

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CASE NO.: 98-721-CR-LENARD(s)(s)

RENE GONZALEZ,

Defendant.

**DEFENDANT'S RENEWED MOTION TO MODIFY CONDITIONS
OF SUPERVISED RELEASE**

COMES NOW the Defendant RENE GONZALEZ by and through his undersigned counsel and renews his motion (DE #1808) to modify his conditions of his supervised release to allow him to return to Cuba and serve the remainder of his supervised release on a non-reporting basis as long as he resides outside of the United States and in support thereof would state as follows:

Brief History of the Case

Given the court's familiarity with factual and procedural history of the case, and in particular the Defendant's previous motion to modify his conditions of release, the motion will only briefly recount the facts.

On June 8, 2001, the jury convicted this defendant of both Counts 1 and 15 of the second superseding indictment. (DE #1291)(Tr. at 14664-5) The court sentenced the defendant to the statutory maximum on both Counts 1 and 15 and imposed those sentences to run consecutively. Therefore, the court imposed a sentence of five years as to Count 1 and a consecutive sentence of ten years as to Count 15 for a total sentence of fifteen (15) years imprisonment. (DE #1437) The court also imposed a

term of supervised release of three years.

The defendant was a model prisoner. He was awarded the maximum amount of gain time. Anticipation of his release from prison, on February 16, 2011 the defendant filed a motion to modify the terms of his then anticipated release. This motion requested that the defendant, a dual citizen of the United States and Cuba be permitted to return home to Cuba to his wife and family who reside there. (DE #1808) This court denied the motion stating that it was “premature¹” and the court did not have the ability to assess the defendant’s performance while on supervised release pursuant to the factors as set forth in 18 U.S.C. §3553(a)

On October 7, 2011 the Rene Gonzalez was released from federal custody to commence his term of supervised release. Since then, he has complied with all conditions of supervised release, and has done so at great hardship to himself. The defendant is isolated from his family and his social support structure, and essentially living in hiding because his conviction as an agent of the Cuban government puts him at risk of reprisals. Consequently he has been unable to obtain a driver’s license, as doing so would require him to make public his address. He has been unable to obtain educational or vocational training again due to the pressures of anonymity and because of restrictions of mobility imposed by the lack of a driver’s license. Perhaps most importantly, the Defendant’s ability to spend time with his family has been severely impaired. He cannot see his wife due to immigration restriction that still prevent her from entering the United States. Despite the representations of the Department of

¹The order was filed September 16, 2011 while the defendant was not released until October 7, 2011.

Justice to this court, efforts to surmount these hurdles have proven futile. Despite promises to the contrary the government recently opposed for no valid articulable reason the defendant's two week travel to Cuba to see his gravely ill brother. He cannot participate in the daily lives of his two daughters who reside in Cuba. He cannot care for his parents or for his seriously ill brother who also live in Cuba. All of these circumstances were unforeseen at the time of the defendant's 2001 sentencing, justifying a modification of his supervised release.

Today, after more than eight months of isolation, the Defendant renews his motion and respectfully requests that this Court permit him to return home so that he can reunite with his family and reintegrate into society.

Prior to his release, the defendant was able to secure satisfactory employment as well as living arrangements. The defendant's supervising probation officer has been in constant contact with the defendant during his initial eight months on supervised release and the defendant has complied with each and every condition of his supervised release.

Therefore, after more than eight months of isolation the defendant respectfully renews his motion and asks that this Court permit him to return home and reunite him with his loved ones and reintegrate into society.

II. Summary Of The Argument

Under 18 U.S.C. § 3853(e)(2), this Court has the authority at any time to modify a defendant's term of supervised release in light of the factors set forth in 18 U.S.C. § 3553(a), including the history and characteristics of the defendant, the need to provide the defendant with the tools for rehabilitation, and the need to avoid

unwarranted sentence disparities among similarly situated defendants. In this case, these factors, and others, weigh heavily in favor of a modification of supervised release, for five reasons.

