

Testimony for the Congressional Executive Commission on China

Dear Chairman Smith and Co-Chairman Merkley,

My name is Bill Browder, and I am the head of the Global Magnitsky Justice Campaign and CEO of Hermitage Capital Management.

Until 2005, I was the largest foreign investor in Russia. My firm worked to expose corruption within Russian companies to improve corporate governance. In retaliation for my efforts to shed light on illicit activities in Russia through my shareholder activism, the Russian authorities declared me a threat to national security and banned my entry to Russia. The situation escalated with the wrongful arrest, torture and murder of my lawyer, Sergei Magnitsky in 2009. Since then, I have been deeply involved in advocating for human rights and justice since Sergei's murder. This led to the establishment of the Magnitsky Act, a piece of legislation that imposes visa bans and asset freezes on human rights violators globally. I am honored to provide testimony for this critical hearing on Unjustly Detained Americans in China.

First, I want to express my sincere gratitude to Chairman Smith for his unwavering support and leadership in sponsoring the Global Magnitsky Act. Your longstanding commitment to human rights and justice has been instrumental in our shared efforts to hold human rights abusers accountable worldwide. I commend the Congressional Executive Commission on China (CECC) for organizing this bipartisan hearing on unjustly detained Americans in China. It is a vital initiative that highlights the plight of Americans arbitrarily imprisoned in China, and I fully support your efforts to bring new light to this pressing issue.

This hearing highly resonates with my own experiences since Sergei Magnitsky's unjust detention, as I have fought against wrongful imprisonment and judicial abuse through the Global Magnitsky Justice Campaign. The campaign successfully brought widespread global attention to human rights violations, and led to significant legislative outcomes, including the 2016 Global Magnitsky Act in the U.S. Since then, I have successfully advocated for the adoption of Magnitsky Acts in 35 countries. Through asset freezes and visa bans, Magnitsky Acts seek to hold accountable those who commit human rights abuses and corruption worldwide.

The issue of arbitrarily detained individuals is not complicated, and democratic governments' response to this ongoing issue highlights the differences between right and wrong. It is more important now than ever for legislators across the aisles to defend the rights of citizens wrongfully detained abroad in authoritarian regimes such as China and Russia. At the core of the values of a rule of law democracy is the fundamental belief in justice and due process, including the right to a fair trial in an impartial court. Uniting to protect these principles is not just a matter of policy, but a reaffirmation of what a democracy like the U.S. stands for.

Congress must exert sustained and significant pressure on the U.S. government to ensure the protection of Americans detained in China, who have long been overlooked at the political level. While consular support, such as welfare visits, is beneficial, it falls short of what is truly needed. There must be a firm commitment and active intervention to confront and challenge the unjust judicial system in China.

Just as in Russia, which I have experienced firsthand on numerous occasions, in China there is no such thing as a free and transparent trial in front of an impartial judge in an independent court. This is because there is no separation of powers within the judicial system. The Chinese Communist Party controls the entire judicial system, including the police, prosecution, judiciary, and penal system and even the legal profession, making fair and transparent trials impossible. Verdicts are decided by party committees, not independent judges, leaving no opportunity for a proper legal defense. Chinese judgments would not withstand scrutiny under the rule of law, and most Chinese prosecutions would fail if retried in a Western court.

I urge the U.S. government to set aside diplomatic niceties and take decisive action by intervening in the judicial cases of all Americans detained in China. Research by former prisoner Peter Humphrey indicates that up to 300 Americans are currently detained in China under various conditions, often on dubious charges, with some having been imprisoned for over a decade on opaque and unjust convictions. Some American prisoners have already been held in China for over ten years on opaque and unjust convictions.

The arbitrary enforcement of local laws and the potential for exit bans without clear legal processes pose significant risks to American citizens. It is therefore crucial for the U.S. government to move beyond standard diplomatic protocols and actively engage in protecting its citizens, challenging the unjust system, and advocating for fair treatment and due process for all detained Americans.

Governments committed to the rule of law have a moral and legal obligation to defend their citizens, especially those considered by the State Department to be arbitrarily detained, affording them the diplomatic attention of the Special Presidential Envoy for Hostage Affairs (SPEHA). Many of these people are detained for the sole reason that they are Americans, effectively handing China a vast supply of prisoners to use as diplomatic leverage whenever they please.

All citizens deserve unwavering support from their home government. The large number of Americans arrested on allegations of minor offenses merit the same level of advocacy as the select few who have been placed on the SPEHA list of arbitrarily detained persons. In China, American prisoners often receive disproportionately long sentences for their alleged crimes and endure cruel and inhumane conditions, including inadequate nutrition, lack of medical care, and restricted access to fresh air and sunlight. Their communication with loved ones is obstructed or censored entirely.

For many years, American administrations from both parties have shied away from intervening directly in the unfair and biased Chinese judicial system on behalf of U.S. citizens caught in legal ordeals. The U.S.

government seems to overlook – or deliberately ignore – a crucial fact: the 2018 Chinese International Criminal Judicial Assistance (ICJA) law on provides a clear mechanism for transferring "convicted" prisoners from China to their home countries, even without a bilateral prisoner transfer agreement (PTA). This law offers a potential pathway for action that has been largely unexplored. It is time for a change in approach - the U.S. government must leverage this legal framework to more actively support and potentially repatriate American citizens unjustly held in Chinese prisons.

The Chinese government is not stopping their practices of arbitrary detention anytime soon and has no intention of complying with international legal standards. I urge the U.S. government to take seriously the cases of all Americans imprisoned in China, in addition to the three Americans, David Lin, Kai Li, and Mark Swidan, on the SPEHA list, and to consider Magnitsky sanctions against those responsible for these injustices. The U.S., as a global leader, must set an example in upholding human rights and the principles of justice globally.

Thank you for your attention to this critical issue.

Sincerely,

Sir William Browder KCMG

Head of the Global Magnitsky Justice Campaign

CEO of Hermitage Capital Management