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11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14  
15 IN THE MATTER OF THE EXTRADITION  
16 OF ALEJANDRO TOLEDO MANRIQUE.

Case No. 19-mj-71055 MAG (TSH)

**MOTION TO DENY EXTRADITION  
FOR LACK OF PROBABLE CAUSE**

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## INTRODUCTION

The Republic of Peru seeks the extradition of former president Alejandro Toledo in connection with allegations of collusion and money laundering. Peru alleges that the Brazilian construction behemoth Odebrecht paid Dr. Toledo millions of dollars in bribes in return for favorable treatment in the bidding for contracts to build the Peru-Brazil Southern Interoceanic Highway. It is true that Odebrecht paid at least \$34 million in bribes, but Dr. Toledo did not know about the bribes, much less solicit or receive them, and he did not give Odebrecht preferential treatment. Instead, the bribes were paid to corrupt Israeli businessman Josef Maiman, who falsely claimed to be acting on Dr. Toledo's behalf.

Although Maiman is both the architect and the true beneficiary of the bribery scheme, he has now entered into an "effective collaboration agreement" (the equivalent of a cooperation agreement) with the Republic of Peru. Under the terms of this agreement, Maiman has agreed to help Peru in its effort to prosecute Dr. Toledo and to pay Peru \$7 million in fines and restitution. In return, Maiman not only escapes prosecution, but is allowed to keep more than \$20 million of bribe money.

Before this Court can certify Dr. Toledo for extradition, the government must meet its burden of demonstrating that there is probable cause to believe that Dr. Toledo actually committed these offenses. Because the government cannot satisfy this burden, its extradition request must be denied.

## BACKGROUND

### I. Dr. Toledo's Presidency

In December of 1994, Alejandro Toledo founded a political movement called *Perú Posible* and announced his candidacy for Peru's 1995 presidential election. At the time, Peru was controlled by dictator Alberto Fujimori. During the decade that Fujimori was in power, he disbanded the Congress, dismissed judges, suspended the Peruvian Constitution, and oversaw shocking human rights violations. Under the Fujimori regime, military tribunals conducted secret trials in which the judges covered their faces with hoods, and defense lawyers were not allowed to cross-examine witnesses or challenge evidence. Fujimori incarcerated thousands of people without even a pretense of charges or due process, and is believed to have overseen the extrajudicial killings of thousands more. Hundreds

1 of thousands of women, mostly poor and indigenous, were forcibly sterilized.<sup>1</sup>

2 Dr. Toledo lost the 1995 election. Undaunted, he challenged Fujimori again in April of 2000.  
3 Dr. Toledo was subjected to smear campaigns, tear gas, and death threats, but he refused to back  
4 down.<sup>2</sup> The “official” tally showed Fujimori with 49.8% of the vote compared to Dr. Toledo with  
5 40.3%. But objective international observers, including the United States, suspected that Fujimori’s  
6 victory was the result of electoral fraud.<sup>3</sup> By this time, Dr. Toledo had emerged as the leader of a  
7 broad democratic coalition. After repeated protests and calls for a new election, Dr. Toledo was  
8 elected President of Peru on June 3, 2001. He was the first indigenous leader of Peru in 500 years.

9 During Dr. Toledo’s presidency, the economy grew an average of 7% each year for five  
10 consecutive years, the highest growth rate in Latin America. At the same time, the rate of extreme  
11 poverty was reduced by 25%. He entered into a bilateral trade agreement with the United States, and  
12 signed free trade agreements with Thailand, Singapore, Chile, and Mexico. Under his leadership,  
13 Peru served as this country’s partner in the fight against narco-trafficking, working to help dismantle  
14 Peruvian, Colombian, and Mexican drug trafficking organizations.

15 Dr. Toledo also worked to reform the judicial system, although much of that progress has been  
16 undone by subsequent leaders. His efforts to expose Fujimori’s wrongdoing ultimately resulted in  
17 Fujimori’s criminal conviction for human rights violations, crimes against humanity, murder, and  
18 kidnapping.<sup>4</sup>

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19  
20 <sup>1</sup> See generally ECF 143-3 (Declaration of Richard Douglas); ECF 143-4 (Declaration of Bruce  
21 Zagaris); see also Nusta Carranza Ko, “Forcibly sterilized during Fujimori dictatorship, thousands of  
22 Peruvian women demand justice,” *The Conversation*, Mar. 3, 2021, available at [http://www.  
23 theconversaition.com/forcibly-sterilized-during-fujimori-dictatorship-thousands-of-peruivian-  
24 women-demand-justice-155086](http://www.theconversaition.com/forcibly-sterilized-during-fujimori-dictatorship-thousands-of-peruivian-women-demand-justice-155086); Joshua Partlow & Lucien Chauvin, “Peru’s Fujimori Gets 25  
25 Years,” *Washington Post*, Apr. 8, 2009, available at [washingtonpost.com/wp-dyn/content/  
26 article/2009/04/07/AR2009040701345.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/04/07/AR2009040701345.html).

27 <sup>2</sup> See “Toledo Sworn In, Vows to Aid Peru’s Poor,” *L.A. Times*, July 29, 2001, available at  
28 <https://www.latimes.com/archives/la-xpm-2001-jul-29-mn-27905-story.html>.

<sup>3</sup> See U.S. State Department, *Country Reports on Human Rights, Peru* (Mar. 4, 2002).

<sup>4</sup> On June 6, 2020, Fujimori’s daughter, Keiko Fujimori, lost the Presidential election in Peru to  
Pedro Castillo. Although international observers, including the United States, agree that the election  
results are valid, Ms. Fujimori has initiated an “electoral coup attempt, pushing Peru’s democracy to  
the brink of collapse.” Steven Levitsky & Alberto Vergara, “Trumpian Tactics Threaten to Undo  
Democracy in Peru,” *New York Times*, June 23, 2021, available at <https://www.nytimes.com/>

1 **II. The Southern Interoceanic Highway Project**

2 When he was elected in 2001, Dr. Toledo made the construction of the Peru-Brazil Southern  
3 Interoceanic Highway Project a priority of his administration. The highway, which would ultimately  
4 stretch across the continent from the Atlantic Ocean to the Pacific Ocean, was part of a larger plan by  
5 a coalition of South American countries to “integrate the region by developing infrastructure for  
6 transport, energy, and communications.”<sup>5</sup> Dr. Toledo had campaigned on a platform of economic  
7 growth and reduction of poverty, and he recognized the potential for the Southern Interoceanic  
8 Highway to revitalize the economy and create opportunities for poor and indigenous South  
9 Americans.<sup>6</sup>

