

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

CASE NO. 10-21957-Civ-LENARD
Criminal Case No. 98-721-Cr-LENARD

GERARDO HERNANDEZ,
Movant,

AFFIDAVIT OF GERARDO HERNANDEZ

v.

UNITED STATES,
Respondent.

_____ /

I, Gerardo Hernandez, declare under penalty of perjury as follows:

1. I am the above-named Movant and make this affidavit in support of the motion to vacate, set aside or correct judgement and sentence under 28 U.S.C. 2255, filed on June 14, 2010.

2. At trial I was represented by Paul A. McKenna, a court appointed attorney practicing in Miami, Florida. I had not previously met him. I can't recall if Mr. McKenna and I ever had a conversation prior to trial about severance.

3. What I do recall is that he never explained to me that it would be possible to have a separate trial on Count III at which time I would have the right to testify on my own behalf on the conspiracy to murder charge free of the prejudice to other charges, and to my co-defendants. Had I known that, I would have insisted on exercising my right to testify in my defense in the conspiracy to murder trial to show how wrong the prosecution's interpretations of its evidence were, and provide the jury with the truth.

4. Nor did Mr. McKenna explain to me that at a separate trial, I could secure the testimony of one or more of my co-defendants without their having to choose between incriminating themselves or refusing to give relevant evidence at my trial on the conspiracy to murder charge.

5. What I never understood, because it was never explained to me until now, that under United States law, I could have requested a separate trial on the conspiracy to murder charge alone in order to testify and present evidence pertinent to that count. I had no prior experience in the US court system and was unaware that a severance would have allowed for such presentation. Had I known that, I would have insisted that my lawyer make every effort to secure a separate trial on that count. If Count III were severed and separately tried I would have testified to establish my innocence.

6. Had I known that I could have had a separate trial on Count III, I would have testified at my trial on that count, in essence, as follows:

A. Prior to the events of February 24, 1996, and up to the present time, I knew and know nothing about any alleged plan to shoot down aircraft of the Brothers to the Rescue.

B. None of the actions that I did take in advance of February 24th, 1996, were intended to be part of any such alleged plan, nor was I aware that any of my actions would contribute to any such alleged plan, if it existed.

C. As I knew nothing about any alleged plan to shoot down any aircraft, still less did I intend to contribute to or have any knowledge of, any alleged plan that would cause any aircraft to be shot down in international airspace or in the territorial and maritime jurisdiction of the United States, as alleged in Count III of the indictment.

D. During the time I was on vacation in Cuba from early November 1995 until my return to Miami on the 26th of January, 1996, I received no information from any source about any alleged plan to shoot down aircraft nor any attempt to threaten, warn or militarily confront them but I did know from public statements by the Cuban Government that it would not tolerate new violations of the Cuban sovereignty by BTTR aircrafts, as those which took place on January 9th and 13th, 1996.

E. I would testify that any reference or notation I might have made on a budgetary report that I had received funds “at Headquarters” or “MX” should not be read, as suggested by the Government, that I was ever present at a meeting at the command center.

F. I would have explained to the jury that because I was a covert agent, I was strictly prohibited from entering any establishment connected to the clandestine services, as that could reveal my real job and jeopardize my mission. This was true, even in Cuba, where we knew the United States had counter-intelligence agents.

G. I would have also testified that I was instructed about a plan entitled “Operation Venecia” which was designed to “neutralize the counterrevolutionary actions of BTTR,” developed by the Directorate of Intelligence in early December of 1995. See Appendix B attached to the 2255 Memorandum. Its purpose was to “call attention of the national and international public opinion” to the activities of BTTR in violating Cuban sovereignty and international law by having German (Roque) return to Cuba and make a public denunciation of BTTR.

H. I was instructed to work on assuring his return “at the end of February or beginning of March 1996.”

I. I would have explained that at no time ever, neither during my stay in Cuba nor before, nor after it, was there any mention of any plan to shoot down BTTR aircraft anywhere nor any other form of communication that led me to believe or suspect the existence of such a plan.

At no time did anyone express to me any concern about the activities of BTTR while flying in international airspace. However, there was concern about BTTR’s public announcements that it intended to continue to conduct operations in Cuban airspace in violation of Cuban sovereignty.

J. Had I been given an opportunity to testify, I would have explained to the jury that during my months away from Miami, my work was taken over by another agent, A-4 (known to me only as A-4 or Miguel. I do not know his actual name.). He moved into my apartment in North Miami and I gave him my decoding disk which was imprinted with a program that permitted the user to decode messages to and from Cuba.

We each had our own laptops. I took mine with me when I returned to Cuba. While these laptops, standing alone, could not send and receive messages, they had the capacity to turn a series of numbers that had been received on a high frequency radio and fed into them, into a coherent message, but only with the aid of a floppy disk that contained a decoding program. There was just a single floppy disk in the apartment and I left it with A-4 when I went on vacation.

K. When I returned to my apartment in North Miami, toward the end of January, 1996, A-4 remained and continued to use the decoding disk. As a Major, he outranked me since I was only a lieutenant. For the several months before he left, he had the disk and was sending and receiving messages. The messages were sent in a code that was common to both of us but only A-4 had the capability to decode the messages through the use of the disk at that time. Although I had access to the disk it remained principally in his possession. It wasn't until early March 1996 that A-4 was directed to turn over the decoding program to me.

L. I do not recall ever receiving a message referencing Operation Escorpion. Given the opportunity, I would have testified that I did not write or send the message of February 12, 1996 which was labelled DG104 at trial and which was directed to "Iselin" advising that no agent should fly on BTTR aircraft during the weekend of February 24-27, 1996. I never referred to that agent by that name, but rather used his other code name, "Castor", as shown by many other reports in the evidence. (During the trial the Government contended that "Castor" was Rene Gonzalez). I do not know why my name was added to that document as a signatory. Among the hundreds of reports that were part of the seized documentary materials, this one, to the best of my recollection, was the only one allegedly signed by two officers.

