

1 IN THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 FORT LAUDERDALE DIVISION

4 CASE NO.: 13-CR-20690-RSR

5 UNITED STATES OF AMERICA, )  
6 Plaintiff, ) Fort Lauderdale, Florida  
7 v. ) March 12, 2014  
8 MARIO FABRICIO ORMACHEA ALIAGA, )  
9 Defendant. ) Pages 1 - 71  
\_\_\_\_\_ )

10  
11 JURY TRIAL BEFORE  
12 THE HONORABLE JOSE A. GONZALEZ  
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

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WITNESS:

PAGE NO:

NANCY ORMACHEA

Direct Examination by Ms. Doakes:

4

Cross Examination by Mr. Byrne:

7

1 (Thereupon, the following proceedings were held:)

2 THE COURT: Miss Doakes, good afternoon.

3 Please be seated.

4 Miss Doakes, are you ready?

5 MS. DOAKES: Yes, Your Honor.

6 THE COURT: Do you have your witness?

7 MS. DOAKES: Yes, Your Honor.

8 THE COURT: Bring in the jury, Madame Marshal.

9 (Jury entered.)

10 THE COURT: Members of the jury, good afternoon.

11 Does the Government waive the polling of the jury?

12 MR. BYRNE: It does, Your Honor.

13 THE COURT: Does the Defendant?

14 MS. DOAKES: Yes, Your Honor.

15 THE COURT: Members of the jury, you have heard all the  
16 evidence and testimony on behalf of the Government.

17 You will now proceed to consider whatever evidence or  
18 testimony the Defendant wishes to offer.

19 And you may call your first witness, Miss Doakes.

20 MS. DOAKES: Thank you, Your Honor.

21 Your Honor, at this time, the Defense calls Nancy Ormachea.

22 (Witness sworn through interpreter.)

23 THE COURT: Be seated, please, and tell us your full name.

24 THE WITNESS: My name is Nancy Barrientos Castro. The  
25 surname is B-A-R-R-I-E-N-T-O-S C-A-S-T-R-O.

1 NANCY ORMACHEA, DEFENSE WITNESS SWORN

2 DIRECT EXAMINATION

3 BY MS. DOAKES:

4 Q. Good afternoon, Mrs. Barrientos. How are you?

5 A. Good afternoon. I am well.

6 Q. Where do you live?

7 A. In La Paz, Bolivia.

8 Q. Are you married?

9 A. Yes.

10 Q. Who are you married to?

11 A. I am married to Mr. Mario Fabricio Ormachea Aliaga.

12 Q. And how long have you been married to Mr. Ormachea Aliaga?

13 A. This year, 2014, we will have been married 18 years.

14 Q. Do you have any children?

15 A. Yes.

16 Q. How many children do you have?

17 A. I have two little girls.

18 Q. Now, Miss Barrientos, I would like to direct your attention to

19 January 1st of 2013. That would have been New Year's Day.

20 A. Perfect.

21 Q. Where was Mario?

22 A. He was with us. That is, he was with me and our daughters and

23 we were taking our end of the year vacation.

24 Q. And where is that?

25 A. We were in Santa Cruz.

1 Q. And how long were you there in Santa Cruz?

2 A. We were there for approximately maybe a week or a little longer  
3 before we traveled.

4 Q. Where did you travel to?

5 A. We took -- made a trip to Miami.

6 Q. And why did you go to Miami?

7 A. We took the trip so that our daughter would go to the park.

8 Q. Are you talking about Disney World?

9 A. Precisely.

10 Q. And how long were you in the parks in Disney World?

11 A. Approximately until the end of January.

12 Q. And at the end of January, where did you go?

13 A. We went back to our country.

14 Q. And who is we?

15 A. My family.

16 Q. Now, was Mario with you at that time?

17 A. Yes.

18 Q. Now, at some point, now at the end of January, you had said  
19 that you returned to La Paz. When you returned back to La Paz who  
20 was with you?

21 A. Well, my family. That would be Nancy, Carolina, Daniella, and  
22 Mari.

23 Q. So you and Mario traveled home back together in La Paz?

24 THE INTERPRETER: Excuse me. Correction from the  
25 interpreter: It was Nancy, Carolina, Daniella, and Mario -- Mario

1 Fabricio.

2 BY MS. DOAKES:

3 Q. Okay. Now, I want to direct your attention to July of 2013.

4 A. Okay.

5 Q. Now, Mario had to return to the United States, then, correct?

6 A. Pardon?

7 Q. In July of 2013, at some point, Mario returned to the United  
8 States?

9 MR. BYRNE: Objection, Your Honor; leading.

10 THE COURT: Overruled.

11 THE WITNESS: Yes, yes.

12 BY MS. DOAKES:

13 Q. And why did he return to the United States?

14 A. He traveled to Washington, D.C. to take his father, who is an  
15 elderly gentleman -- he is an 83-year-old man and he went along with  
16 him.

17 Q. And how long did he stay in Washington, D.C.?

18 A. He stayed there for a very short while because he returned in  
19 the first days of August.

20 Q. Returned where?

21 A. To La Paz, Bolivia.

22 Q. And at some point, did he travel back to the United States?

23 A. That is correct.

24 Q. And do you recall when?

25 A. Yes, he traveled on August 29th.

1 Q. And why did he do that?

2 A. He went to pick up his father.

3 Q. And when was he supposed to return back to La Paz?

4 A. The exact date of his return has been set for January 31st.

5 Forgive me; for August 31st with his father.

6 Q. Did he return on August 31st?

7 A. (Nodded.)

8 Q. Why not?

9 A. Unfortunately, he did not.

10 MS. DOAKES: Thank you, Miss Barrientos. I have no further  
11 questions.

12 THE COURT: Cross examination.

13 CROSS EXAMINATION

14 BY MR. BYRNE:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. When Mr. Ormachea came to the United States on August 29th, you  
18 said that he was coming to see his father?

19 A. To pick up a brother to take him -- excuse me -- on the 29th of  
20 what month, did you say?

21 Q. Of August.

22 A. He did, in fact, come to pick up his father. His father was  
23 returning from Washington.

24 Q. Did he say anything about meeting a man by the name of Humberto  
25 Roca to you?

1 A. Not at all. Never, no, no.

2 Q. Did he say anything to you about coming here for two-weeks  
3 vacation?

4 A. Vacation, no. He came to pick up his father who was coming  
5 back from the United States, from Washington.

6 Q. And the times that you said he was in Washington, did he say  
7 anything to you about meeting with the FBI in Washington?

8 A. Not at all, no, no.

9 MR. BYRNE: No further questions, Your Honor.

10 THE COURT: All right. Thank you, ma'am. You may step  
11 down.

12 THE WITNESS: Thank you very much.

13 THE COURT: Miss Doakes, what else do you have?

14 MS. DOAKES: Nothing further, Your Honor. The Defense  
15 rests.

16 THE COURT: The Government will have no rebuttal, I assume?

17 MR. BYRNE: You are correct, Your Honor.

18 THE COURT: We will rest without rebuttal.

19 Members of the jury, you have heard all of the evidence and  
20 the testimony in connection with this case. And what remains for  
21 you to hear is the closing arguments of the lawyers and the Court's  
22 instructions as to the law.

23 At this point in the trial the Court has to, again, confer  
24 with the litigants outside of your presence. When we reconvene in  
25 just a few moments, we will proceed with the closing arguments. And



1 then, we will give the case to you for your decision at the close of  
2 all the evidence.

3           You may take the jury out, Madame Marshal.

4           Counsel will remain for motions at the close of all the  
5 evidence.

6 (Jury exited.)

7           THE COURT: Be seated, please.

8           We have a problem with one of the jurors. Juror Number 1,  
9 Miss Popluder, has had a death in her family. Her sister-in-law  
10 passed away while she has been here for jury duty. She has to leave  
11 town in the morning to go to the funeral and she will not be back  
12 until Friday.

13           And I propose to excuse her because we will get this case  
14 to them for their deliberations, but I don't know if it's going to  
15 take five minutes or five days. So I am going to excuse her when we  
16 come back and move Mr. Lakso, our first alternate, in that chair.

17           As you will recall, Miss Smith says she has to be in West  
18 Palm Beach herself for medication, or something, tomorrow. So if we  
19 don't have a verdict by 5:00, I am going to ask them to recess and  
20 come back tomorrow at 9:00. And then, she said she will leave here  
21 at 11:00 and be gone and come back and they can continue to  
22 deliberate tomorrow afternoon.

23           If that is acceptable, we are ready to proceed in closing  
24 argument. Who is going to be opening for the United States?

25           MR. BYRNE: Mr. Juenger will be.

1 THE COURT: Mr. Juenger. All right. And who is going to  
2 close for the United States?

3 MR. BYRNE: I will, Your Honor.

4 THE COURT: Mr. Byrne, remember you have 45 minutes for  
5 each side. And you can bring in the jury and I am going to excuse  
6 Miss Popluder.

7 MS. DOAKES: Your Honor, the Defense would renew its Rule  
8 29 request.

9 THE COURT: Oh, I am sorry. Yes, ma'am.

10 Go ahead.

11 MR. BYRNE: One question.

12 We have a question about getting a copy of the jury  
13 instruction because there was that one change.

14 THE COURT: Go ahead, Miss Doakes. I interrupted you.

15 MS. DOAKES: Your Honor, at this time, the Defense would  
16 renew its Rule 29 request for Motion For Judgment of Acquittal.

17 THE COURT: The Defense Rule 29 motion, made at the  
18 conclusion of all the evidence on behalf of the Defendant, will be  
19 denied.

20 Let the record reflect that the Court is furnishing counsel  
21 for both the prosecution and the defense copies of the Court's  
22 proposed instructions, which were the subject of the charge  
23 conference yesterday. And further, two copies for the court  
24 interpreters and one copy for the court reporter.

25 MS. DOAKES: Is that with the change?

1 MR. BYRNE: Yes.

2 THE COURT: Okay. Bring in the jury.

3 (Jury entered.)

4 THE COURT: Miss Popluder, I have been made aware of the  
5 fact that you have had a death in your family and you are going to  
6 be leaving tomorrow morning and there is no way to predict how long  
7 deliberations will last.

8 I am going to excuse you at this time so that you won't  
9 have that on your mind. And I thank you for attending court this  
10 week and serving as one of our prospective jurors in this case. You  
11 are excused at this time with the thanks of the Court and you are  
12 free to go and have a safe journey.

13 Mr. Lakso, that means that you are now promoted to the  
14 number one chair.

15 Now, members of the jury, as I said, you have heard all the  
16 evidence and testimony in connection with this case. And what  
17 remains for you to hear is the closing arguments of the lawyers and  
18 the Court's instruction as to the law.

19 You will find that the order of argument is identical to  
20 the order of proof. You will first hear from Mr. Juenger on behalf  
21 of the Government. And Miss Doakes will, then, address you on  
22 behalf of the Defense. And the Government, then, has the  
23 opportunity to close the argument in rebuttal.

24 At the conclusion of the arguments, the Court will instruct  
25 you on the law that you will apply in reaching your verdict and,

1 then, ask for you to retire to consider that verdict.

2           I remind you that what the lawyers say to you now is not  
3 evidence in the case. The purpose of the closing arguments is to  
4 permit the lawyers to argue to you the evidence and the testimony  
5 upon which your verdict will be based. And also, to argue the  
6 instructions of the law that the Court will give you in its charge.

