

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

**CASE NO. 11-23376-CIV-Lenard**

**RUBEN CAMPA  
[FERNANDO GONZALEZ],  
Plaintiff,**

**v.**

**UNITED STATES,  
Defendant**

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**ATTACHMENT D**

Appellate Brief of defendant Campa in *Campa I*  
(consolidated Case No. 03-110-87, appeal from denial of motion for new trial)

1998 P. 04/88  
C. Heck-milles

NO. 03-11087-B

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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UNITED STATES OF AMERICA,  
Plaintiff/appellee,

v.

RUBEN CAMPA,  
Defendant/appellant.

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On Appeal from the United States District Court  
for the Southern District of Florida

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BRIEF OF THE APPELLANT  
RUBEN CAMPA

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**THIS CASE IS ENTITLED TO PREFERENCE  
(CRIMINAL APPEAL)**

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

**United States v. Ruben Campa  
Case No. 03-11087-B**

Appellee Ruben Campa files this Certificate of Interested Persons and Corporate Disclosure Statement, listing the parties and entities interested in this appeal, as required by 11th Cir. R. 26.1.

Jack Blumenfeld	Former counsel for Guerrero
David M. Buckner	Assistant United States Attorney
Ruben Campa	Defendant
Orlando do Campo	Assistant Federal Public Defender
Hon. Robert L. Dubé	United States Magistrate Judge
Rene Gonzalez	Defendant
Antonio Guerrero	Defendant
Gerardo Hernandez	Defendant
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Kathleen M. Williams	Federal Public Defender

**STATEMENT REGARDING ORAL ARGUMENT**

The defendant respectfully submits that oral argument is necessary to the just resolution of this appeal and will significantly enhance the decision making process.

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**STATEMENT REGARDING ADOPTION  
OF BRIEFS OF OTHER PARTIES**

Appellant Ruben Campa, pursuant to Fed.R.App.P. 28(i), hereby adopts the appellate briefs filed in the instant appeal by co-appellants Gerardo Hernandez, Luis Medina, Antonio Guerrero, and Rene Gonzalez.

## STATEMENT OF JURISDICTION

The district court had jurisdiction of this case pursuant to 18 U.S.C. § 3231 because the defendant was charged with an offense against the laws of the United States. The court of appeals has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which give the courts of appeals jurisdiction over all final decisions and sentences of the district courts of the United States. The appeal was timely filed on February 26, 2003, from the final judgment entered on February 10, 2003, that denied defendant's motion for a new trial and disposed of all claims between the parties to this cause. DE1678.

## STATEMENT OF THE ISSUE

Whether the district court improperly denied Campa's motion for a new trial based on newly discovered evidence, including evidence of prosecutorial misconduct and irregularities involving a defense expert witness, supporting Campa's renewed motion for a change of venue.

## STATEMENT OF THE CASE

### Course of Proceedings and Disposition in the District Court

Ruben Campa was originally indicted in a superseding indictment on October 2, 1998, and charged with various foreign agency offenses. DE83. On May 7, 1999, the government filed a second superseding indictment, which charged him in five counts. Count 1 charged him with conspiring to defraud the government and to act as a foreign agent without proper notification as required under 18 U.S.C. § 951 and 28 C.F.R. § 73.01, *et seq.*, all in violation of 18 U.S.C. § 371. Counts 16 and 17 charged substantive violations of the requirement of notification prior to acting as a foreign agent, under 18 U.S.C. § 951 and 28 C.F.R. § 73.01, *et seq.* Count 16 charged aiding and abetting codefendant Antonio Guerrero, while count 17 charged Campa with personally violating the relevant provisions. Count 7 charged Campa with possessing a false U.S. passport, in violation of 18 U.S.C. § 1546. Count 8 charged that Campa possessed eight improperly-issued identification documents, in violation of 18 U.S.C. § 1028. DE224.

On January 24, 2000, Campa filed a motion for a change of venue, in support of which he subsequently filed additional legal memoranda and notices of filing exhibits. DE329; DE397; DE455; DE483; DE498. Campa's codefendants also

requested a change of venue. On July 27, 2000, the district court denied Campa's and his codefendants' motions. DE586. On October 24, 2000, the district court denied Campa's motion for reconsideration. DE723, DE656. This cause proceeded to trial in Miami commencing on November 27, 2000.

On June 8, 2001, Campa was convicted of all charges. On November 28, 2001, the district court denied Campa's initial motion for a new trial which was based, in part, on the need for a change of venue. DE1392; DE1343. On December 18, 2001, Campa was sentenced to 228 months in prison, which he is currently serving. DE1439.

On November 14, 2002, Campa joined in codefendant Antonio Guerrero's Rule 33 motion for a new trial which was based on newly discovered evidence supporting the previously filed motions for a change of venue. DE1638. The district court denied the motion for a new trial on February 10, 2003. DE1678. This appeal followed.

#### **Statement of Facts**

Fernando Gonzalez Llord, a.k.a. Ruben Campa, was born on August 18, 1963, in Havana Cuba, where he grew up and obtained a masters degree in international relations. During the time period covered by the second superseding

indictment, Campa lived in south Florida for two brief periods of time. He lived in an apartment belonging to his codefendant Gerardo Hernandez from November 1997 until February 1998, when he returned to Cuba. He reentered the United States on July 4, 1998, and shared an apartment with another codefendant, Ramon Labañino, a.k.a., Luis Medina, until their arrest on September 12, 1998. Campa was supposed to return to Cuba in October or early November, 1998. DE1556:11278.

While he lived in south Florida, Campa admittedly worked secretly on behalf of the Cuban government. Along with several of his codefendants, Campa gathered and relayed information concerning the activities of numerous local, extremist anti-Castro groups and individuals, such as Orlando Bosch, who planned the bombing of a Cuban aircraft in 1976 which killed 73 persons, Ex.-R77, and Rodolfo Frometa, the leader of the paramilitary organization Commandos F-4, who had been previously convicted for attempting to buy Stinger anti-tank missiles and C-4 explosives for use against Cuba, and released from prison in 1997. DE1551:10633; DE1550:10593.

The time period covered by the indictment coincided with a dramatic escalation in the forty-year history of violent activities against Cuba by local extremists. There was, for example, the series of bombings in Havana during the



summer of 1997. Specifically, on April 12, 1997, a bomb exploded and destroyed the bathroom of the discotheque Ache in the Melia Cohiba Hotel, a large five-star hotel. DE1552:10756-61. On April 30, 1997, the Cuban authorities discovered another, unexploded bomb at the Melia Cohiba Hotel and deactivated it. DE1552:10768.

On July 12, 1997, two additional bombs exploded in the lobbies of the Capri and National Hotels, the latter of which is a Cuban national landmark. DE1552:10785-87. On August 4, 1997, another bomb went off in the lobby of the Melia Cohiba Hotel, where two other explosive devises had previously been placed. DE1552:10803.

On September 4, 1997, a total of four bombs exploded in rapid succession throughout the city. Bombs exploded at the Triton Hotel, the Chateau Miramar Hotel, the Bodeguita del Medio Restaurant, and the Copacabana Hotel. DE1552:10807-16. Four Mexican tourists were injured in the Bodeguita explosion, and one Italian tourist was killed and several others injured in the Copacabana blast. DE1552:10818-23. On October 19 and 30, respectively, two unexploded bombs were discovered hidden in a Cubanatur tourist van and planted underneath a kiosk at the San Jose Marti National Airport. DE1552:10824-30.

Lieutenant Colonel Roberto Hernandez Caballero, an official of the Cuban Department of State Security who investigated the bombings, believed that some of the persons responsible for the attacks were living in the United States during the time of the attacks and at the time he testified at trial. DE1552:10839. He and other Cuban officials provided evidence they collected related to these and other acts of aggression against Cuba to the Federal Bureau of Investigation in a lengthy written report in June 1998. DE1552:10839-41; see Ex.-R33MM. The report, for example, provided evidence related to several incursions into Cuban territories by Miami-based paramilitary organizations, including Alpha-66 and P.U.N.D., as well as numerous shootings at Cuban waterfront hotels from speedboats driven by Cuban exiles. Id.

Cuba also gave the FBI evidence obtained by Percy Alvarado Francisco Godoy and Juan Francisco Fernandez Gomez, both of whom testified by deposition at Campa's trial. Godoy described numerous attempts between 1993 and 1997 by persons affiliated with the powerful Cuban American National Foundation (C.A.N.F.) to recruit him to engage in violent activities against several Cuban targets. Beginning in September 1994, for example, he was asked to place a bomb at the Cabaret Tropicana, a popular Havana nightclub and major tourist attraction.

DE1554:11012; see Godoy deposition at 45. In November, he flew to Guatemala in connection with this plot and was given the explosives and detonators he was supposed to use in the attack. Id. at 49-55. One of the men he met in Guatemala was Luis Posada Carriles, a Cuban exile with a long history of violent acts against Cuba.

Unknown to his recruiters in Miami, however, Godoy was cooperating with the Cuban authorities and publicly denounced their plans. He later testified at the trial of one of the conspirators in Cuba. Id. at 109. After Godoy's connection to the Cuban government became public, unidentified persons set fire to a car belonging to his friend in Miami, with whom he stayed during his visits to the United States. Id. at 115.

Gomez described similar efforts between 1997 and 1998 by local extremists to engage him in plots to bomb tourist hotels and the Che Guevara Memorial in Santa Clara, Cuba, a popular spot for Cuban school children and foreign tourists. DE1558:11559; see Gomez deposition at 16, 19-20. Unknown to his recruiters in Miami, however, Gomez was also cooperating with the Cuban authorities. Several persons were arrested for their involvement in the scheme and explosives were seized. Persons who were living in the United States and were behind these plots later threatened to kill Gomez. Id. at 66.

Evidence of other acts of aggression against Cuba was provided by some of the participants themselves. Frometa, the self-proclaimed "Maximum Leader" of Comandos F-4, DE1550:10534, described his prior involvement with Alpha 66 and his numerous attempts to smuggle weapons into Cuba or spark a violent insurrection on the island. DE1550:10541. Like so many other anti-Castro militants, Frometa was detained by federal authorities on numerous occasions on various firearms offenses from 1993 onward but was usually let go with merely a warning or the seizure of the weapons he possessed. DE1550:10572.

For example, on February 7, 1994, Frometa and others were stopped on a boat near Key Biscayne, Florida. DE1550:10567-69. Federal authorities discovered 50 firearms on board the vessel that day, including a .50 caliber semiautomatic machine gun as well as shotguns, assault rifles, pistols, and 25,000 rounds of ammunition. DE1550:10567-68. Frometa and the other men, however, were not arrested; they were, according to Frometa, "released that day. Everybody in Miami knows that." DE1550:10569.

Later that year, however, Frometa was finally prosecuted after FBI agents videotaped his attempts to purchase Stinger anti-tank missiles and C-4 explosives from an undercover agent. DE1550:10571, 10579. Frometa wanted the missiles and

explosives to shoot down Cuban helicopters and blow up Castro as well as the “three or four important” people who are usually around him. DE1550:10575-76, 10579. At Campa’s trial, Frometa said it was his “mission” to kill Castro. DE1550:10579.

Orlando Suarez, formerly a Captain with Alpha-66, DE1549:10374, another paramilitary organization openly advocating guerrilla war against Cuba, DE1550:10378, also described the times he and others were stopped on board different vessels in possession of large amounts of weapons but never arrested. For example, on June 10, 1994, federal authorities discovered MAC 50 and MAC 90 rifles and ammunition on board Suarez’s vessel. DE1550:10413-14. Although the boat and the weapons were seized, Suarez and his men were allowed to go home. DE1550:10414.

United States Customs Agent Marco Rocco described his encounter with four other anti-Castro militants whose vessel, the “Esperanza” (or “Hope”), he boarded and searched on October 27, 1997. DE1550:10449. The vessel had been stopped in the waters off Puerto Rico. Hidden within secret compartments in the vessel, Agent Rocco discovered two Baretta .50 caliber semiautomatic rifles, ammunition, night vision goggles, and other military items. DE1550:10456.

Angel Manuel Alfonso, the leader of the group, confessed to Agent Rocco that he and his men were on their way to Isla Margarita, a small island off the coast of Venezuela, to kill Castro, who was scheduled to address a conference of foreign leaders there. DE1550:10467-68. Adolfo told Agent Rocco that it was "his purpose in life to kill Fidel;" that it "wouldn't matter if he went to jail or not. He would come back and accomplish the mission." DE1550:10468.

United States Customs Agent Ray Crump described the times he detained anti-Castro militants on board vessels loaded with weapons and anti-Castro propaganda. DE1550:10429, 10433. For example, on July 11, 1993, he was involved in detaining four men, including Suarez, DE1550:10436, who were on board a vessel containing Alpha 66 propaganda and numerous weapons, including an AR 15 rifle and two 7.6 millimeter rifles, along with several magazines of ammunition. DE1550:10438. Neither the vessel nor the weapons were seized, and none of the men were arrested. DE1550:10438-39.

A series of Diplomatic Notes from Cuba to the United States also reflected the long history of violent activities against Cuba carried out from this country. On March 1, 1994, the Cuban authorities complained about a California man who was arrested in Cuba when he attempted to smuggle hand grenades and Alpha-66

propaganda into the country. Ex.-R29A. On April 6, 1993, Cuba complained about a boat that fired several shots at an oil tanker sailing in Cuban waters. Ex.-R29B.

