

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 REPLY TO THE GOVERNMENT'S RESPONSE
TO THE RENEWED MOTION TO MODIFY CONDITIONS
OF SUPERVISED RELEASE**

COMES NOW the Defendant RENE GONZALEZ by and through his undersigned counsel and for his reply to the government response in opposition (DE #1829) to his renewed motion for the entry of an order modifying his conditions of his supervised release to allow him to return to his family in Cuba (DE #1826) and in support thereof would state as follows:

Factual and Procedural Background

Once again, as they had in their response to the prior motion filed for similar relief when the defendant was incarcerated (*See also* DE#1814 at 1-5) in their section labeled "factual and procedural background" the government's response in opposition to the motion does not contain facts but merely opinion that the defendant was "resolutely and expressly unrepentant" during and following the trial. As this court and the government are surely aware, each and every defendant who is charged with a crime has a right to maintain their innocence and proceed to trial. Mr. Gonzalez exercised his right to trial and did not testify in his own behalf nor did he obstruct

justice in any way during the trial. The government's zeal to continue to punish Rene Gonzalez by separating him from his family should have no connection with his exercise of his right to trial which was exercised almost twelve years ago.

During the course of the sentencing which occurred almost eleven years ago, the defendant was permitted to allocute. The government may not have liked or agreed with what Mr. Gonzalez had to say but it then became the court's obligation to impose what the court felt to be a reasonable sentence. The court generally noted at sentencing that where terrorism is committed against innocent people wherever in the world it is evil and is wrong, but the terrorist acts by others cannot excuse the wrongful and illegal conduct of this defendant.

The government's response also takes note of the covert nature of the Defendant's activities during the relevant period of the indictment. While acknowledging the fact that the legal process has dealt with whether these violent activities should have been approached through the means chosen by the Defendant; the Defendant respectfully reminds the Court that his covert behavior was related to his need to protect his own life while trying to monitor the activities of those others who still operate as shown by the recent firebombing of the ABC Charter offices located in Coral Gables. Such a need for the protection of the defendant's life has not subsided since sentencing and will remain precarious as long as he resides in the United States

This court chose to impose a consecutive sentence at the statutory maximum for each of the two counts of conviction for a total of fifteen years incarceration. Whether he was remorseful or not, this court imposed the maximum sentence permitted by the law.

However, from what appears to be continued chagrin from the government, the defendant is not seeking to rehash his allocution, not seeking to terminate his supervised release but simply requesting permission to return to Cuba and be permanently reunited with his family as outlined within the motion. The insistence on the government of treating this motion as one of termination of supervised release is simply misleading.

As with their prior response, the government continues to mistakenly believe that the purpose of this motion is to terminate or eliminate supervised release. (Response at Page 12) This absurd conclusion is negated by the fact that Rene Gonzalez is continuing to seek to have the exact conditions of supervised release imposed by this court on an almost daily basis on those whose supervised release is non-reporting due to the immigration consequences of their felony adjudication. The modification of the conditions of supervised release being requested simply mirror the conditions of supervised release upon those defendants that this court finds that are subject to deportation. Once again, the defendant is ***NOT SEEKING TO TERMINATE HIS SUPERVISED RELEASE*** but simply looking to serve the remainder of his supervised release in a non-reporting fashion while he resides outside of the United States, to wit, in Cuba with his family.

What the government fails to inform this court is that the defendant will be on

supervised release for another two years. That was this court's judgment and sentence imposed in 2001 and modification of the length of that term is not being sought. What is being sought is the humanitarian resolution for the reasons stated in the motion that the defendant be permitted to return to Cuba while remaining on supervised release as would be any defendant deported to his home country. The circumstances outlined in the motion were not foreseen at the December 2001 sentencing.

Besides endeavoring to treat the Defendant's motion to modify conditions of release as one of asking for termination, the government spends a great deal of time (Resp. at 11-12) with the notion that the defendant is asking for "termination" based on exceptionally good behavior while under supervision. While the defendant is well aware that in the eyes of the government that he will never perform under circumstances amounting to "exceptionally good behavior", this court's prior order outlined that some time on supervision was needed for the court to evaluate the defendant's conduct. The Defendant respectfully submits that his compliance with each and every condition of supervised release has met and exceeded this court's requirement.

Jurisdiction to Grant the Motion

In their response, the government suggests that the court does have jurisdiction to modify his term of supervised release as requested. The defendant agrees that pursuant to 18 U.S.C. §3583(e) a period of supervision of one year must elapse in order for supervision to be terminated. But for at least the third time in the first four pages of this motion, the defendant reiterates that he is not seeking to terminate his supervised release.

If the court were to follow the government's twisted logic in footnote #3 at page 6, then every non-citizen criminal defendant who completes their federal criminal sentence and then is deported whereby their term of supervised release is non-reporting therefore has had their supervised release terminated or eliminated. This motion is clearly one of modification and the court has jurisdiction to entertain and decide the substance of this motion.

In fact this court, in its prior order (DE#1819), treated the prior motion as a motion to modify supervision and not as a motion to terminate supervision. The court's ruling in that motion was to deny the request without prejudice as premature with leave to re-file after commencement of supervised release should the circumstances warrant modification not to wait one year to file the motion since termination of supervision was not the request being made. Therefore, this court has jurisdiction regarding the merit of the modification of supervised release being sought.