7           So for that reason, although not evidentiary, it is  
8 nevertheless an important part of the case because it permits each  
9 party to highlight those portions of the evidence that they believe  
10 most favored their particular position with regard to this  
11 litigation.

12           Having said that, Mr. Juenger, if you are ready you may  
13 proceed with your argument.

14           MR. JUENGER: Yes, Your Honor. Thank you.

15           See, it does happen. I warned you.

16           May it please the Court, counsel, and members of the jury.

17           As Mr. Byrne told you in his opening statement, this is a  
18 case about a man, the Defendant, Mario Fabricio Ormachea Aliaga, who  
19 used his significant power and influence to extort a man, named  
20 Humberto Roca, out of money.

21           And so it is, when Mr. Byrne got up here and told you  
22 that's what this case was about, it was just him talking. A lawyer  
23 talking and telling you what he anticipated the evidence in this  
24 case would show, but now we are at closing argument. And as the  
25 Court already told you, you know the evidence in this case now.

1           So it is not just lawyers talking here. You know what the  
2 facts of this case are because you have sat here and listened for  
3 the last two and-a-half days.

4           Now, what I propose to do for my closing argument is to  
5 kind of recap some of that evidence. This hasn't been a long case  
6 and it's not like you will have forgotten the evidence, but I want  
7 to try and organize it for you in a way, hopefully, to make it  
8 easier for you to see that the Defendant in this case committed the  
9 two crimes that he is charged with.

10           You may recall from the beginning, the Judge told you that  
11 the Defendant is charged with two crimes in this case; one, we call  
12 a Travel Act violation and the other one is called attempted  
13 extortion.

14           Now, once the lawyers are all done talking, the Judge will  
15 give you your instructions and it will look something like this.  
16 Fortunately, he gives the lawyers a copy to use during the closing  
17 arguments. This packet has all the instructions and the Judge will  
18 go over them all with you.

19           And they are all very important, but I'm only going to talk  
20 about two of those instructions. The instructions that we call the  
21 offense instructions because they tell you what it is that the  
22 Government has to prove beyond a reasonable doubt for you to be able  
23 to find the Defendant guilty of both of those crimes that he's  
24 charged with.

25           So I'm going to give you a little peek at these. Actually,

1 before I do that, I want to point out something that's important.  
2 These instructions are all important. And in fact, there is an  
3 instruction in here that tells you that you can't single out or  
4 disregard any of the Court's instructions. You have to consider  
5 them all as whole, but I'm focusing on these two particular ones  
6 because it tells you what the Government has to prove because  
7 they're all important. I don't want to mislead you.

8           If you look here on the screen, you will see this is the  
9 Travel Act violation. Essentially, what the Travel Act says is, it  
10 is against the law to travel from outside the United States to the  
11 United States if what you intend to do is commit one of a number of  
12 crimes and extortion is one of those crimes.

13           If you travel from out of the country into the country with  
14 the intent to commit extortion and you do any act to help further  
15 that extortion, you have committed a Travel Act violation.

16           And if you look here at the instructions, it tells you, the  
17 Defendant can be found guilty of this crime if all of the following  
18 facts are proved beyond a reasonable doubt. And there are three  
19 facts right here that the Government has to prove. And I submit  
20 that we have proven that in this trial and I will tell you why.

21           The first thing the Government has to prove is that the  
22 Defendant traveled in foreign commerce on or about the dates between  
23 the places described in the indictment.

24           Down here it explains a little bit what foreign commerce  
25 means. It means, what you will expect, traveling, travel,

1 transportation, or movement between some place within the United  
2 States and some place outside the United States. So the Government  
3 has to prove that the Defendant traveled from outside of the country  
4 into the country.

5           Clearly we have proven that several different ways. You  
6 have his passport, for example. It has the passport stamp and it  
7 shows he entered the United States on August 29th of 2013.

8           From the witness stand you heard the Customs and Border  
9 Protections Officer who had an encounter with him as he came through  
10 Customs. You saw the declaration form stamped on the 29th showing  
11 that the Defendant entered from Bolivia, which is outside of the  
12 country.

13           You heard from the LAN employee who introduced the travel  
14 records from the airline, the manifest that showed that he traveled  
15 into the United States.

16           Easily, the Government has proved beyond a reasonable doubt  
17 that the Defendant traveled from outside of the United States into  
18 the United States.

19           The second element that the Government has to prove is that  
20 the Defendant traveled with the specific intent to promote, manage,  
21 establish, or carry on an unlawful activity. So the intent for him  
22 coming here was to carry on an unlawful activity. And if you turn  
23 the page here, it tells you that unlawful activity includes the  
24 crime of extortion.

25           Okay. So what we're talking about is, did the Defendant

1 travel to the United States with the specific intent to commit  
2 extortion? And again, I submit to you that the evidence in this  
3 case clearly shows beyond any reasonable doubt that the Defendant  
4 came here with the intent to commit extortion.

5           Now, remember, when we were in voir dire or jury selection,  
6 we talked a little bit about how you prove what someone's state of  
7 mind is because we all agree that none of us are mind-readers, but  
8 we do know, and we all agreed, that you can tell what somebody had  
9 in their mind by the acts they commit, the things they say, and by  
10 the context in which they say them. So let's talk a little bit  
11 about that.

12           What is the context of the Defendant coming to the United  
13 States?

14           Well, what do we know about him? We know that he's the  
15 chief of the Anti-Corruption Division of the Bolivian National  
16 Police Force. We know that he's in charge of the cases involving  
17 Humberto Roca. We know he comes to the United States.

18           And interestingly, what did he do when he first got off of  
19 the plane? You heard from Officer McMillon, the Customs and Border  
20 Protections Agent, why did he say he was coming here? He said he  
21 was coming here for a two-week vacation. You know that's not true.  
22 You know that's not true and you know that he knew that was not true  
23 because the ticket from LAN showed he bought the ticket before he  
24 came here and he knew he was coming back on August 1st or August  
25 31st. He was only here for three days. He lied.



1           Why does a man need to lie about that? Why didn't he just  
2 say I am here to pick up my father and I'm going to be here for  
3 three days? He lied because he didn't want anybody to ask any  
4 questions about why he was really here, but consider the rest of the  
5 context.

6           He comes here. He lies about why he's going to be here and  
7 how long he's going to be here. And then, the very next day, where  
8 is he meeting? The man, who is the head of the Anti-Corruption  
9 Division of the Bolivian National Police Force is meeting in the  
10 garage of the man who he is investigating. Talk about odd context.

11           And what happens at that meeting? You go on from the  
12 context. What happened at that meeting? Well, we know exactly what  
13 happened at that meeting because it was recorded and you have copies  
14 of this. This is admitted into evidence.

15           And you will have a computer back there with you and you  
16 can pop it in and play it and pause it and replay it and back it up.  
17 You can look at this as much as you like, but what you saw here were  
18 some of the best little clips from that.

19           We didn't make you listen to the whole foreign feature  
20 film, but what did the Defendant say in those foreign clips? The  
21 Defendant said a lot about who he was. He told Humberto Roca who he  
22 was. He was in charge is what he told them. He was in charge of  
23 all his cases. He's the top officer involved in those cases. He's  
24 the head of the Anti-Corruption Division.

25           He's telling him all this and about all the power that he

1 has. He tells him that he writes the reports. He controls the  
2 information. He even says something like, you know, there are those  
3 who decide and those who do. I'm one of the ones who do. Nobody  
4 knows as much about this investigation as him. He says prosecutors  
5 come, judges come and go, but whenever there's a meeting, who's  
6 there? Him.

7           Why does he want Humberto Roca, the man he's investigating,  
8 to know this? Because he wants to prove that he has the power over  
9 Mr. Roca. No matter how wealthy Mr. Roca is, this guy calls the  
10 shots. He has Mr. Roca's fate in the palm of his hands.

11           And what else does he tell him at that meeting? Something  
12 very frightening, actually. He tells Mr. Roca that he's innocent  
13 two times. You're innocent. That's frightening because he's the  
14 man who is investigating Mr. Roca. He's the one who gathers all the  
15 evidence and who provides it to the prosecutors and the judge and he  
16 says you're innocent.

17           Does that matter to him? No. He comes here to Miami to  
18 have a meeting in Mr. Roca's garage to tell him, I'm in charge and  
19 you're not guilty. It doesn't matter, but for \$30,000 I will change  
20 the reports. He tells how he can do a 50-page report on this other  
21 person, whose name I can't pronounce, Sanzetenea.

22           He also tells Mr. Roca about the consulate and how he can  
23 use the consulate as a trap. That word comes out of his mouth. The  
24 consulate is a trap. You call people there and you misuse the FBI  
25 because the FBI does not know what's going on -- this is what he

1 claims anyway -- and you bring people there and you trap them.

2           And all of this is something that Mr. Roca can avoid for  
3 \$30,000. That is extortion, ladies and gentlemen. Extortion you  
4 will see is defined in here as the wrongful use of actual use of  
5 actual or threatened fear. This whole meeting was designed to put  
6 Mr. Roca in fear.

7           Now, something that Miss Doakes said in her opening  
8 statement. Look at the video. Look at the demeanor of the  
9 individuals in the meeting. I think where that is headed is that  
10 Mr. Roca doesn't look like he's afraid. He's not quaking in his  
11 boots. They're laughing and getting along okay.

12           But you know something about Mr. Roca that explains that?  
13 Because you know that there are federal agents in the next room.  
14 Mr. Roca has nothing to fear as he sits there in that room because  
15 he knows people, like Agent Arias, are in the next room to protect  
16 him.

17           This isn't about fear right there in his garage. This is  
18 all about the fear of the future. Mr. Roca's future. You heard  
19 what can happen. He can go to jail. He can lose all of his  
20 property in Bolivia. His family members can get charged. He can  
21 never return to his country. He stands to lose everything, but his  
22 life is held in the hands of the Defendant unless he pays \$30,000.

23           And let's not forgot another thing that the Defendant said  
24 when he's talking about how Mr. Roca is innocent. He gives some  
25 examples of people who are in Bolivia. One that stands out is a

1 prosecutor; a prosecutor in Bolivia who is in jail and he says  
2 there's no evidence. Evidence doesn't matter to the Defendant.  
3 It's not about evidence. It's about money. You pay the \$30,000 and  
4 you avoid problems. That's how you know that the Defendant's intent  
5 was to come here and to extort Mr. Roca. That's what he did when he  
6 got here was extort Mr. Roca. Therefore, you know that his intent  
7 was just that.

8           And now, I want to point out something else because based  
9 on the defense case, which was to have the Defendant's wife come  
10 here and say no, no, no, no, he came here to pick up his father.  
11 Well, he may have come here to pick up his father, but he also came  
12 here to extort Mr. Roca and the instructions say something important  
13 to you about this.

14           Here, at the bottom, it says the Government must prove that  
15 the Defendant traveled in foreign commerce and specifically intended  
16 to promote, manage, establish, or carry on an unlawful activity,  
17 which is the extortion. But the Government does not have to prove  
18 that the unlawful activity was the only or even the primary reason  
19 the Defendant traveled.

