

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIGUEL ANGEL CORBACHO DAUDINOT,

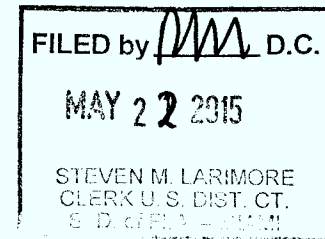
Plaintiff,

CASE NO. 1:13-cv-22589-KMV

v.

YASIEL PUIG VALDES a/k/a YASIEL PUIG
and MARITZA VALDES GONZALEZ.

Defendants.



**EMERGENCY MOTION FOR STAY OF PROCEEDINGS DUE TO NEWLY
DISCOVERED EVIDENCE THAT DEFENDANT'S WRONGDOING HAS
PREVENTED PLAINTIFF FROM PERSONALLY LITIGATING THIS CASE IN THE
UNITED STATES**

COME NOW the Plaintiff, by and through the undersigned counsel, and respectfully file this Motion requesting that this court stay the instant proceeding pending Plaintiff's Resolution of a Travel Ban from Cuba that was caused by Defendant Puig's wrongful actions in Cuba, which were recently discovered by Plaintiff, that have prevented him from timely traveling to the United States, and in support thereof states:

1. The Plaintiffs filed the instant case on July 18, 2013, when Plaintiff, was serving time in Cuban prison as a result of the Defendant's actions, which were alleged in the Complaint.
2. Plaintiff had been convicted to a seven year prison sentence on October 8, 2010, which recognized the time already served by him in prison, which began on January 20, 2010.
3. Despite Plaintiff's unavailability at the time of filing, Plaintiff filed the instant case against the Defendants in the realistic expectation that Plaintiff would be granted provisional release from prison and that his relatives living in Miami, Florida could claim him for the purposes of family reunification.
4. As was expected, on October 6, 2014 the Department of Homeland Security approved an I-130 visa application that was filed on his behalf, which was approved and sent out. In December U.S. Citizenship and Immigration Services indicated that Corbacho Daudinot could



participate in the Cuban Family Reunification Parole Program based on the approval of his Form I-130.

5. Before he could further his efforts to come to the United States, Corbacho Daudinot was once again detained in September 2014 by Cuban police and held without charges until the end of the year.

6. It was not until January 2014, after he was re-released, that Corbacho Daudinot could once again resume his efforts to come legally to the United States.

7. Plaintiff was able to obtain early release of his prison sentence in Cuba, which means that he is deemed as an individual who has fully completed the sentence for which he was convicted.

8. After obtaining his early release, he concluded all of the necessary procedures to bring his citizenship status in Cuba back to that of citizen in good standing. He managed to obtain his identity card and his passport back from the government, which had taken them when he was arrested. He also obtained from the Cuban Tribunal a removal of his name from the No-Fly list based on his conviction in the Cuban Criminal case.

9. Despite all of his diligent effort and success in securing his travel to the United States, Plaintiff was pulled from a line that was boarding a plane to leave the country during March of 2015, because he was on the no-fly list.

10. Plaintiff believed at that time that there may have been some miscommunication between the Tribunal and the National Directorate of Identification, *Direction National de Identification* ("DNI"), which maintains the no-fly list.

11. After much investigation in Cuba regarding Plaintiff's continued inclusion in the no-fly list despite the Cuban Tribunal's consent to his name being excluded from that list, the Plaintiff learned two (2) days ago, on May 18, 2015, that Corbacho Daudinot was on that list as a result of a second case in 2011 involving the Human Trafficking of Yasiel Puig, in which Puig was also the accuser. See "**Exhibit A**", a copy of the sentence No. 229 of May 23, 2011 case, along with its translation.

12. Plaintiff was not a party to that 2011 Cuban case and has no other criminal proceedings in Cuba, however, Yasiel Puig was involved in so many cases in Cuba in which he was accusing individuals of Human Trafficking, that the Cuban court had a template for cases involving his accusations.

13. The Cuban court utilized that template in one such case, identified by Sentence number 229 that took place on May 23, 2011, in which Yasiel Puig was the accuser; the template the court used to write the order for the 2011 case still contained portions of Corbacho Daudinot's criminal case and the court failed to remove Corbacho Daudinot from the sentencing portion of that order, making it appear as if Corbacho Daudinot received a second 7-year prison sentence in that 2011 case.

14. The 2011 case was one where Puig was accusing two men—Alberto Yosbel Bermudez Ferrer and Juan Carlos Lao Gonzalez—who had previously been unknown to Plaintiff, of Human Trafficking. That raises the number of known persons that Puig has maliciously and flagrantly accused of Human Trafficking to eleven (11), including Corbacho Daudinot, Alexander Orozco Noa, Carlos Ivan Hernandez Concepcion, Pablo Camejo Reyes, Odalys Diaz Gonzalez, Armando Muñiz, Eyder Diaz Calderin, Honorio Diaz and Captain Eugenio Cañada Perez, the last of whose family is in the United States and seeking legal grievance against Puig for Cañada's imprisonment and torture in Cuba.

15. Even though he was not part and party to the controversy in the 2011 case, Corbacho Daudinot nonetheless appears in the sentencing order, making appears as though he has a second seven-year sentence for Human Trafficking.

16. It was once again Yasiel Puig's wrongful practice of accusing persons of Human Trafficking that caused Plaintiff to be unable to come to the United States, making his already laborious quest for justice almost impossible.

