

Victima de nuevo, esta vez de abuso de Discreción Judicial.

Por: Humberto Humphrey Pachecker

Yo, junto con mi familia, fuimos víctimas de Fidel Castro Ruz en su capacidad como primer Secretario del Partido Comunista de Cuba. Nosotros estuvimos sujetos a torturas y a otras violaciones mayores y abusos de derechos humanos mientras estuvimos bajo la jurisdicción y la autoridad de Fidel Castro Ruz. Ahora, 36 años más tarde Yo he sido víctima de nuevo, esta vez de abuso de discreción judicial cuando presente en propia persona una demanda judicial contra Fidel Castro Ruz y el Partido Comunista de Cuba bajo la jurisdicción Federal de los Estados Unidos, bajo el Acta Federal de Protección a Víctimas de Tortura y el Acta de Reclamación por daños a Extranjeros.

Mi pregunta es: ¿ Puede un juez federal usar su poderosa posición en el magistrado para expedir opiniones reflejando una extrema filosofía judicial que puede ser adversaria y dañar los derechos civiles y constitucionales de los Ciudadanos Estadounidenses?

En mi viejo diccionario de Derecho Black's, tercera edición, Lord Coke (1552-1634) define la discreción judicial como, "discernere per legem quid sit justum," ver que puede ser justo de acuerdo a las leyes del lugar. No quiere decir un dislocado antojo personal, cual puede dar lugar a cualquier y todo acto, pero esta discreción judicial es guiada por la ley, (ver que declara la ley sobre cierta declaración de hechos, y entonces decidir de acuerdo con la ley,) y por lo tanto hacer substancial equidad y justicia. Es una discreción legal para ser ejercida en discernir el curso prescrito por la ley y no es para dar efecto al deseo del juez, pero si a ese de la ley.

En una más reciente definición del año 1966 una corte federal declara la clásica medida para el abuso de discreción como, "Si fue hecho sin una explicación racional, o una inexplicable separación del proceso establecido, o descansa sobre unas bases no permitidas como una discriminación individual contra una raza en particular o grupo u otras consideraciones las cuales el Congreso no pudo haber tenido intención en hacerlas relevantes."

Jon Roland de la Sociedad de la Constitución, en su siguiente artículo "Abuso de Discreción Judicial" fechado mayo 31, 2003 declara que, La esencia del nomocracy (gobierno basado en sistema legal), la regla de la ley, es limitación de la discreción de funcionarios, y de proporcionar un proceso por el cual los errores o el abuso de discreción judicial puedan ser corregidos. Una cierta discreción es inevitable, porque la ley no puede anticipar cada eventualidad o cómo decidir a qué ley puede aplicarse a una situación dada. Qué dirección la ley no puede proporcionar se supone para ser proporcionado por principios estándares de la justicia y proceso debido, razón, y los hechos de cada caso. Idealmente, los funcionarios deben ser mutuamente constantes y permutables, tomando decisiones similares en casos similares, de modo que nadie pueda ganar una ventaja

indebida eligiendo al funcionario o ejercitando influencia indebida en el funcionario o en el proceso él funciona. Confiamos en funcionarios para ejercer la discreción tal que tienen con la sabiduría, la justicia, y la capacidad, para evitar un gobierno que es arbitrario, insolente, discriminatorio, perjudicado, intruso y corrupto.

Dentro del sector público, la discreción se puede ejercitar por los funcionarios legislativos, ejecutivos, o judiciales. Dentro del sector privado, la discreción se puede ejercitar por los funcionarios privados, tales como agentes, los administradores o los oficiales corporativos, que están en principio conforme a la supervisión de las cortes. El foco aquí está en la discreción judicial, y el abuso de él. No se discutirá cada área de la discreción judicial.

El primer chequeo principal en la discreción de jueces era el jurado. Un juez, sosteniendo la oficina sobre el curso de casos múltiples, y seleccionado por nombramiento o por la elección, es susceptible a la influencia indebida. Un jurado, elegido por suerte, o por la porción, para un solo caso, momentos antes del caso, es menos probables ser corrompido, y teniendo miembros del jurado múltiples rinda los veredictos proporcionando colectivamente un chequeo por cada uno en los otros. Qué lo que el jurado puede ser que carezca en el conocimiento de la ley es compensado por su conexión al ambiente regular no-legal en el cual la mayoría de la gente conforme a la ley debe funcionar.

En las cortes que intentan ahorrar tiempo y dinero no usando a jurados, tales como cortes de la familia en algunos estados, las quejas sobre abuso de la discreción judicial han conducido a las llamadas para que los jurados decidan a cuestiones de la custodia, del visitación, de la ayuda de niño, y de la distribución de la característica marital.

Jueces quiénes imponen las sentencias clementes, para evitar el atestamiento de la prisión y las salidas temprano de delincuentes violentos, provoca a menudo las demandas para las sentencias mínimas obligatorias o condenando las pautas que reducen su discreción para hacer las cosas como imponen sentencias reducidas ante la creencia de los demandados que están arrepentidos o son poco probables que cometan otra ofensa.

La mayoría de las quejas del abuso de la discreción judicial, y llamadas para limitarla con más leyes, concierne cuestiones de preocupación de la política o equidad. Pero hay otra amplia categoría, que se refiere a cuestiones constitucionales del proceso debido y de los derechos civiles. Esto es un campo demasiado grande a discutir adecuadamente en un artículo corto, tan solamente algunos de las clases más importantes de discreción judicial que se están abusando a menudo serán presentadas a continuación.

STARE DECISIS

El stare decisis, es la doctrina según la cual un juez en un caso actual trata decisiones adentro más allá de casos similares como precedentes autoritarios, y rechaza tomar la decisión de una manera que salga de tales precedentes, con respecto a todos según lo decidido correctamente. Hay un lugar para dar el peso a los precedentes, especialmente en casos civiles y materias de la equidad, y clarificar ambigüedades en la letra negra de la

ley, pero es un abuso de la discreción judicial tratar a precedentes como si son la ley, igual o superior a la letra negra de la ley, especialmente cuando esa letra negra de la ley es una de la constitución escrita. Solamente el decreto, el encontrar y la orden, son ley en una decisión judicial, y solamente para los partidos implicados. La opinión referente a cómo la decisión fue alcanzada puede ser persuasiva en sus méritos, e indicativa de cómo la misma corte puede decidir a un caso similar, pero solamente es sentencia, o el comentario, no la ley, y es un abuso de la discreción judicial a no poder agotar el análisis textual e historia legislativa antes de considerar el precedente, y de cerciorarse de que la cadena de precedentes no ha vagado lejos de los límites de la letra negra de la ley.

Respeto a la legislatura y a la administración

Mientras que es apropiado diferir a las ramas legislativos y ejecutivos en las preguntas peculiares a esos ramas y a sus deberes constitucionales, todo juzga demasiado a menudo abuso su discreción tan difiriendo en caso de que los funcionarios de esos ramas hayan excedido claramente su autoridad. Esto se señala a veces en una decisión que declare la materia una “pregunta política”. Está a veces, por lo menos en parte, pero los jueces tienen un deber a actuar donde los límites constitucionales se exceden claramente, y su falta de hacer así que los indican que una carencia de la independencia judicial verdadera de los otros otros ramas y de las presiones que esos ramas pueden aplicar. El resultado es el estado administrativo, el resultado de la falta de hacer cumplir la [doctrina de la non-delegacion](#). La parte de la solución puede ser seleccionar a jueces por el metodo de elección a suerte.

