

IN THE
Supreme Court of the United States

RUBEN CAMPA, RENE GONZALEZ, ANTONIO GUERRERO,
GERARDO HERNANDEZ, AND LUIS MENDINA,
PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

**BRIEF OF AMICI CURIAE
INTERNATIONAL ASSOCIATION OF DEMOCRATIC
LAWYERS, AMERICAN ASSOCIATION OF JURISTS,
INDIAN ASSOCIATION OF LAWYERS, DROIT
SOLIDARITE, THE HALDANE SOCIETY, ITALIAN
ASSOCIATION OF DEMOCRATIC LAWYERS,
JAPANESE LAWYERS INTERNATIONAL
SOLIDARITY ASSOCIATION, THE NATIONAL
UNION OF PEOPLES' LAWYERS OF THE
PHILIPPINES, PORTUGUESE ASSOCIATION OF
DEMOCRATIC LAWYERS, AND PROGRESS
LAWYERS NETWORK OF BELGIUM
IN SUPPORT OF PETITIONERS**

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STATEMENTS OF INTEREST

Amici are organizations of lawyers and jurists throughout the world who have been watching this case with great concern for many years. Amici know that Miami is home to a very large Cuban exile population. This population supports many political and paramilitary groups dedicated to the overthrow of the Castro government. This Court and the international community have long recognized that criminal defendants have the right to a fair trial by an impartial fact finder. Amici submit this amicus brief to inform this court of the international concurrence with the Defendants' claims in their petition that they did not get a fair trial in Miami, and to underscore that Petitioners have stated important reasons for this Court to grant the writ .

All of the parties have consented in writing to the filing of this brief.¹

International Association of Democratic Lawyers: The International Association of Democratic Lawyers (IADL) is an international organization of lawyers and jurists with member associations and individual members in over 90 countries. IADL has consultative status in the United Nations, at Economic and Social Council of the United Nations, (ECOSOC), the United Nations Educational Scientific and Cultural Organization (UNESCO), and the United Nations

¹Pursuant to Rule 37.6 of the Court, no counsel for a party has authored this brief, in whole or in part. No person or entity other than amici curiae, or its counsel have made any monetary contribution to the preparation or submission of this brief.

Childrens Emergency Fund (UNICEF). IADL was founded in 1946 by a large group of lawyers, many of whom served as prosecutors at the Nuremberg trials. The first President of IADL was Rene Cassin, the French jurist who is a main author of the Universal Declaration of Human Rights, (UDHR) whose 60th Anniversary was celebrated last year.² IADL's request to participate as amicus is consistent with its purposes. IADL members throughout the world, were greatly distressed that the Court did not grant the motion to change venue requiring the case to be tried in Miami. The record in the case shows these groups were well known, and their activities widely publicized in the Miami media. Many of their activities are referenced in the initial 11th Circuit panel decision and in the dissent in the en banc decision and are not contested by the government, or the majority in the en banc decision. The evidence provided to the court showed their influence on the Miami community was immense. IADL is concerned that the lower courts refused to properly weigh the evidence of prejudice in determining whether to change venue. IADL filed an amicus brief in the Court of Appeals claiming, as here, that the defendants were denied a fair trial in Miami. IADL's interest in seeking to uphold the right to trial by impartial jurors motivates the organization to participate as amicus in support of the Petitioners request that the Writ of Certiorari be granted.

American Association of Jurists: The American Association of Jurists (Asociación Americana de Juristas), "AAJ", is an international, non-governmental organization of lawyers and jurists,

²For further information on IADL see Appendix I.

founded in Panama in 1975. Since 1989 AAJ has had consultative status with the Economic and Social Council of the United Nations. AAJ also has permanent representatives at the United Nations headquarters in New York and Geneva.³ AAJ has duly constituted national chapters and affiliates in Argentina, Brazil, Bolivia, Canada, Chile, Costa Rica, Cuba, Ecuador, El Salvador, Peru, Dominican Republic, Paraguay, Puerto Rico and Venezuela, as well as individual associates or coordinating committees in the United States, Panama, Colombia, Martinique, Mexico and Haiti. AAJ is a regional affiliate of IADL. Since its founding AAJ has organized many activities in the American Continent and issued statements, on behalf of itself and its chapter affiliates consistent with its objectives, among them, defending and advocating for the right to due process and an impartial and fair trial. AAJ has been following this case with great concern since its commencement in the United States District Court for the Southern District of Florida. Furthermore, AAJ sent an observer mission to the hearing before the Court of Appeals for the Eleventh Circuit on August 20, 2007, which included former Justice Juan Tapia Guzman of Chile, William Sloan of Canada and Vanessa Ramos, President of AAJ. AAJ has issued statements expressing concern about the failure to provide defendants with a fair trial and an impartial jury, as well as denying defendants a change of venue. It is for these reasons that AAJ seeks to express its views to this court by participating as an amicus in support of the Petition for Certiorari.

