

116TH CONGRESS  
2D SESSION

# H. R. —

To reaffirm the principles and objectives set forth in the United States-Hong Kong Policy Act of 1992, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. MALINOWSKI introduced the following bill; which was referred to the Committee on

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## A BILL

To reaffirm the principles and objectives set forth in the United States-Hong Kong Policy Act of 1992, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Hong Kong People’s Freedom and Choice Act”.

### SEC. 2. DEFINITIONS.

For the purposes of this Act:

(1) **JOINT DECLARATION.**—The “Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong” signed on December 19, 1984, and entered into force on May 27, 1985, will be called the “Sino-British Joint Declaration”.

(2) PRIORITY HONG KONG RESIDENT.—Priority Hong Kong residents will be defined as lawful residents of Hong Kong and lawful permanent residents of Hong Kong who hold no right to citizenship or residency in any country or jurisdiction other than the People’s Republic of China (referred to in this Act as “PRC”), Hong Kong, or Macau as of the date of enactment of this Act and who have resided in Hong Kong for the last 10 years, or the immediate family member of such person.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The appropriate congressional committees are defined as—

(A) the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee of the Judiciary of the Senate.

### SEC. 3. FINDINGS.

Congress finds the following:

(1) The National People’s Congress (referred to in this Act as “NPC”) of the PRC has committed to pass national security legislation which, if enacted, would—

(A) contravene the will of the people of Hong Kong whose constitution, the Basic Law, provides in Article 23 that the Legislative Council of Hong Kong shall enact legislation related to national security;

(B) violate the PRC’s commitments under international law, as defined by the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the PRC on the Question of Hong Kong (referred to in this Act as “Joint Declaration”), an international treaty signed on December 19, 1984, and entered into force on May 27, 1985; and

(C) cause severe and irreparable damage to the “one country, two systems” principle and further erode global confidence in the PRC’s commitment to international law.

(2) The United States has a long and proud history as a destination for refugees and asylees fleeing persecution based on race, religion, nationality, political opinion, or membership in a particular social group.

(3) The United States also shares deep social, cultural, and economic ties with the people of Hong Kong, including a shared commitment to democracy, to the rule of law, and to the protection of human rights.

(4) The United States has sheltered, protected, and welcomed as American citizens individuals who have fled oppression of authoritarian regimes, including citizens from the PRC following the violent June 4, 1989, crackdown in Tiananmen Square, deepening ties between the people of the United States and those individuals, regardless of nationality, seeking to contribute to a free, open society founded on respect for the rule of law.

(5) The United States has reaped enormous economic, cultural, and strategic benefit from welcoming successive generations of scientists, doctors, entrepreneurs, artists, intellectuals, and other freedom-loving people fleeing Fascism, Communism, violent Islamist extremism, and other repressive ideologies, including in the case of Nazi Germany, the Soviet Union and Soviet-controlled Central Europe, Cuba, Vietnam, and Iran.

(6) Offering prospective refuge to those who have contributed the most to Hong Kong's success would signal to the Chinese Communist Party that repression in Hong Kong would result in losing its immense wealth and talent to the United States.

(7) A mid-2020 Brookings report notes that "Chinese officials see the United States' continued ability to attract and retain Chinese talent as a serious impediment to their technological ambitions" and a 2009 report of "Issues in Science and Technology" notes that "competition for [science and technology] brainpower...will become one of the key defining features of the West's interactions with the PRC over the coming decades."

(8) A major asymmetric advantage of the United States in its long-term strategic competition with the Communist Party of China is the ability of people from every country in the world, irrespective of their

race, ethnicity or religion, to immigrate to the United States and become American citizens.

#### SEC. 4. STATEMENT OF POLICY.

It is the policy of the United States—

(1) to continue to reaffirm the principles and objectives set forth in the United States-Hong Kong Policy Act of 1992 (Public Law 102–383), namely that—

(A) the United States has “a strong interest in the continued vitality, prosperity, and stability of Hong Kong”;

(B) “support for democratization is a fundamental principle of United States foreign policy” and therefore “naturally applies to United States policy toward Hong Kong”;

(C) “the human rights of the people of Hong Kong are of great importance to the United States and are directly relevant to United States interests in Hong Kong and serve as a basis for Hong Kong’s continued economic prosperity”; and

(D) Hong Kong must remain sufficiently autonomous from the PRC to “justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the People’s Republic of China”;

(2) to continue to support the high degree of autonomy and fundamental rights and freedoms of the people of Hong Kong, as enumerated by—

(A) the Joint Declaration;

(B) the International Covenant on Civil and Political Rights, done at New York December 19, 1966; and

(C) the Universal Declaration of Human Rights, done at Paris December 10, 1948;