10 Dr. Toledo viewed the Highway Project as “the main stimulus for the country’s economy.” *See*  
11 Extradition Documents (“ED”) at 352.<sup>7</sup> In his July 28, 2003 Presidential Address, Dr. Toledo  
12 informed the nation that his administration was committed to building the Southern Interoceanic  
13 Highway. The following month, Peru and Brazil entered into a Declaration of Commitment, in  
14 which the two countries pledged to make the Highway Project a top priority.<sup>8</sup>

15 Dr. Toledo was far from alone in his support for the Highway Project. The Interoceanic  
16 Highway could never have been built without broad support from the Congress, the business  
17 community, and the public. As just one example, the project could not have moved forward without  
18 the April 30, 2004, decision of the Congress to declare the project a national priority and to increase  
19 the national debt ceiling.<sup>9</sup>

20 \_\_\_\_\_  
21 2021/06/23/peru-election-castillo-fujimori.html. Based on her unfounded allegations, “hundreds of  
22 retired military officers” recently wrote to the leaders of Peru’s armed forces “demanding that the  
military not recognize Mr. Castillo as president.” *Id.*

23 <sup>5</sup> *See* “A Long Way to the Interoceanic Highway,” available at [https://www.connectas.org/](https://www.connectas.org/especiales/amazonas/en/vias1.html)  
24 [especiales/amazonas/en/vias1.html](https://www.connectas.org/especiales/amazonas/en/vias1.html).

25 <sup>6</sup> *See* “Toledo Sworn In, Vows to Aid Peru’s Poor,” *supra*.

26 <sup>7</sup> The government has manually filed a copy of the Extradition Documents submitted by Peru. *See*  
ECF 81.

27 <sup>8</sup> *See* Ronald Bruce St. John, *Toledo’s Peru: Vision and Reality* (2010) 148-49.

28 <sup>9</sup> *See* Act No. 28214, an “Act Declaring the Execution of the Peru-Brazil Interoceanic Highway  
Project – IIRSA Sur a Public Need and National Priority.” ED 857-58.

**THE ALLEGATIONS AGAINST DR. TOLEDO**<sup>10</sup>

On May 25, 2018, the Republic of Peru submitted a Request for Active Extradition of Defendant Alejandro Toledo Manrique (the “Extradition Request”). Peru originally sought extradition in connection with three offenses: influence peddling, collusion, and money laundering. In August of 2020, however, Peru notified the United States that the influence peddling allegations had been “eliminated.” *See* ECF 142-1. Accordingly, this motion concerns only the allegations of collusion and money laundering.

**I. Collusion**

The government alleges that sometime toward the end of 2004, Dr. Toledo’s chief of security (Avraham Dan On) approached Jorge Barata, who was then Odebrecht’s superintendent of operations in Peru. Dan On, who claimed to be acting on behalf of Dr. Toledo, offered to favor Odebrecht in the awarding of lucrative contracts for the construction of portions of the Southern Interoceanic Highway. In subsequent conversations, Dan On told Barata that if Odebrecht won the contracts, it would have to pay bribes to Dr. Toledo, with Israeli businessman Josef Maiman acting as intermediary.

The government alleges that on November 4, 2004, Barata met in Brazil with Dr. Toledo, Maiman, Dan On, and two of Maiman’s executives: Sabih Saylan and Gideon Weinstein. According to the government, Dr. Toledo told Barata at the meeting that “he wanted Odebrecht to win the Highway contracts, and would ensure that the schedule for the tenders was not delayed and that the terms of the tenders would be modified to make it difficult or impossible for other companies to participate in them.” *See* Complaint at 4. Saylan and Weinstein told Barata that if Odebrecht were awarded the contracts, it would need to pay \$35 million to various companies owned or controlled by Maiman. They told Barata that Maiman would be receiving the payments on Dr. Toledo’s behalf.

The bidding process for the Highway contracts was handled by Proinversion, a government agency whose purpose was to promote private investment in public infrastructure projects. On

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<sup>10</sup> The following allegations are taken from the government’s 7/15/19 Criminal Complaint (ECF 1). Dr. Toledo disputes these allegations, many of which Peru has now modified or abandoned.

1 December 22, 2004, Dr. Toledo attended a meeting of Proinversion's board of directors, during  
2 which he allegedly asked if it was possible to have an expedited bidding process.

3 On June 23, 2005, Proinversion decided to award Odebrecht the contracts for Sections 2 and 3  
4 of the Highway. The public signing ceremony was scheduled for August 4, 2005. On the morning of  
5 the signing ceremony, the Comptroller General's office delivered a letter to the Proinversion board  
6 claiming that Odebrecht was ineligible to bid for the contracts due to pending litigation with the  
7 Republic of Peru. Dr. Toledo reportedly appeared annoyed by the letter. After the letter was  
8 reviewed by several attorneys, it was determined that Odebrecht was *not* ineligible. The contract  
9 signing ceremony went forward that afternoon.

10 The Complaint alleges that even though Odebrecht won the contracts, Barata decided to pay  
11 only \$20 million instead of \$35 million, because Dr. Toledo failed to modify the bidding terms or do  
12 anything to discourage other companies from bidding.

## 13 **II. Money Laundering**

14 The government alleges that Odebrecht paid \$20 million in bribes, with a total of  
15 \$16,370,255.98 going to Dr. Toledo. According to the Complaint, the money followed this path:  
16 First, Odebrecht paid \$20 million into three accounts: Warbury and Co., Trailbridge Ltd., and Merhav  
17 Overseas. All three of these accounts were controlled by Maiman. From there, Maiman transferred  
18 all of the funds from the Warbury account to Confiado International Corp., another company he  
19 owned. Maiman then transferred \$17,527,000 from Confiado to Ecostate Consulting S.A.  
20 (\$9,052,650) and Milan Ecotech Consulting S.A. (\$8,474,350). According to the Complaint,  
21 Maiman did not control either of these accounts. Instead, the Complaint alleges, these were  
22 "companies which had been designated by Dan On for receiving the funds." *See* Complaint at 9. A  
23 total of \$16,370,255.98 was then transferred from Ecostate and Milan Ecotech to Ecoteva Consulting  
24 Group S.A., "the chairman of which was nominally Eva Fernenbug ("Fernenbug"), Toledo's mother-  
25 in-law." *See id.* at 9-10. Finally, the government alleges that the funds were distributed, "at  
26 Fernenbug's direction," as follows: \$3.45 million for the purchase of a house in Las Casuarinas;  
27 \$882,400 for the purchase of an office at Torre Omega; \$217,007 to pay off the mortgage of Dr.  
28 Toledo's home in Camacho; and \$277,309 for mortgage and interest payments on Dr. Toledo's

1 vacation home in Punta Sal.