On May 3, 1993, Cuba provided the United States with information concerning an Alpha-66 military training camp known as Rumbo Sur, located at 40th Street S.W. and 172nd Avenue. Cuba identified the principal persons involved (including Nazario Sargent, the leader of Alpha-66), and described the weaponry being used at the camp, including 60 M-16 rifles, 400 AK-47 rifles, ten .50 caliber machine guns, plastic explosives, and hand grenades. The Cuban authorities hoped the information provided would be "useful to the United States authorities to take the necessary steps in order to put an end to the criminal actions of this terrorist group." Ex.-R29C.

On May 13, 1993, Cuba provided similar information concerning P.U.N.D., another anti-Castro group with offices and a military camp in Miami. Ruben Dario Lopez Castro and Miguel Angel Alfonso Gonzalez, the man later detained on board the vessel Esperanza, were among the leaders of the organization identified by the Cuban authorities, who went on to describe specific acts of aggression the group had carried out against Cuba. Ex.-R29D.

On October 21, 1992, the Cuban Ministry of Foreign Relations “reiterate[d] their denouncement of the terrorist attack carried out from United States territory against a tourist facility located in Cuba.” Ex.-R29F. Specifically, Cuba complained about an attack on the Melia Varadero Hotel two weeks earlier by Comandos L. Cuba later provided additional information concerning the Comandos L attack, including ballistics expert reports and projectile fragments. Ex.-R29G.

On November 29, 1993, the Cuban authorities again complained about the activities of Alpha-66, especially their “threat of kidnaping foreigners that may find themselves in Cuba ... and making attempts against tourist installations.” Ex.-R29H. As shown by the declassified documents introduced into evidence, all of the persons and groups mentioned in these diplomatic notes were objects of great interest to Campa and his codefendants.

It was against this long backdrop of violent activities against Cuba, and the unwillingness or inability of law enforcement officials here to curtail them effectively, that Campa arrived in south Florida to assume numerous tasks on behalf of the Cuban government. Campa’s responsibilities almost exclusively involved monitoring the activities of persons and groups engaged in acts of aggression against Cuba. For example, in June 1998, Campa participated in Operation Arcoiris



(“Rainbow”), see Ex.-R22, Ex.-R24, which involved conducting surveillance of Orlando Bosch and Ruben Dario Lopez-Castro, and filming their meetings with another person secretly cooperating with the Cuban government.

Bosch had a long history of terrorist acts against Cuba, reflected in a dozier provided to Campa and his codefendants. Ex.-R77. For example, in 1968, Bosch founded an anti-Castro group called “Cuban Power,” which engaged in 78 violent attacks against targets in the United States and several nations abroad in 1968 alone. He was sentenced to 10 years in prison in the United States for some of these activities, but was eventually paroled and settled in Miami. Ex-R77. He was involved in several successful and attempted assassinations of foreign officials believed to be sympathetic to communism, as well as several assassination attempts against Fidel Castro himself. He was involved in numerous bombing attacks, including the bombing of the Cuban airliner in 1976 that left 73 people dead. Bosch was living in Miami during the time period relevant to the indictment. Ex.-R77.

Lopez-Castro was another well-known terrorist with ties to P.U.N.D. and Alpha-66. DE1556:11267. Together, Bosch and Lopez-Castro were planning to introduce a shipment of weapons into Cuba in connection with an assassination attempt against Fidel Castro. DE1556:11254. Campa worked on Operation Rainbow

with codefendant Gerardo Hernandez, as well as codefendants Nilo and Linda Hernandez, who later pled guilty and agreed to cooperate with the government.

During this time period, Campa also participated in Operations Morena (“Brown”) and Neblina (“Fog”). The former again involved keeping an eye on Bosch, “to find [him, nicknamed Rayo] and learn his habitual movements, the places he frequents and visits, what his relationships are.” DE1556:11269, Ex.-R24. The latter similarly involved monitoring the activities of Roberto Martin Perez, a member of the Board of Directors of the C.A.N.F. Cuban authorities believed Perez was one of the persons responsible for the bombings at the Capri and National Hotels on July 12, 1997. Campa worked on Operation Neblina with his codefendant Medina. DE1556:11273.

Campa also worked on Operations Paraiso (“Paradise”) and Giron. Operation Paraiso involved gathering information regarding the paramilitary activities of extremist Cuban exile groups operating in the Bahamas. DE1556:11274. Cuba was also especially interested in the activities of the C.A.N.F, Alpha-66, Cuba 21, and Brothers to the Rescue. DE1556:11274. They were also interested in the activities of Lopez-Castro (the subject of Operation Arcoiris) and Oscar Lima, a former member of the terrorist organization Commandos L, who was known to be testing

explosive-laden, remote-controlled airplanes in the Bahamas for attacks against Cuba. DE1556:11276-77. Campa worked on Operation Paraiso along with codefendant Rene Gonzalez, and cooperating codefendants Alejandro Alonso and Nilo and Linda Hernandez. DE1556:11274.

Operation Giron involved monitoring the activities of C.A.N.F. Of all the exile organizations operating in the United States, the Cuban authorities were especially interested in the C.A.N.F. See Ex.-R20, Ex.-R35. Monitoring the C.A.N.F was considered a “priority” because of the C.A.N.F.’s “dangerousness, proven capacity and resources at its disposal.” Ex.-R19. The “paramilitary machine of this organization stands out, which has as its priority the promotion of projects to make an attempt against the Commander in Chief.” Id. The C.A.N.F was involved in the hotel bombings in Havana during the summer of 1997, and in the recruitment of Godoy to plant additional bombs in Cuba.

Campa joined Operation Giron as a temporary replacement for codefendant Medina. He also replaced codefendant Medina in connection with Operations Aeropuerto (“Airport”) and SURCO, which involved the naval station at Boca Chica and the Southern Command post, respectively. Campa was only minimally involved in Operation Aeropuerto, and was also hardly involved in Operation SURCO.

DE1556:11279. Cooperating codefendant Jose Santos, who claimed to have been assigned to "penetrate" SURCO, only briefly met Campa twice during the summer of 1998, and merely gave him copies of one or two newspaper articles. DE1489:3474-78.

Campa also participated in several anti-terrorism operations that did not receive operational code-names. For example, along with codefendant Gerardo Hernandez and cooperating codefendants Alonso, Nilo, and Linda Hernandez, Campa carried out an assignment to identify and videotape two boats that were docked in the Miami River and believed to contain weapons and explosives destined for Cuba. DE1556:11284-86. The videotape was made and sent to Cuba, where authorities then instructed Campa and codefendant Hernandez to consider possible ways in which to disable the vessels. They also discussed the viability of anonymously notifying the FBI of the existence of the vessels. DE1556:11289. Within a few days, the FBI would, in fact, raid and search the vessels Campa had filmed. DE1556:11290.

Campa also participated in several attempts to obtain information concerning the existence of Cuban exile paramilitary camps in the area. He and codefendant Hernandez traveled to Clewiston, Florida, to locate Camp F-4, belonging to

Comandos L. DE1556:11291. They also sent the Cuban authorities information they obtained concerning Rumbo Sur, an Alpha-66 para-military camp conducting military exercises in the Everglades. DE1556:11291. The report contained the names of several Alpha-66 officers, including Jesus Hoyos and Elvis Castellanos, DE1556:11292, who were subpoenaed by Campa but successfully asserted Fifth Amendment privileges against testifying at trial about their involvement with Alpha-66. These men and others were reported to be brandishing M-1 rifles and Bushmaster AR-15 semi-automatic machine guns, and bragging about participating in violent attacks against Cuba, including shooting at several Cuban hotels from boats traveling offshore. DE1556:11293-94. Campa and his codefendants were also asked to obtain information concerning a Brigade 2506 paramilitary training camp, and possibly film some of its activities. The Brigade 2506 camp got its name from the veterans of the Bay of Pigs invasion.

Throughout the time period covered by the indictment, Campa and his codefendants were generally kept informed of the many activities of numerous anti-Castro persons and groups, and instructed to keep an eye on their activities. Thus, the Cuban authorities were concerned about such people as Hubert Matos, the head of CID, whose involvement in a plot to kill Fidel Castro during a trip to the

Dominican Republic was reflected in a report to Campa in which he was instructed to obtain additional information. DE1556:11298-99.

Similarly, Cuba was interested in Luis Posada Carriles. DE1556:11302. Carriles was the considered "one of the masterminds and author of the bombs that exploded in Havana in 1997." DE1556:11303. He was also involved in the failed plot to blow up the Cabaret Tropicana. It was "necessary to find out everything we can about this objective," read one of the messages from Cuba. DE1556:11303. Campa and his codefendants were also told to follow up on information received by the Cuban authorities that an exile named Rafael Del Pino was planning to pilot a fighter jet to force Castro's plane down over the Bahamas. DE1556:11305. Del Pino was known to have been meeting with Jose Basulto, the leader of Brothers to the Rescue, in connection with the scheme. DE1556:11306.

Campa and his codefendants were asked to monitor and report on the activities of numerous other Cuban exile persons and groups, including: Rolando Borges, the leader of Ex-Club, the organization that tried to recruit Gomez to bomb the Che Guevara Memorial; Jorge Mas Canosa, then the leader of C.A.N.F.; Sergio Gonzalez Rosquete, the leader of P.U.N.D., who was responsible for two armed infiltrations into Cuban territories; Hector Viramontez, the leader of CLU (United

Command for Liberation), another paramilitary organization; and the Cuban American Military Council (CAMCO), an organization of former Cuban military officers dedicated to overthrowing the Castro regime.

CAMCO was believed to have been involved in the explosion at the Melia Cohiba Hotel discotheque on April 12, 1997. Indeed, the Cuban authorities wasted no time in having their contacts in Miami look into this connection as soon as the explosion occurred. Thus, on April 14, 1997, Cuba immediately informed codefendant Medina (code named Allan) of the blast: "During the month of April there was an explosion in the public bathroom of the Cohiba Hotel. ... Apparently there were Cubans involved. ... They were all mercenaries from Giron [Bay of Pigs], and now they have ties with CAMCO." DE1556:11316-17; Ex.-R57(a); Ex.-R59.

Medina was told to have "Jose," an agent, "Search for active information on this act that they have, or any attempt for future similar actions at the CP [Cuba] by CAMCO." Ex.-R57(a). On April 15, 1997, Medina promptly sends a message to "Jose and Tania" notifying them of the explosion and instructing them to obtain "details on any type of activities they [CAMCO] may be planning, organization, introduction of explosives, who are the ones directing, participants, and try to

identify the ones carrying out.” DE1556:11318, Ex.-R57(b). Similarly, on May 7, 1997, Campa’s codefendants are told about an explosion at the Cubanacan offices in Mexico on April 25. DE1556:11319, Ex.-R59. Cuban authorities instructed that an agent identified as T-11 be “alert on information” concerning the blast. Ex.-R59.

Another example of how Campa and his codefendants carried out their duties involved codefendant Hernandez, who notified Cuba on September 11, 1997, that he had received information that “one of the two brothers who had something to do with the bomb on Orlando Letelier” was behind the hotel bombings in Havana that summer. Hernandez relates that he has learned that “Next week they will try to place a bomb in one of the largest buildings in Cuba which is visited most by Fidel” DE1556:11320. Hernandez’s source “doesn’t believe it is a school or a hospital, but one which has to do with tourists.” Hernandez informs Cuba that he has instructed his source to keep his ears open “without calling attention to himself and try to elaborate.” R63. Hernandez and the Cuban authorities agreed on a method of sending further information relating to this development quickly.

Throughout this period of time, Campa and his codefendants carried out their responsibilities on a very limited budget, which, for example, allowed for only \$421 per month for operational expenses. Ex.-R32.



### Standard of Review

This Court's "review of the district court's denial of a motion for a new trial based on newly discovered evidence is subject to the abuse of discretion standard." United States v. Fernandez, 136 F.3d 1434, 1438 (11th Cir. 1998). The abuse of discretion standard also applies to the district court's denial of an evidentiary hearing. Id.

## SUMMARY OF THE ARGUMENT

The district court's denial of Campa's motion for a new trial and change of venue constituted an abuse of discretion because it failed to properly consider newly discovered evidence that further established the inability of Campa and his codefendants to receive a fair trial before an impartial jury in Miami. There was, of course, considerable evidence already before the district court compelling a finding that Campa and his codefendants, who admitted to have worked secretly on behalf of the Cuban government in south Florida, could not receive a fair trial in Miami.

Evidence of pervasive, insurmountable community prejudices against persons, such as Campa, associated with the Castro regime included a large selection of newspaper articles and editorials reflecting a forty-year ideological warfare against the Cuban government. Evidence of widespread local hostilities toward Campa and his codefendants also included the results of a public opinion survey authorized by the district court, which showed, among other things, that 69 percent of all respondents in Dade County were prejudiced against persons charged with the type of offenses set forth in Campa's indictment. Further evidence of Campa's inability to be tried by an impartial jury in Miami included the answers Campa's prospective and actual jurors gave during voir dire, in which they acknowledged personal

prejudices against the defendants, strong disapproval of the Cuban government, and fear of public reprisals in the event they returned verdicts favorable to the defendants.

The newly discovered evidence that further supported Campa's renewed motion for a change of venue, and should have tipped the scales decidedly in favor of granting the requests, included evidence that the government had, for tactical reasons intended to gain an unfair advantage at Campa's trial, falsely denied the government's own recognition that Campa could not receive a fair trial in Miami. The government's true assessment of the depth of local prejudices on matters related to Cuba was revealed in a subsequent litigation in which the government sought, and obtained, a change of venue on exactly the same grounds previously asserted by Campa and opposed by the government. The newly discovered evidence also included evidence that the district court may have been prejudiced against the expert who prepared the public opinion survey submitted in support of the motion for a change of venue, and that the district court improperly failed to disclose that the expert had, in response to the court's order criticizing the survey, written to the district court and attached further empirical materials supporting his earlier findings of pervasive community prejudice.

