THE U.S. STATE DEPARTMENT'S INADEQUATE RESPONSE TO HUMAN RIGHTS CONCERNS IN BOLIVIA: THE CASE OF AMERICAN JACOB OSTREICHER

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS

OF THE

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THE U.S. STATE DEPARTMENT'S INADEQUATE RESPONSE TO HUMAN RIGHTS CONCERNS IN BOLIVIA: THE CASE OF AMERICAN JACOB OSTREICHER

WEDNESDAY, JUNE 6, 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 10 o'clock a.m., in room 2172 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order, and I want to wish everybody a good morning. Thank you for joining us for this extremely important and timely hearing to examine the situation of Mr. Jacob Ostreicher, who has been imprisoned for over 1 year in Bolivia, and the involvement of the State Department in this case.

Normally this subcommittee focuses on human rights issues in the context of whether foreign governments are respecting the rights of their own people. But today we are undertaking the sobering task of defending the human rights of one of our own fellow citizens. Mr. Ostreicher and his wife, Miriam Ungar, who is here with us today to testify on behalf of him, are from New York. His daughter, Chaya Weinberger, will also be testifying, and she is from New Jersey and a resident of my congressional district. She lives in Lakewood.

They are part of a large family and a close-knit Orthodox Jewish community. It was actually Rabbi Aaron Kotler, the chief executive officer of Beth Medrash Govoha, the yeshiva, who first brought Mr. Ostreicher's plight to my attention about 3 weeks ago. Human rights abuses that are happening to Mr. Ostreicher in Bolivia are being felt deeply and personally here in our own country.

Our distinguished witnesses will provide compelling testimony on the facts of Mr. Ostreicher's case and the abuses that he has suffered and continues to suffer. And we will also examine whether Mr. Ostreicher has been receiving the assistance that he should receive as a United States citizen abroad, with the purpose of ascertaining what should be done going forward. We will also do everything we can to correct the ongoing extreme injustice being perpetrated against Mr. Ostreicher and secure his freedom as quickly as possible.

But this responsibility rests primarily with the U.S. Department of State. Our Embassy and consular affairs personnel are in-country, have direct and regular contact with host government officials, and have access to local information that is of critical importance to the safety and security of our citizens.

For this reason, after having studied the information provided by Mr. Ostreicher's family and Bolivian attorney as well as the various media reports, and knowing of his extremely precarious physical and mental health, I was deeply disturbed by our State Department's report to this subcommittee on May 22nd that, "Embassy La Paz will continue to remain in close contact with Mr. Ostreicher and his family and will carefully monitor the progress of his case."

According to the State Department's Country Reports on Human Rights Practices for 2011, "principal human rights problems" reported for Bolivia were "arbitrary or unlawful deprivation of life, arbitrary arrest or detention, and denial of a public, fair trial." The executive summary goes on to list other human rights problems including harsh prison sentences and conditions, official corruption, and a lack of government transparency. The report further specifically references political and judicial corruption, a problem with violence among prisoners, pretrial detainees being held with convicted prisoners, and inadequate medical care in the prisons.

When one has heard the testimony that will be presented at this hearing, which shows that all of these human rights abuses and more are implicated in this case, an overriding question is, "Where is the State Department?" When we are dealing with a country that has such serious human rights abuses, how can the State Department perceive its role as one of merely monitoring the case instead of advocating?

Unfortunately, I am finding this baffling lack of responsiveness, one might even call it indifference, on the part of Embassy and consular personnel to be a disturbing pattern. It is certainly true that the State Department and our Foreign Service has many dedicated, talented and experienced personnel who are deeply committed to the service of our country, and who even risk their lives in the performance of that service. I have and will continue to highly commend them and give them my unqualified support.

But within the past few years I have assisted constituents and residents of New Jersey facing grave crises with family members in Georgia, Brazil and now in Bolivia, who have turned to me when they were unable to obtain help from the State Department or local Embassy and Consular Affairs officials. In a world of increasing travel and international commerce, American citizens expect, and have a right to expect, American officials who represent them in any country to respond to their needs, most particularly in situations that threaten their safety, their security, and their lives. Being in close contact and "monitoring" does not begin to fulfill this expectation in a case that involves grave human rights abuses in a country such as Bolivia.

These past 3 days, the Organization of American States held its 42nd General Assembly in Cochabamba, Bolivia, with a focus on food security. I sent a letter to the Assistant Secretary for Western Hemisphere Affairs, Roberta Jacobson, who headed the U.S. dele-

gation, asking her to publicly and assertively raise Mr. Ostreicher's case at this event. Not only was it held in the country where a U.S. citizen is being denied his fundamental rights, but a topic of that event goes to the heart of the beneficial enterprise that Mr. Ostreicher was undertaking at the time of his arrest, substantially increasing rice production to the country and providing hundreds of new, well-paying jobs for its people.

Unfortunately, Ms. Jacobson did not publicly mention Mr. Ostreicher during her time in Bolivia. The State Department informed congressional offices that she raised his case privately with the Foreign Minister who was present at the General Assembly. When he responded that it is not in his area of competence, she simply followed up with the request that he reach out to the Justice Minister about the case. Does anyone really think that this exchange will have any meaningful results?

The OAS General Assembly afforded an ideal opportunity for Ms. Jacobson to laud Mr. Ostreicher's successful efforts to increase rice production and provide local employment opportunities as a prime example of why governments need to address internal corruption and promote private, foreign enterprise. Bolivian President Evo Morales was asked during the media interview on May 31 about the extent to which he could guarantee the safety of foreign investments in Bolivia. He responded, "all of the firms that invest in Bolivia and comply with agreed conditions will be respected." Are you kidding?

Ms. Jacobson should have emphasized that unless and until so-called agreed conditions do not include submission to corrupt practices, and successful businessmen like Mr. Ostreicher are no longer victimized by the Bolivian Government and judicial processes, foreign investors will not direct their resources to Bolivia, and the country will not solve its food security and other governance issues. But even more importantly, Ms. Jacobson had the responsibility to advocate for Mr. Ostreicher's freedom, simply because there is no evidence that has been submitted that any crime has been committed and his continued imprisonment is a human rights violation.

I would have welcomed, as would other members of this panel, the opportunity to hear from Ms. Jacobson, or another knowledgeable State Department official, at this hearing as to their efforts on Mr. Ostreicher's behalf. They declined. The U.S. State Department declined to come here today. But we are privileged to have the distinguished witnesses who did agree to join us today to examine this important case.

Before we hear from them, I would like to give my colleagues on this subcommittee and some invited guests who are here today an opportunity to make opening comments, and without objection, after all of our subcommittee have been recognized, again I will recognize some of my distinguished colleagues from New York who have joined us today.

I would like to now yield to our ranking member, Ms. Bass, for opening comments you might have.

Ms. BASS. Thank you. Mr. Chairman, let me begin again by thanking you for holding this important hearing regarding Mr. Ostreicher. Allow me to express my deepest concern for Mr.

Ostreicher and his family, who have endured a great deal since his June 2011 detention.

As we are all aware, as of this Monday, Mr. Ostreicher has been held in detention for more than a year. And while he has only been preliminarily charged, what is clear is that his case continues to languish. There is also great concern over his physical and mental health which has become increasingly dire over the last several weeks.

It is reported that three different judges have been assigned to Mr. Ostreicher's case over the past year, and that there has been little, if any, meaningful progress toward opportunities to clear his name. The Congressional Research Service reports that nongovernmental groups suggest that more than 80 percent of prisoners in Bolivian prisons are awaiting sentencing. While the Bolivian justice system allows for up to 18 months before an individual is charged, it is my understanding that this is far from the norm and many cases far exceed this time frame. I hope the Bolivian justice system will move toward a fair, transparent and speedy trial.

Mrs. Ungar, I understand that your husband has grown increasingly frustrated with this process and at present has cut off ties with our people on the ground. I encourage you and your husband to keep channels of communication open so that our diplomatic efforts lead to a speedy and fair end to this very serious situation. Let me be clear. We have not forgotten your husband.

Mr. Chairman, with your permission I would like to submit for the record, a joint House-Senate letter by our fellow colleagues.

Mr. SMITH. Without objection, so ordered.

[The information referred to follows:]

Congress of the United States
Washington, DC 20510

May 29, 2012

General Freddy Barsatti Tudela
Chargé d'Affaires of the Embassy of Bolivia
3014 Massachusetts Avenue NW
Washington, D.C.

Dear General Barsatti:

We write to express our concern regarding an American citizen, Jacob Ostreicher, currently being detained in the Palmasolas prison in Santa Cruz, Bolivia. Mr. Ostreicher, a husband and father, is a constituent of ours from Brooklyn, New York. He joined a group of Swiss partners in an agriculture venture and traveled to Bolivia in 2010 to take over management duties. He was arrested on Friday, June 3, 2011, and in September, he was to be released on bail, but the judge subsequently and unfortunately revoked his decision. Since that time it appears that his health has deteriorated causing considerable concern for his physical well-being. Last month, Mr. Ostreicher began a hunger strike to protest what is a precarious and unjust situation.

In light of this, and in accordance with basic standards of due process and human rights, we respectfully request that the Government of Bolivia provide Mr. Ostreicher a fair opportunity to post bail and make every possible effort to guarantee a fair, transparent and prompt trial.

As you may be aware, Mr. Ostreicher's detention is related to accusations of illegal profiting and association with criminal organizations. We understand that Mr. Ostreicher was preliminarily charged on June 4, 2011, and initially detained in a temporary holding facility at the Santa Cruz offices of the federal counternarcotics police. In accordance with a June 4 judicial decision, Mr. Ostreicher was transferred to the Palmasolas prison in Santa Cruz. It is our understanding that the United States Department of State has been in direct communication with the Bolivian government regarding Mr. Ostreicher's case and we are appreciative of this continued dialogue. While we remain appreciative of the access the Government of Bolivia has provided American State Department officials, it is evident that Mr. Ostreicher's health has deteriorated over time and that bail, in anticipation of a speedy trial, is warranted in this case.

Thank you for your attention to this important matter.

Sincerely,

Charles E. Schumer
United States Senator

Kirsten E. Gillibrand
United States Senator

Jerrold Nadler
United States Representative

Nydia Velázquez
United States Representative

Ms. BASS. This letter calls upon the Bolivian Government to provide the opportunity for Mr. Ostreicher to post bail and to afford him due process under Bolivian international law standards. I quote from the letter, signed by my colleagues from New York, Representatives Nadler and Velázquez and Senators Schumer and Gillebrand:

> "As you may be aware, Mr. Ostreicher's detention is related to accusations of illegal profiting and association with criminal organizations. We understand that Mr. Ostreicher was preliminarily charged on June 4, 2011, and initially detained in a temporary holding facility at the Santa Cruz offices of the Federal counternarcotics police. In accordance with the June 4 judicial decision, Mr. Ostreicher was transferred to the Palmasola prison in Santa Cruz. It is our understanding that the United States Department of State has been in direct communication with the Bolivian Government regarding Mr. Ostreicher's case, and we are appreciative of this continued dialogue. While we remain appreciative of the access the Government of Bolivia has provided American State Department officials, it is evident Mr. Ostreicher's health has deteriorated over time and that bail in anticipation of a speedy trial is warranted in this case."

Mr. Ostreicher's case appears fraught with inconsistencies, lack of transparency and other very concerning twists that have not permitted defense against various allegations. As my colleagues in the House and Senate have clearly called for, it is my sincere hope that the Bolivian Government moves expeditiously to set bail for Mr. Ostreicher, permits additional visits by private medical officials, and that a fair and speedy trial is initiated.

Due process is enshrined in several human rights treaties and covenants. In one such instrument, the International Covenant on Civil and Political Rights, which came into force in 1976, and for which Bolivia is a party, reads as follows:

> "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial at any other stage of the judicial proceedings and should occasion arise for execution of the judgment."

Under this specific circumstance and context, Bolivia should live up to its obligation under international law. It is my hope that as Mr. Ostreicher prepares for what I understand is a hearing on June 11, that these matters will be fully addressed and he will be set free to rejoin his family and put this ordeal behind him.

