

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
	:	
v.	:	
	:	Criminal No. 09-150 (RBW)
WALTER KENDALL MYERS,	:	
a/k/a Agent 202	:	
	:	
and	:	
	:	
GWENDOLYN STEINGRABER MYERS,	:	[PUBLIC VERSION]
a/k/a Agent 123 and Agent E-634	:	
	:	
Defendants	:	
	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANTS’ MOTION FOR REVOCATION
OR AMENDMENT OF THE MAGISTRATE’S DETENTION ORDER**

I. INTRODUCTION

The defendants, Walter Kendall Myers (Kendall Myers) and Gwendolyn Steingraber Myers (Gwendolyn Myers), have been charged in a 5-count indictment arising out of their activities as clandestine agents of the Republic of Cuba (Cuba): (1) one count of conspiracy to be illegal agents of, and to communicate classified information to, Cuba in violation of 18 U.S.C. § 371; (2) one count of being illegal agents of Cuba in violation of 18 U.S.C. § 951; and (3) three counts of wire fraud in violation of 18 U.S.C. § 1343. Further, the United States seeks forfeiture from Kendall and Gwendolyn Myers of over \$1.7 million representing the salary that Kendall Myers received from the United States between 1985 and 2007 while working under false pretenses as a Department of State instructor and intelligence analyst when he was, in fact, a clandestine foreign agent acting at the direction and control of Cuba.

These are extremely serious charges that implicate the national security of the United

States. The Indictment essentially alleges that Kendall and Gwendolyn Myers were a husband-and-wife team of clandestine Cuban agents for three decades whose assignment was to gain access to the United States' most sensitive classified information and transmit it to the Cuban Intelligence Service (CuIS). As found by Magistrate Judge Facciola ,following a detention hearing on June 10, 2009, the government's case against the Myers is exceptionally strong. Detention Memorandum (Det. Memo.) at 14.

The defendants seek by their present motion to overturn the Magistrate Judge's considered and well-reasoned June 10, 2009 Detention Memorandum and Order that they should be held pending trial. Most important to this Court's resolution of the defense motion is the Magistrate Judge's finding that the Myers are plainly significant flight risks. That finding cannot be fairly gainsaid. The Myers have admitted that they have employed false names and false travel documents to travel clandestinely to Cuba in the past. The government's investigation has uncovered that they have significant means to finance their escape from the United States now. Most importantly, the Myers have contemplated, and have taken affirmative steps to prepare for, escape from the United States to Cuba if their activities on behalf of Cuba were discovered. And now, face with an Indictment that seeks their imprisonment for the rest of their lives for those same activities, the defendants have a very strong motivation to flee to Cuba, the country that they call "home."

If they are permitted to escape to Cuba – or even to the safe harbor of the Cuban Interests Section located right here in Washington, D.C. – they will be gone for good. The United States has no extradition treaty with Cuba. Indeed, it has not had diplomatic relations with Cuba for over four decades. Further, as recognized by Magistrate Judge Facciola in his Detention

Memorandum, Cuba has “a powerful motivation” to repay they Myers for their loyal service to its intelligence service and to assist them in their escape from the United States now that they have been caught. Detention Memorandum (Det. Memo.) at 16. Because the Myers are plainly a significant flight risk, the defense’s motion for revocation or amendment of the Magistrate Judge’s Detention Memorandum and Order should be denied.

II. LEGAL PRINCIPLES GOVERNING REQUESTS FOR DETENTION

When the government seeks to detain a defendant on the ground that he is a risk of flight pursuant to 18 U.S.C. § 3142(f)(2)(A), the government must demonstrate the defendant’s flight risk only by a preponderance of the evidence. United States v. Xulam, 84 F.3d 441, 442 (D.C. Cir. 1996). Moreover, at a detention hearing following indictment, the government may present evidence by way of a proffer. United States v. Smith, 79 F.3d 1208, 1209-10 (D.C. Cir. 1996).

Section 3142(g) lists four factors that guide a court’s detention decision: (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant’s release. See 18 U.S.C. § 3142(g).

III. FACTUAL PROFFER

As found by the Grand Jury and further supported by the attached affidavit in support of the arrest of Kendall and Gwendolyn Myers (see Exhibit A hereto):

A. Employment History and Biographical Information

Kendall Myers is a United States citizen born in 1937 in Washington, D.C. He served in the United States Army from January 1959 to March 1962 where he completed intensive

communications training and served in the Army Security Agency. In June of 1972, he earned a Ph.D. from Johns Hopkins University, School of Advance International Studies (SAIS). From in or about 1971 to in or about 1977, he was an Assistant Professor at SAIS. Thereafter, he continued to teach at SAIS on a part-time basis in addition to other employment.

Gwendolyn Myers is a United States citizen who was born in 1938. She married Kendall Myers on or about May 8, 1982. Thereafter, she was employed by Riggs National Bank as an Administrative Analyst in Management Information Systems.

From in or about August 1977, through in or about March 1979, Kendall Myers was employed as a contract instructor at the Department of State's Foreign Service Institute (FSI), a training and professional development institute for Department of State employees located in Arlington, Virginia. After living in South Dakota with Gwendolyn Myers from in or about 1979 until in or about 1980, Kendall Myers returned to Washington, D.C. In or about August 1982, Kendall Myers resumed employment as a contract instructor with FSI and held the title of Chairperson for West European Studies. On or about May 9, 1983, Kendall Myers applied for a non-contractor, two-year appointment as a Training Instructor and Chairperson for West European Studies at FSI. On or about April 15, 1985, Kendall Myers was offered a two-year appointment as a Training Instructor and subsequently, a second two-year appointment as an Education Specialist at FSI, all while serving in a chair capacity in Western European Area Studies.

From at least August 1988 to October 1999, Kendall Myers, in addition to his FSI duties, performed work on a periodic basis for the Department of State's Bureau of Intelligence and Research (INR). INR is responsible for drawing on all-source intelligence to provide value-

added independent analysis of events to policy makers at the Department of State. Starting in approximately October 1999, Kendall Myers began working full time at INR as the Acting Director of the External Research Staff. From approximately July 2001 to October 31, 2007, Kendall Myers was a Senior Analyst for Europe for INR. During his employment at INR in various capacities, Kendall Myers specialized in intelligence analysis regarding European matters. He also served as a Special Assistant for Analyst Training and Development during that time frame.

On October 31, 2007, Kendall Myers retired from the Department of State.

B. The Republic of Cuba

Cuba is a communist country currently ruled by Raul Castro, the brother of Fidel Castro who ruled Cuba from 1959 until 2007. The Government of Cuba is an internationally recognized foreign government and is listed in the Diplomatic List, published by the United States Department of State, and in the Permanent Missions to the United Nations, published by the United Nations, and its establishments in the United States are components thereof.

The Department of State has designated Cuba as a state sponsor of international terrorism in its State Sponsors of Terrorism List (SSTL). The United States does not currently maintain diplomatic relations with the Government of Cuba nor does it have an extradition treaty with Cuba. However, the Cuban Interests Section (CIS) in Washington, D.C., has been designated as the official representative of the Cuban Government to the United States. The CIS is located at 2630 16th Street, N.W., Washington, D.C., which is 2.6 miles from the Myers' apartment on Cathedral Avenue, N.W. By international agreement, the United States cannot enter the CIS without the permission of Cuba. See Exhibit B attached hereto.

C. Cuban Intelligence Activities in the United States

The Cuban Intelligence Service (CuIS) is a general term encompassing numerous Cuban intelligence and counterintelligence entities. It is charged with gathering worldwide intelligence information of interest to Cuba and its allies. The United States was, and continues to be, a principal target for Cuba's intelligence gathering. CuIS has maintains a program aimed at spotting and assessing persons within the United States academic community who may be suitable for recruitment to serve a variety of roles on behalf of Cuba's interests. The most important of these roles is that of agent – that is, a person who is not an officially recognized employee of CuIS but who is aware that he or she is working for the service and is willing to engage in clandestine operational activity, including intelligence gathering, at the direction, and on behalf, of CuIS.

CuIS sometimes employs husband and wife “paired” agents to achieve its intelligence goals in the United States. Such CuIS husband and wife “paired” agents were revealed in the investigation of the Miami network of CuIS agents in the case entitled United States v. Gerardo Hernandez, et al., Cr. No. 98-721-CR-Lenard, and of Carlos Alvarez and Elsa Alvarez in the case of United States v. Alvarez, 05-20943-CR-Moore, both arising in the Southern District of Florida. CuIS also provides false identity and travel documents for its agents to facilitate clandestine travel and to facilitate flight from the United States in case of detection.

D. Clandestine Communication from CuIS to its Agents via Shortwave Radio

During the time frame described herein, CuIS often communicated with its clandestine agents operating in the United States by broadcasting encrypted radio messages from Cuba on certain high frequencies – that is, shortwave radio frequencies. Under this method of

communication, CuIS would broadcast a series of numbers on a particular short-wave frequency. The clandestine agent in the United States, monitoring the frequency on a shortwave radio, could decode the seemingly random series of numbers by using a decryption program provided by CuIS. Once decoded, the text of the message would provide the agent with tasking for intelligence gathering, and instructions about operational activities, including communication plans and meets with CuIS handlers. CuIS would also broadcast similar messages to its handlers.

This shortwave radio communication method was employed by some of the defendants convicted of espionage on behalf of Cuba in the previously mentioned Hernandez case in the Southern District of Florida, as well as by Ana Belen Montes and Carlos Alvarez and Elsa Alvarez.

E. Kendall Myers and Gwendolyn Myers' Affiliation with and Recruitment by CuIS

Based on Department of State documents, in December 1978, Kendall Myers traveled on “unofficial personal travel for academic purposes” to Cuba for approximately two weeks. Kendall Myers indicated in Department of State documents that his travel was predicated on an invitation from a Cuban government official after the official had given a presentation at the FSI.

Recruitment of agents by CuIS is frequently based on political convictions, ideology, or similar cultural interests. Kendall Myers kept a diary of his 1978 trip to Cuba which was recovered by the FBI as part of this investigation. In his account of his trip, Kendall Myers expresses a strong affinity towards Cuba and its revolutionary goals, and a negative sentiment toward “American imperialism.” Notably, Kendall Myers stated in his Cuba diary:

Cuba is so exciting! I have become so bitter these past few months. Watching the evening news is a radicalizing experience. The abuses of

our system, the lack of decent medical system, the oil companies and their undisguised indifference to public needs, the complacency about the poor, the utter inability of those who are oppressed to recognize their own condition. . . . Have the Cubans given up their personal freedom to get material security? Nothing I have seen yet suggests that I can see nothing of value that has been lost by the revolution. . . . [T]he revolution has released enormous potential and liberated the Cuban spirit.

. . . .

Everything one hears about Fidel suggests that he is a brilliant and charismatic leader. He exudes the sense of seriousness and purposefulness that gives the Cuban socialist system its unique character. The revolution is moral without being moralistic. Fidel has lifted the Cuban people out of the degrading and oppressive conditions which characterized pre-revolutionary Cuba. He has helped the Cubans to save their own souls. He is certainly one of the great political leaders of our time.

. . . .

Going through the [Museum of the Revolution in Havana] was a sobering experience. Facing step by step the historic interventions of the U.S. in to Cuban affairs, including the systematic and regular murdering of revolutionary leaders left me with a lump in my throat. . . . They don't need to try very hard to make the point that we have been the exploiters. Batista was only one of the long list of murderous figures that we thrust upon them in the name of stability and freedom.

. . . .

There may have been some abuses under the present regime, life may be more complicated by rationing, etc., but no one can make me believe that Cuba would have been better off if we have defeated the revolution. The idea is obscene.

The FBI's investigation has revealed that approximately six months after returning from his trip to Cuba in 1978, Kendal and Gwendolyn Myers were visited in South Dakota by the same Cuban official who had invited Kendall Myers to visit Cuba. During that trip to South Dakota, the Cuba official recruited Kendall and Gwendolyn Myers to be CuIS agents. Thereafter, CuIS directed Kendall Myers to pursue a job at either the Department of State or the

Central Intelligence Agency.

_____ Government records indicate that on September 1, 1981, Kendall Myers applied for an analyst position with the Central Intelligence Agency. Such a position would have provided Kendall Myers with access to a broad range of classified national security information.

_____ On or about May 9, 1983, Kendall Myers applied for a two-year appointment as a Training Instructor and Chairperson for West European Studies at the Department of State's FSI, a position that required a TOP SECRET security clearance. On or about April 15, 1985, Kendall Myers was offered that two-year appointment as Training Instructor and Chairperson for West European Studies in FSI. When Kendall Myers received his appointment to that position he signed an Oath of Office in which he swore that:

I will support and defend the Constitution of the United States against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

A records check has revealed that at no time did either Kendall Myers or Gwendolyn Myers provide notification to the United States Attorney General or the Secretary of State that either of them was acting as an agent of a foreign government as required by law. Similarly, at no time were Kendall Myers or Gwendolyn Myers:

- a. duly accredited diplomatic or consular officers of a foreign government, recognized by the United States Department of State;
- b. officially and publicly acknowledged and sponsored officials or representatives of a foreign government; or
- c. officially and publicly acknowledged and sponsored members of the staff of, or employees of, any such officer, official, or representative of a foreign government.

F. Kendall Myers' Access to Classified United States Government Information at the Department of State

“Classified” information is defined by Executive Order 12958, as amended by Executive Order 13292, and their predecessor orders, Executive Orders 12356 and 12065, as information in any form that: (1) is owned by, produced by or for, or under control of the United States government; (2) falls within one or more of the categories set forth in the Order; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security. Where such unauthorized release could reasonably result in “serious” damage to the national security, the information may be classified as “SECRET.” Where such damage could reasonably result in “exceptionally grave” damage to the national security, the information may be classified as “TOP SECRET.” Access to classified information at any level may be further restricted through compartmentation in “SENSITIVE COMPARTMENTED INFORMATION” (SCI) categories.

Classified information, of any designation, may be shared only with persons determined by an appropriate United States government official to be eligible for access to classified information, who have signed an approved non-disclosure agreement and who possess a "need to know." If a person is not eligible to receive classified information, classified information may not be disclosed to that person.

