

IN THE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_

IN RE: SUBPOENAS OF THE UNITED )  
STATES DEPARTMENT OF HOMELAND )  
SECURITY, IMMIGRATION & CUSTOMS )  
ENFORCEMENT TO ANN LOUISE )  
BARDACH & THE NEW YORK TIMES. )  
\_\_\_\_\_ )

05-21337

CIV-ALTONAGA

~~MAGISTRATE JUDGE~~  
TURNOFF

Petition of The New York Times Company  
& Ann Louise Bardach to Quash Subpoena

Talbot D'Alemberte, Thomas R. Julin & Jamie L. Zysk  
Florida Bar Nos. 17529, 325376 & 0728861

Hunton & Williams LLP  
Attorneys for The New York Times Company &  
Ann Louise Bardach  
1111 Brickell Avenue, Suite 2500  
Miami, Florida 33131  
305.810.2516 Fax 2460  
tjulin or jzysk@hunton.com

George Freeman  
The New York Times Company  
Florida Bar No. 233684  
229 West 43rd Street  
New York, New York 10036  
212.556.1558 Fax 4634  
freemang@nytimes.com

HUNTON & WILLIAMS LLP

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTRODUCTION.....	1
THE RELEVANT FACTS .....	2
ARGUMENT .....	6
I.    Petitioners’ First Amendment and Federal Common Law Rights Would be Violated by Enforcement of the Subpoenas.....	6
A.    The Department Has Not Shown that the Material Sought is Highly Relevant to an Issue in Any Proceeding .....	12
B.    The Department Has Not Exhausted Alternative Sources .....	13
C.    The Department Cannot Show a Compelling Need for the Material .....	14
II.   The Department Did Not Lawfully Issue or Serve the Subpoenas .....	16
A.    The Subpoenas Fail to Comply With DOJ Guidelines .....	16
B.    The Subpoenas Fail to Comply with the Department’s Own Regulations .....	17
C.    Bardach Was Not Personally Served With Subpoena.....	18
D.    This Court Lacks Personal Jurisdiction Over Bardach .....	18
III.  Petitioners’ Fourth Amendment Rights Would be Violated by Enforcement of the Subpoena.....	19
CONCLUSION .....	20
CERTIFICATE OF SERVICE.....	21

## TABLE OF AUTHORITIES

### Cases

<u>Branzburg v. Hayes</u> , 408 U.S. 665 (1972) .....	6
<u>Cervantes v. Time, Inc.</u> , 464 F.2d 986 (8th Cir. 1972) .....	7
<u>Donovan v. Lone Steer, Inc.</u> , 464 U.S. 408 (1984) .....	1
<u>Federal Elections Commission v. Florida for Kennedy Committee</u> , 681 F.2d 1281 (11th Cir. 1982) .....	1
<u>Gimble v. FDIC</u> , 77 F.3d 593 (2d Cir. 1996) .....	19, 20
<u>Gonzalez v. National Broad. Co.</u> , 194 F.3d 29 (2d Cir. 1999) .....	7
<u>In re: Grand Jury Subpoena, Judith Miller</u> , Nos. 04-3138, 04-3139, 04-3140, 2005 WL 889719 (D.C. Cir. 2005) .....	7
<u>Hancock v. Hobbs</u> , 967 F.2d 462 (11th Cir. 1992) .....	9
<u>Hatch v. Marsh</u> , 134 F.R.D. 300 (M.D. Fla. 1990) .....	7, 9
<u>Jaffee v. Redmond</u> , 518 U.S. 1 (1996) .....	9
<u>Johnson v. City of Miami</u> , 6 Media L. Rep. (BNA) 2110 (S.D. Fla. 1980) .....	7, 8, 9
<u>Kidwell v. McCutcheon</u> , 962 F. Supp. 1477 (S.D. Fla. 1996) .....	7, 8
<u>Loadholtz v. Fields</u> , 389 F. Supp. 1299 (M.D. Fla. 1975) .....	7, 9
<u>McCarty v. Bankers Insurance Co.</u> , 195 F.R.D. 39 (N.D. Fla. 1998) .....	11, 12, 14
.....	
<u>McCray v. Beary</u> , No. 97-C1553-CIV-ORL-18A, 1999 WL 1027042 (M.D. Fla. Feb. 12, 1999) .....	7
<u>Miller v. Superior Court</u> , 21 Cal. 4th 883 (1999) .....	11
<u>Miller v. Transamerican Press, Inc.</u> , 621 F.2d 721 (5th Cir. 1980) .....	8
<u>Morton v. Ruiz</u> , 415 U.S. 199 (1974) .....	17, 18
<u>Oklahoma Press Public Co. v. Walling</u> , 327 U.S. 186 (1946) .....	19
<u>In re Pan Am Corp. (Delta Airlines v. Reed)</u> , 191 B.R. 476 (S.D. Fla. 1995) .....	7

<u>Peay v. BellSouth Medical Assistance Plan</u> , 205 F.3d 1206 (6th Cir. 2000).....	19
<u>Republic of Panama v. BCCI Holdings (Luxembourg, S.A.)</u> , 119 F.3d 935 (11th Cir. 1997).....	18, 19
<u>Riley v. City of Chester</u> , 612 F.2d 708 (3d Cir. 1979).....	7, 9
<u>Silkwood v. Kerr-Mcgee Corp.</u> , 563 F.2d 433 (10th Cir. 1977).....	7
<u>State v. Kangus</u> , 8 Media L. Rep. (BNA) 2045 (Fla. 15th Cir. Ct. 1982).....	14
<u>State v. Roman</u> , 9 Media L. Rep. (BNA) 1733 (Fla. 5th Cir. Ct. 1983) .....	14
<u>Ulrich v. Coast Dental Services, Inc.</u> , 739 So. 2d 142 (Fla. 5th DCA 1999).....	10
<u>United States v. Blanton</u> , 534 F. Supp. 295 (S.D. Fla. 1982) .....	7, 8, 9
<u>United States v. Caporale</u> , 806 F.2d 1487 (11th Cir. 1986).....	2, 6, 8, 13
<u>United States v. Cuthbertson</u> , 630 F.2d 139 (3d Cir. 1980).....	7
<u>United States v. Diaz</u> , No. 03-20895-CR, 2004 WL 1944851 (S.D. Fla. Apr. 27, 2004).....	2
<u>United States v. Diaz</u> , No. 03-20895-CR, 2004 WL 1944851 (S.D. Fla. Apr. 27, 2004).....	7
<u>United States v. Florida Azalea Specialists</u> , 19 F.3d 620 (11th Cir. 1994).....	20
<u>United States v. Gersten</u> , 5 Media L. Rep. (BNA) 1334 (M.D. Fla. 1979).....	7
<u>United States v. Harris</u> , 11 Media L. Rep. (BNA) 1399 (S.D. Fla. 1985) .....	7
<u>United States v. Marcos</u> , 17 Med. L. Rptr. 2005, 1990 WL 74521 (S.D.N.Y. 1990).....	9
<u>United States v. Meros</u> , 11 Media L. Rep. (BNA) 2496 (M.D. Fla. 1985).....	7
<u>United States v. Morton Salt Co.</u> , 338 U.S. 632 (1950).....	20
<u>United States v. Paez</u> , 13 Media L. Rep. (BNA) 1973 (S.D. Fla. 1987).....	7
<u>Von Bulow v. Von Bulow</u> , 811 F.2d 136 (2d Cir. 1987).....	9



## Statutes & Regulations

8 C.F.R. § 208.13 .....	12
8 C.F.R. § 208.9 .....	6, 13
8 C.F.R. § 287.4 .....	1, 16, 17, 18, 20
6 U.S.C. § 111 & 112 .....	17
8 U.S.C. § 1158 .....	12
8 U.S.C. § 1182(a)(3) .....	12
8 U.S.C. § 1225(4) .....	1, 16, 17
8 U.S.C. § 1227(a)(4) .....	12
6 U.S.C. § 542(a) & (d)(1) .....	17
28 C.F.R. § 50.10 .....	16

## Other Authorities

James C. Goodale et al., <u>Reporter's Privilege</u> at 493 (PLI 2003) .....	11
United States Attorney's Manual, § 9-2.161 .....	16
Vincent Blasi, <u>The Checking Value in First Amendment Theory</u> , 1977 .....	9

## INTRODUCTION

This petition is filed on behalf of The New York Times Company and reporter Ann Louise Bardach to quash administrative subpoenas issued to them by the United States Department of Homeland Security, Immigration and Customs Enforcement. The subpoenas direct the Times and Bardach to produce audiotapes of an interview that Bardach conducted of Luis Posada Carriles for articles that she co-authored with Larry Rohter and published in The New York Times in 1998 and other documents, including transcripts, relating to the interview.<sup>1</sup>

The Department issued the subpoenas pursuant to 8 CFR § 287.4. Under that regulation, the subpoenas are not self-enforcing. In order to enforce the subpoena, the Department must go to the U.S. Attorney in the District from which the subpoena was issued and ask for a court order compelling compliance with the subpoena. See 8 U.S.C. § 1225(4)(b) & 8 C.F.R. § 287.4(d). In Donovan v. Lone Steer, Inc., 464 U.S. 408, 415 (1984), the Supreme Court held that a witness issued an administrative subpoena may itself come forward to challenge the subpoena. See also Federal Elections Comm'n v. Florida for Kennedy Committee, 681 F.2d 1281 (11th Cir. 1982) (holding federal district court has jurisdiction to quash administrative subpoena on First Amendment grounds). This petition is filed pursuant to that authority.

If the U.S. Attorney does not seek an order of enforcement, the Court should deem the subpoenas abandoned and grant this petition.<sup>2</sup> If the U.S. Attorney does seek enforcement, the petition should be granted because (I) both the First Amendment and the federal common law protect The New York Times and Bardach from compelled production of the records at issue; (II) the subpoenas do not comply with the Department's own regulations; have not been properly served on Bardach; and cannot, consistent with due process, compel Bardach, a California resident, to produce documents in Florida; and (III) the Fourth Amendment protects The New York Times and Bardach from compelled production of the documents at issue.

This petition is easily granted on the first of these arguments alone because "Federal courts, including the Eleventh Circuit have 'overwhelmingly recognized a qualified privilege for

---

<sup>1</sup> Bardach has filed a declaration in support of this petition. It is referenced by the notation "(Bardach Dec. ¶ \_\_)".

<sup>2</sup> Counsel for the Department contacted counsel for the petitioners to demand compliance after issuing the subpoena.

journalists which allows them to resist compelled disclosure of their professional news gathering efforts and results, whether published or not.’ McCarty v. Bankers Ins. Co., 195 F.R.D. 39, 44 (N.D. Fla. 1998).” United States v. Diaz, No. 03-20895-CR, 2004 WL 1944851, at \*1 (S.D. Fla. Apr. 27, 2004) (relying upon United States v. Caporale, 806 F.2d 1487, 1503 (11th Cir. 1986)).

#### THE RELEVANT FACTS

Ann Louise Bardach is an author and professional journalist whose work has been published in Vanity Fair (where she was a contributing editor for ten years), The Los Angeles Times, Newsweek International, The New Yorker, The New York Times, Slate, and The Washington Post. (Bardach Dec. ¶ 4). In 1998, Bardach worked under contract for The New York Times. (Bardach Dec. ¶ 6). Working under that contract, she interviewed Cuban exile Luis Posada Carriles over several hours at a location outside the United States at a private home, on the street, at cafes, in restaurants, and in cars. (Id.). Based on those interviews and further investigation, Bardach co-wrote with Rohter a series of articles about Posada that was published in The New York Times on July 12 and 13, 1998. (Bardach Dec. ¶ 9; Exhibit A).

The subpoena addressed to Bardach commands her to produce: “Copies of all recordings and documents relating to the interview of Luis Posada Carriles by Ann Bardach, which was conducted in June 1998, excerpts of which were published in the New York Times on July 12 and 13, 1998.” (Exhibit B). The subpoena addressed to Bardach requires production on or before May 14, 2005, to Special Agent Noel Espada at a specified address in Miami, Florida. Bardach resides in Carpinteria, California. (Bardach Dec. ¶ 2). She does not own property or have an office or transaction business in the State of Florida. (Id.). She has visited Florida occasionally for both personal and professional reasons. (Id.).

The subpoena addressed to The New York Times Agency commands it to produce: “Copies of all tape recordings and documents relating to the interview of Luis Posada Carriles by Ann Bardach, which was conducted in June 1998, excerpts of which were published in the New York Times on July 12 and 13, 1998.” (Exhibit C). The Times subpoena requires production on or before May 19, 2005, to Special Agent Noel Espada at a specified address in Miami, Florida.<sup>3</sup>

---

<sup>3</sup> The subpoena issued to The New York Times supplanted an earlier subpoena that called for production of other documents on an earlier date. The movants believe that the Department has abandoned that earlier subpoena. In any event, The New York Times does not have documents responsive to the earlier subpoena so the matter is moot.

(Id.).

Both subpoenas indicate that the addressee is commanded to produce the specified items “in connection with an official proceeding being conducted under the authority of the Immigration and Nationality Act, relating to an ongoing investigation concerning violations of the criminal and administrative provisions of the Immigration and Nationality Act.” Neither subpoena states the title of the official proceeding.

All of the materials that Bardach has in her possession that are responsive to the subpoena were produced or gathered by Bardach in her role as a professional journalist working under contract for The New York Times. (Bardach Dec. ¶ 6). She produced and gathered the materials solely for the purpose of reporting news about matters of paramount public concern. (Id.). Materials responsive to the subpoena contain Bardach’s personal thoughts, questions, and observations regarding the subject upon which she was reporting. (Bardach Dec. ¶ 7). Many of those personal thoughts, questions and observations have not been disclosed in the reports that were published, and Bardach regards these personal thoughts, questions and observations as highly private. (Id.). Materials responsive to the subpoena also contain the personal thoughts and observations of sources that Bardach interviewed for purposes of reporting that she has chosen not to publish because of her concern that publishing such information would interfere with her ability to continue to gather information from those sources as well as other sources. (Bardach Dec. ¶ 8). Some of those personal thoughts and observations, in her judgment, would be personally damaging or embarrassing to sources and they do not relate to matters of public concern. (Id.).

The materials sought by the subpoenas were gathered by Bardach during a lengthy period prior to publication of articles in The New York Times on July 12 and 13, 1998. (Bardach Dec. ¶ 9). Those materials – if they still exist in toto – are kept by Bardach among voluminous other materials that she has gathered over the course of more than 25 years of work as a professional journalist. (Id.). The materials cannot easily be located because they are kept with other materials that are not responsive to the subpoena. (Id.). In order to locate and segregate the responsive materials, Bardach personally would have to look through hundreds or thousands of files. (Id.). In order to ensure that all responsive materials are located and segregated, Bardach estimates that she would have to devote more than two weeks of her time to searching. (Id.). It would be impractical to use third parties and Bardach objects to using third parties to search the

materials, because the materials contain highly confidential and personal materials. (Id.).

Bardach and The New York Times invoke the privilege they are entitled to under the First and Fourteenth Amendments of the United States Constitution and article I, section 4 of the Florida Constitution not to be a witness concerning, and not to disclose information that Bardach, as a professional journalist, has obtained while actively gathering news. (Bardach Dec. ¶ 10). The only information that Bardach or The New York Times has that is responsive to the subpoenas is information obtained within the normal scope of Bardach's work for The New York Times. (Id.). Neither Bardach nor The New York Times has firsthand physical evidence, eyewitness observations, or visual or audio recordings of any crime. (Id.).

Bardach and The New York Times also invoke the privilege they are entitled to under section 90.5015, Florida Statutes (2005), to the extent that it may apply in these proceedings. (Bardach Dec. ¶ 11). Bardach has been authorized by The New York Times to invoke the privileges described above on its behalf as well as on her own behalf. (Bardach Dec. ¶ 14).

Without the privileges Bardach and The New York Times have invoked, their efforts to gather and report news would be seriously impaired. (Bardach Dec. ¶ 12). Sources would be reluctant to provide information to Bardach and The New York Times, Bardach's and The New York Times' appearance of neutrality as a journalist and a news organization would be jeopardized, and the time and resources that they have to report about matters that are often time sensitive would be seriously diminished. (Id.). In short, Bardach's and The New York Times' ability to gather and report news would be significantly harmed without the constitutional privileges provided to Bardach as a professional journalist. (Id.). All of these interests are especially implicated in this case. Bardach believes she was able to obtain the interview of Posada Carriles due to his confidence that she would use her professional judgment in deciding which material to publish. (Id.). Bardach does not believe that Posada Carriles would have provided the interview if he had believed that all aspects of the interview would be delivered to a U.S. law enforcement agency. (Id.). If Bardach is compelled to provide the responsive materials to the government, future sources who are concerned about criminal prosecution undoubtedly will regard her efforts as being conducted on behalf of law enforcement agencies. (Id.). And, the extensive time and effort she will be required to devote to searching for responsive materials will prevent her from engaging in reporting about Posada Carriles and other matters at this time. (Id.). Bardach is now devoted to many journalistic endeavors which seriously will suffer if she

must conduct the search required by the subpoena. (Id.).

Bardach and The New York Times also believe that a newspaper's perception of objectivity is its most important asset. (Bardach Dec. ¶ 13). That perception of neutrality on the part of its readers would be very much undercut if readers believed that the newspaper or its journalists were taking one side or the other in disputes or litigation it was reporting on. (Id.). This is particularly true in a case such as the one regarding Posada Carriles which is so visible and emotional in the South Florida area. (Id.). Providing documents to the government, and therefore appearing to be assisting the law enforcement agencies in this matter, would compromise the ability of readers to believe that The New York Times' news reporting on this matter would be wholly neutral. (Id.). Since readers often think that the establishment is allied in these matters, and that the press too often acts as a lapdog, not a watchdog, of government, assisting the government by providing the sought-after documents would undermine our journalistic neutrality and the very values inherent in the First Amendment. (Id.).

Although the subpoenas themselves do not describe the nature of the official proceeding to which they pertain, upon information and belief, the Department has attempted to subpoena the materials at issue because Posada has entered the United States unlawfully and has filed a petition for asylum. (Bardach Dec. ¶ 16). According to information posted on the website of The National Security Archive at George Washington University,<sup>4</sup> Posada is seeking asylum because of work he did for the Central Intelligence Agency in the 1960s. (Exhibit D).

Upon information and belief, the Department already is in possession of abundant materials concerning the actions of Posada upon which it could dispose of the petition. (Bardach Dec. ¶ 16). Indeed, the Government, through FBI and CIA memoranda and materials, has a 45-year documented history of the activities and operations of Posada Carriles. The National Security Archive, a not-for-profit organization that compiles and publishes declassified government materials has posted on its website extensive information concerning Posada Carriles. (Id.). Declassified CIA and FBI records posted May 10, 2005, on the National Security Archive website (a portion of which are reproduced as Composite Exhibit E), describe the CIA's recruitment of Posada in the 1960's. FBI documents dated May and July, 1965, summarize intelligence indicating that Posada had received payments from a Cuban exile group to finance a

---

<sup>4</sup> See <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB153/index.htm>.

sabotage operation against ships in Veracruz, Mexico, and linking him to a plot to overthrow the government of Venezuela. FBI intelligence reports dated one day after the October, 1976 bombing of Cubana Airlines flight 455 that killed 73 passengers, indicate that an FBI source “all but admitted that Posada and [Orlando] Bosch had engineered the bombing of the airline.” Upon information and belief, Bosch is still living in Miami and the Department could interview him regarding the alleged bombing. In any event, these documents and others provide the Department with contemporaneous details and non-journalist sources of information regarding Posada Carriles’ activities.