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

[The prepared statement of Ms. Bass follows:]

Opening Statement

Representative Karen Bass, June 6, 2012

The U.S. State Department's Inadequate Response to Human Rights Concerns in Bolivia: The Case of American Jacob Ostreicher

Subcommittee on Africa, Global Health and Human Rights

Mr. Chairman, let me begin by thanking you for holding this important hearing regarding Mr. Jacob Ostreicher, a U.S. citizen and businessman held in custody for over 12 months.

Allow me to express my deepest concern for Mr. Ostreicher and his family who have endured a great deal since his June 2011 detention. As we are all well aware, as of this Monday, June 4, 2012, Mr. Ostreicher has been held in detention for more than a year and while he has only been preliminarily charged, what is clear is that his case continues to languish. There is also great concern over his physical and mental health, which has become increasingly dire over the last several weeks.

It is reported that three different judges have been assigned to Mr. Ostreicher's case over the past year and that there has been little if any meaningful progress toward opportunities to clear his name. The Congressional Research Service reports that non-governmental groups suggest that more than 80% of prisoners in Bolivian prisons are awaiting sentencing. While the Bolivian justice system allows for up to 18 months before an individual is charged, it is my understanding that this is far from the norm and many cases far exceed this timeframe. I hope the Bolivian justice system will move towards a fair, transparent and speedy trial.

I would like to offer my appreciation for the dutiful diplomatic work currently underway by our teams at the State Department and those in Bolivia, particularly Mr. Creamer our Chargé in Bolivia and Assistant Secretary for Western Hemisphere Affairs Ms. Jacobson.

Mrs. Unger, I understand that your husband has grown increasingly frustrated with this process and at present has cut off ties with our people on the ground. I encourage you and your husband to keep channels of communications open so that our diplomatic efforts lead to a speedy and fair end to this very serious situation. Let me be clear that we have not forgotten your husband. This hearing and State Department efforts are indications that the U.S. government is actively engaged.

Mr. Chairman, with your permission, I would like to submit for the record, a joint House-Senate letter by our fellow colleagues. This letter calls upon the Bolivian government to provide the opportunity for Mr. Ostreicher to post bail and to afford him due process under Bolivian and international law standards. I quote from the letter signed by New York Representatives Nadler and Velazquez and Senators Schumer and Gillibrand. I quote:

> *As you may be aware, Mr. Ostreicher's detention is related to accusations of illegal profiting and association with criminal organizations. We understand that Mr. Ostreicher was preliminarily charged on June 4, 2011, and initially detained in a temporary holding facility at the Santa Cruz offices of the federal counter-narcotics police. In accordance with a June 4 judicial decision, Mr. Ostreicher was transferred to the Palma-solas prison in Santa Cruz. It is our understanding that the United States Department of State has been in direct communication with the Bolivian government regarding Mr. Ostreicher's case and we are appreciative of this continued dialogue. While we remain appreciative of the access the Government of Bolivia has provided American State Department officials, it is evident that Mr. Ostreicher's health has deteriorated over time and that bail, in anticipation of a speedy trial, is warranted in this case.* End quote.

Mr. Ostreicher's case appears fraught with inconsistencies, lack of transparency and other very concerning twists that have not permitted defense against various allegations. As my colleagues in the House and Senate have clearly called for, it is my sincere hope that the Bolivian government moves expeditiously to set bail for Mr. Ostreicher, permits additional visits by private medical officials and that a fair and speedy trial is initiated.

While our justice system is far from perfect, in criminal cases similar to what we are discussing today, due process is afforded to all whom the State believes has committed a crime. Due process is enshrined in several human rights treaties and covenants. In one such instrument, the International Covenant for Civil and Political Rights, which came into force in 1976 and for which Bolivia is a party, reads as follows:

> *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.*

Under this specific circumstance and context, Bolivia should live up to its obligation under international law. It is my hope that as Mr. Ostreicher prepares for what I understand is a hearing on June 11th that these matters will be fully addressed and he will be set free to re-join his family and put this ordeal behind him.

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

Mr. SMITH. Thank you very much, Ms. Bass. And now we will turn to Mr. Turner, gentleman from New York.

Mr. TURNER. Chairman Smith, Ranking Member Bass, thank you for calling this hearing today. In my short time serving in the House, Chairman Smith, I have seen you as a model for advocacy on behalf of political justice around the world, and today is another good example. I would also like to thank Jacob's wife and daughter for testifying today. I can't imagine your anguish, and I applaud your courage. I also want to thank former FBI agent, Stephen Moore, who has had a distinguished career with the FBI both domestically and in some of the world's most dangerous places.

Here is what we know. Jacob Ostreicher, husband, father and grandfather, has been unlawfully imprisoned in Bolivia for nearly a year without being charged. He lives in a prison town where the guards monitor the exterior but internally there is no supervision, a condition which puts Jacob in fear for his life daily. He needs medical attention and has been repeatedly denied it. What we don't know is why he was denied his freedom by the same judge who had previously cleared him of any wrongdoing. What we don't know is what is being done by the State Department to resolve the issue and ensure Jacob's safe return to the United States and his family. What we don't know is what is meant by private discussions by the State Department. While these private discussions take place, Mr. Ostreicher remains in prison in subhuman conditions and without just cause.

According to the State Department's 2010 human rights report on Bolivia, I quote, "The principle human rights violations reported were killings and torture by security forces, harsh prison conditions, allegations of arbitrary arrests and detention, and ineffective, overburdened and corrupt judiciary." Does the State Department not believe its own report? Does it not think it is real? One would think that this quoted sentence, which appears at the very beginning of the report, this would be cause for alarm when an American is in prison for 1 day, let alone 1 year.

So I ask, when will the State Department reunite Jacob with his wife, his five children, his 11 grandchildren? This is not rhetorical. His family deserves a response, and I will work with the chairman and my colleagues together to get the answers they deserve.

Thank you. I yield back.

Mr. SMITH. Thank you very much, Mr. Turner. I would like to now yield, and thank him for joining us on the panel, Mr. Nadler.

Mr. NADLER. Thank you, Chairman Smith and Ranking Member Bass. I appreciate your holding this hearing today and allowing me to participate, though I am not a member of this committee.

I am here today out of great concern for my constituent, Jacob Ostreicher. Like me, Mr. Ostreicher's family, friends and his community in Brooklyn are very concerned about his situation. As you know, in June of last year, Mr. Ostreicher was arrested in Bolivia on allegations of money laundering and associating with criminal organizations. More than a year later, he is still being held in a Bolivian jail with no formal charges having been filed against him despite his insistence that he is innocent. Mr. Ostreicher is being held in a private cell in the Palmasola prison, a facility that is notoriously violent, according to reports. He has been active in advo-

cating for his cause through the news media, and several media reports regarding his situation have been released this year.

On May 25, Mr. Ostreicher was given the threat of a disciplinary penalty by prison authorities for reports that were released about the condition of the prison and media stories about his case that fostered "discontent among the prison population," as the penalty document puts it. The penalty could result in his movement to a more dangerous part of the prison for 15 days, and it potentially could be used against him in an upcoming hearing. This penalty has not yet been carried out and Mr. Ostreicher's lawyer is appealing it. The Bolivian authorities must know that the carrying out of this penalty would not be acceptable.

Since he was first imprisoned I have been in frequent contact with the State Department about the status of Mr. Ostreicher's case and his condition. The State Department has communicated with the Bolivian Government regarding his situation and to express the frustration of Mr. Ostreicher and our Government regarding his treatment. That work must continue until we see positive results. Last month, after meeting Mr. Ostreicher's wife, Miriam, I wrote a letter to Secretary of State Hillary Clinton asking for help communicating to the Bolivian Government the necessity of giving Mr. Ostreicher a reasonable opportunity to post bail and access to a swift trial. I have also written a letter with my colleagues in the House and Senate to the Bolivian Government asking for the same.

Bolivian law has its own standards that allow a prisoner to be held for 18 months on preliminary charges in a pretrial phase, if they think there is reasonable basis to believe that a crime was committed. However, holding someone for this long without a fair trial, or at the very least the opportunity for bail, violates basic standards of fairness and human rights. Mr. Ostreicher is entitled to a fair trial. He is entitled to see the evidence against him, to have the opportunity to present evidence in his own behalf and to have that case heard promptly and impartially. Our job will not be done until he has been accorded the full measure of the simple justice to which he and we are all entitled.

I especially am concerned about the frequent postponement of hearings in this case. Out of 15 judicial hearings scheduled for Mr. Ostreicher, only three have actually taken place. In addition, after a judge ordered Mr. Ostreicher freed on bail in September, the judge later reversed his position just before being promoted to another judicial position. Mr. Ostreicher has not been given another opportunity to post bail. A hearing regarding Mr. Ostreicher's eligibility for bail is currently scheduled for next week, June 11th.

I am here today in part to make sure the Bolivian Government is aware that our Government at a high level is calling for due process of law and a swift and fair trial for Mr. Ostreicher, and is keeping a very close watch on what is happening. Right now Mr. Ostreicher is on a hunger strike to protest his imprisonment. As a result, he is physically weak and his family is concerned about his health. His health and safety must continue to be monitored. We need everyone, Members of Congress, officials in the executive branch in the State Department and other interested parties to

keep their eyes on that prize and keep up the pressure on the Bolivian Government.

It is important for everyone to remember our goal, making sure Mr. Ostreicher is provided fair treatment and basic due process. They must be made to understand that we will not stand by and simply accept the treatment that he has received to date. Pressure must be applied to the Bolivian Government and its justice system to get this man and his family out of the terrible limbo they are in by ordering a speedy trial and a fair opportunity to be free on bail during this process. I hope this hearing will serve to do just that, to keep the pressure on the Bolivian Government and demonstrate how important Mr. Ostreicher and his situation are to important U.S. Government officials.

Chairman Smith and Ranking Member Bass, again I want to thank you both for holding this hearing and allowing me to take part. I yield back the balance of my time.

Mr. SMITH. Thank you, Mr. Nadler. I would like to now yield, with such time as you may consume, to Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman, Ranking Member, for holding this important hearing and for allowing me to participate.

Mr. Chairman, Jacob Ostreicher's case is a stark reminder of the importance of due process in our legal system. The right to a fair and speedy trial is a fundamental principle in American society. Our founders recognized that without this cornerstone of American law, the government could arrest and hold citizens indefinitely. It has now been 370 days since Jacob was originally arrested. Yet, he has not been charged. The prosecution has not even presented any evidence of his guilt. While, initially, Jacob was to be released on bail, that decision was revoked. The judges in the case have been removed and currently no judge is presiding.

Meanwhile, Jacob remains locked up at Palmasola prison in Santa Cruz, Bolivia. That notorious facility was designed to hold 1,000 prisoners, but is currently home to 3,500 people. Unlike U.S. facilities, this prison is essentially run by the prisoners. Guards provide food and make sure prisoners do not escape, but do nothing to maintain order within the prison's walls. Reports suggest that gangs control life inside the prison. At least once a month there is a suicide reported, and critics suggest many of these deaths may actually be murders. Jacob has undertaken a hunger strike to protest his unjust treatment, and there are now very real health concerns about his continued detention.

While Jacob's case presents important issues about how the United States protects its citizens abroad, we sometimes forget the human dimension to these cases. We should keep in mind Jacob is not only a businessman. He is also a Brooklyn native and a pillar in our local community. He is a devoted husband and the father of five children. He and his wife are blessed with 11 grandchildren. Today, I suspect we will hear testimony from his family, not only about the legal status of Jacob's case, but also about the type of man he is and what his family has endured throughout this ordeal.

Equally important, it is critical that we understand what the State Department is doing on behalf of the Ostreichers. Today, it is my hope that Jacob's family can share with us their experience of working with the State Department. I want to know what steps

the State Department has taken that have already been effective and, more importantly, what more can be done to ensure Jacob sees justice.