Kendall Myers received a TOP SECRET security clearance on or about March 27, 1985, which was increased to TOP SECRET/SCI in or about September 1999, just prior to Kendall Myers beginning to work full time at INR. During his employment at INR, Kendall Myers had daily access to classified information through computer databases and otherwise. Kendall Myers

maintained his TOP SECRET/SCI clearance until his retirement on October 31, 2007.

On June 12, 1985, Kendall Myers signed a Classified Information Nondisclosure Agreement in which he acknowledged, in part:

Intending to be legally bound, I hereby accept the obligation contained in this Agreement in consideration of my being granted access to classified information. . . . I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand those procedures.

I have been advised and am aware that direct or indirect unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge [classified] information unless I have officially verified that the recipient has been properly authorized by the United States government to receive it, or I have been given prior written notice of authorization from the United States Government Department or Agency last granting me a security clearance that such disclosure is permitted. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

I have been advised that any breach of this Agreement may result in the termination of any security clearance I hold; removal from any position of special confidence and trust requiring such a clearance; or the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. . . .

In addition, I have been advised and am aware that any unauthorized disclosure of classified information by me may constitute a violation or violations of United States criminal laws, including the provisions of Section 783(b), Title 50, United States Code

Employing substantially the same language as that quoted in the paragraph above, Kendall Myers acknowledged these same obligations and duties in a Classified Information

Nondisclosure Agreement which he signed on or about April 30, 1991.

At no time during his employment with the Department of State was Kendall Myers ever authorized, directly or indirectly, to deliver, communicate, or transmit sensitive or classified information to agents, officers, or employees of CuIS or any other hostile foreign intelligence service.

G. The Undercover Operation

Some of the strongest proof of Kendall and Gwendolyn Myers' guilt arises from an FBI undercover operation that began in April 2009. During that operation Kendall Myers was approached by an individual who convinced him that he was the Myers' new CuIS handler¹ – an intelligence officer working on behalf of the CuIS whose purpose was to guide them in their activities as agents of Cuba. In fact, the “new handler” was an undercover source (UCS) working for the FBI. During the operation, both Kendall and Gwendolyn Myers met four times with the UCS – on April 15th, 16th, 30th and June 4, 2009 – in various hotels in Washington D.C. During their meetings with the UCS – all of which were video and audio taped by the FBI – the Myers:

- accepted, and responded to, written tasking from the UCS soliciting Kendall Myers views and opinions about various Executive Branch personnel with responsibility for Cuba and Latin America policy;
- were trained by the UCS in the use of an e-mail account and a simple code for use in future communications, and in the use of an encryption device for purposes of encrypting those e-mail communications; and
- selected and used a parole or recognition phrase with the UCS that the Myers

¹ A “handler” a CuIS representative who maintains some type of personal contact with agents located in the United States for purposes of receiving reporting or information from agents, producing tradecraft and communication tools for agents, and sometimes directing and controlling agent activities based on instructions the handler has received from CuIS.

acknowledged they had used in the past in their meetings with CuIS representatives.

Further, during their meetings with the UCS, the Myers discussed their previous activities on behalf of CuIS and, in so doing, admitted to essentially every material fact the government will need to prove them guilty of the charges they now face. To highlight only a few of those admissions, during the undercover operation Kendall and/or Gwendolyn Myers stated:

- that they were recruited to work as agents of the Republic of Cuba in 1979;
- that, thereafter, Kendall Myers obtained employment at the Department of State at the direction of CuIS;
- that the Myers purchased a shortwave radio with money supplied by CuIS;
- that they received Morse Code shortwave radio messages from Cuba on that radio;
- that a code name used for Gwendolyn Myers in the messages was “123;”
- that a code name used for Kendall Myers was “202;”
- that they had travel overseas in recent years approximately to meet face-to-face with their CuIS handlers in, among other places, Trinidad and Tobago, Jamaica, Mexico, Brazil, Ecuador, and Argentina;
- that their last face-to-face meeting with a CuIS handler was in December 2005 in Guadalajara, Mexico; and
- that, since that date, they had remained in contact through emails with a CuIS representative who used the cover name of “Peter.”

Moreover, when asked by the UCS during the April 16, 2009 if he had ever delivered information to CuIS that was classified more than SECRET, Kendall Myers replied, “oh yeah. . . oh yeah.” As for how the information was taken out of the Department of State, Kendall Myers stated that he typically would either memorize the information in documents, or take notes on the

documents, and then put the notes in his office safe. On certain occasions, Kendall Myers would remove classified documents from the Department of State and bring them home. Gwendolyn Myers would then process the documents page-by-page at home. Kendall Myers would return the documents back to the Department of State the next day.

As for how the Myers would communicate this information to CuIS, they indicated during the April 30, 2009 meeting that they had transmit information through a variety of means including, “dead-drops,”² “hand-to-hand” or “brush passes,”³ “personal contacts,”⁴ or, in one case, the exchange of shopping carts at a grocery store.

Regarding convicted Cuban spy Ana Belen Montes,⁵ Kendall Myers stated during the April 30, 2009 meeting with the UCS: “I have great admiration for Ana Montes. She’s a hero . . . But she took too many chances . . . in my opinion. . . . She wasn’t paranoid enough.” He continued: “the funny thing is, of course, some of the stuff I supplied, [Ana Montes] supplied.

² A “dead drop” is a location used to pass items secretly between an agent and his or her handler, or between intelligence officers, without requiring them to meet. The location of the drop is agreed in advance and it typically involves the use of common everyday items to which most people would not give a second glance such as a loose brick in a wall, a library book, a hole in a tree, under a boulder, etc.

³ A “brush pass,” or “hand-to-hand” are terms used to mean a pre-arranged momentary encounter between an agent and his or her handler, or between intelligence officers, wherein written messages, instructions, or other items (e.g., a computer thumb drive or a brief case) are quickly and surreptitiously passed between them as they cross paths. Such encounters may occur in public such as on a busy street or on the subway.

⁴ A “personal contact” or “meet” are terms used to mean a face-to-face contact between an agent and his or her handler wherein operational training and details can be discussed.

⁵ Ana Belen Montes was a senior intelligence analyst at the Defense Intelligence Agency. She was arrested in September 2001. In March 2002, she pled guilty to espionage on behalf of CuIS before this Court. See United States v. Ana Belen Montes, 01-0568M-01.

There was duplication . . . Because I read the stuff that she gave.” Gwendolyn Myers added, “which is terrific because what they got was verified . . . from two different places.”

For their efforts, the Kendall and Gwendolyn Myers also admitted during the April 30, 2009 meeting with the UCS that they had received “lots of medals” from Cuba, and that they traveled clandestinely to Cuba via Mexico in 1995 and met with Fidel Castro, who Kendall Myers described as “wonderful,” and Gwendolyn Myers as “the most incredible statesman in a hundred years.” To reach Cuba, Kendall Myers stated that they had employed false travel documents and traveled under false names. He was “Jorge,” and Gwendolyn Myers was “Elizabeth.”

Further, during the April 30th meeting, the Myers described to the UCS their plan for escape from the United States to Cuba which they referred to as “home.” Kendall Myers stated that they were going to sail there on their sailboat. Once in Cuba, Gwendolyn Myers stated that they would live on their boat so that they – in her words -- “wouldn’t be a burden” to the Cubans. During the April 30th meeting, the Myers also discussed traveling clandestinely to Cuba via Mexico or crossing the border into Canada and then flying to Cuba.

The Myers’ admissions during the undercover operation have been corroborated by other evidence collected during the investigation. Found by their bed in their apartment during a court-authorized search was the shortwave radio they described to the UCS. It is the same make as that used by convicted Cuban spy Ana Montes. The FBI has also identified travel records corroborating the Myers’ overseas operational travel to Trinidad and Tobago, Jamaica, Mexico, Brazil, Ecuador, and Argentina. It has identified the “Peter” emails sent to the Myers’ personal email account, which the Grand Jury found probable cause to believe were really clandestine

communications from a CuIS representative. See Indictment at ¶¶ 63bb - 63ee. Further, the FBI located in the Myers' apartment a sailing guide for Cuban waters,⁶ a travel guide for Cuba, and books entitled The Spy's Bedside Book and On Becoming Cuban.

The FBI also recovered a personal calendar from Kendall Myers upon his arrest that indicated that the Myers were planning to depart to the "Carribbean" on November 9 of this year. No return date is noted in the calendar. Indeed, nothing is scheduled on the calendar after the trip to the Carribbean.

The FBI has also identified encrypted shortwave radio messages between CuIS and a handler of the Myers from 1996 and 1997. Those messages referred to agents 202 and 123, which again, the Myers admitted during the undercover operation were code names used for them by CuIS. Lest there be any doubt about who the Myers are, one of these encrypted handler shortwave messages sent on or around December 18, 1996, refers to a certain agent having a tumor on the shoulder. During a court-authorized search of the Myers' apartment, the FBI found medical records that demonstrate that in late December 1996, just 10 days after CuIS made reference to an agent having a tumor on the shoulder, Gwendolyn Myers had a medical procedure to remove a tumor from her shoulder.

Further, found on Kendall Myers' Department of State work computer was evidence that from August 22, 2006 until his retirement in October 31, 2007, Kendall Myers viewed in excess of 200 intelligence reports that dealt with the subject of Cuba. More than 75 of these made no mention of areas for which Kendall Myers had substantive responsibility as an employee of INR.

⁶ The investigation has also confirmed that the Myers are accomplished sailors who have taken long trips in the past and, at the time of their arrest, were about to embark on a trip on their yacht traveling the East Coast to Maine.

The majority of those reports were marked either SECRET or TOP SECRET.

Department of State records also demonstrate that since at least 1983 and until 2007, Kendall Myers made repeated false statements to government investigators responsible for conducting background investigations which determined Kendall Myers' continued suitability for a TOP SECRET security clearance. Specifically:

- On May 9, 1983, Kendall Myers falsely stated that he had never been an agent, representative, or otherwise acted for a foreign principal;
- On November 21, 1989, he failed to list any personal or continuing contacts he had with any communist country;
- On January 31, 1996, he falsely stated that he had no regular contact with foreign nationals;
- On December 29, 2000, he falsely stated that he had no contact with any foreign governments, establishment or representatives;
- On February 13, 2001, he falsely stated that no one in his immediate family was subject to foreign influence; that he had always acted as to indicate a preference for the United States over foreign countries; that he knew of no other information that could suggest a conflict of interest or embarrass him, the State Department, or the United States; that his activities did not conflict with his security responsibilities or create an increased risk of unauthorized disclosure of classified information; and that he had not omitted any information from his background investigation that could impact his suitability for employment or a security clearance;
- On November 24, 2006, he falsely stated that he had no contact with any foreign governments, establishments, or representatives;
- On January 9, 2007, he falsely stated that he had no relatives, including his spouse, who were ever connected to a foreign intelligence service; that he had not had any unauthorized association with a suspected collaborator of a foreign intelligence service; that he had no suspicions of being a target of a foreign intelligence service; that he had not acted so as to serve another government in preference to the interests of the United States; that he had not deliberately omitted, concealed, or falsified his responses to questions used to make employment, security clearance or trustworthiness determinations; that he had not

provided false or misleading statements to investigators during his background investigations; that he had not acted dishonestly or violated agency rules; that he had not disclosed sensitive or classified information; he had not performed any service with any foreign country; and that he had not omitted any information from his background investigation that could impact his suitability for employment or a security clearance.

These false statements form the basis of the government's wire fraud charges, which are counts 3-5 of the Indictment.⁷ As the Grand Jury found, based on Kendall Myers' repeated false statements, each of which was material to the government's determination that he was suitable for a TOP SECRET security clearance that was a requirement of his Department of State job, there is probable cause to believe that he defrauded the government of its property – namely, the salary it paid to him – every time he received his government paycheck.

Also relevant to this Court's adjudication of the present motion, the government's investigation has revealed that Kendall and Gwendolyn Myers are also people of means. They have at their disposal a brokerage account worth more than \$511,000 as of February 28, 2009. Kendall Myers also has access to a retirement brokerage account worth over \$100,000. Additionally, the investigation has confirmed that Kendall and Gwendolyn Myers own a 37-foot seaworthy yacht that they maintain at a yacht club outside Annapolis, Maryland.

If convicted of violations of 18 U.S.C. §§ 371, 951, and 1343, Kendall and Gwendolyn Myers each face 35 years in jail. By the government's calculations, which factors in a 2-level increase for Kendall Myers' abuse of the public trust under U.S.S.G. § 3B1.3 and 2-level increase for his repeated obstruction of government investigators during his Department of State background investigations under U.S.S.G. § 3C1.1, the base offense level for Kendall and

⁷ These false statements are set out in detail in paragraphs 63 kk - 63 ccc of the Indictment.

Gwendolyn Myers' violation of 18 U.S.C. § 951 is 33.⁸ The base offense level for the wire fraud charge is 31.⁹ The combined offense level for these separate violations after application of U.S.S.G. §§ 3D1.2, 3D1.3, and 3D1.4, is 35. Assuming a Criminal History Category of I for Gwendolyn Myers, her advisory sentencing range after conviction at trial is 168 to 210 months of incarceration. Assuming a Criminal History Category of at least II for Kendall Myers,¹⁰ his advisory sentencing range would be 188 to 235 months of incarceration. Given the gravity of their offenses, the government would likely be seeking sentences in excess of these advisory guideline ranges following any post-trial conviction of the defendants.

⁸ No guideline has been expressly promulgated for a 18 U.S.C. § 951 violation. Accordingly, pursuant to U.S.S.G. §2X5.1, the "most analogous offense guideline" should be applied. The government submits that the most analogous offense guideline is §2M3.3 (Unauthorized Disclosure to a Foreign Government or a Communist Organization of Classified Information by a Government Employee). The base offense level under that section is 29. Adding the 4-level increase for Kendall Myers' abuse of the public trust under U.S.S.G. § 3B1.3 and for his repeated obstruction of government investigators during his Department of State background investigations under U.S.S.G. § 3C1.1, the adjusted base offense level is 33.