In addition, Bardach’s own work, including the referenced New York Times articles and a complete chapter of Bardach’s book “Cuba Confidential: Love and Vengeance in Miami and Havana,” chronicle Posada Carriles’ activities and have provided the public and the Government with an enormous amount of information about him. (Bardach Dec. ¶ 16). All of those documents and materials also identify other individuals who are likely to possess information regarding Posada that would be relevant to the Department’s disposition of his asylum petition.

Upon further information and belief, the Department is entitled to interview Posada Carriles in connection with his petition for asylum. (Bardach Dec. ¶ 16; 8 C.F.R. § 208.9). He obviously can provide the same information to the Department that he has provided to Bardach and she has no reason to believe that he will not do so. (Bardach Dec. ¶ 16).

## ARGUMENT

### I.

#### Petitioners’ First Amendment and Federal Common Law Rights Would be Violated by Enforcement of the Subpoenas

The reporter’s qualified privilege to be free from compulsory process stems from two distinct sources – the First Amendment of the United States Constitution and the federal common law that has developed under Federal Rule of Evidence 501.

The First and Fourteenth Amendments have been interpreted as affording journalists the same type of protection as that afforded by the Florida, California, New York, and other shield Laws. Adhering to principles first established in Branzburg v. Hayes, 408 U.S. 665 (1972), the Eleventh Circuit affirmed in United States v. Caporale, 806 F.2d 1487 (11th Cir. 1986), the denial of a motion to compel testimony from a reporter because the defendant had not shown that the information sought was (1) highly relevant, (2) necessary to proper presentation of the case,

and (3) unavailable from other sources.<sup>5</sup>

Numerous decisions from the U.S. district courts in Florida have applied these standards to quash subpoenas issued to reporters in both civil and criminal cases.<sup>6</sup> For example, in Kidwell v. McCutheon, 962 F. Supp. 1477 (S.D. Fla. 1996), Judge Ferguson granted a habeas petition presented by a reporter who had been imprisoned by a state court judge for refusing to testify on

---

<sup>5</sup> The Third Circuit has agreed with the Eleventh Circuit's view that the First Amendment provides a privilege in both civil and criminal cases. See United States v. Cuthbertson, 630 F.2d 139, 147 (3d Cir. 1980); Riley v. City of Chester, 612 F.2d 708, 715 (3d Cir. 1979). The Second Circuit has agreed that a qualified privilege exists in both civil and criminal cases, but has not decided whether the privilege exists by virtue of the common law or the First Amendment. See Gonzalez v. Nat'l Broad. Co., 194 F.3d 29, 36 & n.6 (2d Cir. 1999). The Eighth and Tenth Circuits have recognized the First Amendment privilege in civil cases, but have not addressed whether it applies in criminal cases. See Silkwood v. Kerr-McGee Corp., 563 F.2d 433, 437 (10th Cir. 1977); Cervantes v. Time, Inc., 464 F.2d 986, 992 n.9 (8th Cir. 1972). Other circuits have held that the First Amendment does not provide a privilege. See, e.g., In re: Grand Jury Subpoena, Judith Miller, Nos. 04-3138, 04-3139, 04-3140, 2005 WL 889719 (D.C. Cir. 2005) (en banc), petitions for certiorari filed, (U.S. May 9, 2005) (No. 04-1507 & 04-1508).

<sup>6</sup> See, e.g., United States v. Diaz, No. 03-20895-CR, 2004 WL 1944851 (S.D. Fla. Apr. 27, 2004) (quashing subpoena for testimony in suppression hearing); McCray v. Beary, No. 97-C1553-CIV-ORL-18A, 1999 WL 1027042 (M.D. Fla. Feb. 12, 1999) (quashing subpoena for impeachment evidence); Kidwell v. McCutheon, 962 F. Supp. 1477 (S.D. Fla. 1996) (issuing habeas corpus to a journalist jailed by a state trial court for refusing to comply with a subpoena for nonconfidential information); In re Pan Am Corp. (Delta Airlines v. Reed), 191 B.R. 476 (S.D. Fla. 1995) (upholding Bankruptcy Court order denying motions to require journalists to testify); Hatch v. Marsh, 134 F.R.D. 300 (M.D. Fla. 1990) (quashing subpoena to non-party television report in civil action); United States v. Paez, 13 Media L. Rep. (BNA) 1973 (S.D. Fla. 1987) (quashing subpoenas to reporters for testimony in federal money-laundering prosecution because defendants had not shown a "critical need" for the information sought); United States v. Meros, 11 Media L. Rep. (BNA) 2496 (M.D. Fla. 1985) (granting motion to quash subpoena where the criminal defendant was himself an alternative source of the information sought from a reporter); United States v. Harris, 11 Media L. Rep. (BNA) 1399 (S.D. Fla. 1985) (quashing subpoena because defendant had made no showing that alternative sources were unavailable); United States v. Blanton, 534 F. Supp. 295 (S.D. Fla. 1982) (quashing subpoena and holding that showing of confidentiality "is irrelevant to the chilling effect that enforcement of subpoenas would have on the flow of information to the press and public"); Johnson v. City of Miami, 6 Media L. Rep. (BNA) 2110 (S.D. Fla. 1980) (quashing subpoena to compel reporter to testify in civil right action against the city); United States v. Gersten, 5 Media L. Rep. (BNA) 1334 (M.D. Fla. 1979) (quashing subpoena for all materials other than broadcast tapes); Loadholtz v. Fields, 389 F. Supp. 1299 (M.D. Fla. 1975) (quashing subpoena to require reporter to produce non-confidential resource materials because plaintiff failed to show exhaustion of alternative sources and a compelling interest to justify compelled disclosure).



a criminal matter before the Florida Legislature had adopted a shield law. He held that “In this federal circuit the law is clear that even where no confidential source is involved, the government is not entitled to subpoena a reporter to testify regarding the product of a newsgathering activity unless it shows that: (1) the reporter has information relevant and material to the offense charged or the defendant's defense; (2) there is a compelling need for disclosure sufficient to override the reporter's constitutional privilege; and (3) the party seeking the information has unsuccessfully attempted to obtain the information from other sources.” *Id.* at 1480. Relying on Judge Paine’s decision in United States v. Blanton, 534 F.Supp. 295 (S.D. Fla. 1982), *aff’d*, 730 F.2d 1425 (11th Cir. 1984), he emphasized “[t]hat no confidential source or information is involved is irrelevant to the chilling effect enforcement of a subpoena would have on information obtained by a journalist in his professional capacity.” *Kidwell*, 962 F. Supp. at 1480. In Blanton, Judge Paine held:

The First Amendment to the Constitution of the United States requires that a reporter be immune from subpoenas in criminal cases regarding his or her work product unless the party seeking the reporter's testimony first makes a showing of sufficient interest and need to overcome the reporter's constitutional privilege, and then only under appropriate safeguards to prevent abuse by those having court process available to them.

Judge Ferguson also relied on the Eleventh Circuit’s decision in United States v. Caporale, 806 F.2d 1487 (11th Cir. 1986), which had adopting the standard governing the exercise of a reporter’s privileged information as stated in Miller v. Transamerican Press, Inc., 621 F.2d 721, 726 (5th Cir. 1980). “The standard is that information may only be compelled from a reporter claiming privilege if the party requesting the information can show: (1) that it is highly relevant; (2) necessary to the proper presentation of the case; and (3) unavailable from other sources. *Caporale*, 806 F.2d at 1504.” *Kidwell*, 962 F.Supp. at 1480.

In one notable case, Johnson v. City of Miami, 6 Media L. Rep. (BNA) 2110, 2110 (S.D. Fla. 1980) (quashing subpoena), Judge Hoeveler held that the chilling effect that compulsory process has on news gathering and reporting is “[e]qually unacceptable” as prior restraints on the press. He explained:

“When a reporter appears on the witness stand . . . he runs the risk of being perceived as a partisan for whichever side benefits from his testimony. In addition, even if the subpoena threat does not lead to conscious decisions by editors and reporters to kill stories or refrain from pursuing certain leads, constant worry about being subpoenaed can distract journalists, making it extremely

difficult for them to pursue their craft in a vigorous, innovative, truly autonomous fashion . . . [T]herefore a respect for the checking value is likely to lead one to accord a high valuation to the kinds of stories that are potentially jeopardized by the practice of subpoenaing reporters.”

Id. at 2111 (quoting Vincent Blasi, The Checking Value in First Amendment Theory, 1977 American Bar Foundation Research Journal 521, 604 (1977)).

Under these First Amendment principles, it matters not whether a confidential source is involved or, as in this case, the articles quote the source by name. “This distinction is utterly irrelevant to the ‘chilling effect’ that the enforcement of these subpoenas would have on the flow of information to the press and to the public.” Loadholtz v. Fields, 389 F. Supp. 1299, 1302 (M.D. Fla. 1975); see also Blanton, 534 F. Supp. at 296-97; Von Bulow v. Von Bulow, 811 F.2d 136, 143 (2d Cir. 1987). Courts also have recognized that the First Amendment requires that the press be afforded independence in its selection and choice of material for publication, and that orders compelling disclosure of outtakes and unpublished information (such as the transcripts and tape recordings made by Bardach), could prompt reporters or editors to purge from publication any information they fear would excite the interest of current or perspective litigants. See Hatch v. Marsh, 134 F.R.D. 300, 301 (M.D. Fla. 1990) (citing United States v. Marcos, 17 Med. L. Rptr. 2005, 1990 WL 74521 (S.D.N.Y. 1990)). Enforcement of the subpoenas at issue would hamstring the ability of the Times and Bardach to explore their subjects fully and would eviscerate their independence to select which material to publish and which to hold back, in derogation of the Times’ and Bardach’s First Amendment rights.

In addition to the protection afforded journalists by the First Amendment, in cases involving solely federal issues, federal courts frequently look to state privilege statutes for guidance in evaluating privilege claims under Rule 501, pursuant to the principles established in Jaffee v. Redmond, 518 U.S. 1 (1996). In Hancock v. Hobbs, 967 F.2d 462, 467 (11th Cir. 1992), the Eleventh Circuit noted that “Rule 501 ‘clearly provides federal courts with the statutory power to recognize new or ‘novel’ evidentiary privileges.’ . . . [T]he courts may derive a new federal rule of privilege from state decisions . . . ‘applying the state law as a matter of federal common law.’” Id. at 467 n.9. In the specific context of federal cases where a reporter has relied on a state shield law, federal courts have held that the shield law should be considered. See Riley v. City of Chester, 612 F.2d 708 (3d Cir. 1979) (reversing, in reliance on First Amendment and Pennsylvania Shield Law, contempt order against reporter in federal civil rights

action) (noting that “[a]lthough we are not bound to follow the Pennsylvania law, neither should we ignore Pennsylvania’s public policy giving newspaper reporters protection”).

The Florida shield law, section 90.5015, Florida Statutes, codifies a substantial body of case law interpreting First Amendment principles and reflects Florida’s strong commitment to ensuring that a professional journalist is not required to testify unless a trial judge is certain that he or she is an eyewitness to a crime or is the sole source of information that is critical to resolution of an important pending issue in litigation. “This qualified statutory privilege extends to both confidential and non-confidential information,” Ulrich v. Coast Dental Services, Inc., 739 So. 2d 142, 143 (Fla. 5th DCA 1999) (quashing trial court order compelling television news reporter to testify in civil action), and, unlike other privileges such as the attorney-client privilege, it cannot be waived by disclosure. Id. In addition, “a reporter’s statutory privilege is generally not conditioned on a prior agreement of confidentiality.” Id. at 144. As long as the subpoenaed party is a professional journalist and the information sought was gathered in the course of his or her duties, the journalist is immunized against providing compulsory testimony unless the testimony is an eyewitness observation of a crime or the subpoenaing party can make the showing required by section 90.5015(2).<sup>7</sup>

California and New York also have adopted shield laws to protect reporters against compelled disclosure of information gathered for purposes of news reporting.

---

<sup>7</sup> Section 90.5015(2) provides:

(2) Privilege.-- A professional journalist has a qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news. This privilege applies only to information or eyewitness observations obtained within the normal scope of employment and does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes. A party seeking to overcome this privilege must make a clear and specific showing that:

(a) The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;

(b) The information cannot be obtained from alternative sources; and

(c) A compelling interest exists for requiring disclosure of the information.

Section 1070 of the California Evidence Code provides:

(a) A publisher, editor, reporter or other person connected with or employed upon a newspaper, magazine, or other periodical publication or by a press association or wire service, or any person who has been so connected or so employed, cannot be adjudged in contempt by a judicial, legislative, administrative body or any other body having the power to issue subpoenas, for refusing to disclose, in any proceeding as defined in § 901, the source of any information procured while so connected or employed for publication in a newspaper, magazine or any other periodical publication or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

\* \* \*

(c) As used in this section, "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication whether or not published information based upon or related to such material has been disseminated.

In Miller v. Superior Court, 21 Cal. 4th 883 (1999), a California appellate court held that the California shield law is not absolute in that it must yield where the evidence sought is critical to a criminal prosecution, no alternative sources are available, and the news media cannot show that any particular harm will result from complying with the subpoena.

New York Civil Rights Law § 79-h(b) is similar to the Florida shield law in that provides a professional journalist may not be held in contempt "for refusing or failing to disclose any unpublished news . . . or the source of any such news . . . unless the party seeking such news has made a clear and specific showing that the news: (i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material thereto; and (iii) is not obtainable from any alternative source."

Thus, the state from which the subpoena issued, the state in which Bardach resides, and the state where The New York Times has its principal place of business all recognize the same qualified privilege. Indeed, most states now have similar shield laws or have recognized and applied a common law privilege to protect reporters from compelled disclosure of information. See James C. Goodale et al., Reporter's Privilege at 493 (PLI 2003).

In McCarty v. Bankers Insurance Co., 195 F.R.D. 39 (N.D. Fla. 1998), Judge Maurice Paul compared the provisions of the Florida shield law with the federal constitutional privilege and found that the protection afforded by the former was "virtually indistinguishable" from that

provided by the latter and granted a motion to quash a subpoena to a professional journalist in reliance on both. Id. at 46.

Applying the standards imposed by the First Amendment as well as by the state shield laws, it is clear that the subpoenas issued by the Department to The New York Times and to Bardach should be quashed.

A. The Department Has Not Shown that the Material  
Sought is Highly Relevant to an Issue in Any Proceeding

As discussed above, the subpoenas issued to The New York Times and to Bardach do not identify the proceeding in which the subpoena has been issued. The subpoena does not indicate that Posada Carriles has filed a petition for asylum or withholding of exclusion, that the Department is seeking the records at issue for the purpose of evaluation of such a petition, or for any other purpose whatsoever. Unless and until the Department is willing to identify the matter under investigation, it cannot establish that the records it seeks are highly relevant to that investigation.

Assuming arguendo that the Department does reveal that it is investigating a petition by Posada Carriles, the Department must indicate what issues the petition presents. As a general matter, an applicant for asylum has the burden of proof to establish that he or she is a refugee, and an applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution. 8 U.S.C. § 1158; 8 C.F.R. § 208.13. An asylum petition may not be granted, however, if, among other reasons, there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States or the alien engaged in terrorist activities.<sup>8</sup> From these statutory provisions, it seems that the issues presented by a petition for

---

<sup>8</sup> Specifically, a petition may not be granted if (1) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States; (3) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States; (4) there are reasonable grounds for regarding the alien as a danger to the security of the United States; (5) the alien is inadmissible under subclause (I), (II), (III), (IV), or (VI) of 8 U.S.C. § 1182(a)(3)(B)(i) or removable under 8 U.S.C. § 1227(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of 8 U.S.C.

asylum can be very broad or very narrow. Only once the issues are understood can this Court determine whether the records sought from the petitioners are “highly relevant” to them.

B. The Department Has Not Exhausted Alternative Sources

The Department has made no showing that the information in the records that it is seeking is not available from alternative sources. Assuming that the records are being sought in connection with a petition for asylum filed by Luis Posada Carriles, the most obvious alternative source of the information is Posada himself. As a part of the asylum process, Posada is required to submit to an interview by an asylum officer. 8 C.F.R. § 208.9. “The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant’s eligibility for asylum. At the time of the interview, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General.” 8 C.F.R. § 208.9(b). In addition, “The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), . . . and question the applicant and any witnesses.” 8 C.F.R. § 208.9(c). In United States v. Mcros, 11 Media L. Rep. (BNA) 2496 (M.D. Fla. 1985), the Court quashed a subpoena issued to a reporter by a criminal defendant because the defendant was himself an alternative source of the information sought from the reporter.

Other obvious sources are the many law enforcement agencies that have conducted extensive investigations of Posada over the course of the past 45 years. In Caporale, the Eleventh Circuit upheld an order quashing a defense subpoena to a reporter because the defendant could have obtained the same information sought from “the FBI agents involved. . . . The district court did not err in concluding that the appellants failed to show that [the journalist] had information that was unavailable for other sources or necessary to the proper presentation of the case in light of the fact that the FBI’s information was provided to appellants in court.” 806 F.2d at 1504. The government recently declassified an extensive dossier, including both FBI and CIA documents, related to Posada. The FBI and CIA agents who contributed to those documents

---

§ 1182(a)(3)(B)(i), there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or (6) the alien was firmly resettled in another country prior to arriving in the United States. See 8 U.S.C. § 1158(b)(2).

would be able to provide information regarding Posada's past activities to the Department. In addition, individuals named in those documents, such as Orlando Bosch, who upon information and belief still lives in Miami, could be interviewed as firsthand non-journalist sources of information regarding Posada Carriles' alleged activities.

It is clear from the numerous published reports and declassified government records that non-governmental, non-journalist witnesses are abundant. The Department has not shown that it has tried to obtain the information that it seeks from the petitioners from any of these sources.

C. The Department Cannot Show a Compelling Need for the Material

Even assuming that the Department could show that the records sought are highly relevant to an issue that would be determined in a proceeding and that it had exhausted alternative sources of the information that exists in those records, the Department cannot show that there is a compelling interest in requiring production of the records. At best, the Department might hope to obtain evidence that shows that statements that Posada Carriles made to the petitioners are inconsistent with statements that he is now making to the government in connection with an asylum petition. Judges have repeatedly held, however, that when evidence is sought from a journalist for the sole purpose of impeaching another witness who will testify in the case, the compelling interest component of the privilege is not met. For example, in State v. Roman, 9 Media L. Rep. (BNA) 1733, 1734 (Fla. 5th Cir. Ct. 1983), Judge Booth held: "Defendant's subpoena is for the purpose of providing possible impeachment testimony and, as such, is a collateral matter . . . . Such evidence sought is not of sufficient probative value or relevancy to compel the testimony sought in putting aside the reporter's First Amendment privilege." See also McCarty, 195 F.R.D. at 47 (holding that subpoenaing party failed to show that his need for impeachment evidence "is so compelling that he cannot otherwise establish his entitlement to relief"); State v. Kangus, 8 Media L. Rep. (BNA) 2045 (Fla. 15th Cir. Ct. 1982) (quashing subpoena issued to reporter to obtain evidence to impeach witness).

On the other hand, there is a compelling interest in protecting the petitioners from compulsory process. As outlined in the facts above, enforcement of subpoenas of this type against journalists creates grave risks that journalists will be unable to gain the confidence of critical sources of information about events of great public concern, that they will be unable to maintain an appearance of neutrality that is critical, or that they will not be so overwhelmed by requests for information from law enforcement agencies, administrative agencies, legislative

parties, and private parties in litigation that they will be able to continue to report the news of the day. This case in particular dramatically illustrates the point. Bardach is an established journalist who has been able to win the confidence of controversial sources such as Posada Carriles. She has done so by conducting thorough interviews and then using her editorial discretion to publish information that both conveys important information to the public, but also maintains the trust of her sources that she will not publish information that unnecessarily would embarrass or endanger the source or other individuals. If sources were to learn that Bardach could be stripped of her editorial discretion to decide what to publish upon the issuance of a government subpoena, sources obviously would be fearful to be candid in their discussions with her or might elect not to have communications with her at all. Sources also, quite probably, would look upon Bardach as an agent of law enforcement itself since her work easily could be accessed by law enforcement.

