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Wrongfully Detained Americans in China

Executive Summary

China is currently holding the most wrongfully detained Americans of any other country¹. A substantial portion of this number is driven by China's use of exit bans. The length of detention is concerning, as the Americans wrongfully detained in China today have been held for, on average more than eight years. Other western countries have also struggled in recent years to address China's use of hostage diplomacy². The United States has traditionally relied on diplomatic engagement to secure the release of Americans from China³. Given the number of Americans detained in China, the length of prison sentences, and China's apparent willingness to engage in hostage diplomacy, more creative and coordinated international approaches are needed to better counter this threat.

The Number of Wrongfully Detained Americans

The number of known Americans wrongfully detained in China has climbed over the last 10 years. In 2014, six Americans were wrongfully detained by China⁴. That number grew to eight Americans in 2016, reaching a peak in 2019, with 20 Americans assessed as wrongfully detained by the Foley Foundation. Since 2022, we have not seen new cases of Americans being wrongfully detained by China, however, until this past weekend, releases have also stagnated⁵.

The U.S. Department of State classifies Americans as wrongfully detained in China: Mark Swidan (detained since November 2012), and Kai Li (detained since September 2016). Pastor David Lin, held 18 years, was recently released on Sep. 15 of this year. The Foley Foundation assesses an additional nine Americans meet the wrongful detention criteria as specified in the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act based on the publicly available information⁶. This number still likely underestimates the extent of Americans wrongfully detained in China, as the Foley Foundation monitors several other cases that might, with additional evidence, meet the criteria for wrongful detention. Further complicating the problem is China's refusal to recognize dual-national citizens. The State Department warns that dual nationals may have their access to consular services denied by China, limiting the assistance the U.S. government is able to provide⁷. The problem of accurately reporting the number of Americans detained in China is exacerbated by underreporting, pressure on families to not come forward because of retaliation concerns, and China's use of exit bans⁸.

¹ Loertscher, C. (2024). Bringing Americans Home 2024: A non-governmental assessment of U.S. hostage policy, family engagement, and the hostage and wrongful detainee landscape. *James W. Foley Legacy Foundation*. <https://jamesfoleyfoundation.org/hostage-advocacy/hostage-report/>

² Hostage diplomacy is defined by as the use of a country's criminal justice system to hold foreigners hostage. Gilbert, D. (2023, September 22). Biden's hostage diplomacy, explained. *Center for Strategic & International Studies*. <https://www.csis.org/analysis/bidens-hostage-diplomacy-explained>

³ Loertscher, C. (2024). Bringing Americans Home 2024: A non-governmental assessment of U.S. hostage policy, family engagement, and the hostage and wrongful detainee landscape. *James W. Foley Legacy Foundation*. <https://jamesfoleyfoundation.org/hostage-advocacy/hostage-report/>

⁴ Based on a database maintained by the James W. Foley Legacy Foundation

⁵ Loertscher, C. (2024). Bringing Americans Home 2024: A non-governmental assessment of U.S. hostage policy, family engagement, and the hostage and wrongful detainee landscape. *James W. Foley Legacy Foundation*. <https://jamesfoleyfoundation.org/hostage-advocacy/hostage-report/>

⁶ The Foley Foundation includes three individuals placed on exit bans in our count

⁷ State Department. (2024, April 12). China travel advisory. <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/china-travel-advisory.html>

⁸ Loertscher, C. (2024). Bringing Americans Home 2024: A non-governmental assessment of U.S. hostage policy, family engagement, and the hostage and wrongful detainee landscape. *James W. Foley Legacy Foundation*. <https://jamesfoleyfoundation.org/hostage-advocacy/hostage-report/>

China's Use of Exit Bans

China leverages exit bans to coerce cooperation with government investigations, pressure family members to return from abroad, settle civil disputes, and exert political leverage on foreign governments⁹. In its investigation of China's use of exit bans, the Associated Press noted that individuals do not receive an official notification that they have been placed under a ban¹⁰. Additionally, exit bans do not have clearly defined time periods, nor a method for remediation. Because China does not provide an official count of the exit bans in use, it is difficult to ascertain an exact number. China President Xi Jinping has expanded the authorities of and use of exit bans¹¹. A perception that China is increasing its use of exit bans is shared by diplomats from multiple countries¹².

