foreign relations, or economic inter-
22 ests of the United States;

23 “(6) the term ‘relevant committees of Congress’
24 means—

1 “(A) the Committee on the Judiciary, the
2 Select Committee on Intelligence, the Com-
3 mittee on Homeland Security and Government
4 Affairs, and the Committee on Health, Edu-
5 cation, Labor, and Pensions of the Senate; and

6 “(B) the Committee on the Judiciary, the
7 Permanent Select Committee on Intelligence,
8 the Committee on Homeland Security, and the
9 Committee on Education and the Workforce of
10 the House of Representatives; and

11 “(7) the term ‘United States person’ has the
12 meaning given that term in section 101 of the For-
13 eign Intelligence Surveillance Act of 1978 (50
14 U.S.C. 1801).

15 “(b) DESIGNATION.—

16 “(1) IN GENERAL.—The Director shall des-
17 ignate a foreign actor as a foreign intelligence threat
18 to higher education, in accordance with this sub-
19 section, if the Director finds that the foreign actor
20 has committed, attempted to commit, or conspired to
21 commit, in connection with an institution, one or
22 more of the following:

23 “(A) Espionage, in violation of sections
24 791 through 799 of title 18.

1 “(B) Kidnapping, in violation of section
2 1201 of title 18.

3 “(C) Fraud or misuse of visas, permits, or
4 other documents, in violation of section 1546 of
5 title 18.

6 “(D) Aggravated identity theft, in violation
7 of section 1028A of title 18.

8 “(E) Fraud or related activity in connec-
9 tion with access devices, in violation of section
10 1029 of title 18.

11 “(F) Fraud or related activity in connec-
12 tion with computers, in violation of section
13 1030 of title 18.

14 “(G) Economic espionage, in violation of
15 section 1831 of title 18.

16 “(H) Theft of trade secrets, in violation of
17 section 1832 of title 18.

18 “(I) Terrorism, in violation of sections
19 2331 through 2339D of title 18.

20 “(J) Interception or disclosure of wire,
21 oral, or electronic communications, in violation
22 of section 2511 of title 18.

23 “(2) PROCEDURE.—

24 “(A) NOTICE BEFORE DESIGNATION.—

1 “(i) TO CONGRESSIONAL LEADERS.—
 2 Not later than 7 days before making a des-
 3 ignation under this subsection, the Direc-
 4 tor shall submit to the Speaker and Minor-
 5 ity Leader of the House of Representa-
 6 tives, the President pro tempore, Majority
 7 Leader, and Minority Leader of the Sen-
 8 ate, and the members of the relevant com-
 9 mittees of Congress—

10 “(I) written notice of the intent
 11 of the Director to designate a foreign
 12 actor under this subsection; and

13 “(II) the findings made under
 14 paragraph (1) with respect to foreign
 15 actor and the factual basis therefor.

16 “(ii) TO THE ATTORNEY GENERAL.—
 17 Not later than 7 days before making a des-
 18 ignation under this subsection, the Direc-
 19 tor shall submit to the Attorney General,
 20 for the Attorney General to determine
 21 whether further investigation or prosecu-
 22 tion is warranted—

23 “(I) written notice of the intent
 24 of the Director to designate a foreign
 25 actor under this subsection; and

1 “(II) the findings made under
2 paragraph (1) with respect to the for-
3 eign actor and the factual basis there-
4 for.

5 “(iii) PROTECTION OF CLASSIFIED IN-
6 FORMATION.—The notice and findings sub-
7 mitted under clauses (i) and (ii) may be in
8 classified form.

9 “(B) PUBLICATION IN FEDERAL REG-
10 ISTER.—If the Director makes a designation
11 under this subsection, the Director shall publish
12 the designation in the Federal Register on the
13 date of the designation.

14 “(C) EFFECT OF DESIGNATION.—For pur-
15 poses of section 117 of the Higher Education
16 Act of 1965 (20 U.S.C. 1011f), a designation
17 under this subsection shall take effect upon
18 publication under subparagraph (B).

19 “(3) RECORD.—

20 “(A) IN GENERAL.—In making a designa-
21 tion under this subsection, the Director shall
22 create an administrative record.

23 “(B) CLASSIFIED INFORMATION.—The Di-
24 rector may consider classified information in
25 making a designation under this subsection.

Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (d).

