

ROLL NO. 2 OF 2011 – MIXED

SENTENCE NO. FOUR OF TWENTY-ELEVEN

IN HAVANA ON THE FOURTH DAY OF AUGUST, TWENTY  
ELEVEN

ACTING JUDGES

PLACIDO BATISTA VERANES  
ALINA SANTANA ECHERRI  
JOSELIN SANCHEZ HIDALGO  
ODALIS FERNÁNDEZ CAPOTE  
JORGE MARRERO CARRASCO

FACT: The Chamber for the Crimes against the State Security of the People's Supreme Court heard a petition for annulment on grounds of error of form and error of law filed by Mr. ALAN PHILIP GROSS against Judgment no. 2, dated March 11, 2011, and handed down by the Chamber for the Crimes against the State Security of the People's Provincial Court of Havana in respect of case no. 2 of 2011 for the crime of Acts against the independence or territorial integrity of the State.

FACT: The actions that were proven under the sentence being challenged have been transcribed below as indispensable for the purposes of the resolution that will be adopted.



It was duly proved that the defendant subject to preventive detention, ALAN PHILLIP GROSS, a US citizen, owner of the company "Joint Business Development Center " (JBDC), 5530, Wisconsin Avenue, Suite 1115, Chevy Chase, Maryland, United States of America, on an undetermined date, but certainly before the month of June of the year 2004, was contacted by Marc Wachtenheim, also a US citizen, of whom he knew was working as a Director of the Project called Cuban Development Initiative of the Pan-American Development Foundation (PADF), an entity that receives funds from the government of the United States of America through the United States Agency for International Development (USAID), which invested part of these funds in implementing programs against the Cuban State whose purposes include destroying the Revolution and consequently, affect Cuba's national independence, so that the defendant would bring down to Cuba a package that, among other things, contained a video camera and was to be delivered to the Cuban citizen José Manuel Collera Vento, a member of the "Masonic Lodge of Cuba". The defendant agreed to satisfy the request and arrived in Havana on the 26th of June of the year 2004. Once in the city, he delivered the package, receiving in turn the sum of approximately 400 US dollars

from the PADF funds after returning to the United States a few days later.

Afterwards, on the early months of the year 2007, without being able to accurately determine the exact date, the defendant ALAN PHILLIP GROSS was contacted again in the United States by Marc Wachtenheim, who was still holding the same position at the Pan-American Development Foundation. This time he asked ALAN PHILLIP GROSS to acquire state-of-the-art communication equipment with the purpose of introducing them in Cuba. ALAN PHILLIP GROSS agreed to do it without any reservations, for he is an expert in this matter, so in order to satisfy such request, he bought a "Smart" cell phone, with a "T Mobile" card and service; a "DELL" laptop computer and a B-GAN satellite connection equipment, model 9201 which, on that same year, started to provide coverage for the Cuban geographical area, and is also characterized by facilitating Internet access through the Immarsat operator, which provides solutions for mobile services at a global scale and is appropriate to easily and expeditiously establish small to medium-size wireless networks for the transmission of e-mails, data files and videos. The detection of such a device is almost impossible, for this is a sophisticated, state-of-the-art equipment which, getting around all national channels, can establish a direct link with satellites. This time, in exchange for his action, the defendant received from Marc Wachtenheim the sum of 5 500 dollars, which came from the Pan-American Development Foundation (PADF).



In the meantime, in that same year of 2007, the defendant ALAN PHILLIP GROSS designed for PADF, a project he called "Information and Communication Technologies for Cuba: a Pilot Project" in which, in addition to the technical features, he also included a strictly political program, through which he intended to provide Internet access to those he called "pro-democracy groups", using satellite communications equipment such as the B-GAN system which he intended to introduce in Cuba by resorting to multiple contacts such as tourists, humanitarian missions and diplomatic pouches and with them, according to his projections, to "break the information access blockade" and "the blockade and close surveillance on communications among pro-democracy groups in Cuba," when, in fact, as a result of the well-known comprehensive blockade being imposed on Cuba and continued by successive US administrations, Cuba has faced technological and economic restrictions to further develop information and communication technologies in society, which includes mass access to information networks. Nevertheless, the defendant submitted his project to Marc Wachtenheim, who refused it. Therefore, the information about the project remained stored in a 'Kingston' thumb drive owned by the defendant.