³ For further information on AAJ see Appendix I.

The Indian Association of Lawyers: The Indian Association of Lawyers (IAL) was founded in 1968, and is one of the leading organizations of lawyers in India with a membership of over 100,000 throughout the country. Its membership is open to lawyers, judges, law teachers, researchers and law students. IAL has since been active in various fields in India. IAL is affiliated to the International Association of Democratic Lawyers [IADL] and takes keen interest in its activities. IAL, in cooperation with IADL, has organized eight international lawyers Conferences in India on the issues of human rights, the fight against terrorism, peace and development. IAL has been keenly following the case of the five Cuban defendants who were tried in Miami. IAL supported the call for change of venue on the ground that they did not receive a fair trial in Miami in such an atmosphere. We join and support the amicus brief that is being filed by the International Association of Democratic Lawyers on the issue of improper venue.

Droit Solidarité: Droit Solidarité (DS) is a French non governmental organization of lawyers, jurists, law teachers and students. DS was founded in 1990 and has over 300 members. (DS) is a member of the International Association of Democratic Lawyers (IADL).⁴ DS has a policy of sending French lawyers to attend (as observers) trials where human rights, including the right to fair and equitable legal treatment, are at stake. Prior to the present application, DS has organized public events, seminars and round tables dedicated to the analysis of this case. A major event was a conference hosted in the Senate of

⁴For further information on Droit Solidarite see Appendix I.

the French Republic, Palais de Luxembourg in Paris on April 19, 2008. Defendant Guerrero's lawyer, and family members of these five defendants, journalists, as well as representatives of several human rights and lawyers' associations from America, Africa and European Union participated. This event was attended by senators, lawyers, academics, political scientists, law students and representatives of civil society. At this event DS noted that the United Nations Working Group on Arbitrary Detentions Opinion n°19/2005 found: "The (US) Government did not deny the fact that (...) the biased climate and preconceived sentiments against the defendants has persisted in Miami and contributed to the defendants being considered guilty from the beginning (...) and that Miami was not the appropriate venue to organize a trial as it was knowingly almost impossible to select impartial jurors in a case involving Cuba (...)

The Haldane Society: The Haldane Society was founded in 1930 and named for Viscount Haldane, the first Lord Chancellor appointed by the first British Labour Government. Its members comprise practicing barristers and solicitors, law professors, students and legal workers and past members include numerous senior judges and government ministers.⁵ The Haldane Society affiliated to the International Association of Democratic Lawyers (IADL) in 1947 and throughout the past six decades Haldane's members have participated in and contributed to many of the IADL's conferences, seminars, missions and publications. Several Haldane members have worked in recent years in the United States, notably on death penalty and

⁵ For further information on the Haldane Society, see Appendix I.

prisoners' rights issues as well as on issues of torture, inhuman and degrading treatment arising out of the Guantánamo Bay Detention Center. Some members of Haldane were present in the United States during the Elian Gonzales controversy and have reported on the violently hostile and emotive atmosphere prevailing in Miami precisely at the moment when the accused in the instant case first came to trial. On the facts alleged by counsel for the accused, Haldane respectfully finds it hard to imagine a case more demanding and necessitating a change of trial venue than the instant case. For these reasons Haldane seeks to participate as amicus in support of the petition for certiorari.

Italian Association of Democratic Lawyers: The Italian Association of Democratic Lawyers, was founded in 2000 and has 500 members who work as barristers, judges and law professors in 20 provinces of Italy.⁶ Since its founding the Association has organized many conferences, meetings and activities in support of human rights, democracy and the rule of law in Italy, Europe and the rest of the world. As lawyers it must be a concern that the influence of the Cuban community of Miami was a determining issue in the trial. The Italian Association is affiliated with the IADL. The Association has been following this case since 2004. An observer from the Association has attended the hearings in the Court of Appeals, and supported the conference in Paris in April of 2008.

Japanese Lawyers International Solidarity Association: The Japanese Lawyers International

⁶For further information on the Italian Association of Lawyers, see Appendix I.

Solidarity Association (JALISA), was founded in 1955 and has branches throughout Japan. JALISA is affiliated with the International Association of Democratic Lawyers and has been an active member of the organization. While JALISA's main activities have been to help rid the world of nuclear weapons and to promote peace, the organization is very active in supporting human rights and all the goals of the United Nations Charter.⁷ JALISA has been following the case of these defendants for many years and has issued statements indicating concern about the fairness of the trial in Miami. JALISA publishes a journal known as "Inter Jurist" in which the organization has expressed its concern about whether these defendants received a fair trial.

