

# Cuban Five

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The **Cuban Five** (**Gerardo Hernández**, **Antonio Guerrero**, **Ramón Labañino**, **Fernando González**, and **René González**) are five Cuban intelligence officers convicted of espionage, conspiracy to commit murder, and other illegal activities in the United States. The Five were part of a Cuban spy network which observed and infiltrated a number of Cuban-American groups, some of which had been responsible for terrorist attacks on Cuba: Alpha 66, the F4 Commandos, the Cuban American National Foundation, and Brothers to the Rescue.<sup>[1]</sup>

At their trial, evidence was presented that the Five had infiltrated Brothers to the Rescue (a Miami-based organization which had on numerous occasions entered Cuban airspace and dropped leaflets into Cuba), had obtained employment at the Key West Naval Air Station in order to send the Cuban government reports about the base, and had attempted to penetrate the Miami facility of US Southern Command.<sup>[2]</sup> On February 24, 1996, two Brothers to the Rescue aircraft were shot down by Cuban military jets in international airspace while flying away from Cuban airspace, killing the four US citizens aboard.<sup>[2]</sup> One of the Five, Gerardo Hernández, was convicted of conspiracy to commit murder, for supplying information to the Cuban government which led to the shootdown.

The Five appealed their convictions and the lack of fairness in their trial has received international criticism.<sup>[3]</sup> The US Supreme Court declined to review the case.<sup>[4]</sup> In Cuba, the Five are viewed as heroes for having sacrificed their liberty in the defense of their country.<sup>[5]</sup>

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## Background

The Cuban government, whose agents the Five were, points out that since the 1959 Cuban Revolution there has been a long history of acts of terrorism being committed against Cuba by those opposed to the Revolution. It claims that US-based exile groups such as Coordination of United Revolutionary Organizations (CORU),

Alpha 66, and Omega 7 committed such acts during the 1960s and 1970s with impunity. In a 2001 report by Cuba's Permanent Mission to the United Nations, the Cuban government cataloged 3,478 deaths as a result of "terrorism", "aggression", "acts of piracy and other actions".<sup>[6]</sup> The events cited span the course of four decades and pertain to attacks such as the bombing of Cubana Flight 455 by men trained by the Central Intelligence Agency, and the CIA-supported Bay of Pigs invasion and the War Against the Bandits between the government and anti-communist rebels in the Escambray Mountains (see also Operation Mongoose and United States and state terrorism#Cuba (1956-present)). As a result, the Cuban government had long sought to combat these groups.

## Activities

The "Cuban Five" were Cuban intelligence officers who were part of "La Red Avispa", or Wasp Network, which the Federal Bureau of Investigation (FBI) dismantled with 10 arrests in 1998.<sup>[7]</sup> The network observed and infiltrated a number of Cuban-American groups: Alpha 66, the F4 Commandos, the Cuban American National Foundation, and Brothers to the Rescue.<sup>[1]</sup> The court found that they had infiltrated Brothers to the Rescue, a Miami-based organization that flew small aircraft over the Florida straits in efforts to rescue rafters fleeing Cuba, and which had on numerous occasions entered Cuban airspace and dropped leaflets into Cuba.<sup>[2]</sup> They obtained employment as laborers at the Key West Naval Air Station and sent the Cuban government detailed reports about the movement of aircraft and military personnel, and descriptions of the layout of the facility and its structures.<sup>[2]</sup> They also attempted to penetrate the Miami facility of Southern Command, which plans and oversees operations of all military forces of the United States in Cuba, Latin America, and the Caribbean.<sup>[2]</sup> On February 24, 1996, two Brothers to the Rescue aircraft were shot down by Cuban military jets in international airspace while flying away from Cuban airspace, killing four US citizens aboard.<sup>[2]</sup> The US government also accused the remaining four of lying about their identities and sending 2,000 pages of unclassified information obtained from US military bases to Cuba. The network received clandestine communications from Cuba via the Atención numbers station.

