

immediate right to know about matters involving improper domestic propaganda as well as whether the U.S. Government compromised the fundamental right to a fair trial of the Cuban Five. Indeed, a petition for *habeas corpus* on behalf of Gerardo Hernández, sentenced to two life terms plus 15 years in prison, is due on June 14, 2010. Yet the government is unlawfully withholding this essential information.

No exemptions to production have been asserted for these contracts. Unfazed by the prospect of violating the federal Freedom of Information Act (FOIA), and eager to avoid exposure of its activities, the BBG has refused to produce them. With no legal basis for withholding, the BBG argues that the Court should not adjudicate plaintiff's complaint seeking production. The BBG now claims that in these briefings, plaintiff has revised and narrowed its FOIA request and the "new" request should be remanded to the agency. There isn't a shred of reality to this grasping and frantic attempt to avoid exposure and production. Plaintiff has not narrowed its request. One need merely look at the Prayer for Relief in plaintiff's Complaint to see that the requests/demands today are the same as when the Complaint was filed.

The second group of records, the "larger universe" of materials, has not been searched for due to the BBG's intransigence relating to the imposition of fees. Plaintiff has submitted a mountain of evidence that it qualifies for preferred fee status as a "representative of the news media," as that term is defined within the FOIA, and for a waiver of fees under the public interest fee waiver provision of the FOIA. The BBG has attempted to set a barrier of access to these materials by demanding more than \$30,000 for public disclosure.

Before even reaching the substance of those evaluations, there is the simple fact that the BBG is subject to the penalty provision in the FOIA which prohibits it from assessing fees to plaintiff due to the BBG's failures to comply with the FOIA. The BBG has, in its opposition

filing, conceded the facts that establish that it is subject to this penalty provision, under which an agency is precluded from charging fees where the agency has failed to comply with any time limit under the Act. *See* 5 U.S.C. § 552(a)(4)(A)(viii).

Agency denials in response to a FOIA request are required to be in writing, a requirement which avoids disputes over whether an agency has or has not denied a FOIA request or denied a fee waiver application. In addition to being timely asserted, and asserted in writing, agency denials must also include written presentation of the bases or reasons for denials and written disclosure of appeal rights and procedures.

Here, it is undisputed and conceded that the agency issued no such written denials in the applicable statutory time periods in response to the January 23, 2009 FOIA request. The BBG has in fact admitted the foundational element - - the fact that “no denial letter, not even a determination letter, was transmitted to the Committee within 20 days of its request.” PSMF ¶ 10; Defendant’s Response to Plaintiff’s “Statement of Material Facts Not in Dispute” (Def’s Resp. to PSMF) at ¶ 10 (admitting same). Furthermore, the agency failed to substantively respond to and/or satisfy the FOIA request within the 20-day statutory period. As such, under the FOIA, the BBG is prohibited from the charging of any fees at all.

Substantively, faced with a record that supports the disclosure of the requested contracts immediately and without the charging of fees, the BBG ignores the detail and dozens of pages of supporting exhibits submitted substantiating plaintiff’s status as a representative of the news media and entitlement to expedited processing without the charging of fees.

Rather than a good faith opposition to plaintiff’s claims, faced with this record, the BBG’s response is a frantic, unsubstantiated argument full of falsehood and irrelevancy.

Plaintiff is alleging, and the BBG has admitted, that the BBG has identified and located contracts with Miami-based journalists - - contracts where the U.S. Government has paid allegedly independent journalists who report under the guise of the independent media in Miami. Plaintiff is alleging, and the BBG has admitted, that it is withholding these specific contracts, properly requested under the FOIA. Disclosure of these contracts, either standing alone or as part of the larger editorial analysis intended by plaintiff, can evidence serious government malfeasance in intentionally and covertly funding the *independent* U.S. media to propagandize and influence domestic public opinion including the jury pool and sitting jury during the high-profile government prosecution of the Cuban Five.