How the United States protects the rights of its citizens who are unjustly detained abroad goes to the core of our values as a nation. The way we respond to nations that ignore fundamental legal and human rights reflects on all of us. It is my hope that this hearing will bring additional attention to Jacob's case and illuminate what additional steps our Government can take in pursuing justice on his behalf.

Thank you, Mr. Chairman, and I yield back.

Mr. SMITH. Thank you, Ms. Velázquez, for your statement and for being here.

I would like to now invite to the witness table our three distinguished witnesses for this afternoon. And again I would note, the U.S. Department of State was invited. We will invite them again at any time they would like to come and give a presentation and accounting as to their advocacy or the lack thereof, but they have been invited and they failed to show.

Beginning first with Ms. Miriam Ungar who is the wife of Mr. Jacob Ostreicher, as we will learn from her testimony she has visited Mr. Ostreicher in Bolivia numerous times both prior to and after his arrest. She has gone from having a normal, happy life as a resident of Brooklyn, New York, to being a lead advocate for her husband in prison almost 4,000 miles away in a country with a different language, culture, and an incomprehensible disregard for fundamental human rights and legal due process. She is serving to help her husband maintain his physical well being and mental sanity in horrendous prison conditions, including assisting him to follow his observances as an Orthodox Jew. Ms. Ungar, your courage and your fidelity to your husband during this extraordinarily difficult ordeal are to be highly commended and we absolutely praise you for that, and it is truly a privilege to have you testify before the subcommittee today.

We will then hear from Chaya Weinberger, another courageous family member who is joining us this morning. Chaya Weinberger is the daughter of Mr. Ostreicher, of course, and that is why she is here. Ms. Weinberger is married and the mother of five small, beautiful children whose picture we will see during the course of her testimony. She is a resident of Lakewood, New Jersey, and I have had the honor of representing her.

Ms. Weinberger has also visited her father in the notorious Palmasola prison in Bolivia, and has attended several of his hearings. In addition to the pain of her father's unjust incarceration and the frustration with repeatedly postponed court hearings, Ms. Weinberger has the additional burden of trying to hide from her children the reason for their grandfather's extended absence. It was not easy for Ms. Weinberger to agree to testify at this hearing, but we are deeply appreciative for her willingness to do so on her father's behalf.

We will then hear from Mr. Steve Moore, who served as a special FBI agent and supervisory special agent 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 a Jewish community center. He spent several years on SWAT, was trained as a sniper and served as the undercover agent on a critical espionage investigation.

Mr. Moore was the case agent for the Los Angeles 9/11 investigation, and later chosen to supervise all al-Qaeda investigations for 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 a liaison and worked closely with the CIA and U.S. State Department in several countries, conducting investigations out of at least six U.S. Embassies. Mr. Moore also served as a term assistant legal attache at the U.S. Embassy in Nassau, Bahamas, during the summer of 2004.

In his retirement, Mr. Moore has voluntarily undertaken to use the skills and considerable extensive experience he has 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. In this capacity he went to Bolivia in early April 2012, to visit Mr. Ostreicher and to investigate his case.

So again, thank you, all three, and thank you, Mr. Moore, for your service to our country, which has been extraordinary.

Ms. Miriam Ungar, if you could begin.

STATEMENT OF MS. MIRIAM UNGAR, WIFE OF JACOB OSTREICHER

Ms. UNGAR. Good morning, Mr. Chairman, members of the committee. My name is Miriam Ungar and I am the wife of Jacob Ostreicher. Some members may think 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 that 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. I was 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.

Jacob went to Bolivia in December 2010 to take over management of a rice company. The first harvest under Jacob's management produced 50 million pounds of rice. This high volume was never previously produced in Bolivia by one company, and it was only 10 percent of the projected amount the company would produce in the next 3 years.

The Government proceeded to investigate the properties of the company and realized that one of the properties was previously owned by a man who lived in Bolivia for the past 15 years. This man was wanted in Brazil in the 1990s, but did not have a criminal record in Bolivia. Jacob had nothing to do with this man and

was not aware of his prior history. This was the excuse the prosecutors used to gain access to all the assets of the company and to then arrest Jacob on June 3, 2011.

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. Since Jacob had power of attorney from Andre Zolty for 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 was illegally obtained and resulted in illicit gains. The prosecutors knew this was not true. They had seen documentation previously proving that all the money invested in the business was cleared through the Central Bank of Bolivia.

The judge did not request proof of any of these allegations and 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 evidence must be submitted to a judge at the arraignment before an arrest can be made. Before being sent to Palmasola, Jacob was thrown into a holding cell and was kept there for 5 days.

After getting all the documents necessary to prove Jacob's innocence, I traveled to Bolivia to present the documents to the attorney we hired to defend Jacob. 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 we couldn't get a hearing scheduled because the transcript of the June 4 arraignment was not completed. Finally, a hearing was scheduled, not one but many. I will list them for you. September 9, September 14, September 23. This one actually commenced.

At this hearing, our lawyer presented documentation to prove that Jacob was not a flight risk. Bolivian law states that in order to be released on bail prior to trial, a prisoner should present proof of a family, a business and a domicile. In addition, the attorney presented documentation proving that the money invested in Bolivia was legally obtained. The money was sent from bank to bank, no cash. The lawyer also presented the origin of the money that was sent to Bolivia. Certified copies of all transfers were submitted to the court. The attorney also presented a letter from the Swiss Federal police that stated Andre Zolty was not under investigation in Switzerland. 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, and due to paperwork and procedural reasons Jacob had to stay in prison until they were completed. Six days later the judge revoked his decision, an unprecedented move in Bolivia. We appealed the judge's annulment. The appeal was finally heard on December 9, after a couple of more postponements. The appellate court ordered the judge to explain within 48 hours why he revoked his decision of release.

The scheduled hearings for this explanation were December 14, it was postponed, December 22, it was postponed. Finally, on January 4, 2012, 4 weeks after the appellate court ordered a hearing, the judge gave a reason for the revocation of his decision, and I

quote him, "I overstepped my boundaries by commenting on the evidence submitted." A few weeks later this judge was promoted to the appellate court. This meant we had to start over, file for a hearing again and submit the same documents all over again. More hearings were scheduled and postponed. January 16, suspended. January 25, suspended. February 24, suspended. March 12, hearing proceeds but is recessed for 1 week. March 21, suspended. March 29, suspended. April 2, the judge recuses himself from the case. May 15, hearing is suspended again. Our next hearing is now scheduled for June 11.

All of the excuses for the postponements were illegal. At every scheduled hearing we were required to notify the Minister of Government. At first, the Minister of Government didn't want to accept the notifications. This was the excuse they used to postpone some of the hearings. After we forcefully notified the Minister of Government of the scheduled hearings, they would postpone them with the excuse that they wanted to attend but were unable to. This is illegal under Bolivian law. A lift of detention hearing must proceed even if the notified parties are not present.

While all of these hearings were being postponed, on December 21, 2011, all 50 million pounds of rice in the facilities disappeared. It took several hundreds of trailer loads close to 3 weeks to remove this amount of rice from the storage facilities. Amazingly, no one in Bolivia knows where the rice is. Our lawyer requested an investigation. Arrest warrants were issued on January 9, 2012, for three people involved in this heist, one of whom was a government employee. To date, these people have not been found. No one in Bolivia is talking about the disappearance of 50 million pounds of rice worth more than $18 million. Three people guilty of theft, known by the government, cannot be found, yet Jacob, an innocent man, languishes in prison. Coincidentally, the 3-year ban on rice exports was lifted in March.

The ride to the courtroom by bus is 1 hour, and the bus is packed full and extremely hot. Once the inmates arrive in the courtroom they are stuffed into a holding cell in the subbasement of a courthouse and kept waiting for hours in extreme heat and without fresh air. The prisoners are kept in a cell until they are 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 wouldn't have to attend his own hearings. But this was not possible, as a prisoner must always be present. We were never told in advance that the hearing would be suspended. He went through this distress every single time.

It is horrific that Jacob has been in a prison for more than a year despite the fact that he has proven and a 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 these hearings. Moreover, just last week Jacob received a notification. A penalty was imposed on Jacob because he spoke to local media in Bolivia and the United States. He received a 15-day penalty. Penalties usually means the prisoners are moved to Chonchocorito, a prison where the worst criminals are sent, where death is a regular occurrence.

The devastation this has wrought on our parents, our children and our grandchildren is indescribable. How do you explain to 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 pounds. He is frail and weak, emaciated and dejected. Our attorney filed a request to the judge to transfer him to a hospital, but the judge is refusing to sign this request. Does our Government want to walk an innocent American citizen out of this prison or do they prefer to carry them 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. Our Government has failed to protect its citizen.

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

Mr. SMITH. Ms. Ungar, thank you so very much for your testimony and for the fervor and the passion that you bring as well as the very, very carefully articulated information. I think that is very helpful, and hopefully both the State Department and the officials in Bolivia are listening because this is the beginning not the end of this committee, this subcommittee's intervention. Had I, and I am sure others, known about this earlier we would have been on top of this. So thank you so much. Jacob would be very proud of the testimony you have provided.

Ms. UNGAR. Thank you.

Mr. SMITH. I would like to now ask Ms. Weinberger if she would proceed.

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

Ms. WEINBERGER. Good morning. Thank you, Chairman Smith, and the other members of the subcommittee for scheduling this hearing. A hearing like this has been long overdue, and I am very thankful that my father's case is finally getting the attention it deserves.

My name is Chaya Weinberger, and although I find it very difficult to speak about such a personal matter, I do so for my father, Jacob Ostreicher, who is an upstanding American citizen begging his country to intervene on his behalf. He, together with all those who love him and want him home are waiting. We are waiting to see the demonstration of liberty on which our country is based upon. We are anticipating seeing justice emerge. We are hoping that our country won't let us down. That the U.S. Government will do more than monitor the case, as the American Embassy in La Paz, Bolivia, has been telling us for the past 12 months. Monitoring is not enough. The situation has gone from bad to worse and we have not seen the State Department respond effectively.

My father is an innocent man. He has over 1,000 documents attesting to that. The Bolivians have not charged him with any crime, for there is no crime to charge him with. When his first hearing was scheduled many family members traveled to Bolivia to attend the hearing. They came from England, Canada, and the United States. The courtroom was filled to capacity with loved ones. The shock and devastation when the judge decided to postpone the hearing was evident on our faces. We were outraged that we would have to return home without actually attending the hearing. Several other family members traveled to Bolivia for the next scheduled hearing. That hearing was postponed as well. I had a hard time controlling my emotions and burst into uncontrollable tears. My father tried to console me but wasn't successful. I would have to travel back home because I left five little children, and I was distraught that I had to leave my father behind. This scenario repeated itself when I returned for a third time in March to attend yet another scheduled hearing.

In the meantime, my father is still sitting in the Palmasola prison, where he is clinging onto his sanity. He is on the verge of collapse both mentally and physically. On my third visit to the prison, he had changed so drastically that I could hardly recognize the gaunt skeleton of a man that faintly resembled my father, who had

always been so strong. During the span of 5 weeks, between my second and third visit, he had weakened so drastically and was so agitated that he could not longer focus on reading more than one paragraph at a time. He stared uncomprehending when I asked him a question, and appeared totally confused. I was very alarmed when I saw him shaking with his head and his eyes taking on a hazy, vacant look. I have not seen him since his hunger strike, which he began on April 15, and I cannot bear to imagine his present condition.

My father's lawyers have been urging the judge to sign an order that would grant him permission to be admitted into a hospital. The judge refuses to sign the order. The U.S. State Department and the U.S. Embassy tell us that my father first needs to be seen by the prison doctor. But there is no licensed doctor in prison. The doctor is a prisoner as the other prisoners are the guards and cooks. I am extremely anxious that my father's medical needs be taken care of; his situation is life threatening.

My father's lawyers tell us that they do not understand why no one in the U.S. Government is taking any drastic steps to secure his release. We do not understand it either. How can my father be allowed to suffer one more day in that misery? The American people are watching you now. They want to see how safe they really are. When innocent Americans are jailed abroad, will their country fight for her citizens, or will she abandon them in their time of need?