In their renewed motion for a new trial and change of venue, defendants also submitted additional newspaper clippings and the declarations of two other experts reflecting widespread local prejudices against persons, such as Campa, associated with the Castro regime. The district court improperly declined to consider these additional materials. The district court also abused its discretion by denying defendants' request for an evidentiary hearing, at which defendants intended to present additional evidence concerning the irregularities involving the expert witness.

## ARGUMENT AND CITATIONS OF AUTHORITIES

### I.

**CAMPA'S CONVICTIONS SHOULD BE REVERSED BECAUSE THE DISTRICT COURT IMPROPERLY DENIED CAMPA'S MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE, INCLUDING EVIDENCE OF PROSECUTORIAL MISCONDUCT AND IRREGULARITIES INVOLVING A DEFENSE EXPERT WITNESS, SUPPORTING CAMPA'S RENEWED MOTION FOR A CHANGE OF VENUE.**

On June 26, 2000, Campa and his codefendants informed the district court that they would not, at trial, deny having gathered intelligence on behalf of the Cuban government. DE1635:App. 1 at 45. Instead, they would show the jury that their main concern was protecting Cuba from acts of aggression carried out by local, extremist anti-Castro groups and individuals.

Rather than deny their ties to the Cuban government, they would show that they had not acted "wilfully" in violation of the law, as required to support a conviction under Count 1, and that they had not gathered "national defense information," or otherwise intended to harm the United States, as necessary for a conviction under Count 2. Codefendant Hernandez would deny having conspired to commit murder in relation to the shoot-down of the Brothers to the Rescue aircraft, and would show that Brothers to the Rescue was largely, if not solely, responsible

for the shoot-downs and loss of life on February 24, 1996. To establish these defenses, Campa and his codefendants would rely heavily on the testimony of Cuban government officials and citizens, including persons such as Godoy and Gomez, who also secretly collaborated with the Cuban government.

Thus, Campa and his codefendants would, at trial, take on everything that was sacred to the dominant and virulently anti-Castro Cuban exile population of Dade County, and would use witnesses sympathetic to the Castro regime to do so. Therefore, if there were ever a case that should not have been tried in Miami, this was certainly it.

Moreover, this case probably could have been tried fairly in any other city in the United States, since the community prejudices and pre-trial publicity confronted in Miami simply did not exist in other parts of the country. Indeed, Campa and his codefendants agreed that a transfer of this trial to Fort Lauderdale would satisfy their concerns. DE586:2.

Accordingly, Campa requested a change of venue, pursuant to Rule 21(a) of the Federal Rules Criminal Procedure, which provides, in relevant part, that the district court "shall transfer the proceeding ... if the court is satisfied that there exists in the district where the prosecution is pending so great a prejudice against the

defendant that the defendant cannot obtain a fair and impartial trial.” (emphasis added).

Campa’s motion also was based on his constitutional rights under the Fifth and Sixth Amendments, see generally Irvin v. Dowd, 366 U.S. 717 (1961); Pamplin v. Mason, 364 F.2d 1 (5th Cir. 1966), as well as the district court’s broader, federal supervisory power to ensure that the defendant receives a fair trial. See Wheat v. United States, 486 U.S. 153, 160 (1988) (courts must ensure “that criminal trials appear fair to all who observe them”); United States v. Haldeman, 559 F.2d 31, 145 (D.C. Cir. 1976) (MacKinnon, J., dissenting) (“The federal supervisory standard provides broader protection against [pretrial] prejudice than the constitutional standard.”).

Campa requested a change of venue because he was constitutionally entitled to “a trial before a jury drawn from a community free from inherently suspect circumstances” and prejudices. Pamplin, 364 F.2d at 7. Neither he nor his codefendants could not get that in Miami, where forty years of anti-Castro publicity had created a general atmosphere of enormous hostility toward anyone associated with the Castro regime.

The district court denied Campa's original motion for a change of venue on July 27, 2000, his motion for reconsideration on October 24, 2000, and his original motion for a new trial on November 26, 2001. DE586, DE723, DE1392. The district court denied Campa's renewed motion for a new trial and change of venue on February 10, 2003. DE1678.

A. Evidence of Pervasive Community Prejudice.

Although always difficult to measure precisely, the pervasive community prejudice that prevented Campa from receiving a fair trial in Miami was amply illustrated by a public opinion survey prepared by Gary Moran, Ph.D., a psychologist and professional jury researcher. For example, Moran found that 69 percent of all respondents, and 74 percent of all Hispanic respondents, were prejudiced against persons charged with engaging in the types of activities outlined in the indictment. DE321, Declaration at 10. Nearly 49 percent of all respondents, and nearly 57 percent of all Hispanic respondents in Moran's survey actually said they could not be fair or impartial. *Id.* at 12. Furthermore, approximately 90 percent of all respondents said that there were no circumstances that would change their opinions. *Id.* at 13.



In its order denying defendants' motion for a change of venue, the district court discounted many of Moran's findings due to the "size of the statistical sample," which it found to be "too small to be representative of the population of potential jurors in Miami Dade County." DE586:15. The district court, however, had earlier expressly approved the CJA application for funding for the survey, which specified the survey population at 300 respondents.

In addition, the district court improperly failed to disclose the existence of a significant prior difference with Moran in an unrelated litigation, in which the court "excoriated" Moran for interviewing jurors after trial and threatened the lawyers who retained him with contempt. DE1635, DE1636 Moran Affid. at ¶9. The district court also failed to disclose the existence of a letter it subsequently received from Moran, who challenged the district court's characterization of his survey and provided the court with additional empirical evidence in support of his findings. *Id.* Moran did not favor defense counsel with a copy of his letter to the court until after the defendants had been sentenced because he had been upset about not being paid promptly for his work and had severed ties with CJA counsel who retained him. *Id.* These irregularities concerning Moran, as well as the additional empirical information he provided to the court, constituted important, newly discovered

evidence supporting Campa's renewed motion for a new trial and change of venue. In its order denying Campa's renewed motion for a new trial, however, the district court failed to address or consider the newly discovered evidence.

In their renewed motion, Campa and his codefendants also relied on a public opinion survey conducted by Kendra Brennan, a prominent legal psychologist. DE1635, DE1636. One of Brennan's important observations was that the sample size used in Moran's survey was fully adequate for its intended purpose and yielded statistically valid results. DE1636:Ex. 4 at 6. Brennan also concluded that Moran's survey "accurately reflect[ed] profound existing biases against those associated with the Cuban government in Miami Dade County," and that "[p]otential jurors would be impervious to traditional methods of detecting and curing bias through voir dire and court instruction." *Id.* at 8.

Furthermore, Brennan's study highlighted the great differences between Miami and the rest of the country with respect to Cuba. For example, Brennan determined that 49.7 percent of the local Cuban population were strongly in favor of direct U.S. military action to overthrow the Castro regime, while 26 percent of the local non-Cuban population, and only 8.1 percent of the national population were strongly in favor of such action. Similarly, 55.8 percent of the local Cuban

population were strongly in favor of supporting military action by the exile community to overthrow the Cuban government, while 27.6 percent and 5.8 percent of the local non Cuban and national populations, respectively, were strongly in favor of such action. Brennan concluded that, "There is an attitude of a state of war between the local (Miami) Cuban community against Cuba "and "their attitudes have spilled over to the rest of the community." Id. at 3.

In her conclusion, Brennan found that the community bias affecting this case was "an opinion ... so entrenched as to often not be consciously held." It was not, therefore, susceptible to the usual courtroom remedies for pretrial publicity, because it was rooted not in publicity, but in passionately held attitudes shared by an exceptionally powerful group within the community. Id. at 7.

In their renewed motion for a new trial, Campa and his codefendants also submitted a study prepared by professor Lisandro Perez, Director of the Cuban Research Institute at Florida International University. Perez concluded that, "The possibility of selecting twelve citizens of Miami-Dade County who can be impartial in a case involving acknowledged agents of the Cuban government is virtually zero." Moreover, Perez stated he "would reach that conclusion even if the jury were composed entirely of non-Cubans, as it was in this case." DE1636:Ex. 5 at 2-3.

Perez explained his conclusion on the basis of several factors. Based upon Census and other demographic statistics, Perez explained that persons of Cuban descent comprised the largest single racial/ethnic/national origin group in the venue (2 of every 7 persons). Thus, it is literally not a “minority,” but “the largest group, period,” among immigrants or non immigrants alike. Furthermore, because of its size and cohesiveness, the Cuban exile community had created a genuine “ethnic enclave” from which it exercised political and economic power, disproportionately impacting the rest of the community. *Id.* at 3-4.

In addition, the establishment of major institutions such as the Cuban American National Foundation, the Latin Builders’ Association, the Latin Chamber of Commerce manifested and focused the exile community’s power in Miami-Dade, securing the election of Cuban Americans to most of the major political offices: the county mayor, the city mayor, the city manager, the county manager and several of the county’s delegation to the state legislature and the Congress of the United States. *Id.* at 4-7.

Furthermore, this community had a singular and well-defined “overriding concern: the ongoing struggle for the recovery of their homeland,” which it injected into the rest of the community. *Id.* at 7. Hence, the surveys referred to by Brennan

showed far more support among non-Cubans in Miami for forcible ouster of the Cuban government than among non-Cubans elsewhere.

According to Perez, the issue was a highly emotional one of “uncompromising hostility to the Cuban government.” *Id.* The vehemence and centrality of that view make any expression of opposing views “especially difficult, resulting in criticism, scorn and threats,” as acknowledged by those prospective jurors brave enough to honestly voice their fear. As explained by Perez: “There is along history of threats, bomb scares, actual bombings, and even murders directed at persons who have dissented from the predominant anti-Castro position or have demonstrated a perceived “softness” toward the regime.” *Id.* at 8-9.

In its order denying Campa’s renewed motion for a new trial, the district court improperly failed to consider the declarations of Brennan and Perez because it incorrectly held that such evidence was not properly before it pursuant to Rule 33 of the Federal Rules of Criminal Procedure. The district court also improperly denied defendants’ request for an evidentiary hearing to further support their motions.

B. The Biases and Attitudes of the Members of Campa's Jury.

Confirming the results of the studies of Moran, Brennan, and Perez, many of Campa's prospective jurors acknowledged that they strongly opposed the Castro regime and admitted that they could not be fair or impartial. This was especially true within the large group of prospective jurors (over 20 percent of the entire venire, DE1636: Ex.5 at 4) who were either Cuban or of Cuban descent.

Despite the honest acknowledgment by many that they could not be fair, Campa could not, however, realistically expect all those who harbored deeply-rooted prejudices against him to admit their bias to the district court or effectively suspend their personal beliefs or anxieties. Some may have deliberately concealed their bias, secretly anxious to cast a personal blow against Castro by convicting Campa, regardless of the evidence at trial. Other prospective jurors, though tainted by local prejudices or personal concerns about possible public reactions to their verdict, may have sincerely, but incorrectly, believed they could be fair.

Thus, during voir dire, many members of the venire, including the twelve members of Campa's jury, essentially said they could be fair. Several of the members of Campa's jury, however, also strongly disapproved of the Castro regime (and no one, in either Campa's jury or the entire venire of 160 persons, agreed with

Cuba's form of government, DE 1636: Ex. 5 at 12). For example, David Buker, who would become the jury foreman, said, "I believe Castro is a Communist dictator and I am opposed to communism so I would like to see him gone and a democracy established in Cuba." DE1472:743. Similarly, Eugene Yagle, who had a "strong opinion" about the Cuban government, said, "I cannot reconcile myself to that [the Cuban] form of government." DE1474:1296-97. Sonia Portalatin also said she had a "strong opinion" about the Cuban government. "I am against communism," she said. DE1472:861.

Particularly in light of their strong opposition to the Cuban government, therefore, Campa's jurors' claims that they could be fair, hardly settled the venue question. Especially in cases, such as this one, involving "inherently suspect circumstances" of prejudice, courts should place "emphasis on the feeling in the community rather than the transcript of the voir dire." Pamplin, 364 F.2d at 7. "It is immaterial that voir dire did not demonstrate community prejudice." Id. at 6.

Especially in cases involving pervasive community prejudice, the Supreme Court has held that courts must be suspicious of the responses of prospective jurors who claim to be immune to local biases. For example, in Irvin v. Dowd, 366 U.S. at 728, the Supreme Court reversed a defendant's murder conviction based upon the

trial court's denial of his motion for a change of venue, even though the members of the petit jury claimed they could be fair. The crime in Irvin had received considerable publicity and there existed, according to a journalistic account, a "pattern of deep and bitter prejudice" against the defendant. 366 U.S. at 726-27.

The Supreme Court held that the defendant was entitled to a change of venue even though each individual juror specifically claimed he would be fair and impartial. Id. at 728. "No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but psychological impact requiring such a declaration before one's fellows is often its father." Id. "Where so many, so many times, admitted prejudice," the Supreme Court observed, "such a statement of impartiality can be given little weight." Id.; see also Rideau v. Louisiana, 373 U.S. 723 (1963) (trial court need not rely solely on the prospective jurors' own assertions of lack of bias).

Similarly, in Pamplin, a federal habeas proceeding, this Court affirmed the district court ruling reversing a defendant's conviction based on the state court's failure to grant his request for a change of venue. The defendant, an African American man active in the civil rights movement, was charged with assaulting a county deputy sheriff. 364 F.2d at 30.