Later on, in the year 2008, the defendant ALAN PHILLIP GROSS, knowing that the company Development Alternatives Inc. (DAI), domiciled at Wisconsin Avenue, Chevy Chase, Maryland, United States of America, a contractor of the United States Agency for International Development (USAID), was launching a request for proposal for the designing and implementation of a counterrevolutionary project for Cuba called "Cuba Democracy Program", to which a huge amount of money had been allocated, contacted the US citizen John Mc Carthy, a Senior Specialist for Development at Development Alternatives Incorporated (DAI), so that the defendant could take part in the project with the purpose of receiving the financial rewards he might be paid for the implementation of said project in case he was selected.

This program launched by Development Alternatives Inc. was sponsored by the USAID, an institution that serves the interests of the special services of its government, using as a façade the assistance for development. Said entity also pursues, among other goals, the overthrowing of the Socialist Revolution and the establishment of the capitalist system in Cuba, for which it finances a series of programs and provides funds for a wide range of organizations and centers that act against Cuba. On that same year, and through the Office of the Assistant Administrator for Latin America and the Caribbean, DAI had called a tender for projects which, as was said, were destined to support "the programs that could make it possible to expand the scope and repercussion of the independent civil society in Cuba and, consequently, accelerate a peaceful transition to democracy", using as a legal basis Sections 109 and 202 of the Cuban Liberty and Democratic Solidarity Act of 1996, known as the Helms -Burton Act, and sub-paragraph (g) under Section 1705 of the Cuba Democracy Act of 1992, known as the "Torricelli Act", which revealed, given the notorious character of these provisions, the aggressive and interfering nature of those programs intended to influence the civil society in Cuba, its socialist and political system and consequently its autonomy as a nation, to which they have allocated huge amounts of money whose sum total, calculated since the year of 1996 until the year of 2008, exceeds the figure of 65 million US dollars which have been granted to more than 25 US organizations with the purpose of supporting what they call "transition to democracy in Cuba."

By implementing these plans, the United States Agency for International Development (USAID) intended to create the conditions to use these channels in order to disseminate distorted information about the Cuban reality and prevent the State competent authorities from detecting the source of misinformation, and its primary objective was to influence certain sensitive sectors of society such as religious groups, youths, blacks, women and social strata they consider marginal with the purpose of discrediting the Revolutionary Government and thus provoke the kind of discontent that would

create the conditions to promote civil disobedience actions or disturbances that would allow them to portray an image of social and political chaos in the country, thus making it possible for its government to carry out maneuvers against Cuba aimed at annihilating its Revolution, with the subsequent harm to the constitutional stability that the Cuban people are entitled to.

In the mean time, in order to meet his goal of actively participating in the aforementioned "Cuba Democracy Program" and receive the financial reward offered, which exceeded the figure of 250 000 US dollars, the defendant ALAN PHILLIP GROSS also submitted to Development Alternatives Inc. (DAI) a record of his personal performance and his *curriculum vitae*, where he described his personal experience and that of his company in the use of modern communication technologies that had already been implemented in a number of countries. These elements allowed him to be chosen and to materialize his intentions contained in the aforementioned Program. Thus, and to such purposes, on October 30th of 2008, the defendant ALAN PHILLIP GROSS signed with the DAI, represented in the person of Samuel L. Williams, who was the manager of that institution, a confidentiality or non-disclosure agreement, given the clandestine character with which the Project was to be implemented in Cuba.