There also is a compelling interest in not enforcing the subpoenas because Bardach and The New York Times are continuing to report the Posada Carriles story. See, e.g., Tim Weiner, Case of Cuban Exile Could test the U.S. Definition of Terrorist - Old Cold Warrior, Out of Friends, Seeks Asylum, N.Y. Times, May 9, 2005, at A1; “Our Man’s in Miami” by Bardach in The Washington Post on April 17, 2005, “Anti Castro Militant Seeks Asylum,” on National Public Radio’s All Things Considered with Bardach heard by 780 stations and 23 million listeners, “This Week in South Florida” with Michael Putney on WPLG on May 15, 2005 and on Democracy Now! Website, <http://www.democracynow.org/article.pl?sid=05/05/09/148243> (containing May 9, 2005, transcript of interview of Bardach about Posada Carriles by national news program airing on more than 300 radio stations). If readers and listeners were to learn that the Times and Bardach provided material regarding Posada to the Government, they may well believe that the Times and Bardach were reporting from a partisan point of view. Although lawyers may understand that the materials were produced pursuant to subpoena, many readers might not understand this technicality.

In addition, the Times and Bardach are actively involved in reporting of other stories of national importance. Issuance of the subpoenas to the petitioners already has consumed a substantial amount of their time in formulating a response. Compliance with the subpoena would take an extraordinary amount of additional time in light of the breadth of the subpoenas and the fact that the subpoenas seeks editorial materials that were created seven years ago and



that are stored with voluminous other confidential editorial materials. In order to comply, the petitioners would be required to halt important newsgathering and reporting.

It is precisely for reasons such as these that the Supreme Court, the Eleventh Circuit Court of Appeals, Judges Ferguson, Paine, and Hoeveler have interpreted the First Amendment as placing a heavy burden on parties who subpoena reporters to show that the information they seek truly is relevant to issues in dispute, that no other sources of that same information exist, and that compelled production of the information will serve a compelling interest. The Department cannot meet these high standards and therefore if the Court concludes that the subpoenas were properly issued and served, it should decline to enforce them.

## II.

### The Department Did Not Lawfully Issue or Serve the Subpoenas

The subpoenas cannot be enforced against either The New York Times or Bardach because (A) they do not satisfy Department of Justice Guidelines for subpoenas to news media and (B) they do not comply with the Department's own regulations. In addition, the subpoena to Bardach cannot be enforced because she has not been properly served with the subpoena, and she cannot, consistent with due process, be compelled to produce documents in Florida.

#### A. The Subpoenas Fail to Comply With DOJ Guidelines

The administrative subpoenas at issue are not self-executing. In order to enforce them, the Department must ask the United States Attorney for the Southern District of Florida to request this Court to issue an order requiring compliance with the subpoena. See 8 U.S.C. § 1225(4)(b); 8 C.F.R. § 287.4. The Department of Justice has issued guidelines in 28 C.F.R. § 50.10 and the United States Attorney's Manual, § 9-2.161, which provide that subpoenas for testimony by news media must be approved by the Attorney General and, in criminal cases, may only be issued if the information sought is essential to a successful investigation – particularly with reference to establishing guilt or innocence. In addition, “all reasonable efforts should be made to obtain the desired information from alternative sources,” and the subpoenas “should avoid requiring production of a large volume of unpublished materials.”

The subpoenas at issue plainly do not comply with DOJ guidelines. The Department has not attempted to avoid requiring production of a large volume of unpublished materials. To the contrary, the subpoenas are extremely broad, seeking all material – published and unpublished – related to Bardach's interview of Posada Carriles. Upon information and belief, the Department

has not exhausted all reasonable efforts to obtain the desired information from non-journalist sources. And, to petitioners' knowledge, neither the Department nor the DOJ has obtained approval by the Attorney General for the subpoenas to Bardach and the Times.

"[W]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required." Morton v. Ruiz, 415 U.S. 199, 235 (1974). In order to enforce the subpoenas, the Department must seek DOJ involvement through the U.S. Attorney for the Southern District of Florida, and the DOJ must follow its own guidelines. The subpoenas do not comply with DOJ guidelines, and for that reason the subpoenas should be quashed.

B. The Subpoenas Fail to Comply with the Department's Own Regulations

The Secretary of the Department of Homeland Security ("DHS") has authority to conduct investigations under 6 U.S.C. § 111 & 112 and to exercise all of the powers of entities transferred to DHS. On March 3, 2003, all of the powers of the Immigration & Naturalization Service were transferred to DHS. (Dep't of Homeland Sec. Reorganization Plan at 4, Nov. 25, 2002) ([http://www.dhs.gov/interweb/assetlibrary/reorgani-zation\\_plan.pdf](http://www.dhs.gov/interweb/assetlibrary/reorgani-zation_plan.pdf)). See also 6 U.S.C. § 542(a) & (d)(1) (requiring submission of a reorganization plan within 60 days of Nov. 25, 2002, and providing that transfers would be effective on the date specified in the plan).

Pursuant to 8 U.S.C. § 1225(4)(a), "any immigration officer . . . [has] power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States."

In accordance with this statute and the transfer of power, the Department of Homeland Security has promulgated 8 C.F.R. § 287.4 to govern regulation of subpoenas. Subsection 287.4(a)(1), provides that a Special Agent in Charge "may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations." Section 287.4(b) provides: "Every subpoena issued under the provisions of this section *shall state the title of the proceeding* and shall command the person to whom it is directed to attend and to give testimony at a time and place specified. A subpoena shall also command the person to whom it is directed to produce the books, papers, or documents specified in the subpoena." (Emphasis added).

The subpoenas issued to Bardach and The New York Times do not state the title of the proceedings. They simply state “You are hereby commanded to produce the following items . . . in connection with an official proceeding being conducted under the authority of the Immigration and Nationality Act, relating to an ongoing investigation concerning violations of the criminal and administrative provisions of the Immigration and Nationality Act.”

These subpoenas plainly do not comply with 8 C.F.R. § 287.4(b). This non-compliance is not merely a technical deficiency. “[W]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.” Morton v. Ruiz, 415 U.S. 199, 235 (1974). Because the subpoenas do not inform the addressees of the title or nature of the proceedings at issue, Bardach and The New York Times cannot make an informed determination of whether the items at issue are relevant to the investigation or whether the subpoenaed information is within the scope of the Department’s authority. As explained in part III below, the subpoenas also violate the Fourth Amendment for these same reasons. The regulations apparently are constructed to ensure that the Department complies with the Fourth Amendment, and since the subpoenas violate the regulations, they must be quashed.

C. Bardach Was Not Personally Served With Subpoena

Bardach has not been personally served with the subpoena attached hereto as Exhibit B. (Bardach Dec. ¶ 3). With respect to service of an administrative subpoena by the Department Title 8, section 287.4(c) of the Code of Federal Regulations provides:

Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him/her the fee for one day’s attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Department, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

Because a copy of the subpoena has not been delivered to Bardach and no record of such service exists to be attached to the original copy of the subpoena, as required by section 287.4(c), the subpoena to Bardach cannot be enforced and instead must be quashed.

D. This Court Lacks Personal Jurisdiction Over Bardach

When a federal statute provides for nationwide service of process, it becomes the statutory basis for personal jurisdiction. Republic of Panama v. BCCI Holdings (Luxembourg),

S.A.), 119 F.3d 935, 942 (11th Cir. 1997). When a federal statute provides the basis for jurisdiction, the constitutional limits of due process derive from the Fifth, rather than the Fourteenth, Amendment. See id. The Fifth Amendment, like the Fourteenth, protects individual litigants against the burdens of litigation in an unduly inconvenient forum. See id. at 945.

To evaluate whether the forum is sufficiently inconvenient to violate an individual's Fifth Amendment rights, the Court should consider: (1) the extent of the [individual]'s contacts with the place where the action was filed; (2) the inconvenience to the [individual] of having to defend in a jurisdiction other than that of [her] residence or place of business, (b) the [individual]'s access to counsel, and (c) the distance from the defendant to the place where the action was brought; (3) judicial economy; (4) the probable situs of the discovery proceedings and the extent to which the discovery proceedings will take place out of the state of the [individual]'s residence or place of business; and (5) the nature of the regulated activity in question and the extent of impact that the [individual]'s activities have beyond the borders of [her] state of residence or business. Peay v. BellSouth Med. Assistance Plan, 205 F.3d 1206, 1212 (6th Cir. 2000) (citing Republic of Panama, 119 F.3d at 946).

Analysis of those factors in the context of this case compels the conclusion that to require Bardach to litigate in Florida would impose such a burden on her as to constitute an infringement of her liberty interests in violation of the Fifth Amendment. Bardach resides in California, not Florida. She does not own property or have an office to transact business in the State of Florida. It would be extremely inconvenient for Bardach to litigate in Miami, given that the materials that are the subject of the subpoena at issue are located in California, more than 2800 miles away. (The interviews themselves did not occur in Florida). Unlike the defendants in Republic of Panama, 119 F.3d at 948, described by the Eleventh Circuit as "large corporations providing banking services to customers in major metropolitan areas along the eastern seaboard," Bardach is an independent journalist who works from her home and office in Southern California.

### III.

#### Bardach's Fourth Amendment Rights Would be Violated by Enforcement of the Subpoena

The Fourth Amendment's prohibition against unreasonable searches applies to administrative subpoenas, which are considered "constructive searches." Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 202-208 (1946); Gimble v. FDIC, 77 F.3d 593, 596 (2d Cir. 1996);

United States v. Florida Azalea Specialists, 19 F.3d 620, 623 (11th Cir. 1994). To comply with the Fourth Amendment, the information sought by administrative subpoena must be “reasonably relevant to the agency investigation,” “not too indefinite,” and “within the authority of the agency.” United States v. Morton Salt Co., 338 U.S. 632, 652 (1950); Gimbel, 77 F.3d at 596.

Here, the Department has not identified the title of the proceeding at issue, as required by 8 C.F.R. § 287.4(b)(2). See part II.B, supra. The subpoenas indicate only that they are in connection with “an official proceeding being conducted under the authority of the Immigration and Nationality Act, relating to an ongoing investigation concerning violations of the criminal and administrative provisions of the Immigration and Nationality Act.” Although one may conjecture that these proceedings relate to an asylum petition on behalf of Posada Carriles or a criminal proceeding brought by the Government against Posada Carriles, the investigation could be related to something entirely different.

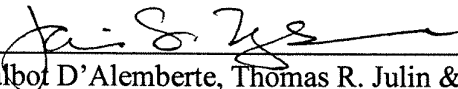
To comply with the Fourth Amendment, the Department must at least identify the title or the nature of the proceeding such that Bardach, The New York Times, and the Court can determine whether the information sought is reasonably relevant to the investigation and whether the information subpoenaed is within the authority of the agency. The subpoenas as drafted are fishing expeditions seeking to probe the depths of the records of a professional journalist’s investigative reporting. The scope of the subpoena is extremely broad in that it extends to “all recordings and documents relating to the interview of Luis Posada Carriles.” Bardach’s declaration show that responsive materials contain her personal thoughts, questions, and observations regarding the subject upon which she was reporting. Her declaration further shows that many of those personal thoughts, questions and observations have not been disclosed in the reports that were published, and that Bardach regards these personal thoughts, questions and observations as highly private. The Department has not and cannot show that all of these materials are “reasonably relevant” to its investigation. The subpoenas therefore constitute unreasonable searches in violation of the Fourth Amendment and should be quashed.

#### CONCLUSION

Wherefore, the Court should quash the subpoenas issued by the Department of Homeland Security to Ann Louise Bardach and The New York Times.

Respectfully submitted,

Hunton & Williams LLP  
Attorneys for The New York Times Company &  
Ann Louise Bardach

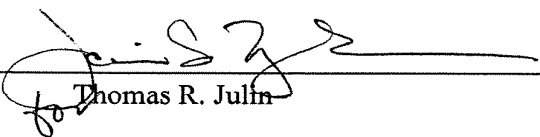
By   
Talbot D'Alemberte, Thomas R. Julin & Jamie L. Zysk  
Florida Bar Nos. 17529, 325376 & 0728861  
1111 Brickell Avenue, Suite 2500  
Miami, Florida 33131  
305.810.2516 Fax 2460  
tjulin or jzysk@hunton.com

George Freeman  
The New York Times Company  
Florida Bar No. 233684  
229 West 43rd Street  
New York, New York 10036  
212.556.1558 Fax 4634  
freemang@nytimes.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this memorandum was mailed on May 16, 2005, to:

Office of the Chief Counsel  
Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
333 S. Miami Avenue, Suite 200  
Miami, Florida 33130

  
Thomas R. Julin

July 12, 1998, Sunday Late Edition - Final  
Section 1 Page 1 Column 1 Desk: Foreign Desk Length: 2885 words  
Type: Special Report

Editor's Note Appended

## **A BOMBERS TALE: Taking Aim at Castro; Key Cuba Foe Claims Exiles' Backing**

By ANN LOUISE BARDACH and LARRY ROHTER

MIAMI

A Cuban exile who has waged a campaign of bombings and assassination attempts aimed at toppling Fidel Castro says that his efforts were supported financially for more than a decade by the Cuban-American leaders of one of America's most influential lobbying groups.

The exile, Luis Posada Carriles, said he organized a wave of bombings in Cuba last year at hotels, restaurants and discotheques, killing an Italian tourist and alarming the Cuban Government. Mr. Posada was schooled in demolition and guerrilla warfare by the Central Intelligence Agency in the 1960's.

In a series of tape-recorded interviews at a walled Caribbean compound, Mr. Posada said the hotel bombings and other operations had been supported by leaders of the Cuban-American National Foundation. Its founder and head, Jorge Mas Canosa, who died last year, was embraced at the White House by Presidents Reagan, Bush and Clinton.

A powerful force in both Florida and national elections, and a prodigious campaign donor, Mr. Mas played a decisive role in persuading Mr. Clinton to change his mind and follow a course of sanctions and isolation against Mr. Castro's Cuba.

Although the tax-exempt foundation has declared that it seeks to bring down Cuba's Communist Government solely through peaceful means, Mr. Posada said leaders of the foundation discreetly financed his operations. Mr. Mas personally supervised the flow of money and

**EXHIBIT**

A

tabbles

logistical support, he said.

"Jorge controlled everything," Mr. Posada said. "Whenever I needed money, he said to give me \$5,000, give me \$10,000, give me \$15,000, and they sent it to me."

Over the years, Mr. Posada estimated, Mr. Mas sent him more than \$200,000. "He never said, 'This is from the foundation,' " Mr. Posada recalled. Rather, he said with a chuckle, the money arrived with the message, "This is for the church."

Foundation leaders did not respond to repeated telephone calls and letters requesting an interview to discuss their relationship with Mr. Posada. But in a brief statement faxed to The New York Times, the group denied a role in his operations, saying "any allegation, implication, or suggestion that members of the Cuban American National Foundation have financed any alleged 'acts of violence' against the Castro regime are totally and patently false."

### The Recluse

#### Talking on His Terms, After Years of Silence

Mr. Posada, 70, has long refused to talk to journalists; his autobiography, published in 1994, provided only a sketchy account of his dealings with the foundation's leaders.

But in two days of interviews, he talked openly for the first time about those relationships and how they figured in a fight to which he has devoted his life, a fight that has left him far from his declared goal of toppling the hemisphere's last Communist state.

His motives for agreeing to the interviews are not easy to pin down. Mr. Posada, who has survived several attempts on his life, told a friend recently that he was afraid he would not live long enough to tell his story.

For the first time, Mr. Posada also described his role in some of the great cold war events in which Cuban exiles were key players. He was trained for the Bay of Pigs at a camp in Guatemala, but did not participate in the landing on Cuban beaches after the Kennedy Administration withheld air support from the first wave of rebels, whose attack quickly foundered.

It was Cuban exiles like Mr. Posada who were recruited by the C.I.A. for the subsequent attempts on Mr. Castro's life.



Jailed for one of the most infamous anti-Cuban attacks, the 1976 bombing of a civilian Cubana airliner, he eventually escaped from a Venezuelan prison to join the centerpiece of the Reagan White House's anti-Communist crusade in the Western Hemisphere: Lieut. Col. Oliver L. North's clandestine effort to supply arms to Nicaraguan contras.

Mr. Posada denied any role in the Cubana bombing, which killed 73 people, many of them teen-age members of Cuba's national fencing team.

He agreed through an intermediary to meet with The New York Times, provided his current residence and alias, and the location of the interviews, were not divulged.

Some of what he said about his past can be verified through recently declassified Government documents, as well as interviews with former foundation members and American officials.

But he made several claims that rest solely on his word, including an assertion that he has agents inside the Cuban military and that American law enforcement authorities maintained an attitude of benign neglect toward him for most of his career, allowing him to remain free and active.

Mr. Posada said all payments from the exile leaders to him were made in cash, and he said he did not know whether the money came from personal, business or foundation accounts. He said that the money was used for his living expenses and for operations and that Mr. Mas told him he did not want to know the details of his activities.

In the interviews he was generally expansive on broad questions of philosophy but evasive on specifics. He spoke in Spanish and English, with difficulty, his speech distorted by the severe damage done to the nerves of his tongue in a 1990 attempt on his life.

Mr. Posada said he was angered by recent newspaper accounts of his activities and eager near the end of his life to put his version of events on record, perhaps reinvigorating a movement he sees as lacking energy and direction since Mr. Mas's death.

The exiles' foundation, created in 1981, has sought to portray itself as the responsible voice of the Cuban exile community, dedicated to weakening the Castro regime through politics rather than force. Thanks to that approach and millions in campaign donations, the foundation became one of Washington's most effective lobbying organizations and a

principal architect of American policy toward Cuba.

Any evidence that the foundation or its leaders were dispensing money to Republicans and Democrats while underwriting bombings could weaken the group's claim to legitimacy. That kind of activity could also violate the Logan Act, which makes illegal any "conspiracy to kill, kidnap, maim or injure persons or damage property in a foreign country."

Mr. Posada's remarks hinted that the foundation's public advocacy of purely nonviolent opposition to Mr. Castro was a carefully crafted fiction. Asked if he functioned as the military wing to the foundation's political wing, much as the Irish Republican Army does for Sinn Fein, he replied, "It looks like that," and laughed.

#### The Money

#### Assertions and Denials On Sources of Support

In the interviews and in his autobiography, "The Roads of the Warrior," Mr. Posada said he had received financial support from Mr. Mas and Feliciano Foyo, treasurer of the group, as well as Alberto Hernandez, who succeeded Mr. Mas as chairman.

Dr. Hernandez and Mr. Foyo did not respond to repeated requests for comment, and it was unclear whether they were aware of how Mr. Posada might have used any money they provided. In his autobiography, Mr. Posada said foundation leaders helped pay his medical and living expenses and paid for his transportation from Venezuela to Central America after his 1985 jailbreak.

At times, Mr. Posada said, cash was delivered from Miami by fellow exiles, including Gaspar Jimenez, who was jailed in Mexico in the 1976 killing of a Cuban diplomat there. Mr. Jimenez is now an employee of the medical clinic that Dr. Hernandez operates in Miami, according to employees at the office.

Mr. Jimenez did not respond to requests for comment.

When the bombs began exploding last year at Cuban hotels, the Government there asserted that the attacks had been organized and paid for by exiles operating out of Miami, a claim it bolstered with the videotape of an operative confessing to carrying out some of the bombings.

More recently, reports in The Miami Herald and the statecontrolled

Cuban press tied the operation to Mr. Posada. However, he told The New York Times that American authorities had made no effort to question him about the case. He attributed that lack of action in part to his longstanding relationship with American law enforcement and intelligence agencies.