During voir dire, the prospective jurors stated that they did not know the defendant, that they had no opinions about the case, and that they “had no prejudice against the Negro race or against a Negro acting as counsel.” Id. Mason’s jury ultimately convicted him and, under state rules, sentenced him to the maximum sentence allowed by statute. Id.

This Court held that the defendant was entitled to a change of venue despite the assurances of fairness he received from the jurors at his trial. It was “immaterial that the voir dire did not demonstrate community prejudice,” this Court held. Id. at 6. Where racial feelings or other prejudices may be strong, this Court observed, voir dire “can hardly be expected to reveal the shade of prejudice that may influence a verdict.” Id. at 7. The defendant was entitled to a new trial in another venue because, this Court held, “[w]here outside influences affecting the community’s climate of opinion as to a defendant are inherently suspect, the resulting probability of unfairness requires suitable procedural safeguards, such as a change of venue, to assure a fair and impartial trial.” Id. at 5.

Furthermore, even those prospective jurors who might not be personally prejudiced against the defendants might nevertheless have felt pressured by the prevailing hostile environment to convict Campa and his codefendants regardless of

the evidence. For example, almost 36 percent of all respondents in Moran's survey said they would be at least somewhat worried about being criticized in their community if they failed to convict the defendants. DE321, Moran Declaration at 11-12. Such concern with the public repercussions and personal consequences of returning an unpopular verdict (i.e., a verdict in favor of the defendants) clearly existed among Campa's prospective jurors. For example, David Cuevas stated, "I would feel a little bit intimidated and maybe a little fearful for my own safety if I didn't come back with a verdict in agreement with what the Cuban community feels, how they feel the verdict should be." DE1473:1068-69. He then added that, if he were required to serve on the jury, "I would probably be a nervous wreck ... I guess I would be a little bit nervous and have some fear, actually fear for my own safety if I didn't come back with a verdict that was in agreement with the Cuban community at large" -- i.e., "anything dealing with communism they are against." DE1473:1069-70.

Hans Morgenstern believed the Cuban government was "a tyrannical government" and "anti-American," DE1473:1027, 1023, and (as many other prospective jurors may have felt) said he would not believe any witness, such as the many witnesses who testified on behalf on the defendants at trial, who was

“affiliated with Cuba.” DE1473:1023, 1032. He was also very concerned, however, about how members of the community would react to a verdict in favor of the defendants. He was “afraid there would be personal criticism” if he returned such a verdict, because “I think a lot of the people are so right wing they are fascist around here.” DE1473:1024-25. Morgenstern was also concerned about the extensive media coverage the trial would receive. He mentioned he had been videotaped by a news crew when he left the courtroom the day before. DE1473:1026. John McGlamery, who admitted he would have difficulty following the district court’s instructions “given the community in which we live,” also was concerned that the community “could become quite volatile” depending on the verdict reached at trial. DE1473:1012, 1018.

Similarly, Michellè Peterson was concerned about how the local community would react to the verdict: “I think I would be concerned about the reaction that might take place.” DE1473:938. She added, “I don’t want rioting and stuff like that to happen like what happened in the Elian case. I thought that got out of hand.” DE1473:945. Barbara Pareria had the “very strong opinion” that Castro was a dictator who was “oppressive to his people.” However, she also stated that, with respect to reaching a verdict, she did not “like the crowd mentality, the mob

mentality” that exists in the Cuban exile community. DE1474:1122. She said she “would have a concern about Miami because of the Cuban population here.” DE1474:1120. James E. Howe, Jr., said he “certainly” did have a concern about the impact his verdict would have on the community. DE1474:1277. “My concern is that no matter what the decision is in this case, it’s going to have a profound effect on us, both here and in Cuba,” he said. DE1474:1277.

Such misgivings about the possible public reaction to the verdict could only have gotten worse after the jury received evidence reflecting the violent propensities of many of the persons and groups Campa and his codefendants were monitoring. The jury could only have been frightened to learn that violent extremists such as Bosch and Frometa lived in their communities. They could only have been further worried about returning an unpopular verdict after witness Jose Basulto’s outrageous red-baiting of Paul McKenna, codefendant Hernandez’s attorney, in which he brazenly accused counsel of being a Cuban agent merely because he was doing his job. DE1540:8945.

Given the Cuban exile community’s dominant role in the local economy, several members of the venire must have feared the possibility of economic reprisals as well. For example, Jess Lawhorn, Jr., a banker and senior vice president in

charge of housing loans, expressly said was concerned about how a verdict would affect his ability to do his job: "I guess I have a concern just how public opinion might affect my ability to do my job afterward ... might impact my ability to do business in the community." When further questioned, he added: "I do deal a lot with members of the Hispanic community ... There may be strong opinions ... that may or may not affect my ability to generate loans for my employer." DE1473:1073.

Only the enormous hostility toward Timothy McVeigh in Oklahoma City after the bombings there possibly compared with the pervasive community prejudice Campa and his codefendants faced in Miami. As in this case, the offense underlying the Oklahoma City prosecution was seen as an attack on this country's democratic values and institutions. There, as here, the defendants were "demonized" in the local media. United States v. McVeigh, 918 F.Supp. 1467, 1472 (W.D.Okla. 1996). In reaching the conclusion that the defendants could not fairly be tried in Oklahoma City, the court in McVeigh simply noted that "[t]he effects of the explosion on that community are so profound and pervasive that no detailed discussion of the evidence is necessary." 918 F.Supp. at 1470.

It could hardly be denied that, in Miami, as in Oklahoma City, the arrests of Campa and his codefendants generated “strong emotional responses” and the “prevailing belief [was] that some action must be taken to make things right again.” 918 F.Supp. at 1472. As in Oklahoma City, Miami Dade County jurors in this case must have felt, as a few prospective jurors actually admitted, “a sense of obligation to reach a result which will find general acceptance in the relevant audience.” *Id.* at 1473. While recognizing that “[t]he existence of such a prejudice is difficult to prove,” Judge Matsch in McVeigh nevertheless concluded “[t]hat there is a fair inference that only a guilty verdict with a death sentence could be considered a just result in the minds of many.” *Id.* at 1472.

Similarly, in Miami, where so many people harbor such a strong resentment against the Castro government, only a guilty verdict would have been considered a “just result” in a prosecution against five men who actually admitted being so-called Cuban spies. That the jurors who sat through Campa’s trial largely claimed, however tepidly, that they could be fair and impartial is of no moment. This is a case involving pervasive “presumptive prejudice,” where the “actual prejudice” of the prospective jurors need not be established. *See, e.g., Sheppard v. Maxwell*, 384

U.S. 333 (1966); Pamplin, 364 F.2d at 6 (“[I]t is unnecessary to prove that local prejudice actually entered the jury box”).

The summary manner in which the jury quickly returned verdicts of guilty as to all defendants on all counts confirmed everyone’s worst fears about the possibility of fairly conducting this trial in Miami. Despite the length and complexity of the trial, the jury reached its verdict less than four full days of deliberations without passing a single note or asking a single question. It is, of course, not unusual for a jury in even a simple airport luggage case to request further instructions on the applicable law or request the transcript of some witness’s testimony.

In Pamplin, 364 F.2d at 3, where the jury had jurisdiction to set the punishment for the offense of conviction, the Court found that the jury’s imposition of the statutory maximum penalty itself indicated the existence of prejudice against the defendant. Here, the jury’s quick verdict in favor of the government despite complicated jury instructions and thin evidence of guilt provided similar proof of persuasive community bias. This was particularly true given the lack of evidence that Campa acted with the requisite “willfulness” and “specific intent” to violate the law, or that he acted as a “foreign agent” within the meaning of the statute in Counts 1, 16, and 17, as interpreted by the district court in its instructions to the jury.

With respect to the foreign agency counts, the district court, in relevant part, instructed the jury that an “agent of the foreign government,” as that term was used in the indictment, “does not include any officially and publicly acknowledged and sponsored official or representative of a foreign government.” DE1584:14607-08. The district court also instructed the jury that, the meaning of any “officially and publicly acknowledged and sponsored official or representative of a foreign government” includes “any official of a foreign government on a temporary visit to the United States for the purpose of conducting official business internal to the affairs of that foreign government.” DE1584:14608. Further, the district court instructed the jury it must “return a verdict of not guilty as to any count charging the defendant with acting as a foreign agent, unless the government proves beyond a reasonable doubt that the defendant was not any officially and publicly acknowledged and sponsored official or representative of a foreign government.” *Id.*

Based on the jury instructions and the evidence presented at trial, there was little or no evidence upon which the jury could reasonably convict Campa of Counts 1, 16 and 17. At least the government clearly believed that to be the case. Thus, on May 25, 2001, the government took the extraordinary step of filing an Emergency Motion for Stay and Petition for Writ of Prohibition with the Court of Appeals (11th Cir. No. 01-12887), seeking review of the district court’s proposed jury instructions.



In the Petition, the government admitted that the district court's proposed jury instructions created "insurmountable barriers for a prosecution of foreign agents," *id.* at 4, made "prosecution of such offenses a virtual impossibility," *id.* at 6, and as to count three "present[[ed] an insurmountable hurdle for the United States in this case"). (Emphasis added). According to the government's own view of the evidence presented at trial, the district court's proposed jury instructions "unfairly and unlawfully imperil[ed] the affected counts in the current prosecution." *Id.* at 6.

The government correctly believed that a fair and impartial jury, untainted by pervasive community prejudice against Campa and his codefendants, would return verdicts of not guilty against Campa on the foreign agency counts. That the jury, instead, quickly returned verdicts favorable to the government on all counts confirmed that the jury was not, in fact, immune to pervasive local prejudices or pressures to return a verdict acceptable to the dominant Cuban exile population, despite their protestations to the contrary during voir dire.

C. Newly Discovered Evidence of Prosecutorial Misconduct.

Throughout these proceedings, the government consistently contended that it was a fallacy to speak in terms of "pervasive community prejudice" in connection with Miami-Dade County. The government contended that Miami had a diverse,

heterogeneous community not likely to be swayed, let alone dominated, by anti-Castro sentiment or prejudice against persons associated with the Castro regime.

The government argued that Dade County's population was not, as defendants feared, "politically monolithic" or otherwise strongly united in its attitudes towards Cuba and matters of special interest to the local Cuban population. The government, therefore, argued that Pamplin v. Mason, a principal case upon which Campa and his codefendants relied, had no application to the determination of the defendants' venue motions. The district court's ruling denying Campa's motions for a change of venue embraced the government's position. DE586.

It remains to be seen what position the government will take on appeal concerning the applicability of Pamplin to the issue before this Court, since the government subsequently took a diametrically opposed position respecting the factual and legal applicability of Pamplin in another politically-charged case filed in the Southern District of Florida. Specifically, in Ramirez v. Ashcroft, Case No. 01-4835-Civ-Huck, the government completely flip-flopped on precisely the same venue question, and relied heavily on Pamplin to urge the district court to move the trial out of Dade County for exactly the same reasons Campa and his codefendants knew they could not receive a fair trial in Miami.

In Ramirez, the government was the defendant, and the plaintiff accused the government (and in particular, the INS, his employer) of engaging in various employment practices that were insensitive, if not offensive, towards the local Cuban population, especially with respect to the Elian Gonzalez affair. Relying primarily on Pamplin, the government argued that, given the nature of the case (*i.e.*, a matter of special interest to the large, vocal Cuban population, which had been galvanized by the Elian affair), local “preconceived opinions,” prejudices, and biases on the Cuba issue (which is what the Elian affair quickly and broadly became) made it impossible for the government to receive a fair trial in Miami. Judge Huck ultimately granted the government’s motion in Ramirez, moving the trial out of the Miami Division of the Southern District of Florida, before the case finally settled.

Newly discovered evidence of governmental misconduct based on intentional misrepresentations of fact and law which violate a defendant’s right to a fair trial before an impartial jury, in violation of the Fifth and Sixth Amendments, falls within the purview of Rule 33 of the Federal Rules of Criminal Procedure. See United States v. DiBernardo, 880 F.2d 1216 (11th Cir. 1989); United States v. Wallach, 935 F.2d 445 (2d Cir. 1991); United States v. Locascio, 6 F.3d 924 (2d Cir. 1993). Thus, the government’s flatly inconsistent positions respecting the applicability of Pamplin to Campa’s motion for a change of venue along with the newly discovered

evidence concerning Dr. Moran's previously unknown problems and contacts with the district court formed the basis of defendants' renewed motion for a new trial.

The district court correctly held that "newly discovered evidence need not relate directly to the issue of guilt or innocence to be the proper subject of a Rule 33 motion." DE1678:7; see generally United States v. Beasley, 582 F.2d 337, 339 (5th Cir. 1978). The district court also correctly held that "[c]hallenges to the fairness or impartiality of a jury may be raised in the context of a motion for new trial." DE1678:8; see United States v. Williams, 613 F.2d 573, 575 (11th Cir. 1980). In denying Campa's renewed motion for a new trial, however, the district court abused its discretion by giving too little weight to the government's deliberately inconsistent positions respecting the legal and factual applicability of Pamplin.

The government simply could not have it both ways: it could not claim pervasive prejudice in the Ramirez litigation, and deny it in this prosecution. While parties to a litigation cannot generally be faulted for seeking to obtain tactical advantages, they are not allowed to change their positions on the facts and the applicable law according to the exigencies of the moment. See Burnes v. Pemco Aeroplex, 291 F.3d 1282, 1285 (11th Cir. 2002). It was improper for the government to take such incompatible positions. See, e.g., Smith v. Groose, 205 F.3d 1045 (8th Cir. 2000).

