

1 STEPHANIE M. HINDS (CABN 154284)  
Acting United States Attorney

2 HALLIE HOFFMAN (CABN 210020)  
3 Chief, Criminal Division

4 ELISE LAPUNZINA (NYBN 2540730)  
Assistant United States Attorney

5 450 Golden Gate Ave., 11th Fl.  
6 San Francisco, California 94102-3495  
7 Telephone: (415) 436-6878  
8 Fax: (415) 436-7234  
9 Email: Elise.LaPunzina@usdoj.gov

10 CHRISTOPHER J. SMITH (VABN 75445)  
Associate Director

11 REBECCA A. HACISKI (DCBN 996656)  
Trial Attorney

12 Office of International Affairs  
13 Criminal Division  
14 U.S. Department of Justice  
15 1301 New York Avenue NW  
Washington, D.C. 20530  
Telephone: (202) 616-2534  
Fax: (202) 514-0080  
Email: Rebecca.Haciski@usdoj.gov

16 Attorneys for United States of America

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 IN THE MATTER OF THE EXTRADITION ) CASE NO. 3-19-71055 TSH  
21 OF ALEJANDRO TOLEDO MANRIQUE )  
22 ) RESPONSE TO MOTION TO DENY  
23 ) EXTRADITION FOR LACK OF PROBABLE  
24 ) CAUSE  
25 )  
26 )  
27 )  
28 )

TABLE OF CONTENTS

1

2 ARGUMENT .....2

3 I. LEGAL STANDARD.....2

4 II. TOLEDO’S CHALLENGE BASED ON WITNESS CREDIBILITY DOES NOT  
5 UNDERMINE PROBABLE CAUSE.....3

6 III. PERU’S EXTRADITION REQUEST AMPLY ESTABLISHES PROBABLE  
7 CAUSE THAT TOLEDO COMMITTED COLLUSION .....6

8 A. Toledo Received Bribe Money .....8

9 B. Peru’s Evidence Establishes that the Bribe Was Intended for Toledo.....9

10 C. Peru’s Evidence Establishes that Toledo Complied with the Bribe Agreement  
11 by Facilitating Odebrecht’s Success in the Highway Tender .....12

12 D. Peru’s Evidence Establishes that Toledo Was Involved in Ensuring that  
13 Odebrecht Paid the Bribe .....14

14 IV. PERU’S EXTRADITION REQUEST AMPLY ESTABLISHES PROBABLE  
15 CAUSE THAT TOLEDO COMMITTED MONEY LAUNDERING.....16

16 A. Peru’s Evidence Establishes that Toledo Gave Directions for Laundering the  
17 Money .....17

18 B. Peru’s Evidence Establishes that Toledo Received Some Bribe Proceeds.....19

19 C. Even Though Peru Has Located and Traced Additional Odebrecht Funds  
20 Since 2018, the Core Allegations Regarding the Money that Toledo  
21 Laundered Remain the Same .....21

22 V. TOLEDO’S EVIDENCE NOT ALREADY CONTAINED IN THE EXTRADITION  
23 DOCUMENTS FROM PERU IS INADMISSIBLE AND DOES NOT DEFEAT  
24 PROBABLE CAUSE.....23

25 VI. CONCLUSION.....24

26

27

28

TABLE OF AUTHORITIES

Federal Cases

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Artukovic v. Rison*,  
784 F.2d 1354 (9th Cir. 1986) ..... 3

*Barapind v. Enomoto*,  
400 F.3d 744 (9th Cir. 2005) ..... 5

*Bovio v. United States*,  
989 F.2d 255 (7th Cir. 1993) ..... 3, 5

*Caplan v. Vokes*,  
649 F.2d 1336 (9th Cir. 1981) ..... 2

*Charlton v. Kelly*,  
229 U.S. 447 (1913)..... 2

*Collins v. Loisel*,  
259 U.S. 309 (1922)..... 2, 3, 23

*Curreri v. Vice*,  
77 F.2d 130 (9th Cir. 1935) ..... 3

*Eain v. Wilkes*,  
641 F.2d 504 (7th Cir. 1981) ..... 4

*Emami v. U.S. Dist. Court for N. Dist.*,  
834 F.2d 1444 (9th Cir. 1987) ..... 3

*In re Extradition of Camelo-Grillo*,  
No. CV 16-9026 JVS, 2017 WL 2945715 (C.D. Cal. July 10, 2017) ..... 2

*In re Extradition of Lara Gutierrez*,  
No. 16-cv-05061, 2017 WL 8231237 (C.D. Cal. Feb. 22, 2017) ..... 5

*In re Extradition of Luna*,  
No. 16-XR-90095 NC, 2017 WL 1036732 (N.D. Cal. Mar. 17, 2017) ..... 5

*In re Extradition of Nava Gonzalez*,  
305 F. Supp. 2d 682 (S.D. Tex. 2004) ..... 8

*In re Extradition of Rodriguez*,  
No. CR 95-6007 MISC JW, 1995 WL 312099 (N.D. Cal. May 17, 1995) ..... 6

*In re Extradition of Rodriguez Ortiz*,  
444 F. Supp. 2d 876 (N.D. Ill. 2006) ..... 6

1 *In re Extradition of Sainez*,  
 2 No. 07-MJ-0177-JMA, 2008 WL 366135 (S.D. Cal. Feb. 8, 2008) ..... 8

3 *In re Extradition of Trinidad*,  
 4 754 F. Supp. 2d 1075 (N.D. Cal. 2010) ..... 2, 3, 23

5 *Luna v. O’Keefe*,  
 6 No. 17-CV-02129-LHK, 2018 WL 784783 (N.D. Cal. Feb. 8, 2018)..... 6

7 *Man-Seok Choe v. Torres*,  
 8 525 F.3d 733 (9th Cir. 2008) ..... 4

9 *Ornelas v. Ruiz*,  
 10 161 U.S. 502 (1896)..... 2

11 *Peroff v. Hylton*,  
 12 542 F.2d 1247 (4th Cir. 1976) ..... 8

13 *Quinn v. Robinson*,  
 14 783 F.2d 776 (9th Cir. 1986) ..... 2, 3, 4

15 *Sainez v. Venables*,  
 16 588 F.3d 713 (9th Cir. 2009) ..... 8

17 *Sakaguchi v. Kaulukukui*,  
 18 520 F.2d 726 (9th Cir. 1975) ..... 2, 6

19 *Santos v. Thomas*,  
 20 830 F.3d 987 (9th Cir. 2016) ..... 2, 4, 5, 23, 24

21 *Shapiro v. Ferrandina*,  
 22 478 F.2d 894 (2d Cir. 1973)..... 5

23 *United States v. Gourde*,  
 24 440 F.3d 1065 (9th Cir. 2006) ..... 2, 3

25 *United States v. Kin-Hong*,  
 26 110 F.3d 103 (1st Cir. 1997)..... 2

27 *United States v. Kollmar*,  
 28 No. 19MJ70677MAG1KAW, 2021 WL 179606 (N.D. Cal. Jan. 19, 2021) ..... 5, 6

*United States ex rel. Petrushansky v. Marasco*,  
 325 F.2d 562 (2d Cir. 1963)..... 23

*Zanazanian v. United States*,  
 729 F.2d 624 (9th Cir. 1984) ..... 3

Federal Statutes

18 U.S.C. § 3190..... 23

1 The United States of America, by the undersigned attorneys, in fulfilling its treaty obligations to  
2 Peru, respectfully submits this response to the motion filed by Alejandro Toledo Manrique (“Toledo”)  
3 requesting that the Court deny Peru’s request for his extradition for lack of probable cause (DE 170).  
4 The Court previously rejected Toledo’s other challenges to extradition (*see* DE 147), and it should  
5 likewise reject the instant one.

6 Peru seeks Toledo’s extradition to prosecute him on two charges: collusion, in violation of  
7 Section 384 of the Peruvian Criminal Code; and money laundering, in violation of Article 1 of Peruvian  
8 Act No. 27765.<sup>1</sup> *See* Req. at 6-18; Supp. Req. at 1562-73.<sup>2</sup> As the government has previously detailed  
9 (*see* DE 8 at 7-19), these charges are based on allegations that Toledo, while serving as the President of  
10 Peru, arranged to receive a \$35 million<sup>3</sup> bribe from Constructora Norberto Odebrecht S.A.  
11 (“Odebrecht”), which he directed to be laundered through various companies and off-shore accounts.  
12 Notably, as set forth in his motion, Toledo concedes that Odebrecht paid the alleged bribe, that the bribe  
13 proceeds were laundered, and that he received some of those laundered funds (albeit in the form of a  
14 loan). *See* DE 170 at 5, 16, 23-24. He argues, however, that it was not him, but rather his friend Josef  
15 Maiman (“Maiman”), who solicited, received, and laundered the bribe. *See id.*

16 In so doing, Toledo presents a speculative theory of defense that is properly tested in the courts  
17 of Peru and not in these extradition proceedings. By simply pointing the finger at Maiman, Toledo  
18 disregards the significant evidence presented by Peru in support of its request for his extradition—which  
19 includes not only prosecutors’ summaries of the evidence from the Peruvian case, but also some of the  
20 underlying evidence itself, including numerous witness statements; contracts; bank statements; other  
21 financial, corporate, and public records; and expert financial and accounting analysis—demonstrating  
22 that Toledo committed the charged crimes. This evidence amply supports a finding of probable cause,  
23

---

24  
25 <sup>1</sup> Peru initially also sought Toledo’s extradition for influence peddling, as an alternative charge  
to collusion, but it has since decided not to proceed on that charge. *See* DE 142-1 at 2.