US government organizations, including the FBI, had been monitoring Cuban spy activities for over 30 years, but made only occasional arrests.<sup>[8]</sup> However, after the two Brothers to the Rescue aircraft were shot down by Cuban MiGs in February 1996 and four US citizens were killed, on the basis of information sent to Cuba by an infiltrator of the group, the Clinton administration launched a crackdown.<sup>[8]</sup> According to US attorney José Pertierra, who acts for the Venezuelan government in its attempts to extradite Luis Posada Carriles, the crackdown was aided by the cooperation of the Cuban authorities with the FBI in 1997. The Cubans provided 175 pages of documents to FBI agents investigating Luis Posada Carriles's role in the 1997 bombings in Havana, but the FBI failed to use the evidence to follow up on Posada, using it instead to uncover the spy network that included the Cuban Five.<sup>[9][10]</sup> According to FBI evidence at the trial, the FBI had been monitoring the communications of Hernández, whose information enabled the shutdown, for several years prior to that event.<sup>[11]</sup> He was not arrested until 1998.

## Arrests, convictions and sentences

All five were arrested in Miami, Florida, on September 12, 1998 and were indicted by the US government on

25 different counts, including charges of false identification and espionage. Seven months later, an additional indictment was added for Hernández - conspiracy to commit murder in connection with the shoot-down of the Brothers to the Rescue aircraft.<sup>[11]</sup> The additional charge followed months of public and media debate in Miami, with Cuban exile groups pressing for the charge.<sup>[11]</sup>

Gerardo Hernandez, one of the convicted men, states that from the day of their arrests, the so-called "Five" spent 17 months in solitary confinement.<sup>[12]</sup> The President of the Cuban National Assembly Ricardo Alarcón de Quesada claims that evidence that "belonged to the defendants themselves and included family photographs, personal correspondence and recipes"<sup>[13]</sup> - was classified as "secret", preventing the defendants and their attorneys from seeing it.<sup>[13]</sup>

The trial, beginning in November 2000, went on for seven months, although jury deliberations lasted a few hours.<sup>[13]</sup> In June 2001, the group was convicted of all 26 counts in the United States District Court for the Southern District of Florida in Miami, including the charge of first-degree murder against Gerardo Hernandez which the prosecution had applied to withdraw.<sup>[13]</sup> The prosecution had tried to withdraw the case when it became clear that the judge's jury instructions would specify that the murder charge required that the deaths occurred within US jurisdiction, which it had been unable to show. The prosecution also applied for an emergency writ, which was denied, that the instructions should exclude reference to jurisdiction.<sup>[14]</sup>

In December 2001, the members of the group were sentenced to varying prison terms: two life terms for Hernández, to be served consecutively; life for Guerrero and Labañino; 19 years for Fernando Gonzáles; and 15 years for René Gonzáles.<sup>[13]</sup> In addition, the prosecution sought the post-release deportation of the three Cuban-born members, and for the two US-born members, a post-release sentence of "incapacitation", imposing specific restrictions on them after their release, which would be enforced by the FBI. The restrictions ban them from "associating with or visiting specific places where individuals or groups such as terrorists, members of organizations advocating violence, and organized crime figures are known to be or frequent."<sup>[15]</sup>

## Appeals

After the arrests, motions by the defense for a change of venue, on the basis that Miami was a venue too associated with exile Cubans, were denied,<sup>[13]</sup> despite the fact that the trial began just five months after the heated Elian Gonzalez affair.<sup>[16]</sup> The jury did not include any Cuban-Americans but 16 of the 160 members of the jury pool "knew the victims of the shutdown or knew trial witnesses who had flown with them."<sup>[17]</sup> According to Ricardo Alarcon, President of Cuba's National Assembly, a year later, an application to change venue for the same reason was granted by the same court in an employment case with a Cuban connection.<sup>[13]</sup> As a result the Five applied for annulment of the trial and a change of venue for a retrial; the motion was denied.<sup>[13]</sup> According to Alarcon, the Five's appeal to a higher court was inhibited by further month's solitary confinement in early 2003, and by denial of access to their attorneys.<sup>[13]</sup> On August 9, 2005, a three-judge panel of the United States Court of Appeals for the Eleventh Circuit in Atlanta unanimously overturned the convictions and sentences of the Cuban Five and ordered a new trial outside of Miami, saying that the Cuban exile community and the trial publicity made the trial unfavorable and prejudicial to the defendants.<sup>[17]</sup> This was the first time a Federal Circuit Court of Appeals reversed a trial court's finding with respect to venue.<sup>[18]</sup>

However, on October 31, 2005 the Atlanta court agreed to a US government request to review the decision, and in August 2006 the ruling for a new trial was reversed by a 10-2 vote of the Eleventh Circuit Court of Appeal sitting *en banc*. Charles R. Wilson wrote the opinion of the majority.

