

WRITTEN TESTIMONY OF MIRIAM UNGAR

BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS HEARING "THE U.S. STATE DEPARTMENT'S INADEQUATE RESPONSE TO HUMAN RIGHTS CONCERNS IN BOLIVIA: THE CASE OF AMERICAN JACOB OSTREICHER"

JUNE 6, 2012

Thank you Mr. Chairman and members of the committee, 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 incarcerated in Santa Cruz, Bolivia.

Jacob and I were born and raised in Brooklyn, New York. Our parents were hard-working honest people who instilled in us strong principles and values. Jacob and I raised our children the same way. We have 5 children and 11 grandchildren.

Some may think that as a wife I may not be objective in the case of my husband. Although I live in agony every day wondering if Jacob will live to the next, I will not share my opinion on any issues I present to you today. Rather, I will just state the facts.

I have witnessed these facts myself. I was in Bolivia from June 12, 2011 until October 23, 2011. I was also in Bolivia several times prior to Jacob's arrest and have been back several times since.

I am here to tell you that my husband has been incarcerated on unsubstantiated accusations for more than 12 months. He has yet to be formally charged and has proven his innocence in a court of law. Every day that he remains in prison, his human rights are being violated.

On December 26, 2010 Jacob went to Santa Cruz, Bolivia to take over management of an agricultural business because there were suspicions that the local manager was embezzling money from the business. Jacob arrived approximately three months before the first harvest.

Jacob's business employed more than 250 indigenous Bolivians and paid them more than any police officer earned in Bolivia.

The first harvest, under Jacob's management, produced more than 50,000,000 tons of rice. During the time of the harvest 450 people were working for Jacob. Every truck in the vicinity of the fields was hired to transport the rice from the fields to the storage facilities to be dried. The storage facilities in the city next to the rice fields were unable

to accommodate the large amount of rice, so Jacob had to move some of the rice to another city. In total, 11 facilities were drying and storing Jacob's rice.

When Jacob placed an order for 500,000 bags to package and store the rice, the order was so large that the company did not believe the order was legitimate. The large amount of rice harvested by Jacob's company was something that had never occurred in Bolivia before. One company, run by one man, produced an unprecedented amount of rice, and what is more, this year's harvest only represented 10% of the projected production for the following three years. This event caused a stir in Bolivia. Rice is an important agricultural product in Bolivia, and the Bolivian people did not produce enough rice to feed themselves. As a matter of fact, there was a government-directed ban on exporting rice during this time.

We believe that interest in the company's abundant harvest prompted the government to proceed to investigate the properties owned by the company. During the investigation, they realized that one of the properties, which was purchased by the ousted local manager, was previously owned by a man who lived in Bolivia and was wanted in Brazil in the 1990's. This man did NOT have a criminal record in Bolivia, and Jacob had nothing to do with him. He was not aware of his prior history. This man was arrested in December of 2010 and immediately extradited to Brazil.

This was the excuse the prosecutors used to seize all the assets of the company and to then arrest Jacob on June 3, 2011.

On Saturday, June 4th, 2011, Jacob was taken from his cell to a car to be transferred to court for his arraignment. Jacob begged them not to take him on the Sabbath since he is an observant Jew. They told him they weren't interested in religion. They physically dragged him and pushed him into a vehicle and took him to court.

At Jacob's arraignment, prosecutors alleged that Jacob was part of a criminal organization, based on claims that the company's main investor – Andre' Zolty – was wanted in Switzerland. The prosecutor waved a document in the air claiming that she had proof that he was wanted in his country. The judge did not request to see the document.

Since Jacob had a power of attorney from Andre' Zolty, for the purposes of making decisions on behalf of the business, the prosecutor claimed this was proof of criminal organization.

The prosecutor also alleged that the money invested in the business was illegally obtained and resulted in illicit gains. The prosecutor did not submit any proof of her allegation. In fact, the prosecutor was aware that the money invested in Bolivia was legal, since she had already seen the wire transfers given to her during one of Jacob's depositions. The judge did not request proof of this allegation either. In his 2 minute decision the judge repeated four times that Andre Zolty was wanted in his own country. In his decision, the judge ordered Jacob to be sent to Palmasola prison – one of Bolivia's most notorious prisons.

The judge's order constituted an illegal act because, according to Bolivian law, sufficient rational evidence must be submitted to a judge at the arraignment before an arrest can be made. As explained, the prosecutor did not actually submit evidence to the judge during the arraignment.