17. Plaintiff's inability to come to the United States—due to Puig's wrongful actions -caused him to miss a deposition that was scheduled for April 21, 2015. Even though Plaintiff's counsel had been in communication with Defendants' counsel, informing them that Corbacho Daudinot was detained in Cuba as a result of the DNI no-flight list, Puig immediately filed for a Motion seeking Rule 37 sanctions on April 21, 2015, after Plaintiff missed his deposition, requesting that the court dismiss Plaintiff's case as a form of sanctions. That motion is set for hearing on May 27, 2015.

18. Defendant cannot be permitted to gain advantage in the instant case by the commission of his wrongful acts in Cuba. He has engaged in a malicious pattern of criminal accusations in Cuba without regard to the lives he destroys, and he has once again embroiled the

Plaintiff in criminal proceedings to which Corbacho Daudinot was not even a party, conveniently preventing Corbacho Daudinot from traveling to the United States in time to meet with the deadlines established by the Scheduling Order and meaningfully participating in the litigation of the instant case.

19. Plaintiff is now again in the process of attempting to remove himself from the non-fly list due to the 2011 criminal case in which he is not even a party.

20. As of the filing of this motion, the parties have conducted minimal discovery on this case. The trial is set for November 16, 2015.

21. The Plaintiff's testimony is needed to establish the underlying facts of the case, and he should be permitted to present his testimony—not only in a deposition—but also during the trial in the instant case.

LEGAL ARGUMENT

Every district court has the power to stay proceedings as “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of the time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Trial courts are afforded “broad discretion” in determining whether to stay a proceeding. *I.A. Durbin, Inc. v. Jefferson Nat'l Bank*, 793 F.2d 1541, 1551-52 (11th Cir. 1986). Where one or more parties proposes that a pending proceeding be stayed, “the competing interest which will be affected by the granting or refusal to grant a stay must be weighed. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). When deciding the question of whether to grant a stay, “courts generally consider the following factors: (1) whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant. (2) whether a stay will simplify the issues in the case; and (3) whether discovery is complete, and a trial date has been set.” *Tomco Equipment Company v. Southeastern Agri-Systems, Inc.*, 542 F.Supp. 2d 1303.(N.D.Ga. 2008). The Supreme Court stated, however, that among the competing interests to be considered in a motion to stay is “the hardship or inequity which a party may suffer in being required to go forward”. *Landis*, 299 U.S. at 254.

In the case at bar, the Plaintiff has overcome almost insurmountable obstacles—including being suddenly and unexpectedly detained by Cuban police for several months without charges—to come to the United States; he not only obtained permission to travel, but he secured

an early release of his criminal sentence, regaining possession of his identification card, and his passport, and managed to obtain from a Cuban Tribunal an order to remove his name removed from the DNI no-fly list. It was only his unaccountable, forcible, and unknown inclusion in another one of Puig's malicious criminal accusations in Cuba that kept the Defendant from attending his deposition, thereby complying with his discovery obligations and participating actively in the current litigation.

One point that carries great weight in deciding whether or not to grant a stay of proceeding is the stage of litigation. In *Semiconductor Energy Laboratory Co., LTD. V. Chimei Inmolux Corp.*, 2012 WL 7170593 (C.D. Cal 2012), the court held that even though the litigation had been underway for a year, little discovery had been conducted (neither party had served any document requests or written discovery and no parties had taken depositions or undertaken expert discovery), which was a point in favor of a stay. The court held that, since discovery was in its infancy, there was more work ahead of the parties and the court than behind them, and a stay would not unduly prejudice either party.

In the case at bar, the Defendants shall not be prejudiced by a stay in the proceedings. Other than a Request for Production, the Defendants have not undertaken any discovery and the Plaintiff has not demanded any discovery of the Defendants. While it is never pleasant to be under the shadow of litigation, a delay in the instant case, which has not involved discovery or intense motion practice, shall not unduly burden the Defendants in any way, as the underlying facts and the underlying witnesses shall remain the same, and the work to be undertaken to see this case to trial shall remain unaltered by the lapse.

Plaintiff should be permitted the opportunity to remove his name from the no-fly list that would not have been included on the list but for Defendant's pernicious actions. His visa application was approved and the USCIS approved him for the family reunification program, he was released from his sentence, received his passports and legal documentation, and given permission by Cuba to travel, and it was only his wrongful inclusion in Puig's 2011 new Cuban criminal case that have kept him from being here.

Having come this far, it would be unjust and inequitable to deny the Plaintiff his right to pursue this case and to appear at trial to face the Defendants before a trier of fact.

"There is a constitutional right to a fair trial in a civil case." Latolias v. Whitley, 93 F.3d 205, 207 (5th Cir.1996) (quoting Lemons v. Skidmore, 985 F.2d 354, 357 (7th Cir.1993)); see also Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966) (finding that a fair trial is guaranteed to every person by the Due Process Clause of the Fourteenth Amendment to the Constitution); Bailey v. Systems Innovation, Inc., 852 F.2d 93, 98 (3d Cir.1988) (holding that "fairness in a jury trial, whether criminal or civil in nature, is a vital constitutional right"); Chicago Council of Lawyers v. Bauer, 522 F.2d 242, 248 (7th Cir.1975)(recognizing that "the right to a fair trial, guaranteed by the Sixth Amendment to criminal defendants and to all persons by the Due Process Clause of the Fourteenth Amendment").

