

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
and FEDERAL EXPRESS

Brothers to the Rescue and its members
Mr. Jose Basulto, individually
and as President of Brothers to
the Rescue
5790 SW 84th Street
Miami, Florida 33143-8218

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EMERGENCY ORDER TO CEASE AND DESIST AND ORDER OF
COMPLIANCE

TAKE NOTICE THAT upon consideration of all the evidence available, it appears to the Administrator of the Federal Aviation Administration that:

1. On or about July 11, 1995, representatives of the Miami Flight Standards District Office (FSDO), met with Jose Basulto and advised him of the consequences of any unauthorized penetration of Cuban territorial airspace, and advise him that any violation of the Federal Aviation Regulations (FAR), 14 C.F.R. § 1.1 *et seq.*, or any international regulations, vigorously will be investigated, prosecuted and adjudicated. Mr. Basulto was given a copy of the of the regulations governing operations in international airspace. In addition, the FSDO personnel placed Mr. Basulto on notice that every general aviation pilot filing a flight plan for July 13, 1995, for operation in the vicinity of the demonstration planned in the vicinity of the territorial waters and airspace of the Republic of Cuba, would be notified of the consequences of entering Cuban territorial airspace.
2. On or about July 13, 1995, Jose Basulto, the holder of Commercial Pilot Certificate No. 002122405, acted as pilot-in-command of civil aircraft N2506, the property of another (registered to Brothers to the Rescue (BTTR)), on a passenger-carrying flight departing from Opa Locka Airport, Miami, Florida. Harry Tester, a reporter for Channel 4 (CBS) and an unidentified cameraman accompanied Mr. Basulto on the flight, and videotaped the flight. Brothers to the rescue operated or caused the operation of twelve other civil aircraft (N161BH, N5485S, N29226, N61276, N6789Y, N2456S, N108LS, N312MX, N2329S, N408JC, N3537Q, and N165BH) that flew on flight plans in the vicinity of civil aircraft N2506.
3. During the course of the flight, Mr. Basulto operated civil aircraft N2506 into the:
 - a. Territorial airspace of the Republic of Cuba;

- b. Havana, Cuba, Terminal Control Zone (TCZ); and
- c. Prohibited Area MU-P1.

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4. At all times mentioned herein, the areas described in paragraph 3, above, were either Restricted Areas or Prohibited Areas of the Republic of Cuba, as defined in Cuban Law 1318 - Organizacion, Planificacion Y Control De Los Vuelos Sobre El Territorio Y Region De Informacion De Vuelo De La Republica De Cuba (Cuban Law 1318).
5. At the time of the flight described in paragraphs 3, above, Mr. Basulto did not have authorization from the Cuban Government Air Traffic Control Authority for entry into, and operation within, that airspace contrary to, and in violation of Cuban Law 1218 - Reglamento De Sobrevuelo Al Territorio Nacional (Cuban Law 1218, Article 3, Article 5, and Article 14, and Cuban Law 1318, Article 7, Article 10, and Article 14).
6. The U.S. Department of State, Office of the Spokesman issued a public announcement for immediate release on August 8, 1995. The announcement warned "ALL" persons that the Cuban Government asserted its "FIRM DETERMINATION" to take actions necessary to defend Cuban Territorial sovereignty and to prevent unauthorized incursions into Cuban territorial waters and airspace. The announcement further warned that the Cuban Government stated: "Any boats from abroad can be sunk and any aircraft downed".
7. On or about August 23, 1995, the Department of State issued a statement warning that "entering Cuban territory, territorial waters or airspace without prior authorization from the Cuban Government may cause one to be subject to arrest or other enforcement action by Cuban authorities...." The statement also cited an earlier statement, on July 14, 1995, in which the Cuban Government warned that "any boat from abroad can be sunk and any airplane downed."
8. On or about August 26, 1995, Jose Basulto issued a statement critical of the United States' policy toward the "illegitimate Castro regime" and of the United States' sanctions against BTTR's pilots for airspace violations.
9. On or about August 24, 1995, the FAA issued a statement acknowledging receipt of a letter dated August 21, 1995, (and supporting documentation), in which the Cuban Civil Aeronautic Authority expressed concern about the safety of BTTR's pilots for the planned activities of September 2, 1995, and indicated that it would close the flight corridors over Cuba on September 2.
- 10 On or about August 29, 1995, the FAA issued a statement announcing plans to handle Brothers to the Rescue's planned flight activity in the vicinity of Cuban territorial airspace. The FAA, in the statement, cited the Cuban government's

statements advising pilots against activities that could jeopardize their safety, and that the FAA will issue a Special Notice to Airmen (NOTAM) cautioning U. S. certificated pilots that they are subject to the actions of the Cuban Government if they violate Cuban territorial airspace. In addition, representatives of the FSDO met with leaders of Brothers to the rescue; warned them of the dangers of flying in Cuban territorial airspace without authorization and that any alleged violations of the FAR or international regulations vigorously will be investigated, prosecuted, and adjudicated.

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11. On August 31, 1995, Mr. Basulto was specifically advised through a Notice of Proposed Certificate Action, that the Administrator proposed to suspend his pilot certificate for 120 days because his operation of civil aircraft N2506 on July 13, 1995, as described in paragraphs 2, 3, 4, and 5, above, violated the FAR.