Chairman Smith and members of the subcommittee, we are tired. We are exhausted from months of appealing to various Members of Congress and other U.S. Government officials with no response. It has been a frustrating, painful year and we are at the end of our strength. We beg of you, Congress, and the U.S. State Department, to act now. Soon it may be too late. The only one who can get my father out of this nightmare is the U.S. Government, with the help of the Almighty.

There are many people heartbroken about my father's condition. He is not just my father. He is also a beloved husband, grandfather, uncle, brother and very devoted son and grandson. His many friends whom he has always helped are deeply concerned about his welfare and have him at the forefront of their hearts and minds. His entire extended family, who have missed him terribly throughout the year and especially during the recent holidays, ask about him constantly.

When will he be coming home? That is the question that my father's 97-year-old grandmother, who has unfortunately found out about his terrible situation, asks every day amid tears. His predicament weighs heavily on her heart, affecting her health. At this late stage in her life when she should be experiencing the joy of family and children, she is instead spending her days weeping for her imprisoned grandson.

My dear grandmother who is with us today, is a Holocaust survivor, and is completely devastated about her son's dire situation. She suffers in silence every day, for she cannot share her heartache with her elderly husband since he has a heart condition, and hearing that his son is in jail in faraway Bolivia for a crime he did not commit would destroy him. When he constantly asks about my fa-

ther, we are compelled to lie, telling him that only passport difficulties are preventing him from coming home. My grandmother prays every day that her son come home before he finds out.

My children are hurt. They assume that their grandfather is away on an extended business trip and believe that they are not as important to him as his business. They cannot be more wrong, but I cannot assuage their feelings by telling them the real reason their grandfather is away. They are traumatized enough. My 7-year-old niece told her mother that she already forgot what her grandfather looks like. Not only can we not tell the children about their grandfather's situation, but I cannot tell my father what the children are thinking. It would be so painful for him to hear that they are hurt and he could do nothing to help them.

We need him home. Every day that he is gone brings a new agony, a new question from our children as to his whereabouts. The grandchildren hear their parents conversing in hushed, scared voices, and they are confused. They are confused and hurting. Kids in school ask them many questions about their grandfather and they remain silent. They don't know what to say and neither do we.

Who can find words to explain this madness? Who can tell little children that their grandfather is being held hostage in a third world country for no reason at all? I cannot. And so I appeal to you, the Government of the country I have always loved, Let me tell my children and the world a different story, one that will show them the greatness of their homeland, an advocator of liberty. Let me tell them a story that has a happy ending. Let me tell them that their grandfather is finally coming home.

I would again like to thank the subcommittee for arranging this hearing especially Chairman Chris Smith, for being the first elected official to have his office meet with me as soon as he found out about this travesty of justice. Our community, family and friends will never forget that he brought my father's case to the forefront, and we will be forever grateful. Thank you for giving us hope.

[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 "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, Chairman Smith, and the other members of the Subcommittee for scheduling this hearing. A hearing like this has been long overdue, and I am thankful that my fathers' case is finally getting the attention it deserves.

My name is Chaya Weinberger, and although I find it difficult to speak about such a personal matter, I do so for my father, Jacob Ostreicher, who is an upstanding American citizen begging his country to intervene on his behalf. He, together with all those who love him and want him home are waiting. We are waiting to see the demonstration of liberty on which our country is based upon. We are anticipating seeing justice emerge. We are hoping that our country won't let us down. That the U.S. Government will do more than "monitor the case," as the American embassy in La Paz, Bolivia has been telling us for the past twelve months. Monitoring is not enough. Things have gone from bad to worse and we have not seen the State Department respond effectively.

My father is an innocent man. He has over 1000 documents attesting to that. The Bolivians have not charged him with any crime, for there is no crime to charge him with.

When his first hearing was scheduled ten family members travelled to Bolivia to attend the hearing. They came from England, Canada and the United States. The courtroom was filled to capacity with loved ones. The shock and devastation when the judge decided to postpone the hearing was evident on our faces. We were outraged that we would have to return home without actually attending the hearing. Several other family members travelled to Bolivia for the next scheduled hearing. That hearing was postponed as well. I had a hard time controlling my emotions and burst into uncontrollable tears. My father tried to console me but wasn't successful. I would have to travel back home because I left five little children and was distraught that I had to leave my father behind. This scenario repeated itself when I returned for a third time in March to attend yet another scheduled hearing.

In the meantime, my father is sitting in the notorious Palmasola prison, where he is clinging onto his sanity. He is on the verge of collapse, both mentally and physically. On my third visit to the prison, he had changed so drastically that I could hardly recognize the gaunt skeleton of a man that faintly resembled my father, who had always been so strong and vigorous. During the span of five weeks, between my second and third visit, he had weakened so drastically and was so agitated that he could no longer focus on reading more than one paragraph at a time. He stared, uncomprehending when I asked him a question, and appeared totally confused. I was very alarmed when I saw him shaking with his head and his eyes taking on a hazy, vacant look. I have not seen him since his hunger strike, which he began on April 15th and I cannot bear to imagine his present condition.

My father's lawyers have been urging the judge – the third judge assigned to my father's case – for over three weeks to sign an order that would grant him permission to be admitted into a hospital. The judge refuses to sign the order. The U.S. State Department and the U.S. Embassy tell us that my father first needs to be seen by the prison doctor. But there is no licensed doctor in the prison! The doctor is a prisoner, as other prisoners are the guards, cooks, and storekeepers.

I am extremely anxious that my father's medical needs be taken care of; his situation is life threatening.

My father's lawyers tell us that they do not understand why no one in the U.S. Government is taking any drastic steps to secure his release. We do not understand it either – how can my father be allowed to suffer one more day in that misery? **The American people are watching you now. They want to see how safe they really are. When innocent Americans are jailed abroad, will their country fight for her citizens, or will she abandon them in their time of need?**

Recently, the Bolivian market was flooded with rice. That rice was stolen from my father, who together with investors had invested millions into it and stood to eventually own a huge percent of the market. Because Bolivia is run by a president who controls every aspect of the economy, this was a tremendous threat to him. My father represented the American ideals of democracy and free markets, and I believe they hated him for it. With him now conveniently out of the picture, they are free to control the price of whatever they export without having to deal with competition. Moreover, "coincidentally," a six year ban in the country on exporting rice was lifted a month later.

Chairman Smith and Members of the Subcommittee, we are tired. We are exhausted from months of appealing to various Members of Congress and other U.S. Government officials with no response. It has been a frustrating, painful year and we are at the end of our strength. We beg of you, Congress, and the U.S. State Department to act now. Soon it may be too late. The only one who can get my father out of this nightmare is the U.S. Government, with the help of the Almighty.

There are many people heartbroken about my father's condition. He is not just my father – he is a beloved husband, grandfather, uncle, brother and devoted son and grandson. His many friends whom he has always helped are deeply concerned about his welfare and have his situation at the forefront of their hearts and minds. His entire extended family, who have missed him terribly during the recent holidays, ask about him constantly.

When will he be coming home? That is the question that my father's 97 year old grandmother, who has unfortunately found out about his terrible situation, asks every day amid tears. His predicament weighs on her heart, affecting her health. At this late stage in her life, when she should be experiencing the joy of family and children, she is instead spending her days weeping for her imprisoned grandson.

My father's father does not cry about his son, for he does not know about his predicament. We have not told him, for fear that the news would be too much for him to bear. He is 86 years old with a heart condition. Hearing that his son is in jail in faraway Bolivia for a crime he did not commit, would kill him. When he constantly asks about my father we are compelled to lie, telling him that only passport difficulties are preventing him from coming home. But it is only a matter of time before he will find out the truth. We hope our father comes home before it's too late.

My children are hurt. They assume that their grandfather is away on an extended business trip and believe that they are not as important to him as his business. They cannot be more wrong, but I cannot assuage their feelings by telling them the real reason their grandfather is away. They are traumatized enough. My 7 year old niece told her mother that she already forgot what her grandfather looks like. Not only can we not tell the kids about their grandfather's situation, but I cannot tell my father what the children are thinking. It would be too painful for him to hear that they are hurt, and he can do nothing to help them.

We need him home. Every day that he is gone brings a new agony, a new question from my children as to his whereabouts.

The grandchildren hear their parents conversing in hushed, scared voices, and they are confused. They are confused and hurting. Kids in school ask them many questions about their grandfather, and they remain silent. They don't know what to say, and neither do we. Who can find words to explain this madness? Who can tell little children that their grandfather is being held hostage in a third world country for no reason at all? I cannot. And so, I appeal to you, the government of the country I have always loved. Let me tell my children and the world a different story, one that will show them the greatness of their homeland, an advocator of liberty. Let me tell them a story that has a happy ending. Let me tell them that their grandfather is finally coming home.

I would again like to thank the Subcommittee for arranging this hearing, especially Chairman Chris Smith, for being the first elected official to have his office meet with me as soon as he found out about this travesty of justice. Our community, family and friends will never forget that he brought my father's case to the forefront, and we will be forever grateful. Thank you for giving us hope.

Mr. SMITH. Ms. Weinberger, thank you very much for your very eloquent and passionate testimony as well. Thank you so much.

Mr. Moore?

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

Mr. MOORE. Chairman Smith, Ranking Member Bass, I sincerely appreciate your efforts on this matter and for your interest in my observations on this. I am not being paid to be here today. I am not in any way, shape or form, an employee of the Ostreicher family. I don't do this for a living. I believe that accepting money for what I am doing would very likely devalue my opinion in some peoples' eyes. I have no motive here except that I seem to have found myself in retirement with a skill set and experiences which can help people, and I would like to do that.

I would like to take a few moments and peel off the polite diplomatic veneer of what is going on in Bolivia right now. It is so easy to say, well, this is a country going through their own judicial procedure, and therefore we have to allow this to go through. But in reality, there is no judicial procedure going on here. This is a state-sponsored kidnaping. In my position, the only stock I have in trade is my credibility. I was involved in the Amanda Knox case, and after her exoneration I got a lot of requests to become involved in cases. The first time I am wrong about a case is the last time I am of any value to anybody who is in Jacob's situation. It is crucial to me that I don't make a mistake.

I asked the family to give me all the documentation they had, all the court documents. I went to Bolivia. I spent 3 days with Jacob. I talked to members of the former Government of Bolivia, who were conveniently in prison. I talked to attorneys who represented the prisoners. I talked to prisoners, one of which asked me to smuggle out a video of him making a payment to a judge, and I tried. It was the unanimous, the unanimous point of every single person that there is no judicial procedure to occur.

These hearings that they talk about are happening for one reason and one reason only, there is no evidence. So if you have a hearing you are going to be exposed for having no evidence. I have looked at this case from every possible direction, every angle, and I admit to you that because it is such a complicated case, an initial look at it, a quick brief on a one-pager can make it look like, well, there could be smoke. There could be fire. I did 25 years in the FBI. I never lost a conviction when we brought somebody into court. There is no evidence that a crime occurred. First they are going to have to prove that a crime occurred, and then they are going to have to prove that this innocent man from New York had something to do with it.

This is as I say, simply a state-sponsored kidnaping. They are playing six degrees of separation with Jacob. I am sure you are familiar with how that works. If you took all the people I was acquainted with and everyone they were acquainted with, you could quickly get me to the President. With Jacob, they found that he had hired somebody who happened to know somebody who the Bolivians are saying was a drug dealer. Imagine that, somebody in Bolivia being a drug dealer.

One thing you should know about this prison is that there are no big-time drug dealers in it. You know why? Because they can afford to buy their way out. One prisoner I was talking to said it is a very democratic system because if you don't have money they don't charge you as much to get out. Jacob has a lot of money in their eyes. I interviewed an attorney, who was there to represent one of his clients, while I was at Palmasola. He told me that Jacob has four things going against him. Number one, he is an American. Number two, he is White. Number three, he is a Jew. And number four, he has money. This is an attorney. I asked him what Jacob should do and he said, pay as quickly as possible.