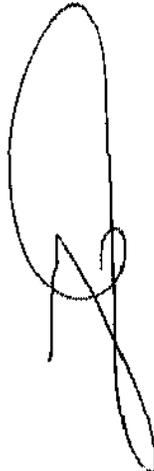


The Project designed by the defendant ALAN PHILLIP GROSS, which he called "For the Island", essentially described the ideas he had discussed during his previous attempt to approach Marc Wachtenheim, which he entitled "Information and Communication Technologies for Cuba: a Pilot Project", since it coincided with the requirements of the DAI "Program" which was already in progress and involved the use of portable devices, cell phones and wireless high fidelity satellite transmission equipment to facilitate "unrestricted" transmission of information and communications among what he called "democracy activists" and "other participants" so that, in this way, "these communications could not be monitored", the purpose of which being, as he himself stated, "to contribute to the promotion of a just and democratic government" in Cuba.

The defendant ALAN PHILLIP GROSS reiterated in the documents he drafted for the aforementioned Project his intentions and those of his sponsors to contribute to a "peaceful transition in Cuba" which, in the context of the interests of said agencies, is nothing but the destruction of the Cuban Socialist Revolution and the sovereignty of the country, for which he designed a website in Internet that he designed and hosted in Google that would remain valid for a year and was due to expire on February 12th of 2010, under the name "For the Island. Net", and whose configuration offered several services such as an encyclopedia and the possibility to send and receive e-mails and videos. Its home page showed, in addition to the name given to

the site, the phrases "If not now, when" and "The future of Cuba is now", against a backdrop displaying a Cuban national flag, which was an obvious subliminal encouragement to subvert Cuba's economic, social and political order.

Later on, the defendant ALAN PHILLIP GROSS, using the funds provided by Development Alternatives Inc. (DAI), which exceeded the figure of 60 000 US dollars, purchased 63 pieces of equipment and their state-of-the-art accessories to introduce them surreptitiously in Cuba and use them later in the installation of three Internet access networks via satellite in the western, central and eastern regions of Cuba, particularly in the cities of Havana, Camagüey and Santiago de Cuba. To that end, he contacted in New York, the United States, the US citizen Williams Recant, a member of a Jewish organization based in that country to whom he said, without providing further details, he would participate in a project called "For Cuba". Williams Recant recommended ALAN PHILLIP GROSS to contact Cuban citizen William Miller Espinosa, who belonged to the Jewish Community in Cuba, and through Recant he knew of the existence of Jewish groups who traveled to Cuba frequently. Then, the defendant ALAN PHILLIP GROSS got the idea of introducing the equipment in Cuba using the visitors of the Jewish community, whenever the circumstances allowed, for which he also applied for a travel license from the Office of Foreign Assets Control (OFAC) of the Treasury Department of the US Government and also an export license from the Department of Commerce of the aforementioned government, describing in both applications the high level of confidentiality of his Cuba contracts and stating that he would be extremely careful not to run into any risk and also expressing that all this work would be done with "non-governmental groups", after which he managed to obtain the corresponding licenses to travel to our country.

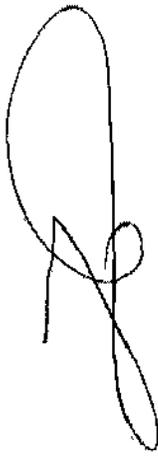


After securing all such logistics and hoping to be financially rewarded for the services he could offer to Development Alternatives Inc. through the Project he had designed, the defendant ALAN PHILLIP GROSS, in his attempt to undermine Cuba's national independence, made his first trip on March 30th of 2009, and brought with him all the information and communication equipment and means necessary to install a network, which he managed to introduce in the country without their being detected by the Customs at Havana's "José Martí International Airport. On that occasion, the defendant contacted the aforementioned William Miller Espinosa at the synagogue of the Jewish Community in Havana, at Calle I, No. número 263, esquina a 13, Municipio Plaza de la Revolución, where he took the equipment pieces to and interconnected them using a B-GAN device, which allowed him to establish satellite communication. ALAN PHILLIP GROSS said to Miller Espinosa that his intention was only "to improve communications among the Jewish communities," thus concealing the true purposes of the DAI Program sponsored by

USAID. This time, ALAN PHILLIP GROSS, using the system he had installed, established communication with several persons, including John Herzog, Subcontracting Manager of Development Alternatives Inc.

