

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
2^D 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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) **JOINT DECLARATION.**—The term “Joint
4 Declaration” means the Joint Declaration of the
5 Government of the United Kingdom of Great Britain
6 and Northern Ireland and the Government of the
7 People’s Republic of China on the Question of Hong
8 Kong, signed on December 19, 1984, and entered
9 into force on May 27, 1985.

10 (2) **PRIORITY HONG KONG RESIDENT.**—The
11 term “Priority Hong Kong resident” means—

12 (A) a permanent resident of Hong Kong
13 who—

14 (i) holds no right to citizenship in any
15 country or jurisdiction other than the Peo-
16 ple’s Republic of China (referred to in this
17 Act as “PRC”), Hong Kong, or Macau as
18 of the date of enactment of this Act;

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

22 (iii) has been designated by the Sec-
23 retary of State or Secretary of Homeland
24 Security as having met the requirements of
25 this subparagraph, in accordance with the

1 procedures described in section 7 of this
2 Act; or

3 (B) the spouse of a person described in
4 subparagraph (A), or the child of such person
5 as such term is defined in section 101(b)(1) of
6 the Immigration and Nationality Act (8 U.S.C.
7 1101(b)(1)), except that a child shall be an un-
8 married person under twenty-seven years of
9 age.

10 (3) HONG KONG NATIONAL SECURITY LAW.—
11 The term “Hong Kong National Security Law”
12 means the Law of the People’s Republic of China on
13 Safeguarding National Security in the Hong Kong
14 Special Administrative Region that was passed
15 unanimously by the National People’s Congress and
16 signed by President Xi Jinping on June 30, 2020,
17 and promulgated in the Hong Kong Special Admin-
18 istrative Region (referred to in this Act as “Hong
19 Kong SAR”) on July 1, 2020.

20 (4) APPROPRIATE CONGRESSIONAL COMMIT-
21 TEES.—The term “appropriate congressional com-
22 mittees” means—

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

1 (B) the Committee on Foreign Relations
2 and the Committee on the Judiciary of the Sen-
3 ate.

4 **SEC. 3. FINDINGS.**

5 Congress finds the following:

6 (1) The Hong Kong National Security Law pro-
7 mulgated on July 1, 2020—

8 (A) contravenes the Basic Law of the
9 Hong Kong Special Administrative Region (re-
10 ferred to in this Act as “the Basic Law”) that
11 provides in Article 23 that the Legislative
12 Council of Hong Kong shall enact legislation re-
13 lated to national security;

14 (B) violates the PRC’s commitments under
15 international law, as defined by the Joint Dec-
16 laration; and

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

21 (2) On July 14, 2020, in response to the pro-
22 mulgation of the Hong Kong National Security Law,
23 President Trump signed an Executive order on
24 Hong Kong normalization that, among other policy
25 actions, suspended the special treatment of Hong

1 Kong persons under U.S. law with respect to the
2 issuance of immigrant and nonimmigrant visas.

3 (3) The United States has a long and proud
4 history as a destination for refugees and asylees flee-
5 ing persecution based on race, religion, nationality,
6 political opinion, or membership in a particular so-
7 cial group.

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

13 (5) The United States has sheltered, protected,
14 and welcomed individuals who have fled authori-
15 tarian regimes, including citizens from the PRC fol-
16 lowing the violent June 4, 1989, crackdown in
17 Tiananmen Square, deepening ties between the peo-
18 ple of the United States and those individuals seek-
19 ing to contribute to a free, open society founded on
20 democracy, human rights, and the respect for the
21 rule of law.

22 (6) The United States has reaped enormous
23 economic, cultural, and strategic benefits from wel-
24 coming successive generations of scientists, doctors,
25 entrepreneurs, artists, intellectuals, and other free-

1 dom-loving people fleeing fascism, communism, vio-
2 lent Islamist extremism, and other repressive
3 ideologies, including in the cases of Nazi Germany,
4 the Soviet Union, and Soviet-controlled Central Eu-
5 rope, Cuba, Vietnam, and Iran.

6 (7) A major asymmetric advantage of the
7 United States in its long-term strategic competition
8 with the Communist Party of China is the ability of
9 people from every country in the world, irrespective
10 of their race, ethnicity, or religion, to immigrate to
11 the United States and become American citizens.