## 2 ARGUMENT

### 3 **I. Extradition Is Prohibited Unless There Is Probable Cause to Believe that Dr. Toledo 4 Committed the Alleged Offenses**

5 Before an extradition request can be granted, the court must determine “whether there is  
6 evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, or, in  
7 other words, whether there is probable cause.” *Santos v. Thomas*, 830 F.3d 987, 991 (9th Cir. 2016)  
8 (en banc) (citations omitted); *see also* U.S.-Peru Extradition Treaty, art. VI § 3(c) (requiring “such  
9 evidence as would be sufficient to justify the committal for trial of the person if the offense had been  
10 committed in the Requested State”). While the overall “extradition process is shared between the  
11 executive and judicial branches,” the “probable cause determination has been placed squarely in the  
12 judiciary’s hands.” *Santos*, 830 F.3d at 991, 1007. The extradition judge does not “serve merely as a  
13 rubber stamp,” but must “make an independent determination that the accused committed the crimes  
14 alleged.” *In re Extradition of Platko*, 2123 F. Supp. 2d 1129, 1239 (S.D. Cal. 2002) (citations  
15 omitted).

#### 16 **A. The Government Bears the Burden of Establishing Probable Cause**

17 The government bears the burden of offering “evidence that ‘will support a reasonable belief  
18 that [the extraditee] was guilty of the crime charged.’” *In re Extradition of Okeke*, 1996 WL 622213,  
19 \*5 (D.N.J. Sept. 5, 1996) (quoting *Ahmad v. Wigen*, 910 F.2d 1063, 1066 (2d Cir. 1990)). While “the  
20 government’s evidence need only be properly authenticated” to be admitted, the Ninth Circuit has  
21 cautioned against “conflat[ing] the admissibility standard with the standard required to satisfy  
22 probable cause.” *Santos*, 830 F.3d at 1006. “Simply because evidence has been authenticated does  
23 not mean any evidence the government submits is sufficient to satisfy probable cause. Were that the  
24 case, the judiciary’s role in the extradition process would be meaningless.” *Id.* Instead, the court  
25 must “assess whether, based on the evidence, the person could be brought to trial for the same crime  
26 in the United States.” *Id.* at 993.

#### 27 **B. The Court May Assess the Credibility of Witnesses as Part of Its Probable Cause 28 Determination**

In assessing whether the government has met its burden, “[t]he credibility of witnesses and the

1 weight accorded to their testimony is solely within the province of the extradition magistrate.”  
 2 *Mainero v. Gregg*, 164 F.3d 1199, 1205-06 (9th Cir. 1999) (citation omitted). “The standard is  
 3 whether the statements in question are truthful or whether they are unreliable, self-contradictory,  
 4 coerced, uncorroborated by other evidence, or the result of torture.” M. Cherif Bassiouni,  
 5 *International Extradition: United States Law and Practice* (6th ed. 2014) at 901 (citations omitted).

### 6 **C. The Court May Admit and Consider Explanatory Evidence**

7 While a party seeking to avoid extradition “is not permitted to introduce evidence on the issue  
 8 of guilt or innocence,” *In re Extradition of Chavez*, 408 F. Supp. 2d 908, 911 (N.D. Cal. 2005), he  
 9 can “present his own evidence to explain away the requesting government’s evidence of probable  
 10 cause,” *Barapind v. Enomoto*, 400 F.3d 744, 749 (9th Cir. 2005) (en banc). As a general rule,  
 11 “explanatory” evidence is admissible, but “contradictory” evidence is not. *Santos*, 830 F.3d at 992.

12 Broadly speaking, this means that an extraditee may present “evidence rebutting probable  
 13 cause,” but cannot present “evidence in defense.” *Collins v. Loisel*, 259 U.S. 309, 316 (1922). Thus,  
 14 for example, the accused may not present alibi evidence or evidence of an affirmative defense like  
 15 insanity. *Santos*, 830 F.3d at 993. Evidence of witness coercion, on the other hand, is admissible  
 16 “explanatory” evidence, “because a coerced statement is not competent evidence and cannot support  
 17 probable cause.” *Id.* at 1001.

## 18 **II. The Court Should Admit and Consider the Explanatory Evidence Offered by Dr. Toledo**

19 When Peru submitted its extradition request in May of 2018, the preliminary investigation was  
 20 just beginning. Indeed, the investigation remains open more than three years later. As Peru’s  
 21 prosecutors have continued to interview witnesses and collect records, they have been forced to  
 22 modify some of their allegations, and abandon other allegations entirely. Dr. Toledo respectfully  
 23 requests that the Court admit the following explanatory evidence, all of which was either generated or  
 24 obtained by the prosecutors in Peru:

### 25 **A. Excerpts from the Acusación Fiscal Documenting the Decision to Dismiss the 26 Allegations Against Sabih Saylan and Gideon Weinstein**

27 In August of 2020, the prosecutors in Peru issued an *acusación fiscal* (“Accusation”). The  
 28 United States subsequently provided the defense with a 3,100-page English translation. The

1 Accusation includes an Order of Dismissal for Sabih Saylan and Gideon Weinstein. The decision to  
2 dismiss was based on the prosecutors' determination that neither Saylan nor Weinstein participated in  
3 the November 4, 2004 negotiations. In reaching that determination, Peru's prosecutors necessarily  
4 reject the earlier theory, presented in the Extradition Request and in the government's Complaint, that  
5 Saylan and Weinstein were responsible for working out the details of the bribery agreement at the  
6 November 4, 2004 meeting with Barata.

7 Peru's analysis of the role of Saylan and Weinstein is admissible explanatory evidence because  
8 it constitutes Peru's own explanation of the evidence upon which it previously relied. Accordingly,  
9 Dr. Toledo respectfully requests that the Court admit and consider the following pages of the  
10 Accusation: 2-3 and 39-42, all of which are attached hereto as Exhibit A.