Moreover, there was, as the government argued in Ramirez, indeed a deeply-held prejudice in this community on matters related to Cuba, especially if they involve core Cuban-exile values and issues, and nothing could hit closer to home than the prosecution of five men accused of being Cuban spies responsible for the deaths of four Brothers to the Rescue pilots. The district court abused its discretion by giving too little weight to the government's important concession on this point.

Although a serious breach of its duty of candor to the court, the government's inconsistent positions on Pamplin was hardly the only time the government exceeded the boundaries of fair play and constitutional safeguards in its overzealous drive to convict Campa and his codefendants. The most egregious example of the impermissible extent to which the government was willing to go occurred on the eve of closing arguments, when the government filed its Emergency Petition for a Writ of Prohibition (May 25, 2001), in which it plainly misstated the course of proceedings before the district court in an attempt to gain an advantage on the appeal. The district court was extremely offended by the government's "outright misrepresentation of fact made to the Eleventh Circuit." DE1580:13918. Later discovering "another erroneous statement" in the government's petition, the district court stated, "I am very disappointed that the government would have made such

gross misrepresentations concerning both my findings to Feola and the status of the jury instructions before the Eleventh Circuit in its motion for stay.” DE1580:14025.

In its order denying Campa’s renewed request for a new trial and change of venue, the district court failed to give adequate weight to the government’s ultimate concession that Campa and his codefendants could not receive a fair trial in Miami. The district court also incorrectly held that it lacked jurisdiction to grant Campa’s motion for a new trial based on the “interests of justice.” DE1678:5.

D. Prejudicial Pretrial Publicity and Media Coverage of Trial.

In addition to relying on the declarations of Moran, Brennan, and Perez to prove the obvious, *i.e.*, the existence of “pervasive community prejudice” against persons such as Campa and his codefendants, Campa submitted copies of numerous newspaper articles reflecting the depth and extent of anti-Castro sentiment in this community. Codefendant Medina also filed a number of newspaper clippings in support of his motions for a change of venue.

The articles reflected “prejudicial and inflammatory” pretrial publicity that had “saturated the community,” thus raising a “presumption of prejudice” among potential jurors and requiring a change of venue. *See* Murphy v. Florida, 421 U.S. 794, 798-99 (1975); Spivey v. Head, 207 F.3d 1263, 1270 (11th Cir. 2000); Mayola v. Alabama, 623 F.2d 992, 997 (5th Cir. 1980). The district court itself at one point

observed that “there seems to be a parade of articles appearing in the media about this case.” DE1645:14.

Following the large, initial wave of unfair publicity this case received in the immediate aftermath of the arrests of Campa and his codefendants (discussed below), this case also received extensive, prejudicial pre-trial publicity when Campa and his codefendants informed the court they would admit their ties to the Cuban government but explain they were here only to monitor extremist anti-Castro groups and individuals. At the same time, they informed the court that Cuban citizens and officials would testify on their behalf. Thereafter, for example, there appeared one Miami Herald article entitled, “Cuba helps defense at trial” and “Suspected spies to get help from Havana at trial.” The Spanish version of the article, had the following headline: “Cuban officials will attend the trial of the spies.” There was a related article in Spanish, whose headline translated into: “Cuba will collaborate at espionage trial.” The headline of another Spanish article translated into: “A mysterious Cuban colonel appears in the trial of the spies.” A local editorial at the time castigated President Clinton for shaking Fidel Castro’s hand at a recent United Nations event, and referred to Castro as the “head of a terrorist state.” Copies of these articles were attached to Campa’s motion for reconsideration of the denial of his motion for a change of venue. DE656.

Newspaper articles directly related to this case appeared almost everyday throughout the course of the trial. In fact, on the first day of voir dire, a prospective juror revealed that a newspaper article on the case was lying about in the jury assembly room. DE1245:171. The following day, another prospective juror was seen reading that article in the courtroom just as the court was introducing the case to the panel. DE1470:196-197.

The considerable media attention given to this trial upset both the district court and several of the jurors. At least one prospective juror complained to the district court about being videotaped by a news team even before the trial began. DE1473:1026. Several prospective jurors had previously been seen talking to the press during the first day of voir dire. DE1245:111-12. Family members of the victims of the shoot-down also gave at least one interview to the press before the trial even began. DE1245:111. The district court was especially concerned that such interviews, particularly by the victims' family members, could "pollute the jury pool." DE1245:113. On March 13, 2001, as the trial dragged on, the court was still complaining about the presence of "cameras focused on the jurors as they came out of the building. DE1540:9005.

Later, during deliberations, some members of the jury actually complained about being filmed as they left the court house. Several of them were concerned



because they had been filmed all the way to their cars as they left the courthouse and felt their license plates had been filmed as well. DE1585:14644-45. The district court was equally concerned about the jury being “pressed by the media during deliberations.” DE1585:14645. The camera crews that filmed the jurors belonged to Channel 23 and Radio Marti, DE1585:14646, two vehemently anti-Castro Spanish language news organizations.

Attached as an Appendix to this brief are copies of most of the newspaper articles Campa submitted in support of his several requests for a change of venue (codefendant Medina attached another large number of articles as well). Thus, attached to Campa’s original motion for a change of venue, dated January 24, 2000, DE329, were the following exhibits, now included in the Appendix:

**Exhibits A, B, C, D, and E** were five of the many articles that had been published concerning commencement of this prosecution. The press conference at which the United States Attorney for the Southern District of Florida proudly announced the arrests of the original ten defendants (reflected in Exhibit B) was also widely broadcast on English and Spanish speaking television. The headline on one El Nuevo Herald article, which shows a magnifying glass trained on the Pentagon building revealing a map of Cuba, proclaims: “Havana versus the Pentagon.” Exhibit C.

**Exhibits F and G** were local editorials supporting the indictment of the original ten defendants. **Exhibit H** consisted of two articles reflecting the guilty pleas of five of Campa's codefendants.

**Exhibits I, J, and K** were just three of the long stream of articles that regularly appeared in the local press concerning Cuba and the Castro regime, which is relentlessly portrayed as a human rights abuser and international pariah. These three articles connected Castro to the torture of American prisoners of war in Vietnam, to international drug trafficking, and to the heavy repression of political dissidents in Cuba.

**Exhibit L** consisted of two articles reflecting the local furor that resulted from the scheduled appearance in Miami of a popular musical group from Cuba called Los Van Van. Organized anti-Castro groups opposed Los Van Van's appearance in Miami, and said they would broadcast videotapes of those who went to the show and expose them as Castro sympathizers. Several fights ultimately erupted outside the building where the concert took place, and eleven people were arrested. Campa's jurors must have been worried about the likelihood of such red-baiting and intimidation, especially after Basulto's outburst at trial.

**Exhibit M** reflected the hero's welcome a local pilot received after flying over Havana and dropping anti-Castro leaflets. Of course, one of the issues at trial

involved the shoot down of two Brothers to the Rescue airplanes which the Cuban authorities claimed invaded their airspace.

**Exhibits N and O** consisted of three of the overwhelming number of newspaper articles that appeared at the time concerning Elian Gonzalez, the Cuban boy whose mother died during an attempt to reach this country's shores. Elian's story greatly fueled local anti-Castro sentiments, and resulted in massive anti-Castro demonstrations, several of which involved protesters violating the law and being arrested.

**Exhibit P** was a political cartoon that poked fun at the Cuban exile community's intolerance towards those who disagree with their views on Castro.

Attached to Campa's Sealed Notice of Filing Additional Exhibits, dated February 25, 2000, DE397, were the following additional illustrations of the local community's intolerance towards persons or businesses in any way associated with the Castro regime:

**Exhibit A-1** described a disturbance outside the federal courthouse in Miami that illustrated how passionately members of this community feel about anything having to do with Cuba. It occurred after a hearing in federal court in the case involving Elian Gonzalez. According to the article, a group of anti-Castro protesters gathered outside the courthouse to heckle and harass a few members of Elian's

family who believed the boy should have been returned to his father in Cuba. Police had to be called to help escort the family home.

**Exhibits B-1, C-1, D-1, and F-1** were a few of the numerous articles reflecting the arrest in Miami of another suspected Cuban spy, and the demand that a Cuban diplomat in Washington, D.C., be expelled from the country for spying. These incidents received considered additional publicity in television and radio broadcasts, especially in Spanish-language stations. **Exhibit G-1** was a news bulletin entitled "Miami Spy Hunting" which boldly labeled Campa and his codefendants as "members" of a Cuban spy ring arrested on September 12, 1998.

**Exhibit H-1** was an article entitled "Cuba, U.S. Still Fight Cold War." The article quoted a foreign policy expert's assertion that "the Cuban government has never ended the Cold War, the United States is still the enemy and it will use every means at its disposal to protect its interest."

**Exhibit I-1** reflected the sentencing hearings of two codefendants who were cooperating with the government and were expected to testify against Campa. The article sympathetically portrayed them as extremely repentant people who were manipulated and misused by the Cuban government with which, of course, Campa and his codefendants worked.

Exhibits J-1, K-1, and L-1 included an editorial again condemning the shoot down of the Brothers to the Rescue airplanes (which was be a central issue at trial) and articles reflecting several events that were held to commemorate the fourth anniversary of the shoot down. One of the events involved a rally at the federal courthouse in Miami to call for the indictment of Fidel Castro in connection with the incident. Another involved a mass in which 150 people participated.

Exhibits M-1 and N-1 described a Miami Dade County ordinance that prohibited the county from having any business contacts with Cuba and threatened to derail a well-established university film festival because of the planned screening of a film made in Cuba.

Attached to Campa's Joint Sealed Reply Memorandum, dated March 20, 2000, DE455, were additional articles further reflecting the extent of local prejudices against Castro and the generalized fear of being associated with the Castro Regime:

Exhibit A-2 reflected the fear people have for their personal safety when dealing with matters related to Cuba, and quotes a local business with legal business ties to Cuba as saying, "Put my name in the newspaper today and I'll get death threats tomorrow."

**Exhibit B-2** reflected the arrest of another alleged Cuban spy. **Exhibits C-2 and D-2** reflected the sentencing hearings of the cooperating codefendants.

**Exhibit E-2** described the anti-Castro protests that surrounded the Miami Film Festival and the Latin American Studies Association meeting in Miami.

Attached to Campa's Second Sealed Notice of Filing Additional Exhibits, dated April 14, 2000, DE483, were copies of a few of the literally hundreds of articles that appeared during that period of time in the local press concerning Elian Gonzalez, the young boy whose personal tragedy had set off a new round of widespread, negative publicity concerning Cuba and any person (now including Attorney General Janet Reno and President Clinton) in any way considered sympathetic to the Castro regime. Copies of these articles, which reflected a community on pins and needles worrying about how a section of the population would respond to INS decisions concerning Elian, are included in the Appendix:

**Exhibit A-3** described a crowd of about sixty protesters who gathered outside Janet Reno's house carrying posters depicting Ms. Reno as the devil. Over twenty police officers were dispatched to the residence to prevent a disturbance.

**Exhibit B-3** reflected alarming telephone calls to Spanish-speaking radio programs that threatened the safety of President Clinton, Vice President Gore, and other federal officials because of their views on the Elian affair.

**Exhibit C-3** also reflected official worries about the possibility of violence stemming from the activities of local anti-Castro groups.

**Exhibit D-3** showed anti-Castro protesters surging through metal barricades erected by the police outside Elian's home, and another group of protesters lying down on the street to block traffic as a further sign of support for Elian and opposition to the Castro regime.

**Exhibit E-3** was an article entitled, "Mary 'appears' near Elian," concerning what some believed to be an apparition of the Virgin Mary on the window of a bank near Elian's home in Miami. The article shows how the political struggle against Castro and the return of Elian to his father is so deep that it has acquired a religious significance.

**Exhibits F-3 and G-3** were headlines that speak for themselves concerning events during those extremely tense days. They reflected the Attorney General's demand that Elian be returned to his father ("Reno Wants Elian Today") and the local community's successful refusal to comply ("Family Defies Order"). At the end of the day, Ms. Reno returned to Washington, D.C., and Elian remained in Miami.

**Exhibits H-3 and I-3** were newspaper photographs of a few of the thousands of anti-Castro protesters who gathered outside of Elian's Miami home. They

illustrated the pervasive, local prejudice against anyone accused of being a supporter of the Castro regime.

Attached to Campa's Third Sealed Notice of Filing Additional Exhibits, dated May 25, 2000, DE498, and included in the Appendix, were additional articles further reflecting the intensity of local sentiments on matters related to Cuba:

**Exhibit A-4** described a bomb threat that was made against Attorney General Janet Reno at her Miami home due to her involvement in the Elian affair.

**Exhibit B-4** described multiple death threats that were recently made against the INS agent who carried Elian Gonzalez out of his Miami home a few weeks earlier. Federal officials considered the death threats to be credible and provided the agent special protection against possible personal harm.

**Exhibit C-4** described a protest march by approximately 100,000 people who opposed returning Elian Gonzalez to his father in Cuba and the government's handling of the Elian affair.

**Exhibit D-4** described a memorial service for mothers who died at sea. Also photographed and shown in tears was the mother of one of the Brothers to the Rescue pilots who was shot down by a Cuban air force pilot in 1996.



**Exhibit E-4** described the threats of retaliation local arts businesses have received due to their opposition to a county regulation prohibiting the doing of business with persons connected to the Cuban regime.