What is clear from the BBG's response is that the government seeks to avoid its obligation to disclose this information to the public. Unable to claim any statutory exemption to disclosure, unable to set forth any lawful basis to justify its arbitrary and capricious withholding, the BBG has now resorted to frivolous argument in a final attempt to evade disclosure. The contracts have already been identified. The contracts have been located. Yet, the BBG withholds.

The BBG has failed to carry its burden of justifying its withholding of the specific contracts - - already identified and located. 5 U.S.C. § 552(a)(4)(B).

For the "larger universe" of records for which the search has not been undertaken due to the issues regarding fees, plaintiff has clearly set forth its entitlement to disclosure without the charging of fees and a compelling need for expedited disclosure.

The government's desperate and last-ditch effort to avoid adjudication should be denied, and the relief as requested in plaintiff's prayer for relief in its Complaint, should be issued.

I. The BBG Has Failed to Justify Withholding of the Specifically Identified Contracts

The BBG has proffered no justification under any of the FOIA's statutory exemptions for the withholding of these records it has already identified and located. Accordingly, the BBG has failed to meet its burden under the FOIA and must disclose the contracts. 5 U.S.C. § 552(a)(3)(A); *See McCutchen v. U.S. Dep't of Health and Human Services*, 30 F.3d 183, 185 (D.C. Cir. 1994) (government bears burden of justifying any withholding).

A. The Relief Sought Today is the Same as Advanced in the Complaint; It is a Frivolous Fantasy to Suggest Plaintiff Has Made a "recent decision to narrow its FOIA request"

The case before the Court is set forth in the Complaint.¹ The factual and legal basis is unchanged. The relief requested is unchanged. The FOIA request is unchanged.

The BBG represents that "Plaintiff is no longer seeking the massive universe of documents it requested in January 2009 but . . . it has narrowed its FOIA request to specifically named contracts. Plaintiff's recent decision to narrow its FOIA request entitle Defendant, Broadcasting Board of Governors ("Defendant") to summary judgment. . ." Defendant's Reply in Support of its Motion for Summary Judgment and Opposition to Plaintiff's Cross Motion for Summary Judgment (hereinafter "Def's Opp.") at 1.

This is something of a deeply bizarre and fantastic representation to make in any context, and is equally frivolous as a basis from which to argue that the Court should avoid adjudication.

As detailed in the Complaint, the BBG has completed its search for certain contracts which it has identified with particularity.² The BBG concedes it has asserted no exemption to

¹ The BBG makes no effort to dispute, as it cannot, that plaintiff has exhausted its administrative remedies with regard to the relief sought from this Court.

² The BBG's acknowledgment of these contracts was very specific, down to the contract number, date, and name of the journalist receiving payment from the government. Ex. 4 to Pl's MSJ, March 11, 2009 Letter and Chart (listing 18 journalists as "vendors" and for each journalist identifying contract numbers, award date, obligated amount, contract type, status of each contract and release date, if any, of each contract); Ex. 5 to Pl's MSJ, March

production. Def's Opp. at 17. There is no issue with respect to cost, as the search is complete and was nominal or *de minimus* in any case. Furthermore, plaintiff has represented in writing repeatedly it shall fully pay any costs for this scope of production under objection. However, even though plaintiff has offered to pay, the BBG will not release the documents and will not even tell the plaintiff what the costs are for the documents.

Today, as in the Complaint, plaintiff seeks production of these already-searched-for-and-identified contracts.

In the Prayer for Relief, there are eight specified requests/demands, each assigned a letter from A to H. The first five requests/demands pertain to these particular contracts for which the agency search is complete. The requests are that the Court:

- A. Order that defendant Broadcasting Board of Governors be enjoined from withholding the specified requested contracts pursuant to the Freedom of Information Act;
- B. Order defendant Broadcasting Board of Governors to process immediately the request for specifically identified contracts;
- C. Order defendant Broadcasting Board of Governors, upon completion of such processing, to disclose the requested contracts in their entirety and make copies available to plaintiff;
- D. Order the defendant Broadcasting Board of Governors to disclose the requested contracts in their entirety without the charging of fees;
- E. Order defendant Broadcasting Board of Governors to disclose the requested contracts in their entirety in electronic format; . . .

