ONE CITY, TWO LEGAL SYSTEMS: POLITICAL PRISONERS AND THE EROSION OF THE RULE OF LAW IN HONG KONG

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ONE CITY, TWO LEGAL SYSTEMS: POLITICAL PRISONERS AND THE EROSION OF THE RULE OF LAW IN HONG KONG

THURSDAY, MAY 11, 2023

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The hearing was held from 10:03 a.m. to 12:09 p.m., in Room 2020, Rayburn House Office Building, Washington, DC, Representative Chris Smith, Chair, Congressional-Executive Commission on China, presiding.

Also present: Senator Jeff Merkley, Co-chair, and Representatives Wexton, Nunn, Zinke, Steel, and Salinas.

STATEMENT OF HON. CHRIS SMITH, A REPRESENTATIVE FROM NEW JERSEY; CHAIR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Chair SMITH. This hearing of the Congressional-Executive Commission on China will come to order. The title is "One City, Two Legal Systems: Political Prisoners and the Erosion of the Rule of Law in Hong Kong." I want to thank all of our distinguished witnesses for being here and for their leadership every single day, 24/7, 365 days a year. It inspires all of us to do more. So thank you, again, for that leadership.

Let me just give a few opening comments, then yield to my distinguished colleagues for any comments that they would like to make as well. This is an important hearing focusing on political prisoners in Hong Kong and how the rule of law has eroded substantially in just the past several years, accelerating since the introduction of the National Security Law in June of 2020—a law that was introduced not by Hong Kong's legislature but imposed by the National People's Congress Standing Committee in Beijing.

That fact tells you how false the one country, two systems mantra has turned out to be. For we no longer have rule of law in Hong Kong, but rule by law—and I would say by unjust law—by laws that are imposed upon the people of Hong Kong by their communist overlords in Beijing. Of course, as our witness Kevin Yam points out in his written testimony, we still see lawyers and judges "decked out in their British-style wigs and gowns." But the common law inheritance—which is referenced in article 8 of the governing Basic Law of Hong Kong—has been destroyed, notwithstanding the residual pomp and ceremony.

It is all just Gilbert-and-Sullivanesque playacting, with the Lord High Executioner being replaced by a modern major general. For now the outcome of trials for violation of the National Security Law is a foregone conclusion, with Secretary for Security Chris Tang boasting just last month of a 100 percent conviction rate in cases concerning national security. And what are these violations of the National Security Law? Consider the case of Hong Kong university student Lui Sai-yu who pleaded guilty to a charge of incitement to secession for running an instant messaging channel that advocated Hong Kong independence.

He was sentenced by District Court Judge Amanda Woodcock to five and a half years in prison for a violation of the NSL—saying that this was of a "serious nature." To add insult to injury, Lui pled guilty to benefit from the common law practice of reducing a sentence by one-third if the defendant pleads guilty. While the judge initially sought to comply with that precedent, the prosecution objected, and the judge only shaved six months off the sentence. In other words, a five-year prison sentence for a university student engaging in free speech.

Amanda Woodcock was also the trial judge who sentenced Jimmy Lai—whose son Sebastien we will hear from today, and we're honored to have you here—for inciting others, she said, to knowingly participate in a banned Tiananmen Square anniversary vigil. This, of course, is separate from the five-year, nine-month lawfare sentence he was already serving, which Sebastien can tell us more about in a few moments, or his upcoming trial for sedition under the National Security Law.

There should be consequences for judges like Amanda Woodcock, who are complicit in the dismantling of the rule of law in Hong Kong and who bow to the dictates of the Chinese Communist Party. In tandem with this hearing, our staff has produced an excellent report on the role played by Hong Kong judges in rights violations under the National Security Law, which I encourage everyone to read. Just as we have sanctioned so-called judges in Venezuela and Iran for their undermining of constitutional government and participating in show trials, so too should someone like Amanda Woodcock, who is a judge in name only, be sanctioned for undermining the rule of law and, indeed, the judiciary.

Another judge who should be sanctioned, in my opinion, is District Court Judge Kwok Wai-kin. Judge Kwok was the judge who sentenced five speech therapists to 19 months in prison for publishing three allegorical children's books about sheep being harmed by wolves. And that was with "seditious intent." This is shocking. There is actually one item in the judge's sentence that I actually agree with, however. When the defendants sought to argue that one country, two systems meant that a distinction exists between the People's Republic of China and Hong Kong, Judge Kwok berated them, saying it's morally wrong to say that Hong Kong and the PRC are separate. In this, Judge Kwok was correct. The distinction between the PRC and Hong Kong has been obliterated.

This is the reason why I've introduced in the House—along with Ranking Member McGovern, and Senator Rubio and Senator Merkley, our co-chair of this commission and the two ranking members as well—the Hong Kong Economic and Trade Office Certifi-

cation Act, or H.R. 1103. I see no reason why the Chinese Communist Party and Communist China should have three additional consular outposts in the United States, as Hong Kong no longer is distinct from the mainland. Indeed, as our witness Anna Kwok will testify, these Economic and Trade Offices are collecting information about members of her group, the Hong Kong Democracy Council, and other democracy activists. Thus, I call on my colleagues to join as cosponsors of H.R. 1103, and I ask that a letter from the various Hong Kong NGOs calling for markup and passage of H.R. 1103 be entered into the record at this point. Without objection, so ordered.

Finally, I would note that American businesses have now been put on notice that the rule of law in Hong Kong is dead. Just as mainland China has political prisoners such as Guo Feixiong—who incidentally is facing a sham trial for subversion of state power—Ding Jiaxi and Gao Zhisheng—and I've chaired three hearings, one with Gao's daughter, Grace, and two with this wife. The way that man has been maltreated as a defense attorney is an abomination to all things good and honorable, and brings dishonor to the Chinese Communist Party, as so many of their actions do. But that one is, in particular, especially egregious. And of course, we are speaking out as strongly and as consistently, in a totally bipartisan way, for heroic political prisoners like Jimmy Lai, Gwyneth Ho, and Chow Hang-tung.

And if you think businesses in China are not the next target, just look across the border and see what happened two weeks ago to Bain & Company, whose offices were raided by Chinese authorities in Shanghai. We too are going to look closely at the actions of American companies like PayPal and Stripe which, as one of our witnesses will testify, are terminating services to pro-democracy groups in Hong Kong. We want to ask them why. And we are also going to look at the role played by TikTok in interfering with the advertising and playing of the documentary "The Hong Konger: Jimmy Lai's Extraordinary Struggle for Freedom."

This episode was detailed in a written statement submitted by Father Robert Sirico of the Acton Institute, a man I've known for about 30 years who is also a great, great leader for human rights. And I ask that it be entered into the record, along with a submission by Sunny Cheung, one of the members of the Committee for Freedom in Hong Kong Foundation, and also one by the lawyers for Jimmy Lai.

So again, I want to thank my colleagues for being here. And I want to especially thank our witnesses. And I'd like to yield to Ms. Salinas for any opening comments.

OPENING STATEMENT OF HON. ANDREA SALINAS, A U.S. REPRESENTATIVE FROM OREGON

Representative SALINAS. Thank you, Chairman Smith, and Co-chair Merkley. I'm honored to be appointed to the Congressional-Executive Commission on China for the 118th Congress. And I really do look forward to this opportunity to work with my colleagues on both sides of the aisle on comprehensive whole-of-government approaches to support global cooperation while defending fundamental human rights and democracy. I am deeply concerned by the ongoing attacks on free speech and democracy in Hong

Kong. The government's practice of bringing false and politically motivated charges against Hong Kong residents is an appalling subversion of international legal standards. And I thank the witnesses here today for coming before the Commission to share their experiences to help us consider effective measures to counter threats to the rule of law in Hong Kong.

Sadly, I will not be able to stay for the entire hearing. I have to leave for a markup in another committee. But I have already read your statements; I will go back and actually watch the hearing testimony. So I would appreciate if one or more of the witnesses might reflect on and consider how recent U.S. competitiveness policies might relate to human rights in Hong Kong. As you all likely know, Congress recently passed substantial investments in domestic technology and green energy manufacturing, many of which are aimed at actually bringing industrial capacity back to the U.S. and reducing economic dependence, and that might factor into our efforts to continue to champion political freedom and the rule of law in Hong Kong.

Once again, I am so grateful to be serving on the Commission, and I look forward to working closely with my colleagues to defend human rights and democracy. I thank you.

Chair SMITH. Commissioner Salinas, we're just so happy to have you on the Commission, and I look forward to working with you. Thank you.

I'd now like to yield to a distinguished man who served as Cabinet member for the Department of the Interior, Ryan Zinke. So glad to have you here.

STATEMENT OF HON. RYAN K. ZINKE,
A U.S. REPRESENTATIVE FROM MONTANA

Representative ZINKE. Thank you, Mr. Chairman. You know, I think we recognize China for what it is. You know, we can take any avenue. If we want to take on the Pacific, as a former Secretary, just on the egregious pollution aspect of it, they're the world's largest emitter of pollution. Ninety percent of the world's plastics come from four rivers in China. They're the world's largest violator of fishing rights. And any country that promotes human trafficking and organ harvesting is evil. I don't know what other term you can say. But I think these committee hearings are important, a lot of it to expose. And you have personal stories. And I'm very interested in hearing your remarks on a personal level, because this is what the House does, along with the Senate. It has hearings for it and then thinks about what action we need to take as a Congress. And we can take action. The House has the power of the purse, and to a degree the power of the purse dictates action in our government. So together, this is a bipartisan issue. I'm proud to be a part of this Commission because I think it's an important topic. China is fast becoming our adversary. I don't think we're quite there yet, but the road and consequences of global adversaries of this scale is far reaching.

And the core of it is freedom. We should never forget why we're here. It is about freedom. It is about democracy. And I'll go back to one of our greatest presidents, I would say, John F. Kennedy, and his remarkable statements that we will pay any price, we will

bear any cost, to ensure the survival and success of liberty and our freedom. And that extends to our allies and friends. So with that, Mr. Chairman, I'm interested to hear the witnesses' statements.

Chair SMITH. Thank you so much, Commissioner Zinke.

I just would note that Daniel Suidani from the Solomon Islands has just come in, and welcome. He briefed the CECC a couple weeks ago on the long arm of China's transnational repression in his Pacific island nation. Disturbingly, his GoFundMe account to pay for his trip to warn Congress and the American people was blocked until word got out that he would be appearing before the CECC. Nonetheless, we are going to look at why GoFundMe would freeze his account, hopefully without having to use our subpoena authority, which we will use if they don't cooperate. So welcome. Thank you for being here.

I'd now like to introduce our very distinguished witnesses. Let me note parenthetically that Co-chair Merkley is on his way. Over on the Senate side they had some pressing business that he had to attend to, but he will be here. He's ever faithful and a great leader. He will be here momentarily.

I would like to welcome our panelists for today's very important hearing. Let me begin by introducing Sebastien Lai. He is—living martyr Jimmy Lai—this is his son. Someone who is more than just a very, very great son to his dad, but a man who has been exceptionally articulate in advocating on behalf not only of his father, but on behalf of all the people of Hong Kong. He is truly remarkable. He is leading the international Free Jimmy Lai Campaign to secure his father's release. Like his media entrepreneur father who founded Next Digital, and Apple Daily, the popular independent Chinese language newspaper in Hong Kong which was forcibly shut down by the Hong Kong authorities in 2021, Sebastien has become an advocate for civil liberty in general and freedom of the press in particular.

In December 2021, Sebastien accepted the 2021 WAN–IFRA Golden Pen of Freedom award on behalf of his father and the newsroom staff of the Apple Daily Hong Kong. On receiving the award he said, "less and less people are shining a light in these dark corners," given Apple Daily's shutdown and the ongoing crackdown on journalism in the region. Sebastien is here with us today to shine that light brightly. We welcome him. Your father is in our prayers. He could have left Hong Kong at any time, but so loyal was he to the people of Hong Kong and to the cause of freedom, and press freedom in particular, that he just stayed, knowing that there was a very potentially ominous future facing him.

Next is Brian Kern, welcome . . . who is an American citizen and a Hong Kong permanent resident. He has been involved in the Hong Kong democracy movement for 15 years and has written three books about its history over the past decade. One was about the Umbrella Movement, one about the period from 2014 to 2018, and the most recent about the 2019 to 2020 protests. He and his family left Hong Kong in 2020 and moved back to the United States. He now works with various Hong Kong pro-democracy groups in the diaspora. He has monitored politically motivated arrests, prosecutions, and imprisonments in Hong Kong since the summer of 2019. He was the lead researcher on Hong Kong Democ-

racy Council's June 2022 report on political prisoners in Hong Kong, which has been a very, very useful tool for us on this Commission. So thank you for providing us with that kind of very actionable and credible information. Really appreciate it, Brian.

And then we'll hear from Kevin Yam, who's a senior fellow at the Georgetown University Center for Asian Law. He will be joining us remotely from Australia. Kevin was born in Hong Kong, raised in Australia, and spent nearly two decades working in Hong Kong. Before his return to Australia in 2022, he was a lawyer with international firms and worked on white-collar crime, financial regulatory investigations, and commercial litigation. Beyond his day job, Kevin was a rule-of-law and democracy activist serving variously as a member of the Hong Kong Law Society's Constitutional Affairs and Human Rights Committee, and a founding co-convener of the now-defunct Hong Kong Progressive Lawyers Group.

Since returning to Australia, he has resumed his Hong Kong advocacy efforts, meeting with various members of the Australian parliament and the current Australian foreign minister. He is a regular interviewee with Australian international media outlets in Hong Kong on China issues in Hong Kong, including commenting on the ongoing political prosecutions in Hong Kong. Over the years, Kevin has published commentaries with outlets such as The Economist, ABC Australia, Apple Daily—the latter obviously being the paper run by Jimmy Lai.

Finally, we'll hear from Anna Kwok, who is executive director of the Hong Kong Democracy Council, a leading nonpartisan nonprofit organization for Hong Kong's pro-democracy movement and Hong Kongers in the United States. Under Anna's leadership, HKDC advances Hong Kongers' fight for basic human rights through policy advocacy, diaspora empowerment, and research and education. And again, we rely on your input and information. It is just extraordinary. HKDC actively monitors and documents the plight of political prisoners, as well as the Hong Kong government's attempts to influence American businesses and foreign policy. The organization is sanctioned and censored by the PRC. And we—welcome to the club—thank you that you are doing such a tremendous job.

During Hong Kong's 2019 protests, Anna was an activist behind major international campaigns, from publicly pleading with global leaders to stand with Hong Kong at the G–20 summit to broadcasting real-time police locations for on-the-ground protesters. Anna helped actualize a decentralized grassroots movement that continues to this day. In 2022, two years after the enactment of the National Security Law, Anna decided to publicize her identity and personal story in defiance of the widespread fear gripping Hong Kongers abroad. Again, may your courage inspire others, Anna, and thank you for being here.

I'd now like to recognize, for such time as he may consume, Sebastien Lai.

STATEMENT OF SEBASTIEN LAI, SON OF POLITICAL PRISONER JIMMY LAI

Mr. LAI. My name is Sebastien Lai, and my father is Jimmy Lai, the media and publisher-writer and pro-democracy campaigner. My father faces life in prison for publishing the truth and he is a prisoner of conscience. Thank you very much for the strong statements and inspirational work that you and all of you sirs and madams have been doing and that this Commission has been doing. I also want to thank the Congressional-Executive Commission on China for nominating my father and five others for the Nobel Peace Prize. This nomination has touched me deeply and my family is very grateful for it.

A brief word on my father's background. He was born in 1948—his family lost everything when the Communists took power. As a child of 12, he fled China for a better life in Hong Kong. He started out as a manual laborer, but went on to own his own clothing firm, Giordano, and saw global success as a result. My father became one of Hong Kong's most successful entrepreneurs. My father is a proud British citizen. He is also a Christian, a devout Catholic, and his faith gives him strength. He deeply believes in freedom, civil liberties, and human rights. It was these values that inspired him to start the newspaper Apple Daily because, he said, without free and independent information there is no freedom.

Apple Daily quickly grew to be the largest and most popular Chinese language newspaper in Hong Kong. It was known for its independent journalism and its anti-corruption and pro-democracy stance. At its peak, it had 8 million unique pageviews a day and 4,000 employees. As soon as my father began in media, he stood up to China. And China's leaders targeted him for it.

First, he was effectively forced to sell Giordano after the CCP threatened to close down all the stores in mainland China. Then his business and our family home were firebombed. He was spied on, and he and our family were followed. His advertisers were targeted and he was threatened financially. But their tactics did not work, and Apple Daily kept publishing. And then it got worse. As the pro-democracy protests swept Hong Kong, the authorities crushed my father's business and put him in prison. Soon after, Apple Daily was raided by 500 police officers and has since been forced to close. His assets were frozen. His employees lost their jobs. And his business was destroyed.

My father is in prison for telling the truth. He has faced what can only be described as lawfare. He was first sentenced to prison for lighting a candle at a vigil to commemorate the Tiananmen Square massacre. Then he faced spurious fraud charges over alleged breach of office. He was sentenced to five years and nine months in prison, when any jail time is unheard of in a commercial lease matter. This should send a chill down the spine of any business owner in Hong Kong. Now he faces life in prison for alleged crimes of sedition and crimes under the controversial National Security Law. These ludicrous charges are based on his writing and other material published in Apple Daily.

For this, he faces life in prison. His trial is in September, but the outcome is a foregone conclusion. The security minister boasts that they have a 100 percent conviction rate in these cases. We expect

he will face a lengthy sentence and possibly life imprisonment. This could mean I never see my father again. Because I speak out for my father, I can't return to Hong Kong to visit him in prison. He is 75 years old, so a long sentence will see him die behind bars. The authorities are cracking down hard on my father to send a message to him and others—dissent will not be tolerated. There is no freedom of the press. There's no rule of law.

The case against my father symbolizes just how broken the legal system is in Hong Kong. And it should be a warning to all businesspeople that it is not business as usual in Hong Kong. We have started the Free Jimmy Lai Campaign to call for his immediate release and freedom. We need your help, and we need the help of the U.K. and U.S. governments. I thank the Commission for condemning the unlawful actions against my father. I also thank the United States Government for the strong stance it has taken against my father's ongoing persecution.

I am, however, disappointed that our own country, the United Kingdom, has not taken a stronger stance. To this day, the U.K. government has not condemned what happened to my father, or even called for his release. I am alarmed by this. My father is a British citizen. I am a British citizen. Why won't the British government call for his release? I implore the U.S. and U.K. governments to support my campaign to free my father.

In conclusion, I am proud that my father stood up to China and stood up for democracy in Hong Kong. I ask that the United States Government continue to do all it can to secure my father's freedom and to hold the CCP and the Hong Kong authorities accountable for his ongoing persecution. Thank you very much.

Chair SMITH. Mr. Lai, thank you so very much for your very eloquent and strong statement. I'd now like to yield to Mr. Kern for such time as he may consume.

STATEMENT OF BRIAN KERN,
WRITER, RESEARCHER, AND ACTIVIST

Mr. KERN. Mr. Chairman, Commissioners, I appear before you today as both a citizen of the United States and a permanent resident of Hong Kong. I express my deep appreciation for the CECC's consistent work on Hong Kong over the years. So many Members of Congress on both sides of the aisle, as well as the administration, are important allies in the Hong Kong people's struggle for freedom and democracy, and that is most heartening.

I am here to speak with you about the crisis of mass political imprisonment in Hong Kong. It is an essential part of the overall ongoing crackdown, the systematic suppression of human rights, and the Chinese Communist Party's transformation of Hong Kong into an authoritarian society. Over the years, I worked for many prodemocracy civil society groups and political parties in Hong Kong. All of them have been shut down and their leaders are now in prison. Lee Cheuk-yan, Chow Hang-tung, Albert Ho, Leung Kwok-hung, Benny Tai, Joshua Wong, Eddie Chu, Jeremy Tam, Kwok Ka-ki, and Alvin Yeung. Three of them, as the Chair noted, Lee Cheuk-yan, Chow Hang-tung, and Joshua Wong, have deservedly been nominated for this year's Nobel Peace Prize, along with Jimmy Lai, Gwyneth Ho, and Cardinal Zen.

In all, more than 80 groups associated with the pro-democracy movement have been forced to close, 188 pro-democracy leaders have been arrested, 109 convicted, and 46 imprisoned. Dozens are in long-term pretrial detention. You have to look hard around the world to find countries where the political opposition has been so systematically and drastically targeted for elimination as Hong Kong.

But it's not just leaders of the pro-democracy movement who are in prison. In fact, they make up a minority. Most political prisoners are ordinary Hong Kongers—university and high school students, medical workers, emergency first-aiders, lawyers, teachers, businesspeople, journalists, people from across the pro-democracy spectrum, from the most moderate to the most radical. The oldest political prisoner is Jimmy Lai at 75 years old. The youngest is 13. He was just convicted last week.

Mass political imprisonment affects virtually every sector of Hong Kong society, every community, every neighborhood. Most everyone in Hong Kong knows someone imprisoned for political reasons. Just this year, my neighbor, a young devout Christian musician, was sentenced to more than four years in prison for taking part in a protest in 2019. I was at that protest. I was about 200 yards away from him when he got arrested. Millions of us stood up for freedom and democracy, but some are paying for that much more heavily than others.

In 2020, on the eve of the imposition of the draconian National Security Law, my own family decided to leave Hong Kong while we believed we still could. Refuge in this country has afforded me the opportunity to fight on for Hong Kong. Being free myself, I have a special responsibility to all those who are not free, and above all to political prisoners. I think I speak for most Hong Kongers when I say we have a strong awareness that it could just as easily be any one of us in prison. The people who are there are serving time on our behalf. We have great gratitude for and solidarity with them, and we will fight until every political prisoner is free, however long that may be.

I started monitoring political arrests a few weeks after the beginning of the protests in 2019, as it became clear that the regime would employ mass arrests as a tactic to crush the protests, and I've continued to do so ever since. From June 2019 until now, there have been 10,615 political arrests in Hong Kong. I was the lead researcher on Hong Kong Democracy Council's report on political prisoners, which came out in June 2022, just a little bit more than a year ago. It's based on a complete database which is continually updated.

One of our main motivations in publishing the report was to emphasize the very large number of political prisoners. The international media has done a pretty good job of covering the trials of high-profile figures such as Jimmy Lai, Joshua Wong, and some others, but there's been little reporting on this pattern of mass political imprisonment. The report's cut-off date was May 11, 2022, exactly one year ago today. At that time, there were 1,014 political prisoners in Hong Kong. Now, one year later, the number has risen to 1,459. That's 445 new political prisoners in one year—an increase close to 50 percent. Let me put that in global perspective.

The only countries incarcerating political prisoners at rates faster than Hong Kong's over the past three years are Burma and Belarus, hardly beacons of the rule of law.

This is what makes what's happening in Hong Kong all the more extraordinary. Unlike Belarus and Burma, up until 2019—despite its lack of democracy—Hong Kong had fairly robust rule of law. There are few better indicators of its deterioration of the rule of law and the erosion of the independence of the judiciary than the huge increase in the number of political prisoners. Political imprisonment per se isn't an entirely new phenomenon in Hong Kong, but mass political imprisonment is. At the start of the protests in June 2019, there were 26 political prisoners. We've gone from 26 then to 1,014 in May 2022, to 1,459 today.

Who are these political prisoners? There are basically three categories. One, protesters from the 2019–2020 protests. Two, those remanded and imprisoned on National Security Law charges. And three, those remanded and imprisoned on sedition charges. Of those three groups, by far the largest is protesters. About 1,300 people have been imprisoned on protest-related charges versus 116 on National Security Law and sedition charges. Young people have been particularly targeted. One hundred fifty-nine political prisoners are minors. That's about 10 percent of the overall total. Seventy percent of political prisoners are under the age of 30. I call the young people of Hong Kong today the prison generation. Oppression is one of their most defining experiences.

We expect the number of political prisoners to continue to rise for some time to come. There are around 500 whose trials have not concluded or even begun. On top of that, there are new arrests happening all the time. A conservative estimate is that the number of political prisoners will plateau at around 2,000 sometime next year. That's assuming there are no new waves of mass arrests.

What can the United States do? At this point I'm cognizant of the time. I have some remarks prepared in response to that question, but perhaps it's best for me to pause here and if you'd like to hear them I'd be happy to share them during the question-and-answer portion of the session. They can also be found in my written testimony. Thank you, Commissioners, for your support of the Hong Kong people's ongoing struggle for freedom and democracy.

Chair SMITH. Mr. Kern, thank you very much for not just your testimony but, above all, for the work you're doing. You know, I have many heroes in the human rights movement, and certainly Jimmy Lai is one of them and Joshua Wong and so many others. But in the Soviet Union it was Natan Sharansky. And he said, famously—and I actually went to the camp where he was in the 1980s, Perm Camp 35. And he said, if you don't chronicle, you can't fight it. And you're doing a great job for all of us in chronicling these abuses so we really know the parameters and how many. And, you know, the idea of a prison generation is just appalling. It brings dishonor, frankly, to Xi Jinping and his leaders.

I'd now like to introduce Kevin Yam, who's coming to us remotely from Australia.

STATEMENT OF KEVIN YAM, SENIOR FELLOW, CENTER FOR ASIAN LAW, GEORGETOWN UNIVERSITY

Mr. YAM. Thank you, Mr. Chairman. Thank you, all the Commissioners present today. This is a great opportunity for us to be able to talk about what is going on in Hong Kong. Now, the reality is this: There are other lawyers around that are probably much more qualified than I am to talk about what is going on in Hong Kong, and the situation with political prisoners, and so on. Unfortunately, a lot of them are currently in jail. And of those who are not in jail or exile, they're too afraid to speak. They have family in Hong Kong. They have other connections in Hong Kong. And in that sense, I'm a little bit different because I've got no close family in Hong Kong anymore. I even brought my mum's ashes back from Hong Kong when I left the city and went back to Australia. So from that angle, I guess I'm fairly qualified in that I have done some criminal law. I've done a lot of activism over the years. But at the same time, I'm the most available.

So look, I've prepared a fairly mild written submission for the Commission to consider, but I think the most important thing is this. If you go around and ask the various judges in Hong Kong, they'll think that they're behaving in a way that is completely independent. They think that no one's tapping them on the shoulder or anything like that. If you go and watch trials in Hong Kong, you'll see all of them still in their wigs and gowns. You'll see all the legal jargon being used, lots of drawn-out trials. It's easy to hoodwink people who want to believe that Hong Kong is well when it comes to the rule of law, but actually everything's really rotten to the core and actually these judges do not live in a vacuum.

They can see that their chief justice is no longer willing to publicly defend the separation of powers, that the chief justice has reinstated Judge Kwok, whom Mr. Chairman talked about earlier, who's actually a disgraced judge. But he's reinstated him. And they've seen the chief justice turn up at party political events like Communist Party 100th anniversary commemorations. And worse still, what they've really seen is that whenever they show a little bit of backbone, they'll be rounded on by pro-Beijing forces and even by pro-Beijing officials themselves.

So we've heard Sebastien Lai's testimony and what happened with Jimmy Lai. The thing is, Jimmy Lai tried to get a foreign lawyer into Hong Kong to represent him, because there are very few local lawyers available, willing, and able to do that. In fact, the Hong Kong courts tried to show a little bit of backbone on that case by letting that foreign lawyer in. But then what happened? The chief executive immediately went to Beijing—immediately went to Beijing and sought a reinterpretation. And at the same time, all these Beijing officials rounded on the judges for adopting so-called international values, ones that all of us would take for granted.

And then when the interpretation came, and the judges were being overridden, the judiciary actually had to humiliate itself once more by issuing a further statement saying, oh, we really respect what the National People's Congress has done. Now, that's like essentially being punched in the gut and then you still have to smile along and thank the thugs who are punching you. So the judges are not living in a vacuum. They know who's buttering their bread.

They know that by obeying they're going to have better survival and promotion prospects. So even when they convince themselves that they're operating completely independently, in practice the results can pretty much only go one way. And that is against all the political defendants.

And in a way, that actually makes things worse than mainland China because at least in mainland China there's no pretense. You get these brutally short trials, and then no justice at all, and everyone can see that or actually be hidden from it. But in Hong Kong, they go through this whole drawn-out pretense, long trials that go on half a year, a year, and there's just even more pain for the political prisoners concerned.

Now, I'd just like to go very quickly to the question of prosecutors. Look, sometimes there are arguments that when prosecutors in political cases are doing these things, they are just doing their jobs, that they are just feeding family, getting paid, going through the motions. Unfortunately, that's not what they're doing. What they're really doing—they're not prosecuting. They're persecuting. They've breached all the international and local standards of prosecutorial fairness. They would indiscriminately go against the bail applications of any political defendants. They would go after juveniles. You know, they even, like, with pro-Beijing figures, talk about possibly bringing Jimmy Lai over to China for trial.