12 **SEC. 4. STATEMENT OF POLICY.**

13 It is the policy of the United States—

14 (1) to reaffirm the principles and objectives set
15 forth in the United States-Hong Kong Policy Act of
16 1992 (Public Law 102–383), namely that—

17 (A) the United States has “a strong inter-
18 est in the continued vitality, prosperity, and
19 stability of Hong Kong”;

20 (B) “support for democratization is a fun-
21 damental principle of United States foreign pol-
22 icy” and therefore “naturally applies to United
23 States policy toward Hong Kong”;

24 (C) “the human rights of the people of
25 Hong Kong are of great importance to the

1 United States and are directly relevant to
2 United States interests in Hong Kong and
3 serve as a basis for Hong Kong’s continued eco-
4 nomic prosperity”; and

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

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

13 (A) the Joint Declaration;

14 (B) the International Covenant on Civil
15 and Political Rights, done at New York Decem-
16 ber 19, 1966; and

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

19 (3) to continue to support the democratic aspi-
20 rations of the people of Hong Kong, including the
21 “ultimate aim” of the selection of the Chief Execu-
22 tive and all members of the Legislative Council by
23 universal suffrage, as articulated in the Basic Law;

24 (4) to urge the Government of the PRC, despite
25 its recent actions, to uphold its commitments to

1 Hong Kong, including allowing the people of Hong
2 Kong to govern Hong Kong with a high degree of
3 autonomy and without undue interference, and en-
4 suring that Hong Kong voters freely enjoy the right
5 to elect the Chief Executive and all members of the
6 Hong Kong Legislative Council by universal suf-
7 frage;

8 (5) to support the establishment of a genuine
9 democratic option to freely and fairly nominate and
10 elect the Chief Executive of Hong Kong, and the es-
11 tablishment of open and direct democratic elections
12 for all members of the Hong Kong Legislative Coun-
13 cil;

14 (6) to support the robust exercise by residents
15 of Hong Kong of the rights to free speech, the press,
16 and other fundamental freedoms, as provided by the
17 Basic Law, the Joint Declaration, and the Inter-
18 national Covenant on Civil and Political Rights;

19 (7) to support freedom from arbitrary or unlaw-
20 ful arrest, detention, or imprisonment for all Hong
21 Kong residents, as provided by the Basic Law, the
22 Joint Declaration, and the International Covenant
23 on Civil and Political Rights;

24 (8) to draw international attention to any viola-
25 tions by the Government of the PRC of the funda-

1 mental rights of the people of Hong Kong, as pro-
2 vided by the International Covenant on Civil and Po-
3 litical Rights, and any encroachment upon the au-
4 tonomy guaranteed to Hong Kong by the Basic Law
5 and the Joint Declaration;

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

10 (10) to maintain the economic and cultural ties
11 that provide significant benefits to both the United
12 States and Hong Kong, including the reinstatement
13 of the Fulbright exchange program with regard to
14 Hong Kong at the earliest opportunity;

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

19 (12) to welcome and protect in the United
20 States residents of Hong Kong fleeing persecution or
21 otherwise seeking a safe haven from violations by
22 the Government of the PRC of the fundamental
23 rights of the people of Hong Kong.

1 **SEC. 5. TEMPORARY PROTECTED STATUS FOR HONG KONG**
2 **RESIDENTS IN THE UNITED STATES.**

3 (a) DESIGNATION.—

4 (1) IN GENERAL.—For purposes of section 244
5 of the Immigration and Nationality Act (8 U.S.C.
6 1254a), Hong Kong shall be treated as if it had
7 been designated under subsection (b)(1)(C) of that
8 section, subject to the provisions of this section.

9 (2) PERIOD OF DESIGNATION.—The initial pe-
10 riod of the designation referred to in paragraph (1)
11 shall be for the 18-month period beginning on the
12 date of enactment of this Act.

13 (b) ALIENS ELIGIBLE.—As a result of the designa-
14 tion made under subsection (a), an alien is deemed to sat-
15 isfy the requirements under paragraph (1) of section
16 244(c) of the Immigration and Nationality Act (8 U.S.C.
17 1254a(c)), subject to paragraph (3) of such section, if the
18 alien—

19 (1) was a permanent resident of Hong Kong at
20 the time such individual arrived into the United
21 States and is a national of the PRC (or in the case
22 of an individual having no nationality, is a person
23 who last habitually resided in Hong Kong);

24 (2) has been continuously physically present in
25 the United States since the date of the enactment of
26 this Act;

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

5 (4) registers for temporary protected status in
6 a manner established by the Secretary of Homeland
7 Security.

8 (c) CONSENT TO TRAVEL ABROAD.—

9 (1) IN GENERAL.—The Secretary of Homeland
10 Security shall give prior consent to travel abroad, in
11 accordance with section 244(f)(3) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1254a(f)(3)), to
13 an alien who is granted temporary protected status
14 pursuant to the designation made under subsection
15 (a) if the alien establishes to the satisfaction of the
16 Secretary of Homeland Security that emergency and
17 extenuating circumstances beyond the control of the
18 alien require the alien to depart for a brief, tem-
19 porary trip abroad.