20           So he can come here to pick up his father, but he also  
21 intended to come here to extort Mr. Roca. That's how these first  
22 two elements are established beyond any reasonable doubt. What else  
23 happened in that garage in Miami Lakes, but extortion?

24           The last thing the Government has to prove is that while  
25 traveling, the Defendant knowingly committed an act to promote,

1 manage, establish, or carry on an unlawful activity. What this  
2 means is that it's not enough just to prove that he had the intent  
3 in his mind. People can have thoughts in their minds and it's not a  
4 crime until you do something, an act, to carry out that illegal  
5 thought in his mind and he did plenty of acts here.

6           He went to Mr. Roca's house. He talked to Mr. Roca. He  
7 explained how he had so much power. He made his little pitch about  
8 how he could change everything for money. He took the money. You  
9 saw him count out the money. He rented a car to get to the house.  
10 He was going to go back to the airport.

11           All of these were acts that were done to promote, or carry  
12 on this extortion. We are not just punishing. We are not just  
13 trying to find him guilty because of something in his mind. It's  
14 because he actually took steps to truly extort him. That's the  
15 first charge.

16           The second charge is the attempted extortion charge. And  
17 that is set forth on a different page. It says the Defendant can be  
18 found guilty of this crime only if all of the following facts are  
19 proved beyond a reasonable doubt. And just like the other one,  
20 there are three different facts that the Government has to prove.  
21 They're all right here.

22           First, the Government has to prove that the Defendant  
23 attempted to cause Mr. Roca to part with property. Again, it's on  
24 video. He didn't just attempt. He attempted to get him to part  
25 with \$30,000. That's what he attempted to do. He, actually, got

1 him to part with \$5,000 and you saw photographs of this and this is  
2 hardly in dispute. He had \$5,000 in his pocket and it's the same  
3 money that the agent photographed that Mr. Roca had. So clearly, he  
4 got him to part with the money.

5           The second thing that the Government has to do is prove  
6 that the Defendant did so knowingly by attempting to use extortion.  
7 We've already talked about that in the last charge. Did he attempt  
8 to get that money by extortion?

9           Well, what else did he attempt to get it by? He got it by  
10 telling Mr. Roca I'm in charge. I hold all the cards. Nobody makes  
11 any decisions. He even says not even the vice president or  
12 president makes decisions because I have the information. I control  
13 the information. I can divert the information whichever way I want.  
14 There's nobody else that can do that. He's the one in charge.

15           It only cost \$30,000; \$30,000 to get what he should get for  
16 nothing, for free, because the Defendant tells him you're innocent.  
17 Think about that. That is a frightening diabolical thing to do to  
18 somebody. You're innocent. You're charged. You can go to jail.  
19 You can be removed. You lose your property. Your family members  
20 get wrapped up in all this. You're innocent and I don't care, but  
21 for \$30,000.

22           The last thing the Government has to prove is that the  
23 attempted extortion transaction, if actually carried out, would have  
24 delayed interrupted, or affected interstate commerce. Let me say  
25 that again. The attempted extortion in the transaction, if actually

1 carried out would have delayed, interrupted, or affected interstate  
2 commerce.

3 Kind of sounds like a lawyer wrote that and it's further  
4 defined for you. Interstate commerce is the flow of business  
5 activities between one state and anywhere outside of the state.

6 And it says the Government does not have to prove that the  
7 Defendant specifically intended to affect interstate commerce, but  
8 it doesn't matter what he thinks about it, but the Government must  
9 prove that the natural consequences of the acts described in the  
10 indictment, the extortion, would affect interstate commerce.

11 This is the important part. If you decide that there would  
12 be any affect on interstate commerce that is enough to satisfy this  
13 element. The affect can be minimal.

14 Now, I don't want to digress into a law school class here.  
15 You didn't sign up for that, but I want to explain what this is all  
16 about. Many of you, I'm sure know, there are essentially two  
17 governmental systems in our country.

18 There's the national government, the United States  
19 Government seated in Washington, D.C. and our congressmen go there  
20 and create laws. And there's a whole court system for the United  
21 States of America and you happen to be in one right here. This is  
22 the United States District Court for the Southern District of  
23 Florida.

24 There also happens to be a state system of Government.  
25 It's in Tallahassee, Florida. Every state has their own and in

1 Tallahassee they can create laws for the State of Florida. So there  
2 are two systems.

3           We are here in the federal court. And the thing is, in  
4 federal court, in the U.S. Court, it is designed to handle matters  
5 that affect issues between states and between the United States and  
6 other countries and that's why this has to be in here.

7           There has to be some sort of affect between states or  
8 between nations that makes it of interest to the United States of  
9 America and to this Court. It is why we are in this court as  
10 opposed to being in state court. State court, they handle things  
11 that are only involved in the State of Florida and don't affect the  
12 national interest or other states.

13           So you have to find that the extortion that he was  
14 committing would have, in some way, even a tiny way, had an affect  
15 on interstate or foreign commerce. And I submit to you, ladies and  
16 gentlemen, what do you know?

17           You know that he came here. The Defendant came here and  
18 \$30,000 in U.S. is what he asked for. You know he got \$5,000 in  
19 U.S. currency. And you saw at the very end of the video, what did  
20 he say he was going to do? He's leaving. He's taking the money  
21 back to a foreign country.

22           Now, that is a minimal -- to be sure -- a minimal affect on  
23 interstate or foreign commerce, but it is an affect and that's why  
24 it is in this courthouse and why you need to consider it and you  
25 need to find it beyond a reasonable doubt.



1 Do you have the time, Your Honor?

2 THE COURT: You have 22 minutes.

3 MR. BYRNE: Ladies and gentlemen, I'm going to sit down  
4 because I want to make sure that Mr. Byrne has an opportunity to  
5 come back, but I submit, if you go through those elements, that's  
6 what it is that the Government has to prove. Each one of those  
7 three elements for each one of those crimes. It's right here on the  
8 video. The video and the audio do not lie. It does not lie about  
9 what happened inside that room.

10 I submit to you that this evidence proves beyond any  
11 reasonable doubt that the Defendant committed both of those crimes  
12 as charged.

13 Thank you.

14 THE COURT: Thank you, Mr. Juenger.

15 Miss Doakes, you may proceed.

16 MS. DOAKES: Your Honor, may I just -- I need to set up my  
17 iPad. I need some help with that.

18 Members of the jury, during my opening I told you that this  
19 was a case about money in exchange for influence in Bolivia and not  
20 the United States.

21 I told you that the Government would not be able to prove  
22 any extortion. They wouldn't be able to prove any corruption and I  
23 was right. They have failed to prove to you, beyond a reasonable  
24 doubt, that Mr. Ormachea committed any of the crimes charged in the  
25 indictment.

1           I told you, I asked you the question in opening, then why  
2 are we here? Well, we're here because of a wealthy corrupt  
3 businessman who came in here and wanted to use this platform in  
4 order to get back at the Bolivian Government.

5           And the prosecution, how they tried to establish its case,  
6 they put on a video with subtitles that went by really fast. And  
7 they tried and they used Mr. Roca to explain what happened, rather  
8 than giving you the whole picture.

9           You all have a transcript. There's a transcript that was  
10 prepared in this case. And when you all go back, I'm going to ask  
11 you to carefully go through that transcript. I'm going to go  
12 through parts of that transcript right now with you. And I'm going  
13 to show you that this case is about money in exchange for influence  
14 in Bolivia and not the United States. The Government has failed to  
15 prove its case beyond a reasonable doubt.

16           Now, first, what is the definition of reasonable doubt?  
17 Proof beyond a reasonable doubt is proof so convincing that you are  
18 willing to rely and act on it without hesitation in the most  
19 important of your affairs. So in essence, what that means is proof  
20 beyond a reasonable doubt. It's not a gut feeling. It's not a  
21 maybe and it's not an I think. It's beyond a reasonable doubt.

22           Now, there are two counts that are charged in the  
23 indictment. There's the Travel count and there's the count  
24 involving the Hobbs Act count. Both counts involve the crime of  
25 extortion. Extortion means obtaining property from a person who

1 consents to give it up because of the wrongful use of actual or  
2 threatened force, violence, or fear.

3           Now, the issue in this case is whether or not Mr. Roca  
4 voluntarily gave up his property, which was the money, the \$5,000  
5 because he feared. So what is the definition of fear? The  
6 definition of fear is a state of anxious concern, alarm, or  
7 anticipation of harm. It includes the fear of financial loss, as  
8 well as the fear of physical violence.

9           Now, obviously, there was no evidence here presented that  
10 showed any kind of fear of physical violence. So the issue is going  
11 to be whether or not there was any fear of any other actions, which  
12 Mr. Roca stated there were acts of reprisals against his family.

13           So let's walk through the transcript and as we're walking  
14 through the transcript, I'm going to show you how this was money in  
15 exchange for influence in Bolivia and not in the United States.  
16 When we start on Page 5 of the transcript, you have Mr. Roca that  
17 says, well, tell me what are we going to do? Tell me.

18           Now 'we' means we're working together. What are we going  
19 to do? And he says because what I want to know, Colonel, is that  
20 you tell me exactly everything because I don't want it later to be  
21 that this one or that other one. He's in control here. I'm looking  
22 at Page 5 on August 30th of the transcript.

23           Now, we know that and the evidence showed that Mr. Ormachea  
24 was the head of the Anti-Corruption Unit there in Bolivia. And Mr.  
25 Roca is asking Mr. Ormachea, well, what are we going to do? He

1 means, what are we going to do in our case. How are you going to be  
2 of benefit to me?

3           Page 6 of the transcript says and Mr. Ormachea tells him  
4 how he's going to be able to be of benefit to him. He's telling him  
5 how he is going to be able to help him. He says this is what we are  
6 doing in regard to your situation in regard to Humberto Roca. And  
7 he starts to talk about what they're doing with respect to the ATT  
8 case.

9           And he goes on, on Page 8 of the transcript, and he starts  
10 explaining to Mr. Roca, this is who I am. I'm the chief of the  
11 Anti-Corruption Division. And he talks about it and tells him that  
12 he's involved in the investigation of one of the cases, the criminal  
13 cases that Mr. Roca is charged with, the illegal enrichment case.  
14 And that's the case, if you recall, he was talking about the Nardi  
15 Suxo case.

16           And basically, why this is a benefit to Mr. Roca is because  
17 Mr. Ormachea, by being involved in this case, he is in a position  
18 where he could let Mr. Roca know what's going on in the prosecution.  
19 That's a benefit to Mr. Roca; Page 10.

20           And then, Mr. Roca starts talking about Alvaro Garcia.  
21 He's asking Mr. Ormachea to give him information about the  
22 president. And why? Because why would Mr. Roca want information  
23 about the vice president of Bolivia? Because that would be of  
24 benefit to him. That would be a benefit to his federal case that he  
25 has pending currently against the Government of Bolivia.

1           Then, Mr. Ormachea goes on to say so in regard to your  
2 thing, I'm ready and willing to help you. And he says -- and this  
3 is how I'm ready, willing to help you. What I want to do is, we  
4 should not deviate, but instead concentrate on the investigation.  
5 And he talks about how there are so many parts of the investigation.

6           Page 11 goes on to say, listen, I'm being entirely honest.  
7 We do not have all the resources in the world. We are not the FBI.  
8 So Mr. Ormachea is telling Mr. Roca, we are not in a position to be  
9 able to just start to travel, to take statements, and make  
10 appointments. He's kind of letting him know that here and that they  
11 are not in the position to get up and start taking statements.