Now, what I would say is this. I mean, when it comes to things like, what should we do with these people, it's not easy. But I would invite the Commission to ask this question: Do you think their conduct makes you puke? And I use this word not lightly, because it actually came from Oliver Wendell Holmes, who said that you should uphold laws unless those laws make you puke. Now, I would say that people of conscience would find that those operating as prosecutors, as well as some of the judges, are behaving in biased and unfair ways that should make everyone puke.

And with that, I would happily take questions on recommendations and other issues about the rule of law, especially in the business sector. Thank you.

Chair SMITH. Thank you so very much, Mr. Yam. I deeply appreciate your testimony and for coming to us.

Before going to Anna, I'd like to recognize and welcome—because I know he is very busy over at the United States Senate—our co-chair, Senator Merkley.

STATEMENT OF HON. JEFF MERKLEY, A U.S. SENATOR FROM OREGON; CO-CHAIR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Co-chair MERKLEY. Well, thank you very much, Mr. Chairman. And do we have time for me to give opening remarks? I'll do so. Thank you. I just came from testifying on a bill on the Senate side. So I'm sorry I wasn't able to join you at the start.

In just a few years, Hong Kong has gone from a relatively free and open city to a shadow of its former self. This transformation has not been an accident but rather the result of the ruthless assault on Hong Kong's spirit by the Chinese Communist Party and its shameless enablers in the Hong Kong government. At every step, this Commission has documented that assault, shining a light

on the draconian National Security Law, chronicling the crushing of civil society, and now today releasing a report detailing the erosion of Hong Kong's rule of law.

Nowhere is the crisis in Hong Kong's rule of law more vivid and heartbreaking than in the explosion in the number of political prisoners. The Commission's Political Prisoner Database, which has long focused on the many thousands of cases in mainland China, has expanded in recent years to now also include cases in Hong Kong. We've had no choice but to do so. We've had a responsibility to do so. As one of our witnesses today informs us, in the last four years there have been 10,615 political arrests in Hong Kong. What had been a relatively free and open city locked up thousands of political prisoners with dizzying speed. That includes icons of free speech like Jimmy Lai and Joshua Wong.

But the jailers didn't stop after they made examples of prominent advocates for freedom and democracy. As we'll hear today, this is a story of mass political imprisonment. Hong Kong's rulers want to send that message that nobody who speaks truth to power—protesters, politicians, journalists, or anybody else—is safe. This is devastating for all of us who love Hong Kong. I will never forget Thanksgiving Day 2019. The day after the Hong Kong Human Rights and Democracy Act and the bill banning the export of crowd control equipment to the Hong Kong police were signed into law, 100,000 Hong Kongers held a rally to thank the United States for standing with Hong Kong. They thanked us, these defenders of the soul of Hong Kong, the freedom of Hong Kong, the political rights of Hong Kong, who were putting so much on the line in the face of determined repression.

I had the privilege of addressing that crowd via video that day and remain proud of the work this Commission did—on a bipartisan, bicameral basis to get those bills signed into law. But what we did was from the safety of the United States, unlike the huge challenge on the ground in Hong Kong. If Hong Kong's freedom fighters can no longer feel safe in Hong Kong, the least we can do—the very least—is make them feel safe here in the United States. It's disgraceful that we have not done more to open up humanitarian pathways for Hong Kongers to the United States of America.

Whether it's Priority 2 refugee protections in the Hong Kong Safe Harbor Act Senator Rubio introduced last Congress with my support, or other pathways, it's long past time to act. We've shown there's bipartisan support for this cause, bicameral support. We can't let the politics or the objections of a few stop us from doing what's right. Thank you, Mr. Chairman.

Chair SMITH. Thank you very much, Co-chair Merkley. Again, thank you for your leadership on these initiatives. I'd like to now yield to Anna Kwok for such time as she may consume.

STATEMENT OF ANNA KWOK, EXECUTIVE DIRECTOR, HONG KONG DEMOCRACY COUNCIL

Ms. KWOK. Chairman Smith, Co-chairman Merkley, and members of the Commission, thank you for inviting me to today's hearing to testify. I was born in Hong Kong in 1997, the year when its sovereignty was handed over from the United Kingdom to China under the promise of basic liberties and a high level of autonomy. I am now 26 and currently in exile. In less than a quarter century, Hong Kong descended from a beacon of hope for freedom to the product of yet another failed international treaty negotiated with the Chinese Communist Party. Through the years, Hong Kongers did absolutely everything we could—at the ballot, on the streets, in the courts—to defy the odds stacked against us.

By June 2020, decades of civil organizing and months of a decentralized protest movement ended with Beijing's decisive gavel, the imposition of the National Security Law. Soon after, the city turned into a surveillance state, just like China. My friends who are supposedly anonymous ended up in prison one by one. Since 2020, both the Trump and Biden administrations have repeatedly acknowledged Hong Kong's loss of its promised autonomy. We must know that the international treaty failed at the cost of an ever-rising number of political prisoners, with 1,459 political prisoners and counting. How high does the number have to get for the world to actively hold the Chinese Communist Party accountable, and accountable for its breach of international treaties?

Sure, we are of course not ending the dictatorship right here, right now. But we can, and we should, at least slow down the oppression and reduce the number of people impacted. Demand the release of Hong Kong political prisoners. Offer humanitarian pathways to the politically persecuted. In the past two Congresses, various Hong Kong-related pathway bills have sprung up, but none has passed. Every delayed action is a missed opportunity to embrace allies for a global antiauthoritarian alliance. Therefore, I urge you to work across the aisle to reintroduce a new unified bill that offers humanitarian pathways for Hong Kongers as soon as possible.

A Priority 2 refugee destination, as Chairman Merkley mentioned, should be considered so Hong Kongers can seek long-term resettlement in the U.S. as a third country, where vetting procedures can be implemented for security concerns. To strengthen Hong Kongers' activism in the U.S., the current deferred enforced departure program should be upgraded to temporary protected status. Both of these will protect Hong Kong's strongest advocates and demonstrate America's commitment to democratic values around the world.

Besides, the Biden administration should further utilize the sanctioning tools in the Hong Kong Human Rights and Democracy Act of 2019 and the Hong Kong Autonomy Act of 2020, as endorsed and highlighted by the Commission this morning again and supported by other advocacy groups, including the Committee for Freedom in Hong Kong and Stand with Hong Kong. This November, U.S.-sanctioned Chief Executive of Hong Kong John Lee will appear in San Francisco for the APEC summit. The White House should carefully plan its approach in handling this issue.

Here in the U.S., we must also work together to counter foreign influence from the Hong Kong government on American soil and on American entities. The three Hong Kong Economic and Trade Offices in D.C. right here, in New York, and San Francisco have long enjoyed the same level of privilege as do the United Nations and the World Trade Organization. They exploit their presence and privilege to counterlobby against pro-democracy legislation right here on Capitol Hill and gather intelligence on team members of the Hong Kong Democracy Council. As someone on the receiving end of transnational repression, I applaud this Commission for taking the lead on the Hong Kong Economic and Trade Office Certification Act.

Last but not least, three other pieces of important legislation merit our attention. The Hong Kong Business Integrity and Transparency Act recently reintroduced by Congressman Curtis and Congressman Peters monitors possible human rights abuses facilitated by American corporates that operate in Hong Kong. The Safeguarding Internet Freedom in Hong Kong Act helps Hong Kongers remain connected to the world amid online censorship and control. And a permanent reauthorization of the PROTECT Hong Kong Act of 2019 ensures that American weapons don't end up in the hands of the Hong Kong police without it being tied up with the annual NDAA process.

Despite the grave dangers posed by the NSL, I decided to reveal my previously anonymous identity and commit to the cause of freedom in Hong Kong. There are many courageous Hong Kongers who refuse to back down despite the risks involved, including those who are in the room today. We persist because we believe human rights and democratic values will ultimately prevail. At a time of rising global authoritarianism, the international community must see the inherent value of a free and democratic Hong Kong. Thank you, Commissioners, for all your continued support. I hope Hong Kongers can count on your allyship as we move forward on our path to freedom and democracy. Thank you.

Chair SMITH. Thank you very much, Miss Kwok. Co-chairman Merkley has to get back to the Senate for some votes, so I'm very happy to yield to him for any questions he has.

Co-chair MERKLEY. Thank you very much, Mr. Chairman.

Mr. Kern, in your testimony you call for the United States to provide special immigration pathways for Hong Kongers. It's been a major priority for members of this Commission, but frankly, we haven't been making much progress in Congress as a whole. What message does it send if we welcome to our shores the heroes of Hong Kong who are fleeing persecution? And what message does it send if we fail to welcome them?

Mr. KERN. Well, you may know that up to now probably something like over 200,000 Hong Kongers have left Hong Kong and gone elsewhere since the imposition of the National Security Law in 2020. And you've probably heard that the United Kingdom government has started this BNO visa scheme, according to which Hong Kongers who have British National Overseas passports, or are eligible for them, can apply to go to the U.K. And for that reason, somewhere around 150,000 Hong Kongers have done that.

But there are still just so many situations we find where Hong Kongers, who are persecuted directly, are having difficulty leaving Hong Kong and finding somewhere where they can go where they are free. Initially, Taiwan appeared quite receptive to Hong Kongers at risk of persecution, and they seem to have become less so. Hong Kongers who are in Taiwan report frequently that they don't feel very comfortable there. Taiwan is worried about infiltration. It's worried about unnecessarily provoking the PRC, and so on. So that's not a very possible route these days.

Some Hong Kongers have gone to Canada. Some have gone to Australia. But I think it would send a huge message if the United States offered humanitarian pathways to persecuted Hong Kongers. Relatively few Hong Kongers have found themselves in the U.S. since 2020 because it's so hard to get in. My family and I were able to come because of my U.S. passport. And I'll just say that when I arrived in the U.S. in 2020—you know, there are a lot of clichés about freedom. There is a lot of misuse of the word "freedom." But I have never felt so free and safe in my life as when I arrived in the U.S. And that was thanks to my U.S. passport.

I would like that opportunity to be available to the relatively limited number of Hong Kongers who really need to get out and feel safe. You know, I mentioned that there are nearly 1,500—1,459 political prisoners in Hong Kong. Those people will be getting out of prison eventually. And they too will need somewhere to go. I think it's something very useful that the U.S. Government can do. I know lots of Congresspeople have been working to make that happen. And I really hope that this will be the congressional session where Congress and the administration can work together to make it a reality.

Co-chair MERKLEY. Thank you. I hope so, too. And I'm certainly working towards that goal.

Mr. Lai, you talked about the values that made Hong Kong a success—rule of law, freedom of speech, freedom to do business. As these values get picked apart, eroded one by one, what kind of Hong Kong does this leave us going forward? If businesses can no longer rely on robust rule of law and instead are vulnerable to government sanction, theft of their assets—like Apple Daily, like your father experienced—shouldn't businesses be rethinking doing business in Hong Kong?

Mr. LAI. Thank you for your question, sir. The cost of business in Hong Kong has gone up significantly as a result of these institutions being broken down. Yesterday I had a question from Bloomberg. And they asked me what I thought about doing business in Hong Kong. And I pointed out that if you google "Apple Daily rate," I think it gives a very good idea to anybody—a very good visual indication to anybody who's thinking of starting a business in Hong Kong of what can happen at the flip of a switch.

Co-chair MERKLEY. Thank you.

And, Ms. Kwok, I have two minutes left, so this will be my last question. I have many more that I'll submit for the record. But legislative options for opening up humanitarian pathways through Congress right now are not moving forward quickly. It's a big challenge. What can the Biden administration do under its own author-

ity to step up and do more to assist Hong Kongers fleeing persecution?

Ms. KWOK. Thank you for the question. In Congress, of course, as I said, designating it a Priority 2 refugee program is definitely a must. But at the same time, the Biden administration does have the executive authority to upgrade the current DED program, deferred enforced departure program, to temporary protected status. And what that would mean would be another layer of protection for Hong Kongers who are already present in the United States, because as it stands now, the DED does not really give legal status to any Hong Kongers who stay here. It's merely an executive means to not deport any Hong Kongers, even if they overstay their permitted period.

And what that means is sometimes when Hong Kongers are here, they cannot work. They struggle. They have to wait for months for the USCIS to give a Federal Register Notice for them to be able to work. But then there are a lot of Hong Kongers who are committed in the fight against the regime and want to continue their fight in international institutions, in think tanks, in INGOs, and the civil society. And if they can be granted TPS, temporary protected status, they would have a much smoother process, enabling them to work in the United States and also offering them more opportunities to speak up for themselves, as they will feel more protected.

And on the other hand, in fact, the Biden administration also has the executive power to upgrade the DED status to P-2. And Congress can also legislate for that to happen. And P-2 is very important and crucial for Hong Kongers who are still in Hong Kong, because sometimes when they do try to flee to other countries there might be police in the Hong Kong airport stopping them, especially if they see that the destination is the United States. And that's why the asylum route may not be the most useful for a lot of Hong Kongers who struggle to come to the U.S. directly. And that's why both the TPS and P-2 program would be great and significant for Hong Kongers, both those still inside Hong Kong and those in the United States.

Co-chair MERKLEY. Thank you. You mentioned that you decided to step out of anonymity in order to be a public voice. To each of you, thank you for your courage, for your fight for freedom, for the rights of Hong Kongers. We stand with you and applaud you. Thank you.

Chair SMITH. Thank you very much, Co-chair Merkley.

I have a number of questions. And I'll ask a few of them and then yield to my good friend and colleague, Miss Wexton, for any questions she has. You know, some bad news just came in. It's reported in The Guardian that Hong Kong has passed a law to limit the work of foreign lawyers amid the ongoing Jimmy Lai case. You probably are aware of that, but it's—you know, it's to try to block a Tim Owen and any others. It gives authority to the executive there to block that kind of participation, that kind of representation. So I think that again betrays a weakness on the part of their ability to sustain their views in open court, even though it's not an open court, but in a court. So I just would reveal that—some of you

probably already knew that. But it's very, very discouraging on the part of the Chinese.

Sebastien Lai, you had said how disappointed you are about the government of the U.K. not speaking out. You know, I have many good friends in the Commons as well as in the House of Lords. And I know David Alton frequently speaks out on behalf of Jimmy Lai. He's tenacious. Ben Rogers does an amazing job as well. While he's not in the legislature, he's certainly someone that we look to and rely on for good information and for leadership. I will tell you that we'll initiate a letter today and as Commissioners if they would like to cosign, to the prime minister and to high officials—but especially the prime minister—appealing for a full-fledged effort to help your dad, Jimmy Lai.

I also think they should join us, and join us robustly, in asking that he and the other five, six total, be named—including Joshua Wong—be named by the Nobel Peace Prize Committee to receive the Nobel Peace Prize. You know, back in 2010 I very aggressively promoted that Chen Guangcheng, Gao Zhisheng, and Liu Xiaobo all be named by the Nobel Prize Committee. And people around the world were pushing Liu Xiaobo as well, including Vaclav Havel. And that concerted effort resulted in a 2010 Nobel Peace Prize. And as we all remember, the Chinese government was so insecure they wouldn't even let him out of prison to attend, or his wife to attend.

But I think that has to be done again. I mean, there's no more egregious violator of human rights today than Xi Jinping. And, of course, that long arm has now completely been outreached to the great people of Hong Kong. So we'll ask the U.K. as well, and others who are doing it already, to join us and others, you, in naming these wonderful, wonderful, heroic men and women to receive the Nobel Peace Prize. It's got to be done. You know, there's human rights violations all over the world, but these are the most egregious. And it's a place where we could make a difference. So we will do that letter today, or put it together and try to get the Commissioners—and I know they'll join us—in asking that the U.K. boldly speak out on behalf of your dad and join us in this effort.

Let me also speak to the issue of implementation of the Hong Kong Human Rights and Democracy Act. I would just say in 2014 that whole concept was hatched in my office. And the guy that did it is sitting right there. Scott Flipse came up with this idea for the Hong Kong Human Rights and Democracy Act. We put it all together. He worked on it. It was a great effort by the Commission. And everyone told me on the Foreign Affairs Committee, it's a solution in search of a problem. You know, don't worry. Hong Kong will never matriculate from an island—or, an oasis of democracy to a dictatorship. And we said—you know, it's almost like what Gretzky said. You may not be that aware of his quotes. But he says, always go where the puck's going—not where it is, but where it's going.

We've got to think ahead. And thank you, Scott. He thought ahead. And we put the bill in. And I couldn't get it passed for four years. I tried my darndest. And finally, and I do thank Speaker Pelosi, she helped us get that bill passed. It went over to the Senate. They passed the identical companion bill. It came over again to us and we sent it down to the President. It's got great things

in it. But it has to be implemented. So if I could ask all of you—and, Anna, you might want to start—whether or not you think the Biden administration—because you did say—I implore the administration—implore. You're not just asking, you're imploring the administration to sanction National Security Law judges and persecutors—prosecutors, I would say, as well. And that the U.S. Government should respond clearly with designated sanctions.

Are we doing enough at the executive branch level? And if President Biden were sitting right here, what would you say to him and to our Secretary of State? Because, again, we're on the same team, but we need to do more, in my humble opinion. Your thoughts?

Ms. KWOK. For sure. I think the entire Hong Kong Committee, or the majority of the Hong Kong Committee, would agree that sanctions are not utilized enough, to the extent that actually the Hong Kong government officials are not so scared of sanctions anymore. They think, oh, perhaps the bills or the Hong Kong Human Rights and Democracy Act is just here for show. And that is why I implore the administration to really utilize tools that were hard fought by advocates in 2019 and 2020, with hundreds of thousands of Hong Kongers going to the street just to thank the U.S. Congress for passing the bill and having sanctioning policies in place.

So right now as we speak, it is actually the 57th day of the largest National Security Law trial that involves more than 40 pro-democracy leaders in Hong Kong right now. If we do not impose sanctions, targeted sanctions, against prosecutors, against judges handpicked by Beijing before the trial ends, we can perhaps expect to see potential life sentencing on some of the most familiar names we have been seeing for the last decade. And that is why I think we are actually really battling and competing with time right now. If we don't do it early enough, soon, there won't be any momentum anymore and it will be a train that we'll miss forever. And that's why I really implore President Biden, the administration, and also Congress to exert more pressure on the administration for further sanctions to being placed.

Mr. LAI. On a personal level, in my father's case, the Biden administration, the White House, has spoken—has been a lot more vocal than Downing Street. So thank you very much for—I think the letter would be absolutely incredible help in raising my father's case to the U.K.

I also just want the White House to know that we're incredibly grateful for this. And it does show that the ideas of freedom of speech and all these institutions are much more sacred in the United States than in countries where people don't speak up for their own citizens. In terms of what I'd asked the Biden administration, to do more is to continue to speak out for what's happening to the people of Hong Kong and to my father, as in Hong Kong they no longer have a voice, sadly. And to actively seek my father's and other political prisoners' release, because it's the just and fair thing to do. They have not committed any crimes. Thank you.

Mr. KERN. First, perhaps first I should say that I consider the U.S. Government to be one of the actors that's been the best when it comes to Hong Kong, compared to its Western allies. I give it a lot of credit for that. And I'm not just talking about the current administration. The previous one as well, as well as many people in

Congress on both sides of the aisle. As I said in my opening statement, that's incredibly heartening. I'm sure you all know that when the U.S. speaks, the world listens. And any leadership that the administration can take is important.

My main message is, hold the line. Right now, we're seeing signs of slippage from some European countries. You know, I was really hoping that after the Russian invasion of Ukraine, that would be a big wakeup call. And Western democracies would say, look, it's not a good idea to be economically dependent on ideological adversaries, dictatorships as powerful as the Communist Party. I'm not sure that that awareness has really been transformed into China policy in some countries in Europe. So the U.S. really needs to keep showing leadership on that. I think one of the very positive things about this administration is they've tried to improve alliances with their allies, and that's extremely important, to act together. But I think it's an area where the U.S. will have to show leadership.

Anna, especially, has a lot of excellent specific policy recommendations and things that can be done. But one thing I should say is that both the previous administration and the current one have sanctioned various Communist Party and Hong Kong government officials, and top Hong Kong police officers. Make those sanctions stick. We've heard rumors that the administration may actually be considering allowing Chief Executive John Lee to attend the APEC summit in November, even though he is sanctioned by the U.S. Government. That absolutely should not happen. If it does, it will send a terrible message. It will basically mean sanctions mean nothing.

So that's why I say hold the line, no backsliding. Anything you can do to lead a coalition of Western democracies that will take a strong stance on China, that will be very important. But at this specific time, I really think it's an area where the U.S. has to follow through.

Chair SMITH. Thank you.

Kevin, did you want to say anything, our man in Australia?

Mr. YAM. Yes. Thank you, Mr. Chairman. The thing is, look, as a Hong Kong lawyer, it's never easy to say that you should sanction a fellow professional, whether in the form of a prosecutor or a judge. And if those guys were doing nothing more than going through the motions, I probably would have gone through with that reluctance. But the reality is, whether we're talking about certain of the national security judges or some of the prosecutors in political cases, we're talking about people who have gone above and beyond to persecute, to uphold a political line. We're talking about people who have been fabulously rewarded with promotions, with orders of merit, with chief executive commendations, you name it.

So if that's the case, why should the United States allow these people to have access to the global financial system? Why should the United States allow these people's children to come and enjoy the best of free world education, when young men and women in Hong Kong are being put through reeducation, through patriotic education, through imprisonment, and so on? So with some reluctance, I would say that, you know, let's do it.

And I absolutely also echo what Brian had said in relation to John Lee. It would send a terrible message if the United States

lifts sanctions against him and lets him into San Francisco come November for APEC. So I take the view that the conduct of these judges and prosecutors—Hong Kong made them, just as they made me, right? The rule of law made our careers. But they are destroying the very thing that made our careers. And therefore, I don't see why they shouldn't be sanctioned.

Chair SMITH. You know, because of your suggestions we will follow that up with the administration and ask that they not provide that. You know, lessons learned. I've been in Congress now 43 years. And human rights laws often are a nuisance to any administration, Republican or Democrat. I wrote the Belarus Democracy Act that was enacted into law in 2004. Lukashenko, a dictator, horrible, put all these people in prison, tortured them horribly in Belarus. We got the bill passed, some of the prisoners got out. And then all of a sudden there was a sense—and this is during the Bush administration—well, we made our point, now we can move on and go back to business as usual.

So I did a 2006 iteration of the act. I did it again in 2012 and then again a couple of years ago. There's always that sense that we made our point. But until these great people are free, and human rights are respected, we have not made our point. We've just made a downpayment on getting there. So thank you all for making that very important point. We can't get human rights fatigue and say, now let's go back to business as usual. And I'm always worried. I see it all the time no matter who's in the White House. So we, this Commission in a bipartisan way, will try to stand up.

One final question—we'll have a few more in the second round, but to Sebastien Lai. What is an average day for your father? How does he get through it? Is it his faith that helps buoy his persistence and his courage? How does he do it?

Mr. LAI. Because of the National Security Law, I haven't seen him since the end of 2020, unfortunately. From my understanding, my father knows he's doing the right thing. He's a deeply religious man. And I think he's keeping strong.

Chair SMITH. I'd like to yield to Jennifer Wexton. Commissioner.

Representative WEXTON. Thank you very much, Mr. Chairman. I want to thank the witnesses for being here too. I know that is really hard for you. I know that your families are probably facing a lot of trouble as a result of your testimony here today. So thank you so much for all your work that you've been doing.

Mr. Chairman, I want to thank you so much for your long history with human rights here in Congress. I know that we kind of think of you as the iron man of human rights in the House of Representatives. I'm glad you could continue to do it, because somebody needs to hold these administrations accountable. And you just have that institutional memory, and I'm so glad you're here and that you have it. I know that you worked a lot with my predecessor, Representative Wolf, on these issues. I'm very proud to continue his story. It's great to be here.

I again want to thank everybody for coming, and I have some questions for you. I was a lawyer before I came here. I was also a prosecutor in Loudoun County. I was also a judge for a while. So seeing what's happening in Hong Kong is very frightening to me,

as somebody who grew up here, in the principles of constitutional law, the rule of law, and just seeing the basic inalienable rights that we have here in this country, things like the right to free speech, right to assembly, things like that which just are nonexistent for the Hong Kongers now. It is scary to see that this happened right before our eyes over the past several years. So I feel for you. I feel for you. And I feel for you that you can't go back to your country and just enjoy your life as a free person. So I feel really bad about that.

But I want to thank everybody for being here. I want to ask some questions about that. So my first question is—you know, one of the things that I find most frightening about this new—this new security law is that they have this whole idea of extraterritorial jurisdiction, where they can come after people and prosecute them for things that they do in other places—in places that aren't China, aren't Hong Kong, and aren't, you know, their own country, for the things that they do here in the U.S. or in the U.K. Do you have any instances of people being actually brought back to China or being prosecuted in Hong Kong for things that they did when they weren't in Hong Kong? Any instances of that, or is it more just a threat that they have?

Ms. KWOK. Recently, there was a Hong Konger student who used to study in Japan, and she wanted to go back to Hong Kong to renew her passport. And once she stepped onto the soil of Hong Kong, she got arrested for something she did and she said in Japan, which was simply organizing, to talk about Hong Kong, and to advocate for the stories and freedoms for Hong Kong. So that's been happening, I think, in many instances. And usually anonymous protesters, or organizers who do not really have a high public profile, are the most susceptible to this kind of persecution and arrest, because a lot of the time they try to be helpful when they're outside.

And it's very difficult to gauge where the red line is. You never know, you know, what the bottom line is when you're being monitored or surveilled by the Hong Kong offices, especially when they're in countries with HKETOs, the Hong Kong Economic and Trade Offices. And that is why it's not only about the NSL, actually. It's not only the National Security Law, but all the other—you know, freedom of speech, freedom of expression have been greatly limited because of how the Hong Kong government actually tries to monitor Hong Kongers overseas. But I guess perhaps Brian and Sebastien may have other cases that you would want to bring forward as well.

Representative WEXTON. Any other cases, Sebastien? Any other examples?

Mr. LAI. Yes. The case about the Hong Kong student, I think, in Japan is the one that happened most recently, and really the boldest one, so to speak, because it was just a few social media posts that she liked. Another thing I wanted to point out about the National Security Law—just to add to this—is that the National Security Law—when it was first introduced, wasn't meant to be retroactive. What happened before the National Security Law wasn't meant to be something that you get charged for. And obviously,

that is not the case. So you have this incredibly broad law that covers the world, and time, which makes it so much more poisonous.

Representative WEXTON. That's very frightening. Yes, it is absolutely very scary.

Mr. LAI. Yes.

Representative WEXTON. Brian.

Mr. KERN. I think the thing I'd like to stress is that the way authoritarian regimes operate is largely through threat. If they're successful, they'll threaten much more than they'll follow through on it. So what happens with something like this is it conditions people's behavior. Obviously, that's the case for people who are trapped in Hong Kong. We often say Hong Kong is one big prison. There are the 1,459 political prisoners actually sitting in prison, then they're the ones in Hong Kong, which is a pretty small territory. But it affects people beyond that as well.

You know, Anna pointed out that she made a decision at one point to cease to be anonymous. You know, for people sitting on this panel, they're not going to go back to Hong Kong unless they want to go to prison. That's the position that every single Hong Kong person living outside of Hong Kong finds themselves in. Do I allow my face to be shown? Do I show up in public? Do I go to protests? Do I talk to the papers? Because if I do, then I better not go back to Hong Kong. I want to see my family in Hong Kong. Am I really going to take that risk? So that's what I mean. As much as, like, specific instances like the Hong Kong student in Japan, it's the way it affects Hong Kong people living abroad.

And of course, that is by design. It's by intention. I often think of the National Security Law as not so much a law as a blueprint for control. It's meant to control people. It's meant to control their behavior. We see that, I think, throughout the diaspora. Everyone goes through those kinds of calculations when they think about what role they're going to play and whether or not they can appear publicly.

Representative WEXTON. This is the same thing that they've done with Uyghurs and with the Tibetans as well, the exact same thing. And I know because I have a lot of Uyghur constituents in my district who have told me about instances where they've gotten a call and they said, you know, we've got grandma here and she'd love to talk to you via WhatsApp, would you like to talk to her? And then they'll talk to her, and there'll be somebody from the PRC sitting right next to her on the sofa, you know, and she's like, Everything's fine here. It's really scary, because everybody still has family in Hong Kong, I would imagine, so that's really frightening. And I just feel really bad for you.

