

117TH CONGRESS
1ST SESSION

S. 1138

To revoke or deny visas to Chinese officials involved in the formulation or execution of a policy that prevents innocent United States citizens from leaving China.

IN THE SENATE OF THE UNITED STATES

APRIL 15, 2021

Mr. MARKEY (for himself, Ms. WARREN, Mr. RUBIO, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To revoke or deny visas to Chinese officials involved in the formulation or execution of a policy that prevents innocent United States citizens from leaving China.

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 “Ending China’s Exit
5 Ban for American Citizens Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) According to the Integrated Country Strat-
2 egy for the United States Mission to China, released
3 on August 29, 2018—

4 (A) “Chinese law enforcement and security
5 services employ extra-judicial means against
6 U.S. citizens without regard to international
7 norms”; and

8 (B) exit bans “are sometimes used to pre-
9 vent U.S. citizens who are not themselves sus-
10 pected of a crime from leaving China as a
11 means to pressure their relatives or associates
12 who are wanted by Chinese law enforcement in
13 the United States”.

14 (2) The Government of China has imposed exit
15 bans on United States citizens in the context of
16 criminal charges and private commercial disputes.

17 (3) Imposing exit bans on foreign nationals is
18 authorized by Article 28 of the Exit and Entry Ad-
19 ministration Law of the People’s Republic of China,
20 which—

21 (A) lists the circumstances under which
22 “foreigners shall not be allowed to exit China”,
23 including “other circumstances in which exit
24 shall not be allowed in accordance with laws or
25 administrative regulations”; and

1 (B) assigns responsibility for administering
2 exit/entry matters to the Ministry of Public Se-
3 curity and the Ministry of Foreign Affairs, with
4 public security organs responsible for admin-
5 istering “the stay and residence of foreigners.

6 (4) Such exit bans against United States citi-
7 zens may violate Article 35 of the Consular Conven-
8 tion Between the United States of America and the
9 People’s Republic of China, done at Washington
10 September 17, 1980, which states that—

11 (A) if a United States national is “placed
12 under any form of detention”, the Government
13 of China shall notify the United States con-
14 sulate within 4 days; and

15 (B) a United States consular officer is en-
16 titled to “be informed of the reasons for which
17 said national has been arrested or detained in
18 any manner.”

19 (5) Such exit bans may also violate Article 36
20 of the Vienna Convention on Consular Relations,
21 done at Vienna April 24, 1963, and in effect in
22 China as of August 1, 1979, which requires the Gov-
23 ernment of China to “without delay, inform the con-
24 sular post of the sending State if, within its consular

1 district, a national of that State . . . is detained in
2 any other manner.”.

3 (6) Many United States citizens are not aware
4 of a ban on their exit until they attempt to leave
5 China and once they are made aware of the ban,
6 Chinese authorities provide very little information to
7 the United States citizen, or to United States con-
8 sular officials regarding—

9 (A) the nature of the ban;

10 (B) which Chinese government entity is re-
11 sponsible for the ban; and

12 (C) what procedures must be followed to
13 resolve the dispute related to the ban.

14 (7) The apparent extra-judicial application of
15 exit bans to United States citizens presents a serious
16 human rights concern that violates due process
17 rights to which United States citizens are entitled
18 under international law.

19 **SEC. 3. INADMISSIBILITY OF CERTAIN ALIENS.**

20 (a) INELIGIBILITY FOR VISAS.—If the Secretary of
21 State determines that an official of the Government of
22 China has been substantially involved in the formulation
23 or execution of a policy that prohibits certain United
24 States citizens from leaving China in an attempt to con-
25 vince a relative of such citizens to submit himself or her-

1 self into the custody of the Government of China for pros-
2 ecution, to compel United States citizens to participate in
3 Chinese government investigations, or to aid the Govern-
4 ment of China in resolving civil disputes in favor of Chi-
5 nese parties—

6 (1) such official may not be issued a visa to
7 enter the United States or be admitted to the United
8 States; and

9 (2) any visa or other documentation to enter or
10 to be present in the United States that was pre-
11 viously issued to such official shall be revoked by the
12 Secretary of State, in accordance with section 221(i)
13 of the Immigration and Nationality Act (8 U.S.C.
14 1201(i)).