During that stay in Cuba, the defendant, ALAN PHILLIP GROSS, also devoted himself to training Havana Jewish Community members Jeiro Montaigne Babani and Fernando Cheong Cisnar in the use of the equipment without telling them about the real end he pursued. On said occasion the defendant made connectivity tests in the area surrounding the aforementioned institution and installed into the network several wireless points of access in different locations inside the synagogue to provide Internet access to the highest possible number of people who visited the community, whether or not they were members, so that, some day, these modern satellite communication means could be used by the true end users of this "Program": the members of the internal counterrevolution.

Upon his return to the United States on April 6<sup>th</sup> of 2009, the defendant ALAN PHILLIP GROSS, just as it had been agreed, sent a report on the results achieved in Cuba to John Herzog, who was the person in charge of receiving them after each trip the defendant made to Cuba. Besides, this was the proof ALAN PHILLIP GROSS was required to submit in order to receive the payment for the implementation of the "Project."



In the aforementioned report, the defendant, ALAN PHILLIP GROSS, informed John Herzog that he had created the website "For the Island.Net" to provide the users of these wireless networks he was installing with Internet access, and that he was doing proselytism among them so that they would use this site to open their e-mail accounts instead of using other sites such as Gmail, Yahoo or Hotmail, which would make it easier for him to track users. Likewise, ALAN PHILLIP GROSS informed Herzog that he had advised the aforementioned clients that they should not use their own surnames in the e-mail addresses they created, obviously to make their identification by the competent Cuban authorities all the more difficult.

Continuing with his unlawful behavior, and in order to prevent Cuban Customs officials from detecting the introduction of these satellite communications means into the country, and to avoid being discovered as well as prevent his plans, which were already under way, from being foiled, the defendant, ALAN PHILLIP GROSS, made contact in the United States with Suzane Andisman, a member of the US Jewish community who would travel to Cuba as part of a religious group, and he requested her to include in her luggage some communication equipment, something that the aforementioned US citizen agreed to do without knowing the true plans of the defendant. ALAN PHILLIP GROSS traveled to Havana on the 25th of April of

2009 and brought with him a B-GAN satellite terminal plus one laptop computer. Suzane Andisman traveled the day after carrying the rest of the equipment required to install a network. Both Suzane and ALAN PHILLIP GROSS arrived in the Cuban capital through the "José Martí" International Airport and met later at the "Parque Central" Hotel of the aforementioned city where the defendant, ALAN PHILLIP GROSS, picked up the equipment that Andisman had brought to him.

Under such circumstances, the defendant, ALAN PHILLIP GROSS, traveled to Santiago de Cuba carrying the aforementioned equipment and once there he contacted the leader of the Jewish Congregation, Eugenia Farín Levy, to whom he gave the aforementioned devices and he made her believe it was "a donation to improve communications among the Jewish communities", and immediately proceeded to install them at the site of the Jewish Community of the aforementioned city at Calle Corona, Número 253, entre Habana y Maceo, from where he tried to establish communication, to no avail, as the connectivity device of the B-GAN was out of order, so he decided to leave the equipment there, travel back to the capital later and return from there to the United States of America on May 4th of that same year.



After concluding this trip, the defendant, ALAN PHILLIP GROSS, sent to his DAI sponsors, just as he had done on the previous occasion, a detailed report about his activities in Cuba emphasizing, among other details, the identity and social function of the person he had met in Santiago de Cuba, the population of that province and the distribution of its inhabitants.