So, in your view, have the U.S. Government sanctions actually worked? Have they actually worked at all? Government sanctions, have they worked at all? Mr. Kern, I know you said something about them.

Mr. KERN. It depends on what you mean by "work." I often hear people complain and say, oh, the sanctions aren't working. And when they say that, what they seem to mean is that they have not changed the behavior of the people sanctioned. Obviously, that's one way of figuring out whether sanctions are working. But I can say with 100 percent certainty, sanctions have a hugely positive ef-

fect symbolically. And you might say symbols don't mean anything, and I would disagree. They have a huge effect. It heartens Hong Kong people in Hong Kong to see that the U.S. Government recognizes what these people in Hong Kong and the Communist Party are doing to them.

Not only that, but as a campaigner or as an activist, it's very powerful to be able to say, you should not be associating with this guy, John Lee. He is sanctioned by the U.S. Government. That sort of thing really matters. And in that sense, I think sanctions are very important and quite effective, whether or not they directly affect the behavior of the individuals sanctioned. And that's why it's so important once you sanction somebody to hold the line and be firm on that. And I totally agree with everyone else on this panel who says that the U.S. should consider further sanctions, especially on National Security Law prosecutors and judges, as well as prosecutors and judges involved in other political trials in Hong Kong.

Representative WEXTON. Thank you very much. And you kind of anticipated one of my other questions, which was, Are other Western countries helping out with this at all? Other Western countries helping out with allowing in more refugees and stuff like that from Hong Kong, or anybody?

Mr. KERN. You're not just talking about sanctions; you're also talking about other——

Representative WEXTON. No, sanctions and everything. Are they helping us to show that this security law is bad, and that—you know, that they will stand with the Hong Kongers? Is there any other Western country that's helping us, besides the U.K.?

Mr. KERN. Well, I think that we were just mentioning before you came in, that the United Kingdom government has started this new British National Overseas visa scheme, which allows Hong Kongers who have a British National Overseas passport or are eligible for it, to come to the U.K. on a five-year plan that can lead to permanent residency. And 150,000 Hong Kongers have availed themselves of that. That's a very concrete and important measure that the U.K.——

Representative WEXTON. So those people who were living in Hong Kong at the time of the switchover?

Mr. KERN. Yes. Since the imposition of the National Security Law, you know, the U.K. government said that the Chinese government has violated the joint Sino-British Declaration, and therefore we're enacting this visa scheme. That's a very concrete measure. I think a lot of Western governments have said the right things. And it's important for them to say the right things. Canada and Australia have enacted certain pathways to make it easier for some Hong Kongers to go to those places. That's useful. But I was also saying that I am afraid that there's a bit of a sea change happening, where some Western governments are going back to the bad old days where trade pretty much dictates China policy.

I think the U.S. was caught in that trap for decades, actually. And I'm very encouraged by the changes in U.S. China policy over the last few years. And I mentioned that I think the U.S. needs to continue to play a leading role in that policy and work with its allies on that. I think the U.S. can have a very positive influence on

some of its Western allies as regards China policy, Hong Kong policy.

Representative WEXTON. Thank you, Mr. Chairman. I've definitely overstayed my welcome here. I'll come back for the second round. Thank you.

Chair SMITH. I'd now like to yield to Commissioner Nunn.

Representative NUNN. Mr. Chair, thank you very much. And I appreciate this committee coming together to have what is a very important conversation on the Chinese Communist Party's not only takeover but crackdown with this National Security Law that they've placed in Hong Kong.

First of all, Mr. Lai, thank you so much for spending time with us today, for the sacrifice that your family has made, including the imprisonment of your father. For speaking, for being a voice for the people of Hong Kong, for practicing his faith, he now—as you highlighted—is interned with very little judicial capability to be able to appeal this. We here in the United States stand with you in unwavering support. Of the rule of law, of the right to free expression, and of democracy in the face of adversity.

I'm from the small state of Iowa. And if we were to look at what Hong Kong went through in almost an overnight experience—the capturing of 7 million lives and taking away those fundamental things that here in America Jefferson highlighted as life, liberty, and the pursuit of happiness—and muzzled in an instant. It would be the equivalent of Iowa, Nebraska, South Dakota, North Dakota, all in the course of an evening being transitioned from being a bastion of hope, a place that Asia could look to for freedom, for a voice, for the rule of law both in its judges but also in an exemplary police force, and that has now been used as a baton to crack down on individuals who have stood up.

I mention those states in the heart of the heartland because, as Mr. Kern just highlighted, they were the states to help stand up and fight back against China's repression. When we took a personal hit in Iowa by doing trade negotiations, it meant that our farmers didn't get to sell pork and soybeans to a very lucrative market. But it was far more important that we stood up to China now than afford them the ability to bully not just their neighbors, but the entire world. The people of Hong Kong are proven friends, and it's clear today, with so many of you here, how important this is to your families and to the future of your families.

As trade partners, as allies with the United States, you deserve to enjoy this fundamental right that we've experienced here in the West. But what the Chinese Communist Party has done by implementing its National Security Law in Hong Kong is effectively crush not just the freedom, but it's punished individual expression, it's destroyed civil liberties, and it's taken away the promise that was made that these individuals would have the opportunity to have a fair and autonomous life. Overnight, the CCP betrayed not just the people of Hong Kong, but it lied baldfaced to the rest of the world in its ambition.

It is difficult to work with partners who we want to find an on-ramp with, like China. But when they tell the United States to our face that they're not flying surveillance balloons over the West Coast, they're not actively looking to harm, they're not intrinsically

suppressing their own people, I can only imagine the difficulty for those in Hong Kong today to be able to trust their own government. So, with that, Mr. Lai, I'd like to begin with you.

Due to the mass crackdown of civil liberties and the people of Hong Kong who are fleeing their home country today, as many we see in this room, in what ways can the United States create really a more welcoming place for these individuals to call home? We've learned not just that sanctions are effective, but that there can be a carrot in this opportunity. Maybe what was highlighted from the British visa plan, to help those—particularly those intellectuals who want to leave Hong Kong, find a new home in America.

Mr. LAI. Thank you, sir. The people of Hong Kong are an incredibly well-educated, bilingual or trilingual labor force. So, really, they are an asset to any country that can get enough of them. And so I think, as you alluded to, an easier visa requirement. Now, it's not my area of expertise, but an easier visa requirement, especially for those who are politically persecuted, for all those who want to leave for the U.S. And many of them want to move to the U.S. because of, I think fundamentally, how the U.S. has treated this case; there is much love for the U.S. in Hong Kong, especially among those who love freedom, which is, I think, most people. So that's all I know to say on this. But thank you.

Representative NUNN. And Mr. Lai, I think one of the key aspects of this, for those who have made it to the West, is continuing to be a voice for those who remain behind. To be a clear channel of information and being able to describe what's happening in Hong Kong today under this national security apparatus that's really enslaving its own community.

Ms. Kwok, I would like to speak to you on this—call it propaganda, call it dangerous doublespeak—coming out of China today. The reality is, as a military member who served counterintelligence operations inside China, I see a difference between what is said to the West and then what is done inside China. Specifically, the CCP has become a master of rhetorical influence. And they're doing this in a variety of mediums. Can you please share with us from your experience some of the ways the Communist Party has really promoted a pro-authoritarian narrative that's influencing even some within Hong Kong to be subverted to Beijing and willfully give up their own rights?

Ms. KWOK. Thank you for the question. I think you're right that the Chinese Communist Party is certainly expert in really melding people's minds and creating different languages to cater to different audiences. And from my time in the United States, I've observed that the CCP has done so on American soil as well. For example, firstly through the Hong Kong Economic and Trade Offices, which have offices in D.C., New York City, and San Francisco.

They consistently organize events with civil society partners, art galleries, you know, film festivals to talk about the story of Hong Kong. Well, of course, the kind of story they're talking about is a prosperous Hong Kong that never had any human rights abuses. And we know it's not true. But for some American members of the public who just want to watch a film, they would not understand, you know, the very complex dynamics behind it and they would

easily absorb the rhetoric that Hong Kong is back to business, while in fact it is not.

And, secondly, I think one thing that has been getting more traction in Congress and in cthe general public is about TikTok. TikTok has been proven to have a way for people—for staff members in mainland China—to access and also manipulate the algorithm for the version in the United States. And that is definitely something to look at, because that is what the CCP thrives on, having all these subtle traces and subtle ways to really plant ideas into people's minds that are used for or manipulated enough to support the regime.

And that has been happening in Hong Kong for the past 26 years, with national education, patriotic education. A lot of propaganda materials have been used in kindergarten and primary schools to kids to tell them to love China. I exactly went through that sort of education, but not as much, or as serious, or as intense as kids in Hong Kong right now. And that is why it's also important to keep free internet open—access open in Hong Kong. Even though right now there's virtually a firewall inside of Hong Kong—for example, HKDC's website is blocked in Hong Kong and censored.

But still, I think the Hong Kong government does not dare to really have a full firewall built up, as it is in mainland China right now. But even with that, they're blocking websites arbitrarily, one by one, every day. And what we can do—the previous leader had a bill in Congress on keeping Hong Kong's internet freedom safe and free for Hong Kongers to access. And I urge the Congress to reconsider that kind of legislation and see how we can keep internet access open in Hong Kong. And that is the only space Hong Kongers have right now to continue engaging in a discussion on freedom and democracy.

Representative NUNN. Thank you, Ms. Kwok. And thank you for your advocacy on this very, very important issue.

Mr. Kern, I'm going to turn to you briefly here. You know, we look at what's going on in the rest of the world right now. We see crackdowns in Iran. We see a repressive state not just in Russia but in Eastern Europe. These have been very in your face, physical, military operations almost. And China, they're approaching it in a different path, but clearly with very similar effect. Hong Kong, the perfect example. The threat to Taiwan, very obvious to anyone who's watching right now. Could you deep dive with us briefly on the things that Beijing has done to effectively subjugate Hong Kong in such a short period of time that have really ripped away some of these fundamental freedoms that were enjoyed for decades prior to this with really not a shot even being fired, but almost more effective than we're seeing in other repressive regimes?

Mr. KERN. When you need to shoot your own people, it's a sign you failed. That, I think, is a Communist Party dictate. You know, one of the things about the Communist Party is that it's so strong that it doesn't often need to go out in the streets and shoot its own people. The last time it did that in very large numbers was 1989 at the Tiananmen massacre. And I think that was one of the things the Party learned, is do everything you can so as to not have to resort to that.

So what you see in Hong Kong is that they turn the screws as they need to. They imposed the National Security Law. They arrested a lot of people. They waited to see what followed. They were disappointed that not enough Hong Kong people stopped speaking, stopped saying what they didn't want to hear. And so they dragged out this old, from the U.K. colonial period, sedition law. Now, I don't know what sedition means to you, but in Hong Kong it's basically a speech crime.

There was reference made today to these five young trade unionists who published three allegorical children's books about sheep. They were arrested and tried under sedition and sentenced to 19 months in prison each. There have been 77 arrests on sedition charges now. Jimmy Lai is also going to be tried on sedition, as well as under the National Security Law. And for virtually all of these people, it's because they were journalists. There are two editors from a very respected publication that also has been forced to close, like Apple Daily, called Stand News. They're both on trial for sedition.

Many people who are on trial for sedition, it's for online comments they've made on social media. So that's what I mean. They turn that screw, and they look around and say, have enough people been silenced? Are we satisfied? If not, then they find other screws to turn. And their objective is to silence people, because propaganda really isn't very effective unless it's accompanied by censorship. If people have the right to say what they think, you've got competing voices and it's very hard for propaganda to win out at the end of the day.

In China, they've really perfected that combination of propaganda and censorship. And in Hong Kong, they're trying to find exactly what the right mix is so that essentially they can turn it into China.

Representative NUNN. Imagine a situation in which George Orwell is arrested for writing "Animal Farm." Unfortunately, it sounds like in Hong Kong today, fiction is now fact. And that's exactly what we see. These individuals who were trying to illustrate the challenge are now becoming the victim of a police state. I want to thank you all very much for your testimony today. And know you have a strong ally on a bipartisan, bicameral effort to be able to stand with Hong Kong and the work you're trying to do to stand up to the CCP.

Mr. Chair, I cannot thank you enough for leading this effort. Thank you.

Chair SMITH. Thank you so much, Commissioner Nunn. And thank you for the background you bring to this, which is extraordinary and unique.

Just a couple other questions and then I'll yield to my colleagues if they have any further questions. First of all, you know, I was just thinking, in a follow-up to this hearing, we're going to put together a resolution asking the Nobel Peace Prize Committee to—we will appeal to them, they can't be told what to do, and that's the way it should be—to award it to the six people, beginning with Jimmy Lai, that are on the list that this Commission has recommended, the co-chairs, the ranking members. We've asked them to do that.

Back in 2010, I did the same thing with Liu Xiaobo, and Chen Guangcheng, and Gao Zhisheng. Liu Xiaobo did get it—I'll never forget sitting there where they had the empty seat. It just spoke volumes—and then they wouldn't even let his wife attend as well. But I think this is the most opportune time to reassert this. So we'll do a House resolution on this and begin drafting it today.

Secondly, Mr. Kern, you talked briefly about the issue of trade. And as an exporting country, we know that China is absolutely reliant on trade to sustain its military, the Chinese Communist Party. And, you know, there's a whole lesson that was not learned back when after Tiananmen Square—and I would fault George Herbert Walker Bush and then Bill Clinton for their appeal to China to say, nothing to see here. Brent Scowcroft, as we all know, made an infamous trip over to reassure them post-Tiananmen Square.

And then Bill Clinton got it right at first, and even accused Bush of coddling dictatorship. And then he coddled like no one else. You know, on May 26th, 1994, he de-linked human rights and trade. I actually went to Beijing with a letter in hand signed by 100 Members—bipartisan Members. I met with the Foreign Ministry. And they told me—it would be January before they would be up for the renew period for MFN de-linkage. And they said, We're getting it. You know, I said, Well, we've got names here.

And I called Warren Christopher as soon as I got back, who was the secretary of state. And I said, They think you're bluffing. And we were. And we lost such leverage. You know, I think we would have a different China today—if not for what happened on May 26th, 1994, on a Friday afternoon when everybody had left this place to go back to their districts, as they should. I was still here lingering. I went over and did a press conference that C–SPAN carried. It's still on their website, if you ever want to check it out. And it was, like, oh, how could we have given up that leverage?

But we need to regain it. I've introduced a bill that would re-link MFN with trade, the PNTR, as they call it now, with a number of categories, including political prisoners. And my hope is, and I've met with the chairman of the Ways and Means Committee, and I've talked to others. I'm not sure we'll get it passed, or whether or not it would ever be signed. We need to be moving in that direction. You know, we need conditionality and not trade in an unfettered way that enables a dictatorship to just absolutely maltreat its own people. Like your dad.

So we're pursuing that. I appreciate, Mr. Kern, that you brought that up—I remember meeting with the Chamber of Commerce in Beijing on one of the many trips. And some of those were taken with your predecessor, Frank Wolf, who was a great, great champion of human rights. And, you know, there was one foreign service officer from the State Department sitting there who was very junior grade. They had all these commercial experts in our embassy flocking around. You know, and a lot of people from the Chamber of Commerce.

And they all said: We trade—my words, paraphrase—and they matriculate from dictatorship to democracy. And I said, nothing could be further from the truth. They'll get more powerful and more dictatorial, and they'll have the means to carry it out with

more impunity and more effectiveness. So hopefully we've learned that lesson. I'm not sure we have. But we need to keep trying. And this panel certainly helps. Your leadership, all of you, helps really significantly.

Mr. Kern, you mentioned that 13-year-old. What was he or she charged with? Do you remember?

Mr. KERN. It was a very complicated case. There was an incident in which—it was during the protests. And plainclothes police officers saw that some protesters were blocking a road. And the protesters noticed them. And this was—actually a lot of flashpoints during the protests happened because of plainclothes police officers, who would often dash out and grab people, and wrestle them to the ground, and beat them. And so protesters were very much on guard against this sort of thing.

And a couple of the plainclothes police officers were surrounded by some protesters. And the protesters were haranguing them and saying: You're cops. You shouldn't be here. That sort of thing. So he, and I want to say five others, were on trial for false imprisonment. The idea was that they had essentially imprisoned these police officers because they weren't allowing them to go. And then I think a couple of them were charged with assaulting the police officers. I think there was a skirmish between them.

So that boy, upon conviction, was remanded into custody. And his sentencing, along with that of the others, will be in a week to ten days. And he will most likely—there are three types of juvenile detention in Hong Kong. And for children that young, he'll get some kind of juvenile detention sentence, which can last up to three years.

Chair SMITH. Can I just ask if any of you would like to speak to the issue of how the prisoners are treated? Do they have access, particularly if they're American or U.K., to consular affairs personnel to do a welfare visit, to make sure they're being treated, you know, well? Which is probably an oxymoron. But do they have that kind of access?

And if I could also ask, Ms. Kwok, especially you, we know that transnational repression is on the rise. And we're working on legislation to try to address it. I think the administration's very well aware of it, and they're speaking out as well. How are your leaders, how are you treated when it comes to this surveillance state that comes here and then they look to intimidate and harass?

Ms. KWOK. Some personal anecdotes that I can provide would include, for example, when the Hong Kong Democracy Council, or DC4HK, other Hong Kongers in the DMV area tried to organize protests, sometimes we would find cameras pointed at us. And of course, there's no way we can verify who these people were, but they would refuse to speak to us and sometimes they actually walked directly from the HKETO offices. So we can tell very clearly that they belong to the HKETOs. And, separately, it's about HKETO officers asking Hong Kongers in the DMV area for personal information about members of my team.

And of course, that would constitute transnational repression because they're trying to spread fear and trying to get personal information that they do not necessarily need just to, you know, intimidate activists and advocates working on this issue. And previously

there were other Hong Kong community members in Boston and in the Cornell area in New York State, who have been beaten or intimidated by various—we don't know who they are. But, for example, the DOJ actually released some report just a few days ago about one of them actually being a spy for the Chinese Community Party, who was intentionally intimidating one of the activists, I believe who is here with us today.

So there are many instances of transnational repression. But because it's not been a very known or openly discussed subject in the past, I think we're still discovering and finding cases of transnational repression. And in order to help Hong Kongers in the U.S. continue their advocacy, I really suggest having faster humanitarian pathways for Hong Kongers so that they can feel safer, and even expediting asylum cases, especially for individuals who have been intimidated, threatened, or injured by transnational repression. And, on the other hand, again, I would have to emphasize the need for the HKETO Certification Act, which would really have to evaluate the presence, and the status, and privileges of the HKETOs, as well as what they have been doing here in the United States.

Mr. LAI. Just to add to that, the transnational repression isn't necessarily a new thing for Hong Kong and China. And it's especially not just limited to the people of Hong Kong. An example of this is the secret police stations that are dotted all across the world. Another more perverse example is with students at universities—at Western universities, being spied on by fellow students. And they report back to the embassy. And a lot of those students end up having issues back in their country.

Mr. YAM. Perhaps I can take the question on consular access for prisoners. I know of a number of cases in Hong Kong, including parochially one Australian citizen in the 47-political-activist case that is currently in trial—that China's view is that a lot of these guys, because they have both Hong Kong residency as well as foreign citizenship, that they deem these people as Chinese nationals, and therefore they're not entitled to consular access. So I know that there are a number of those cases where political prisoners, people in remand, are denied access to their home country's consular officials.

Chair SMITH. Mr. Kern, thank you.

Mr. KERN. Yes, in regard to that, with U.S. citizens who are political prisoners in Hong Kong, the U.S. Consulate in Hong Kong typically says that these are private matters, and so we know very little about this. I'm not aware of any particular cases. There are some where it's a little bit uncertain whether the individual in question is a U.S. citizen. I do not know the extent to which the U.S. Consulate in Hong Kong is following up on that. The families of these individuals have also chosen not to speak out. And so none of these cases has really become public knowledge.

You also asked about the prisons. And the thing to keep in mind about Hong Kong is it's in transition from a liberal to an authoritarian society. And when it is, a lot of elements are kind of up in the air. So with the Hong Kong police, for example, it's perfectly clear that they've essentially been transformed into a militia to enforce the will of the Communist Party. And there's this huge new

National Security Department within the Hong Kong Police Force. There are Chinese secret police now operating in Hong Kong because of the National Security Law. It's entirely secret. We don't know how they're cooperating with the Hong Kong Police, and so on.

The prisons are not run by the police. They're run by the Correctional Services Department, which, like so many civil services in Hong Kong, have through the years functioned fairly well and fairly efficiently. The kinds of abuses you see in many authoritarian countries, like Belarus where people are horribly tortured and even killed in prison, you do not see in Hong Kong. There have been some questions on the issue of solitary confinement of political prisoners. And it's been very difficult to get good information about that. The CSD said in those cases that those prisoners have voluntarily decided to confine themselves solitarily. And we're not sure about that.

So we're keeping an eye on what's happening in the prisons. We don't have a good monitoring system to find out whether all political prisoners are getting out when their sentences have expired. So there's a lot of gray areas in Hong Kong now that have become more difficult to monitor because of the situation there.

Chair SMITH. Mr. Kern, has the ICRC, the International Committee of the Red Cross, tried to get into the prisons?

Mr. KERN. Not that I know of.

Ms. KWOK. I also want to add one more thing to the discussion, and that is that Sammy Bickett, who's sitting behind me, was actually in Hong Kong's prison two times, and for a few weeks. And he's a United States citizen who was working in Hong Kong as a lawyer at the time. And during his time in prison, he said that he did get some consular visits, and more often than perhaps other people. And of course, it's great that he's back in the U.S. safely. But, of course, I think the U.S. Consulate in Hong Kong is also navigating, honestly, in this muddy water. And I would also suggest that the U.S. Consulate in Hong Kong increase communication with American businesses in Hong Kong, as sometimes they are complicit in human rights abuses. And that can be monitored through the Hong Kong Business Integrity and Transparency Act.

Chair SMITH. Anna, do you know if they allow ministers to come in, like religious leaders, to visit and tend to the spiritual needs?

Ms. KWOK. I'm not aware of these visits.

Mr. KERN. They have this category called justice of the peace. And many high-profile citizens can become justices of the peace. Cardinal Zen, who you nominated for the Nobel Peace Prize, very deservedly, has been one of the people who very consistently goes and visits a very wide range of political prisoners, from the very well known to some of these kids who get very little attention. So there are people like him who are still doing that, yes.

Chair SMITH. Commissioner Wexton.

Representative WEXTON. Thank you, again, Mr. Chairman. And, you know, when you're telling us about what happened in 1994, it definitely calls to mind just how good it is to have you on this committee, because having you here as the chairman is—you have this institutional knowledge like nobody else. It's great to have you here.

I've got to say, I agree with you that giving repressive regimes more power and more ability to interact with the world does not make them any less repressive. In fact, it makes them more repressive. We've seen that happening here in China. They've certainly raised repression to an art form here, where they can—where they can not only repress Taiwan and Tibet, and everybody. I feel that it's just really, really bad. And I just feel like they started with Tibet, and then they moved on to Xinjiang, and then to Hong Kong.

And now Taiwan is next on the list—the next and last, hopefully, on their agenda. So we just need to do what we can to stop it, because it doesn't seem to be stopping. So I think it would be good to get conditionality back into the trade piece. To that point, Mr. Chairman, I do feel that the horse has left the barn. At this point, it's a lot harder to get the horse back in the barn. So it's going to be a lot harder. I agree with you that we need to do something, because we can't just stand by and let this happen.

I'm relatively new to Congress. This is my fifth year here. Sometimes I don't understand why we can't do things that make so much sense. I know there's a lot of reasons. I know there's a lot of moving parts and everything. And maybe, Mr. Chairman, you can elucidate why we can't do relatively quick fixes, like change the status to TPS. Because, I mean, I can't think of a better time to do it than now, because people who definitely can't go home—I mean, they can't go home, they might as well be able to work here and stay here as long as they can be protected. It's not good that they could be kicked out at any moment. It's scary.

But when I think about why that is, I just try to think about why there's a lot of moving parts here. I think a big part of it is China's power, particularly its economic power. I guess we are addicted to these cheap goods, right? You see every day—everything is like Shein, Shein coming into the picture now. You can buy boxes and boxes of clothes for, like, 10 and 20 bucks. You buy these disposable clothes. And the reason that they are able to buy them for so cheap is because they're made with forced labor, made with exploited resources. You know, that's why they're able to undercut the rest of the world. We just eat it up. We just can't get enough of it, and this is really a problem.

Now we have TikTok, which is even worse. You know, TikTok is even scarier to me, because that is something where they really have a conduit for propaganda. They also have about a billion people who are giving them all their data. So then they have a conduit for their propaganda, they have a bunch of data about Americans. They know our whereabouts, what we do. They know what we like, what we don't like, what our bank accounts are, everything—I mean, you name it, all the information. So it's a really big problem. I think we've got to do something about that as well.

But you know, Energy and Commerce had hearings about TikTok. You would have thought that we said we were saying we were going to sacrifice a bunch of kittens and puppies on the steps of the Capitol the way people reacted. It was insane. People were, like, don't take away our TikTok. Insane. We got threats and all kinds of horrible, horrible things. So it's very, very frightening what they've done. We need to see what we can do to make it better.

One of the questions I have for you is, what do you consider the "new normal" in Hong Kong? I know that they had mass crackdowns about things like the Umbrella Movement and things like that. They had mass crackdowns over time as people were protesting in public. Do you feel that those mass protests will return again, that people will be able to protest in a massive way and that they'll have more mass detention? Do you think the new normal is just surveilling people mercilessly and then picking up people one at a time? What is the new normal going to be in Hong Kong? And I'll start with you. Sebastien, why don't you go ahead?

Mr. LAI. Yes. I think the Hong Kong government and, indeed, the Chinese government has really gone on a war with information. So I think, regarding mass protests in Hong Kong, if you lock down the system, just communicating with others, and you have surveillance over that, then it's very hard to gather any idea of a mass protest, from our understanding. So I think at some point the Hong Kong government realized that actually the loudest sound of oppression isn't tear gas, guns, batons. It's silence. And I think that's where we are in Hong Kong right now—silence.

Ms. KWOK. I also want to echo something that you said earlier about how it happened to Tibetans, to Uyghurs, and now to Hong Kongers and next, perhaps, we're worried about Taiwanese democracy. I think in the past two years Congress has actually taken a pretty constructive approach by increasing America's competitiveness, and also how America can limit the supply chain so that America can continue a sort of allyship with democratic countries like Taiwan.

And I know there is currently talk of another round of perhaps something to follow up on USICA and the COMPETES Act from last year, which became the CHIPS and Science Act in the end. And actually, in last year's conferencing there were extensive provisions for Hong Kongers, Tibetans, and Uyghurs, and also concerning humanitarian pathways as well, because in certain provisions and drafts of the bill it was understood that perhaps having more freedom fighters who fought with the regime would actually increase some sort of competitiveness here domestically in the U.S.

And I would urge that if this package is going into discussion again this year, I hope that there can be provisions attached with regard to protecting Uyghurs, Tibetans, and Hong Kongers in the United States, as well as increasing a sort of competitiveness together with Taiwan. And hopefully that can eventually help us dilute the human rights abuses happening in Hong Kong.

Representative WEXTON. Anyone else have anything else that they want to add?

Mr. YAM. I think there's a lot of talk about, especially in the Western world foreign policy establishment, national security establishment, that Hong Kong is a lost cause and that everyone should move to the next line of defense of Taiwan. Now, obviously, there are measures that are specific in relation to Taiwan that Western governments, including the United States, should be taking.

But on the other hand, given that Hong Kong's one country, two systems model was set up as an example to be applied on Taiwan, if the Western world decides that they're going to abandon Hong

Kong and think that, Oh, if we abandon Hong Kong we can just put all our efforts into Taiwan, then that actually emboldens China to think that they can get away with repression, that they can get away with doing whatever they want, and that far from helping the Western world in focusing on Taiwan, giving up on Hong Kong is actually going to embolden China to take a more aggressive line in relation to Taiwan and make it much more difficult for the Western world to hold the line.

Representative WEXTON. Thank you very much. That's great advice, and I agree. Thank you so much. I thank the witnesses for being here today. This is really fascinating. I'm sorry that you guys have to go through this, but hopefully we can help in some way. Thank you so much. Take care.

Chair SMITH. I do want to thank our very distinguished witnesses for your leadership each and every day. You help us. We work together, but you are really guiding lights for this Commission as to our next steps and what we need to do. So thank you so very, very much. The hearing is adjourned.

[Whereupon, at 12:09 p.m., the hearing was concluded.]