The State Department has heroically raised the issue over and over with the Government. Had I, when I was working kidnaping, raised the issue with the kidnappers, the family would not have been satisfied. The State Department has not held a single meeting for the purpose of discussing Jacob. Whenever they have discussed Jacob with the Bolivian Government it has been at a regularly scheduled meeting. They have never mentioned his name in public, not once.

I need to tell you that I worked at an Embassy for a short time. I worked out of Embassies on at least six different bombing cases, Jakarta, Karachi, Islamabad. The people of the State Department are by and large good people, many of them are brave. I can remember after the car bombing at the Embassy at Karachi, I worked with a regional security officer in Karachi and I couldn't help but notice that he still had scars and stitches in his face from the glass, and he was at the Embassy helping people get out of the country. They are good, good people, but they have a problem with their system.

The system is such that there is a disincentive for anybody in State to help an American. It works like this. Your annual performance appraisals and your general career track are determined by how cordial your relationship is with the host government. There is no box to check saying, have you gotten any Americans out of jail? All the boxes are about what you have done to get along with that country. They actually go and interview the people that you interact with in the host country. What do you think your performance appraisal is going to go if you anger that government, if you accuse them of things that they are doing? Your performance appraisal is going to tank and your next assignment is not going to be in Italy, which you had hoped, it is going to be in Sierra Leone. There is no incentive to help an American. There is a strong disincentive.

I speak to you as somebody who spent 20 years in the Federal Government doing what I thought were important things. Doesn't matter how important the thing is. There was a saying in the Bureau that some people used, I am not proud of it, but "big cases, big problems; small cases, small problems; no cases, no problems." In the Federal system, at least in the bureaucratic part of the Federal system, you are not rewarded for great deeds as much as you are penalized for mistakes and problems. The only sane career strategy is to avoid problems. The more great things you try to achieve, the more risk you have of stubbing your toe and ending up in Dakar and not Rome.

In a written statement to Congress last year, Secretary of State Hillary Clinton declared, "The State Department has no greater responsibility than the protection of U.S. citizens overseas, particularly when Americans find themselves in the custody of a foreign government facing an unfamiliar and at times unfair legal system." The State Department has no greater responsibility than protecting U.S. citizens overseas when they find themselves in a foreign government facing unfamiliar and at times unfair legal system.

If you were to ask my son today what his number one priority in life is he would say, I need to get classes set up for next semester. I need to get my car fixed. If I were to tell you by what I observe what his big priorities are, it would be working on that car and fixing his computer. Classes might not have much to do with it.

If you were to look at the State Department today, I would hazard to guess that protecting Americans in the custody of foreign governments from an unfamiliar and at times unfair legal system is not in their top 100. There is a reason for that. Protecting Americans who are unfairly charged contradicts and complicates and makes more difficult their actual, their de facto number one, two and every number through 100 priorities. I find no joy in saying these things. I admire the people in the State Department. I do not think they are evil people or uncaring people. But the fact is clear that the bureaucracy that they have established is not designed to help Americans and provides a disincentive.

When I was in the Bahamas as a legal attache, one of the first things that I was told was that my responsibility as the law enforcement representative of that Embassy was to maintain cordial relationships with the Bahamian police, with the Bermudan police. I covered from Bermuda to Grenada. My job was to stay friendly with these people. Fortunately, I never had to deal with an American unjustly incarcerated; usually they were nice enough to earn their way into jail. Usually it was people who had missed their boat and woke up after a bender in a Bahamian jail, or people who had gone too far away from the beach in search of prostitution or drugs, only to be set upon by gangs who were looking for Americans who are looking for prostitution or drugs. But it was clear that there was not an incentive for me to go to bat for Americans.

I think that it is crucial that we examine what is behind State Department actions. I was in Palmasola prison with Jacob for 3 days. I wanted to be there longer, but on the third day I was threatened and shaken down for money from the people that I was having to pay to protect me. As you have heard, Palmasola prison is basically a—here is Palmasola right now. That is the main drag in Palmasola. That is about the nicest section of town right there.

[Photograph.]

Mr. MOORE. The prisoners run the asylum. The guards do not come in except to conduct rollcalls, but if you pay you don't have to go to rollcall so it is a pointless exercise. Raw sewage runs through the street. There are stores throughout the place where you can buy meat, food, hardware, paint. This is all brought in by the guards because they take bribes.

That by the way is the cocaine area. It looks a lot like the garbage dump because they are colocated.

[Photograph.]

Mr. MOORE. There is a storefront there where you can buy cocaine. A dose of cocaine costs roughly half of what a Coca-Cola costs in the prison. Water costs a little bit less than cocaine. The food you eat is a daily bucket of gruel that is brought in, cooked by the prisoners at the kitchen area which is conveniently located with another dump so they don't have to throw the waste far away. But most people don't eat that because they can pay to have food brought in.

The prison is run not so much by an elected group as it is a cartel who has won power through killing other prisoners. There are roughly 20 suicides every year, and people have become very creative with their suicides, stabbing themselves in the back repeatedly at times. Internal discipline is handled by a group of people known as the Disciplina Interna. These are a group of thugs that are hired by the main group of leadership in the prison. They wear special shirts, and for convenience they are all lifers so that they have no outside motivation for betraying the people that they work for which guarantees that they are almost all murderers, serial murderers or serial rapists. I have the photographs that I have because I paid a serial rapist to take because he had paid a guard to get a camera into the prison. I was paying a gentleman, who had only murdered one person, to be my security, and he saw me interviewing members of the previous government and other members who he believed were innocent prisoners, and realized that I was not there as I had said, as Jacob's brother-in-law, and so he started demanding more money for my safety, and I was unable to return to the prison.

There is prostitution openly in the prison because they have a women's prison there, and for $1 American money the women are allowed to come into the prison at night, or I am sorry, all during the day.

The State Department's lack of assistance for Americans overseas is not simply the case with Jacob. It has been the case of every situation I work for. While I do not speak and do not purport to speak for the Knox family, I watched for 4 years as the Ambassador and the United States Embassy in Italy watched essentially a kangaroo trial, and watched as a 20-year-old American woman was sentenced essentially to life in prison, and did nothing.

The State Department has claimed, or has hidden, really, behind the fact that they need to allow the host government's judicial system to take its course. I agree with that. The vast majority of Americans who are in prison overseas have earned their way there. I am not advocating for them. I don't think it is wrong that Americans are in prison overseas. I arrested almost all Americans. I have no bias in that direction. However, the innocent ones have to be looked after. And if you tell me that you have to wait for the judicial system to go through the motions, I get it, if you are in England, if you are in Germany, if you are in Japan. But if you are in Bolivia where the State Department has already put in writing that there is hardly a judicial system, I mean the closest thing it looks like is Al Capone's judicial system. Money has to go up for things to happen and money buys positions for people. That the United States Government would hide behind the fact that this is

a legitimate, judicial process is almost offensive. They are on one hand saying that this is corrupt and horrible, and on the other hand they are saying, but it is good enough for us. This encourages the Bolivian Government, because what you accept you encourage.

There is a law I am sure you are aware of, Title 22 Section 1732 of the United States Code. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reason for such imprisonment, and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war nor otherwise prohibited by law, as he may think necessary or proper to obtain or effectuate the release, and all of the facts and proceedings relative thereto as soon as practical, and that shall be communicated to Congress.

I hereby provide notification to this committee that I am aware of an American in a prison, in my professional opinion, who is unjustly deprived of his liberty under the authority of a foreign government. As a 25-year veteran of the FBI familiar with the judicial processes overseas and in the United States, I testify here under oath that the imprisonment of Jacob Ostreicher appears by any reasonable standard to be wrongful, and every bit of evidence that I have obtained and reviewed supports this conclusion. I call upon the President and the State Department to act responsibly according to Title 22 of the United States Code. 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 "THE U.S. STATE DEPARTMENT'S INADEQUATE RESPONSE TO HUMAN RIGHTS CONCERNS IN BOLIVIA: THE CASE OF AMERICAN JACOB OSTREICHER"

JUNE 6, 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.

My name is Steve Moore and in 2008, I retired from the FBI after a 25 year career during which time I served as both a Special Agent and a Supervisory Special Agent. After the attacks of 9/11 I was put in charge of Al Qaeda investigations in Los Angeles and within a year I was asked to stand up an extra-territorial investigations squad in Los Angeles with the mandate to rapidly deploy to the site of any terrorist attack against the United States or its citizens or interests throughout Asia and Pakistan. During this assignment, I worked out of at least six U.S. embassies throughout Asia and Pakistan, and regularly briefed ambassadors, staff and host-country officials on the progress of the investigations. I worked closely with the State Department and CIA, and even investigated the car bombing of the U.S. Consulate at Karachi, Pakistan which resulted in the deaths of 12 people.

Following this assignment I took a short-term position as the Assistant Legal Attaché at the United States Embassy in Nassau, The Bahamas. The Legal Attaché to whom I reported was stationed approximately one thousand miles away in Bridgetown, Barbados. I served as the de facto Legal Attaché for the territory from Bermuda to Grenada. During this time I became very familiar with Embassy protocol, priorities, and strategies. As Legal Attaché for the Bahamas, I sat in on all high-level embassy meetings regarding security and safety of personnel, narcotics strategy and enforcement and most specifically, was responsible for dealing with host government law enforcement agencies regarding the arrest of Americans in the Bahamas and the other Caribbean islands within my jurisdiction.

After my retirement from the FBI, I was made aware of the Amanda Knox case; the American student studying in Italy who was wrongly accused and convicted of the murder and rape of a female roommate. For the next two years, I devoted much of my time to that case. During this investigation I interacted with the state department and had much opportunity to witness their involvement or lack of same in her case. My personal opinion (and I am not representing Amanda Knox or her family) is that the State Department's inaction was inexcusable.

After the reversal of Amanda's conviction and exoneration by an Italian appeals court (after she spent four years in prison), I was contacted by the Ostreicher family and asked to review Jacob's case. I think it is germane to explain that in the cases which I have worked involving Americans wrongly incarcerated overseas, I have not requested or accepted a fee. Only in the Ostreicher case have I even been compensated for expenses. To put it candidly, I am not in these cases for the money. I am here simply because I have become aware of the surprising number of Americans who have been wrongly accused and/or convicted overseas, and I have a unique skill set and experience base with which to help people who have no way of helping themselves. (I should also say that it is my belief that 95% of the Americans incarcerated in foreign prisons have earned their way there. I am not here to plead their cases.)

I am not being paid to testify here today. I am not in the service of the Ostreicher family in any way. I am acutely aware that my only stock in trade is my veracity. Accepting money for providing a professional opinion devalues that opinion in some people's eyes and that is a risk I am unwilling to take. I realize that if I ever mistakenly advocate for a person who is actually guilty of a crime, I will have no future value to those who have been wrongly convicted. I have been contacted by at least half a dozen individuals and groups, asking for my involvement in their particular cases. I have taken on only those where the individual is demonstratively and provably innocent and has no other recourse.

Jacob Ostreicher is one of those few people. I have seen all the Bolivian's self-described "evidence" against him, and I have seen the evidence which supports his innocence. In Jacob's case there is a complete absence of any concrete, tangible evidence on even a microscopic scale which would indicate that he had in any way shape or form participated in a crime in Bolivia. Nor is there even evidence that a crime has even been committed. The entire "prosecution" against Mr. Ostreicher has been a form of the game "Six degrees of separation," a game by which in six sets of acquaintances, anyone in the United States can be connected to anyone else. The Bolivian case, brought to its most basic elements is simply this: Jacob Ostreicher hired someone to buy land for his company. That person knew someone who years before had been accused of drug dealing. Jacob had money. Therefore, Jacob was a drug money

launderer. In the Knox case, we had rooms full of tainted and fabricated evidence to argue. But in the Ostreicher case, we have no valid evidence to even argue against.

My investigation in Bolivia included the interview of attorneys actively involved in "advocating" for their clients in Palmasola Prison, as well as members of the former government who are now in prison in Bolivia for unstated and uncharged crimes, as well as other prisoners, at least one of which asked me to smuggle a video out of the prison showing him making a cash payment to a Bolivian judge. One prominent attorney told me, and I quote: "Jacob is in this prison for four reasons: One; he is an American. Two; he is white. Three; he is Jewish, and Four; he has money."