⁹ The government calculates the adjusted base offense level for the wire fraud charge as follows: base offense level of 7 under U.S.S.G. §2B1.1(a)(1), plus a 16-level increase for a more than \$1,000,000 loss under §2B1.1(b)(1)(I), plus a 2-level increase for misappropriation of secrets for the benefit of a foreign government or instrumentality under §2B1.1(b)(5), plus a 2-level increase for use of sophisticated offense conduct pertaining to the execution or concealment of the offense, plus a 2-level increase for Kendall Myers' abuse of the public trust under § 3B1.3, plus a 2-level increase for his repeated obstruction of government investigators during his Department of State background investigations under § 3C1.1.

¹⁰ The pretrial services report indicates that Kendall and Gwendolyn Myers have no prior criminal records. While the government is still researching the matter, it appears that, at least, Kendall Myers has a prior criminal record. Kendall Myers was convicted in December 1976 of negligent homicide in the Superior Court of the District of Columbia. Under the federal sentencing guidelines, that conviction will count towards his criminal history score as it was imposed within 10 years of the defendant's commencement of the instant criminal conduct on behalf of CuIS. See U.S.S.G. § 4A1.2(e)(2).

[REDACTED]

Gwendolyn Myers is 71 years-old. Kendall Myers is 72.

IV. THE MAGISTRATE JUDGE'S DETENTION MEMORANDUM AND ORDER

On June 5, 2009, Magistrate Judge Facciola granted the government's motion for a serious risk of flight hold pursuant to 18 U.S.C. § 3142 (f)(2)(A). On June 10, 2009, Magistrate Judge Facciola presided over a detention hearing in this matter. At the conclusion of the hearing, Magistrate Judge Facciola ruled that the defendants were serious flight risks and ordered them held without bond pending trial. On that same day, Magistrate Judge Facciola issued a 19-page written Detention Memorandum including the Court's written findings of facts and reasons for detaining the defendants.

As to the weight of the evidence against the defendants, Magistrate Judge Facciola found that "[t]o put it bluntly, the government's case seems at this point insuperable. . . . The greater the possibility of conviction, the greater the motivation to flee." Det. Memo. at 14-15. As to the nature and circumstances of the crime factor, Magistrate Judge Facciola stated: "These defendants . . . are each over 70 years old. If convicted, they face incarceration for what may very well be the rest of their lives. That fate provides a most compelling motivation to flee and avoid it at all costs." Id. at 15.

Importantly, the Magistrate Judge's decision also emphasized that the Myers had "traveled extensively beyond the United States to meet with Cuban agents" with the assistance of "assumed and false identities and documents." Most significantly, according to the Magistrate Judge, the Myers had made plans "to escape" to Cuba including going through Canada or by sailing to Cuba. Id. at 18. "That defendants already had made plans to escape indicates how profound the risk of flight is." Id.

Further, Magistrate Judge Facciola noted that because the United States does not have an extradition treaty with Cuba and, indeed, does not have diplomatic relations with Cuba, the defendants “will not be extradited to the United States” if they “succeed in fleeing to a Cuba, a country they have described as their home.” Id. at 16. Easier still, according to Magistrate Judge Facciolo, would be for the defendants to take the “10 minute cab ride” from their residence to the CIS on 16th Street, N.W., right here in Washington, D.C., which is the functional equivalent of the Cuban Embassy. Id. at 17. Because of an international agreement between the United States and Cuba which makes the CIS “inviolable,” “[o]nce [the defendants] enter that building, they will have effectively fled from the United States.” Id.

According to Magistrate Judge Facciola, Cuba also has a “powerful motive to assist” the Myers to escape to Cuba “to repay their loyalty over the many years that they have been in its service,” “to make sure that its other agents in the United States are encouraged to continue to work for Cuba knowing that Cuba will help them to escape if they, like the defendants get caught,” and “to prevent defendants from ever being tempted to cooperate with the United States and expose other agents or how Cuba manages and supports them.” Id. at 16. According to the Magistrate Judge, “[t]here is not a single imaginable reason why Cuba would want the defendants to remain in the United States subject to prosecution.” Id. The Detention Memorandum notes as well that “history teaches that countries have made efforts to get their spies out of the country when they were discovered,” and cites to the example of Kim Philby, a British double agent working for the U.S.S.R. who fled to Moscow with the assistance of the Soviets after his espionage was discovered by the British, and Jonathan Pollard, a United States citizen who spied for Israel and who was arrested just as he tried to seek save haven in the Israeli

embassy. Id. at 17-18.

For all of these reasons, Magistrate Judge Facciola rejected the defendants' suggestion – repeated in the motion at bar – that a combination of a money bond, stay away orders, the surrender of their passports, electronic monitoring, and home detention would suffice to ensure the defendants' appearance for trial. According to the Magistrate Judge, there was “no assurance that [an electronic surveillance] device will signal authorities in sufficient time to apprehended them before they take the 10-minute cab ride to the Cuban Interests Section.” Id. at 19. Accordingly, Magistrate Judge Facciola ordered the defendants detained pending trial.

V. ARGUMENT

Other than to assert baldly that it should be overturned, the defendants' present motion ignores entirely Magistrate Judge Facciola's considered Detention Memorandum and invites this Court's *de novo* review. In so doing, nowhere do the defendants provide any challenge to the Magistrate Judge's conclusions (or the facts underlying them):

- that the weight of the government's evidence is “insuperable;”
- that, if convicted, the defendants face the likely prospect that they will be incarcerated for the rest of their lives;
- that they have contemplated and planned for an escape from the United States to Cuba in the past;
- that they have previously traveled clandestinely to Cuba by employing false names and fraudulent travel documents;
- that Cuba has a powerful motivation, and the ability, to assist them in any escape from the United States, including providing them with false travel documents as it did in the past;
- that, if they reach Cuba, they will not be extradited back to the United States; or

- that the CIS in Washington, D.C., provides an equally impervious and even more readily accessible safe harbor for the defendants than Cuba.

Rather than disputing any of these salient points, the defendants offer this Court a single, plainly-distinguishable case, United States v. Karni, 298 F. Supp.2d 129 (D.D.C. 2004), and repeat again their suggestion, rejected by Magistrate Judge Facciola in his considered opinion, that a combination of a money bond, stay away orders, the surrender of their passports, electronic monitoring, and home detention will ensure their appearance for trial.

The defendants' reliance on United States v. Karni, 298 F. Supp.2d 129 (D.D.C. 2004) is misplaced. Karni involved *unindicted export* charges, not, as here, indicted charges that the defendants were clandestine foreign agents of a hostile foreign intelligence service for three decades defrauding the United States of its most sensitive classified information. See id. at 129. As Magistrate Judge Facciola recognized in his Detention Memorandum, in analogous cases where defendants have been charged with espionage on behalf of a hostile foreign power, courts have regularly found that there are no conditions that will assure the foreign agent's appearance. Det. Memo. at 14 (citing United States v. Kostadinov, 527 F. Supp. 1547, 1551 (S.D.N.Y. 1983) and United States v. Cole, 715 F. Supp. 677, 680 (E.D. Pa. 1988)). As the District Court reasoned in Kostadinov:

Espionage differs from all other crimes in one unique, highly significant respect. The purpose of espionage is political: to undermine the government of the United States with a view to its destruction. This goal is shared by all enemies of this country. Countries antagonistic to the United States who would not offer asylum to murderers or thieves very likely will open their doors to one who shares their political purpose inimical to the United States Any country that is an enemy of the United States is a possible haven.

It is beyond doubt that a vast underground and spy network exist in this country and around the world. A spy would undoubtedly have access to many exit routes and to places which would afford him sanctuary as a hero and not as a criminal. In addition, the

court cannot close its eyes to the concern that the . . . government [on behalf of which the defendant was spying] knows that its employee might defect, particularly if he faces a life imprisonment. Such a fear could conceivably prompt the . . . government to aid the defendant's flight.

Kostadinov, 527 F. Supp. at 1551; see also United States v. Amirnazmi, No. 08-CR-429, 2008 WL 4925015, at *2 (E.D. Pa. Nov. 18, 2008) (defendant could exploit high level contacts in foreign government to secure passport and flee). As found by Magistrate Judge Facciola, each of the concerns noted by the District Court in Kostadinov is equally applicable here. See Det. Memo. at 14-19.

Similarly, it should also inform this Court's pre-trial release calculus that the Myers' 30 years of service on behalf of a hostile foreign intelligence service demonstrates a callous indifference to the national security of the United States. If the Myers are permitted to escape to Cuba, they pose a real and present danger to the United States. During the undercover operation, they expressed an eagerness to teach other Cuban agents and intelligence officers in Cuba about how to successfully spy against the United States. Specifically, Gwendolyn Myers told the FBI's undercover source during the April 30, 2009 meeting, that Kendall Myers would be a good teacher at a School of Intelligence in Cuba, and then asked the UC, "so when can we come?" Kendall Myers agreed, saying "I could see doing . . . [t]hat I would like to do." If the Myers are released and escape to Cuba, they will happily share with other Cuban operatives the knowledge they gained over the past three decades as successful clandestine agents pitted against the United States, a fact that should weigh strongly against their release. See 18 U.S.C. § 3142(g) (the nature and seriousness of the danger to the community that would be posed by the defendant's release is factor in Bail Reform Act analysis).

Further, there is significant evidence that the Myers (unlike the defendant in Karni) would flee the United States if they were released pending trial. Unlike in Karni, where this Court has found strong circumstantial evidence of a defendant's interest in fleeing the jurisdiction and an intent to do so, it has ordered pre-trial detention. Compare United States v. Anderson, 384 F. Supp.2d 32, 36 (D.D.C. 2005) (ordering pre-trial detention where there was "strong circumstantial evidence of [the defendant's] clear interest in fleeing the jurisdiction and his intent to do so" by virtue of his use of aliases and false identities and possession of literature on how to disguise identity and to hide assets) with Karni, 298 F. Supp. 2d at 132-33. As found by Magistrate Judge Facciola (and not disputed by the defense), the Myers have used false names and documents to travel clandestinely to Cuba in the past, and have contemplated, and planned for, escape back to Cuba either by boat or by traveling over the border to Canada and then flying there. Accordingly, like in Kostadinov, Cole, and Anderson, the defendants are a very serious flight risk and should be detained pre-trial.

Also unpersuasive is the defendants' suggestion that a combination of a money bond, stay away orders, the surrender of their passports, electronic monitoring, and home detention would diminish the flight risk which even they do not seriously dispute that they pose. As for their offer of a bond, the government submits that, for the Myers, it has never been about the money. The FBI's investigation has revealed that the Myers were not motivated by money to serve as clandestine agents for Cuba but by communist ideology. The wealth that they presently possess was not given to them by Cuba but was the result of an inheritance that they received within the last five years. Where their choice is effectively between life in prison in this country or being

greeted as heros in Cuba,¹¹ the decision whether to escape to Cuba will be a straightforward one for the Myers and leaving behind a money bond is highly unlikely to weigh heavily in their calculus.

The defendants' promise to honor a Court-ordered stay aways from Cuban or from the CIS is similarly suspect. As Magistrate Judge Facciola recognized:

The defendants' hostility to the United States and their admiration for Cuba is well documented. It is hard to imagine, with so much at stake, that they would feel any compunction to fleeing prosecution in a country to which they seem to feel such little loyalty.

Indeed, underlying all of their conduct on behalf of Cuba is a web of deceit. The government's investigation has revealed that starting in 1983 and continuing until 2007, Kendall Myers again and again made false statements to Department of State investigators responsible for conducting his background investigations and determining his suitability for holding a TOP SECRET security clearance. Those false statements form the basis for the government's wire fraud charges. They also demonstrate that the Myers are unworthy of this Court's trust when it comes to promises to this Court that they are willing to make in order to gain their pre-trial release.

Similarly unpersuasive is the Myers' suggestion that they could surrender their travel documents to the Court as a condition of their release. A passport is not needed to sail to Cuba. Moreover, the defendants' proposal to give up their passports means little where they have admitted using false documents to travel clandestinely to Cuba in the past. The Myers have at

¹¹ In a June 7, 2009 statement responding to the Myers' arrest, Fidel Castro asserted that if the government charges against Gwendolyn Myers were true he could "not but admire her selfless and courageous behavior towards Cuba." He also stated "[t]hose who one way or the other helped to protect the lives of Cuban citizens against terrorist plans and the plots to attempt against the life of their leaders, of the many which were perpetrated by several US administrations, . . . they deserve every honor in the world."

their disposal over \$600,000 in the bank and the assistance of CuIS. As they have done in the past, they can procure the false travel documents that they need for their escape after they have given this Court the authentic travel documents that they don't need.

The 10-minute taxi-cab ride¹² from the Myers' apartment to the CIS also does not require a passport. Indeed, the Myers' ready-access to the CIS on 16th Street, N.W., defeats any suggestion that their in-home detention combined with electronic monitoring will stop them from fleeing from the jurisdiction of this Court.¹³ In a 10-minute race, the Myers would not need much of a head-start to beat law enforcement to the safe harbor that the CIS represents. If the Myers made a run-for-it in the middle of the night, it is likely that they would reach the CIS long before the violation of the conditions of their release were detected by the Pretrial Service Agency, rather less before those violations were communicated to law enforcement.

The defendants' effort to overcome this problem by suggesting that their house arrest could be served at a location "at least 20 miles from the Cuban Interest Section" is curious. Any case wherein the defendants concede that they may need a buffer-zone between themselves and a safe harbor outside the jurisdiction of this Court so as to give the FBI a "fighting chance" to catch them if they decide to flee, is plainly not one wherein pre-trial release should be permitted. A defendant's compliance with the Bail Reform Act is not a game. Nor, as Magistrate Judge Facciola recognized, should it impose on the FBI the "draconian burden" of 24-hour surveillance.

¹² Only 2.6 miles separates the Myers' apartment from the CIS which is located at 2630 16th Street, N.W., Washington, D.C. The Russian Embassy sits less than a 1/2 a mile (and less than a 2-minute drive) from the Myers' apartment building.