11 **B. Excerpts from the Acusación Fiscal Quoting Josef Maiman's January 22, 2020**  
12 **Testimony**

13 In the years following the submission of its extradition request, Peru has continued to obtain  
14 testimony from Josef Maiman. The Accusation quotes extensively from this more recent testimony.  
15 Of particular relevance in this case is a portion of Maiman's January 22, 2020 testimony, in which he  
16 confirms that he was the person who recommended that Dr. Toledo hire Avraham Dan On as his  
17 security chief.<sup>11</sup> This testimony is admissible explanatory evidence that clarifies Maiman's previous  
18 testimony by elaborating on his relationship with Dan On. Dr. Toledo respectfully requests that the  
19 Court admit and consider pages 1083-1084 of the Accusation, which are attached hereto as Exhibit B.

20 **C. Financial Records Obtained and Relied Upon by Peru**

21 In both the Complaint and the Extradition Request, the money laundering allegations are based  
22 on financial transfers to and from accounts belonging to Trailbridge, Merhav Overseas, Warbury,  
23 Confiado, Ecostate, Milan Ecotech, and Ecoteva. Yet, the Complaint and the Extradition Request  
24 contain only brief excerpts from and summaries of the financial records.

25 Over the past three years, Peru has produced 2,195 pages of the underlying bank records to Dr.

26 \_\_\_\_\_  
27 <sup>11</sup> Although the government declined to provide the defense with a copy of Maiman's 2020  
28 testimony, the defense was able to obtain a 178-page Spanish-language transcript of the testimony  
through Dr. Toledo's counsel in Peru. The defense is in the process of having the transcript  
translated into English, but the translation is not yet complete.

1 Toledo's counsel in Peru. *See* Declaration of Caitlin Costello ("Costello Decl."), attached hereto as  
 2 Exhibit C, at ¶ 3. Undersigned counsel has, in turn, produced these bank records to the government.  
 3 *See id.*<sup>12</sup> These bank records clarify and explain the excerpts and summaries contained in the  
 4 Extradition

5 Using these records, the defense has retraced the path of Odebrecht's payments. The defense's  
 6 analysis, along with a detailed explanation of how the defense arrived at its conclusions, is set forth in  
 7 Caitlin Costello's Declaration. To the extent that Peru had these records in 2018, they are referred to  
 8 and relied upon in the extradition request. To the extent that Peru obtained the records after it made  
 9 the extradition request, Peru has referred to and relied upon the records in its Accusation. These  
 10 financial records are explanatory evidence, and the defense respectfully requests that the Court admit  
 11 and consider them.

12 **D. Josef Maiman's December 26, 2019 Judgment of Effective Collaboration**

13 Josef Maiman is the main witness against Dr. Toledo. In the original extradition request, Peru  
 14 relied heavily on Maiman's testimony. The extradition request included complete transcripts of  
 15 Maiman's July 5, 2013 Statement, *see* ED 5019-95; Maiman's February 27, 2017 Deposition, *see* ED  
 16 479-98; Maiman's September 5, 2017 Supplementary Statement, *see* ED 499-535.<sup>13</sup> In addition, the  
 17 extradition request refers to Maiman's decision to cooperate with Peru as an "effective collaborator."  
 18 *See* ED 31 (identifying Maiman as an "effective collaborator").

19 On December 26, 2019, the judge of the preliminary investigation court in Peru issued an order  
 20 entitled "Judgment of Effective Collaboration," which approved the terms of Maiman's collaboration  
 21 agreement with Peru. The defense has received a copy of the Judgment of Effective Collaboration  
 22 from Dr. Toledo's counsel in Peru, and has had it translated into English by a court-certified Spanish  
 23 interpreter.

24 As this Court recognized in its February 6, 2020 Discovery Order, statements made by Maiman

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26  
 27 <sup>12</sup> Because of the number of documents, the defense has not filed them with this motion. The defense  
 is prepared to file the records, either electronically or manually, according to the Court's preference.

28 <sup>13</sup> The extradition request also included transcripts of television interviews of Maiman. *See* ED Vol.  
 I-CD.

1 after the extradition request was submitted “could potentially undermine the official statements”  
 2 included in the request. Accordingly, the defense respectfully requests that the Court admit and  
 3 consider the December 26, 2019 Judgment of Effective Collaboration (the “Collaboration  
 4 Agreement”), which is attached hereto as Exhibit D.

5 **E. The Complete Transcript of Jorge Barata’s April 24, 2019 Testimony**

6 Jorge Barata is one of the two key witnesses against Dr. Toledo. In the original extradition  
 7 request, Peru relied on Barata’s November 21, 2016 testimony, a complete copy of which was  
 8 included with the extradition request. *See* ED 351-60. In 2019, Peru obtained additional testimony  
 9 from Barata. Barata’s 2019 testimony is cited extensively in the Accusation. Although the  
 10 Accusation does not contain the complete transcript of Barata’s 2019 testimony, it includes at least 19  
 11 different excerpts, many of which are several pages. The defense has received a copy of Barata’s  
 12 2019 testimony from Dr. Toledo’s counsel in Peru, and has had it translated into English by a court-  
 13 certified Spanish interpreter.

14 The complete transcript of Barata’s 2019 testimony is explanatory evidence that serves to  
 15 clarify Barata’s earlier testimony, and provide context for the excerpts contained in the Accusation.  
 16 In addition, the 2019 testimony will assist the Court in assessing whether the statements of Barata, as  
 17 well as Peru’s other witnesses, are “unreliable, self-contradictory, coerced, uncorroborated by other  
 18 evidence, or the result of torture.”<sup>14</sup> *See* Bassiouni at 901. For these reasons, Dr. Toledo respectfully  
 19 requests that the Court admit and consider the transcript of Jorge Barata’s April 24, 2019 Testimony  
 20 (hereinafter “Barata 4/24/19”), which is attached hereto as Exhibit E.

21 **F. The February 2, 2012 Nominee Agreement Between Ecoteva and Merhav**

22 On February 2, 2012, Ecoteva Consulting S.A. entered into a Nominee Agreement with the  
 23 Merhav Group (an entity controlled by Maiman). The Nominee Agreement gave Maiman exclusive  
 24 “control of the funds and assets” of Ecoteva, as well as “the decision-making power regarding  
 25 investment in various projects or in business of any nature whatsoever.” ED 5039-40, 5044.  
 26 Although the Nominee Agreement is discussed at several points in the Extradition Request, *see, e.g.*,

27 \_\_\_\_\_  
 28 <sup>14</sup> Like Maiman, Barata has entered into an effective collaboration agreement with Peru. *See* ED 28. Unfortunately, the defense has been unable to obtain a copy of the agreement.

1 ED 2214-15, 5029-44, the Request does not include a copy of the Nominee Agreement itself. The  
2 actual agreement is explanatory evidence that clarifies the extradition request by providing the  
3 complete text of the agreement. The defense respectfully requests that the Court admit and consider  
4 the 2/2/12 Nominee Agreement, which is attached hereto as Exhibit F.