12. On or about October 18, 1995, the Department of state issued a statement in which it advised the BTTR,

that if persons enter Cuban territory, Territorial seas or airspace without authorization from the Cuban Government they may be subject to arrest or other enforcement action by Cuban authorities for violations of Cuban law. The Cuban Government has repeatedly asserted its determination to take actions it deems necessary including the sinking of vessels and the downing of aircraft to defend Cuban territorial sovereignty and to prevent unauthorized incursions into Cuban territorial waters and airspace.

13. On or about January 13, 1996, Jose Basulto acted as pilot-in-command of civil aircraft N2506, the property of another, on a flight departing from Opa Locka Airport.

14. During the course of the flight, Mr. Basulto operated civil aircraft N2506 into the territorial airspace of the Republic of Cuba.

15. At all times mentioned herein, the area described in paragraph 14, above, was either a Restricted Area or Prohibited Area, as defined in Cuban Law 1318.

16. At the time of the flight described in paragraph 14, above, Mr. Basulto did not have authorization from the Cuban Government Air Traffic Control Authority for entry into, and operation within, that airspace contrary to, and in violation of Cuban Law 1218, Article 3, Article 5, and Article 14, and Cuban Law 1318, Article 7, Article 10, and Article 14.

17. On January 13, 1996, the Brothers to the Rescue confirmed the flight described in paragraphs 14, 15, and 16, above, claiming that its aircraft overflew Havana and dropped anti-Castro leaflets.

18. On or about January 13, 1996, the Reuters News Agency reported that the Cuban Government condemned the above-described January 13, flight that resulted in the violation of its airspace, and warned that it would stop further incursions.

19. On or about February 24, 1996, Jose Basulto acted as pilot-in-command of civil aircraft N2506, the property of another, on a passenger-carrying flight departing from Opa Locka Airport.

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20. During the course of the flight, Mr. Basulto operated civil aircraft N2506 into the territorial airspace of the Republic of Cuba.

21. At all times mentioned herein, the area described in paragraph 20, above, was either a Restricted Area or a Prohibited Area, as defined in Cuban Law 1318.

22. At the time of the flight described in paragraphs 19, 20, and 21, above, Mr. Basulto did not have authorization from the Cuban Government Air Traffic Control Authority for entry into, and operation within, that airspace contrary to, and in violation of Cuban Law 1218, Article 3, Article 5, and Article 14, and Cuban Law 1318, Article 7, Article 10, and Article 14.

23. During the course of Jose Basulto's February 24, 1996, flight described in paragraphs 19, 20, 21, and 22, above, aircraft operated by the Republic of Cuba shot down civil aircraft N2456S and civil aircraft N5485S, which were operating in the vicinity of civil aircraft N2506.

24. At all times mentioned herein, BTTR operated, or caused the operation of civil aircraft N2456 and civil aircraft N5485S on the flights described in paragraph 23, above.

25. The operations of civil aircraft by Jose Basulto, BTTR, and unnamed pilots that operated civil aircraft for Brothers to the Rescue described above, were careless or reckless so as to endanger the lives or property of others.

26. To ensure the safety of flight in the Florida Straits in the vicinity of Cuba, the Federal Aviation Administrator has issued an immediately effective Special Federal Aviation Regulation (SFAR) prohibiting the operation of U.S. registered civil aircraft in the international airspace north of Cuba below 14,000 feet under visual flight rules. This area is designated as the Florida Straits Airspace Area.

WHEREAS, the Administrator of the Federal Aviation Administration, acting by and through his Chief Counsel, has determined that the operations of the aforesaid are contrary to and in violation of sections 91.703(a)(2), 91.703(a)(3),

and 91.13(a) of the Federal Aviation Regulations, Cuban Law 1218, Articles 3, 5, and 14, and Cuban Law 1318, Articles 7, 10, and 14; and whereas the Administrator has determined that an emergency exists and safety in air commerce and air transportation require the immediate issuance of this order.

NOW, THEREFORE, pursuant to the authority vested in the Administrator of the Federal Aviation Administration by 49 U.S.C. § 40113(a) and 49 U.S.C. § 46105(c), and section 13.20 of the Federal Aviation Regulations, 14 C.F.R. § 13.20, it is ordered that Brothers to the Rescue, Jose Basulto, (fill in the names of additional pilots) any other U.S.-certificated pilot that has acted as pilot-in-command or as a required flight crewmember on any civil aircraft operated or caused to be operated by Brothers to the Rescue within the territorial airspace of the Republic of Cuba, without authorization, is now and in the future ordered to cease and desist from the operation of any civil aircraft within the territorial airspace of the Republic of Cuba without prior authorization from the Cuban Air Traffic Control Authority. It is further ordered that the aforesaid comply with SFAR governing the Florida Straits Airspace Area and all other applicable Federal Aviation Regulations.

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JUDICIAL REVIEW

Pursuant to 49 U.S.C. § 46110, an order issued by the Administrator of the Federal Aviation Administration shall be subject to review by the court of appeals of the United States for the circuit in which the person resides or has its principal place of business or the United States Court of Appeals for the District of Columbia upon petition filed within 60 days after the issuance of such order by any person disclosing a substantial interest in the order. After the expiration of 60 days, petition may be filed only by leave of court and upon the showing of reasonable grounds for failure to file the petition by the 60th day.

Nicholas G. Garaufis
Chief Counsel

By: Peter J. Lynch
Assistant Chief Counsel