

SEEKING FREEDOM FOR AMERICAN TRAPPED IN BOLIVIAN PRISON

HEARING BEFORE THE SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS OF THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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SEEKING FREEDOM FOR AMERICAN TRAPPED IN BOLIVIAN PRISON

WEDNESDAY, AUGUST 1, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
AND HUMAN RIGHTS,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:49 p.m., in room 2172 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The hearing will come to order, and I want to thank you all for joining us as the subcommittee continues to shine the spotlight on and to search for a resolution to the extreme injustice being perpetrated by the Bolivian Government officials against Jacob Ostreicher, an American trapped in the infamous Palmasola Prison, charged with crimes for which the Bolivian Government has produced no evidence, either of the crimes themselves or that Mr. Ostreicher committed either one.

He is being denied the most fundamental due process and human rights both under Bolivian law and international human rights standards.

On June 9, Sheri Rickert, my staff director on the subcommittee and I went to Bolivia to meet with Mr. Ostreicher and to attend a court hearing for his release on bail which had been repeatedly delayed since September of last year.

The testimony presented at the subcommittee at the June 6 hearing about this case revealed that repeated due process violations were being committed by Bolivian officials.

On June 11, I had the opportunity to witness some of that myself. Two attorneys from the Bolivian Ministry of Government, who I understand should not be intervening in the case in the first place, aggressively threatened to take legal action against the judge if he refused to recuse himself. Although the judge rightly rejected the ludicrous reasons for which the Ministry of Government attorneys based their threat, they accomplished their goal of having the hearing postponed, and Mr. Ostreicher returned to prison.

To underline the absurdity of the Bolivian judicial system, Mr. Ostreicher's case was then referred to a court where the judge is detained in the same prison as Mr. Ostreicher. It took fully 6 weeks for the hearing to be rescheduled. Remember, this is a bail hearing in another court that has a judge.

I've been informed that, unfortunately, the same scenario occurred on June 11 at the hearing that took place, and again on

July 23. The Ministry of Government attorneys injected themselves into the hearing and aggressively threatened the judge if she failed to recuse herself. The judge rejected out of hand the basis asserted for the threat, and again postponed the hearing and returned Mr. Ostreicher to jail.

While in Bolivia I met with Vice Minister of Foreign Affairs, Juan Carlos Alurralde, the Minister of Government Carlos Romero, and Minister of Justice Cecilia Ayllón Quinteros to advocate for Ostreicher's release. Each one of them have made commitments with respect to this case but sadly have not followed through.

And in the meantime, Mr. Ostreicher continues to face daily threats to his life in the violent, unsanitary, drug infested Palmasola Prison.

He has been on a hunger strike, as we know, since April 15, and he was already extremely frail and weak when I saw him over a month ago. A private and a Bolivian Government doctor have examined Mr. Ostreicher and recommended that he be referred to a medical clinic for evaluation. Given everything else that has happened in this case, it is highly suspicious that the prison officials are unable to find police escorts to take him there.

Although our own State Department officials are finally acknowledging that Ostreicher's due process rights are being violated, they continue to seem hesitant and uncertain about what action to take on his behalf. The State Department was invited to testify at this hearing, but indicated that they were not available to do so this week.

I do look forward to arranging a follow-up hearing at the earliest possible date when they are prepared to discuss their efforts in this case.

Since undertaking my own advocacy efforts on behalf of Mr. Ostreicher in early June, I have received reports about several Americans who are imprisoned overseas and are being denied their fundamental due process and human rights.

Out of a sense of obligation to do all I can to help Mr. Ostreicher, but also to assist other U.S. citizens in similar situations, I will introducing legislation this Friday that will hold accountable those foreign government officials who are responsible for the violation of due process and human rights of imprisoned Americans.

The legislation is entitled Justice for Imprisoned Americans Overseas Act, or Jacob's Law.

It is premised on the principle that foreign government officials responsible for violations of fundamental due process and human rights of imprisoned U.S. citizens as well as their immediate family members should not have the privilege of traveling to the United States while our citizens are unjustly languishing in prisons and they are responsible for them.

The bill would prohibit the issuance of a visa and deny entry to any foreign government official who is violating or failing to fulfill a responsibility to uphold the rights of imprisoned Americans.

The legislation would also deny entry to such officials for 10 years if the American dies from any cause while imprisoned. These visa and entry prohibitions would likewise apply to these officials' immediate family members.

Entry into the United States would be denied only when an American's fundamental rights are being violated. Americans who violate the legitimate laws of a foreign country must accept the consequences of their crimes, but the United States cannot stand by and simply monitor the cases when our citizens are being held hostage contrary to international human rights standards.

I would emphasize that already under current law, 22 U.S. Code Section 1731, the President must demand the release of any citizen who has been unjustly deprived of his liberty by or under the authority of any foreign government, and to undertake appropriate means to obtain the release of such citizen. We're not talking about just monitoring the release of that person.

This legislation provides the State Department with a tool that it should welcome in order to help it fulfill that responsibility.

We are privileged to have with us today two attorneys who are representing Mr. Ostreicher in the Santa Cruz courts. I would like to thank them for coming all the way from Bolivia to participate in this hearing on Mr. Ostreicher's behalf.

We will also receive an update about the case from Mr. Ostreicher's wife, Ms. Miriam Ungar, and his daughter, a constituent of mine from New Jersey, Ms. Chaya Weinberger.

Finally, I would like to express my appreciation to Mr. Steven Moore, a retired FBI Special Agent who has spent considerable time and effort investigating Mr. Ostreicher's case, and who interrupted his book tour in Washington State just to be with us today. Thank you for that sacrifice, and thank you for the tremendous work that you have done.

I'd like to now yield to my friend and colleague, Ms. Bass, the ranking member, for any opening comments she might have.

Ms. BASS. Mr. Chairman, thank you for continuing to focus on Mr. Jacob Ostreicher, the U.S. citizen and businessman held in custody in Bolivia for over 14 months. And let me just take the opportunity to commend you for your aggressive action of taking the time out and going directly to Bolivia. And as I understand in reports from that there was concerns for your physical safety, but you took it upon yourself to do that, anyway.

I regret that no meaningful progress has been made toward this release since our last hearing on June 6, as his forced detention becomes more troubling each day and each minute that he remains incarcerated.

Mr. Chairman, allow me to again express my deepest concern for Mr. Ostreicher and his family who have endured such a great deal since his June 2011 detention. Mr. Ostreicher, as has been noted, has been held in detention for well over a year without due process.

Hearings on this case have been postponed numerous times including the most recent only on July 23. I must ask the Bolivian Government why do they continue to stall on this case?

I am aware that the Bolivian justice system allows for up to 18 months before an individual is charged. It's my understanding that this is far from the norm, and in many cases far exceed this time frame.

Although the difficulty of assessing justice in Bolivia is clearly a problem that extends beyond the case of Mr. Ostreicher, I would hope that this case, to be one of these that I would hope that the

necessary diplomatic and political pressures would be applied to resolve this case.

Let me take the time to urge the U.S. officials to do all that is possible to find a solution to what is a crisis that divides a family, and robbed a mother, wife, children of a son, husband, and father.

Ms. Ungar, I empathize with the frustration that you, your husband, and your family have endured. I say I empathized, I can't say that I know exactly how you feel because I don't think anybody knows how you feel unless they have been in that exact situation. But let me say again that we have not forgotten your husband and we, too, are worried about his mental and physical health and well being.

I once again encourage you and all parties involved to keep channels of communication open so that every effort to bring transparency and progress to this very serious crisis can be resolved.

I hope that you are able to keep the faith and believe that your husband will be returned to you, and that you will soon be able to put this tragedy behind you.

Thank you, Mr. Chairman, and I look forward to hearing from today's witnesses.

Mr. SMITH. Thank you very much, Ms. Bass. I'd like to now turn to Mr. Turner, the gentleman from New York.

Mr. TURNER. Chairman Smith, Ranking Member Bass, thank you for calling this hearing today.

Chairman Smith, let me applaud you for your effort on behalf of Jacob Ostreicher. I also want to thank Jacob's wife and daughter for coming to Washington again to share their thoughts with us.

A little over a month ago we had a similar hearing and it was entitled, "The State Department's Inadequate Response to Human Rights Concerns in Bolivia." Frankly, this hearing could now be entitled, "The State Department's Inadequate Response to Human Rights Concerns in Bolivia Part II."

And perhaps even that is not completely accurate because unlike movie sequels, nothing has changed.

Jacob has still not been formally charged, he has been denied a hearing, he continues to live in squalor, and in constant fear for his life, and his health continues to deteriorate.

The State Department's response is still inadequate.

They have been invited but they have declined to testify claiming that it is better to work behind the scenes. This strategy has been employed for over a year, and I ask what are the results. So, if the State Department were here I would have one question; what are you doing to help him? He has been detained without a hearing, no trial, no jury, no verdict, no due process, Mr. Chairman. I believe Jacob's family deserves to know what is going on, and I hope the State Department will answer that question.

Thank you. I yield back.

Mr. SMITH. Mr. Turner, thank you very much. I now recognize the gentlelady from New York, Ann Marie Buerkle.

Ms. BUERKLE. Thank you, Mr. Chairman.

First of all, let me begin by saying thank you to all of our witnesses and to Mr. Ostreicher's family for being here today. I know how difficult this is, but we need you to help us raise awareness about the issue and all of the challenges that he faces, so thank

you very much for your courage to be here and to help us do our job even better.

I just want to thank the chairman. We are very fortunate to have a chairman such as Mr. Smith who has the courage to continue to focus on these human rights violations throughout the world, and who has been steadfast. And as was mentioned by the ranking member, by his trip to Bolivia, and again the courage it takes to call attention and to remain vigilant on behalf of not only Mr. Ostreicher but also his family.

I look forward to hearing your testimony today. It's going to take all of Congress and this administration, it's going to take a concerted effort for us to get him the liberty and the freedom that he needs, and we want to pledge that to you. We will remain steadfast, and we will continue to work on his behalf as well as your's.

I thank you very much, and I yield back.

Mr. SMITH. Thank you very much, Ms. Buerkle.

I'd like to now welcome to the witness table our very distinguished witnesses beginning first with Yimy Montaña Villagomez who obtained his legal license at the Universidad and a Master's degree as well, both in Santa Cruz in Bolivia. He is admitted to the Bolivian bar. He has been the principal at the law firm of Montaña & Associates for the past 2 years, and has represented Mr. Ostreicher since January 2012.

We will then hear from Jerjes Justiniano who attended the school of Universidad, the Adventist University of Chile, and obtained his license in law as well in Santa Cruz. He has completed a Master's program in criminal law and is awaiting to present his thesis. He is also admitted to the Bolivian bar and has been a partner in the firm that he heads since 2000. Mr. Justiniano has represented Mr. Ostreicher in this case since November and December 2011, and again since March 2012.

We'll then hear from Ms. Miriam Ungar, who is the wife of Mr. Jacob Ostreicher. She has visited Mr. Ostreicher in Bolivia numerous times both prior to and after his arrest. She has gone from having the normal life of a resident of Brooklyn, New York to being the lead advocate for her husband imprisoned in a foreign country with a different language, different culture, and an incomprehensible disregard for fundamental human rights and legal due process. She has striven to help her husband maintain his physical well being and mental sanity in horrendous prison conditions.

Ms. Ungar, once again I commend you and thank you for your courage and your fidelity to your husband. When Sheri and I met with him, he spoke about you, Chaya, and rest of the family almost non-stop, about how much he just longs to be with you both of you. And it was really extraordinary how much he misses you and cherishes the family, and both of you.

We'll then hear from Ms. Chaya Weinberger, the daughter of Mr. Ostreicher. Ms. Weinberger is married and the mother of five small children. She is a resident of Lakewood, New Jersey in the district which I have the honor of representing, and she's also visited her father in the notorious Palmasola Prison in Bolivia, and has attended several of his hearings. We are deeply appreciative of her willingness, and again to the both of you, thank you so much.

We then will hear from Mr. Steven Moore who served as FBI Special Agent and Supervisory Special Agent in the FBI for 25 years retiring in 2008. Mr. Moore led the investigations of many high profile crimes in Los Angeles, including the first ever conviction for an anthrax threat and the Buford Furrow shooting murder spree at the Los Angeles Jewish Community Center.

He spent several years on SWAT, and was a case agent for Los Angeles 9/11 investigation, and later chosen to supervise all al-Qaeda investigations for the Los Angeles FBI.

In 2003, Mr. Moore stood up the FBI squad in charge of responding to acts of terrorism against the U.S. in Asia and Pakistan, including the bombings of the U.S. consulate in Karachi, and the JW Marriott Hotel in Jakarta. He established liaison and worked closely with the CIA and the U.S. Department of State in several countries, conducting investigations at at least six U.S. Embassies. Mr. Moore also served a term as assistant legal attache at the U.S. Embassy in Nassau, Bahamas during the summer of 2004.

In his retirement, Mr. Moore has written a book entitled, "Special Agent Man: My Life in the FBI as a Terrorist Hunter, Helicopter Pilot, and Certified Sniper," which was just recently released. He also has voluntarily undertaken to use his enormous skills and experience that he acquired as an FBI Special Agent to help exonerate Americans wrongly incarcerated abroad, including Amanda Knox who was convicted in 2009 in Italy of murdering her roommate. Of course, because of his work largely, the evidence was shown to be bogus and she is now free.

He went to Bolivia in early April 2012 to visit Mr. Ostreicher and to investigate his case, and we welcome him back, as well.

Mr. Montaña, if you would proceed with your testimony.