(3) to continue to support the democratic aspirations of the people of Hong Kong, including the “ultimate aim” of the selection of the Chief Executive and all members of the Legislative Council by universal suffrage, as articulated in the Basic Law of the Hong Kong Special Administrative Region of the PRC (referred to in this Act as the “Basic Law”);

(4) to urge the Government of the PRC, despite its recent actions, to uphold its commitments to Hong Kong, including allowing the people of Hong Kong to govern Hong Kong with a high degree of autonomy and without undue interference, and ensuring that Hong Kong voters freely enjoy the right to elect the Chief Executive and all members of the Hong Kong Legislative Council by universal suffrage;

(5) to support the establishment of a genuine democratic option to freely and fairly nominate and elect the Chief Executive of Hong Kong, and the establishment by 2020 of open and direct democratic elections for all members of the Hong Kong Legislative Council;

(6) to support the robust exercise by residents of Hong Kong of the rights to free speech, the press, and other fundamental freedoms, as provided by the Basic Law, the Joint Declaration, and the International Covenant on Civil and Political Rights;

(7) to support freedom from arbitrary or unlawful arrest, detention, or imprisonment for all Hong Kong residents, as provided by the Basic Law, the Joint Declaration, and the International Covenant on Civil and Political Rights;

(8) to draw international attention to any violations by the Government of the PRC of the fundamental rights of the people of Hong Kong, as provided by the International Covenant on Civil and Political Rights, and any encroachment upon the autonomy guaranteed to Hong Kong by the Basic Law and the Joint Declaration;

(9) to protect United States citizens and long-term permanent residents living in Hong Kong, as well as people visiting and transiting through Hong Kong;

(10) to maintain the economic and cultural ties that provide significant benefits to both the United States and Hong Kong;

(11) to coordinate with allies, including the United Kingdom, Australia, Canada, Japan, and the Republic of Korea, to promote democracy and human rights in Hong Kong; and

(12) in the case of the promulgation of new national security legislation in Hong Kong, to review immigration, asylum, and residency regulations such that those residents of Hong Kong fleeing persecution and seeking better opportunities will be welcomed in the United States.

## SEC. 5. PROTECTION FOR HONG KONG RESIDENTS IN THE UNITED STATES.

### (a) DESIGNATION.—

(1) IN GENERAL.—For purposes of section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a), Hong Kong shall be treated as if it had been designated under subsection (b)(1)(C) of that section, subject to the provisions of this section.

(2) PERIOD OF DESIGNATION.—The initial period of the designation referred to in paragraph (1) shall be for the 18-month period beginning from such time as the Standing Committee of the NPC of the PRC promulgates national security legislation with respect to Hong Kong that amends Article III of Hong Kong’s Basic Law.

(b) ALIENS ELIGIBLE.—As a result of the designation made under subsection (a), an alien who is a resident of Hong Kong is deemed to satisfy the requirements under paragraph (1) of section 244(c) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)), subject to paragraph (3) of such section, if the alien—

(1) has been continuously physically present in the United States since the date of the enactment of this Act;

(2) is admissible as an immigrant, except as otherwise provided in paragraph (2)(A) of such section, and is not ineligible for temporary protected status under paragraph (2)(B) of such section; and

(3) registers for temporary protected status in a manner established by the Secretary of Homeland Security.

### (c) CONSENT TO TRAVEL ABROAD.—

(1) IN GENERAL.—The Secretary of Homeland Security shall give prior consent to travel abroad, in accordance with section 244(f)(3) of the Immigration and Nationality Act (8 U.S.C. 1254a(f)(3)), to an alien who is granted temporary protected status pursuant to the designation made under subsection (a) if the alien establishes to the satisfaction of the Secretary of Homeland Security that emergency and extenuating circumstances beyond the control of the alien require the alien to depart for a brief, temporary trip abroad.

(2) TREATMENT UPON RETURN.—An alien returning to the United States in accordance with an authorization described in paragraph (1) shall be treated as any other returning alien provided temporary protected status under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a).

(d) FEE.—

(1) IN GENERAL.—In addition to any other fee authorized by law, the Secretary of Homeland Security is authorized to charge and collect a fee of \$360 for each application for temporary protected status under section 244 of the Immigration and Nationality Act by a person who is only eligible for such status by reason of subsection (a).

(2) WAIVER.—The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application referred to in paragraph (1).

## SEC. 6. DIFFERENTIAL TREATMENT OF HONG KONG RESIDENTS FOR IMMIGRATION PURPOSES

(a) IN GENERAL.—For not less than 5 years from such time as the President suspends, in whole or in part, special treatment of Hong Kong under United States law, Hong Kong will continue to be considered a separate foreign state apart from the PRC as mandated in section 103 of Public Law 101–649 and thus Hong Kong will continue to be treated as a separate foreign state for purposes of a numerical level established under section 1152 of title 8, United States Code.