Also included in the Appendix are additional articles attached to Campa's renewed motion for a new trial and reply memorandum, filed on November 14, 2002, and January 9, 2003, respectively. DE1638, and DE1669. The district court improperly failed to consider these exhibits, which belied the government's continued attempts to minimize the extent of ingrained local prejudices against all persons associated with the Castro regime.

**Exhibit A (DE 1638)** (Miami Herald article entitled, "Emotions High at Cuban's Appearance," dated November 14, 2002) showed that anti-Castro sentiments continue to run so high that a local college sponsoring a forum in which a Cuban official was invited to speak had to install metal detectors and hire police to protect against violence at the event.

**Exhibit A (DE 1669)** (Miami Herald article dated December 31, 2002) concerned Rodolfo Frometa, the head of Comandos F-4, who testified at Campa's trial, proudly proclaiming that his group shot Juan Pablo Roque, one of Campa's codefendants, in an attempt to assassinate him in Cuba. According to Frometa, Roque was only left in serious or critical condition, but his bodyguard and the

Comandos F-4 gunman were killed in the attack. Frometa makes no attempt to conceal that it is his group's intent "to execute [Roque] for the crime he committed," and that it is their intention "to eliminate him." Id.

It is impossible to imagine any other community in this country in which a highly visible paramilitary group can brazenly proclaim its intention to assassinate an individual and actually attempt to carry it out (having two other persons killed along the way!) without fear of prosecution. Such public displays of violent extremism and defiance towards law enforcement could only send shivers down the spines of law-abiding members of our community, twelve of whom were asked to pass judgment on five accused Cuban spies, including Campa.

**Exhibit B** (Miami Herald article dated December 6, 2002) reflected yet another cancellation of a cultural event because of threats organizers received from local anti-Castro groups who opposed the possible participation at the AIDS benefit concert by a Cuban singer who has "not publically repudiated" the Castro regime. "We didn't want problems with anyone," one of the organizers is quoted as saying, "we heard they were planning protests, sabotage." Id.

**Exhibit C** (New Times article dated December 5, 2002) reflected the recent attempts by a group of twenty Cuban local clergy, including Roman Catholic Auxiliary Bishop Agustin Roman of the Archdiocese of Miami, to obtain the release

of four men accused of plotting to kill Fidel Castro during an official visit to Panama. The four men awaiting trial in Panama include Luis Posada Carriles and Guillermo Novo, two men in whose movements and activities Campa and his codefendants were especially interested.

**Exhibit D** (Miami Herald editorial dated October 12, 2001) reflected the widespread view in this community, greatly re-enforced by the local media (especially the Spanish-language media), that the Cuban government “terrorizes its own citizens” and belongs on the U.S. State Department’s terrorism blacklist.” Hardly a day goes by without there being something in the mass media that severely criticizes the Cuban government or otherwise fans anti-Castro sentiments.

**Exhibit E** consisted of several pages from an issue of “La Verdad” (“The Truth,” January 9, 2003), one of the many Spanish-speaking newspapers freely distributed throughout Miami Dade County. There appeared in the newspaper a lengthy editorial proclaiming that “We are still at war” (“Seguimos en guerra”), and more precisely, that we are still: “At war against the assassin and narco-terrorist Fidel Castro; At war against international communism; and at war against Castro-communist agents, the infiltrators and spies who, as exiles, enjoy the freedoms of the United States...” See Exhibit E (emphasis added, quoted portions in Spanish underlined). Also appearing in the same issue of “La Verdad” were two typical anti-

Castro announcements, one seeking the freedom of the “Cuban political prisoners” who have been detained in Panama (“To keep these patriots in prison is to cowardly cave in to the assassin and narco-trafficking Fidel Castro”), and the other, an announcement by Frometa and two associates, seeking the freedom of Cuban political prisoners held in U.S. jails, including Eduardo Arocena, the former head of the anti-Castro group Omega 7, who was convicted of first degree murder and several attempted murder offenses involving Cuban diplomats and suspected Castro sympathizers. See United States v. Arocena, 778 F.2d 943, 943-47 (2d Cir. 1985) (describing Arocena’s lengthy history of violence and lawlessness).

These exhibits, together with the other evidence supplied to the district court in support of the motions for a new trial and change of venue, compelled a finding that Campa and his codefendants could not, and did not, receive a fair trial in Miami. This Court, therefore, should vacate Campa’s conviction based upon the district court’s improper denial of Campa’s motion for a new trial and change of venue.

## CONCLUSION

Based upon the foregoing argument and citations of authority, this Court should vacate Campa's convictions and grant his request for a new trial in a venue consistent with his rights under the Fifth and Sixth Amendments.

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## CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7). According to the WordPerfect program on which it is written, the numbered pages of this brief contain 13,312 words.



\_\_\_\_\_  
Joaquin Mendez

## CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served by mail this 8th day of April, 2003, upon Anne Schultz, Assistant United States Attorney, Chief of Appellate Division, 99 N.E. 4th Street, Miami, Florida 33132-2111, Paul A. McKenna, Esq., 2940 First Union Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131; William Norris, Esq., 7685 S.W. 104th Street, Suite 220, Miami, Florida, 33156; Philip R. Horowitz, Esq., Two Datan Center, 9130 South Dadeland Blvd., Suite 1910, Miami, Florida 33156; Leonard I. Weinglass 6 West 20th Street, New York, NY 10011 and Ruben Campa, Reg. No. 58733-004, FCI-Oxford, Post Office Box 500, Oxford, WI 53952.



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

**CASE NO. 11-23376-CIV-Lenard**

**RUBEN CAMPA  
[FERNANDO GONZALEZ],  
Plaintiff,**

**v.**

**UNITED STATES,  
Defendant**

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**ATTACHMENT E**

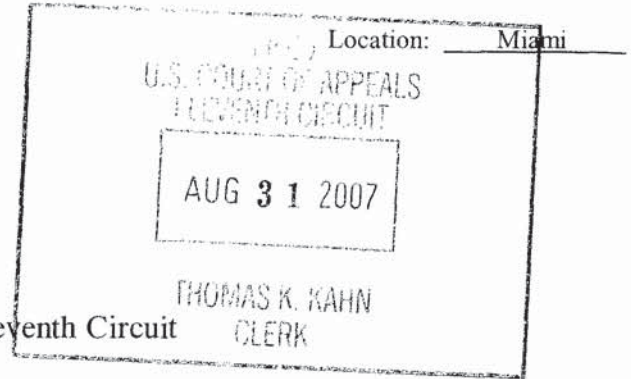
Chart, with covering letter, submitted to *Campa 3* court  
by Movant Campa's appellate counsel, setting forth  
claimed instances of supposed government misconduct

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Re: *United States v. Gerardo Hernandez, et al.*; Case No. 01-17176-BB  
Submission of chart regarding prosecutorial misconduct objections,  
rulings, and instructions

Dear Mr. Kahn:

Appellants respectfully submit the attached chart in response to the Court's request at the August 20, 2007 oral argument that the appellants submit a comprehensive list of claimed instances of misconduct (both during trial and during argument), with record citations and notations as to whether the comments were objected to and/or a curative instruction given.