**STATEMENT OF MR. YIMY MONTAÑO VILLAGOMEZ, ATTORNEY
FOR JACOB OSTREICHER**

[The following testimony was delivered through an interpreter.]

Mr. MONTAÑO VILLAGOMEZ. I thank this committee for the opportunity. I come here to transmit to you very important news which is that a citizen of yours, of this country, is dying in a Bolivian prison. I know his case entirely, and I have absolutely no doubt regarding Mr. Ostreicher's innocence.

Bolivia is going through a very difficult time particularly in administering justice. There is still a complete concentration of power in the central government and this concentration of power today has turned completely against Mr. Ostreicher subjecting him to a trial, a trial which has—a prosecution which has robbed him of his freedom. It is attacking his life, his health.

In this prosecution there has been not even the least respect for the laws and constitutional rights which as a citizen he should be allowed to have through the Bolivian legal system.

This illegal and cruel prosecution of Mr. Ostreicher has been going on for the last 14 months. There is an innocent man who is in horrific conditions. His health is suffering, and for the last 20 hearings he has not been allowed to recover his freedom. He's not even been allowed the assistance of a doctor in this situation. And this comes about as a result of bad use and abuse of power which has fallen upon Mr. Ostreicher.

If his rights to life and health have not been respected, how is it possible that he would be given due process according to the existing laws? This is reflected in the fact that there are continuing efforts by the Ministry of Government and the officials working for that Ministry who will not allow a bail hearing to be heard to see whether he would be able to regain his freedom.

All of the rights, whether they be in international treaties, or through Bolivian laws to which he should be entitled to have been left on paper. We can't imagine there being due process when there's no independence of the different branches.

The prosecutor's office from Bolivia and the judges act at the behest of the government, and when they refuse to do so they are removed from office. His right to freedom has been continually compromised as have his life, his health, his belongings, and his right to be with his family.

Although he is innocent, he continues to be detained while people who commit crimes, even crimes against him continue to be free.

I don't know what to tell you to ask exactly of your government. I would only plead you and encourage you to act in the most appropriate and timely fashion possible. If not, this story may not have a happy ending. His life is gravely compromised. He's quite weakened, and his family needs him back so that he can be with them once again.

Thank you, Mr. Chair, and to the members of the subcommittee for this opportunity to tell my truth.

[The prepared statement of Mr. Montaña follows:]

WRITTEN TESTIMONY OF YIMY VILLAGOMEZ MONTAÑO
BEFORE THE "HOUSE COMMITTEE ON FOREIGN AFFAIRS, SUBCOMMITTEE
ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS"

"SEEKING FREEDOM FOR AMERICAN TRAPPED IN BOLIVIAN PRISON"

AUGUST 1, 2012

Thank you, Mr. Chairman and members of the committee, my name is Yimy Villagomez Montaño, I am a Bolivian citizen, an attorney, and I represent Jacob Ostreicher against the unjust criminal process led by the Public Ministry and the Ministry of Government of Bolivia in case SC-X-518/2011 for the alleged commission of the crimes of Money Laundering and Criminal Organization.

Before discussing legal matters, I must express my firm belief that Mr. Jacob is an innocent man. That is why I agreed to defend your citizen, who came to my country to develop an agricultural project and to create jobs without ever imagining that this would lead to his incredible and illegal prosecution for the sole purpose of appropriating all or part of his property. This criminal behavior has been assumed by some government officials and public servants who, abusing their powers, have detained Mr. Jacob to extort him and achieve their purposes.

While it is true that Mr. Jacob is under Bolivian jurisdiction, I must make it clear that for now there is no separation of powers in Bolivia, especially since the Ministry of Government is one of my client's accusers. The judges are not sufficiently independent to administer justice properly because in many cases they are pressured when they refuse to do the Government's bidding or rule contrary to its interests. These judges are removed from the case, they are threatened or even prosecuted, and in some cases they are removed from the bench.

However, the criminal process against my client Mr. Jacob Ostreicher lacks legality. As a lawyer, I understand the government has not respected his rights as enshrined by the Political Constitution of Bolivia, the laws in force, and international treaties that Bolivia is a party to and obligated to comply with. Among the rights and constitutional guarantees that have been atrociously violated is the right to due process, the right to defense, and **the right to be presumed innocent**, as well as the systematic violation of fundamental rights such as human rights, including the right to life and health, for the reasons I am about to explain.

The Political Constitution of Bolivia recognizes the right to life (Art. 15) and also requires leaders and public servants to respect this fundamental right of all citizens under the jurisdiction of Bolivia. In the case before us today, however, the State has broken its own rule because, through its prosecution agencies (the Public Ministry and the Police), it has developed an unjust case against an innocent person; endangered the life of my client by putting him in prison in subhuman conditions without providing any evidence and forcing him to prove his innocence; denied medical assistance despite knowledge of his serious health condition; and detained him for over 14 months. Through the forgoing actions, with clear contempt for his life, the State violated his rights and put his life at tremendous risk.

These violations are also evident through the State's refusal to fulfill its obligations to safeguard the life and health of my client Jacob Ostreicher, who has suffered a terrible loss in health as a result of this unfair criminal proceeding. There is a forensic medical report, a report by the prison doctor where he is detained, and a report by a private doctor who unequivocally inform and request that to safeguard the life and restore the health of my client, he be removed to a medical facility for a period of 8 days. The prison officials have refused to comply with a court order (from Judge 9th), misleadingly alleging that escorts are unavailable to secure his transfer. I think it is nonsense to put at risk the life and health of a person who has been suffering an unjust detention over the past 14 months despite of his innocence.

Members of Congress, given that the State of Bolivia has been unable to protect the life and health of my client, as I just explained, it is highly unlikely it respects the procedural rights that are guaranteed to all Bolivian citizens and foreigners under the jurisdiction of Bolivia. Although the violated rights date back to June 3, 2011, over the eight months I have represented Jacob I have witnessed the lack of the due process incorporated by the Political Constitution of Bolivia (Art. 115) and the laws enacted by this Government. As the Constitutional Tribunal of Bolivia established: **'With regard to due process, enshrined as a constitutional guarantee by art. 115 of the Constitution, and as a human right in Art. 8 of the Pact of San José de Costa Rica and Art. 14 of the International Covenant on Civil and Political Rights, the Constitutional Court has understood this, in its uniform jurisprudence, as "the right of everyone to a fair trial in which his or her rights are adjusted to the general laws that are applicable to all those who are in a similar situation (...) it includes the set of requirements to be observed in the procedural stages, so that people can adequately defend themselves against any type of State action that could affect his or her rights. "**

This situation is evident when the court fails to conduct a hearing for my client to recover his freedom. This situation is becoming common in this trial given that after 17 failed attempts and 14 months of detention, a hearing has not been held because my client's detractors have resorted to intimidating judges and prosecutors, and lately they have opted to request the recusal of judges to prolong the detention, even though they know my client is innocent and his health is fragile.

In this context, it is difficult to imagine my client has access to prompt and timely justice, much less to the right to defend himself considering the investigators and prosecutors assigned to the case lack objectiveness (Art. 72 of the Act of 1970) and continue to insist he is a flight risk only to prolong his illegal detention. It is difficult to imagine he can exercise his right to defend himself after being abusively prosecuted, to the extent that even his wife has been prosecuted for her comments. As his lawyer, I am unable to do my job when I am constantly forced to unmask the unjust and false accusations made against my client. The prosecution only investigates or considers those theories that match the fictitious version of the case they created to keep him detained. It is important I note that the defense's investigation has been limited, making it difficult to mount a proper defense.

But this process is flawed from the outset because the Political Constitution of the State (Art. 116) provides that a person be presumed innocent and that doubts be resolved in favor of the accused, but in the present case this has not been followed because the Judge, in violation of this law and Act 1970 (art. 6), declared in his detention order that he considers my client to be guilty and that he must prove his innocence, which is in violation of international law and the laws of the State. This is part of the great illegality that this proceeding embodies.

It is difficult to understand the behavior of the Bolivian Ministry of Justice, and those who administer it, and the conduct of Ministry of Government officials. I say this with regard to the way citizen are treated since, on the one hand an innocent man is imprisoned, while on the other two dangerous Brazilian citizens with a history of drug trafficking, one is deported for carrying false immigration documents (Maximiliano Dorado, who was not prosecuted in Bolivia), and the other, his brother, remains free and has not been accused of any crime. There is no logic to the way in which the State and the judicial system treats a person who came to Bolivia to make money legally and support indigenous families (Jacob Ostreicher who is imprisoned) and the way in which they treat persons who have a history of illegal drug trafficking and homicide (the Dorado Brothers).

I equally sustain that Mr. Ostreicher's access to justice is nonexistent, given that government officials have illegally seized Jacob's assets and, although the government passed a law against corruption (Law 004), those who illegally seized the assets incredibly remain free!!!! They are free only because they acted under the protection and with the knowledge of agents from the Ministry of Government (DICARBI, which operates directly under this Ministry). Therefore, Members of Congress, you may understand that we cannot expect "Justice" can be done since, when it comes to safeguarding the rights, interests, and assets of my client, criminal prosecution agencies do not act justly.

Similarly, the Bolivian justice system has acted disproportionately by conducting an unjust criminal procedure, especially since it not only pretends to prosecute Mr. Ostreicher, but also his wife Ms. Ungar, thus prolonging this nightmare by keeping an innocent man in prison, with deteriorating health, far from his family, stripped of his property and a step away from losing his life.

Members of Congress, the rights of my client only exist on paper -- that is why it is very unlikely he will be able to defend his rights in practice. It is risky to hope due process will be reinstated since there is no indication that it will, and because at this stage of the legal process a trial may soon take place against this innocent person, and I have no doubt the court that will hear his case will be intimidated and manipulated by those who are against Mr. Ostreicher to achieve their objective, which is to sentence him. This is their plan since it is very unlikely they will admit they have committed a great injustice by taking away the one right that can never be waived: FREEDOM. This, even though they have dragged through the mud the name of JACOB OSTREICHER, his honor and that of his family, even though he is innocent in his conscious and under the law.

I do not feel that I am in any position to request that you take any particular action in favor of your citizen. I only ask that in recognizing the injustice that is manifest in my client's detention, you do your best efforts, either directly or through the highest levels of your government. Delayed action, or taking action that is ineffective, could be decisive for the life of my client.

Thank you, Mr. Chairman, for giving me the opportunity to appear before you today.

Mr. SMITH. Mr. Montaña, thank you very much for your testimony and for your courage, both of the attorneys, to be here. You know, Ms. Bass and I were just talking. It shows tremendous courage and bravery for both of you to come to the United States and to be here knowing the impunity, especially the prosecutory impunity that currently reigns in Bolivia, and we're seeing it with Jacob's case, so thank you for your testimony.

Mr. Justiniano.

**STATEMENT OF MR. JERJES JUSTINIANO ATALÁ, ATTORNEY
FOR JACOB OSTREICHER**

[The following testimony was delivered through an interpreter.]

Mr. JUSTINIANO. Good afternoon, Mr. Chair, and to the members of the subcommittee.

I first need to tell you that in my professional career I do not take drug trafficking cases, so when Mr. Ostreicher asked me to take a look at his case and after I found no evidence to the effect that he was at all implicated or implicated in drug trafficking, it was only then that I accepted his case.

I also have to say that unfortunately I am not particularly proud of the Bolivian judicial system. The levels of corruption, political and economic machinations, the lack of independence for the judges makes this system extremely weak. And I would say that just because these political characteristics, these characteristics in general have had a great impact on Mr. Ostreicher's case.

This testimony is difficult for me for two reasons. This is because of the political—because through the process the Bolivian Government and the Ministry of Government has directly interfered in the case. And it becomes difficult for me personally, as well as for political reasons because of personal ties that I have. My father has been named Ambassador of Bolivia in Brazil, so I have personal ties to the government.

However, it's also difficult for me because it's hard to explain the situation of an American citizen in a completely different legal system. In spite of that, human rights are human rights for anybody and everybody. And in this particular case it's the human rights of Mr. Jacob Ostreicher that have been violated. And, particularly, this is the case with the procedural aspects of this, so I think it might be hard for you to understand this fully, but in this particular case both the prosecutor and a judge have indicated that it is impossible to say that he has committed the crime because he has not proven the legality of his financing.

The Bolivian authorities have said that he has not denied the ties with these other people and the illegality of the financing and, therefore, he is guilty.

While they may be different, the Bolivian and the American legal systems, there is, in fact, one guiding principle in both of them which is the presumption of innocence, which means that the accuser must, in fact, prove the guilt of the party, and this has not happened at all in the case of Mr. Jacob Ostreicher.

As soon as there was a quest to end the detention of Mr. Ostreicher and a judge reviewed the evidence provided by the defense, he decided that, in fact, there was no evidence to indicate that there was any illegal source of the funding, and he was grant-

ed his freedom. Curiously enough, 6 days later that same judge without word from or to anybody changed his opinion and ordered his detention once again.

As Mr. Montaña stated, there have been over 20 hearings that have not been held because of interference by the Bolivian Ministry of Government on the Bolivian justice system. I cannot give you the reasons behind this interference, but I can definitely say that there is interference by the Ministry of Government on Mr. Jacob Ostreicher's case.

I can identify public officials like Fernando Rivera and Dennis Rodas Limachi who have directly interfered in the government, and interfered in this procedure. And you, Mr. Chairman, have seen it yourself.

I personally believe that it is not only Jacob Ostreicher who is at risk because of his health, and because of his illegal prosecution, but the Bolivian justice system is also at risk.

The democracy has certain pillars and separation of powers, and as soon as the executive branch interferes with the judicial branch by threatening a judge, democracy itself is threatened.