### 5 **III. The Government's Evidence Fails to Establish Probable Cause**

6 Dr. Toledo cannot be extradited unless there is probable cause to believe that he committed the  
7 offenses of collusion and money laundering.

8 With respect to the collusion allegation, the government must establish probable cause to  
9 believe that Dr. Toledo was a "government official[] or civil servant[]" who "swindle[d] the Peruvian  
10 State or State-supported bodies or entities" in connection with "contracts, supplies, tenders,  
11 competitive biddings, auctions or any other similar operation," by "making arrangements with the  
12 concerned parties in agreements, adjustments, liquidations or supplies." *See* Complaint at 3 (quoting  
13 Section 384 of the Peruvian Criminal Code).

14 With respect to the money laundering allegation, the government must establish probable cause  
15 to believe that Dr. Toledo "convert[ed] or transfer[red] money, property, instruments, or proceeds,  
16 knowing or suspecting their unlawful original, with the intention to prevent the identification of their  
17 origin, their seizure or forfeiture." *See* Complaint at 8 (quoting Article 1 of Peruvian Act. No.  
18 27765).

19 The government cannot satisfy its burden of establishing probable cause to believe that Dr.  
20 Toledo committed either offense.

#### 21 **A. There Is No Probable Cause to Believe that Dr. Toledo Engaged in Collusion**

22 When Dr. Toledo was elected President in 2001, Maiman saw an opportunity to make millions  
23 by falsely representing himself to Odebrecht as an intermediary acting on Dr. Toledo's behalf. Dr.  
24 Toledo's support for the Interoceanic Highway Project well-known. *See* ED 352. Not only was it the  
25 centerpiece of his July 2003 Presidential Address, but he had executed a Declaration of Commitment  
26 with Brazil in August of 2003. It was also common knowledge that Dr. Toledo wanted the bidding  
27 process to be completed as quickly as possible so that construction on the highway could begin. *See*  
28 ED 353.

1 Maiman had been doing business with Odebrecht since the 1980s, and he knew Odebrecht was  
 2 “a company with corrupt practices.” ED 490-91; Barata 4/24/19 at ¶ 135. For Odebrecht, paying  
 3 bribes was an ordinary and expected cost of doing business.<sup>15</sup> Maiman also knew that Odebrecht  
 4 would almost certainly be awarded the contracts, with or without Dr. Toledo’s assistance, because  
 5 Odebrecht was the dominant construction firm in Peru, and had “the greatest capacity to execute” the  
 6 contracts without excessive delays. ED 353.

7 Maiman’s history with Odebrecht, combined with his knowledge of Dr. Toledo’s political  
 8 priorities, enabled him to craft a scheme whereby it would appear to Odebrecht that Dr. Toledo was  
 9 performing per the bribery agreement, when in fact Dr. Toledo had no idea that the agreement  
 10 existed. Knowing that Dr. Toledo supported the expedited bidding process and was determined to  
 11 avoid delays, Maiman told Odebrecht that Dr. Toledo would support the expedited bidding process  
 12 and avoid delays, *if Odebrecht paid the bribe*. Maiman also knew that Odebrecht was the only viable  
 13 contender for the construction contracts, so there was little risk in promising Odebrecht that it would  
 14 be awarded the contracts, *if Odebrecht paid the bribe*.

15 Finally, it is no coincidence that Avraham Dan On was the member of Dr. Toledo’s staff who  
 16 allegedly first approached Barata with the bribery scheme. Maiman’s relationship with Dan On dated  
 17 back to the 1970s, when they both served in the Israeli military, and they had worked together in the  
 18 past. ED 353; Barata 4/24/19 at ¶ 20. Maiman “trusted him implicitly.” ED Vol. I CD at 11. In fact,  
 19 Maiman was the one who recommended that Dr. Toledo hire Dan On. *See* Exh. B at 1083-84.  
 20 Because Maiman had an independent relationship with Dan On, they could communicate directly,  
 21 without Dr. Toledo’s knowledge.

22 **1. There Is No Credible Evidence that Dr. Toledo Solicited the Bribes or**  
 23 **Participated in the November 4, 2004 Negotiations**

24 The government alleges that the bribery scheme was agreed upon at a November 4, 2004  
 25 meeting in Rio de Janeiro. *See* Complaint at 4. According to the Complaint, the participants in the

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26  
 27 <sup>15</sup> Odebrecht has admitted that its Division of Structured Operations “effectively functioned as a bribe  
 28 department within Odebrecht and its related entities.” *See* Plea Agreement, *United States v.*  
*Odebrecht S.A.*, No. CR 16-643 (RJD), at B-7, available at [www.justice.gov/opa/press-release/](http://www.justice.gov/opa/press-release/file/919916/download)  
[file/919916/download](http://www.justice.gov/opa/press-release/file/919916/download).

1 meeting were Barata, Dr. Toledo, Dan On, Maiman, and two of Maiman's employees: Sabih Saylan  
2 and Gideon Weinstein. *See id.* The government alleges that during this meeting, Dr. Toledo told  
3 Barata that "he wanted Odebrecht to win the Highway contracts, and would ensure that the schedule  
4 for the tenders was not delayed and that the terms of the tenders would be modified to make it  
5 difficult or impossible for other companies to participate in them." *Id.* Barata then worked out the  
6 details of the bribery scheme with Saylan and Weinstein, who told Barata that "if Toledo ensured that  
7 the tender schedule would not be delayed and that the terms would be modified such that Odebrecht  
8 was awarded the Project contracts, Odebrecht should give Toledo US\$35 million, via payments made  
9 to various companies owned or controlled by Maiman using fictitious contracts with Odebrecht." *Id.*  
10 No credible evidence supports these allegations.

11 The witnesses have given extensive and inconsistent testimony about who was present at the  
12 meeting. In 2016, Barata testified that the people at the meeting were himself, Maiman, Saylan,  
13 Weinstein, and Dr. Toledo. ED 354. In 2019, Barata testified that Marcelo Odebrecht was also  
14 present. *See* Barata 4/24/19 at ¶¶ 990-993. In 2017, Maiman said that the people present were  
15 himself, Dr. Toledo, Barata, Weinstein, and Saylan. ED 485. According to Weinstein, the only  
16 people at the meeting were himself, Barata, Maiman, and Marcelo Odebrecht. ED 4286. Saylan  
17 denies knowing about the meeting at all. Exh. A, *supra*, at 23-25. None of the witness statements  
18 support the government's allegation that Avi Dan On was present.