APPENDIX

PREPARED STATEMENTS

PREPARED STATEMENT OF SABASTIEN LAI

INTRODUCTION

I am Sebastien Lai, son of Jimmy Lai, the media owner, publisher, writer, and pro-democracy campaigner. My father has been imprisoned since December 2020, and he is now Hong Kong's highest profile political prisoner. He is also a prisoner of conscience, imprisoned for his work.

My father was also the founder and owner of Next Digital Ltd and its newspaper *Apple Daily*, which was closed down in June 2021 as a result of actions taken by the Hong Kong authorities against the paper.

At the outset I would like to thank the members of the Congressional-Executive Commission on China for their nomination of my father, together with five other Hong Kongers—Cardinal Zen, Tonyee Chow Hang-tung, Gwyneth Ho, Lee Cheuk-Yan, and Joshua Wong—for the Nobel Peace Prize, in recognition of my father's advocacy for peaceful protest, for the right to freedom of expression and an independent and free press, and for democracy in Hong Kong. This nomination has touched me deeply and I am very grateful for it.

MY FATHER'S BACKGROUND IN SUMMARY

My father was born in mainland China's Guangdong province in 1947. He was born into a wealthy family, but they lost it all when the communists took power in 1949.

When he was only 12 years old, my father fled China and traveled to Hong Kong as a stowaway on a fishing boat. He immediately had to work when he arrived in Hong Kong, despite his young age: he had to work to pay back the cost of his passage. He worked as a child laborer in a garment factory, in a sweatshop.

He is an entirely self-made businessman and a huge Hong Kong success story. From the shop floor of the textiles industry he rose through the ranks and eventually started his own clothing firm, Giordano, that saw global success.

My father gained his full British citizenship in 1992. He has always been very proud to be British, and very proud of his Hong Kong roots. The values that made Hong Kong such a success as a place—the rule of law, freedom of speech, freedom to do business—are also values very dear to my father and which fueled his own success.

My father is also a deeply Christian man, a devout Catholic. His faith is in no small part a driver of his belief in freedom and human rights.

1989

Until 1989, my father concentrated on his business interests, particularly growing his clothing business, Giordano.

However, the Tiananmen Square massacre in 1989 was a wake-up call for him. My father then resolved to direct his energy to supporting the fight for democracy and holding the powerful in Beijing to account, whatever the personal cost to him.

He did so first through Giordano. In the face of the crackdown on pro-democracy protesters in 1989, his company, Giordano, distributed t-shirts emblazoned with pro-democracy messages.

Soon after, in 1990, he entered into the publishing industry, and established Next Media (later to become Next Digital Ltd). His first publication, *Next Magazine*, was a Chinese-language weekly magazine that covered current affairs and business news. He established *Next Magazine*'s sister newspaper, *Apple Daily*, in 1995.

Apple Daily, and its parent company, Next Digital Ltd, were born out of this resolve to promote freedom and democracy in Hong Kong, and in China. My father was quick to realise that without free and independent information, there is no free-

dom. *Apple Daily* was named after the forbidden fruit: if Adam and Eve did not eat it, there would be no evil, and there would be no news.

Apple Daily quickly grew to be the largest and most popular Chinese-language newspaper in Hong Kong. It was known for its independent journalism, and its anti-corruption and pro-democracy stance.

TARGETING OF MY FATHER BY THE CHINESE COMMUNIST PARTY (CCP)

Right from the start of his media career in 1990, my father stood up to China. He criticized China's leaders, and they hated him for it.

That is why the authorities quickly began to target him—in order to try to silence him. Ever since my father entered the publishing industry, his businesses have been subjected to harassment and targeting by the CCP because of the perceived threat that he posed to this authoritarian regime. He was effectively forced to sell Giordano after the CCP threatened to close down all the stores in mainland China. His business and our family home have been fire-bombed. He was subjected to long-running surveillance, and he and other members of our family were regularly followed. Seeing surveillance vans and cameramen outside our home when I was growing up was an everyday occurrence. His advertisers were targeted and he was threatened financially.

My father's Catholic faith is also relevant to the way in which the CCP targeted him, for many years. His close relationship with Cardinal Zen and other human rights defenders and activists in Hong Kong who draw strength from their religion has become a focal point of the CCP repression upon him.

But none of these tactics by the CCP worked. My father is a man of strong principle and a man of deep faith. He was standing up to the CCP because it was the right thing to do. He refused to be intimidated.

The actions now taken against my father, that have resulted in his imprisonment and the destruction of his business, Next Digital Ltd, are the culmination of years of harassment and targeting of my father and his businesses by the CPP. What seems to have led to the authorities stepping up their actions against him and using the law to attempt to crush his business, and his spirit, was the 2019–2020 democracy movement and the protests which swept Hong Kong.

My father supported the democracy movement, and personally participated in some of the protests and vigils. As the authorities began to crack down on dissent, he knew he was a prime target for them and that they may try to imprison him. In an interview in 2020 with AFP, shortly before the National Security Law (NSL) was enacted, he said he had no plans to leave Hong Kong despite his wealth and the risks he faced:

> *"I came here with nothing, the freedom of this place has given me everything. Maybe it's time I paid back for that freedom by fighting for it . . .*
>
> *I'm prepared for prison. If it comes, I will have the opportunity to read books I haven't read. The only thing I can do is to be positive.*"

My father was arrested first in August 2020, and has been in prison continuously since December 2020. The arrests were designed to be humiliating and to send a message to all *Apple Daily* staff, and to any other journalists watching. The *Apple Daily* offices were raided by hundreds of police officers in a show of extreme force, and my father was placed in handcuffs and paraded around his offices. This was all designed to try to crush his spirit and to frighten his staff and colleagues.

THE CHARGES AGAINST MY FATHER

The international legal team for me and my father explains the charges he has faced in more detail in their written submissions, but in summary he has already been prosecuted, convicted, and served lengthy prison sentences for exercising his right to peaceful protest. They have sought to discredit him and smear his reputation through allegations of "fraud," said to be based on a breach of the Next Digital office lease. He has now been sentenced to 5 years and 9 months imprisonment on that charge. This is unheard of for a commercial matter, and it should send a chill down the spine of any business owner in Hong Kong.

The Hong Kong authorities now accuse my father of crimes of sedition and crimes under the controversial NSL. These are charges based on his writings and other material published in *Apple Daily*, and meetings with various people. These are criminal charges for journalism. And criminal charges for discussing democracy and human rights with international figures. These are ludicrous charges which symbolize just how damaged the legal system in Hong Kong now is. There is no freedom of the press. There is no rule of law.

My father's NSL and sedition trial is due to take place later this year, starting on September 25th, 2023. But I know the outcome is a foregone conclusion. The Security Minister has recently boasted of having a 100% conviction rate in national security cases, and the NSL itself is designed to criminalize all dissent, all criticism of the authorities. The maximum sentence under the NSL is life imprisonment. I know that the authorities intend to crack down heavily upon my father, to send a message to him and others, and so I expect him to receive a lengthy sentence, and possibly a life sentence. He is already 75 years old so any long sentence could see him die behind bars.

My father has never advocated for violence. He is a man of peace. His only so-called "crime" is to disagree and condemn the actions of the CCP and the Hong Kong authorities that seek to silence critical voices. For that, he faces the rest of his life in prison.

The actions taken against *Apple Daily* and its parent company, Next Digital Ltd, also resulted in the newspaper itself being destroyed. It ceased operating in 2021, as there was no other option: my father and other executives had been arrested and its assets frozen. On January 12th, 2023, we saw the de-listing of this once thriving business from the Hong Kong stock exchange and the auctioning of its remaining assets in a fire sale. This was a CCP theft and CCP destruction of a very successful media company.

THE #FREEJIMMYLAI CAMPAIGN

My father is a victim of an autocratic state which will not tolerate dissent or criticism. It is clear that there is no longer "One Country, Two Systems" but that Beijing is now controlling Hong Kong. The NSL spells that out. His treatment is grossly unfair.

As my lawyers explain in their submission, this unfairness has been recognized by many powerful voices, including the United States Government State Department, the Senate Foreign Relations Committee, and this Commission. What has happened to my father has also been condemned and criticized by United Nations officials, the European Union (both through its External Action Service and the European Parliament), many other countries and civil society groups such as Amnesty International, Human Rights Watch, the Committee to Protect Journalists, PEN International, and Reporters Without Borders (RSF). The United Kingdom has also made clear that the authorities in Hong Kong are in breach of the Sino-British Joint Declaration, an international treaty in place since the handover.

I would like to thank the Commission for its condemnation of the actions taken against my father, including his imprisonment for peaceful protest in 2021, and for its statement on World Press Freedom Day this year calling on the United States Government to lead a global effort to secure the release of all those unjustly detained in Hong Kong, including my father.

I would also like to thank the United States Government for the strong stance it has taken against my father's ongoing persecution, including the State Department's condemnation of his conviction on spurious fraud charges in October 2022, and his lengthy sentence of imprisonment.

I am, however, disappointed that the United Kingdom has not taken a stronger stance in this shocking case. I have met with the UK's Minister of State for the Indo-Pacific, Anne-Marie Trevelyan MP, twice, along with my lawyers, and they have also met with Rita French, Britain's Global Ambassador for Human Rights and Deputy Permanent Representative to the United Nations in Geneva. In private meetings they have said that my father's case is a very high priority for the UK, and that they are raising their concerns with Hong Kong and China at every available opportunity.

However this is not the impression which they are giving to me, or to China and Hong Kong. Both the Prime Minister, Rishi Sunak MP, and the Foreign Secretary, James Cleverly MP, have refused to meet with me and the international legal team. The Foreign Secretary has, however, been willing to meet personally with senior CCP Ministers and senior officials. In February 2023 at the Munich Security Conference he met with Member of the Political Bureau of the CPC Central Committee and Director of the Office of the Central Commission for Foreign Affairs, Wang Yi; and just last week he met with China's Vice-President, Han Zheng, the architect of the brutal crackdown on the pro-democracy movement in Hong Kong in 2019–2020.

The UK Government has yet to condemn my father's treatment or call for his release. I am shocked by this. My father is a British citizen. I am a British citizen. Why is our government not supporting us fully and fearlessly?

I am now leading the international campaign to free my father, before it is too late: the #FreeJimmyLai campaign. I am very grateful to the Commission for holding the upcoming evidence session on May 11th, 2023, and giving me a platform to explain more about my father and what he stands for.

THREATS TO MY FATHER'S SUPPORTERS

Because I have chosen to take a stand and advocate for my father, I cannot return to Hong Kong due to the risk of prosecution. This means I may never see or speak to my father again.

The Hong Kong authorities have made very clear that they do not agree with what I am doing, or the work of the international legal team. In response to my calls to the United Kingdom and the international community to condemn the actions taken against my father and demand his immediate release, the Hong Kong authorities have accused me, my lawyers, and the UK Government, of attempting to undermine the rule of law in Hong Kong.[1]

Two weeks ago, a committee of the UK Parliament—the All-Party Parliamentary Group on Hong Kong—published a report, *Media Freedom in Hong Kong: the Case of Jimmy Lai and Apple Daily,*[2] that concluded that the provisions of the NSL are in violation of the International Covenant on Civil and Political Rights,[3] and that the NSL and sedition laws have been improperly used to stifle dissent and suppress freedom of expression in Hong Kong.[4] The Hong Kong authorities responded by declaring the report to be "*malicious slander against the NSL*" in an attempt to undermine the rule of law in Hong Kong.

The Hong Kong authorities have sought to defend their actions with the claim that, "*Hong Kong is a society underpinned by the rule of law and has always adhered to the principle that 'laws must be obeyed and lawbreakers be held accountable.'*"[5] This description of Hong Kong as a society underpinned by the rule of law is a description that once rang true, but now belongs to the past. It is no longer correct.

The actions taken against my father are not the actions of a government that respects the rule of law. They are the actions of a government that has no respect for law, and for the fundamental rights and freedoms of individuals in Hong Kong. As the Commission has noted in its October 2022 special report, *Hong Kong's Civil Society: From an Open City to a City of Fear*[6] the provisions of the NSL have been used to effectively dismantle Hong Kong's once thriving civil society.[7] The NSL has enabled the Hong Kong authorities to target not only protesters, for which it had previously used public order offenses, but also the organizations that once formed the core of Hong Kong's civil society—human rights non-governmental organizations; pro-democracy religious groups; trade unions; professional groups; student union organizations; and the independent media including Next Digital Ltd and *Apple Daily*—organizations perceived by the CCP to undermine China and Hong Kong's international image, and to challenge the CCP's legitimacy.

CONCLUSION

What has happened to my father, to Next Digital and to *Apple Daily* should sound the alarm bells for any business operating in Hong Kong. What has happened to my father could happen to anyone, to any organization. For as long as my father remains in prison, Hong Kong is not a safe place to do business. For as long as the NSL and other laws are used to target businesses and organizations considered to undermine the CCP, Hong Kong is not a safe place to do business.

I ask that the United States Government continue to do all it can to secure my father's freedom and to hold the CCP and the Hong Kong authorities accountable for their ongoing persecution of my father.

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[1] See, for example, HKSAR press release, "HKSAR Government strongly opposes interference by foreign government in court case involving Lai Chee-ying," 10th January 2023.

[2] All-Party Parliamentary Group on Hong Kong, "Inquiry into Media Freedom in Hong Kong: the case of Jimmy Lai and Apple Daily," 25th April 2023. Available at: https://www.hkinquiry.org/mediafreedominhongkongreport

[3] Ibid. pp. 21–24.

[4] Ibid. p. 23.

[5] HKSAR press release, "HKSAR Government strongly opposes interference by foreign government in court case involving Lai Chee-ying," 10th January 2023. See also, HKSAR press release, "HKSAR Government strongly disapproves of and firmly rejects report by UK All-Party Parliamentary Group on Hong Kong," 25th April 2023.

[6] https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Hong%20Kong%20Civil%20Society%20Report.pdf

[7] Ibid. pp. 8–9.

I wish to close my written testimony by quoting Common, the hip-hop artist and Academy Award winner. In 2015, he wrote in TIME Magazine that Jimmy Lai, my father, is "*a hero in Hong Kong*" because:

> "*There are those who, when given the keys to wealth and the perks of the Establishment, choose not to rock the boat because of the backlash they might face. Jimmy Lai is not such a person.*
>
> *Though he went from a child laborer in a garment factory to owning his own clothing line and media company, he rejected complacency and the status quo when he chose to criticize a powerful government and support a primarily student-led democracy movement in his beloved Hong Kong.*
>
> *His courage in the face of the firebombing of his home, as well as his subsequent arrest for his role in challenging the ruling order, resonates around the world as an inspiration for those seeking self-determination. It was this kind of bravery that inspired me to mention the Hong Kong protests in my Oscar acceptance speech, and that reminds all of us to always strive to speak truth to power."*[8]

My father is in prison because he spoke truth to power for decades. He is still speaking truth to power and refusing to be silenced, even though he has lost everything and he may die in prison. I am very proud to be his son.

PREPARED STATEMENT OF BRIAN KERN

Mr. Chairman, Commissioners, I appear before you today as both a citizen of the United States and a permanent resident of Hong Kong. I express my deep appreciation for the CECC's consistent work on Hong Kong over the years. So many members of Congress on both sides of the aisle as well as the administration are important allies in the Hong Kong people's struggle for freedom and democracy, and that is most heartening.

I am here to speak to you about the crisis of mass political imprisonment in Hong Kong. It is an essential part of the overall ongoing crackdown, which includes the systematic suppression of the basic human rights of freedom of expression, freedom of association, freedom of assembly and political participation, and the Chinese Communist Party's transformation of Hong Kong into an authoritarian society.

Over the years, I worked for many pro-democracy civil society groups and political parties in Hong Kong. All of them have been shut down, and their leaders are now in prison: Lee Cheuk-yan, Chow Hang-tung, Albert Ho, Leung Kwok-hung, Benny Tai, Joshua Wong, Eddie Chu, Jeremy Tam, Kwok Ka-ki, and Alvin Yeung. (Three of them, Lee Cheuk-yan, Chow Hang-tung and Joshua Wong, have deservedly been nominated this year for the Nobel Peace Prize by some of the Commissioners before me now, along with Jimmy Lai, Gwyneth Ho and Cardinal Zen.) In all, more than 80 groups associated with the pro-democracy movement have been forced to close; 188 pro-democracy leaders have been arrested, 109 convicted, and 46 imprisoned. Dozens are in long-term pre-trial detention. You have to look hard around the world to find countries where the political opposition has been so systematically and drastically targeted for elimination as Hong Kong.

But it's not just people who were at the heart of the pro-democracy movement who are in prison. In fact, they make up a minority. Most political prisoners are ordinary Hong Kongers. University and high school students, medical workers, emergency first-aiders, lawyers, teachers, business people, journalists, people from across the pro-democracy spectrum, from the most moderate to the most radical. The oldest political prisoner is Jimmy Lai at 75 years old. The youngest is 13. Mass political imprisonment affects virtually every sector of Hong Kong society, every community, every neighborhood. Most everyone in Hong Kong knows someone imprisoned for political reasons.

Just this year, my neighbor, a young devout Christian musician, was sentenced to more than four years in prison for taking part in a protest in 2019. I was at that protest. I was about two hundred yards away from him when he got arrested. There but for the grace of God . . . Millions of us stood up for freedom and democracy, but some are paying for that much more heavily than others.

In 2020, on the eve of the imposition of the draconian national security law, my own family decided to leave Hong Kong while we believed we still could. Refuge in this country has afforded me the opportunity to fight on for Hong Kong. Being free

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[8] https://time.com/collection-post/3823046/jimmy-lai-2015-time-100/.

myself, I have a special responsibility to all those who are not free, and above all to political prisoners.

I think I speak for most Hong Kongers when I say we have a strong awareness that it could just as easily be any one of us in prison. The people who are there, are serving time on our behalf. We have great gratitude for and solidarity with them, and we will fight until every political prisoner is free, however long that may be.

I started monitoring political arrests a few weeks after the beginning of the protests in 2019, as it became clear that the regime would employ mass arrests as a tactic to crush the protests, and I've continued to do so ever since. From June 2019 up to now, there have been 10,615 political arrests in Hong Kong.

I was the lead researcher on Hong Kong Democracy Council's report on political prisoners, which came out last June. It is based on a complete database which is continually updated.

One of our main motivations in publishing the report was to emphasize the very large number of political prisoners. The international media has done a pretty good job of covering the trials of high-profile figures such as Jimmy Lai, Joshua Wong and some others, but there has been little reporting on the pattern of mass political imprisonment.

The report's cut-off date was May 11, 2022, exactly one year ago today. At that time, there were 1,014 political prisoners in Hong Kong. Now, one year later, the number has risen to 1,457. That's 443 new political prisoners in one year—an increase of close to 50 percent.

Let me put that in global perspective. The only countries incarcerating political prisoners at rates faster than Hong Kong's over the past three years are Burma and Belarus. Hardly beacons of rule of law.

This is what makes what's happening in Hong Kong all the more extraordinary. Unlike Belarus and Burma, up until 2019, despite its lack of democracy, Hong Kong had fairly robust rule of law. There are few better indicators of its deterioration and the erosion of the independence of the judiciary than the huge increase in the number of political prisoners. The judiciary's like a stop sign the government has simply steamrolled. Or perhaps it's more accurate to say, the judiciary's been complicit in its own steamrolling.

Political imprisonment isn't an entirely new phenomenon in Hong Kong, but *mass* political imprisonment is: At the start of the protests in June 2019, there were 26 political prisoners. We've gone from 26 then to 1,014 in May 2022 to 1,457 today.

Who are these political prisoners? There are basically three categories: 1) protesters from the 2019–2020 protests; 2) those remanded and imprisoned on national security law charges; and 3) those remanded and imprisoned on sedition charges.

(Note: Sedition is a UK-colonial-era law that had never been used in post-handover Hong Kong up until 2020. In all, since then, 77 people have been arrested for "doing or saying acts with seditious intent" to incite hatred of the Chinese government, Hong Kong government and/or police. As the Hong Kong authorities have applied it, it is essentially a speech crime. Most of the people arrested for sedition have been tried for online speech or for their work as journalists. In the most infamous example, four young trade unionists were convicted of sedition and imprisoned for 19 months each for publishing allegorical children's books about sheep. While sedition is not a national security law crime, it is investigated by the National Security Department of the Hong Kong Police Force and adjudicated by judges designated by the Chief Executive to preside over national security law trials, and it is included by the Hong Kong government as a crime "endangering national security.")

Of those three groups, by far the largest is protesters. About 1,300 people have been imprisoned on protest-related charges versus 72 people on national security law charges, and 44 on sedition charges. (Several dozen others have been imprisoned for other political crimes such as insulting the national flag, insulting the national anthem, and inciting others to not vote or to cast a blank vote.)

Young people have been particularly targeted. One hundred fifty-nine political prisoners are minors—that's about 10 percent of the overall total. Seventy percent of political prisoners are under the age of thirty. I call the young people of Hong Kong today "the prison generation"—oppression is one of their most defining experiences.

We expect the number of political prisoners to continue to rise for some time to come. There are at least 380 people charged with crimes related to the 2019–2020 protests whose trials have not concluded or not even begun, and there are dozens more either on trial or awaiting trial on national security and sedition charges. On top of that, there are new arrests happening all the time. A conservative estimate

is that the number of political prisoners will plateau at around 2,000 some time next year. That's assuming there are no new waves of mass arrests.

What can the United States do?

Now is a crucial moment in the world's relations with the Communist Party and Hong Kong government. Post-zero-Covid, both the Communist Party and the Hong Kong government are making a big push to reset relations with the rest of the world. We've already seen some Western countries begin to revert to the bad old days when trade almost totally dictated their China policy. Both Chancellor Scholz of Germany and President Macron of France have gone to Beijing within the past half-year with big business delegations in tow. The government of the United Kingdom has already hosted one Hong Kong government minister this year and says it will host three more before the end of the year. We regard this type of diplomacy as entirely inappropriate. Tantamount to appeasement, it sends the exact wrong message to the Communist Party; namely, as long as we can do business, we will only pay lip service to calling out crimes against humanity in the Uyghur region, the stripping of Hong Kong's autonomy and basic human rights, and threats to invade Taiwan. Not only that, but these leaders misconstrue current global power dynamics: at this point in history, the Communist Party needs the rest of the world more than the opposite. I had hoped that the Russian invasion of Ukraine would wake Western democracies up to the dangers of economic dependence on dictatorships hostile to their basic values, but it looks like we still have some way to go in convincing some countries of that in regard to China.

By contrast, the U.S. has a relatively clear-eyed view of what China under the Communist Party is today. The current administration's China policy is largely fair, robust, coherent, comprehensive, and rational. After decades of mostly calamitously misguided China policy across both Democratic and Republican administrations, the U.S. is finally beginning to get China right. Whether or not the current strategy proves to be effective depends on how well and how consistently it is implemented. And that, in turn, depends on continuing consensus on China across political parties. This current strategy will take time and will only succeed if its general principles are embraced by future administrations.

With this in mind, my message to the President and Congress is this: Hold the line. Continue to take a tough stand on Hong Kong, and let the Communist Party know that the crackdown on Hong Kong will continue to be an impediment to improved U.S.-China relations.

And to show you mean business, pass the Hong Kong bills that are before Congress. Close Hong Kong economic and trade offices in this country.

Don't allow the Hong Kong government to whitewash its image in the international community. Make sure the sanctions on Chinese government officials, Hong Kong government officials, and top Hong Kong police officers now in place stick, and extend them to prosecutors and judges in political trials. Don't allow U.S.-sanctioned Chief Executive John Lee to attend the APEC summit in San Francisco in November as he says he would like to do.

Use your influence to persuade U.S. companies to refrain from showing public support for the Hong Kong government or cooperating in its propaganda initiatives. I keep a Corporate Bad Actors list together with the Hong Kong Democracy Council. It's made up of international companies in Hong Kong that have violated the United Nations Guiding Principles on Business and Human Rights. Unfortunately, it has grown quite long. The leaders of U.S. financial firms such as JPMorgan Chase, Blackrock, KKR, Goldman Sachs, Blackstone, Morgan Stanley, Carlyle, Apollo, BNY Mellon, and State Street, as well as the chair of the American Chamber of Commerce in Hong Kong have colluded with the Hong Kong government within the past half year. If U.S. companies decide to operate in Hong Kong, that's up to them, but at a bare minimum, they should do so without publicly supporting a government that has put so many political prisoners behind bars and stripped Hong Kongers of their basic human rights.

And lastly, let me ask the following of you. There are a lot of clichés about freedom, there are a lot of misuses of the word "freedom," but after a year of constant harassment, intimidation and threats in Hong Kong, I had never felt so free and safe in my life as when I arrived in the U.S. Protection was afforded me due to my U.S. passport. I hope that protection can be extended to other persecuted Hong Kongers. The President's Deferred Enforced Departure order for Hong Kongers already in the U.S. was meant as a stopgap until more lasting legislation providing humanitarian pathways for Hong Kongers could be passed, much as after the Tiananmen Massacre in 1989. I urge Congress and the administration to work together to pass such legislation in this Congressional session.

Thank you, Commissioners, for your support of the Hong Kong people's ongoing struggle for freedom and democracy.

PREPARED STATEMENT OF KEVIN YAM

Mr. Chairman, Mr. Co-Chairman, members of the Commission, thank you for inviting me to testify before you today. The views expressed are my own and do not represent the views of any group or entity to which I belong.

I begin with a confession: there are lawyers more qualified to talk about Hong Kong criminal law than me. Unfortunately, some of them, like veteran activist lawyers Albert Ho[1] and 2023 Gwangju Prize for Human Rights winner Chow Hang Tung,[2] are languishing in jail. Others are still in Hong Kong fighting the good fight and cannot testify before the Commission lest they get their clients or themselves into trouble. Yet others who left Hong Kong dare not speak out, fearful of what that might mean for their loved ones in Hong Kong.

By contrast, I no longer have close family connections with Hong Kong. I even brought my mother's ashes back to Australia with me when I left Hong Kong in 2022. And I have practiced as a lawyer in Hong Kong for over 17 years, including a little bit of criminal law, as well as lots of rule of law and democracy activism along the way. So while I might not be the most qualified lawyer to testify before the Commission, I am the most available.

My testimony today about Hong Kong's rule of law starts with the various trials against political dissidents and protesters. To a casual observer, one will mostly still see lawyers and judges decked out in their British-style wigs and gowns. The trials still follow common law's detailed trial procedures, with questioning of witnesses by lawyers and judges. Legal submissions are still full of British-style legal jargon. As for judges, the majority would likely have convinced themselves that they are still independent. They get told this in public all the time by the Hong Kong government.[3]

Against this background, political trials in Hong Kong still have all the outward trimmings that can potentially hoodwink an international community which wants to believe in and get friendly with the Chinese Communist Party again in the post-COVID world. But this is precisely what makes the current situation in Hong Kong particularly insidious. The whole pantomime that is now played out in Hong Kong courts is an edifice that is decaying on the inside.

To begin with, as much as many judges might think of themselves as independent, they do not live in a vacuum. They can see the tone set by the current Chief Justice. Unlike his predecessor,[4] he refused to publicly defend separation of powers in Hong Kong after years of attacks against the concept by Beijing officials.[5] He reinstated a judge[6] disgraced for expressing explicit pro-Beijing political bias in court,[7] and who is then promoted to hear national security cases.[8] He saw fit to attend a party-political event in the form of the Chinese Communist Party's 100th anniversary celebrations.[9]

Hong Kong judges also saw the definition of their judicial oath being changed on them in 2021.[10] By having sworn to uphold Hong Kong's Basic Law and bear alle-

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[1] "UN calls for release of ailing Hong Kong rights lawyer Albert Ho," *Radio Free Asia*, March 30, 2023.

[2] *2023 Gwangju Prize for Human Rights Winner Announcement*, May 2, 2023: http://eng.518.org/sub.php?PID=0301&action=Read&idx=1032&ckattempt=1.

[3] See, e.g., Hong Kong Department of Justice, *Our legal system—judicial system and the courts*: https://www.doj.gov.hk/en/our_legal_system/judiciary.html.

[4] Rhoda Kwan, "Explainer: Understanding Hong Kong's debate around the separation of powers and an executive-led system," *Hong Kong Free Press*, September 26, 2020: https://hongkongfp.com/2020/09/26/explainer-understanding-hong-kongs-debate-around-the-separation-of-powers-and-an-executive-led-system/.

[5] "Journalist questioned why no mention of separation of powers in speech, Chief Justice: too politicized, not appropriate to comment," *Inmedia.net*, January 11, 2021 (original in Chinese): https://www.inmediahk.net/node/1080146.

[6] Maisy Mok, "'Noble stabber' judge back on unrest cases," *The Standard*, Jul 30, 2021: https://www.thestandard.com.hk/section-news/section/4/232700/%27Noble-stabber%27-judge-back-on-unrest-cases.