And, finally, I would like to state that I cannot understand why a U.S. citizen who decided to invest in Bolivia, and who decided to create jobs in Bolivia is being treated the way he is treated. Jacob Ostreicher's companies would pay higher salaries than what Bolivia pays its police officers. Still, he is being held illegally with no reason, and through direct interference on behalf of the government. That is why I consider this not only illegal but truly unjust.

Thank you, Mr. Chairman, for your time.

[The prepared statement of Mr. Justiniano follows:]

**WRITTEN TESTIMONY OF JERJES ENRIQUE JUSTINIANO ATALÁ
BEFORE THE "HOUSE COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS"
IN THE EVENT CALLED "SEEKING FREEDOM FOR AMERICAN
TRAPPED IN BOLIVIAN PRISON"**

AUGUST 1, 2012

Mr. Chairman and members of this Committee:

My name is **JERJES ENRIQUE JUSTINIANO ATALÁ**, I am Bolivian, I am 41 years of age, married, I have four children and since 2000 I am a lawyer and my only activity is the exercise of the profession.

I have a degree and expertise in criminal law, I completed a Masters Program in Criminal Law and I am waiting to present my thesis.

I work mainly in criminal proceedings since 2000 and my experience in Bolivia spans almost as long as the length of time that the new penal system has been in place, because in 2001, Bolivia introduced a new penal system.

Importantly, in my professional career, I do not advocate for drug-related issues because of my principles and personal conviction. In this regard, before accepting my current client, Jacob Ostreicher, I thoroughly analyzed all the evidence that was against him, which is why I finally decided to accept the case, given that there does not exist a single concrete evidence against him, direct and convincing to prove the offenses alleged.

In addition and prior to the details of the case, I must point out that unfortunately the Bolivian judicial system is not something that I feel particularly proud of. The levels of corruption, economic and political interference and lack of professional competence of judges, has significantly weakened the Bolivian judicial system. These aspects have influenced my client's case, for as we shall see later in the testimony, from the beginning of the process there have been illegalities surrounding it.

This testimony, particularly for me, is very difficult for two reasons, one personal and another procedural. Personal, because I consider that in this process, the Bolivian government, through the Ministry of Government, has had and continues to directly interfere. This becomes personally difficult, because my father has been designated as Ambassador of Bolivia to the neighboring country of Brazil and in a way, my role as a lawyer in this case, affects the relationship. This difficulty, however, is resolved because both, my father and I, are moved by ethical and moral principles, so it is merely a small inconvenience.

On the other hand, the difficulty lies in the fact that I am testifying on various illegalities committed in a judicial process which is different than the one you have in this country.

Therefore, I consider it appropriate to do a preliminary introduction to my testimony by providing a brief description of the Bolivian criminal procedure, so you can understand better the illegality that my client, Jacob Ostreicher, was a victim of.

I. BRIEF DESCRIPTION OF THE CRIMINAL PROCESS IN BOLIVIA. -

1. PHASES OF THE CRIMINAL PROCESS. -

For purposes of this statement, the criminal process has three main stages, the first of these is discovery or investigation, the second is the trial and the third phase is appeals or “resources.” Each phase is comprised of sub-phases.

We will cover the first phase in this testimony, given that this is the phase we are in with Mr. Ostreicher’s case.

The discovery phase has two sub-phases, the first one called Preliminary Investigation and the second called Preparatory Stage.

The preliminary investigation begins with a complaint (applied in criminal proceedings). Under Article 300 of the Criminal Procedure Code (CPP), this phase should last 20 days, after which, the prosecutor must provide one of four options: a) formal charge, i.e., provisionally attribute to the person the commission of a crime; b) extend the

investigation up to 90 days, unless the investigation is complex, in which case it can be expanded up to 180 days; c) reject the complaint or grievance, and d) request an alternative outlet to criminal process, such as an abbreviated procedure, conditional suspension of the process, etc.

2. RESOLUTIONS SUBSTANTIATED. -

Importantly, as in any legal proceedings, all resolutions issued by the prosecutors (art. 73 CPP) and judges (art. 124 CPP) should be sufficiently reasoned, and the lack of such reasoning leads to nullity for infringement of the rules of due process.

3. FORMAL CHARGES. -

If the prosecutor decides to charge the person, it must satisfy the requirements of Article 302 of the CPP, i.e., there should be sufficient prima facie evidence on the participation of the accused (defendant) of the crime under investigation.

Having filed formal charges, the second sub-phase of the first phase begins, called Preparatory Stage, which should last up to 6 months, except in the case of crimes related to organized crime, in which case the judge in the criminal procedure will be asked to expand the investigation for no more than 18 months. In any case, this period begins to run from the time the judge notifies the defendant of the formal charge.

4. PRECAUTIONARY MEASURES. -

Within this phase, usually after the formal charges, the prosecutor may request the application of interim measures, which are ultimately decided by the judge.

There are two types of precautionary measures, personal and material. The former is intended to ensure the presence of the accused in the development of the process and the implementation of the law, and the latter seeks to repair the damage.

The personal precautionary measures are of two kinds, first, preventive detention (art. 233) and second, alternatives to detention (art. 240).

For the imposition of a precautionary measure, whichever one, there must be at least two requirements under section 233 of the CPP.

There must be probability of authorship, that is, sufficient evidence that the accused committed the crime he is accused of, and there must also be procedural risks, which may be either flight risk (art. 234 CPP) or risk of obstruction (art. 235 CPP).

It is important to note that, to establish whether any of these procedural risks are present, there must be sufficient objective and material evidence that the defendant created any of these procedural risks. This means that precautionary measures are imposed in response to conduct by the accused in the development of the investigation, similar to a procedural penalty imposed because of the defendant's conduct.

In any case, the judge's decision must be well founded, as explained in section 2, otherwise the detention is illegal.

Given the possibility of imposition of a preventive detention measure, an injunction proceeding exists called termination of preventive detention, that is, when there is new evidence that undermines the foundation that was the basis for preventive detention, the person can request the court to remand such preventive detention and provide alternatives to the same.

In any case, be it the imposition of precautionary measures or the termination of same, if the party is dissatisfied with the ruling, it can request an appeal to a higher court which can review the judge's conduct.

5. RESTRICTION OF FREEDOM BY THE PROSECUTOR. -

The Bolivian Code of Criminal Procedure allows the prosecutor to order an arrest for the sole purpose of bringing him before the judge for a ruling on his legal status. As is stated above in paragraph 2, this should be on the basis of a reasoned decision in which the prosecutor commits to the same requirements as the judge to order the preventive detention, that is, that there is a probability of authorship and the existence of procedural risks, otherwise the arrest is illegal.

6. INVESTIGATION PROCESS. -

During the development of the preparatory phase, the prosecutor must present the investigation, giving knowledge to the accused of all the information, so that the accused may know the investigation and exercise his right of defense, because the purpose of the preparatory phase (art. 277 CPP Bolivia) is the collection of evidence that will form the basis to enable the prosecution and the defense of the accused.

7. CONCLUDING REQUIREMENT. -

After the investigation, the prosecutor must issue a concluding order (art. 323 CPP), which can be one of three types: a) provide for an indictment, if it believes it has sufficient grounds to prove the accused is the offender, b) provide for any alternative solution, which as stated, may be conditional suspension of the proceedings, summary proceedings, etc., or c) provide for the dismissal, if it is shown that the act did not occur, that there was no crime, or that the accused has not participated in the same or there are not enough elements to provide the basis for the accusation.

8. PRESUMPTION OF INNOCENCE. -

This is a procedural principle that is present throughout the development process, under Article 6 of the CPP, and it not only means that the accused should be treated as innocent until proven guilty in a final judgment, but essentially means that the burden of proof is on the accuser. This means that if the prosecutor has charged the accused, he must prove the accusation and the defendant has no obligation to prove anything. This procedural principle is also guaranteed by the Constitution in Article 116.

II. REPORT OF A PARTICULAR CASE. -

Considering the above is important to analyze the case of Mr. Jacob Ostreicher, so in my opinion he is being subjected to improper processing, with an illegal arrest. In this sense we must take into account three issues, namely:

1. ILLEGAL ARREST BY THE PROSECUTOR. -

The essential arguments of the prosecutor to order the arrest on June 3, 2011, were as follows:

a) Claudia Liliana Rodriguez Espitia purchased farms, with funds from a group of investors, including my client, that totaled over \$23,000,000.

b) Regarding these purchases, there is a business relationship between Claudia Liliana Rodriguez, Ozzie Espitia, and Maximilian Gold, the last two people with criminal records in Brazil for drug trafficking and money laundering.

c) Furthermore, according to the prosecutor, there is a company called Lagro with some kind of relationship with the other people with links to drug trafficking. This company was said to be owned by Claudia Liliana Rodriguez.

d) Notwithstanding the foregoing, the main basis for the prosecutor to arrange the apprehension was that JACOB OSTREICHER HAD NOT JUSTIFIED OR CREDITED WITH SUFFICIENT DOCUMENTATION THAT THE MONEY HE INVESTED IN BOLIVIA CAME FROM A LAWFUL SOURCE AND BECAUSE HE WAS NOT ABLE TO PROVE THIS, IT WAS PRESUMED THAT THE MONEY'S SOURCES WERE ILLEGAL.

e) His apprehension was also arranged due to his relationship with Swiss citizen André Zolty, because this citizen was allegedly wanted in his country.

f) In addition, detention was ordered because according to intelligence Jacob Ostreicher wanted to leave the country.

g) Finally, his arrest was set because the minimum penalty for the offense of laundering of illicit proceeds (money laundering) is five years imprisonment, so it would be feasible under Article 226 of the CPP.

This resolution is an illegal arrest because of the following:

a) All statements made by the prosecutor are not properly grounded, i.e. they violate Article 73 of the CPP. There is no objective evidence regarding the statements. Indeed, the

prosecutor reaches his conclusion as a product of Jacob Ostreicher's statement, when the legal approach is to reach that conclusion based on objective factors, which do not exist in this resolution.

b) It is not even explained how he would have committed the crime, that is, there is no proof of what profits were being legitimized, those of the alleged drug traffickers or those of Jacob Ostreicher. This lack of substantiation violates the rules of due process provided for in the Constitution in Article 115, II.

c) By requiring that the defendant demonstrate and prove with appropriate documentation that the money invested is of legal origin, there was a violation of Article 6 of the CPP and of Article 116 of the Constitution. You can not force the defendant to prove his innocence.

d) For these violations of legal norms, **THE ARREST ORDERED BY THE PROSECUTOR IS ILLEGAL.**

2. PREVENTIVE DETENTION UNLAWFUL BY THE JUDGE. -

Once the defendant was arrested, he was brought before the examining judge, in this case Judge number 3, who after hearing the arguments of each of the parties, ordered the arrest of Jacob Ostreicher. This arrest was based on the following:

a) First, the judge noted that it was not proved that Jacob Ostreicher was not in Bolivia as the legal representative of André Zolty.

b) According to the judge, neither was it proved that Jacob Ostreicher was not related to Maximilian and Ozzie Dorado, who were both wanted in Brazil.

c) The judge indicated that there were procedural risks, because the existence of a family in Bolivia was not established, which means there were not enough natural roots in the country.

d) The existence of legal activity in the country was not proven.

e) The judge merely mentioned that there were others in the case, such as Maximilian, Ozzie Dorado, André Zolty, and Claudia Liliana Rodriguez, so there was an criminal organization.

f) The judge said that, if left free, evidence could be destroyed or altered or witnesses or other participants could be influenced not to participate because the person apprehended has a lot of money.

g) Finally, and in the worst form of legal aberration, the judge indicated that in crimes of legitimization, the court should not apply the presumption of innocence because the test is reversed, i.e., the defendant must prove that he is innocent.

ILLEGAL TO RESOLUTION:

a) The resolution is not well founded, it fails to reflect any single element or material target, that is, it is based on mere assertions by the prosecutor. This violates Article 124 of the CPP, regarding the lack of grounds for judicial decisions.

b) Organized crime is referenced simply because of the fact that there are others involved, without stating or providing a basis for what would be the level of participation. If it is organized crime, the level of participation should be at least be stated, including who is the leader, on behalf of whom the accused was acting. In the absence of this basis, Article 124 of the CPP is violated again, as well as the Constitution because norms of due process protected in Article 116 of the Constitution are being violated.

c) Noting that, if freed, he would destroy or hide evidence or influence witnesses and participants, rather than providing an objective basis, also violates Article 12 of the CPP, because the parties are not treated equally and only what was said by the prosecutor is considered, without considering that Jacob Ostreicher, while he was released, never engaged in any of these behaviors. If the analysis had been objective, the judge should have reached a different conclusion.

d) Using the term “could” gives rise to a determination by the judge that there is no certainty, that there is doubt. Having ordered the arrest despite the existence of doubt, there

is a violation of articles 7, 221 and 222 of the CPP, and also of Article 116 of the Constitution, which says that, when in doubt, a judge must always make the decision that is the most favorable to the accused.

e) Finally, the worst of the violations is when the judge said that, for these types of crimes, the presumption of innocence does not apply because the burden shifts to the defendant. I am including here verbatim the text of the criminal law regarding the offense of laundering of illicit proceeds:

“He who acquires, converts, or transfers property, resources or rights connected with the crimes of: processing, trafficking in controlled substances, smuggling, corruption, criminal organizations, delinquent associations, trafficking and human trafficking, trafficking in human organs, trafficking weapons and terrorism, in order to conceal or disguise the nature, origin, location, destination, movement or ownership, shall be punished with imprisonment from five to ten years disqualification from public office and / or elected officials and a fine of two hundred to five hundred days.