The court in Latolias, further stated that "it is difficult, but essential to maintain [the right to a fair trial in a civil case] for prisoner-plaintiffs." *Id.* at 207 (quoting Lemons, 985 F.2d at 357). Since "the very nature of a trial as a search for truth" (Nix v. Whiteside, 475 U.S. 157, 158, 106 S.Ct. 988, 989-90, 89 L.Ed.2d 123 (1986)), "at a minimum, fundamental fairness requires that plaintiffs have the opportunity to present their cases" in order for the trier of fact can make a meaningful search for that truth. 93 F. 3d at 207.

The Eleventh Circuit has held that in order to determine whether the prisoner should appear at trial, the district court must consider factors such as "whether the prisoner's presence will substantially further the resolution of the case, the security risks presented by the prisoner's presence, the expense of the prisoner's transportation and safekeeping, and whether the suit can be stayed until the prisoner is released without prejudice to the cause asserted." Ballard v. Spradley, 557 F. 2d 476, 480 (5th Cir. 1977).¹ The court should not base the exercise of its discretion on the probability that a prisoner will succeed on the merits of the claim. *Id.* at 481.

While the cases above, dealt with the issue of Motions for Habeas Corpus Ad Testificandum, which is not an option in the instant case because the Plaintiff is not being held within the United States, they are indicative of the analysis that the court enters in cases like these, when a Plaintiff is unable to testify in court due to a criminal proceeding that bars him from attending the trial. Importantly, the court in Ballard stated that "should other considerations

¹ Prior to October 1, 1981, the 11th Circuit was actually part of the 5th Circuit. After the 11th Circuit was created, it adopted all of the 5th Circuit's holdings prior to October 1, 1981.

be present... a stay of the action may be appropriate.” *Id.* at 481 (quoted in *ITEL Capital Corp. v. Dennis Min. Supply and Equipment, Inc.*, 651 F.2d 405 (5th Cir. 1981).

In the case at bar, the Plaintiff has no other alternative, but to respectfully request that the court stay the proceedings for a period of three (3) months so that he may finalize his visa process and is allowed to attend the deposition—and later, trial—personally.

There will be no prejudice to the cause asserted in the instant case, as all elements are already in place, the witnesses lined up, and the discovery yet conducted. Moreover, Congress anticipated that cases raised under the TVPA, based on the inherent nature of the acts prohibited by the law, which involve extreme suffering conducted under “actual or apparent authority, or color of law, of a foreign nation” for which the Plaintiff must have first “exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred” prior to filing a claim, would require an adequate period of time to be brought before the court, and therefore provided for a ten year statute of limitation for such cases to be raised.

WHEREFORE, Plaintiffs respectfully request, that this Motion to Stay be heard on May 27, 2015 at the hearing already scheduled for Defendants’ Motion for Sanctions, and further requests that, in the interest of conducting through discovery and having a fair trial and permitting the Plaintiff to present his best case to the trier of fact, that the Court enter an order staying the instant proceedings for a three (3) month period so that the Plaintiff can finalize the proceedings to obtain his visa through USCIS’s family reunification program.

Local Rule 7.1(a)(3) Certification

Undersigned counsel called and attempted to conferr with counsel for Defendants, Sean Santini, regarding this motion, but was unable to reach him.

By: s/Kenia Bravo
Kenia Bravo, Esq., FBN 68296
Avelino J. Gonzalez, Esq., FBN 75530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was filed in federal court using CM/ECF on May 22, 2015.

s/Kenia Bravo

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Exhibit A

Sentence Number: Two Hundred Twenty-Nine (229)

In Cienfuegos on May 23rd, 2011

President: Ana Maria Bilbao Ramos

Judges: Vivian Patricias Saez Hidalgo
Maylin Carballosa Padron
Jesús Pena Iznaga
Roque Armenteros Montalbán

Heard: In oral and public trial before the Penal courtroom of The Popular Provincial Tribunal of Cienfuegos, case number ninety-three of the year 2011 of Las Tunas Police Department, followed by a crime of human trafficking.

Appears: The Fiscal Minister

And: The accused, ALBERTO YOSBEL BERMUDEZ FERRER, Cuban citizen, twenty years old, natural of Cienfuegos, son of Juan Alberto and Alina, of single civil status, white, with 12th grade education, unemployed, with I.D. Number 89102031126, domiciling on sixty-second avenue, number 5922, between 59 and 61, Cienfuegos, who is incarcerated without bond, and who is represented by public defender Vidal Martin Noa.

The accused JUAN CARLOS LAO GONZALEZ, Cuban citizen, forty-three years old, natural of Cienfuegos, son of Carlos and Ana, of married civil status, white, with 12th grade education, occupation driver, with I.D. Number 87100726006, domiciling on sixty-third street, building 4, apartment 5, city Grifo, Cienfuegos, who is incarcerated without bond, and who is represented by public defender Aurelio Castillo Alvarez.

As Speaker Provincial Judge of Cienfuegos, Vivian Saez Hidalgo.

First Whereas: It has been proven that ALBERTO YOSBEL BERMUDEZ FERRER, while in Ecuador, a country in which he resided since 2009, in a date not well established but known to be in February of 2010, communicated with his brother Yunier Bermudez Ferrer, a U.S. resident, whom he conveyed his desire to travel to the U.S., his brother told him he would put him in contact with a man known as "Freddy el calvo", a resident of the U.S. who would help him. During the same month, February of 2010, the referred citizen contacted the accused BERMUDEZ FERRER via telephone, whom he assured of his ability to transfer him to the U.S. without complying with immigration procedures, in return he wanted for the accused to return to Cuba and contact in our country the members of the baseball team of Cienfuegos, whom he had to convince to abandon our territory illegally to play in the North American major leagues. In that moment naming the following players Edwin Vassel Pedroso, Pavel Quesada Pedroso, Heiker Hernandez Menendez, Noelvis Entenza Gonzalez and Yasiel Puig Valdez, the escape would take place on a fast boat which would pick them up in some point of the Cuban coast; this was accepted by the accused.