First, the characteristics of Defendant are such that requiring his continued presence in this country actually undermines the purpose of supervised release, which is to facilitate and oversee the re-entry of a recently incarcerated defendant into the community. Defendant's firm intention is to return to Cuba as soon as practicable to be with his family; there is no prospect or desire that he will in fact re-join American society. Indeed, the Defendant intends to renounce his United States citizenship upon his return to Cuba in order to provide the Court with ample assurance that he does not intend to return. Requiring Defendant's presence on supervised release serves only to isolate him from the only community that can reasonably re-enter, and thus undermines the purpose of supervised release.

Second, this is a unique and extraordinary case in which the existing conditions of supervised release significantly inhibit Defendant's ability to develop as a productive member of society, and to receive educational and vocational training that would facilitate his rehabilitation. This is so because there are genuine, significant dangers to Defendant's personal safety as a result of the circumstances surrounding his conviction as an agent of the Cuban government. Defendant must remain essentially anonymous and has no prospects of securing employment that corresponds with his professional training as a pilot. Moreover, because he cannot publicly register his address for fear of revealing his whereabouts to those who might intend him harm, Defendant is unable to secure a driver's license that would permit him to travel to a

job, exercise the degree of mobility that is essential to a normal social life, and identify himself for other purposes.

Third, the conditions of Defendant's supervised release place extraordinary and unusual burdens on Defendant's ability to develop the ties to his family that are an essential element of his ability to reintegrate into a post-incarceration environment. Defendant's entire immediate family is in Cuba. The Department of Justice through the prosecution has advised this Court that it is willing to facilitate Defendant receiving visits from his wife. (DE #1814, at 11.) Yet the State Department has made that almost entirely impossible: Defendant's wife has been permitted to visit him only one time since 2000, and then only under extraordinarily burdensome conditions. She has also been advised that further visits will not be permitted, and formal diplomatic requests from the Cuban government have gone unanswered. The Defendant also remains separated from his two children, and is therefore unable to participate in their daily lives. Moreover, Defendant's parents are in their eighties and their ability to travel is extremely limited, and his brother remains very seriously ill with cancer. Permitting Defendant to return to Cuba would reunite him with his familial support structure, and allow him to play a productive role in their lives.

Fourth, forcing Defendant to remain here imposes an unduly harsh punishment on him as compared with similarly situated defendants. It is commonplace to provide as a condition of supervised release that foreign defendants be removed from this country upon their release from prison. Although Defendant is a dual citizen, the Bureau of Prisons and the State Department have both long recognized the primacy of his Cuban citizenship by authorizing him to receive consular visits from Cuban

authorities. Indeed, this very Court expressed the view during sentencing that Defendant is more properly regarded as Cuban. It is the Defendant's intention is to renounce his United States citizenship as soon as he arrives in Cuba to give the United States confidence that he will never re-enter this country. Treating him differently from other foreign citizens, especially when doing so separates him from his family and society, thus constitutes a disparately harsh punishment.

Finally, Defendant has complied fully with all of the terms of his supervised release. That period of compliance, combined with his ideal performance while incarcerated, demonstrates that the risk of recidivism here is nonexistent, and thus supports a modification of the terms of supervised release as requested. The Defendant provided further evidence during his exemplary behavior and compliance with this court's conditions during his recent trip to Cuba to visit his terminally ill brother. The Defendant has departed the judicial district only with permission; prepared all required reports; followed all the instructions of his probation officer; met his family responsibilities to the best of his ability; maintained lawful employment; maintained his residence; not used alcohol in excess or used any controlled substance; avoided places in which controlled substances are present; has not associated with any persons engaged in criminal activity or convicted felons; accepted all visits by his probation officer; has not been arrested; has not entered into any agreement with law enforcement; has provided required notice to third parties of his criminal history; has provided all required financial information to his probation officer; has submitted to searches by his probation officer; will timely file tax returns; and has avoided all persons advocating violence. The Defendant's exemplary compliance despite the

hardships he has endured demonstrates his character, and presses in favor of a modification of the terms of his release to allow him to return to Cuba as requested.