The defendant, ALAN PHILLIP GROSS, persisting in his unlawful behavior, planned his third trip to Cuba with the purpose of continuing the surreptitious introduction of information and communication equipment in order to create wireless data networks for the aforementioned goals. And in order to do that without being detected by the Cuban custom authorities, he made contact, from his office in the United States, with US citizen Richard Klein, who was also a member of a Jewish group who would be traveling to Cuba accompanied by other members of his own congregation and to whom ALAN PHILLIP GROSS asked to include some of these equipment in his luggage, a request Richard Klein accepted without knowing the true ends sought by the defendant, so he traveled to Cuba carrying the aforementioned equipment on June 4th of 2009, while the defendant, ALAN PHILLIP GROSS, also traveled on that same date but on a different flight, thus managing to avoid drawing the attention of the Customs officers at Havana's José Martí International Airport.

Once they were in Cuba, the defendant, ALAN PHILLIP GROSS, picked up the information and communication equipment brought in by Richard Klein, which would allow him to install another communication network similar to the previous two and it would provide satellite access because one of its components was also a B-GAN terminal. Carrying these equipment, ALAN PHILLIP GROSS drove to Camagüey where he contacted David Pernas Levy, President of the Jewish Community in that province, to whom he said that those equipment were a donation from the Jewish Community in the United States to improve communications among the Cuban Jewish Communities, thus concealing, once again, the true purposes he pursued and, with Pernas' consent, he installed the equipment at the site of the aforementioned congregation at Calle Andrés López Sánchez, Número 365 entre Joaquín de Agüero y Capdevila, Camagüey; he put in place a wireless satellite communication network and performed some connectivity tests until he managed to connect with Internet, after which he returned to Havana and from there to the United States on the 18<sup>th</sup> of the same month.

Upon his arrival in the United States, the defendant, ALAN PHILLIP GROSS, just as he was instructed to do, drafted a detailed report which he submitted to his Development Alternatives Inc. sponsors in order to receive the financial reward for his work and informed them about the steps he had taken to transfer all the equipment to the cities of Santiago de Cuba and Camagüey to avoid being detected by the Cuban authorities. ALAN PHILLIP GROSS unequivocally described this work as a very risky task, stating that the detection by the Cuban authorities of the communication network he was putting in place "would lead to the confiscation of the equipment and the arrest of users", among other things.

Thus, and insisting on his purpose of creating clandestine wireless communication networks in Cuba to facilitate the transmission and reception of materials to and from other countries as well as inside the country among individuals who are contrary to the revolutionary process, the defendant, ALAN PHILLIP GROSS, on an undetermined date, drafted an extensive document which he stored together with others in his "Kingston" thumb drive, dated in June 2009, with the password "Joint9," and which he entitled "How to communicate safely in repressive environments," explaining it was "addressed to the political activists operating in non-permissive environments and those who support their work" and where he described an entire work methodology to be implemented to this end, using state-of-the-art information and communication devices such as mobile phones, digital cameras, computers, thumb drives, e-mail communication, websites, IP Volumes, blogs, cyber-cafes, as well as the measures to be taken by individual users and the most reliable technical means, and concluded that he had done that work taking as a basis the compilation of materials on the subject and "his personal experience

and that of other colleagues”, the content of which is fully consistent with the activities carried out by the defendant, ALAN PHILLIP GROSS, while implementing his Project “For the Island” and the information and communication equipment he purchased for that purpose and the measures taken by him to deploy the means introduced in Cuba.

Afterwards, the defendant, ALAN PHILLIP GROSS, traveled on two other occasions to Cuba, from the 22nd to the 31st of July and from the 24th of November of 2009 until the 3rd of December of that same year, the date when he was arrested. He visited the capital of the country and the cities of Camagüey and Santiago de Cuba, where he had installed Internet access networks via satellite for counterrevolutionary purposes, with the intention of recruiting and training more persons in the use of these means, who would also be responsible for taking good care of said equipment, always following the instructions contained in the contract signed with Development Alternatives Inc. (DAI), which required the submission of a report after each trip in order to secure his financial reward which, by the time the Project was completed, would total 258 274 US dollars, thus evidencing the business-for-profit nature and the conspiratorial and covert character of the defendant’s actions aimed at creating a technological infrastructure almost impossible to detect by the Cuban authorities, which would enable the aforementioned US government agencies and the very government of that country to meet their goals to undermine the Cuban constitutional order and thus harm the independence of the State.