HABEAS COPURS Y QUO WARRANTO

Cualquier persona tiene al derecho de solicitar la liberación de un preso si el funcionario que lo retiene no demuestra suficiente autoridad en hacer tal detención. Una escritura de la *recopilación de los habeas* es una subespecie de una escritura del *quo warranto*, es el derecho de hacer que un funcionario cese o se refrene de una cierta acción a menos que él pruebe la suficiente autoridad para ello. Solamente el primero se protege explícitamente en la constitución de los E.E.U.U., pero el último esta implicado por el proceso debido de la ley y las cláusulas y las enmiendas de la non-delegación. El principio implicado es la presunción que un funcionario carece la autoridad para una acción a menos que él pueda probar que él la tiene, de modo que una petición para cualquier escritura no implique un derecho al *oyer* (audiencia justa) y el *terminer* (decisión sobre los méritos) para el solicitante, pero solamente *terminer*. El derecho del *oyer* pertenece al respondedor para tal petición. Si la respuesta es inadecuada, o la corte no tiene tiempo para el *oyer*, entonces su deber es conceder la escritura de orden. El problema es que los jueces, especialmente los jueces federales cuando el respondedor es un funcionario federal, está demasiado a menudo dejando de actuar en peticiones de los *habeas*, en los varios pretextos, de tal modo invirtiendo la presunción a favor del funcionario y de sus acciones. Las peticiones para las escrituras de orden del *quo warranto* son sistemáticamente ignoradas o desestimadas, a veces sobre la base de carencia de la autoridad legislativa, pero no hay autoridad legislativa que sea necesaria. No hay súplica o apelación de tal inacción. La ley provee al solicitantes solamente la opción de intentarlo otra vez ante otro juez, de tal modo animando compras o buscando el foro conveniente. Las quejas de la

mala conducta judicial para tal negación o inacción también se están no haciendo caso sistemáticamente. Esto no se debe realmente llamar un abuso de la discreción judicial porque por ley un juez no tiene ninguna discreción en terminer (jurisdicción), sino que ha emergido como práctica que mina todas las otras protecciones de la constitución.

Selección del jurado

Suponen que el petit (pequeño) y los grandes jurados deben ser seleccionados al azar de la comunidad, llamado proceso sortition, con una cierta investigación fuera de los miembros del jurado que no pueden ser imparciales o que tienen algunas dificultades o los deberes críticos. Sin embargo, los jueces abusan demasiado a menudo de su discreción *para embalar a* jurados con las personas que son parciales de varias maneras. Una forma es exigir que la toma de los miembros del jurado un juramento “sigue la ley” *según lo dado por el juez*. Eso permite a juez al misinstruct el jurado en cuanto a cuáles es la ley.

Acceso del jurado de ensayo

En comienzo de la república, la costumbre del proceso debido de la ley era [discutir todas las aplicaciones la ley en presencia del jurado](#), que les permitía aprender cuáles eran las cuestiones legales junto con el juez, es decir, el magistrado de presidencia, y nosotros podemos presumir que esta práctica era parte de lo que significaron los fundadores de la republica por “proceso debido” en la constitución. Sin embargo, los jueces han abusado de su discreción adoptando la práctica de requerir defensas y ser sometido a ellas por los litigantes en la escritura, y de no permitir las copias sean proporcionadas el jurado, ni de permitir que los abogados hagan discusiones legales en presencia del jurado. Esto ha dado a jueces control sobre el ensayo de maneras que derriba en gran parte las protecciones que suponen el jurado proporcionar, porque no permite que los miembros del jurado oigan la discusión, en un proceso penal, que la corte no tiene jurisdicción, o que la carga no es autorizada por un estatuto, o el estatuto por el estado o la constitución federal, o que el estatuto está aplicado mal a los hechos del caso, o que las derechas del acusado fueron infringidas por mala conducta investigadora, procesal, o judicial.

Acceso del Gran jurado

El problema es revelado a menudo por la broma del viejo querellante que él podría conseguir al jurado magnífico “procesa un emparedado de jamón”. Originalmente, en la república temprana, no había querellantes públicos. Los procesamientos criminales fueron conducidos por los abogados privados, cualquier pagado de las víctimas, por la suscripción, o designados por el juez para servir *favorable bono*. Cuando los querellantes públicos comenzaron a ser designados, pronto asumieron a jurados magníficos de un excedente indebido de la influencia, con la ayuda del abuso de la discreción judicial de los jueces. Esto es ayudada por una carencia de la educación cívica del público referente a los deberes de miembros del jurado magníficos, o embalandos a jurados magníficos con los cronies del establecimiento judicial.

Selección del Fiscal

En casi cada estado y en las cortes federales está dentro de discreción judicial para que el juez conceda el acceso a las cortes a cualquier persona para conducir un procesamiento criminal, pero excepto en Texas, tales peticiones se no hacen caso o se despiden sistemáticamente. Esto es un problema especial cuando los sospechosos son funcionarios, cronies del fiscal querellante o juez. Salvo [procesamientos criminales privados](#) sin causa justa está un abuso de la discreción judicial.

Procesamiento privado de los derechos públicos, *Qui tam* y *ex relatione*

Un derecho para que cualquier persona busque un remedio declaratorio o prescriptivo contra cualquier acción ilegal de los oficiales del gobierno sin tener que haber sido dañado personalmente, pero puesto que 1922 cortes han estado abusando de su discreción judicial negando lugar a los demandantes que no pueden probar daños corporales. Un derecho relacionado, *qui tam*, de cualquier persona de actuar en el lugar del gobierno, *ex. rel.*, cuando el gobierno no lo hará así pues, para proteger los derechos de las personas y hacer cumplir la ley.

Desacato y detención coactiva

No hay poder delegado en la constitución de los E.E.U.U. para que un juez federal procese a cualquier persona por desacato de la corte, excepto en territorio federal, bajo arte. I Sec. Cl 8. 17 o arte. IV Sec. Cl 3. 2, o encarcelar a alguien indefinidamente para forzarlo en hacer algo. Fue anticipado por los fundadores de la republica que todos las cortes de justicia federales serían localizados en enclaves federales, pero no todos lo estan, y las órdenes y las acciones de desacato son a menudo extendidas más allá de los límites territoriales de tales enclaves, en donde las cortes federales no tienen ninguna tal jurisdicción.

EXPULSION

Aunque el propósito indicado original de licenciar y de expulsar a abogados era proteger al público contra los deshonestos o incompetentes, el licenciar y la influencia los jueces tienen sobre la expulsión es excesivo y se abusa demasiado a menudo para suprimir a los abogados que pudieron desafiar sus abusos judiciales.

Protección del abogado

El otro lado de controlar a los abogados con amenazas de desacato o de la expulsión es

una protección sistemática de los jueces contra ser demandados, abusando de la discreción judicial para castigar a las personas que pudieron tener la osadía de hacer así pues, y a sus abogados si pueden conseguir cualesquiera para representarlos. Violadores de este hallazgo de la “ley no escrita” todos sus movimientos que son no hechos caso o negados después de eso, sin importar mérito.

Inmunidad absoluta

Es apropiado que los jueces tengan una inmunidad limitada de ser demandado para sus decisiones judiciales si son simplemente el resultado del error o incompetencia. El remedio para ese es súplica a una tribunal más superior. El problema es que los jueces abusan de su discreción judicial para protegerse y a otros jueces contra la responsabilidad civil y criminal por indebidamente ser influenciada, por ejemplo por el soborno, la intimidación o el cronyism.