On June 4, 2008, a 3-judge panel of the Eleventh Circuit Court of Appeals upheld the convictions of the "Five" but vacated and remanded for resentencing in district court the sentences of Guerrero, Labañino, and Fernando González. The court affirmed the sentences of Gerardo Hernandez and Rene Gonzalez.<sup>[2]</sup><sup>[19]</sup> The court held that the sentencing judge had made six serious errors, but nonetheless remanded the case back to the same court. The decision was drawn up by William Pryor.<sup>[20]</sup> In January 2009, the Five appealed to the US Supreme Court.<sup>[21]</sup> 12 *amicus curiae* briefs were filed.<sup>[22]</sup>

In May 2009, in response to the request for Supreme Court of the United States review of the panel decision by Judge Pryor, Solicitor General Elena Kagan, on behalf of President Barack Obama, filed a brief asking that the petition for a writ of certiorari be denied.<sup>[23]</sup> On June 15, 2009, the Supreme Court denied review<sup>[24]</sup>

## International criticism of the convictions

Since their conviction, there has been an international campaign for the case to be appealed. In the United States, the campaign is most conspicuously represented by the National Committee to Free the Cuban Five<sup>[25]</sup>, which is represented in twenty US cities and over thirty countries.

On 27 May 2005, the United Nations Commission on Human Rights adopted a report by its Working Group on Arbitrary Detention stating its opinions on the facts and circumstances of the case and calling upon the US government to remedy the situation.<sup>[26]</sup> Among the report's criticisms of the trial and sentences, section 29 states:

29. The Working Group notes that it arises from the facts and circumstances in which the trial took place and from the nature of the charges and the harsh sentences handed down to the accused that the trial did not take place in the climate of objectivity and impartiality that is required in order to conform to the standards of a fair trial as defined in article 14 of the International Covenant on Civil and Political Rights, to which the United States of America is a party.

Amnesty International has criticized the US treatment of the Cuban Five as human rights violations, as the wives of René Gonzáles and Gerardo Hernández have not been allowed visas to visit their imprisoned husbands.<sup>[27]</sup> Furthermore, Amnesty International has declared, in a 2006 open letter to the US State Department, that they are following closely the status of the ongoing appeals of the five men of numerous issues challenging the fairness of the trial which have not yet been addressed by the appeal courts.<sup>[28]</sup>

Eight international Nobel Prize winners have written and sent a document to the US Attorney General calling for freedom for the Cuban Five, signed by Zhores Alferov (Nobel Prize for Physics, 2000), Desmond Tutu



Sign on a street in Varadero, Cuba.

(Nobel Peace Prize, 1984), Nadine Gordimer (Nobel Prize in Literature, 1991), Rigoberta Menchú (Nobel Peace Prize, 1992), Adolfo Pérez Esquivel (Nobel Peace Prize, 1980), Wole Soyinka (Nobel Prize in Literature, 1986), José Saramago (Nobel Prize in Literature, 1996), Günter Grass (Nobel Prize in Literature, 1999).<sup>[29]</sup>

In the United Kingdom, among other actions, 110 Members of Parliament wrote an open letter to the US Attorney General in support of the Five.<sup>[30]</sup> Six others wrote to Tony Blair calling on the British government to apply pressure on the US to act against terrorists in Florida and to release the Five immediately. Blair declined to do so.

In April 2009 a Brazilian human rights group, Torture Never Again, awarded the Five its Chico Mendes Medal, because their rights had been violated.<sup>[31]</sup>

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## External links

- National Committee to Free the Cuban Five (<http://www.freethethefive.org/>)
- Miami 5 (<http://www.granma.cu/miami5/ingles/index.html>) — site run by the Cuban newspaper *Granma*
- antiterroristas.cu (<http://www.antiterroristas.cu/>) — on terrorism against Cuba, and on the Cuban Five

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