Things being thus, BERMUDEZ FERRER, in order to carry out the plan traveled to our country, on February 24, 2010, and days after took it upon himself to locate the baseball

players to which he would make the offer of deserting our country to play American major league baseball. In this order of events, on March 27, 2010 the subject known as "Freddy el calvo" communicated via telephone with BERMUDEZ FERRER on a cell phone that the accused used, telling him to rent a tourism car so that together with the athletes they could travel to Las Tunas from where they would illicitly leave. BERMUDEZ FERRER communicated with his step-father and also accused JUAN CARLOS LAO GONZALEZ and told him the plans he had, as well as the tasks he had to comply with, accepting LAO GONZALEZ agreed to be part of the plan and since BERMUDEZ FERRER did not have a drivers license and did not know how to drive, the car was rented under LAO GONZALEZ'S name, he rented a Hyundai with tag number T-27033, which would be returned two days later in Las Tunas. In this car, before heading to Las Tunas, they went to Palmira a province in Cienfuegos and contacted on two occasions the pitcher of the Cienfuegos baseball team Noelvis Entenza to propose their offer of leaving the country to play in the North American team, the offer was not accepted by this athlete, and then in the city of Cienfuegos they contacted the right field player of the same team Yasiel Puig Valdez and made the same offer which he did not accept.

So on and so forth things continued on to the houses of Pavel Quesada Pedroso, Edwin Vassel Pedroso, and Heiker Hernandez Menendez, who after a conversation with BERMUDEZ FERRER accepted the offer already narrated and traveled with the accused in the rented car to Las Tunas. During the trajectory the accused received a phone call from the before mentioned "Freddy el calvo" who told him someone named Ivan would call him, and would give him the details related to the established plan. After receiving said call, BERMUDEZ FERRER was told by the before mentioned Ivan that when he got to Las Tunas he was to get out of his vehicle in a place called La Caldoza and begin to walk with a book under his left arm, which would serve as a way to identify him. He and his companions were detained in said city.

Once the accused were detained, BERMUDEZ FERRER'S cell phone which he used to communicate with the exterior, a book which he used to make himself identifiable, a photocopy of his passport and a paper with "Freddy el calvo" name on it were taken as well as the rented car utilized by them to travel.

The accused ALBERTO YOSBEL BERMUDEZ FERRER, of the description before mentioned, of normal social behavior and no penal antecedents.

The accused JUAN CARLOS LAO GONZALEZ, of the description before mentioned, of normal social behavior and no penal antecedents.

Second Whereas: To prove the facts narrated before, this tribunal unilaterally values each and every evidentiary material put in its reach, in first order the declarations offered by the accused dismissing the arguments offered by the same, they entirely deny the narrated events, both alleging that they were doing a favor based on each of their points of view, their allegations are contrasted with the coherent and convincing declarations offered by the witnesses Yasiel Puig Valdes, Pavel Quesada, Edwin Vassel, Heiker Hernandez and Noelvis Entenza, who not only during the oral trial but also during the investigative phase of the process manifested in detail how they were contacted and by who, leaving no doubt about the participation of both accused and their role in the illegal plan to leave the country with the athletes, this being the price that BERMUDEZ FERRER would pay for his desired trip to the U.S. and with the help of the essential co-accused and step-father of the same

that due to the bond that unites them would not have hesitated to help him accomplish his purpose of which he would obviously feel satisfied, apart from this being very clear the last of the baseball players mentioned the active role of LAO GONZALEZ in the intent to persuade him to abandon our country. It is very clear to this tribunal that the actions performed by BERMUDEZ FERRER were to obey instructions from the exterior which would guarantee him his own leave from the country. Evidently this was all known by LAO GONZALEZ, who during the rental of the car as well as during the whole trajectory gave signs of being involved in all the details not only of contacting the ball players but also in the specific form in which the vehicle was being used, vehicle which would be returned in Las Tunas. In this order all the evidence was taken into account, evidence of BERMUDEZ FERRER making contact with the U.S. resident, the information that the accused holds an Ecuadorian citizenship, the fact that the accused had a paper with "Freddy el calvo" written on it, the rented tour car used by the accused, as well as the rental agreement, the social behavior and characteristics of the accused, the characterization of the athletes that were contacted, as well as that from BERMUDEZ FERRER'S brother, resident in the U.S.

Third Whereas: That the Fiscal Minister sustained and raised to definitive the provisional conclusions reached regarding the cause and events narrated, and the imputation and sanctions imposed.

Fourth Whereas: That the mentioned defenders sustained their conclusions established in the case.

First Legal Reason: That the events that have been proven constitute a crime of HUMAN TRAFFICKING as provided in article 347.2 of the Penal Code in force, and conformed to this it appears that the accused dedicated themselves to contacting the different baseball players from Cienfuegos as part of the organized plan so that these without complying with immigration procedures would leave the country, both accused acting in this case based on communications and direction from the exterior.

Second Legal Reason: That the accused are criminally responsible for being the authors of mentioned crime due to the actions they committed aimed at carrying out the criminal activity in this case as established by article 18.1 and 18.2(a) of the Penal Code.

Third Legal Reason: That there are no concurrent circumstances that modify the Penal responsibility faced due to committing this crime, because this tribunal does not consider the circumstances seen in article 52(ch), because in their moment the accused recognized their actions, this position was not held throughout the whole oral trial where they denied particulars of vital importance for the imputation.