Litigantes Pro Se, propia persona

En vez de acomodar a la carencia del conocimiento legal de las personas que se representan por si mismas y que o no pueden permitirse un abogado, o que no confían en los abogados que están conforme al control de las cortes, los jueces y el personal de la corte discriminan sistemáticamente contra los litigantes que aparecen en *PRO SE* o *en propria persona*, a menudo despidiendo sus peticiones o mociones por fuera de la mano, sin importar sus méritos. Ése es abuso de la discreción judicial.

Defensa afirmativa

Los jueces han adoptado la práctica en procesos penales de requerir la defensa hacer un movimiento para la defensa afirmativa, que podría ser una defensa como la autodefensa que admite a los hechos y discute las acciones fue justificada, o que intenta probar algún otro confió el crimen. El análisis razonado original para esto era proporcionar el aviso debido del procesamiento así que pueden preparar su respuesta. Se concede normalmente, pero en el ensayo 1994 de *Davidian* fue negado, mucho a la sorpresa de los abogados de defensa, que planearon discutir autodefensa. Para evitar que la defensa someta una oferta de la prueba, que sería argumentos para la revocación en súplica, el juez acordó, si ella se refrenara de hacer así pues, incluir una instrucción el jurado que ella podría considerar autodefensa, solamente a él no permitiría la discusión y la evidencia de la autodefensa durante ensayo. Pensando su mejor ocasión puesta en convenir ese, los abogados de defensa fueron junto con este abuso de la discreción judicial. Sin embargo, otras instrucciones engañaron a jurado en la condenación de alguno por los demandados en realces que condenaban, aun cuando absolvieron todos en las ofensas bajas, y el juez las condenó para los realces como si lo habían encontrado culpable de las ofensas bajas.

Defensa Mens rea

En casos criminales, por estándares constitucionales originales, los elementos de la carga de la prueba criminal son *mens rea*, *actus reus*, concurrencia, causalidad, y daño. El primer, *mens rea*, es “intento criminal”, y los jueces están permitiendo que los procesamientos criminales procedieran sin la prueba de ella, especialmente cuando los estatutos prohíben los actos que son *malum prohibitum* en vez de *malum in se*. En este el abuso de la discreción de los legisladores ayudan a los jueces, pero sigue siendo un abuso de la discreción judicial.

La pregunta sigue siendo: ¿ Puede un juez federal usar su poderosa posición en el magistrado para expedir opiniones reflejando una extrema filosofía judicial que puede ser adversaria y dañar los derechos civiles y constitucionales de los Ciudadanos Estadounidenses?

SEGUIDO ESTAN LAS COPIAS ACTUALES DE MI DEMANDA CONTRA FIDEL CASTRO RUZ Y EL PARTIDO COMUNISTA DE CUBA, ET AL, SERVICIO DE PROCESO, ORDEN DEL SECRETARIO DE LA CORTE EN REVERDIA CONTRA FIDEL CASTRO RUZ, ET AL, PETICION DE SENTENCIA FINAL POR DOS BILLONES DE DOLARES, OPINION DEL JUEZ EN SENTENCIA FINAL DESESTIMADA CAMBIANDO ORDEN DEL SECRETARIO DE LA CORTE, Y NOTICIA DE APELACION.

THIS LAWSUIT AGAINST FIDEL CASTRO RUZ AND THE ENTIRE CUBAN COMMUNIST PARTY IS A CRY FROM GOOD OVER BAD CALLING UPON THE AMERICA'S PEOPLE TO RAISE OURSELVES AGAINST THOSE WHO ARE IN CONSPIRATION WITH EVIL TO DESTROY US. SPECIAL SENTIMENT COMES TO MY HART FROM READING TWO SPECIAL MEN'S MESSAGES TO THE PEOPLE, WRITTEN BOTH OVER A HUNDRED YEARS AGO.

“I HAVE OFTEN PONDERED OVER THE DANGERS WHICH WERE INCURRED BY THE MEN WHO ASSEMBLED HERE AND ADOPTED THAT DECLARATION OF INDEPENDENCE, I HAVE PONDERED OVER THE TOILS THAT WERE ENDURED BY THE OFFICERS AND SOLDIERS OF THE ARMY, WHO ACHIEVED THAT INDEPENDENCE...GIVING LIBERTY NOT ALONE TO THE PEOPLE OF THIS COUNTRY, BUT HOPE TO THE WORLD FOR ALL FUTURE TIME. IT WAS THAT WHICH GAVE PROMISE THAT IN DUE TIME THE WEIGHTS SHOULD BE LIFTED FROM THE SHOULDERS OF ALL MEN, AND THAT ALL SHOULD HAVE AN EQUAL CHANCE. THIS IS HE SENTIMENT EMBODIED IN THAT DECLARATION OF INDEPENDENCE...”

“QUÉ FRANJAS NUESTROS RÍOS! NUESTROS MONTES QUE ROSAS! QUÉ BORDADOS NUESTROS PENSAMIENTOS! NUESTRAS ALMAS, QUE ÁGUILAS!...CUANDO LAS CONDICIONES DE LOS HOMBRES CAMBIAN, CAMBIAN LA LITERATURA, LA FILOSOFIA Y LA RELIGIÓN, QUE ES UNA PARTE DE ELLAS...PARA DICHA DE LA PERSONA Y LA CALMA PÚBLICA NO SE HA DE CEDER, NI FIAR A OTRO, NI HIPOTECAR JAMÁS...DE AMÉRICA

SOY HIJO, A ELLA ME DEBO. Y DE AMÉRICA, A CUYA REVELACIÓN, SACUDIMIENTO Y FUNDACIÓN URGENTE ME CONSAGRO, DAR VIDA A LA AMÉRICA, RESUCITAR LA ANTIGUA, FORTALECER Y REVELAR LA NUEVA...PELEAMOS EN CUBA PARA ASEGURAR, CON LA NUESTRA, LA INDEPENDENCIA HISPANOAMERICANA..." "PERO EL HOMBRE VERDADERO NO PUEDE TEMER A LAS REALIDADES, LO QUE TIENE QUE HACER ES LUCHAR POR CAMBIARLAS"

United States District Court SOUTHER DISTRICT OF FLORIDA

Humberto Pacheco Cardenas, Jr. SUMMONS IN A CIVIL CASE
a/k/a NAFA J. Humphreys, i/c/o
the Estate of Humberto Pacheco Case No: 04-14152 CIV - MARRA
Leon, and others John Doe which MAGISTRATE JUDGE LYNCH
are similarly situated,
Plaintiffs,
v.