19 No witness has ever suggested that Dr. Toledo made any statements about ensuring that the  
20 schedule for the tenders was not delayed, or modifying the terms of the tenders to make it difficult or  
21 impossible for other companies to participate in them. Barata did at one point claim that Dr. Toledo  
22 "told me he wanted company ODEBRECHT to win the bidding." ED 356. Later in the same  
23 statement, though, Barata clarified that Dr. Toledo had not actually said anything to him at the  
24 meeting. Rather, Barata had merely surmised that Dr. Toledo knew about and approved of the  
25 bribery scheme, based on the "pretty compelling" fact that Dr. Toledo was in the suite. ED 359.  
26 When Barata was questioned again in 2019, he reiterated that he and Dr. Toledo had not interacted at  
27 all during the meeting. *See* Barata 4/24/19 at ¶¶ 988-993; *see also* ED 354.

28 Even Peru no longer appears to believe that Dr. Toledo made any statements to Barata at the

1 November 4th meeting. While discussing the November 4th meeting with Barata, Public Prosecutor  
2 Jose Domingo Perez Gomez stated: “[A]ccording to what I understand, there are persons close to the  
3 President, that he trusts, the ones who approach you [Barata] or ask you for money. But the  
4 presidential figure doesn’t ask for it at that time.” See Barata 4/24/19 at ¶ 59.

5 Peru has also concluded that neither Saylan nor Weinstein played any role in the bribery  
6 negotiations. In August of 2020, Prosecutor Perez Gomez filed an Order of Dismissal as to both  
7 Saylan and Weinstein. See Exh. A, *supra*, at 2-3. The prosecutor acknowledged that Barata had  
8 “declared about the involvement” of Saylan and Weinstein “in the agreement to make illicit  
9 payments.” See *id.* at [40-42]. The prosecutor rejected Barata’s testimony, however, in favor of  
10 Maiman’s testimony that Saylan and Weinstein had not even been present at the meeting, much less  
11 negotiated the terms of the agreement with Barata. See *id.* The prosecutor concluded that Maiman’s  
12 statement “justifies an acquittal” for both Saylan and Weinstein, “since it *categorically disproves the*  
13 *Prosecutor’s thesis* regarding the participation of [Saylan and Weinstein] in the agreement to make  
14 illicit payments.” See *id.* [accusation 39-42] (emphasis added).

15 The prosecutor’s decision regarding Saylan and Weinstein is significant for two reasons. Not  
16 only does it undermine the government’s assertion regarding the November 4, 2004 meeting, but it  
17 indicates that the prosecutors in Peru have concluded that the testimony of one of its key witnesses –  
18 Jorge Barata – is not credible.

## 19 **2. Maiman’s Claim that Dr. Toledo Said to Expect \$20 Million Is Not Credible**

20 According to the Complaint, sometime toward the end of 2004, “Toledo told Maiman he was  
21 planning to establish a foundation for which he would receive ‘donations’ that might total substantial  
22 amounts.” See Complaint at 4. This allegation is taken from Josef Maiman’s February 27, 2017  
23 deposition, during which Maiman added: “At a later date, TOLEDO specified that the donations  
24 might total approximately US\$ 20 million, although he did not have the exact dates yet.” ED 484.  
25 Maiman’s statement makes no sense.

26 It is undisputed that Odebrecht promised to pay \$35 million, not \$20 million. If Dr. Toledo had  
27 been involved in the bribery scheme, he would have known that the agreement was for Odebrecht to  
28 pay \$35 million, not \$20 million. And if Dr. Toledo had been receiving the payments, he would have

1 known that Odebrecht paid at least \$34 million, not \$20 million.

2 It is true that both Barata and Maiman initially testified that Odebrecht paid only \$20 million.  
3 See ED 355 (Barata); ED 487-88 (Maiman). After Peru confronted them with financial records  
4 disproving this claim, however, both Barata and Maiman were forced to admit that there was never  
5 an agreement for Odebrecht to pay \$20 million, nor did Odebrecht ever decide to limit its payments  
6 to \$20 million. In his 2019 testimony, Barata acknowledged that Odebrecht had paid \$34 million.  
7 See 4/24/19 Barata at ¶¶ 788-92. Likewise, Maiman admitted in his Collaboration Agreement that  
8 Odebrecht had deposited more than \$34 million into his accounts. See Collaboration Agreement at 7.

9 **3. Dr. Toledo Did Not Perform the Unlawful Acts Maiman Had Promised**  
10 **Odebrecht**

11 If Dr. Toledo had been a knowing participant in the bribery scheme, he would have fulfilled, or  
12 at least attempted to fulfill, his side of the bargain. He was not, and did not. Odebrecht was  
13 promised three things in return for its \$35 million bribe: (1) Dr. Toledo would support the expedited  
14 bidding schedule and prevent delays; (2) Dr. Toledo would amend the bidding requirements to favor  
15 Odebrecht and impede other companies; and (3) Odebrecht would be awarded the contracts.

16 Two of these events were bound to occur regardless of whether Odebrecht paid bribes: Dr.  
17 Toledo had already committed his support to expediting the Highway Project, long before Odebrecht  
18 ever considered paying a bribe. Dr. Toledo did not support the expedited bidding process because he  
19 was expecting a bribe; he supported it because he agreed with the Congress that the Interoceanic  
20 Highway was a “public need and national priority.” See ED 857-88. And Odebrecht was almost  
21 certain to win the contracts, with or without a bribe, because it was the only construction firm capable  
22 of fulfilling the contracts on the desired schedule. Accordingly, the only real benefit promised in  
23 return for the bribes was that Dr. Toledo would amend the bidding requirements to favor Odebrecht  
24 and impede other companies. This never happened.

25 According to Barata, Maiman’s executives had assured him that Dr. Toledo would “amend the  
26 provisions of the bidding conditions to favor [Odebrecht] and hinder or prevent the participation of  
27 other companies, thereby granting [Odebrecht] a competitive advantage in the bidding,” but this “*was*  
28 *not executed.*” ED 355 (emphasis added). Dr. Toledo not only “failed to amend the bidding

1 conditions,” but also “failed to implement other favorable measures for the company.” ED 355-56.

2 As Barata later recalled, “I wasn’t getting anywhere with President Toledo, and I felt frustrated by his  
3 procedure, because he hadn’t made the modifications that we wanted.” Barata 4/24/19 at ¶¶ 181-82.