12           So here he is letting Mr. Roca know this is where we are in  
13 the investigation. And he goes on and he says how will this be of  
14 use to you? And he says it will be of use to you because we know  
15 right now that you're concentrating your defense strategy just on to  
16 say how you've left for political reasons, but I believe you should  
17 focus it on this other aspect of it.

18           Page 13 where he says I'm going to explain it to you as if  
19 Jorge Valda was here, if he has not done so already. This shows he  
20 has no intent. Again, showing that he's trying to help Mr. Roca.

21           And then, look at the bottom, he says, I told you. And Mr.  
22 Roca says I don't want anything at all from you. That is what I  
23 told him.

24           Well, at the end of the transcript, it says and do you know  
25 what -- Mr. Ormachea says, you know what, I will tell you with my

1 hand on my heart in the name of God, I'm not lying to you. I am  
2 certain of your innocence. This is showing that Mr. Ormachea has no  
3 intent to extort.

4           Then, on Page 15 of the transcript, here again, a benefit.  
5 Mr. Ormachea is providing Mr. Roca. He's feeding him information  
6 about the investigation of his case.

7           Page 17 of the transcript, Mr. Roca says, does Evo know or  
8 not know? And Evo is the President of Bolivia. He's trying to get  
9 him here to talk about whether he knows anything. If there is  
10 anything here, trying to find out whether or not there is anything  
11 that Mr. Morales is doing illegal. He's trying to find out whether  
12 or not, Mr. Quintana, another official in Bolivia is involved in any  
13 drug trafficking related activities.

14           Again, this is a benefit to Mr. Roca. It's a benefit to  
15 Mr. Roca, because Mr. Roca wants to embarrass the Bolivian  
16 Government. And what better way to get information from someone who  
17 is high-ranking in the Bolivian Government.

18           Page 18, Mr. Roca says, well, let's get back to our thing.  
19 Again showing that they're working together.

20           At the bottom of Page 18, Mr. Ormachea talks about, I  
21 already know them. I'm telling you this is the know-how I have.  
22 Again, Mr. Ormachea is explaining to Mr. Roca this is the  
23 information that I have, any expertise that I have.

24           And here, if you recall, Mr. Byrne asked Mr. Roca about  
25 these Chinese barges. And Mr. Ormachea, here, he is giving an

1 example of what happened here. He's giving an example of someone  
2 who he tried to help before and what happened when he presented it  
3 to higher officials involved in the Bolivian Government. And he's  
4 giving an example of what happened to him as a result of doing that  
5 because he's working on that person's side this is what happened.

6           And then, on Page 20, I'll say this is the first time where  
7 it says, let's suppose that you are able to divert the attention  
8 focused on me and you focus it on the true guilty parties. Well,  
9 you heard Mr. Roca. He testified that Mr. Ormachea said that.

10           Here, on Page 20, where it says let's suppose that you're  
11 able to divert the attention focused on me and focus it on the true  
12 guilty parties. This is Mr. Roca mentioning this to Mr. Ormachea.  
13 He's in control here. He's saying this is what you need to do.

14           And then, he goes on to say, I see, and Alvaro comes to you  
15 and says no. It's Humberto Roca that asks what are you going to do?  
16 And he tells him again, listen, I'm the one in control of all of  
17 this.

18           And at the bottom of that page, on Page 20, here Mr.  
19 Ormachea is explaining to Mr. Roca, again, when he's talking about  
20 how he can help him and why he believes that he is innocent. And  
21 he's telling him there are some problems with the dates that were  
22 imposed by the tax ministry, which you shouldn't have been included  
23 in. This is an example of why I believe you are innocent. Here  
24 he's helping Mr. Roca with his defense on the Bolivian charges.  
25 That's no intent to extort.

1           Then, on Page 22, Mr. Roca goes back and says, all right,  
2 let's continue with our thing of how to do this. Again, our thing.  
3 This is the two -- this is an exchange for a benefit. Let's  
4 continue on with our thing.

5           And Mr. Roca says, all right, you will divert the  
6 information. So I mean, what do I do? And Mr. Ormachea says to  
7 him, you just wait for the results. You don't have anything to do  
8 because you're in good hands.

9           And then, this is the first time -- as you can see in the  
10 next line where he says, all right, but what I don't want is for  
11 there to be about the topics with anyone. And the topics, I submit  
12 to you, he is referring to the money. And this is the first time  
13 when money comes up. So who brings it up? It's Mr. Roca and not  
14 Mr. Ormachea that brings up the idea about money.

15           And then, he goes on to say, don't forgot that. For me it  
16 is hard for me to move things. Again, this is him talking about the  
17 money where he brings it up for the very first time during that  
18 meeting.

19           On Page 24, at the very top Mr. Ormachea says, if you think  
20 that I, in my inner core, in my conscious, in my heart, if I thought  
21 you were guilty I would not be talking to you. Again, this is  
22 showing that he had no intent to extort.

23           And then, he says to him, he's asking him, you know, for  
24 all of this, you know, I'm not trying to take the -- the next  
25 sentence Mr. Ormachea says, right, for all of this, I mean, until



1 the end of what the investigative phase is because there's a place.  
2 I can't be a con artist and tell you and we go this far and nobody  
3 knows anything. Again, here, he's not trying to take his money from  
4 him. There's no demand here. There's no you give me \$30,000 or  
5 else. I'm not trying to take any money from you. There is no  
6 intent. There is no intent to extort.

7           And then, he goes on to say at the very bottom, do you  
8 think something like 30 would be all right? He's asking Mr. Roca,  
9 do you think something like 30 would be all right? I mean, is that  
10 someone who has an intent to extort? There is no demand here. Do  
11 you think something like 30 would be all right?

12           And then, Page 25, and this is when Mr. Roca, then, that  
13 says, oh, all right, \$30,000. Well, how am I going to give it to  
14 you? If this isn't extortion -- if Mr. Ormachea intended to extort,  
15 he would want this money right now.

16           So he says on Page 27, Mr. Roca is saying, well, how much  
17 do you want by tomorrow? And there's this discussion from Mr. Roca  
18 explaining that he's not able to get the ten. And so Mr. Roca says  
19 I'm able to get ten for you now.

20           And then, they start talking about, he then gets back to --  
21 at the bottom of Page 27 -- he says what we're going to do is to  
22 divert the attention, the attention towards those who are truly  
23 responsible. Here we have Mr. Roca telling Mr. Ormachea to divert  
24 the attention to those who are truly responsible.

25           Page 31, here, again, Mr. Ormachea is talking about the

1 access to information that he has. And Mr. Roca is saying, do you  
2 have any evidence on Kintada (phonetic), this individual named  
3 Kintada. He says do you have it? It's a benefit. He's asking him  
4 do you have any evidence on that?

5 And Mr. Ormachea says, do you have anything on Alvaro?  
6 That's at the bottom. Alvaro is the vice president. And Mr.  
7 Ormachea says, Alvaro, well, there are several things, right, but I  
8 don't need evidence. I don't need so much. Again, Mr. Roca is  
9 asking for a benefit in exchange for information.

10 Page 36, here the sixth line down, Mr. Roca says, there's  
11 nothing in the Aerosur case; Colonel, there's nothing. And Mr.  
12 Ormachea says, what are they going to do with what they owe you,  
13 sir? He says, sir, as a sign of respect.

14 And I say, we, because I'm here to help you. Don't forgot  
15 you can also use me for that. We must collect. And when he's  
16 talking about the 'we' must collect -- we must collect -- he's  
17 referring to the tax issues with Aerosur.

18 So in sum, just from that August 30th meeting, when you go  
19 back and you review that transcript, you will see that there's a  
20 benefit being offered to Mr. Roca in exchange for influence in  
21 Bolivia.

22 And the benefit is, well, the inside information that Mr.  
23 Ormachea has concerning his case, the benefit is being able to let  
24 him know and giving him inside information from the prosecution  
25 letting him know what's going on with the investigation. That's the

1 benefit that he's receiving.

2           And at the end of that August 30th meeting, you see the two  
3 men shaking hands. There's no fear here. Mr. Roca has his arm  
4 around Mr. Ormachea's back. That doesn't show fear and that's  
5 Government's Exhibit 5-D.

6           Now, turning to the transcript of the August 31st meeting,  
7 Mr. Byrne, if you recall, asked Mr. Roca what did the Defendant say  
8 about future visits he had planned to the United States. And I am  
9 referring to Mr. Roca's testimony.

10           And Mr. Roca said that he was going to come back in  
11 November, in mid November, in order to conduct investigations. And  
12 they were talking about investigations that were going to be  
13 occurring in Washington and in Miami.

14           And then, Mr. Byrne asked, well, where specifically in  
15 Washington? And Mr. Roca said he would get assistance from the FBI  
16 to call a man by the name of Sanzetenea for him to go to the  
17 consulate because the consulate is actually Bolivian territory.

18           And then, the question from Mr. Byrne, what did the  
19 Defendant say about the FBI? He said that he talked about the  
20 cooperation of the FBI. And what did the Defendant tell you about  
21 the FBI's knowledge of what was going to be going on?

22           And then, he goes on and he says, well, the FBI knew about  
23 it and that it was, basically, just a trap. Well, that wasn't true.  
24 That was taken out of context because if you look at Page 2 of the  
25 August 31st transcript he says, I think the next time we're going to

1 come -- and I want to tell you this because it's important -- we are  
2 going to come around November, in November, the second week of  
3 November. Here, Mr. Ormachea is giving Mr. Roca the heads-up. He's  
4 letting him know when the Bolivian National Police is coming back.

5           And when they come back, he's telling them they're going to  
6 present a summons to the consulate in Washington. So he's giving  
7 him heads-up coming to Washington for Guillermo, who Mr. Roca  
8 testified was a former executive of Aerosur and for Patricia -- and  
9 he's referring to Patricia Gutierrez -- who was also an executive in  
10 Aerosur. So here, basically, Mr. Ormachea is giving Mr. Roca a  
11 heads-up of what they're about to do. That's a benefit that Mr.  
12 Roca is getting.

13           Now, Mr. Byrne asked Mr. Roca yesterday something about,  
14 did the Defendant say anything to you about bringing you to the  
15 Bolivian Consulate? And Mr. Roca said, yes. And then, he said what  
16 did he say that in the future I, too, could go to the Bolivian  
17 Consulate to give a statement.

18           Now, if you look at Page 3 of the August 31st transcript,  
19 you will see that that was not true. What the transcript actually  
20 says is, in any case, you know what? It's a trap. I'm telling you.  
21 What's the trap? The trap is to tell them because we're going to  
22 have to cooperate with FBI's cooperation.

23           So he's not saying anything about that he would be taken to  
24 the Bolivian consulate to give a statement. He's warning him that  
25 this is going to be a trap. If this happens it's going to be a

1 trap. Again, he's providing him with inside information.

2 Now, Page 5 of the transcript, here Mr. Roca gives Mr.  
3 Ormachea a \$5,000 down-payment. There's no fear here. This is  
4 control. This is just we have this partnership. I'm going to give  
5 you \$5,000 and I'm going to send you the other part.