The State Department, for their part, have simply watched and "raised the issue" with the Bolivian government. One can only imagine the fear that strikes in the heart of Evo Morales. The embassy seems to be relying on the validity and fairness of the Bolivian justice system, saying that they do not have the right to interfere in a country's legitimate justice system. However, Bolivia's system is neither just nor is it legitimate. It is inconceivable that the State Department in Bolivia is unaware of the total corruption of the "Justice System." Yet, they use its legitimacy as their excuse not to act.

Without going into intricate detail in my opening statement, I've will say simply that the Morales socialist regime has taken the Al Capone model of government and perfected it. The Bolivian judicial system is best described as a pyramid scheme where each political appointee must buy his or her appointment, and then continue to make ongoing payments to keep their position. The people at the top of the pyramid make the most money, and the people at the bottom of the pyramid are the lowly prosecutors. The money for all the payments they send toward the pointy end of the pyramid, of course originates with the accused; which makes it crucial that those with money are accused regularly. Charging only the poor is a sure way to lose your job.

Trials are not so much held as purchased in Bolivia. If you do not pay for trial you will not receive the trial. You may stay in prison for three years under Bolivian law without being charged. And then a series of canceled hearings can keep you imprisoned indefinitely after that. It is curious that in a country where most crimes involve drug trafficking, there are no, NO, major drug traffickers in prison. Simply, they can pay their way out.

What has happened to Jacob Ostreicher is little more than a state-sponsored kidnapping for ransom. In very simple terms, his capitalist success in growing more rice on one individually owned farm complex than the Bolivian government could manage in the entire country was about to embarrass the Morales government and the threat needed to be eliminated. What a

fabulous turn of fortune for the Bolivians that not only could they solve their political problem, and at the same time potentially infuse the justice "system" with a significant windfall.

I spent three days with Jacob in the Palmasola Prison in Bolivia. Palmasola is a Kafka-esque nightmare. It is Lord of the flies on crack cocaine – – literally. In a move as incomprehensible as it is irresponsible, the Bolivian government has ceded control of the day-to-day operation of the prison—to the prisoners. This enlightened philosophy has resulted in a prison completely run by a group of hard-core violent criminals who actually earned their way into the prison. (History teaches that it is very important to put enough real criminals into a Gulag to establish its legitimacy). The prison is run by a council of prisoners who were not so much elected as they were the winners of a turf war. These "leaders" provide lodging, food and "order" for the prisoners—at least for those prisoners who have money to pay for it. Prisoners are not issued cells; new prisoners have to rent or buy their own cells. If they do not have money to rent or buy quarters, they sleep outside in the sewage. If a prisoner does not have money to buy protection, he is at the mercy of any other prisoner with a desire for their blanket, or any person with a grudge or mental issue, and is therefore in great physical danger.

If a prisoner does not have enough money for food, he must eat the gruel provided by the prison daily, the greasy, soupy mixture of vegetables and questionable meat which is created in the prison kitchen/garbage dump. I'm not making this up. Sewage runs through open channels on every street, and yes I said street. Palmasola Prison is a squalid village of small neighborhoods all within an approximately two square acre tract of swampy and uneven land surrounded by 20 foot concrete walls topped with concertina wire. There are small stores within the walls where beverages can be bought and cocaine is also sold openly through a storefront. The price of a single hit of cocaine, notches equally between the price of a bottle of water and a bottle of Coca-Cola, making water the only substance cheaper to purchase in Palmasola than Cocaine.

Gangs of security thugs called "Securita Interna" patrol the grounds and mete out "justice". They also serve as spies for the cartel of prisoners running Palmasola. The justice administered by the "Interna" ranges from severe beatings to confinement without food or water, to the occasional cut throat. Murders within the prison occur at the rate of about a dozen a year, and indeed, a body had been found the day before I arrived. All members of the Interna are required to be "lifers" so that they will be loyal to the prison hierarchy, and also ensuring that all enforcement personnel are immensely violent murderers and rapists. Into this you throw Jacob Ostreicher, a conservative Jew from New York who has never hurt a fly. The fact that Jacob survived this long is to me a miracle. But it is not a miracle which can be attributed to the State Department.

I need to say at this point that I have worked with the State Department extensively in my time with the FBI and I find individual members of the State Department to be, for the most part, wonderfully compassionate people, and in some cases brave and heroic people. I enjoyed my time working at the Embassy in Nassau and I admired the people there. However flaws in the diplomatic system were immediately apparent even to me.

In a written statement to congress last year, Secretary of State Clinton declared:

"The State Department has no greater responsibility than the protection of U.S. citizens overseas – particularly when Americans find themselves in the custody of a foreign government, facing an unfamiliar, and at times unfair, legal system."

However, there seems to be an endemic, massive and catastrophic disconnect between Secretary Clinton's rhetoric and the actions of the State Department in the field, which is tragically illustrated in the case of Jacob Ostreicher. Regardless of the comforting words, I have never seen the State Department go out on a limb for any person or persons except when they felt that it would be politically advantageous.

The first and foremost problem is the very real *disincentive* for career State Department executives to involve him or herself in the plight of a wrongly accused American. State Department diplomats are evaluated not on initiatives which have resulted in justice for the wrongly accused, but by the quality of their relationship(s) with the host government.

Not surprisingly, confronting and accusing a foreign government which is abusing an innocent American does not improve the relationship with that government, which means that it is a potential career ender. I know from a quarter century in the federal government that advancement depends little on great achievements and much more on lack of embarrassing failures. The number of successes listed in the resume of a federal executive is irrelevant if there is a single, noted failure. State Department careers are in some way analogous to the Hindu belief that if you're doing the right thing, each subsequent life you will be reincarnated in a more exalted position. A poor evaluation by host country diplomats is a career ender, or at best, will reroute the next transfer from Rome to Djibouti. The only sane career strategy is risk aversion. In this case, it appears that attempts are being made to appease Jacob and his family until Charges Creamer and Consular Section Chief Flachsbart transfer out.

One of the first briefings I received as an embassy staffer was to advise me that my main responsibility was maintaining cordial relationships with host country law enforcement organizations. I quickly learned that advocating for an American arrested in The Bahamas was something that would not help in maintaining a cordial relationship with Bahamian law

enforcement. Fortunately for me this never became a serious problem, because inevitably, the US citizens arrested by the Bahamian authorities during their cruise ship stops in Nassau, were invariably engaged in what the embassy called "stupid American tricks." Usually it was going too far off the beaten track in search of prostitution or drugs and falling afoul of gangs of criminals who lived off the Americans in search of vices. Usually, the victim would be lured to an alley where they were relieved of their money, their consciousness and their recent memory. Others simply woke up from a drinking binge in a Bahamian jail, hours after their ship had sailed. But still, the message was clear, advocating for arrested Americans was not a career builder.

According to the embassy website, Charges d'affaires John Creamer in Bolivia has conducted extensive, admirable attempts to improve relations with the Bolivian government, including string quartets brought to Bolivia to tour, education initiatives, soccer games between the embassy and a Bolivian team, even participation in Bolivian indigenous celebrations. However, nothing concrete has ever been ventured in the name of Jacob Ostreicher. Jacob is not mentioned on the website, and it begs the question of embassy priorities.

As an example of what I consider egregiously bad and disingenuous behavior by the Bolivian embassy happened recently. Jacob Ostreicher is now on the seventh week of a hunger strike and should be hospitalized. However, the US Embassy has said that they will not pressure the Bolivians to get Jacob into a hospital until he sees the prison doctor. It was quite a while before they would acknowledge that there is no such thing as a prison doctor at Palmasola. Yet they still require that Jacob see a person in the facility for a medical evaluation prior to their recommendation. I realize that there may be a diplomatic reason behind it but in this case common sense has to at least outweigh that silliness. I have seen the medical facilities at the prison, and would prefer to remain in my own cell and suffer to contracting whatever extra illnesses I might contract in the "care" of the pseudo medical personnel in the prison. Because Jacob will not subject himself to amateur medical care in the prison, he has now been deemed by the State Department to be "uncooperative," and Kathryn Flachsbart, Consular Section Chief decries his lack of cooperation because he has expressed his disappointment and anger at his feeling of abandonment. This is an obscene Catch-22. "We are not going to do anything for you and if you get angry about it we will use that as justification for not doing anything else for you."

The State Department's lack of assistance for wrongly incarcerated Americans is more than a joke; it's a sick joke because just about every American traveling overseas believes that if they are wrongly arrested, the U.S. government will come to their aid. Yesterday, I posed a question to a former Los Angeles Times crime reporter as to what would happen if he was arrested on

trumped-up charges in a foreign country. His answer? "The State Department would get me out."

Thank you for your examination of this issue. I have found in the cases I have worked that innocence is rarely enough. The court of final appeal is almost always the free press of the United States and the elected representatives who take up their cause. YOU are Jacob's last hope.

Mr. SMITH. Mr. Moore, thank you so very much, especially, I think, your point in citing Title 22. We will convey that to the President and to the Secretary of State in hopes that they will act.

And let me just ask a few opening questions if I could, and again thank you for underscoring, and I hope the press takes note of this as well, that you are doing this pro bono. This is something that you are absolutely convinced is a gross miscarriage of justice. That an innocent man is being not only incarcerated but his very life is in danger, and we need to be proactive and advocate rather than merely monitor the situation, again whatever that means.

Mr. MOORE. Mr. Smith, I just wanted to add one thing——

Mr. SMITH. Yes, please.

Mr. MOORE [continuing]. To add to your statement there. The biggest threat to Mr. Ostreicher right now is not a lingering, slow death from starvation. It is a quick, unexpected death at the hands of prisoners.

Mr. SMITH. Thank you so much for that sense of extreme urgency that we need to all be aware of both this side of Washington, that is to say the Congress, as well as the executive branch.

Let me ask a few questions if I could, beginning first with Ms. Ungar. If you could just tell us when the last time you spoke with your husband, and again just a quick update on his current state of health. If you could also tell us, with regards to the Embassy, in your view, you did speak to this in your testimony, but just to make it very clear, what role that the Embassy has taken. Has it been an advocacy? A moment ago we heard from Mr. Moore that not a single meeting has been undertaken for Jacob. It may have come up in larger venues, but not a single public word. And I want to know if that is in country, in Bolivia, as well as in the United States. Has the State Department uttered a single word?

I think your point, Mr. Moore, about the no greater responsibility, that Secretary of State Hillary Clinton stated, and very eloquently stated, those words become meaningless if they are not applied in a real-world setting of Jacob Ostreicher.

So if you could, what has been said, and again, where has the Embassy been?

Ms. UNGAR. First, I spoke to Jacob yesterday. He was unable to carry on a long conversation. He did not have the energy for that. He is starting to become forgetful. He doesn't remember the things he has told me. He doesn't remember anything from the day before. I am very concerned about his health, and it is deteriorating at a much more rapid rate since he has been on this hunger strike for almost 7 weeks.

As far as the Embassy is concerned, I don't believe that they have done anything for Jacob specifically. They have raised the case and they have said they monitor the case. Raising the case means if they happen to have a meeting with the Foreign Minister on another issue, they will happen to mention Jacob's name. I think that is insufficient and ineffective and very disappointing and very frustrating. And I am sure that the State Department does not need me to tell them what it is that they can do. I am sure that they know what they can do, and that there are things that our Government can do to help Jacob, and our goal is to bring him home.

Our goal is not to get him out on bail where he cannot come home, because the fact remains that he was imprisoned illegally. Stating that a country has a right to keep him for 18 months is if they have proven with sufficient evidence that he has done something wrong, and that has not happened. What they should do is release him and let him come home, and that is what we want the State Department to do. Thank you.

Mr. SMITH. Thank you. I think, Mr. Moore, you made a very interesting point when you said there is no evidence that even a crime has occurred, never mind whether or not Jacob Ostreicher was in any way complicit in a crime, but where is the crime?