The National Union of Peoples' Lawyers (NUPL) of the Philippines: The NUPL was founded on 15 September 2007 as a nationwide association of human rights lawyers in the Philippines.⁸ The fourth point of the NUPL General Program of Action states that NUPL shall campaign, advocate and lobby for the liberties, freedoms and rights of the Filipino people as well as those of other peoples of the world". With this vision, the NUPL became an active member of the International Association of Democratic Lawyers (IADL). The NUPL hereby submits that the Honorable Court can take judicial notice of the fact that Miami, Florida is home to a great number of Cuban exiles hostile to Fidel Castro, the Cuban government, and its supporters. The fact that the these Defendant's

⁷For further information on the Japanese Lawyers International Solidarity Association, see Appendix I.

⁸For further information on NUPL, see Appendix I.

are agents of the Cuban government is glaring enough to make them easy prey for anyone vindictive to the Cuban government. Hence, Miami, Florida is the least likely of places where the these defendants may secure an independent and impartial trial, thus the great need for a change of venue and new trial of their case.

Portuguese Association of Democratic Lawyers: The Portuguese Association of Democratic Lawyers (APJD) was founded in the 10th of December 1948, the date of the enactment of the Universal Declaration of Human Rights. The Association is affiliated with IADL.⁹ APJD had to operate in a clandestine fashion from its founding until April 1974 when democracy was restored in Portugal. In light of this history, APJD knows how important the right to a fair trial by an impartial tribunal is in a democratic society. It is known world wide that Miami is the center of activity for many groups which seek to attack Cuba and oust its government and that these groups have significant influence in Miami.

Progress Lawyers Network based in Belgium: Progress Lawyers Network (PLN) was founded in 2003 as a network of progressive lawyer's offices in Brussels, Antwerp and Ghent. PLN has since then brought together many lawyers, jurists, university staff and human rights activists in Belgium as well as abroad.¹⁰ PLN shares the concern of the Petitioners that Miami was not the right place for their trial. PLN believes that the well known hostility of the powerful Cuban exile community in Miami made a fair

⁹For further information on the APJD, see Appendix I.

¹⁰For further information on the PLN, see Appendix I.

trial impossible for petitioners as agents from Cuba who were trying to stop the attacks from the very groups which were responsible for planning and carrying out hostile terrorist acts against Cuba. This case is one instance when the international community can see clearly what the court in Miami did not recognize, which is holding a trial of persons sympathetic to Cuba in Miami, will deny them a fair trial.

BRIEF OF AMICI CURIAE

I. Introduction:

Amici file this brief to urge this Court to grant the writ of certiorari to review and overturn the convictions of these defendants. The Petition for Certiorari argues, that the defendants were denied a fair trial, in part, because the District Court repeatedly denied the defense motions to change venue to the contiguous City of Fort Lauderdale which did not possess the prejudices which existed in Miami both through community prejudice and pretrial publicity. The Petition claims that the District Court and the Court of Appeals imposed standards for changing venue inimical to the right to a trial by an impartial jury, and applied the incorrect standard of review on appeal. Amici argue herein that the Petitioners' have identified significant errors in the decisions below on the venue issue such that this Court should grant the writ.

Amici, the International Association of Democratic Lawyers, the American Association of Jurists, the Indian Association of Lawyers, Droite

Solidarite, the Haldane Society, Italian Association of Democratic Lawyers, the Japanese Lawyers International Solidarity Association, the Portuguese Association of Democratic Lawyers, the National Union of Peoples' Lawyers, and the Progress Lawyers Network are organizations of lawyers and jurists which have in common the goal of promoting and securing human rights around the world. Amici support the petition for the Writ of Certiorari and provide the arguments below for this Court's consideration.

II. The Right to Trial By Impartial Fact Finders is A Universally Recognized Right

The impartiality principle is a universal principle. It is enshrined in the Sixth Amendment to the Bill of Rights and provides defendants with the right to have their cases heard by an **impartial** jury.

The impartiality principle is enshrined in other international instruments, many of which have been signed and/or ratified by the United States.

Article 10 of the Universal Declaration of Human Rights states: "Everyone is entitled in full equality to a fair and public hearing by an independent and **impartial** tribunal, in the determination of his rights and obligations and of any criminal charge against him."

Article XXVI section 2 of the American Declaration on the Rights and Duties of Man, states: Every person accused of an offense has the right to be given an **impartial** and public hearing, and to be tried by courts previously established in accordance with

pre-existing laws, and not to receive cruel, infamous or unusual punishment.

Article 14, sub-section 1.1 of the International Covenant for Civil and Political Rights states: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and **impartial** tribunal established by law.

