

INTERNATIONAL COMMISSION
OF INQUIRY INTO THE CASE OF THE



Testimony of RICARDO ALARCÓN,

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Given at the International Commission of Inquiry into the case of the Cuban Five on Friday the 7th of March 2014, 13:50 to 15:00, Panel discussion: the Cuban Five – US-Cuban Relations.

I will go directly to one point that I think is probably the key question right now. That is: the reason why President Obama should immediately order the freedom for Gerardo, Ramón, and Antonio.

It is a long and very complicated appeal process, so I want to concentrate on the fundamental issues of the accusation against the Cuban Five. You might find from time to time, in the British media, a reference to the 'Cuban spies'. That has to do with one of the two main charges against them, which was not spying, but conspiracy to commit espionage. The other main charge was conspiracy to commit murder. Those are the important charges against the Five. There were minor things about fake documents, not telling the truth, or other things that are, of course, for all of them. 15 years is several times the greatest amount of prison time any person ever was sentenced for, in the US, for those violations.

But let's go to what the government said at that time. In September 1998, when the Five were arrested, the first indictment was issued. There was only one general conspiracy against the US charge and some minor charges; and one important count, conspiracy to commit espionage. President Obama should know by now that that count, the conspiracy to commit espionage, was legally destroyed by none other than the court of appeals in Atlanta, by a unanimous vote in 2008. The court of appeals in Atlanta ordered that those charged with count two - conspiracy to commit espionage - Ramon and Antonio, should have their sentences vacated and needed to be resentenced by the judge in Miami.

Ironically, in the same court order, the court of appeals recognized that Gerardo Hernández was also entitled to have the same 'advantage' of being resentenced on count two. But they refused to do that because Gerardo was already serving another life term due to count three: conspiracy to commit murder.

The court of appeals in Atlanta found, and mentioned repeatedly in a long document of more than 90 pages containing this court order, that nothing in this case was involving national security or endangering the US national security. You see how certain tricks operating the legal system support the legal system in the US. They were not accused of spying, so the government did not have to produce evidence of actual spying, they were just accused of 'conspiring' to commit espionage. But the court imposed the highest sentence possible for the crime of spying, which is a life term. The court of appeals obviously saw the illegality of that and vacated the life term for Ramon and Antonio and ordered for them to be resentenced. That is one point: to pardon them or to forget the accusation of spying is very easy. The president only has to take the word of the court of appeals of the USA.

Then the second main count, on which I will concentrate a little bit more, count three: conspiracy to commit murder. As I said, the original indictment came in September 1998. Nothing in that indictment referred to small planes, air incidents, the Cuban Air Force shooting down American planes... nothing of that kind.

But between September and sometime in April or May the following year, a big media campaign erupted in Miami, demanding that the government added that accusation against one of the prisoners, Gerardo Hernández. I remember reading in the Miami press about meetings held very openly in that city between the attorneys of the city of Miami, the FBI chief, and Mr Basulto¹ and other individuals linked with terrorist groups involved in that incident. What happened? On February 24th, 1996, the Cuban Air Force was obliged after many months of warnings, after dozens of provocations by that group which included armed provocation, and terror provocation. And so the Cuban Air Force interrupted the flight of three small planes; two were shot down over Cuban territory.

The indictment made a very interesting point: that the FBI had discovered who Gerardo Hernández was and what he was doing in Miami since some time around 1994, 1995, that means more than a year before the incident of the small planes. When that incident took place, according to President Clinton, who was president at that moment - he wrote that in his memoirs he was advised to bomb Cuba, to go to war with Cuba. But he decided to do a different thing. He signed the Helms-Burton Act, reinforcing the embargo against Cuba instead of going to war.

But, I repeat, according to the indictment, the FBI knew when the incident took place that Gerardo Hernández was conducting the very serious and delicate mission he was serving in Miami, but he was not accused for that. In those days, Miami was a cauldron: people were on the streets, clamouring for war against Cuba. A question that the US should answer is 'how do you explain that you have there, under your

¹ José Basulto was head of the Brothers to the Rescue, the organisation that was owner of the American planes shot down.

control, the man who was responsible for the shooting down of those planes, and you didn't do anything against that man'.

Time passes, Gerardo remains in Miami, performing his duties. Cuba didn't take him out of Miami, which was something that we would have done if we were afraid that he might be trapped because of that incident. We knew he didn't have anything to do with that and the FBI also knew, that is why they didn't act against Gerardo. When the Five were detained in 1998, the first indictment doesn't mention the incident with the planes at all.

A few months later, after that campaign in the local media, demanding the court to add the accusation of the small planes incident, the second indictment was added. But what happened with that second indictment? The same government, in May 2001, just before the jury was going to make their decision, asked for something that they themselves, the government, asked on page 2 of an emergency petition for writ of prohibition for that charge to be withdrawn. Why? According to their words: because that accusation amounts to an insurmountable hurdle for this prosecutor that mainly took the acquittal of the accused man. They recognize that that accusation became an insurmountable obstacle for them. Notwithstanding, you know that he was found guilty and sentenced on that charge, even though the prosecutor recognised that they had not been able to prove it.

Peter Schey², who is a lawyer in California, has been involved in another dimension of this incident: the strange case of the location of the incident. For one strange reason, since 1996, the US government has refused to show the images taken by US satellites regarding that incident. I was there when the International Civil Aviation Organization of the UN asked the US government for that. You know the answer, it was no. At the trial the question came again, but what was the prosecutor's reaction? No! And since then several organisations and lawyers in the US have been demanding the same.

The US government recognised that it couldn't prove Gerardo's participation, his link to the incident, and that accordingly that accusation became an obstacle. The same government is still refusing to contribute to define the exact place of the incident. I may be very suspicious, but my conclusion is that the problem with the images is that those satellite images simply show the truth: that the incident took place over Cuba. There is no other reason why they still prohibit anybody to see the images.

Gerardo had nothing to do with that incident. He was not a pilot in the Cuban Air Force, he was not a military leader, he was not an air traffic control person. Besides, Cuba didn't need that. Because our authorities get that information many times every day directly from the federal aviation administration or the air traffic control in Miami. Every day, day and night.

President Obama has a very simple question in front of him. These people have been serving 15 years, a little bit more now, on two main counts. One is conspiracy to commit this espionage without espionage. During these 15 years, in the US, people guilty of spying have gotten much less than 15 years.

² Peter Schey is executive director of the Center for Human Rights and Constitutional Law Foundation.

Secondly, Gerardo is also accused of something that the accuser himself, in an unprecedented step, asked to withdraw from the accusation.

Then it is not so difficult for Obama to take his hand and sign a piece of paper ordering Gerardo, Ramón, and Antonio to be released from prison immediately.