This offense will also apply to the conduct described above although the crimes of which come from the proceeds of crime which have been committed wholly or partly in another country, provided that such acts are considered criminal in both countries.

The person who facilitates, or encourages the commission of this offense shall be punished with imprisonment from four to eight years.

This confirms that the offense of laundering of illicit proceeds is autonomous and will be investigated, prosecuted and sentenced without previous conviction in respect of the offenses mentioned in the first paragraph.”

f) Having indicated that in this case proof governs, there is obviously a violation of the provisions of Article 116 of the Constitution.

g) In this case, as in all others, the procedural guarantees of the presumption of innocence should govern, i.e., that the person is not required to prove anything, and the accuser, the prosecutor in this case, must provide proof. Fully expressing what the judge

and prosecutor state, until Jacob Ostreicher's money is proven illegal, its source must be found legal and lawful.

3. DENIAL OF FREEDOM BY JUDGE IS ILLEGAL. -

Finally, as part of this analysis, I should indicate that once the arrest was issued, Jacob's lawyer at the time argued that instead of filing an appeal, it was desirable to request a termination of the preventive detention, so that after nearly two months after an order of arrest, on September 23, 2011, there was a hearing regarding the termination of preventive detention.

This hearing was not conducted before the same judge who ordered the detention, but in front of another judge, who was at the same level.

That judge initially made a correct and proper evaluation of the new evidence submitted by the defense of Mr. Ostreicher:

a) Indicated that the defense had introduced new elements as established in Article 239, 1) of the CPP, which make the defendant's status change.

b) Noted that the certification of UBS Bank of Switzerland, showed the nearly USD \$24,000,000 entered the financial system, so there is no evidence of illicit money.

c) Noted that the Certification of UBS Bank of Switzerland, regarding the client Andre Zolty, could prove that he is a person with prestige, because UBS Bank has indicated that he is a person with a flawless credit relationship.

d) Proved with the appropriate documentation that Jacob Ostreicher was the legal representative of André Zolty.

e) Indicated that the certification of the Swiss Federal Police demonstrated that Andre Zolty is not wanted, neither he nor his company, and he does not even have a criminal record.

f) In addition, the judge made a comprehensive assessment of the conduct of Mr. Ostreicher, stating he had been summoned three times by prosecutors, having attended and

provided all the assistance that was requested. He stated that there was no indication that the accused has been hampering the investigation.

g) Finally, he stated that there was doubt as to the participation of Jacob Ostreicher in the commission of the crimes attributed to him, so according to him, the procedural guarantee of presumption of innocence should apply. The judge granted termination of preventive detention, ordering the release of Jacob Ostreicher.

h) Curiously and mysteriously, the judge, six days after providing this fair judgment, changed his mind and issued a new decision by his own initiative, that is, without being prompted, revoking his own order.

i) Worst of all was that, to make this new resolution, he violated Article 124 of the CPP, because after indicating that it had erred in assessing the evidence, he did not indicate what the error was, in violation of so that Article and Article 115 II of the Constitution. Thus, maintaining the illegal detention by the Bolivian justice.

j) As I state above, it is strange and mysterious that the judge changed his mind. In the opinion of the defense there was illegal pressure from prosecutors, because if they disagreed with the ruling on September 23, 2011, they should have filed the appeal but instead, were benefited by a change in attitude and decision of the judge. Just as another curious fact, a few months later, the judge was promoted to a senior position.

4. CURRENT STATUS OF PROCEDURE. -

Once the judge changed his decision to maintain the Jacob Ostreicher illegally detained, the decision was kept despite having filed an appeal and having the superior court order him to issue a new resolution.

After this, Jacob Ostreicher requested a new hearing to request the termination of preventive detention, the same that was developed in April, but after a suspension for three or four days, to date there has not been a new date scheduled for the hearing, despite it being suspended more than 20 times.

What has attracted the attention of the defense is that in recent months, the Ministry of Government has directly interfered in the proceedings through its agents, Fernando Rivera Tardío and Denis Rodas Limachi, who have caused the suspensions in recent hearings for our client. They have been given the task of bringing challenges against judges, reaching even to threaten them with lawsuits against them if they do not leave the case alone and suspend the hearings.

This approach demonstrates a clear interference by the executive on the judiciary, an interference which not only affects the case of Jacob Ostreicher, but democracy itself because, as we all know, among the pillars of democracy is the separation and division of powers.

These ways of acting, have made the outlook for Mr. Ostreicher uncertain, so I can say without a doubt that to date it has not only been an unfair trial, but moreover it is essentially an illegal and unjust detention, reaching even to seriously jeopardize Mr. Ostreicher's own life. Despite having gone on a hunger strike, Mr. Ostreicher's claims were not addressed, and despite being in poor health and with an order of admission to a hospital, he has not been transferred to a hospital given the ridiculous excuse that Palmasola jail does not have enough guards, and finally, because the living conditions at the penitentiary, are not the most sanitary, reaching even to inhuman conditions.

This evidently shows that, in the words of the title of this hearing, our client is "trapped" and even "kidnapped" in that prison.

Finally, I would like to indicate that I do not understand how an American citizen can be treated this way, having invested in Bolivia and given jobs to indigenous Bolivians, reaching higher salaries than the government itself pays to the police. All of this only shows that there is a great illegality and injustice.

Thank you very much.

Mr. SMITH. Mr. Justiniano, thank you very much again to both of you. Again, I can't underscore for the American audience how courageous it is for you to come here and testify. But having been in the courtroom and watching what I truly thought was a stellar representation on behalf of Jacob, despite the intimidation tactics that were clearly on display, and despite the judge who went from being confident in the morning to being a nervous wreck because he was so fearful about the sword of Damocles that was hanging over his head. And you two gentlemen were in the court standing up on behalf of Jacob, and have come here now to Washington.

I would hope the people of Bolivia would realize that you have given a great deal of encouragement to all of us, that Bolivian democracy in the future, providing people of your stature are robustly involved with the democracy, has a great future.

Very often, it is the defense attorneys and their stand for human rights and human dignity that determines which course a country takes, so I want to say how this subcommittee applauds you for the stellar defense you're providing for Jacob, but also for your courage.

Ms. Ungar.

**STATEMENT OF MS. MIRIAM UNGAR, WIFE OF JACOB
OSTREICHER**

Ms. UNGAR. Thank you, Mr. Chairman and members of the subcommittee for taking the time to hear my testimony today. My name is Miriam Ungar and I'm the wife of Jacob Ostreicher, a 53-year-old American citizen currently detained in Santa Cruz, Bolivia. As I've already testified on June 6 before this subcommittee, I will only give a short recap of my husband's story.

On December 26, 2010, Jacob went to Santa Cruz, Bolivia to take over management of a rice business after investors suspected that the local manager they hired was embezzling money from the company. When Jacob arrived in Bolivia, the local manager was nowhere to be found, and Jacob immediately hired lawyers to start filing criminal and civil charges against her.

Before she fled, the local manager purchased a parcel of land from a man wanted in Brazil in the 1990s. When Bolivian authorities realized that the company was operating on his land, they raided Jacob's office and deposed him. Even though Jacob did not purchase the land himself, Jacob cooperated fully with the authorities and notified the U.S. Embassy of the deposition.

After enduring two additional depositions, Jacob was arrested on June 3, 2011. At the arraignment, the prosecutors alleged criminal organization and money laundering. It is my understanding that no evidence was reviewed by the judge.

Following three postponements, on September 23, 2011, a judge ordered Jacob's release on bail based on evidence submitted, only to reverse his decision 6 days later. Of the 22 hearings that have been scheduled, 19 hearings were postponed. Most of the stated excuses for these postponements were illegal. During Jacob's last two scheduled hearings, the Bolivian Ministry of Government resorted to a new tactic to postpone Jacob's hearings.

Mr. Chairman, as you mentioned before, at the June 11 hearing the legal advisor to the Ministry of Government demanded that the third judge on Jacob's case recuse himself. By law, the higher court

that he referred it to must make a decision within 48 hours. They failed to do that. They did not follow due process.

Forty-two days later on July 23, the 22nd scheduled hearing in Jacob's case, Jacob was brought into the courtroom only to hear a repeat of what occurred at the June 11 hearing. The fourth judge on Jacob's case was ordered to recuse herself by the Ministry of Government's legal advisor. She refused. The legal advisor threatened to file charges against her. The judge refused, but referred it to a higher court anyway. By law, the higher court must make a decision within 48 hours. It is now August 1 and we are still waiting.

Today marks 426 days and my husband, Jacob Ostreicher, has been incarcerated in Palmasola Prison without being formally charged with a crime. Palmasola is a notorious prison ruled by the most hardened criminals. Every day that Jacob remains in that prison is another day that his life remains in constant danger.

I am beyond frustrated by the Bolivian Government's consistent interference in my husband's case resulting in a denial of his due process and basic human rights. Although I'm aware of the shortcomings of the Bolivian justice system, I believe that what my husband has endured is more than the average prisoner in Bolivia. Evidenced by the two most recent hearings in his case, the Ministry of Government is playing an active role in preventing Jacob from having his case heard.

I would like to address a report I received from the U.S. Embassy on the meeting on July 5, 2012 with Roberto Desogus from the United Nations High Commissioner of Human Rights' office in Bolivia. I received a report on July 12. Following the meeting, the U.S. Embassy reported that it is the opinion of the UNHCHR Office in Bolivia that Jacob is not being persecuted or targeted by the government, but rather he is yet another victim of a brutally slow, inefficient, underfunded and corrupt judicial system.

According to the UNHCHR, the procedural delays, the rotation of prosecutors, the recusal of judges, and the apparent lack of hard evidence in Jacob's case are all factors which are common in the majority of cases in the Bolivian judicial system.

As our Bolivian attorneys attested, the totality of what Jacob has experienced is not common. Moreover, even if it was, the UNHCHR, an international body charged with upholding and advocating for international standards of human rights should not sit idly by and accept it. Nor, in my opinion, should the U.S. Government. Jacob is a U.S. citizen and the U.S. Government should do everything in its power to insure respect for his rights and due process regardless of how unjust, slow, and corrupt the justice system in Bolivia is.

I am utterly distraught and frustrated beyond words that it has been 15 months since the crisis began and we are still right where we are in June 2011. We have not moved forward in this case. Fifteen months in prison just seems to flow so easily from our mouths, but 15 months is a milestone in the life of a human being.

In the 15 months that Jacob has been kept hostage in a foreign country, his grandchildren have learned to walk, to talk, and some even started school. These are lost milestones that can never be recovered.

In summary, Mr. Chairman, Jacob's rights are continuously being violated every second that he remains in prison. The last two hearings in his case have provided evidence that he is being targeted by the Bolivian Government and, thus, I hope that the United States Government will continue to advocate for and protect its citizen.

Thank you, Mr. Chairman, for the opportunity to appear before you and this subcommittee today.

[The prepared statement of Ms. Ungar follows:]

WRITTEN TESTIMONY OF
MIRIAM UNGAR

BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
AND HUMAN RIGHTS HEARING "Seeking Freedom for American Trapped in Bolivian
Prison: THE CASE OF AMERICAN JACOB OSTREICHER"

August 1, 2012

Thank you, Mr. Chairman and members of the Subcommittee, for taking the time to hear my testimony today. My name is Miriam Ungar, and I am the wife of Jacob Ostreicher, a 53 year old American citizen currently being detained in Santa Cruz, Bolivia.

As I have already testified on June 6, 2012 before this Subcommittee, I will only give a short recap of my husband's story.

On December 26, 2010, Jacob went to Santa Cruz, Bolivia to take over management of a rice business after investors suspected that the local manager they hired was embezzling money from the company. When Jacob arrived in Bolivia, the local manager was nowhere to be found and Jacob immediately hired lawyers to start filing criminal and civil charges against her. Before she left, the local manager purchased a parcel of land from a man wanted in Brazil in the 1990's. When Bolivian authorities realized that the company was operating on his land, they raided Jacob's office and deposed him – even though Jacob did not purchase the land himself. Jacob cooperated fully with the authorities and notified the US Embassy of the deposition. This occurred at the height of the harvesting season. Jacob continued the harvest and successfully produced 50,000,000 lbs. of rice. After enduring two additional depositions, Jacob was arrested on June 3, 2011. At the arraignment, the prosecutors alleged criminal organization and money laundering. It is my understanding that no evidence was reviewed by the judge. Custody of the company's assets was handed to DIRCABI, the government division in charge of confiscated goods.

Following three postponed hearings, on September 23, 2011 a judge ordered Jacob's release on bail based on evidence submitted, only to reverse his decision six days later.

While there have been rumors as to the whereabouts of the rice, as of December 2011, we do not know where the rice is and we do not know if it was sold. \$18,000,000 worth of rice is unaccounted for. In March of 2012, a three year ban on the export of rice was lifted.

Since my husband first appeared at his arraignment in June 2011, a total of twenty-two hearings have been scheduled in his case, but only three have commenced. The rest were postponed. Of the three that commenced, one was the hearing where the judge released Jacob on bail. The second hearing was the appellate court's order to the judge to explain his decision to revoke bail. The third hearing was when the judge explained why he revoked his decision.

In my previous testimony, I noted that most of the stated excuses for the hearing postponements were illegal. During Jacob's last two scheduled hearings, on June 11 and July 23, the Bolivian Ministry of Government resorted to a new tactic to postpone Jacob's hearings.

Mr. Chairman, you were in Bolivia and attended the June 11 hearing. It is my understanding that you witnessed the Minister of Government's legal advisor demanding that the third judge on Jacob's case recuse himself. When the judge refused, he was threatened by the legal advisor that charges would be filed against him. The judge decided not to recuse himself, but then referred his decision to a higher court. By law, the higher court must make a decision within 48 hours. They failed to do that. They did not follow due process.

