

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:10-21957-cv-JAL
(98-721-cr-JAL)

GERARDO HERNANDEZ,

Movant,

v.

UNITED STATES,

Respondent.

**THIRD AFFIDAVIT OF MARTIN GARBUS
(1) IN OPPOSITION TO THE
GOVERNMENT'S MOTION TO STRIKE
AND OBJECT TO DE53, AND**

**IN SUPPORT OF (2) MOVANT'S MOTION
FOR DISCOVERY, (3) MOTION FOR LEAVE
TO REFILE DE53 AND ATTACHMENTS
AND**

**(4) IN THE ALTERNATIVE, TO AMEND
AND SUPPLEMENT GROUND FIVE THE
HABEAS CORPUS APPLICATION**

State of New York)
County of New York) ss:

Martin Garbus, being duly sworn, deposes and says:

1. I am one of the attorneys for Gerardo Hernandez, Movant, and submit this affidavit and supporting Brief:

(a) in opposition to the Government's Motion to Strike and Object; and

(b) and in opposition to the Government's Response to the Discovery Motion and in support of Movant's Memorandum in Further Support of Discovery motion; and

(c) in support of Movant's Motion for Leave to Refile DE53 and attachments to expand the record; and

(d) in the alternative, to file an amended pleading (as contained in paragraphs 16, 17 and 18 of this Affidavit) if the Court determines the facts alleged in DE53 and this affidavit are not within the scope of the original 28 USC §2255 application filed by Movant.

2. I request permission to file this Third Affidavit , if the Court grants the Government's Motion to Strike or Object to the August 31, 2012 Affidavit DE53, the Brief, and the Attachments.

3. As the Brief now submitted in opposition to the Government's motion shows (and as DE53 showed), all of the "facts" in DE53 came within the original 28 U.S.C. § 2255 application filed by Movant. If the Court feels otherwise, then Movant requests permission to amend the pleading to include the facts set forth in DE53 in an amended pleading, more particularly the facts set forth in Movant's Motion, in the alternative, for leave to amend "Ground Five" of the motion to vacate judgment dated June 14, 2010.

4. This affidavit is based on research I and my associates conducted in order to bring the relevant facts to the Court's attention, both for the purposes of the information gathering for DE53 and to show, in the alternative, the facts for Ground Five of the amended pleading.

5. I contacted Oscar Corral, the writer of the Miami Herald story of September 8, 2006, Thomas Fiedler, the former editor of the Miami Herald in 2006, and Geoffrey Cowan, the former Director of the Voice of America, who was responsible for Radio/TV Marti. They each refused to speak with me, but each said he would obey court process (p.6, paragraph 13-16 of DE53). I also attempted to interview witnesses who spoke to the Columbia University study as well as the University professor in charge of the study. They too would not speak further to me, but would obey Court process. I also contacted individuals who knew facts about Radio/ TV Marti

activities between 1996 and 2001, but they too would not speak to me but would obey Court process.

6. I supervised an examination of Government websites and sources in order to get further detailed information to the Court. The Government websites and databases, and other information sources, were often incomplete, contradictory, and seemed to be deliberately misleading. We cannot get any further information for the Court at this time without Court intervention. For example, according to the FOIA petition information, Ivette Leyva, the wife of Wilfredo Cancio Isla, also received monies from the Broadcasting Board of Governors. According to the FPDS site, she received monies prior to 2005 and received \$45,550 from June 3rd, 2005 to September 29th, 2008. Leyva worked as an assignment editor and TV producer for WJAN Ch. 41, America TeVe, from May 2005 to September 2006. The total amount of this is unknown. This Court, and the Government, were previously given a detailed affidavit of the attempt to get information during the FOIA proceeding.

7. The Broadcasting Board of Governors (BBG) became the independent entity responsible for all U.S. Government and government-sponsored, non-military, international broadcasting on October 1, 1999. With enactment of the 1998 Foreign Affairs Reform and Restructuring Act (Public Law 105-277), the BBG assumed authority for the International Broadcasting Bureau (IBB) and its broadcasting services – the Voice of America (VOA) and the Office of Cuba Broadcasting (OCB). The Board also oversees three grantee organizations, Radio Free Europe/Radio Liberty (RFE/RL), Radio Free Asia (RFA), and the Middle East Broadcasting Networks (MBN).