¹³ In response to the Myers' offer to pay for the cost of their proposed electronic monitoring, the Government would note that it would be inequitable to permit them to purchase their own in-home detention simply because they have the means to do so.

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AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANT

I, Brett Kramarsic, being first duly sworn, hereby depose and state as follows:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) assigned to the Washington Field Office, and have been employed by the FBI for over eight years. I am assigned to a squad responsible for counterespionage matters including those relating to Cuba and matters involving the unauthorized disclosure of classified information. I have been working in this field since beginning my duties at the Washington Field Office. As a result of my involvement in espionage investigations and investigations involving the unauthorized disclosure of classified information, I am familiar with the tactics, methods, and techniques of particular United States persons who possess, or have possessed a United States government security clearance and who may choose to harm the United States by misusing their access to classified information. Further, I am familiar with the strategy, tactics, methods, tradecraft and techniques of the Cuban foreign intelligence service and its agents. Before working as a Special Agent for the FBI, I worked for eight years as an electrical engineer for the FBI.

2. As a federal agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States.

3. The information in this affidavit is based on my personal knowledge and on information provided to me by other law enforcement and counterintelligence investigators during the course of this investigation. Unless otherwise noted, information provided to me by other law enforcement personnel does not necessarily reflect my personal observations or investigation but rather has been passed to me by individuals with first hand knowledge. Since this affidavit is being submitted for the limited purpose of establishing probable cause in support

of a complaint and arrest warrant, I have not included each and every fact known to me concerning this investigation.

4. This affidavit is submitted in support of an application for a complaint and arrest warrant charging WALTER KENDALL MYERS (hereinafter KENDALL MYERS) and GWENDOLYN STEINGRABER MYERS (hereinafter GWENDOLYN MYERS) with conspiracy to act as illegal agents of the Republic of Cuba and to communicate classified United States information to the Republic of Cuba in violation of 18 U.S.C. § 371; acting as illegal agents of the government of Cuba in violation of 18 U.S.C. § 951; and wire fraud in violation of 18 U.S.C. § 1343.

5. Under Title 18, United States Code, Section 371, it is a federal criminal offense for two or more persons to “conspire to commit an offense against the United States.”

6. Under Title 18, United States Code, Section 951, it is a federal criminal offense for any person other than a diplomatic officer or attaché to act in the United States as an agent of a foreign government without prior notification to the Attorney General.

7. Under Title 18, United States Code, Section 1343, it is a federal criminal offense for anyone having “devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises” to “transmit[] or cause[] to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such a scheme or artifice to defraud.”

BACKGROUND ON KENDALL MYERS

8. KENDALL MYERS is a United States citizen born in 1937, in Washington, D.C.

In or about June 1972, he earned a PhD from Johns Hopkins University, School of Advanced International Studies (SAIS), in Washington, D.C. He married his wife, GWENDOLYN MYERS, on or about May 8, 1982. They live in Washington, D.C.

9. KENDALL MYERS was in the U.S. Army from January 1959 to March 1962, where he completed intensive communications training and served in the Army Security Agency.

10. From in or about 1971 to in or about 1977, KENDALL MYERS was an Assistant Professor at SAIS in the area of Western European Studies. Thereafter, KENDALL MYERS continued to teach at SAIS on a part time basis in addition to other employment noted below.

11. From in or about August 1977, through in or about March 1979, KENDALL MYERS was employed as a contract instructor at the Department of State's Foreign Service Institute (FSI), a training and professional development institute for Department of State employees located in Arlington, Virginia. After living in South Dakota with GWENDOLYN MYERS from in or about 1979 until in or about 1980, KENDALL MYERS returned to Washington, D.C. In or about August 1982, KENDALL MYERS resumed employment as a contract instructor with FSI and held the title of Chairperson for West European Studies. On or about May 9, 1983, KENDALL MYERS applied for a non-contractor, two-year appointment as a Training Instructor and Chairperson for West European Studies at FSI. On or about April 15, 1985, KENDALL MYERS was offered a two-year appointment as a Training Instructor and subsequently, a second two-year appointment as an Education Specialist at FSI, all while serving in a chair capacity in Western European Area Studies. From at least August 1988 to October 1999, KENDALL MYERS, in addition to his FSI duties, performed work on a periodic basis for the U.S. State Department's Bureau of Intelligence and Research (INR).

12. Starting in approximately October 1999, KENDALL MYERS began working full time at INR as the Acting Director of the External Research Staff. From approximately July 2001 to October 31, 2007, KENDALL MYERS was a Senior Analyst for Europe for INR. INR is responsible for drawing on all-source intelligence to provide value-added independent analysis of events to policy makers at the U.S. Department of State. During his employment at INR in various capacities, KENDALL MYERS specialized in intelligence analysis regarding European matters. He also served as a Special Assistant for Analyst Training and Development during that time frame.

13. On October 31, 2007, KENDALL MYERS retired from the Department of State.

BACKGROUND ON GWENDOLYN MYERS

14. GWENDOLYN MYERS (formerly Gwendolyn Trebilcock) is a United States citizen born in 1938.

15. In or around 1980, GWENDOLYN MYERS moved to Washington, D.C., with KENDALL MYERS. She married KENDALL MYERS on or about May 8, 1982. Sometime thereafter, GWENDOLYN MYERS was hired by Riggs National Bank as an Administrative Analyst in the Management Information Systems (MIS). In 1986, she was promoted to Special Assistant to the MIS Division Director.

STATUS OF DEFENDANTS

16. At no time material to this Complaint were defendants KENDALL MYERS or GWENDOLYN MYERS:

- a. duly accredited diplomatic or consular officers of a foreign government, recognized by the United States Department of State;

- b. officially and publicly acknowledged and sponsored officials or representatives of a foreign government; or
- c. officially and publicly acknowledged and sponsored members of the staff of, or employees of, any such officer, official, or representative of a foreign government.

17. At no time did either KENDALL MYERS or GWENDOLYN MYERS provide notification to the United States Attorney General or the Secretary of State that either of them was acting as an agent of a foreign government as required by law.

THE GOVERNMENT OF THE REPUBLIC OF CUBA

18. I am aware based on my experience as a Special Agent responsible for counterintelligence matters relating to Cuba that, from 1959 until 2007, the Republic of Cuba (Cuba) was ruled by Fidel Castro. Since 2007, Cuba has been ruled by Fidel Castro's brother, Raul Castro. Cuba is a communist country. The Government of Cuba is an internationally recognized foreign government and, as of the execution of this application, is listed in the Diplomatic List, published by the United States Department of State, and in the Permanent Missions to the United Nations, published by the United Nations, and its establishments in the United States are components thereof.

19. The U.S. Department of State has designated Cuba as a state sponsor of international terrorism in its State Sponsors of Terrorism List (SSTL). Further, I am aware that the United States does not currently maintain diplomatic relations with the Government of Cuba; however, the Cuban Interests Section (CIS) of the Swiss Embassy in Washington, D.C., has been designated as the official representative of the Cuban Government to the United States.

CUBAN INTELLIGENCE ACTIVITIES IN THE UNITED STATES

20. I am aware based on my experience and training that the Cuban Intelligence Service (CuIS) is a general term encompassing numerous Cuban intelligence and counterintelligence entities. A primary such entity is the Directorate of Intelligence (DI), formerly known as the Directorate of General Intelligence (DGI). It is charged with gathering worldwide intelligence information of interest to Cuba and its allies. The United States was, and continues to be, a principal target for Cuba's intelligence gathering.

21. Further, I am aware based on my experience and training that CuIS has a well-established program aimed at spotting and assessing persons within the United States academic community who may be suitable for recruitment to serve a variety of roles on behalf of Cuba's interests. The most important of these roles is that of agent – that is, a person who is not an officially recognized employee of CuIS but who is aware that he or she is working for the service and is willing to engage in clandestine operational activity, including intelligence gathering, at the direction, and on behalf, of CuIS. An agent-in-place is a recruited agent who occupies a position or job in which he or she has authorized access to intelligence information of value to CuIS, including classified information. One such agent was Ana Belen Montes, who was a senior intelligence analyst at the Defense Intelligence Agency prior to her arrest and conviction for espionage on behalf of CuIS in March 2002 before this Court in the case of United States v. Ana Belen Montes, 01-0568M-01.

22. I have further learned based on my experience and training that CuIS employs “handlers” in the United States, i.e., persons who maintain some type of personal contact with agents located in the United States. Handlers receive reporting or information from agents,

produce tradecraft and communication tools for agents, and sometimes direct and control agent activities based on instructions the handler has received from CuIS. Handlers could be "legals," that is, persons with diplomatic immunity whose affiliation with Cuba is known. Also CuIS employs "illegals" as handlers, that is, persons whose affiliation to the Government of Cuba is not publicly disclosed, whose intelligence function is clandestine, and who possess no diplomatic immunity.

23. I have further learned based on my experience and training that a dead drop is a location used to pass items secretly between an agent and his or her handler, or between intelligence officers, without requiring them to meet. The location of the drop is agreed in advance and it typically involves the use of common everyday items to which most people would not give a second glance such as a loose brick in a wall, a library book, a hole in a tree, under a boulder, etc.

24. I have further learned based on my experience and training that a brush pass, pass or hand-to-hand are terms used to mean a pre-arranged momentary encounter between an agent and his or her handler, or between intelligence officers, wherein written messages, instructions, or other items (e.g., a computer thumb drive or a brief case) are quickly and surreptitiously passed between them as they cross paths. Such encounters may occur in public such as on a busy street or on the subway.

25. I have further learned based on my experience and training that a personal contact, contact, or meet are terms used to mean a face-to-face contact between an agent and his or her handler wherein operational training and details can be discussed.

26. I have further learned based on my experience and training that a parole is a

password or recognition phrase used between an agent and his or her handler, or between intelligence officers, to identify each other.

27. I have further learned based on my experience and training that CuIS sometimes employs husband and wife "paired" agents to achieve its intelligence goals in the United States. Such CuIS husband and wife "paired" agents were revealed in the investigation of the Miami network of CuIS agents in the case entitled United States v. Gerardo Hernandez, et al., Cr. No. 98-721-CR-Lenard, and of Carlos Alvarez and Elsa Alvarez in the case of United States v. Alvarez, 05-20943-CR-Moore, both arising in the Southern District of Florida.

28. I have further learned based on my experience and training that CuIS employs multiple code names for its agents to safeguard and protect their identities. CuIS also provides false identity and travel documents for its agents to facilitate clandestine travel and to facilitate flight from the United States in case of detection.

KENDALL MYERS and GWENDOLYN MYERS's AFFILIATION WITH AND RECRUITMENT BY CuIS

29. Based on information developed in the investigation, in December 1978, KENDALL MYERS traveled on "unofficial personal travel for academic purposes" to Cuba for approximately two weeks. Two other Department of State employees traveled during the same time frame. KENDALL MYERS indicated in Department of State documents that his travel was predicated on an invitation from a Cuban government official (hereinafter, co-conspirator "A") after co-conspirator "A" had given a presentation at the FSI. According to information I learned during the investigation, co-conspirator "A" served at the Cuban Mission to the United States (CMUN) in New York City in the late 1970s and early 1980s. KENDALL MYERS's guide in

Cuba, was an official with Cuba's Foreign Service Institute (hereinafter, co-conspirator "B").

Based on all of the evidence collected during this investigation, I conclude that KENDALL MYERS's trip to Cuba in 1978 provided the CuIS with the opportunity to assess and or develop KENDALL MYERS as a Cuban agent.

30. Based on my review of past investigations of Cuban agents, recruitment by CuIS is frequently based on political convictions, ideology, or similar cultural interests. The investigation has revealed a diary, written by KENDALL MYERS, of his 1978 trip to Cuba. In his account of his trip, KENDALL MYERS expresses a strong affinity towards Cuba and its revolutionary goals, and a negative sentiment toward "American imperialism." Notably, KENDALL MYERS states:

Cuba is so exciting! I have become so bitter these past few months. Watching the evening news is a radicalizing experience. The abuses of our system, the lack of decent medical system, the oil companies and their undisguised indifference to public needs, the complacency about the poor, the utter inability of those who are oppressed to recognize their own condition. . . . Have the Cubans given up their personal freedom to get material security? Nothing I have seen yet suggests that I can see nothing of value that has been lost by the revolution. . . . [T]he revolution has released enormous potential and liberated the Cuban spirit.

....

Everything one hears about Fidel suggests that he is a brilliant and charismatic leader. He exudes the sense of seriousness and purposefulness that gives the Cuban socialist system its unique character. The revolution is moral without being moralistic. Fidel has lifted the Cuban people out of the degrading and oppressive conditions which characterized pre-revolutionary Cuba. He has helped the Cubans to save their own souls. He is certainly one of the great political leaders of our time.

....

Going through the [Museum of the Revolution in Havana] was a sobering experience. Facing step by step the historic interventions of the U.S. in to Cuban affairs, including the systematic and regular murdering of revolutionary leaders left me with a lump in my throat. . . . They don't need to try very hard to make the point that we have been the exploiters. Batista was only one of the long list of murderous figures that we thrust upon them in the name of stability and freedom.

....

There may have been some abuses under the present regime, life may be more complicated by rationing, etc., but no one can make me believe that Cuba would have been better off if we have defeated the revolution. The idea is obscene.

31. The FBI's investigation has revealed that approximately six months after returning from Cuba, KENDALL MYERS and GWENDOLYN MYERS were visited by co-conspirator "A" in South Dakota, where KENDALL MYERS and GWENDOLYN MYERS were living at the time. During that trip, KENDALL MYERS and GWENDOLYN MYERS were recruited by co-conspirator "A" and they agreed to serve as clandestine agents of the Republic of Cuba. Thereafter, CuIS directed KENDALL MYERS to pursue a job at either the Department of State or the Central Intelligence Agency.

32. My investigation to date has determined that on or about April 15, 1985, KENDALL MYERS was offered a two-year appointment as Training Instructor and Chairperson for West European Studies in FSI, a position that required a TOP SECRET security clearance. When KENDALL MYERS received his appointment to that position he signed an Oath of Office in which he swore that:

I will support and defend the Constitution of the United States against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

33. I have learned through the investigation that KENDALL MYERS and GWENDOLYN MYERS possess a number of books relating to Cuba, notably a book entitled On Becoming Cuban.