20 (2) TREATMENT UPON RETURN.—An alien re-
21 turning to the United States in accordance with an
22 authorization described in paragraph (1) shall be
23 treated as any other returning alien provided tem-
24 porary protected status under section 244 of the Im-
25 migration and Nationality Act (8 U.S.C. 1254a).

1 (d) FEE.—

2 (1) IN GENERAL.—In addition to any other fee
3 authorized by law, the Secretary of Homeland Secu-
4 rity is authorized to charge and collect a fee of \$360
5 for each application for temporary protected status
6 under section 244 of the Immigration and Nation-
7 ality Act by a person who is only eligible for such
8 status by reason of subsection (a).

9 (2) WAIVER.—The Secretary of Homeland Se-
10 curity shall permit aliens to apply for a waiver of
11 any fees associated with filing an application re-
12 ferred to in paragraph (1).

13 **SEC. 6. TREATMENT OF HONG KONG RESIDENTS FOR IMMI-**
14 **GRATION PURPOSES.**

15 Notwithstanding any other provision of law, during
16 the 5 fiscal year period beginning on the first day of the
17 first full fiscal year after the date of enactment of this
18 Act, Hong Kong shall continue to be considered a foreign
19 state separate and apart from the PRC as mandated
20 under section 103 of the Immigration and Nationality Act
21 of 1990 (Public Law 101–649) for purposes of the numer-
22 ical limitations on immigrant visas under sections 201,
23 202, and 203 of the Immigration and Nationality Act (8
24 U.S.C. 1151, 1152, and 1153).

1 **SEC. 7. VERIFICATION OF HONG KONG PRIORITY RESI-**
2 **DENTS.**

3 (a) **IN GENERAL.**—Not later than 180 days after the
4 date of the enactment of this Act, the Secretary of State,
5 in consultation with the Secretary of Homeland Security,
6 shall publish in the Federal Register, an interim final rule
7 establishing procedures for designation of Hong Kong Pri-
8 ority Residents. Notwithstanding section 553 of title 5,
9 United States Code, the rule shall be effective, on an in-
10 terim basis, immediately upon publication, but may be
11 subject to change and revision after public notice and op-
12 portunity for comment. The Secretary of State shall final-
13 ize such rule not later than 1 year after the date of the
14 enactment of this Act. Such rule shall establish proce-
15 dures—

16 (1) for individuals to register with any United
17 States embassy or consulate outside of the United
18 States, or with the Department of Homeland Secu-
19 rity in the United States, and request designation as
20 a Priority Hong Kong Resident; and

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

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

26 (1) biometric data;

1 (2) copies of birth certificates, residency cards,
2 and other documentation establishing residency; and

3 (3) other personal information, data, and
4 records deemed appropriate by the Secretary.

5 (c) GUIDANCE.—Not later than 90 days after the
6 date of the enactment of this Act, the Secretary of State
7 shall issue guidance outlining actions to enhance the abil-
8 ity of the Secretary to efficiently send and receive informa-
9 tion to and from the United Kingdom and other like-mind-
10 ed allies and partners for purposes of rapid verification
11 of permanent residency in Hong Kong and designation of
12 individuals as Priority Hong Kong Residents.

13 (d) REPORT.—Not later than 90 days after the date
14 of the enactment of this Act, the Secretary of State shall
15 submit a report to the House Committees on Foreign Af-
16 airs and the Judiciary and the Senate Committees on
17 Foreign Relations and the Judiciary detailing plans to im-
18 plement the requirements described in this subsection.

19 (e) PROTECTION FOR REFUGEES.—Nothing in this
20 section shall be construed to prevent a Priority Hong
21 Kong Resident from seeking refugee status under section
22 207 of the Immigration and Nationality Act (8 U.S.C.
23 1157) or requesting asylum under section 208 of such Act
24 (8 U.S.C. 1158).

1 **SEC. 8. REPORTING REQUIREMENTS.**

2 (a) IN GENERAL.—On an annual basis, the Secretary
3 of State and the Secretary of Homeland Security, in con-
4 sultation with other Federal agencies, as appropriate, shall
5 submit a report to the appropriate congressional commit-
6 tees, detailing for the previous fiscal year—

7 (1) the number of Hong Kong SAR residents
8 who have applied for U.S. visas or immigration ben-
9 efits, disaggregated by visa type or immigration ben-
10 efit, including asylum, refugee status, temporary
11 protected status, and lawful permanent residence;

12 (2) the number of approvals, denials, or rejec-
13 tions of applicants for visas or immigration benefits
14 described in paragraph (1), disaggregated by visa
15 type or immigration benefit and basis for denial;

16 (3) the number of pending refugee and asylum
17 applications for Hong Kong SAR residents, and the
18 length of time and reason for which such applica-
19 tions have been pending; and

20 (4) other matters deemed relevant by the Secre-
21 taries relating to efforts to protect and facilitate the
22 resettlement of refugees and victims of persecution
23 in Hong Kong.