8. We have found multiple but incomplete payment records from various governmental agencies overseen by the Broadcasting Board of Governors (BBG) and the United States Information

Agency (USIA), including the Office of Cuba Broadcasting (OCB), Voice of America (VOA), Radio TV/Marti and others. These payments have been documented in multiple FOIA suits and petition, referred to in the habeas corpus application, the Federal Procurement Database System, and investigative reports and articles. Paid Government propagandists were involved in all or nearly all of the 1,932 days between the date of the shoot-down and the date of the conviction. Discovery is sought because it is only the Government records that can fully detail the daily media events and specific acts of misconduct of a five year period that began 16 years ago. None of the published articles or given speeches indicated that the writer or speaker is receiving Government monies.

9. DE53 contains “facts” that ultimately support the original application and the proposed amended pleading. Because the Government is trying to create a procedural morass, we also seek to amend the pleading. Other than a blunderbuss attack, the motion to strike is empty. It does not contest one fact.

10. The Government’s database indicates that since 1960 that some media entities and commentators with media in the Miami area, allegedly independent (but in fact were not) received Government money from a variety of sources. For example, Channel 41 WJAN, America TeVe, was functioning in Miami at the time of the trial. America TeVe’s Network Director is Omar A. Saul Romay, the Chairman is Marcelo Soldano. We only know Sherjan Broadcasting Co. Inc. received \$111,600 from the Government from October 19, 2004 to September 17, 2005. We do not know how much, if any, it received at any other time. The President and Chief Executive Officer of Sherjan is Omar A. Saul Romay and the CFO is Marcelo Soldano, according to Dunn & Bradstreet and the Florida Department of State. WJAN features, among other things, “A Mano Limpia”, a highly political show hosted by an alleged

independent journalist who was not independent. Oscar Haza, who had previously received federal payments, is a very small example of the interrelationship between a small group of paid journalists, some of whom were previously imprisoned. FPDS search documents.

<http://www.fpds.org> (BBG and USIA searches).

11. Because government budgets are reported agency by agency, it is difficult, if not impossible, to learn how such Government money went to Basulto, his colleagues, his nominees, Radio/TV Marti and journalists paid by Radio Tv/Marti. Getting detailed responsible information about the Government's use of Radio/TV Marti funds for illegal purposes has always been difficult. In 1996 to 2001 and as late as 2011, Radio/TV Marti was failing to give information to the Government as to exactly what it was doing. See GAO reports on Cuba (Exhibit P).

12. The factual basis for Movant's in DE53 was based on, among other sources, the submitted exhibits. The following are citations (with an explanation where needed) to the exhibits previously attached to DE53, as well as further cites. DE53 annexed them for the convenience of the Court and the Government. The Government objects to that. Many of the citations have been previously cited, as were the attachments filed in support of DE53.

A. United States v. Hernandez et. al, No. 98-721-Cr-LENARD/DUBE, Electronically Filed Document 818 (So. Fl. 2000) (United States' Motion to Enforce Court's Directive Concerning Witness Comments to News Media)(<http://www.pacer.gov>)

B. When the Story is us: Miami Herald, Nuevo Herald, and Radio/TV Marti, Columbia University Case Study, CSJ-10-0026.0

C. (PERLINK"<https://casestudies.jrn.columbia.edu/casestudy/www/home.asp?nid=1>"
<https://casestudies.jrn.columbia.edu/casestudy/www/home.asp?nid=1>)