**CLANDESTINE COMMUNICATION FROM CuIS TO ITS AGENTS
VIA SHORTWAVE RADIO**

34. Based on my knowledge and familiarity with the communication methodologies of CuIS, I am aware that, during the time frame described herein, CuIS often communicated with its clandestine agents operating in the United States by broadcasting encrypted radio messages from Cuba on certain high frequencies – that is, shortwave radio frequencies. Under this method, CuIS would broadcast a series of numbers on a particular short-wave frequency. The clandestine agent in the United States, monitoring the frequency on a shortwave radio, could decode the seemingly random series of numbers by using a decryption program provided by CuIS. The series of numbers would then be decoded into cognizable text for use by the agent. Once decoded, the text of the message could provide the agent with tasking for intelligence gathering, instructions about operational activities, including communication plans and meets with CuIS handlers. Similarly, CuIS would broadcast similar messages to its handlers.

35. This shortwave radio communication method was employed by some of the defendants convicted of espionage on behalf of Cuba in the previously mentioned Hernandez case in the Southern District of Florida, as well as by Ana Belen Montes and Carlos and Elsa Alvarez.

36. I have further learned that CuIS broadcasts such encrypted shortwave radio messages in Morse Code or by a voice reading a series of numbers.

37. I have learned through this investigation that KENDALL MYERS and GWENDOLYN MYERS maintain in their possession in their apartment an operable shortwave radio of the same make used by CuIS agent Ana Belen Montes. The radio was manufactured between approximately 1983 and 1986.

38. I have learned through this investigation that KENDALL MYERS knows Morse Code.

THE UNDERCOVER OPERATION

39. On or about April 15, 2009, the Federal Bureau of Investigation (FBI) initiated an undercover operation. The purpose of the undercover operation was to convince KENDALL MYERS and GWENDOLYN MYERS that they had been contacted by a *bona fide* Cuban intelligence officer and, in the course of their ensuing discussion and relationship, ascertain the scope, nature, and substance of KENDALL MYERS and GWENDOLYN MYERS's clandestine activities on behalf of CuIS.

40. During the afternoon of April 15, 2009, an undercover source of the FBI ("UCS") approached KENDALL MYERS in front of the Johns Hopkins School of Advanced International Studies ("SAIS") on Massachusetts Avenue, N.W., in Washington, D.C. The UCS told KENDALL MYERS that a named CuIS intelligence officer (hereinafter co-conspirator "D") "sent me to contact you." The UCS continued that he did not want to "bother" KENDALL MYERS or take "too much" of his time, but that he had "instructions to contact" him and "to get some information . . . and [KENDALL MYERS's] opinion" because of the "change that is taking place in Cuba and the new administration." The UCS said that co-conspirator "D" sends "his regards," offered KENDALL MYERS a cigar, and congratulated him on his birthday.

KENDALL MYERS agreed to meet the UCS later that evening at a nearby hotel, after KENDALL MYERS was done teaching a class at SAIS. KENDALL MYERS volunteered that his wife, GWENDOLYN MYERS, could join them. The UCS agreed.

The April 15, 2009, Meeting

41. Following the conclusion of KENDALL MYERS's class on the evening of April 15, 2009, the UCS met with both KENDALL MYERS and GWENDOLYN MYERS for a drink in a hotel lounge, located in Washington, D.C. The meeting lasted approximately one hour. During the meeting, KENDALL MYERS and GWENDOLYN MYERS accepted written tasking from the UCS. The tasking solicited KENDALL MYERS's views and opinions of various Executive Branch personnel with backgrounds in, and responsibility for, Latin American policy. KENDALL MYERS agreed to provide the requested information at a scheduled meeting with the UCS the following day. Further, KENDALL MYERS and GWENDOLYN MYERS made the following statements during their April 15, 2009, meeting with the UCS:

- KENDALL MYERS asked the UCS, "So how is everybody at home?", referring to Cuba.
- KENDALL MYERS stated that they were last in Cuba "ten years ago."
- KENDALL MYERS stated "we've been meeting in third countries" and that the last such country was Mexico "like three years ago, [or] four years ago."
- GWENDOLYN MYERS confirmed that the last meeting was in Guadalajara, Mexico, "a while ago."
- KENDALL MYERS stated to the UCS "[l]et me explain something . . . which is important for us and . . . could be important to you. When I left the State Department, one of the reasons . . . I was gonna leave anyway. . . I was going to leave in 2008. . . . But I clashed with . . . the assistant secretary who was my boss. . . ." KENDALL MYERS stated that, as a result of that clash, he felt "uncomfortable [and] more or less threatened . . . So I've been very cautious

about reestablishing contact because I didn't want to, uh, implicate you . . ."

- KENDALL MYERS stated, "we have been very cautious, careful with our moves and, uh, trying to be alert to any surveillance if there was any." KENDALL MYERS further stated that he "think[s] that has passed. . . [b]ut we still need to be careful . . ."
- In response to a statement by the UCS that co-conspirator "D" had told the UCS that KENDALL MYERS was "the only agent that received by . . . Morse Code," KENDALL MYERS responded, "yes, that's right."
- GWENDOLYN MYERS confirmed that she and KENDALL MYERS still had the radio they had used to receive messages and named the manufacturer.
- GWENDOLYN MYERS stated that "you gave us the money to buy" the radio "a hundred years ago and it still works beautifully. . . . Although I haven't listened to it in a while."
- KENDALL MYERS acknowledged that it "would be nice" to travel to Cuba "in the near future."
- KENDALL MYERS indicated that they could sail to Cuba on their sailboat and that "they already ha[ve] the charts . . . the maps . . . a cruising guide" to do so.
- Later, KENDALL MYERS stated that "our idea is to sail home."
- KENDALL MYERS stated to the UCS concerning lifting the United States travel ban to Cuba, that "[y]ou don't want all those Americans . . . believe me, those North Americans, you don't want them."
- KENDALL MYERS stated that "[t]he trouble with this country, there's just too many North Americans."
- KENDALL MYERS and GWENDOLYN MYERS confirmed traveling to Cancun for "meetings."
- KENDALL MYERS and GWENDOLYN MYERS confirmed meeting at Chichen Itza in the Yucatan with someone they nicknamed "Sandy" because he had "dyed his hair blonde."
- GWENDOLYN MYERS stated, "[w]e have nicknames." KENDALL MYERS confirmed, "We have nicknames, we never use their real names, even the double names."

- When told that co-conspirator “D” was now the UCS’s boss, KENDALL MYERS stated, “[he] has gone up? . . . Well, good. He’s wonderful . . . Give him our love.”
- When asked by the UCS who “Peter” was, KENDALL MYERS stated, “Peter was just a cover name . . . It’s the name that is used in the Internet . . . in the emails . . . There’s no . . . we never knew a Peter.”
- KENDALL MYERS stated that “it’s an honor for us” to meet the UCS. KENDALL MYERS further stated that “we’ve been a little nervous . . . and . . . I think you should tell them that . . . we’ve been nervous because, because we didn’t want to hurt them . . . We were worried . . .”

At the conclusion of the meeting, KENDALL MYERS and GWENDOLYN MYERS agreed to meet with the UCS the following day at a different hotel so they could respond to the tasking.

The April 16, 2009, Meeting

42. On April 16, 2009, the UCS met with the KENDALL MYERS and GWENDOLYN MYERS in a hotel room located in Washington, D.C. The meeting lasted approximately one hour. During the meeting, KENDALL MYERS responded to the tasking provided by the UCS on the previous day. They were also instructed by the UCS in the use of an email account for future communication with the UCS. Further, during the April 16, 2009, meeting, KENDALL MYERS and GWENDOLYN MYERS made the following statements:

- KENDALL MYERS acknowledged the UCS’s use of water-soluble paper to take notes during the meeting and indicated that he knew what it was.
- KENDALL MYERS refused the UCS’s offer of a drink of Scotch while he was answering questions in response to the UCS’s tasking of the previous day, noting, “no, no, that’s okay . . . while I work, you know.”
- GWENDOLYN MYERS recalled, and both her and KENDALL MYERS agreed to use in future meetings with the UCS, a parole (or pass phrase) that KENDALL MYERS and GWENDOLYN MYERS had used previously.
- KENDALL MYERS agreed to provide the UCS information at the next meeting

concerning the Trinidad and Tobago Summit of the Americas.

- KENDALL MYERS declined the UCS's suggestion to identify any of his students who "could be useful for us." KENDALL MYERS stated, "[u]nlikely . . . I don't trust any of them."
- Near the conclusion of the meeting, KENDALL MYERS asked the UCS to "send special greetings . . . and hugs . . . to everybody . . . and to all of our friends." KENDALL MYERS and GWENDOLYN MYERS then listed individuals they believe were located in Cuba, including "two very old friends," co-conspirator "A" and co-conspirator "B."
- GWENDOLYN MYERS acknowledged that a code name used for her in messages was "123."
- KENDALL MYERS acknowledged that a code name used for him was "202."
- KENDALL MYERS discussed his first trip to Cuba in December 1978 and provided details on how he and GWENDOLYN MYERS were recruited to work for CuIS by co-conspirator "A" six months later, in 1979, while they were living in South Dakota.
- KENDALL MYERS agreed that they should change the location of the next meeting with the UCS to a different hotel for reasons of "security."

At the conclusion of the meeting, KENDALL MYERS and GWENDOLYN MYERS agreed to meet with the UCS again on April 30, 2009, at a different Washington, D.C. hotel.

The April 30, 2009, Meeting

43. The UCS met with KENDALL MYERS and GWENDOLYN MYERS in a hotel room, located in Washington, D.C., during the day on April 30, 2009. The meeting lasted approximately three hours. During the meeting, KENDALL MYERS and GWENDOLYN MYERS received, and were trained in the use of, an encryption device for purposes of encrypting future email communications with the UCS. Further, during the April 30, 2009 meeting, KENDALL MYERS and GWENDOLYN MYERS made the following statements:

- Upon first meeting the UCS, KENDALL MYERS exchanged with the UCS the parole agreed-upon during the April 16, 2009 meeting.
- Asked by the UCS if he had “detected [any] enemy activity,” KENDALL MYERS responded “No.”
- KENDALL MYERS delivered a “four point” message that he requested the UCS send. The message included the following four points:
 - (1) KENDALL MYERS noted that he and GWENDOLYN MYERS were “delighted to have contact again. We really have missed you. And you, speaking collectively, have been a really important part of our lives and we have felt incomplete. I mean, we really love your country, ... and the people and the team are just important in our lives. So we don’t want to fall out of contact again.”
 - (2) KENDALL MYERS noted that he and GWENDOLYN MYERS “really like retirement. It gives us a chance to be with each other more. It gives us a chance for me to concentrate on teaching. And it gives us a chance to sail.”
 - (3) KENDALL MYERS stated that he and GWENDOLYN MYERS “don’t think we are able to do the work again. . . we’re a little burned out. . . we lived with the fear and the anxiety for a long time . . . and still do.”
 - (4) KENDALL MYERS stated that he and GWENDOLYN MYERS “would like to be a reserve army. . . ready when we’re needed. I will begin a process of re-getting back in contact with . . . my old contacts . . . work on new ones. . . to be able to react if the situation gets dangerous or we hear something that makes us worried, that we think you should know. . . .But I think, honestly, we don’t want to go back into . . . the regular stuff”
- KENDALL MYERS acknowledged working with CuIS for 30 years.
- GWENDOLYN MYERS stated that KENDALL MYERS joined in 1978 and KENDALL MYERS confirmed that he really didn’t start working until 1981.
- KENDALL MYERS and GWENDOLYN MYERS acknowledged meeting a co-conspirator “A” in South Dakota in 1978.
- KENDALL MYERS stated that CuIS asked him to work at either the Department of State or the Central Intelligence Agency. GWENDOLYN MYERS stated that they both preferred the Department of State because KENDALL MYERS is “not a

very good liar.” KENDALL MYERS continued “you had to be a good liar to pass [the polygraph at CIA].”

- KENDALL MYERS and GWENDOLYN MYERS confirmed traveling to Trinidad and Tobago, Argentina, Brazil, Ecuador, and Jamaica for personal contacts (i.e., operational meetings).
- KENDALL MYERS confirmed a personal contact in Italy.
- KENDALL MYERS discussed another personal contact in Prague whose name “we never learned . . . and explained to us, Cuba . . . It was incredible. . . we never learned his name, never saw him again.” GWENDOLYN MYERS added that the individual explained “what we were getting into . . . he was, incredible.”
- KENDALL MYERS stated that he was given a leather jacket by another individual during one of their first personal contacts and that he still had it.
- GWENDOLYN MYERS confirmed a personal contact with co-conspirator “B” in France.
- KENDALL MYERS and GWENDOLYN MYERS referred to a former CuIS intelligence officer as “GOD.”
- GWENDOLYN MYERS informed the UCS that there were numerous personal meetings in New York City. KENDALL MYERS and GWENDOLYN MYERS informed the UCS that they thought meetings in New York City were dangerous.
- KENDALL MYERS stated that “we had contacts here a lot.” “Some” were personal meetings, and “some just passes.”
- KENDALL MYERS said that they had contacts more often than every six months.
- GWENDOLYN MYERS confirmed that the country in which they felt the most comfortable for a personal contact was in Cuba, noting “once we got there . . . we knew we were okay.”
- KENDALL MYERS and GWENDOLYN MYERS agreed that the most secure way to transmit information to illegal agents was “hand-to-hand.” GWENDOLYN MYERS stated that this was because “you can always back off if you want. . . and the person we were meeting would understand.”
- KENDALL MYERS remarked that he “didn’t like dead drops . . . because you

lose control of it.”

