Suspend the Rules and Pass the Bill, H.R. 8428, With an Amendment
(The amendment strikes all after the enacting clause and inserts a new text)

116TH CONGRESS
2D SESSION
H. R. 8428

To provide for temporary protected status for residents of Hong Kong, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
SEPTEMBER 29, 2020

Mr. MALINOWSKI (for himself, Mr. KINZINGER, Mr. PHILLIPS, and Mr. TAYLOR) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL
To provide for temporary protected status for residents of Hong Kong, and for other purposes.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Hong Kong People’s Freedom and Choice Act of 2020”.

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SEC. 2. DEFINITIONS.

For purposes of this Act:


(2) Priority Hong Kong Resident.—The term “Priority Hong Kong resident” means—

(A) a permanent resident of Hong Kong who—

(i) holds no right to citizenship 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;

(ii) has resided in Hong Kong for not less than the last 10 years as of the date of enactment of this Act; and

(iii) has been designated by the Secretary of State or Secretary of Homeland Security as having met the requirements of this subparagraph, in accordance with the
procedures described in section 7 of this Act; or

(B) the spouse of a person described in subparagraph (A), or the child of such person as such term is defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)), except that a child shall be an unmarried person under twenty-seven years of age.

(3) HONG KONG NATIONAL SECURITY LAW.—

The term “Hong Kong National Security Law” means the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region that was passed unanimously by the National People’s Congress and signed by President Xi Jinping on June 30, 2020, and promulgated in the Hong Kong Special Administrative Region (referred to in this Act as “Hong Kong SAR”) on July 1, 2020.

(4) APPROPRIATE CONGRESSIONAL COMMITTINGES.—The term “appropriate congressional committees” means—

(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 on the Judiciary of the Senate.

SEC. 3. FINDINGS.

Congress finds the following:

(1) The Hong Kong National Security Law promulgated on July 1, 2020—

(A) contravenes the Basic Law of the Hong Kong Special Administrative Region (referred to in this Act as “the Basic Law”) that provides in Article 23 that the Legislative Council of Hong Kong shall enact legislation related to national security;

(B) violates the PRC’s commitments under international law, as defined by the Joint Declaration; and

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

(2) On July 14, 2020, in response to the promulgation of the Hong Kong National Security Law, President Trump signed an Executive order on Hong Kong normalization that, among other policy actions, suspended the special treatment of Hong
Kong persons under U.S. law with respect to the issuance of immigrant and nonimmigrant visas.

(3) 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.

(4) 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.

(5) The United States has sheltered, protected, and welcomed individuals who have fled 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 seeking to contribute to a free, open society founded on democracy, human rights, and the respect for the rule of law.

(6) The United States has reaped enormous economic, cultural, and strategic benefits from welcoming successive generations of scientists, doctors, entrepreneurs, artists, intellectuals, and other free-
dom-loving people fleeing fascism, communism, violent Islamist extremism, and other repressive ideologies, including in the cases of Nazi Germany, the Soviet Union, and Soviet-controlled Central Europe, Cuba, Vietnam, and Iran.

(7) 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 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;

(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 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 funda-
mental rights of the people of Hong Kong, as pro-
vided by the International Covenant on Civil and Po-
litical Rights, and any encroachment upon the au-
tonomy 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, including the reinstatement
of the Fulbright exchange program with regard to
Hong Kong at the earliest opportunity;

(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) to welcome and protect in the United
States residents of Hong Kong fleeing persecution or
otherwise seeking a safe haven from violations by
the Government of the PRC of the fundamental
rights of the people of Hong Kong.
SEC. 5. TEMPORARY PROTECTED STATUS 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 on the date of enactment of this Act.

(b) Aliens Eligible.—As a result of the designation made under subsection (a), an alien 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) was a permanent resident of Hong Kong at the time such individual arrived into the United States and is a national of the PRC (or in the case of an individual having no nationality, is a person who last habitually resided in Hong Kong); and

(2) has been continuously physically present in the United States since the date of the enactment of this Act;
(3) is admissible as an immigrant, except as
otherwise provided in paragraph (2)(A) of such sec-
tion, and is not ineligible for temporary protected
status under paragraph (2)(B) of such section; and

(4) 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 Immigra-
tion 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, tem-
porary trip abroad.