Complaint at 26, Prayer for Relief.

As detailed in the Complaint, for the larger scope of materials that are encompassed by plaintiff's FOIA request, the BBG has not searched or has stopped its search for responsive

17, 2009 Chart (identifying type of service for each vendor/journalist); Def's Resp. to PSMF at ¶¶ 11, 14. 39 (admitting Board identified contracts by journalist name, contract number and date).

records. The search for the larger “universe” of records has been stopped by the agency because it refuses to proceed without payment of many tens of thousands of dollars in claimed fees.

Today, as in the Complaint, plaintiff challenges the imposition of search and duplication fees for the larger “universe” of records. Judicial resolution of the fee dispute is a pre-condition to the search for this range of materials. For this larger set of records, plaintiff has not moved for an order of production because the records have not been not identified and withheld. The search is stopped by the BBG.

In the Prayer for Relief, the sixth of the eight specified requests/demands, pertains to plaintiff’s challenge to the agency’s fee determination. The relevant request is that the Court:

- F. Declare that the Broadcasting Board of Governors may not impose fees for the remainder of the processing of the Committee’s FOIA request in light of 5 U.S.C. § 552(a)(4)(A)(viii) and remand the matter for further processing consistent with the Court’s declaration; . . .

Complaint at 26, Prayer for Relief.

The remaining two requests in the prayer for relief pertain to award of costs and reasonable attorneys fees and that the Court grant such other relief as deemed just and proper. *Id.*

The BBG is presenting frivolous nonsense when it comes before this Court to contend that the Court should not adjudicate the Complaint because in this briefing “Plaintiff, for the first time, abandoned its all encompassing January 23, 2009, FOIA request.” Def’s Opp. at 5.

Plaintiff has absolutely not abandoned the scope of its request. The relief requested today is precisely the relief requested in the Complaint. Plaintiff has, time and again, represented to the agency that it has not narrowed its request.

The contracts already identified through search are requested to be immediately produced. The records that have yet to be searched for, because the BBG truncated its search based on the fee dispute, are requested to be searched for upon remand with the fee issues

resolved in Plaintiff's favor. No narrowing of the scope of the FOIA request has occurred. No narrowing or even modification of the relief requested before this Court has occurred.

What has occurred is that in these briefings, the BBG here too demonstrates its willful intransigence, its defiance of its legal obligations under the FOIA. The depth of nonsense to which the BBG stoops reflects just how badly it does not want this information revealed. It is hiding basic contracts because it fears exposure to the claims that it has violated its essential mandate, the fundamental restrictions prohibiting it from using its resources to propagandize domestic public opinion with its agenda regarding Cuba, and because it fears exposure of critical questions as to governmental misconduct in the prosecution of the Cuban Five.

B. The BBG Cannot Refuse to Produce the Contracts on the Purported Basis of Cost

The BBG tries to justify its refusal to produce the already-recovered public contracts by claiming that, although these contracts have been searched for ostensibly during a two hour grace period of free searching, that unless plaintiff makes "full payment" of over \$30,000, the estimated cost for the "full universe" of records under plaintiff's FOIA request, the agency is not obligated to produce these already-searched-for-and-recovered public contracts. *See* Def's Opp. at 9 – 11.

This is not a situation where an agency is withholding production because, based on a requester's request, it has expended vast resources to conduct a search and the requester is refusing to pay what she agreed to. The BBG has never conducted the larger search. The BBG has conducted its contract search during a purported two hour "free search" grace period and is refusing to produce the public contracts. Plaintiff has accepted full financial responsibility for the cost of the production of the contracts, even while asserting objection.