"As you can see," he said, "the F.B.I. and the C.I.A. don't bother me, and I am neutral with them. Whenever I can help them, I do."

Mr. Posada gave conflicting accounts of his contacts with American authorities. Initially he spoke of enduring ties with United States intelligence agencies and of close friendship with at least two current F.B.I. officials, including, he said, an important official in the Washington office.

"I know a very high-up person there," he said.

Later he asked that those comments be omitted from any article and said it had been years since he had had these close dealings.

An American Government official said the C.I.A. has not had a relationship with Mr. Posada "in decades," and the F.B.I. also denied his assertions. "The F.B.I. does not now have nor have we ever had a longstanding relationship with Posada," said John F. Lewis, Jr. who as assistant director in charge of the national security division supervises all counterintelligence and counterterrorism work for the agency.

Declassified documents unearthed in Washington by the National Security Archives support Mr. Posada's suggestion that the F.B.I. and the C.I.A. had detailed knowledge of his operations against Cuba from the early 1960's to the mid-1970's.

G. Robert Blakey, chief counsel to the 1978 House Select Committee on Assassinations, said he had reviewed many of the F.B.I.'s classified files about anti-Castro Cubans from 1978 and had noted many instances in which the bureau turned a blind eye to possible violations of the law. As he put it, "When I read some of those things, and I'm an old Federal prosecutor, I thought, 'Why isn't someone being indicted for this?' "

On one point Mr. Posada was direct and unrepentant: he still intends to try to kill Mr. Castro, and he believes violence is the best method for ending Communism in Cuba.

"It is the only way to create an uprising there," Mr. Posada said. "Castro

will never change, never. There are several ways to make a revolution, and I have been working on some."

Within militant Cuban exile circles, Mr. Posada is a legendary figure, celebrated for his tenacity and dedication to the antiCastro cause. He has at various times also worked for Venezuelan, Salvadoran and Guatemalan intelligence or security agencies because, he explained, he wanted "to fight against the Communists, the people who helped Cuba."

But the Cuban Government regards him as a terrorist and a "monstrous criminal" responsible for numerous acts of violence against official installations and personnel, on the island and off, and has called on the United States to curb his activities.

Mr. Posada proudly admitted authorship of the hotel bomb attacks last year. He described them as acts of war intended to cripple a totalitarian regime by depriving it of foreign tourism and investment.

"We didn't want to hurt anybody," he said. "We just wanted to make a big scandal so that the tourists don't come anymore. We don't want any more foreign investment."

The bombs were also intended, Mr. Posada said, to sow doubts abroad about the stability of the regime, to make Cuba think he had operatives in the military and to encourage internal opposition. "People are not afraid anymore," he said. "They talk openly in the street. But they need something to start the fire, and that's my goal."

### The Bombings

#### A Mastermind Reveals Some Key Secrets

For several months the attacks did indeed discourage tourism. With a rueful chuckle, Mr. Posada described the Italian tourist's death as a freak accident, but he declared that he had a clear conscience, saying, "I sleep like a baby."

"It is sad that someone is dead, but we can't stop," he added. "That Italian was sitting in the wrong place at the wrong time."

In Havana last September, authorities arrested a 25-year-old Salvadoran, Raul Ernesto Cruz Leon, and accused him of carrying out a halfdozen of the hotel attacks. Mr. Posada said Mr. Cruz Leon, whom he described as a mercenary, had been working for him, but said "maybe a dozen" others

reporting to him remained at large.

The hotel bombings were organized from El Salvador and Guatemala, Mr. Posada said. Explosives were obtained through his contacts there, and subordinates in turn recruited couriers like Mr. Cruz Leon to take the explosives into Cuba and detonate them in carefully selected targets.

"Everything is compartmentalized," Mr. Posada said. "I know everybody, but they don't know me."

"This was an inside operation in Cuba," he added, explaining that he was now trying to think of another way to disrupt the Cuban economy and demonstrate to the Cuban people that Mr. Castro's security apparatus is not all-powerful and all-knowing. "Very soon there will be exciting news," he predicted.

Mr. Posada said he had several ongoing operations, including one that resulted in Cuba's capture of three of his colleagues in early June. "Castro is keeping this a secret," he said. "I don't understand why."

In response to several questions about operational details that he clearly did not want to answer, he jokingly said, "I take the Fifth Amendment."

While agreeing to allow the interviews to be taped, he declined to be photographed, saying he did not want to provide Cuban agents with any information that would help them hunt him down. "The reason that I last so long is that nobody knows how I am," he explained. "Not having pictures of my pretty face has kept me alive a long time."

In Guatemala in 1990, he was attacked and gravely wounded in what he describes as an assassination attempt mounted by his enemies at Cuban intelligence. He was hit with a dozen bullets, one of which shattered his jaw and nearly severed his tongue, requiring several rounds of reconstructive surgery.

He said that during his long recuperation in El Salvador, some of his expenses were paid by Dr. Hernandez, the current chairman of the Cuban-American foundation, whom he described as "a great Cuban patriot and a dear friend." Just last year, he said, a Houston surgeon whom he also described as a friend flew to El Salvador and performed further surgery on him.

Mr. Posada detailed instances of support from foundation leaders throughout his career. Mr. Mas, he said, helped organize his escape from

a Venezuelan prison in 1985, and then helped settle him in El Salvador, where he joined the White House-directed operation that led to the Iran-contra scandal.

"All the money that I received when I escaped from the jail," he said, "it was not that much, but it was through Jorge."

Mr. Posada said Mr. Mas was also very much aware that he was behind the hotel bombing campaign last year. But the two men had a longstanding agreement, he said, never to discuss the details of any operation that Mr. Posada was involved in.

"He never met operators, never," Mr. Posada said. "You ask for money from him, and he said, 'I don't want to know anything.' " Any discussion was "not specific, because he was intelligent enough to know who knows how to do the things and who doesn't know."

Mr. Mas, he added, "was afraid of the telephone."

"You don't talk like that on the telephone."

Asked when he had last visited the United States, he answered with a laugh and a question of his own: "Officially or unofficially?" A State Department official said Mr. Posada was reported to have visited Miami in the summer of 1996.

Mr. Posada acknowledged that he has at least four passports, all in different names. He regards himself as a Venezuelan citizen, but he has a Salvadoran passport bearing the name Ramon Medina Rodriguez, the nom de guerre he assumed during the Iran-contra affair, and a Guatemalan passport issued in the name of Juan Jose Rivas Lopez.

He also reluctantly admitted to having an American passport. But he would not discuss how he had obtained it or disclose the name in it, saying only that he occasionally uses it to visit the United States "unofficially," and had once used it to gain refuge in the American Embassy when he was caught in the middle of a revolution in the West African country of Sierra Leone.

"I have a lot of passports," he said with a laugh. "No problem."

He added, "If I want to go to Miami, I have different ways to go. But I don't go. You can't control Customs people. They can do anything."

"Then," he said, "Your friends can't help you."

**Images:** Photos: Luis Posada Carriles, bottom right, who has waged a campaign aimed at toppling Fidel Castro, says Jorge Mas Canosa, top left, and other Cuban-American exile leaders gave him money over the years. (From left, Susan Greenwood for The New York Times (1992); United Press International (1982); Associated Press (1976)(pg. 1); **KNOWING THE RIGHT PEOPLE:** The Cuban-American National Foundation provided these undated photographs of Jorge Mas Canosa, its founder and president until his death last year, with Presidents Bush and Clinton. (Reuters/Archive Photos)(pg. 10)

**Editor's Note:** August 16, 1998, Sunday

A front-page article on July 12 reported a series of interviews with Luis Posada Carriles, a Cuban exile who told of having waged a campaign of violence aimed at toppling Fidel Castro. Mr. Posada was quoted as saying his operations had been financed for years by Jorge Mas Canosa and other leaders of an influential American lobbying group, the Cuban-American National Foundation.

Because of an editing oversight, one sentence reported that Mr. Posada said the Cuban-American leaders had "supported" a series of hotel bombings in Cuba. The wording was not intended to mean that Mr. Posada said the foundation leaders had paid specifically for the hotel bombings.

In the interviews, Mr. Posada acknowledged having organized the bombing campaign. He also noted that leaders of the foundation had publicly expressed support for the bombings, which they characterized as an act of internal rebellion. But, as was made clear elsewhere in the article, Mr. Posada said Mr. Mas and other leaders of the foundation did not earmark money for specific operations, and asked not to be told how he used their funds.

---

Copyright 1998 The New York Times Company

**July 13, 1998, Monday** Late Edition - Final  
**Section A Page 1 Column 3 Desk:** Foreign Desk **Length:** 5572 words  
**Type:** Chronology

**Correction Appended**

## **A BOMBER'S TALE: Decades of Intrigue; Life in the Shadows, Trying to Bring Down Castro**

**By ANN LOUISE BARDACH and LARRY ROHTER**

**MIAMI**

Two years after the Bay of Pigs invasion ended in ignominious failure on the beaches of Cuba, two young Cuban exiles stood next to each other in the spring sun at Fort Benning, Ga., training for the next march on Havana.

It was 1963, a time of feverish American plotting against Fidel Castro's rule. The two men were among the exiles who had survived the bungled operation to overthrow the Cuban leader and had enlisted in the United States Army, confident that President Kennedy would mount another attack that would banish Communism from the hemisphere.

The orders never came, and both men soon quit the Army to begin their own three-decade war against Mr. Castro.

Jorge Mas Canosa, the younger of the two, emerged as the public face of the movement, a successful businessman who as chairman of the powerful Cuban-American National Foundation courted Presidents and politicians, raised money and relentlessly lobbied the White House and Congress to get tough on Cuba. By the time Mr. Mas died of cancer last November, after two decades of denying any direct role in the military operations of exiles seeking to destabilize Cuba, he had become perhaps the most influential voice in tightening America's official policy of economic and political quarantine.

The older man, Luis Posada Carriles, a former sugar chemist, became a leader of the exiles' clandestine military wing, plotting to kill Mr. Castro



and planting bombs at Cuban Government installations. As Mr. Mas was building a personal fortune that eventually exceeded \$100 million, Mr. Posada remained in the shadows, consorting with intelligence officers, anti-Castro militants and even, declassified documents say, reputed mobsters.

Now, as he nears the end of his career as the most notorious commando in the anti-Castro underground, Mr. Posada has for the first time detailed his 37-year relationship with exile leaders in the United States and with the American authorities.

Supplemented by additional interviews and newly declassified American intelligence reports, Mr. Posada's account is the most detailed to date of the deadly underside of the campaign against Mr. Castro's rule.

In two days of taped interviews at his hideout in the Caribbean, Mr. Posada was by turns proud, bawdy, boastful and evasive about his work as a self-proclaimed freedom fighter, which included a series of hotel bombings last year that plunged Cuba into tumult. He described, sometimes selectively, the role of his sponsors in the ostensibly nonviolent Cuban-American population, and his complicated relationship with American officials who originally trained him but now take a dimmer view of his activities.

"The C.I.A. taught us everything --everything," Mr. Posada said. "They taught us explosives, how to kill, bomb, trained us in acts of sabotage. When the Cubans were working for the C.I.A. they were called patriots. 'Acciones de sabotaje' was the term they used to classify this type of operation," he added, using the Spanish for acts of sabotage. "Now they call it terrorism. The times have changed. We were betrayed because Americans think like Americans."

It is not clear why Mr. Posada, who has avoided interviews for most of his career, has chosen to speak publicly. Last month, he agreed through an intermediary to talk to a reporter, provided that the location of the interview was described only as "somewhere in the Caribbean" and that his current residences were not disclosed. Mr. Posada, who has survived several assassination attempts, recently told a close friend that he feared that he would not live long enough to tell his version of events.

During the interviews Mr. Posada often joked about his outlaw activities. But there was also a wistful, almost melancholic tone to the conversations with a man who has devoted his entire adult life to a not yet-realized goal that seems as elusive as ever. Communism in Europe

has vanished, but the 71-year-old Mr. Castro is still a true believer and still in power, with no signs that he is losing his grip.

No anti-Communist opposition in the world has been more fervent or as well financed as that of Cuban exiles living here. And yet, as Mr. Posada made clear in the interviews, they have little to show for their efforts.

To outsiders, the struggle between the aging leader and the graying commandos who want to displace him seems geriatric, as out of place in the late 1990's as the vintage American cars that still cruise the streets of Havana. But as Mr. Posada emphasized, the hatred of the men on the losing side of Mr. Castro's revolution has not been dimmed by the passing of the years.

"Castro will never change, never," he said, adding later, "Our job is to provide inspiration and explosives to the Cuban people."

Barely a half-hour into the conversation, Mr. Posada yanked his shirt over his head, displaying a torso ribboned with scars, the legacy of an attempt on his life in Guatemala in 1990. Both his arms showed holes where slugs had entered and exited; across his upper left chest was a 10-inch gash where bullets had grazed his heart.

"Let me have your hand," he said, maneuvering a reporter's wrist to the right side of his jaw, shattered by the same bullet that damaged his tongue and nerves, leaving him with a crushed, gravelly voice. "One bullet entered here, and it exited on the left side. My chin used to be an inch longer, very nice. I was very handsome once."

Mr. Posada, who always carries a revolver and is described in C.I.A. files as an excellent marksman, blames Cuban operatives for his maiming. But as he told the story of his life on the run and his work for various anti-Communist governments in the region, it became clear that his decades of intrigue had left him with enemies aplenty throughout the region, from the leftist guerrilla movements of Venezuela, Nicaragua and El Salvador to the Guatemalan military, whose officers he was spying on at the behest of the country's President.

A long period of recuperation followed the attack. Then at 64, he resumed his life's mission, doggedly determined to topple Mr. Castro. "It's a war, a bad war," he said.

The Early Years

An Interest in Politics; A Split in the Family

Luis Posada Carriles was born on Feb. 15, 1928, in the then elegant coastal city of Cienfuegos, one of four children in a family he described as upper-middle-class. His father owned a bookstore and printing press, and moved the family to the capital when Luis was 17 and about to enter the University of Havana.

Also at the university was an intense law student named Fidel Castro. "He was three years ahead of me," Mr. Posada recalled, describing him as tall and handsome but outfitted "like a crazy guy, dressed like a gangster."

He said his most vivid memory of Mr. Castro was his imposing the same gangster style on student politics, relying on a band of supporters in which "everyone had guns" to intimidate opponents.

After studying medicine for two years and then chemistry, Mr. Posada went to work for the Firestone Tire and Rubber Company, first in Havana and then in Akron, Ohio, after the revolution. His entire family, including his parents, two brothers and a sister, remained behind, committed to Mr. Castro's revolution.

His 58-year-old sister, Maria Conchita Posada de Perez, joined the Cuban Army after the revolution and reached the rank of colonel. "She is married to a colonel in the intelligence department," Mr. Posada said, savoring the irony. "I help her with money now and then."

Like most educated Cubans his age, Mr. Posada opposed the dictatorship of Fulgencio Batista. "To be frank, I was never interested in politics when I was young," he said. "Not until the revolution."

By 1960 he had moved into open opposition to Mr. Castro, which landed him in a military prison. According to his Cuban criminal record, a copy of which was published a decade ago in Granma, the official newspaper of the Cuban Communist Party, he then sought political asylum at the Embassy of Argentina, left Cuba in February 1961 and immediately volunteered for the force being trained by the C.I.A. for the Bay of Pigs invasion two months later.

It is not clear precisely what prompted Mr. Posada to take up arms against the revolution so heartily supported by his own family and, initially, by a great majority of his countrymen. Asked repeatedly to explain, he said simply: "All Communists are the same. All are bad, a form of evil."

Later in the interviews, Mr. Posada wrote out his credo on a sheet of yellow note paper. The oppression, suffering and poverty Mr. Castro has propagated, he argued, "gives the right to all free Cubans to rebel in arms against the tyrant, using violence and any method within our reach that contributes to the toppling of the nefarious system and leads to the freedom of our fatherland."

Mr. Posada was sent to Guatemala to take part in a second wave of landings in the Bay of Pigs invasion, but did not see action because the initial invading force foundered.

In March 1963, at the C.I.A.'s behest, Mr. Posada enrolled in officer candidate school at Fort Benning and received instruction in demolition, propaganda and intelligence. Fate brought him together with Mr. Mas Canosa. "Jorge stood next to me every day for seven months in the line," recalled Mr. Posada. "We were very close friends."

Both men left the Army after it became clear that the United States had no intention of invading Cuba again. They settled in Miami, the epicenter of anti-Castro activity.

Although revolution was his passion, Mr. Mas took jobs as a milkman, stevedore and shoe salesman before becoming involved with a telephone cable company that became the cornerstone of his multimillion-dollar fortune.

"I knew Jorge when he was poor," Mr. Posada recalled. "He was not perfect, but he was a very smart guy. He had a lot of trouble with different people, even with his own brother."

But, Mr. Posada added, "I trusted him."

#### The C.I.A. Years A 'Principal Agent'; Links With 'Gangster'

While Mr. Mas was making his mark in business, Mr. Posada was building close ties to the C.I.A., which was using Miami as a base of operations against Mr. Castro.

It was a dizzying time of conspiracies and plots, some harebrained, some deadly serious. The agency's station in Miami was among its largest, and its officers industriously enticed anti-Castro Cubans to sign on with "the company." Miami's organized-crime figures, who had taken in bountiful profits under the Batista Government, were eager to bankroll the Cuban

opposition, or use the Cubans for their own ends.

In the interviews, Mr. Posada spoke only obliquely about this period and provided even fewer details in his 1994 autobiography, "The Roads of the Warrior."

Now, newly declassified documents furnished for The New York Times by the National Security Archive, a nonprofit research group in Washington, make clear why: For much of that time, the C.I.A. was directing Mr. Posada's activities, involving itself even in such minutiae as whether he should buy a boat. (His handlers thought that it was a bad idea and that his cover would be better without it.)

The documents are part of voluminous files amassed by the 1978 House Select Committee on Assassinations as part of its investigation into the killing of President John F. Kennedy. Investigators examining whether anti-Castro Cubans had any links to the 1963 assassination were permitted to read and summarize a trove of Government cablegrams and documents, all of which remain classified.

According to those summaries, Mr. Posada provided the agency and the F.B.I. with a steady stream of valuable information about Cuban exile activity in Miami. It was the C.I.A. that directed Mr. Posada to "establish a training camp for guerrilla ops against Castro." At one point, the documents say, the agency pressed Mr. Posada to recruit his brother Ricardo as a spy.

Interviewed in the late 1970's by investigators from the House assassinations panel, Mr. Posada said he had been trained as a C.I.A. operative in the Florida Keys and had quickly become a "principal agent." He said his anti-Castro group had "worked with the company direct" and had had arms, boats and a network of safe houses.

His handling of those responsibilities evidently earned Mr. Posada the respect of his C.I.A. superiors and high marks in the agency evaluations filed on him. One from the summer of 1965 deemed him "of good character, very reliable, security-conscious," while another a year later said his "performance in all assigned tasks has been excellent."

At the same time, Mr. Posada was deepening his relationship with Mr. Mas, who is described in one of the C.I.A. documents as a "close friend" of his. The two were active in the exile group RECE, or Cuban Representation in Exile, and later in a larger umbrella alliance called CORU, or Coordinator of United Revolutionary Organizations, both of

which undertook violent actions aimed at toppling the Castro Government.

A series of July 1965 cablegrams asserts that the two men were plotting to attack Soviet and Cuban installations abroad. One document quotes Mr. Posada as saying that "Jorge Mas Canosa of RECE had paid assassin \$5,000 to cover expenses of a demolition operation in Mexico" and that Mr. Posada was "planning to place limpet mines on a Cuban or Soviet vessel in the harbor of Veracruz, and had 100 lbs. of C4 explosives and detonators."