Forty-two days later, on July 23, 2012, the twenty-second scheduled hearing in Jacob's case, Jacob was brought into the courtroom only to hear a repeat of what occurred at the June 11 hearing. The fourth judge on Jacob's case was ordered to recuse herself by the Minister of Government's legal advisor. She refused. The legal advisor threatened to file charges against her. The judge refused, but referred it to a higher court anyway. By law, the higher court must make a decision within 48 hours. It is now August 1st. We are still waiting.

Today marks 426 days that my husband, Jacob Ostreicher, has been incarcerated in Palmasola prison without being formally charged with a crime. Palmasola is a notorious prison ruled by the most hardened criminals. Every day that Jacob remains in that prison is another day that his life remains in constant danger.

I am beyond frustrated by the Bolivian Government's consistent interference in my husband's case, resulting in a denial of his due process and basic human rights. Although I'm aware of the shortcomings of the Bolivian justice system, I believe that what my husband has endured is something more than the average prisoner in Bolivia. Evidenced by the two most recent hearings in his case, the Ministry of Government is playing an active role in preventing Jacob from having his case heard.

I would like to address a report I received from the US Embassy on its July 5, 2012 meeting with Roberto Desogus from United Nations High Commission of Human Rights in Bolivia. I received their report on July 12. Following the meeting, the US Embassy reported that it is the opinion of the UNHCHR office in Bolivia that Jacob is not being persecuted or targeted by the government, but rather he is yet another victim of a brutally slow, inefficient, underfunded and corrupt judicial system. According to the UNHCHR, the procedural delays, the rotation of prosecutors, the refusal of judges and the apparent lack of hard evidence in Jacob's case are all factors which are common in the majority of cases in the Bolivian judicial system.

As our Bolivian attorneys will attest, the totality of what Jacob has experienced is not common. Moreover, even if it was, the UNHCHR, an international body charged with upholding and advocating for international standards of human rights, should not sit idly by and accept it. Nor, in my opinion, should the US Government. Jacob is a U.S. citizen, and the US Government should do everything in its power to ensure respect for his right to due process – regardless of how unjust, slow and corrupt the justice system in Bolivia is.

I am utterly distraught and frustrated beyond words that it has been fifteen months since this crisis began, and we are still right where we were in June of 2011. We have not moved forward in this case. Fifteen months in prison just seems to flow so easily from our mouths. But fifteen months is a milestone in the life of a human being. In the fifteen months that Jacob has been kept hostage in a foreign country, his grandchildren have learned to walk, to talk, and some have even started school. These are lost milestones that can never be recovered.

In summary, Mr. Chairman, Jacob's rights are continuously being violated every second that he remains in prison. The last two hearings in his case have provided evidence that he is being targeted by the Bolivian Government, and thus, I hope the United States Government will continue to advocate for and protect its citizen.

Thank you, Mr. Chairman, for the opportunity to appear before you and this Subcommittee today.

Mr. SMITH. Thank you again, Ms. Ungar, for, as I said at the outset, your steadfast advocacy, so effective and aggressive, all involvement completely motivated by the love for your husband. Thank you for, again, your advocacy.

Ms. Weinberger.

**STATEMENT OF MS. CHAYA GITTY WEINBERGER, DAUGHTER
OF JACOB OSTREICHER**

Ms. WEINBERGER. Thank you, Mr. Chairman and other members of the subcommittee for bringing my father's plight to the forefront, and for scheduling this hearing. I will never forget all that you have done for my family during this time of crisis and will be forever grateful.

The image of my dear innocent father accompanies me as I speak before you this afternoon. It is an image that causes me to shutter when I think of it. His face is swollen with hunger. His skin is pale and lifeless, but his eyes are alive. They are very much alive and filled with longing pleading with me to try with all my waning energy to recuse him before it's, God forbid, too late. He still hopes after all these months for freedom and liberty back home in the land that he loves.

I cannot let him down, and so although it is very hard for me to be in the limelight once again, I appeal to you, the government on my homeland, my father's situation has not changed in the slightest since his detention 426 days ago. It has been a long painful year filled with let downs and postponed hearings, and we have just had enough.

We are enraged at the injustices, lies and scandalous acts that are being committed against my father. We have tried going patiently through the Bolivian legal system and bearing with their way of governing but they have shown us that their justice system is flawed beyond repair.

Rather than pursue justice for victims and the accused alike, the Bolivian justice system appears to be a vehicle for political maneuvering. I have been appalled by what I have witnessed firsthand while in attendance at one of my father's hearings in Bolivia.

At my father's very first scheduled hearing the judge was texting on his Blackberry and even answered a phone call while the defense lawyers were arguing their case. Although I was not in attendance at my father's most recent hearings, we have learned that the Ministry of Government requested that the judges should recuse themselves, a political maneuver to postpone my father's hearing for as long as possible done in the course of a hearing for everyone to witness.

How can my father possibly be receiving fair treatment in a country with a government that does not even bother to hide its corruption? How much longer must he wait and wonder when his salvation will come, for it will not come through the Bolivian justice system. Time has shown us that. It is clear to us that his only chance for liberation is if the American Government will jump into action and demand his freedom from his captors before it's too late. He deserves to be free.

It is my sincere belief that the only reason for his being kept hostage is because he stood for the American ideals of free enterprise

and capitalism, and the Bolivian Government saw him as a threat to its way of life and control of the rice markets.

The abuse and torture my innocent father is going through both mentally and physically would stun the mind of any sane person. I have seen it with my own eyes. It was so ghastly, I felt as I were in a horror movie.

Sewerage runs through the streets of the huge prison. There are no guards to protect the inmates, and the only security comes from other inmates. Fistfights erupt between the prisoners often. It is a common occurrence for a corpse to be carried out. It is a scene from a nightmare and my dear father is living this nightmare daily. Every day that he is being kept there his basic human rights are being violated.

Our Web site is being visited daily by hundreds of people who are praying and care very much about my father. More than 35,000 people have signed a petition to the White House in support of his release from detention. These people see how the Bolivian Government has perverted justice and they are sickened by it. They want to see their country act on behalf of their fellow citizen.

My father is literally clinging onto his sanity. He tells me that the one thought that gives him the strength to endure is the hope that the American Government will do everything in its power to secure his release. He often stares at the American flag painted on the wall by his cell and dreams about the day when he will proudly sing the song of liberty and salute to his homeland.

Mr. Chairman and members of the subcommittee, let's show my father that his dreams will become a reality. Show him and the world that America is what it professes to be, a country that stands for liberty, a land that will fight for her citizens, a country that will not allow its innocent citizen be kept hostage in a foreign country, and won't let anyone stand in her quest for truth. Prove that American citizenship is a commodity worth having, and that the Star-Spangled Banner will triumph once again over those who mock all she stands for; that she will not stay in my father's cell in the Palmasola Prison, but will rather be carried back with my father to the greatest nation on earth. Let her be back where she belongs together with my father, dual witnesses to the supremacy of their country, the United States of America. Please do everything in your power to bring my father back to his homeland, back to his children and grandchildren before it's too late. And for all the time and effort that you're investing in this cause, may God bless you all, may God bless my father, and may God bless the United States of America. Thank you.

[The prepared statement of Ms. Weinberger follows:]

WRITTEN TESTIMONY OF CHAYA WEINBERGER
BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND
HUMAN RIGHTS HEARING "SEEKING FREEDOM FOR AMERICAN TRAPPED IN BOLIVIAN
PRISON"

AUGUST 1ST, 2012

Thank you Mr. Chairman and other members of the Subcommittee, for bringing my father's plight to the forefront and for scheduling this hearing. I will never forget all that you have done for my family during this time of crisis and we will forever be grateful.

The image of my dear innocent father accompanies me as I speak before you this afternoon. It is an image that causes me to shudder when I think of it. His face is swollen with hunger, his skin is pale and lifeless. But his eyes are alive. They are very much alive and filled with longing, pleading with me to try with all my waning energy to rescue him before its G-d forbid too late. He still hopes, after all these months, for freedom and liberty, back home in the land that he loves. I cannot let him down. And so, although it very hard for me to be in the limelight once again, I appeal to you, the government of my homeland.

My father's situation has not changed in the slightest since his detention began more than a year ago. It has been a long, painful year filled with let-downs and postponed hearings, and we have just about had enough. We are enraged at the injustices, lies and scandalous acts that are being committed against my father. We have tried going patiently through the Bolivian legal system and bearing with their way of governing, but they have shown us that their justice system is flawed beyond repair. Rather than pursue justice for victims and the accused alike, the Bolivian justice system appears to be a vehicle for political maneuvering. I have been appalled by what I have witnessed first-hand while in attendance at one of my father's hearings in Bolivia. At my father's very first scheduled hearing, the judge was texting on his blackberry and even answered a phone call while the defense lawyers were arguing their case. Although I was not in attendance at my father's most recent hearings, we have learned that the Minister of Government requested that the judges should recuse themselves; a political maneuver to postpone my father's hearing for as long as possible, done in the course of a hearing for everyone to witness. How can my father possibly be receiving fair treatment in a country with a government that does not even bother to hide its corruption? How much longer must he wait and wonder when his salvation will come? For it will not come through the Bolivian justice system. Time has shown us that.

It is clear to us that his only chance for liberation is if the American government will jump into action and demand his freedom from his captors before its too late. He deserves to be free. It is my sincere belief that the only reason for his being kept hostage in that hell is because he stood for the American ideals of free enterprise and capitalism, and the Bolivian Government saw him as a threat to its way of life and control of the rice markets.

The abuse and torture my innocent father is going through, both mentally and physically would stun the mind of any sane person. I have seen it with my own eyes, it was so ghastly, I felt

as if I were in a horror movie. Sewage runs through the streets of the huge prison. There are no guards to protect the inmates, and the only security comes from other inmates. Fistfights erupt between the prisoners often, it is a common occurrence for a corpse to be carried out. It is a scene from a nightmare, and my dear father is living this nightmare daily. Every second that he is being kept there, his basic human rights are being violated.

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Please do everything in your power to bring my father back to his homeland, back to his children and grandchildren, before it's too late. And for all the time and effort that you're investing in this cause, may God bless you all, may God bless my father and may God bless the United States of America.

Mr. SMITH. Thank you very much, Ms. Weinberger.
Mr. Moore.

**STATEMENT OF MR. STEVE MOORE, SPECIAL AGENT
(RETIRED), FEDERAL BUREAU OF INVESTIGATIONS**

Mr. MOORE. Chairman Smith, Ranking Member Bass, and distinguished members of the committee, I want to thank you again for your diligence in keeping this before the American public. And I want to thank Mr. Justiniano and Mr. Montaña. They are brave men for doing this. We know what could happen in Bolivia.

When I was in the FBI, if I did an undercover SWAT operation I slept at home. Nobody knew where I lived. These people go back to a country after appearing here and people know where they live.

I want to thank you again. The damage that has been done to my confidence in the government by the inaction of the State Department has been in many ways rebuilt by the actions of this subcommittee, and Mr. Smith in particular.

The legislation that I've just found out about and done as much research as I can here, it addresses a vast governmental blind spot that is costing people part of lives and entire lives. This is essential legislation.

In 25 years of working for the government, I have never seen such egregious inaction by any department of the government as I'm seeing by the State Department. And I say this as somebody who worked in an Embassy. I don't think it's endemic to necessarily everybody in State. There are brave people in State, but there are cowards in State, too.

I will do, Mr. Smith, whatever I can do to assist in support of this legislation. I am bothered by the State Department inferring that they're doing something behind the scenes. Notice that they never said they were doing anything behind the scenes, they're saying we prefer to do things behind the scenes.

I would think that if the State Department was doing anything, even behind the scenes, they might appear in one of these hearings and they might give some kind of wink and a nod to a member of the subcommittee, but they're not.

We used to say in the FBI that sometimes what you didn't see was better evidence than what you saw. What I don't see is the best evidence I see of exactly what the State Department is not doing.

When I testified before, I then followed up with an investigative report which was provided to the U.N. High Commissioner on Human Rights by Mr. Smith's office. In that, I noted more than nine violations, egregious, obvious violations that are not subjective, they're objective violations in the custody alone of Mr. Ostreicher.

For instance, according to the First U.N. Congress in 1955 which Bolivia and the United States are participants, untried prisoners shall be kept separate from convicted prisoners. Mr. Ostreicher is kept with serial rapists, mass murderers. The person who claims to protect him has only killed one or two people, so I'm sure he feels much more reassured by that. That's a violation of international treaty.

“Where sleeping accommodation is in an individual cell or rooms, each prisoner shall occupy by night a cell or room by himself.” Mr. Ostreicher and many of the prisoners slept outside, and many of the prisoners still sleep outside on garbage heaps because you have to pay to have a cell.

“There should be regular supervision by night in keeping with the nature of the institution.” There is not. The only monitoring I saw in that prison at night was when the guards fired over our heads to intimidate us.

“All accommodation provided for the use of prisoners and, in particular, all sleeping accommodations shall meet all minimum requirements for health due to being climatic conditions, particularly due to cubic content of air, minimum floor space, lighting, heating and ventilation.” There’s no such thing as that. Raw sewerage runs through the street. This is a squalid cesspool. Mosquitoes are everywhere. There is no hygiene. Their garbage dumps are literally in living spaces.

“No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.” We know that lifers, murders, serial rapists are the internal security for that prison. That’s not a nuanced phrase about how things are run in there, that is the de facto government-approved manner of maintaining internal discipline.

“All parts of the institution regularly used by prisoners shall be maintained and kept scrupulously clean at all times.” I refer you to my comments on raw sewage and open garbage heaps.