“(4) PERIOD OF DESIGNATION.—

“(A) IN GENERAL.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside under subsection (d).

“(B) REVIEW OF DESIGNATION UPON PETITION.—

“(i) IN GENERAL.—The Director shall review the designation of a foreign intelligence threat to higher education under the procedures set forth in clauses (iii) and (iv) if the designated foreign actor files a petition for revocation within the petition period described in clause (ii).

“(ii) PETITION PERIOD.—For purposes of clause (i)—

“(I) if the designated foreign actor has not previously filed a petition for revocation under this subparagraph, the petition period begins

1 2 years after the date on which the
2 designation was made; or

3 “(II) if the designated foreign
4 actor has previously filed a petition
5 for revocation under this subpara-
6 graph, the petition period begins 2
7 years after the date of the determina-
8 tion made under clause (iv) with re-
9 spect to that petition.

10 “(iii) PROCEDURES.—Any foreign
11 actor designated as a foreign intelligence
12 threat to higher education that submits a
13 petition for revocation under this subpara-
14 graph shall provide evidence in the petition
15 that the relevant circumstances described
16 in paragraph (1) are sufficiently different
17 from the circumstances that were the basis
18 for the designation such that a revocation
19 with respect to the foreign actor is war-
20 ranted.

21 “(iv) DETERMINATION.—

22 “(I) IN GENERAL.—Not later
23 than 180 days after receiving a peti-
24 tion for revocation submitted under
25 this subparagraph, the Director shall

1 make a determination as to such rev-
2 ocation.

3 “(II) CLASSIFIED INFORMA-
4 TION.—The Director may consider
5 classified information in making a de-
6 termination in response to a petition
7 for revocation. Classified information
8 shall not be subject to disclosure for
9 such time as it remains classified, ex-
10 cept that such information may be
11 disclosed to a court ex parte and in
12 camera for purposes of judicial review
13 under subsection (d).

14 “(III) PUBLICATION OF DETER-
15 MINATION.—A determination made by
16 the Director under this clause shall be
17 published in the Federal Register.

18 “(IV) PROCEDURES.—Any rev-
19 ocation of a designation by the Direc-
20 tor shall be made in accordance with
21 paragraph (6).

22 “(C) OTHER REVIEW OF DESIGNATION.—

23 “(i) IN GENERAL.—If no review has
24 taken place under subparagraph (B) dur-
25 ing any 5-year period, the Director shall

1 review the designation of a foreign actor as
2 a foreign intelligence threat to higher edu-
3 cation in order to determine whether such
4 designation should be revoked pursuant to
5 paragraph (6).

6 “(ii) PROCEDURES.—If a review does
7 not take place pursuant to subparagraph
8 (B) in response to a petition for revocation
9 that is filed in accordance with that sub-
10 paragraph, the review shall be conducted
11 pursuant to procedures established by the
12 Director. The results of such review and
13 the applicable procedures shall not be re-
14 viewable in any court.

15 “(iii) PUBLICATION OF RESULTS OF
16 REVIEW.—The Director shall publish any
17 determination made under this subpara-
18 graph in the Federal Register.

19 “(5) REVOCATION BY ACT OF CONGRESS.—Con-
20 gress, by an Act of Congress, may block or revoke
21 a designation made under paragraph (1).

22 “(6) REVOCATION BASED ON CHANGE IN CIR-
23 CUMSTANCES.—

24 “(A) IN GENERAL.—The Director may re-
25 voke a designation made under paragraph (1)

1 at any time, and shall revoke a designation
2 upon completion of a review conducted pursu-
3 ant to subparagraphs (B) and (C) of paragraph
4 (4) if the Director finds that—

5 “(i) the circumstances that were the
6 basis for the designation have changed in
7 such a manner as to warrant revocation; or
8 “(ii) the national security of the
9 United States warrants a revocation.

10 “(B) PROCEDURE.—The procedural re-
11 quirements of paragraphs (2) and (3) shall
12 apply to a revocation under this paragraph. Any
13 revocation shall take effect on the date specified
14 in the revocation or upon publication in the
15 Federal Register if no effective date is specified.

16 “(7) EFFECT OF REVOCATION.—The revocation
17 of a designation under paragraph (5) or (6) shall
18 not affect any action or proceeding based on conduct
19 committed prior to the effective date of such revoca-
20 tion.