[7] "Geoffrey Ma says judges expressing political views in public risks compromising impartiality," *The Standard*, May 25, 2020: https://www.thestandard.com.hk/breaking-news/section/4/147844/Geoffrey-Ma-says-judges-expressing-political-views-in-public-risks-compromising-impartiality.

[8] Lau On-kei, "Kwok Wai-kin admits to being appointed designated National Security judge, had said that accused in Lennon Wall chopping person case had noble sentiments," *HK01*, September 16, 2021 (original in Chinese)[not provided herein].

[9] *Chief Justice of the Court of Final Appeal and Chief Judge of the High Court to attend celebration activities of 100th anniversary of founding of Communist Party of China in Beijing*, June 27, 2021: https://www.hkcfa.hk/filemanager/PressRelease/en/upload/96/press_release_20210627_01en.pdf.

[10] *Interpretation and General Clauses Ordinance* (Hong Kong), section 3AA.

giance to Hong Kong, they are now deemed to have subscribed to a whole set of political axioms, such as upholding "the national sovereignty, unity, territorial integrity and national security of the People's Republic of China." This is no mere formality, as a judge is required "to intend to" and "in words and deeds" to "genuinely and truthfully observe, support, maintain and embrace" the pledge.

Most importantly, what is becoming ever more apparent is that whenever any judge or court tries to show a bit of backbone, they get viciously barked at by pro-Beijing media, by various Hong Kong versions of Benedict Arnolds who are doing Beijing's bidding, and even by Beijing officials. Just look at what happened when Jimmy Lai tried to bring in a British senior counsel for his National Security Law case in Hong Kong. The courts did initially let in the British senior counsel.[11]

But then what? Beijing officials and mouthpieces rounded on the judges for applying international standards.[12] The Hong Kong Chief Executive ran crying to Granddaddy Xi for a re-interpretation against the rulings.[13] And the Hong Kong judiciary had to put out a statement stating their respect for the re-interpretation, and that the courts would uphold the National Security Law.[14] It is as if one gets punched in the gut and then still has to smile and thank the thug for the punch.

So what does this mean? It means that the judges still serving in Hong Kong all know which way the winds are blowing. They know that the safest route to survival and promotion is to obey to the hilt. It means that for all the long political show trials with their ostentatious displays of common law court procedure, they will, whether consciously or subconsciously, almost inevitably side with the prosecution.

On one level, this makes things even worse in Hong Kong than in Mainland China. At least in Mainland China, the kangaroo court is brutally short, with no little pretense of trials being anything other than foregone conclusions. By contrast, the legal agony in Hong Kong is extended and expensive, but mostly with little palpable difference to the final result.

Beijing's pummeling of the Hong Kong judiciary also means that successful Hong Kong lawyers have been so unwilling to become judges that even the pro-Beijing camp had publicly sounded the alarm.[15] Senior lawyer friends of mine who still live in Hong Kong say that this unwillingness extends even to pro-Beijing high-flyers in the profession, as they do not want to suffer reputational damage from being associated with an increasingly politicized judiciary.

As a result, the Hong Kong judiciary is, with very few exceptions, only attracting and will only continue to attract mediocrities who are looking for not much more than income stability and possibly a life pension. This will not only impact on the impartiality of a judiciary looking to show career-boosting obedience in political cases. It will also affect the quality of justice and legal reasoning being meted out in commercial disputes, as top talent shy away from joining the bench.

Overall, what we have witnessed in Hong Kong is a death by a thousand cuts from Beijing to Hong Kong's rule of law and judicial independence. And the United Nations is also questioning the maintenance of judicial independence in Hong Kong in view of things such as the fact that only judges designated by the Hong Kong government can hear national security cases.[16]

Before concluding, I would like to turn to Hong Kong prosecutors in political trials. It is never easy for a lawyer to criticize fellow practitioners. I also appreciate that lawyers sometimes have to act on cases where they take positions that they do not personally believe in. And as someone who used to be my family's main

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[11] *Re Timothy Wynn Owen KC* [2022] HKCFI 3233 (Hong Kong Court of First Instance); [2022] 5 HKLRD 726 (Hong Kong Court of Appeal); [2022] 25 HKCFAR 288 (Hong Kong Court of Final Appeal).

[12] "National security law for Hong Kong must be fully and accurately enforced," *Global Times*, November 29, 2022, https://www.globaltimes.cn/page/202211/1280719.shtml. This is an English translation of a summary of remarks by a spokesperson from the Hong Kong and Macao Affairs Office of the State Council of the People's Republic of China, the Chinese original of which can found here: https://www.hmo.gov.cn/xwzx/xwfb/xwfb__child/202211/t20221128__23897.html.

[13] *Statement by Chief Executive on submitting report to CPG on National Security Law and recommendation to request interpretation of National Security Law from NPCSC*, November 28, 2022: https://www.info.gov.hk/gia/general/202211/28/P2022112800736.htm.

[14] *Judiciary responds to interpretation of Hong Kong National Security Law by Standing Committee of National People's Congress*, December 30, 2022: https://www.info.gov.hk/gia/general/202212/30/P2022123000679.htm.

[15] Ambrose Lam San-keung, "Hong Kong Courts Need Move On From Dino Age," *The Standard*, February 13, 2023: https://www.thestandard.com.hk/breaking-news/section/4/200218/(Viewpoint)-Hong-Kong-Courts-Need-Move-On-From-Dino-Age.

[16] Letter from Margaret Satterwaite, United Nations Office of the High Commissioner for Human Rights' Special Rapporteur on Independence of Judges and Lawyers to the Hong Kong Government, April 19, 2023, 2–3: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27992.

breadwinner, I understand that it is sometimes not a simple case of quitting an unpleasant job when you have mouths to feed at home.

I would therefore have had some sympathy for prosecutors of political trials if it is clear that they are doing nothing more than going through the motions. But at least with some of them, that is far from the case. Instead, they are carrying out their roles as persecutors and not merely prosecutors with gusto. In doing so, they are ignoring common law requirements of prosecutorial fairness, as well as Hong Kong[17] and international[18] guidelines of prosecutors requiring them to uphold human rights.

Examples of such abuses include indiscriminately opposing bail for defendants in national security cases,[19] and aggressively pursuing draconian sentences against juveniles as young as 14 years of age or who otherwise have issues such as Asperger's Syndrome.[20] There are also attempts to prove national security breaches with perplexingly childish cross-examination questions, such as whether reporting comments from Putin on his rationale for invading Ukraine would affect Ukrainian citizens' morale and thus endanger national security.[21]

Taken together, what is clear is that some prosecutors in political cases are lowering their own professionalism and, by extension, the quality of legal processes in courts, down to the level of schoolyard boorishness. Not only is this grossly unjust for the defendants concerned, but when this is all that Hong Kong judges are facing day in, day out, it would in turn affect the quality of justice, legal reasoning and the rule of law in courts generally, even in non-political or commercial cases. And prosecutors who pursue political cases in such a poor manner are rewarded with various promotions and awards.[22]

This then leads to the following questions for the Commission to consider. Should such individuals who are being rewarded and promoted by China for going the extra mile to take their prosecution to outright persecution be allowed to enjoy access to a global financial system of which the United States plays a key role? Should they be allowed to send their children to places like the United States where they would enjoy high living standards and an education that encourages free thought, while youths in Hong Kong are being force-fed Mainland China-style nationalist education? Should they be allowed to enjoy holidays in free nations such as the United States?

To deny these Hong Kong persecutors (yes, I do mean persecutors) such freedoms would admittedly be draconian. In this regard, however, I would take the Commission to the words of former United States Supreme Court Justice Oliver Wendell Holmes. In a letter to the British political theorist Harold Laski, Justice Holmes said that judges should hold a statute to be unconstitutional if it makes one want to "puke."[23] Similarly, I would invite members of the Commission to consider this: do the repressive actions of these Hong Kong persecutors, who have chosen to be

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[17] Hong Kong Department of Justice, *Prosecution Code*, paras 3.12–3.16: https://www.doj.gov.hk/en/publications/prosecution_ch3.html.

[18] United Nations, *Guidelines on the Role of Prosecutors*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, para 2(b): https://www.doj.gov.hk/en/publications/prosecution_app1.html.

[19] See, eg, Michael Shum, "Court battle drags on for 47 activists, politicians," *The Standard*, March 2, 2021: https://www.thestandard.com.hk/section-news/section/11/227977/Court-battle-drags-on-for-47-activists-politicians.

[20] Chris Lau, "Hong Kong prosecutor who sought tougher penalties for protesters elevated to senior counsel," *South China Morning Post*, March 31, 2021: https://www.scmp.com/news/hong-kong/law-and-crime/article/3127808/hong-kong-prosecutor-who-sought-tougher-penalties.

[21] "Chung Pui-kuen: if bin Laden agrees to be interviewed, it would be published; prosecution: this affects U.S. citizens' morale and endangers national security," *InMedia*, February 20, 2023 (original in Chinese): https://www.inmediahk.net/node/1094542/.

[22] See, e.g., footnote 20 above; Chris Lau, "Hong Kong prosecutor leading national security law case against 47 opposition figures takes key justice department role," *South China Morning Post*, August 13, 2021: https://www.scmp.com/news/hong-kong/politics/article/3144895/hong-kong-prosecutor-leading-national-security-law-case. Deputy Director of Public Prosecutions (Special Duties), Anthony Chau Tin-hang, was also rewarded with a Hong Kong Chief Executive's Commendation for Government/Public Service on 1 July 2021 "*in recognition of his outstanding performance in the Department of Justice*"—see page 72 of the following: https://gia.info.gov.hk/general/202107/01/P2021063000579_370988_1_1625057277705.pdf.

[23] Letter from Justice Oliver Wendell Holmes to Harold J Laski, Oct 23, 1926, reprinted in 2 *Holmes-Laski Letters* 887, 888 (Mark DeWolfe Howe edition, 1953), as cited in Andrew B Coan, "Well, Should They? A Response to If People Would be Outraged by Their Rulings, Should Judges Care?" 60 *Stanford Law Review* 213, 227. The letter in question (with the "puke" reference found as per the letter's citation here) can also be seen here: https://archive.org/stream/holmeslaskilette017767mbp/holmeslaskilette017767mbp_djvu.txt.

important cogs in destroying Hong Kong's rule of law and human rights, make you want to puke?

It is not for me to answer this question for the Commissioners. But what I would say is this: as someone who practiced law in Hong Kong for a long time and will forever be grateful for everything that this previously free city had given to me, I want to puke when thinking about the persecutors who went and are going extra miles in their acts of repression. And I believe that all good people of conscience would join me in wanting this Holmesian puke.

Should members of the Commission feel the same way, then the next steps that should be taken in relation to these persecutors are, draconian as they may appear, clear.

PREPARED STATEMENT OF ANNA KWOK

Mr. Chairman, members of the committee, thank you for inviting me to testify at this hearing.

Hong Kong, the city with its promised autonomy under the framework "One Country, Two Systems," (1C2S) was once the beacon of hope for freedom and democracy in Asia. Since 2020, both the Trump and Biden administrations have repeatedly acknowledged Hong Kong's loss of its promised autonomy. **Within 25 years, Hong Kong has descended from being a symbol of a vibrant civil society in East Asia, to the epitome of another failed international deal negotiated with the People's Republic of China.**

I was born in 1997, the year when Hong Kong's sovereignty was passed from the United Kingdom to the People's Republic of China. Through my life, my yearning for democracy and freedom grew along with the city's desires. In the beginning, people were generally hopeful—perhaps we could keep protesting until we see our universal suffrage, perhaps we could maintain autonomy even after the 50-year term on One Country, Two Systems, and perhaps, even, we could democratize China and Asia. Years went by, this hope was proven to be just a fantasy: the HKSAR government started attempting to slowly replace One Country, Two Systems with repressive and propaganda-promoting legislation. The government attempted to introduce the censorship-heavy Article 23 in 2003 and the propaganda-spreading national education curriculum in 2012. It was then, Hong Kongers slowly came to realize the intention behind One Country, Two Systems—it was a tactic to buy time for the Chinese Communist Party to slowly boil the frog named Hong Kong. In 2014, Hong Kongers demanded universal suffrage through the Umbrella Movement; the Beijing government outright denied Hong Kongers' our rights. Eventually, Hong Kongers understood the promised autonomy was nothing but a fraud to slowly rein in Hong Kongers' freedoms. The last wave of the pro-democracy movement in Hong Kong broke out in the summer of 2019, when the Hong Kong government attempted to pass legislation to allow extraditions from Hong Kong to China. Hong Kongers knew it was almost their last chance before a long winter and gave all they could to turn the tides of history. The city and the people marched in the millions, campaigned internationally, and even won with a landslide victory in the then district council elections. Hong Kongers banded together to show the world—we call for freedom and democracy, the government is working against the people. However, the years of civil society growth and the months of decentralized movement were ended with a decisive gavel: the Hong Kong government implemented the National Security Law in June 2020, which laid out the legal foundation for the government to arrest and convict Hong Kongers who have been exercising their human rights to advocate politically.

One Country, Two Systems has failed Hong Kong. Some say it has always been a manipulated international deal with the Chinese government—when the system allows for one-party and one-man governance, the system has been doomed to fail since the very beginning. Given the Chinese Communist Party's bad-faith dealing record these days, the world would not be so surprised that Hong Kong did not turn out the way democratic countries imagined. However, as the Chinese Communist Party had appeared relatively susceptible to change years ago, One Country, Two Systems had the world completely fooled for years. I believe every foreign policy analyst and China watcher, even certain Commissioners present today, had hopes that one day, Hong Kong would be the defining city in East Asia's struggle for democracy and freedom. Turns out, it still is, yet it bears an opposite meaning now.

THE COST OF A FAILED ONE COUNTRY, TWO SYSTEMS: POLITICAL PRISONERS

The failure of One Country, Two Systems, which essentially promised Hong Kongers political rights, came with the cost of political prisoners in Hong Kong. According to Hong Kong Democracy Council's political prisoner database maintained by Brian Kern, who is also testifying today, by April 30, 2023, the once flourishing civil society has 1,453 political prisoners. Thousands more have been charged with a selection between or a mix of the National Security Law, the colonial-era sedition law, and various other protest-related offenses. Currently, there are around 500 cases pending for trials and sentencing. Convictions made on the grounds of the National Security Law and sedition are standing firmly at 100%. While other witnesses have shared experiences faced by specific political figures, such as Jimmy Lai, Joshua Wong, and Gwyneth Ho, we must remember similar fates are also shared by thousands of nameless Hong Konger protesters who are now detained or imprisoned.

The citywide political persecution also erased Hong Kong's space for political organizing and protesting. Over the past 3 years, media outlets, political parties, civil organizations, and unions have been shut down one by one. The once vibrant civil society is now a silenced, censored, and oppressed one. However, it must be recognized that some Hong Kongers on the ground are still persisting, either silently or discreetly. We must not forget about them.

The freefall of freedom in Hong Kong does not only reflect the state of domestic affairs inside of Hong Kong, its political ramifications ripple through Asia. The city was once a haven for dissidents and marginalized groups. Tibetan, Uyghur, and Chinese activists were able to organize in Hong Kong, Asian human rights advocates relied on Hong Kong to meet with representatives from the international society. With Hong Kong's relative freedom eradicated, the state of affairs extends to curtail general democratic development in Asia. It also allows the CCP to heighten its regional influence and control in Asia.

Since Xi Jinping came to power, the CCP has sought to intimidate, coerce, and bully countries in the South China Sea and beyond—the most notable example being Taiwan. In parallel to the explicit authoritarian expansion, Xi also makes his "no limits" partnership with Putin known, at a time when Russia is actively invading Ukraine. Without a doubt, Xi and the CCP intend to send a strong message on its commitment to authoritarian dictatorship not just domestically, but around the world.

In light of the developing alliance between dictatorship regimes, the U.S. should assert its commitment to pro-democracy values and stand firm against dictatorship regimes. The determination to support basic human rights and promote democracy should be expressed through foreign policy legislation and execution, including offering humanitarian pathways to freedom fighters and sanctioning human rights abusers.

RECOMMENDATIONS IN RELATION TO FOREIGN POLICIES

Humanitarian Pathways

In July 2020, days after the enactment of the draconian National Security Law, the Trump administration determined Hong Kong was no longer "sufficiently autonomous" and should no longer enjoy certain differential treatment set forth in the United States-Hong Kong Policy Act of 1992. One year later, in August 2021, the Biden administration decided to defer enforced departure for Hong Kongers in the United States for foreign policy reasons, asserting the United States' commitment to unite democratic values to defend democracy and promote human rights around the world. It is abundantly clear that the issue of Hong Kong has garnered bipartisan support in the United States, and we are grateful for the executive decisions directed by the two consecutive administrations.

While there were quick responses from both administrations to respond to Hong Kong's situation in 2020 and 2021, thought must be put into political prisoners who are currently in jail, especially those who may seek refuge when they are released one day. Hong Kongers have dedicated years of their lives in the fight for freedom and democracy in Hong Kong. If they can make it to the United States, they will undoubtedly be valuable actors and resources in the foreign policy network.

Currently, while asylum application exists for people who come to the United States directly from Hong Kong, there are no existing pathways for Hong Kongers to come to the United States for humanitarian purposes. In the 116th and 117th Congress, various versions of humanitarian pathway-related legislation were introduced, but none managed to pass. As months become years, we are getting close to seeing a crisis of released individuals getting charged and arrested again in the endless limbo of a corrupted judiciary system.

Therefore, I urge the Commissioners before me to exercise your legislative power to offer humanitarian pathways for Hong Kongers as soon as possible, during the 118th Congress. Among the various measures, the Priority 2 (P–2) refugee program allows Hong Kongers to first travel to a third country—vetting procedures can take place to eliminate security concerns there—then resettle to the United States upon successful application. This program will be impactful for political prisoners who wish to continue their fight against the regime once they are out of jail. It will send a strong message to human rights advocates in Asia on the American commitment to promoting and protecting democracy.

Separately, while eligible Hong Kongers who are in the United States currently benefit from the Deferred Enforced Departure (DED) program—an executive means to not deport Hong Kongers who overstay their permitted period—I urge the administration to upgrade the DED program to a longer-term solution, such as the Temporary Protection Status (TPS).

The Biden administration has designated Hong Kongers the DED protection twice: from August 2021 to February 2023 (18 months), and from January 2023 to January 2025 (24 months). In the 2023 redesignation of Hong Kongers' DED, the Presidential Memorandum only came one and a half weeks before the program's deadline. Hong Kongers in the United States had to face possible deportation, which in its worst-case scenario, would result in another round of mass arrests when protesters have no choice but to return to Hong Kong.

In both rounds of the DED program designation, there was a significant wait time between the release of the Presidential Memorandum from the administration and the publication of the Federal Register Notice from the USCIS: 77 days in 2021 and 98 days in 2023. Without a published Federal Register Notice, Hong Kongers who are eligible for the DED and its related employment authorization cannot apply for the relevant document. Without legal work documents, some Hong Kongers have been terminated or fired at work, causing both livelihood concerns to Hong Kongers and operational difficulties to American employers. However, if Hong Kongers were granted TPS, a program directed by the Department of Homeland Security (DHS), the wait time would be significantly reduced, thus reducing both the administrative burden of the USCIS, the livelihood anxiety of Hong Kongers, and the operational burden on employers. TPS also provides a legal status and basis for Hong Kongers to stay in the United States, which would provide stability for pro-democracy protesters to continue their grassroots efforts in fighting against the CCP. In the past year, there were numerous political campaigns organized by Hong Kongers to uncover the CCP's foreign influence through the Hong Kong government on American soil. As Hong Kongers are undeniably impactful and valuable forces in countering the CCP's authoritarian expansion abroad, I urge the administration to consider upgrading the current DED program to TPS for Hong Kongers in the United States, in order to build a stronger, more resistant, and more comprehensive civil society in the U.S.

Sanctions

In 2019 and 2020, the 116th Congress passed the Hong Kong Human Rights and Democracy Act and the Hong Kong Autonomy Act, which provided available policy tools and authorized the U.S. Government to impose sanctions on officials and entities in Hong Kong responsible for violating Hong Kong's promised autonomy.

In response to the continual persecution, conviction, and sentencing pursued by the Hong Kong SAR government, I implore the administration to sanction National Security Law judges and persecutors. When the SAR government maximizes the potential of every single policy tool to abuse human rights in Hong Kong, the U.S. Government should respond clearly with designated sanctions. It is of utmost importance to hold human rights perpetrators accountable for their complicity in the regime's oppression.

Thus far, sanctioning recommendations have been made by the Congressional-Executive Commission on China (CECC), as well as two other Hong Kong advocacy organizations—the Committee for Freedom in Hong Kong (CFHK) and Stand with Hong Kong (SWHK).

The Aftermath of a Failed One Country, Two Systems: Another Proxy for the CCP

While One Country, Two Systems is a known fraud at home, the Hong Kong government continues to manipulate the façade of a play-pretend autonomy to appeal to the international society.

The previously recognized autonomy allows the Hong Kong government certain special treatment, including the existence of Hong Kong Economic and Trade Offices

(HKETOs) around the world. Currently, there are three HKETOs present in the United States. They are in New York City, San Francisco, and the country's capital—Washington, DC. In fact, it is just a 20-minute walk from the White House, and a 15-minute car ride from where we are now.

The HKETOs are overseas representative offices of the Hong Kong government. Granted additional privileges, exemptions, and immunities by legislation and Executive Order 13052 President Clinton signed in June 1997, the HKETOs currently enjoy the same status as institutions such as the United Nations and the International Monetary Fund under the International Organizations Immunities Act (IOIA). The HKETOs were first set up to develop and strengthen positive trade relations between the United States and Hong Kong. In recent years, it was revealed by the Hong Kong Free Press that the HKETO in Washington, DC. gave instructions to lobbyists to counter the passage of the Hong Kong Human Rights and Democracy Act. Previously, Hong Kongers in DC have also received requests from HKETO officers to gather information about members on our team. In the past year, HKETOs have been active in engaging with business leaders, congressional offices, and government representatives at private events, including music concerts in both Washington, DC and New York City. These events often bear the main theme of promoting a prosperous Hong Kong, to whitewash the human rights abuses committed by the Hong Kong government. In general, the offices are now used by the CCP to promote pro-authoritarian narratives and direct influence operations in the United States.

Aside from the U.S.-based HKETOs, the Hong Kong government has been tirelessly organizing global campaigns, events, and summits to appeal to American corporates and tourists. Last November, the government organized a global financial leader summit in Hong Kong, where CEOs of BlackRock, Morgan Stanley and Goldman Sachs flew to Hong Kong to listen to the keynote speech by John Lee, the U.S.-sanctioned Chief Executive of Hong Kong. The participation from these financial institutions, at odds with the U.N. Guiding Principles on Business and Human Rights, took place just miles away from where political prisoners were detained and imprisoned. I struggle to think of other top-tier global financial centers where masses of citizens are put in jail for exercising their fundamental human rights—not in New York City, London, or Tokyo. The SAR government manages to leverage its previous status of being a global financial center to lend the reputation of American corporates to build their stage.

When American corporates conduct businesses and set up headquarters in Hong Kong, some comply and succumb to the government's request to participate in suppressing and silencing certain pro-democracy politicians and organizers. According to HKDC's latest report, "Business NOT As Usual: International Companies in the New Authoritarian Hong Kong," American corporations, such as PayPal and Stripe, have terminated services to Hong Kong pro-democracy parties and groups. Currently, people in Hong Kong cannot successfully search for HKDC's account on PayPal, despite it being perfectly accessible and available in the United States.

Additionally, as Hong Kong's open internet access and information privacy is increasingly threatened, it is difficult to guarantee the data privacy of American corporates in Hong Kong.

When American corporates continue to kowtow to the Hong Kong government and its repressive measures, there is a disorienting mismatch between the foreign policy direction from the U.S. Government and the business decisions made by American corporates.

RECOMMENDATIONS IN RELATION TO NATIONAL SECURITY

In response to the three HKETOs present in the U.S., Congress should pass the bipartisan legislation the Hong Kong Economic and Trade Office Certification Act, reintroduced by both the Chair and Co-chair of the CECC, together with Sen. Rubio and Rep. McGovern.

Once passed, the legislation would require the President, 30 days after enactment, to certify whether HKETOs in the United States merit the extension of privileges, exemptions, and immunities that they currently maintain. If the President certifies that the HKETOs do not merit diplomatic immunity, the HKETOs will terminate their operations within six months. If the President determines that the HKETOs do merit an extension of privileges, Congress has the authority to offer a disapproval resolution which, if adopted, would force the administration to revoke the privileges enjoyed by the HKETOs. This determination by the President would be required yearly.

Separately, to counter the Hong Kong government's intrusive demands made on American corporates, the 118th Congress should also consider the bipartisan Hong

Kong Business Integrity and Transparency Act, which was recently introduced in Congress by Rep. Curtis and Rep. Peters.

The bipartisan bill aims to monitor the business environment in Hong Kong in relation to American businesses. It mandates semi-annual reporting from the Department of Commerce on instances of demands for user data, assistance with law enforcement, and content takedowns by the Hong Kong government.

In order to combat the increasing foreign influence conducted by the Beijing and Hong Kong governments through the HKETOs and to monitor the Hong Kong government's demands on American corporates, Congress should consider passing the Hong Kong Economic and Trade Office Certification Act and the Hong Kong Business Integrity and Transparency Act in this Congress.

CONCLUSION

In light of the apparent authoritarian character expressed by the Hong Kong SAR government at home and abroad, it is in the foreign policy and national security interests of the United States to pass and implement the above-mentioned legislation and executive means with regard to paving humanitarian pathways, sanctioning, evaluating HKETOs' status, and monitoring the Hong Kong government's intrusion into American businesses in Hong Kong.

In 2023, when more and more people are put behind bars, people may think Hong Kong has hit its rock bottom, and we can hardly bounce back. What people fail to see is: day by day, Hong Kongers at home and abroad continue to struggle for survival and for a chance to get our promised freedom and democracy. We persist because we truly believe basic human rights and democratic values will ultimately prevail. In the decade of increasing aggression expressed by authoritarian dictators, the international community must see the inherent value of having a democratic Hong Kong for the world.

Thank you, Commissioners, for your support for Hong Kong. I hope Hong Kongers can continue counting on you as our dependable allies in our path to democracy.

PREPARED STATEMENT OF HON. CHRIS SMITH

Good morning, and welcome to this important hearing focusing on political prisoners in Hong Kong, and how the rule of law has eroded substantially in just the past several years, accelerating since the introduction of the National Security Law in June of 2020—a law that was introduced not by Hong Kong's legislature, the LegCo, but imposed by the National People's Congress Standing Committee in Beijing.

That fact tells you how false the "one country, two systems" mantra has turned out to be. For we no longer have rule of law in Hong Kong, but rule by law—by laws that are imposed upon the people of Hong Kong by their communist overlords in Beijing.

Of course, as our witness Kevin Yam points out in his written testimony, we still see lawyers and judges "decked out in their British-style wigs and gowns." But the common law inheritance—which is referenced in article 8 of the governing Basic Law of Hong Kong—has been destroyed, notwithstanding the residual pomp and ceremony.

It is all just Gilbert-and-Sullivanesque playacting, with the Lord High Executioner having been replaced by a modern Major General.

For now the outcome of trials for violation of the National Security Law are a foregone conclusion, with Secretary for Security Chris Tang boasting just last month of a 100 percent conviction rate in cases concerning national security.

And what are these violations of the National Security Law? Consider the case of a Hong Kong university student, Lui Sai-yu, who pleaded guilty to a charge of "incitement to secession" for running an instant messaging channel that advocated Hong Kong independence. He was sentenced by District Court Judge Amanda Woodcock to five and a half years in prison for the violation of the NSL being of a "serious nature."

To add insult to injury, Lui pleaded guilty to benefit from the common law practice of reducing a sentence by one-third if the defendant pleads guilty. While the judge initially sought to comply with that precedent, the prosecution objected, and the judge only shaved six months off the sentence. In other words, a five-year prison sentence for a university student engaging in free speech.

Amanda Woodcock was also the trial judge who sentenced Jimmy Lai, whose son Sebastien we will hear from today, for "inciting others to knowingly participate" in a banned Tiananmen Square anniversary vigil. This of course is separate from the five-year, nine-month "lawfare" sentence he was already serving, which Sebastien

can tell us more about, or his upcoming trial for sedition under the National Security Law.

There should be consequences for judges like Amanda Woodcock who are complicit in the dismantling of the rule of law in Hong Kong and who bow to the dictates of the Chinese Communist Party.