III. Argument

A review of the §3553 sentencing factors reveals that the conditions of Defendant's supervised release undermine its purpose. Defendant's motion to modify these conditions should be granted for the following five reasons.

A. The Conditions Of Defendant's Supervised Release Isolate Him From The Community.

Considering Defendant's "history and characteristics," 18 U.S.C. § 3553(a)(1), it is clear that his supervised release conditions are inappropriate. As the Supreme Court has explained, "Congress intended supervised release to assist individuals in their transition to community life. Supervised release fulfills rehabilitative ends, distinct from those served by incarceration." *United States v. Johnson*, 529 U.S. 53, 59 (2000). However, in order for supervised release to serve its goal, the defendant must be released into the community he intends to rejoin.

In Defendant's case, that community is in Cuba. Defendant regards himself as a Cuban citizen, and as a member of Cuban society. Although he resided for a time in the United States, Defendant spent his formative years, from 1961 to 1990, in Cuba. His home—including not only his house, but also his wife, his two children, his parents, and his brother—are waiting for him in Cuba. More importantly, as a Cuban citizen, the Defendant's community support structure lies there, as do all of his opportunities to live the life of a law-abiding citizen. In fact, during sentencing, this Court recognized that Defendant regarded himself primarily as a Cuban citizen. The

Executive Branch of the federal government has likewise acknowledged this fact by permitting and facilitating consular visits for Cuban officials who wish to see Defendant from time to time both on a regular basis during his lengthy period of incarceration as well as while under supervision. This agreement has been in effect since 2001 or for more than a decade. A copy of the diplomatic note granting consular access is attached hereto as Exhibit "A"

Consequently, because of his unique history and characteristics, forcing Defendant to remain in the United States serves only to delay his reentry into society and stunt his rehabilitation. While he bears no ill will toward the people of the United States, the Defendant has absolutely no intention of settling permanently, or of building a life, here. Indeed, Defendant has offered on numerous occasions and remains willing to give up his United States citizenship, recognizing that in so doing, he will permanently forgo the right to return to the United States as he pleases. He wishes to renounce his United States citizenship not out of contempt for the United States, but because he hopes that this action will provide to the Court and to the Government the concrete assurance that he does not intend to return for any suspect purpose whatsoever.

B. Defendant's Reasonable Fear For His Safety Inhibits His Rehabilitation.

Another key fact relating to Defendant's "history and characteristics" is that since being released, Defendant has reasonably feared for his safety. As a convicted agent of the Cuban government, Defendant is reviled by a significant number of people who harbor anti-Cuba and anti-Castro views, some of whom have advocated violence. Therefore, Defendant has found it necessary to take strong measures to

ensure that his identity and location remain a secret from those who would do him harm. When Defendant was released from prison, he was immediately transported to a discreet location. Since that time, he has essentially lived in hiding, for fear that discovery of his identity and location will expose him to danger. The probation office has segregated the Defendant's file from that of other under supervision and it can only be accessed on a "need to know" basis.

This need for secrecy has resulted in significant hardship in the Defendant's every day existence. The most daunting practical obstacle Defendant faces is that he is unable to obtain a driver's license. The state in which Defendant resides does not permit residents to secure a driver's license using a P.O. Box address, or to use a third party's address on a driver's license. Therefore, if Defendant were to apply for a driver's license, his address, which is not currently a matter of public record, would become so, and his efforts to remain anonymous and concealed would likely fail. Because Defendant cannot both preserve his safety and obtain a driver's license, he has effectively been forced to go without a license. Indeed, other than his identification card issued by the United States Bureau of Prisons, and a now expired thirty day United States passport secured and used for the trip to visit his ailing brother, he has no other means of identification.

Defendant's lack of a driver's license severely restricts his mobility. Because he cannot drive legally, his movements are contained to the area that he can reach on foot, by bicycle, or with public transit, which is not robust where he resides. Thus, although the conditions of his supervised release allow him free movement within the district in which he resides, he is unable to take advantage of that right due to well

founded fears for his safety.