26 <sup>2</sup> Peru’s extradition request is referred to herein as “Req.” with citations to the page numbers  
27 appearing at the top right of each page of the request. Peru’s supplement to the extradition request,  
which contains the *acusacion fiscal* (Peru’s formal charging document dated August 11, 2020), is  
referred to herein as “Supp. Req.” with similar citations.

28 <sup>3</sup> All monetary amounts included herein are in U.S. dollars unless otherwise indicated.

1 which is the only remaining finding this Court needs to make in order to certify Toledo’s extradition.  
 2 Accordingly, the Court should deny Toledo’s motion, and certify his extradition for the Secretary of  
 3 State’s decision on whether to surrender Toledo to stand trial on the charges in Peru.

#### 4 **ARGUMENT**

##### 5 **I. LEGAL STANDARD**

6 An extradition hearing is not a criminal proceeding, but it involves a “preliminary examination  
 7 of the evidence” akin to a grand jury investigation or a preliminary hearing under Rule 5.1 of the Federal  
 8 Rules of Criminal Procedure. *Santos v. Thomas*, 830 F.3d 987, 991 (9th Cir. 2016) (en banc) (citation  
 9 omitted); *see also, e.g., Charlton v. Kelly*, 229 U.S. 447, 461-62 (1913). “The function of the  
 10 committing magistrate is to determine whether there is competent evidence to justify holding the  
 11 accused to await trial, and not to determine whether the evidence is sufficient to justify a conviction.”  
 12 *Collins v. Loisel*, 259 U.S. 309, 316 (1922). This “narrow function” requires the magistrate simply to  
 13 “indicat[e] those items of submitted evidence on which the decision to certify extradition is based.”  
 14 *Quinn v. Robinson*, 783 F.2d 776, 791 (9th Cir. 1986) (quoting *Caplan v. Vokes*, 649 F.2d 1336, 1342  
 15 n.10 (9th Cir. 1981)).

16 In this way, “[t]he magistrate’s function is to determine whether there is ‘any’ evidence  
 17 sufficient to establish reasonable or probable cause.” *Sakaguchi v. Kaulukukui*, 520 F.2d 726, 730 (9th  
 18 Cir. 1975). Probable cause is “proof furnishing good reason to believe that the crime alleged has been  
 19 committed by the person charged with having committed it.” *Ornelas v. Ruiz*, 161 U.S. 502, 512 (1896)  
 20 (citation omitted). It is established where “there is evidence sufficient to cause a person of ordinary  
 21 prudence and caution to conscientiously entertain a reasonable belief of the accused’s guilt.” *In re*  
 22 *Extradition of Trinidad*, 754 F. Supp. 2d 1075, 1081 (N.D. Cal. 2010) (internal quotation marks and  
 23 citation omitted).

24 While the probable-cause standard is by no means “toothless,” it “does not even require that the  
 25 government make its showing by a preponderance of the evidence.” *United States v. Kin-Hong*, 110  
 26 F.3d 103, 120-21 (1st Cir. 1997); *see also United States v. Gourde*, 440 F.3d 1065, 1069 (9th Cir. 2006)  
 27 (en banc). Rather, the evidence must establish a “fair probability” that the fugitive committed the  
 28 charged crime. *In re Extradition of Camelo-Grillo*, No. CV 16-9026 JVS, 2017 WL 2945715, at \*6

1 (C.D. Cal. July 10, 2017) (quoting *Gourde*, 440 F.3d at 1069). Probable cause thus exists even where  
 2 “the evidence introduced . . . is not overwhelming.” *Quinn*, 783 F.2d at 815. While “[c]onclusory  
 3 statements alone” will not suffice, all that is required is “sufficient evidence from which an inference  
 4 [may] be drawn” that the elements of the foreign crime have been met. *Trinidad*, 754 F. Supp. 2d at  
 5 1082.

6 A finding of probable cause in an extradition case, may be, and typically is, based entirely on the  
 7 authenticated documentary evidence and information provided by the requesting country. *See, e.g.*,  
 8 *Collins*, 259 U.S. at 317; *Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986). A country requesting  
 9 extradition is “not required to produce all its evidence at an extradition hearing.” *Quinn*, 783 F.2d at  
 10 815. Otherwise,

11 the foreign government[,] though entitled by the terms of the treaty to the extradition of  
 12 the accused for the purpose of a trial where the crime was committed, would be  
 13 compelled to go into a full trial on the merits in a foreign country, under all the  
 14 disadvantages of such a situation, and could not obtain extradition until after it had  
 procured a conviction of the accused upon a full and substantial trial here. This would be  
 in plain contravention of the intent and meaning of the extradition treaties.

15 *Collins*, 259 U.S. at 316 (citation omitted). Indeed, a statement by the foreign prosecutor or other  
 16 authority summarizing the evidence in the foreign case alone may suffice. *See, e.g., Emami v. U.S. Dist.*  
 17 *Court for N. Dist.*, 834 F.2d 1444, 1450-52 (9th Cir. 1987) (German prosecutor’s statement sufficient to  
 18 establish probable cause); *Bovio v. United States*, 989 F.2d 255, 259-61 (7th Cir. 1993) (Swedish  
 19 investigator’s statement sufficient to establish probable cause).

20 **II. TOLEDO’S CHALLENGE BASED ON WITNESS CREDIBILITY DOES NOT**  
 21 **UNDERMINE PROBABLE CAUSE.**

22 Although Peru’s extradition request contains numerous, substantial pieces of evidence from  
 23 myriad sources supporting the Peruvian charges against Toledo, this Court could base its probable-cause  
 24 finding solely on statements provided by Jorge Henrique Simoes Barata (“Barata”), the superintendent  
 25 of Odebrecht in Peru, and Maiman. *See, e.g., Zanzanian v. United States*, 729 F.2d 624, 627 (9th Cir.  
 26 1984) (“[T]he self-incriminating statements of accomplices are sufficient to establish probable cause in  
 27 an extradition hearing.”) (citing *Curreri v. Vice*, 77 F.2d 130, 132 (9th Cir. 1935)). The evidence  
 28

1 contained in these statements, detailed below, clearly incriminates Toledo.<sup>4</sup> In short, Barata says that  
 2 Toledo solicited a bribe, which Barata agreed to, and did in fact pay, in exchange for Toledo favoring  
 3 Odebrecht in the tender for contracts to construct the Peru-Brazil Southern Interoceanic Highway  
 4 (“Highway”); Maiman says that he received and laundered that bribe on Toledo’s behalf and upon his  
 5 instructions through Maiman’s and other accounts.

6 Toledo’s attempt to undermine this evidence by arguing (DE 170 at 16-18, 22) that the two  
 7 cooperators are not “credible” is misplaced. The Ninth Circuit in its recent decision in *Santos v. Thomas*  
 8 rejected the notion that a fugitive may “call into question the credibility of the government’s offer of  
 9 proof,” at least by introducing evidence in that regard. 830 F.3d at 993; *see also id.* at 992 (“An  
 10 accused in an extradition hearing has no right . . . to pose questions of credibility as in an ordinary trial .  
 11 . . .”) (quoting *Eain v. Wilkes*, 641 F.2d 504, 511 (7th Cir. 1981)). Although the Court previously noted  
 12 in *Quinn v. Robinson* that the “credibility of witnesses and the weight to be accorded their testimony is  
 13 solely within the province of the extradition magistrate,” it also explained that the “magistrate does not  
 14 weigh conflicting evidence and make factual determinations.” 783 F.2d at 815. Thus, the magistrate’s  
 15 probable-cause finding is “not a finding of fact in the sense that the court has weighed the evidence and  
 16 resolved disputed factual issues.” *Id.* at 791 (internal quotation marks and citation omitted).

17 The Ninth Circuit’s decision in *Man-Seok Choe v. Torres* is instructive in this regard. 525 F.3d  
 18 733 (9th Cir. 2008). In that case, the Court upheld an extradition magistrate’s finding of probable cause  
 19 where Korea alleged that the fugitive, along with an accomplice, had paid a bribe to a police officer so  
 20 that he would exert his influence to close an investigation into the fugitive’s lobbying activity.<sup>5</sup> The  
 21 fugitive attempted to challenge a summary of the accomplice’s testimony incriminating him by  
 22 “point[ing] out that [the accomplice] had every reason to shift blame to him to reduce her own  
 23

---

24 <sup>4</sup> Peru provided Maiman’s statements of July 5, 2013, February 27, 2017, and September 5,  
 25 2017, and Barata’s of November 21, 2016, in full, *see* Req. at 351-60, 479-535, 5019-59; and the  
 26 *acusacion fiscal* includes numerous excerpts from two additional statements, Maiman’s of January 22,  
 2020, and Barata’s of September 20, 2019.

27 <sup>5</sup> The fugitive was also charged with paying a bribe to a Korean official so that a particular  
 28 company would win a bid to supply high-speed rail cars to the Korean government. The Court  
 concluded that probable cause was lacking for that charge because Korea’s extradition request contained  
 only conclusory accusations that the fugitive had met with and promised the official a reward, without  
 any supporting evidence. *Man-Seok Choe*, 525 F.3d at 738.