- GWENDOLYN MYERS further stated that her favorite way of passing information involved the changing of shopping carts in a grocery store because it was “easy enough to do.” She further stated that she “wouldn’t do it now. Now they have cameras, but they didn’t then.”
- KENDALL MYERS stated that his least favorite method for transmitting information “is that goddamn telephone system. . . . We wouldn’t do it.” GWENDOLYN MYERS stated “we did it once, never again, we threw it away.”
- KENDALL MYERS further stated that he believed that the “telephone system” was responsible for Ana Montes’s detection and apprehension.
- KENDALL MYERS stated that the “best way” to take information out from his job was “in your head.”
- KENDALL MYERS told the UCS that he removed information from the Department of State by memory or by taking notes. GWENDOLYN MYERS added that he kept his notes locked in his office safe.
- KENDALL MYERS stated that “I was always pretty careful. I, I didn’t usually take documents out.”
- GWENDOLYN MYERS reminded KENDALL MYERS that he did remove documents from the Department of State and that GWENDOLYN MYERS handled the documents “page-by-page” and then KENDALL MYERS “slipped them . . . back in.” KENDALL MYERS stated that “usually I wouldn’t leave anything at home.”
- KENDALL MYERS stated he would return any documents he had taken home to his office the next day.
- KENDALL MYERS stated that he and GWENDOLYN MYERS had bookends that were used as a concealment device at their home.
- KENDALL MYERS and GWENDOLYN MYERS informed the UCS that they put the written instructions the UCS had given them at the last meeting inside an old book in their home.
- GWENDOLYN MYERS informed the UCS that KENDALL MYERS would transport documents home in “official envelopes” in a briefcase so that “if you opened it, it looked the same.” KENDALL MYERS stated that “in my case, I had

to, uh, experiment . . . different ways of doing that.”

- KENDALL MYERS stated that he got information from a certain United States government agency “all the time” and stated “that was my job.”
- In response to a question asking whether he had ever delivered information to CuIS that was classified more than SECRET, KENDALL MYERS replied “Oh, yeah. . . Oh, yeah.”
- KENDALL MYERS stated “I have great admiration for [Cuban spy] Ana Montes. She’s a hero. . . But she took too many chances. . . in my opinion. . . . She wasn’t paranoid enough.”
- KENDALL MYERS said that “the funny thing is, of course, some of the stuff I supplied, [Ana Montes] supplied. There was duplication . . . Because I read the stuff that she gave.” GWENDOLYN MYERS continued “which is terrific because what they got was verified . . . from two different places.”
- Referring to Ana Montes, GWENDOLYN MYERS stated, “She was not paranoid enough But she loved it, she did what she loved to do.” KENDALL MYERS continued, saying, “we have a great admiration” for Ana Montes.
- In response to a question posed by the UCS as to whether it was possible that there was another Ana Montes inside the United States government, KENDALL MYERS responded, “Well, I hope so.” GWENDOLYN MYERS responded, “I hope so. I hope so. Yeah.”
- GWENDOLYN MYERS stated with regard to Ana Montes: “I envy her being able to love what she was doing, and say what she was doing and why she was doing it. . . .’cause I can’t do that.”
- KENDALL MYERS acknowledged that they had received “lots of medals” from the government of Cuba.
- KENDALL MYERS stated that the “best one was meeting Fidel. . . Oh, that was wonderful.” KENDALL MYERS stated that he and GWENDOLYN MYERS met Fidel Castro in a small house where they were staying and he spent a whole evening, lasting approximately four hours, talking with them. “Sandy” (a handler) was also present.
- KENDALL MYERS stated “Fidel is wonderful, just wonderful.” GWENDOLYN MYERS continued: “He’s . . . the most . . . incredible statesman in . . . a hundred years for goodness sakes.”

- KENDALL MYERS stated they met with Fidel Castro around New Year's Day in 1995 and that they had gone through Mexico to Cuba while traveling under false names. GWENDOLYN MYERS traveled to Cuba under the name of "Elizabeth," and KENDALL MYERS traveled under the name of "Jorge."
- KENDALL MYERS acknowledged previously receiving false documents to facilitate clandestine travel, but that they had "got rid of everything."
- In responding to a question regarding how they might escape "from the States," KENDALL MYERS stated that they did not need false travel documents to cross the border because "we're sailing there." GWENDOLYN MYERS added "we've always said we'll just come on a boat. . . . we're not taking a train, or plane or, you know."
- GWENDOLYN MYERS stated that they could also go to Canada because they "could fly from Canada . . . to Cuba. . . . [W]e could, even with our US passports, travel to Cuba [from Canada]. . . . They won't turn us down in Canada." KENDALL MYERS agreed that he "would go to Canada. . . . Or we can just sail across." GWENDOLYN MYERS added "well, then we have our place to live [on the sailboat]. Nobody has to put us up, we have our own place to live there. . . . I mean, we wouldn't be a burden."
- When the UCS indicated that he was going to send information concerning KENDALL MYERS and GWENDOLYN MYERS "to Cuba," GWENDOLYN MYERS stated "[b]e sure and tell them we love them." KENDALL MYERS added "[w]e don't wanna lose them. . . [w]e'll be members of the reserve army."
- GWENDOLYN MYERS informed the UCS that KENDALL MYERS would be a good teacher at a School of Intelligence in Cuba, adding, "so when can we come?" KENDALL MYERS agreed "that I could see doing. . . [t]hat I would like to do."
- During a demonstration and training by the UCS in the use of an encryption program for future email communications between the UCS and the MYERS, GWENDOLYN MYERS stated "isn't that fast. Those guys are getting good." KENDALL MYERS added that the encryption program was "better than 2005."
- GWENDOLYN MYERS asked the UCS to "clean" the UCS's computer after he demonstrated the encryption program to her. KENDALL MYERS said "[s]he's paranoid." GWENDOLYN MYERS agreed, "I'm paranoid."
- GWENDOLYN MYERS informed the UCS that she would not use her own computer to send an encrypted email message to the UCS. KENDALL MYERS added "[w]e go to Internet cafes."

- KENDALL MYERS explained that after he returned from a trip to China in 2006, he encountered problems with a supervisor at INR, noting that “made us very cautious.”
- KENDALL MYERS told the UCS that he and GWENDOLYN MYERS “got a little paranoid” that his boss at INR put him on a “watch list” and “thought it would be unwise for us to be going to Mexico for contacts at that point.”
- KENDALL MYERS and GWENDOLYN MYERS stated that they had received e-mails “asking for a meeting in Mexico” but the MYERS “kept saying no because [they] were worried” and “thought it was too dangerous.”
- KENDALL MYERS and GWENDOLYN MYERS related to the UCS that their last personal contact was in Guadalajara. KENDALL MYERS said he thought the meeting was in December 2005.
- When asked by the UCS if the “last meeting . . . in 2005” was “the end,” KENDALL MYERS responded “there has been no end . . . There doesn’t need to be an end.” GWENDOLYN MYERS added, “it’s continuing.”
- KENDALL MYERS said that, after that last meeting, “we’ve had lots of e-mails.”
- At the conclusion of the meeting, KENDALL MYERS asked the UCS, “So when do you want to meet again?”
- After agreeing on a date and location for the next meeting, KENDALL MYERS, GWENDOLYN MYERS, and the UCS agreed on a visual signal and parole to be used at the next meeting.
- After the UCS indicated that the next meeting “will be our last meeting, okay?,” GWENDOLYN MYERS responded “well, maybe, maybe six months from now, we can do it again.”
- When asked by the UCS if they were “happy,” KENDALL MYERS responded “[w]ell, my only unhappiness is that we won’t be seeing enough of you.”
- KENDALL MYERS stated “it was our life.” GWENDOLYN MYERS added, “[i]t is our life, it still is. . . But we, we can’t do it that much. . . . [W]e don’t want to make a mistake. We don’t wanna screw up.”
- At the conclusion of the meeting, GWENDOLYN MYERS stated “[w]ell, we sure are happy to meet you.” KENDALL MYERS added, “we have mixed feelings. . .

we want to have contact. . . but we're burned out. . . it's a full-time job." GWENDOLYN MYERS added, "and it still is because we haven't let it go. . . it's still always on our minds, always. . . . So it's not retiring. . ."

- KENDALL MYERS continued: "It's forever. . . You know, it's like Fidel . . . It's forever."

At the conclusion of the April 30, 2009, meeting, KENDALL MYERS and GWENDOLYN MYERS agreed to meet the UCS again on or about June 4, 2009 at a different Washington, D.C., hotel.

**CuIS CLANDESTINE SHORTWAVE RADIO BROADCASTS RELATED TO
KENDALL MYERS AND GWENDOLYN MYERS**

44. The FBI collects high frequency messages from CuIS in Cuba to Cuban officers and their agents abroad, to include illegal agents operating within the United States. Among other high frequency messages broadcast by CuIS that the FBI has collected, I am aware that the FBI has identified messages that it has determined were broadcast to a handler of KENDALL MYERS and GWENDOLYN MYERS, hereinafter, co-conspirator "C."

45. The messages sent to co-conspirator "C" contain many references to standard CuIS tradecraft, including mentions of passes, visual signals, personal contacts, dead drops, counter-surveillance techniques, danger signals, clandestine communication techniques and plans, coded messages, and code names referring to KENDALL MYERS and GWENDOLYN MYERS.

46. Further, the message sent to co-conspirator "C" make multiple references to Cuba. For example,

- A message sent on or about February 15, 1997, to co-conspirator "C" describes Cuban reactions to a "gringo" project to democratize Cuba.

- A message sent on or about March 26, 1997, to co-conspirator "C" describes Cuban reactions to the Helms-Burton Act which imposed sanctions against U.S. companies doing business with Cuba.
- A broadcast sent on or about January 29, 1997, to co-conspirator "C" congratulates the actions that the co-conspirator "C" has carried out in the "heart of the enemy" and proclaims them a "tribute to Marti," which I believe is a reference to Jose Marti, a Cuban national hero.

47. Among the messages sent to co-conspirator "C" was a message sent on or about December 18, 1996, in which co-conspirator "C" is instructed to show an interest in a tumor on the shoulder of agent "E-634." Medical records collected during this investigation demonstrate that on or about December 27, 1996, just nine days after this message was sent, GWENDOLYN MYERS had a medical procedure to remove a tumor from her shoulder.

48. On or about November 26, 1996, CuIS sent an encrypted shortwave radio message to co-conspirator "C" instructing co-conspirator "C" to take advantage of an upcoming pass (or brief exchange of information) with an agent to see "the area of the new residence" and to study the location of intercepting "123." During the April 30, 2009, meeting with the UCS, GWENDOLYN MYERS acknowledged that a code name used for her was "123." Further, the investigation has determined that KENDALL MYERS and GWENDOLYN MYERS moved to a new residence as of January 1, 1997, just one month after this message was sent.

49. On or about February 26, 1997, CuIS sent an encrypted shortwave radio message to co-conspirator "C" informing co-conspirator "C" of a specific tasking sent by another intelligence officer, referred to as "GOD," to the agents concerning the collection of information of interest to CuIS. During the April 30, 2009, meeting with the UCS, KENDALL MYERS stated that one of the intelligence officers with responsibility for them was referred to as "GOD."

50. On or about March 22, 1997, CuIS sent an encrypted shortwave radio message to co-conspirator "C" instructing co-conspirator "C" to make a personal contact with "634" to train on use of an Iomega data storage device. As stated previously, a December 18, 1996 message indicated that "E-634" had a tumor on the shoulder, and medical records collected during this investigation demonstrate that on or about December 27, 1996, just nine days after this message was sent, GWENDOLYN MYERS had a medical procedure to remove a tumor from her shoulder. Further, the FBI's investigation has revealed that KENDALL MYERS and GWENDOLYN MYERS possess an Iomega device in their residence.

51. On or about April 1, 1997, CuIS sent an encrypted shortwave radio message to co-conspirator "C" informing co-conspirator "C" that "202" had informed CuIS that he was "in the process of a clearance." During the April 30, 2009, meeting with the UCS, KENDALL MYERS acknowledged that a code name used for him was "202."

KENDALL MYERS and GWENDOLYN MYERS's OVERSEAS TRAVEL FOR PERSONAL CONTACTS WITH CuIS HANDLERS AND REPRESENTATIVES

52. In the April 30, 2009, meeting with the UCS, KENDALL MYERS and GWENDOLYN MYERS confirmed traveling to Trinidad and Tobago, Jamaica, Brazil, Ecuador, Argentina, and Mexico for personal contacts or meetings. I have corroborated this travel based on a review of Department of State travel records and law enforcement travel databases. Specifically, these records demonstrate that KENDALL MYERS and GWENDOLYN MYERS undertook the following non-work related foreign travel:

January 2002	Port of Spain, Trinidad and Tobago
December 2002	Kingston, Jamaica
July 2003	Mexico City, Mexico

December 2003	Rio de Janeiro, Brazil
July 2004	Quito, Ecuador
December 2004	Puerto Vallarta, Mexico
July 2005	Buenos Aires and Iguazu, Argentina
December 2005	Mexico City and Oaxaca, Mexico

53. In addition to corroborating the April 30, 2009, statements of KENDALL MYERS and GWENDOLYN MYERS concerning third-country meetings with their CuIS handlers, based on my experience and training, this pattern of travel is also notable as it began shortly after the arrest of Ana Montes in September 2001. I assess that CuIS began meeting with KENDALL MYERS and GWENDOLYN MYERS outside the United States in third-countries because it believed meetings with the MYERS in the United States posed too much risk to its intelligence officers following the arrest of Ana Montes.

KENDALL MYERS and GWENDOLYN MYERS's 1995 CLANDESTINE MEETING WITH FIDEL CASTRO IN CUBA

54. During the April 30, 2009, meeting with the UCS, KENDALL MYERS and GWENDOLYN MYERS confirmed traveling to Cuba via Mexico in 1995 around New Year's Day to meet with Fidel Castro. Based on a review of Department of State travel records and law enforcement travel databases, I have confirmed that KENDALL and GWENDOLYN MYERS did travel to Mexico in the first week of January 1995. Not surprisingly, there is no record of their travel to Cuba. KENDALL MYERS and GWENDOLYN MYERS stated in the April 30, 2009, meeting that they used false names when they traveled to Cuba in 1995 (*i.e.*, GWENDOLYN MYERS traveled under the name "Elizabeth" and KENDALL MYERS traveled under the name "Jorge"). KENDALL MYERS never disclosed to the Department of State any post-1978 travel to Cuba as he was required to do under Department of State policy.