Of course, the restrictions on Defendant's movement are only one consequence of his inability to secure a driver's license. Defendant is unable to perform any task that requires government-issued identification. For example, although he is trained as a flight instructor, his pilot's license has lapsed, and he cannot enroll in a program to renew that certification without identification, and without disclosing his address. As a result, Defendant cannot obtain employment in the field in which he is trained, and is instead performing menial work that pays considerably less, and that does not take advantage of his talents and skills.

Furthermore, Defendant cannot pursue an education, obtain credit, or otherwise conduct his daily affairs unless he obtains identification. *See* 18 U.S.C. § 3553(a)(1)(D) (noting that any sentencing decision must consider the need to "provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner"). Well prior to his release, the defendant began studying economics through the University of Havana. The Defendant has had to deal with great difficulties on account of logistics caused by lack of direct access with the faculty staff. Allowing him to return to Cuba would fulfill the purpose of supervised release in this regard as to his vocational and educational training and studies.

These difficulties, when taken together, mean that even if Defendant intended to resettle in the United States, it would not be possible for him to establish a life here, as he is undocumented and unsafe. Defendant has diligently attempted to improve his situation, in collaboration with his probation officer, but these efforts have not borne

fruit. Thus, again, Defendant's "history and characteristics" – unforeseen at the time of the imposition of his original sentence – warrant a modification of the terms of his release so that he can begin a new life.

C. Defendant's Supervised Release Conditions Isolate Him From His Family.

Defendant lives in the United States without the support of his wife, his two daughters, his parents, or his brother, all of whom are in Cuba. This separation is not only a serious humanitarian issue, but also goes to the core objectives of supervised release, *i.e.*, facilitating Defendant's reintegration into the community.

Defendant's wife, Olga, has been unable to visit him due to immigration restrictions resulting from her prior deportation. While the government has previously represented to this Court its willingness to "effectuate[] some accommodation in that regard," (DE#1814:11) in fact, despite consistent efforts, despite consistent efforts, Olga has not been able to visit Defendant even once during his period of supervised release. Olga has been able to visit Defendant only once since his sentencing, and then under the most burdensome conditions. Specifically, in late 2010, Olga was permitted to travel to Marianna, Florida, to visit her husband during his incarceration. While she was permitted to travel with her children, they were kept separated during her visit. In Marianna, Olga was confined to a hotel under armed guard, and was able to see her husband briefly only before being sent back to Cuba.

Even more important, subsequent diplomatic and humanitarian requests for another visit have met with no success. Olga and her attorney have made requests with the United States Interests Section in Havana, which have been denied. Cuban diplomatic officials have likewise lodged repeated requests with the State

Department—these have met with no response. The understanding within the Cuban government is that no response will be forthcoming. After the government’s unsubstantiated opposition to the Defendant’s motion to travel to see his gravely ill brother, the assurances to “make an accommodation” for the Defendant have proven to be simply untrue. Olga has authored a letter to this Court, which is attached to this Motion as Exhibit “B”. In the letter, she personally pleads for the Court to reunite her family so that they can move forward together. As recently as June 8, 2012 in her continuing efforts to see her husband, Olga has applied to the State Department once again for a visa to see her husband.

The Defendant is also separated from his two daughters, both of whom live in Havana. While they can visit him, they cannot afford to do so regularly, and so they see him only twice a year. Defendant’s older daughter, Irma, is twenty-six years old, and his younger daughter, Ivette, is fourteen. While Defendant was incarcerated for much of his children’s lives, he is now eager to reconnect with them and to embrace his role as their father. He is prohibited, however, from doing so by his current conditions of supervised release.

Defendant’s parents likewise reside in Havana. Defendant’s parents traveled to visit him numerous times during his period of incarceration, but both of them are now elderly (each approaching eighty years of age), and travel has become difficult for them as the time has passed. Due to their age and health, they see Defendant only once a year. Allowing Defendant to return to Cuba would allow his parents to spend their remaining precious time with their son.