Fidel Castro Ruz, Cuban Communist
Party's ("PCC") General Secretary, f/k/a
President of the Council of State and
of the Council of Minister; First Secretary
of the PCC, and Chairman of the Cuban
Communist Politburo, and other Officials
with whom he conspired,
Defendants,
TO: (name and address of Defendant)
Fidel Castro Ruz
Cuban Interest Section Office, Embassy of Switzerland Bld.
2630 16 Street N.W.
Washington, D.C. 20009

YOU ARE HEREBY SUMMONED and required to served upon Plaintiffs

Humberto Pacheco Cardenas, Jr., a/k/a
NAFA J. Humphreys, et al
2 West Main Street
Avon Park, Florida 33825

an answer to the complaint which is herewith served upon you, within ____20____ days
after service of the summons upon you, exclusive of the day of service. If you fail to do
so, judgment by default will be taken against you for the relief demanded in the

complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLARENCE MADDOX

6-18-2004

Clerk Date

L. HARRIS

(By) Deputy Clerk

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

Case No.: _____

**Humberto Pacheco Cardenas, Jr.)
a/k/a NAFA J. Humphreys, i/c/o)
the Estate of Humberto Pacheco)
Leon, and others John and Jane)
Doe which are similarly situated,)**

Plaintiffs,

**V.)
TORT LIABILITY CLAIM)**

**Fidel Castro Ruz, Cuban Communist)
JURY TRIAL REQUESTED)
Party's ("PCC") General Secretary, f/k/a)
President of the Council of State and)
of the Council of Minister; First Secretary)
of the PCC, and Chairman of the Cuban)
Communist Politburo, and other Officials)
with whom he conspired,)
Defendants,**

COMPLAINT

I, Humberto Pacheco Cardenas Jr., a/k/a NAFA J. Humphreys, Plaintiff appearing in Pro Se, on behalf of myself, and on behalf of the Estate of Humberto Pacheco Leon, and others John Doe and Jane Doe family members, injured parties similarly situated pursuant to 28 U.S.C. Section 1654, complain and allege as follows:

I. PRELIMINARY STATEMENT

This is an action for a declaratory judgment and for compensatory and punitive damages for torts committed in violation of international law and the domestic constitution and laws of the Republic of Cuba. This Complaint is instituted pursuant to specific statutory authorization, namely the Alien Tort Claims Act, 28 U.S.C. Section 1350, and the Torture Victims Protection Act, 106, Stat., 73, 1992, as more detailed below. Plaintiffs in this action include his immediate family members identified former residents of the Communist Republic of Cuba (“communist Cuba”), one individual identified former resident of communist Cuba and United States’ Naturalized Citizen, now deceased, whose immediate family members or themselves were subjected to torture and other major human rights abuses as residents of communist Cuba, as well as other past and current residents and citizens of the communist Cuba, together with his immediately affected family members. Plaintiffs include the family members, him and as personal representative of the one individual’s estate all subjected to torture in Communist Cuba, in labor camps and other facilities, supervised by the Defendants under the Defendants control, who were tortured as a result of the violations more detailed described below. All these Plaintiffs were residents and/or still are citizens of the Communist Republic of Cuba and thereby subject to the jurisdiction and authority of the Defendant Fidel Castro Ruz (“Castro”) in his Capacity as First Secretary of the Cuban Communist Party (hereinafter referred to as “PCC”), Commander in Chief of the Revolutionary Armed Forces of the Communist Republic of Cuba, and Chairman of the Politburo, have suffered, and been threatened with, the most severe forms of persecution and abuse violating their fundamental human rights, at the hands of, and/or with the concurrence, support and/or supervision of the named Defendant Castro manipulating the Communist’s Republic of Cuba Constitutional basis, governed by the totalitarian state controlled by and under a single party rule of the PCC, later under Article 5 of the Communist Republic of Cuba’s Constitution of 1976 as later amended in 1992 (hereinafter referred to as “Communist Article 5”), in concert with other officials at the highest levels of the PCC, the National Government of the Communist Cuba and its ruling Central Committee. These violations include, but are not limited to torture, genocide, kidnaping, extrajudicial killing, arbitrary detention, denial of the rights, human rights, basic rights to freely exercise religious freedom of movement, political beliefs, speak freely, to associate, assemble peacefully, and to express one views freely. Please see composite of Plaintiffs’ Exhibits 1 to 4 attached hereto and explaining in some details the Communist Republic of Cuba’s constitutional basis, regime type, Communist Party Congress, Central Committee, and the Politburo.

This action is instituted against Defendant Fidel Castro Ruz, and his conspirators,

presently serving and since January 1959 when came to power by force of arms, as General Secretary of the PCC, who has served since the 1960s as the head chief of a repressive authoritarianism of the regime and its ongoing tendency to quell dissidence both within and outside the PCC. The Defendant acting under the Communist Article 5, subordinates the state and civil society to the PCC, played a principal and a major role in investigates and actively suppress any and all dissent, opposition, including the role the state has assumed the right to interfere in the lives of all citizens, even those who do not actively oppose the PCC and its practices, through a consistent and thoroughgoing policy, and an extensively and brutally applied pattern and practice, of arbitrary arresting, kidnaping, detaining, assaulting, torturing, and sometimes executing said residents and/or citizens of the communist Cuba, with the purpose of intimidating, punishing and coercing them so as to force them to relinquish their beliefs, religious practices, civil liberties, and political rights. Specifically, acting as Chief of State, Head of Government, First Secretary of the PCC, and Commander in Chief of the armed forces, Defendant exercises control over all aspects of Cuban life through the PCC, with principal authority to control and secure the suppression and termination of said residents and/or citizens in the communist Cuba. Defendant Castro planned and carried out a sustained and deliberate set of policies and actions that resulted in the arbitrary and unlawful arrest, kidnaping, detention, persecution, and in some cases execution of the Plaintiffs, and/or other members of the Plaintiffs class and family. Defendant Castro played a critical principal role in seeking the violent suppression of the Plaintiffs and family members in communist Cuba in general in particular (which Defendant personally chooses), through a determined policy of arbitrarily arresting, kidnaping, detaining, torturing, and arbitrarily executing Plaintiffs and members of Plaintiffs' family, said residents and/or citizens of communist Cuba, who refused to renounce their beliefs, religious practices, civil liberties, political rights, and their association with the public dissidence, or who demonstrated publicly against these acts of repression. Defendant Castro personally chooses the membership of the selected group which heads the party. The PCC controls all government positions including judicial offices. The Ministry of Interior is the principal organ of state security and totalitarian control. The Revolutionary Arm Forces (FAR) directed by Defendant and Defendant's brother, Raul Castro, exercise defacto control over the state security apparatus, which Defendant Castro supervised during the period of his office as Commander of State from 1959 through present as First Secretary of the PCC, and Commander in Chief, played a principal and critical role in this process of the abusive practices that were a regular part of the campaign of persecution against Plaintiffs, including torture and arbitrary executions, took place. During said period of time, Plaintiffs and members of Plaintiffs' family residents and/or citizens of communist Cuba were arbitrarily detained in labor force camps, jails, and mental hospitals located in communist Cuba, with many of them being executed as a result of torture that was inflicted upon them as part of the campaign of intimidation and punishment that Defendant Castro participated in, design, supervise, and carry-out. Please see a composite of Plaintiffs' Exhibits 5 to 10 attached hereto which are photographs showing victims of torture, genocide, kidnaping, and victims of Human rights and basics rights violations.