55. The FBI's investigation has also revealed that KENDALL MYERS and GWENDOLYN MYERS possess a Cuban travel guide which was published in the mid-to-late 1990s.

KENDALL MYERS and GWENDOLYN MYERS's CONTINUED CLANDESTINE E-MAIL COMMUNICATION WITH REPRESENTATIVES OF CuIS

56. During the April 30, 2009, meeting, KENDALL MYERS and GWENDOLYN MYERS stated that they had received e-mails "asking for a meeting in Mexico" but the MYERS "kept saying no because [they] were worried" and "thought it was too dangerous." During the April 15, 2009, meeting, KENDALL MYERS stated that the name "Peter was just a cover name . . . It's the name that is used in the Internet . . . in the emails . . . There's no . . . we never knew a Peter."

57. The FBI's investigation has identified the e-mails to which KENDALL MYERS and GWENDOLYN MYERS were referring to in the April 15th and April 30th meetings. The e-mails are from a "Peter Herrera." They are sent from Mexico to the MYERS's home e-mail account. In the first e-mail, sent on or about December 22, 2008, "Peter" purports to be a Mexican art dealer and tells the MYERS that "I still keep my collection of art pieces for my best customers, just tell me when you are ready to pick them up next year." On or about December 29, 2009, both KENDALL MYERS and GWENDOLYN MYERS responded jointly to this e-mail. In their response, they told "Peter" that they were "[d]elighted to hear from you and to learn that your art gallery is still open for us. We have not yet made travel plans for the new year but will get back in touch with you as soon as we have done so." The e-mail is signed "Kendall and Gwen."

58. On or about March 16, 2009, "Peter" e-mailed again, saying "[i]f you are interested in some special art pieces from our art gallery just let me know when you are ready to pick them up." On or about March 27, 2009, both the Myers responded by e-mail saying "[y]our art pieces are stunning! If only we could visit to see them in person. However, our schedules do not allow for a trip to Mexico at this time. We very much appreciate you remembering us. Please keep us informed of your future shows." They signed the email, "The Myers."

59. Other than the above e-mails from "Peter," the FBI has identified no other e-mails to either KENDALL MYERS or GWENDOLYN MYERS inviting them on trips to Mexico. Based on the statements of KENDALL MYERS and GWENDOLYN MYERS during the April 15th and April 30th meetings with the UCS, their prior admitted operational travel to Mexico, and the stilted language used in the e-mails which is consistent with talking in code, I assess that the "Peter Herrera" e-mails are from a representative of CuIS requesting that KENDALL MYERS and GWENDOLYN MYERS go on operational travel to Mexico.

KENDALL MYERS's ACCESS TO CLASSIFIED UNITED STATES GOVERNMENT INFORMATION AT THE DEPARTMENT OF STATE

60. During the April 16, 2009 meeting with the UCS, GWENDOLYN MYERS and KENDALL MYERS stated that they were recruited by co-conspirator "A" in 1979. In the April 30, 2009, meeting, KENDALL MYERS acknowledged that he did not start working until 1981. In that same meeting, KENDALL MYERS stated that he had been asked by CuIS to work either at the Department of State or the Central Intelligence Agency. GWENDOLYN MYERS stated that they both preferred the Department of State because KENDALL MYERS "is not a good liar." KENDALL MYERS agreed that "you had to be a good liar to pass [the polygraph at the

CIA].”

61. Government records corroborate these statements. Specifically, Department of State records demonstrate that KENDALL MYERS applied for a position with the Central Intelligence Agency on or about September 1, 1981. Department of State records demonstrate that KENDALL MYERS resumed employment as a contract instructor at the Department of State’s Foreign Service Institute (FSI) in or about 1982. Further, on or about May 9, 1983, KENDALL MYERS applied for a non-contractor, two-year appointment as a Training Instructor and Chairperson for West European Studies in FSI. Department of State records show that KENDALL MYERS was offered that position on or about April 15, 1985.

62. Department of State records demonstrate that KENDALL MYERS received a TOP SECRET¹ security clearance on or about March 27, 1985, a clearance which was required for his two-year appointment as Training Instructor and Chairperson for West European Studies at FSI. In or about September 1999, his security clearance was increased to TOP SECRET/SCI just prior to KENDALL MYERS beginning to work full time at the Department of State’s Bureau of Intelligence and Research (INR). During his employment at INR, KENDALL

¹ “Classified” information is defined by Executive Order 12958, as amended by Executive Order 13292, and their predecessor orders, Executive Orders 12356 and 12065, as information in any form that: (1) is owned by, produced by or for, or under control of the United States government; (2) falls within one or more of the categories set forth in the Order; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security. Where such unauthorized release could reasonably result in “serious” damage to the national security, these orders require that the information be classified as “SECRET.” Where such damage could reasonably result in “exceptionally grave” damage to the national security, these orders require that the information be classified as “TOP SECRET.” Access to classified information at any level may be further restricted through compartmentation in “SENSITIVE COMPARTMENTED INFORMATION” (SCI) categories.

MYERS had daily access to classified information through computer databases and otherwise.

KENDALL MYERS maintained his TOP SECRET/SCI clearance until his retirement on October 31, 2007.

63. My investigation to date has determined that on June 12, 1985, KENDALL MYERS signed a Classified Information Nondisclosure Agreement in which he acknowledged, in part:

Intending to be legally bound, I hereby accept the obligation contained in this Agreement in consideration of my being granted access to classified information. . . I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand those procedures.

I have been advised and am aware that direct or indirect unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge [classified] information unless I have officially verified that the recipient has been properly authorized by the United States government to receive it, or I have been given prior written notice of authorization from the United States Government Department or Agency last granting me a security clearance that such disclosure is permitted. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

I have been advised that any breach of this Agreement may result in the termination of any security clearance I hold; removal from any position of special confidence and trust requiring such a clearance; or the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. . . .

In addition, I have been advised and am aware that any unauthorized disclosure of classified information by me may constitute a violation or violations of United

States criminal laws, including the provisions of Sections. . . . Section 783(b), Title 50, United States Code

64. Employing substantially the same language as that quoted in the paragraph above, KENDALL MYERS acknowledged these same obligations and duties in a Classified Information Nondisclosure Agreement which he signed on or about April 30, 1991.

65. My investigation to date has determined that at no time during his employment with USDS was KENDALL MYERS ever authorized, directly or indirectly, to deliver, communicate, or transmit sensitive or classified information to agents, officers, or employees of CuIS or any other hostile foreign intelligence service.

66. My investigation to date has determined that at no time was GWENDOLYN MYERS ever granted a security clearance by the United States government.

**KENDALL MYERS's REPEATED VIEWING OF CLASSIFIED INFORMATION
RELATED TO CUBA**

67. During the April 30, 2009, meeting, when the UCS asked KENDALL MYERS whether he had ever delivered information to CuIS that was classified more than SECRET, KENDALL MYERS responded "Oh yeah. . . Oh, yeah." KENDALL MYERS stated that the "best way" to take information out from his job was "in your head." KENDALL MYERS told the UCS that he removed information from the Department of State by memory or by taking notes. GWENDOLYN MYERS added that he kept his notes locked in his office safe.

68. An analysis of KENDALL MYERS's classified Department of State work computer hard drive reveals that from August 22, 2006, until his retirement on October 31, 2007, KENDALL MYERS, while employed at INR, viewed in excess of 200 sensitive or classified intelligence reports concerning the subject of Cuba. Of these intelligence reports, more than 75 of

these reports made no substantive mention of countries within KENDALL MYERS's area of responsibility as an employee of INR. Of these reports concerning Cuba, the majority were classified and marked SECRET or TOP SECRET.

KENDALL MYERS's FALSE STATEMENTS AND OMISSIONS

69. The FBI's review of KENDALL MYERS's Department of State security file reveals a plethora of knowingly false statements by KENDALL MYERS whose goal by these statements is plainly to conceal the fact that he and his wife are conspiring to be, and in fact were, illegal agents of the Republic of Cuba who were providing sensitive and classified United States government information to CuIS, a hostile foreign intelligence service. Specifically:

- On or about May 9, 1983, in response to a question on a Department of State "Statement Regarding Actions on Behalf of Foreign Principals" submitted by KENDALL MYERS as part of his application for a two-year appointment as a Training Instructor and Chairperson for West European Studies at FSI asking whether he was or ever had been an agent, representative or otherwise acted for a foreign principal, KENDALL MYERS answered "No," when, in truth and fact, as KENDALL MYERS well knew, he was an agent of CuIS. The form also notified KENDALL MYERS of his legal obligation to report such a foreign agent relationship to the Justice Department.
- On or about November 21, 1989, in response to a question appearing on Form SF-86, Questionnaire for Sensitive Positions, asking KENDALL MYERS to list any personal or continuing contacts he had had with a national of a communist country, KENDALL MYERS listed no such contacts, when, in truth and fact, as KENDALL MYERS well knew, he had had both personal and continuing contacts with nationals of Cuba, a communist country.
- On or about January 31, 1996, during a security interview conducted in Arlington, Virginia, in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he did not have any regular contact with foreign nationals, when, in truth and fact, as KENDALL MYERS well knew, he had had regular contact with Cuban foreign nationals.
- On or about December 29, 2000, in response to a question appearing on Form SF-86, Questionnaire for National Security Positions, asking whether KENDALL

MYERS had had any contact with a foreign government, its establishments (embassies or consulates), or its representatives, other than on official United States government business, KENDALL MYERS falsely answered "No," when, in truth and fact, as KENDALL MYERS well knew, he had such contacts with representatives of Cuba.

- On or about February 13, 2001, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that no one in his immediate family was subject to any foreign influence, when, in truth and fact, as KENDALL MYERS well knew, his wife, GWENDOLYN MYERS, was an agent of CuIS.
- On or about February 13, 2001, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he has always acted as to indicate a preference for the United States over a foreign country, when, in truth and fact, as KENDALL MYERS well knew, he had acted so as to indicate a preference for a foreign country over the United States as he was an agent of CuIS who was providing CuIS with sensitive and classified United States government information.
- On or about February 13, 2001, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that there was not any other information that he knew that could suggest a conflict of interest or be a possible source of embarrassment to him, the Department of State, or the United States, when, in truth and fact, as KENDALL MYERS well knew, his status as an agent of CuIS created a conflict of interest with his employment with the Department of State and would be a possible source of embarrassment to him, the Department of State, or the United States if it were publicly disclosed.
- On or about February 13, 2001, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he was not engaged in activities that posed a conflict with his security responsibilities or that would create an increased risk of unauthorized disclosure of classified information, when, in truth and fact, as KENDALL MYERS well knew, his activities and status as an agent of CuIS posed a conflict with his security responsibilities as an employee of the Department of State and increased the risk of the unauthorized disclosure of classified information.
- On or about February 13, 2001, during a security interview conducted in

Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he could not think of any issue omitted from his interview that might impact on his suitability for employment or eligibility for access to classified information, when, in truth and fact, as KENDALL MYERS well knew, he had concealed and omitted from his security interview the material fact that he and his wife, GWENDOLYN MYERS, were agents of CuIS.

- On or about November 24, 2006, in response to a question on SF-86, Questionnaire for National Security Positions, asking whether KENDALL MYERS had had any contact with a foreign government, its establishments (embassies or consulates), or its representatives, other than on official United States government business, KENDALL MYERS falsely answered "No," when, in truth and fact, as KENDALL MYERS well knew, he had had such contacts with representatives of Cuba.
- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he had no relatives, including his spouse, who are or were connected with any foreign government, to include intelligence or security services, when, in truth and fact, as KENDALL MYERS well knew, his wife, GWENDOLYN MYERS, was an agent of CuIS.
- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he has not had unauthorized association with a suspected or known collaborator or employee of a foreign intelligence service and he has no knowledge or suspicions of ever being a target of interest of a foreign intelligence service, when, in truth and fact, as KENDALL MYERS well knew, he had such unauthorized associations with representatives of CuIS and that he himself was an agent of CuIS.
- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he has not performed or attempted to perform duties, or otherwise acted, so as to serve the interests of another government in preference to the interests of the United States, when, in truth and fact, as KENDALL MYERS well knew, as an agent of CuIS, he had performed such duties and otherwise acted so as to serve the interests of the government of Cuba in preference to the interests of the United States.
- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United

States government, KENDALL MYERS falsely stated that he has not deliberately omitted, concealed, or falsified relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, or determine security clearance eligibility or trustworthiness, when, in truth and fact, as KENDALL MYERS well knew, he had repeatedly made material misstatements and omissions on personnel security questionnaires to prevent the Department of State from discovering the material and relevant fact that he was a clandestine agent of CuIS.

- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he has not deliberately provided false or misleading information concerning relevant and material matters to an investigator or security official in connection with a personnel, security, or trustworthiness determination, when, in truth and fact, as KENDALL MYERS well knew, he had repeatedly made material misstatements to government investigators and security officials in connection with a security determination to prevent the Department of State from discovering the material and relevant fact that he was a clandestine agent of CuIS.
- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he had not demonstrated a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency, when, in truth and fact, as KENDALL MYERS well knew, he had repeatedly violated his Classified Information Non-disclosure Agreements.
- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he had not committed unauthorized disclosure of classified or sensitive information, when, in truth and fact, as KENDALL MYERS well knew, he had committed unauthorized disclosure of classified or sensitive information when he clandestinely provided such information to representatives of Cuba.
- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he had not performed any service, whether compensated, volunteer or employment, with any foreign country, when, in truth and fact, as KENDALL MYERS well knew, he had served as a clandestine agent of CuIS.

- On or about January 9, 2007, during a security interview conducted in Washington, D.C., in response to a question posed by an agent of the United States government, KENDALL MYERS falsely stated that he could not think of any issue omitted from the interview that might impact on his suitability for employment or eligibility for access to classified information, when, in truth and fact, as KENDALL MYERS well knew, he had concealed and omitted during the interview the material fact that he was a clandestine agent of CuIS.