Finally, Defendant’s only sibling, his brother Roberto, resides in Havana. Three

years ago, Roberto was diagnosed with cancer as this court is well aware from the prior filing which resulted in the Defendant being able to spend precious time with him. (DE #1821) He continues to battle the disease, and at this time, his prognosis is poor but he has recently improved enough to return to his home but is bedridden. Obviously due to Roberto's condition, he is unable to travel to visit his brother, and Defendant wishes to return to Cuba, in part, to spend time with Roberto.

The circumstances related above demonstrate that the impact on Defendant's family ties has been extraordinary, and far beyond what was anticipated at the time he was sentenced more than a decade ago. At the time, Defendant did not understand that he would be separated from his wife and children for so long, or that his parents and brother would be unable to visit him.

D. Forcing Defendant To Remain In The United States Creates An Unwarranted Sentencing Disparity Between Defendant And Similarly Situated Defendants.

Modification of the conditions of supervised release would also prevent "unwarranted disparit[ies]" between Defendant's sentence and those of "defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Although Defendant is a dual citizen, and therefore not strictly speaking a foreign national, the nature of the offense for which he was convicted—acting as an unregistered foreign agent—as well as the circumstances relating to his family and social support structure described above, demonstrate that he absolutely is for all practical purposes Cuban. Nevertheless, Defendant is treated very differently from other foreign defendants, and the unintended consequence of that disparate treatment

is that Defendant is effectively punished more harshly than others with similar records who have committed a similar offense.

The standard procedure for sentencing foreign defendants who are not citizens is for the court to order them at the time completion of the Defendant's term of imprisonment that they be surrendered to the custody of United States Customs and Immigration Enforcement for removal proceedings consistent with the Immigration and Nationality Act. *See also* United States Sentencing Guidelines Manual § 5D1.1(c) (“The court ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment.”). For a foreign national, including one sentenced to a term of supervised release, deportation is often a condition of supervised release. *See* 18 U.S.C. § 3583(d). In fact, this Court sentenced two defendants in this very case—Ramon Labaniño and Fernando Gonzalez—to removal upon their release from prison. (DE #1435:5; #1439:5.)

In another recent case in this district, the court recently granted the precise relief sought here. In *United States v. Carlos Regalado Amechazurra*, No. 09-10008-CR-JLK, the defendant was a Cuban citizen who was not deported following conviction, but who violated the supervised release condition that he attend a mental health program. (DE#72.) The court responded by reinstating his supervised release term, and allowing him to return to his native Cuba to complete his supervised release term on a non-reporting basis, with the proviso that the defendant would have to notify the Probation Office within 72 hours if he re-entered the United States. (*Id.*) A copy of that order is attached as Exhibit “C”

In another case involving substantially similar allegations to those at issue here, the district court did not force the Defendant to remain in the United States. In *United States v. Khaled Abdel-Latif Dumeisi*, No. 03-CR-664 (N.D. Ill. 2004), the defendant was charged with acting as an agent of the Saddam Hussein-led Iraqi government in violation of 18 U.S.C. §§ 371, 951, the same offenses for which Defendant was convicted in this case. Dumeisi was also charged with two counts of perjury. (DE #42.) Dumeisi was convicted on all counts, and sentenced to 46 months' incarceration, and two years' supervised release. (DE #125:1.) It was clear that Dumeisi, a permanent resident of the United States, anticipated his deportation at the time of the proceedings. (DE#116:2). Likewise anticipating his deportation, the court imposed a special condition of supervised release stating that if Dumeisi was deported, he would not return to the United States without the written consent of the Attorney General. (DE#125:4.) *Dumeisi* demonstrates that there is nothing about the "nature of [Defendant's] offense" that requires a defendant to remain in the United States after his release from prison.

These authorities demonstrate that the conditions of Defendant's supervised release impose an "unwarranted disparit[y]" between his sentence and those of similarly situated defendants. To be sure, Defendant's situation is not identical to these other defendants, as he is a dual citizen. However, as the Government has acknowledged in this case, Defendant's United States citizenship takes a back seat to his Cuban citizenship. Moreover, Defendant is willing to renounce his United States citizenship if it means that he is permitted to return to his home and his family. Furthermore, the Defendant is likewise willing to accept any restrictions on travel to

the United States that this Court believes appropriate during his term of supervised release if the defendant is not requested to required to surrender his citizenship. Under these circumstances, it is manifestly proper, and supported by precedent, to permit Defendant to return to Cuba without further delay.