15 (b) TERMINATION OF VISA INELIGIBILITY.—

16 (1) IN GENERAL.—The Secretary of State may
17 terminate visa ineligibility under subsection (a) with
18 respect to an individual if the Secretary of State
19 makes a determination that—

20 (A) credible information exists that the in-
21 dividual did not engage in the activity for which
22 visa ineligibility was imposed;

23 (B) the individual has been prosecuted ap-
24 propriately for the activity for which visa ineli-
25 gibility was imposed;

1 (C) the individual has—

2 (i) credibly demonstrated a significant
3 change in behavior;

4 (ii) been subject to an appropriate
5 consequence for the activity for which visa
6 ineligibility was imposed; and

7 (iii) credibly committed to not engage
8 in an activity described in that subsection
9 in the future; or

10 (D) the termination of visa ineligibility is
11 in the national security interests of the United
12 States.

13 (2) NOTIFICATION.—Not later than 15 days be-
14 fore the date on which visa ineligibility is terminated
15 under paragraph (1) with respect to an individual,
16 the Secretary of State shall submit a report to the
17 Committee on Foreign Relations of the Senate, the
18 Committee on the Judiciary of the Senate, the Com-
19 mittee on Foreign Affairs of the House of Rep-
20 resentatives, and the Committee on the Judiciary of
21 the House of Representatives that describes the jus-
22 tification for the termination.

23 (c) ANNUAL REPORT TO CONGRESS.—

24 (1) IN GENERAL.—Not later than 1 year after
25 the date of the enactment of this Act, and annually

1 thereafter for the following 5 years, the Secretary of
2 State shall submit a report to the congressional com-
3 mittees listed in subsection (b)(2) that identifies—

4 (A) to the extent practicable, all of the
5 Chinese officials who were substantially involved
6 in the formulation or execution of a policy that
7 prohibits certain United States citizens from
8 leaving China in an attempt—

9 (i) to convince a relative of such citi-
10 zens to submit himself or herself into the
11 custody of the Government of China for
12 prosecution;

13 (ii) to compel United States citizens
14 to participate in Chinese government inves-
15 tigations; or

16 (iii) to aid the Government of China
17 in resolving civil disputes in favor of Chi-
18 nese parties;

19 (B) the individuals who have had visas de-
20 nied or revoked pursuant to subsection (a) dur-
21 ing the preceding year, including the dates on
22 which such denials or revocations were imposed
23 or terminated, as applicable;

24 (C) the number of United States citizens
25 who the Government of China has prohibited

1 from leaving China for any of the reasons de-
2 scribed in subsection (a); and

3 (D) for each of the United States citizens
4 referred to in subparagraph (C), the period dur-
5 ing which they have been forced to remain in
6 China.

7 (2) FORM.—The report required under para-
8 graph (1) shall be submitted in unclassified form,
9 but may include a classified annex.

10 (3) EXCLUSION OF PERSONALLY IDENTIFIABLE
11 INFORMATION.—The Secretary of State may not in-
12 clude any personally identifying information of any
13 United States citizen in any of the reports submitted
14 to Congress under paragraph (1).

15 (4) PRIVACY ACT.—Any information obtained
16 by the Secretary of State to complete the report
17 under this subsection shall be subject to section
18 552a of title 5, United States Code (commonly
19 known as the “Privacy Act”).

20 (d) WAIVER FOR NATIONAL INTEREST.—

21 (1) IN GENERAL.—The Secretary of State may
22 waive the application of subsection (a) in the case of
23 an alien if the Secretary determines that such waiv-
24 er—

1 (A) is necessary to permit the United
2 States to comply with the Agreement Regarding
3 the Headquarters of the United Nations, signed
4 at Lake Success June 26, 1947, and entered
5 into force November 21, 1947 (TIAS 1676), or
6 any other applicable international obligation of
7 the United States; or

8 (B) is in the national interest of the
9 United States.

10 (2) NOTIFICATION.—Upon granting a waiver
11 under paragraph (1), the Secretary of State shall
12 submit a report to the congressional committees list-
13 ed in subsection (b)(2) that—

14 (A) details the evidence and justification
15 for the necessity of such waiver; and

16 (B) if such waiver is granted pursuant to
17 paragraph (1)(B), explains how such waiver re-
18 lates to the national interest of the United
19 States.

○