1 culpability, and that her statements aren't supported by any other witness." *Id.* at 740. The Ninth  
2 Circuit explained that, even accepting the fugitive's arguments, the accomplice's "lack of credibility is  
3 merely a weakness in Korea's case" and did not "completely obliterate the evidence of probable cause."  
4 *Id.* (internal quotation marks, brackets, and citation omitted).

5 The Ninth Circuit's conclusion that challenges to a witness's credibility do not negate a  
6 probable-cause finding in an extradition proceeding is consistent with that of other courts. *See, e.g.,*  
7 *Bovio*, 989 F.2d at 259-60 (rejecting fugitive's argument that probable cause was lacking where "the  
8 major witness relied upon by the Swedish government . . . has admitted lying during the investigation,  
9 and there is otherwise no corroboration of her account," and noting that a fugitive has "no right to attack  
10 the credibility" of witnesses in an extradition hearing, as "issues of credibility are to be determined at  
11 trial"); *Shapiro v. Ferrandina*, 478 F.2d 894, 905 (2d Cir. 1973) ("The judge's refusal to examine the  
12 credibility of the testimony and statements included in the translated material was clearly proper, since  
13 the declarants were not before him."); *In re Extradition of Lara Gutierrez*, No. 16-cv-05061, 2017 WL  
14 8231237, at \*4 (C.D. Cal. Feb. 22, 2017) (rejecting fugitive's claim that a witness statement "border[ed]  
15 on incredible" because "[t]he circumscribed nature of this Court's inquiry does not permit the Court to  
16 weigh the credibility of [the witness's] statements"); *cf. Barapind v. Enomoto*, 400 F.3d 744, 749-50  
17 (9th Cir. 2005) (en banc) (deciding that a witness's recantation did not obliterate probable cause because  
18 it "constituted conflicting evidence, the credibility of which could not be assessed without a trial").

19 Indeed, this Court has repeatedly rejected probable-cause challenges based on attacks on the  
20 credibility of witness statements provided in support of extradition requests. *See, e.g., United States v.*  
21 *Kollmar*, No. 19MJ70677MAG1KAW, 2021 WL 179606, at \*7 (N.D. Cal. Jan. 19, 2021) (rejecting  
22 fugitive's attempt to discredit the victim's testimony, and also noting that a lack of corroborating  
23 evidence, such as a passport stamp, for a witness's recitation of what happened on a cross-border trip  
24 "does not demonstrate that [the witness] was not credible"); *In re Extradition of Luna*, No. 16-XR-  
25 90095 NC, 2017 WL 1036732, at \*5 (N.D. Cal. Mar. 17, 2017) (rejecting fugitive's "attempt[] to  
26 discredit all of the witness testimony presented" because "[a]s an extradition court, the Court may not  
27 make credibility determinations") (citing *Santos*, 830 F.3d at 993). The Court should similarly reject  
28 Toledo's defense based on attempting to discredit Barata and Maiman.

1 But even if the Court were to consider their credibility, Barata and Maiman establish far more  
 2 than a fair probability that Toledo committed the charged crimes.<sup>6</sup> Their statements are specific and  
 3 detailed, and, as explained below, corroborated by significant evidence. To the extent there are any  
 4 “inconsistencies and discrepancies,” probable cause still exists. *Sakaguchi*, 520 F.2d at 728. Such an  
 5 issue is “of no consequence if there exists in [Peru’s] documents ‘any’ other sufficient competent  
 6 evidence” to establish probable cause. *Id.* Thus, “[p]roviding an air-tight narrative of the events  
 7 surrounding a crime is not a precondition for granting extradition,” and issues regarding alleged  
 8 inconsistencies in the evidence “are all properly reserved for the eventual trial in [the requesting  
 9 country].” *In re Extradition of Rodriguez Ortiz*, 444 F. Supp. 2d 876, 893 (N.D. Ill. 2006); *see also*,  
 10 *e.g.*, *Kollmar*, 2021 WL 179606, at \*8 (finding probable cause where a witness’s statements, while  
 11 “generally consistent,” contained some “errors” and inconsistencies); *Luna v. O’Keefe*, No. 17-CV-  
 12 02129-LHK, 2018 WL 784783, at \*12 (N.D. Cal. Feb. 8, 2018) (finding probable cause even despite  
 13 “some minor inconsistencies between the statements that two of the witnesses . . . gave in 2009 and the  
 14 statements they gave in 2012”); *In re Extradition of Rodriguez*, No. CR 95-6007 MISC JW, 1995 WL  
 15 312099, at \*3-4 (N.D. Cal. May 17, 1995) (finding probable cause even where fugitive argued that  
 16 witness statements were “inherently inconsistent,” given that “disputed issues such as the number of  
 17 bullets which entered the victim’s body or the number of bullets which were fired from [the fugitive’s]  
 18 gun should be left to a [court in the requesting country]”).

19 **III. PERU’S EXTRADITION REQUEST AMPLY ESTABLISHES PROBABLE CAUSE**  
 20 **THAT TOLEDO COMMITTED COLLUSION.**

21 The evidence provided by Peru supports a finding of probable cause for the collusion charge.  
 22 The elements of collusion under Peruvian law are: (1) the defendant was a government official or civil  
 23 servant; (2) by reason of his or her position, the defendant participated at any stage in contracts,  
 24 supplies, tenders, competitive biddings, auctions, or any other similar operations conducted by the  
 25 government; and (3) in connection therewith, the defendant defrauded the State of Peru or state-

---

27 <sup>6</sup> Indeed, Peru’s First National Preliminary Investigation Court, which issued the warrant for  
 28 Toledo’s arrest, found that Barata’s November 21, 2016, statement “is credible” because it was detailed  
 and corroborated by other evidence. Req. at 3498-99.

1 supported bodies or entities by making arrangements with the concerned parties in agreements,  
2 adjustments, liquidations, or supplies. *See* Req. at 3280-85; Supp. Req. at 54-56, 1915-25.<sup>7</sup>

3 Peru's evidence demonstrates that in 2004, when Toledo was the President of Peru, he used his  
4 authority in that position, and particularly his influence over the Private Investment Promotion Agency  
5 ("Proinversion"), a Peruvian state agency, to solicit and agree to a bribe in connection with  
6 Proinversion's awarding of contracts to construct the Highway. *See, e.g.*, Req. at 5964-68 (description  
7 of criminal conduct set forth in decision of the Supreme Court of Justice of Peru, dated March 13, 2018).  
8 In particular, individuals acting on behalf of Toledo, including Avraham Dan On ("Dan On"), Gideon  
9 Weinstein ("Weinstein"), and Sabi Saylan ("Saylan"), told Barata that Odebrecht should pay Toledo a  
10 \$35 million bribe. They offered that, in exchange, Toledo would ensure that the schedule for the  
11 Highway project would not be delayed and that the conditions for bidding on the project would be  
12 modified, so as to facilitate Odebrecht winning the contracts.<sup>8</sup> Barata agreed to pay the bribe. Toledo  
13 was thereafter involved in Proinversion's tender process, and Odebrecht was ultimately awarded  
14 contracts for two sections of the Highway at a ceremony that Toledo attended, held at the presidential  
15 palace, after a Proinversion Committee Chairman who had been appointed by Toledo dismissed last-  
16 minute concerns about Odebrecht's qualifications.

17 Toledo's arguments that the evidence is insufficient to establish probable cause are meritless.  
18 Specifically, he argues (DE 170 at 5, 15-16) that Maiman executed an elaborate scheme in which he  
19 pretended to seek a bribe for Toledo, when in fact he intended the money for himself. However, the  
20 evidence does not support this theory. Rather, it establishes probable cause that Toledo was the true  
21 bribe-seeker, as multiple witnesses attested to that fact, and there is evidence that Toledo received bribe

---

23  
24 <sup>7</sup> Section 384 of the Peruvian Criminal Code, criminalizing collusion, provides:

25 The government officials or civil servants who, in contracts, supplies, tenders,  
26 competitive biddings, auctions or any other similar operation in which they participate by  
27 reason of their office or on a special commission, swindle the Peruvian State or State-  
28 supported bodies or entities, pursuant to law, by making arrangements with the concerned  
parties in agreements, adjustments, liquidations or supplies, shall be punished by  
imprisonment for not less than three (3) years and not more than fifteen (15) years.

<sup>8</sup> To bid on the Highway project, Odebrecht entered into joint ventures with Peruvian companies,  
*see* Req. at 28, but for ease of reference, they are referred to collectively as "Odebrecht" herein.

1 funds and also made efforts to comply with and to enforce the bribe agreement. In any event, a  
 2 fugitive’s attempt to blame another individual for the criminal conduct of which he stands accused,  
 3 when it does not fully obliterate probable cause, presents an issue that should be reserved for trial in the  
 4 requesting country, and does not present a basis on which to deny certification. *See, e.g., Peroff v.*  
 5 *Hylton*, 542 F.2d 1247, 1249 (4th Cir. 1976) (“It may be that on the full trial Peroff may be able to  
 6 submit substantial proof that another rather than he was the perpetrator of the fraud, but that is a matter  
 7 for exploration during the trial in Sweden and not for extensive evidentiary inquiry during the  
 8 extradition hearing.”); *In re Extradition of Nava Gonzalez*, 305 F. Supp. 2d 682, 693 (S.D. Tex. 2004)  
 9 (rejecting fugitive’s “theory of a conspiracy masterminded by mostly anonymous [ruffians] to wrongly  
 10 accuse him of the early-morning attack” as “highly implausible,” and also concluding that “the final  
 11 resolution of such issues will be left to the Mexican judicial system”); *In re Extradition of Sainez*, No.  
 12 07-MJ-0177-JMA, 2008 WL 366135, at \*17 (S.D. Cal. Feb. 8, 2008) (rejecting fugitive’s claim that  
 13 someone else committed the shooting of which he was accused because “none of [h]is evidence is  
 14 sufficient to negate [the victim’s] definitive statements that [the fugitive] shot him and [another  
 15 individual]”), *certification upheld on habeas review by Sainez v. Venables*, 588 F.3d 713 (9th Cir. 2009).