M. I would have wanted to tell the jury that given what I did know about the long history of provocations by BTTR, and how they had been responded to date, any deliberate confrontation outside Cuban territorial airspace was simply something I could not have imagined, in part because I knew the lengths to which the Cuban authorities had gone to avoid any action that might provoke a military response from the United States and its terrible consequences. The idea that Cuba would elaborate a plan to confront those planes on international waters was to me –and still is- absurd and irrational.

N. I would have explained that there was no reasonable basis to believe that either Roque or Castor had the possibility of flying with BTTR that weekend. Roque could not have flown with BTTR that week-end as he would have already been on his way back to Cuba by then, while Castor had not flown with BTTR in over a year, and was no longer listed as a BTTR pilot.

O. In any event, I would have provided the jury with the facts that would have contradicted the prosecutor's argument that I somehow signalled Havana that neither one would be flying and that this action enabled the shoot down to occur. At a severed trial on Count III, I would have testified that I had never written or communicated in any manner that Roque and Castor would not be flying that weekend, or that they had been warned not to.

P. Operation Venecia was a major effort by the Directorate of Intelligence to denounce the BTTR organization both domestically and internationally for their unlawful violations of Cuban sovereignty with the intention of bringing about a halt to their continuing violation of Cuban airspace. Had I been able to testify, I would have explained that that project involved much more than the mere return of an agent (Roque) to Cuba, as portrayed at trial.

My assignment to work in extricating him from Miami was complicated. Roque was a Cuban MIG pilot who defected from Cuba to the United States. He was immediately acclaimed as a hero in Miami. A book he wrote about his exploits was published by the Cuban American National Foundation and distributed widely. He was sought after by community groups and organizations in Miami as a speaker.

He was therefore a public figure. He was also a married man whose disappearance would be noticed immediately. Moreover, we suspected he might have already come under counter-intelligence surveillance. Working with him, meeting him and arranging his return, exposed me and others to detection. Extricating him from Miami and returning him to Cuba demanded a considerable effort, requiring me to focus my attention and resources to the utmost in order to assure his successful departure and travel through a third country. I was also given risky last minute assignments, such as video-recording him leaving the CANF offices in Miami.

Q. Roque's return to Cuba and press conference achieved significant results. He released the names and phone numbers of the FBI agents he encountered, as well as photographs and other materials that demonstrated his deep involvement in the Miami community and civic organizations. But most important were his revelations regarding the criminal nature of the BTTR and its plans to carry out terrorist activities against the Cuban people. These revelations were, of course, overshadowed by the tragic events of February 24.

AA. The intercepted high frequency messages, introduced at trial, revealed that I was recognized and received special commendation from headquarters for my work on Operation Venecia, an operation which was considered successful and received special attention from the Commander in Chief who met twice with Roque. At no time was I given such commendation for Operation Escorpion.

BB. Much was made of my having responded to the commendation by referring to our work as having "ended successfully" which was interpreted as if I was writing about the shoot down rather than Operation Venecia. Nothing could be further from the truth. As I mentioned, it is very clear from the specific wording and context that I was being recognized for my work in Operation Venecia.

CC. I also wanted to testify to correct the misinterpretation of the language in that commendation that spoke of my work in dealing with the "provocations carried out by the

government of the United States this past February 24 ,” as if that was a reference to the alleged plan to shoot down BTTR aircrafts. In fact, it was a reference to my efforts in the aftermath of the shoot down to determine on that day, and for a few days thereafter, whether the public clamour in Miami for a possible attack on Cuba, as well as the provocative public statements from some within the U.S. Government, signalled a real threat against my country

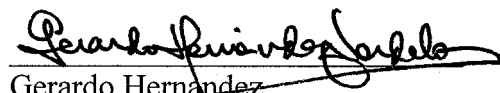
DD. Immediately after the events of February 24, I worked for several days, practically without sleep, collecting information, monitoring TV, listening to the radio and reading many newspapers. Fortunately, the United States did not respond militarily, but I was recognized for having helped determine if a potentially dangerous situation was unfolding.


EE. Finally, the government distorted the reasons for my promotion to Captain on June 6th. 1996, arguing that my alleged work on the shoot down earned me my promotion. Had I been able to testify, I could have explained that in fact, by that time, I had been in grade as a lieutenant for four years, and was promoted on the anniversary date of the founding of the Ministry of the Interior, together with all other lieutenants who had served for four years without blemish, including Nilo Hernandez, a co-defendant who had nothing to do with Escorpion but who had also served four years. In Cuba it is the period of service that qualifies one for promotion and I received my promotion on that basis alone.

I recognize that testifying at trial would mean also submitting myself to cross examination. Given my innocence of the charges in Count III, I would have been entirely willing to do so at a separate trial on those charges.

I came to Florida in service to my country, unarmed, to contribute to end violence against my people and therefore to save lives. That I would be charged with a conspiracy to murder was the furthest thing from my thinking and reality. It is my hope that this writing assists the Court in its efforts to find the truth and restore justice.

Pursuant to the oath requirements of 28 U.S.C. § 1746, I have made the above affidavit, swearing to its truth under penalties of perjury this 16 day of March, 2011.


Gerardo Hernandez


MIKE ADAMS, CASE MANAGER
"AUTHORIZED BY THE ACT OF
JULY 27, 1955 TO ADMINISTER
OATHS (18 USC 4004)" 3/16/11