“Corporal punishment, punishment by placing in a dark cell and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offenses.” Coincidentally, every single one of those practices are undertaken at Palmasola.

“The medical officer shall daily visit prisoners undergoing such punishment” There is no doctor at Palmasola. They have trouble getting a doctor to come into the prison because it’s so dangerous.

This information was provided to the United Nations High Commissioner on Human Rights. It had to be provided by the State Department, and when the State Department met with the U.N. High Commissioner on Human Rights, they filed a report because they’re watching carefully what’s going on, and said that basically the legal procedure in Bolivia is corrupt, it’s brutal. These are quotes, these are not my adaptations of this. It is “corrupt, brutal, slow, inefficient, under-funded,” and that’s okay?

What they said was this is their procedure; therefore, if it’s corrupt, if it’s brutally slow, inefficient, and under-funded, because that’s the way it is, that’s okay. What if the Bolivians were to enact tomorrow stoning for accused prisoners? That would be under the Bolivian law. Would the State Department go ahead with that?

The fact that it is a part or claimed to be a part of law does not make it legitimate. And State Department hiding behind corruption in a country like Bolivia is—it’s the worst type of duplicity.

On the State Department’s Web site today is a statement that says, “We work to insure that Americans are afforded due process under local laws.” I don’t believe that to be true. On the State De-

partment Web site today it also says, "The State Department is committed to insuring fair and humane treatment for American citizens imprisoned overseas." I have just mentioned nine violations of international law that I witnessed and photographed while I was in Bolivia. If the State Department is committed to insuring fair and humane treatment for American citizens imprisoned overseas, what standards do they use, and how are they going to enforce it?

When the report came back to Ms. Ungar on their meeting with the U.N. High Commissioner on Human Rights, not one mention was made of the violations of Jacob's captivity. It was ignored. They discussed the legal procedure, but more than half the report dealt with the illegal and inhumane treatment he was receiving in prison; yet, it wasn't addressed.

We don't have dumb people in State. They knew that more than half this report had to do with illegal procedures in his captivity; yet, they didn't even address it. Committee members, they didn't forget. These people are not fools. It did not serve their purposes to discuss it.

This is embarrassing to me as somebody who served his country and who loves his country, who has friends in State. There are people I admire in State, but if we are depending upon other governments to tell us what's okay for our citizens, the State Department is nothing more than a rubber stamp for despotic governments.

There needs to be, as this legislation proposes, a way to hold State, all of State, not just the good people but the people who are career oriented, there needs to be a means to hold them to their responsibilities to the American people.

My dad used to tell me that fences aren't necessary until the cow leans up against it. I think it is important that the good people of State are not betrayed by the inaction of the other people in State who should be held in line by this type of legislation, or there should be an organization within State dedicated to the investigation of Americans who are held overseas.

I agree 100 percent with Representative Smith, I put Americans in jail for 25 years. If an American earns his way into a prison overseas, fine. That's fine. I am not so xenophobic as to say that all Americans in prison overseas should be released. They shouldn't, but they should at least be held to some type of decent treatment and the legal process should be valid, because some of those people are really innocent.

I've heard recently that 70 percent of Bolivian prison inmates, not jail inmates, prison inmates have not received a trial. Is that okay with State?

If Jacob Ostreicher dies in Palmasola Prison, both the Bolivian Government and the United States Department of State will have the same blood on their hands.

And, again, I want to thank the attorneys from Bolivia because they show us that our struggle here is not against a people, it's not against a country, it's not America gets its way, it is simply that we're fighting corrupt governments and trying to help the good people of those governments reclaim the name that their countries deserve. Thank you.

[The prepared statement of Mr. Moore follows:]

WRITTEN TESTIMONY OF STEPHEN K. MOORE

SPECIAL AGENT, FBI (RETIRED)

BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
HEARING "SEEKING FREEDOM FOR AN AMERICAN TRAPPED IN A BOLIVIAN PRISON"

AUGUST 1, 2012

Chairman Smith, distinguished members of the committee, I sincerely appreciate your efforts on this matter and your interest in my observations on this case.

WHAT SHOULD BE THE RESPONSE OF THE UNITED STATES GOVERNMENT TO JACOB OSTREICHER'S IMPRISONMENT?

When I testified before this committee in June, I referred to State Department's "toolkit" and deferred to their best judgment. Their judgment apparently told them that it would be better for them to do the absolute minimum they could do. Their best judgment apparently told them that advocating for the release of a man who is otherwise likely to die thousands of miles from America in a swampy, disease-infested prison, is not in the State Department's best interest.

In June of this year, a report was submitted to the UN High Commissioner on Human Rights (UNCHR), by members of this committee. Major violations of international standards of detention and human rights were clearly documented. To wit:

According to the First UN Congress of 1955:

Paragraph 8(b)

"Untried prisoners shall be kept separate from convicted prisoners."

INVESTIGATIVE FINDINGS:

Palmasola Prison operates in direct contravention of the First UN Congress of Detention, paragraph 8(b).

Jacob and other untried prisoners are intermingled with the entire prison population. Within the

small cell block (or "pavilion") in which he must pay to live, there are several untried political prisoners, as well as a wide variety of mass murderers, single murderers, serial rapists and violent drug offenders. This is in stark contravention of the UN requirement.

Paragraph 9(1)

"Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself."

Paragraph 9(2)

"There shall be regular supervision by night, in keeping with the nature of the institution."

Paragraph 10

"All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."

Paragraph 28(1)

"No prisoner shall be employed, in the service of the institution, in any disciplinary capacity."

INVESTIGATIVE FINDINGS:

Palmasola Prison operates in direct contravention of Paragraphs 9(1), 9(2), 10 and 28(1), of the First UN Congress on Detention.

Prisoners at Palmasola are provided no cell, no indoor sleeping accommodations, nor any bedding or blankets. All prisoners are required to purchase or rent cells by the cartel of prisoners who run the prison from the inside.

When Jacob Ostreicher was transferred to Palmasola, he was literally "thrown into" the prison. The door to the men's pavilion was opened and he was pushed in, with the door closing behind him. For five nights, Jacob was forced by prisoners to sleep outside, atop a mound of garbage at the far rear of the prison without bedding or shelter of any kind. During this time, he contracted a severe gastro-intestinal infection causing him diarrhea and vomiting for several days. He was unable to move from the garbage pile. No medical care was provided, no cell was provided during this time, and no help of any kind was offered during this first week of incarceration.

At the conclusion of the week, a prisoner had pity on Jacob and arranged for him to sleep in a "cell" which was exactly the size of a single mattress. This "cell" was in a highly-crowded sleeping area. This investigator talked to prisoners from Canada, South Africa and the United Kingdom. Most were unable to "afford" to rent or buy a cell, (there are not enough cells and inside sleeping accommodations for all the prisoners), and therefore they sleep in the streets at night, or occasionally sleep in the Catholic chapel, in return for participating in services for a religion they do not follow.

"Supervision" at night, as well as during the day, is conducted by prisoners and not hired guards, in violation of the Geneva accords. Uniformed professional guards man only checkpoints and entry points to the individual prison wards of the facility. They venture into the prison only during meal hour and at roll call. This investigator never saw a uniformed officer inside the men's prison in the three days he was inside the prison; except during meal and roll-call. However, roll-call is an activity which a prisoner may pay to avoid. Only those prisoners without the financial wherewithal to pay for exemption from roll-call are required to be counted. It leaves open the question as to whether roll-call itself is for prisoner accountability or for prison guard income purposes.

A prisoner-run organization known as "Disciplina Interna" (Internal Discipline) provides order and "security" inside the prison. The requirement for membership in the "Disciplina" is that the prisoner is a "lifer" or 'prisoner sentenced to life in prison.' The reason for this is apparently that it provides the prison cartel increased control over their security force. It also ensures that the very persons responsible for order and security inside the prison are in fact the most violent persons inside the prison. This investigator became aware that 'Disciplina' operatives were conducting surveillance on visitors and prisoners, providing a source of internal information for the prisoner cartel, charging money to ensure the safety of prisoners, stealing cash and valuables from other prisoners, and administering regular and routine physical beatings as part of their role in "maintaining order." During the three day investigative foray into the prison, this investigator was approached by a 'Disciplina' operative (a murderer) who demanded money from him in order to ensure his safety and security while in the prison.

Prisoners who do not pay "protection" money are in grave danger. Statistically, between one and four prisoners are murdered at Palmasola (out of a population of 3,500) each month. These killings are predominantly categorized as "suicides," though anecdotal evidence (stab wounds in the back, etc.) indicates that few if any are suicides. The day prior to the arrival of this investigator, another killing had occurred in the pavilion.

Paragraph 14:

"All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulous clean at all times."

Paragraph 31:

"Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offenses."

Paragraph 32(1):

"Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

Paragraph 32(3):

"The medical officer shall visit daily prisoners undergoing such punishments..."

INVESTIGATIVE FINDINGS:

Palmasola Prison operates in direct contravention of Paragraph 14, 31, 32(1) and (3) of the First UN Congress on Detention.

Palmasola Prison is filthy. Raw sewage runs through the center of some of the streets, open garbage pits have been created throughout the institution, insects of all kinds, (especially mosquitoes) are rife. There are no apparent sanitary precautions in the creation of the prison food; a gruel-like soup made in an open-air kitchen over open fires, immediately adjacent to the main prison garbage dump.

None of the discipline cells, where this investigator witnessed as many as a dozen unfed inmates being held, have latrine facilities, running water, or light. No prisoners in the cells are fed, and they depend upon the concern of fellow prisoners to obtain food. This investigator could find not a single prisoner who believed that there was a doctor assigned to the prison in any capacity, with the possible exception that one of the prisoners might have been a doctor at one point.

Not ONE of the these allegations in the report were discussed with the UNHCHR by State.

UN RESPONSE TO THE STATE DEPARTMENT AND STATE RESPONSE TO JACOB'S FAMILY:

From: "Lynch, Felicia D"
Date: July 12, 2012 11:43:41 AM EDT
To: "Miriam Ungar "
Subject: Report on Meeting with UNHCHR

Miriam/Sheri –

Below you will find the report from our meeting with Roberto Desogus from UNHCHR last week. Please let me know if you have any questions.

Regrads, (sic)

Felicia

On Thursday July 5, 2012, representatives of the Consular Section of the US Embassy in La Paz met with Mr. Roberto Desogus of the United Nations High Commission on Human Rights. The meeting was regarding the detention of Jacob Ostreicher, a US citizen presently detained in Palmasol prison in Santa Cruz, Bolivia. Below are some of the main points from the meeting:

Judicial Procedural Delays are Common in Bolivia

According to the UNHCHR office in Bolivia, many of the procedural delays that have occurred in Ostreicher's case are commonplace throughout the Bolivian judicial system. While in the US, the recusal of a judge only occurs in exceptional cases where a severe conflict of interest exists, recusals are quite common in Bolivia. Additionally, frequent reassignment of prosecutors is also common. Each time a new prosecutor is assigned, the judge will typically grant extensions to hearings and proceeding in order for the new prosecutor to become acquainted with the case. The delays which have occurred in Mr. Ostreicher's case are not unusual.

Bolivian Judicial Branch Lacks Resources

The judicial entities in Bolivia lack the resources necessary to conduct in-depth investigations. It is common for victims of crimes to pay the costs of prosecutors to conduct investigations. In Mr. Ostreicher's case, there are no direct victims. In such a case, it is common for prosecutors to simply go to trial with the same evidence which was collected at the initial arrest and seizures. In many cases, no real investigation actually takes place during the investigative period.

Prosecutors have Significant Discretion in Investigative Period

Prosecutors are given a significant amount of discretion during the investigative and preventative detention period. It is typical for judges to yield to a prosecutor's discretion. The result is that in many instances prosecutors are taken at their word and little evidence need be presented to a judge. Moreover, the burden of proof in order to place an individual in preventative detention is that there are "indications of criminal activity". As a practical matter, suspicious or even irregular behavior is enough to place an individual in preventative custody. This appears to be the case for Mr. Ostreicher. While there is no direct evidence implicating Mr. Ostreicher in criminal activity in the Investigative File, his link to Liliana Rodriguez, meetings with Maximiliano Dorado, and investments in Bolivia appear to be out of the ordinary.

Preventative Detention

The preventative detention period may last anywhere from six to thirty-six months depending on a variety of factors in the case. The detention period may be extended at the prosecutor's request. In a complex case, such as money laundering, a judge will typically grant a prosecutor's motion for extension of detention. Additionally, if a new charge is presented during the preventative detention period, the detention period for that particular charge restarts. It may take four to six years for a case such as Mr. Ostreicher's to actually go to trial. However, the preventative detention period may not exceed the amount of time of the maximum sentence which may be given for the particular charge of which an individual is being accused. Statutes of limitation will also prevent the detention period from lasting indefinitely. Typically, the preventative detention period will count as time-served towards the final sentence.

Conclusion

It is the opinion of the UNHCHR office in Bolivia that Mr. Ostreicher is not being persecuted or targeted by the government but rather he is yet another victim of a brutally slow, inefficient, underfunded and corrupt judicial system. The procedural delays, the rotation of prosecutors, the recusal of judges, and the apparent lack of hard evidence in Mr. Ostreicher's case are all factors which are common in the majority of cases in the Bolivian judicial system.

Taking it piece by piece

Moreover, the burden of proof in order to place an individual in preventative detention is that there are "indications of criminal activity". As a practical matter, *suspicious or even irregular behavior is enough to place an individual in preventative custody*. This appears to be the case for Mr. Ostreicher.

