

ISSUE BRIEF

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Aiding Hong Kong's Autonomy—and U.S. Security—Through the Visa Waiver Program

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July 1, 2017, marks the 20th anniversary of the transfer of Hong Kong's British rule to control by the People's Republic of China. The arrangement included a promise by China to provide Hong Kong with "a high degree of autonomy, except in foreign and defense affairs."¹

Events in recent years have called into question China's respect for Hong Kong's autonomy. One way for the U.S. to promote and encourage Hong Kong's continued autonomy is to allow it to join the Visa Waiver Program (VWP) as long as the U.S. government can certify that the territory remains autonomous. Such a policy will not only take a stand for Hong Kong's autonomy and freedoms, but also benefit economic freedom and U.S. security.

Background on Hong Kong's Autonomy

In the 20th century, Hong Kong grew into a vibrant and prosperous colony with economic and political freedoms under British rule. When Hong Kong transitioned from British to Chinese control, the Sino-British Joint Declaration specified certain protections for Hong Kong:

- Hong Kong was allowed by China to "enjoy a high degree of autonomy, except in foreign and defense affairs."
- Hong Kong would have its own "executive, legislative and independent judicial power, including that of final adjudication."
- Hong Kong's traditional rights and freedoms were protected by law, and its existing laws were to be left "basically unchanged," as would its "current social and economic systems."
- Hong Kong would maintain its own customs authority and its own travel documents, as well as the authority to "conclude relevant agreements with states, regions and relevant international organizations."²

These guarantees were to last for 50 years. With its freedoms and capitalist system guaranteed, Hong Kong has continued to prosper since the 1997 handover, consistently earning the number one spot in The Heritage Foundation's *Index of Economic Freedom*.

Concerns for Hong Kong's Continued Autonomy

Concerns have been growing over Beijing's increasing influence over Hong Kong's domestic politics and its residents' liberties.

- In 2014, massive protests filled the streets of downtown Hong Kong in opposition to China's power in pre-screening the choice of Hong Kong's Chief Executive and residents' overall ability to achieve universal suffrage.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4726>

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- In 2015, five Hong Kong booksellers critical of Beijing were detained in mainland China, one of whom may have been involuntarily removed from Hong Kong.³
- In 2015, restrictions were placed on the number of mainland Chinese visits from the adjacent city of Shenzhen to Hong Kong.⁴

While Chinese President Xi Jinping's visit to Hong Kong from June 29 to July 1 is to commemorate the 20th anniversary of Hong Kong's handover from British rule, the visit is being perceived as a chance for Beijing to remind Hong Kong who is in charge.⁵

Using the Visa Waiver Program to Support Hong Kong

To support Hong Kong's autonomy, the U.S. must continue to distinguish Hong Kong from mainland China—as long as the facts warrant such a distinction. One way to do this is to provide the citizens of Hong Kong with the unique benefit of travelling to the U.S. without a visa under the VWP.

Hong Kong issues its own passports and is free to enter into non-defense agreements with other nations. As such, it can enter into the VWP so long as it meets the requirements of the program.

To be eligible for the VWP,⁶ Hong Kong must:

- Demonstrate a non-immigrant-visa-refusal rate (the percentage of visa applicants denied by the State Department for a particular nation) of no more than 3 percent;

- Issue all its citizens secure, machine-readable biometric e-passports; and
- Present no discernable threat to U.S. law enforcement or U.S. national security;

Once a part of the VWP, member countries must also:

- Increase its own airport security requirements;
- Share intelligence about known or suspected terrorists with the U.S. (per Homeland Security Presidential Directive 6 (HSPD-6));
- Exchange biographic, biometric, and criminal data with the U.S. (automated, via Preventing and Combating Serious Crime (PCSC) agreements);
- Share information on lost and stolen passports (LASP agreements); and
- Provide U.S. citizens with a reciprocal ability to travel without a visa.

Hong Kong's Eligibility for the VWP

Hong Kong's semi-autonomy includes law enforcement and immigration functions, which ensures that all but one of the above conditions can be met. The one exception is the maximum 3 percent visa-refusal rate. In the past several years, Hong Kong's visa-refusal rate has fluctuated between 3.1 percent and 4.6 percent.⁷

1. The city of Hong Kong was ruled by the British government from 1842 to 1997, except for several years of Japanese occupation during World War II. While Hong Kong Island was given to Britain in perpetuity, the City of Hong Kong also included an even larger amount of territory on the mainland that was only leased from the Chinese for 99 years. While Hong Kong grew into a vibrant and prosperous city with economic and political freedoms, the British lease on a large part of Hong Kong was set to expire in 1997. The Chinese refused to extend the lease, and the division of the city was considered impractical. As a result, the British government under Margaret Thatcher negotiated the transfer of control over Hong Kong back to China with specific requirements laid out in the Sino-British Joint Declaration.

