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Georgetown Center for Asian Law (GCAL)

**Submission to the Congressional-Executive Commission on China Hearing:
A Son and Daughter's Appeal to Xi Jinping to Release Their Dad, Jimmy Lai**

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Introduction

1. On December 15, 2025, the Hong Kong High Court found media mogul and longtime pro-democracy advocate Jimmy Lai guilty of seditious publication and of conspiracy to advocate for sanctions, in violation of the Crimes Ordinance and Article 29(4) of the National Security Law, respectively. Lai was later sentenced to twenty years in prison, likely a life sentence for the 78-year-old, and the longest sentence by far ever handed down under the NSL. Lai's co-defendants, all of whom pled guilty, were sentenced to prison terms ranging from six years and three months to ten years.
2. The essential fact of Lai's prosecution and conviction was clear, even from the first day of his national security arrest, on August 10, 2020: Lai committed no crime, at least as defined in rights-respecting jurisdictions governed by the rule of law. Instead, he was criminally prosecuted for exercising his basic human rights, often in ways that captured the attention of the people of Hong Kong, and that deeply angered senior officials in Hong Kong and Beijing.
3. This submission provides a short overview of the Lai verdict, and the ways in which the criminal charges against him are a clear violation of Lai's right to free expression, both under the Basic Law, Hong Kong's constitutional document, and under international human rights law. It is based on a forthcoming report by GCAL, entitled *Peaceful Advocacy as National Security Threat: The Jimmy Lai Verdict and the Legal Attack on Free Expression in Hong Kong*. As far as GCAL is aware, that report is the first full-length analysis of the Lai verdict to be published, either in English or in Chinese.

Sanctions advocacy: protected political speech or criminal act?

4. As noted above, Lai was convicted of sanctions advocacy under Article 29(4) of the NSL. The criminalization of sanctions advocacy is a somewhat new phenomenon. In fact, it appears that Article 29(4) was a world-first: as far as the authors of this submission have been able to determine, NSL Article 29(4) is the first provision to explicitly criminalize sanctions advocacy. When Jimmy Lai was first arrested in 2020, no other government in the world had enacted a similar provision, making Lai and his co-defendants likely the first people ever to be arrested and charged with sanctions advocacy. Since the NSL's enactment, three other states have followed in Hong Kong's footsteps: Belarus, Russia, and Venezuela.
5. The question of whether sanctions advocacy is protected political speech turns on an analysis of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19 protects the right to freedom of expression, and also lays out permissible limitations that can be imposed by states, including those on the grounds of national security or public order. Though the right to free expression can be restricted on national security grounds, criminalization of targeted sanctions advocacy likely would not pass muster as a legitimate national security interest.

6. GCAL believes that no legitimate national security interest is served by a prohibition of sanctions advocacy. Therefore, NSL Article 29(4) would not pass muster under the ICCPR. In general, international human rights law sets a high bar for prohibiting speech. Under international human rights law and comparative best practice, direct incitement to violence can be subject to criminal sanction, but usually only in cases in which the incitement is both intended to excite violence, and likely to have that immediate effect. Sanctions advocacy cannot be considered an incitement to imminent violence. There is also a question of agency: private citizens may advocate in favor of sanctions, but sanctions can only be imposed by states, or by intergovernmental agencies.
7. Several key United Nations human rights bodies have condemned Lai's arrest and prosecution, and have deemed the NSL Article 29(4) charges against him as an unlawful restriction on Lai's right to free expression under international law. In August 2024, for example, the UN Working Group on Arbitrary Detention (WGAD) issued an opinion on the various cases that had been lodged against Lai, including the national security case that is the subject of this analysis. The WGAD found that Lai's detention, and the NSL and sedition charges against him, constituted a violation of his Article 19 right to free expression, referring to the government's prosecution of Lai as a "clear violation of article 19 of the Covenant."² The Working Group ended its analysis by calling for Lai's immediate and unconditional release.
8. The High Court's conviction of Lai for sanctions advocacy represents a grim milestone in the history of the fight for free expression. Lai is one of the first individuals ever to be convicted of this crime, either in Hong Kong or anywhere in the world. The authors of this submission fear his case will serve as a grim precedent: Lai may have been among the first to be imprisoned for the "crime" of sanctions advocacy, but he won't be the last, either in Hong Kong, or globally.
9. There are other problems with the High Court's verdict. Lai's conviction rests heavily on his pre-July 1, 2020, actions and statements. It is true that Lai did advocate for sanctions against Hong Kong and Chinese officials prior to the implementation of the NSL, but even the court acknowledges that such actions were legal. The court's extensive discussion of Lai's pre-NSL political activity raises concerns over whether the verdict violates the non-retroactivity principle, in effect convicting Lai for actions that were not criminal at the time.
10. After the NSL went into effect on July 1, 2020, Lai stopped advocating for sanctions against Hong Kong or Mainland officials. On July 15, 2020, for example, Lai wrote on Twitter that "it is more important than ever for the world to voice out and to take