In the month of November of 2009, when the defendant, ALAN PHILLIP GROSS, was still in the United States of America, he received a telephone call from US citizen Akram Elias, ex Grand Master of the Masonic Lodge of Washington, a person whose behavior is characterized by being very much contrary to the Cuban political system, who called ALAN PHILLIP GROSS at the suggestion made by John Mc Carthy, given Akram Elias's interest in the “Cuba Democracy Program” of the company Development Alternatives Inc., in which the defendant was working, and agreed to meet and talk with him at a cafe nearby the defendant’s office. During said meeting, Elias inquired about the possibility to expand the actions that were being carried out by the defendant to include the Cuban Masonic lodges. They both agreed to meet in Havana in the month of December that same year to continue discussing the matter, on the occasion of Akram Elias's visit to Cuba.

Thus, on December 2nd of 2009, while the defendant, ALAN PHILLIP GROSS, and US citizen Akram Elias were in Havana, they agreed to meet at the “Hotel Nacional de Cuba”, where they took up again the idea they had discussed in Washington to expand the Project to include Cuban Masonic institutions, so they agreed to have a next

meeting to streamline the details. Said meeting did not take place due to the detention of the defendant, ALAN PHILLIP GROSS, by Cuban authorities in the evening hours of the 3<sup>rd</sup> day of the same month. During his arrest, he was found in the possession of two thumb drives, one of them was a "Micro Center" brand and the other was a "Kingston" brand, where he had stored many of the documents that contained the projects that the defendant was implementing against the Cuban State.



Every time the defendant, ALAN PHILLIP GROSS, traveled to Cuba to surreptitiously introduce information and communication equipment himself or using other persons, he did so having a tourist visa, so he was required to declare that equipment to the Cuban Customs officers. But he did not do that. He surreptitiously introduced them in Cuba to install the aforementioned satellite communication wireless networks in addition to recruiting or training other persons to operate and take care of said equipment. After the defendant's detention, the three locations where the aforementioned wireless networks had been installed were searched and the authorities in charge of the investigation of the case seized three BGAN satellite communications terminals—a Hughes brand, Model 9201—with their cards, connection cables and batteries; three laptops—one Mac Book and two Apples—with their feeding cables and current transformers; three Routers—one Workgroup Switch Linksys, one Linksys Cisco model with its feeding cable and transformer, Model LS120V-15ALE, and one Ruckus wireless, Model Zone Director 1000 with its cable and transformer; 13 Blackberry phones, Model 8320, with their corresponding hand-free cables, earphones and battery chargers, their SIM cards and SD micro, in addition to their battery chargers; 6 Wester Digital external hard drives with their connection cables; 2 Polycom multi-conference internal communicators; 2 Logitech Web Cameras; one Radio Shack Frequency Modulator; 14 wireless transmitters or Ruckus access points, all with their respective network, feeding and transformer cables; 10 Apple Ipods; a Clarisys Internet protocol telephone with its USB connection cable; one Kingston thumb drive of two Gb capacity; one Magic Jack Modem with USB connection; one pair of Logitech earphones with integrated microphone; one Clarisys phone and the telephone line 202-280-7647; one Cisco router with its cable and current transformer; one Linksys wireless Switch with its cable and current transformer; a Cisco Linksys router with its cable and current transformer; a mobile phone charger with its connection cable; one Linksys Switch with its cable and current transformer; one Logitech mouse; one Eddier bauer green compass; one pair of Logitech earphones with integrated microphone and connectors; one Coming Data CP 0520 current transformer with a Belkin F5U 404-BLK connection device and four USB ports; one Clarisys Ip telephone with its connecting cable; 6 current adaptors; 4 Wonpro current adaptors; 2 thumb drives, one Kingston and one Microcenter; one Router with its cable and current

transformer; and, one adaptor cable with two USB ports in white color.