4 **B. There Is No Probable Cause to Believe that Dr. Toledo Engaged in Money  
5 Laundering**

6 The government alleges that Dr. Toledo engaged in money laundering by (1) having Maiman  
7 receive \$20 million in bribes from Odebrecht on his behalf; (2) directing Maiman to transfer the  
8 money to Ecostate and Milan Ecotech; (3) transferring the money from Ecostate and Milan Ecotech  
9 to Ecoteva, a company whose nominal owner was Dr. Toledo’s mother-in-law; and finally (4) having  
10 his mother-in-law spend the funds for his benefit. None of these allegations are supported by  
11 probable cause.

12 **1. The Complaint’s Allegations Are Based on Outdated and Incorrect  
13 Information from Peru**

14 When Peru submitted its extradition request to the United States in 2018, its theory was that  
15 Odebrecht had decided to pay only \$20 million. This theory was based on the early testimony from  
16 Barata and Maiman. By the time the government filed its Complaint in July of 2019, both Barata and  
17 Maiman had changed their testimony and admitted that Odebrecht had actually paid at least \$34  
18 million. This information apparently was not conveyed to the United States by Peru, however. As a  
19 result, the Complaint’s money laundering allegations are based on outdated and incorrect  
20 information.

21 Peru’s current theory appears to be that Odebrecht paid \$34.2 million to Maiman: \$31.5 million  
22 to Warbury and \$2.7 million to Trailbridge and Merhav. Of the \$31.5 million paid into Warbury,  
23 Peru now alleges that \$8 million went to an account in Israel belonging to Maiman’s mother; \$3.7  
24 million went to a consulting company called Sirloin Dash; \$17.5 million went to Ecostate and Milan  
25 Ecotech; and \$2.3 million is unaccounted for. Ecoteva received a combined \$16.3 million from  
26 Ecostate and Milan Ecotech. From there, Peru now alleges that \$6 million was personally used by  
27 Maiman; \$6.6 million was seized, or will be seized, by Peru; \$4.5 million was used to purchase real  
28 estate in Fernenbug’s name (Las Casuarinas and Torre Omega); and \$500,000 went to pay Dr.  
Toledo’s mortgage payments. *See Costello Decl. at ¶ 22 & Attachment 1* (a visual representation of

1 Peru's theory).<sup>16</sup>

2 **2. Maiman Was the True Owner of Ecostate and Milan Ecotech**

3 The government alleges that Maiman was acting on instructions from Avraham Dan On when  
4 he transferred the funds from Confiado to Ecostate and Milan Ecotech. *See* Complaint at 9. The  
5 implication is that Dan On was acting on behalf of Dr. Toledo, and that Maiman had no connection to  
6 either Ecostate or Milan Ecotech. In 2013, however, Maiman testified that Dan On had originally  
7 incorporated both companies on *Maiman's* behalf, and that all of the money in both Ecostate and  
8 Milan Ecotech belonged to him. ED 5047; 5057. Maiman's ownership of both Ecostate and Milan  
9 Ecotech was subsequently confirmed by Maiman's attorney, who attested to the fact that all of the  
10 funds in both Ecostate and Milan Ecotech were "solely and exclusively owned" by Maiman. ED  
11 2200, 2205, 2207, 2212.

12 **3. Maiman Controlled Ecoteva and Its Investments, for His Sole Benefit**

13 The government alleges that the money went from Ecostate and Milan Ecotech to Ecoteva, "the  
14 chairman of which was nominally Eva Fernenbug ('Fernenbug'), Toledo's mother in law." *See*  
15 Complaint at 9. In 2013, however, Maiman testified that he was the true owner of Ecoteva's funds,  
16 and that all investments were made at his direction, for his financial benefit. This testimony is  
17 corroborated by the February 2, 2012 Nominee Agreement between Ecoteva and Maiman's Merhav  
18 Group, as well as the January 27, 2014 declaration by Maiman's attorney.

19 According to Maiman's attorney, Maiman "decided to incorporate" Ecoteva in 2012, as part of  
20 a plan to "diversify[] his investments into the real estate industry in Peru." ED 2213. Ecoteva was  
21 incorporated on January 26, 2012, in the name of Eva Fernenbug, using Maiman's money from the  
22 Ecostate and Milan Ecotech accounts.<sup>17</sup> ED 2214, 5037. Although Fernenbug was the nominal  
23

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24 <sup>16</sup> The defense's understanding of the money trail differs in a few respects. Based on its review of the  
25 financial records, the defense has determined that Odebrecht paid \$4 million to Trailbridge and  
26 Merhav, not \$2.7 million. *See* Costello Decl. at ¶ 9. In addition, the defense has determined that  
Milan Ecotech and Ecostate transferred \$17.5 million to Ecoteva, not \$16.3 million. *See id.* at ¶¶ 16-  
17, 22 & Attachment 2 (a visual representation of the defense's understanding of the money trail).

27 <sup>17</sup> Maiman's relationship with Fernenbug goes back to 1972, a decade before he met Dr. Toledo. ED  
28 5020. According to Maiman's attorney, he asked Fernenbug to be the nominal head of Ecoteva  
because he "could not purchase the properties directly, given that transactions made by legal entities  
not domiciled in Peru (non-residents) are subject to a higher tax burden." ED 2213; *see also* ED

1 director of Ecoteva, Maiman had exclusive “control of the funds and assets” by virtue of a February  
 2 2, 2012 Nominee Agreement. ED 5039-40. Under the terms of the Nominee Agreement, Maiman  
 3 “retained absolute power over the functions of ECOTEVA CONSULTING GROUP S.A., as well as  
 4 the decision-making power regarding investment in various projects or in business of any nature  
 5 whatsoever.” ED 2215; *see also* ED 5044; Nominee Agreement, Exh. E, *supra*. While Ecoteva  
 6 could “propose investments and projects,” it had “no autonomy to act on purchases, sales or any  
 7 transaction” without Maiman’s express authorization. ED 5029.

#### 8 **4. Eva Fernenbug Acted at Maiman’s Direction, for Maiman’s Benefit**

9 The government alleges that “at Fernenbug’s direction, at least some of the funds were  
 10 transferred [from Ecoteva] to two Peruvian bank accounts” and “used to purchase properties (and to  
 11 pay mortgages for properties) in Peru.” Complaint at 9.