UNHCHR RESPONSE:

The UNHCHR agrees that “...there is no direct evidence implicating Mr. Ostreicher in criminal activity in the Investigative File...”

The State Department memo states that “[Jacob’s] link to Lilita Rodriguez, meetings with Maximiliano Dorado, and investments in Bolivia appear to be out of the ordinary.” However:

1. Jacob never met with Maximiliano Dorado
2. The response assumes that business/agricultural investments in Bolivia are “out of the ordinary?”
3. The only thing that is “unusual” about Jacob’s case is that he knows a person in Bolivia who knows someone who dealt drugs. How unusual is this really?

The memo continued; “[Jacob] is yet another victim of a brutally slow, inefficient, underfunded and corrupt judicial system.”

When is it acceptable that an American is kept in an inhumane prison by a corrupt judicial system on no hard evidence? Isn’t that the definition of a situation in which State should be demanding the person’s release?

Indeed, the State Department, in a statement currently on their website, declares:

“We work ... to ensure that Americans are afforded due process under local laws.” If the system is corrupt, as State is saying, are these then acceptable hands in which to leave Americans? Is a system which is “brutally slow, inefficient and underfunded” okay with State?

Neither State or the UNHCHR have answered in any way the violations of international treaties as it relates to Jacob’s confinement (let alone his case). They didn’t just “forget” more than half the report. This answer from State is incomplete, unacceptable and an insult to Jacob, his family, and this committee. It raises questions about either their core competence or their motives. They should be compelled to answer ALL the questions the report raised.

Also from the State Department website this month: *“The State Department is committed to ensuring fair and humane treatment for American citizens imprisoned overseas.”*

If it weren’t so tragic, this would be comical. Not only are they NOT committed to ensuring fair and humane treatment for an American citizen named Jacob, they are not acting with even minimum care. Their attitude and actions are characterized by indifference, laziness, self-interest and neglect, as well as contempt for their own role in our government.

Imagine that a person happens upon a burning house and hears a baby crying. By the letter of the law, they are required to do nothing. They know that to do something to save the baby

would be risky, but to do nothing would mean the death of the child. The person makes a bold decision—they will call 9-1-1. But when they call, the line is busy. Satisfied that they have fulfilled their duty, they continue on their walk with a clear conscience, knowing that they've done what the law required. Legally, they are pure as the driven snow. Morally and ethically, they have blood on their hands.

I could say that this is where we find ourselves with State and Bolivia, except that in our situation, State hasn't done even what they are required to do. If Jacob Ostreicher dies in Palmasola prison, both the Bolivian government and the United States Department of State will have his blood on their hands.

Mr. SMITH. Mr. Moore, thank you so very much. Especially given your background, I think you bring enormous gravitas to Jacob's innocence, the denial of due process rights which has been pervasive and systemic. And, again, I thank you for taking time out of your work to fly here, to be here to advocate and to provide insights on behalf of Jacob Ostreicher.

You know, it does strike me, and you made a very strong point, your final point, about the blood being on the hands of those both in the Government of Bolivia and those at State who have been asleep at the switch, or indifferent, or whatever it might. And I would have to say, you know, there were people, especially the people in the Consular Affairs that were very robust in their concerns about Jacob, and I mean deeply concerned about him. And even people within the Embassy who had knowledge, and they seemed to—after Miriam Ungar's testimony and your's, and Ms. Weinberger at the previous hearing—seemed to have gotten more up to speed on the policy side of State, but it doesn't seem to go any further. And I think that's where the huge tragedy is, because I have found in 32 years as a Member of Congress that despotic governments look at how high up the chain of command are the concerns being expressed.

We are the legislative branch, we do write the laws, and we do oversight. And the fact that State is not here is disconcerting. Maybe they had a good reason, but I would have loved to have had them here. We will re-invite them. This invitation is an open one to them. But where is, with all due respect, President Obama? Where is Secretary of State Hillary Clinton when it comes to Jacob Ostreicher? Have they contacted Evo Morales, picked up the phone and said, "Mr. President, you need to personally look into this."

I was amazed when I met with Mr. Romero, the Minister of Government, when he said, and counsel might want to speak to this, that it was Jacob and his lawyers who sought delays for bail hearings. And I said, "Time out, Mr. Minister. First of all, it defies the straight face test," as we say, "and defies all logic to suggest that a man would want to stay in prison and would delay a bail hearing." This wasn't about the substance of the non-case, because there is no evidence and there is no charges, it's about bail.

And I said, you know, "When you say things like that, it strains credulity about where are you getting your information." So, you might want to speak to that in a moment.

You did say, Mr. Moore, that there's egregious inaction on the part of the government. And, again, where is the President? As I said in my opening comments, it is in law, U.S. Code 22 Section 1732 that "the President must demand the release of any citizen who has been unjustly deprived of his liberty by or under the authority of any foreign government, and to undertake appropriate means to obtain the release of such citizen."

Has it gotten to the point? And, again, I wanted State to be here so we could ask that question. You know, it wasn't until this subcommittee, I think, began to raise the questions that it even went up to an Assistant Secretary level, and that was when we did the letter, my colleagues and I, because a OAS meeting was being held, and we asked that it be raised by that official who was on her way there. And then that conversation we're told was simply this,

“Raise Jacob’s case.” The person on the Bolivian side said, “That’s not my jurisdiction, but I’ll pass on your concerns.”

We need to take it to a much higher level. You might want to speak to that, Mr. Moore. I do think if the President were to get on the phone, he is meeting with people—he doesn’t even have to meet with them. Just get on the phone and call Evo Morales and say, “Jacob must be free.” Because if he, as you said in the beginning about the—he is a dying man. I saw it myself. His health has deteriorated. From a purely humanitarian point of view, why wouldn’t the Bolivian Government want to—from a purely humanitarian point of view—put him on a plane and send him back to his family?

So, if you want to speak to any of those issues, the two counsel, about the delays were sought by Jacob for his bail. He didn’t want to get out of jail, he wanted to stay in jail. It’s ludicrous.

Mr. JUSTINIANO. Yes, Mr. Chair. As you were saying, it defies belief and is contradictory that a person who is seeking their freedom would, in fact, request a continuance or ask for a suspension of the hearings. And there have been more than 20 hearings that have been suspended.

It is the case in many of the cases that go before the Bolivian justice system that defendants try to slow down the process; however, that is not the case of Jacob Ostreicher.

We, the attorneys, can state that, in fact, again and again when a case has been continued we protest that and ask for the case to be heard. So, we can state that when they say that it is we, his attorneys and Mr. Jacob Ostreicher, who have been requesting the continuances, that is completely false.

Mr. MONTAÑO. Mr. Chairman, this is yet another one of the lies that the government will use to cover its crime. It’s another lie which only a person who is, in fact, trying to cover their own crimes would use when we’re talking about a person who has been detained illegally, who is innocent, for the last 15 months. They will use that and a million other excuses in order to cover their own crimes.

Mr. SMITH. Ann Marie Buerkle, I know you have to leave for another appointment.

Ms. BUERKLE. Thank you, Mr. Chairman.

I guess—first of all, again thank you all for being here, and for your courage, and for your willingness to sit here and tell us what is going on.

What is the possible motivation of the government to do this to an American? What—if you know, other than the corrupt—you’re saying there’s corruption, but what is the motivation?

Mr. JUSTINIANO. We are unable to say exactly why the Ministry of Government is interfering in this particular case. But what we can say for sure is that it is interfering.

Just to give you a fact, the Wall Street Journal today reported that Attorney Fernando Rivera is a prosecutor in the case. He is not a prosecutor, he works for the government. And he is directly interfering in the process, and we don’t know why. There is no concrete evidence as to why. What we do know for sure is that he is interfering.

Ms. BUERKLE. Other than the obvious that we talked about and that the chairman so eloquently talked about the President and the State Department, what else can we do to—maybe, Mr. Moore, you can speak to this, or any of the panelists. What else can we do in this body?

Mr. MOORE. I think this legislation is a fabulous start. All the pieces really are in place right now. There are international laws that say you can't treat Jacob the way he is being treated. There are Bolivian laws that say that you can't treat him the way he's being treated. There are Federal laws that say that the State Department cannot ignore this, nor can the President ignore this. The pieces are all there. Everybody is turning their heads. Everybody is ignoring it.

Legislation such as Mr. Smith is proposing is the kind of thing that would take it out of the discretionary area. It is like anything else that people don't want to do, sometimes you have to have a stick that makes those who don't want to comply, comply. And I think this is essential because, frankly, what Mr. Smith's legislation is doing so well is it is forcing State to do nothing other than what their charter already tells them they must do, but it is holding them responsible for doing it. And, at the same time, it is not a blanket punishment of the Bolivian people, such as a funding cut or something that would be a humanitarian issue. This is making the people who are responsible for this, responsible for their actions.

So, I think that's important. And, frankly, I would very strongly advocate that there be a strong look at whether there needs to be a department within State that is tasked with following the plight of Americans overseas who are wrongly convicted, or who are wrongly held.

Again, there needs to be some discretion so that you can say you know what, this is valid. But even a person who is caught with some drugs in their possession doesn't deserve to be in Palmasola. There needs to be some type of redress of conditions, and for the innocent there needs to be aggressive action in their behalf. And that is the one thing State is not doing.

State is, in a macro sense, operating in the greater good of America, but they are willing to sacrifice individual Americans on the way to their goals. That is not okay.

Ms. BUERKLE. Thank you, Mr. Chairman. I yield back.

Mr. SMITH. Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman, and thank all the witnesses.

While we're trying to bring some light on this matter here, what are the conditions in Bolivia? Is the free press seizing this? Is it a well known case? Is there any popular movement on the part of Bolivians to rectify this injustice if, indeed, they see it that way?

Mr. JUSTINIANO. If I may, Representative, the case is slowly becoming more public and reaching more publicity. And now, unfortunately, it is being spoken about in these terms which is it's the case of the gringo who's been arrested for nothing. Because it's quite clear that, in fact, there is no legal grounds for his detention.

Mr. TURNER. Mr. Montaña, do you see it the same way? Do people see this as an injustice, or is there any newspaper or public figure involved?

Mr. MONTAÑA. For the 7 months that I have been working with Jacob, what truly motivates me is that any person who approaches me, any person who has any contact with me asks me about Jacob. The media has started to approach me and they have started to look for me and to ask me about Jacob. I have embraced the media, and I have spoken as much as possible to talk about these injustices.

Mr. Representative, yours truly is possibly the person who is closest to Jacob right now. He has suffered a loss of family, and I am the one who is always going to visit him in the jail, in the prison. And I will continue to see him and to follow through with this, and I will continue fighting for him even though, as Congressman Smith has already recognized, we are facing difficulties.

However, I will always be able to go whether it's before your subcommittee or anywhere else I need to, to say that Jacob is innocent. Even if they want to prosecute or even persecute us, and if they say anything other than Jacob is innocent, we will continue to fight for his freedom.

Upon our return to Bolivia, Mr. Jerjes and myself will be open to discussing exactly what we stated here. And something else, even those who are unofficially after Jacob have admitted that he's innocent. Thank you.

Mr. TURNER. I have another—Mr. Moore, you've been on this more than anyone. We had a question before on motive. It's both political and economic, but there is a large amount of inventory, equipment, and money that is not only missing, will probably never be recovered. Could you tell us a bit?

Mr. MOORE. Yes, Mr. Turner. It is true that the land, the crop, millions of dollars of combines, harvesters, I mean, very high ticket equipment is simply missing. It's gone. And after confiscating tens of millions of pounds of bagged high-quality rice, the Bolivian Government claims, number one, not to know where the rice went. And, at the same time, declared a rice surplus in the country for the first time in years.

Evo Morales is almost obsessively attempting to embarrass capitalism as a concept in kind of a retro Castro-esque type of political agenda. He has recently announced that he will throw Coca-Cola out of the country, and is proud that only two other countries have ever thrown Coca-Cola out of their country, and that's North Korea and Cuba. He ran an airline—ran the state airline, Aerosur, out of business because it was a capitalist-based company, and their president, by the way, is now in hiding, I believe in Spain. I'm not going to give his address but he's in Spain, and he has been charged with the exact same charges as Jacob.

Evo Morales despises capitalism, is trying to make a stand against capitalism. The government is corrupt, they are stealing and then trying to stamp out the capitalist system. And, frankly, Jacob's business endeavor was so successful that it would have completely laid the lie to Evo Morales' particular brand of socialism.

Mr. TURNER. I have one quick final question. What is the title of your book, and can I get it down on Kindle?

Mr. MOORE. Yes, sir, thank you. It is called, "Special Agent Man." It's kind of tongue in cheek.

Mr. TURNER. Okay.

Mr. MOORE. And it is available on Kindle, and I'll even sign your Kindle.

Mr. TURNER. Thank you. I yield back.

Mr. MOORE. Thank you, sir.

Mr. SMITH. Thank you very much. Let me ask the two distinguished attorneys, one thing I learned from the trip from you was that the presumption of innocence is guaranteed both in the criminal procedure code, as well as in the Constitution; and, yet, early on in Jacob's case he was presumed in papers that were lodged to be guilty until proven innocent.

Could you expand upon that? Is that frequently done, or was that an aberration?

Mr. JUSTINIANO. It seems that when the prosecutor filed the case, by filing a complaint against Jacob, the statement was that he had not proven that his finances were legal.

Later, the judge for the case stated that that particular crime did not have the presumption of innocence as other crimes did. He alleged that this particular crime did not fall under that category, and that is completely false according to the Constitution, and according to the Code of Criminal Procedure.

It is out of the ordinary for a judge to say something like that, especially when addressing the crime, or rather the alleged crime of money laundering, as Jacob is being accused. That's why we affirm without a doubt that he is being illegally detained and illegally prosecuted.