(b) REGULATIONS.—In order to facilitate the future verification of Hong Kong residency status of visa applicants from the PRC, the Secretary of State shall—

(1) issue regulations within 365 days of enactment establishing a process for Hong Kong residents to register their status with embassies of the United States and the Department of State globally for purposes of adjudicating an individual's claim to Hong Kong residency as part of a future visa application for entry to the United States, including through such means as—

(A) recording of biometric data;

(B) official registration and scanning of birth certificates, residency cards, and other documentation establishing long-term residency; and

(C) collection of other personal information, data, and records deemed appropriate by the Secretary;

(2) issue guidance within 180 days of enactment outlining actions to enhance the ability of the Department of State to efficiently share information with the United Kingdom and other allies for purposes of rapidly adjudicating residency of Hong Kong applicants for admission to the United States; and

(3) provide within 180 days of enactment a briefing to the House Committees on Foreign Affairs and Judiciary and the Senate Committees on Foreign Relations and Judiciary on plans to implement the requirements pursuant to paragraphs (1) and (2).

## SEC. 7. ADMISSION FOR CERTAIN HIGHLY SKILLED HONG KONG RESIDENTS.

(a) IN GENERAL.—Subject to subsection (c), the Secretary of Homeland Security, or, notwithstanding any other provision of law, the Secretary of State in consultation with the Secretary of Homeland Security, may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), if the alien—

(1) or an agent acting on behalf of the alien, submits a petition for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

(2) is otherwise eligible to receive an immigrant visa;



(3) is otherwise admissible to the United States for permanent residence (excluding the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)); and

(4) cleared a background check and appropriate screening, as determined by the Secretary of Homeland Security.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS.—An alien is described in this subsection if the alien is a citizen of the PRC and was born in or has been a resident or permanent resident of Hong Kong for at least 10 years as of the date of enactment of this Act, and—

(A) has received a graduate diploma from an accredited institution;

(B) has completed undergraduate or graduate education in the United States; or

(C) is the sole or majority owner of a company with more than 50 direct employees or greater than \$5 million in assets.

(2) SPOUSES AND CHILDREN.—An alien is described in this subsection if the alien is the spouse or child of a principal alien described in paragraph (1).

(c) NUMERICAL LIMITATIONS.—

(1) IN GENERAL.—The total number of principal aliens who may be provided special immigrant status under this section may not exceed 50,000 per year for each of the 5 fiscal years beginning after the date of the enactment of this Act. The Secretary may, in consultation with the Secretary of State, prioritize holders of diplomas in STEM fields, including the physical and life sciences, computer science, engineering, technology, math, and medicine.

(2) EXCLUSION FROM NUMERICAL LIMITATIONS.—Aliens provided immigrant status under this section shall not be counted against any numerical limitation under section 201, 202, 203, or 207 of the Immigration and Nationality Act (8 U.S.C. 1151, 1152, 1153, and 1157).

(d) PROTECTION OF ALIENS.—The Secretary of State, in consultation with the heads of other relevant Federal agencies, shall make a reasonable effort to provide an alien described in this section who is applying for a special immigrant visa with protection or the immediate removal from the PRC if possible, of such alien if the Secretary determines after consultation that such alien is in imminent danger.

(e) ELIGIBILITY FOR ADMISSION UNDER OTHER CLASSIFICATION.—No alien shall be denied the opportunity to apply for admission under this section solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

(f) TIMELINE FOR PROCESSING APPLICATIONS.—

(1) IN GENERAL.—The Secretary of State and the Secretary of Homeland Security shall ensure that all steps under the control of the United States Government incidental to the approval of such applications, including required screenings and background checks, are completed not later than 2 years after the date on which an eligible applicant submits an application under subsection (a).

(2) EXCEPTION.—Notwithstanding paragraph (1), the relevant Federal agencies may take additional time to process applications described in paragraph (1) if satisfaction of national security concerns requires such additional time, provided that the Secretary of Homeland Security, or the designee of the Secretary, has determined that the applicant meets the requirements for status as a special immigrant under this section and has so notified the applicant.

## SEC. 8. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS OF CERTAIN NATIONALS OF THE PRC.

(a) IN GENERAL.—Subject to subsection (c)(1), whenever an alien described in subsection (b) applies for adjustment of status under section 245 of the Immigration and Nationality Act during the application period (as defined in subsection (e)) the following rules shall apply with respect to such adjustment:

(1) The alien shall be deemed to have had a petition approved under section 204(a) of such Act for classification under section 203(b)(3)(A)(i) of such Act.

(2) The application shall be considered without regard to whether an immigrant visa number is immediately available at the time the application is filed.