In tandem with this hearing, our staff has produced a report on the role played by Hong Kong judges in rights violations under the National Security Law, which I would urge all of us to read.

Just as we have sanctioned so-called judges in Venezuela and Iran for their undermining of constitutional government and participating in show trials, so too should someone like Amanda Woodcock, who is a judge in name only, be sanctioned for undermining the rule of law and, indeed, the judiciary.

Another judge who should be sanctioned, in my opinion, is District Court Judge Kwok Wai-kin. Judge Kwok was the judge who sentenced five speech therapists to 19 months in prison for publishing three allegorical children's books about sheep being harmed by wolves, with "seditious intent."

Shocking.

There is actually one item in the judges sentence that I actually agree with, however: when the defendants sought to argue that "one country, two systems" meant that a distinction exists between the People's Republic of China and Hong Kong, Judge Kwok berated them, saying that it is "morally wrong" to say that "Hong Kong and PRC are separate."

In this, Judge Kwok is correct: the distinction between the PRC and Hong Kong has been obliterated.

That is the reason why I have introduced in the House, along with Ranking Member McGovern, and Senator Rubio and Senator Merkley in the Senate, the Hong Kong Economic and Trade Office Certification, or HKETO, Act, H.R. 1103.

I see no reason why Communist China should have three additional consular outposts in the United States, as Hong Kong no longer is distinct from the mainland. Indeed, as our witness Anna Kwok will testify, these Economic and Trade Offices are collecting information about members of her group, the Hong Kong Democracy Council, and other democracy activists. I thus call on my colleagues to join as cosponsors of H.R. 1103, and I ask that a letter from various Hong Kong NGOs calling for markup and passage of H.R. 1103 be entered into the record.

Finally, I would note that American businesses have now been put on notice that the rule of law in Hong Kong is dead. Just as mainland China has political prisoners such as Guo Feixiong—who incidentally is facing a sham trial for "subversion of state power"—Ding Jiaxi and Gao Zhisheng—so too does Hong Kong have political prisoners like Jimmy Lai, Gwyneth Ho, and Chow Hang-tung.

And if you think businesses in Hong Kong are not the next target, just look across the border and see what happened two weeks ago to Bain & Co., whose offices were raided by Chinese authorities in Shanghai. We too are going to look closely at the actions of American companies like PayPal and Stripe, which as one of our witnesses will testify, are terminating services to pro-democracy groups in Hong Kong. We want to ask them why. And we are also going to look at the role played by TikTok in interfering with the advertising and playing of the documentary "The Hong Konger: Jimmy Lai's Extraordinary Struggle for Freedom."

This episode was detailed in a written submission by Fr. Robert Sirico from the Acton Institute, which I ask to be entered into the record, along with a submission by Sunny Cheung, one by the Committee for Freedom in Hong Kong Foundation, and one by the legal team representing Jimmy Lai and Sebastien Lai.

Finally, I see that Daniel Suidani from the Solomon Islands is in the audience. He briefed the CECC a couple of weeks ago on the long arm of China's transnational repression in his Pacific island nation. Disturbingly, his GoFundMe account, to pay for his trip to warn Congress and the American people, was blocked until word got out that he would be appearing before the CECC. Nonetheless we are going to look at why GoFundMe would freeze his account, hopefully without having to use our subpoena authority.

STATEMENT OF HON. JEFF MERKLEY

In just a few years, Hong Kong has gone from a relatively free and open city to a shadow of its former self. This transformation has not been an accident but rather the result of the ruthless assault on Hong Kong's spirit by the Chinese Communist Party and its shameless enablers in the Hong Kong government. At every step, this Commission has documented that assault, shining a light on the draconian National Security Law, chronicling the crushing of civil society, and now today releasing a report detailing the erosion of Hong Kong's rule of law.

Nowhere is the crisis in Hong Kong's rule of law more vivid and heartbreaking than in the explosion in the number of political prisoners. The Commission's Political Prisoner Database, which has long focused on the many thousands of cases in mainland China, has expanded in recent years to now also include cases in Hong Kong. We've had no choice but to do so. We've had a responsibility to do so. As one of our witnesses today informs us, in the last four years there have been 10,615 political arrests in Hong Kong. What had been a relatively free and open city locked up thousands of political prisoners with dizzying speed. That includes icons of free speech like Jimmy Lai and Joshua Wong. But the jailers didn't stop after they made examples of prominent advocates for freedom and democracy. As we'll hear today, this is a story of mass political imprisonment. Hong Kong's rulers want to send the message that nobody who speaks truth to power—protesters, politicians, journalists or anybody else—is safe.

This is devastating for all of us who love Hong Kong. I will never forget Thanksgiving Day 2019. The day after the Hong Kong Human Rights and Democracy Act, and my bill banning the export of crowd-control equipment to the Hong Kong police were signed into law, a hundred thousand Hong Kongers held a rally to thank the United States for standing with Hong Kong. They thanked us, these defenders of the soul of Hong Kong, the freedom of Hong Kong, the political rights of Hong Kong, who were putting so much on the line in the face of determined repression. I had the privilege of addressing that crowd via video that day and remain proud of the work this Commission did on a bipartisan, bicameral basis to get those bills signed into law.

But what we did was from the safety of the United States, unlike the huge challenge in Hong Kong. If Hong Kong's freedom fighters can no longer feel safe in Hong Kong, the least we can do—the very least—is make them feel safe here in the United States. It is disgraceful that we have not done more to open up humanitarian pathways for Hong Kongers to the United States of America. Whether it's Priority 2 refugee protections in the Hong Kong Safe Harbor Act that Senator Rubio introduced last Congress with my support or other pathways, it's long past time to act. We've shown there's bipartisan support for this cause, bicameral support. We can't let politics or the objections of a few stop us from doing what's right.

PREPARED STATEMENT OF HON. JAMES P. MCGOVERN

Good morning. I join Chair Smith and Co-chair Merkley in welcoming those attending today's Congressional-Executive Commission on China hearing on political prisoners in Hong Kong. I regret that I am unable to be present due to a competing hearing in the Nutrition, Foreign Agriculture, and Horticulture Subcommittee, of which I am Ranking Member.

I welcome our witnesses today and am deeply thankful for your commitment to the causes of human rights and democracy for Hong Kong. It is due to your efforts and those of hundreds of your colleagues that we know what has happened in Hong Kong and what the consequences have been for its people. I realize that your dedication has come at great cost. I can only say that what you are doing is laudable and I hope and believe that future generations will recognize your sacrifice and celebrate your contributions.

As we will hear today, the number of political prisoners in Hong Kong has shot up from 26 in June 2019 to 1,014 in May 2022 to 1,457 today. These are ordinary people from all walks of life in Hong Kong, and of every age—the youngest is 13 and the oldest, Jimmy Lai, whose son is with us today, is 75. We know some of their names, but not most. Each of their lives has been completely upended by a state that punishes the exercise of fundamental rights by using the 2020 National Security Law to quell dissent, limit protest, and curb criticism.

It is critical to understand that the imprisonment of these more than 1,400 people is just the beginning of the story. Just as important, and just as intentional, is the ripple effect, first, on their families and loved ones, and more broadly, on the whole society—the businesses shut down, the jobs and livelihoods lost, the fear instilled,

the self-censorship that results. Because it really is true, as one of our witnesses will say today, that "it could just as easily be any one of us."

There should be no doubt that the huge increase in the number of political prisoners in Hong Kong is an indicator of the politicization of the judiciary and its resulting loss of independence. The effective exercise of human rights depends on the existence of means to protect and defend those rights. An impartial and independent judiciary is one of the most important of those means. When the actions of prosecutors and judges are based on ideology, when they interpret the law to favor a political position at the expense of protecting universal rights, they are acting to undermine rule of law and human rights, and they should be sanctioned. I take this opportunity to again endorse the witnesses' position that U.S. sanctions authorities should be fully enforced against Hong Kong prosecutors and judges implementing the National Security Law.

We in Congress and on this Commission will continue to call out the use of the National Security Law to criminalize the exercise of rights, and we will continue to champion the cases of political prisoners in Hong Kong.

But there is more we can do: we must pass legislation to offer humanitarian pathways for Hong Kongers as soon as possible. I welcomed President Biden's decision in February to extend the Deferred Enforced Departure order for another 24 months as a first step. But more lasting solutions are needed. We tried to get this done in the 117th Congress but fell short. We must succeed during this Congress.

We should also increase our engagement and improve coordination with the government of the United Kingdom—joint advocacy on cases may be more effective than going it alone.

Finally, my message to U.S. businesses in Hong Kong is simple: neither the HKSAR nor the PRC can be counted on to operate in accordance with the rule of law, as the gutting of the commitments made in the Basic Law makes clear. The more than 1,400 political prisoners in Hong Kong are living, breathing evidence of this. You ignore this reality at your own risk. If you doubt me, ask for a meeting with Jimmy Lai.

Thank you.

SUBMISSIONS FOR THE RECORD

SUBMISSION OF MARK L. CLIFFORD, PRESIDENT, COMMITTEE FOR FREEDOM IN HONG KONG FOUNDATION

Thank you for inviting me to share my perspective on the many political prisoners in Hong Kong. It is a subject close to my heart and my experience. Sadly, in the new Hong Kong, a simple "thank you" for your interest could be construed as "collusion" with a foreign power and put the speaker at risk of being charged under Hong Kong's National Security Law.

Freedom of the press is no longer guaranteed in Hong Kong. The clampdown on media freedom, and specifically the destruction of the pro-democracy *Apple Daily* newspaper, show in microcosm how civil and political rights have been dismantled.

I was proud to be part of *Apple Daily*, the flagship publication of the Next Digital media group and a leading voice for democracy in Hong Kong with some 1,000 employees in Hong Kong and Taiwan. After a decades-long career in Hong Kong, holding a variety of senior positions in journalism, I served as an independent non-executive director of Next Digital Ltd., *Apple Daily*'s owner, from May 2018 until September 2021.

The end of press freedom in Hong Kong came in June 2021, when more than 500 armed police marched into the Apple Daily newsroom, jailing senior journalists. The company's founder and controlling shareholder, Jimmy Lai, had already been jailed on manufactured charges since December 2020. Subsequent government actions made it impossible for the company to pay its bills, including the salaries for our journalists.

Jimmy Lai has been in jail since December 31, 2020. He is kept in solitary confinement and is ritually manacled for his court appearances: disgraceful treatment for a 75-year-old man who has always preached non-violence and whose only "crime" has been the thousands of articles he has written in defense of freedom and democracy. He bears his imprisonment with grace and dignity, having accepted that it is his fate to be held captive for his beliefs.

As of May 2023, Hong Kong holds more than 1,400 political prisoners, including high-profile individuals who were active in the pro-democracy movement. In addition to Lai, they include Joshua Wong, Lee Cheuk-yan, and Gwyneth Ho. Securing the release of these and other political prisoners should be a top priority for both the Biden administration and for Congress.

My former *Apple Daily* colleagues also deserve support and advocacy. They have been imprisoned for nearly two years. Why am I not there with them? I just happened to be in the U.S. visiting family when the arrests were made. All the directors who were in Hong Kong at the time were arrested. I have never been able to return to Hong Kong, my home for 28 years.

Every political prisoner is an affront to decency and justice, but when journalists are taken away, it destroys people's ability to monitor the operations of their government.

Lai, if he is convicted, faces life in prison. The other six journalists from *Apple Daily* have, under duress, expressed a willingness to plead guilty. But they are still being held hostage, presumably so they can be pressured to testify against their former boss, too, when his trial is held. Those six include **Cheung Kim Hung,** the former chief executive officer; editor in chief **Ryan Law; Lam Man-chung,** executive editor; **Chan Pui-man,** associate publisher and news editor; **Yeung Chin-kee,** editorial writer; and **Fung Wai-kong,** the *Apple Daily* managing editor and also an editorial writer. He had quit the paper but was arrested at the airport while trying to fly to London in June 2021.

All of the *Apple Daily* journalists face life in prison on charges including "conspiracy to commit collusion with a foreign country or with external elements" and "conspiracy to publish a seditious publication." These charges are obviously bogus. They were just doing journalism.

Imagine if the publisher of the *Washington Post* and six of the newspaper's top journalists were jailed merely for publishing the news. It's the same situation.

The arrest of journalists in Hong Kong is particularly shocking because the city was long a beacon for freedom. China promised in an international treaty (the 1984 Sino-British Joint Declaration) and the city's mini-constitution (the Basic Law) to keep Hong Kong's longstanding liberties intact. The city's destruction at the hands of the Communist Party in China should be a warning to people everywhere that freedom is fragile and at risk.

I would like to suggest that the members of this Commission consider the following recommendations to more effectively advocate for the release of political prisoners in Hong Kong:

1. **Develop a mechanism between Congress and the executive branch to press for the release of all political prisoners in Hong Kong.** Congress should mandate a report from the Department of State outlining its actions to promote the release of political prisoners in Hong Kong. In addition, Congress should hold regular meetings with executive branch staff who can provide updates on political prisoners' well-being, the steps being taken to secure their release, and plans for future advocacy.
2. **Encourage Members of Congress to "adopt" Hong Kong political prisoners.** The U.S. Commission on International Religious Freedom (USCIRF), in conjunction with Amnesty International and the Tom Lantos Human Rights Commission, operates the "Defending Freedoms Project," which helps draw attention to human rights abuses around the world. The project encourages Members of Congress to advocate on behalf of prisoners of conscience by providing them with information about prisoners and their families and practical ideas for raising awareness in Congress, at the State Department, and with foreign governments. Currently there are no adopted prisoners from Hong Kong. The CECC and the project's organizers should encourage an increased focus on the more than 1,400 political prisoners being held in Hong Kong.
3. **Strengthen and streamline the Defending Freedoms Project to improve outcomes in political prisoner advocacy.** The Tom Lantos Human Rights Commission should consider recommending that congressional offices submit an annual report detailing the steps they took to support the political prisoners they adopted. They should also be routinely providing Members' offices with a list of political prisoners who are eligible for adoption. The Commission can also broaden their outreach by improving resources to constituents with family members or friends who may be eligible for adoption on how to craft effective applications to Members.

SUBMISSION OF FRANCES HUI, POLICY AND ADVOCACY COORDINATOR, COMMITTEE FOR FREEDOM IN HONG KONG FOUNDATION; FOUNDER AND DIRECTOR, WE THE HONGKONGERS

Chairman Smith, Chairman Merkley, and Members of the Congressional-Executive Commission on China, I would like to express my sincere gratitude for the opportunity to provide testimony to the Commission. I am deeply honored to share the stories of those I know personally who are currently imprisoned for standing up for their basic freedoms in Hong Kong. Their dedication and courage in the face of adversity inspires me and many others to continue advocating for justice and democracy in Hong Kong.

I became an activist when I was 14 years old. I joined Scholarism, a student organization led by middle and high school students, including Joshua Wong, to protest the government's national education proposal in 2012 and a Beijing-proposed new election method that sparked the Umbrella Movement in 2014. Throughout my time fighting for democracy in Hong Kong, I have met many like-minded, intelligent, and kind people whom I call friends. After the fall of our city to the Chinese Communist Party's (CCP) authoritarian rule, we provided support for one another and became important leading voices of Hong Kong's pro-democracy movement. But now, many of these friends are either behind bars or living in fear because they continue to be monitored and harassed by Hong Kong authorities.

In 2020, we campaigned together for pro-democracy activists at the democratic primaries. I left Hong Kong soon after the election, as I had serious concerns for my safety under the newly implemented National Security Law (NSL). At that time, I was confident that the movement for freedom and justice would continue to thrive in Hong Kong. But who would have thought that all of those candidates from the democratic primaries would now be in prison and facing the possibility of life behind

bars? Who would have thought that media outlets would be forced to shut down and journalists would be accused of publishing seditious materials? Who would have thought that civil society would be crushed and that so many people would have to flee Hong Kong, the city we have always called home.

It's been two years since the Hong Kong 47 were charged under the NSL. I secured asylum in the United States in 2021. The words "political prisoners" and "political asylee" are two labels that I never imagined would apply to me or my friends, but today that is the reality.

We cannot accept the status quo. We cannot condemn the CCP's many human rights abuses without rejecting what the CCP is forcing Hong Kongers to endure. Securing the release of political prisoners in Hong Kong and alleviating their suffering should be a priority for the U.S. and the international community. As outlined in the recommendations appended to this written testimony, the U.S. has few apparatuses to advocate for the release of political prisoners. It's important to encourage Members of Congress and the Administration to speak the names of prisoners like Jimmy Lai and Joshua Wong loudly and often in an effort to raise their public profiles and put pressure on the CCP to release them.

In addition to advocating for prisoners' release, it is important to remember that civil and political liberties need protection and monitoring for those still living in Hong Kong. These include press freedom, internet freedom, and religious freedom. While a limited degree of freedom is still available in these areas, the vaguely written NSL has sent a chilling effect throughout society, encouraging self-censorship and further limiting the space for people to exercise their rights. Without a concerted effort to safeguard and preserve these small, free spaces, the condition of Hong Kong is likely to worsen. Additional vigilance is necessary from the international community. And the U.S. should closely monitor conditions in Hong Kong and continue to support those who remain there.

While many who feared persecution fled Hong Kong shortly after the implementation of the NSL, many others do not qualify for immigration programs introduced by other countries. They are in need of safe havens because they can be arrested at any time and become political prisoners. Additionally, many current political prisoners will complete their sentences, but they will likely be closely monitored by Hong Kong authorities and potentially face more persecution. It is also possible that we will see another large-scale crackdown on civil liberties in Hong Kong in the future. The U.S. should be prepared to provide humanitarian pathways for Hong Kongers under threat. As it stands, the routes for Hong Kongers to be resettled in the U.S. are limited and largely temporary. It is, therefore, timely for both the U.S. Administration and Congress to provide immediate and long-term relief to rectify these challenges by using the U.S. Refugee Admissions Program (USRAP), specifically the Priority-2 (P–2) refugee status.

In addition to the recommendations provided in the statement by the CFHK Foundation's President Mark Clifford, I would like to offer some additional recommendations to address the pressing issues that I have raised above.

1. **Press for the release of all political prisoners, including religious prisoners of conscience.** There are hundreds of Hong Kong political prisoners that could be adopted by Members of Congress or Commissioners at the U.S. Commission on International Religious Freedom. These include high-profile individuals, like Jimmy Lai, Joshua Wong, and others.
2. **Strengthen the CECC's Political Prisoner Database as a resource for Members to adopt Hong Kong political prisoners.** The Congressional-Executive Commission on China runs a Political Prisoner Database which has identified at least 50 political prisoners currently held in Hong Kong. The database is a valuable resource for Members of Congress and civil society to identify both the scope and scale of the political prisoner crisis in Hong Kong, and also helps in identifying potential prisoners that could be adopted and advocated for by Members. The Commission can work with civil society organizations to identify more political prisoners in Hong Kong that have yet to be included in the database. In addition, the Commission should also consider working in tandem with the Tom Lantos Human Rights Commission to nominate individuals in the database to the Defending Freedoms Project for Members of Congress to adopt their cases.
3. **Broaden multilateral cooperation among allies on Hong Kong.** Allies and partners should coordinate sanctions efforts, refugee relief, and political prisoner advocacy to achieve a stronger and more comprehensive response to the challenges facing Hong Kong. The U.S. and the U.K. share common foreign policy priorities, making it advantageous for them to work together in securing the release of several British National Overseas citizens (BNOs)

currently imprisoned in Hong Kong, identifying sanctions targets where the U.S. already has access to the necessary financial information, and drawing lessons from the U.K.'s early resettlement of Hong Kongers. Other allies, including EU member states, Japan, and Australia, could also play a crucial role in supporting U.S. efforts to hold the CCP and Hong Kong authorities accountable.

4. **Issue grants to support organizations that promote information access in Hong Kong.** Programs that apply new and emerging technology and make use of older forms of technology (like radio news programming) serve valuable purposes for Hong Kongers who seek information about the government and international events. Grant-making authority ought to flow from a larger U.S. government initiative to support information access in Hong Kong.
5. **Convene a dialogue between the U.S. government and tech companies like Facebook, Google, Twitter, and others to discuss best practices for maintaining a free and open internet in Hong Kong.** The government can lead a working group to better coordinate efforts to stand against actions from the CCP and Hong Kong authorities that threaten the safety and security of Hong Kongers. Doing so would encourage U.S. tech firms to resist demands from the CCP that violate users' rights, and it would allow better insight into the scope and scale of the CCP's privacy infringements.
6. **Discourage the Vatican from expanding its 2018 deal with Beijing.** The U.S. should oppose any expansion of the Sino-Vatican deal in the strongest terms and continue diplomatic discussions with the Vatican to urge the repeal of the 2018 deal, which has already been renewed twice.
7. **Press for the release of all political prisoners, including religious prisoners of conscience.** There are hundreds of Hong Kong political prisoners that could be adopted by Members of Congress or Commissioners at the U.S. Commission on International Religious Freedom. These include high-profile individuals like Jimmy Lai, Joshua Wong, and others.
8. **Monitor deterioration in religious freedom in Hong Kong.** The U.S. should monitor the state of religious persecution in Hong Kong, including the plight of 90-year-old Roman Catholic Cardinal Joseph Zen, who filed an appeal to his conviction last year for failing to register a relief fund with the local authorities during the 2019 protests. The U.S. should also assist in establishing safe and secure channels to communicate with the underground church in the PRC and religious societies in Hong Kong.
9. **Partner with other persecuted groups in China to advance U.S. policy toward China.** The development of more regularized and systematic mechanisms can help facilitate coordination with and between affected communities, including Uyghurs, Tibetans, Christians, and other persons of faith.
10. **Grant Priority–2 (P–2) refugee status to Hong Kongers and other persecuted minorities in China.** This can be accomplished by Congress or the Administration and has already been demonstrated by the extension of P–2 status to Afghans following the U.S. withdrawal from Afghanistan. The Hong Kong Safe Harbor Act, among other legislative efforts in Congress, aims to do the same for Hong Kongers. Doing so would provide Hong Kongers with an expedited means of resettlement and the opportunity to seek permanent refuge within U.S. borders that rightly recognizes the permanence of the changes in the city-state.

Once again, thank you for providing me with a platform to share my perspective and to share with you the voices of my friends who continue to stand for freedom behind bars. I hope that this hearing will serve as a vital step toward promoting support for political prisoners and the persecuted people of Hong Kong. It's my wish that the international community does not forget the suffering of the people of Hong Kong, who have stood on the front line in defending the freedom of the world, and will tirelessly explore ways to support them.

Committee for Freedom in Hong Kong Foundation
1100 13th Street NW, Suite 800
Washington, DC 20005
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May 8, 2023

The Honorable Michael McCaul
Chairman
Foreign Affairs Committee
U.S. House of Representatives
2170 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable Bob Menendez
Chairman
Foreign Relations Committee
United States Senate
423 Dirksen Senate Office Bldg.
Washington, DC 20510

The Honorable Gregory Meeks
Ranking Member
Foreign Affairs Committee
U.S. House of Representatives
2471 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable James Risch
Ranking Member
Foreign Relations Committee
United States Senate
423 Dirksen Senate Office Bldg.
Washington, DC 20510

Dear Chairmen McCaul and Menendez, and Ranking Members Meeks and Risch,

We represent a coalition of 30 organizations committed to the freedom of Hong Kong, the rights of its people, and the support of the Hong Kong diaspora. We write to request that your respective committees schedule business meetings to markup the bipartisan ***The Hong Kong Economic and Trade Office Certification Act*** (S. 490; H.R. 1103). This bipartisan legislation would force a review of the preferential treatment that Hong Kong Economic and Trade Offices (HKETOs) currently receive under U.S. law. These organizations may have deserved special treatment when they represented a relatively autonomous Hong Kong; they now operate as little more than propaganda machines for the Chinese Communist Party. We believe this charade must come to an end.

As you know, HKETOs are official representative offices of the Hong Kong Special Administrative Region. They were founded after the British handover of Hong Kong to the People's Republic of China (PRC) in 1997, and intended to deepen economic, trade, investment, and cultural ties between Hong Kong and the U.S. HKETOs currently operate in New York, San Francisco, and Washington, DC. They serve no consular functions, but U.S. law gives the offices and their employees diplomatic privileges, exemptions, and immunities.

In the treaty governing the handover, the PRC committed to affording Hong Kong a "high degree of autonomy." Permission to operate HKETOs in the United States was predicated on the understanding that the PRC would honor that commitment. Over the last several years, the PRC has instead thoroughly abrogated this commitment. In June 2020, the PRC tightened its grip on the city with the passage of the draconian National Security Law, which targets the basic freedoms and independence once enjoyed by the people of Hong Kong. The sad fact is that Hong Kong can no longer claim autonomous status—as the U.S. recognized following the enactment of the *Hong Kong Human Rights and Democracy Act* of 2019. Allowing the PRC to operate a separate diplomatic office in the U.S. now confers a privilege on that it does not deserve.

The *Hong Kong Economic and Trade Office Certification Act* would require the President to make an annual certification that HKETOs merit the extension of the privileges and immunities they currently

receive. It also stipulates that if Congress adopts a resolution disapproving that certification, the administration would have to revoke their status.

As you carefully consider your committees' priorities, we ask that you include among them a markup of this important legislation. The people of Hong Kong deserve proper representation, not CCP propaganda.

Sincerely,

Committee for Freedom in Hong Kong Foundation - on behalf of a coalition of 30 organizations.

U.S.-based Hong Kong Community and Advocacy Groups:

1. Cornell Society for the Promotion of East Asian Liberty (SPEAL)
2. DC4HK (Washingtonians supporting Hong Kong)
3. Fight for Freedom. Stand with Hong Kong.
4. Hong Kong Affairs Association of Berkeley
5. Hong Kong Democracy Council
6. Hong Kong Forum, Los Angeles
7. Hong Kong Liberty Silver Hair Group
8. Hong Kong Professional Network
9. Hong Kong Student Advocacy Group at NYU (NYU-HKSAG)
10. Hong Kong Watch
11. Hong Kongers in San Diego
12. Hong Kongers in San Francisco Bay Area
13. Lion Rock Cafe
14. LV4HK - Las Vegas Stands with Hong Kong
15. Northern California Hong Kong Club
16. NY4HK - New Yorkers Supporting Hong Kong
17. Penn State Students For Hong Kong
18. Philly4HK
19. SD4HK - San Diegans Supporting Hong Kong
20. Students For Hong Kong (Students4HK)
21. TX4HK - Texans Supporting Hong Kong
22. US Hongkongers Club
23. We The Hongkongers

Supporting Groups of Ally:

24. China Aid Association
25. Citizen Power Initiatives for China
26. Humanitarian China
27. Human Rights in China
28. Tibet Action Institute
29. Uyghur Human Rights Project

cc: Senators Marco Rubio, Jeff Merkley
Representatives Christopher Smith, Jim McGovern

CONGRESSIONAL EXECUTIVE COMMISSION ON CHINA

ONE CITY, TWO LEGAL SYSTEMS: POLITICAL PRISONERS AND THE EROSION OF THE RULE OF LAW IN HONG KONG

SUBMISSIONS

ON BEHALF OF JIMMY LAI AND SEBASTIEN LAI

Citizen of the United Kingdom of Great Britain and Northern Ireland

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Submitted by international legal counsel to Mr Jimmy Lai and Mr Sebastien Lai:

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10th May 2023

INTRODUCTION AND EXECUTIVE SUMMARY

1. These submissions are filed by the international legal team for Mr Jimmy Lai ("**Mr Lai**") and his son, Mr Sebastien Lai, to assist the Congressional Executive Committee on China ("**CECC**"). These submissions are filed in advance of the 11th May 2023 CECC hearing: *One City, Two Legal Systems: Political Prisoners and the Erosion of the Rule of Law in Hong Kong,* and they provide some further detail regarding Jimmy Lai, the barrage of cases which he has faced since 2020, and address how his case is emblematic of the annihilation of media freedom, civil society and the rule of law in Hong Kong. We are happy to assist the CECC further should there be any specific additional questions arising.

2. We also summarise in these submissions what the erosion of the rule of law in Hong Kong means for United States ("**US**") citizens and businesses in Hong Kong.

3. Jimmy Lai is a renowned media entrepreneur, pro-democracy campaigner and writer. He founded Next Media Limited in 1990, which later became Next Digital Limited ("**NDL**") (the parent company of *Apple Daily*). The company's publications included *Next Magazine* (published from 1990) and tabloid newspaper *Apple Daily* (published from 1995). From the outset Mr Lai's principles in his media work were to be staunchly independent, pro-democratic and anti-corruption. NDL was Hong Kong's largest listed media company and the most prolific producer of independent Chinese language news in the wider region, and *Apple Daily* was extremely popular until its forced closure in 2021.