2. The Government of the Hong Kong Special Administrative Region, Constitutional and Mainland Affairs Bureau, *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*, <http://www.cmab.gov.hk/en/issues/jd2.htm> (accessed June 28, 2017).

3. Alan Wong, Michael Forsythe, and Andrew Jacobs, "Defying China, Hong Kong Bookseller Describes Detention," *The New York Times*, June 16, 2016, <https://www.nytimes.com/2016/06/17/world/asia/hong-kong-bookseller-lam-wing-kee.html> (accessed June 28, 2017).

4. "Beijing to Limit Hong Kong Visits by Mainland Chinese," Reuters, April 11, 2015, <http://www.reuters.com/article/us-china-hongkong-visas-idUSKBN0N20H820150412> (accessed June 28, 2017).

5. Robert Keatley, "China's Bullying of Hong Kong Could Get Ugly," *The National Interest*, June 13, 2017, <http://nationalinterest.org/feature/chinas-bullying-hong-kong-could-get-ugly-21138?page=show> (accessed June 28, 2017).

6. These criteria apply to any nation seeking eligibility for the VWP.

7. U.S. Department of State, Bureau of Consular Affairs, "Adjusted Refusal Rates—B-Visas Only—by Nationality (FY 2006–FY 2016)," <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY16.pdf> (accessed June 28, 2017).

In the past, the Department of Homeland Security (DHS) had the authority to waive this 3 percent requirement (up to 10 percent), but Congress has since limited that authority.⁸

Given that Hong Kong is close to meeting the refusal-rate requirement,⁹ Congress should create an exception for Hong Kong to join the VWP. Providing Hong Kong citizens with the ability to come to the U.S. without a visa would be to treat Hong Kong as the autonomous and free city that it is and ought to remain. To ensure that it remain so, the U.S. should make Hong Kong's participation in the VWP dependent on a yearly certification by the Secretary of State that "Hong Kong is sufficiently autonomous to justify separate treatment" as required in legislation currently pending in Congress.¹⁰

Enhancing Economic Freedom and National Security

Adding Hong Kong to the VWP would also enhance economic freedom and national security for the U.S. Hong Kong is one of the financial and trading hubs of Asia, so allowing Hong Kong's citizens to travel to the U.S. will encourage additional trade, businesses deals, and tourism.

In addition to the significant security-enhancing information that Hong Kong will share with the U.S. through the VWP, the program includes robust screening and security procedures to which all Hong Kong travelers will be subject. Indeed, every traveler to the U.S. from a VWP country is pre-screened through the Electronic System for Travel Authorization (ESTA), which checks various databases for information about the person's eligibility for travel to the U.S., and whether he or she is a known security

risk. Upon arriving in the U.S., individual biographic and biometric information is checked against additional sets of biometric databases controlled by the DHS and the FBI. At any point in this process, U.S. officials can prevent individuals from entering the U.S. if they are deemed a security risk or ineligible for visiting the U.S.

Supporting Freedom and Advancing U.S. Interests

To promote U.S. security and economic freedom in Asia, Congress should:

- **Allow Hong Kong to join the VWP.** So long as Hong Kong complies with the other requirements of the program, an exception should be made for its visa-refusal rate.
- **Certify yearly that Hong Kong is sufficiently autonomous.** Hong Kong's participation in the VWP should be contingent on a yearly certification by the U.S. Secretary of State.

Promoting Freedom in Hong Kong

Hong Kong is a shining example of how political autonomy and economic freedom allow a nation to flourish. Defending its economic and political freedom are a matter of principle that also advances U.S. economic and security interests.

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8. Visa-refusal rates are an imperfect metric that relies on the judgement of consular officers to ascertain an individuals' risk of overstaying his legal stay in the U.S. Visa overstay rates are a better way of assessing the risk of a country's citizens overstaying their visa or VWP status.

9. The DHS also recently added Hong Kong to a short list of countries that do not effectively take back their citizens whom the U.S. is trying to deport. This must change before Hong Kong can admitted to the VWP. See Stephen Dina, "Trump Presses More Countries Take Back U.S. Deportees in Immigration Success," *The Washington Times*, May 16, 2017, <http://www.washingtontimes.com/news/2017/may/16/countries-refusing-us-deportees-cut-from-20-to-12/> (accessed June 28, 2017).

10. Hong Kong Human Rights and Democracy Act of 2017, S. 417, 115th Cong., 1st Sess., https://www.rubio.senate.gov/public/_cache/files/c0e742be-2280-4dd8-84d9-ceb1d2d68136/83B58A4E780F9071A7A987C287CCA0E2.hongkongdemocracyact.pdf (accessed June 28, 2017).