6 If he really had fear, if this was extortion, Mr. Ormachea  
7 would have demanded the entire \$30,000 and not just taken a \$5,000  
8 down-payment. If Mr. Roca was so afraid of Mr. Ormachea, if there  
9 was fear of any kind of reprisals, he would have given him that  
10 entire \$30,000.

11 Page 6, it says, no, nobody has to know anything. That's  
12 why I don't want to involve anybody else. Again, Mr. Roca is in  
13 control. Again, he's saying, I don't want anybody to know anything.  
14 That's on Page 7 of the August 31st transcript.

15 And so, they're talking about -- Mr. Roca says -- when he's  
16 talking about I'm going to give you \$5,000 right now and \$10,000 if  
17 I am able to later. And if I can't -- Mr. Roca says -- I'm going to  
18 send you a ticket. If I can't, I'll send you a ticket. And so,  
19 then, you'll come back for the rest of the money.

20 This is Mr. Roca who says he was afraid of reprisals if he  
21 did not give any money. And he's volunteering, look, if I can't  
22 come up with the other \$10,000, I'm just going to send you a ticket  
23 and you'll come back for the rest of the money. He's confirming  
24 exactly what he's going to do.

25 So this \$30,000 includes the detour in your report. And he

1 goes on to say, are you going to prepare your reports? Are you  
2 going to detour your reports to shift all the information towards  
3 the true culprits? He's seeking confirmation of what he's going to  
4 be able to do here.

5           Page 11 of the August 31st transcript, Mr. Roca says, so  
6 what happens if Sanzetenea comes through person X? And Mr. Ormachea  
7 says, all right. And Mr. Roca says, and offers you more.

8           Offers you more? This is, again, showing that there's a  
9 benefit that Mr. Roca is receiving and also showing that there is no  
10 fear here. That there's no extortion here. Mr. Roca, when he says,  
11 offers you more that it's inferring that he also recognizes that the  
12 two have an agreement, a partnership.

13           And then, on Page 12, Mr. Ormachea says, you know what?  
14 Let me tell you another thing -- this is in response to Mr. Roca  
15 saying what if Mr. Sanzetenea comes and offers you more -- Mr.  
16 Ormachea says, you know what? Let me tell you another thing. This  
17 is not because of the money. It's not because of money. It has to  
18 do with doing the right thing. That's evidence of his intent not to  
19 extort Mr. Roca. That is evidence of him providing a benefit in  
20 exchange for influence in Bolivia. There is no extortion here. He  
21 didn't intend to extort.

22           And then, he goes on to say, Mr. Roca, you're aware that  
23 this Government uses and discards. Mr. Roca also says, you're aware  
24 that you're at risk of being used and discarded as well. I mean,  
25 does this sound like someone who is afraid? Does this seem like

1 fear on Mr. Roca's part?

2           Page 15 of the transcript, at the top, it talks about, but  
3 I think it's bad in every sense having had a situation -- Mr. Roca  
4 says -- like this one we have with you now in order to do things  
5 correctly. This situation, this arrangement, this partnership. By  
6 doing the right thing are you going to have problems here?

7           Page 18 at the bottom, Mr. Roca says, well, you're going to  
8 be responsible at the end of the investigation. Mr. Ormachea says,  
9 yes, of all the evidence, in theory if God knows what will be  
10 directed towards someone else and not towards me. So confirming  
11 this is what I'm going to receive. This is Mr. Roca confirming from  
12 Mr. Ormachea this is what I'm going to receive.

13           Page 19, Mr. Roca says, I see, but what about the other  
14 process, about the taxes? This is another case, a criminal case  
15 that Mr. Roca has. And then, he goes on to say, the one regarding  
16 terrorism or whatever it's called. I have that one as well. All  
17 right.

18           And Mr. Roca says, yes, but that's another agreement.  
19 Another agreement, an agreement between the two parties. Mr. Roca  
20 is getting a benefit, which is the inside information, and Mr.  
21 Ormachea receiving the money in exchange for influence in Bolivia.

22           Page 25, here Mr. Roca says, hey, look, look at the  
23 paradox. I would like to be investigated thoroughly, but the  
24 problem is in Bolivia all the judges know me. And Mr. Ormachea  
25 says, what happens is that there are no guarantees, right? There

1 are no guarantees. And if there were some guarantees at any time  
2 and let's say they would change the situation in any way, I would be  
3 the first to tell you.

4           This is Mr. Ormachea saying to Mr. Roca, if I hear anything  
5 about what's going on in your case, I will be the first one to tell  
6 you. And I will be the first one to tell you, sir, we're going to  
7 get your statement. Take the following documents and I'll see you  
8 in the consulate in Miami. We're going to ask you some questions.

9           So when you go back and when you really look at this  
10 evidence in its entirety and really look at the transcript, you will  
11 see that this is two men benefitting. This is one man receiving  
12 money and the other one receiving information for influence in  
13 Bolivia and not here in the United States and that there was no  
14 crime here. There was no extortion.

15           Mr. Roca controlled how this was supposed to be. Mr. Roca  
16 controlled the amount of the money to be given. Mr. Roca controlled  
17 what information he wanted to receive and who would be involved.  
18 Now, I want to talk a little bit about how they failed to prove fear  
19 beyond a reasonable doubt.

20           Well, certainly, there wasn't a fear of financial loss.  
21 You heard Mr. Roca. You heard all the money, the millions of  
22 dollars that had been wired in from foreign accounts to a business  
23 account here in Miami to his own personal account. You heard about  
24 all the properties that he has and all the money he has. That  
25 certainly isn't fear of financial harm.



1           Then, he says, he feared reprisals if he didn't pay \$5,000  
2 to Mr. Ormachea. Well, you saw Mr. Roca testify. You got to  
3 observe his demeanor. Did he seem like a person who was in fear to  
4 you? He was pretty matter of fact. And if he really feared his  
5 family seeking reprisals, well, he has the financial means and he  
6 could have gotten them out of Bolivia.

7           THE COURT: You have five minutes left.

8           MS. DOAKES: Thank you.

9           Now, I want to talk to you a little bit about the jury  
10 instructions, similar acts. And basically, you had heard testimony  
11 from Mr. Valda. Mr. Valda testified that Mr. Ormachea came to him  
12 in March of 2013 and attempted to extort his other clients in  
13 relation to Jindal Steel and that evidence is similar act evidence.  
14 It is evidence of what the law says is evidence of a prior bad act.

15           What I submit to you that the jury instructions say that  
16 before you can consider that evidence of what occurred in March of  
17 2013, you have to first find that Mr. Ormachea committed the two  
18 acts charged in the indictment beyond a reasonable doubt.

19           So what it is, is that March of 2013 incident. It's like  
20 the pink elephant in the living room. Even though it is sitting  
21 there you cannot consider it, unless you actually determine beyond a  
22 reasonable doubt that Mr. Ormachea committed both of the acts  
23 charged in the indictment.

24           Now, you did not hear from Mr. Ormachea in this case. He  
25 did not testify. And at the time, in jury selection, when I asked

1 you all whether or not the fact that if he decided not to testify,  
2 whether or not you would use that against him.

3           And each of you took an oath and each of you said you would  
4 not do that because it is the Government who has the burden of proof  
5 in this case. And they have to prove to you beyond a reasonable  
6 doubt that Mr. Ormachea committed the acts charged in the  
7 indictment.

8           Now, some of you may not like what my client did here. I  
9 mean, there's testimony that he was a high-ranking police official  
10 in Bolivia and he flies here and he meets with Mr. Roca in his  
11 living room.

12           And some of you may believe that's morally wrong because  
13 he's in a position to protect and serve and in a position of  
14 integrity. And that he would fly all the way to the United States  
15 to meet with this man in his living room and take \$5,000 and goes  
16 back and kind of gives him inside information about what's going on.  
17 But you're not here to decide whether or not he did something  
18 morally wrong.

19           You are here to decide whether or not the evidence that was  
20 presented here before you proved this case beyond a reasonable doubt  
21 of whether or not Mr. Ormachea committed extortion beyond a  
22 reasonable doubt.

23           And I submit to you what the evidence shows was that Mr.  
24 Ormachea received money in exchange for providing Mr. Roca with the  
25 benefit and that was to give him the inside information of what was

1 going on in his cases and to give him sort of a heads-up as to when  
2 the Bolivian National Police, if there were any other steps that  
3 were going to be taken with respect to his extradition.

4           Now, I want to talk to you about the lies of Mr. Valda, the  
5 attorney. Now, you heard that he said that in January of 2013, when  
6 Mr. Roca refused to meet with Mr. Ormachea, he said that, you know,  
7 well, his mother was arrested. Well, you heard from Mr. Roca. He  
8 said that his mother was arrested after Mr. Ormachea was arrested in  
9 this case.

10           And what Mr. Valda testified to about the mother being  
11 arrested, right in January of 2013, that wasn't included in his  
12 affidavit to the prosecutors. He said that he met with him at a  
13 police station near the prosecutor's office near the courthouse, but  
14 he didn't go to the prosecutor's office and report it. He didn't go  
15 to any court official to report it. I mean, don't you think the  
16 fact that he didn't do any of that? Because it didn't happen.

17           THE COURT: Your time is up, Miss Doakes.

18           MS. DOAKES: Mr. Ormachea is innocent and I ask that you  
19 find him not guilty.

20           THE COURT: Before we get to the closing argument on behalf  
21 of the Government, we will take our afternoon recess and we will be  
22 in recess for 15 minutes. When we reconvene, we will hear from Mr.  
23 Byrne's rebuttal on behalf of the Government.

24           Take the jury out, Madame Marshal and we will be back in 15  
25 minutes.

1 (Recess.)

2 THE COURT: Bring in the jury, Madame Marshal.

3 (Jury entered.)

4 THE COURT: Mr. Byrne, if you are ready, you may proceed  
5 with your closing summation.

6 MR. BYRNE: Thank you, Your Honor.

7 Ladies and gentlemen, Miss Doakes just told you that  
8 context is important and she went through the parts of the  
9 transcript that she wanted you to see. Context is very important,  
10 ladies and gentlemen. It is very important and that is why we did  
11 not only introduce videos with subtitles.

12 We, the Government, introduced these entire transcripts.  
13 There are yellow stickers in the top right-hand corner of these  
14 transcripts. Those are Government exhibits. We wanted you to see  
15 the entire context of what happened because context is important.

16 Now, Miss Doakes wants you to believe that Mr. Roca was in  
17 Miami and he just called up Mr. Ormachea and said, hey, I would like  
18 to get some inside information about my cases. Can you help me out?

19 What did the evidence in this case show? How did this all  
20 begin, right? We know how this all began. Mr. Valda was in Bolivia  
21 working on Mr. Roca's cases. And the Defendant said, step into my  
22 office. I want to talk to you about a case. I want to talk to you  
23 about Humberto Roca's case. I can help fix the situation for a  
24 price; \$20,000 for each of his siblings.

25 Now, Miss Doakes told you, how do we even know Mr. Valda is

1 even telling the truth about that? Well, it's right here on the  
2 transcript. Miss Doakes didn't go over this part of the transcript  
3 with you. I want to be completely clear with you.

4           First of all, I don't like these situations and I think  
5 Jorge Valda told you that. Yes, yes, yes, he told you when you --  
6 that's right. You told him \$20,000. I think that was the amount  
7 and that you could fix my sister's situation. That's what you told  
8 him, right? Yes, yes, yes.