16 **A. Toledo Received Bribe Money.**

17 Strong proof demonstrating that Toledo made an agreement to receive a bribe comes from  
 18 evidence establishing that he actually received bribe money. As an initial matter, Barata stated that he  
 19 paid some money directly to Toledo. Specifically, Barata described that “I personally have handed over  
 20 money to Mr. Alejandro Toledo . . . [i]n his house, in the palace, on several occasions, in Avi Dan On’s  
 21 house . . . .” Supp. Req. at 1136.<sup>9</sup> Moreover, Toledo concedes that he received \$500,000 of the bribe  
 22 money, purportedly as a loan. *See* DE 170 at 22. He also concedes that other bribe money was used to  
 23 purchase properties in Peru, *see id.*, each of which has a nexus to him (detailed below), thereby creating  
 24 an inference that such money was in fact used for Toledo’s benefit. Such evidence, even if it involves  
 25  
 26

27 <sup>9</sup> “Toledo” and “Dan On” are written in all capitals in the original text. Such capitalization of  
 28 names in the extradition request and *acusacion fiscal* is not reflected in the quotations from those  
 documents contained herein.

1 only part of the bribe funds, clearly implicates Toledo in the bribe agreement, and undercuts his claim  
2 (*id.* at 5) that he “did not know about the bribes.”<sup>10</sup>

3 **B. Peru’s Evidence Establishes that the Bribe Was Intended for Toledo.**

4 Relatedly, other evidence submitted by Peru indicates that no one other than Toledo was ever  
5 discussed as the intended recipient of the bribe. The other party to the bribe agreement, Barata, has  
6 stated unequivocally and consistently that he understood that Odebrecht would pay Toledo in order to  
7 ensure its success in the Highway tender. Barata describes a number of encounters in which the  
8 arrangements for a bribe expressly for Toledo were made:

- 9 • “At the end of 2004, during a social event in the Government Palace, I was contacted by Avi Dan  
10 On, the immediate assistant and intermediary of the President of the Republic at the time,  
11 Alejandro Toledo, who offered to favor Odebrecht in the biddings for the construction of  
Sections 2, 3, and 4 of the Highway.” *Req.* at 353.<sup>11</sup>
- 12 • “Subsequently, in the first week of November 2004, . . . I participated in a meeting held in the  
13 presidential suite of the Hotel Marriot [in] Rio de Janeiro, counting with the presence of  
14 Alejandro Toledo, Jose Maiman and two officials of Josef Maiman, called Gideon Weinstein and  
15 Sabi Saylan. On this occasion, the officials of Josef Maiman informed me that should Odebrecht  
16 be the [sic] awarded the contract in the bidding, it would have to pay a bribe of \$35 million to  
17 Toledo, via several companies of Josef Maiman Business Group, through the adoption of  
fictitious contracts with Odebrecht.” *Id.* at 354. “[T]he presidential suite is a very large room  
18 and I was with the officials of Maiman sitting at a table. Toledo and Maiman were somewhere  
19 else inside the Suite. However, for me, the presence of the President of the Republic in the same  
20 room was pretty compelling.” *Id.* at 359.<sup>12</sup>
- 21 • In addition, “I was summoned by Avi Dan On to attend meetings in the Government Palace, in  
2005, which we accessed through the side door, with no record of our visit, and which I attended  
22 to obtain updates on the bidding. On one of these occasions, Avi Dan On informed me that

---

21 <sup>10</sup> Barata further stated that he gave \$300,000 or \$400,000 to Toledo personally in cash,  
22 purportedly for Toledo’s 2010 presidential campaign. *Supp. Req.* at 1292-95.

23 <sup>11</sup> The translated statement of Barata from June 18, 2019, provided by Toledo aligns with this  
24 statement, as follows: “[T]he first conversation was with Avi Dan On,” who said “what we want is  
25 compensation for facilitating. We’re going to help you, and President Toledo will support you. Just tell  
26 me what you need; we’ll guarantee this process.” *DE 170-1* at 53.

27 <sup>12</sup> The translated statement of Barata from June 18, 2019, provided by Toledo similarly explains  
28 that in the Rio Marriott’s presidential suite, “[w]e finished arriving at a final figure: the number was  
thirty-four thousand three hundred, something like that. Not only Mr. Maiman attended this event, but  
President Toledo as well. He arrives to give confirmation of his, of his presence and validate his  
knowledge of the subject . . .” *DE 170-1* at 53; *see also id.* at 58 (“The confirmation [of the bribe  
agreement] took place, we were in a presidential suite, in a room much bigger than this one. There was  
a table, a dinner table, a dining room, and there was a living room on the other side. So, I had stayed on  
this side of the dining room table, with Mr. Saby and Mr. Gideon discussing amounts and defining,  
making timetables and that whole history of payments. . . . And there, at that time, we sealed a deal.”).

1 should Odebrecht win the referred biddings, it would have to make corrupt payments to  
2 Alejandro Toledo, the amounts of which would be indicated later on by the officials of the  
Peruvian-Israeli multimillionaire business Josef Maiman.” *Id.* at 353.

3 Even according to the evidence provided by Toledo in support of his motion, Barata understood from  
4 the beginning that the bribe was for Toledo because his intermediaries “were very objective, very clear  
5 [with regard to] . . . the consent and the authorization of the President.” DE 170-1 at 63.

6 Maiman corroborates Barata’s story, in which Toledo first broached the idea of a bribe toward  
7 the end of 2004, and plans were further solidified in Rio de Janeiro. He states:

- 8 • “Toward the end of 2004, Alejandro Toledo . . . mentioned he was going to establish a  
9 foundation and asked [me] to help him with the reception of donations,” which Maiman  
“suspected . . . might be intended to cover up less-than-transparent activities.” *Id.* at 484.
- 10 • “It was the end of the year 2004, and [Toledo] told me that he wanted to develop a political  
11 program that he hoped to receive contributions, help, and support from Brazilians . . . . At some  
12 point, he asked me if I was willing to help him by receiving the funds, to which I said yes. That  
13 must have been in the second half of 2004, because in November, once in Brazil, he already  
knew that I was willing to be the recipient, and when Mr. Barata asked me, he was not offering it  
but rather trying to confirm if I had accepted to be the recipient.” Supp. Req. at 180-81.
- 14 • “In Rio de Janeiro, in November 2004, . . . [in a] suite at the Marriott, there was a meeting  
15 between [me], Alejandro Toledo, . . . Wideon Weinstein and Sabih Saylan, and Jorge Baratta.”  
Req. at 485.
- 16 • In addition, also in Rio de Janeiro, “at some point, Jorge Baratta told [me] that there were going  
17 to be donations for Alejandro Toledo’s foundation” and Maiman “confirmed to Barata that  
18 Alejandro Toledo had indeed already mentioned the matter of the donations” and “confirmed  
[my] willingness to receive the funds.” *Id.* at 486; 503.

19 Other evidence further corroborates Toledo’s (and Barata’s) presence at the Marriott in Rio de  
20 Janeiro on November 4, 2004—nor has Toledo contested that fact. *See id.* at 2149-89 (travel records,  
21 other official records, and hotel records). This evidence makes sense, given that, as a matter of public  
22 record, a presidential summit involving Peru, Brazil, and other countries was held in Rio de Janeiro on  
23 November 3 to 5, 2004, to discuss matters relating to the partnership between the countries, including  
24 the physical integration of their territories. Supp. Req. at 153, 181.

25 Toledo’s claim that Peruvian prosecutors have “reject[ed] the earlier theory . . . that Saylan and  
26 Weinstein were responsible for working out the details of the bribery agreement at the November 4,  
27 2004, meeting with Barata,” based on their “determination that neither Saylan nor Weinstein  
28 participated in the November 4, 2004 negotiations,” is misplaced. *Cf.* DE 170 at 12. Prosecutors



1 continue to allege that “the fact that [Saylan] participated in the illegal payment arrangement that took  
2 place between [Toledo and Barata] in the context of the concession process for the Southern  
3 Interoceanic Project, the purpose of which was to benefit Odebrecht in the concession bidding for the  
4 [Highway] Project and to satisfy the economic interests of the former president, is a matter of fact.”  
5 Supp. Req. at 58. They also continue to allege that “Gideon Weinstein and Sabih Saylan were also  
6 present” at the meeting held in Rio de Janeiro in November 2004 through which Barata, Maiman, and  
7 Toledo colluded. *See id.* at 209. They dismissed collusion charges against Saylan and Weinstein  
8 because Barata’s accusation that they were involved in the agreement to pay bribes was “not  
9 confirmed,” and was contradicted by testimony by Maiman indicating that the bribe agreement had been  
10 reached prior to the meeting and that he did not divulge the existence of that agreement to Saylan or  
11 Weinstein; thus, as recited in the *acusacion fiscal*, “clear, specific, direct and unquestionable” proof of  
12 guilt was lacking, specifically with respect to Saylan or Weinstein’s knowledge “about the illicit assets  
13 that were to be transferred to” Toledo. *Id.* at 40-42, 66-78, 85-86, 89-94, 98-99, 101.