21 “(c) AMENDMENTS TO A DESIGNATION.—

22 “(1) IN GENERAL.—The Director may amend a
23 designation under subsection (b) if the Director
24 finds that the foreign actor has changed its name,
25 adopted a new alias, dissolved and then reconsti-

1 tuted itself under a different name or names, or
2 merged with another foreign actor.

3 “(2) PROCEDURE.—Amendments made to a
4 designation in accordance with paragraph (1) shall
5 be effective upon publication in the Federal Register.
6 Subparagraphs (B) and (C) of subsection (b)(2)
7 shall apply to an amended designation upon such
8 publication. Paragraphs (2)(A)(i), (4), (5), (6), (7),
9 and (8) of subsection (b) shall also apply to an
10 amended designation.

11 “(3) ADMINISTRATIVE RECORD.—The adminis-
12 trative record shall be corrected to include the
13 amendments as well as any additional relevant infor-
14 mation that supports those amendments.

15 “(4) CLASSIFIED INFORMATION.—The Director
16 may consider classified information in amending a
17 designation in accordance with this subsection. Clas-
18 sified information shall not be subject to disclosure
19 for such time as it remains classified, except that
20 such information may be disclosed to a court ex
21 parte and in camera for purposes of judicial review
22 under subsection (d).

23 “(d) JUDICIAL REVIEW OF DESIGNATION.—

24 “(1) IN GENERAL.—Not later than 30 days
25 after publication in the Federal Register of a des-

1 ignation, an amended designation, or a determina-
2 tion in response to a petition for revocation, the for-
3 eign actor designated as a foreign intelligence threat
4 to higher education may seek judicial review in the
5 United States Court of Appeals for the District of
6 Columbia Circuit.

7 “(2) BASIS OF REVIEW.—Review under this
8 subsection shall be based solely upon the administra-
9 tive record, except that the Government may submit,
10 for ex parte and in camera review, classified infor-
11 mation used in making the designation, amended
12 designation, or determination in response to a peti-
13 tion for revocation, in a manner consistent with the
14 Classified Information Procedures Act (18 U.S.C.
15 App.).

16 “(3) SCOPE OF REVIEW.—The Court shall hold
17 unlawful and set aside a designation, amended des-
18 ignation, or determination in response to a petition
19 for revocation the court finds to be—

20 “(A) arbitrary, capricious, an abuse of dis-
21 cretion, or otherwise not in accordance with
22 law;

23 “(B) contrary to constitutional right,
24 power, privilege, or immunity;

1 “(C) in excess of statutory jurisdiction, au-
2 thority, or limitation, or short of statutory
3 right;

4 “(D) lacking substantial support in the ad-
5 ministrative record taken as a whole or in clas-
6 sified information submitted to the court under
7 paragraph (2); or

8 “(E) not in accord with the procedures re-
9 quired by law.

10 “(4) JUDICIAL REVIEW INVOKED.—The pend-
11 ency of an action for judicial review of a designation,
12 amended designation, or determination in response
13 to a petition for revocation shall not affect the appli-
14 cation of this section, unless the court issues a final
15 order setting aside the designation, amended des-
16 ignation, or determination in response to a petition
17 for revocation.

18 “(e) REPORTS.—

19 “(1) IN GENERAL.—Not later than 180 days
20 after the date of enactment of this section, and every
21 year thereafter, the Director shall submit to the rel-
22 evant committees of Congress a detailed report con-
23 taining the following:

1 “(A) A description and assessment of for-
 2 eign actors who engage in activities listed in
 3 subsection (b)(1).

4 “(B) An assessment of the impact of for-
 5 eign actors who engage in activities listed in
 6 subsection (b)(1) on scholarship and research
 7 and development in connection with institu-
 8 tions.

9 “(C) An assessment of the implementation
 10 and operation of the designation process for
 11 foreign intelligence threats to higher education
 12 established under this section.

13 “(D) An assessment of the likely effects of
 14 the designation of foreign intelligence threats to
 15 higher education on activities listed in sub-
 16 section (b)(1) in connection with institutions.

17 “(2) FORM OF REPORTS.—The reports required
 18 under paragraph (1) shall be submitted in an un-
 19 classified form, but may contain a classified annex.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 21 The table of sections for chapter 33 of title 28, United
 22 States Code, is amended by adding at the end the fol-
 23 lowing:

“540D. Designation of foreign intelligence threats to higher education.”.