An International Problem

The United States is not unique in its struggles to secure the release of its citizens from China. In recent years, Australia and Canada have also seen their own citizens used as political pawns to secure concessions favored by the Chinese Communist Party (e.g., the release of Huawei Chief Financial Officer Meng Wanzhou)^{13,14, 15}. National security and foreign policy experts warn of China's willingness to flaunt international norms and engage in hostage diplomacy to achieve its aims^{16,17}. Given this international threat, more creative thinking and tools are needed to counter it.

Recommendations

The United States needs a robust strategy, using multiple tools, to secure the release of Americans held in China. This strategy should include cooperation with countries, as other nations are also working to secure the release of their own citizens from China. Additionally, after the 2020 U.S. Presidential election, Dui Hua, a nonprofit focused on political prisoners in China, noted that "the Chinese government often makes gestures when a new American president is elected¹⁸." Dui Hua encouraged then President-elect Joe Biden to use his election to request the release of Mark Swidan¹⁹. The 2024 presidential election represents another possible opportunity for the president-elect to request the release of Americans wrongfully detained in China as an act of goodwill.

Diplomatic engagement is still needed, and the State Department should use the full range of its tools, including facilitating humanitarian releases and prisoner exchanges, as appropriate. Finally, the United States should evaluate how it can better leverage the authorities and capabilities of Executive Order 14078 Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home (e.g., use of designations, and sanctions against foreign government officials directly or indirectly involved with wrongful detentions) against China²⁰.

⁹ Department of State. (2024, April 12). *China travel advisory*. <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/china-travel-advisory.html>

¹⁰ Kinetz, E. (2020, May 5). 'No remedy, no rights': China blocks foreigners from leaving. *Associated Press*. <https://apnews.com/article/shanghai-suburbs-international-law-only-on-ap-china-5d59ce2a8442d6511cb9e7d8a3494679>

¹¹ Smith, A., & Austin, H. (2023, July 27). China's use of exit bans leaves Americans at the risk of being arbitrarily detained. *NBC News*. <https://www.nbcnews.com/news/world/china-exit-bans-detentions-travelers-businesses-xi-jinping-covid-rcna95264>

¹² Kinetz, E. (2020, May 5). 'No remedy, no rights': China blocks foreigners from leaving. *Associated Press*. <https://apnews.com/article/shanghai-suburbs-international-law-only-on-ap-china-5d59ce2a8442d6511cb9e7d8a3494679>

¹³ Needham, K., and Tian Y. K. (2023, October 11). Australian journalist Cheng Lei back home after China release. *Reuters*. <https://www.reuters.com/world/australian-journalist-detained-by-china-arrives-home-2023-10-11/>

¹⁴ McGuirk, R. (2024, February 21). China-born Australian democracy blogger won't appeal suspended Chinese death sentence. *Associated Press*. <https://apnews.com/article/yang-hengjun-china-australia-espionage-d8ebca29783d0eae30a99b55f11c5b61>

¹⁵ Slisco, A. (2021, September 24). Canadian diplomats detained in China since 2018 finally returning home, Trudeau says. *Newsweek*. <https://www.newsweek.com/canadian-diplomats-detained-china-since-2018-finally-returning-home-trudeau-says-1632670>

¹⁶ Cecco, L., and Davidson, H. (2021, September 29). Meng and the Michaels: Why China's embrace of hostage diplomacy is a warning to other nations. *The Guardian*. <https://www.theguardian.com/world/2021/sep/29/meng-wanzhou-michael-kovrig-michael-spavor-china-analysis>

¹⁷ Klass, A. (2020, July 9). Michael Kovrig, Michael Spavor, and China's history of hostage diplomacy. *The China Project*. <https://thechinaproject.com/2020/07/09/michael-kovrig-michael-spavor-and-chinas-history-of-hostage-diplomacy/>

¹⁸ Dui Hua. (2020, November 30). American citizen Mark Swidan: Eight years in Jiangmen detention center. *Dui Hua*. <https://duihua.org/american-citizen-mark-swidan-eight-years-in-jiangmen-detention-center/>

¹⁹ Dui Hua. (2020, November 30). American citizen Mark Swidan: Eight years in Jiangmen detention center. *Dui Hua*. <https://duihua.org/american-citizen-mark-swidan-eight-years-in-jiangmen-detention-center/>

²⁰ Loertscher, C. (2024). Bringing Americans Home 2024: A non-governmental assessment of U.S. hostage policy, family engagement, and the hostage and wrongful detainee landscape. *James W. Foley Legacy Foundation*. <https://jamesfoleyfoundation.org/hostage-advocacy/hostage-report/>