14 The prosecutors’ determination that they lacked sufficient evidence to convict Saylan and  
15 Weinstein of participating in the collusive agreement does not disprove the two defendants’ participation  
16 in the November 4, 2004, bribe meeting. Indeed, although Weinstein did not admit to discussing a bribe  
17 for Toledo, he did admit to being present at the Rio de Janeiro Marriott on November 4, 2004, for a  
18 “social lunch” involving himself, Toledo, Maiman, Saylan, and Dan On, and for a separate meeting  
19 involving Barata, Maiman, and Odebrecht’s CEO, Marcelo Odebrecht. Req. at 4286-87. Toledo’s  
20 claim that Saylan “denies knowing about the meeting [to discuss the bribe agreement] at all” (DE 170 at  
21 17) is incorrect. Rather, Saylan just confirmed the separate meeting Weinstein described involving  
22 himself, Barata, Maiman, and Marcelo Odebrecht, and not Saylan. *See* Supp. Req. at 23-24; *see also id.*  
23 at 62-63 (statement of Maiman discussing a meeting with Barata and Marcelo Odebrecht for which “I  
24 decided that Gideon Weinstein would accompany me to the meeting and Mr. Saylan would not attend  
25 because I did not want to bring a lot of people and outnumber them”).

26 As discussed above, the fact that there may be minor discrepancies between different witnesses’  
27 accounts, such as exactly who participated in the meetings and in what capacity, does not vitiate  
28 probable cause, particularly given that the witness statements were given well over a decade after the

1 fact. And in any event, as discussed below, other evidence suggests that Toledo reached an agreement,  
 2 whether through Dan On, Weinstein, and/or Saylan or otherwise, to help Odebrecht win the Highway  
 3 tender in exchange for a bribe.

4 **C. Peru's Evidence Establishes that Toledo Complied with the Bribe Agreement by**  
 5 **Facilitating Odebrecht's Success in the Highway Tender.**

6 Contrary to Toledo's suggestion, Odebrecht's successful bid for two sections of the Highway  
 7 (sections 2 and 3) was not a foregone conclusion; rather, Toledo helped to ensure the company's  
 8 success. Odebrecht was not clearly "almost certain to win the contracts, with or without a bribe, because  
 9 it was the only construction firm capable of fulfilling the contracts on the desired schedule," as Toledo  
 10 claims (DE 170 at 19). Indeed, other companies in fact successfully obtained contracts for constructing  
 11 sections 1, 4, and 5 of the Highway. *See* Req. at 2270, 4339.<sup>13</sup> Moreover, as Barata described, his  
 12 "agreement with Alejandro Toledo was that [Odebrecht] would only pay if [it] was awarded the contract  
 13 in the bidding," and "the assistance of Alejandro Toledo" provided in compliance with that agreement  
 14 "consisted [of] maintaining the terms for the execution of the bidding, despite the requests for its  
 15 postponement, by other bidders, which obviously reduced the level of competitiveness of the process."  
 16 *Id.* at 354-56. Thus, regardless of whether an expedited schedule happened to align with Toledo's  
 17 political priorities, as he suggests (DE 170 at 16), the evidence supports an inference that Toledo took  
 18 action in furtherance of the bribe agreement.

19 As of December 2, 2004, the contracts were scheduled to be finalized on September 26, 2005,  
 20 Req. at 907; but with involvement by Toledo discussed further below, the contracts were ultimately  
 21 finalized almost two months earlier, on August 4, 2005, *id.* at 45-46. Overall, this timeline was much  
 22 shorter than usual, as bidding usually lasted approximately two years. *See id.* at 355; Supp. Req. at 330-  
 23 31, 586-87. According to Barata, completing the tender "in a record time" was "the main competitive  
 24 advantage [Odebrecht] had over other potential bidders." Supp. Req. at 212.

---

25  
 26  
 27 <sup>13</sup> In addition, Toledo's hypothesis that "Maiman's history with Odebrecht" contributed to his  
 28 ability to craft his covert scheme to arrange a "bribe" for himself (DE 170 at 16) fails to explain Peru's  
 evidence demonstrating that Maiman also received money from another Highway contractor, Camargo  
 Correa, on behalf of Toledo. *See, e.g.,* Req. at 517, 526, 2270-71; Supp. Req. at 1124-25.



1 As an example of Toledo's involvement in giving Odebrecht this competitive advantage, Peru's  
2 evidence demonstrates that Toledo held a meeting at the government palace in September 2004 with  
3 various Proinversion officials at which he urged them to move the tender process along quickly. As  
4 described in a statement by Jorge Penaranda, the Peruvian official in charge of feasibility assessments  
5 for the Highway project, Toledo "stated the importance and urgency of starting the works of the  
6 Southern Interoceanic Highway, and indeed he asked me if I could deliver the assessments before the  
7 contractual term," requesting that the officials "carry out the work as soon as possible." *Id.* at 218-19.

8 As another example, Peru's evidence demonstrates that Toledo attended a Proinversion board  
9 meeting held on December 22, 2004. *Req.* at 779, 874-77. According to testimony by Peruvian  
10 Minister of Transportation and Communications and Proinversion board member Jose Ortiz Rivera  
11 ("Ortiz"), the meeting was held in the government palace, which was unusual, because Toledo "wanted  
12 to be informed" about the Highway tender, and at the meeting, Toledo asked whether the planned  
13 deadlines could be shortened. *Id.* Although other public works projects were discussed at the meeting,  
14 Toledo participated only in the discussion relating to the Highway project. *Supp. Req.* at 260-61.<sup>14</sup>

15 Subsequently, on February 9, 2005, Toledo signed a Supreme Executive Resolution exempting  
16 the Highway project from having to undergo certain feasibility assessments, which were ordinarily  
17 mandated by law for public works projects in Peru. *Req.* at 878-80. By eliminating this step, the tender  
18 process could proceed more quickly, thereby reducing the possibility that companies other than  
19 Odebrecht could submit competitive bids. *See id.* at 3504-05; *Supp. Req.* at 285. In this way, as  
20 determined by Peru's First National Preliminary Investigation Court, which issued the warrant for  
21 Toledo's arrest, Toledo "practically set the basis for benefitting" Odebrecht. *Req.* at 3470.

22 Toledo's concern for ensuring that Odebrecht was awarded the contracts on schedule may also  
23 be inferred from the events that occurred on the day of signing, August 4, 2005. Proinversion's board of  
24 directors convened a meeting that day to complete its review of the bidding process, at which time it

---

26 <sup>14</sup> Toledo engaging in this kind of intervention with Proinversion regarding the Highway project  
27 was not unusual. *See, e.g., Supp. Req.* at 1110 (Barata stating that he witnessed Toledo call  
28 Proinversion and Ministry of Economy and Finance officials to "complain . . . that the process was not  
working, why they had extended the deadline and that kind of thing"); *see also* DE 170-1 at 56 (Barata  
recounting similar information); *id.* at 64-65 (same).

1 learned of an issue relating to Odebrecht’s eligibility to participate in the tender. *Id.* at 50, 56, 914-15.  
 2 The meeting was adjourned, and, although it had initially been held as usual at the Ministry of Economy  
 3 and Finance, Toledo invited the board to continue their meeting at the government palace, as reflected in  
 4 the meeting minutes and the testimony of Proinversion’s chairman of the board. *Id.* at 2050-75; 4315.  
 5 Odebrecht’s bids were approved despite the irregularity.<sup>15</sup> Toledo attended the ceremony at which the  
 6 contracts were signed, even though such an appearance was unusual. *Id.* at 46.

7 **D. Peru’s Evidence Establishes that Toledo Was Involved in Ensuring that Odebrecht**  
 8 **Paid the Bribe.**

9 Further evidence that the bribe agreement involved Toledo is apparent in that Toledo sought to  
 10 enforce the agreement. According to Barata, when “we were behind in payment of the bribes, he  
 11 summoned me to his house in Camacho, to pressure me into continuing with the payments.” *Id.* at 359.  
 12 He further explained that “sometimes President Toledo himself called me at his house two or three  
 13 times” and said “hey Barata, damn, pay me, come on . . .” *Supp. Req.* at 1134.<sup>16</sup>

---

14  
 15  
 16  
 17 <sup>15</sup> In particular, at approximately 10:00 a.m. that day, the Peruvian Vice Comptroller General  
 18 alerted the Proinversion board that Odebrecht had pending litigation with the State of Peru, which, if  
 19 true, would disqualify it from bidding on the Highway project. *Req.* at 50, 914-15. Per regulation, in  
 20 this situation, Proinversion should have requested an opinion from its legal manager and from an  
 21 experienced private law firm, suspended the bidding process, and, if necessary, returned the bids. *Id.* at  
 22 187-88. However, within just a few hours, the meeting reconvened, and Sergio Bravo Orellana  
 23 (“Orellana”), a Proinversion Committee Chairman who had been appointed by Toledo, informed the  
 24 board that he had received a report from attorney Juan Monroy Galvez (“Galvez”), concluding that the  
 25 litigation identified by the Vice Comptroller did not in fact involve Odebrecht. *Id.* at 2060-61, 2076-86.  
 Orellana further informed the board that he had also received a report prepared by Proinversion’s Legal  
 Manager, Percy Velarde Zapater (“Zapater”), expressing his opinion that the allegation that Odebrecht  
 was involved in legal proceedings with Peru was inaccurate. *Id.* at 2061-63, 2107-08. However, in  
 subsequent statements to Peruvian authorities, Galvez asserted that in fact he did not send Proinversion  
 his report until several days after the board meeting, on August 8, 2005, and could not have prepared the  
 report in just a few hours, *id.* at 2089-90, 2095-97; and Zapater asserted that he did not send  
 Proinversion his report until later in the afternoon on August 4, 2005, after the board meeting and  
 signing ceremony had concluded, *id.* at 2099, 2136-38.