**KENDALL MYERS and GWENDOLYN MYERS's
VIOLATIONS OF 18 U.S.C. §§ 371 AND 951**

70. Based on the facts set forth above, I submit there is probable cause to believe that WALTER KENDALL MYERS and GWENDOLYN MYERS, did conspire with each other and with others, to act as illegal agents of the government of Cuba and did so act in the United States as agents of the government of Cuba without prior notice to the Attorney General in violation of 18 U.S.C. §§ 371 and 951.

**KENDALL MYERS's SCHEME AND ARTIFICE TO DEFRAUD
THE DEPARTMENT OF STATE**

71. Further, based on false statements set forth in paragraph 69 above, I submit there is probable cause to believe that KENDALL MYERS engaged in a scheme and systematic course of conduct with intent to defraud the Department of State and the United States, and to obtain property of the U.S. Department of State and the United States by means of false and fraudulent pretenses and representations, and in fact caused those entities to lose property, *i.e.*, money in the form of salary payments, in violation of 18 U.S.C. § 1343.

72. Based on Department of State records and interviews conducted during this investigation, I know that starting on or about April 15, 1985, KENDALL MYERS obtained a two-year appointment as a Training Instructor and Chairperson for West European Studies at the Department of State's Foreign Service Institute, a position for which he received a salary of

\$38,852 on an annual basis. Starting in or around October 1999, KENDALL MYERS obtained a full-time position at INR as Acting Director of the External Research Staff, a position for which he received an annual salary of \$82,014 in 1999, increasing to \$93,308 in 2000. Later, in July 2001, KENDALL MYERS obtained the position of Senior Analyst for Europe in INR, a position for which he received an annual salary of \$96,325, which increased to \$131,996 at the time of his retirement in October 2007.

73. Department of State records demonstrate that each of these jobs held by KENDALL MYERS were positions of special confidence and trust requiring access to highly sensitive classified national security information prepared by members of the intelligence community, including information classified at the TOP SECRET level. Accordingly, on or about March 27, 1985, prior to entering service on his two-year appointment as a Training Instructor and Chairperson for West European Studies at FSI, KENDALL MYERS was required to obtain, and did obtain, a TOP SECRET security clearance from the Department of State. Department of State records further establish that KENDALL MYERS security clearance was increase to TOP SECRET/SCI in or about September 1999, just prior to him beginning work full-time in the Bureau of Intelligence and Research. KENDALL MYERS maintained his TOP SECRET security clearance until his retirement on or about October 31, 2007.

74. Department of State records further establish that each of KENDALL MYERS's false statements and omissions delineated in paragraph 69 above were made by KENDALL MYERS during the course of his initial background security investigation or subsequent re-investigations to determine his suitability, or continued suitability, for access to TOP SECRET information. The standard by which a prospective or existing federal employee's request for a

security clearance is adjudicated is whether the grant of access to classified information to the individual is "clearly consistent with the interests of the national security." See Executive Order No.10450, §§ 2 and 7; 5 C.F.R. § 732.203. Based on interviews conducting during this investigation, I know that a critical part of the security clearance adjudication process is the answers given by the individual seeking a clearance to questions on a security questionnaire as well as to questions at an oral interview conducted by a government investigators. As KENDALL MYERS plainly knew, and as the FBI has been informed by Department of State representatives during this investigation, if the truth had been known that, while he was an employee of the Department of State, he and his wife, GWENDOLYN MYERS, were, themselves, clandestine agents of CuIS and/or had committed unauthorized disclosures of classified United States government information to CuIS, then KENDALL MYERS's eligibility for a TOP SECRET security clearance would have been denied, his security clearance revoked, and his employment with FSI and INR terminated.

75. Department of State records further establish that from on or about April 15, 1985, through October 31, 2007, as a result of the aforesaid materially false, fraudulent and misleading pretenses, representations, and promises, KENDALL MYERS received at least \$1,735,054 in moneys (in the form of salary payments), funds, and property from the Department of State and United States Government for the benefit of himself and GWENDOLYN MYERS.

76. The FBI's investigation has revealed that, in the District of Columbia, having devised the above-described scheme to defraud, for purpose of executing and in order to effect the scheme to defraud, KENDALL MYERS did knowingly cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, and

sounds, specifically,

- On or about April 14, 2005, an electronic transfer of \$2,148.41, representing KENDALL MYERS's U.S. Department of State salary, was transmitted from a government account in Kansas City, Missouri, to a Riggs National Bank account controlled by KENDALL MYERS and GWENDOLYN MYERS and located at 1101 15th Street, N.W., Washington, D.C. 20005;
- On or about May 12, 2005, an electronic transfer of \$2,148.41, representing KENDALL MYERS's U.S. Department of State salary, was transmitted from a government account in Kansas City, Missouri, to a Riggs National Bank account controlled by KENDALL MYERS and GWENDOLYN MYERS and located at 1101 15th Street, N.W., Washington, D.C. 20005; and
- On or about December 7, 2006, an electronic transmission of KENDALL MYERS's security questionnaire was sent from the U.S. Department of State, 2210 C Street, N.W., Washington, D.C., 20520, to the Bureau of Diplomatic Security located at 1801 North Lynn Street, Arlington, Virginia 22209.

REQUEST FOR SEALING

77. Because the investigation is continuing and disclosure of some of the details of this affidavit may compromise subsequent investigative measures to be taken in this case, may cause suspect(s) to flee, may cause suspect(s) to destroy evidence, or may otherwise jeopardize the investigation, I respectfully request that this affidavit be sealed until further order of the Court.


CONCLUSION

78. Based on the facts set forth above, and on my experience and training in investigating cases involving violations of federal law and other experienced agents with whom I have consulted, there is probable cause to believe:

- that at least in or about 1979 and continuing until the present, in the District of Columbia and elsewhere, WALTER KENDALL MYERS and GWENDOLYN STEINGRABER MYERS, did conspire with each other and with others, (i) to defraud the United States and the Department of State, by impeding, impairing,

obstructing, and defeating the Department of State's lawful government functions of control over its information and ability to protect classified information against unauthorized disclosure; (ii) to act as an illegal agent of the government of Cuba in the United States without prior notice to the Attorney General and Secretary of State, as required by law; (iii) to communicate, as an employee of the United States and the Department of State, to a person whom such employee knows and has reason to believe was an agent and representative of a foreign government, namely the Republic of Cuba, information the employee had reason to know had been classified under the authority of the President of the United States and by the Secretary of State as affecting the security of the United States, in violation of 18 U.S.C. § 371;

- that at least in or about 1979 and continuing until the present, in the District of Columbia and elsewhere, WALTER KENDALL MYERS and GWENDOLYN MYERS did act as illegal agents of the government of Cuba in the United States without prior notice to the Attorney General and Secretary of State, as required by law, in violation of 18 U.S.C. § 951; and
- that at least in or about September 1981 to on or about October 31, 2007, in the District of Columbia and elsewhere, WALTER KENDALL MYERS and GWENDOLYN MYERS did devise and intend to devise a scheme and artifice to defraud the United States Department of State and to obtain monies and properties belonging to the United States Department of State and the United States Government by means of materially false and fraudulent pretenses, representations and promises in violation of 18 U.S.C. § 1343.


BRET KRAMARSIC, Special Agent
Federal Bureau of Investigation

JUN - 4 2009

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF JUNE, 2009.


UNITED STATES MAGISTRATE JUDGE
JOHN M. FACCIOLA
U.S. MAGISTRATE JUDGE

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 9313

ESTABLISHMENT OF INTERESTS SECTION

**Agreement Between the
UNITED STATES OF AMERICA
and CUBA**

**Effected by Exchange of Notes
Signed at New York May 30, 1977**



CUBA

Establishment of Interests Section

Agreement effected by exchange of notes
Signed at New York May 30, 1977;
Entered into force May 30, 1977.

*The Acting Assistant Secretary of State to the Cuban Vice Minister of
External Affairs*

CITY OF NEW YORK
MAY 30, 1977

Pursuant to Public Law 89-497, approved
July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

"... the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and protocols by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

EXCELLENCY:

I have the honor to refer to the negotiations that our two delegations have conducted toward establishing an Interests Section of the United States of America in the Embassy of Switzerland in Havana and an Interests Section of Cuba in the Embassy of Czechoslovakia in Washington. We have reached agreement on the functions, personnel, privileges and immunities that both Sections will enjoy on the basis of full reciprocity. Each Interests Section will be headed by a diplomat with the rank of Counselor. The Interests Sections will be able to employ a reasonable number of nationals of the receiving State, in Cuba through the national enterprise CUBAISE, and in the United States through normal employment practices.

Both Sections will be located in those buildings that were occupied by the Embassies of the United States of America in Havana and of the Republic of Cuba in Washington and will be under the protection of the Embassy of Switzerland in Havana and of the Embassy of Czechoslovakia in Washington. Both Interests Sections will be inviolable. Entry will not be permitted without the consent of the heads of the Interests Sections.

Signs on the exterior of the buildings occupied by the Interests Sections will indicate: Embassy of Switzerland in Havana, United States Interests Section; and Embassy of Czechoslovakia in Washington, Cuban Interests Section. The official stationery of both Interests Sections shall be so lettered with the exception of that used for internal communications.

No flags nor national seals of either country shall be displayed on

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the outside of the aforementioned buildings or other properties, except those that are engraved on the buildings, because they are under the protection of other diplomatic missions.

Automobiles and other means of transportation used by the Interests Sections or their employees, shall be licensed in the series assigned to the automobiles belonging to the Swiss Embassy in Havana and the Czechoslovakian Embassy in Washington respectively and may only display the flags of those countries.

Official access of the United States Interests Section to the Ministry of Foreign Affairs in Havana and of the Cuban Interests Section to the Department of State in Washington will be at the same level.

The Interests Sections shall have the right of free communication for all official purposes, using open or encrypted diplomatic mail or communications. Official correspondence and diplomatic pouches will be inviolable, in accordance with international practice. The Interests Sections may maintain radio transmitters only with the consent of the host country.

Members of the Interests Sections shall have freedom to travel throughout the territory of the host country in accordance with the established international practice commonly accepted for Embassy personnel. In accordance with Protocol, the Head of each Interests Section shall rank in diplomatic precedence after Charges d'Affaires. The Interests Sections may carry out routine diplomatic and consular functions and make their own financial transactions.

Both Governments reconfirm their commitments under the applicable international treaties governing diplomatic and consular relations to which both are parties. Personnel of both Sections shall benefit from the privileges and immunities provided by those treaties.

The names of the diplomats of both Interests Sections will appear in the Diplomatic List, apart from and after those of the diplomats of the Government of Switzerland in the case of the United States and the Government of Czechoslovakia in the case of Cuba.

The Government of the United States shall obtain the concurrence of the Government of Switzerland and the Government of Cuba shall obtain the concurrence of the Government of Czechoslovakia to this arrangement.

Subject to the preceding paragraph, the opening of the Interests Sections will take place simultaneously in both capitals at a date to be mutually agreed within one month of the date of this exchange of notes.

I have the honor to propose that this note and your Excellency's reply thereto constitute an agreement between our two Governments. Accept, Excellency, the assurances of my highest consideration.

WILLIAM H. LUTERS

Dr. PERIKLIN TORRAS,
Vice Minister of External Affairs,
Republic of Cuba

AS 9313

The Cuban Vice Minister of External Affairs to the
Secretary of State

REPUBLICA DE CUBA
MINISTERIO DE RELACIONES EXTERIORES

Excelencia:

Me honro en hacer referencia a la Nota de Vuestra Excelencia de fecha de hoy relativa al establecimiento de Secciones de Intereses de la República de Cuba en la Embajada de la República Socialista de Checoslovaquia en Washington y de los Estados Unidos de América en la Embajada de la Confederación Helvética de Suiza en La Habana, la cual traducida al español dice lo siguiente:

"Tengo el honor de referirme a las negociaciones que han sostenido nuestras dos delegaciones relativas al establecimiento de una Sección de Intereses de los Estados Unidos de América en la Embajada de Suiza en La Habana y una Sección de Intereses de Cuba en la Embajada de Checoslovaquia en Washington. A tal efecto, hemos establecido de común acuerdo las funciones, personal, privilegios e inmunidades de que disfrutará ambas Secciones bajo régimen de plena reciprocidad. Cada Sección de Intereses estará encabezada por un diplomático con rango de Consejero. Las Secciones de Intereses podrán contratar un número razonable de personal nacional del Estado receptor por intermedio en Cuba de la Empresa CUBALSH y en los Estados Unidos por medio de las prácticas normales de empleo.

Ambas Secciones tendrán sus Oficinas en los edificios que ocupaban las Embajadas de Estados Unidos de América en La Habana y de la República de Cuba en Washington, bajo la protección de la Embajada Suiza en La Habana y de la Embajada de Checoslovaquia en Washington, respectivamente. Ambas Secciones de Intereses serán inviolables. No se podrá penetrar en ellas sin el consentimiento de los Jefes de las Secciones de Intereses.

Mr. William H. Lutens
Acting Assistant Secretary
Of State for the United States
of America.

TIAS 9313

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**WALTER KENDALL MYERS,
a/k/a Agent 202**

and

**GWENDOLYN STEINGRABER MYERS,
a/k/a Agent 123 and Agent E-634**

Defendants

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: **Criminal No. 09-150 (RBW)**
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ORDER

The Court having reviewed the defendants’ Motion for Revocation or Amendment of the Magistrate’s Detention Order, the United States opposition thereto, and the entire record herein, it is hereby

ORDERED that the defendants’ Motion for Revocation or Amendment of the Magistrate’s Detention Order is DENIED; and it is

FURTHER ORDERED that for the reasons stated in Magistrate Judge Facciola’s June 10, 2009, Detention Memorandum, and based on the Findings of Fact stated therein, I conclude that there are no reasonable conditions that could be set that would assure the defendants’ appearance for trial; and it is

FURTHER ORDERED that the defendants, Walter Kendall Myers and Gwendolyn Steingraber Myers, are to be detained pending trial.

Signed on this the _____ day of July, 2009.

Honorable Reggie B. Walton
United States District Judge