Plaintiff **five times** requested from the BBG production of the already-identified public contracts. *See* Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment and Cross Motion for Summary Judgment (hereinafter “Pl’s MSJ”) at 15, *citing*, Exs. 6, 7, 8, 12 and 14 to Pl’s MSJ. Plaintiff **five times** submitted to the BBG that it would provide full payment, under challenge, to procure production without further delay. *Id.*

The BBG’s citation of *Saldana v. Fed. Bureau of Prisons*, 2010 WL 1656862 (D.D.C. April 27, 2010), where the requester reformulated his request to *expand* the scope of the necessary search and disclosure, did not agree to pay the estimated fee, and in fact never paid - - despite agreeing to - - a fee for a previous request, is inapposite.

The BBG has throughout the life of plaintiff’s FOIA request - - at the administrative level and during this litigation - - distorted and at times completely ignored the facts. *See, e.g.*, Pl’s MSJ at 19 – 20. Faced with the record, the BBG now advances the baseless and outrageous claim that its withholding should not undergo judicial review.

The bottom line is that the BBG has not, and cannot, justify its withholding of the specifically identified contracts. Accordingly, plaintiff is entitled to summary judgment ordering the immediate disclosure of these contracts, which have already been identified by the BBG. The BBG’s continued recalcitrance, even at this stage, makes clear that it will not abide by its legal obligations under the FOIA absent an order from the Court.

II. Plaintiff is Entitled to Disclosure without the Charging of Fees

A. The BBG is Barred from Imposing Fees Due to Its Failure to Comply with the FOIA’s Time Limits

Not only does the BBG not dispute, it in fact admits, that it failed to comply with the FOIA’s statutory time constraints. Def’s Resp. to PSMF at ¶ 10 (admitting PSMF ¶ 10 “No

denial letter,³ not even a determination letter,⁴ was transmitted to the Committee within 20 days of its request.”). Further, the BBG failed to substantively respond to and/or satisfy the FOIA request within the 20-day statutory period.

Accordingly, the BBG is precluded by law, under the FOIA’s statutory bar, from assessing any fees for plaintiff’s FOIA request. *See* 5 U.S.C. § 552(a)(4)(A)(viii).

B. Plaintiff has Established that It is a Representative of the News Media⁵

Plaintiff is a representative of the news media. The BBG has made no attempt to rebut the record or the FOIA’s broad definition of the “representative of the news media” category.⁶ Rather, the BBG simply states in a conclusory manner that plaintiff does not fit this category. The BBG does not even attempt to discredit the actual and specific evidence submitted by plaintiff in support of its representative of the news media status.

Yet, the record is rife with support for plaintiff’s status and so clearly contradicts even the broad conclusory assertions advanced by the BBG. *See, gen’ly*, Pl’s MSJ at 25 – 32.

The BBG has already conceded that plaintiff stated its intent to publish the information and make it available electronically. Ex. 1 to Def’s MSJ, Diaz-Ortiz Decl. at ¶ 4. The BBG did

³ That the BBG even implies a denial need not be in writing, Def’s Opp. at 3, n. 2, is truly astounding. “*All denials are in writing.*” 22 C.F.R. § 503.3(b) (emphasis added); *Id.* at § 503.7(e)(3) (“If we do not completely grant your request for a waiver or reduction, *the denial letter* will designate the appeal official.”) (emphasis added).

⁴ Forced to admit that no written determination or denial letter issued within the FOIA’s timeframe, the BBG has apparently abandoned the argument that it was entitled to an extension of time under the FOIA, which mandates written notification of such. Accordingly, the BBG has conceded that it failed to meet the deadlines set forth by the FOIA.

⁵ The BBG’s Motion for Summary Judgment admitted the denial of plaintiff’s status but misrepresented the record to state plaintiff had not appealed this determination, and did not substantively address the denial. *See* Def’s MSJ at 9, n. 1. However the BBG has been forced now to face that its distortions are contradicted by the factual record. *See* Pl’s MSJ at 29, n. 9.