Mr. Mas, other documents reported, "had in his possession 125 lbs. of Pentol to be placed as charges on the vessels" and had "proposed to demolitions expert he travel to Spain, Mexico at expense of RECE and place bombs in Communist installations in those countries."

By July 24, according to the cablegrams, Mr. Posada had "completed two 10-lb. bombs for RECE working directly with Mas Canosa." At that point, the cablegrams cryptically report, Mr. Posada was "instructed to disengage from activities." There is no indication that the operation went forward.

The intelligence files contain intriguing references to Mr. Posada's dealings with Frank (Lefty) Rosenthal, described in one report as a "well-known gangster" who became the model for the fictional crime figure at the center of the movie "Casino."

During the summer of 1965, Mr. Posada was "involved in passing silencers, C-4 explosives, detonators" and hand grenades to Mr. Rosenthal, according to a Defense Department intelligence report. A year later, the report continued, Mr. Posada supplied 150 small bombs and some fuses to Mr. Rosenthal "under threat of bodily harm."

The 1967 report drily states that "station only recently advised of this transaction." A "memo for the record" says the timing "suggests Posada may have been moonlighting for Rosenthal and only reported transactions to agency when it got hotter." About that time, Mr. Rosenthal left Miami for Las Vegas, Nev., after being questioned by the police in Miami about a series of unsolved bombings.

It appeared that Mr. Posada's ties with the agency had begun to fray. A report in February 1968 complains of his "tendency" to become involved in "clandestine sabotage activities." A few months later, in June 1968, Mr. Posada was questioned about "unreported association with gangster

elements" and "thefts from C.I.A., plus other items."

#### The Latin Years

##### A Venezuela Job; Break With C.I.A.

Mr. Posada's life took a new turn in 1967, when he abruptly left Miami and joined Venezuelan intelligence. This marked the beginning of his years as an operative for a succession of Latin American governments. He has not lived again in the United States, depending instead on a web of powerful friends in the region who see to his welfare and shield him from prosecution.

He got his job as chief of operations for Venezuelan intelligence with the help of C.I.A. recommendations and was immediately sent to combat the leftist guerrilla movements that Mr. Castro was supporting in Venezuela.

To Mr. Posada, the work was an extension of his efforts to bring down Mr. Castro, and by all accounts, he carried out his job in Venezuela with gusto. "I persecuted them very, very hard," he said of the guerrillas, some of whom later abandoned armed struggle and now are important political figures in Venezuela. "Many, many people got killed."

Mr. Posada arranged for a friend from his C.I.A. days, Orlando Bosch, to "come to Venezuela to make sabotage" against the Castro Government. Mr. Bosch had earlier been convicted in the United States of a bomb attack on a Polish freighter bound for Cuba and advocated the violent overthrow of Mr. Castro.

But a falling out with Venezuela's newly elected President, Carlos Andres Perez, led to Mr. Posada's dismissal and prompted him to found his own private security agency, "the largest in Venezuela," he said.

Around that time, Mr. Posada's relationship with the American authorities was suddenly thrown into crisis by an intelligence report that "Posada may be involved in smuggling cocaine from Colombia through Venezuela to Miami, also in counterfeit U.S. money in Venezuela."

According to the report, a copy of which is summarized in the House investigators' files, the C.I.A. decided "not to directly confront Posada with allegation so as not to compromise ongoing investigation." But subsequent cablegrams call Mr. Posada a "serious potential liability." The agency would most likely "terminate association promptly if allegations prove true," one read.

Mr. Posada was questioned, and "found guilty only of having the wrong kind of friends," the synopsis of another report read. Interrogators were convinced by his denial of drug trafficking, the report concluded.

Even so, by February 1976, the agency's officers decided to break their ties with Mr. Posada in what the documents cryptically described as concerns about "outstanding tax matters."

Over the next few months, Mr. Posada volunteered information to the agency in hopes of obtaining American visas for himself and his family. He warned that Mr. Bosch and another Cuban exile were plotting against the nephew of Chile's deposed leftist President. In June, Mr. Posada was calling the C.I.A. again, "concerning possible exile plans to blow up Cubana airliner leaving Panama." He again asked for help with his visa.

Four months later, on Oct. 6, 1976, a Cubana jetliner with 73 people aboard was blown out of the sky shortly after it took off from the Caribbean island of Barbados. The dead included teenagers from Cuba's national fencing team.

The following day, the C.I.A. made what its records call "unsuccessful attempts" to reach Mr. Posada.

#### The See-Saw Years

#### Jail and an Escape; A New Link With U.S.

The bombing dramatically changed Mr. Posada's fortunes. Investigators in Venezuela traced the bomb to the plane's luggage compartment and identified two Venezuelans who checked bags through to Havana but got off the plane in Barbados. The men had worked for Mr. Posada, who was arrested and charged with the bombing. Also arrested was Mr. Bosch, who had long collaborated with Mr. Posada.

To this day, Mr. Posada maintains that he did not order the bombing and blames a Cuban colleague in Venezuelan intelligence for the action, which he called "stupid." Mr. Bosch has defended the attack in a published interview as "a legitimate act of war."

A retired C.I.A. official familiar with the case said in a recent interview that "Bosch and Posada were the primary suspects," adding, "There were no other suspects."

Mr. Posada was jailed in Venezuela, and for most of the next nine years, he remained behind bars, where along with Mr. Bosch he learned to



paint.

During the interviews, Mr. Posada emphasized that he was never convicted of the bombing, and blamed corruption and political influence-peddling in the Venezuelan justice system for his failure to be freed on bail.

Mr. Mas, in contrast, was flourishing, his business booming and his political influence growing. At the behest of the Reagan Administration, he founded the Cuban-American National Foundation in 1981.

Mr. Posada acknowledged that he might still be in jail in Venezuela had not his friends, led by Mr. Mas, come to his rescue. In a sworn deposition taken in a civil lawsuit, Ricardo Mas, the estranged brother of Jorge Mas, recounted how he had traveled to Panama to obtain the cash used to pay for the escape.

Ricardo Mas was the comptroller of his brother's company, Church & Tower, from 1972 to 1985. He said that at his brother Jorge's instruction he deposited a check in one of the company's Panamanian accounts and returned with cash.

"He said that he needed me to go down and bring back \$50,000, that it would be used to get Luis Posada Carriles out of jail, that Carriles wanted out, that he might start talking," Ricardo Mas testified. "The guy, I guess, was breaking down. They had to get him out of jail."

Mr. Posada's version of how money was raised for escape is somewhat different. He said that a bribe for the warden had come from the sale of his house in Venezuela and that the money from Mr. Mas had paid for additional expenses.

During a changing of the guard at midnight on Aug. 18, 1985, Mr. Posada, dressed in a black jacket with a collar turned up like a priest's, crossed the courtyard of the prison. He carried a Bible, to strengthen the impression that he was a priest, and a satchel containing food and a lamp.

A farmer saw him and ran to his side seeking solace, he recalled with amusement recently. " 'Father, I have a son who is ill. Could you please pray for him?' I said 'O.K. friend, walk with me and pray,' and together the two men strolled out of the prison. 'It was perfect,' Mr. Posada said.

After 15 days in Caracas, Mr. Posada said, he was taken to Aruba aboard a shrimp boat. From there, a private plane flew him to Costa Rica and

then on to El Salvador, where Felix Rodriguez, a Cuban-American comrade from his C.I.A. days, was waiting for him with a job helping the secret contra resupply operation directed by Lieut. Col. Oliver L. North, the White House aide.

Mr. Posada was working for the American Government again, this time for a covert operation that had ties to the C.I.A. and the local military attache, but which was run by the White House.

In his autobiography, Mr. Posada acknowledged his debt to Mr. Mas. He wrote that "a group from Miami, all very prominent, among them Jorge Mas, Feliciano Foyo, Pepe Hernandez and others" created a "pool" to handle his finances. Mr. Foyo, who first met Mr. Posada during their training for the Bay of Pigs, is the longtime treasurer of the Cuban-American Foundation, while Mr. Hernandez is the group's president.

"I usually got \$2,000 to \$3,000 a month from Jorge," Mr. Posada elaborated recently. "Every month someone came from Miami, and they gave me money. But as soon as I started working with the contras, I said stop sending me money, because I am working."

Mr. Posada was given a Salvadoran passport in the name of Ramon Medina Rodriguez. He coordinated the flights of a fleet of rickety planes that ferried supplies for the contras from the Salvadoran air base at Ilopango to the battlefield.

The flights ended in October 1986, when Sandinista forces shot down one of the planes and captured an American named Eugene Hasenfus, who parachuted safely to the ground. Mr. Posada said he had relentlessly teased Mr. Hasenfus about his habit of wearing the parachute and had himself been scheduled to fly aboard the downed aircraft but had narrowly missed the flight.

Captured by the Nicaraguan Government, Mr. Hasenfus began talking and immediately admitted that the contra operation was being directed by a Cuban exile known as Max Gomez whose real name was Felix Rodriguez. It was not long before the world learned that Ramon Medina was actually Luis Posada Carriles, the international fugitive.

These days, however, Mr. Posada describes his relationship with Mr. Rodriguez as frosty. According to F.B.I. documents obtained by the National Security Archive, Mr. Posada was interviewed for more than six hours at the American Embassy in Honduras regarding his role in the Iran-contra affair and complained to F.B.I. agents that Mr. Rodriguez

"talked too much."

"They wanted me to come to Washington to testify against Oliver North," he said in the recent interview. "I refused to go," he continued proudly, adding disparagingly that "Felix went and testified." Of Mr. Rodriguez he said: "You see, he's like a boy, like a child. Felix was an enemy of Oliver North."

#### The Guatemala Years Wounded by Gunmen; A Long Recovery

At loose ends after the Iran-contra affair, Mr. Posada soon signed on as a security consultant to Vinicio Cerezo, Guatemala's first democratically elected civilian President in a generation. Mr. Cerezo's biggest challenge was to curb the power of the Guatemalan military, and Mr. Posada's reputation for loyalty and tenacity seemed to make him the ideal choice to keep an eye on restive officers or guerrillas who might be planning a coup or an assassination.

But at the same time, Mr. Posada continued to pursue his campaign against the Cuban Government, keeping in close touch with his friends in Miami.

Mr. Posada said that in the 1980's, Gaspar Jimenez delivered money and messages to him. Mr. Jimenez, who was jailed in the 1976 murder of a Cuban diplomat in Mexico, now works at the medical clinic run by Dr. Alberto Hernandez, the foundation's current chairman, according to employees there.

A prominent Cuban exile, who has known Mr. Jimenez for 40 years, said the money had been provided by Cuban-Americans in Miami. Mr. Jimenez, he said, gave Mr. Posada \$15,000 "for every act of sabotage." Mr. Jimenez did not respond to requests for comment.

Mr. Posada's activities were brought to a halt on Feb. 28, 1990, though, when three gunmen he describes as Cuban intelligence operatives approached his car as it was stopped in traffic in Guatemala City and opened fire at him. He was hit by a dozen bullets, and he survived, he said, only because he was able to drive himself to a gasoline station and scratch out a note that mentioned his relationship with Mr. Cerezo and asked for an ambulance to be called.

"It took two years and three surgeries to recover," Mr. Posada said. "My last surgery was a year ago. A doctor friend from Houston came down

and operated on me at an army base in El Salvador."

In his book, Mr. Posada said his medical bills, some \$22,000, were paid by friends in Miami. Once again, leaders of the Cuban-American National Foundation, among them Dr. Hernandez, who succeeded Mr. Mas Canosa as chairman of the group last November, and Mr. Foyo, its treasurer, led the effort.

Mr. Posada acknowledged that many people besides his enemies in Cuba had had motive to want him eliminated. Guerrilla groups in Venezuela, the Sandinista Government of Nicaragua, the Farabundo Marti National Liberation Front in El Salvador had all been victims of his anti-Communist zeal, and the Guatemalan Army had long been resentful of an outsider being brought in to advise and protect Mr. Cerezo.

But Mr. Posada said he was certain that his attackers were Cuban operatives, citing information provided to him by an unidentified friend in Mossad, the Israeli intelligence agency. "They were supposed to kidnap me and take me back to Cuba, interrogate me and have me confess on television," he maintained.

#### The Final Years Dreading That Castro May Outlive Him

At an age when most of his contemporaries have retired and are doting on their grandchildren, Luis Posada Carriles has returned with renewed vigor and determination in recent years to the struggle that has consumed him all of his adult life. Time is running out, he made it clear, both for him and his lifelong adversaries.

With Mr. Mas dead, Mr. Posada said, he is particularly concerned that the anti-Castro movement is now rudderless and drifting. One of the reasons he agreed to come forward now to discuss his activities, he explained, was in hopes of reinvigorating the cause.

"Right now is a bad time," he said. "Too many years. Everybody is very old."

Mr. Posada said he last spoke with Mr. Mas about a month before he died of cancer that began in the prostate and spread to the lungs and bones. "He was very sick then," he said. "It was very sad. He was in terrible pain. He knew he was dying. He was a very powerful man." Mr. Posada paused. "Now is nothing."

Equally disturbing is the attitude of American Government agencies, Mr. Posada said. Cuba is not as important an issue to the Clinton White House as it was to earlier administrations, and many of the veteran operatives for whom he performed favors-- and from whom he collected them -- have long since passed from the scene, leaving him to deal with a younger, less sympathetic generation. "It's been a long time since I've done anything for them," he lamented.

"It's a new relationship," he continued, with concern evident in his voice. "The problem is that they think the money which helped me in the operation came from the States," which would be a violation of American law. When it was suggested to him that was indeed the case, he replied "Yes, it's obvious."

As Mr. Posada sees it, because he does not stage his antiCastro activities from within the United States, his activities should be of no concern to the American authorities. "What I do is from Latin America, and my targets are inside Cuba," he said. "I am not a citizen, so they do not have power over me."

Mr. Posada suspects that he may be questioned by the American authorities about the hotel bombings, and he is bitter about the way he and the Cuban exile cause have been treated over the years. After a long courtship, he feels, he and his compatriots were seduced and then abandoned.

But most distressing of all is the nagging thought that his nemesis, Fidel Castro, might outlive him, as he has already outlived Mr. Mas. "Maybe I pass away before Castro," he said with a shrug. "Nobody knows."

Informed that Mr. Castro's mother lived well into her 90's and that another relative recently celebrated her 105th birthday, Mr. Posada groaned. "Oh my God," he said. But then, shaking his head and wagging his finger, he quoted a popular proverb, as if to reassure himself. It is derived from the Cuban tradition of slaughtering a hog for a holiday meal: "A cada lechon se le llega su Nochebuena," or "Every pig gets its Christmas Eve."

**Images:** Photos: (United Press International, 1959, 1961; Reuters; Associated Press; Canadian Press Photo)(pg. A6); LAST RESPECTS -- A Cuban flag was placed on the coffin of the influential Cuban exile Jorge Mas Canosa during his funeral last Novmeber in Miami. (Associated Press)(pg. A7)

Chart: "An Exile's Life"

FEB. 15, 1928 -- Luis Posada Carriles is born in Cienfuegos, Cuba.

1947 TO 1952 -- Mr. Posada attends Havana University. One of his class 2/3mates, who is three years ahead of him, is a young law student named Fidel Castro.

JAN. 1, 1959 -- Mr. Castro marches into Havana, ousting the corrupt regime of Fulgencio Batista, the longtime dictator. Mr. Posada quickly sours on Mr. Castro.

APRIL 1961 -- After fleeing Cuba, Mr. Posada trains for an American sponsored invasion. A band of Mr. Castro's opponents goes ashore at the Bay of Pigs, hoping to spark an uprising that will oust Mr. Castro. The operation is supported by the Central Intelligence Agency, but the United States reneges at the last moment on its promise to provide air cover. The invasion fails.

MARCH 1963 -- Mr. Posada enlists in U.S. Army and receives training in intelligence operations and demolitions at Fort Benning, Ga. There he meets a young exile named Jorge Mas Canosa.

1964-67 -- In March 1964, Mr. Posada quits the Army. He then takes on a string of jobs in Miami. He forges close ties with the Central Intelligence Agency. Mr. Mas joins the anti-Castro paramilitary organization RECE (Cuban Representation in Exile).

1967 -- Mr. Posada moves to Venezuela and, with C.I.A. help, takes a job as chief of operations of the country's security police.

OCT. 6, 1976 -- A bomb destroys a Cubana Airlines flight shortly after takeoff from Barbados, killing all 73 aboard. Among the dead are teenage members of Cuba's national fencing team.

NOV. 1976 -- Authorities in Venezuela charge Mr. Posada, Orlando Bosch and two Venezuelans in connection with the bombing. All four are immediately jailed.

JULY 6, 1981 -- Mr. Mas formally incorporates the Cuban-American National Foundation.

AUG. 18, 1985 -- Mr. Posada escapes from a Venezuelan prison. The

warden later acknowledges that he was bribed. Mr. Posada goes to the Ilopango air base in El Salvador, where he begins working on the contra resupply operation directed by Lieut. Col. Oliver L. North.

OCT. 7, 1986 -- A contra resupplyplane is shot down and the operation exposed. It is quickly disclosed that the Cuban carrying the passport Ramon Medina is actually Mr. Posada.

FEB. 28, 1990 -- Mr. Posada, working as a private security consultant in Guatemala, is shot 12 times by three gunmen. He attributes the attack to Cuban intelligence. No arrests are made.

APRIL 1997 -- Bombs begin to explode at Havana's better hotels, an operation Mr. Posada says he directed. (pg. A6)

**Correction:** July 18, 1998, Saturday

A chart on Monday about the life of the Cuban exile Luis Posada Carriles misstated the date that Fidel Castro entered Havana after taking power. It was Jan. 8, 1959. (Jan. 1 was the date that the dictator Fulgencio Batista fled Cuba.)

---

Copyright 1998 The New York Times Company



UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY  
IMMIGRATION AND CUSTOMS ENFORCEMENT

Office of Origin: Miami, Florida

SUBPOENA

Date: May 6, 2005

To: Ann Louise Bardach

You are hereby commanded to produce the following items on or before May 14, 2005 to Special Agent Noel Espada at 18425 NW 2<sup>nd</sup> Avenue, Ste. # 425, Miami, Florida 33169 in connection with an official proceeding being conducted under the authority of the Immigration and Nationality Act, relating to an ongoing investigation concerning violations of the criminal and administrative provisions of the Immigration and Nationality Act.

You are commanded to produce the following:

Copies of all recordings and documents relating to the interview of Luis Posada Carriles by Ann Louise Bardach, which was conducted in June 1998, excerpts of which were published in the New York Times on July 12 and 13, 1998.

Pursuant to an official investigation being conducted by the Department of Homeland Security, Immigration and Customs Enforcement, it is further requested that your company not disclose the existence of this request. Any disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Should you have any questions, please call Senior Special Agent Noel Espada at (786) 367-8293 or Supervisory Special Agent James Weir at (786) 402-0835.

Special Agent in Charge  
(Title)

RETURN ON SERVICE OF SUBPOENA

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, I served the above subpoena on the above named party.

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

EXHIBIT

B





UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY  
IMMIGRATION AND CUSTOMS ENFORCEMENT

Office of Origin: Miami, Florida

SUBPOENA

Date: May 03, 2005

To: The New York Times Agency  
Attn: George Freeman  
229 West 43rd Street, 9th floor  
New York, NY 10036

Fax: 212/556-4634

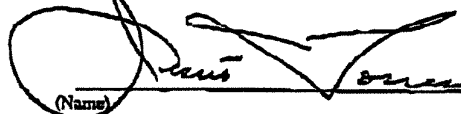
You are hereby commanded to produce the following items on or before May 19, 2005 to Special Agent Noel Espada at 18425 NW 2<sup>nd</sup> Avenue, Ste.# 425, Miami, Florida 33169, in connection with an official proceeding being conducted under the authority of the Immigration and Nationality Act, relating to an ongoing investigation concerning violations of the criminal and administrative provisions of the Immigration and Nationality Act.

