

**Testimony of Brian Kern
to the Congressional-Executive Commission on China**

May 11, 2023

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 on-going 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 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. 159 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 will 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 US 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 US 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 US-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 US-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 US 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 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 US 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 US 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 cliches 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 US. Protection was afforded me due to my US 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 US was meant as a stop gap 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 on-going struggle for freedom and democracy.