In addition to the international instruments which the United States has signed and/or ratified, Article 6 subsection 1 of the European Convention on Human Rights states: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and **impartial** tribunal established by law.”

Similarly, Article 7, section 1.1 of the African Charter on Human and People’s Rights states:

“Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried

within a reasonable time by an **impartial** court or tribunal.”

There is no more settled rule in the United States Constitution than the principle that due process requires that every defendant be given a fair trial. This principle is further embodied in the Constitution's requirement that **every juror must be impartial**. It is a violation of the Due Process Clause made applicable to the states through the Fourteenth Amendment that a biased juror should not and cannot serve on a jury in a civil or criminal case. In *Irvin v Dowd*, 366 U.S. 717, 721-23 (1961), this court stated:

“In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, ‘indifferent’ jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process. ‘A fair trial in a fair tribunal is a basic requirement of due process.’ (Citations omitted).”

See also, *Virgil v Dretke*, 446 F.3d 598, (5th Cir. 2006), wherein the Court stated:

“We are also mindful that certain errors in the trial process are so basic to a fair trial as to defy harmless error review. It is clearly established that the Supreme Court views the denial of the right to an impartial decision maker to be such an error that taints any resulting conviction with constitutional infirmity.”

III. Venue Requirements in the Constitution Were Never Meant to Diminish The Right of the Accused to An Impartial Jury

The Constitution and the Sixth Amendment contain venue provisions as follows: Article III section 2, clause 3 requires that “[T]he Trial of all Crimes, except in Cases of Impeachment, shall be . . . held in the State where the said Crimes shall have been committed.” The Sixth Amendment guarantees a federal criminal defendant both the right to be tried by an impartial jury and the right to a trial in the State and district where the crime was committed.

The history of these provisions shows that they were meant to **protect criminal defendants**. The venue provision in Article III was not initially controversial because it was “a response to the English practice of the 1760's and 1770's of transporting colonists to another colony or England for trial.” This practice had been protested as denying the colonists a fair trial by preventing the person from presenting an adequate defense, or allowing the British government to find juries sympathetic to its position.¹¹ See, Scott Kafker, “The Right of Venue and the Right of Impartial Jury: Resolving the Conflict in the Federal Constitution,” 52 U.of Chi. Law Rev. 729 (1985).

The venue language therefore was designed to enhance a defendant’s right to a fair trial not to be used

¹¹The author of this comment primarily addressed the issue of whether the right to seek a change of venue resided only with the defendant, allowing defendants not to make a motion to change venue, and seek dismissal of the case because an impartial jury could not be found in the district.

as a barrier to changing venue, where there is a reasonable likelihood that an impartial jury cannot be impaneled in that venue. The venue provisions were never meant to trump the impartiality principle.¹² The Petitioners’ have articulated the proper standards for motions for change of venue and standard of review of such rulings.

IV. The Lower Courts’ Failure to Change Venue Undermined The Universal Impartiality Principle

When reading the protective nature of the venue provisions of the Constitution in conjunction with the primacy of the impartiality principle, Courts in general (and in this case in particular) are required to review requests for change of venue in order to **give maximum effect to the impartiality principle**. This means courts must consider factors which impact the impartiality principle in addition to direct evidence of specific prejudice against specific defendants. In this case the District Court made no findings of fact with respect to the evidence submitted by defendants regarding the prejudice of the Miami community against anyone associated with the Cuban government. The majority in the en banc decision refused to consider any evidence of prejudice which did not relate to these specific defendants. That is, the majority in the en banc decision refused to include in its determination of whether the defendants could receive a fair trial in Miami: (1) the evidence presented of the strength, of the extremist paramilitary groups in Miami, and the pervasive hostility they and their political supporters

¹²This is especially true in this case given that the change of venue was to a different city within the same judicial district.

had generated in Miami toward anyone supportive of the Cuban government, and (2) the inflamed passions against those supporting Cuba generated by both the shoot downs and the Elian Gonzalez matter. As noted further below, the majority opinion in the en banc decision on venue, applied an incorrect standard in evaluating the prejudice issue and, in so doing, undermined the impartiality principle.