That the detained defendant, ALAN PHILLIP GROSS, 61, a person whose other personal and individual information is stated herein, graduated with a BS in Sociology and Health from the University of Maryland. He obtained a Master's degree in Social Work from the Virginia Commonwealth University School of Social Work, where he has also worked as an associate professor. He was a member of the Bethesda Jewish Federation in Maryland and of the BBYO. He has been senior partner or executive of several companies in the United States of America. At the moment when these events occurred, he was the owner of the "Joint Business Development Center, LLC", based in Maryland, the United States. He has worked in over 50 countries of Africa, Europe, Asia and Latin America.

The defendant has particularly set up the VSAT communications system for the US government under contract for various institutions that receive funds from the USAID in countries like Iraq, Afghanistan, and Pakistan, and sold these communications systems to military units of the US Army National Guard some of which have been involved in missions in the abovementioned countries. He was once directly hired by USAID to conduct a commercial feasibility study at the Israeli-Palestinian border. In the 1990s, after the demise of socialism in East Europe, he was hired by various firms, companies and Non-Governmental Organizations (NGOs) to conduct feasibility and trade studies and projects that facilitate the transit to a capitalist system. He has maintained a laudable behavior along the canons of US society and he has no criminal record in Cuba.



FACT: In the judgment of the People's Provincial Court, the events this court determined as proven qualified as the crime of Acts against the independence and/or territorial integrity of the State, as set forth in Article 91 of the Criminal Code, with the amending circumstances of criminal liability defined in Article 53 (b) of the aforementioned Criminal Code; consequently, the court sentenced Mr. ALAN PHILLIP GROSS to fifteen years of incarceration with the applicable accessory penalties.

FACT: The petition for annulment on grounds of error of form was filed in accordance with Article 70.5 of the Criminal Procedure Act.

FACT: The petition for annulment on grounds of error of law was filed in accordance with Article 69.3 and 69.6 of the Criminal Procedure Act.

FACT: Petitioner ALAN PHILIP GROSS requested that a hearing be held.

Justice PLACIDO BATISTA VERANES acted as PRESIDING JUDGE

WHEREAS: Further to the review of the judicial proceedings in respect of this case and further to the completion of the judicial formalities and requirements defined in the Criminal Procedure Act, the petition was accepted, and given the nature and characteristics of this case, the hearing has held at the headquarters of the People's Supreme Court on July 22, 2011, with the attendance of defense counsel Armanda Nuris Piñero Sierra, defendant ALAN PHILLIP GROSS and the Prosecutor.

WHEREAS: The judicial process requires that the order in which the grounds for the petition were submitted in writing be reversed. The grounds of error of form must be treated before the grounds error of law, because the assessment of any of the former will render the review and solution of the latter inappropriate. Hence, the grounds of form, as supported by Cause 5 of the Criminal Procedure Act and in respect of which petitioner ALAN PHILIP GROSS notes that the findings obtained from the seized thumb drives were inapplicable as prosecutor's evidence because the effective and procedural law does not include a procedure that regulates the retrieval of digital documentation. Having said the above, the scientific and technological development and advances have caused that the concept of "document" be updated. This concept cannot be restricted exclusively to a piece of paper that reflects and contains a human statement in writing. The diversity of physical storage devices that can appropriately embody and perpetuate ideas and statements of will by persons, as well as other events of life, has multiplied to include, inter alia, videotapes and/or films, disks, audio tapes, floppy disks and thumb drives that may contain elements of proof and legal relevance that may be part of the legal traffic. As a result, the assessment made by the acting court in regards the contents of the thumb drives seized from defendant ALAN PHILLIP GROSS was correct in keeping with the requirements of the Criminal Procedure Act for the sole objective of uncovering the objective truth of the amenable events; particularly when the essential contents therein were corroborated by abundant evidence supplied by eyewitnesses, documents and expert opinions that were reviewed during the hearing in strict compliance with the legal principles and procedural guidelines of publicity, oral deposition, immediacy and contradiction, all of which helped the parties uphold their respective points and the court make an objective, sufficient and rational assessment of the criminal acts committed by the defendant.