II. JURISDICTION AND VENUE

This Court has jurisdiction over the claims brought by Plaintiffs by virtue of 28 U.S.C. Section 1350, incorporating provisions of the Alien Tort Claims Act, the Torture Victims Protection Act, which provide for Federal Jurisdiction and a Cause of Action “for any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States” as well as for acts of torture committed abroad against either U.S. Citizens or citizens of other nations. By virtue of 28 U.S.C. Section 1654. Appearance personally or by Counsel. “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”

4. In this case, the actions of the Defendant Castro and those with whom he conspired and supported, constituted violations of some of the most deeply held and universally acknowledged human rights that are enshrined in a member of widely ratified international treaties that the United States has ratified as well as being firmly accepted parts of customary international law. These include, but is not limited to, the right to not be arbitrarily arrested, imprisoned, and deprived of life; the right to not be subjected to torture and genocide; the right to hold and express views and beliefs freely and without interference; the right to liberty and security of the person; and the right to associate with others and to practice religious and spiritual beliefs without restriction. The exercise by the Plaintiffs of these international recognized human rights, enshrined in both treaties ratified by the United States and in customary international law, and universally recognized as part of the law of nations, has been seriously and maliciously abridged by the policies and actions of the Defendant Castro and his co-conspirators acting under Communist Article 5, governed by the totalitarian state controlled by and subordinates the state and civil society under a single party rule of the PCC. Among the specific human rights treaty standards violated by the Defendants are those incorporated in the convention against Torture, the convention on Civil and Political Rights, the Genocide Convention, and the United Nations Charter. Many of these same standards also are embodied in customary international law as articulated in the Universal Declaration of Human Rights. Each of these standards and how they have been violated by the actions of the Defendant Castro and his co-conspirators to the detriment and injury of the Plaintiffs, is described and explained in the text of the Complaint, below beginning with Paragraph 23. These violations of international law, together with injuries inflicted upon the Plaintiffs and Plaintiffs’ family members, as a result of these violations, place this legal action within the parameters of the jurisdictional standards spelled out in 28 U.S.C. Section 1350 embodying the provisions of the Alien Tort Claims Act and the Torture Victims Protection Act.

5 The fact that the Defendant Castro is not a citizen nor a resident of the United States, although he has in this Country a Registered Agent and/or a Registered Office in a representative capacity, in addition, he is “doing business” through the Chief of the Cuban Interest Section in Washington D.C., named, Dagoberto Rodriguez, does not deprive the Court of jurisdiction, since the very nature of the Alien Torts Claims Act and the Torture Victims Protection Act provisions authorizing this type of civil action in Federal Court recognizes that many defendants or potential defendants in these cases, as aliens committing torts abroad that involve violations of international law, will be in the United States and subject to the jurisdiction of our Federal Courts only on a temporary

basis including in a representative and/or substituted capacity. Non-resident persons or businesses operating, conducting, and engaging in or carrying on a business or business venture in the United States are amenable to substituted service pursuant to Federal Statutes.

6 Venue is properly vested in the Federal District Court for the Southern District of Florida pursuant to the requirements of 28 U.C.S. Section 1391 (b) and (d) as a location within the United States where the Defendants are juridically personally located during and through their current Registered Agent's Office, "The Cuban Interest Office at the Consular Section", located at: 2360 16 Street, N.W., The Embassy of Switzerland's Building, Washington, D.C., 20009, in addition, are "doing business" though their Chief of the Cuban Interest Section in Washington D.C., Mr. Dagoberto Rodriguez, and can be personally substituted served with process regarding the initiation of this lawsuit pursuant to the requirements of Rule 4 (c) (1) and (e) of the Federal Rules of Civil Procedure. Non-resident persons or businesses operating, conducting, and engaging in or carrying on a business or business venture in the United States are amenable to substituted service pursuant to Federal Statutes.

III PARTIES

A. PLAINTIFFS

7 Plaintiffs represents a designated class of residents and/or citizens, who have resided in the past, who are currently residing, who have visited in the past, or who are currently visiting the Communist Republic of Cuba, and have been subjected to various forms of persecution and abuse, amounting to serious violations of their human rights, as a result of the policies and actions of the Defendant Castro and other high level government officials with whom he has conspired, acting under the communist Article 5 governed by the totalitarian state controlled by and under a single party rule of the PCC, aimed at intimidating and punishing the Plaintiffs for their political beliefs, and practices, freedom of speech, preventing them from engaging in these practices, and eliminating them for their human rights advocates and beliefs.

8 John Doe designations have been used to substitute for the specific identities of family's members identified Plaintiffs in order to protect them and their families some of whom remain within the jurisdiction of the Defendants from the most serious forms of reprisal, including arrest, torture, and execution. For these Plaintiffs a very real and substantial risk exists that the government of Cuban would seek to inflict punishment and coercion on the Plaintiffs and on their families as a result of this lawsuit and in bringing public exposure and criticism to the Cuban government's policies and practices regarding the intimidation of Cuba's residents and/or citizens, and the government's efforts to investigates and actively suppress any and all opposition and dissent.

9 Plaintiff Humberto Pacheco Cardenas is a 51 year old man currently residing in Florida. He is bringing this Complaint in Pro Se on behalf of himself and his late father, Humberto Pacheco Leon ("Plaintiff Leon"), an United States Naturalized Citizen. Plaintiff Leon was an officer administrator for the democratic government of Cuba. He died in Miami of emphysema. However, his body showed the scars of having been tortured and suffered other cruel inhuman and degrading treatments by Defendants. To resist the illegal persecution, torture, and confinement based solely on his beliefs and

democratic practices, Plaintiff Leon suffered family separation when sent his family out of Cuba in exile through Europe until they reunited again here in the United States. During all this time Plaintiff Leon was coerced and forced to renounce to all his personal possessions, including his job. He was incarcerated in and out several times including his wife. Plaintiff Leon, his wife and daughter were forced to move to an empty chicken house for several years. For nearly ten years he and his family were forced to live in miserable conditions. He was also subjected to degradation and ridicule. For instance, he was arrested and interrogated and physically and mentally tortured to make him believe he was insane, and that his family would be incarcerated and tortured too. He suffered nasal cavity lacerations and internal bleeding which always caused great pains until the day he died in Florida. Although the Communist Cuba's Constitution prohibits abusive treatment of detainees and prisoners, but members of the Security forces and government's officials continue to give direct orders regarding the torture, mental abuses, incarceration, among others, of Plaintiff Leon.

10 Plaintiff Humberto Pacheco Cardenas a/k/a NAFA J. Humphreys, is bringing this Complaint too, in Pro Se on behalf of himself and his immediate family members, others John Doe, who were and/or currently are being tortured and jailed in the communist Cuba. Several family members died as a result of torture and/or beating received while in the custody of Cuba's government. Some of their bodies showed signs of having suffered beaten and tortured. Other family members have received several written death threats and have been visited by PCC's undercover agents, informers, the Rapid Reaction Brigades who have threats them with death by slitting their throats. Another family member was arrested while in her way to a friend's house. She was tied up and interrogated for more than 30 consecutive days and she was forced, though torture and beating, to give information about illegal purchase of food. She was forced to seek exile victim of PCC's undercover agents, the Rapid Reaction Brigades. She left Cuba together with her family, they all died in the sea. The communist government of Cuba never conducted a full investigation into the Cuban Coast Guards sinking of the "13 of March" tugboat which occurred on July 13, 1994, which caused the death of 37 people. Please see a composite of Plaintiffs' Exhibits 11 to 16 attached hereto which are newspaper clips, report on torture in jails and Amnesty International report on the tugboat "13 of March" killing.

11 The others John Doe, injured parties similarly situated, immediately affected family members involved in this case who are victims of persecution, torture, and some cases of execution from the Defendants, attached hereto are their stories, photographs of their suffering, their remains; some of them died others still have not recovered from the horrible experience they went thru. See the U.S. Department of State's report as Plaintiffs' Exhibits 17 to 22 attached hereto.

12 Pursuant to Rule 23 of the Federal Rule of Civil Procedure, the individual Plaintiffs identified above are joined in the Complaint by other members of the class of adversely affected individuals family members whom they represent, namely past or present residents and/or citizens of the Communist Republic of Cuba, individuals incarcerated and tortured in Cuba's jails, detention centers, and labor camps, individuals kept, abused, and tortured in communist Cuba during the periods that the Defendant Castro exercised supervisory function as the Head of Government, First Secretary of the Cuba Communist Party, PCC. Members of the Plaintiffs class, because of their beliefs and associations

have been subjected either to grave abuses of their internationally recognized human rights, including, but not limited to, arbitrary arrest, kidnaping, imprisonment, torture, genocide, and deprivation of life, liberty, and security of the person, or, have been threatened with such violations, thought the actions of the Defendant Castro and other high level government official with whom he has conspired to carry out these acts and objectives.