26 <sup>16</sup> The translated statement by Barata from June 18, 2019, provided by Toledo corroborates this  
 27 fact as follows: “[S]everal times, not in the negotiation phase, but after the negotiation phase, [Toledo]  
 28 would ask me to pay, that I wasn’t paying, that I was delaying payments. Even after becoming  
 president, he invited me to his home on several occasions to ask what was going on.” DE 170-1 at 54;  
*see also id.* at 94 (discussing call in which Toledo confronted Barata about ““why aren’t you paying us?  
 Why haven’t you made the payments to us yet? Why have you not, not, not already assumed, or not,  
 not, not fulfilling your commitment?””).

1 In his motion, Toledo claims that “[t]here is no evidence to corroborate Barata’s claim – no  
2 phone records, voice mail messages, emails, or calendar notations. Moreover, the idea that Dr. Toledo  
3 would approach Barata directly is not credible.” DE 170 at 22. These claims are misplaced. An address  
4 book found during a search of Toledo’s house in Camacho in 2017 contained the name and details for  
5 Barata. Req. at 2929-30; 3491. Moreover, Barata explained that he spoke with Toledo “over the phone,  
6 we exchanged no emails. . . . [and] I only used one mobile phone which I would change every 3 years,”  
7 which would reduce the likelihood that any investigation would uncover corroborating evidence of  
8 specific interactions.<sup>17</sup> *Id.* at 356. Even so, the visitor log from the government palace documents that  
9 direct contact between Toledo and Barata was not unheard of, as it notes that Barata had a “[m]eeting”  
10 with Toledo, along with Ortiz and Marcelo Odebrecht, on August 26, 2004 (for approximately two  
11 hours)<sup>18</sup>; a “[l]unch with the President” on January 10, 2005 (for almost two hours)<sup>19</sup>; a “[w]ork  
12 meeting” with Toledo on May 5, 2005 (for approximately three-and-a-half hours); a business meeting  
13 with Toledo on February 22, 2006 (for approximately five-and-a-half hours); and a “meeting” with  
14 Toledo on June 23, 2006 (for three hours). *Id.* at 65-66, 2147; Supp. Req. at 1091-92.

15 Thus, Peru’s request for Toledo’s extradition contains evidence, from multiple sources,  
16 identifying Toledo as the person who, through intermediaries, made arrangements with Odebrecht for  
17 the payment of a bribe in connection with the Highway tender. This evidence spans the inception of the  
18 illicit agreement to well after the plan was executed.

---

22 <sup>17</sup> Relatedly, Maiman noted that “there are no emails [regarding the transfer of the bribe money  
23 from Odebrecht], since all of the instructions were given over the phone.” Req. at 513.

24 <sup>18</sup> This meeting occurred shortly before the meeting discussed above, which Toledo convened to  
urge various Proinversion officials to move the Highway tender process along as quickly as possible.

25 <sup>19</sup> This meeting occurred the same day that Toledo met with representatives from a Peruvian  
26 business association that requested that Peruvian companies be required to be included in the tender for  
the Highway. Supp. Req. at 911. In a statement, the chairman of the board of directors of one Peruvian  
27 company recalled that Toledo told him something like “Don’t worry, I’m not going to let the Brazilians  
take it away by themselves,” which suggested to him that Toledo already expected a Brazilian company  
28 (*i.e.*, Odebrecht) to win the project, and did not want Peruvian companies to interfere with that. *Id.* at  
900. A few days after these meetings, the call for bids and the bidding terms and conditions were  
published. *Id.* at 639-41.

1 **IV. PERU'S EXTRADITION REQUEST AMPLY ESTABLISHES PROBABLE CAUSE**  
 2 **THAT TOLEDO COMMITTED MONEY LAUNDERING.**

3 The evidence provided by Peru supports a finding of probable cause not only that Toledo agreed  
 4 to receive bribe money but also that he engaged in laundering it. The elements of money laundering  
 5 under Peruvian law are: (1) the defendant converted or transferred money, goods, effects, or earnings;  
 6 (2) the defendant was aware or presumed that the money or other items had illegal origins; (3) the  
 7 defendant sought to prevent the money or other items from being seized or confiscated, or to prevent  
 8 their illegal origins from being identified. *See* Req. at 3228-31; Supp. Req. at 1926-45.<sup>20</sup>

9 Peru's evidence demonstrates that Toledo directed Odebrecht to pay him a bribe through  
 10 offshore accounts, and that at least some of the bribe money was in fact passed through a number of  
 11 such accounts and was ultimately used to purchase, and pay mortgages for, properties in Peru. *See* Req.  
 12 at 5973-78 (description of criminal conduct set forth in decision of the Supreme Court of Justice of Peru,  
 13 dated March 13, 2018). In particular, it demonstrates that Odebrecht upheld its agreement with Toledo  
 14 by paying at least \$28,699,639.08 and €1,225,584.06 between 2006 and 2010.<sup>21</sup> Supp. Req. at 1115,  
 15 1128-30. The funds were transferred first to accounts of three companies associated with Maiman.  
 16 They were then passed through other offshore accounts, including ones designated by Dan On acting on  
 17 behalf of Toledo, and then into the account of Ecoteva Consulting Group S.A. ("Ecoteva"), a company  
 18 which Toledo was involved in creating and of which he named his elderly mother-in-law the chairman.  
 19 Finally, some of the funds were then converted to buy properties and pay off mortgages in Peru, each of  
 20 which has a nexus to Toledo.

---

21  
 22 <sup>20</sup> Article 1 of Peruvian Act No. 27765, criminalizing money laundering, provides:

23 Whoever converts or transfers money, property, instruments, or proceeds, knowing or  
 24 suspecting their unlawful origin, with the intention to prevent the identification of their  
 25 origin, their seizure or forfeiture, shall be punished by imprisonment for not less than  
 eight (8) and not more than fifteen (15) years, and by a fine of one hundred and twenty  
 (120) to three hundred fifty (350) days.

26 <sup>21</sup> When Peru initially transmitted its extradition request, it provided evidence indicating that  
 27 Odebrecht had paid approximately \$9,626,010 of the bribe; however, as discussed further below, its  
 28 investigation later uncovered additional amounts. The government has not confirmed Toledo's analysis  
 of the financial records supporting his motion (*see* DE 170 at 12-13; DE 170-1 at 12-20), and the Court  
 does not need to make a finding with respect to the exact amount of the bribe that was paid in order to  
 reject Toledo's arguments regarding probable cause.

1 It is implausible that, as Toledo claims (DE 170 at 5), all of the bribe money went to Maiman. In  
 2 so claiming, Toledo ignores the testimony of both Maiman and Barata indicating that at least some of  
 3 the bribe money in fact went to Toledo, as well as other evidence from which it may easily be inferred  
 4 that Toledo orchestrated the laundering of, and benefitted from, at least some of the funds.

5 **A. Peru’s Evidence Establishes that Toledo Gave Directions for Laundering the**  
 6 **Money.**

7 Peru’s evidence shows that Toledo directed Odebrecht to funnel its bribe payments through  
 8 Maiman’s accounts. According to Peruvian prosecutors, “the illicit funds were deposited in accounts of  
 9 offshore companies (front companies) in the name of third parties so that the illicit origin of such assets  
 10 would not be discovered.” Supp. Req. at 313.

11 As discussed above, Maiman stated that Toledo asked him to receive “donations,” which he said  
 12 might total approximately \$20 million. Req. at 484. Barata similarly stated that at the November 4,  
 13 2004, meeting in Rio de Janeiro, it was decided that the bribe would be paid “via several companies of  
 14 Josef Maiman Business Group.” *Id.* at 354.<sup>22</sup>

15 Maiman further stated that in the first half of 2006, Toledo told him “that the first donations were  
 16 about to come in” and that Maiman should “keep them in his accounts until he received further  
 17 instructions.” *Id.* at 486; *see also id.* at 512 (“the task with which Toledo entrusted me was to receive  
 18 the money in my companies’ accounts and keep it there until he gave me further instructions”). Barata  
 19 confirmed that disbursements for the bribe began in 2006, and bank records indicate that Odebrecht’s  
 20 first payment to Maiman’s accounts occurred on June 23, 2006—the same day that the palace visitor log  
 21 documents a meeting involving Barata and Toledo. *Id.* at 355, 366-67; Supp. Req. at 1092. Bank  
 22 records also confirm subsequent additional transfers from Odebrecht to Maiman’s accounts. Req. at  
 23  
 24

---

25  
 26 <sup>22</sup> The notion that Toledo might have entrusted Maiman to receive the Odebrecht bribe on his  
 27 behalf is not implausible, as Toledo suggests (DE 170 at 23). Toledo has explained, “I know Mr.  
 28 Maiman well. I have been a friend of his since 1980.” *Id.* at 2633-34. Maiman confirms that he “was a  
 trusted friend of [Toledo’s],” *id.* at 504, and that he and Toledo “have been very close friends for many  
 years,” *id.* at 483. *See also, e.g., id.* at 5062 (statement of Saylan noting that “Mr. Maiman is a very close  
 friend of Mr. Toledo”).

