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Ambassador Clayland Boyden Gray
United States Ambassador to the European Union
Rue Zinner 13
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Belgium

Brussels, 8 January 2007

Dear Ambassador, Your Excellency

We are writing to you about the fate of five Cubans (also known as the "*Miami five*") who were sentenced by a US court to lengthy prison terms after being convicted of conspiracy to commit espionage, conspiracy to murder and other related charges.

These men (Gerardo Hernández Nordelo, Antonio Guerrero, Ramón Labañino, Fernando González and René González) were arrested in September 1998 in Miami, put on trial in November 2000, convicted on June 8, 2001, and given sentences ranging from 15 years to two consecutive life terms.

Our concerns are threefold:

I.

We believe that some of the charges these men faced are based on - to put it mildly - absurd accusations. Two examples will suffice to illustrate this:

It seems clear that these men were sent to the USA to infiltrate, and provide information on, Cuban exile organizations suspected of terrorist activities against Cuba, including Alpha 66, Omega 7 and 'Brothers to the Rescue'. The US federal government knew this. This is why the men weren't convicted of espionage. They weren't even charged with espionage. In fact they were accused of *"conspiracy to commit espionage"*, which means the federal government wanted to convince the trial jury that these men actually agreed between **themselves** to spy on the US government at some point in the future. During the trial, no evidence was put forward to support this accusation.

Yet the jury found them guilty on this charge.

The second example has to do with the conviction of Gerardo Hernández for *"conspiracy to murder"* four members of an organization of Cuban exiles ('Brothers to the Rescue'.) Their planes were shot down over Cuban territory on February 24, 1996 by the Cuban authorities. After several violations of Cuban airspace by this organisation, in January 1996 the Cuban government had publicly declared that any further violation of its airspace would result in planes being shot down. Apparently, a diplomatic note was sent to the US government urging it to put an end to such flights, which it didn't. In short, Gerardo Hernández was bizarrely charged with conspiring with members of the Cuban military to murder the four members of the organisation 'Brothers to the Rescue' that ended up being killed when their planes were shot down. Based on this charge, Hernández was convicted and is now serving two life sentences plus 15 years.

These five men are of course not without responsibility. They were unregistered, and therefore illegal, agents of a foreign government active on US territory.

But the charges they ended up facing and the convictions based on them, are clearly politicized, which leads us to our second concern.

II.

Amnesty International, in a letter sent to Mr Kevin Whitaker at the Office of Cuban Affairs at the US State Department on January 11, 2006, underlined that the trial which ended in convictions for the five men was far from impartial. Amnesty believes that:

"*the pervasive community prejudice against the Cuban government and its agents in the trial venue and the publicity and events surrounding the trial combined to create a situation where they were unable to obtain a fair and impartial trial.*"

In saying so, Amnesty International was merely reiterating the substance of a legal opinion produced by a three-judge panel of the Eleventh Circuit Court of Appeals of August 8, 2005 (Case Number 01-17176, Docket Number 98-00721). This panel unanimously reversed the convictions and asked for a new trial. The conclusion of this opinion deserves to be quoted in full:

"In light of the foregoing discussion, the defendants' convictions are REVERSED and we REMAND for a new trial.

The court is aware that... the reversal of these convictions will be unpopular and even offensive to many citizens. However, the court is equally mindful that those same citizens cherish and support the freedoms they enjoy in this country that are unavailable to residents of Cuba. One of our most sacred freedoms is the right to be tried fairly in a noncoercive atmosphere. The court is cognizant that its judgment today will be received by those citizens with grave disappointment, but is equally confident of our shared commitment to scrupulously protect our freedoms. The Cuban-American community is a bastion of the traditional values that make America great. Included in those values are the rights of the accused criminal that insure a fair trial. Thus, in the final analysis, we trust that any disappointment with our judgment in this case will be tempered and balanced by the recognition that we are a nation of laws in which every defendant, no matter how unpopular, must be treated fairly. Our Constitution requires no less."