² Opinion No. 34/2024, August 2024, paragraph 64. In the next paragraph, the WGAD makes clear that Lai's detention cannot be justified on national security grounds, in line with Article 19(3) of the Covenant.

actions to defend against suppressions of freedom by the CCP.”³ The court convicted him anyway, judging statements like these to be a “more indirect and subtle strategy” to call for sanctions. In other words, even though Article 29(4) wrongly criminalizes peaceful political speech, Lai did not in fact break the law.

11. The problem with this breathtakingly broad approach is obvious. It criminalizes not only direct calls for sanctions, but also more general comments that, in the view of the court, could be interpreted as indirectly referring to such actions. Rather than using common law interpretative tools to limit the already broad scope of NSL Article 29(4), instead the court chose to broaden the text of the law even further, to include vague and indirect calls for international solidarity and support like Lai’s.

Lai’s Seditious Conviction: the criminalization of political speech

12. Lai and his *Apple Daily* co-defendants were also convicted of sedition under the Crimes Ordinance. (Since Lai was charged, the crime of sedition was revised, and is now a part of the Safeguarding National Security Ordinance.) But none of the writings cited by the court as seditious would be considered remotely criminal in rights-respecting jurisdictions, or under international law. Instead, the High Court cited the “context” of the 2019 protests, and as well as Lai’s sometimes sharp tone in his published writings, to find him guilty of sedition.
13. Sedition is defined in Hong Kong’s criminal law in part as the use of speech or publication to “bring into hatred or contempt or excite disaffection against [the SAR government],” or to “incite persons to violence,” or to “counsel disobedience to the law or any unlawful order.” There are some statutory defenses, including for speech or publication that attempts to “point out errors or defects in the government or constitution of Hong Kong.... with a view to remedying of such errors or defects.”⁴
14. As even a facial reading of the law makes clear, the crime of sedition is inherently political: it is designed to punish speech that is critical of the government. Much political writing is in fact geared towards “exciting disaffection” among readers for the government, and convincing the audience that the government itself is unjust or even illegitimate. Governments can use sedition laws to crack down on speech that is particularly caustic and highly critical, or that touches on particularly sensitive subjects. Or they can take advantage of the incredibly vague and subjective nature of the crime to punish even political speech that is not particularly severe in its tone, but that still crosses the government’s red lines. Since 2020, the Hong Kong government has done both, casting a wide net to punish a wide range of speech.

³ Verdict, paragraph 1670, p. 783.

⁴ The full text of the relevant provisions is laid out in the verdict, paragraphs 64-5, pp. 43-5. After Lai was charged, the government revised the sedition provision of the Crimes Ordinance, expanding it even further, and folding it into the 2024 Safeguarding National Security Ordinance. Lai was prosecuted under the older, colonial-era sedition provision.

15. What's interesting about the court's recitation of Lai's statements and *Apple Daily's* published output is how normal, how – for lack of a better word – *journalistic* it all seems: there are no calls for violence, no calls to overthrow the government. Instead, the court reproduces page after page of comments, both by Jimmy himself and by others, which are deeply familiar to longtime readers, both of *Apple Daily*, and of other Hong Kong media outlets. *Apple Daily's* sometimes sharp tone might set it apart from many of its contemporaries, but none of the ideas cited in the court's verdict are particularly new or different from what one would have read in other newspapers in 2019 and 2020. *Apple Daily* called then-Chief Executive Carrie Lam "evil," for example, and referred to President Xi Jinping as "Emperor Xi." More than once, it referred to the Hong Kong Police Force as "black cops."
16. What's important, however, is that these points of view, as expressed in the pages of *Apple Daily* and by Lai himself, are forms of peaceful political expression that should be protected by Hong Kong's Basic Law, and that are protected by Article 19 of the ICCPR and international human rights law more generally. In its General comment No. 34, the UN Human Rights Committee specifically mentions both political discourse and journalism as forms of expression that are protected by Article 19, and therefore by extension by Articles 27 and 39 of the Basic Law.⁵