Fourth Legal Reason: To establish the adequate measure for a sanction to impose the Tribunal considered what was established in article 47.1 and twenty-seven both from the Penal Code, getting from here the special social danger that the actions of the accused had because of being involved in acts with the goal of accomplishing the illegal desertion of national territory by athletes of Cienfuegos of high performance with high perspectives, not

taking into account the legal immigration procedures that rule and in that way undermining the immigration procedures that our country guides itself by. Apart from this the accused co-worked with people that from the U.S. pretend to not know the prestige of our Revolution and make fun of our laws, inserting themselves in the stealing of our talents which takes place from that country to go against our development. It was also taken into account that the roles of both were active since they were the ones that were in our territory and contacted and in some way materialized in Cuba the idea or plans of the people in the exterior. Taking into account that the accused have a normal conduct and lack penal antecedents and taking into account the social danger already explained, they are deserving of a sanction of being imprisoned for a time close to the minimum limits, determined by their protagonist role in the crime committed on their part, without being used in BERMUDEZ FERRER'S advantage the circumstance seen in article 17.1 of the mentioned Penal norm, because he executed highly dangerous acts which were very well thought out and had nothing to do with immaturity due to his youth, this sanctions will be used to comply with the sanctions provided by the legislator.

Fifth Legal Reason: That this Tribunal considers that we should apply the assessed sanction established in article 43.1 of the Penal Code, consistent with the decommissioning of the instruments used in the crime, that is to say dispose them of some of the goods that were used as instruments to commit the crime, in this case a cellular phone model APHU of black color with its accessories, a photocopy of a Cuban passport and I.D. and Ecuadorian citizenship as well as a book.

Judgment: We find the accused ALBERTO YOSBEL BERMUDEZ FERRER and JUAN CARLOS LAO GONZALEZ as AUTHORS of a HUMAN TRAFFICKING crime and sanction them to EIGHT YEARS of DEPRIVATION OF FREEDOM for the first and SEVEN YEARS OF DEPRIVATION OF FREEDOM for the second, which they must serve in a penitentiary establishment that the Interior Minister assigns.

The accused MIGUEL ANGEL CORBACHO DAUDINOT is sanctioned as AUTHOR of a HUMAN TRAFFICKING crime and is sentenced to SEVEN YEARS OF DEPRIVATION OF FREEDOM, which he must serve in a penitentiary establishment that the Interior Minister assigns.

Additional Sanctions: With the sanction consisting in deprivation of rights are also included the lost of the right to vote actively or passively, as well as the right to occupy an official post in this institution that is related to political activity or administrative activity of the State, or in state economic units or mass social organizations, for the term of the principal sanction.

With regard to occupied property: It is disposed that:

- One cellular phone model APHU black in color with its accessories, used but in good shape be given to the Ministry of Communication.
- One paper cut out is maintained with the events.
- One auto Hyundai brand with its accessories be left to the free disposition of the business TRANSTUR.
- That the rental agreement of one tour car be left with the events.

Precautionary Measure: The precautionary measure of provisional imprisonment is imposed for the accused since they did not give any varying motives for the crime they are accused of and having in mind the nature of the sanction imposed and once settled and firm the sentence and executed the principal sanction the precaution days suffered by the accused will be added.

This sentence is susceptible to an Appeal before the Supreme Court within 10 able days following its notification.

Notified in the preceding form:

BY THESE MEANS WE PRONOUNCE OUR SENTENCE, ORDERED AND AFFIRMED.

(FDO) BILBAO RAMOS, SAEZ HIDALGO, CARABALLOSA PADRON, PENA IZNAGA, ARMENTEROS MONTALVAN.-

MAIKENIA CASTELLON SUAREZ, JUDICIAL SECRETARY OF THE FIRST POPPULAR PROVINCIAL TRIBUNAL OF CIENFUEGOS

I CERTIFY: That the antecedent is an authentic copy of its original that forms part of this case, and that is composed of four pages, and that has been authorized from this legal form, and so that it is recorded I extend the present with the proper date.

VTO. BNO. PRESIDENT

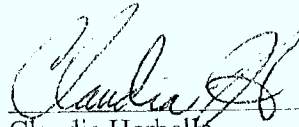
SECRETARY
illegible

CERTIFICATE OF TRANSLATION

STATE OF FLORIDA)
)
COUNTY OF DADE)

Claudia Herbello, being duly sworn, deposes and says:

1. That I am familiar with both the English and Spanish languages.
2. That I have made the attached translation from the annexed document in the English language and hereby certify that the same is a true and complete translation to the best of my knowledge, ability and belief.

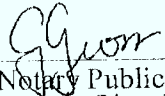


Claudia Herbello

STATE OF FLORIDA)
)
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 21 day of May, 2015 by Claudia Herbello, who is personally known to me or who has produced Drivers Licence as identification.





Notary Public, State of Florida
Name: Gloria Gross
Commission Serial No. _____
My Commission Expires: _____

SENTENCIA NÚMERO: DOSCIENTOS VEINTINUEVE.- (229)
EN CIENFUEGOS A LOS VEINTITRES DÍAS DEL MES MAYO DEL AÑO DOS MIL
ONCE.