Mr. MONTAÑO. Mr. Chair, I took on the task of looking over other similar cases to see if, in fact, I could find a similar judgment. And believe me when I tell you that I found none because this is illegal, and the victim of this illegality is your citizen. Thank you.

Mr. SMITH. So, when the U.N. human rights representative says, as you all have noted in your testimonies, that this is common to Bolivians, as well, this mistreatment, that is false, at least as it pertains to a presumption of innocence standard?

Mr. JUSTINIANO. The situation in Bolivia, unfortunately, it is common that there are violations of human rights. However, Mr. Chairman, you have seen the Palmasola Prison. That is a true violation of human rights. And although it is true that a prison should not be the best place for a person to be, it should also not be the worst place in the world.

In Mr. Ostreicher's case, if we can say that there are rational levels of the violation of human rights, these levels have been exceeded and he has had his human rights violated even more.

Mr. MONTAÑO. Mr. Chair, it is common in Bolivia and it has happened with the human rights representative who has not had the guts to be able to face the music and talk the truth. And why should that which is commonplace go above and beyond what the law is? That is not something that an international organization should accept.

I am sure that the person who wrote that report has this lying heavily on his conscience if he himself is still free. Thank you.

Mr. SMITH. When I yielded to Ann Marie Buerkle you had not, Mr. Moore, had an opportunity to speak to the egregious inaction, and the fact that, if you'd like to, or Miriam, or Ms. Weinberger, to this apparent inability on the part of the President of the United States to pick up the phone and make that call. It is about equities, and very often human rights are at the back of the bus, especially with this administration.

I was late coming to this hearing because I had a meeting with a man named Chen Guangcheng, and he is the blind activist Chinese lawyer that on two occasions, I've been working on his case since 2005, the U.S. Department of State was going to give him back to the Chinese until he himself said, "Wait a minute. I need to leave here. My family and I are not safe here." And twice here we reached him in his hospital in Beijing and he made an impassioned plea to come to the United States. I believe that was a game changer, his plea to a Congressional hearing.

This administration and others that preceded it don't take human rights seriously. It's a talking point. It's an asterisk somewhere. I wrote the Trafficking Victims Protection Act of 2000, and I can tell you we had serious opposition to it from the Clinton administration, serious. Thankfully, it was a bipartisan bill and it got passed, and we had veto override strength, huge, that was huge.

I don't understand why this President, a Nobel Peace Prize winner, can't protect or won't protect Americans unjustly incarcerated, and it goes the same for Secretary of State Hillary Clinton.

Every single day, as has been so amply demonstrated by your testimonies and by the evidence from Jacob himself, his health is deteriorating. As Yimy said, he is a dying man. How could we stand idly by and go campaigning somewhere, important as this is with an election around the corner, when a man is in such peril?

So, I again would ask you, I mean, egregious inaction is a very serious charge, and as you very diplomatically put it, the administration has other interests, but aren't American lives preeminent? Aren't they priority number one? Human rights, in general, ought to be priority number one. Here we're talking about an American.

And I would say before you answer, too, to my friends from Bolivia, I had the privilege while I was in both Santa Cruz and La Paz to meet with the prosecutors that are working on anti-human trafficking, both sex trafficking and labor trafficking issues. They were wonderful prosecutors. I mean, people who want to put people who sell and reduce women, especially, to commodities, behind bars, and confiscate their assets, and provide assistance to the victims.

They, too, some of them indicated that they feared being prosecuted by rogue government people who don't like if they go across a certain line. But I was deeply impressed, they gave me great hope. And I think that all of us think that Bolivia has a great future because there are people like the two lawyers that are here today, and people the likes of which I met.

I also pointed out, and I take your point, Yimy, to heart when you said that you're embracing the media. I had a press conference with the Bolivian media at U.S. Embassy La Paz and found them

to be very responsive and empathetic, maybe not all but very many. I pointed out to them that I had been to two shelters where Bolivian girls, some as young as 12, 13, and 14 who had been sold into modern day slavery, sex trafficking. They had been abused, are now being helped by the government and by the nuns that run one of those shelters, that my law actually was being used to help them. Some of the money came from the U.S. Government, because we care about Bolivians too.

You know, Bolivia deserves better than rogue prosecutors that are trying to intimidate as they are in the case of Jacob, and all these judges, a passing parade of judges who have to recuse themselves. But, Mr. Moore, if you could speak to that. And, again, I do think the more the Bolivian media learns about this unjust incarceration it ought to provide a pathway for reform for everyone, including Bolivians. No one should be mistreated like this. Everyone is entitled to universally recognized human rights. And your presence here, again, brave and courageous as it is, speaks volumes of the respect that I and others have for Bolivia. You are Bolivia. You care for the rule of law, and I would hope that the government would sit up and take notice and follow your lead.

Mr. MOORE. I worked on the Amanda Knox case in Italy, and what I repeatedly said is that every country in the world will make a mistake judicially. It is not the judge—it is not the measure of a nation whether they will make a judicial mistake. It is the measure of a country, what they will do about it.

I think Bolivia is a country that has a strong desire to do the right thing. It's just that their government does not. I found out recently that my mother-in-law and one of my wife's aunts go to Bolivia every year and work in a medical clinic there to provide free medical care for people who can't afford it, some in the city of Santa Cruz near Jacob. I didn't know this until after I had testified. Their question was can they still go, or have I ruined their ability to go?

As far as the State Department's overarching responsibilities for American foreign policy as opposed to individual innocent Americans in prison, I can't help but go back to the analogy of primitive society who every year before planting and before harvest would sacrifice—would make a human sacrifice so that it would benefit the rest. We now see that as barbarianism.

If we are still sacrificing individual Americans by allowing them to languish in prison so that our foreign policy advances, so that we can get bases in appropriate countries, so that we can try to re-establish relationships with countries, then are we not somewhat barbaric?

There is, and I understand this. I empathize with the State Department's dilemma. They are responsible for overarching responsibility for our foreign policy, but I remember the argument after 9/11 when people who disagreed with the Patriot Act said are we giving up everything we're trying to achieve if we go over the line in giving up personal freedoms? And I had to answer those questions a lot.

I would put it to the State Department that if we allow Americans to languish in prisons, innocent Americans to languish in prison, aren't we giving away just the thing we're trying to gain? I

think something has to be done. Hopefully, this legislation will be the first strong step in that direction which will force the State Department, and the good people in the State Department, I don't dislike them, to seriously consider that one American is an American. One American is America. You can't just say that for these people we'll sacrifice him. That's barbaric.

Mr. SMITH. Miriam.

Ms. UNGAR. Thank you. Firstly, I would tip my hat to you for this. I would like to thank you for Jacob's Law. I want to thank you for Jacob's Law. It's the first two good words I've heard in 15 months. I would like to give you an applause from my whole family for that. You were the first person to actually be proactive in this case, and I don't know how to thank you for that, really. It means a lot to me to have you in our corner. And I also want to thank the two lawyers for their bravery, and their bravery should be commended. Thank you.

Mr. SMITH. Just a couple of questions and then we'll conclude. Mr. Turner, do you have anything you want to add? Whoever would want to answer this, one of the questions I asked Minister of Government Romero was "What do you do when there's a rogue prosecutor or rogue prosecutors who may themselves be benefitting from money, a shakedown?" I think that, Mr. Moore, you talked about it being a shakedown, even our Embassy people have talked about this being a shakedown. Who tracks Jacob's assets?

Mr. MOORE. Extortion.

Mr. SMITH. Extortion, better word. And then the next question—if you could speak to that issue first. And, I thought of it, one of the questions I asked the Minister of Justice was "Where's the accounting for all of the stolen property?" I mean, first, second, third, fourth, and fifth is get Jacob back, but it is a concern that a huge theft has occurred. And I was told that there are very serious accountings of where that is. Is it there, I mean, or is it in somebody's pocket? Rogue prosecutors, especially, that's a concern.

Mr. JUSTINIANO. Yes, thank you. One of the rights that has been affected, that has been violated of Mr. Ostreicher, in fact, does have to do with his patrimony. We speak about the right to his freedom, and to his health, but it is, in fact, the right to his patrimony and belongings. And one of the ironies of the case is that one of the prosecutors has, in fact, been named to the Ministry of Justice. It's worse than that, that his patrimony is in the hands of the Ministry of the Government.

And since it is the Ministry of Government which is responsible for the property, for his machinery, for the rice itself, it has been practically stolen from him, and it is in the hands of the Ministry of Government.

Curiously enough, the Ministry of Government is not named in this trial, this prosecution in which the rice has been stolen even when the party responsible for that rice is the Ministry of Government itself.

Unfortunately, somebody will have to answer for this, for the machinery, the land, and particularly the investment that Mr. Ostreicher has made in Bolivia. I think practically it might be one or two prosecutors who would be asked to respond to these damages, but really it's the Bolivian State.

Mr. SMITH. One final question, and it's more of a technical question. When did the clock begin on the 18 months? There was some disagreement. Is there disagreement? I mean, does this go until December or when does it go to, please?

Mr. JUSTINIANO. As you say, this is actually a difficult question to ask. It's a very tricky procedural and technical legal question. But what has to happen is we have to make a distinction between the initiation of the criminal prosecution and the investigation part of the prosecution.

This prosecution was initiated on December 28, 2010. However, the investigative phase of the prosecution began on May 4, 2011. Therefore, the 18 months allowed would expire in November 2012. However, to date from when he was formally arrested, Mr. Jacob Ostreicher on June 3, 2011, almost 14 months have gone by from that date.

Mr. SMITH. Mr. Moore, I understand you have to catch a plane. Thank you.

Mr. MOORE. Yes, sir. Thank you.

Mr. SMITH. Thank you for coming. We do appreciate it.

Mr. MOORE. Thank you.

Mr. SMITH. And thank you for, again, breaking off your schedule to come here at this hearing.

Since I've returned I have spoken about Jacob to many of my colleagues on both sides of the aisle, and there is an interest, a growing interest among Members of Congress to travel to Bolivia to speak out on behalf of Jacob's freedom. Does that help?

Mr. JUSTINIANO. One of Mr. Moore's arguments was specifically that, that he had never before seen such a lack of activity on the part of the Secretary of State.

In the 14 months that Jacob Ostreicher has been detained in pre-trial detention, we have only seen the concern demonstrated by yourself and this subcommittee. However, we do believe that any action, any intervention whatsoever from people of your level would benefit Mr. Ostreicher's case.

Mr. SMITH. Thank you. I would just note for the record that when any of us in government speak out on behalf of an innocent man and promote human rights, we have a duty to protect, a moral duty. We're not doing Jacob a favor by intervening, we're doing what is right and honorable. And, again, I can't say enough how much I respect all of you, but to our two distinguished counselors who have come here, you are the future of Bolivia. And I want you to know on behalf of my colleagues in the U.S. Congress how much respect we have for you. And that we stand in solidarity with the Bolivian people who deserve better themselves. They deserve freedom and democracy, and a due process and respect for the rule of law that you represent. And I just want you to know how extraordinarily respectful I am of your efforts and who you are. So, thank you so very much.

And to Miriam and to Ms. Weinberger, thank you again. Your love is what's driving this, and your concern for your husband, and for your father. If you have anything you would like to say as I close the hearing, you're welcome to do it.

Well, thank you, and we will accelerate our efforts. We hope tomorrow to introduce Jacob's Law. We will start building the co-

sponsors for it and look for a markup of the legislation. And I can assure you, I can absolutely assure you from my point of view, and on behalf of many of my colleagues, we will not quit until Jacob is free.

The hearing is adjourned.

[Whereupon, at 4:50 p.m., the subcommittee was adjourned.]

A P P E N D I X



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**SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128**

**SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
Christopher H. Smith (R-NJ), Chairman**

July 30, 2012

You are respectfully requested to attend an OPEN hearing of the Subcommittee on Africa, Global Health, and Human Rights, to be held in Room 2172 of the Rayburn House Office Building **(and available live via the Committee website at <http://www.hcfa.house.gov>)**:

DATE: Wednesday, August 1, 2012
TIME: 2:30 p.m.
SUBJECT: Seeking Freedom for American Trapped in Bolivian Prison
WITNESSES: Mr. Yimy Montaña Villagomez
Attorney for Jacob Ostreicher

Mr. Jerjes Justiniano Atalá
Attorney for Jacob Ostreicher

Ms. Miriam Ungar
Wife of Jacob Ostreicher

Ms. Chaya Gitty Weinberger
Daughter of Jacob Ostreicher

Mr. Steve Moore
Special Agent (*Retired*)
Federal Bureau of Investigations

By Direction of the Chairman

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COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON Africa, Global Health, and Human Rights HEARING

Day Wednesday Date August 1, 2012 Room 2172 Rayburn

Starting Time 2:49 p.m. Ending Time 4:50 p.m.

Recesses 0 (to) (to)

Presiding Member(s)

Rep. Chris Smith

Check all of the following that apply:

Open Session

Electronically Recorded (taped)

Executive (closed) Session

Stenographic Record

Televised

TITLE OF HEARING:

Seeking Freedom for American Trapped in Bolivian Prison

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Chris Smith, Rep. Karen Bass, Rep. Robert Turner, Rep. Ann Marie Buerkle

NON-SUBCOMMITTEE MEMBERS PRESENT: (Mark with an * if they are not members of full committee.)

HEARING WITNESSES: Same as meeting notice attached? Yes No
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)

TIME SCHEDULED TO RECONVENE _____

or
TIME ADJOURNED 4:50 p.m.

Shirley B. ...
Subcommittee Staff Director