E. Defendant's Compliance With All Applicable Conditions Of Supervised Release Supports Modification Of Those Conditions.

It is undisputed that Defendant was a model prisoner while incarcerated, and it is equally indisputable that he has complied with all standard and special conditions of supervised release. Defendant has maintained open and regular communication with his probation officer, and has complied willingly with every request from the probation office.

Defendant has been subject to thirteen standard conditions of supervised release, as well as multiple special conditions. The standard conditions are: that Defendant cannot leave the district without the permission of the court or probation office; that he must report to the probation officer each month; that he must truthfully answer all inquiries and follow his probation officer's instructions; that he support his dependents and meet other family responsibilities; that he work at a lawful occupation unless excused for schooling, training, or other reasons; that he notify the probation officer before any change in residence; that he refrain from abusing alcohol and using controlled substances; that he not frequent places where controlled substances are distributed; that he not associate with any persons engaged in criminal activity, or with anybody convicted of a felony; that he permit the probation officer to visit him at any time and that he willingly surrender any contraband; that he notify his probation

officer should he be arrested; that he not enter into agreements with any law enforcement agency without court permission; and that he notify third parties of any risk that may be associated with his criminal history.

Defendant has complied with all of these standard conditions. With regard to these, he notes that his ability to support his dependents and meet his family obligations would be greatly increased if he were permitted to return to Cuba so that he could seek employment that utilizes his skills. With regard to his lawful occupation, he notes that in addition to working, he has been attempting to study economics at the University of Havana, but has faced challenges in doing so because communications with his instructors have been difficult given his circumstances. With regard to communicating with persons previously engaged in crimes, Defendant has complied, including refraining from all contact with his codefendants in the case.

Defendant has also complied with all special conditions of his supervised release. These include: that he shall provide complete access to financial information to his probation officer; that he shall maintain full time employment, and provide documentation of that employment to the probation officer; that he shall submit to reasonable searches of his person and property; that he file accurate income taxes for the years of his prosecution, and pay all applicable taxes, interest and penalties; and that he not associate with or visit places where individuals or groups advocating violence are known to be or frequent.

Defendant has complied with all of these conditions to the best of his ability. He presently is working with the Probation Office and Internal Revenue Service to obtain information regarding his income tax liability for 1998, the year in which he

was arrested—he requires assistance because papers relevant to his taxes were seized by the FBI. As soon as he is advised of any potential tax liability from 1998, Defendant will resolve it forthwith. Defendant will also timely file his 2011 tax return.

Defendant's compliance with all conditions of supervised release demonstrates his respect for the law and for this Court's authority. While the Government has previously suggested that he poses a risk of recidivism, his model behavior both while incarcerated and while on supervised release demonstrates, in concrete terms, that this is false. Thus, there is no need for Defendant to be forced to remain in the United States to either deter crime or to protect the U.S. public. *See* 18 U.S.C. § 3553(a)(2), (3). Defendant has lived under the most severe restrictions for over thirteen years now, and all he asks is that he be permitted to rejoin his family in Cuba, and establish a new life for himself as a member of Cuban society.

IV. Conclusion

Defendant respectfully requests that this Court grant his motion and modify the conditions of his supervised release as follows:

1. That the Court permit Defendant to return to Cuba, and reside in Cuba with his family for the duration of his term of supervised release, with the understanding that Defendant will renounce his United States citizenship upon arrival in Cuba.
2. That while Defendant resides in Cuba, his term of supervised release shall be non-reporting.
3. That if Defendant returns to the United States during the term of his supervised release, he shall report to the nearest United States probation office within seventy-

two hours of his arrival.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record this 22nd day of June 2012.

Respectfully submitted,

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