⁶ The BBG at the administrative level attempted to support its denial with a restrictive definition of the category. *See* Pl’s MSJ at 30, *citing* Ex. 15 to Pl’s MSJ, July 27, 2009 Letter. The FOIA’s standards for categorizing representatives of the news media are not so restrictive, but are in fact rather expansive. *See* 5 U.S.C. § 552(a)(4)(A)(ii); *See also*, Pl’s MSJ at 25 – 26 (setting forth the legislative history expanding the category); *Id.* at 30 – 31 (addressing the impropriety of the BBG’s restrictive definition). The BBG has now reluctantly conceded that “the definition of a ‘representative of the news media’ was arguably expanded by Congress.” Def’s Opp. at 12.

not once, either at the administrative level or in its motion for summary judgment, question this intent nor has it ever proffered a reason to doubt this ability to publish. Plaintiff in fact directly, in no uncertain terms, stated and re-stated its intent to publish specifically the records requested. Ex. 1 to Pl's MSJ, January 23, 2009 FOIA request at 1 (information "for the dissemination to the public and for public education. All information received shall be published and made available electronically for public access."); Ex. 8 to Pl's MSJ, May 4, 2009 appeal at 4 (same); Ex. 11 to Pl's MSJ, June 26, 2009 Second Appeal at 5 ("The requestor has a solid basis for expecting publication of news articles...the subject of which will encompass and shall also disseminate information that is specifically requested by the instant Freedom of Information Act request."); *Id.* ("Ms. La Riva represents herein through her counsel that she, as a freelance journalist and as representative of the requestor, intends for the information sought by the instant FOIA request to be disseminated through publication." (emphasis added)).

Yet now, the BBG baldly asserts "plaintiff failed to show its specific intent and ability to use its editorial skills...or a solid basis to expect publication in the case at hand." Def's Opp. at 13.

Plaintiff has set forth, and supported, its extensive and established history of editorial analysis and publication pertaining to similar issues regarding U.S. Government activities affecting U.S. – Cuba relations and the case of the Cuban Five. Ex. 11 to Pl's MSJ, June 26, 2009 Second Appeal at 3 – 5.

Plaintiff has set forth, and submitted exhibits showing, its use of editorial discretion in the selection and presentation of materials of information it gathers and aggregates and analyzes in order to disseminate information of current interest to its audience and the public. *See, e.g.*, Ex. 11-5 to Pl's MSJ (25 page printout from web site of selected articles and source information).

Plaintiff's publication and dissemination of information, and organizational findings are distributed nationally and internationally to hundreds of thousands of people. La Riva Decl. at ¶ 9 (attachment B to Pl's MSJ); Ex. 8 to Pl's MSJ, May 4, 2009 Appeal at 4.

Here, plaintiff has presented a substantial record establishing not only that the public contracts, *per se*, will be published upon release, but that they are a part of a larger and ongoing editorial publication and analysis of issues of political and social import.

What the BBG summarily dismisses - - without disputing the authenticity of - - as "information regarding some of [plaintiff's] work in the past," Def's Opp. at 13, is in fact dozens of pages of explanation and supporting exhibits demonstrating plaintiff's history of and continued dissemination of information through hard copy, electronic dissemination and audio-video media; through organization of press conferences and academic forums; through publication and distribution of leaflets and advertisements; through publication and dissemination of original articles as well as of source information, of press releases and of its regularly distributed monthly bulletin.⁷ *See, gen'ly*, Pl's MSJ at 25 – 32; *See also*, Exs. 11 – 11-11 to Pl's MSJ, June 26, 2009 Second Appeal and exhibits thereto.

The BBG further demonstrates its determination to claim anything and everything - - with no support in, and despite the clarity of, the record - - in order to continue its recalcitrance as evidenced by its absurd claim that plaintiff did not provide evidence to support its status as a representative of the news media.