1 **SEC. 3. DISCLOSURE OF FOREIGN GIFTS OR CONTRACTS.**

2 Section 117 of the Higher Education Act of 1965 (20
3 U.S.C. 1011f) is amended—

4 (1) by striking subsection (a) and inserting the
5 following:

6 “(a) DISCLOSURE REPORT.—

7 “(1) IN GENERAL.—An institution described in
8 paragraph (2) for a calendar year shall file a disclo-
9 sure report under subsection (b) with the Secretary
10 by January 31 or July 31, whichever is sooner.

11 “(2) TYPES OF INSTITUTIONS.—An institution
12 described in this paragraph is an institution that—

13 “(A) is owned or controlled by a foreign
14 source;

15 “(B) receives a gift from or enters into a
16 contract with a foreign source, the value of
17 which is \$250,000 or more, considered alone or
18 in combination with all other gifts from or con-
19 tracts with that foreign source within a cal-
20 endar year; or

21 “(C) receives a gift from or enters into a
22 contract with a foreign intelligence threat to
23 higher education, or any agent thereof, the
24 value of which is \$50,000 or more, considered
25 alone or in combination with all other gifts
26 from or contracts with that foreign intelligence

1 threat to higher education within a calendar
2 year.”;

3 (2) in subsection (b)—

4 (A) by redesignating paragraphs (1)
5 through (3) as subparagraphs (A) through (C),
6 respectively, and adjusting the margins appro-
7 priately;

8 (B) by striking “REPORT.—Each” and in-
9 serting the following: “REPORT.—
10 “(1) IN GENERAL.—Each”;

11 (C) in subparagraph (A) (as so redesign-
12 ated), by inserting “, as measured by the fair
13 market value of such gifts and contracts” after
14 “particular country”;

15 (D) in subparagraph (B), as so redesign-
16 ated—

17 (i) by inserting “the identity of the
18 foreign government and, if applicable, the
19 foreign government agency, and” after
20 “with a foreign government,”; and

21 (ii) by inserting “, as measured by the
22 fair market value of such gifts and con-
23 tracts” before the period at the end; and

24 (E) by adding at the end the following:

1 “(2) REQUIREMENTS RELATING TO FOREIGN
 2 INTELLIGENCE THREATS.—For any institution de-
 3 scribed in subsection (a)(2)(C), the report required
 4 under this section shall contain, in addition to any
 5 applicable information required under paragraph
 6 (1)—

7 “(A) the identity of the foreign intelligence
 8 threat to higher education involved; and

9 “(B) the aggregate dollar amount of such
 10 gifts and contracts attributable to the foreign
 11 intelligence threat to higher education, as meas-
 12 ured by the fair market value of such gifts and
 13 contracts.”;

14 (3) in subsection (c), by adding at the end the
 15 following:

16 “(3) For any such gift received from, or con-
 17 tract entered into with, a foreign intelligence threat
 18 to higher education, the fair market value of the gift
 19 or contract, the date of the gift or contract, and a
 20 description of any such conditions or restrictions on
 21 the gift or contract.”;

22 (4) in subsection (e), by inserting “, and shall
 23 also be accessible to the public through electronic
 24 means” before the period at the end; and

25 (5) in subsection (h)—

1 (A) by redesignating paragraphs (2)
2 through (5) as paragraphs (3) through (6), re-
3 spectively;

4 (B) by inserting after paragraph (1) the
5 following:

6 “(2) the term ‘foreign intelligence threat to
7 higher education’ means any foreign source that is
8 designated as a foreign intelligence threat to higher
9 education in accordance with section 540D of title
10 28, United States Code;”;

11 (C) in paragraph (4) (as so redesignated),
12 by striking “or property” and inserting “, prop-
13 erty, services, or payment to the staff of an in-
14 stitution”;

15 (D) by striking paragraph (5) (as so redesi-
16 gnated) and inserting the following:

17 “(5) the term ‘institution’ means an institution
18 of higher education—

19 “(A) to which Federal financial assistance
20 is extended (directly or indirectly through an-
21 other entity or person); or

22 “(B) that receives support from the exten-
23 sion of Federal financial assistance to any of
24 the institution’s subunits”; and

- 1 (E) in paragraph (6)(B) (as so redesign-
- 2 nated), by inserting “institutes, instructional
- 3 programs,” before “research or lecture”.