Before being sent to Palmasola, Jacob was thrown into a holding cell and was kept there for five days. The cell did not have a bed or a chair. He was kept in unsanitary conditions. Jacob is an Orthodox Jew and keeps kosher. He was without food and water for all five days. Human waste was in a bowl from the previous prisoners with no water to flush the waste. No one cleaned the bowl while Jacob was there. On the fifth day he was transferred to Palmasola prison.

He was thrown into that prison to fend for himself. The government of Bolivia does not provide cells for prisoners. If a prisoner cannot afford to buy or rent a cell, he must sleep outdoors on the ground.

We hired an attorney to defend Jacob. The attorney said that if we brought in original documents to prove Jacob's innocence, then he would be freed. Our attorney explained that we must prove that all of the money invested in the business was legitimate, and that Andre' Zolty was not wanted in Switzerland.

After getting all the documents ready, I traveled to Bolivia to present them to the attorney. I went to Bolivia on June 12, 2011.

At first we were unable to get a hearing scheduled because the judges were all going on vacation for the month of July.

In August, we were told that we could not get a hearing scheduled because the transcript of the June 4th arraignment was not yet completed. It took 4 months for the secretary of the court to complete the transcript.

Finally, a hearing was scheduled – in fact, not one, but many.

September 9,
September 14,
September 23 – this one actually commenced.

At the hearing on September 23, our lawyer first presented documentation to prove that Jacob was not a flight risk. Bolivian law provides that in order to be released on bail, prior to trial, a prisoner should present proof of three things: 1. Family, 2. Business & 3. Domicile.

The proof we presented was a marriage certificate and documents proving that I filed for a residency. Birth certificates of all the children and grandchildren were submitted to prove that Jacob has a family. Finally, documents proving that Jacob had an agricultural business and that we had a lease on a house were presented too.

However, we did not want Jacob to be released on bail. We wanted Jacob to be released unconditionally because he was innocent. Therefore, the attorney also presented to the court the original wire transfers from the bank, notarized, authenticated, certified and legalized. In addition, we also presented documentation of the origin of this money. The documents proved that all of the money invested in Bolivia was legal. The attorney also presented an original letter from the Swiss Federal Police stating that Andre' Zolty is not wanted in Switzerland, nor is he under investigation. This document was also notarized, authenticated, certified and legalized. The attorney claimed that by submitting these documents and proving Jacob's innocence, the case would be dismissed.

Based on all the evidence submitted, the judge ordered Jacob's release on bail. Due to procedural reasons Jacob was still in prison when six days later, the judge revoked his decision. This was an unprecedented move in Bolivia.

We immediately filed for an appeal of the judge's annulment. The appeal was scheduled and postponed a couple of times before it was finally heard on December 9, 2011. The appellate court ordered the judge to explain within 48 hours, why he revoked his decision of release on bail. They also penalized the judge 5 working days for revoking his decision illegally.

The scheduling and postponed of hearings continued:
12/14/2011 postponed
12/22/2011 postponed

In the meantime, on December 21, 2012, all 50,000,000 lbs. of rice produced by Jacob's company disappeared from the storage facilities. The prosecutor had previously illegally placed all assets in the custody of DIRCABI, which is the government division in charge of confiscated goods. The DIRCABI was responsible for the rice that suddenly disappeared. It took several hundred trailer loads close to three weeks to remove this amount of rice from all of the storage facilities. Amazingly, no one in Bolivia has acknowledged that they know where the rice is.

Our attorney was able to get an anti-corruption prosecutor to investigate the disappearance of the rice. Facility owners claimed the rice was removed by DIRCABI, but, DIRCABI insisted that they did not authorize the removal of the rice. Documents were provided by the facility owners proving that DIRCABI signed the letters to release the rice, but DIRCABI claimed that the signatures were forgeries. Arrest warrants were issued on January 9, 2012, for three people involved in the theft of the rice. One of the three people was an employee of DIRCABI. To date, not one of the three have been found. I am puzzled by the fact that no one in Bolivia is talking about the theft of 50,000,000 lbs. of rice worth more than \$18,000,000, and the three people charged with stealing it cannot be found, yet Jacob, the innocent owner of the rice, languishes in prison. Coincidentally, the three year ban on rice exports was lifted in March.

Despite the appellate court's ruling on December 9, 2011, that the judge must explain his annulment of Jacob's release within 48 hours, it took until January 4, 2012, for the hearing to commence. This was 4 weeks later. At this hearing, the judge stated his reason, - and I quote: "I overstepped my boundaries by commenting on the evidence submitted". Jacob was horrified. Jacob walked over to the judge and asked him, if he had a family. The judge replied that he did. Jacob asked the judge, how can you do this to me when you know I am innocent? The judge replied that he knows Jacob is innocent, but he was threatened to be sent to prison. He said he has a family and he cannot go to prison for Jacob. The US Consular Agent was in the room when the judge said this to Jacob. A few weeks later, this judge was promoted to the appellate court.