V. The Lower Court's Should Have Changed Venue:

The lawyers for the defendants submitted significant evidence to support their initial change of venue motion as well as their ongoing renewals of the motion and post trial motion for a new trial. The evidence was not only related to pre-trial publicity, but also the tenor of the publicity.¹³ The defendants also

¹³ George Gedda, **Federal Officials Say 10 Arrested, Accused of Spying For Cuba**, Miami Herald, Sept. 14, 1998, 165a; Manny Garcia, Cynthia Corzo, Ivonne Perez, **Spies Among Us: Suspects Attempt To Blend In, Miami**, Miami Herald, Sept. 15, 1998; David Lyons, Carol Rosenberg, **Spies Among Us: U.S. Cracks Alleged Cuban Ring, Arrests 10**, Miami Herald, Sept. 15, 1998; Fabiola Santiago, **Big News Saddens, Angers Exile Community**, Miami Herald, Sept. 15, 1998; Juan O. Tamayo, **Arrest of Spy Suspects May Be Switch In Tactics**, Miami Herald, Sept. 15, 1998; Javier Lyonnet, Olance Noguerras, **Cae Red de Espionaje de Cuba /FBI Viro al Reves Casa de Supuesto Cabecilla** and Pablo Alfons, Rui Ferreira, **Cae Red de Espionaje de Cuba/Arrestan a 10 en Miami**, Nuevo Herald, Sept. 15, 1998; **La Habana Contra El Pentagono ("Havana versus the Pentagon")/Estructura de la Red de Espionaje**, Nuevo Herald, Sept. 15, 1998; **Arrest of alleged Cuban spies demands vigorous prosecution**, Sun-Sentinal, Sept. 16, 1998; Juan O. Tamayo, **Miscues Blamed on Military's Takeover of Cuban Spy Agency**, Miami Herald, Sept. 17, 1998; David Kidwell, **Motion**

provided community surveys¹⁴ and instances during the trial when defendants continued to hold demonstrations and press conferences as a way of pressuring the jury.¹⁵

Could Delay Trials of Alleged 10 Cuban Spies, Miami Herald, Oct. 6, 1998; David Lyons, **Cuban Couple Pleads Guilty in Spying Case**, Miami Herald, Oct. 8, 1998; David Kidwell, **Three More Accused Spies Agree To Plead Guilty**, Miami Herald, Oct. 9, 1998; Carol Rosenberg, **Couple Admits Role in Cuban Spy Ring**, Miami Herald, Oct. 22, 1998; Juan O. Tamayo, **U.S.-Cuba Spy Agency Contacts Began A Decade Ago**, Miami Herald, Oct. 31, 1998; David Kidwell, **U.S. Tries To Tie Espionage Case To Planes' Downing**, Miami Herald, Nov. 13, 1998, 166a; Carol Rosenberg, **Identities of 3 Alleged Spies Still Unknown**, Nov. 14, 1998; Juan O. Tamayo, **Spies Among Us/Castro Agents Keep Eye on Exiles**, Miami Herald, Apr. 11, 1999; Carol Rosenberg, **Shadowing of Cubans A Classic Spy Tale**, Miami Herald, Apr. 16, 1999; **Cuban Spy Indictment/Charges Filed In Downing of Exile Fliers/The Brothers to the Rescue Shootdown**: David Lyons, **Castro Agent In Miami Cited By U.S. Grand Jury**, Juan O. Tamayo, **Brothers to the Rescue Shootdown/Top Spy Planned Brothers Ambush**, and Elaine de Valle, **Relatives: Charges Fall Short**, Miami Herald, May 8, 1999; **Confessed Cuban Spy Receives Seven Years**, Miami Herald, Jan. 29, 2000; **Contrite Cuban Spy Couple Sentenced, Miami Herald, Feb. 3, 2000**; **Miami Spy-Hunting**, Miami Herald, Feb. 19, 2000; Carol Rosenberg, **Confessed Cuban Spies Sentenced To Seven Years**, Miami Herald, Feb. 24, 2000; **Terrorism Must Not Win In Brothers to the Rescue Shootdown**, Miami Herald, Feb. 24, 2000; **Brothers Pilots Remembered** (photo), Miami Herald, Feb. 25, 2000; **Shot-down Brothers Remembered**, Miami Herald, Feb. 25, 2000, 167a.

¹⁴ See 298a -300a which states in pertinent part: "The motion for new trial was also supported by a public opinion survey conducted by legal psychologist Dr. Kendra Brennan and a study by Florida International University's Professor of Sociology and Director of the Cuban Research Institute Dr. Lisandro Pérez. By affidavit, Dr. Brennan characterized the results of a poll of Miami Cuban-Americans as reflecting "an attitude of a state of war ... against Cuba." She reviewed Moran's survey (which the District Judge