PRESIDENTE:

ANA MARIA BILBAO RAMOS.-

JUECES:

VIVIAN PATRICIA SAEZ HIDALGO.-

MAYLIN CARBALLOSA PADRON.-

JESUS PENA IZNAGA.-

ROQUE ARMENTEROS MONTALVAN.-

VISTO, en Juicio Oral y Público ante la Sala de lo Penal del Tribunal Provincial Popular de Cienfuegos, la Causa número noventa y tres del año dos mil once de Instrucción Policial (Las Tunas), seguido de un delito de, **TRAFICO DE PERSONAS.-**

COMPARECE: El Ministerio Fiscal.

Y: El acusado **ALBERTO YOSBEL BERMUDEZ FERRER**, ciudadano cubano, de veinte años de edad, natural de Cienfuegos, hijo de Juan Alberto y Alina, de estado civil soltero, de la tez blanca, con duodécimo grado de escolaridad, desocupado, con carné de identidad número 89102031126, vecino de avenida sesenta y dos, número cinco mil novecientos veintidós, entre cincuenta y nueve y sesenta y uno, Cienfuegos, el que se encuentra asegurado con la medida cautelar de Prisión provisional por estos hechos, y representado por el letrado defensor de oficio Vidal Martín Noa.-

El acusado **JUAN CARLOS LAO GONZALEZ**, ciudadano cubano, de cuarenta y tres años de edad, natural de Cienfuegos, hijo de Carlos y Ana, de estado civil casado, de la tez blanca, con duodécimo grado de escolaridad, de ocupación chofer al momento de los hechos, con número de carné de identidad 87100726006, vecino de calle sesenta y tres, edificio cuatro, apartamento cinco, Pueblo Grifo, Cienfuegos, el que se encuentra asegurado con la medida cautelar de Prisión provisional por estos hechos y representado por el letrado defensor designado Aurelio Castillo Álvarez-

SIENDO PONENTE LA JUEZA PROVINCIAL DE CIENFUEGOS, VIVIAN SAEZ HIDALGO.

PRIMER RESULTANDO: Probado que **ALBERTO YOSBEL BERMUDEZ FERRER**, encontrándose en Ecuador, país donde poseía residencia desde el año dos mil nueve, en fecha no bien determinada pero enmarcada en el mes de febrero del año dos mil diez, se comunicó con su hermano Yunier Bermúdez Ferrer, residente en los Estados Unidos de América a quien le pidió refirió sus deseos de viajar al mencionado país, comunicándole el hermano que en ese caso lo pondría en contacto con un ciudadano conocido por "Freddy el calvo", residente en Estados Unidos que lo ayudaría, así las cosas, transcurriendo el propio mes de febrero del año dos mil diez, el referido ciudadano se comunicó mediante vía telefónica con el acusado **BERMUDEZ FERRER**, a quien le aseguró su traslado a los Estados Unidos, sin cumplir los trámites migratorios, para lo cual y en compensación de ello, debía regresar a Cuba y contactar en nuestro país con integrantes del equipo de béisbol de la provincia de Cienfuegos, a los cuales debía convencer de que abandonarían nuestro territorio ilegalmente para en las grandes ligas del béisbol norteamericano, refiriéndole en esos momentos los nombres de Edwin Vassel Pedroso, Pavel Quesada Pedroso, Heiker Hernández Menéndez, Noevis Entenza González y Yasiel Puig Valdéz, salida que se llevaría a efecto en un medio naval rápido que los recogería en algún punto de las costas cubanas, lo que fue aceptado por el encartado.-

Así las cosas, el acusado **BERMUDEZ FERRER** a fin de llevar a cabo lo acordado viajó a nuestro país, en fecha veinticuatro de febrero del año dos mil diez y en días posteriores no conocidos con exactitud, se dio a la tarea de averiguar cómo localizar a los peloteros a quienes se les haría la propuesta de desertar a fin de que jugaran mediante contrato en el béisbol profesional americano, en este orden de cosas en fecha veintisiete de marzo del referido año, el conocido por "Freddy el calvo" se comunicó telefónicamente con el **BERMUDEZ FERRER**, mediante un teléfono celular que utilizaba el inculcado, indicándole en esa oportunidad que rentara un auto de turismo para que de conjunto con los deportistas se trasladaran hacia la provincia de Las Tunas por donde se realizaría la ilícita salida, por lo que el **BERMUDEZ FERRER** le comunicó a su padrastro y también acusado **JUAN CARLOS LAO GONZALEZ** los planes que tenía, así como las funciones que debía cumplir, aceptando el **LAO GONZALEZ** insertarse en la planificación, y como el

BERMUDEZ FERRER no posea licencia de conducción y de hecho no sabía manejar, el auto se alquilaba a nombre del LAO GONZALEZ, haciendo éste último tal trámite alquilando el auto Hyundai con número de matrícula T-27033, que sería entregado dos días después en la ciudad de Las Tunas, y en el mismo antes de iniciar el viaje a la referida provincia se dirigieron hacia el municipio de Palmira en esta provincia de Cienfuegos y contactaron en dos ocasiones, indistintamente cada acusado con el pitcher del equipo de Cienfuegos Noelvis Entenza a quien ambos inculpados le propusieron su salida ilegal de este país para jugar rentado en el béisbol norteamericano, lo que no fue aceptado por este deportista, y luego ya en nuestra ciudad de Cienfuegos, provincia del mismo nombre contactaron con el jardinero del propio equipo cienfueguero Yasiel Puig Valdéz a quien le hicieron idéntica propuesta no aceptándola esta.-