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Sincerely,

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Attachment

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**APPELLANTS' CHART OF MISCONDUCT, OBJECTIONS, AND COURT RULINGS**

Type of Misconduct/ Relevant Case Law	Specific Instances: Comments/Arguments/Evidence	Was There a Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>1. Misstating the record – in violation of court orders re: unproven/uncharged espionage (“spying”) by Campa on military base in Fayetteville, N.C.</b></p> <p><i>Hands Davis Blakey Alzate</i></p>	<p><u>Opening:</u></p> <p>– “Defendant John Doe number three, the evidence will show, lived for a time in Fayetteville, North Carolina, a stone’s throw from the Camp LeJeune Marine Base.” (R29:1583)</p> <p><u>During Trial:</u></p> <p>Government elicits testimony to which Campa objects as attempts to link Campa to spying on military base in Fayetteville, North Carolina. <i>See</i> R54:5253 (testimony of FBI Agent Giannotti regarding possibility of uncharged Fayetteville activities by Campa); R68:6936, 6938 (government seeks to introduce map depicting Fort Bragg and elicits references to Fayetteville military installation during testimony of Campa’s former Fayetteville landlord, Olin Baggett); R76:8272 (government seeks testimony from Admiral Carroll regarding Fort Bragg and Fayetteville, NC)</p> <p><u>Rebuttal:</u></p> <p>“I submit to you it is impossible to believe we would be better off with spies in our community in Tampa, in Fayetteville, North Carolina, in Norfolk, Virginia, on our military bases” (R124:14477)</p> <p>“Ruben Campa ... a Cuban spy sent to the United States to destroy the United States” (R124:14481)</p> <p>“It is not just the dead kids. How about the live people they have ... Osvaldo Reina, a truck driver from Florida. . . . Look, they are Cuban spies.” (R124:14482)</p> <p>“Let’s ask, why are you on military bases? Why are you in Key West Florida at Boca Chica Naval Air Station? Why are you in Fayetteville North Carolina?” (R124:14483)</p>	<p>No</p> <p>Yes – Objections made to each of four references: (R54:5253; R68:6936, 6938; R76:8272)</p> <p>Court twice instructs government not to suggest criminal/military-related activity in Fayetteville by Campa. (R54:5282; R68:6958).</p> <p>Court denies motions for mistrial. (R54:5277-79; R68:6952-56; R76:8338).</p> <p>No</p> <p>No</p> <p>No</p> <p>Yes – Sustained. (R124:14483). Motion for mistrial (R124:14483, 14538-14543) denied (R124:14543 -14545) – although court states “it is close. I don’t disagree with your concern.” (R124:14544).</p>	<p>No</p> <p>As to 4th reference – R76:8373 (directing jury to disregard government’s suggestion of military connection)</p> <p>No</p> <p>No</p> <p>No</p> <p>No – despite defense request for curative instruction as alternative to mistrial. R124:14541.</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>2. Additional instances of misstating the record/evidence – during closing argument</b></p> <p><i>Hands</i> <i>Davis</i> <i>Blakey</i> <i>Alzate</i></p>	<p><b><u>(A) Defendants were spies sent to destroy the United States:</u></b></p> <p>– Campa “is a Cuban spy sent ... to destroy the United States” (R124:14481)</p> <p>– “These [constitutional rights, including right to counsel] are for people bent on destroying the United States, paid for by the American taxpayer” (R124:14482)</p> <p>– “When the smoke clears, you can look at all of these defendants for what they truly are, they are spies, bent on the destruction of the United States of America.”(R124:14536)</p> <p><b><u>(B) They sponsor “book bombs:”</u></b></p> <p><u>Trial:</u> Govt. seeks testimony of FBI witness that <i>plastilina</i> (modeling clay) is same substance as “plastique” used in making bombs. R39:3122.</p> <p><u>Initial Closing:</u> – Objectives of Operation Picada include “Prepare an alleged book bomb [with] plastique and send it via express mail” (R121:13965)</p> <p><u>Rebuttal:</u> – “Yes this is great, we want these guys sending ... book bombs...” (R124:14476)</p> <p>– “They sponsor book bombs” (R124:14480)</p> <p><b><u>(C) Cuba is preventing FBI investigation of exile activity:</u></b></p> <p>– “The FBI isn’t invited back to pursue that stuff” (R124:14493)</p> <p>– “When the bosses in Havana decide that they want to share evidence with the United States of America” (R124:14493)</p> <p>– “When they want to allow witnesses to be interviewed in Cuba, then that process will take place” (R124:14493)</p>	<p>No</p> <p>Yes – Sustained; motion for mistrial reserved, but denied. R124:14482, 1448545.</p> <p>No [previous objection sustained]</p> <p>Yes – Sustained. Motion to strike granted. R39:3122.</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>Yes – Sustained (R124:14493)</p> <p>Yes – Sustained (R124:14493)</p> <p>Yes – Sustained (R124:14493)</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p>(cont'd – 2. additional instances of misstating the record/evidence)</p> <p><i>Hands Davis Blakey Alzate</i></p>	<p><b><u>(D) All violent activity by exile groups has been prosecuted:</u></b></p> <p>– “Every case Mr. Mendez brought before you resulted in somebody getting arrested and prosecuted. It sounds like the FBI does do their job” (R124:14471-72)</p>	<p>Yes (“Misstates the evidence”) – Sustained (R124:14472)</p>	<p>No</p>
	<p><b><u>(E) Cuba employs death penalty for littering</u></b></p> <p>– “What typically is the consequence of a pilot violating civil aviation regulations with regard to throwing things out of airplane windows? ... The penalty for that would not be death, would it?” (R73:7806-07)</p>	<p>Yes – Sustained (R73:7807)</p>	<p>No</p>
	<p><b><u>(F) Captain Johansen’s log book didn’t plot longitude</u></b></p> <p>– “Mr. McKenna, what you forgot to tell the jury, what the longitude was because if you look at it, this is February 17” (R124:14523)</p>	<p>Yes (“It is a misstatement. He plotted both the longitude and the latitude on the map”) – Sustained (R124:14523)</p>	<p>No</p>
	<p><b><u>(G) “When you [the Cuban Government] are caught, you destroy evidence”</u></b> (R124:14531)</p>	<p>Yes (“It is so far outside of our case”) – Sustained (R124:14531)</p>	<p>No</p>
	<p><b><u>(H) [Buchner, the defense radar expert] “had 75,000 reasons to make that stuff up.”</u></b> (R124:14533)</p>	<p>Yes (“There is no evidence he got \$75,000”) – Sustained (R124:14533)</p>	<p>No</p>
	<p><b><u>(I) They [spies] “infiltrated Congress”</u></b> (R124:14488; 14476)</p> <p>– “Don't look at me, look at these other people, forget I am a spy infiltrating the FBI, the United States Congress” (R124:14476)</p>	<p>No</p> <p>No</p>	<p>No</p> <p>No</p>
	<p>– “They infiltrated Congress” (R124:14488).</p>	<p>No</p>	<p>No</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>3. Misstating the law/ distorting or attempting to vitiate the jury instructions (as to Count 3)</b></p> <p><i>Romine Hall High</i></p>	<p><u>Initial Closing:</u> –“The evidence does show that the plan was to shoot down the aircraft, period, and if that meant in international air space, that was agreeable to the plan” (R122:14112)</p>	<p>Yes (“It is a misstatement of the law”) – Sustained (R122:14112)</p>	<p>No</p>
	<p>–“We know the shutdown in international air space was contemplated from the fact that it actually occurred in international air space. [A] conspiracy does not need to have succeed for this to be a conspiracy, but when it does succeed as this one” (R122:14112)</p>	<p>Yes (“It is a misstatement of the law” – Sustained (R122:14113)</p>	<p>No</p>
	<p><u>Rebuttal:</u> – “The United States must prove there was a conspiracy to kill and we have proven a conspiracy to kill” (R124:14514)</p>	<p>Yes (“They have to prove more than that”) – Sustained (R124:14515)</p>	<p>No</p>
	<p>– “How else do you know that there was a conspiracy to kill here?” (R124:14515)</p>	<p>Yes – Sustained (R124:14515)</p>	<p>No</p>
	<p>–“We have jurisdiction in this Court, in this United States District Court because it occurred in international air space” (R124:14517)</p>	<p>Yes – Sustained; defense seeks instruction to “disregard that mistake of law;” court grants motion to strike. **[Curative instruction by court arguably exacerbates prejudice, by telling jury the “statement regarding jurisdiction is not ... for the jury [and] is for the Court to determine.” (R124:14517)</p>	<p>Yes** (see ruling at left)</p>
	<p>– “There is an element that requires the proof of the crime occurring in international air space” (R124:14517)</p>	<p>Yes (“It is a misstatement. It is an agreement”) – Sustained</p>	<p>No</p>
	<p>– “Ladies and gentlemen, you read the instructions” (R124:14517)</p>	<p>Yes (“He is now arguing with the Court what the instruction says”) – Sustained (R124:14517-18)</p>	<p>No</p>
	<p>– “The United States of America has proven that the shutdown occurred in international air space” (R124:14518)</p> <p>“I am merely telling the jury –” (R124:14518)</p>	<p>Yes (“I object to this argument by counsel and I ask that it be stricken. That is not what must be proven”) – Sustained (R124:14518)</p> <p>Yes (“I object to him arguing with you about the law”) – Sustained (directing AUSA to “Move on”) (R124:14518)</p>	<p>No</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>4. Urging jury nullification</b></p> <p><i>Funches</i> <i>Trujillo</i></p>	<p><b>Re: Count 3:</b></p> <p>– “If I don’t think of an argument because I am not as smart as you guys, please if you have an argument in your head and it blows his arguments away, don’t be afraid to use it.” (R124:14510)</p> <p><b>Generally:</b></p> <p>– [Within first few words to the jury in rebuttal]: “Now you are ready in a short while on Monday to start talking among yourselves what the right decision is in this case.” (R124:14471)</p> <p>– [Last words to the jury]: “I know you will do the right thing.” (R124:14536)</p>	<p>No</p> <p>No</p> <p>No</p>	<p>No</p> <p>No</p> <p>No</p>
<p><b>5. Misleading the jury as to the nature of the defense/ suggesting defense is a last minute fabrication/ attacking counsel for arguing all grounds for acquittal</b></p> <p><i>Davis</i></p>	<p><b>Re: Count 3:</b></p> <p>– “There is one truth, just one truth, there is not multiple theories, not multiple choice tests. Truth comes in one package and this is a quest for the truth. Mr. McKenna told you in his opening the shooting was justified. The shoot downs of those planes were justified. He argues to you now his client didn’t know anything about it. It is not a multiple choice test. Somebody dies and it is justified, you are involved in it. If you don’t know anything about it, tell us from the beginning Mr. McKenna. Why do we spend months determining where the location of the shutdown was? If your guy doesn’t know anything about it, let’s go home. That is because he changes horses in the middle of the stream. He throws up what might be good day one and then uses what may be good day two.”(R124:14510-145111)</p> <p><i>Compare</i> McKenna’s Opening: “[S]eated right behind me is the scapegoat” (R29:1604); Cuba had “no need for my client to do anything” as to the shutdown. “That info was provided by the United States Government.” (R29:1618); “I think when you have heard all the evidence, you will come to a conclusion about what happened with respect to the Brothers to the Rescue and it is going to be A, that Mr. Hernandez had absolutely no involvement in the decision itself to shoot down the plane. He didn’t do anything to help the Cubans. All that info had been given by the U.S. Government.” (R29:1624)</p>	<p>No</p>	<p>No</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>6. Vouching</b></p> <p><i>Berger</i> <i>Young</i> <i>Eyster</i> <i>Butera</i> <i>Garza</i> <i>Hands</i> <i>Russell</i></p>	<p><b><u>For the fact that all of the defendants are spies:</u></b></p> <p><u>Opening:</u> – “This is a case about agents of the Cuban espionage service who came to this country to spy” (R29:1570)</p> <p>– “a sophisticated and highly motivated espionage cell operating in the midst of our community” (R29:1577)</p> <p><u>During trial:</u> AUSA comment in presence of jury reflecting belief that defendants committed espionage conspiracy (R:113:13127)</p> <p><u>Rebuttal:</u> – “I submit to you it is impossible to believe we would be better off with spies in our community in Tampa, in Fayetteville, North Carolina, in Norfolk, Virginia, on our military bases” (R124:14477)</p> <p>– “Ruben Campa ... a Cuban spy sent to the United States to destroy the United States” (R124:14481)</p> <p>– “It is not just the dead kids. How about the live people they have assumed identity of to escape from this county. Osvaldo Reina, ... Edwin Martinez, ... Daniel Cabrera. Look, they are Cuban spies.” (R124:14482)</p> <p>– “Let’s ask, why are you on military bases? Why are you in Key West Florida at Boca Chica Naval Air Station? Why are you in Fayetteville North Carolina?” (R124:14483)</p> <p>– “We know [Medina] was spying on the air force base because he kept a record ... .” (R124:14484-14485).</p> <p>– “My G-d these guys are spies. What do you think they are doing in this country? (R124:14510)</p> <p>– “When the smoke clears, you can look at all of these Defendants for what they truly are ... spies, bent on the destruction of the United States of America” (R124:14535)</p>	<p><i>See #1 supra</i> re: Campa’s trial objections &amp; court’s sustaining</p> <p>No</p> <p>No</p> <p>Yes–Sustained; remark stricken (113:13127); motion for mistrial denied – R113:13130</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>Yes. Sustained. (R124:14483). Motion for mistrial denied (R124:14483, 14538-14545), although court states “it is close. I don’t disagree with your concern.” (R124:14544).</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>	<p><i>See #1</i></p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>6. Vouching (continued)</b></p> <p><i>Berger Young</i></p>	<p><b><u>For fact the “spies” were “bent on destroying the U.S.”</u></b></p> <p><b><u>For credibility of FBI, government witnesses, and Basulto:</u></b></p> <p>– “[The FBI] did a fabulous job. They are the best of the best and they have set quite a high mark for future performances in other cases. The surveillances, the searches that were involved all with the approval of the United States District Judges; the decrypted disks, the preservation of all the available evidence, an extraordinary job, worthy of the highest praise.” (R124:14472)</p> <p>– “Every case that Mr. Mendez brought before you resulted in somebody getting arrested and prosecuted. It sounds like the FBI does do their job.” (R124:14471-14472)</p> <p>– “Whether you disagree or agree with Jose Basulto ... he was bent on the overthrow of the communist country of Cuba as he is today, he wants to see Democracy restored” (R124:14475)</p> <p>– “The FBI isn’t invited back to pursue that stuff” (R124:14493)</p> <p>– “When the bosses in Havana decide that they want to share evidence with the United States of America (R124:14493)</p> <p>– When “they want to allow witnesses to be interviewed in Cuba, then that process will take place” (R124:14493)</p> <p>– Re: Stu Hoyt: “ I submit to you he was a superb witness with impeccable credentials” (R124:14503)</p> <p><b><u>For the fact that there was no “credible evidence’ of exiles planting bombs in Havana (as the defense maintained):</u></b></p> <p>– “Bombs in Havana. Absolutely wrong. If there is evidence, credible evidence that was prosecutable in this district or I hope any other district where there is a capable prosecutor and capable investigators, they should bring those charges against people if they are responsible from this community or any other community in the United States. I will find out and prosecute the case.” (R124:14492)</p>	<p><i>See supra # 2.</i></p> <p>No</p> <p>Yes – Sustained (R124:14472)</p> <p>No</p> <p>Yes – Sustained (R124:14493)</p> <p>Yes – Sustained (R124:14493)</p> <p>Yes – Sustained (R124: 14493)</p> <p>No</p> <p>No</p> <p>No</p>	<p><i>See # 2</i></p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<b>6. Vouching (continued)</b>  <i>Berger</i> <i>Young</i>	<u>For fact that Hernandez supports “goon squads” to brutalize anyone who complains about the Cuban government:</u>  – “What is Hernandez all about? ... Does he say let’s send the goon squad and give this guy a tune up? What did he say in the document? You need to send out some people from the department and talk to this guy. What do you think ‘go see this guy’ means in Cuba, somebody who talks about Fidel Castro?” (R124:14495)	No	No
<b>7. Burden-shifting/ complaining defendants went to trial and cross- examined witnesses</b>  <i>Cunningham</i> <i>Simon</i> <i>Blankenship</i> <i>Blakey</i>	– “It is lawyer talk getting up here and saying we don’t dispute it [false identities]. Sure they dispute it; they pled not guilty” (R124:14480)  – “They forced us to prove their guilt beyond a reasonable doubt. They received the ablest of counsel who argued every point and called many witnesses and cross-examined our witnesses.” (14482)  – “As Mr. McKenna has amply demonstrated to you they have no burden of proof but he absolutely has subpoena power. He called a number of witnesses.” (R124:14525)  – “The defense has the same subpoena power – ” (R124:14525)  – “It is not – ” (R124:14525)	No  No  Yes (“Object to the shifting of the burden”) – Sustained (R124:14525)  Yes (“It is shifting – ”) – Sustained (R124:14525)  Sustained (“Move on Mr. Kastrenakes”) (R124:14525)	No  No  No  No
<b>8. Personally attacking the defendants</b>  <i>Blakey</i> <i>Hall</i> <i>Hands</i> <i>Wilson</i> <i>Rodriguez</i> <i>Barker</i> <i>Young</i> <i>Darden</i>	<u>Bent on destroying the US</u>  <u>They sponsor book bombs</u>  <u>Re: Hernandez:</u>  <u>In trial:</u> Testimonial reference (second) to Hernandez’s noting that a taxi driver was criticizing the Cuban government, to align Hernandez with repression in Cuba (R46:3970-71)  <u>Rebuttal:</u> “What is Hernandez all about? He never loses an opportunity to spy or report on people. ... Does he say let’s send the goon squad and give this guy a tune up? What did he say in the document? You need to send out some people from the department and talk to this guy. What do you think ‘go see this guy’ means in Cuba, somebody who talks about Fidel Castro?” (R124:14495)	<i>See supra</i> #2  <i>See supra</i> # 2  Yes – overruled. (R46:3971).  No	<i>See</i> # 2  <i>See</i> # 2  No  No



Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>9. Attacking defendants for having court-provided counsel</b></p> <p><i>Goodwin</i> <i>Wilk</i> <i>Rodriguez</i></p>	<p>– Defendants received the “ablest of counsel who argued every point: These are for people bent on destroying the United States, paid for by the American taxpayer” (R124:14482)</p> <p>“Mr. Blumenfeld made that statement to the jury” (R124:14482)</p> <p><i>See also:</i> [Buchner, the defense radar expert] “had 75,000 reasons to make that stuff up, folks. 75,000 reasons” (R124:14533)</p>	<p>Yes (McKenna: “Objection;” Mendez: “I have a motion”) – Sustained (R124:14482)</p> <p>Sustained (R124:14482)</p> <p>Yes – Sustained (R124:14533)</p>	<p>No</p> <p>No</p> <p>No</p>
<p><b>10. Personally attacking defense counsel</b></p> <p><i>McLain</i> (plain error) <i>Friedman</i></p>	<p><b><u>Attacks on the Defense Attorneys (Severally) During Closing/Rebuttal:</u></b></p> <p>– It’s “time now for the propaganda to end” (R122:14119)</p> <p>– “I wonder why they say those sorts of things [focus your attention on the exile extremist activity]” (R124:14471)</p> <p>– “In this trial you have heard invented the Disney world defense put before you (GC: 14476)</p> <p>– “It is lawyer talk getting up here and saying we don’t dispute it [false identities].” (R124:14480)</p> <p>– Defense of monitoring “Cuban exile groups” is “a fallacy” (R124:14483)</p> <p>– “Was this the provocations of a terrorist counterrevolutionary group? No. The Cuban government doesn’t say that. That is lawyer talk in a courtroom five years later.” (R124:14523)</p> <p><b><u>Attacks on Defense Attorneys (Individually) During Rebuttal:</u></b></p> <p><b>Blumenfeld/Ct. 2:</b> – “When you are the defense attorney you have to dance around plain English ... ignore your common sense” (R124:14501) – “What Mr. Blumenfeld told is not the evidence, it is lawyer talk.”(R124:14509)</p> <p><b>Horowitz:</b> – “Well, Mr. Horowitz, I am sorry ... Not lawyer talk, evidence.” (R124:14489)</p> <p>– “Mr. Horowitz’ argument is, it is ridiculous” (R124:14492)</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>10. (cont'd) Personally attacking defense counsel</b></p> <p><i>McLain</i> (plain error) <i>Friedman</i></p>	<p><b>Attacks on Defense Attorneys (Individually) During Rebuttal (cont'd):</b></p>		
	<p><b>Norris:</b> – “The hollow words of Mr. Norris he is sorry that his client stole the identity of some child is not enough. ... Mr. Norris’ words ring very hollow.” (R124:14481-14482)</p>	No	No
	<p><b>McKenna/Ct3:</b> -- “It doesn’t matter in the world of George Buchner who [the shutdown victims] are. All that matters to George Buchner and Mr. McKenna is Jose Basulto. What kind of justification is that to shoot people out, or in Mr. McKenna’s word, the final solution. I heard that word before in the history of mankind.” (R124:14474)</p>	No	No
	<p>– “Mr. McKenna told you in his opening the shooting was justified. The shoot downs of those planes were justified. He argues to you now his client didn’t know anything about it. It is not a multiple choice test. Somebody dies and it is justified, you are involved in it. If you don’t know anything about it, tell us from the beginning Mr. McKenna. Why do we spend months determining where the location of the shutdown was? If your guy doesn’t know anything about it, let’s go home. That is because he changes horses in the middle of the stream. He throws up what might be good day one and then uses what may be good day two.”(R124:14510-14511)</p>	No	No
	<p>– “You don’t dance around it, you don’t throw up ideas that are false and come up with some other ideas. You tell the truth.” (R124:14511)</p>	No	No
	<p>– McKenna’s law is “the law of the jungle.” (R124:14514)</p>	No	No
	<p>– “Mr. McKenna, what you forgot to tell the jury, what the longitude was because if you look at it, ...” (R124:14523)</p>	Yes (“It is a misstatement. He plotted both the longitude and the latitude on the map”) – Sustained (R124:14523)	No
	<p>– “[Y]ou will see that argument for what it is, a total falsehood, a total unmitigated falsehood, nothing to do except to mislead you.” (R124:14524)</p>	No	No
<p>– “If you believe this malarky ... acquit” (R124:14530)</p>	No	No	

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<b>11.</b> <b>Appealing to</b> <b>patriotism,</b> <b>passions,</b> <b>morals, fears,</b> <b>and concern</b> <b>for human</b> <b>rights in</b> <b>Cuba</b>  <i>Cunningham</i> <i>Cole</i> <i>Barker</i>	<u>Opening:</u> –“a sophisticated and highly motivated espionage cell operating in the midst of our community” (R29:1577)	No	No
	– “attempting ... to discredit ... Cuban community in Miami” (R29:1591-1592)	No	No
	<u>During Trial:</u> – Government recognizes BTTR as “humanitarian” despite discontinuance of BTTR rafter reporting following U.S.-Cuba migration accord of 1995 (R29:1589)	No	No
	– FBI witness describes Cuban agency as “an intelligence pyramid” headed by Fidel Castro. (R44:3699-3700)	No	No
	– Government’s BTTR representative witness, Iglesias, receives directions/signals from BTTR lawyer during testimony; BTTR attorney – first warned during testimony of BTTR witness, Lares, R55:5515-16 – expelled from courtroom after continuing with visible gesturing in aid of government examination of witness. (R56:5605)	Yes – Sustained (R56:5605)	No
	– While testifying, government’s BTTR witness, Iglesias, admonished by court for repeatedly engaging in prejudicial courtroom demonstrations when attorneys were distracted by attending side bar conferences during his testimony. (R56:5629; R58:5902, 5949)	Yes – Sustained (R58:5949)	No
	– Government’s Cuban dissident witness, Leonel Morejon, repeatedly makes reference to repression and his imprisonment in Cuba despite court order to government to avoid such testimony. (R58:5997; R60:6195)	Yes – Sustained (R60:6195))	No
	– Prosecutor highlights Cuba as “repressive,” R80:8748, “dictatorship.” R80:8754. Americans, not Cubans, have “freedom of choice” R80:8754.	No	No
	– Witness Basulto (called by defense, but aligned with government and later lauded by government as “freedom fighter”) accuses defense counsel of collaborating with the Cuban government – “Are you doing the work of the intelligence government of Cuba ... ?” (R81:8945)	Yes – Sustained (R81:8947). Denial of motion for mistrial, but partial granting of curative instruction request.	Yes (R81:8955: counsel is “doing his job”)
	– Government asks Basulto about “tense time in this community” during 1962 missile crisis (R83:9241)	Yes – Sustained (R83:8955)	No
– Impermissible government publishing of United Nations findings and condemnation of shutdown. R88:10027.	Yes – Sustained; but motion for mistrial denied (R88:10027)	No	

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<b>11. Cont'd (appealing to patriotism, passions, morals, fears, and concern for human rights in Cuba)</b>  <i>Cunningham Cole</i>	<u>Initial Closing:</u> – I don't know if you saw the old movie Invasion of the Body Snatchers. This is a movie where the planet is being taken over by pod people and at the end is a scene of a truck driving off with new pods in it ready to be sown. That is what this is, new identifies ready to be used and ready to be sown by the Cuban Intelligence Service.” (R121:13939-40)	No	No
	– It's “time now for the propaganda to end” (R122:14119)	No	No
	<u>Rebuttal:</u>		
	– “This is an extremely important case. Your decision is extremely important” (R124:14471)	No	No
	– “A bureau that sees the United States of America as its prime and main enemy.” (R124:14475)	No	No
	– “These are not the rules of Cuba. ...” (R124:14475)	No	No
	– “They [spies] are everywhere, come on.” (R124:14477)	No	No
	– Spies “bent on destroying the U.S.” (R124:14481-82, 14536)	Yes – Sustained (R124:14482)	No
	– “[Judge] will do her job if you do your job” (R124:14487)	No	No
	– “Cuba [is] friends with our enemies” (R124:14512)	No	No
	– “If their own people see that planes dropping leaflets people inside those planes are going to be murdered brutally, mercilessly and nothing happens, what people in Cuba are going to stand up for their rights? Zero.” (R124:14520)	No	No
	– “Does the Cuban government have a stake in this case? A huge one.” (R124:14532)	No	No
	– “When the bosses in Havana decide ...” (R124:14493)	Yes – Sustained (R124:14493)	No
– “I want you to remember that when you think how long this trial has lasted, from Thanksgiving to Memorial Day, a day we commemorate people who have fought for our country and Thanksgiving, a day we cherish to be with our families and this will never happen again for these families because he with his blood promotion to Captain, Captain Hernandez” (R124:14535)	No	No	
– “I know you will do the right thing” (R124:14536)	No	No	

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>12. Introducing purely inflammatory evidence/making purely inflammatory arguments</b></p> <p><i>Hands Bowen Frost North Martin v. Parker</i></p>	<p><b><u>Invoking the name of G-d on the side of the prosecution:</u></b>                      – “We are not operating under the Rules of Cuba, thank G-d” (R124:14475)                      – “My G-d these guys are spies. What do you think they are doing in this country?” (R124:14510)                      – [Re: Cuban witnesses]: “Adlai Stevenson said it best about lies. He said lies are an abomination unto the Lord but a very pleasant help in a time of trouble. Aren’t they?” (R124:14530)</p> <p><b><u>Comparing shutdown to Hitler’s “Final Solution:”</u></b>                      – “All that matters to [Buchner and McKenna] is Jose Basulto. What kind of justification is that to shoot people out, or in Mr. McKenna’s word, the final solution. I heard that word before in the history of mankind.” (R124:14474).</p> <p><i>Compare</i> McKenna’s closing (arguing based on premise that Cuban radar showed military shutdown occurred in Cuban air space) (R124:14433); “last resort” jury instruction: R125:14610.</p> <p><b><u>Persistent References to “the Dead Babies”</u></b></p> <p><u>Opening:</u>                      – “The evidence will show that the real Ruben Campa died in California in infancy ... sadly, the real Luis Medina died in infancy in California” (R29:1570-71)                      – “birth certificates for the real but unfortunately deceased infants whose identity they assumed” (R29:1581)</p> <p><u>During trial:</u>                      – Despite motion and offer to stipulate, government asks first witness, “look around the courtroom and tell us if you see your [deceased] son” (R30:1711, 1716), after asking witness, Reverend Medina, to describe son’s death: “He became very ill so we took him to the hospital to find out what was wrong with him. ... They discovered he had a spinal problem and after a few days, he passed away.” (R30:1709-10); later government questioning (unobjected-to): “Does Florida law allow you to obtain driver’s licenses and false identifications under the name of a dead baby?” (R33:2164)</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>Following opening statement Campa moves <i>in limine</i> arguing “emotional testimony regarding deceased son will be unfairly prejudicial” given defense stipulation to identity-related facts (DE787:3); Govt. refuses stipulation, court overrules objection – R30:1715</p> <p>Defense objects to continued asking of “macabre” question (re: dead child in courtroom) – objection partially sustained, but government permitted to present – via three witnesses – evidence re: death of family members;</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>

Misconduct/ Case Law	Specific Instances: Comments/Arguments/Evidence	Defense Objection? How Did the Court Rule?	Curative Instruction?
<p><b>(cont'd – 12. inflammatory evidence, argument)</b></p> <p><i>Hands</i> <i>Bowen</i> <i>Frost</i> <i>North</i> <i>Martin v. Parker</i></p>	<p><u>Closing:</u></p> <p>– “These are the driver’s licenses in the names of the three illegal officers, that they were using ... having appropriated these identities from infants who once died” (R121:13929)</p> <p>– “For the main identities the illegal officers used these dead babies’ identities” (R121:13930)</p> <p><u>Rebuttal:</u></p> <p>– “They killed 4 innocent people and they use in these identities dead babies, dead children to establish who they are ... “you talk about stealing the memories of families. Reverend Medina lost a child 30 years ago. ... They don’t care.” (R124:14480)</p>	<p>No</p> <p>No</p> <p>No</p>	<p>No</p> <p>No</p> <p>No</p>

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

**CASE NO. 11-23376-CIV-Lenard**

**RUBEN CAMPA  
[FERNANDO GONZALEZ],  
Plaintiff,**

**v.**

**UNITED STATES,  
Defendant**

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**ATTACHMENT F**

December 3, 2000, *El Nuevo Herald* newspaper article



1 of 2 DOCUMENTS

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**SECTION:** PANORAMA; Pg. 6A

**LENGTH:** 415 words

**HEADLINE:** MIEDO A SER JURADO EN EL JUICIO A ESPIAS CUBANOS

**BYLINE:** RUI FERREIRA, El Nuevo Herald

**BODY:**

El miedo a una reaccion violenta por parte del exilio cubano si un jurado decide absolver a cinco hombres acusados de espiar para el regimen de la isla, ha llevado a muchos potenciales candidatos a pedir a la jueza que los excuse del deber civico.

"A decir verdad, Senoria, espero que mi participacion [en el jurado] no tenga impacto en mis negocios", declaro el viernes un vicepresidente de una importante entidad bancaria miamense.

Cuando la jueza Joan A. Lenard le pidio que profundizara, Jesse Lawhorne Jr. expreso claramente su temor a que un veredicto absolutorio de los acusados pueda afectar su negocio, porque "tengo relaciones con miembros de la comunidad hispana que tienen opiniones duras sobre el tema". Poco despues, un empleado del condado fue mucho mas preciso: "¡Si! Tengo miedo por mi seguridad si el veredicto no es del agrado de la comunidad cubana", anadio Dave Cuevas, padre de tres hijos menores y que fue excusado.

Durante los primeros cinco dias de seleccion del jurado, muchos de los convocados manifestaron cierta resistencia a integrarlo. En casi todos esos casos argumentaron que no querian estar expuestos al escrutinio de la prensa.

Aunque en algunos de ellos, la jueza, la fiscalia o la defensa no creyo los motivos, hasta el viernes casi tres cuartos de los convocados habian sido eximidos de integrar el jurado. "Siempre hay gente que trata de convencernos de que no sirve porque realmente no quiere estar aqui un par de meses encerrada", afirmo uno de los abogados. Sin embargo, "en este caso, sabemos que conformar el jurado iba a ser dificil, la gente tiene miedo".

De hecho, esa presion parece ser tan real que abogados familiarizados con el proceso afirmaron que el ambiente pudiera relajarse un poco si la prensa no publicara los nombres de los potenciales jurados. Legalmente no hay nada que lo impida: la corte es un lugar publico.

Hasta el viernes, faltando aun por escrutar unas 50 personas, el jurado se esta perfilando como mayormente anglo y afroamericano, en parte porque casi todos los convocados de origen cubano han dicho que no pueden ser imparciales. Otros latinos admitieron que por el ambiente en que viven estan demasiado expuestos a vecinos o conocidos cubanos.

Pero hay excepciones. Es el caso de Ileana Briganti, joven de origen cubano que admitio, con firmeza, a la jueza que el tema de los supuestos espias "ha saltado en mi hogar", pero "me considero una persona fuerte, capaz de no dejarme influenciar".



MIEDO A SER JURADO EN EL JUICIO A ESPIAS CUBANOS El Nuevo Herald

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