

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

RENE GONZALEZ,

Magistrate Judge Dube

Defendant.

**MOTION TO MODIFY CONDITIONS
OF SUPERVISED RELEASE**

COMES NOW the Defendant RENE GONZALEZ by and through his undersigned counsel and moves this Court for the entry of An order modifying his conditions of his impending supervised release to allow him to return to Cuba upon completion of his sentence and in support thereof would state as follows:

Brief History of the Case

On September 12, 1998, the defendant and nine other persons were arrested by agents of the Federal Bureau of Investigation (hereinafter "FBI") on a criminal complaint alleging that each of them was acting, in various capacities, as agents of the government of Cuba. (DE #11) On October 2, 1998 a federal grand jury in Miami, Florida returned a superseding indictment. (DE #71) This defendant was named in counts 1 and 5 of that superseding indictment.

On May 7, 1999, the grand jury returned a second superseding indictment in this case. (DE #224) The second superseding indictment charged this defendant with now thirteen others in the Southern District of Florida at Miami, Florida. This defendant and eleven of his codefendants were charged in Count 1 with a multi-object

conspiracy in violation of 18 U.S.C. §371 which allegedly occurred from 1994 until September 12, 1998. In Count 15, the defendant was charged with from at least 1995 until September 12, 1998 with violating 18 U.S.C. §951 and 2 and 28 C.F.R. §73.01 *et seq.* in that it was alleged that he knowingly acted as an agent of the Republic of Cuba knowing that he did not provide prior notification to the Attorney General. (DE #224)

On November 27, 2000, the trial commenced with jury selection. (Tr. at 9)(DE #765) After more than six months of trial, on June 4, 2001, the jury was instructed (Tr. at 14582) and commenced deliberations. (Tr. at 14620) After almost five days of deliberations, 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)

Sentencing was held for this defendant on December 13 and 14, 2001. (DE #1452) After hearing the individualized objections and permitting the defendant to allocute, 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) On December 20, 2001, the defendant timely filed his notice of appeal. (DE #1440)

Appellate Process

The appellate process in this case took more than seven (7) years with the original three judge panel remanding the matter for a new trial. See United States vs. Campa, 419 F.3d 1219 (11th Cir. 2005) An *en banc* panel of the Eleventh Circuit reversed the three judge panel's determination on the issue of venue and sent the case

back to the three judge panel to decide all of the remaining issues. See United States vs. Campa, 459 F.3d 1121 (11th Cir. 2006). Ultimately, the three judge panel vacated the sentences of Fernando Gonzalez, Ramon Labaniño, and Antonio Guerrero and remanded their cases for resentencing. However, that panel affirmed all issues including the sentences in a lengthy opinion as to Rene Gonzalez and Gerardo Hernandez. See United States vs. Campa, 529 F.3d 980 (11th Cir. 2008) On September 2, 2008, the Eleventh Circuit denied timely petitions for rehearing and rehearing *en banc*. On June 15, 2009 the United States Supreme Court denied certiorari. See Campa vs. United States, 129 S.Ct. 2790 (2009)

December 13-14, 2001 Sentencing

According to this Court's judgment, (DE #1437) the defendant, in addition to serving the fifteen-year sentence of incarceration, is to serve a concurrent term of supervised release of three (3) years. Furthermore, the court imposed numerous special conditions on the defendant regarding his finances, filing federal income taxes for the "prosecution years" and a prohibition against associating with or visiting specific places where terrorists, organizations advocating violence or organized crime figures are known to be or frequent. The defendant, who is a *dual citizen* of Cuba and the United States was not ordered deported.

Imprisonment and Pending Release

After the Rene Gonzalez was arrested on September 12, 1998, he was ordered temporarily detained and an arraignment and detention hearing date were set. (DE #16) The defendant waived his right to a speedy detention hearing and his hearing was reset until September 28, 1998. (DE #39) On that date, after a hearing was held, the

defendant was ordered detained pending trial. (DE #79, 80, 82, 130) He has been incarcerated ever since.

Primarily due to a stellar and spotless prison record, Rene Gonzalez is incarcerated at and designated to the medium security Federal Correctional Institution at Marianna, Florida. According to the Bureau of Prisons web site, www.bop.gov he is scheduled for release from prison on October 7, 2011, slightly less than eight (8) months from now.

Issue/Request for Determination and Relief Requested

It is the defendant's request that his impending supervised release be modified to allow him to travel back to Cuba and reside in Cuba with his family as opposed to serving his term of supervised release in the United States. As with those on supervised release living abroad, it is requested that the term of supervised release be non-reporting while he resides outside of the United States, however, should he re-enter the United States within the three (3) year period that he report to the United States Probation Office immediately.