(3) In determining the alien's admissibility as an immigrant, and the alien's eligibility for an immigrant visa—

(A) paragraphs (5) and (7)(A) of section 212(a) and section 212(e) of such Act shall not apply; and

(B) the Attorney General may waive any other provision of section 212(a) (other than paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of paragraph (3)) of such Act with respect to such adjustment for humanitarian purposes, for purposes of assuring family unity, or if otherwise in the public interest.

(4) The numerical level of section 202(a)(2) of such Act shall not apply.

(5) Section 245(c) of such Act shall not apply.

(b) ALIENS COVERED.—For purposes of this section, an alien described in this subsection is an alien who—

(1) faces a fear of persecution on account of his or her political opinion by the PRC of the government or other authorities in the Hong Kong Special Administrative Region;

(2) was born in or has been a resident or permanent resident of Hong Kong for at least 10 years;

(3) has initiated permanent residence in the United States (other than brief, casual, and innocent absences) during the period beginning June 1, 2019, and ending on the date that is 5 years from the date of enactment of this Act; and

(4) was not physically present in the PRC for longer than 90 days after the date of establishment of such permanent residence.

(c) CONDITION; DISSEMINATION OF INFORMATION.—

(1) NOT APPLICABLE IF SAFE RETURN PERMITTED.—Subsection (a) shall not apply to any alien if the Secretary of State has determined and certified to Congress, before the first day of the application period, that conditions in the PRC permit aliens described in subsection (b)(1) to return to that foreign state in safety.

(2) DISSEMINATION OF INFORMATION.—If the President has not made the certification described in paragraph (1) by the first day of the application period, the Secretary of Homeland Security shall, subject to the availability of appropriations, immediately broadly disseminate to aliens described in subsection (b) information respecting the benefits available under this section. To the extent practicable, the Secretary shall provide notice of these benefits to the last known mailing address of each such alien.

(d) Exclusion from numerical limitations.—Aliens provided immigrant visas under this section shall not be counted against any numerical limitation under sections 201, 202, or 203 of the Immigration and Nationality Act (8 U.S.C. 1151, 1152, or 1153).

## SEC. 9. REPORTING REQUIREMENTS.

(a) IN GENERAL.—On an annual basis, the Secretary of State, in consultation with the Secretary of Homeland Security and other Federal agencies, as appropriate, shall submit a report to the appropriate congressional committees on—

(1) the number of Hong Kong SAR residents who have applied for admittance, been admitted, and been provided permanent residence in the United States during the preceding fiscal year, disaggregated by visa type or residence status, including refugee, temporary protected status, special immigrant visa, and legal permanent residence status provided for under this Act;

(2) the number of denials or rejections of applicants, including a description of the basis for denial and disaggregated by the basis for denial and by visa type or residency status during the previous fiscal year;

(3) the number of Hong Kong SAR residents that have applied for political asylum by fiscal year, including number of rejections, and disaggregated by basis for denial during the previous fiscal year; and

(4) other matters deemed relevant by the Secretary on efforts to protect and facilitate the resettlement of refugees and victims of political persecution in Hong Kong.

(b) FORM.—Each report under subsection (a) shall be submitted in unclassified form and published on a text-searchable, publicly-available website of the Department of State.

## SEC. 10. STRATEGY FOR INTERNATIONAL COOPERATION ON HONG KONG.

(a) IN GENERAL.—It is the policy of the United States—

(1) to support the people of Hong Kong by providing temporary relief, refugee status, and appropriate immigration incentives to Hong Kong residents of the Hong Kong Special Administrative Region of the PRC in the event that the PRC enacts legislation that renders certain Hong Kong persons at risk of persecution due to their political beliefs; and

(2) to encourage like-minded nations to make similar accommodations for Hong Kong people fleeing oppression by the Government of the PRC.

(b) PLAN.—The Secretary of State, in consultation with the heads of other Federal agencies, as appropriate, shall develop a plan to engage with other nations, including the United Kingdom, on cooperative efforts to—

(1) provide refugee and asylee protections for victims of, and individuals with a fear of, political persecution in Hong Kong, either by Hong Kong authorities or other authorities acting on behalf of the PRC;

(2) enhance protocols to facilitate the relocation of refugees and displaced persons from Hong Kong; and

(3) expedite sharing of information, as appropriate, related to individual visa or travel document rejections of applicants from the Hong Kong SAR for reasons of—

(A) national security concerns;

(B) fraudulent or corrupt practices related to immigration or victim protection, including refugee and asylee protections; and

(C) fraud and corruption.

(c) REPORT.—Within 90 days of enactment of this Act, the Secretary of State or his or her designee shall submit a report on such plan described in paragraphs (1) through (3) of subsection (b) to the appropriate congressional committees.

#### SEC. 11. SUNSET.

This Act shall sunset on the date that is 5 years after the date of enactment of this Act.

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