13 Other members of the class of adversely affected individuals have been joined though this class action, pursuant to the requirements of Rule 23 (a), because the class is too numerous to permit joinder of all members, these are questions of law and fact common to the class, the claims of the representative party are typical of the claims of the class, and the representative party will fairly and adequately protect the interests of the class. Moreover, pursuant to the requirements of Rule 23 (b), separate actions would create a risk of inconsistent adjudications affecting the interest of all members of the class, and the nature of the circumstances is such that there are common questions of law and fact that predominate over any questions affecting only individual members, making a class action the appropriate method for adjudicating the issue presented. In addition, the physical location and circumstances of many members of the class, namely their being located in Cuba, and the fact that many of them currently are being held in arbitrary and unlawful detention in Cuba, as well as the threat to them and their families safety associated with identifying them as individual Plaintiffs made their joinder as individual and named Plaintiffs impractical, if not impossible and dangerous.

B DEFENDANTS

14 Defendant Fidel Castro Ruz is a Citizen and Resident of the Communist Republic of Cuba, and currently serves as Chief of State, Head of Government, First Secretary of the Cuba Communist Party (PCC), and Commander in Chief of the armed forces. Defendant exercises control over all aspects of Cuban life through the Communist Party and its affiliated mass organizations, the government bureaucracy, and the State Security apparatus. The Communist Party is the only legal political entity, and Defendant personally chooses the membership of the select group which heads the PCC. The Party controls all government positions, including judicial offices.

15 Defendants though the Ministry of Interior which is the principal organ of the State Security has totalitarian control; the Revolutionary Armed Forces (“FAR”) directed by Defendant’s brother, RAUL CASTRO, exercise de facto control over this Ministry. In addition to regulating migration and controlling the border guard and the police forces, the Interior Ministry investigates and actively suppresses organized opposition and dissent. It maintains a pervasive system of vigilance though undercover agents, informers, the Rapid Reaction Brigades, and the Committees for the Defense of the Revolution. While Defendants traditionally used these Committees to mobilize citizens against dissenters, impose ideological conformity, and root out “counter revolutionary” behavior, severe economic problems have reduced the willingness of the citizens to participate with these committees and thereby lessened their effectiveness. Other mass organizations also inject government and communist party control into every citizen’s daily activities at home, work, and school. Under Defendant’s Castro direct control members of the Security Forces committed human rights abuses and continued to harass,

threaten, imprison, defame, and physical attack human rights advocates and members of independent professional associations including journalist, economist, and lawyers, often with the goal of encouraging them to leave Cuba.

16 Defendants repression of dissent includes a member of human rights groups and other non-governmental organizations formed an umbrella association, know as the “Concilio Cubano”. Defendants responded by detaining and harassing certain key members and obstructing meetings of the group. Human rights advocates were denied the right of due process and subjected to unfair trials. Political prisoners were offered the choice of exile or continued imprisonment; prison conditions are harsh.

III GENERAL STATEMENT OF FACTS

17 Whereas the Defendant’s Castro communist regime demonstrates some flexibility in accommodating the demands of its partisans, its response to public dissidence and opposition has consistently been uncompromising and repressive. During the first twenty years of the Cuban communist regime, thousands of regime opponents, including many individuals who today would be classified as prisoners of conscience, were executed by firing squad or “disappeared” in prison. During the 1960s Defendant’s regime’s campaign to destroy the autonomous institutions of civil society produced a raft of excesses, including mass deportations and imprisonments, and during the mid 1960s, it is estimated that Cuba’s prison system held more than 40,000 long term political prisoners, giving Cuba one of the world’s highest per capita rates of political incarceration.

18 During the late 1970s and 1980s, approximately 20,000 political prisoners were freed on condition that they immediately leave Cuba communist. In its Annual Report of year 2001, Amnesty International claims that “Several hundred” imprisoned Cubans are either political prisoners or prisoners of conscience. Amnesty International and the Human Rights Watch Americas have consistently reported ill treatment of detainees in prisons and police stations, and frequent short-term detention and harassment of human rights and political activists. In 1992 Freedom House documented dozens of cases of political detainees being subjected to unnecessary psychiatric treatments, including multiple dozens of electroshock therapy, in efforts to alter their personalities and as a method of torture. Political prisoners are regularly subjected to physical and psychological torture, including beatings, neglect, and isolation in cramped, unventilated cells. Political prisoners are also frequently housed alongside common criminals, including violent felons. Prisons conditions are known to be extremely poor through testimonial evidence and though evidence gathered by the United Nations Commission on Human Rights (“UNCHR”).

19 From the 1991 until 1997, the UNCHR designated a Special Representative (upgraded in 1992 to Special Rapporteur) to investigate the human rights situation in Cuba. The Cuban communist Government consistently denied the Special Rapporteur permission to enter the country and refused to respond to the Rapporteur’s written inquires on human rights matters although later modified their response. Based on reports from Cuba’s independent human rights groups, every year but one since 1991, the UNCHR has adopted resolutions condemning Cubas human rights record. For example, in 1995 the commission approved a resolution that regretted profoundly Cuba’s violations of basic human rights and fundamental freedoms and expressed “particular concern at prevailing

intolerance for freedom of speech and assembly in Cuba.” Official surveillance of private and family affairs by government -controlled mass organizations, such as the CDRs Committees for the Defense of the Revolution, remains one of the most pervasive and repressive features of Cuban life. The communist government has assumed the right to interfere in the lives of residents and citizens, even those who do not actively oppose the regime and its practices. The PCC controls the mass organizations which permeate society. Their ostensible purpose is to “improve” the citizenry, but in fact their goal is to discover and discourage nonconformity. The PCC utilize a wide range of social controls. The Ministry of Interior employs an intricate system of informants and block committees CDRs, to monitor and control public opinion. CDRs reports on any suspicious activity, including conspicuous consumption; unauthorized meetings, including those with foreigners; and defiant attitudes toward the government and the revolution. State Security often reads international correspondence and monitors overseas telephone calls and conversations with foreigners. Citizens do not have the right to receive publications from abroad, cannot access the internet. Security Agents subject dissidents, foreigners, diplomats, and journalists to surveillance. The PCC, does not allow criticism of the revolution or its leaders. Laws against anti-government propaganda, graffiti, and insults against officials carry penalties of from 3 months to 1 year in prison. If Defendant or its conspirators are the object of criticism, the sentence is extended to 3 years. Local CDRs inhibit freedom of speech by monitoring and reporting dissent or any criticism. Police and State Security officials regularly harassed, threatened, beat, and otherwise abused human rights advocates in public and private as a means of intimidation and control.

20 The Cuba communist regime not only violates basic civil liberties, but also uses political criteria to discriminate in the provision of employment, education, and social services. Thus, for example, individuals who display discontent be dismissed altogether from their jobs, or their children may be expelled from schools. The Cuba communist’s Penal Code does not meet international standards of due process and protection of human rights, rights such as freedom of speech and freedom of association. Among the felonies listed in the code are thought crimes such as “dangerousness,” “illegal association,” and “dissemination of enemy propaganda.” These charges, which carry sentences ranging from one to fifteen years, are often lodged against nonviolent political dissidents and human rights monitors. More vocal opponents who call for fundamental political change may be charged with “Rebellion,” which carries sentences exceeding fifteen years (15) and, in some cases, may warrant capital punishment. Individuals who are convicted of insulting the Defendant face prison sentences of up to three years, and citizens caught attempting to emigrate illegally may be imprisoned for up to six years. Trial procedures are skewed against defendants, who do not enjoy the right of habeas corpus and are usually not assigned a public defender until the actual date of their trial.