Factors in Support of Motion

Dual Citizenship

While the Defendant was born in the United States, as a small child his family returned to Cuba in 1961. Both his childhood and adult formative years were spent in Cuba. He came back to the United States in 1990. After his arrest and conviction in this case, the defendant has been treated by the government as more of a Cuban citizen than an American citizen since he has received regular consular visits from Cuban officials which have been permitted and authorized by the Bureau of Prisons.

Lack of Ties to the United States

Back in 1998 when the defendant was arrested, his wife and two children resided in the Kendall area of Miami-Dade County. At the time of his arrest he had employment in Miami and lived a middle class lifestyle. In addition, back in at the time of his arrest he had relatives that lived in the United States. His grandmother owned property and resided in Sarasota, Florida.

Since the time of his arrest more than twelve (12) years ago, Rene Gonzalez's family life has undergone great changes. In August 2000, the defendant's wife, Olga Salanueva, was arrested on immigration charges and was ordered deported to her native Cuba. In November 2000 she was physically deported back to Cuba. During the past decade, Olga Salanueva has unsuccessfully made numerous attempts gain admission to the United States. On July 16, 2008, she was advised that she was ***permanently inadmissible*** from the United States. By forcing Rene Gonzalez to serve his supervised release term in the United States, this court would extend the separation between husband and wife that has been ongoing for more than a decade. While their marriage remains not only intact but strong, Rene and Olga will not be able to live together until he is permitted to return home to his family.

Rene and Olga have two daughters. At the time of his arrest his daughters were fourteen years of age and four months (4) respectively. Their oldest daughter, Irma has been living with her mother in Havana since 2000. The jail sentence has deprived Rene of being present for her formative years. Now age 26, she has obtained a degree in psychology and is continuing her studies working toward a mater's degree in Clinical Psychology at Havana University.

Their youngest daughter, Ivette, was only four months old when Rene was arrested. She lives in Havana with her mother and attends school. Since the sentencing in this case, she has seen her father only twice a year. However, due to her tender years and her mother's deportation, she was unable to see her father from 2000 until the twice yearly visits commenced in 2007. At thirteen years of age, she has the opportunity to be reunited with and live with her father who she can only recollect seeing in a visiting room of a federal prison. By allowing Rene Gonzalez to return home to Cuba this court will allow him to reconnect with his children whom he has seen only intermittently over the past decade.

Rene Gonzalez's parent are still alive and residing also in Havana, Cuba. During his lengthy incarceration, Rene's parents have traveled to see him while he was incarcerated in Pennsylvania, South Carolina as well as north Florida where he is at the present time. However both of his parents are rapidly approaching eighty (80) years of age and travel for them has become difficult at best. Due to their age and health, they are limited to seeing Rene only once a year. Allowing Rene to serve his term of supervised release in Cuba would allow his parents to spend their remaining precious time with their son.

As stated previously, at the time of the defendant's sentencing Rene Gonzalez's grandmother owned property and was residing in Sarasota, Florida. In 2008 she passed away and therefore, as of the date and time of the filing of this motion, Rene Gonzalez has no relatives in the United States even remotely available where he could stay upon release. He does not own property in the United States.

Employment

At the time of his arrest in 1998, the defendant's primary employment in Miami was as a flight instructor. His pilot's license has long since expired as well as his certifications as either a pilot or as an instructor. He has no job prospects in either the Miami area or in the United States. Having not flown for more than a decade would require years of training to regain his status.

In addition, having not worked other than for menial wages while incarcerated, he does not have the financial ability to start a new life by himself in the United States. Three generations of his family is in Cuba and he should be permitted to return to them.

Relief Requested

It is respectfully requested that this Court grant this motion and modify his impending term of supervised release as follows:

1) permit him to travel back to Cuba and reside in Cuba with his family as opposed to serving his term of supervised release in the United States.

2) That within seventy two (72) hours of his release that he report to the nearest probation office

3) That within seventy two hours of his voluntary departure from the United States that the defendant (through his attorney) provide verification of his voluntary departure and his arrival in Cuba.

4) That while the defendant is residing in Cuba, the term of his supervised release shall be non-reporting.

5) If during the term of supervised release the defendant reenters the United

States, he shall report to the nearest United States probation office within seventy two hours of his arrival.

Local Rule 88.9 Certificate

Pursuant to Local Rule 88.9 on February 16, 2011 the undersigned spoke with Assistant United States Attorney Caroline Heck Miller and she represented that on behalf of the government that she objects to the relief sought within this motion.

WHEREFORE, the Defendant RENE GONZALEZ respectfully requests that this Court grant this motion and permit his impending supervised release be modified to allow him to travel back to Cuba and reside in Cuba with his family as opposed to serving his term of supervised release in the United States. In addition, it is requested that the term of supervised release be non-reporting while he resides outside of the United States, however, should he re-enter the United States within the three (3) year period that he report to the United States Probation Office immediately.

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 16th day of February 2011.

Respectfully submitted,

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