Plaintiff has demonstrated that its work goes beyond merely making information available. Plaintiff has demonstrated and supported that it gathers information from a variety of

⁷ The BBG does not dispute and therefore concedes that the submitted evidence demonstrates plaintiff's dissemination of information through various media formats, including its regularly distributed monthly bulletin, and publication of news articles, which dissemination reaches hundreds of thousands of people through plaintiff's network.

sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public. *See Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Plaintiff's work includes regular distribution of monthly bulletins, as well as articles and press releases. *See Center for Public Integrity v. Dep't of Health and Human Services*, 2007 U.S. Dist. LEXIS 56172 (D.D.C. Aug. 3, 2007) (plaintiff's history of publication activities of disseminating articles and reports through newsletter and website and intent to use the information sought in these particular requests "as the basis for several press releases and articles" similar in nature to its previous reports sufficient to demonstrate representative of the news media status).

The FOIA's standards are clear. The BBG's baseless assertions fail to address with any detail and do not dispute in any credible manner plaintiff's detailed presentation, supported by the record, that plaintiff is a representative of the news media for fee purposes of the FOIA. That the BBG advances such bald assertions in the face of such a clear record illustrates its determination to continue its arbitrary and capricious defiance of the FOIA.

C. Plaintiff has Established Its Entitlement to a Public Interest Fee Waiver

Plaintiff has established entitlement to a public interest fee waiver for the information requested. The BBG admits that it is prohibited by law from publishing within the United States. Def's Opp. at 15. The BBG admits that it has identified specific contracts between the agency and specific journalists. Def's Resp. to PSMF at ¶¶ 11, 14, 39 (admitting Board identified contracts by journalist name, contract number and date).

The existence of these contracts is not speculative. The requested contracts are U.S. Government-paid contracts with supposedly *independent journalists*, whose reporting, including

incendiary articles about Cuba and the Cuban Five, is placed before the U.S. audience in Miami, including during the period of the U.S. Government's Miami prosecution of the Cuban Five.

Attachment B to Pl's MSJ, La Riva Decl. at ¶ 27.

The BBG asserts that media coverage overtly published by the Office of Cuba Broadcasting (OCB) would not have been broadcast in Miami, with no evidence of "inadvertent" domestic dissemination, Def's Opp. at 15. While this is not the basis for plaintiff's claims, it is a noteworthy statement because of its outright falsity.

In a January 2009 report, the Government Accountability Office (GAO) found that "both Radio and TV Martí broadcasts reach U.S. audiences in several ways. ... [R]esidents of Miami can watch TV Martí programming on local cable or DirecTV, and anyone can access streaming video and audio from OCB's Internet site." U.S. Gov't Accountability Office, Broadcasting to Cuba: Actions are Needed to Improve Strategy and Operations, at 4 (2009).⁸

In any case, plaintiff is not alleging "inadvertence." Indeed, the public interest lies in uncovering the government's *intentional* and *covert* payment to journalists who publish in the United States to the U.S. public under the guise of the *independent media*.

These are contracts evidencing that U.S.-based journalists were on the government payroll. These are contracts that may well expose grave government malfeasance. The larger universe of requested records reflects a broader search for similar information related to the same

⁸ An electronic version of the GAO's January 2009 Report is accessible at <http://www.gao.gov/new.items/d09127.pdf>.