4. *Apple Daily* has been described by many commentators as *"a thorn in the side"*[1] of the Hong Kong and Beijing authorities, and it is undoubtedly the case that Mr Lai and his media company were targeted precisely for that reason. The closure of *Apple Daily* in 2021 was described as *"the blackest day"* for media freedom in Hong Kong by Amnesty International[2]; an extreme, chilling demonstration of the authorities' actions to silence opposition voices and use the law to curb dissent.

5. Mr Lai – a British citizen – was arrested in August 2020 and has been imprisoned in Stanley Prison consistently since December 2020. The actions taken against Mr Lai have been widely condemned across the globe, as we explain further below, including by the United Nations, the European Union, and the US Government. However, in stark contrast, the response from his own government – the British Government – has been limited, restrained and patchy. Despite early public condemnation of the charges against Mr Lai under the NSL by the then Foreign Secretary, Dominic Raab in December 2020,[3] for a long period successive Foreign Secretaries were silent about his case. When his son, Sebastien Lai, travelled to the UK earlier this year, on two separate occasions, neither the Prime Minister nor the Foreign Secretary would meet with him and the international legal team. The Foreign Secretary has made passing reference to Mr Lai's case in his statement to the United Nations ("**UN**") Human Rights Council on 27th February 2023,[4] however, as a matter of great disappointment to Sebastien Lai, the UK Government is yet to condemn Jimmy Lai's imprisonment or call for his immediate release.

6. In summary, the international legal team's submissions are as follows:

   (a) The evidence since the passage of the Law of the People's Republic of China on Safeguard on Safeguarding National Security in the Hong Kong and Special Administrative Region

[1] E.g. see https://www.theguardian.com/world/2021/jun/23/hong-kong-apple-daily-symbol-of-pro-democracy-movement-to-close
[2] https://www.amnesty.org/en/latest/press-release/2021/06/hong-kong-apple-daily-closure-is-press-freedom-darkest-day/
[3] See, for example, https://www.gov.uk/government/news/foreign-secretary-statement-on-jimmy-lai
[4] See https://www.gov.uk/government/speeches/un-human-rights-council-february-2023-foreign-secretarys-statement

2020 (the **"NSL"**) in 2020, including the prosecution of Mr Lai under its provisions, clearly demonstrates that it is being used to repress freedom of expression and to target "undesirable" media. Its broad terms, extraterritorial reach, grant of sweeping powers of search, seizure and surveillance, and its use in practice to prosecute hundreds of activists, journalists, students and others, has destroyed the free and independent media in Hong Kong.

(b) The authorities' campaign of "lawfare" – the weaponization of the law - against Mr Lai and *Apple Daily* illustrates a more insidious form of crackdown on freedom of expression, through the use of ostensibly unconnected proceedings that all, in reality, have the common goal of punishing Mr Lai for exercising his rights to freedom of expression and opinion and peaceful protest.

(c) These actions also have serious implications for businesses operating in Hong Kong. Mr Lai's case demonstrates the ease with which "undesirable" companies may be dismantled. Hong Kong's financial and regulatory institutions and authorities, which are themselves now subject to the NSL as are their officers, have become tools in such politically motivated economic activity. The sweeping powers of search and seizure used in Mr Lai's case to access confidential journalistic material, for example, may also be applied in many other commercial contexts. There is emerging evidence that the NSL has caused companies to reconsider operating or arbitrating in Hong Kong.

(d) The actions taken against Mr Lai in violation of his fundamental right to freedom of expression, are in clear breach of the Joint Declaration on Hong Kong, agreed between the UK and China on 19th December 1994 ("**Joint Sino-British Declaration**"), and by which China agreed that the rights and freedoms, including the right to freedom of speech and of the press, would be ensured by the law of Hong Kong.

(e) The UK's response to Mr Lai's imprisonment has been weak. Whereas the Foreign Secretary has recently mentioned Mr Lai's case as example of the *"erosion"* of the freedom of expression and of assembly in Hong Kong,[5] the Government has not otherwise publicly condemned the actions taken against Mr Lai, and *Apple Daily*, or called for Mr Lai's release. The UK's actions – and inaction - stand in stark contrast to the robust support shown to Mr Lai by the US and other States, international bodies and civil society.

7. We respectfully request that the CECC recommend that:

(a) The US Government engages bilaterally with the UK to take steps to ensure Mr Lai's release.

(b) The US Government treats Mr Lai's case, a case that is emblematic of the rapid destruction of the rule of law and fundamental rights and freedoms in Hong Kong, as a political priority.

(c) The US Government engage robustly with the Hong Kong and Chinese authorities regarding this case, making clear that Mr Lai's treatment is unacceptable, in breach of the Sino-British Declaration, the Basic Law, and international human rights law, and seeking his immediate release.

[5] See https://www.gov.uk/government/speeches/un-human-rights-council-february-2023-foreign-secretarys-statement.

(d) The US Government continues to publicly condemn the actions taken against Mr Lai and *Apple Daily*, and the suppression of the free and independent media in Hong Kong in violation of the Basic Law and international law.

(e) The US Government engages bilaterally and multilaterally with the UK and other States and the European Union, to ensure the protection of individuals and businesses from the consequences of the arbitrary and unlawful application of the NSL. Measures should include (i) the continued suspension of extradition and Surrender of Fugitive Offender Agreements with Hong Kong and China, and urging States that have not yet suspended such agreements to do so, (ii) ensuring States publish robust business advisories warning businesses operating or intending to operate in Hong Kong of the risks posed by the NSL to businesses and their employees, and (iii) consideration of actions that may be taken against third-parties involved in the unlawful expropriation of businesses and assets under the guise of national security.

SUMMARY OF RELEVANT BACKGROUND

8. As the CECC is aware, Mr Lai is a 75-year-old British citizen based in Hong Kong. He was already a successful businessman when, in 1990, he founded Next Media Limited, inspired by the 1989 Tiananmen bloodshed to think about politics and how he could make a difference. Next Media Limited later became NDL. It was Hong Kong's largest listed media company, and the most prolific producer of independent Chinese-language news in the wider region. The group included *Apple Daily*, one of Hong Kong's most popular newspapers from 1995 until its forced closure in June 2021.

9. Mr Lai is also a well-known and high-profile supporter of the Hong Kong democracy movement and advocate for peaceful assembly. This pro-democracy stance was reflected in the content of his publications, including his own column in *Apple Daily*.

10. Mr Lai has been repeatedly targeted by the Hong Kong authorities because of his political opinions, his status as a high-profile pro-democracy advocate and the influence of his media company. This has been the case since 1990 when he first became involved in media ownership: his clothing businesses in mainland China were targeted once he began to write articles criticising China's leaders, particularly the then prime minister, Li Peng, widely known as the 'Butcher of Beijing.' He has been targeted in multiple ways since, including through insulting articles in Chinese state media (in which he was often called 'Fatty Lai'); threats to him and family members – for example, in January 2015 his home in Kowloon Tong and the headquarters of Next Media (as it was then known) were petrol bombed; intimidatory surveillance; and attempts to undermine his media business, including through threats to companies advertising in his publications.

11. However, the pro-democracy protests in 2019 and 2020 were a turning point, along with the passage of the NSL. Since then, Mr Lai has been targeted extensively using the law as the authorities' weapon of choice.

12. On 28th February and 18th April 2020 Mr Lai was arrested in connection with his attendance at gatherings during the protests in 2019. On 10th August 2020 Mr Lai was arrested again, this time under the newly passed NSL, for the new crime of alleged collusion with foreign agents, and for sedition. Other Next Digital staff were also arrested, including *Apple Daily*'s lead editorial writer, publishing under the name Li Ping, who had been critical of the authorities' decision to prosecute dissidents and those critical of the crackdown on protesters.

13. In 2021, Mr Lai and others were convicted in four separate sets of criminal proceedings arising out of their peaceful participation in high-profile pro-democracy protests in 2019 and 2020, organised by civil liberties groups.[6] Mr Lai was sentenced in the four cases to lengthy and disproportionate sentences of imprisonment, ranging from 8 months' to 14 months' imprisonment.[7] His sentences in the four sets of proceedings were served concurrently, in part.[8] He completed his final sentence of imprisonment in September 2022.

14. On 25th October 2022, Mr Lai was convicted of fraud said to arise out of an alleged breach of the terms of the lease of *Apple Daily*'s premises (a matter that would ordinarily be treated as a civil matter), and, on 10th December 2022, was sentenced to a wholly disproportionate sentence of 5 years and 9 months' imprisonment.[9]

15. In September 2023, Mr Lai faces a trial on further charges of foreign collusion and sedition, including charges under the NSL. The charges, for which the maximum sentence on the NSL charge is life imprisonment, are said to arise from pro-democracy publications and campaigns by *Apple Daily*.

16. The annihilation of NDL, and with it *Apple Daily,* was achieved through the use of Hong Kong's existing legal, financial and regulatory institutions and apparatus, albeit facilitated by provisions in the NSL. NDL's ability to operate was effectively ended upon the arrest of Mr Lai and his colleagues.

17. The offices of *Apple Daily* were raided by over 200 police officers on the day of Mr Lai's arrest on 10th August 2020. Journalistic material was seized in the raid under the arrest warrant. Police also announced the prosecution of three *Apple Daily* companies, froze HK$18m (£1.66m) in assets of Apple Daily Limited, Apply Daily Printing Limited, and AD Internet Limited, and locked company bank accounts containing more than $400m.

18. The demise of NDL has been swift. As at 2020, NDL employed around 2,000 people across its brands, reported an annual revenue of HKD $1.16 billion (around £120 million) and was growing. The company's assets were valued at HKD $2 billion for the year ending March 2020.[10] On 14th May 2021, the Secretary for Security, Mr John Lee, issued a notice under s.3 of Sch.3 to the Implementation Rules for Art.43 of the NSL, prohibiting Mr Lai from dealing with his assets, and freezing all the shares held in NDL by Mr Lai, on the grounds that Mr Lai had been charged with offences under the NSL, and that there are reasonable grounds to suspect that Mr Lai's assets constitute "offence related property".[11] Trading in NDL shares was suspended on 17th June 2021. On 12th January 2023, NDL was permanently de-listed from the

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[6] See sentencing judgments for each of the four sets of proceedings: *HKSAR v Lai Chee Ying* [2021] HKDC 457; *HKSAR v Lai Chee Ying* [2021] HKDC 447; *HKSAR v Chan Ho Wun and others* [2021] HKDC 645; *HKSAR v Lee Cheuk Yan and others* [2021] HKDC 1572.

[7] See ibid. Mr Lai was sentenced as follows: (1) On 16th April 2021, to 12 months' imprisonment (organising an unauthorised assembly) and 9 months' imprisonment (knowingly taking part in unauthorised assembly) to be served concurrent; (2) On 16th April 2021 to 8 months' imprisonment (knowingly taking part in unauthorised assembly); (3) On 28th May 2021 to 14 months' imprisonment (organising an unauthorised assembly); (4) On 13th December 2021 to 13 months' imprisonment (incitement to knowingly take part in an unauthorised assembly).

[8] In the second case the sentencing judge ordered for 2 months of Mr Lai's 8-month term of imprisonment to be served consecutive to his 12-month sentence handed down in the first case. In the third case, the sentencing judge ordered 6 months of the 18-month sentence of imprisonment to be served consecutively to the sentences handed down in the first and second case.

[9] An English translation of the sentencing judgment is not publicly available but a translated press release may be found at https://www.jurist.org/news/wp-content/uploads/sites/4/2022/12/Lai-Sentencing.pdf. Mr Lai is appealing both conviction and sentence. As a result of this conviction, he could also face a 10-year ban on the direction and management of companies.

[10] Not including liabilities.

[11] See https://www.info.gov.hk/gia/general/202105/14/P2021051400829.htm. The Implementation Rules for Article 43 of the NSL came into operation on 7th July 2020. According to s.1 of Sch.3: Rules Relating to Freezing, Restraint, Confiscation and Forfeiture of Property, "offence related property" means "*(a) the property of a person – (i) who commits, or attempts to commit, an offence endangering national security; or (ii) who participates in or facilitates the commission of an offence endangering national security; or (b) any property that is intended to be used or was used to finance or otherwise assist the commission of an offence endangering national security*". Available at: https://www.elegislation.gov.hk/hk/A406A!en?xpid=ID_1594007258812_001

Hong Kong Stock Exchange.[12] In the same month, NDL's few remaining physical assets, including the printing presses, were auctioned in a fire sale.

19. The Committee for Freedom in Hong Kong Foundation condemned these actions, stating that, *"Lee's actions show rule of law is no more in Hong Kong. Lee acted without judicial process in freezing company bank accounts and Lai's 72 percent shareholding. Today it is Jimmy Lai and his colleagues who suffer."*[13]

20. For most of the period since his initial arrest Mr Lai has been in prison, where he remains. NDL's board either left Hong Kong to avoid arrest themselves, or if they remained have been unable to continue any meaningful business activity related to NDL or its objectives as a publisher. Unable to function, permanently separated from its founder and senior management, and facing a government avowedly hostile to its business of publishing independent media, supported by an arbitrary and overbearing NSL, liquidation became inevitable for NDL.

21. In July 2021, Clement Chan Kam-wing, Managing Director for Assurance of international accountancy firm BDO Limited was appointed by the Hong Kong authorities as Inspector, to investigate the affairs of NDL. He was initially tasked with delivering a report within 6 months. On 27th January 2023 Mr Chan's appointment was extended for a fifth time.

IMPACT OF THE NSL ON THE RULE OF LAW AND FREEDOM OF EXPRESSION IN HONG KONG

22. A free and independent press is a fundamental pillar of democracy. Mr Lai's case is emblematic of how the NSL has been used to suppress the free and independent media in Hong Kong, in violation of the International Covenant on Civil and Political Rights 1966 ("**ICCPR**"),[14] and of the Joint Sino-British Declaration and the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the **Basic Law**") that guarantees to Hong Kong residents "freedom of speech, of the press, and of publication; freedom of association, of assembly".[15] The country is currently plummeting in international press freedom rankings. It has dropped from 80th to 140th in RSF's World Press Freedom Index of 180 countries between 2022-2023),[16] and experienced the single biggest 10-year decline of any country in the world in Article 19's Global Expression Report.[17] This precipitous decline is largely attributable to the NSL. This has profound implications not only for individuals living in Hong Kong, but also to business.

23. Before its promulgation, numerous international bodies expressed serious concerns that the NSL would severely restrict internationally protected human rights, including the right to freedom of expression and undermine the rule of law in Hong Kong. For instance, on 19th June 2020, a joint communication to China from six UN Special Rapporteurs[18] highlighted that:

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[12] See https://www.hkex.com.hk/News/Regulatory-Announcements/2023/230109news?sc_lang=en Under Rule 6.01A(1) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong, the Exchange may cancel the listing of any securities that have been suspended from trading for a continuous period of 18 months. See https://en-rules.hkex.com.hk/sites/default/files/net_file_store/consol_mb.pdf.

[13] https://www.thecfhk.org/post/apple-daily-delisting-from-hong-kong-stock-exchange-another-blow-for-hong-kong-as-business-centre.

[14] China is not a party to the ICCPR. However, China affirmed, upon the handover of Hong Kong from the United Kingdom (UK) to China on 1st July 1997, that it accepted the continued application of the ICCPR and certain other treaties to which China was not a party, but which were implemented in Hong Kong at that time by virtue of the UK's ratification. Article 39 of the Basic Law confirms that the ICCPR *"shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region"*.

[15] Article 27, Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Third Session of the Seventh National People's Congress on 4th April, Promulgated by Order No. 26 of the President of the People's Republic of China on 4th April 1990. Effective as of 1st July 1997) ("the **Basic Law**").

[16] https://rsf.org/en/country/hong-kong.

[17] https://www.article19.org/resources/hong-kong-no-more-sham-trials-publisher-jimmy-lai-must-be-freed/.

[18] See OL CHN 13/2020 available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25354

(a) The lack of specific definitions in the legislation for what conduct "*seriously endangers national security*" could result in the criminalisation or restriction of fundamental freedoms protected by the ICCPR, and in particular, the rights to freedom of expression and opinion, and of peaceful assembly (Arts.19 and 21).

(b) The lack of specificity also implicated the right to legal certainty as protected by Art.15(1) ICCPR, which required criminal laws to be sufficiently precise to define what types of behaviour and conduct constitute a criminal offence and the consequences of committing such an offence.

24. The NSL as finally enacted on 30th June 2020[19] remains breathtakingly broad in scope, in violation of the above rights under the ICCPR (as well as others). It is clear that the NSL is being used to clamp down on the fundamental right of freedom of expression (as enshrined in international legal instruments such as Art.19 ICCPR, an instrument applicable to Hong Kong through Art.39 of its constitutional document, the Basic Law).[20] In particular, it is the rights of those expressing "undesirable" views that are being targeted and repressed. Despite the lip service paid to the ICCPR at Art.4 NSL, its implementation since 2020, in Mr Lai's case as in others, reveals that any purported rights protection it offers is in fact illusory.

25. The NSL creates, under Chapter III, offences of "*secession*", "*subversion*", "*terrorist activities*" and "*collusion with a foreign country or with external elements to endanger national security*." Mr Lai's case demonstrates how easily these broadly framed definitions can be used by the authorities to arbitrarily target a wide range of "undesirable" conduct such as journalism that is critical of the Communist Party of China ("**CCP**"): the charges against Mr Lai under the NSL include allegations of collusion with foreign forces in relation to various articles published by *Apple Daily*.

26. The chilling effect of these broadly defined offences on "undesirable" media organisations is compounded further by the punitive and totally disproportionate sentences of imprisonment they carry. Each carries a potential maximum sentence of life imprisonment (see Arts.20, 22, 24 and 29 NSL): this is also the maximum sentence that Mr Lai is currently facing.

27. The NSL grants the (specially created)[21] "*department for safeguarding national security of the Police Force of the Hong Kong Special Administrative Region*" sweeping and intrusive police powers of investigation, including:

(a) "*search of premises, vehicles, vessels, aircraft and other relevant places and electronic devices that may contain evidence of an offence*" (Art.43(1));

(b) "*ordering any person suspected of having committed an offence endangering national security to surrender travel documents, or prohibiting the person concerned from leaving the Region*" (Art.43(2));

(c) "*freezing of, applying for restraint order, charging order and confiscation order in respect of, and forfeiture of property used or intended to be used for the commission of the offence, proceeds of crime, or other property relating to the commission of the offence*" (Art.43(3)); and

[19] See https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf .
[20] See https://www.basiclaw.gov.hk/en/basiclaw/facts.html.
[21] Art.16 NSL.

(d) "*upon approval of the Chief Executive, carrying out interception of communications and conducting covert surveillance on a person who is suspected, on reasonable grounds, of having involved in the commission of an offence endangering national security*" (Art.43(6)).

28. In Mr Lai's case, these powers were used to raid *Apple Daily*'s offices and seize journalistic material, in addition to arresting senior editorial staff.[22] Mr Lai's mobile phones have been seized under Art.43(1) of the NSL, despite their containing journalistic and source material.[23] Other "undesirable" media organisations have faced similar targeting: in 2021 pro-democracy outlet *Stand News* (which reportedly had already begun to self-censor after the passing of the NSL)[24] had its offices raided, staff and journalists arrested, and its operations shut down. Its editorial staff are currently on trial on sedition charges.[25] Following the targeting of *Stand News*, other pro-democracy media organisations are reported to have rapidly shut themselves down to protect the safety of their staff, in a clear display of the chilling effect of these actions.[26]

29. The concerns raised about the potential for these punitive and broadly defined provisions to be used to target "undesirables" have been entirely borne out in practice. Reporting since the passing of the NSL indicates that hundreds of individuals have been arrested under its provisions, including democratic politicians, pro-democracy activists, journalists and students.[27] In July 2022 the UN Human Rights Committee cited reports that over 200 people had been arrested, including 12 children.[28] On 14th April 2023, now marked as Hong Kong's 'National Security Day' the security minister Chris Tang boasted a 100% conviction rate in the 71 national security cases that had gone to trial.[29]

EXTRATERRITORIAL APPLICATION OF THE NSL

30. The breadth of the NSL's extraterritorial application is of grave concern. Under Art.37, it applies to an "*incorporated or unincorporated body such as a company or an organisation which is set up in the Region if the person or the body commits an offence under this Law outside the Region.*"[30] This could therefore include activities as diverse as hosting a website or server outside Hong Kong that contains content that violates the NSL.[31] As the threatened prosecution of the CEO of Hong Kong Watch, Benedict Rogers, under Art.29 of the NSL, for "*collusion with a foreign country or with external elements to endanger national security*" said to arise from Hong Kong Watch's human rights campaigns and the publication of Hong Kong Watch's website,[32] shows this threat is not merely fanciful.[33]

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[22] https://www.theguardian.com/world/2021/jun/17/hong-kong-police-arrest-editor-in-chief-of-apple-daily-newspaper-in-morning-raids.
[23] The seizure and inspection of Mr Lai's mobile phones pursuant to Article 43(1) of the NSL has been the subject of legal challenge in Hong Kong. Mr Lai's appeal to the Court of Appeal was rejected on 19th October 2022.
[24] See e.g. https://www.nytimes.com/2021/12/29/world/asia/hong-kong-stand-news-arrest.html. "*After the security law, the authorities' pressure quickly mounted. In June, Stand News removed online commentaries published in May or earlier, noting that Hong Kong was beginning to target "speech crimes.""*
[25] https://hongkongfp.com/2023/02/16/stand-news-trial-ex-hong-kong-editor-accused-of-sedition-says-politicians-should-be-free-to-criticise-authorities/.
[26] See e.g. https://hongkongfp.com/2022/01/02/breaking-independent-hong-kong-news-outlet-citizen-news-to-shut-down-on-tue-days-after-stand-news-raid/ and https://www.thestandard.com.hk/breaking-news/section/4/185477/Raymond-Wong's-Mad-Dog-Daily-shutters-in-third-closure-within-a-week.
[27] See e.g. https://www.reuters.com/world/asia-pacific/one-year-hong-kong-arrests-117-people-under-new-security-law-2021-06-30/; https://www.theguardian.com/world/2023/feb/04/hong-kong-47-trial-of-dozens-in-pro-democracy-movement-set-to-begin-under-national-security-laws.
[28] https://news.un.org/en/story/2022/07/1123432.
[29] See https://hongkongfp.com/2023/04/14/hong-kong-security-chief-hails-100-conviction-rate-in-national-security-cases/#
[30] https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf.
[31] Kwok and Donkervoort, op cit, p.5.
[32] See https://www.hongkongwatch.org/all-posts/2022/3/14/hong-kong-watch-co-founder-and-ceo-benedict-rogers-threatened-under-national-security-law
[33] On 3rd August 2022 the Hong Kong security bureau announced that it would "spare no efforts in pursuing" Canadian journalist, Victor Ho, and others based in Canada and the United States, for subversion under Article 22 of the NSL. The group, based in Toronto, had called for the

31. In addition, the very existence of this provision enables threats to be made to others – whether from State bodies or third-party actors – which may have a chilling effect on freedom of expression in the US. Mr Lai's international legal team and many others, including NGOs and journalists, have received threats of extraterritorial prosecution under the NSL from anonymous, generic email accounts, for example. Such threats are often accompanied by or coincident with other forms of cyber-harassment, such as emails being sent impersonating the target; threats of rape/ death/ dismemberment being made to the target; intrusive surveillance; and attempted hacking of emails, WhatsApp and online accounts. All of these forms of cyber-harassment have been levelled at members of the international legal team.

USE OF "LAWFARE" TO SUPPRESS CRITICAL VOICES

32. As summarised above, Mr Lai is not just facing prosecution under the NSL. He has faced (and continues to face) a campaign of prosecutorial harassment through multiple sets of legal proceedings which, whilst ostensibly unconnected, are in fact designed to target him for his pro-democracy views and campaigns. These include, for instance, his sentences of many months' imprisonment for participation in peaceful protests, and his most recent conviction and draconian prison sentence for fraud said to arise out of the violation of a lease agreement (see above). Further, and as set out in more detail above, *Apple Daily* itself has, through the legal and regulatory persecution of NDL, been shuttered - permanently.

33. The weaponization of the law in this way and in order to silence critics through the proliferation of legal proceedings against journalists, publishers, pro-democracy campaigners, lawyers and others in Hong Kong is a particularly insidious one. Prosecutions under the NSL have attracted widespread criticism precisely due to the law's self-evident incompatibility with fundamental human rights, and due to the clear evidence of its targeted use. In contrast, the public order and fraud offences of which Mr Lai was convicted in the other cases to date do not share these features, thus lending them a veneer of legitimacy. For instance, in one of Mr Lai's protest cases,[34] the Court expressly relied upon the COVID-19 pandemic to justify an arbitrary and disproportionate custodial sentence which bore no relation to Mr Lai's actual conduct (namely, 13 months' imprisonment for attending a vigil commemorating the victims of the Tiananmen Square massacre for 15 minutes to light a candle), and which, in reality, served to punish Mr Lai for exercising his right to engage in peaceful protest.

34. Likewise, Mr Lai's conviction for fraud might be said to appear ostensibly unrelated to his pro-democracy views. However, as with the protest convictions, these proceedings constitute another example of how Hong Kong has used legal proceedings to pursue and punish Mr Lai for exercising his right to publish material that is pro-democracy and critical of the CCP, and in attempt to smear Mr Lai's reputation. The US Department of State has condemned the fraud charges as "*spurious*" and expressed deep concern over efforts "*to stifle press freedom and restrict the free flow of information*."[35]

35. This resort to "lawfare", through the use of multiple, ostensibly unconnected, legal proceedings to repress "undesirable" media otherwise than by directly targeting their reporting is a tactic

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formation of the "Hong Kong Parliament" overseas: See https://www.info.gov.hk/gia/general/202208/03/P2022080300222.htm and https://nationalpost.com/news/canada/hong-kong-national-security-law-victor-ho. A number of States, including the UK and the majority of EU Member States (Portugal and Czech Republic are the exceptions), have suspended their bilateral Surrender of Fugitive Offenders Agreements with Hong Kong since the passage of the NSL. See https://www.doj.gov.hk/en/external/table4ti.html (said to be "as at 9.11.2020").

[34] *HKSAR v Lee Cheuk-yan and Others* [2021] HKDC 1572, at [37]-[43] and in particular [40]: "*I consider a deterrent and punitive sentence appropriate. The defendants exhibited a blatant disregard of a serious risk to the entire community. The defendants ignored and belittled a genuine public health crisis. They showed no concern for the safety and health of fellow Hong Kongers. They wrongly and arrogantly believed their common purpose and right to commemorate in Victoria Park was more important than protecting the community or the public's right to protection from a serious health risk, an invisible risk.*"

[35] See https://www.state.gov/jimmy-lais-fraud-case-verdict/.

that has been observed in other high-profile cases. One such example is the pursuit of criminal tax evasion and foreign ownership charges against former Nobel Peace Prize laureate Maria Ressa in the Philippines (whose recent acquittal on a number of tax charges was welcomed by the UN Special Rapporteur on Freedom of Opinion and Expression as "*a victory for media freedom as well as justice*").[36] This method of targeting individuals and businesses through the use of criminal and regulatory laws may not be confined to "undesirable" media, but may also be directed at any individual or business operation that is considered to pose a threat to the ruling authority.

IMPLICATIONS OF THE ACTIONS AGAINST MR LAI AND *APPLE DAILY* FOR BUSINESSES OPERATING IN HONG KONG

36. On 26th June 2020, shortly before the NSL's promulgation, over 50 UN experts issued a joint statement raising concerns over the ease with which it could facilitate the repression of fundamental human rights. The UN experts warned that it would "*undermine the ability of businesses operating in Hong Kong to discharge their responsibility to respect human rights in line with the UN Guiding Principles on Business and Human Rights.*"[37]

37. Three years on, the prosecution of Jimmy Lai and destruction of *Apple Daily* under the NSL clearly demonstrate that those concerns were well-founded.

