

WRITTEN TESTIMONY OF YIMY VILLAGOMEZ MONTAÑO

**BEFORE THE "HOUSE COMMITTEE ON FOREIGN AFFAIRS, SUBCOMMITTEE
ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS"**

"SEEKING FREEDOM FOR AMERICAN TRAPPED IN BOLIVIAN PRISON"

AUGUST 1, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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