This meant that we had to start over – file for a hearing again and submit the same documents again. More hearings were then scheduled and postponed:

January 16, 2012 – Suspended

January 25, 2012 – Suspended

February 24, 2012 – Suspended

March 12, 2012 – Hearing proceeds but it recessed for one week.

March 21, 2012 – Suspended

March 29, 2012 – Suspended

April 2, 2012 – Judge recuses himself from the case.

May 15, 2012 – Suspended

Our next hearing is now scheduled for June 11.

It should be noted that the excuses used by the Government to justify the suspensions were illegal. At every hearing, we were required to notify the Minister of Government a minimum of 2 days before the hearing. At first the Minister of Government did not want to accept the notifications. That was used as an excuse to postpone several hearings. After we forcefully notified the Minister of Government, they would postpone the hearing with the excuse that they wanted to attend but were unable to.

Our attorney had to physically fly to La Paz before every hearing to personally hand the notification to the Minister of Government. Sending the notification through the regular channels, the Notification System, guaranteed that the notification would not be done on time. The attorney finally requested permission from the judge to post the notification's on the boards in the courtroom because too many trips have been made to La Paz. The judge granted his request and the prosecutor did not object.

At the next hearing, the attorney posted the notification on the board in the courtroom and the prosecutor used that as an excuse that the Minister of Government was not properly notified. The judge suspended the hearing. When the defense attorney objected, the judge agreed with the attorney but suspended the hearing anyway.

Our attorney objected to every suspension. He quoted the Bolivian law that states that a lift of detention must proceed even if the notified parties are not present. The judge agreed with the attorney but suspended the hearings anyway.

When Jacob was taken to appear at all of these hearings, he was transferred from the prison by bus. It is difficult to describe the physical and mental torture of these transfers. The prisoners are loaded onto the bus according to a list prepared by the courts. Prisoners board the bus in order of this list. Sometimes Jacob's name was the first on the list and the guard would skip him on purpose. Sometimes Jacob's name would not be on the list at all. This was unbelievably stressful for Jacob. The ride to the courtroom by bus is one hour, and the bus was packed full and extremely hot. Once the inmates arrived, they were stuffed into a holding cell in the sub basement of the courthouse and kept waiting there for hours in extreme heat and without fresh air. The prisoners were kept in one cell until they were called to the courtroom. Jacob would always come into the courtroom drenched in sweat. His lips would be caked and dry.

There were times when Jacob begged the lawyer to make arrangements so he would not have to attend his own hearings. But this was impossible as the prisoner must always be present.

Jacob endured this agonizing routine with every single scheduled hearing, only to have them continuously postponed by the judge.

It is horrific that Jacob has been in prison for more than a year despite the fact that he has proven, and a sitting judge has recognized, his innocence in a court of law. Worse yet, flying in the face of presumption of innocence, the prosecution has not proven their allegations at any of the hearings.

Moreover, just last week, Jacob received a notification that a penalty had been imposed on him because he spoke to local media in Bolivia and to media in the United States. He received a 15 day “penalty.” Penalties usually mean the prisoners are moved to Chonchocorito – a prison where the worst criminals are sent, and where death is a regular occurrence.

This past Friday, our attorneys were notified that the third judge on the case will not be presiding at the hearing scheduled on June 11. The case will be moved to the 10th court. The judge that presides in the 10th court is on vacation and we do not know if his schedule will allow him to hear this case on the 11th of June.

The devastation this has wrought on our parents, our children and our grandchildren is indescribable.

How do you explain to young children that their grandfather is in a prison but he didn't do anything wrong?

How is Jacob supposed to go on living – knowing he has done nothing wrong and his freedom has been stolen from him. Jacob has been on a hunger strike since April 15. He has lost 60 lbs., and he is frail and weak. We have been trying to get him to a doctor since March, but the judge refuses to sign the request.

We requested the US Embassy to intercede on Jacob's behalf due to his failing health, but they insisted that Jacob must see the prison doctor. The prison doctor is not licensed to practice medicine. Jacob has pain in his teeth and needs to see a dentist, but the judge is refusing to sign this request too.

The US Embassy has attended all of Jacob's hearings and asserts that it has "raised the case" several times with the Foreign Minister of Bolivia. These actions have yet to produce any results.

Does our government want to walk an innocent American citizen out of this prison, or would they prefer to carry him out?

In summary, Mr. Chairman, Jacob's human rights have been violated with every postponement, every denial and every minute he remains in that prison.

To date, our government has failed to protect its citizen.

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