Radio Martí broadcasts 24 hours per day, seven days a week via shortwave radio across a transmission area that encompasses all of South Florida. *Id.* at 11, Figure 2. It is also broadcast via satellite radio 24 hours a day which directly reaches all of South Florida. *Id.* Satellite radio reports no jamming signals and so directly reaches the public in South Florida one hundred percent of the time - - 24 hours a day, seven days a week. *Id.*

TV Martí is broadcast through satellite TV using two providers, Hispasat satellite and DirecTV. *Id.* at 12, Figure 3. Hispasite satellite is broadcast 24 hours a day and its transmission area encompasses all of South Florida. DirecTV's transmission also encompasses all of South Florida. *Id.* These satellite transmissions report no jamming and so programming directly reaches the public in South Florida one hundred percent of the time - - every time it is broadcast. *Id.*

nature of malfeasance. The BBG has admitted that sanctioned publication to the U.S. public is a violation of law. The public interest in disclosure is clear and established.⁹

III. The Compelling Need for Disclosure and Expedited Processing

This is an issue of ongoing government misconduct to covertly influence U.S. public opinion through the guise of the independent media. Contracts with independent, U.S.-based journalists have already been identified. The BBG cannot allege their nonexistence.¹⁰

Many of the already-identified contracts would evidence payments in the thousands of dollars. *See, gen 'ly*, Ex. 4 to Pl's MSJ, March 11, 2009 Letter and Chart. One journalist was paid \$11,250.00 as late as September 2007 for the services of "Writing, Voicing and Researching." *Id.* at 26 (listing contracts for Ivette Leyva). *See, e.g., Id.* at 16 (two payments, each identified as "purchase order," to Ariel Ramos under Contract # P109-1014 from November 1999 through January 2000 amounting to \$5,200); *Id.* at 11 (two payments, each identified as "purchase order," to Enrique Encinosa under Contract # P109-1071 from December 2000 through February 2001, the first for \$1,200 the second for \$4,000); *Id.* at 5 (six payments, each identified as "purchase order," to Pablo Alfonso under Contract # P109-1023 from October 2000 through February 2001 amounting to \$13,000). These journalists engaged in repeated publications of purportedly independent articles. The articles included many that were highly incendiary, included false information and poisoned domestic public opinion during the prosecution, trial and conviction of the Cuban Five.

⁹ Defendant does not dispute and therefore concedes plaintiff's ability to disseminate the information, nor has it directly disputed (proffering only a blanket quotation of statutory language) that the disclosure is not primarily in plaintiff's commercial interest.

¹⁰ The BBG's assertion that plaintiff advances "baseless" allegations, Def's Opp. at 16, is nonsense. Contracts have been identified. This is not something that is feared may occur at some indefinite time, or a general activity of the government as in the cases cited by the BBG. *See* Def's Opp. at 17. This is intentional and ongoing deception of the public. It is specific and serious government malfeasance in covertly manipulating public opinion.

The BBG asserts that expedited processing is not warranted because the trial of the Cuban Five has concluded. Def's Opp. at 16. However, as above, the petition for *habeas corpus* to be filed on behalf of Gerardo Hernández, sentenced as a result of that prosecution to two life terms plus 15 years, is due on June 14, 2010. This information is directly relevant and indeed essential to exposing whether the U.S Government compromised the fundamental right to a fair trial of the Cuban Five.

The urgency in informing the public is not limited to the time period of the trial.

The payments are not limited to the time period of the arrest and prosecution of the Cuban Five - - even the contracts already identified by the BBG show dates as late as September 2008. *See, e.g.*, Ex. 5 to Pl's MSJ, March 17 Chart (For services contracted through September 2008: Carlos Alberto Montaner paid \$36,050; Roberto Martin Perez paid \$10,800; Ramon Bonachea paid \$19,500; Juan Manuel Cao paid \$50,800). The public is entitled to disclosure about the ongoing funding streams from the U.S. Government to so-called "independent journalists" whose independence is relied upon by the public when considering their articles. These authors have published articles that affect domestic public opinion about public issues involving US – Cuba relations.

The broader universe of related materials is expected to provide greater information, depth and exposure, as well as substance for related editorial analysis and publication.

The public is entitled to know the details as to how the U.S. Government is funding their "independent" reporting. If they are government-paid journalists, the public should be free to explore how that impacts the "independence" of their reporting. If they do constitute a network of journalists whose purpose, or even just effect, is to propagandize domestic public opinion in