24 (b) FORM.—Each report under subsection (a) shall
25 be submitted in unclassified form and published on a text-

1 searchable, publicly available website of the Department
2 of State and the Department of Homeland Security.

3 **SEC. 9. STRATEGY FOR INTERNATIONAL COOPERATION ON**
4 **HONG KONG.**

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

7 (1) to support the people of Hong Kong by pro-
8 viding safe haven to Hong Kong SAR residents who
9 are nationals of the PRC following the enactment of
10 the Hong Kong National Security Law that places
11 certain Hong Kong persons at risk of persecution;
12 and

13 (2) to encourage like-minded nations to make
14 similar accommodations for Hong Kong people flee-
15 ing persecution by the Government of the PRC.

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

20 (1) provide refugee and asylum protections for
21 victims of, and individuals with a fear of, persecu-
22 tion in Hong Kong, either by Hong Kong authorities
23 or other authorities acting on behalf of the PRC;

1 (2) enhance protocols to facilitate the resettlement of refugees and displaced persons from Hong Kong;
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4 (3) identify and prevent the exploitation of immigration and visa policies and procedures by corrupt officials; and
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6

7 (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—
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9
10
11

12 (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
13
14

15 (B) fraud or misrepresentation under section 212(a)(6)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)).
16
17

18 (c) REPORT.—Not later than 90 days after the date
19 of the enactment of this Act, the Secretary of State, in
20 consultation with the heads of other Federal agencies, as
21 appropriate, shall submit a report on the plan described
22 in subsection (b) to the appropriate congressional committees.
23

1 **SEC. 10. REFUGEE STATUS FOR CERTAIN RESIDENTS OF**
2 **HONG KONG.**

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

12 (b) ALIENS DESCRIBED.—

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

15 (A) is a Priority Hong Kong Resident
16 and—

17 (i) had a significant role in a civil so-
18 ciety organization supportive of the pro-
19 tests in 2019 and 2020 related to the
20 Hong Kong National Security Law and the
21 encroachment on the autonomy of Hong
22 Kong by the PRC;

23 (ii) was arrested, charged, detained,
24 or convicted of an offense arising from
25 their participation in an action as de-
26 scribed in section 206(b)(2) of the United

1 States-Hong Kong Policy Act of 1992 (22
2 U.S.C. 5726(b)(2)) that was not violent in
3 nature; or

4 (iii) has had their citizenship, nation-
5 ality, or residency revoked for having sub-
6 mitted to any United States Government
7 agency a nonfrivolous application for ref-
8 ugee status, asylum, or any other immigra-
9 tion benefit under the immigration laws
10 (as defined in section 101(a) of that Act (8
11 U.S.C. 1101(a)));

12 (B) is a Priority Hong Kong Resident
13 spouse or child of an alien described in sub-
14 paragraph (A); or

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

18 (2) OTHER CATEGORIES.—The Secretary of
19 Homeland Security, in consultation with the Sec-
20 retary of State, may designate other categories of
21 aliens for purposes of establishing a well-founded
22 fear of persecution under subsection (a) if such
23 aliens share common characteristics that identify
24 them as targets of persecution in the PRC on ac-

1 count of race, religion, nationality, membership in a
2 particular social group, or political opinion.

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

7 (A) an organizing role;

8 (B) a first aid responder;

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

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

14 (E) a participant who during the period
15 beginning on June 9, 2019, and ending on June
16 30, 2020, was arrested, charged, detained, or
17 convicted as a result of such participation.

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

23 (d) EXCLUSION FROM NUMERICAL LIMITATIONS.—
24 Aliens provided refugee status under this section shall not
25 be counted against the numerical limitation on refugees

1 established in accordance with the procedures described in
2 section 207 of the Immigration and Nationality Act (8
3 U.S.C. 1157).

4 (e) REPORTING REQUIREMENTS.—

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

10 (A) the Committee on the Judiciary and
11 the Committee on Foreign Relations of the Sen-
12 ate; and

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

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

18 (A) the total number of refugee and asy-
19 lum applications that are pending at the end of
20 the reporting period;

21 (B) the average wait-times for all appli-
22 cants for refugee status or asylum pending—

23 (i) a prescreening interview with a re-
24 settlement support center;

1 (ii) an interview with U.S. Citizenship
2 and Immigration Services; and

3 (iii) the completion of security checks;

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

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

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

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

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

24 It is the policy of the United States to encourage al-
25 lies and partners of the United States to make accom-

1 modations similar to the accommodations made in this Act
2 for residents of the Hong Kong Special Administrative Re-
3 gion who are fleeing oppression by the Government of the
4 People's Republic of China.

5 **SEC. 12. TERMINATION.**

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