

COURT ORDERS FIVE DEPORTED TO CUBA

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Body

A Federal appeals court here refused today to block the deportation of five Cubans being held in a Federal prison. The expulsions, set for Thursday, would be the first since the 1984 immigration treaty between the United States and Cuba was suspended three years ago.

The decision by the three-judge panel was immediately appealed to the Supreme Court by attorneys for the detainees. But a Justice Department spokeswoman said the Government was confident that the decision would be upheld.

"They will be the first five to go back," said Deborah Burstion-Wade, the Justice Department spokeswoman. "We expect that there will be others before the end of the year."

The agreement under which they will be returned to Cuba was first negotiated and signed by the United States and Cuba in 1984. It was suspended the following year, then reinstated in 1987.

All Convicted of Crimes

It named 2,746 Cubans among the 125,000 who came to the United States in the 1980 Mariel boatlift whom United States officials deemed dangerous criminals, mental patients or undesirable and sought to repatriate.

All five of those whom the United States wants to deport Thursday were convicted of crimes in the United States. Ms. Burstion-Wade said the five are to leave from the Air National Guard field in Birmingham, Ala., aboard a United States Marshal Service airplane.

The five are among the 116 Cubans being held at a Federal prison in Talladega, Ala., where the Justice Department is hearing appeals of deportation orders handed down by the Immigration and Naturalization Service.

Fifteen Cubans have exhausted their appeals and were ordered on Nov. 17 to be returned to Cuba. But their attorneys charged that the Government had violated the procedure laid down for such appeals after riots by Cuban detainees last year, and that it had also failed to adequately consider their requests for political asylum.

More Hearings Scheduled

Attorneys for the 15 appealed the Nov. 17 decisions to a Federal Court in Birmingham, where on Tuesday they were denied an injunction halting the deportations. They then appealed to the United States Court of Appeals for the 11th Circuit, which ruled today.

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The cases of the other 10 who have exhausted their appeals through hearings before the I.N.S. and Justice Department are scheduled to be heard in Federal Court in Birmingham on Monday, said Gary LeShaw, an attorney with the Atlanta Legal Aid Society.

He said that an unfavorable ruling by the Supreme Court in the appeal of those slated to be flown to Cuba on Thursday could mean the return of the remaining 10 as early as next week.

Among the five men who are scheduled to be returned to Cuba on Thursday and who had appealed their deportation orders are Onel Calzado Garlobo, 43 years old, convicted of attempted sexual molestation; Rene Maurin Oliva, 25, convicted of theft and battery, and Miguel Beitia Socarraz, 28, convicted of burglary. Two others, Hector Hernandez Quesada and Angel Meneses Hernandez, did not appeal their deportations to the Federal courts.

Suspended in 1985

In the first year of the agreement, 201 of those named were returned to Cuba, but the agreement was suspended in 1985 by the Government of Fidel Castro in retaliation for American support of Radio Marti, a news and information program broadcast from Miami, financed by the United States Government and staffed by Anti-Castro Cuban Americans.

Since then, many of the Cubans, classified as excludable aliens because they had committed crimes since arriving in the United States, were held in Federal prisons, even after serving their sentences for their crimes, while Government officials sought to re-establish the agreement with Cuba.

Last November, the agreement was re-established. Detainees who did not want to go back to Cuba immediately rioted in the Federal penitentiaries in Oakdale, La., and Atlanta.

Those riots ended with an agreement to establish new procedures for paroling detainees into American society and an appeal to the Justice Department by those detainees recommended for deportation.

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