(2) TREATMENT UPON RETURN.—An alien re-
turning to the United States in accordance with an
authorization described in paragraph (1) shall be
treated as any other returning alien provided tem-
porary protected status under section 244 of the Im-
migration 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. TREATMENT OF HONG KONG RESIDENTS FOR IMMIGRATION PURPOSES.

Notwithstanding any other provision of law, during the 5 fiscal year period beginning on the first day of the first full fiscal year after the date of enactment of this Act, Hong Kong shall continue to be considered a foreign state separate and apart from the PRC as mandated under section 103 of the Immigration and Nationality Act of 1990 (Public Law 101–649) for purposes of the numerical limitations on immigrant visas under sections 201, 202, and 203 of the Immigration and Nationality Act (8 U.S.C. 1151, 1152, and 1153).
SEC. 7. VERIFICATION OF HONG KONG PRIORITY RESIDENTS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Homeland Security, shall publish in the Federal Register, an interim final rule establishing procedures for designation of Hong Kong Priority Residents. Notwithstanding section 553 of title 5, United States Code, the rule shall be effective, on an interim basis, immediately upon publication, but may be subject to change and revision after public notice and opportunity for comment. The Secretary of State shall finalize such rule not later than 1 year after the date of the enactment of this Act. Such rule shall establish procedures—

(1) for individuals to register with any United States embassy or consulate outside of the United States, or with the Department of Homeland Security in the United States, and request designation as a Priority Hong Kong Resident; and

(2) for the appropriate Secretary to verify the residency of registered individuals and designate those who qualify as Priority Hong Kong Residents.

(b) DOCUMENTATION.—The procedures described in subsection (a) shall include the collection of—

(1) biometric data;
(2) copies of birth certificates, residency cards, and other documentation establishing residency; and
(3) other personal information, data, and records deemed appropriate by the Secretary.

(c) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall issue guidance outlining actions to enhance the ability of the Secretary to efficiently send and receive information to and from the United Kingdom and other like-minded allies and partners for purposes of rapid verification of permanent residency in Hong Kong and designation of individuals as Priority Hong Kong Residents.

(d) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall submit a report to the House Committees on Foreign Affairs and the Judiciary and the Senate Committees on Foreign Relations and the Judiciary detailing plans to implement the requirements described in this subsection.

(e) PROTECTION FOR REFUGEES.—Nothing in this section shall be construed to prevent a Priority Hong Kong Resident from seeking refugee status under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or requesting asylum under section 208 of such Act (8 U.S.C. 1158).
SEC. 8. REPORTING REQUIREMENTS.

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

(1) the number of Hong Kong SAR residents who have applied for U.S. visas or immigration benefits, disaggregated by visa type or immigration benefit, including asylum, refugee status, temporary protected status, and lawful permanent residence;

(2) the number of approvals, denials, or rejections of applicants for visas or immigration benefits described in paragraph (1), disaggregated by visa type or immigration benefit and basis for denial;

(3) the number of pending refugee and asylum applications for Hong Kong SAR residents, and the length of time and reason for which such applications have been pending; and

(4) other matters deemed relevant by the Secretaries relating to efforts to protect and facilitate the resettlement of refugees and victims of 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 and the Department of Homeland Security.

SEC. 9. 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 safe haven to Hong Kong SAR residents who are nationals of the PRC following the enactment of the Hong Kong National Security Law that places certain Hong Kong persons at risk of persecution; and

(2) to encourage like-minded nations to make similar accommodations for Hong Kong people fleeing persecution 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 asylum protections for victims of, and individuals with a fear of, persecution in Hong Kong, either by Hong Kong authorities or other authorities acting on behalf of the PRC;
(2) enhance protocols to facilitate the resettlement of refugees and displaced persons from Hong Kong;

(3) identify and prevent the exploitation of immigration and visa policies and procedures by corrupt officials; and

(4) expedite the sharing of information, as appropriate, related to the refusal of individual applications for visas or other travel documents submitted by residents of the Hong Kong SAR based on—

(A) national security or related grounds under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)); or

(B) fraud or misrepresentation under section 212(a)(6)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)).

(c) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State, in consultation with the heads of other Federal agencies, as appropriate, shall submit a report on the plan described in subsection (b) to the appropriate congressional committees.
SEC. 10. REFUGEE STATUS FOR CERTAIN RESIDENTS OF HONG KONG.