21 Consistent with the general description and documentation of the serious infringements of human rights that were carried out against residents and/or citizens of the communist Cuba, each of the Plaintiffs and their families suffered very concrete injuries and losses as a result of the actions of the Defendant Castro, and actions by other officials supervised by and/or under the orders of Defendant Castro.

22 Specifically, Plaintiffs were subjected to arbitrary arrest, abduction, imprisonment and torture based on their beliefs and practices, and their support for other family members,

as detailed in the specific causes of action that follow beginning with paragraph 24 of the Complaint.

IV SPECIFIC CAUSES OF ACTION CONSTITUTING VIOLATIONS OF HUMAN RIGHTS STANDARDS AND INTERNATIONAL LAW

23 The following specific abuses, constituting torts involving the most serious forms of intentionally inflicted physical and mental suffering and injury, were inflicted upon the Plaintiffs as a direct result of the actions of the Defendant Castro and those with whom he acted in concert to carry out the officially sanctioned and mandated policy of persecuting, punishing, terrorizing and intimidating residents and/or citizens of the communist Cuba. Each of these types and forms of abuse also constituted violations of international law embodied in treaties and in customary international practice, binding on both the United States and the government of communist Cuba as indicated and explained in each paragraph below, thereby bringing these torts within the terms of the Alien Tort Claims Act and the Torture Victims Protection Act, as indicated above in paragraphs 3 through 5 of this Complaint. They were carried out by the Defendant and other officials with whom he conspired, acting under communist constitutional basis governed by the totalitarian state controlled by and under a single party rule of the PCC, and later under the Communist Article 5, with the specific intent and purpose of abridging and denying and coercing them for the exercise of those rights, in violation of international law. Each of the following causes of action should be considered to re-allege and incorporate by reference the allegations set forth above in this Complaint as if fully set forth in the body of each cause of action.

A. FIRST CAUSE OF ACTION: TORTURE

24 Plaintiffs re-allege and incorporate by reference all the allegations set forth above in this Complaint, as if fully set forth herein.

25 The acts inflicted against Plaintiffs were inflicted by and/or at the instigation, under the control, and authority, or with the consent or acquiescence of the Defendant or a public official or other person with whom he conspired, acting in an official capacity and/or under Defendant's order and/or supervision.

26 The acts and abuses herein described placed Plaintiffs in imminent fear of their lives and/or caused them to suffer severe physical and mental pain and suffering. They were deliberately and intentionally inflicted for purposes that included intimidation and punishment, among others.

27 The Convention against Torture, which came into effect internationally on June 26, 1987 and was ratified by the United States on October 21, 1994 and implemented and given domestic effect by Congress through legislation adopted in 1994 and 1998, and, in May, 1996 communist Cuba ratified the U.N. Convention against Torture and other cruel, inhuman or degrading treatment or punishment, even the Cuban Communist Constitution prohibits abusive treatment to detainees and prisoners. This infliction of torture was the first type of human rights violation the U.S. Courts recognized as authorizing the granting of relief under the Alien Tort Claims Act, in the landmark case of *Filartega vs. Penarala*, 630 F.2d 876 (2d. Cir. 1980). Torture also is prohibited absolutely under other

international treaties and under customary international law, including Article 5 of the Universal Declaration of Human Rights, and Article 7 of the International Covenant on Civil and Political Rights. The latter treaty came into effect internationally on March 23, 1976, and was ratified by the United States on June 8, 1992. The Universal Declaration is not a treaty, but a unanimously adopted resolution of the General Assembly of the United Nations that is widely recognized as an embodiment of fundamental and universally accepted standards of customary international law. The abusive practices imposed upon the Plaintiffs and other family members in detention, including, but not limited to beatings, prolonged periods of restraint and denial of food, water and sleep, as well as the use of instruments of torture, and being forced to witness the torture of others, as described by Plaintiffs in paragraphs above of this Complaint, constitute severe pain and suffering under the meaning of the Convention Against Torture and the other international instruments, and thereby constitute violations of international law under the terms of the Alien Tort Claims Act and the Torture Victims Protection Act, 28 U.S.C. Section 1350.

28 As has been documented by the U.S. Department of State in its Country Report on Human Rights and its Report on International Religious Persecution (attached hereto as Plaintiffs' Exhibits) Cuba has engaged in a consistent and wide spread pattern and practice of subjecting these residents and/or citizens to torture while in detention. Plaintiffs have provided specific examples of how Plaintiffs or their immediate family members have been subjected to torture, and have suffered physical and psychological injuries as a result of these practices that the Defendant Castro and other government officials with whom he has conspired have promoted and supported.

B. SECOND CAUSE OF ACTION: GENOCIDE

29 Plaintiffs re-allege and incorporated by reference all the allegations set forth above in the Complaint, as if fully set forth herein.

30 The acts inflicted against Plaintiffs were inflicted by and/or at the instigation, under the control and authority, or with the consent or acquiescence of the Defendant Castro and/or a public official or other person with whom he conspired, acting in an official capacity and/or under Defendant's order and/or supervision.

31 The acts and abuses herein described placed Plaintiffs in eminent fear of their lives, and caused them to suffer severe physical and mental pain and suffering. They were deliberately and intentionally inflicted for purposes that included intimidation and punishment among others.

32 Genocide is prohibited under the Convention on the Prevention and Punishment of the Crime of Genocide (referred to as the Genocide Convention), which entered into force internationally on January 12, 1951 and was ratified by the United States on November 25, 1988. Genocide is defined in the Convention as intentional actions taken "to destroy, whole or in part, a national, ethnic, racial or religious group" through such means as "killing members of a group; causing serious bodily or mental harm to members of the group, and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part..." (Article II)(a) through (c)). The actions of the Defendant Castro and the other government officials with whom he conspired meet this definition because they consisted of an intentionally inflicted policy and practice

carried out under Cuba's communist regime, of inflicting serious bodily harm, and in a number of cases death while in detention, against resident and/or citizens aimed at punished, intimidating and coercing them because of their religious, beliefs, associations, and practices, with the ultimate aim of elimination of the Plaintiffs and their members of family and other similarly situated.

C. THIRD CAUSE OF ACTION; DEPRIVATION OF THE RIGHT TO LIFE

33 Article 6 of the International Covenant on Civil and Political Rights, which came into force internationally on March 23, 1976, and ratified by the United States on June 8, 1992, confirms that "Every human being has the inherent right to life" and that "no one shall be arbitrarily deprived of his life." This same principle is set out in Article 3 of the Universal Declaration of Human Rights, at United Nations' General Assembly Resolution unanimously adopted on December 10, 1948, and now interpreted as the clearest embodiment of the Universal Standards of human rights enshrined in customary international law. As indicated above, and in the documentation attached hereto, an extraordinary large number of residents and/ or citizens, numbering over the several thousands in slightly over forty years according to the U.S. Department of State on its Country Reports on Human Rights Practices, have died in detention under conditions that U.S. Department of State has confirmed were likely linked to the infliction of torture. These executions through torture can be directly attributed to Defendant Castro in his capacity as Head of Government, First Secretary of the PCC, Commander in Chief of the armed forces of the communist Cuba, and Chief Supervisory Official in charge of the operation of the totalitarian state, labor camps, and mental hospitals under his control where many of these instances of torture and arbitrary executions as a result of torture took place during the period when Defendants exercised authority over all aspects of Cuban life with persecution in Cuba.

