

BRIEF SUMMARY OF THE CASE OF THE CUBAN FIVE

In September 1998, five Cuban men were arrested in Miami by FBI agents and kept in isolation cells for 17 months before their case was even brought before a court. Their mission in the United States was monitoring the activities of the groups and organizations responsible of terrorist activities against Cuba.

Gerardo Hernandez, Ramón Labañino, Fernando Gonzalez, Antonio Guerrero and René Gonzalez were accused of the vague crime of conspiracy to commit espionage. The US government never accused them of actual espionage, nor did it affirm that real acts of espionage had been carried out, as no classified document had been confiscated from them.

In spite of the vigorous objections raised by the Five's defense, the case was tried in Miami, Florida, a community with a long history of hostility toward the Cuban government, that prevented the holding of a fair trial.

The trial, which lasted over six months, became the longest trial that the United States had known until then. More than 119 volumes of testimony and over 20,000 pages of documents were compiled, including the testimonies of three retired Army generals and a retired admiral, who agreed that, did not existed evidence of espionage.

Near the trial's conclusion, when the case was about to be presented to the jury for its consideration, the US government recognized in written that it had failed to prove the main charge of conspiracy to commit murder against Gerardo Hernandez, alleging that it was facing an "insurmountable obstacle" in connection with winning the case. The jury nonetheless found the Five guilty of all charges, under intense pressure brought to bear on them by the local media.

Found guilty, the Five were given in sum 4 life sentences and 77 years and were imprisoned in five completely separate maximum security prisons without communication between them.

Gerardo Hernández Nordelo	2 life terms plus 15 years
Ramón Labañino Salazar	1 life term plus 18 years
Antonio Guerrero Rodríguez	1 life term plus 10 years
Fernando González Llort	19 years
René González Sehwerert	15 years

Additionally they were imposed a clause according to which *“as a further special condition of supervised release the defendant is prohibited from associating with or visiting specific places where individuals or groups such as terrorists, members of organizations advocating violence, and organized crime figures are known to be or frequent.”*

The charges of conspiracy to commit espionage and conspiracy to commit murder represented for three of them life sentences, being the first people ever to be sentenced to life imprisonment for espionage in the United States in a case where no secret document was ever handled.

The appeal process has lasted 8 years. On August 2005 a three-judge panel of the court of appeals revoked all of the convictions on the grounds that the five accused had not received a fair trial in Miami. In an unexpected move, the government asked the twelve judges of the Court of Appeals of the Eleventh Circuit to review the panel's decision through a so-called *en banc* procedure. Exactly one year later, on August 2006, in spite of the strong disagreement voiced by two of the three judges who made up the panel, the Court revoked, by majority, the decision of the three judges

All the while, on May 27, 2005, the UN Working Group on Arbitrary Detention, after reviewing the arguments advanced by the family of the Cuban Five and the US government, concluded that their imprisonment was arbitrary and urged the US government to take the measures needed to rectify the situation.

The Working Group stated that, based on the facts and the circumstances in which the trial was held, the nature of the charges and the severity of the convictions, the imprisonment of the Five violates

Article 14 of the International Convention on Civil and Political Liberties, to which the United States is a signatory.

Never before, the UN Working Group on Arbitrary Detention has denounced as arbitrary the privation of liberty in a case judged in the United States due to violations committed during the legal process.

The lack of evidence needed to substantiate the two main charges — conspiracy to commit espionage and conspiracy to commit first-degree murder—and the imposition of completely irrational and unjustifiable life sentences, has been in the course of all the appeal process another key argument advanced by the defense in its efforts to reveal the arbitrary nature of the process.

On September 2, 2008, the Court of Appeals ratified the guilty verdicts of the Five; ratified the sentences of Gerardo Hernández and René González; considered wrongful the sentences of Antonio Guerrero, Fernando González and Ramón Labañino and revoked them, referring the cases once again to the Miami District Court so they could be re-sentenced (a process yet in course).

Gerardo Hernández	Court of Appeals ratified his sentence 2 life terms plus 15 years
Ramón Labañino	Court of Appeals vacated his sentence Waiting for a sentencing hearing scheduled for December 8, 2009
Antonio Guerrero	Court of Appeals vacated his sentence Re-sentenced on October 13, 2009 to 21 years and 10 months
Fernando González	Court of Appeals vacated his sentence Waiting for a sentencing hearing scheduled for December 8, 2009
René González	Court of Appeals ratified his sentence 15 years

In that occasion the full Court of Appeals recognized that not secret or national defense information was obtained or transmitted in the case of the defendants in the charge of conspiracy to commit espionage.

On the other hand, one of the three judges, the Hon. Phyllis Kravitch affirmed, in a 16-page dissident opinion, that the government did not

present sufficient evidence to find Gerardo guilty of the charge of conspiracy to commit murder.

On June 15, 2009 the U.S. Supreme Court announced, without explanation, its decision not to review the case of the Five, in spite of the solid arguments made by the defense attorneys from the obvious and multiple legal violations committed during the whole trial.

The US Supreme Court ignored also the universal backing to the petition and to the Five, expressed by 12 amicus curiae briefs, an unprecedented fact since it is the largest number of *amicus* briefs ever to have urged US Supreme Court to review a criminal conviction.

Ten Nobel laureates, among them Timor Leste President Jose Ramos Horta, Adolfo Perez Esquivel, Rigoberta Menchu, Jose Saramago, Wole Soyinka, Zhores Alferov, Nadine Gordimer, Gunter Grass, Dario Fo and Mairead Maguire, as well as the Mexican Senate, the National Assembly of Panama, and Mary Robinson, the former President of Ireland (1992-97) and former UN High Commissioner for Human Rights (1997-2002), and UNESCO General Director Federico Mayor, signed the amicus briefs.

They were joined by hundreds of parliamentarians around the world, among them 75 members of the European Parliament, including two ex presidents and three current vice presidents of this Legislature; as well as numerous legal and human rights associations of different countries of Europe, Asia and Latin America, international personalities and legal and academic organizations in the United States.

With this US Supreme Court decision, legal resources to appeal the Atlanta Court's ruling that ratified their convictions practically ran out.

On October 13, 2009, in the US District Court for the Southern District of Florida took place the sentencing hearing of Antonio Guerrero, during which, the same Judge that in December 2001 condemned him to a life sentence plus 10 years, was obliged to admit that in Antonio's case does not exist evidence of gathering nor transmitting secret information. However, she imposed him an unfair sentence of 21 years and 10 months of imprisonment plus 5 years of supervised release.

The sentencing hearings for Fernando González and Ramón Labañino shall take place on December 8, 2009.

During these years of unjust imprisonment, the delay in the granting of visas to the relatives of the Cuban Five, imprisoned in the United States since September 12, 1998, has, in most cases, prevented these relatives from visiting the Five more than once a year on average, despite the regulations of the different prisons allowing monthly visits.

Two of them, Gerardo Hernandez and René Gonzalez, have been prevented from receiving visits of their respective spouses, Adriana Pérez and Olga Salanueva, to whom repeatedly and systematically have been denied the entry permit in US territory to accomplish these visits. As a result, Adriana and Olga have been prevented from visiting their imprisoned husbands for 11 and 9 years, respectively.