38. Neither the NSL nor its implementing regulations define the term "*national security*". As applied in the law of the People's Republic of China, the term is extremely broad, encompassing "*non-traditional security fields such as economic security, cultural security, societal security, science and technology security, cybersecurity, environmental security, resource security, nuclear security, and the security of overseas interests.*"[38] Statements by Hong Kong's Chief Secretary for Administration in April 2021 suggest that a similarly expansive definition is applicable under the NSL, stating:[39]

> "*When it comes to national security, people may only think of political security, territorial security and military security, and often consider that the matter bears little relevance to their own selves. In fact, the challenges that we are facing in this new era have gone beyond political security, territorial security and military security as conventionally perceived. Extensive in breadth and depth, national security has a direct bearing on people's interests and encompasses more than ten other key aspects,* ***including economic security, cultural security, social security, technology security, cybersecurity, ecological security, resource security, nuclear security, overseas interests security and some emerging aspects like biosecurity, outer space security, deep sea security and polar security***." (Emphasis addid)

39. The sweeping powers of search and seizure granted by the NSL, together with the applicable of an expanded definition of "national security" that extends to all areas of society, industry, and the economy, are also a key concern for businesses in Hong Kong. The raid on *Apple Daily*, arrests of senior management staff, and freezing of its assets, all exemplify the concerning

[36] See https://www.ohchr.org/en/press-releases/2023/01/un-expert-welcomes-verdict-maria-ressas-tax-evasion-case#:~:text=Ressa%20and%20Rappler%20were%20charged,10%20years%20imprisonment%20and%20fines.
[37] See https://www.ohchr.org/en/press-releases/2020/06/un-experts-call-decisive-measures-protect-fundamental-freedoms-china.
[38] See Kwok and Donkervoort, "*The Risks for International Business under the Hong Kong National Security Law*", Harvard Kennedy School, July 2021 at p.4. Accessible at https://ash.harvard.edu/files/ash/files/the_risks_for_international_business_under_the_hong_kong_national_security_law_7.7.21.pdf?m=1626968393.
[39] See https://www.cso.gov.hk/eng/blog/blog20210411.htm.

breadth of these powers.[40] Mr Lai's case demonstrates the ease with which such powers may be used to obtain highly confidential journalistic material.

40. The same powers may be used in a variety of contexts to seize confidential or otherwise sensitive company material. Indeed, on 16th July 2021 the US Government issued an advisory to businesses operating in Hong Kong, warning of heightened risks regarding data privacy, and transparency and access to critical business information arising from these powers.[41] With respect to the latter, the US Government advisory rightly warns of the heightened risk to businesses whose operations rely on free and open press resulting from the increased pressure on freedom of the press, noting, among other actions taken against the press, the actions taken against Mr Lai and *Apple Daily*, as summarised above.[42]

41. In contrast to the robust position taken by the US Government, the Guidance published by the Foreign, Commonwealth and Development Office ("**FCDO**"), "*Overseas Business Risk: Hong Kong*", updated 21st February 2023, warns of significant change in Hong Kong's political landscape since the imposition of the NSL, but plays down the risk to businesses operating in Hong Kong by the NSL, stating that "*most businesses report that they are operate normally amidst the current political environment*".[43] The Guidance refers to pro-democracy protests and civil unrest in 2019, and concerns about the extent to which the NSL has "*damaged freedom of expression*" but, crucially, unlike the US Government advisory, fails to identify and warn businesses of the serious, wider implications to businesses resulting from the NSL and the clamp down on the free and independent media in Hong Kong, and confines its warning to "*political statements critical the Hong Kong and Chinese authorities*".[44]

42. Reporting since the passing of the NSL suggests that many companies have been forced to consider relocating.[45] Some companies, such as media company Initium, have relocated.[46]

DESTRUCTION OF THE RULE OF LAW IN HONG KONG

43. Finally, the NSL is also damaging Hong Kong's previous standing as a centre for dispute resolution in the region. Its promulgation prompted the legal regulatory bodies of England and Wales, the Law Society and the Bar Council, to write to the Chief Executive of Hong Kong to express "*grave concerns that this law may be used to stem dissent, arrest and criminally prosecute members of the legal profession and others who legally exercise their internationally recognised human rights*."[47] The *Financial Times*, whose reporters spoke with lawyers at firms in Hong Kong, Tokyo and Singapore, reported in April 2021 that international corporations were considering writing Hong Kong out of governing law and arbitration clauses in their contracts.[48] In March 2022, two Judges of the UK Supreme Court announced their immediate resignation from the Hong Kong Court of Final Appeal, citing concerns over the NSL.[49] Most recently, the Executive's interference in the issue of Mr Lai's choice of British defence counsel

[40] Kwok and Donkervoort, op cit, p.5.
[41] https://home.treasury.gov/system/files/126/20210716_hong_kong_advisory.pdf.
[42] Ibid, p.5.
[43] FCDO, Guidance: Overseas Business Risk: Hong Kong, Updated 21st February 2023. Available at: https://www.gov.uk/government/publications/overseas-business-risk-hong-kong/overseas-business-risk-hong-kong
[44] Ibid, Section 4.2: Rights and freedoms.
[45] See e.g. https://www.theguardian.com/world/2021/sep/07/hong-kong-international-companies-reconsider-future-in-wake-of-security-law; https://www.wsj.com/articles/hong-kong-global-companies-leaving-protests-china-crackdown-11622998192.
[46] See https://www.theguardian.com/world/2021/sep/07/hong-kong-international-companies-reconsider-future-in-wake-of-security-law.
[47] https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/national-security-law-in-hong-kong.
[48] https://www.ft.com/content/1070440a-0993-4c19-9797-2e0e781fd7db.
[49] https://www.supremecourt.uk/news/role-of-uk-judges-on-the-hong-kong-court-of-final-appeal-update-march-2022.html.

for his forthcoming NSL trial[50] has raised questions over the rule of law and the separation of powers in Hong Kong.

44. Tellingly, even the official journal of the Law Society of Hong Kong notes that "*it is critical for the Hong Kong Government to effectively address the perception problem of Hong Kong in the post-NSL landscape. For Hong Kong to survive as a premier dispute resolution hub, addressing the perception problem with concrete action is the need of the hour.*"[51]

RECOMMENDATIONS

45. Mr Lai is a British citizen who has faced a barrage of legal proceedings directed at discrediting him, silencing him and dismantling his business, as part of a wider effort to suppress the free and independent media in Hong Kong. He now faces life imprisonment for exercising his right to freedom of expression and opinion. The actions taken against Mr Lai and *Apple Daily* are emblematic of the real and serious risk to individuals and businesses in Hong Kong – not only to those who voice "political" statements critical of the Hong Kong authorities and China. The broad interpretation of "national security" and actions deemed to constitute a threat to national security applied by Hong Kong, and allowed for by the sweeping provisions of the NSL, means that there is a real risk to those who carry out non-political activity perceived undermining any Hong Kong policy, including economic activity.

46. In the light of the above, we respectfully request that the CECC recommend that:

    (a) The US Government engages bilaterally with the UK to take steps to ensure Mr Lai's release.

    (b) The US Government treats Mr Lai's case, a case that is emblematic of the rapid destruction of the rule of law and fundamental rights and freedoms in Hong Kong, as a political priority.

    (c) The US Government engage robustly with the Hong Kong and Chinese authorities regarding this case, making clear that Mr Lai's treatment is unacceptable, in breach of the Sino-British Declaration, the Basic Law, and international human rights law, and seeking his immediate release.

    (d) The US Government continues to publicly condemn the actions taken against Mr Lai and *Apple Daily,* and the suppression of the free and independent media in Hong Kong in violation of the Basic Law and international law.

    (e) The US Government engages bilaterally and multilaterally with the UK and other States and the European Union, to ensure the protection of individuals and businesses from the consequences of the arbitrary and unlawful application of the NSL. Measures should include (i) the continued suspension of extradition and Surrender of Fugitive Offender Agreements with Hong Kong and China, and urging States that have not yet suspended such agreements to do so, (ii) ensuring States publish robust business advisories warning businesses operating or intending to operate in Hong Kong of the risks posed by the NSL to businesses and their employees, and (iii) consideration of actions that may be taken

[50] See reporting in https://hongkongfp.com/2022/12/01/media-tycoon-jimmy-lais-trial-adjourned-to-dec-13-hong-kong-immigration-withholds-visa-extension-for-his-lawyer/.
[51] See https://www.hk-lawyer.org/content/national-security-law-and-dispute-resolution-hong-kong-back-basics.

against third-parties involved in the unlawful expropriation of businesses and assets under the guise of national security.

CAOILFHIONN GALLAGHER KC
JONATHAN PRICE
TATYANA EATWELL
JENNIFER ROBINSON

DOUGHTY STREET CHAMBERS

10TH MAY 2023

SUBMISSION OF REVEREND ROBERT SIRICO,
PRESIDENT EMERITUS, ACTON INSTITUTE

Chairman Smith, Chairman Merkley, and members of the Joint House and Senate Commission on China, I appreciate the opportunity to address the urgent topic of human rights in Hong Kong and in particular the situation of my friend Jimmy Lai Chee-ying.

I have known Mr. Lai for the past 25 years in personal, pastoral, and professional capacities. In my judgment, he is a man of high principles and spirituality and a highly skilled entrepreneur, as his success in business attests. I know his family as well and have traveled with them on vacation and dined in their homes on numerous occasions. Mr. Lai sees his business and social commitments as extensions of his faith life, and even now, while in prison and awaiting trial for what could be a severe sentence, he maintains his Christian hope that freedom may one day come to his homeland through his free and voluntary witness. What is being done to this man and people like him both in Hong Kong and on the mainland of China is morally deplorable and requires a bold and nonpartisan response from all leaders concerned with freedom of the press, freedom of assembly, freedom of enterprise, and freedom of religion.

Hong Kong has long epitomized the essence of the human spirit. It has been creative, alive, energetic, and free. This spirit, coupled with decades of freedom under British colonial rule, has provided economic prosperity and served as a beacon of hope for Chinese suffering under an oppressive communist regime. Thousands of mainland Chinese have fled the Maoist regime to Hong Kong—among them Jimmy Lai, who escaped to Hong Kong as a stowaway at age 12. Beginning a new life as a simple textile laborer in Hong Kong, he eventually built a phenomenally successful clothing retail business. His first clash with the Chinese Communist Party came after the Tiananmen Square Massacre, when Jimmy's public criticism of CCP leadership resulted in the threat of closing his shops in China. CCP pressure eventually forced Jimmy to sell his clothing business entirely. Undeterred, Jimmy harnessed his entrepreneurial talent to build Hong Kong's most successful newspaper in its history: the pro-democracy *Apple Daily*. As custodian of freedom of speech and freedom of the press, *Apple Daily* gave voice to Hong Kong's democratic advocates following its 1997 transition from British colonial rule to China's control.

At the handover, there were reasons for hope. Jimmy's native China was in the midst of an enormously successful economic liberalization: it permitted local family businesses, was open to global trade, and promoted advanced education for its citizens. Those internal economic reforms and integration into the global marketplace lifted hundreds of millions of Chinese citizens out of poverty. This demonstrated that what had happened in Hong Kong could also happen in the Motherland. Yet a palpable shift has occurred under the leadership of Chinese president Xi Jinping. This shift has seen the suppression of Hong Kongers' democratic aspirations and the evisceration of the rule of law. The Beijing-imposed National Security Law, and its proscription of an undefined "sedition," undermined Hong Kong's Basic Law and made it impossible for Jimmy to operate a free press. The National Security Law even threatens freedom globally, as its claims to extraterritorial jurisdiction prevents advocates of authentic Hong Kong democracy like me from ever returning to Hong Kong without risking arrest. Hong Kong was supposed to retain its "One Country, Two Systems" status until 2047, but Beijing's grip is coming at an enormous human cost, not the least of which is the imprisonment of Hong Kong's advocates for democracy and freedom.

Jimmy's life is a song of freedom and faith. Although Jimmy became a fabulously successful entrepreneur through sheer inspiration and grit, business success is not what drives this man. Rather, it is his capacity for love and sacrifice. Although he could have fled Hong Kong long ago, he chose to stay to give voice to the rightful aspirations and hopes of his fellow Hong Kongers. Jimmy is willing to make this sacrifice because, as he explains, he owes freedom his life. However, it is also a sacrifice that neither he, nor any other human being, should have to make.

All of this prompted me to produce the film *The Hong Konger: Jimmy Lai's Extraordinary Struggle for Freedom* (available at www.freejimmylai.com) in order to spread Jimmy's story around the globe, because Jimmy's story is in many ways the human story. The Acton Institute publicly released this documentary on April 18. Unfortunately, Acton's efforts to promote the film on TikTok have not proceeded unperturbed. First, TikTok removed a video clip from our account on April 21 for containing "violent and graphic content" of Hong Kong police beating and teargassing protesters in Hong Kong in 2019. TikTok subsequently restored that content. Then around noon eastern time on Tuesday, May 2, Acton's TikTok account was suspended. Acton received no explanation for the suspension. We were unable

to log in to the account and thus could not submit any kind of an appeal of our suspension. We submitted requests for an explanation and account restoration via TikTok's online feedback form. After multiple media reported the suspension, TikTok restored our account around 8:45 p.m. eastern time on May 3. However, two videos on the account were removed for violating TikTok's "community guidelines," without any information on how the videos violated those guidelines. TikTok subsequently restored that content. Then on May 5, a TikTok representative spoke to Acton's director of marketing and communications to explain that the account was suspended in error due to automated systems, which detected unusual activity on the account. It is ironic that content promoting *The Hong Konger* on TikTok would generate account disruptions and a temporary suspension, particularly when TikTok insists it does not cater to the Chinese Communist Party in adjudication of content. The Acton Institute will continue to promote *The Hong Konger* because Jimmy's voice must be heard. He is a symbol of the very human quest for freedom. Jimmy is a modern-day Aleksandr Solzhenitsyn and Nelson Mandela.

I am deeply grateful to Representative Smith and to Senator Merkley, the chair and co-chair of this commission, as well as to its former chairs, Representative James McGovern and Senator Marco Rubio, for nominating Jimmy Lai and five fellow Hong Kongers for the Nobel Peace Prize. Jimmy and his colleagues are supremely worthy of such recognition. But even more important is that Jimmy and all Hong Kongers, indeed all Chinese, have a right to be free. Thank you for the opportunity to submit this testimony.

SUBMISSION OF SUNNY CHEUNG, VISITING FELLOW, NATIONAL SUN YAT-SEN UNIVERSITY; NON-RESIDENT FELLOW, PACIFIC FORUM

INTRODUCTION

Thank you, Chairman Smith, Co-chairman Merkley, and distinguished members. It is an honor for me to submit my testimony to this committee. I want to start by thanking this committee. In the first several months of the 118th Congress, the CECC timely shedding light on the political prisoners and erosion of rule of law in Hong Kong helps send a powerful signal to this administration and the world.

I am also grateful for Congress's previous bipartisan passing of the Hong Kong Human Rights and Democracy Act, Hong Kong Autonomy Act, and PROTECT Hong Kong Act. Many of these great bills could not be ratified without help from this commission, a commission that has shown unyielding support for Hongkongers for over two decades since its first establishment.

Two years ago, once I fled Hong Kong and came to the U.S., I was invited to testify before this commission to address the daunting human rights situation in Hong Kong and offer policy recommendations for Congress and the executive branch to establish humanitarian pathways for Hongkongers.

Today, unfortunately, Congress and the administration can still barely remove the hurdle and respond to the political crackdown in Hong Kong effectively. Despite the efforts made by President Biden in announcing and prolonging the Deferred Enforced Departure (DED) for Hongkongers, people who are in need can hardly find ways to stay in this country with permanent status. Given this, it creates a significant gap between the U.S. commitment to deter Chinese authoritarianism and its ability to assist victims of political persecution under the Chinese Communist Party. This gap highlights the urgent need for more proactive and effective measures to address the issue.

Worse still, the situation in Hong Kong continues to deteriorate, further widening the gap. The most significant National Security Law case, involving 47 individuals, is now being tried. As a nominee in the 2020 pro-democracy camp primaries, I was fortunate enough to avoid the crackdown. However, all of my politically active friends have been imprisoned and charged with state subversion due to their involvement in the primaries and commitment to fighting for democracy within the legislature. The case of the 47 exposes the harsh reality that the overwhelming majority of political opposition is being eliminated. High-profile political prisoners like them are likely to face retribution from the regime if they persist in voicing their concerns to the outside world. Rights violations within the prison system can be invasive, designed to weaken and wear down one's resolve and determination. Isolating prisoners in individual cells, limiting their freedom, seizing their daily necessities, denying them legal rights, and preventing them from visiting critically ill family members—these incidents only represent a fraction of what is currently happening in Hong Kong. The challenges faced by lesser-known activists can only be imagined if such prominent political prisoners face such difficulties.

Despite the conditions in prison, an even greater issue is that political prisoners rarely find themselves in a fair or favorable courtroom environment. In the case of the 47, dozens of political leaders, many of whom are professionals, have been detained for two years without solid evidence from the prosecution. Last year, the United Nations issued a report sharply condemning the bail conditions under the National Security Law, which fundamentally altered the "presumption of bail" principle. Presently, under the National Security Law, defendants are "presumed not to be bailable," and granting bail is a rare exception. It is worth noting that when the trial finally begins, prosecutors often maintain that they are still gathering evidence, deciding on legal principles and precedents to use, and refuse to disclose critical information about the basis for the charges, creating an extremely unfair situation for the defendants. Politically appointed National Security Law judges tend to interfere, if not assume the role of the prosecutor, by questioning defendants and presuming their guilt. This has become the "new normal" in the judicial sphere under the National Security Law.

In summary, the treatment of prisoners is deteriorating, with constant surveillance, silencing, and intimidation even behind bars. Furthermore, the burden of proof has been reversed; instead of requiring the prosecution to present a solid case, judges often assert that defendants have failed to prove their innocence.

TAIWAN AS A SAFE HARBOR

In 2020, in response to the changes brought about by the Chinese Communist Party's imposition of the National Security Law, the "Hong Kong Humanitarian Assistance and Care Action Plan" was planned under the instructions of President Tsai Ing-wen. The "Taiwan-Hong Kong Service Exchange Office" was also established under the Mainland Affairs Council to handle Hong Kong people's humanitarian assistance and care matters based on its existing legal norms and public-private cooperation while ensuring national security. While there is no official number of Hong Kong protesters who go for this route, groups in Taiwanese civil society estimate the number reached over a thousand within the past two years.

Regrettably, Taiwan currently lacks a refugee law, which means that the administration and the Mainland Affairs Council lack experience in dealing with a large volume of asylum applications. Additionally, due to concerns about infiltration by the Chinese Communist Party in Hong Kong, there is no established mechanism for thoroughly and systematically vetting applicants.

Furthermore, recent statistics from Taiwan's Ministry of the Interior indicate a record-breaking increase in the number of Hong Kong individuals granted residence and permanent resident permits. As the number of applications continues to rise, the Taiwan administration must find ways to expedite the processing of applications and effectively screen applicants. Currently, the administration relies heavily on public-private collaboration to verify the identity and information of applicants, with each application handled on a case-by-case basis. The administration first seeks consultation from trusted partners, such as Hong Kong dissidents or Taiwanese individuals familiar with Hong Kong, to confirm an applicant's identity and involvement in the movement. If an applicant's identity or participation cannot be confirmed by anyone, the authority is likely to deny the application. While outsourcing the screening duty to trusted partners may help to alleviate the burden on the authority, it also poses the risk of compromising the screening system if these civil partners lack comprehensive knowledge of the screening process. Therefore, it is essential to increase the manpower and seek assistance from external sources to ensure that the screening process is carried out effectively and efficiently.

I have come to know that many young asylum seekers are eager to join the military as soon as their asylum applications are approved. One of them told me that, after Hong Kong has fallen, Taiwan will be the next target. He wants to serve in the military and defend Taiwan from intimidation and authoritarian expansion. Hence, I believe that aiding more Hongkongers to settle down in Taiwan can be advantageous to Taiwan's national interests and security, and meet tomorrow's needs.

U.S. AS A SAFE HARBOR

As mentioned earlier, there is a discrepancy between the U.S. commitment to defending democracy and its actual policy implementation to assist freedom fighters. This gap manifests in two primary ways, exposing the inadequacy and inconsistency of the administration's strategies.

In recent years, this Commission and numerous other federal agencies have become aware of the threat posed by transnational repression and its impact on intimidating dissidents on American soil. In the past, the Federal Bureau of Investigation (FBI) apprehended several CCP spies suspected of harassing and assaulting

Chinese and Hongkonger dissidents. For instance, I was one of those who assisted by providing information to the FBI director's office based on my experiences. The FBI also established a website and hotline to gather information to combat this growing threat. Since the government recognizes that transnational repression by the CCP is pervasive, it should develop policies to assist dissidents in danger consistently. More importantly, it would be logical to create a mechanism that facilitates cross-agency cooperation for helping people in need. Once refugees are confirmed by law enforcement as victims of transnational repression on American soil, the USCIS should have no reason to further delay their asylum applications. Nonetheless, such collaboration is currently missing. People who are in most imminent danger are not the ones being recognized and expedited in the system.

Moreover, the administration has shown excessive neutrality in facilitating the acceleration of asylum applications for people. Political refugees are aware that the State Department and other agencies have consistently upheld the policy and narrative of not interfering with USCIS operations. Indeed, there are compelling reasons for supporting this practice. However, I would argue that a more collaborative approach between agencies is necessary.

For years, the U.S. consulate in Hong Kong, the State Department's Bureau of East Asian and Pacific Affairs and the Bureau of Democracy, Human Rights and Labor Affairs have been gathering information and intelligence. Their extensive experience stems from their interactions with individuals and organizations in Hong Kong. It would be reasonable for them to communicate with USCIS and recommend an expedition for groups and individuals with whom they are familiar. Of note, it is not proposed that other agencies can override the interview process or directly approve applications; such authority should remain within the purview of USCIS. However, these agencies could potentially assist political refugees in securing an opportunity to meet with an asylum officer as soon as possible. This is particularly relevant considering that many Hong Kong refugees are stuck waiting for years to meet an asylum officer at a USCIS asylum office or field office.

Conclusion and Policy Recommendations

After years of waiting, a brutal fact is that the imperfect U.S. refugee policy for Hongkongers has aided the Chinese Communist Party's cognitive operations. Since the historic 2019 Anti-extradition Bill Movement, Beijing has aimed to sway Hong Kong and even Taiwanese citizens through the United Front Bureau and official media channels. The objective is to incite conflict among protesters and undermine public confidence in the U.S. as a dependable ally and global power. For instance, following the U.S. withdrawal from Afghanistan, Chinese counterparts have criticized the moral authority, political determination, and capability of the U.S. In Hong Kong's context, Beijing has asserted that Hong Kong protesters were forsaken by the U.S. after initially receiving support in 2019, insinuating that the U.S. is an unreliable global player.

It is essential to recognize that the existing refugee policy and USCIS issues also contribute to other complexities, and the difficulties are faced not just by Hongkongers but many others.

However, the longer these democracy-seeking protesters experience mismanagement and mistreatment within the system, the easier it is for Beijing to disseminate propaganda and misinformation. From Beijing's viewpoint, the U.S. commitment to aiding freedom fighters is nothing more than an empty gesture, with the U.S. often retracting support after urging individuals to make sacrifices for democracy and human rights. This narrative has gained traction in Hong Kong, and even Taiwan.

Apart from that, the policy itself also fails to respond to the deteriorating human rights situation in Hong Kong. Therefore, stronger coordination among agencies in the administration should be embraced, and a transnational effort led by the U.S. is very much necessary.

Policy recommendations are as follows:

1. Congress can pass legislation to ease entry into the U.S. for Hongkongers who are targeted for their involvement in activism and the pro-democratic movement. Bills intended precisely for this purpose already exist in the form of the Hong Kong Safe Harbor Act and the Hong Kong People's Freedom and Choice Act.
2. The administration can consult with the FBI and other relevant law enforcement agencies to help victims of transnational repression expedite their asylum applications.
3. The administration can establish a mechanism which State Department and other relevant agencies can recommend to individuals to secure an interview opportunity with the USCIS as soon as possible.

4. The administration has the opportunity to collaborate with the Taiwanese government and the American Institute in Taiwan to provide humanitarian aid, such as addressing visa issues and providing material and emotional support to relocate political refugees and assist them in settling down.

5. The administration can consider instructing the intelligence community to provide additional assistance in assessing the backgrounds of asylum applicants. This information could be shared and used to assist the USCIS, or broadly, the Department of Homeland Security, in expediting certain cases. If the Taiwanese government requires U.S. assistance in screening the backgrounds of Hongkongers, this model could also be applied in Taiwan.

6. The administration can actively work with NGOs, charities, religious groups, the private sector, etc. in the civil society to help Hong Kong asylum seekers accommodate their needs and resettle in the U.S., such as providing language courses and job opportunities. It is essential to expand community involvement in assisting political refugees through public-private collaboration to alleviate the administrative burden. The sooner they settle in, the sooner they can give back to the U.S.

United States House of Representatives
Congressional-Executive Commission on China

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In accordance with Rule XI, clause 2(g) of the Rules of the House of Representatives, witnesses are asked to disclose the following information. Please complete this form and attach it to your written testimony and it may be made publicly available in electronic format.

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2. Hearing Title:

3. Your Name:

4. Organization, organizations, or government entity you are representing:

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False Statement Certification:

Knowingly providing material false information to this commission, or knowingly concealing material information from this commission, is a crime (18 U.S.C. 1001). This form may be made part of the hearing record.

Witness Signature **Date**

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Witness Biographies

Sebastien Lai, son of political prisoner Jimmy Lai

Sebastien Lai is Jimmy Lai's son. Sebastien is leading the international #FreeJimmyLai campaign to secure his father's release. Jimmy Lai is a renowned media entrepreneur, writer, and pro-democracy campaigner, who founded Next Digital and *Apple Daily*, the popular independent Chinese language newspaper in Hong Kong which was forcibly shut down by the Hong Kong authorities in 2021. Jimmy Lai has been imprisoned in Hong Kong since December 2020 and now awaits trial in September 2023 which could lead to him spending the rest of his life behind bars.

In December 2021 Sebastien accepted the 2021 WAN–IFRA Golden Pen of Freedom award on behalf of his father and the newsroom staff of *Apple Daily Hong Kong*. On receiving the award he said there will be "less and less people shining light in these dark corners" given *Apple Daily*'s shutdown and the ongoing crackdown on journalism in the region.

Brian Kern, writer, researcher, and activist

Brian Kern is a citizen of the United States and a Hong Kong permanent resident. He has been involved in the Hong Kong pro-democracy movement for fifteen years, working with many different groups, and has written three books about its history over the past decade: one about the Umbrella Movement, one about the period from 2014 to 2018, and the most recent about the 2019–2020 protests. He and his family left Hong Kong in 2020 and moved to the United States. He now works with various Hong Kong pro-democracy groups in the diaspora. He documented the 2019–2020 protests in extensive detail and has monitored politically motivated arrests, prosecutions, and imprisonments in Hong Kong since summer 2019. He was the lead researcher on Hong Kong Democracy Council's June 2022 report on political prisoners in Hong Kong.

Kevin Yam, Senior Fellow, Center for Asian Law, Georgetown University

Kevin is currently a Senior Fellow with the Georgetown University Center for Asian Law. He was born in Hong Kong, raised in Australia, and spent nearly two decades working in Hong Kong. Before his return to Australia in 2022, he was a lawyer with international firms and worked on white collar crimes, financial regulatory investigations, and commercial litigation. Outside of work, Kevin was a rule-of-law and democracy activist, serving variously as a member of the Hong Kong Law Society's Constitutional Affairs and Human Rights Committee, and as a founding co-convenor of the now defunct Hong Kong Progressive Lawyers Group.

Since returning to Australia, he has resumed his Hong Kong advocacy efforts, meeting with various members of the Australian parliament and the current Australian Foreign Minister. He is a regular interviewee with Australian and international media outlets on Hong Kong and China issues, which included commenting on ongoing political prosecutions in Hong Kong, and over the years has published commentaries with outlets such as The Economist, Quartz, The Australian, ABC Australia, Crikey, *Apple Daily*, and Stand News.

Anna Kwok, Executive Director, Hong Kong Democracy Council

Anna Kwok is the Executive Director of Hong Kong Democracy Council (HKDC), a leading Hong Konger advocacy organization in Washington, DC. Under Kwok's leadership, HKDC reimagines a holistic organizing approach, with the combination of policy advocacy, research initiatives, and diaspora empowerment, to advance Hong Kongers' fight for freedom. The organization is now actively monitoring and documenting the rise in the number of political prisoners, as well as the Hong Kong government's attempts to influence American businesses and foreign policy.

During Hong Kong's 2019 pro-democracy movement, Kwok was an activist behind major international campaigns. They include the global call for country leaders to "Stand With Hong Kong" at the G20 Summit. Anonymously organizing netizens, she also broadcast real-time police locations to Hong Kongers, in order to assist their on-the-ground protests. Kwok's story epitomizes the grassroots forces of global Hong Kongers in the decentralized movement.

In 2022, two years after the enactment of the National Security Law, Kwok decided to publicize her identity and personal story online. Her action affirms Hong Kongers' determination to fight for freedom and democracy.