1 366-87; Supp. Req. at 1128-30, 1237-39; *see also* DE 8 at 15 (summarizing transfer of funds between  
2 various Maiman accounts).

3 According to Maiman, Toledo provided instructions for the bribe funds to be transferred to three  
4 Costa Rican companies, Milan Ecotech Consulting S.A. (“Milan Ecotech”), Ecostate Consulting S.A.  
5 (“Ecostate”), and Sirlon Dash Consulting S.A. (“Sirlon”). In particular, Maiman stated that Toledo told  
6 him by phone that he should “transfer the funds to the companies and accounts indicated . . . by Mr. Dan  
7 On.” Req. at 513. Subsequently, in October or November 2006, Dan On reportedly met Maiman in  
8 Israel and “brought the names of the companies [namely, Milan Ecotech, Ecostate, and Sirlon] and the  
9 account information.” *Id.*; Supp. Req. at 1113 (Maiman’s statement that amounts paid by Odebrecht  
10 were to be transferred to Costa Rica upon “an instruction that we received from former President Toledo  
11 . . . via Dan On”). Bank records confirm the transfer of funds to Milan Ecotech and Ecostate. Req. at  
12 2276-81, 2801-35.

13 Public records indicate that Dan On served as the chairman of the board of directors of both  
14 Milan Ecotech and Ecostate (which were incorporated on July 20, 2005, and November 23, 2006,  
15 respectively). *Id.* at 2751, 2762. As Toledo has acknowledged, Dan On worked for him as his security  
16 advisor during Toledo’s presidency, and thereafter went to work for Maiman. *Id.* at 5105; *see also id.* at  
17 5062 (statement of Saylan indicating that Dan On “was the security advisor of Mr. Toledo” and  
18 following Toledo’s presidency, “began managing some funds belonging to Maiman”). According to  
19 Maiman, Toledo and Dan On had “an extremely close relationship,” “a very close personal  
20 relationship,” due to the “nature of [Dan On’s] work in protecting the president” such that he and Toledo  
21 “were basically together all day.” Req. Supp. at 1087.

22 Bank records further show that in 2011 and 2012, the funds in the accounts of Milan Ecotech and  
23 Ecostate were transferred to Ecoteva, another Costa Rican company, which is linked to Toledo. Req. at  
24 2216-19, 2868-75. According to Melvin Rudelman Wohlstein (“Rudelman”), the notary public who  
25 incorporated Ecoteva, he met with Toledo on January 19 or 20, 2012, in Costa Rica, along with Dan On,  
26 to discuss creating Ecoteva.<sup>23</sup> *Id.* at 2716-17. Rudelman stated that Toledo “chose the name of ‘Ecoteva  
27

28  

---

<sup>23</sup> Rudelman’s uncle handled the incorporation of Milan Ecotech and Ecostate, and introduced  
**RESPONSE TO MOTION TO DENY EXTRADITION FOR LACK OF PROBABLE CAUSE**



1 Consulting Group S.A.” and “pointed out that his mother-in-law would be the CEO and legal  
 2 representative of the Company.” *Id.* at 2717. Travel records confirm Toledo and Dan On’s presence in  
 3 Costa Rica from January 18 to 21, 2012. *Id.* at 2744, 2746. A record from Costa Rica’s National  
 4 Register indicates that Rudelman established Ecoteva, with Toledo’s mother-in-law, Eva Fernenbug  
 5 (“Fernenbug”), as the chairman of its board of directors, shortly thereafter, on January 23, 2012. *Id.* at  
 6 2774-76. Fernenbug was then nearly eighty-five years old. *See id.* at 2248. Toledo remained involved  
 7 with Ecoteva thereafter, as, according to Rudelman, Toledo called to tell Rudelman that Fernenbug  
 8 would be arriving in Costa Rica on July 17, 2012, and Fernenbug came to his office the next day, along  
 9 with Dan On, saying that she had come to transfer money from Ecoteva to Peru. *Id.* at 2718-19.<sup>24</sup>

10 Even if Maiman retained actual authority over the funds from Odebrecht, as Toledo suggests  
 11 (DE 170 at 21-22), the evidence described above establishes probable cause that, regardless, Toledo was  
 12 involved in determining how at least some of the funds were dispersed.

13 **B. Peru’s Evidence Establishes that Toledo Received Some Bribe Proceeds.**

14 According to Maiman, “[t]he actual beneficiary of the money was Alejandro Toledo.” Req. at  
 15 489; *see* Supp. Req. at 1124 (confirming that the money from Odebrecht came from “the agreement to  
 16 pay Toledo”). Other evidence supports this claim.<sup>25</sup>

17 As an initial matter, Barata told Peruvian authorities that, although he does not know how much  
 18 of the bribe payments Maiman has turned over to Toledo, Barata gave Toledo some money directly, as  
 19 discussed above. Supp. Req. at 1136. While such money would not necessarily have been part of the  
 20 laundering scheme, it bolsters the notion that other Odebrecht money was also destined for Toledo.

21 Moreover, Toledo concedes that he received \$500,000 of the Odebrecht money, which he claims  
 22 came in the form of a loan from Maiman to pay off the mortgages on two houses Toledo owned in  
 23 Camacho and Punta Sal, Peru. DE 170 at 22; *see also* Req. at 2658-59. Maiman has also said that the

24  
 25  
 26 Toledo to Rudelman. Req. at 2730-31, 2750-51, 2761-63.

27 <sup>24</sup> Toledo denied having participated in the creation of Ecoteva. *See* Req. at 2682-83.

28 <sup>25</sup> Similarly, the translated statement of Barata from June 18, 2019, provided by Toledo clearly  
 indicates Barata’s understanding that Toledo was the intended beneficiary of the money, with Maiman  
 as his intermediary. *See* DE 170-1 at 90.

1 money was a loan, but conceded that the loan is not documented because it “was an oral agreement.”  
2 Req. at 5049. While Toledo says in his brief that Maiman expected him to repay the loan, Toledo does  
3 not say that he actually did so. *See* DE 170 at 22. Bank records indicate that the money for this  
4 purported loan was first transferred from Ecoteva to a personal account of Fernenbug’s (not Maiman’s),  
5 and then used to pay off the mortgages. Req. at 72-73, 2882-84, 2891-2905, 2909; 3050-51.

6 Toledo also does not dispute that \$4.5 million of the Odebrecht money that was transferred to  
7 Ecoteva was used to purchase certain real estate in Peru. *See* DE 170 at 22; DE 170-1 at 20. Even  
8 though the money was nominally used by Fernenbug (who did not reside in Peru), Toledo was involved  
9 in the purchases, thus supporting an inference that the money was used to buy real estate for his benefit.

10 *First*, bank records document the transfer of \$3.45 million on July 24, 2012, from Ecoteva to an  
11 account held by a person named Luis Fernando Arbulu Alva (“Arbulu”). Req. at 72-73, 2885-90.  
12 Public records document the sale of a house owned by Arbulu in Las Casuarinas, Peru to Fernenbug six  
13 days later. *Id.* at 3004-05; *see also id.* at 2719 (statement of Rudelman describing a financial agreement  
14 executed by Fernenbug shortly ahead of the sale, on July 18, 2012, at his office during her trip to Costa  
15 Rica). Moreover, Toledo admitted to browsing real estate in Las Casuarinas, including the house that  
16 Fernenbug ultimately purchased there. *Id.* at 2650. According to Paul Allemant Florindez, the real  
17 estate broker who handled the purchase of the Las Casuarinas house, he met Toledo in 2009 at Toledo’s  
18 residence in Camacho “so that [Toledo] [could] tell me the characteristics of the property he was looking  
19 for,” and he then visited various houses, including Arbulu’s, with Toledo and his wife from then until  
20 2012. *Id.* at 3117-18.

21 *Second*, bank records document the transfer of money from Ecoteva, to Fernenbug’s personal  
22 account, and then to the seller of an office, three parking spaces, and a storage unit located in the Torre  
23 Omega building in Peru. *Id.* at 72-73, 2882-84, 2891-2905, 2906, 2908, *see also id.* at 2938-95  
24 (purchase agreement). Although Fernenbug was nominally the purchaser of that property on September  
25 5, 2012, for approximately \$882,400, Toledo admitted that he was involved in discussions about the  
26 purchase. *Id.* at 2637. According to the seller’s representative, Fernenbug’s real estate agent, Moises  
27 Velarde Zabalbeascoa (“Velarde”), “told me that the person with whom he was talking to was Alejandro  
28 Toledo,” and he met with Velarde and Toledo to discuss the sale price. *Id.* at 3098-99. He said that he



1 was unaware that Fernenbug was the purchaser until after the contact was signed. *Id.* at 3103. Velarde  
 2 corroborated Toledo's participation in the meeting about the sale price, and also stated that Toledo had  
 3 first contacted him in July or August 2012 asking about offices for sale. *Id.* at 3108-09. During a search  
 4 of Toledo's house in Camacho, authorities found an email from the lawyer who handled the Torre  
 5 Omega purchase, which Dan On had forwarded to Toledo and his wife, with instructions that "if it is  
 6 very urgent, you better meet with [the lawyer] and clarify this matter and the central point: 'if it possible  
 7 [sic] to pay directly to the seller without opening an account in Lima?'" *Id.* at 2935-36. This email  
 8 further indicates Toledo's involvement in the purchase (as well as Dan On's collaboration with Toledo).

