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IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

APR 24 1989

Clara, U.S. District Court
Alexandria, Virginia

UNITED STATES OF AMERICA

v.

JOSEPH F. FERNANDEZ

CRIMINAL NO. CR89-00150-A

VIOLATIONS:

18 USC 1505
Obstruction of
Proceedings
(Counts 1 and 3)18 USC 1001
False Statements
(Counts 2 and 4)INDICTMENTAPRIL 1989 TERM - At AlexandriaCOUNT ONE

THE GRAND JURY CHARGES THAT:

INTRODUCTION

1. At all times relevant to this Indictment, the Central Intelligence Agency ("CIA") was the principal United States Government agency responsible for the collection of foreign intelligence and the conduct of covert action and foreign intelligence operations.

2. At all times relevant to this Indictment, the defendant JOSEPH F. FERNANDEZ was an employee of the CIA, serving as the chief of station in Costa Rica. As the CIA chief of station, the defendant FERNANDEZ had immediate control over and responsibility for all CIA operations in Costa Rica. The defendant FERNANDEZ reported to and received

OFFICE OF
INDEPENDENT COUNSEL

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supervision from the Chief of the CIA's Central American Task Force, who was stationed at CIA headquarters in Langley, Virginia.

3. At all times relevant to this Indictment, the National Security Council ("NSC") was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense. At all times relevant to this Indictment, other officials were also members of the NSC by appointment of the President. The function of the NSC was to advise the President on the integration of domestic, foreign and military policies relating to the national security, to facilitate cooperation among the military services and other departments and agencies of the government in matters involving the national security, and to review, guide and direct foreign intelligence and covert action activities.

4. At all times relevant to this Indictment, the Contras, also known as the Nicaraguan democratic resistance, were military insurgents engaged in military and paramilitary operations in Nicaragua. In many instances, these operations occurred near the borders of Costa Rica and Honduras, Nicaragua's neighboring countries to the south and north, respectively.

5. From in or about December 1981 to on or about October 11, 1984, the United States Government, acting

principally through the CIA, pursuant to written presidential findings, provided the Contras with financial support, arms and military equipment, as well as supervision, instruction, tactical and other advice, coordination, intelligence and direction.

6. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited funds, including salaries, available to the CIA as well as certain other agencies and entities of the United States, from being obligated or expended in support of military or paramilitary operations in Nicaragua. This provision of law was commonly known as the Boland Amendment.

7. On August 12 and December 4, 1985, Congress adopted modifications to the Boland Amendment that authorized the provision of humanitarian aid to the Contras, including communications equipment and communication training, and allowed United States government employees to exchange information with the Contras, including "advice" on the "effective delivery and distribution of materiel." At all times between October 12, 1984 and October 17, 1986, however, the CIA was prohibited from spending funds (including funds for salaries and transportation) for activities that "amount[ed] to participation in the planning or execution of military or paramilitary operations in Nicaragua by the Nicaraguan democratic resistance, or to participation in logistics activities integral to such operations." As of

October 18, 1986, Congress again authorized the CIA to provide military aid to the Contras.

8. At no time during the period October 12, 1984 through October 17, 1986, was any member of the NSC staff authorized by a presidential finding to undertake any covert or special activities with respect to Nicaragua, including any of the covert or special activities previously undertaken by the CIA. At all times during this period, Oliver L. North was a member of the NSC staff.

9. On October 6, 1986, a plane carrying lethal supplies for delivery to the Contras was shot down over Nicaragua. The sole survivor of this incident was an American citizen named Eugene Hasenfus.

10. In early November 1986, reports appeared in the foreign and domestic press that the United States Government had participated in the shipment of arms to Iran.

11. On November 25, 1986, the Attorney General of the United States announced that proceeds from the arms transfers to Iran may have been diverted to assist the Contras.

12. In late November 1986, the CIA's Office of Inspector General began an investigation into possible unlawful and unauthorized CIA support for military and paramilitary operations in Nicaragua by the Contras.

13. On January 11, January 24 and February 2, 1987, the defendant JOSEPH F. FERNANDEZ met with an investigator working for the CIA's Office of Inspector General at CIA

Headquarters, Langley, Virginia, to answer questions with respect to that Office's inquiry.

14. From on or about January 11, 1987 to March 1, 1987, in Fairfax County, within the Eastern District of Virginia, the defendant JOSEPH F. FERNANDEZ unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before a department and agency of the United States, to wit, the conduct of an investigation by the CIA's Office of Inspector General into possible unlawful and unauthorized CIA support for military and paramilitary operations in Nicaragua by the Contras, by making false, fictitious, fraudulent and misleading statements and representations to an inspector of the CIA's Office of Inspector General, including false statements more fully set forth in Count Two of this Indictment, for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Section 1505.)

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

15. Paragraphs 1 through 13 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

16. On or about January 11, 1987, in Fairfax County, within the Eastern District of Virginia, the defendant JOSEPH F. FERNANDEZ unlawfully, willfully and knowingly did make and cause to be made material false, fictitious and fraudulent statements to a department and agency of the United States, to wit, the CIA's Office of Inspector General, in a matter within its jurisdiction, to wit, an investigation into possible unlawful and unauthorized CIA support for military and paramilitary operations in Nicaragua by the Contras, as follows: that a project to build an airstrip in northern Costa Rica in 1985 was an initiative of the Costa Rican government; that the airstrip was to be used for training activities by Costa Rican forces in preparation for a possible Nicaraguan invasion of Costa Rica; and that the defendant FERNANDEZ's only contacts with Rafael Quintero were on the occasions of resupply flights.

17. Those statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant JOSEPH F. FERNANDEZ then and there well knew

and believed, among other things, the project to build an airstrip in northern Costa Rica was an initiative of the defendant FERNANDEZ and others; the airstrip was designed to facilitate the resupply of the Contras; and the defendant FERNANDEZ had numerous contacts with Rafael Quintero in connection with matters other than the resupply flights, including the construction of the airstrip in northern Costa Rica.

(Violation of Title 18, United States Code, Section 1001.)