A few months earlier, the UN Working Group on Arbitrary Detention, in its Opinion 19/2005 adopted on May 27, 2005, had come to a similar conclusion. It considered the positions of the US government and of several sources speaking in the name of the convicted men, and concluded that the flaws of the trial were *"of such gravity that they confer the deprivation of liberty of these five persons an arbitrary character."*

More specifically, concerning the issue of impartiality, which lies at the heart of our concern about the politicization of this trial, the UN Working Group had the following to say:

"(c) The jury for the trial was selected following an examination process in which the defence attorneys had the opportunity and availed themselves of the procedural tools to reject potential jurors, and ensured that no Cuban-Americans served on the jury, ***Nevertheless, the Government has not denied that even so, the climate of bias and prejudice against the accused in Miami persisted and helped to present the accused as guilty from the beginning. It was not contested by the Government that one year later it admitted that Miami was an unsuitable place for a trial where it proved almost impossible to select an impartial jury in a case linked with Cuba."***

Of course we are aware that in a decision of August 9 of this year, the entire Eleventh Circuit Court overruled the previous decision by the three-judge panel, thus excluding a new trial. At the same time it ordered the case to be sent back to "*the panel for consideration of the remaining issues.*" We certainly haven't heard the last of this case.

As is the case in every mature democracy, the US judicial branch is independent and it does not lie in Your powers to influence the outcome of any decision by US courts.

However, in this particular case, we feel that it is important to raise your awareness - and that of your superiors in the State Department - about the fate of these five men, if only to show that many people outside the US and Cuba are concerned about them and about the strong circumstantial evidence indicating that political and ideological considerations have influenced their judicial process.

III.

Our third and final concern has to do with the fact that some prisoners have been denied the right to see their families. Olga Salanueva, wife of René González (sentenced to 15 years' imprisonment) has been refused entry to the USA since 2002. She was deported from the USA in 2000 after being accused by the US government of being an agent for Cuban intelligence. According to Amnesty International, no evidence was provided on which she could respond to this claim. Olga actually lived for over two years in the USA while her husband was on trial and was deported only after her husband refused to enter a plea arrangement in return for her being allowed to remain in the United States. René González has consequently not seen his young daughter since she was four months old.

Adriana Pérez, wife of Gerardo Hernández (sentenced to life imprisonment) has not been allowed to visit her husband since his arrest in 1998. Both she and Olga Salanueva have been denied visas under provisions of the Immigration and Nationality Act relating to varying concerns, namely terrorism, national security, or espionage, without detailed reasons being given. In fact, according to Amnesty International,

"the reasons given for denying visas to allow them to visit their husbands have reportedly changed at various points, making it more difficult for the applicants to make their case and raising questions about the good faith of the authorities in this matter. We understand that Adriana Pérez, for example, was denied a visa last September [2005] on the unsupported ground that she may seek to remain in the USA."

International standards underline the importance of allowing prisoners to maintain regular contact with their families. The International Covenant on Civil and Political Rights, to which the USA are a party, states in its Article 10, that *"all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."* The UN Human Rights Committee's General Comment 21 on Article 10 of that Covenant underlines that individuals deprived of their liberty may not be subjected to *"any hardship or constraint other than that resulting from the deprivation of liberty",* and that respect for the humanity and

dignity of persons deprived of their liberty shall be applied *"without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or status."*

Also, the 'Basic Principles for the Treatment of Prisoners' adopted and proclaimed by UN General Assembly resolution 45/111 of 14 December 1990 state that:

"5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants."

Finally, Principle 15 of the 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', adopted by the UN General Assembly resolution 43/173 of 9 December 1988, stipulates that *"... communication of the detained or imprisoned person with the outside world, and in particular his family of counsel, shall not be denied for more than a matter of days."*

It seems that the decision on issuing visitors' visas for Olga Salanueva and Adriana Pérez is now in the hands of the State Department. We urge you to call on the relevant elements within it to review this matter and allow these two women to visit their husbands after all these years.

To conclude, it is important for us to underline what this letter is **not**: it is not a statement about the decades-old US embargo on Cuba and it is not a defence of the Cuban regime.

What this letter does express is a deep disappointment with what seems to be a politicized miscarriage of justice in the USA, a country that measures itself according to the highest legal standards.

This whole case, including the cruel separation of some of the convicted men from their families based on shifting and unconvincing justifications, does a disservice to the image of the USA around the world, quite apart from the suffering it has caused to the five men who have been languishing in prison for the last eight years.

Yours sincerely,

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