The voir dire of the jurors and potential jurors shows that many of these jurors were not only hostile to the regime in Cuba, but some expressed concern for their personal safety or livelihood if they voted to acquit these defendants. The jury selection began with 168 prospective jurors. 86 jurors were immediately dismissed for reasons language, hardship, illness or availability. Of the 82 remaining jurors, 32 of them openly stated negative opinions of Cuba, Castro, and Communism or questioned their ability to be fair and

had criticized) and stated that it “accurately reflects profound existing bias against those associated with the Cuban government in Miami [-]Dade County” where “[p]otential jurors ... would be impervious to traditional methods of detecting and curing bias through voir dire and court instruction.” Brennan determined that, although 49.7 percent of the local Cuban population strongly favored direct United States military action to overthrow the Castro regime, only 26 percent of the local non-Cuban population and 8.1 percent of the national population favored such action. Similarly, 55.8 percent of the local Cuban population strongly favored military action by the exile community to overthrow the Cuban government but only 27.6 percent of the local non-Cuban population and 5.8 percent of the national population favored such action. She concluded that there was “an attitude of a state of war between the local Cuban community against Cuba” which had “spilled over to the rest of the community” and had a “substantial impact on the rest of the Miami-Dade community.” She found that the documented community bias showed a “deeply entrenched body of opinions [so entrenched as to often not be consciously held] that would hinder any jury in Miami-Dade County from reaching a fair and impartial decision in this case.” Dr. Pérez 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 ... even if the jury were composed entirely of non-Cubans, as it was in this case. His conclusion was based on a number of factors, including the demographics of the area and the cohesiveness, political impact, interests, and emotional concerns of the Cuban community.

¹⁵See, 200a-201, and 260a

impartial because of the possible reactions of the Cuban community in Miami or for fear of their or their families safety, or had personal contact with the victims and/or victims families, or had bias about the case from media reports (representing 40% of the potential jurors). For example, Peggy Beltran would not believe any testimony from any admitted Cuban Spy witnesses; David Cuervas said: “I will be little nervous and have some fear...for my own safety if I didn’t come back with a verdict that was in agreement with the Cuban community at large”, 247a; James E Howe Jr. believed that the Cuban government is an oppressive regime that needs to be overturned; Jess Lawhorn, Jr. was concerned about his ability to do his job because of the Miami Cuban community’s public opinion; Luis Mazza did not like Cuban government and would not believe the defendant’s testimony, 248a; Jenine Silverman stated that “Castro is a dictator”; Jose Teijeiro stated that Cuba was a “very bad government”; Belkis Briceno-Simmons did not believe in Cuban system of government; Ilena Briganti said “it would be difficult” to be fair; David Buker, who was not only a juror, but the foreperson of the jury, believed that Castro is a communist dictator, Mr. Buker was opposed to communism and he would like to see democracy established in Cuba, 249a; Haydee Duarte saw Castro as a dictator; Maria Gonzalez did not approve of the Cuban regime and was against communism Rosa Hernandez: believed the Cuban government was oppressive, 250a; Susan Kuk: believed it would be difficult to be fair and she also had personal contact with victims families; Lilliam Lopez was against the Republic of Cuba and didn’t like communism; John McGlamery did not have a favorable view of Cuba, 251a; Hans Morgenstern had an obvious mistrust of

those affiliated with Cuban government and was concerned about returning a not-guilty verdict, 252a; Angel De La O could not make a fair judgment and was concerned about the welfare of his family in Cuba; Connie Palmer believed Castro is a bad person and she knew a passenger on Basulto's plane for 8 years, 253a; Joseph Paolercio was not happy with US-Cuban relations and had negative views of the Miami Cuban community; Barbara Pareira was worried about a verdict because of the Miami Cuban community and she had many close Cuban friends, 254a; Sonia Portalatin was against communism and had strong opinions about the Cuban government; Eugene Yagle had negative opinions about the Cuban government; John Gomez remembered Brothers to the Rescue and had heard someone in the group was a spy, 255a; Luis Hernandez might not believe a witness who was a Cuban communist; Florentina McCain knew that airplanes were shot down and memorials took place; Michelle Peterson was concerned about a verdict and its impact on the Miami Cuban community, 256a; Jessica de Arcos had personal contact with victims and/or families; Daniel Fernandez had personal contact with victims and/or families; Tim Healy had personal contact with victims and/or families; Caroline Rodriguez had personal contact with victims and/or families, 257a; Plancencia knew many of the named witnesses, 258a.

The convergence of the Elian Gonzalez controversy at the time of the trial exposed an outraged and militant Cuban exile community. Its actions required armed intervention by the INS to support the return of Elian Gonzalez to his father in Cuba. This lingering effects of the Elian Gonzalez affair led the government in the *Ramirez* case to seek a change of

venue when charged with discrimination by a Cuban American based on its claim it could not get a fair trial in Miami.¹⁶

The attorneys for the five were accused of being agents of the Cuban government and the government in closing arguments made exceedingly inflammatory statements regarding the impact on the US of acquitting the defendants.¹⁷ The first panel of the Court of Appeals which considered the evidence found the convergence of the above listed facts created a "perfect storm" which deprived these petitioners of a fair trial to in Miami. The en banc decision is striking for its failure to even acknowledge the record showing lack of partiality compiled by the original panel in its original ruling. It defies logic for a court, as the majority in the en banc decision holds, that pretrial publicity on issues related directly to the defendants is