Mr. MOORE. They haven't charged a crime. That is incredible.

Mr. SMITH. Let me just ask you with regards to, again Ms. Ungar, I understand that you, yourself, were threatened with criminal charges in Bolivia. Could you describe what happened?

Ms. UNGAR. Yes, of course. I was notified by a lawyer in September 2011 that there were charges brought against me, charges of obstruction of justice, and the reason was that I had given an interview to CNN via telephone. At the time I fled the country and I was afraid to go back there. I believe——

Mr. SMITH. Wait. For an interview with CNN you were threatened?

Ms. UNGAR. Yes. I was threatened.

Mr. SMITH. With prosecution?

Ms. UNGAR. Charges were actually started against me for obstruction of justice, but I left the country before I was able to be served. Thank you.

Mr. SMITH. Could you tell us what action the U.S. consular affairs representative took when your husband's hearing was postponed? Did they object? Did they advocate for an immediate resumption of that hearing or what?

Ms. UNGAR. No, they have not. They did attend every single hearing, quietly. They never objected to anything, and they don't give us any advice and they don't say anything. They are just monitoring. That is basically all they are doing.

Mr. SMITH. Charge d'Affaires John Creamer is in a photo that I saw and watched on a YouTube on June 3, 2012, and a Bolivian news article also carried it, and it referenced in his official capacity dancing in elaborate costume in a parade for a large street party. I find it extremely offensive that the head American representative in the country apparently did not consider it inappropriate to publicly celebrate when an innocent U.S. citizen is being held in a notorious prison in the same country. And anyone who has seen the picture, I think you will find it equally appalling.

Are you aware of the photo, I would say to anybody on the panel, have you seen it, and what does that say to you?

Ms. UNGAR. I am aware of the photo, and I was absolutely horrified by the message that this conveys to the Bolivian Government. It is okay to have an American citizen in a prison even though he is not guilty, and I will even dance with you on the street in your costume. I was slapped in the face when I saw that. Thank you.

Mr. SMITH. Let me ask if I could, Mr. Moore, perhaps, or any of you, where did the $18 million go?

Mr. MOORE. Are you talking about the rice?

Mr. SMITH. Yes.

Mr. MOORE. That really goes to the crux of the case. Evo Morales is very interested in proving that socialism is far superior to capitalism. To that end he has driven the capitalist airline in the country, AeroSur, out of business by charging it exorbitant fees for fuel while the company that he started is flourishing. The president of AeroSur by the way is now being charged with illicit enrichment, which by the way is the exact thing that they arrested Jacob for, and he is in hiding in Spain.

Jacob was going to create more rice in 3 years' time than the rest of the socialist government could produce in the rest of the country. Morales was controlling the price of rice this way, because if Bolivian rice ever got on the foreign market the price would change drastically and the Bolivians would have a problem. Jacob was going to destroy that scheme, and so they had to stop his rice production and that is what they did. It was just very convenient for them that it could also be a source of cash. They expected no one to say a word.

Mr. SMITH. I see. I think you, Mr. Moore, made a very, very important point, one that you have never lost a conviction. That you have throughout your entire career put the bad guys behind bars, never losing a conviction is, I think, an extraordinary record, and that includes Americans. You very carefully vetted this case before you took it and took this upon yourself, and again you are doing it pro bono.

How would you advise the State Department to separate cases where there is a truly, a crime has been committed? Do they do any kind of vetting of the substance of the issue so that an innocent man does not languish in a prison, now facing possible death because of their lack of advocacy? Is there any due diligence being done by U.S. State Department?

Mr. MOORE. Well, I do believe somewhere in the State Department, deep in the hallway, they do probably discuss whether the person is guilty or innocent. But if they just simply demanded rigorous compliance with a country's own judicial system, then they wouldn't have 90 percent of these problems. For instance, in the Knox case 90 percent of the evidence was simply falsified. Its admission was against European law, Italian law. If they had just held their feet to the fire on that she never would have been convicted in the first place.

I am not saying that governments can't arrest Americans on suspicion even if they are wrong. I get that. That is a fundamental right. But they are wrong in Jacob's case. And if we held their feet to the fire and said, you must charge this man, you must give him the right to answer the charges, and if we held them to reasonable behavior it doesn't matter to us as much if the person is guilty or innocent because we will force them to act lawfully. And in those cases where they say they have acted lawfully and they have essentially done a Stalin and created their own verdict, then we can intervene. Right now, Jacob should never have been arrested, but now that he has he should be immediately released on bail at least. It is offensive to me to say that because I know he is not guilty. But if we are not going to demand his release for any, unconditionally, then at least bail and let him come back here.

Mr. SMITH. Has Secretary Clinton called you, Ms. Ungar?

Ms. UNGAR. No, she has not.

Mr. SMITH. Or anybody from her office?

Ms. UNGAR. No. No, they have not.

Mr. SMITH. Let me ask you one final question, and I have others but would a trip, a congressional trip, to visit him be of help and assistance, if I were to put together such a trip?

Mr. MOORE. I think it would be extremely helpful for Jacob's safety. If the Bolivian Government believes that they could get away with harming him to quiet him, and that if by harming him this would all stop, they would. If they believe that the Government and the press are watching closely and if Jacob stubs his toe we are going to march into Morales' office, then his safety at least could be enhanced.

Mr. SMITH. Thank you. I again want to just observe that your comments, Mr. Moore, about the lack of advocacy and the fact that that is antithetical in the State Department upward mobility, if you will, comports absolutely with instances that I have faced over and over again. I have been in Congress 32 years, and while I always hope for the best, and as you pointed out so well, they are very bright people, very good people, but it is not the way to advancement if you ruffle the feathers of people of the host country. Nowhere have I seen this more apparent than in the area of international child abduction.

I got involved with the David Goldman case and spent the better part of a year working on his case. And while the welfare and whereabouts, and the consular people in Brazil were extraordinary, empathetic, when it came to the higher levels, Assistant Secretary, Secretary of State, and even the President, they were AWOL, for want of a better word. Yes, there was a concern, maybe an empathy, but there was no real advocacy whatsoever with Lula, who was then the President of that country, to get David Goldman, his son, Sean, back to the United States and, frankly, back to New Jersey. There are in excess of 2,500 other American children who have been abducted, and we have done so little at the Department of State. I have a bill pending called the Sean and David Goldman International Child Abduction Prevention and Return Act that we are trying to bring forward to the House to give the President some real tools, and the Secretary of State, to combat this violation of Americans' human rights, and frankly, they could be doing so much of it already, administratively, they don't even need the bill. But we are trying to give them direction as well as a prescribed course of action. But this is shocking, but it is also par for the course. But that has to change and I do think your testimonies today have been game changers; extraordinary testimony if ever I have heard it.

I would like to now yield to Ms. Bass for any such time as she may consume.

Ms. BASS. Sure. Thank you, Mr. Chair. And I actually want to follow up on what you just said, in terms of the structural problems within the State Department, in your testimony. And I just wanted to ask this question on my behalf but also on my colleague, Congressman Nadler, who had to leave, is what do you think can be done? And again, I am specifically talking about this case, of course, but also you are raising the structural issue and you have

seen this many different times, so do you have any thoughts on that?

Mr. MOORE. I do have some thoughts on that. They are obviously not vague, or they are obviously not completely fleshed out. But to give you an analogy, in the FBI we had a problem at Waco when our tactical teams and our hostage negotiation teams were acting at loggerheads. They were opposed to each other essentially. And that seemed to work out well. And so what we had to do at that point was create a combined group whose number one goal was resolution of an issue, not resolution of an issue by a specific means. Now SWAT teams and hostage negotiators are on the same organization. I believe that there needs to be, because it is becoming such a big problem as the Congressman has pointed out, an organization within State that specifically advocates for Americans in those situations. Because there is nobody, and it is not in anybody's interest to do it. If there was a specific organization—it is kind of like putting internal affairs in the police. Somebody has to do it. They are not going to be liked, but somebody has to do that important role.

Ms. BASS. So in this specific case what do you think that the State Department should do? I mean I know that it is in the area of advocacy, obviously they should advocate, but specifically what would you suggest that we recommend them to do? There is a hearing coming up on June 11, so in the best of all worlds what would the State Department's intervention be?

Mr. MOORE. I am not going to give them specific instructions because they certainly know what is in their tool kit. They haven't opened the tool kit yet. I would say the number one thing they haven't done is put the lightest—what they have done so far is almost winking at the Bolivian Government and saying, we are going to make a show of appearing to object, but really we are friends and we are going to go out and dance at your festivals. If you look at their Web site all you see is literally dozens of photographs of Embassy personnel at functions, at concerts, at community areas, giving books to libraries. Nowhere is Jacob mentioned in the entire Web site.

Ms. BASS. It is appropriate for the State Department officials to attend the June 11 hearing? And I would imagine that they have not attended the previous hearings.

Ms. UNGAR. They have attended every hearing.

Ms. BASS. Oh, they have. But they have what?

Ms. UNGAR. Nothing.

Ms. BASS. They are monitoring it as you said.

Mr. SMITH. Would the gentlelady yield briefly?

Ms. BASS. Yes, sure.

Mr. SMITH. Would it be appropriate for us to be at the June 11 hearing?

Mr. MOORE. I think it would send a message. I think they would cancel the hearing.

Ms. UNGAR. They may do that anyway.

Mr. MOORE. Really it is kind of like asking somebody to come in and explain where the money is that is missing. They don't want to come to that meeting. They don't have evidence to present, so every single hearing is a delaying tactic.

Ms. BASS. So I wanted to also ask you some questions about the case. And you were making references to the Bolivian Government and trying to understand why this happened to begin with, and the missing rice and the missing money, and is the business continuing to function on its own? Why did his business partner have nothing, I mean there were no charges. He wasn't arrested. So in terms of—what was the motive?

Mr. MOORE. The business partner didn't go to Bolivia. That is why he wasn't arrested.

Ms. BASS. I see. Do you believe if he had gone to Bolivia he would have suffered the same fate?

Mr. MOORE. I do.

Ms. BASS. I see. And so what was the government's, what is behind it? I mean you mentioned the socialist Government of Bolivia. What do you think, they were trying to nationalize the farm? I mean what——

Mr. MOORE. I am trying to take a complicated subject and put it down into about 30 seconds. But Evo Morales' big issue right now is to prove that socialism is far superior to capitalism.

Ms. BASS. Understand.

Mr. MOORE. And so part of what he has been doing is trying to showcase different things that prove that. The profitability of a private airline was embarrassing to him so he had to eliminate it.

Ms. BASS. Has there been a lot of publicity about this case? In other words, holding him up to the public in Bolivia as this is a crime?

Mr. MOORE. No.

Ms. BASS. So they have not been covering this.

Mr. MOORE. It is not in their best interest.

Ms. BASS. Yes. Well, I mean when you mentioned that they have been looking for examples, I was just wondering if he had made this an example.

Mr. MOORE. This was a preemptive act, and frankly, this is how it happened. They were fairly unaware and unconcerned at the beginning because of the production levels that the farm was coming up with. What they didn't anticipate was these were just startups and they hadn't completely cultivated all the land. Jacob, at a certain point, went in and asked somebody to print bags for 500 million pounds of rice. That sent a shockwave throughout the agricultural community which got to the government, and they thought 500 million pounds of rice will rapidly destabilize our control of the rice market.

Ms. BASS. So were there other rice farmers that were, Bolivian rice farmers that also objected because they were concerned that the yield was so much? You know what I mean, in other words, it was competition?

Mr. MOORE. He was taking all the trucks, all the—he had so much rice that he was using almost all the infrastructure to process the rice, yes.

Ms. BASS. I see. And Ms. Ungar, did you want to say something?

Ms. UNGAR. I just wanted to clarify that it was 50 million pounds of rice, and it was——

Mr. MOORE. Oh, 50 million pounds. I am sorry.

Ms. UNGAR. There isn't one company in Bolivia that is able to produce that amount of rice.

Ms. BASS. I see. Yes, so the other companies could be coming into play in terms of this.