12 It is true that Fernenbug made the real estate purchases in Peru, but she did so on Maiman’s  
 13 instructions, for Maiman’s financial benefit. As Maiman explained in his 2013 testimony, Ecoteva  
 14 “would propose investments and projects to manage the funds, administer the purchases and  
 15 investments, subject to the instructions of the MERHAV GROUP. ECOTEVA ha[d] no autonomy to  
 16 act in purchases, sales or any transaction” without Maiman’s authorization. ED 5029. Both the  
 17 house in Las Casuarinas and the office at Torre Omega were investments made on Maiman’s behalf.  
 18 ED 5040-41; 5048-49.

19 Dr. Toledo did receive \$500,000 to pay his mortgages, but as Maiman testified in 2013, the  
 20 \$500,000 was a loan that Maiman expected Dr. Toledo to repay. ED 5049-50.

#### 21 **5. There Is No Credible Evidence that Dr. Toledo Ever Asked Barata or** 22 **Maiman for the Money**

23 The Complaint alleges that “on one occasion in 2010 after Toledo had left office, Toledo  
 24 summoned Barata to his home in Camacho to pressure Barata to continue the payments.” Complaint  
 25 at 8. There is no evidence to corroborate Barata’s claim – no phone records, voice mail messages,  
 26 emails, or calendar notations. Moreover, the idea that Dr. Toledo would approach Barata directly is  
 27 not credible. According to the government, Toledo went to great lengths to distance himself from the

28 \_\_\_\_\_  
 5042.

1 bribery scheme. The government's theory is that Dr. Toledo used intermediaries at every stage:  
2 Avraham Dan On to make the initial approach to Barata; Weinstein and Saylan to negotiate the  
3 details with Barata and, later, tell Barata which of Maiman's accounts would be receiving the money;  
4 and Dan On to tell Maiman to transfer the funds to the Costa Rican accounts. It is simply not  
5 plausible that Dr. Toledo would expose his involvement by personally approaching Barata.

6 More important, there is no evidence whatsoever that Dr. Toledo ever asked Maiman for the  
7 money. According to the government's theory, Dr. Toledo entrusted Maiman to receive \$35 million  
8 on his behalf, then waited patiently for years while Maiman withheld all but a \$500,000 loan. There  
9 is no evidence, documentary or testimonial, that Dr. Toledo ever asked Maiman to pay him. The  
10 government would have this Court believe that Dr. Toledo was willing to betray his country, violate  
11 the law, destroy his reputation, and risk dying in prison so that Maiman could enrich himself by tens  
12 of millions of dollars, while Dr. Toledo would receive nothing more than a \$500,000 loan. Aside  
13 from being patently implausible, there is no way to reconcile this picture of Dr. Toledo with the  
14 impatient man who, according to the government, summoned Barata to his home to pressure him for  
15 payments.

#### 16 **6. Maiman Is the True Beneficiary of the Bribery Scheme**

17 Tellingly, both Barata and Maiman have conceded that they do not know whether Dr. Toledo  
18 profited from the bribery scheme. When Barata was asked in 2019 whether he had any knowledge of  
19 money going to Dr. Toledo, he testified, "I have no idea." *See* Barata 4/24/19 at ¶¶ 797-98. Later in  
20 the same statement, Barata confirmed that he had "no direct evidence" that any money was ever  
21 delivered to Dr. Toledo. *See id.* at ¶¶ 1002-03. In 2017, Maiman, too, admitted that he did not know  
22 whether or not Dr. Toledo had benefitted from the bribes. *See* ED 495.

23 Maiman was the real beneficiary of the bribery scheme. Odebrecht paid \$35 million. Of that,  
24 \$4 million was deposited into Maiman's Trailbridge and Merhav Overseas accounts. There is no  
25 allegation that this money ever left Maiman's control. The remaining \$31 million went to Warbury  
26 and then to Confiado, both accounts controlled by Maiman. Of the \$31 million deposited in  
27 Confiado's account, Peru alleges that between \$16.3 million and \$17.5 million was transferred to  
28 Ecoteva. Most of the remaining \$14 million either went to Maiman's relatives and companies, with

1 \$2.3 million unaccounted for. Of the money that went to Ecoteva, Peru acknowledges that Maiman  
2 personally used \$6 million and Peru has seized or will seized another \$6.6 million. Maiman's own  
3 testimony shows that the \$5 million spent on real estate was done on Maiman's behalf, not Dr.  
4 Toledo's. All that is left is a \$500,000 loan.

5 Not only did Maiman receive (and maintain control over) all of the bribe money, but under the  
6 terms of his collaboration agreement with Peru, he gets to keep most of it. Maiman has promised to  
7 pay Peru \$7 million and Peru has seized or will seize an additional \$6.5 million. That leaves Maiman  
8 with more than \$20 million.

### 9 CONCLUSION

10 Peru's current theory of their case bears little resemblance to what was presented to this  
11 Court in 2019, and even less semblance to what was publicly announced in 2017 to be an open and  
12 shut case against Dr. Toledo. In the interim, Peruvian prosecutors have permitted Josef Maiman and  
13 Jorge Barata to change their sworn testimony repeatedly when confronted by contradictory evidence.  
14 The Peruvian investigation bears no resemblance to a search for the truth. Instead, it ignores the  
15 actual culprits in the relentless and misguided pursuit of Dr. Toledo. How else, in the face of bank  
16 records and contradictory testimony that demonstrate that Maiman repeatedly lied to prosecutors  
17 about the most important details of his bribery scheme, would Maiman be allowed to enter a  
18 cooperation agreement that provides immunity to him and his family, dismissal for his employees/co-  
19 conspirators Saylan and Weinstein, and the not insignificant perk of being able to keep more than \$20  
20 million of bribe money that he solicited and collected. Maiman offers no explanation for why Dr.  
21 Toledo made no effort for 15 years to collect any of the money, all of which, minus a "commission"  
22 for Maiman, was purportedly meant for Dr. Toledo.

23 The evidence before this Court proves the following beyond probable cause: Josef Maiman,  
24 with the assistance of his employees, engaged in an elaborate scheme to collect bribes from Jorge  
25 Barata under the guise of representing the interests of Dr. Toledo. Maiman concealed this scheme  
26 from Dr. Toledo, and funneled the money to Maiman's family and employees.

27 As there is no competent or reliable evidence that Dr. Toledo was aware of any of Maiman's  
28 illicit activities, nor that Dr. Toledo took any of the actions promised to Odebrecht by Maiman, nor

1 that Dr. Toledo attempted to collect any of the bribes paid to Maiman, this Court must deny the  
2 extradition request for lack of probable cause.

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8  
9 Dated: July 8, 2021

Respectfully submitted,

10 GEOFFREY A. HANSEN  
11 Acting Federal Public Defender  
Northern District of California

12 /S

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