(a) IN GENERAL.—Aliens described in subsection (b) may establish, for purposes of admission as a refugee under sections 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or asylum under section 208 of such Act (8 U.S.C. 1158), that such alien has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion by asserting such a fear and a credible basis for concern about the possibility of such persecution.

(b) ALIENS DESCRIBED.—

(1) IN GENERAL.—An alien is described in this subsection if such alien—

(A) is a Priority Hong Kong Resident and—

(i) had a significant role in a civil society organization supportive of the protests in 2019 and 2020 related to the Hong Kong National Security Law and the encroachment on the autonomy of Hong Kong by the PRC;

(ii) was arrested, charged, detained, or convicted of an offense arising from their participation in an action as described in section 206(b)(2) of the United
States-Hong Kong Policy Act of 1992 (22 U.S.C. 5726(b)(2)) that was not violent in nature; or

(iii) has had their citizenship, nationality, or residency revoked for having submitted to any United States Government agency a nonfrivolous application for refugee status, asylum, or any other immigration benefit under the immigration laws (as defined in section 101(a) of that Act (8 U.S.C. 1101(a)));

(B) is a Priority Hong Kong Resident spouse or child of an alien described in subparagraph (A); or

(C) is the parent of an alien described in subparagraph (A), if such parent is a citizen of the PRC and no other foreign state.

(2) OTHER CATEGORIES.—The Secretary of Homeland Security, in consultation with the Secretary of State, may designate other categories of aliens for purposes of establishing a well-founded fear of persecution under subsection (a) if such aliens share common characteristics that identify them as targets of persecution in the PRC on ac-
count of race, religion, nationality, membership in a particular social group, or political opinion.

(3) **SIGNIFICANT ROLE.**—For purposes of clause (i) of subsection (b)(1)(A), a significant role shall include, with respect to the protests described in such clause—

(A) an organizing role;

(B) a first aid responder;

(C) a journalist or member of the media covering or offering public commentary;

(D) a provider of legal services to one or more individuals arrested for participating in such protests; or

(E) a participant who during the period beginning on June 9, 2019, and ending on June 30, 2020, was arrested, charged, detained, or convicted as a result of such participation.

(c) **AGE OUT PROTECTIONS.**—For purposes of this section, a determination of whether an alien is a child shall be made using the age of the alien on the date on which the alien files an application for refugee or asylum status with the Secretary of Homeland Security.

(d) **EXCLUSION FROM NUMERICAL LIMITATIONS.**—Aliens provided refugee status under this section shall not be counted against the numerical limitation on refugees
established in accordance with the procedures described in section 207 of the Immigration and Nationality Act (8 U.S.C. 1157).

(e) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, and every 90 days thereafter, the Secretary of State and the Secretary of Homeland Security shall submit a report on the matters described in paragraph (2) to—

(A) the Committee on the Judiciary and the Committee on Foreign Relations of the Senate; and

(B) the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives.

(2) MATTERS TO BE INCLUDED.—Each report required by paragraph (1) shall include—

(A) the total number of refugee and asylum applications that are pending at the end of the reporting period;

(B) the average wait-times for all applicants for refugee status or asylum pending—

(i) a prescreening interview with a resettlement support center;
(ii) an interview with U.S. Citizenship
and Immigration Services; and

(iii) the completion of security checks;

(C) the number of approvals, referrals in-
cluding the source of the referral, denials of ap-
lications for refugee status or asylum,
disaggregated by the reason for each such de-
nial; and

(D) the number of refugee circuit rides to
interview populations that would include Hong
Kong SAR completed in the last 90 days, and
the number planned for the subsequent 90-day
period.

(3) FORM.—Each report required by paragraph
(1) shall be submitted in unclassified form, but may
include a classified annex.

(4) PUBLIC REPORTS.—The Secretary of State
shall make each report submitted under this sub-
section available to the public on the internet website
of the Department of State.

SEC. 11. STATEMENT OF POLICY ON ENCOURAGING ALLIES
AND PARTNERS TO MAKE SIMILAR ACCOM-
MODATIONS.

It is the policy of the United States to encourage al-
lies and partners of the United States to make accom-
modations similar to the accommodations made in this Act for residents of the Hong Kong Special Administrative Region who are fleeing oppression by the Government of the People’s Republic of China.

SEC. 12. TERMINATION.

Except as provided in section 6 of this Act, this Act shall cease to have effect on the date that is 5 years after the date of the enactment of this Act.