¹⁶In *Ramirez v. Ashcroft*, No. 01-4835-Civ-Huck (S.D.Fla.) the government filed its change of venue motion on 25 June 2002. In the Ramirez motion, the government argued: "the Elian Gonzalez matter was an incident which highly aroused the passions of the community and resulted in numerous demonstrations. The government requested "a change in the location/venue" "outside of Miami Dade County to ensure that the Defendant ... receive a fair and impartial trial on the merits of the case." They noted that, "[w]hile not requested," the court also had the discretion to transfer the trial to another judicial district. The government orally argued that there were no incidents "since 1985 that so polarized the community or that so affected every individual in the community as the Elian Gonzalez affair." 202a-203a

¹⁷During closing arguments, the government made a number of comments to which the defendants objected. For example, is was stated that "the Cuban government" had a "huge" stake in the outcome of the case and that the jurors would be abandoning their community unless they convicted the "Cuban sp[ies] sent to ... destroy the United States." 198a.

the only information that the court will consider in assessing claims of presumed prejudice.

It is difficult to imagine a case where granting a change of venue motion was more appropriate and where this court's intervention is most required if the United States is going to honor its commitment to having impartial fact finders decide cases. Thus, this case presents a bell-whether test of United States' judicial system. The political overtones of this case are unmistakable given the lack of relations between the United States and Cuba, influenced to large degree by the power of the exile community in Miami.

Amici as members of the international community of jurists and lawyers were struck by the U.S. government's continued insistence on the Miami venue even after significant evidence was presented which should have demonstrated difficulties in fielding an impartial jury in Miami. The government's push for en banc review reveals the stark reality that the government knew, especially with respect to the conspiracy to commit murder charge, that the only possible way to obtain a conviction of these individuals was to keep the case in Miami. Unfortunately, it appears that the Justice Department needed to keep its proverbial finger on the scales to tip the balance in their favor, and in so doing engage in jury shopping rather than uphold the principle of impartiality. In this way the universal principal of impartiality was not upheld. This Court has the opportunity to correct this error.

CONCLUSION

For the foregoing reasons, Amici ask this court to grant the writ of certiorari.

Respectfully submitted,

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APPENDIX I**FURTHER DESCRIPTIONS OF THE AMICI IN SUPPORT OF THEIR STATEMENTS OF INTEREST****International Association of Democratic Lawyers:**

IADL's purposes include:

To facilitate contact and exchanges of views among lawyers and lawyers associations of all countries to foster understanding and goodwill among them.

To work together to achieve the aims set out in the Charter of the United Nations.

To ensure common action by lawyers:

In the realm of law, the study and practice of the principles of democracy to encourage the maintenance of peace and cooperation among nations.

To restore, defend and develop democratic rights and liberties in legislation and in practice.

To promote the independence of all peoples and to oppose any restriction on this independence whether in law or in practice.

To defend and promote human and peoples' rights.

To promote the preservation of ecology and healthy environments.

To struggle for strict adherence to the rule of law and the independence of the judiciary and legal profession.

To defend peoples' rights to development and for conditions of economic equality and the enjoyment of the fruits of scientific progress and natural resources.

American Association of Jurists:

The principles and objectives of AAJ are defined in Chapter 1, Art. 2 of its Statutes, which read as follows:

The principles and objectives of the American Association of Jurists are: a) self-determination of peoples, and full economic independence and the sovereignty of the State over its wealth and natural resources; b) to oppose imperialism, fascism, colonialism and neocolonialism, oppose racism and discrimination against women, indigenous peoples and national minorities; c) the defense of real peace based on the principles of peaceful co-existence between States of different social and economic systems; d) to defend and promote human rights, and the realization of better and more effective guarantees for their protection; e) to denounce and oppose repressive legislation in American States which contradicts and deviates from principles and objectives of the Association; f) to establish fraternal relations and common actions with jurists and their organizations throughout the world committed to objectives similar to those stated in our Statutes; g) to mobilize jurists of the American countries to develop joint actions to ensure the active involvement of the juridical science in the process of social and economic changes in their respective countries, which are consistent with the principles and objectives enumerated herein; h) the defense and protection of the legal profession as well as solidarity with jurists who are persecuted because their activity in abiding by the principles herein set forth.