Lai's Twenty-Year Sentence: a draconian prison term

17. Lai's guilty verdict was handed down on December 15, 2025. When his sentence was announced by the High Court on February 9, 2026, the result was truly stunning, even though a stiff outcome was very much expected: Lai was sentenced to twenty years in prison, by far the longest prison term to be handed down under the NSL to date. He is now eligible for release in April 2040, at which time he would be 92 years old.⁶
18. Lai's co-defendants also received heavy sentences. The court found all of the defendants to be in the upper sentencing band, and then adopted a starting point of 15 years for the Article 29(4) convictions. His *Apple Daily* colleagues Law Wai-kong, Lam Man-chung, and Fung Wai-kong all pled guilty, which meant that they could receive a one-third sentence reduction. This brought their sentences down to ten years, which is the minimum sentence that they could receive, once the court had determined that their crimes all fell in the upper sentencing band.⁷ The other co-defendants, Chan Tsz-wah ("Wayland"), Li Yu-hin ("Andy"), Cheung Kim-hung, Chan Pui-man, and Yueng Ching-kee, received sentences ranging from six years and three months to seven years and three months.

⁵ General comment No. 34, paragraph 11. Article 27 of the Basic Law protects, *inter alia*, the right to free expression, and Article 39 links human rights in Hong Kong directly to the ICCPR.

⁶ "Jimmy Lai Wins Fraud Conviction Appeal; 18-Year 'Collusion' Sentence to Begin Early – Earliest Release at Age 92," Radio France International (in Chinese), February 26, 2026.

⁷ *HKSAR v. Lui Sai Yu*, [2023] HKCFA 26.

19. As with the verdict itself, the court claimed that Lai's pre-July 1, 2020 activities were not criminally cognizable, because the NSL does not have any retrospective effect. That said, the court made clear that Lai and his co-defendants' actions "formed part of the context in which their offences took place," making them relevant to the determination of the seriousness of the offenses involved.⁸ The court's reliance on a pro-government narrative of the events of 2019 to justify a heavier sentence is deeply disturbing. That narrative is now woven into Hong Kong's national security jurisprudence, which meant that the High Court was able to rely on this factor as established precedent.⁹ The court's weighing of this factor also raises questions as to whether it convicted and sentenced Lai based on his actions prior to July 1, 2020, in clear violation of the fundamental principle of non-retroactivity.
20. The twenty-year sentence handed down to Lai is both incredibly draconian on its face, and also much heavier than the sentences issued by mainland Chinese courts in high-profile cases involving Chinese activists. To cite but a few recent examples: in 2023, rights activists Xu Zhiyong and Ding Jiaxi were convicted of subversion, and sentenced to fourteen and twelve years respectively. In 2009, prominent intellectual and pro-democracy advocate Liu Xiaobo was convicted of inciting subversion over his role in the drafting of the pro-democracy manifesto Charter 08. He was sentenced to 11 years in prison. Liu died of cancer in 2017 while still behind bars.

Next Steps for Winning Jimmy Lai's Freedom: the role of government advocacy

21. As the above analysis makes clear, the factors that drove the prosecution and conviction of Lai and his co-defendants were political, not legal. The overtly political nature of the case also points to the only potential solution: only the CCP leadership, and likely only Xi Jinping himself, can decide to release Lai and his co-defendants. Western governments should therefore focus their advocacy efforts on Beijing. In particular, the U.S. government should press the Chinese government to release Lai and his co-defendants, immediately and unconditionally.
22. If and when Beijing decides to allow Lai and his co-defendants to be released, there is a mechanism to effectuate this decision within Hong Kong Law. Under Article 48(12) of the Basic Law, the chief executive has the power to "pardon persons convicted of criminal offences or [to] commute their penalties." Since there are no statutory guidelines on how this power should be exercised, the chief executive is assumed to have wide discretion in his exercise of it.
23. The verdict against Lai, and his twenty-year sentence, represent dark moments in the long struggle for democracy, human rights, and the rule of law in Hong Kong. But his

⁸ Reasons for Sentence, paragraph 39.

⁹ *HKSAR v. Ma Chun Man* [2022] 5 HKLRD 246, at paragraphs 74-5. The High Court references *Ma Chun Man* in paragraph 35 of the Reasons for Sentence.

courage and his sacrifice serve as powerful examples for pro-democratic advocates around the world. The authors of this submission believe that his efforts on behalf of democracy in Hong Kong will one day be vindicated. In the meantime, the U.S. government should press the Chinese government on Lai's case, and should also press for the freedom of all other national security prisoners in Hong Kong.