

Congressional Executive Commission on China

Hearing on Prominent, Imprisoned Human Rights Lawyer Gao Zhisheng

Testimony of Jared Genser¹, Founder of Freedom Now and International *Pro Bono* Legal Counsel to Gao Zhisheng

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Good afternoon Mr. Chairman and Mr. Co-Chairman and thank you for the opportunity to speak with you today. I would like to begin by thanking the Congressional-Executive Committee on China for your stalwart support of Gao Zhisheng and your commitment to providing an essential forum for exposing human rights violations in China.

As international *pro bono* legal counsel to the imprisoned Chinese lawyer Gao Zhisheng, I will provide you with a brief overview of his case and an explanation of why his continued detention violates Chinese and international law. I will also reflect on why, although Mr. Gao is only one of many Chinese prisoners of conscience, his is a bellwether case that deserves especially close attention.

Gao Zhisheng was a prominent Chinese lawyer who ran afoul of the government after he took on politically sensitive cases, particularly those of religious minority groups. In 2005, the government shut down his law firm. In August 2006, authorities arrested Mr. Gao and accused him of inciting subversion—a charge frequently used to silence government critics like 2010 Nobel Peace Prize Laureate Liu Xiaobo, who is also a *pro bono* client of mine. The government prevented the family's chosen lawyers from meeting with Mr. Gao and used threats against his wife and children to extract a confession. The trial lasted less than a day and the government failed to even notify the family or their chosen counsel of the proceedings. On December 22,

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2006, Beijing's First Intermediate People's Court handed down a suspended three-year sentence subject to a five-year probationary period.

Despite the formal suspension of his sentence, Mr. Gao was not free; over the next five years, the government repeatedly disappeared and tortured him. In September, 2007, authorities disappeared him for 50 days after he publicly criticized China's human rights record. Then, in February, 2009, the government again abducted Mr. Gao shortly after his family sought asylum in the United States. Denied access to a lawyer, Mr. Gao was held in secret for more than a year. Although he mysteriously reappeared in March, 2010, Mr. Gao disappeared again a few weeks later. He has not been seen or heard from since. On November 19, 2010, the UN Working Group on Arbitrary Detention – an independent and impartial body include experts from Chile, Norway, Pakistan, Senegal, and Ukraine – issued Opinion No. 26/2010, finding his ongoing detention to be in violation of international law. After 20 months with no credible information regarding Mr. Gao's whereabouts or wellbeing and just days before the probationary period was to end, Chinese state media announced last December that Mr. Gao would serve the full three-year prison sentence. The government claimed that Mr. Gao violated his probation and was therefore taken to the Shaya County Prison in remote Xinjian. Prison authorities turned Mr. Gao's family away after they traveled 22 hours by train to see him, incredulously claiming that Mr. Gao didn't want to see family members and also that he could not receive visitors during a three-month "education period." No independent party has been able to confirm Mr. Gao is alive or actually in this prison.

The government's imprisonment of Mr. Gao—if he is in-fact at the Shaya County Prison—is illegal for three reasons. First, Mr. Gao has already spent more than three years in government custody since his arrest in 2006 on subversion charges. Quite simply, he has already

served the full sentence. Second, the charges against Mr. Gao for inciting subversion arise out of his written and spoken criticism of the Chinese government. Imprisoning Mr. Gao for exercising his fundamental right to freedom of expression is a flagrant violation of China's international obligations and its own constitution. Finally, the prosecution of Mr. Gao failed to meet international standards for due process. During the trial, the government relied upon a forced confession and denied Mr. Gao the right to legal counsel of his choosing. Then, in revoking Mr. Gao's probation, it appears the government acted without any legal process whatsoever. We have filed a new petition to the UN Working Group on Arbitrary Detention urging it to find this new period of detention also in violation of international law.

Although he is only one of many Chinese political prisoners, Mr. Gao's case is an important bellwether for three reasons. First, Mr. Gao is not a traditional dissident; he is a lawyer. A vanguard of the *weiquan* or "rights defending" movement, Mr. Gao attempted to promote the rights of his clients by working from within the system. His case shows the government's willingness to persecute those that promote the rule of law from within, but he is not alone. The government continues to hold the prominent lawyer Chen Guangcheng under strict house arrest with his wife and daughter. Chen, also a self-trained lawyer, rose to prominence after he organized a class action lawsuit exposing abuses under China's one child policy. The government is also moving forward with the prosecution of Ni Yulan, a well-known tenants' rights lawyer.

Second, the continued detention of Mr. Gao is instructive because it is part of a larger crackdown in which the Chinese government continues to stifle free expression. As Ambassador Locke noted last month, repression in China has only worsened since the uprisings in the Middle East and North Africa. In December and January, activists Chen Wei, Chen Xi, and Li Tie all

received long prison sentences of nine or ten years, and authorities put a fourth activist, Zhu Yufu, on trial. Each was charged with subversion or its incitement. This larger crackdown will only be exacerbated by the government's incredulous moves to potentially legalize disappearances like Mr. Gao's under Chinese law. Such a cynical move would render the "rule of law" meaningless.

Finally, Mr. Gao's case is striking for how brazen the government has become in its willingness to publicly and transparently lie about the circumstances of his detention. After the government disappeared Mr. Gao in 2009, a security agent told the family that Mr. Gao had "lost his way and went missing." Later, the Foreign Ministry spokesman indicated that Mr. Gao was "where he should be," but when pressed later smiled and said he didn't know where Mr. Gao was and couldn't be expected to know the whereabouts of all of China's 1.3 billion people. Then, the government released a photograph of Mr. Gao purporting to show him alive and well, but in it, Mr. Gao was wearing a distinctive bracelet he had given his daughter Grace before she fled to the United States. After his wife, Geng He, pointed this out in an interview, an unknown woman attempted to steal it from Grace in a New York City subway. Now, authorities are claiming that Mr. Gao, a loving husband and father, would rather not see his family.

The Chinese government's treatment of Mr. Gao and his family is nothing short of shocking and its contradictory claims show a total disregard for the international community. If the government's lies are not publicly and directly confronted, it sends a message to Beijing that respect for the rule of law and basic human rights are no longer a priority.

I thank you for the opportunity to share my thoughts with you today and would welcome any questions.