Así las cosas continuaron hacia los domicilios donde residen Pavel Quesada Pedrosa, Edwin Vassel Pedrosa y Heiker Hernández Menéndez quienes luego de conversar con el BERMUDEZ FERRER aceptaron la propuesta ya narrada, y se trasladaron hacia la provincia de Las Tunas con los acusados en el auto rentado, ocurriendo que durante el trayecto el aludido acusado recibió otra llamada del supra mencionado Freddy quien le indicó que lo llamaría alguien conocido por Iván, cuyas generales se desconocen y la daría detalles relativos a la planificación puesta en marcha, recibiendo dicha llamada el BERMUDEZ FERRER mientras transitaban por la provincia de Camagüey, expresándole el mencionado Iván, que una vez en la ciudad de Las Tunas se bajara del vehículo en el sitio conocido por La Caldosa y comenzara a caminar con un libro debajo del brazo izquierdo, lo que serviría para identificarlo, siendo detenido este y sus acompañantes en dicha ciudad.-

Una vez que fueron detenidos los acusados se les ocupó, específicamente al BERMUDEZ FERRER el teléfono celular utilizado por este para la comunicación con el exterior, un libro utilizado por este para su identificación, una fotocopia de su pasaporte, y un recorte de papel con el nombre de Freddy el calvo, así como el auto utilizado para el traslado.-

El acusado ALBERTO YOSBEL BERMUDEZ FERRER, de las generales antes descritas, de normal comportamiento social y sin antecedentes penales.-

El acusado JUAN CARLOS LAO GONZALEZ, de las generales antes descritas, de buen comportamiento social y sin antecedentes penales.-

SEGUNDO RESULTANDO: Para dar por probados los hechos narrados con anterioridad, este órgano jurisdiccional valoró de forma unilateral y en su conjunto cada uno de los medios probatorios puestos a su alcance, en primer orden las declaraciones brindadas por los acusados desestimando los argumentos ofrecidos por los mismos pues si bien negaron totalmente los hechos narrados alegando en ambos casos que solo hacían un favor, vistos cada uno de ellos desde las aristas que les corresponden, sus descargos se contraponen con las coherentes y convincentes declaraciones ofrecidas por los testigos Yasiel Puig Valdés, Pavel Quesada, Edwin Vassel, Heiker Hernández y Noelvis Entenza, quienes no solo durante el acto de juicio oral sino también durante la fase investigativa del proceso manifestaron detalladamente cómo contactaron con ellos y por parte de quienes, quedando fuera de dudas la participación esencial de ambos encartados en la parte que les correspondía de la organización de la salida ilegal de los referidos deportistas, siendo éste el precio que pagaría el BERMUDEZ FERRER por su anhelada salida hacia los Estados Unidos, recibiendo la cooperación imprescindible del coacusado y padrastró de éste quien por el vínculo que los une no vacilaría en ayudarlo a lograr su propósito de lo cual obviamente se sentiría satisfecho, siendo muy claro además el último de los peñeteros mencionados en cuanto a la activa vinculación del LAO GONZALEZ e el intento por persuadirlo a abandonar nuestro país, estando muy claro para este fuero juzgador que las acciones realizadas por el BERMUDEZ FERRER obedeciendo las indicaciones del exterior le garantizarían su propia salida, lo que evidentemente era conocido por el LAO GONZALEZ, quien tanto durante el alquiler del vehículo como durante el trayecto dio muestras de estar al tanto de todos los detalles no tan sólo con el hecho de contactar directamente a uno de los peñeteros, sino por la forma específica en que se comenzó a utilizar el vehículo cuya entrega se haría en Las Tunas, máxime siendo ellos de la provincia de Cienfuegos, en este orden de cosas se estimaron como pruebas documentales el informe referido sobre los contactos que realizó el BERMUDEZ FERRER

con ciudadano residente en los Estados Unidos, informe relativo a ciudadanía ecuatoriana que ostenta el mencionado acusado, acta de ocupación de diversos artículos al mismo, entre ellos el recorte de papel con el nombre de Freddy el Galvo, acta de ocupación del auto TUR utilizado por los inculcados, así como la copia del contrato de arrendamiento, el acta de entrega del vehículo, investigaciones complementarias referentes al comportamiento social y características de los acusados, informes sobre caracterización de los atletas que se contactaron, así como la del hermano del BERMUDEZ FERRER, residente en los Estados Unidos.

TERCER RESULTANDO: Que el Ministerio Fiscal mantuvo y elevó a definitivas sus conclusiones provisionales obrantes en el rollo de la Causa en el sentido de los hechos narrados, la imputación y la sanción impuesta.

CUARTO RESULTANDO: Que los letrados defensores mantuvieron sus conclusiones provisionales obrantes en el rollo de la Causa.

PRIMER CONSIDERANDO: Que los hechos que se declaran probados constituyen un delito de **TRAFICO DE PERSONAS** previsto en el artículo trescientos cuarenta y siete apartado dos del Código Penal vigente, puesto conforme aparece de los mismos habida cuenta que los acusados se dedicaron a contactar a diferentes pilotos cienfuegueros como parte del plan organizado para que estos sin cumplir con los trámites migratorios salieran del país, actuando ambos encartados en este caso con comunicación y orientación desde el exterior.

SEGUNDO CONSIDERANDO: Que los acusados son responsables penalmente en concepto de **AUTORES** del referido delito por haber ejecutado por sí mismos todas las acciones encaminadas a la realización de la acción delictiva en cada caso, tal como lo establece el artículo dieciocho apartado uno y dos inciso a) del Código Penal.