9           That's how we started it, but we don't finish there, do we?  
10 Because Mr. Roca tells the Defendant through Jorge Valda that he is  
11 not interested.

12           Jorge told me that you had spoken with him stating you  
13 could do some things for me. But of course. And I told him, I  
14 don't want anything at all. That's what I told him.

15           But it didn't stop there, did it?

16           Because when Jorge Valda told that to the Defendant, the  
17 Defendant did not stop. He called up Carlos Guillen. He called up  
18 Mr. Roca, himself. And then, he came to the United States and that  
19 is how he ended up in that garage. That is how this whole  
20 conversation and that's the context of how this whole conversation  
21 began. And not Mr. Roca calling up and saying, hey, I would like  
22 some influence on my cases. No.

23           And we know that because that was confirmed on the  
24 recordings. Context is important. Let me give you another example  
25 of what context is important.

1           Now, Miss Doakes went over that part about the consulate  
2 and the trap and you remember testimony about that. The Defendant  
3 says this is how we get people to the consulate in the United  
4 States. This is how we get them onto Bolivian soil. We send an FBI  
5 agent and we send a police officer. They don't know what's going on  
6 at all. Their point is just to make it look official.

7           And then, when we get them into the Bolivian Consulate  
8 they're on Bolivian soil and that's where the trap is set. He tells  
9 him that at the beginning of the second conversation and we went  
10 over that, right?

11           And then, at the end of that conversation, Mr. Roca says to  
12 the Defendant, look, here's the paradox, I would love to be  
13 investigated thoroughly in Bolivia. Why? Because Mr. Roca told  
14 you, himself, and the Defendant told you in his recordings that Mr.  
15 Roca is innocent.

16           And the Defendant says, but there are no guarantees, Mr.  
17 Roca. And we all know that there are no guarantees if you're an  
18 innocent man in Bolivia, right? Because we saw what happened to  
19 that prosecutor in Bolivia.

20           So then, the Defendant made sure to tell Mr. Roca about  
21 Isabelino Gomez who is in jail where there's no evidence against  
22 him. Those people in the Navy Barges case, in jail, where there's  
23 no evidence against them because it's all about money. And he tells  
24 him, Mr. Roca, there are no guarantees. And then, what does he say?  
25 Let's go to the transcript.

1           What happens is there are no guarantees, right? There are  
2 no guarantees. And if there were some guarantees at any time and  
3 let's say they would change the situation in any way, I would be the  
4 first to tell you, sir. We're going to get your statement. Take  
5 your documents. We're going to the consulate.

6           Well, what happens in the consulate? He just told us a  
7 couple of minutes before that that's where the trap is set. Context  
8 is important.

9           Now, Miss Doakes said what the Mr. Roca was trying to do  
10 was trying to pay for influence about his cases. And she gave you  
11 all these examples about how Mr. Roca asking about his cases and  
12 that's all he was trying to do. He just wanted to get information  
13 on his cases and that's why the Defendant was in this room.

14           This is a very important point, ladies and gentlemen. You,  
15 as jurors, bring your common sense into the jury room and I want you  
16 to ask yourselves a question. If Mr. Roca was paying for  
17 information about his cases and the Defendant was supplying  
18 information about those cases, why would Mr. Roca want the Defendant  
19 to be arrested?

20           Why would he have invited the FBI to see what was going on?  
21 That makes no sense, right? He would want to continue to get  
22 information about his cases if that's what the agreement was, but  
23 there was no agreement. There was never an agreement. This started  
24 with Jorge Valda telling him, this is who I am. This is the power  
25 that I hold.

1           Mr. Roca pays or what? He stays guilty. I know he's  
2 innocent. He told Mr. Roca that over and over again, but that  
3 doesn't matter. You have to pay.

4           Now, she also talked about the things Mr. Roca said to the  
5 Defendant. Tell me what we're going to do. Tell me what you're  
6 going to do. What are you going to do for me? What happens if  
7 this? What happens if that?

8           Remember, ladies and gentlemen, this was an undercover  
9 operation. Mr. Roca approached the FBI. And the FBI asked him to  
10 record those conversations, to videotape those conversations.

11          So Mr. Roca, what was he trying to do? What are you trying  
12 to do when this is happening to you? He tries to get the Defendant  
13 to talk. What are you going to do? What do you tell Jorge Valda?  
14 Tell me. You tell me. Why?

15          Because he knows there's a recording and he is trying to  
16 make sure that he gets everything on the record and he did. The  
17 Defendant told him exactly what was going on. The Defendant gave  
18 him all those examples of innocent men in jail. He told him if  
19 anything changes I'll have you in the consulate. I'll change the  
20 reports.

21          He did all those things so he could make sure to get out of  
22 the Defendant what had started with Jorge Valda in Bolivia. She  
23 pointed out that Mr. Roca was smiling in that photograph. Mr. Roca  
24 knew that the FBI was in the room. He knew what the plan was. He  
25 wasn't scare. He wasn't going to start screaming. That was after



1 the first meeting.

2           They had a meeting the next day. The whole point was so  
3 the Defendant would come back and they could see what he was really  
4 there for. So he's not going to say, help me because it would tip  
5 off the whole operation. That's common sense.

6           Now, there's some talk about paying for influence and that  
7 sounds like to me like he was trying to bribe the Defendant. And  
8 there are two big differences between bribery and extortion and it  
9 is important to that out. The first big difference is fear.

10           The way to think of bribery is, it's a one-way ratchet.  
11 The status quo is right here. You pay you get a benefit. You don't  
12 pay, you go back to hear, status quo. There's no downside. There's  
13 no negatives.

14           What was the downside for Mr. Roca? \$30,000? All the  
15 money with respect to his family member's cases? His freedom?

16           The Defendant kept telling him, innocent men in jail in  
17 Bolivia. I was meeting with the FBI. We were talking about your  
18 case, Mr. Roca. We were talking about extraditing people. Freedom,  
19 that's a downside. His family's freedom.

20           Now, Miss Doakes said, how could Mr. Roca have anything to  
21 fear? He is wealthy. So wealthy people cannot be extorted? Is  
22 that the idea? You are not going to see anywhere in those jury  
23 instructions where it says it is not extortion if you could afford  
24 it. Why do wealthy people often get extorted? Because they are a  
25 vulnerable targets.

1           John Dillinger was a famous bank robber. And someone asked  
2 John Dillinger once, why do you rob banks? And he said, because  
3 that's where the money is. That's why Mr. Roca was a target for  
4 this type of thing.

5           She said that the Defendant just wanted to do the right  
6 thing and Mr. Roca said I want to do the right thing. The Defendant  
7 is the Chief of the Anti-Corruption Unit of the Bolivian National  
8 Police. What is his job to do? His job is to investigate, to find  
9 the guilty parties, to organize the evidence against those guilty  
10 parties and that's his job. That's what police officers do.

11           What police officers don't do, they are not supposed to  
12 find the guilty parties and then go to the innocent parties and say,  
13 hey, if you pay me money, if you give me \$30,000, I'll make sure  
14 that you stay innocent and that the guilty people are charged. No  
15 system of justice works like this.

16           Now, Miss Doakes made the point that Mr. Roca is a liar.  
17 She called him a liar. What evidence is there that Mr. Roca lied?  
18 Zero. Now, she said my client didn't testify and you cannot hold  
19 that against him. And that is absolutely true, but the Defendant  
20 made statements.

21           The Defendant made statements. The Defendant made  
22 statements when he got off that airplane. The Defendant made  
23 statements to Carlos Guillen and Humberto Roca about the FBI; the  
24 statements that are in these transcripts. And the Defendant made a  
25 statement to Luis Arias, who testified. Think about what he said.

1           The moment he stepped off the plane he was lying. What are  
2 you doing here? I'm here for two weeks vacation. Not true. He had  
3 a reservation to fly back to Bolivia a couple days later. He knew  
4 he was meeting with Humberto Roca. What about all those statements  
5 about the FBI? And you will see these transcripts are chock full  
6 about the FBI.

7           And why was the Defendant talking so much to Mr. Roca about  
8 the FBI? About the investigation that he had with the FBI about how  
9 he was sharing information with the FBI, about how he cut off that  
10 information exchange like this. I'm the one that controls the  
11 information about your case with the FBI. Don't think they haven't  
12 asked us about your cases; they have.

13           Well, what do we know about that statement about the FBI?  
14 We called in Jared Garth. He's in charge of all communications  
15 between officials in Bolivian law enforcement and the United States  
16 FBI. And what he did he tell you? No way. None of that is true.

17           We met with one guy and that was the first time we ever met  
18 with Bolivian law enforcement and we never talked anything about  
19 Humberto Roca's case. And I looked through our database and there's  
20 no communications whatsoever. Why is the Defendant saying that to  
21 Mr. Roca? The answer is obvious. He's trying to scare him.

22           And then, Mr. Arias testified the Defendant leaves Mr.  
23 Roca's house and he has \$5,000 cash and he's caught red-handed. Mr.  
24 Arias -- Agent Arias -- interviews him. And he asks him, what are  
25 you here for? And he says, I'm here to take my father back to

1 Bolivia. And then, Agent Arias let's him know, well, we know that  
2 you met with Humberto Roca here. And then what happens? Then, he  
3 says, oh, right. He's a client of mine. I was offering him legal  
4 services.

5           Look through the transcripts. You won't see any discussion  
6 about the Defendant offering Mr. Roca legal services. Why? Because  
7 it's not true. Why did he say that? Because he got caught  
8 red-handed doing something wrong. Mr. Juenger told you at the  
9 beginning of this case that you jurors are not mind-readers.

10           Okay. We are not asking you to be mind-readers. We are  
11 asking you to look at the actions, look at the words. What do they  
12 tell you? I'm a dead man. That's what he said, I'm a dead man.

13           Ladies and gentlemen, your job is a very important one, but  
14 it's a very specific one. You have to look at those questions,  
15 those elements. They're like questions. You have to look at those  
16 elements and find the facts.

17           You can't be worried about that the Defendant has young  
18 children here -- I mean, back in Bolivia -- and you feel sympathy.  
19 The Judge will tell you that you cannot let sympathy dictate your  
20 verdict. You have to look at the evidence and that is the most  
21 important thing.

22           And when we put these exhibits into evidence, we did that  
23 because we want you to look at the big picture. We want you to look  
24 at all the evidence together. Don't single out certain parts. Look  
25 at the big picture and what will you see? You will see exactly what

1 this is all about. It has been about this from day one and it is  
2 obvious that this is extortion.

3           This is about a man who used his position of power to get  
4 someone to pay him money, someone who Mr. Roca -- as wealthy as he  
5 is -- even he has to exceed to the power of the Bolivian National  
6 Police when they come knocking at his doorstep because they have  
7 power. They have power over his family in Bolivia. They have power  
8 over his cases in Bolivia. And just because someone has money does  
9 not mean they cannot be a victim of a crime.

10           Ladies and gentlemen, I ask you to consider all the  
11 evidence in this case. And when you consider all the evidence  
12 together, and when you consider all the testimony, you will reach  
13 the only verdict that is consistent with the evidence and that is  
14 guilty on Counts One and Two.

