

# Justices for Clemency

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February 24, 2014

Mr. Barack Obama  
President of the United States  
The White House

Dear Mr. President:

We are retired appellate justices from diverse parts of the nation, who in combination reflect many decades of deep experience with our judicial system, and with our Constitution. And we appreciate that you, as our nation's President, share our bedrock commitment to upholding and defending that Constitution.

Each of us has examined the relevant appeals record in the case of the "Cuban 5". We concur with the August, 2005, unanimous opinion of the three-judge panel of the 11<sup>th</sup> Circuit Court of Appeals, (No. 01-17176) that pervasive community prejudice, intense and inflammatory publicity -- in part funded by the federal government -- prosecutorial misconduct and denial of multiple motions for change of venue, denied the defendants their constitutional right to a fair trial. We do not agree with the subsequent, divided *en banc* decision that extensive *voir dire* cured these fundamental defects.

As of February 27 three of the defendants will remain in federal prison after fifteen years of incarceration. Given the lack of fairness of the trial, basic justice calls for their release. Executive clemency in this case will free four unjustly convicted human beings. And it will do more. Last November, sixty-six United States Senators wrote you, urging you to take all necessary steps consistent with the national interest to secure the release of Alan Gross, incarcerated in Cuba. The Cuban government replied by stating "its readiness to immediately establish a dialogue with the United States government to find a solution to the case of Mr. Gross on a reciprocal basis...". In short, honoring and defending our constitutional rights will serve the interests of justice, both in the United States and in Cuba.

By means of the individual, signed letters attached, we urge you to grant clemency.

We thank you for your consideration, and for your dedicated service to our nation.

***(This letter, signed by 9 appellate justices, was hand-delivered to the President by a senior United States Senator.)***

Honorable Cruz Reynoso, Supreme Court of California, Presidential Medal of Freedom Award

Hon. William Leaphart, Supreme Court of Montana

Hon. Mark McCormick, Supreme Court of Iowa

Hon. James Regnier, Supreme Court of Montana

Hon. Terry Trieweiler, Supreme Court of Montana

Hon. William A. Newsom, California Court of Appeals

Hon. Marc Poche, California Court of Appeals

Hon. John Racanelli, California Court of Appeals