D. FOURTH CAUSE OF ACTION: THE RIGHT TO LIBERTY AND SECURITY OF THE PERSON, AND TO BE FREE OF ARBITRARY ARREST AND IMPRISONMENT.

34 The right to liberty and security of the person is guaranteed by Article 3 of the Universal Declaration of Human Rights, and Article 9 of the Covenant on Civil and Political Rights. Article 9 of the Covenant also stipulates that "No one shall be subjected to arbitrary arrest or detention" or "deprived of his liberty" except according to lawful procedures. Also of special relevance to the tort damage Complaint that has been brought before this Court by the Plaintiffs, Article 9 stipulates that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right of compensation."(Article 9 (5)).

Amnesty International Report 2002 confirmed that medical care in Cuban prisons was disastrous in last years. Medicine and supplies were scarce and Cuba's government blames the long time United States' ban on trade with Cuba as a factor, this Report said that " there were concerns that in some cases care was deliberately withheld from prisoners of conscience or other political prisoners." Many prisoners have died while in custody in year 2001 after suffering many of them from health problem. Amnesty

International indicates that between 1991 - 1996 dozens of members of groups belonging to Cuban citizens were taken into custody and threatened with imprisonment. "Some 600 long-term prisoners of conscience remained in prison, the majority accused of "enemy propaganda". Several hundred other political prisoners were also serving lengthy jail terms...Although, serving sentences for "dangerousness". The arbitrary arrest and detentions described by the Plaintiffs in this Complaint are indicative of the type of arbitrary administration of justice that has been imposed on the residents and/or citizens, resulting in the arbitrary deprivation of liberty, and often serious injuries and deaths. There were reports that prisoners were frequently beaten by guards in several prisons including Combinado del Sur and Havana province. Political prisoners have been stripped, handcuffed, beaten and dragged along corridors for refusing to shout out pro-government slogans while held in prison. At least five hundred unarmed civilians died in circumstances suggesting excessive use of force by law enforcement officials, including security guards belonging to vigilance and protection corps, who were reportedly under orders to shoot to kill anyone who entered state property to steal food. Please see an updated Report from Cubafacts.com, and Amnesty International 1996 as composite of Plaintiffs Exhibits 23 to 28 attached hereto.

F. SIXTH CAUSE OF ACTION: THE FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION, AND THE FREEDOM TO HOLD OPINIONS WITHOUT INTERFERENCE AND TO ASSOCIATE FREELY.

38 The right to "freedom of thought, conscience and religion," and the right to hold opinions without interference and to associate with other freely, are enshrined in Articles 18, 19 and 20 of the Universal Declaration, and Articles 18, 19 and 22 of the International Covenant on Civil and Political Rights. As enumerated in the attached U.S. Department of State Reports on International Religious Freedom and Country Reports on Human Rights, these internationally recognized rights and protections have been seriously infringed by the policy and practice banning the residents and/or citizens, and seeking the repression, punishment and intimidation of these residents and/or citizens in order not to permit them to exist. This "harsh" and "unremitting campaign" against the residents and/or citizens has included assigning many thousand to re-education through labor camps and other facilities specially established to "rehabilitate" these citizens who refuse to recant their belief "voluntarily" but in fact their goal is to "discourage" nonconformity. Each of the identified Plaintiffs in this case have stated how their arrest, detention, and punishment, including physical and mental took place because of their beliefs. In May of 1996 Amnesty International requested permission to visit Cuba but received no reply. In August 1996 Amnesty received an invitation to attend an international conference on the protection of citizens' rights in Havana organized by the government. However, when requested visas delegates were told that they could only attend as individuals and not as representative of Amnesty International. In September and October of same year, journalists from Havana Press and Bureau of Independent Journalist of Cuba, faced harassment and threats of imprisonment and were warned that the state would not be responsible for any future violent action taken against them because of their activities.

G. SEVENTH CAUSE OF ACTION: VIOLATIONS OF THE ABOVE-CITED RIGHTS AND PROTECTIONS AS EMBODIED IN CUSTOMARY INTERNATIONAL LAW.

39 Each of the above-cited violations of international treaty based law also involve the abridgement and violation of the same rights protections enumerated in sub-sections A through F above, as embodied in customary international law. It is well established that the enumeration of these types of Universally recognized rights and protection in specific treaties do not remove them from coverage by customary international law, but merely provide an additional treaty-based framework recognizing their internationally protected status . This distinction, and the additional coverage by international customary law, are important, since they provide a basis for requiring compliance with universally accepted human rights standards by all nations and governments, whether or not they have specifically ratified individual human rights treaties. For example, see *Filartega vs. Penarala*, 630 F.2d 876 (2d. Cir. 1980), United States Courts found it possible to apply the prohibitions against torture as a basis for an Alien Tort Claims Act based on customary international law as well as the treaties embodying the same anti-torture standards.

H. EIGHT CAUSE OF ACTION; TERRORISM, ACTS DONE TO THE TERROR OF THE PEOPLE.

40 Defendants, throughout their 45 years of totalitarian regime, have managed to inflict total terror on the residents and/or citizens of Cuba. This regime has caused and is causing at all times an state of alarm, fright, dread, a state of mind induced by the apprehension of hurt from the hostile and continuous threatening daily events and manifestation, a total fear caused by the appearance of danger that Defendants portrait on the residents and/or citizens of Cuba. These Defendants' acts were done "to the terror of the people." See *Arto vs. State*, 19 Tex. App. 136. Cuba's residents and/or citizens have no legal right to change their government or to advocate change. The Constitution proscribes any political organization other than the PCC. Communist government in Cuba rejects any change judged incompatible with the revolution. Communist Party membership is a de facto prerequisite for high-level official positions and professional advancement. Please see report where, U.S. District Court deny Immunity to Chinese Officials sued for persecution and crimes against humanity, which is attached hereto as Plaintiffs' Exhibit 29 - 30 and made a part hereof.

V. PRAYER FOR RELIEF .

41 Based on the above facts, jurisdictional claims, and legal arguments presented herein, Plaintiff, on behalf of himself, in Pro Se, on behalf of the Estate, and others John Doe and Jane Doe family members similarly situated, ask for judgment against the Defendants as follows:

- a). Compensatory damages according to and consistent with the injuries described, the extent of which will be demonstrated according to evidence to be presented;
- b). Punitive and exemplary damages according to and consistent with the extraordinary and gross nature of the Defendants' conduct and the injuries it produced, the extent of

which will be demonstrated according to evidence to be presented;
c). Declaratory judgment confirming the unlawful nature of the pattern and practice of gross violations of human rights that have taken place, and that the Defendant have played a material part in carrying out, in concert with other high-level officials in Cuba, resulting in serious and permanent injury of the Plaintiffs;
d). Such other relief as this Honorable Court may deem suitable and necessary;
e). Reasonable fees and costs associated with these proceedings, including service of process.

DEMAND FOR JURY TRIAL

Pursuant to the requirements of Rule 38(b) of the Federal Rule of Civil Procedure, a Jury Trial is demanded for all issues so triable.

Respectfully Submitted this 18th day of June, 2004

**HUMBERTO PACHECO CARDENAS a/k/a
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