You are commanded to produce the following tape recordings, and documents, viz.:

Copies of all tape recordings and documents relating to the interview of Luis Posada Carriles by Ann Bardach, which was conducted in June 1998, excerpts of which were published in the New York Times on July 12 and 13, 1998.

*Pursuant to an official investigation being conducted by the Department of Homeland Security, Immigration and Customs Enforcement, it is further requested that your company not disclose the existence of this request. Any disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.*

Should you have any questions, please call Senior Special Agent Noel Espada of this office at (305) 597-6000 or cell (786) 367-8293.

  
(Name)

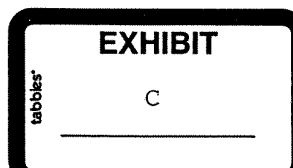
Special Agent in Charge  
(Title)

[SEAL]

RETURN ON SERVICE OF SUBPOENA

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, I served the above subpoena on the above named party by \_\_\_\_\_

\_\_\_\_\_  
(Name)



# The National Security Archive

[home](#) | [about](#) | [documents](#) | [news](#) | [publications](#) | [FOIA](#) | [research](#) | [internships](#) | [search](#) | [donate](#) | [mailing list](#)

## Press Coverage

**"Case of Cuban Exile  
Could Test the U.S.  
Definition of Terrorist"**  
by Tim Weiner  
*New York Times*  
May 9, 2005

**"Papers connect exile to  
bomb plot"**  
by Oscar Corral  
*Miami Herald*  
May 10, 2005

**"Documentos vinculan a  
Posada con ataque"**  
por Oscar Corral  
*Miami Herald* via  
[elnuevoherald.com](http://elnuevoherald.com)  
May 10, 2005

Join the NSARCHIVE  
Electronic Mailing List

## LUIS POSADA CARRILES THE DECLASSIFIED RECORD

CIA and FBI Documents Detail Career in International  
Terrorism; Connection to U.S.

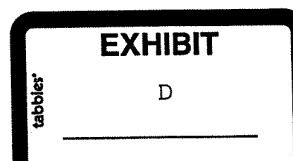
National Security Archive Electronic Briefing Book No.  
153

For more information contact  
Peter Kornbluh - 202/994-7116

May 10, 2005

*Washington D.C. May 10, 2005* - Declassified CIA and FBI records posted today on the Web by the National Security Archive at George Washington University identify Cuban exile Luis Posada Carriles, who is apparently in Florida seeking asylum, as a former CIA agent and as one of the "engineer[s]" of the 1976 terrorist bombing of Cubana Airlines flight 455 that killed 73 passengers.

The documents include a November 1976 FBI report on the bombing cited in yesterday's *New York Times* article "Case of Cuban Exile Could Test the U.S. Definition of Terrorist," CIA trace reports covering the Agency's recruitment of Posada in the 1960s, as well as the FBI intelligence reporting on the downing of the plane. The Archive also posted a second FBI report, dated one day after the bombing, in which a confidential source "all but admitted that Posada and [Orlando] Bosch had engineered the bombing of the airline." In addition, the posting includes several documents relating to Bosch and his suspected role in



the downing of the jetliner on October 6, 1976.

Using a false passport, Posada apparently snuck into the United States in late March and remains in hiding. His lawyer announced that Posada is asking the Bush administration for asylum because of the work he had done for the Central Intelligence Agency in the 1960s. The documents posted today include **CIA records** confirming that Posada was an agent in the 1960s and early 1970s, and remained an informant in regular contact with CIA officials at least until June 1976.

In 1985, Posada escaped from prison in Venezuela where he had been incarcerated after the plane bombing and remains a fugitive from justice. He went directly to El Salvador, where he worked, using the alias "Ramon Medina," on the **illegal contra resupply program** being run by Lt. Col. Oliver North in the Reagan National Security Council. In 1998 he was interviewed by Ann Louise Bardach for the *New York Times* at a secret location in Aruba, and claimed responsibility for a string of hotel bombings in Havana during which eleven people were injured and one Italian businessman was killed. Most recently he was imprisoned in Panama for trying to assassinate Fidel Castro in December 2000 with 33 pounds of C-4 explosives. In September 2004, he and three co-conspirators were suddenly pardoned, and Posada went to Honduras. Venezuela is now preparing to submit an official extradition request to the United States for his return.

According to Peter Kornbluh, who directs the Archive's Cuba Documentation Project, Posada's presence in the United States "poses a direct challenge to the Bush administration's terrorism policy. The declassified record," he said, "leaves no doubt that Posada has been one of the world's most unremitting purveyors of terrorist violence." President Bush has repeatedly stated that no nation should harbor terrorists, and all nations should work to bring individuals who advocate and employ the use of terror tactics to justice. During the Presidential campaign last year Bush stated that "I think you can create conditions so that those who use terror as a tool are less acceptable in parts of the world." Although Posada has reportedly been in the Miami area for more than six weeks, the FBI has indicated it is not actively searching for him.

---

## **Documents**

Note: The following documents are in PDF format.  
You will need to download and install the free [Adobe Acrobat Reader](#) to view.

## **THE CIA CONNECTION**

Luis Posada Carriles had a long relationship with the CIA. In February 1961, he joined the CIA's Brigade 2506 to invade Cuba, although the ship to which he was assigned never landed at the Bay of Pigs. While in the U.S. military between 1963 and 1965 the CIA recruited him and trained him in demolitions; he subsequently became a trainer of other paramilitary exile forces in the mid 1960s. CIA documents posted below reveal that he was terminated as an asset in July 1967, but then reinstated four months later and apparently remained an asset until 1974. The documents also show that he remained in contact with the Agency until June 1976, only three months before the plane bombing.

### **Document 1: CIA, October 13, 1976, Report, "Traces on Persons Involved in 6 Oct 1976 Cubana Crash."**

In the aftermath of the bombing of Cubana flight 455, the CIA ran a file check on all names associated with the terror attack. In a report to the FBI the Agency stated that it had no association with the two Venezuelans who were arrested. A section on Luis Posada Carriles was heavily redacted when the document was declassified. But the FBI retransmitted the report three days later and that version was released uncensored revealing Posada's relations with the CIA.

### **Document 2: FBI, October 16, 1976, Retransmission of CIA Trace Report**

In this uncensored version of the CIA trace report, the Agency admits that it "had a relationship with one person whose name has been mentioned in connection with the reported bombing," Luis Posada Carriles. The CIA file check shows that Posada was "a former agent of CIA." Although it doesn't say when his employment began, it

indicates he was terminated briefly in the summer of 1967 but then reinstated in the fall and continued as an asset while a high level official in the Venezuelan intelligence service, DISIP, until 1974. Even then, "occasional contact with him" continued until June 1976.

**Document 3: CIA, June 1966, File search on Luis "Posada"**

In this file search the CIA states that Posada has "been of operational interest to this Agency since April 1965," the likely date when he first became a paid CIA agent.

**Document 4: FBI, July 18, 1966, "Cuba"**

An informant reports to the FBI that Posada is a CIA agent and is "receiving approximately \$300.00 per month from CIA."

**Document 5: CIA, April 17, 1972, Personal Record Questionnaire on Posada**

This "PRQ" was compiled in 1972 at a time Posada was a high level official at the Venezuelan intelligence service, DISIP, in charge of demolitions. The CIA was beginning to have some concerns about him, based on reports that he had taken CIA explosives equipment to Venezuela, and that he had ties to a Miami mafia figure named Lefty Rosenthal. The PRQ spells out Posada's personal background and includes his travel to various countries between 1956 and 1971. It also confirms that one of his many aliases was "Bambi Carriles."

## **EARLY TERRORIST PLOTTING**

During the time that Posada was on the CIA payroll in the mid-1960s, he participated in a number of plots that

involved sabotage and explosives. FBI reporting recorded some of Posada's earliest activities, including his financial ties to Jorge Mas Canosa, who would later become head of the powerful anti-Castro lobby, the Cuban American National Foundation.

**Document 6: FBI, July 7, 1965, "Luis Posada Carriles"**

The FBI transmits information obtained from the CIA's Mexico station titled "Intention of Cuban Representation in Exile (RECE) to Blow up a Cuban or Soviet Vessel in Veracruz, Mexico." The document summarizes intelligence on a payment that Jorge Mas Canosa, then the head of RECE, has made to Luis Posada to finance a sabotage operation against ships in Mexico. Posada reportedly has "100 pounds of C-4 explosives and detonators" and limpet mines to use in the operation.

**Document 7: FBI, July 13, 1965, "Cuban Representation in Exile (RECE)"**

A FBI cable reports on intelligence obtained from "MM T-1" (a code reference to the CIA) on a number of RECE terrorist operations, including the bombing of the Soviet library in Mexico City. The document contains information on payments from Jorge Mas Canosa to Luis Posada for an operation to bomb ships in the port of Veracruz, as well as a description of Posada and a statement he gave to the FBI in June of 1964.

**Document 8: FBI, May 17, 1965, "Roberto Alejos Arzu; Luis Sierra Lopez, Neutrality Matters, Internal Security-Guatemala"**

The FBI links Posada to a major plot to overthrow the government of Guatemala. U.S. Customs agents force Posada and other co-conspirators to turn over a cache of weapons that are listed in this document. The weapons include napalm, 80 pounds of

C-4 explosives, and 28 pounds of C-3 explosives.

## **BOMBING OF CUBANA FLIGHT 455**

### **Document 9: FBI, October 7, 1976, Secret Intelligence Report, "Suspected Bombing of Cubana Airlines DC-8 Near Barbados"**

In one of the very first reports on the October 6, 1976, downing of Cubana Flight 455, the FBI Venezuelan bureau cables that a confidential source has identified Luis Posada and Orlando Bosch as responsible for the bombing. "The source all but admitted that Posada and Bosch had engineered the bombing of the airline," according to the report. The report appears to indicate that the Venezuelan secret police, DISIP, were arranging for Bosch and Posada to leave Caracas, although this section of the document has been censored.

In the report, the FBI identifies two Venezuelan suspects arrested in Barbados: Freddy Lugo and Jose Vazquez Garcia. Vazquez Garcia is an alias for Hernan Ricardo Lozano. Both Ricardo and Lugo worked for Luis Posada's private security firm in Caracas at the time of the bombing.

### **Document 10: FBI, November 2, 1976, Secret Intelligence Report "Bombing of Cubana Airlines DC-8 Near Barbados, West Indies, October 6, 1976"**

The FBI receives information from a source who has spoken with Ricardo Morales Navarrete, a Cuban exile informant working for DISIP in Caracas. Known as "Monkey" Morales, he tells the FBI source of two meetings during which plotting for the plane bombing took place: one in the Hotel Anauco Hilton in Caracas, and another in Morales room at the Hilton. Both meetings were attended by Posada

Carriles. A key passage of the report quotes Morales as stating that "some people in the Venezuelan government are involved in this airplane bombing, and that if Posada Carriles talks, then Morales Navarrete and others in the Venezuelan government will 'go down the tube.' He said that if people start talking 'we'll have our own Watergate.'" Morales also states that after the plane went down, one of the men who placed the bomb aboard the jet called Orlando Bosch and reported: "A bus with 73 dogs went off a cliff and all got killed."

**Document 11: FBI, November 3, 1976, Cable, "Bombing of Cubana Airlines DC-8 Near Barbados, West Indies, October 6, 1976"**

The FBI reports on arrest warrants issued by a Venezuelan judge for Posada, Bosch, Freddy Lugo and Ricardo Lozano.

## **ORLANDO BOSCH AND ANTI-CASTRO TERRORIST ORGANIZATIONS**

**Document 12: FBI, January 24, 1977, Secret Report, "Coordination of United Revolutionary Organizations (CORU) Neutrality Matters - Cuba - (Anti-Castro)"**

The FBI reports on a plot to carry out terrorist attacks that will divert attention from the prosecution of Orlando Bosch and Luis Posada in Caracas. Orders for the attacks are attributed to Orlando Garcia Vazquez, a Cuban exile who was then head of the Venezuelan intelligence service, DISIP. (Garcia Vazquez currently lives in Miami.) The report also provides some details on CORU.

**Document 13: FBI, August 16, 1978, Secret Report, "Coordinacion de Organizaciones Revolucionarias Unidas (Coordination of United**



**Revolutionary Organizations)  
(CORU), Neutrality Matters - Cuba -  
(Anti-Castro)"**

This FBI report provides a comprehensive overview of CORU which the FBI describes as "an anti-Castro terrorist umbrella organization" headed by Orlando Bosch. The report records how CORU was created at a secret meeting in Santo Domingo on June 11, 1976, during which a series of bombing attacks were planned, including the bombing of a Cubana airliner. On page 6, the report relates in great detail how Orlando Bosch was met in Caracas on September 8, 1976, by Luis Posada and other anti-Castro exiles and a deal was struck as to what kind of activities he could organize on Venezuelan soil. The document also contains substantive details on behind-the-scene efforts in Caracas to obtain the early release of Bosch and Posada from prison.

**IRAN-CONTRA AND POSADA  
(A.K.A. RAMON MEDINA)**

**Document 14: September 2, 1986,  
Contra re-supply document,  
[Distribution of Warehoused Contra  
Weapons and Equipment - in  
Spanish with English translation]**

After bribing his way out of prison in Venezuela in September 1985, Posada went directly to El Salvador to work on the illicit contra resupply operations being run by Lt. Col. Oliver North. Posada assumed the name "Ramon Medina," and worked as a deputy to another anti-Castro Cuban exile, Felix Rodriguez, who was in charge of a small airlift of arms and supplies to the contras in Southern Nicaragua. Rodriguez used the code name, Max Gomez. This document, released during the Congressional investigation into the Iran-Contra operations, records both Posada and Rodriguez obtaining supplies for contra troops from a warehouse at Illopango

airbase in San Salvador.

[home](#) | [about](#) | [documents](#) | [news](#) | [publications](#) | [FOIA](#) | [research](#) | [internships](#) | [search](#) | [donate](#) | [mailing list](#)

Contents of this website Copyright 1995-2004 National Security Archive. All rights reserved. [Terms and conditions](#) for use of materials found on this website.

DECODED COPY SECRET

AIRGRAM CABLEGRAM RADIO TELETYPE

DECLASSIFICATION AND/OR  
RELEASE OF CIA INFORMATION  
IN THIS DOCUMENT

SD-10 44-2-171

URGENT

TO DIRECTOR

FROM LEGAT MEXICO (67-0101) (P) (U)

LUIS ROSADA GARRILES IS-CUBA

MEXICO, ADVISED BY SECRET MEMORANDUM DATED JULY 12, 1965, NOT TO BE FURTHER DISSEMINATED WITHOUT THE APPROVAL OF ISSUING OFFICE. SENTILED 4 IN TEXAS. CUBAN REFERENCE IN EX-101 (RECE) TO BLOW UP A CUBAN OR SOVIET VESSEL IN VERACRUZ, MEXICO. (S)(U)

A CUBAN REFUGEE WHO IS ASSOCIATED WITH CUBAN ACTIVISTS IN THE MIAMI AREA AND WHO HAS FURNISHED RELIABLE INFORMATION IN THE PAST ADVISED THAT LUIS ROSADA GARRILES STATED ON JUNE 25 LAST THAT JORGE MAS CANOSA OF THE REGE HAD PAID HIM \$5,000 TO COVER THE EXPENSES OF A DEMOLITION OPERATION IN MEXICO. ROSADA SAID HE WAS PLANNING TO PLACE LIMPET MINES ON EITHER A CUBAN OR SOVIET VESSEL IN THE HARBOR OF VERACRUZ, MEXICO AND HAD 100 POUNDS OF C-4 EXPLOSIVES AND DETONATORS. ROSADA SAID HE WAS PREPARING CERTAIN PAPERS TO SHOW HE IS WORTHY TO BE ABLE TO OBTAIN A VISA FOR ENTRY INTO MEXICO. (S)(U)

FOR INFORMATION OF BUREAU AND MIAMI

HENRY D. JOHNSON

RECEIVED: JUL 15 2 41 PM '65

CONFIDENTIAL

JUL 12 1965

TO: CC: MR. BRENNAN

For

SECRET

JUL 15 1965

If the intelligence contained in the above message is to be disseminated outside the Bureau, it is suggested that it be paraphrased in order to protect the Bureau's cryptographic systems.

EXHIBIT

E

tablier



RELEASED PER P.L. 102-526 (JFK ACT)

NARA *gm* DATE *4/28/85*

Reproduced at the National Archives

## UNITED STATES DEPARTMENT OF JUSTICE

## FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to  
File No.~~SECRET~~

105-8280

Miami, Florida

July 13, 1965

CIA HAS NO OBJECTION TO  
DECLASSIFICATION AND/OR  
RELEASE OF CIA INFORMATION  
IN THIS DOCUMENT. *KP 9-9-98*~~SECRET~~ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE8/8/94  
#211326  
Classified by *MACIGAT (JFK)*  
Declassify on: *OADR*  
*4/2/85*RE: CUBAN REPRESENTATION IN EXILE (RECE);  
INTERNAL SECURITY - CUBA;  
NEUTRALITY MATTERS.DECLASSIFIED BY *5268 SLD/HSE*  
ON *4-16-98 (JFK)*

MM T-1, another Government agency which conducts intelligence investigations, on June 17, 1965, advised information had been received from a Cuban refugee with contacts among Cuban exile activists, and this refugee's previous reporting has proved to be fairly reliable. The information from this source is as follows: *(S)(X)(U)*

On June 11, 1965, a Cuban exile, proficient in demolition and the use of explosives, gave instructions in these subjects to three Cubans about to be infiltrated into Havana, Cuba, under the auspices of the Cuban Representation in Exile (RECE) *(S)(X)(U)*

In connection with this instruction, Jorge Mas Canosa, an official of RECE, residing in Miami, proposed to the demolition expert that he travel to Spain, Mexico, and other Latin American countries at RECE's expense and place bombs in Communist installations such as embassies and information service libraries. Mas said that in May, 1965, one of RECE's agents had placed a bomb in the Soviet Library in Mexico City, which bomb exploded and caused a furor. On this agent's return to Miami, he was not bothered by U. S. authorities, although his activities were common *(S)(X)(U)*

~~SECRET~~

GROUP 1

Excluded from automatic  
downgrading and  
declassification.CIA INFO CLASSIFIED PER  
ITS 7/5/84 LTR.  
9803 140/26 #21,326 4/29/SEE REVERSE  
SIDE FOR  
CLASSIFICATION  
ACTION

FBI/DOJ

~~SECRET~~

~~SECRET~~

RE: CUBAN REPRESENTATION IN EXILE (RECE).

knowledge in exile circles. Mas interpreted this to mean U. S. tacit approval to the operation. ~~(S)~~ (U)

It is noted that "The Miami Herald," a daily newspaper published in Miami, Florida, on May 22, 1965, reported that two homemade bombs were thrown into a building occupied by the Mexican-Russian Cultural Relations Institute in Mexico City on May 21, 1965. Mexican police said they found a Cuban flag at the scene. Aldo Rosado Tuero, General Coordinator for Movimiento Nacionalista Cristiano (MNC), claimed that five commandos from his group in Mexico City did the bombing.

"The Miami Herald," on July 11, 1965, contained an article stating two Mexicans were in jail in Mexico City as accomplices of a Cuban-American in a Miami based plot to bomb leftist installations throughout Latin America.

The police said that Manuel de la Isla Paulin, Daniel Ituarte, and Henry Agueros Garces are members of a group which is affiliated with the Miami Cuban refugee National Christian Movement. De la Isla admitted taking part with Agueros in the May, 1965, attack on the Mexican-Russian Cultural Relations Institute in Mexico City.