15           Thank you very much for your time.

16           THE COURT: Members of the jury, it is now my duty to  
17 instruct you on the rules of law that you must follow in deciding  
18 this case. After I have completed these instructions, you will go  
19 to the jury room and begin your discussions, which we call your  
20 deliberations.

21           You must decide whether the Government has proved the  
22 specific facts necessary to find the Defendant guilty beyond a  
23 reasonable doubt. Your decision must be based only on the evidence  
24 presented here. You must not be influenced in any way by either  
25 sympathy for or prejudice against the Defendant or the Government.

1           You must follow the law as explained to you, even if you do  
2 not agree with the law, and you must follow all of the instructions  
3 as a whole. You must not single out or disregard any of the Court's  
4 instructions on the law.

5           As you know, the indictment or formal charge against a  
6 Defendant is not evidence of guilt. The law presumes every  
7 Defendant is innocent. The Defendant does not have to prove his  
8 innocence or produce any evidence at all. The Defendant does not  
9 have to testify. And if the Defendant chose not to testify, you  
10 cannot consider that in any way while making your decision.

11           The Government must prove guilt beyond a reasonable doubt  
12 and if it fails to do so, you must find the Defendant not guilty.  
13 The Government's burden of proof is heavy, but it does not have to  
14 prove the Defendant's guilt beyond all possible doubt. The  
15 Government's proof only has to exclude any reasonable doubt  
16 concerning the Defendant's guilt.

17           A reasonable doubt is a real doubt based on your reason and  
18 common sense after you have carefully and impartially considered all  
19 the evidence in the case. Proof beyond a reasonable doubt,  
20 therefore, is proof so convincing that you would be willing to rely  
21 and act upon it without hesitation in the most important of your own  
22 affairs.

23           If you are convinced that the Defendant has been proved  
24 guilt beyond a reasonable doubt, you should say so. If you are not  
25 convinced, you should likewise say so. As said before, you must

1 consider only the evidence that has been admitted in the case.  
2 Evidence includes the testimony of witnesses and the exhibits  
3 admitted, but anything the lawyers say is not evidence and it is not  
4 binding on you.

5           You should further not assume from anything I may have said  
6 that the Court has any opinion about any factual issue in the case.  
7 Except for my instructions to you on the law, you should disregard  
8 anything I may have said during the trial in arriving at your own  
9 decision about the facts.

10           Your own recollection and interpretation of the evidence is  
11 what controls. In considering the evidence, you may use reasoning  
12 and common sense to make deductions and reach conclusions. You  
13 should not be concerned about whether the evidence is direct or  
14 circumstantial.

15           Direct evidence is the testimony of one who asserts that he  
16 or she has actual knowledge of the facts, such as an eyewitness.  
17 Circumstantial evidence is proof of a chain of facts and  
18 circumstances that tend to prove or disprove a fact. There is no  
19 legal difference in the weight that you may give to either direct or  
20 circumstantial evidence.

21           When I say you must consider all the evidence, I do not  
22 mean that you must accept all of the evidence as true or accurate.  
23 You should decide whether you believe what each witness had to say  
24 and how important that testimony was.

25           And in making that decision, you may believe or disbelieve

1 any witness in whole or in part. The number of witnesses testifying  
2 concerning any particular point does not necessarily matter. To  
3 decide whether you believe any witness, I suggest that you ask  
4 yourselves a few questions.

5           Did the witness impress you as one who was telling the  
6 truth?

7           Did the witness have any particular reason not to tell the  
8 truth?

9           Did the witness have a personal interest in the outcome of  
10 the case?

11           Did the witness seem to have a good memory?

12           Did the witness have the opportunity and ability to  
13 accurately observe the things he or she testified about?

14           Did the witness appear to understand the questions clearly  
15 and answer them directly?

16           Did the witness' testimony differ from other testimony or  
17 other evidence?

18           You should also ask yourself whether there was evidence  
19 that a witness testified falsely about an important fact and ask  
20 whether there was evidence that at some other time a witness said or  
21 did something, or did not say or do something that was different  
22 from the testimony the witness gave during the trial.

23           But keep in mind that a simple mistake does not mean a  
24 witness was not telling the truth as he or she remembers it. People  
25 naturally tend to forget some things or remember them inaccurately.



1 So if a witness misstated something, you must decide whether it was  
2 because of an innocent lapse in memory or an intentional deception.  
3 The significance of your decision may depend on whether the  
4 misstatement is about an important fact or about an unimportant  
5 detail.

6           If the Government offers evidence that the Defendant made a  
7 statement or admission to someone being arrested or detained, you  
8 must consider that evidence with caution and great care. You must  
9 decide for yourself, one, whether the Defendant made the statement,  
10 and two, if so, how much weight to give to it.

11           To make these decisions you must consider all the evidence  
12 about the statement, including the circumstances under which it was  
13 made.

14           During the trial you heard evidence of acts done by the  
15 Defendant on other occasions that may be similar to the acts the  
16 Defendant is currently charged with. You must not consider any of  
17 this evidence to decide whether the Defendant committed the acts  
18 charged now, but you may consider this evidence for the other very  
19 limited purposes.

20           If other evidence leads you to decide beyond a reasonable  
21 doubt that the Defendant committed the charged acts, you may  
22 consider evidence of similar acts done on other occasions to decide  
23 whether the Defendant had the state of mind or intent necessary for  
24 the crime charged according to a plan, or to prepare to commit a  
25 crime, or committed the charged acts by accident or mistake.

1           As you know, members of the jury, the indictment charges  
2 two separate offenses, two separate crimes called counts against the  
3 Defendant. Each count has a number. You will be given a copy of  
4 the indictment to refer to during your deliberations.

5           Count one charges that the Defendant committed what is  
6 called a substantive offense. Specifically, that he knowingly and  
7 willfully traveled in foreign commerce with the intent to commit  
8 extortion. I will explain the law governing that offense in a  
9 moment.

10           Count Two charges that the Defendant attempted to commit a  
11 substantive offense specifically extortion and that he attempted to  
12 obstruct, delay, and affect interstate and foreign commerce by  
13 obtaining the property of Humberto Roca by the wrongful use of fear.  
14 I will explain the law governing that offense in a moment.

15           Please note that the Defendant is not charged in Count Two  
16 with committing a substantive offense. He is charged with  
17 attempting to commit that offense. I will give you a specific  
18 instruction on attempt. I will now give you the law governing the  
19 offenses now.

20           It is a federal crime for anyone to travel in foreign  
21 commerce in order to carry on certain unlawful activities. The  
22 Defendant can be found guilty of this crime, that is the crime  
23 alleged in Count One of the indictment, only if all the following  
24 facts are proved beyond a reasonable doubt.

25           One, that the Defendant traveled in foreign commerce on or

1 about the dates and between the places described in the indictment;

2           Two, that the Defendant traveled with a specific intent to  
3 promote, manage, establish, or carry on an unlawful activity;

4           And three, that while traveling the Defendant knowingly  
5 committed an act to promote, manage, establish, or carry on an  
6 unlawful activity.

7           The term foreign commerce means travel, transportation, or  
8 movement between some place within the United States and some place  
9 outside the United States.

10           The Government must prove that the Defendant traveled in  
11 foreign commerce and specifically intended to promote, manage,  
12 establish, or carry on an unlawful activity. But the Government  
13 does not have to prove that the unlawful activity was the only or  
14 even primary reason the Defendant traveled.

15           Unlawful activity means the crime of extortion in violation  
16 of the laws of Florida or of the United States. Under Florida law  
17 it is unlawful to verbally and maliciously threaten to injure  
18 another person with the intent to extort money from that person.  
19 The threat need not be a threat of physical injury.

20           It is also unlawful to verbally and maliciously threaten to  
21 accuse another person of any crime. To threaten someone maliciously  
22 means intentionally and without any lawful justification. It is not  
23 necessary for the Government to prove that the Defendant intended or  
24 had the ability to carry out the threat.

25           Under United States law, it is unlawful to attempt to

1 obstruct, delay, and affect interstate and foreign commerce by  
2 obtaining the property of someone by the wrongful use of fear.

3           The crime charged in traveling in foreign commerce with the  
4 intent to promote, manage, establish and carry on an unlawful  
5 activity. The crime charged is traveling in foreign commerce with  
6 the intent to promote, manage, establish, and carry on an unlawful  
7 activity.

8           So if you find beyond a reasonable doubt that any one  
9 method or way of violating the law occurred that is sufficient, but  
10 you must all agree on the particular way involved.

11           The second crime charged in the indictment, that is Count  
12 Two of the indictment, alleges and states that it is a federal crime  
13 to attempt to extort something from someone else and in doing so to  
14 obstruct, delay, or affect interstate commerce.

15           The Defendant, in this case, can be found guilty of this  
16 crime that is the crime alleged in Count Two of the indictment only  
17 if all of the following facts are proved beyond a reasonable doubt.

18           First, that the Defendant attempted to cause Humberto Roca  
19 to part with property;

20           Two, that the Defendant did so knowingly by attempting to  
21 use extortion;

22           And three, that the attempted extortion transaction, if  
23 actually carried out, would have delayed, interrupted, or affected  
24 interstate commerce.

25           Property includes money, other tangible things of value,

1 and intangible rights that are a source or a part of income or  
2 wealth.

3           Extortion means obtaining property from a person who  
4 consents to give it because of the wrongful use of fear.

5           Fear means a state of anxious concern, alarm, or  
6 anticipation of harm. It includes the fear of financial loss as  
7 well as fear of physical violence.

8           The fear experienced by the victim does not have to be the  
9 consequence of a direct threat. The threats used to extort money  
10 may be subtle and indirect as long as the Government can show  
11 circumstances surrounding the alleged extortion of conduct that  
12 rendered the victim's fear of threatened loss reason.

13           Interstate commerce is the flow of business activity  
14 between one state and anywhere outside the state. The Government  
15 does not have to prove that the Defendant specifically intended to  
16 affect interstate commerce in any way, but it must prove that the  
17 natural consequences of the acts described in the indictment would  
18 be to somehow delay, interrupt, or affect interstate commerce.

19           If you decide that there would be any affect at all in  
20 interstate commerce, then that is enough to satisfy this element.  
21 The affect can be minimal. In some cases, as you know, it is a  
22 crime to attempt to commit an offense even if the attempt fails.

23           In this case, the Defendant is charged in Count Two with  
24 attempt to commit extortion. The Defendant can be found guilty of  
25 an attempt to commit that offense only if both of the following

1 facts are proofed beyond a reasonable doubt.

2           First, that the Defendant knowingly intended to commit the  
3 crime of extortion;

4           And second, that the Defendant's intent was strongly  
5 corroborated by his taking a substantial step toward committing the  
6 crime. A substantial step is an important action leading up to  
7 committing of an offense, not just an inconsequential act. It must  
8 be more than simply preparing. It must be an act that would  
9 normally result in committing the offense.

10           You will see when you study the indictment that it charges  
11 that a crime was committed on or about certain dates. The  
12 Government does not have to prove that the crime occurred on an  
13 exact date. The Government only has to prove beyond a reasonable  
14 doubt that the crime was committed on a date reasonably close to the  
15 date alleged.

16           The word knowingly means that an act was done voluntarily  
17 and intentionally and not because of a mistake or by accident. The  
18 word willfully means that the act was committed voluntarily and  
19 purposely with the intent to do something the law forbids. That is  
20 with a bad purpose to disobey or disregard the law.