9 Toledo's suggestion in his motion that Fernenbug purchased the real estate in Peru "on  
 10 Maiman's instructions, for Maiman's financial benefit" (DE 170 at 22) is contrary to the evidence. Even  
 11 if Fernenbug has known Maiman for somewhat longer than either of them has known Toledo, she has  
 12 been Toledo's mother-in-law for over forty years. *See* DE 19 at 7 (Toledo's memorandum in opposition  
 13 to detention, noting that Toledo married his wife in 1979).<sup>26</sup> Moreover, Toledo's claim that Maiman  
 14 controlled all of Fernenbug's purchases by virtue of a nominee agreement between one of his companies  
 15 and Ecoteva (DE 170 at 21-22) is unavailing. Even if the nominee agreement were enforced as written  
 16 (despite the fact that other contracts in the money-laundering scheme were admittedly shams), the funds  
 17 for the Torre Omega properties do not appear to have been governed by that agreement because they did  
 18 not come directly from Ecoteva. Rather, they passed first through Fernenbug's personal bank account,  
 19 which does not appear to have been subject to the nominee agreement. *See* Req. at 2882-84, 2891-2905.

20 **C. Even Though Peru Has Located and Traced Additional Odebrecht Bribe Funds**  
 21 **Since 2018, the Core Allegations Regarding the Money that Toledo Laundered**  
 22 **Remain the Same.**

23 Contrary to Toledo's suggestion (DE 170 at 20-21), the fact that Peru's investigation has been  
 24 ongoing since the submission of its extradition request in 2018 does not undermine probable cause. The  
 25 new evidence primarily indicates that there is more money at issue than initially believed; it does not  
 26 discredit Peru's initial allegations regarding part of the money trail from Odebrecht to Toledo.

---

27 <sup>26</sup> Fernenbug has also transferred significant sums of money to Toledo's wife. For example, in  
 28 the span of less than a year, between October 2018 and June 2019, she transferred over \$1 million to  
 Toledo's wife. *See* DE 49 at 2.

1 Peruvian authorities have uncovered additional evidence, which is incorporated into the  
2 discussion above, that supports their allegations that there was an agreement to pay a \$35 million bribe  
3 to Toledo. Supp. Req. at 202. Toledo suggests that more recent statements from Maiman and Barata  
4 contradict such allegations, but the statements in fact only further bolster the existence of the agreement  
5 and Toledo's role in shaping it.

6 While the Peruvian authorities' understanding of exactly how much of the promised money was  
7 paid and where all the money went may have evolved, their original allegations generally persist. In  
8 particular, Peru's current case shows, as it did before—and as Toledo concurs, *see* DE 170-1 at 18—that  
9 money passed from Odebrecht to three companies associated with Maiman (Trailbridge Ltd., Merhav  
10 Overseas Ltd. ["Merhav"], and Warbury & Co.); then to another Maiman company, Confiado  
11 International Corp.; then to Ecostate and Milan Ecotech; then to Ecoteva. Supp. Req. at 1241-85.  
12 Peru's current evidence—which Toledo does not dispute—shows that, as set forth originally in the  
13 extradition request, at least \$16,370,255.98 was transferred to Ecoteva, approximately \$5 million of  
14 which was used for the purchase of the Las Casuarinas and Omega Torre properties and to pay off  
15 Toledo's home mortgages. *Id.*; *see* DE 170 at 20 & 21 n.16.

16 Peru's new claims about additional money paid by Odebrecht and transferred to Maiman and  
17 others do not undermine its original allegations. Barata stated in 2019 that in 2016 he understood from  
18 records maintained by Odebrecht's structured operations department (which was responsible for paying  
19 bribes) that the company had paid \$20 million of the bribe for Toledo. Supp. Req. at 205; *see* Req. at  
20 356. He explained, however, that the company had since accessed additional data such that he "fe[lt]  
21 much more certain in affirming that the value that has been transferred to Mr. Maiman is 31 million and  
22 something," based on records that he made available to prosecutors. Supp. Req. at 205. In addition,  
23 since submitting the extradition request, prosecutors obtained a copy of a sham agreement in which  
24 Odebrecht agreed to pay \$34.3 million to a company owned by Maiman, purportedly for "technical  
25 services in relation to the preparation of the tender documents and the execution of the Projects." *Id.* at  
26 1150-57; *see also id.* at 1093-98 (statement of Barata discussing the document as being intended to  
27 "ratify that we had reached an agreement and that we were going to pay thirty-four million"). Barata  
28 and Maiman both recognized the document as being a fictitious contract pertaining to the bribe

1 agreement. *Id.* at 1095-96, 1102-04. Thus, even if some Odebrecht funds landed in Maiman’s or others’  
 2 pockets, ample evidence showing that Toledo committed money laundering still exists.

3 **V. TOLEDO’S EVIDENCE NOT ALREADY CONTAINED IN THE EXTRADITION**  
 4 **DOCUMENTS FROM PERU IS INADMISSIBLE AND DOES NOT DEFEAT**  
 5 **PROBABLE CAUSE.**

6 The evidence provided by Peru in support of its request for Toledo’s extradition has been  
 7 authenticated in accordance with 18 U.S.C. § 3190 and is therefore automatically admissible in these  
 8 proceedings. *See* Certificates of Elisa Greene, Acting Consul General at the U.S. Embassy in Lima,  
 9 dated May 23, 2018, and Certificates of Ryan Karnes, American Citizen Services Chief at the U.S.  
 10 Embassy in Lima, dated September 1, 2020, attached to original documents filed manually with the  
 11 Court, *see* DE 81; DE 171; *see also* 18 U.S.C. § 3190 (foreign country’s evidence that is properly and  
 12 legally authenticated, as demonstrated by “the certificate of the principal diplomatic or consular officer  
 13 of the United States resident in such foreign country,” “shall be received and admitted as evidence [at an  
 14 extradition] hearing for all the purposes of such hearing”). This evidence includes both the documents  
 15 initially submitted along with Peru’s extradition request in 2018 as well the *acusacion fiscal*, which Peru  
 16 submitted as a supplement to its request in 2020. Accordingly, the government does not object to  
 17 Toledo’s requests for the admission of selections from the *acusacion fiscal* (DE 170 at 11-12), as the  
 18 entire document is admissible.

19 The government objects to the remainder of Toledo’s requests seeking to admit other evidence,  
 20 namely, the 2,195 pages of financial records, the judgment regarding Maiman’s cooperation, the  
 21 transcript of Barata’s April 24, 2019, testimony, and the nominee agreement between Ecoteva and  
 22 Merhav (*id.* at 12-15), to the extent those materials are not already contained among Peru’s extradition  
 23 documents.<sup>27</sup> Given the limited nature of an extradition proceeding, a fugitive’s right to controvert the  
 24 evidence introduced against him is “limited to testimony which explains rather than contradicts the  
 25 demanding country’s proof.” *United States ex rel. Petrushansky v. Marasco*, 325 F.2d 562, 567 (2d Cir.  
 26 1963); *see also Collins*, 259 U.S. at 315-17; *Santos*, 830 F.3d at 992. In general, “explanatory evidence

---

27 <sup>27</sup> Excerpts of Barata’s testimony are contained in the *acusacion fiscal*. The United States has  
 28 not compared the financial records provided by Toledo with the numerous financial records included in  
 the extradition request to determine the extent to which they are duplicative.

1 is evidence that explains away or completely obliterates probable cause, whereas contradictory evidence  
2 is that which merely controverts the existence of probable cause, or raises a defense . . . [or] evidence  
3 the credibility of which could not be assessed without a trial.” *Santos*, 830 F.3d at 992-93 (internal  
4 quotation marks and citations omitted). None of the evidence identified above is admissible because it  
5 fails to explain away or completely obliterate probable cause.<sup>28</sup> But, even if the Court were to admit it,  
6 it does not diminish the probable cause needed for a certification of the extradition.

7 **VI. CONCLUSION**

8 For the foregoing reasons, the United States requests that the Court deny Toledo’s motion to  
9 deny Peru’s request for his extradition for lack of probable cause and certify Toledo’s extradition for  
10 possible surrender to Peru on the charges of collusion and money laundering.

11 DATED: August 12, 2021

Respectfully submitted,

12 STEPHANIE M. HINDS  
13 Acting United States Attorney  
/s/ Rebecca A. Haciski

14 \_\_\_\_\_  
15 ELISE LAPUNZINA  
Assistant United States Attorney  
16 CHRISTOPHER J. SMITH  
Associate Director  
17 REBECCA HACISKI  
Trial Attorney  
18 Office of International Affairs

19  
20  
21  
22  
23  
24  
25  
26  
27 <sup>28</sup> Although Toledo references the Ninth Circuit’s decision in *Santos* (DE 170 at 11), which  
28 recognized that “[r]eliable evidence that the government’s evidence was obtained by torture or coercion”  
in violation of the principles of Due Process Clause of the Fifth Amendment may be admissible, he has  
provided no such evidence. *Cf.* 830 F.3d at 1003-04.