D. Alberto Muller, *Asesinos*, DIARIO LAS AMERICAS, February 20th, 2001.
(<http://www.diariolasamericas.com/>)

E. *March 11th 2009 Freedom of Information Act Petition Response, Office of the General*

- Counsel FOIA and Privacy Act, Case #FOIA 09-007*
- F. *Hard-Line Organizations, Cuban Information Archives Document 0005 p. 1, 15, Binder Section 15, 1998-2010, (http://www.cuban-exile.com/doc_001-025/doc0005.html)*
- G. *Julio Armando Estornio's Resume, Found through FOIA Documents*
- H. *Julio Estorino, Malice Aforethought, DIARIO LAS AMERICAS, May 14th, 1999. At 4-A (<http://www.diariolasamericas.com/>)*
- I. *Kathy Glasgow, Overthrow on the Radio, THE MIAMI NEW TIMES, February 13th, 1997. (<http://www.miaminewtimes.com>)*
- J. *Liberation Newspaper's FOIA Documents Analysis 1&2, Government-Funded propaganda Operation in Miami Exposed, Gloria La Riva & Ben Becker, [ReportersForHire.com](http://www.pslweb.org/reporters-for-hire/analysis/govt-funded-propaganda-part-1.html) (<http://www.pslweb.org/reporters-for-hire/analysis/govt-funded-propaganda-part-1.html>)*
- K. *Luis Aguilar Leon, Rage and its Limitations, EL NUEVO HERALD, February 27th, 1996, at 6A (<http://www.elnuevoherald.com/>)*
- L. *Christopher Marquis, Journalists Will Analyze Integrity of Radio/TV Marti Transmissions, EL NUEVO HERALD, January 26th, 1996, at 11A (<http://www.elnuevoherald.com/>)*
- M. *Wilfredo Cancio Isla, Cuba Used Hallucinogens to Train its Spies, EL NUEVO HERALD, June 4th, 2001. (<http://www.elnuevoherald.com/>)*
- N. *Carol Rosenburg, Havel Salutes Ex-Prisoner of Castro, THE MIAMI HERALD, September 23rd, 2002. (<http://www.latinamericastudies.org/human-rights/havel-salutes.htm/>)*
- O. *Alvin Snyder, Privatize Radio/ TV Marti, THE MIAMI HERALD, April 29th, 1996, at http://alvinsnyder.com/privatize_radio_and_tv_marti_54918.htm*
- P. *United States Government Accountability Office, Opinion GAO-12-243R, Broadcasting Board of Governors Should Provide Additional Information to Congress Regarding Broadcasting to Cuba, December 13th, 2011*
And United States Government Accountability Office, Opinion GAO-08-764, Weaknesses in Contracting Practices Reduced Visibility into Selected Award Decisions, July, 2008
- Q. *Mike Clary, Radio/TV Marti's Move to Miami Strains Credibility, Critics Say: Lawmakers, Others Warn Against Relocation to Heart of Cuban American Community, THE LOS ANGELES TIMES, August 20th, 1996 (http://articles.latimes.com/1996-08-20/news/mn-35941_1_radio-marti.htm)*
- R. *Oscar Corral, 10 Miami Journalists Take U.S. Pay, THE MIAMI HERALD, September 8, 2006, at 1A. (<http://www.miamiherald.com>)*
- S. *Abby Goodnough, U.S. Paid 10 Journalists for Anti-Castro Reports, THE NEW YORK TIMES, September 9, 2006 (<http://www.nytimes.com>)*
- T. *United States Government Accountability Office, Opinion B-305368, Department of Education – Contract to Obtain Services of Armstrong Williams, September 30th, 2005.*
- U. *United States Government Accountability Office, Opinion B-229069, 66 Comp. Gen 707, September 30th, 1987. (<http://redbook.gao.gov/13/fl00613.php>)*
- V. *Ariel Remos, Close to 100,000 Cuban Exiles Made Their Rejection of Castro Clear, DIARIO LAS AMERICAS, October 13, 1998, page 1A*