Droit Solitarite

Purposes of Droit Solidarite (DS)

As IADL , DS has as its purposes: bringing lawyers, judges, jurists, and law teachers together to work in order to achieve the aims set out in the United Nations Charter, as well as ensuring common action by lawyers in order to defend and promote human and peoples' rights, to struggle for strict adherence to the rule of law and independence of judiciary and legal profession as well as to encourage in the realm of law the study and practice of the principles of democracy making for the maintenance of peace and cooperation between nations. (DS) watches the way fundamental legal documents such as the 1948 Universal Human Rights Declaration and the 1966 International Covenant on Civil and Political Rights (ICCPR) are implemented whether in France or abroad.

Haldane Society

Purposes and activities of the Haldane Society:

For over 75 years, the Haldane Society has been committed to the advancement of human rights and the rule of law, both domestically and internationally. It has provided consultative papers to governments and organises numerous conferences and lectures on issues including but not limited to international human rights law, employment issues, immigration and asylum, rights of criminal defendants, access to justice, equality and gender rights, housing law and environmental concerns. The Haldane Society has sent many fact-finding missions to countries around the world to observe trials where serious concerns have been raised about standards of fairness and compliance with

international norms guaranteed by such instruments as the International Covenant of Civil and Political Rights and the United Nations Convention Against Torture.

Italian Association of Democratic Lawyers

As lawyers, engaged in the defense of the fundamental rights without any regard to the political or national identity of the defendant, it is important to ask whether the trial would have been different if this case involved people with identical accusations, if they had been tried in Miami but it had not be an issue that the people came from Cuba. The Italian Association believes that in this case, fair trials on other issues may be had in Miami, but given the influence of the hostile Cuban exile community the fact that the case involved persons trying to protect Cuba from attacks the accused could not obtain a fair trial in Miami. It is for this reason we ask this Court to review this decision, and require the case to be heard in a city other than Miami .

National Union of Peoples' Lawyers:

Purposes and activities of NUPL

The NUPL is committed to the defense, protection, and promotion of human rights especially of the poor and the oppressed. After only more than a year since its formation, the NUPL has already established its presence in almost every region in the Philippines thereby becoming one of the largest organizations of human rights lawyers in the Philippines. The NUPL is directly engaged in litigation and legal consultancy as a venue for advocacy on issues affecting the rights of the

people and as an arena to serve them even more effectively and efficiently. It is directed towards the active defense, protection, and promotion of human rights covering the people's, including peoples from other countries, civil, political, social, economic, and cultural rights, including the advocacy and assertion of their inherent right to self-determination. As a principal mission, the NUPL is united and committed to render competent legal services, with the use of one's legal education, skills, training, knowledge, and experience, to the marginalized sectors for the upholding and promotion of their rights and freedoms.

Portuguese Association of Democratic Lawyers:

History and purposes of APJD.

At the time APJD was founded it had to operate in a clandestine fashion due to existence of the dictatorship in Portugal. APJD remained clandestine until the end of the dictatorship in April 1974. Under the dictatorship human rights were not respected. Freedom of speech was criminally suppressed in special Court trials – then called “Plenary Courts” – and totally controlled by and obedient to the government and therefore without any independence whatsoever. During the dictatorship period, the Portuguese Association of Democratic Lawyers fought for the protection and respect of rights, with its members defending political prisoners in the struggle for freedom and democracy. Several lawyers were tried and sentenced to jail for their advocacy of democracy. After the reinstatement of a democratic regime in Portugal, Portuguese Association of Democratic Lawyers (APJD) was formally founded

and made its existence official. At all times the APJD sought to uphold the rights of the accused to have fair trials in impartial tribunals.

Progress Lawyers Network:

Activities of PLN

PLN concentrates on four branches of law: social law, penal law, immigration law and family law. PLN offers special attention to the defence of union men and women and social law, it defends the progressive achievements of international law, the sovereignty of nations and the right of self determination of nations and their right to dispose of their own raw materials. PLN promotes the independence of the lawyers profession and for respect of the rights of the defense. PLN has organized symposiums with national and internationally renowned speakers on subjects such as “The impact of European anti-terrorist legislation on fundamental rights”, “Labour law under pressure of the Lisbon strategy”, “Migration and respect for fundamental rights”, “Protection of union delegates” and so forth. PLN objects to any deterioration of fundamental rights and liberties on a national European and international level. PLN has showed interest in this case for several years and has sent observers to the oral hearings of 2004, 2006 and 2007. PLN has publicized its observations about this case throughout Belgium and among European lawyers and jurists generally with the result that all who hear of the case, are disappointed that the Court did not change venue out of Miami.

PLN is concerned about the respect for the fundamental right of fair trial which is recognized as a general principle of justice under the Belgian rule of law, as well as by article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 14 of the International Covenant on Civil and Political Rights. The United States, since its founding, has recognized the right to a trial by an impartial jury and has upheld this principle on numerous occasions.