21           While a person must have acted with the intent to do  
22 something the law forbids before you can find the person acted  
23 willfully, a person need not be aware of the specific law or rule  
24 that his conduct may be violating.

25           Each count of the indictment charges a separate crime. You

1 must consider each crime and the evidence relating to it separately.  
2 If you have find the Defendant guilty or not guilty of one crime  
3 that must not affect your verdict for any other crime.

4           You are cautioned, members of the jury, that the Defendant  
5 is on trial only for the specific crimes charged in the indictment.  
6 You are here to determine, from the evidence in this case, whether  
7 the Defendant is guilty or not guilty of these specific crimes.

8           Also, you must never consider punishment in any way to  
9 decide whether the Defendant is guilty. If you find the Defendant  
10 guilty, the punishment is for the Court alone to decide later.

11           Your verdict in this case, members of the jury, whether  
12 guilty or not guilty must be unanimous. In other words, up must all  
13 agree. Your deliberations are secret and you will never have to  
14 explain your verdict to anyone.

15           Each of you must decide the case for yourself, but only  
16 after fully considering the evidence with the other jurors. You  
17 must discuss the case with one another and try to reach an  
18 agreement.

19           While you are discussing the case, do not hesitate to  
20 re-examine your opinion and change your mind if you become convinced  
21 that you were wrong. But do not give up your honest beliefs just  
22 because others think differently or because you the simply want to  
23 get the case over with.

24           Remember, that in a very real way, you are the judges. You  
25 are the judges of the facts of this case and your only interest in

1 this case is to seek the truth from the evidence in this case.

2           At this time, I would like to thank Mr. Mackey, who has  
3 basically served as our alternate juror in this case. And Mr.  
4 Mackey, since we have eleven of the original 12 jurors present and  
5 Mr. Lakso had replaced the alternate juror who was excused, I will  
6 excuse you at this time. So you are free to leave and you are  
7 excused at this time, sir, with the thanks of the Court.

8           Members of the jury, when you go to the jury room, you  
9 should first select one of your number who will act as your foreman  
10 or forewoman who will preside over your deliberations and who will  
11 speak for you here in court.

12           A form of verdict has been prepared for your convenience  
13 and I will now read it to you. It reads as follows: We the jury,  
14 unanimously find the Defendant Mario Fabricio Ormachea Aliaga as to  
15 Count One of the indictment guilty or not guilty.

16           You will see on the face of the verdict form the words  
17 guilty or not guilty next to which there is a blank.

18           When you have reached a unanimous agreement as to your  
19 verdict your foreman or forewoman, acting for the jury, will  
20 indicate your unanimous finding by placing an X or check in the  
21 place marked guilty or not guilty, as you may find, under the facts  
22 and the law of this case.

23           The verdict continues to read: We the jury, unanimously  
24 find the Defendant Mario Fabricio Ormachea Aliaga, as to Count Two  
25 of the indictment, guilty or not guilty, so say we all.



1           And again, when you have reached an unanimous agreement,  
2 your foreman or forewoman, acting for the jury, will indicate your  
3 finding by checking the appropriate box. When you have reached an  
4 unanimous agreement, your foreman or forewoman will fill out the  
5 form, will date and sign it.

6           If you wish to communicate with the Court during the course  
7 of your deliberations, you should reduce your message or question to  
8 writing and pass it to the marshal, who will then bring it to the  
9 Court's attention. We will, then, respond as promptly as we can  
10 either in writing. Although, occasionally, it may be necessary to  
11 have you back into the courtroom so that you may be addressed  
12 orally.

13           The jury instructions, which have just been read to you,  
14 will be delivered to you in the jury room for your review and to  
15 assist you in the course of your deliberations. A copy of the  
16 indictment, in this case, will also be delivered to you in the jury  
17 room to assist you in your deliberations.

18           The exhibits that have been received into evidence will,  
19 likewise, be assembled by the clerk. And they will, likewise, be  
20 delivered to you for your review during the course of your  
21 deliberations.

22           As I told you on the first day of trial, I will see that  
23 you leave here by no later than 5:00. If you have not reached a  
24 verdict by 5:00, I will at that time ask that you recess your  
25 deliberations until tomorrow morning at 9:00. So you need not have

1 to worry about whether we are going to keep you all night. We are  
2 not going to do that.

3           And then, I will again remind you that your verdict in this  
4 case must be unanimous. That is you have to all agree before it may  
5 be returned to the Court as a verdict. And with those instructions  
6 you may retire in the consideration of that verdict.

7           Madame Marshal, you may take the jury out and I will give  
8 you a copy of the indictment to give to the jury, which I have done  
9 earlier.

10 (Jury exited.)

11           THE COURT: And if you remain in the courtroom and  
12 inventory the exhibits with the clerk we will send the exhibits  
13 back. And we will be in recess until we hear from the jury and I  
14 have a copy of the verdict form that I will give to counsel.

15           MR. BYRNE: I have the laptop if they want to use it.

16           THE COURTROOM DEPUTY: Do we want to hold onto that until  
17 they ask for it?

18           THE COURT: Yes.

19 (Recess.)

20           THE COURT: Miss Doakes, we had to wait 15 minutes for you.

21           MS. DOAKES: Your Honor, I was in my office. I apologize.  
22 I'm so sorry.

23           THE COURT: Well, the jury announced it had a verdict and  
24 we had to be chasing you down all over the district.

25           MS. DOAKES: I'm so sorry, Your Honor.

1 THE COURT: The jury has announced it has reached a  
2 verdict.

3 You may bring in the jury, Madame Marshal.

4 (Jury entered.)

5 THE COURT: Members of the jury, have you reached a  
6 verdict?

7 THE FOREPERSON: Yes.

8 THE COURT: Would you please pass the verdict to the  
9 Marshal.

10 THE FOREPERSON: (Complied.)

11 THE COURT: Members of the jury, harken to the reading of  
12 your verdict.

13 You may be seated.

14 THE COURTROOM DEPUTY: United States District Court,  
15 Southern District of Florida, Case Number 13-20690 criminal,  
16 Rosenbaum, referred to Senior Judge Jose A. Gonzalez, Junior.

17 United States of America versus Mario Fabricio Ormachea  
18 Aliaga, verdict form: We, the jury, unanimously find the Defendant  
19 Mario Fabricio Ormachea Aliaga as to Count One of the indictment  
20 guilty;

21 We, the jury, find the Defendant Mario Fabricio Ormachea  
22 Aliaga as to Count Two of the indictment guilty.

23 So say we all, signed by the foreperson of the jury on  
24 March 12th of 2014.

25 THE COURT: Members of the jury, is this your verdict?

1 THE JURORS: Yes.

2 THE COURT: As your names are called would you please  
3 answer out loud.

4 Please poll the jury, Madame Clerk.

5 THE COURTROOM DEPUTY: Juror number 1, is the verdict as  
6 read your verdict?

7 THE JUROR: Yes.

8 THE COURTROOM DEPUTY: Juror number 2, is the verdict as  
9 read your verdict?

10 THE JUROR: Yes.

11 THE COURTROOM DEPUTY: Juror number 3, is the verdict as  
12 read your verdict?

13 THE JUROR: Yes.

14 THE COURTROOM DEPUTY: Juror number 4, is the verdict as  
15 read your verdict?

16 THE JUROR: Yes.

17 THE COURTROOM DEPUTY: Juror number 5, is the verdict as  
18 read your verdict?

19 THE JUROR: Yes.

20 THE COURTROOM DEPUTY: Juror number 6, is the verdict as  
21 read your verdict?

22 THE JUROR: Yes.

23 THE COURTROOM DEPUTY: Juror number 7, is the verdict as  
24 read your verdict?

25 THE JUROR: Yes.

1 THE COURTROOM DEPUTY: Juror number 8, is the verdict as  
2 read your verdict?

3 THE JUROR: Yes.

4 THE COURTROOM DEPUTY: Juror number 9, is the verdict as  
5 read your verdict?

6 THE JUROR: Yes.

7 THE COURTROOM DEPUTY: Juror number 10, is the verdict as  
8 read your verdict?

9 THE JUROR: Yes.

10 THE COURTROOM DEPUTY: Juror number 11, is the verdict as  
11 read your verdict?

12 THE JUROR: Yes.

13 THE COURTROOM DEPUTY: Juror number 12, is the verdict as  
14 read your verdict?

15 THE JUROR: Yes.

16 THE COURT: The jury has been polled all answering in the  
17 affirmative. The Court finds the verdict is unanimous. Madame  
18 Clerk, you may record the verdict.

19 Members of the jury, before I excuse you from further  
20 attention to this case, I wish to thank you on behalf of the Court  
21 and on behalf of the litigants, but especially on behalf of your  
22 fellow citizens of the United States for the service that you have  
23 rendered here this week to the cause of the administration of  
24 justice in our country.

25 I hope you have found this to be an interesting, a

1 rewarding, and an enriching experience. I hope that you will leave  
2 here this afternoon with the satisfaction of knowing that you have  
3 discharged the highest responsibility and, indeed, the highest  
4 privilege of citizenship in our country, which is as serving as a  
5 juror and sitting as a judge of the rights and the affairs of our  
6 fellow citizens.

7           The jury will stand discharged at this time with the thanks  
8 of the Court. You may take the jury out, Madame Clerk.

9 (Jury exited.)

10           THE COURT: Mario Fabricio Ormachea Aliaga, you have been  
11 tried by a jury of 12 citizens of the United States. And that jury  
12 has returned its verdict in the case of the United States of America  
13 versus Mario Fabricio Ormachea Aliaga and has found you guilty of  
14 the offenses charged in the indictment in the case of the United  
15 States of America versus Mario Fabricio Ormachea Aliaga.

16           Accordingly, the Court finds you and adjudges you at this  
17 time as follows: As to Count one, guilty; as to Count Two, guilty.

18           The Probation Office of this Court will be directed to  
19 conduct a Presentence Investigation Report of this Defendant and  
20 submit the same to the Court.

21           The sentencing will be scheduled and held in this case on  
22 Friday, May the 23rd of 2014 at 9:45 a.m. in this courthouse.  
23 Specifically, in Courtroom 310 before the Honorable Robin S.  
24 Rosenbaum, United States District Judge, to whom this case was  
25 originally assigned.

1           The Defendant is remanded to the custody of the United  
2 States Marshal by him to be held pending the sentencing in this case  
3 for the further order of this Court.

4           All right. Would you have the Defendant sign it.

5           Is there any further business to come before the Court at  
6 this time in connection with this case?

7           MR. BYRNE: No, Your Honor.

8           THE COURT: For the defense?

9           MS. DOAKES: No, Your Honor.

10          THE COURT: All right. Then, the case will stand in recess  
11 until the time of sentencing or the further order of the Court.

12          The Court is in recess.

13          (Thereupon, the foregoing proceedings concluded.)

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## CERTIFICATE

I hereby certify that the foregoing transcript is an accurate transcript of the proceedings in the above-entitled matter.

05/23/14

Bonnie Joy Lewis,  
Registered Professional Reporter  
CASE LAW REPORTING, INC.  
7001 Southwest 13 Street,  
Pembroke Pines, Florida 33023  
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