Ms. UNGAR. I don't believe that it was the other companies. Those are really small-time companies with very, very small volume, too small to feed Bolivia.

Ms. BASS. I see. And the final question I wanted to ask you is, you mentioned that by doing the CNN interview you were, well, they attempted to file charges. So you have been unable to go back to Bolivia because of this? Are you under threat of being arrested if you go back?

Ms. UNGAR. Yes, I did actually take the risk of going back to Bolivia because I couldn't stay away and leave him alone for such a long period of time. I tried to do it over holidays where there was celebrations in Bolivia, so by the time that they realized I was there I was already on my way home. But I cannot go back there. It is not safe for me to be there.

Ms. BASS. Okay.

Ms. UNGAR. And he is there all alone. There is no one there with him.

Ms. BASS. Right. I am very sorry. Thank you very much. I yield back.

Mr. SMITH. Thank you, Ms. Bass.

Mr. Turner?

Mr. TURNER. Thank you, Mr. Chairman. The plant and equipment, there was a $20 million investment of international money mostly came in here as well as the initial rice harvest. Bolivia has degenerated into some type of kleptocracy. If Jacob were to be found innocent, would they be obligated to return the plant, equipment, the rice? Does that now make this even far more complex and confound our efforts?

Ms. UNGAR. Well, the rice is gone so they can't return it. The equipment has been dismantled and the parts have disappeared, so there is no equipment.

Mr. TURNER. Disappeared.

Ms. UNGAR. And the land was confiscated, so there is nothing left.

Mr. TURNER. All right.

Mr. MOORE. And they are growing something else on the land.

Mr. TURNER. Coca?

Mr. MOORE. Probably.

Mr. TURNER. So would you say there is a major disincentive for everyone involved in this to adjudicate this properly and say he is innocent?

Ms. UNGAR. Yes.

Mr. TURNER. So if there is any light at the end of this tunnel it will be a diplomatic hardball and our State and executive branch are going to have to make uncompromising demands. So far we haven't seen any willingness to do that, is that fair?

Mr. MOORE. Yes.

Ms. UNGAR. Yes, it is.

Mr. TURNER. Do you see a path out of this?

Mr. MOORE. I think we might have some traction in this after July. I think the Chargé and the Consular Section Chief are both transferring out, and I am sure they both were trying to push this away until they went into their next reincarnation. And the new people will have to deal with it I would hope.

Mr. TURNER. Thank you. I yield back.

Mr. SMITH. Thank you, Mr. Turner. Ms. Bass, did you have a question?

Ms. BASS. Yes, just real quickly. You mentioned that they were growing something else. What are they growing?

Mr. MOORE. I talked to Jacob yesterday, and the allegations among the prisoners are that the Bolivian Government is rapidly seizing privately owned land and converting it to coca use, and he believes from what he has heard through the prisoner grapevine that his land has been converted to coca growing. It is a better product financially.

Mr. SMITH. Mr. Deutch?

Mr. DEUTCH. Thank you, Mr. Chairman. First, Ms. Ungar and Ms. Weinberger, your willingness to be here today to testify means an enormous amount to us, clearly to Jacob, and this horrific human rights abuse that continues is now front and center where it should be. Your family members, your community and we as well are grateful for your willingness to participate today, so thank you very much for being here.

Ms. UNGAR. Thank you.

Mr. DEUTCH. I would like to just go back and talk a bit about what communication, it is not clear to me what communication has taken place between the U.S. officials and the Bolivian Government. Has there been an exchange of correspondence? Have you been copied on any correspondence?

Ms. UNGAR. The Chargé has met with the Foreign Minister of Bolivia several times for other issues, and did raise Jacob's case. He also met the chief of the Embassy, Kate Flachsbart, also met with the Attorney General of Bolivia. At all times the meetings were not about Jacob, but they did raise the case, and that is all that was done. I don't get any information from the State Department, and unless I specifically ask, "Have you done something, what happened?" If I don't ask I don't get any information.

Mr. DEUTCH. What was the response from the Bolivian officials?

Ms. UNGAR. Every response is the same, we will look into it.

Mr. DEUTCH. Let me talk for a moment about the hunger strike. It is 7 weeks now that Jacob is on a hunger strike. Is there a response? Has there been a response from the Bolivians to his deteriorating condition? What has been the response to that?

Ms. UNGAR. No, Bolivians don't care if someone goes on a hunger strike, but the Americans do.

Mr. DEUTCH. I would like to point out something, and I would like to make a request to the chairman. I would like to point out it is little surprise that in a country whose leader, Evo Morales, has befriended some of the worst human rights abusers in the world in the Castros, in Ahmadinejad, that this kind of horrific situation could take place shouldn't be shocking, yet of course it is and certainly the direct impact that it has on you and your family makes it so.

I hope that rather than speculating about what is in the toolbox of the State Department, I mean I don't know, Mr. Chairman, whether the State Department was invited to participate today——

Mr. SMITH. Yes, they were. We asked repeatedly that they come here and testify and they adamantly refused. And they are welcome. They are welcome anytime.

Mr. DEUTCH. It seems to me that at the same time that we continue to press this issue and that we do everything we can to press this issue with the Bolivians, we do provide oversight to the State Department. And I would hope that we would have an opportunity to pursue in some greater detail whether, if it is appropriate here in open session, if there are tools in the toolbox that require classified discussions that we reach out to have those meetings as quickly as possible so that we understand the steps that can be taken and can encourage the State Department in the strongest possible terms to utilize them.

And I think the focus as we go forward clearly has to be on Jacob in this, again this just horrific situation. There is time for further discussions about the State Department and whether or not—Mr. Moore, I am not sure that I agree that there is a disincentive for professionals at the State Department to look the other way and not stand up for Americans. I am sure they would argue. We can have those discussions in future oversight hearings. Right now I want to do everything we can to schedule those meetings and to press, to know that everything that can be done is being done. And in the meantime, the fact that it is now 7 weeks into a hunger strike, and you described Jacob's condition, this is an issue that goes beyond this subcommittee and beyond the discussions taking place on Capitol Hill. There is a very serious abuse of human rights here, and the human rights community I hope will engage in a very profound and serious way as well even as we continue to do our work here. And again, I appreciate so much your willingness to be here and to speak up in this very powerful way.

Ms. UNGAR. Thank you.

Mr. DEUTCH. I yield back.

Mr. SMITH. Thank you, Mr. Deutch. Any further questions by the panels? Just as a conclude and perhaps, Mr. Moore, you might want to speak to this. I think it was you who said this that Jacob was seen as being an American, White, Jewish, and perhaps well off. I have worked for the last 30 years, more than 30 years, on combating anti-Semitism, and very often it is very thinly disguised but it is rampant throughout the entire world, including in the United States. It is getting worse. Just recently I chaired a hearing on the rising tide of anti-Semitic activity globally and it is, some pockets of the world obviously it has gotten demonstrably worse, but it is in South America without a doubt. And I am wondering if you have detected any sense of anti-Semitic behavior as to how the Government of Bolivia has mistreated Jacob?

Mr. MOORE. I think you can't discount it. Morales is very, very desperately trying to improve his relationship with Hugo Chavez over in Venezuela, and Venezuela recently invited Ahmadinejad to come visit. So anything he can do which would push his country toward that direction would help his status with Chavez.

Mr. SMITH. Appreciate it. Ms. Ungar?

Ms. UNGAR. I would like to make a comment on that too. At the arraignment which was on June 4, it was on the Sabbath, it is on a Saturday, and they wanted to move Jacob from the holding cell, which was in the FELCCN Building, into the courtroom, and they had to do that by car, and he begged them, please, please don't make me go by car. I am a religious Jew. I observe the Sabbath. And they dragged him and shoved him in the car saying, we don't care about religion.

Mr. SMITH. I appreciate that very much. Is there anything our distinguished panelists would like to say in closing? You certainly have covered Jacob's plight extraordinarily well.

Ms. UNGAR. I would like to say one more thing. That being that the 18 months is a violation of international law and a violation of human rights, it is coming up on June 21. But even though we get to that point, they will probably find something new to start investigating and keep him for an additional 18 months. And the reason I am mentioning this, because I have spoken to some members and the response that I received from some of the members is, let us wait and see what happens on Monday, on June 11. I have heard this for the past 12 months. Every time a hearing was scheduled, okay, let us wait for this one. Let us wait for this one. I don't want to hear let us wait for the coming one. We need to do action now. Our time is limited. Time is of the essence because we may not have who to bring home shortly. Thank you.

Mr. SMITH. Thank you. And that is the last word, eloquently stated, thank you. The hearing is adjourned.

Ms. UNGAR. Thank you.

[Whereupon, the hearing was adjourned at 11:51 a.m.]

APPENDIX

Material Submitted for the Hearing Record

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

June 1, 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, June 6, 2012
TIME:	10:00 a.m.
SUBJECT:	The U.S. State Department's Inadequate Response to Human Rights Concerns in Bolivia: The Case of American Jacob Ostreicher
WITNESSES:	Ms. Miriam Ungar Wife of Jacob Ostreicher Ms. Chaya Gitty Weinberger Daughter of Jacob Ostreicher Mr. Steve Moore Special Agent Federal Bureau of Investigations *(Retired)*

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

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

Day *Wednesday* Date *June 6, 2012* Room *2172 Rayburn*

Starting Time *10:00 a.m.* Ending Time *11:51 a.m.*

Recesses [*0*] (____to ____) (____to ____) (____to ____) (____to ____) (____to ____) (____to ____)

Presiding Member(s)

Rep. Chris Smith

Check all of the following that apply:

Open Session [✓]
Executive (closed) Session [ ]
Televised [✓]
Electronically Recorded (taped) [✓]
Stenographic Record [✓]

TITLE OF HEARING:

The U.S. State Department's Inadequate Response to Human Rights Concerns in Bolivia: The Case of American Jacob Ostreicher

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Chris Smith, Rep. Robert Turner, Rep. Karen Bass

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

Rep. Jerrold Nadler*, Rep. Nydia Velázquez*, Rep. Ted Deutch

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.)*

Prepared statement from Rep. Bass
Letter from Members of Congress submitted by Rep. Bass
Letter from Rep. Nadler submitted by Rep. Bass

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *11:51 a.m.*

Subcommittee Staff Director

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE KAREN BASS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

JUDICIARY COMMITTEE
SUBCOMMITTEES:
RANKING MEMBER
CONSTITUTION
INTELLECTUAL PROPERTY, COMPETITION, AND THE INTERNET

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEES:
HIGHWAYS AND TRANSIT
RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

ASSISTANT WHIP

Congress of the United States
House of Representatives
Washington, DC 20515

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May 21, 2012

The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Honorable Secretary Clinton:

Today I met with Miriam Unger, the wife of Jacob Ostreicher, a constituent from Borough Park, Brooklyn who has been held in a Bolivian prison for more than a year without being formally charged with a crime. Over the past year, at the request of community leaders and family members, I have requested frequent updates from the State Department regarding Mr. Ostreicher's condition and his case. While I appreciate the State Department's efforts thus far to communicate with the Bolivian government regarding his situation, I am troubled that he still has not had the opportunity to defend himself in a court of law.

Mr. Ostreicher has been accused of money laundering and maintains that he is innocent. It is my understanding that only three hearings out of the fifteen that were scheduled so far have actually been held. In addition, the judges have shifted three times, and there is currently no judge assigned to his case. In September 2011, one of these judges issued an opinion that Mr. Ostreicher should be let out on bail, only to reverse this decision soon afterwards. These conditions are preventing Mr. Ostreicher from receiving a fair hearing in court.

Mr. Ostreicher is being held in Palmosola Prison, a notoriously dangerous facility. He has been on a hunger strike since April 15th and is physically weak. His family is understandably very concerned about his well-being. I understand and respect the fact that Bolivia is a sovereign nation with its own legal policies and procedures, but I respectfully request that you directly contact your counterparts in the Bolivian government, and impress upon them the need for the court to hear Mr. Ostreicher's case so that a fair result can be attained.

Sincerely,

Jerrold Nadler

JERROLD NADLER
Member of Congress

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