MM T-1, on July 2, 1965, stated that a Cuban refugee who was associated with Cuban activists in Miami, and who has furnished reliable information in the past, stated that Luis Posada Carriles, on June 25, 1965, said that Jorge Mas Canosa paid him \$5,000.00 to cover the expenses of a demolition operation in Mexico. ~~(S)~~ (U)

~~SECRET~~

CLASSIFIED PER CIA'S  
7/5/91  
9803/402/92 241326  
4/29/92

NARA *gm*DATE *4/28/05*~~SECRET~~

RE: CUBAN REPRESENTATION IN EXILE (RECE).

Posada said he was planning to place limpet mines on either a Cuban or Soviet vessel in the harbor of Veracruz, Mexico, and had 100 pounds of C-4 explosives and detonators. Posada said he was preparing certain papers to show he is a Puerto Rican, to enable him to obtain a visa for entry into Mexico. *(U)*

*Luis* Immigration and Naturalization Service (INS) records, at Miami, Florida, on November 14, 1961, under INS Number A12 419 708, reflect that Luis Clemente Posada Carriles entered the United States at Miami from Cuba on April 28, 1961. He resided at 1761 S. W. 5th Street, Miami, Florida. Posada's INS file reflected the following information:

Race	White
Sex	Male
Born	February 15, 1928, Cienfuegos, Cuba
Employment	Supervisor, Firestone Rubber Company.
Marital Status	Married
Wife	Concepcion Castaneda Napoles.

MM T-1, on September 6, 1961, stated that the Unidad Revolucionaria, an anti-Castro organization, planned to select infiltration teams from its commando group known as the Black Falcons. The teams would be given special training, and Luis Poveda Carriles was selected as one of the participants. No further background information was available concerning Poveda. *(U)*

On June 23, 1964, Luis Posada, at Polk City, Florida, gave a signed statement to the FBI, stating the following:

~~SECRET~~

-3-

CLASSIFIED PER  
NS 15/9/LTR.  
9803/10/1/501 #211,326  
4/29/92

~~SECRET~~

RE: CUBAN REPRESENTATION IN EXILE (RECE)

He was then 36 years of age, served in the U. S. Army one year, and resided at 750 N. W. 15th Street, Miami. He had joined Junta Revolucionaria Cubana, an anti-Castro organization known as JURE. About three months before, he went to Polk City, Florida, and with other JURE members, built a military training camp on property belonging to Mr. Weir Williams. After that military training courses in guerrilla warfare were given, and three groups of eight men each were trained. He explained the purpose of the training was for guerrilla warfare in Cuba, and they planned to be in Cuba by May 20, 1964, but the plan failed.

Posada continued that he had not been told they had the support of the U. S. Government, but they did believe they had U. S. Government tolerance by the very fact they had not been bothered by anyone while they conducted their military training activities.

On June 25, 1965, Weir P. Williams stated that he had not been contacted by the U. S. Government to allow these Cubans to use his property, but was led to believe it was in accord with the Government's desire. He said that the uniforms, boots and equipment appeared to be U. S. Government issue, and on one occasion the Sheriff of Polk County, Florida, told Williams he had checked with the Federal Government and verified it was operating with U. S. Government approval.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

~~SECRET~~



RELEASED PER P.L. 102-526 (JFK ACT)  
NARA *gm* DATE *4/28/05*

Reproduced at the National Archives

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

~~SECRET~~

In Reply, Please Refer to  
File No.

~~SECRET~~

DECLASSIFIED

ON 6-27-98 (JFK)

5668 SLD/KSR

2-380

Miami, Florida  
May 17, 1965

(SPARK/EL 8/16/65 STR)

Classified by 2468/152  
Declassify on: OADR 1/18/98

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE

RE: ROBERTO ALEJOS ARZU;  
LUIS SIERRA LOPEZ  
NEUTRALITY MATTERS  
INTERNAL SECURITY - GUATEMALA

It is noted that ROBERTO ALEJOS ARZU, 180 Palm Drive, Palm Island, Miami Beach, Florida, is a wealthy Guatemalan national and has been conspiring to overthrow the Government of Guatemala.

On May 6, 1965, Mr. ALLEN S. YARBOROUGH, U. S. Customs Agent, Miami, Florida, furnished the following information:

LUIS SIERRA LOPEZ, a Cuban exile associated with ALEJOS, was arrested by Mexican authorities in Tapachula, Mexico, on April 29, 1965. SIERRA was subsequently released and arrived in Miami, Florida, on May 2, 1965, where he was met by ALEJOS and LUIS POSADA, another Cuban exile associated with ALEJOS.

As a result of a series of conferences held by Mr. YARBOROUGH with SIERRA and POSADA and other exiles associated with ALEJOS, the following munitions were surrendered to U. S. Customs agents on May 4, 1965:

- 1 .30 cal. machine gun, M-1919A4
- 1 .30 cal. machine gun, M-1919A4
- 1 Browning Automatic Rifle
- 1 Flame Thrower w/tanks and gun
- 1 Portable Flame Thrower Gun, No. M-2A1

SEE REVERSE  
SIDE FOR  
CLASSIFICATION  
ACTION

~~SECRET~~  
~~Group 1~~

Excluded from automatic  
downgrading and  
declassification

ENCLOSURE

~~SECRET~~



~~SECRET~~

RE: ROBERT ALEJOS ARZU;  
LUIS SIERRA LOPEZ

1 Carbine .30 cal. M-1 short stock, without trigger  
1 Carbine .30 cal. M-1 short stock mechanisms  
3 Carbines .30 cal. M-1, long stock (no serial Nos.)  
1 Carbine .30 cal. M-1 long stock, Serial No. 2888  
1 .30 cal. barrel (packed)  
1 Thompson .45 cal. submachine gun, 1928 model  
1 Pistol, .45 cal. Colt automatic  
10 .45 cal. M-3 Grease guns  
1 Rocket Launcher, 3.5", M-20 (Bazooka)  
2 Mortar, 60 MM, M-5, tripod, base plate, barrel  
1 Electric blasting machine, U. S. Army 10 cap.  
2 Mount; tripod, .30 cal. M-2  
2 Mount, bipod, .30 cal. M-2  
15 Garand Rifles, M-1

Ammunition

1500 rounds M-2 30.06 ball linked armor piercing  
3240 rounds M-2 30.06 ball  
700 rounds carbine .30 cal. ball  
100 rounds pistol, .38 cal. (ball)  
400 rounds .45 cal. (ball)  
100 rounds .50 cal. (ball)  
5 rounds 12 gauge shotgun shells  
3 Flares, Marine  
1 Ammunition belt for BAR  
11 Bandoleers - empty  
43 Clips - BAR  
108 Clips - .45 cal. M-3 Grease gun  
1 Clip (round) - .45 cal. Thompson, 1928  
Model submachine gun

2.

~~SECRET~~

~~SECRET~~

RE: ROBERT ALEJOS ARZU;  
LUIS SIERRA LOPEZ

26 Clips - .45 cal. pistol  
28 Grenade adapters, M-1 Garand rifle  
1 Pistol holster, .45 cal. Colt  
1 Pistol holster, .38 cal.  
5 Trigger Mechanisms, .30 cal. M-2 carbine  
conversion  
24 Pistol Belts  
6 Cartridge Belts  
  
32 Blocks C-4 (2½ lbs. each) 80 lbs.  
12 Blocks C-3 (2½ lbs. each) 28 lbs.  
24 Blocks TNT (1 lb. each) 24 lbs.  
8 Blocks Pinolite (1 lb. each) 8 lbs.  
2 cans Napalm (3 gal. each) 6 gals.  
16 rockets Bazooka (3.5 inch dia. H.E.)  
44 sticks Dynamite (Military) 1 - lb. each 44 lbs.  
46 rounds 57 MM Mortar Shells  
51 M-21 Hand Grenades (fragmentation)  
3 Tear gas Grenades  
6 Rifle Grenades  
5 rolls Orange-wax fuse clover brand - Total of  
170 feet  
20 each Fuse lighters  
2 each Heavy duty primers (1 lb. each)  
1 box Fuse Lighter Primers (100 each)  
53 Blasting caps  
1 roll Detonating wire - approx. 1/4 mile  
  
1 Ammunition Bag, M-1 Garand Rifle  
1 Satchel, tool bag  
7 Gun Slings  
1 Val-Pac suitcase for clothes

3.

~~SECRET~~

~~SECRET~~

RE: ROBERT ALEJOS ARZU;  
LUIS SIERRA LOPEZ

26 Pairs Coveralls - Air Force type  
1 Poncho  
40 Suspenders, web, for carrying field packs  
1 12 gauge Winchester semi-auto. shotgun

Mr. YARBOROUGH said that as a result of investigation, interviews, and intelligence information, it was ascertained that the following individuals have been in some way involved in ALEJOS' conspiracy:

LUIS SIERRA LOPEZ  
LUIS POSADA CARRILES  
AMADO ~~CANTILLO~~ HUGUET  
EUGENIO ~~AGUILERA~~ FRUTOS  
BERNADO ~~BOSCH~~ RODRIGUEZ  
HIPOLITO ~~MARTINEZ~~ TERRERO  
VICTOR ~~VASQUEZ~~  
JOSE ~~BONDON~~  
RAMON ~~ESCARDA~~ RUBIO  
JOSE ~~SALAZAR~~ JARDON  
JOSE F. ~~VERNIER~~ (VERRIER)  
JESUS ~~MARTINEZ~~  
ATON ~~CONSTANZO~~ CONSTANCE ~~PALAU~~  
ANTONIO ~~PEREZ~~ BASUITO  
HORACIO ~~SOTOLONGO~~ GARCIA  
BLAS ERNESTO ~~MARTINEZ~~ DOMINGUEZ  
GASTON ~~CEPELLETRU~~ SILVA  
GUILLERMO ~~RODRIGUEZ~~  
JUAN ~~HERNANDEZ~~  
ROLANDO ~~MARTIN~~ GONZALEZ  
LORETO ~~SANTIAGO~~ GUIJARRO  
GERARDO ~~MARTINEZ~~

~~SECRET~~

# MESSAGE RELAY

Transmit in ☐ Plaintext ☒ Code  
Via Teletype the Attached ☒ Immediate ☐ Urgent ☐ Nitel  
From Director FBI

Date *10/18/76*

To: SAC *MIAMI*  
*SAN JUAN*

*309*  
*Mexico City*  
*Buenos Aires*

To: RUEADWW ☐ The President ☐ The Vice President ☐ White House Situation Room  
☐ Attn ☐ Attn

RUEAWA ☐ Attorney General ☒ Deputy Attorney General  
☒ Attn: Analysis and Evaluation Unit

RUEBWA ☐ Assistant Attorney General, Civil Rights Division

RUEBWA ☒ Assistant Attorney General, Criminal Division

RUEBWA ☒ Attn: Internal Security Section ☒ Attn: General Crime Section

RUEBND ☐ Drug Enforcement Administration

RUEBWA ☒ Immigration and Naturalization Service

RUEBWA ☐ U.S. Marshall Service

RUEBWA ☐ Department of the Air Force (AFOSI)

RUEBWA ☐ Department of the Army

RUEBWA ☒ Director, CIA

RUEBWA ☒ Commandant, U.S. Coast Guard

RUEBWA ☒ Director, Defense Intelligence Agency

RUEBWA ☐ Energy Research and Development Administration

RUEBWA ☒ Federal Aviation Administration

RUEBWA ☐ Other than Listed

RUEBWA ☐ National Aeronautics & Space Admin

RUEBWA ☐ National Security Agency

RUEBWA ☐ (DIENSA NSO (ADIT SOO))

RUEBWA ☐ Naval Investigative Service

RUEBWA ☐ U.S. Postal Service (if Classified)

RUEBWA ☐ (Use RUEBWA if Unclassified)

RUEBWA ☒ U.S. Secret Service (EID)

RUEBWA ☒ Secretary of State

RUEBWA ☐ Department of Transportation

RUEBWA ☐ Attn: Director of Security

RUEBWA ☒ Department of Treasury

RUEBWA ☒ Attn: U.S. Customs

RUEBWA ☐ Department of Energy

RUEBWA ☐ Bureau of Alcohol

RUEBWA ☐ U.S. Secret Service

RUEBWA ☐ U.S. Secret Service

RUEBWA ☐ U.S. Secret Service

*Classified by 330000*  
*Declassify on: OADR*  
*6/2/83*

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 10/18/76 BY 1046  
EXCEPT WHERE SHOWN  
OTHERWISE  
SUBJECT (Text beginning on page)

OCT 08 1976

TELETYPE

OCT 19 1976

SECRET

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION  
COMMUNICATIONS SECTION

OCT 07 1976

TELETYPE

~~0 072345Z OCT 76~~

~~R: BARBADOS (2-3)~~

~~TO DIRECTOR IMMEDIATE NR 102 07~~

~~SECRET~~

*Cubana Airlines*

UNSUBS. SUSPECTED BOMBING OF CUBANA AIRLINES DC-8 NEAR BARBADOS,

WEST INDIES, OCTOBER 6, 1976, NM - CISA - WEST INDIES.

*BY teletype 10/7/76, Legat CARACAS ADVISED AS FOLLOWS:*

CUBANA AIRLINES FLIGHT 455, DC-8 AIRCRAFT LEASED BY CUBANA

FROM AIR CANADA, CRASHED IN THE CARIBBEAN SEA OFF THE COAST OF  
BARBADOS AT ABOUT 1:45 PM ON OCTOBER 6, 1976, SHORTLY AFTER  
TAKEOFF FROM SEAWELL AIRPORT, BARBADOS, EN ROUTE TO HAVANA, CUBA,  
VIA KINGSTON, JAMAICA. NO SURVIVORS REPORTED AMONG THE 78 PER-  
SONS ABOARD THE PLANE.

ACCORDING TO AMERICAN EMBASSY, BRIDGETOWN, BARBADOS, PILOT  
REPORTED TO SEAWELL AIRPORT TOWER SHORTLY BEFORE CRASH THAT AN  
EXPLOSION HAD OCCURRED ABOARD THE PLANE. FLIGHT LOG RECOVERED  
AFTER CRASH NOTED POWER FAILURE IN NUMBER FOUR ENGINE, BUT NO  
MENTION OF EXPLOSION. AIRPORT OFFICIAL AT BARBADOS REPORTEDLY  
INFORMED THAT PILOT TOLD TOWER THERE HAD BEEN EXPLOSION IN ONE  
OF THE REAR LAVATORIES OF THE PLANE.

STATE DEPT.  
INFO (PARA 2  
-END) L UNCLAS  
FILE: A-2 DCS  
AUTHORITY  
9/29/96

AMERICAN EMBASSY, PORT OF SPAIN, TRINIDAD, ADVISED ON  
OCTOBER 7, 1976, AS FOLLOWS:

"TRINIDAD AND TOBAGO POLICE ARE HOLDING TWO VENEZUELAN

~~SECRET~~

~~END PAGE ONE~~

~~CARBON COPY DO NOT FILE~~

*2*



SECRET

~~SECRET~~  
CITIZENS WHOM THEY BELIEVE MAY BE CONNECTED WITH THE CUBANA AIRLINE  
CRASH OCTOBER 6 OFF BARBADOS. TWO SUSPECTS ARE:

"A. JOSE VAZQUEZ GARCIA - HOLDER OF VENEZUELAN PASSPORT  
720733 (THIS IS THE PERFORATED NUMBER--NUMBER WRITTEN IN THE PASS-  
PORT IS 3140806), ISSUED ON JUNE 6, 1976, IN CARACAS. BORN  
DECEMBER 9, 1950 IN CARACAS. HOLDS VENEZUELAN ID CEDULA V  
3140806.

"B. FREDDY (NOT FEDERICO) LUGO - HOLDER OF VENEZUELAN PASS-  
PORT 006543 (THIS IS THE PERFORATED NUMBER--NUMBER WRITTEN IN THE  
PASSPORT IS 2123051), ISSUED JULY 6, 1976, IN CARACAS. SINGLE.  
BORN OCTOBER 17, 1942. GAVE RESIDENCE AS CARACAS AND OCCUPATION  
AS JOURNALIST. HOLDS ID CEDULA VD 2123051. CARRIES OFFICIAL  
PRESS CARD NO 152 OF CIRCULO DE REPORTEROS GRAFICOS DE VENEZUELA.  
LUGO ALSO HAD IN HIS POSSESSION TOURIST CARD FOR COLOMBIA DATED  
JULY 15, 1976. THIS GAVE PERMANENT ADDRESS AD IRB URDANETA VERDE  
24, CARACAS.

"THESE TWO VENEZUELAN ARRIVED IN TRINIDAD FROM CARACAS ON  
PANAM 443 EARLY MORNING HOURS WEDNESDAY, OCTOBER 6. CHECKED INTO  
HOLIDAY INN AT 0200 HOURS. HOTEL REGISTRATION MADE IN NAMES OF  
~~END PAGE TWO~~

STATE DEPT INFO (ALL PARAS) IS  
UNCLASSIFIED PER DSS AUTHORITY  
8/28/96

SECRET

~~SECRET~~

JOSE GARCIA/FREDDY PEREZ. HOME ADDRESS GIVEN AS LRB CRISTO  
REY NO 61, VALENCIA, VENEZUELA. HAD LUGGAGE WHEN CHECKED INTO HOTEL.

VENEZUELAN CHECKED OUT OF HOLIDAY INN ABOUT 0600 OCTOBER 6  
WITH LUGGAGE AND WERE SEEN AT PIAZZO AIRPORT. BOARDED CUBANA FLIGHT  
AT 1150 OCTOBER 6 TO BARBADOS.

RETURNED FROM BARBADOS TO TRINIDAD ON SAME DAY ON BWIA FLIGHT  
AT 2155 AND CHECKED INTO HOLIDAY INN AT 2300 WITHOUT SUITCASES.  
REGISTRATION IN NAME OF GUSTAVO GARCIA, RESIDENCE BOGOTA, COLOMBIA.  
THEY CLAIMED THE SUITCASES HAD BEEN STOLEN, BUT THEY HAVE MADE NO  
REPORT OF STOLEN SUITCASES EITHER TO AIRLINE OR BARBADOS OR  
TRINIDAD POLICE.

"AMONG DOCUMENTS IN HANDS OF POLICE IS BOARDING PASS OF E.  
SEALY FOR DIFFERENT BWIA FLIGHT. POLICE CHECKING THIS OUT. THIS  
THEY BELIEVE COULD BE TRINIDAD ACCOMPLICE.

"OF INTEREST IS FACT BOTH PASSPORTS FAIRLY NEW. THEREFORE  
DIFFICULT TRACE PAST TRAVEL. HOWEVER, PASSPORT OF FREDDY LING DID  
HAVE STAMP SHOWING ENTRY AT BARBADOS ON JULY 9. (NOTE: THE BOMBS  
WHICH WENT OFF AT THE BWIA OFFICE AND AT THE GENERAL MANAGER'S CAR  
AND YACHT IN BRIDGETOWN, BARBADOS, TOOK PLACE ON 10 AND 11 JULY  
1975.)

~~END PAGE THREE~~

STATE DEPT. INFO (ALL PAGES.) IS  
UNCLASSIFIED FOR DHS AUTHORITY  
8/28/96

SECRET

4

~~SECRET~~

"PAGE IN POSSESSION OF LIGO APPARENTLY FROM ADDRESS BOOK WITH  
LETTER "E" ON IT CITED FOLLOWING: EMBASSY AMERICAN 2246111-1271  
PRI JOSEPH LEO 331511.

"TRINIDAD AND TOBAGO POLICE ARE FINGERPRINTING BOTH SUSPECTS  
AND COPYING ALL DOCUMENTS IN THEIR POSSESSION.