- (<http://www.diariolasamericas.com/>)
- W. Orlando Bosch, *Lightning*, DIARIO LAS AMERICAS, May 15th, 2001. (<http://www.diariolasamericas.com/>)
- X. Daniel Morcate, *Imperfect Crime*, EL NUEVO HERALD, May 13th, 1999. (<http://www.elnuevoherald.com/>)
- Y. Carl Bernstein, *The CIA and the Media*, Rolling Stone, October 20, 1977. (http://www.carlbernstein.com/magazine_cia_and_media.php)
- Z. Seymour M. Hersh, *HUGE CIA OPERATION REPORTED IN US. AGAINST ANTIWAR FORCES, OTHER DISSIDENTS IN NIXON YEARS.*, *The New York Times*, December 22, 1974, at 1. (<http://www.nytimes.com>)
- AA. Howard Kurtz, *Administration Paid Commentator*, *Politics*, January 8, 2005 at AOL. (<http://www.washingtonpost.com/wp-dyn/articles/A56330-2005Jan7.html>)
- BB. Greg Toppo, *Education Department Paid Commentator to Promote Law*, *USA Today*, January 7, 2005. (<http://www.usatoday.com/news/washington/2005-01-06-williams-wh...>)
- CC. David Barstow, *Behind TV Analysts, Pentagon's Hidden Hand*, *The New York Times*, April 10, 2008 at 1. (<http://www.nytimes.com/2008/04/20/us/20generals.html?pagewanted=all>)
- DD. Mark Mazzetti and Borzou Daragahi, *US. Military Covertly Pays to Run Stories in Iraqi Press*, *the Los Angeles Times*, November 30, 2005. (<http://articles.latimes.com/2005/nov/30/worldfg-infowar30...>)
- EE. Jeff Gerth and Scott Shane, *U.S. Is Said to Pay to Plant Articles in Iraqi Papers*, *the New York Times*, December 1, 2005. (<http://www.nytimes.com/2005/12/01/politics/01propaganda.html?pa...>)
- FF. Memorandum from David Ogden, Deputy Attorney General, to Department Prosecutors, January 4, 2010. (<http://www.justice.gov/PrintOut2.jsp>)
- GG. BBG Contract Numbers: #00009200102BP1091016 and #00009200001BP0098024. The first *Estorino* contract was found at <http://cubamoneyproject.org>. The second contract was obtained at <http://FPDS.gov>
- HH. Hernando Calvo Ospina and Katlijn Declercq, *The Cuban Exile Movement: Dissidents or Mercenaries*, Ocean Press, 2000. ISBN #1-876175-15-X.
- II. Enrique Encinosa, *Cuba, The Unfinished Revolution*, Eakin Press, 1998. (CTUR)
- JJ. The interview of Enrique Encinosa: <http://babalublog.com/2010/12/the-escambray-the-sierra-magestra-enrique-encinosa-humberto-fontova-and-more/>
- KK. See Antonio Guerrero's Motion for Habeas Corpus Relief dated March 5, 2011 (hereafter cited as GM) at page 3 and 4 for additional articles by Remos.
- LL. Alvin Snyder. *Warriors of Disinformation*, Arcade, 2012, at page 221 et seq.
- MM. Jim McGee and Bob Lowe, "FBI Agents Arrest Omega 7 'Mastermind'", *THE MIAMI HERALD*, July 23, 1983. Remos describes the Junta Patriótica Cubana's placards and slogans, including one calling for Eduardo Arocena's freedom. Remos is a member of that group. Eduardo Arocena is founder and leader of the paramilitary organization Omega 7.

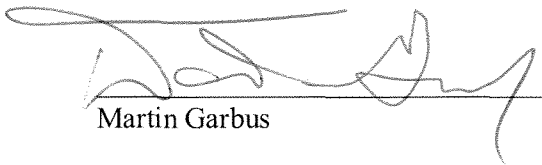
NN. *Daniel Morcate, Imperfect Crime, THE MIAMI HERALD, May 13th, 1999. (Medina v USA, 2255 Motion, transcript 1817-1826, 2266-2279, 2637-2641, 6730-6762, 7130-7136)*
OO. *John Elliston, Psy War on Cuba, Ocean Press, 1999. 92-96*
PP. *United States Government Accountability Office, Opinion B-305368, Department of Education – Contract to Obtain Services of Armstrong Williams, September 30th, 2005.*

13. We took the above referenced citations, exhibits, Court documents in the FOIA suits, the available information from Movant's 2255, and from the databases referred to and from published sources in public record and created DE53 and Ground Five of the amended pleading setting forth information about a small sampling of the journalists involved in the project to convict Movants. I have tried to indicate where I have no knowledge of essential facts. I repeat, Ground Five is only a sampling of the materials in DE53 and a very small sampling of all of the information showing the Government unconstitutional actions.

14. The Government claims the present habeas corpus application does not permit the "facts" set forth in DE53 to be counted. We disagree.

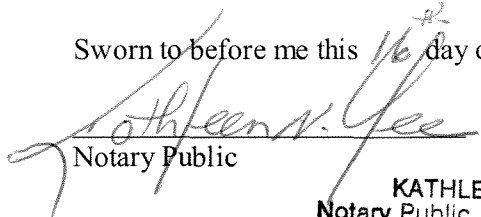
15. We do not believe repleading is required. If the Court believes otherwise, we request permission to file an amended pleading.

16. The relief sought by Movant should be granted.



Martin Garbus

Sworn to before me this ¹⁶ day of November, 2012.



Notary Public

KATHLEEN N. YEE
Notary Public, State of New York
No. 01YE6088677
Qualified in Westchester County
Commission Expires March 10, 2015.