WHEREAS: The actions judged as proven by the court of first instance show that Mr. ALAN PHILLIP GROSS consciously and voluntarily accepted, and in exchange for money, supplied services for the United States Agency for International Development ("USAID"), the purpose of which was to design and implement a

program to destroy or overthrow the economic, political and social order established by the Cuban people in the permanent and democratic exercise of its right of self-determination, and to that end, Mr. ALAN PHILLIP GROSS traveled to Cuba on a tourist visa in several occasions and unlawfully imported wireless satellite communication equipment and materials, which he installed in different Cuban cities, and he trained individuals on their operation for the purpose of creating clandestine networks for access to distorted news reports aimed at causing confusion and discontent against the legitimately established political and revolutionary power in Cuba; i.e., the objective of the military, political, economic and financial war waged by the US Government against our people.

WHEREAS: In keeping with the above, the People's Provincial Court of Havana was right in qualifying the actions perpetrated by Mr. ALAN PHILLIP GROSS as a crime of Acts against the independence or territorial integrity of the State, which are punishable under the existing law that protects the sovereignty and self-determination of the Cuban people. For this reason, the ground for the petition by Mr. ALAN PHILLIP GROSS to claim the application of Article 11 of Law no. 88, dated February 16, 1999, must be rejected. The aforementioned article punishes the offenses that arise from actions promoted by the US Government, but limits its scope to the acts of distribution of financial and/or material resources. Therefore, in accordance with the principle of legality that characterizes the Cuban system of justice and laws, a criminal norm, which content differs from the actions perpetrated by the defendant, is not applicable, as was the case here.



WHEREAS: The court of first instance has the authority to either apply, in favor of defendant ALAN PHILLIP GROSS, or reject the amending circumstance of criminal liability defined in Article 52(ch) of the Criminal Code. The court acted wisely by arguing in its judgment that no effective repentance was evidenced in the defendant's behavior. It was noted that the defendant's recognition of his actions did not occur with sincerity or effectively contributed to their clarification, since the defendant did not acknowledge the politically destructive intent of his actions. The decision adopted by the court of first instance was correct because the aforementioned mitigating circumstance is based on a behavior that is peripheral to the criminal offense; in other words, a positive conduct in regards the material and social consequences of the criminal offense for the purpose of either mitigating its impact or redressing the aggrieved party, and a conduct of cooperation with the justice administration through confessions to the law enforcement authorities and agents. While the position adopted by Mr. ALAN PHILLIP GROSS was appropriate and had a bearing on the judgment issued by the court of first instance that reduced the sanction requested by the prosecution, his recognition of his actions did not reflect any spontaneous or effective repentance,

nor did the defendant show any willingness to redress or diminish the impact of his unfair actions or to apologize to the Cuban people as the victim of the US Government actions, and these reasons are sufficient to confirm the just and proportionate sentence of fifteen years of incarceration imposed on Mr. ALAN PHILLIP GROSS; consequently,

THIS COURT HAS DECIDED AS FOLLOWS: The petition for annulment on grounds of error of form and error of law filed by defendant ALAN PHILLIP GROSS against Sentence no. 2, dated March 11, 2011, and handed down by the Chamber on Crimes against the State Security of the People's Provincial Court of Havana is hereby denied, and the aforementioned sentence is hereby confirmed and declared firm in all its parts.

NOTICE of this resolution shall be given to the court of first instance and to all the parties to these proceedings. The trial records shall be returned to the aforementioned trying court. And for this purpose, all the relevant notices shall be served. This roll shall be archived subject to prior observance of the notation requirements established by the law.

IN WITNESS WHEREOF, the undersigned have adopted and delivered this sentence.

A large, stylized handwritten signature in black ink, appearing to be a cursive representation of a name, possibly 'A. N. P.', written over a faint, illegible stamp.

*Abel Armando Nave Pineda Sierra*

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