TERCER CONSIDERANDO: Que en la Comisión del delito no concurren circunstancias modificativas de la Responsabilidad Penal, al no reconocerse por este órgano la circunstancia atenuante prevista en el artículo cincuenta y dos inciso ch), pues si bien en su momento los acusados reconocieron su actuar esta posición no se mantuvo en toda su extensión en el juicio oral donde negaron particulares de vital importancia para la imputación.

CUARTO CONSIDERANDO: Que para adecuar la medida de la sanción a imponer el Tribunal tuvo a la vista lo establecido en los artículos cuarenta y siete apartado uno y veintisiete ambos del Código Penal, partiendo así de la especial peligrosidad social que tuvo el actuar de los acusados al involucrarse en actos tendentes a lograr la salida del territorio nacional de deportistas cienfuegueros de alto rendimiento con grandes perceptivas, obviando los encartados los trámites migratorios que se siguen, socavando así los acuerdos migratorios existentes de los que nuestro país forma parte, además los acusados le hicieron el juego a personas que desde los Estados Unidos pretenden desconocer el prestigio de nuestra Revolución y burlar nuestras leyes, insertándose en el robo de talentos que se lleva a cabo desde ese país en contra de nuestro desarrollo. también se tuvo en cuenta que el actuar de ambos fue activo pues en nuestro territorio fueron los encargados de contactar y de cierta manera materializar en Cuba las ideas o planes de la cabeza pensante en el exterior, entendiéndose que a los acusados les obra una normal conducta y carecen de antecedentes penales por lo que atendiendo a la peligrosidad social ya explicada son merecedores de una sanción privativa de libertad cercanas a los límites mínimos, determinadas en función del mayor o menor protagonismo empleado en el delito por su parte, sin que se asocie en beneficio del BERMUDEZ FERRER la circunstancia adecuativa prevista en el artículo diecisiete apartado uno de la mencionada norma penal, toda vez que ejecutó actos altamente peligrosos de manera bien pensada que nada tienen que ver con la inmadurez propia de su juventud, sanciones con las cuales se puedan cumplir los fines de la sanción previstos por el legislador.

QUINTO CONSIDERANDO: Que este Tribunal considera que debemos aplicar la sanción accesoria establecida en el Artículo cuarenta y tres apartado uno del Código Penal, consistente en el Comiso de los instrumentos del delito, es decir desposeerlos de algunos de los bienes que fueron ocupados y que fueron utilizados como instrumentos para ejecutar los hechos, en este caso de un teléfono celular modelo APHU de color negro con

sus accesorios de una fotocopia de un pasaporte cubano y de la cédula de ciudadanía ecuatoriana así como el libro.-

FALLAMOS: Se sanciona a los acusados **ALBERTO YOSBEL BERMUDEZ FERRER** y **JUAN CARLOS LAO GONZALEZ** como **AUTORES** de un delito de **TRAFICO DE PERSONAS** a **OCHO AÑOS DE PRIVACION DE LIBERTAD** para el primero y **SIETE AÑOS DE PRIVACION DE LIBERTAD**, para el segundo, la que deberán cumplir en el establecimiento penitenciario que le asigne el Ministerio Interior.-

Se sanciona al acusado **MIGUEL ANGEL CORBACHO DAUDINOT** como **AUTOR** de un delito de **TRAFICO DE PERSONAS** a **SIETE AÑOS DE PRIVACION DE LIBERTAD**, la que deberá cumplir en el establecimiento penitenciario que le asigne el Ministerio Interior.-

Sanción Accesorias: Con las accesorias consistente en la privación de derechos consistentes en el período de inhabilitación para el ejercicio del derecho a ocupar cargo de dirección en los órganos correspondientes a la actividad política administrativa del Estado, en unidades económicas estatales y en organizaciones sociales y de masas, por un término igual al de la sanción principal.-

En cuanto a bienes ocupados: Se dispone que:

- Un teléfono celular modelo APHU de color negro con sus accesorios, de uso en buen estado se entregue en calidad definitiva al Ministerio de Comunicaciones.-
- Un recorte de papel se mantenga unido a las actuaciones.-
- Que un auto marca HYUNDAI con sus accesorios se deje a libre disposición del Grupo Empresarial TRANSTUR.-
- Que el contrato de arrendamiento de un auto TUR se deje unido a las actuaciones.-

Medida Cautelar: Se mantiene la medida cautelar de prisión provisional impuesta a los acusados al no haber variado los motivos que originaron su imposición y teniendo en cuenta la naturaleza de la sanción impuesta y una vez firme la sentencia y ejecutada la sanción principal abóquense los días de preventiva sufridos por los acusados en esta

Esta sentencia es susceptible de Recurso de Casación ante la Sala de lo Penal del Tribunal Supremo Popular dentro de los diez días hábiles siguientes a su notificación.-

Notifíquese de la forma legal procedente.-

ASI POR ESTA NUESTRA SENTENCIA LO PRONUNCIAMOS, MANDAMOS Y FIRMAMOS.-

(FDO). BILBAO RAMOS, SAEZ HIDALGO, CARBALLOSA PADRON, PENA IZNAGA, ARMENTEROS MONTALVAN.-

MAIKENIA CASTELLÓN SUAREZ, SECRETARIA JUDICIAL DE LA SALA PENAL PRIMERA DEL TRIBUNAL PROVINCIAL POPULAR DE CIENFUEGOS.

CERTIFICO: Que lo que antecede es copia fiel y auténtica de su original que obra a fojas de la causa, y que ha quedado compuesta de cuatro hojas, y que ha sido autorizada de la forma legal procedente, y para que así conste se extiende la presente en la propia fecha.-
Certifico:

VTO. BNO. PRESIDENTE

SECRETARIA