"TRINIDAD AND TOBAGO POLICE REQUEST URGENTLY ANY INFORMATION  
OF THESE PERSONS, PARTICULARLY ANY CRIMINAL RECORDS. NO OBJECTION  
TO LEGATT CONTACTING LOCAL POLICE/SECURITY SERVICES. POLICE REQUEST  
AT LEAST INTERIM REPLY BEFORE 1700 LOCAL TIME. PLEASE SEND REPLY  
NEARLY IMMEDIATE.

"POLICE WOULD LIKE TO KNOW IF ANYONE FROM LEGATT OFFICE PLANS  
TO COME TO TRINIDAD ON THIS CASE, OR HOW YOU WOULD LIKE TO RECEIVE  
COPIES OF FINGERPRINTS, ETC."

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (S)  
ON OCTOBER 7, 1976, A CONFIDENTIAL SOURCE ABROAD ADVISED THAT (S)  
END PAGE FOUR

SECRET



~~PAGE FIVE~~ ~~OR 2-9~~ ~~SECRET~~

FREDDY LUGO IS A VENEZUELAN NEWSMAN WHO IS ALSO EMPLOYED AS AN INVESTIGATOR BY LUIS POSADA, [REDACTED]

(S) [REDACTED] CARACAS. HE RESIGNED FROM HIS POSITION [REDACTED] IN 1973. [REDACTED] (S)

(S) POSADA IS A CUBAN EXILE WHO IS KNOWN FOR HIS ANTI-CASTRO ACTIVITIES, AND HE REPORTEDLY ASSISTED ORLANDO BOSCH AVILA IN 1974, SHORTLY BEFORE BOSCH WAS ARRESTED BY VENEZUELAN AUTHORITIES. (S)

LEGAT BECAME ACQUAINTED WITH POSADA WHILE THE LATTER WAS [REDACTED] (S)

(S) AND AFTER HIS RESIGNATION, POSADA CONTINUED TO CONTACT LEGAT ON RARE OCCASIONS, USUALLY IN ORDER TO OBTAIN PERSONALIZED SERVICE IN CONNECTION WITH VISA REQUESTS. IN VIEW OF LUGO'S EMPLOYMENT BY POSADA, LEGAT ASSUMES HIS NAME AND TELEPHONE NUMBER WERE FURNISHED TO LUGO BY POSADA. LEGAT ESTIMATES HE HAS SEEN POSADA IN PERSON ON PERHAPS THREE OCCASIONS SINCE 1973, THE LAST TIME BEING ON JUNE 10, 1976, WHEN POSADA VISITED LEGAT OFFICE TO INQUIRE IF FBI HAD INTEREST IN CARLO BORDONI (BUFILE 29168554, ORFILE 29-13). INFORMED IN THE AFFIRMATIVE, POSADA REVEALED BORDONI HAD HIRED TWO OF HIS OPERATIVES AS ARMED BODY GUARDS AT HIS HOME. THAT INFORMATION WAS SUBSEQUENTLY PASSED BY LEGAT TO [REDACTED] (S)

[REDACTED] WHO WERE INVOLVED IN THE ARREST ACTION AGAINST BORDONI. (S)

~~END PAGE FIVE~~

SECRET

~~THE SIX CAN EAT GREENS~~

ON OCTOBER 7, 1976, THE CONFIDENTIAL SOURCE FURTHER ADVISED THAT

~~CLASSIFIED BY 4420, X03, C. FLORES P. AND A. INDEFINITE~~

VENEZUELA

37

**SECRET**



MM0938 3080 105

PP HI WF

DE MM

P 020105Z NOV 76FM MIAMI (2-469) (P)

TO DIRECTOR PRIORITY

WASHINGTON FIELD PRIORITY

BT

~~SECRET~~

~~SECTION OF 2~~

NO FOREIGN DISSEMINATION

UNSUBS; BOMBING OF CUBANA AIRLINES DC-8 NEAR BARBADOS, WEST  
INDIES, OCTOBER 6, 1976. NEUTRALITY MATTERS- CUBA - WEST  
INDIES. ~~(MIAMI FILE 2-469)~~

~~CHILBOM. PFO. MURDER. EID. OOJ. (MIAMI FILE 185-76).~~

ON NOVEMBER 1, 1976, A CONFIDENTIAL SOURCE WHO HAS FURNISHED  
RELIABLE INFORMATION IN THE PAST ADVISED THAT ON OCTOBER 23-24,  
1976, RICARDO MORALES NAVARRETE, COMISARIO IN CHARGE OF SECTION  
D54, A COUNTERINTELLIGENCE SECTION OF DISIP (VENEZUELAN  
INTELLIGENCE SERVICE), FURNISHED THE FOLLOWING INFORMATION  
TO SOURCE:

SOME PLANS REGARDING THE BOMBING OF A CUBANA AIRLINES  
AIRPLANE WERE DISCUSSED AT THE BAR IN THE ANAUCO HILTON HOTEL  
IN CARACAS, VENEZUELA, AT WHICH MEETING FRANK CASTRO,

Dep. Dir.	_____
Asst. Dir.:	_____
Adm. Serv.	_____
Ext. Affairs	_____
Files & Rec.	_____
Gen. Inv.	_____
Ident.	_____
Intell.	_____
Laboratory	_____
Legal Coun.	_____
Plan. & Insp.	_____
Rec. Mgmt.	_____
Training	_____
Telephone Rm.	_____
Director Sec'y	_____

PAGE TWO MM 2-469 ~~SECRET~~

GUSTAVO CASTILLO, LUIS POSADA CARRILES AND MORALES NAVARRETE WERE PRESENT. THIS MEETING TOOK PLACE SOMETIME BEFORE THE BOMBING OF THE CUBANA AIRLINES DC-8 NEAR BARBADOS ON OCTOBER 6, 1976.

FRANK CASTRO IS A LEADER OF CORU, THE ANTI-CASTRO TERRORIST ORGANIZATION WHICH HAS TAKEN CREDIT FOR SEVERAL BOMBINGS. GUSTAVO CASTILLO IS ONE OF THREE PERSONS INVOLVED IN THE ATTEMPTED KIDNAPING OF THE CUBAN CONSUL IN MERIDA YUCATAN ON JULY 23, 1976, AT WHICH TIME THE CONSUL'S BODYGUARD WAS SLAIN. ORESTES RUIZ HERNANDEZ AND GASPAR JIMENEZ WERE APPREHENDED BY MEXICAN AUTHORITIES BUT CASTILLO EVADED CAPTURE. LUIS POSADA CARRILES HAS BEEN ARRESTED BY VENEZUELAN AUTHORITIES IN CONNECTION WITH THE CUBANA AIRLINES DC-8 BOMBING.

MORALES NAVARRETE TOLD THE SOURCE THAT ANOTHER MEETING TO PLAN THE BOMBING OF A CUBANA AIRLINER TOOK PLACE IN THE APARTMENT OF MORALES NAVARRETE IN THE ANUCO HILTON. THIS MEETING WAS ALSO PRIOR TO THE BOMBING OF THE CUBANA AIRLINER ON OCTOBER 6, 1976. PRESENT AT THIS MEETING WERE MORALES NAVARRETE,

5/4/05

PAGE THREE MM 2-469 ~~SECRET~~

POSADA CARRILES AND FRANK CASTRO. ACCORDING TO MORALES NAVARRETE, AT THIS MEETING THERE WAS SOME DISAGREEMENT AS TO WHO WOULD TAKE PART IN THE VARIOUS PHASES OF THE OPERATION, AND WHO WOULD CLAIM CREDIT FOR THE BOMBING. FRANK CASTRO SAID THE FLNC ( NATIONAL LIBERATION FRONT OF CUBA) WOULD TAKE CREDIT.

THE FLNC IS AN ANTI-CASTRO TERRORIST ORGANIZATION WHICH HAS TAKEN CREDIT FOR SEVERAL BOMBINGS.

MORALES NAVARRETE SAID THAT AFTER THIS MEETING HE HAD NOTHING MORE TO DO WITH THIS MATTER. HE ADDED THAT AFTER THE CABANA AIRLINER BOMBING ON OCTOBER 6, 1976, FRANK CASTRO DID NOT WANT THE FLNC TO CLAIM CREDIT AS HE WAS AFRAID OF REPRISALS BY THE CUBAN GOVERNMENT.

MORALES NAVARRETE SAID THAT THE GROUP INVOLVED HAD PREVIOUSLY ATTEMPTED TO BOMB A CUBANA AIRLINER IN PANAMA AND IN JAMAICA.

MORALES NAVARRETE SAID THAT SOME PEOPLE IN THE VENEZUELAN GOVERNMENT ARE INVOLVED IN THIS AIRPLANE BOMBING, AND THAT IF POSADA CARRILES TALKS, THEN MORALES NAVARRETE AND OTHERS IN

PAGE FOUR ~~MM 2-469 SECRET~~

THE VENEZUELAN GOVERNMENT WILL "GO DOWN THE TUBE". HE SAID THAT IF PEOPLE START TALKING "WE'LL HAVE OUR OWN WATERGATE".

MORALES NAVARRETE SAID THAT AFTER THE CUBANA AIRLINER CRASH, HERNAN RICARDO LOZANO TELEPHONED ORLANDO BOSCH FROM TRINIDAD STATING "A BUS WITH 73 DOGS WENT OFF A CLIFF AND ALL GOT KILLED". BOSCH, KNOWING THAT MANY PHONE CALLS ARE TAPPED BY THE VENEZUELAN GOVERNMENT, PRETENDED HE DID NOT KNOW WHAT HERNAN RICARDO LOZANO WAS TALKING ABOUT.

SOURCE SAID THAT IN A CONVERSATION WITH ORLANDO GARCIA VASQUEZ, MINISTER COUNSELLOR ON SECURITY MATTERS TO VENEZUELAN PRESIDENT CARLOS ANDRES PEREZ, GARCIA VASQUEZ TOLD SOURCE THAT SHORTLY AFTER THE CUBANA CRASH, GRACIA VASQUEZ TALKED TO CARLOS FABRI, THE BOMB EXPERT FOR DISIP. GARCIA VASQUEZ TOLD FABRI THAT HE WOULD HAVE TO TESTIFY AT ANY TRIAL IN THIS MATTER REGARDING BOMBS AND THEIR COMPONENTS. ACCORDING TO GARCIA VASQUEZ, FABRI BECAME VERY NERVOUS AND GARCIA VASQUEZ TOLD SOURCE HE BELIEVES THAT FABRI EITHER MADE THE BOMB FOR THIS CUBANA BOMBING, INSTRUCTED PERSONS ON HOW TO MAKE IT, OR AT LEAST HAD PRIOR KNOWLEDGE OF THE BOMBING.

PAGE FIVE MM 2 469 ~~SECRET~~

GARCIA VASQUEZ MENTIONED THAT THE BOMB ON THE CUBANA AIRLINER WAS ACTIVATED BY A "LAPICERO" (TIME PENCIL).

SOURCE SAID THAT HE ALSO CONVERSED WITH A MEMBER OF THE VENEZUELAN POLICIA TECNICA JUDICIAL (JUDICIAL TECHNICAL POLICE) (PTJ) IN CARACAS. THIS MEMBER, WHOSE NAME SOURCE DOES NOT RECALL, BUT WHO HAS A POLISH NAME, SAID THAT AFTER THE CUBANA AIRLINER CRASHED, THE PTJ KNEW WHO WAS INVOLVED AND THEREFORE WANTED TO HANDLE THE INVESTIGATION. HOWEVER, THE PTJ WAS DENIED THE INVESTIGATION AND DISIP TOOK OVER THE MATTER "TO COVER IT UP". THIS PTJ MEMBER ALSO TOLD SOURCE THAT IF CARLOS FABRI DID NOT MAKE THE BOMB, THEN HE AT LEAST HAD PRIOR KNOWLEDGE OF THE MATTER.

SOURCE SAID THAT FABRI AND POSADA CARILLES ARE GOOD FRIENDS AND THAT FABRI AND POSADA HAD ACTUALLY BEEN ARRESTED A COUPLE OF YEARS AGO BY VENEZUELAN AUTHORITIES AFTER IT WAS LEARNED THEY PROVIDED FALSE DOCUMENTATION AND EXPLOSIVES TO DR. ORLANDO BOSCH AVILA IN VENEZUELA AT THAT TIME.



5/4/05

PAGE SIX MM 2-469 ~~SECRET~~

DR. ORLANDO BOSCH AVILA IS A FUGITIVE FROM THE U.S., LEADER OF CORU, AND IS IN CUSTODY IN VENEZUELA IN CONNECTION WITH THIS CUBANA AIRLINES BOMBING.

MORALES NAVARRETE TOLD SOURCE THAT ORLANDO BOSCH SAID THAT GUILLERMO NUVO VISITED CHILE IN EARLY 1975 AT WHICH TIME HE VISITED BOSCH. DURING THIS PERIOD, GUILLERMO NUVO MAKE CONTACT WITH AN ULTRA-RIGHTWING ORGANIZATION KNOWN AS "PATRIA Y LIBERTAD" (FATHERLAND AND LIBERTY). BOSCH SAID THAT ORLANDO LETELIER'S DEATH WAS THE RESULT OF AN AGREEMENT BETWEEN GILLERMO NUVO AND THE "PATRIA Y LIBERTAD" ORGANIZATION. MORALES NAVARRETE SAID THAT SOME MEMBERS OF "PATRIA Y LIBERTAD" ARE ALSO MEMBERS OF "DINA", A CHILEAN INTELLIGENCE SERVICE. SOURCE WAS UNABLE TO LEARN FURTHER INFORMATION REGARDING THIS MATTER.

MORALES NAVARRETE ALSO TOLD SOURCE THAT GUSTAVO CASTILLO AND MEMBERS OF HIS GROUP ARE RESPONSIBLE FOR THE FOLLOWING BOMBINGS IN THE MIAMI, FLORIDA AREA: BOMBING OF THE DOMINICAN CONSULATE ON OCTOBER 6, 1975, BOMBING OF THE DOMINICAN AIRLINES TICKET OFFICE ON OCTOBER 20, 1975; BOMBINGS AT THE BROWARD COUNTY COURT HOUSE ON OCTOBER 10, 1975; AND ATTEMPTED BOMBING OF A



PAGE SEVEN MM-2-469 ~~SECRET~~

BAHAMAS AIR AIRLINER AT MIAMI INTERNATIONAL AIRPORT ON NOVEMBER 27, 1975. ACCORDING TO MORALES NAVARRETE, THE ORGANIZATION "YOUTH OF THE STAR", WHICH CLAIMED CREDIT FOR THESE BOMBINGS, IS COMPOSED OF GUSTAVO CASTILLO, GASPAR JIMENEZ, ORESTES RUIZ HERNANDEZ, DUNEY PEREZ ALAMO AND RACIEL RODRIGUEZ GONZALEZ WHO IS THE YOUNGER BROTHER OF REINOL RODRIGUEZ, FLNC MEMBER WHO RESIDES IN SAN JUAN, PUERTO RICO. THIS GROUP IS GENERALLY INDEPENDENT EVEN THOUGH MEMBERS WILL ACCOMPLISH TERRORIST ACTS FOR THE FLNC OR OTHER CUBAN TERRORIST GROUPS.

SOURCE ADVISED THAT ON OCTOBER 27, 1976, THE VENEZUELAN GOVERNMENT ISSUED SOME TYPE OF NEWS RELEASE STATING THAT THERE IS NO RICARDO MORALES NAVARRETE IN DISP. SINCE THAT TIME, SOURCE HAS TELEPHONED NAVARRETE TO HIS OFFICE AND TO HIS APARTMENT AT THE ANAUCO HILTON IN CARACAS. PERSONS ANSWERING THE PHONE STATE THAT THEY KNOW OF NO RICARDO MORALES NAVARRETE NOR DO THEY KNOW OF COMISARIO MOISES ( A CODE NAME FOR MORALES NAVARRETE). SOURCE SAID THAT MORALES NAVARRETE TELEPHONED HIS GIRL FRIEND IN MIAMI, FLORIDA, TELLING HER NOT TO PHONE HIM AS "HE DOES NOT

PAGE EIGHT ~~MM 2-469 SECRET~~

EXIST". MORALES NAVARRETE SAID HE WOULD TELEPHONE HER INSTEAD. MOST OF THE ABOVE INFORMATION WAS TOLD IN STRICT CONFIDENCE TO SOURCE AND DIVULGENCE OF THIS INFORMATION WOULD IMMEDIATELY PINPOINT THE SOURCE WHO REQUESTED THAT THIS INFORMATION NOT BE DIVULGED OUTSIDE THE U. S. GOVERNMENT. THEREFORE, NO ACTION SHOULD BE TAKEN ON THE ABOVE INFORMATION WHICH COULD COMPROMISE THE SOURCE.

*6098 CHM*  
~~CLASSIFIED BY *6098 CHM* NO. *2* & *3* INDEFINITE~~  
*Administrative Data for Legal's Only*  
ADMINISTRATIVE.

SOURCE IS RAUL DIAZ, ORGANIZED CRIME BUREAU, DADE COUNTY PUBLIC SAFETY DEPARTMENT, WHO TRAVELED TO VENEZUELA ON OCTOBER 22, 1976, IN AN ATTEMPT TO CONVINCE MORALES NAVARRETE TO TESTIFY IN THE NOVEMBER 15, 1976 STATE TRIAL OF ROLANDO OTERO FOR NINE BOMBINGS IN MIAMI, INCLUDING THAT OF THE MIAMI FBI OFFICE.

PAGE NINE MM 2-469 ~~SECRET~~

DIAZ SAID THAT MORALES NAVARRETE SAID THAT THE FLORIDA STATE ATTORNEY'S OFFICE SHOULD REQUEST THE VENEZUELAN GOVERNMENT, THROUGH THE U.S. DEPARTMENT OF STATE, TO HAVE MORALES SO TESTIFY.

RAUL DIAZ REQUESTED THAT HE NOT BE REVEALED AS THE SOURCE OF THIS INFORMATION, AND AS SET OUT IN THE DETAILS, THIS INFORMATION SHOULD NOT BE REVEALED OUTSIDE THE U.S. GOVERNMENT. IT IS NOTED THAT RAUL DIAZ IS A FRIEND OF MORALES NAVARRETE.

REGARDING PATRIA Y LIBERTAD, THE MIAMI OFFICE OPENED A CASE ON OCTOBER 3, 1973, ENTITLED "PATRIA Y LIBERTAD, IS-CUBA (MIAMI FILE 105-21705) (BUFILE 105-258678)". THIS CASE WAS OPENED WHEN AN INFORMANT OF THE MIAMI OFFICE ADVISED THAT WHEN AN ANTI-CASTRO ORGANIZATION NAMED DIRECTORIO REVOLUCIONARIO WAS DISSOLVED IN MIAMI, SOME OF ITS MEMBERS ATTEMPTED TO ORGANIZE A NEW GROUP, PATRIA Y LIBERTAD, WHICH WAS TO BE HEADED BY ALDO VERA SERAFIN. (IT IS NOTED THAT VERA SERAFIN WAS ASSASSINATED IN SAN JUAN, PUERTO RICO ON OCTOBER 25, 1976). THIS CASE WAS CLOSED IN MARCH, 1975, AS INVESTIGATION REVEALED THAT THIS ORGANIZATION WAS NEVER FORMED. REGARDING BOMBINGS

RELEASED  
NARA *mt* DATE *5/4/05*

PAGE TEN TM 2-465-SECRET

COMMITTED BY GUSTAVO CASTILLO AND OTHERS IN THE MIAMI AREA,  
AS MENTIONED BY MORALES NAVARRETE, THE MIAMI OFFICE IS  
CONDUCTING INVESTIGATION REGARDING THIS AND THE BUREAU WILL  
BE ADVISED UNDER APPROPRIATE CASE CAPTIONS.

BUREAU IS REQUESTED TO FURNISH ABOVE INFORMATION TO  
LEGAT, CARACAS.

BT

REFS HOLD

*Administrative Data to Legat only.*