Substantive Merit

Throughout the motion to government cites to 18 U.S.C. §3553(a)(2)(C) and the need for this court to consider the need to protect the public from the further crimes of the defendant. As a reminder, the defendant had no prior convictions or arrests at the time of his arrest. Yet, the government unabashedly wants to keep what they consider a convicted spy in the United States. This clearly leads to an absurd result.

It is the defendant's solution and request that will "protect the public from the further crimes." The defendant's request would remove him from the "target" of his "spying," to wit, the United States. The defendant's offer to renounce his citizenship

can be made a condition of his probation as well as barring his return to the United States. The solution proposed by the defendant is the permanent for the fears expressed by the government and for the “public” that may feel threatened by the defendant’s presence in the United States.

At page eight of their response, the government seeks to address the driver’s license issue without full knowledge of the defendant’s efforts. Each effort and every possible angle was done with consultation with the United States Probation Office and the defendant’s assigned officer. The defendant was extremely careful to make sure that his efforts in this regard did not run afoul of any of the rules and regulations of his supervised release. In fact, he received additional valuable suggestions from his probation officer on possible ways to secure a license without disclosing his current location. However changes to the state law of the defendant’s state of residence were modified in within the last few years so that a driver’s license must reflect the driver’s actual address.

At page eight the government acknowledges that a website reported a threat to the defendant made on a Miami-based radio broadcast. This website was able to substantiate the broadcast, together with the date, time, and radio station. In addition, they published on their web site a copy of the actual recording and a transcript of the broadcast. It is much more than simply a hunch. The danger posed to the defendant is real and his remedy should not be to report to the same law enforcement agency that arrested him but to return to the safety of Cuba.

At page nine the government argues that the defendant is simply rehashing sentencing arguments that were known to him in 2001. The government, however,

fails to comprehend how live shave changed in the last eleven years. The sentence imposed by this court did not come with a crystal ball in order to see into the future as to how people's lives would change over more than a decade. What the defendant did not anticipate was being the only citizen on supervised release, probably in the whole United States, who has been denied the basic right to live with his family who loves him and awaits his arrival home. This inequitable result, has separated the defendant from his family while deportees on supervised release may reunite with their families.

The humanitarian concerns continue to be ignored by the government. In order to set the record straight, after the defendant filed his initial motion in early 2011 to modify his supervised release while he was still in Marianna, counsel for the defendant was unaware that the Cuban and United States government had come to an agreement to let Olga Salanueva (the defendant's wife) come to the United States in November 2010 in exchange for a family visit of an American prisoner been held in Cuba. This otherwise secret agreement was to remain a confidential diplomatic accommodation. At page 11 of their March 7, 2011 response, the government wrote "However, notwithstanding that Mrs. Gonzalez's deportation ordinarily would bar her from re-entry into the United States, the United States has been willing to, and has effectuated, some accommodation in that regard, so that husband and wife have been able to visit." This revelation for the first time violated the agreement between the two countries to keep this matter private. The defendant respectfully reminds this court that the government's statement was made in addressing humanitarian claims surrounding his supervised release and suggested that there would be future

accommodations. Since that statement nearly eighteen (18) months ago, no accommodations have been made.

Since the inappropriate revelation by the government, the “accommodation” has never been made despite numerous requests. The government though citing to possible humanitarian consideration even opposed the defendant’s request to visit his dying brother in Havana which this court granted over their objection. Opposing such a request with an undocumented, unsupported theory shows the punitive nature of Rene Gonzalez being on supervised release in the United States as opposed to being permitted to return to his family on a more permanent basis.

The offer of Rene Gonzalez to renounce his United States citizenship is not a mandatory condition of his supervised release. It is being made as an offer of compromise to satisfy the government’s insatiable desire for the defendant never to return to the United States. Without the defendant’s voluntary desire to renounce his United States citizenship, upon completion of his supervised release the defendant would otherwise be permitted to travel freely between the United States and Cuba. Therefore, it is the defendant that would be protecting the public to a greater extent than the prosecution themselves.

***Further review of the modification factors
pursuant to 18 U.S.C. 18 U.S.C. §3583***

According to the government “(t)he Movant fails to show significant unforeseeable changes pertinent to those sentencing factors” (Response at Page 1). “Further, his claim that the court’s regimen of supervised release is extraordinarily burdensome to him, in ways that could not have been foreseen, also is incorrect” (Response at Page 8); and, “The Movant’s complaints about his current conditions of

supervised release are overblown and do not amount to new unforeseen circumstances warranting modification or termination of supervised release” (Response at Page 10).

The Defendant respectfully notes that the government’s statements are not based on a realistic view of the Defendant’s situation. The complications derived from the extraordinary measures the Defendant has been forced to undertake for his own protection couldn’t have been known by any means until he was actually released. The extraordinary character of such measures has been determined by the characteristics of the defendant, as well as the unique nature of the offense he was convicted of and the more unique circumstances surrounding the facts of the case.

It wasn’t until his initial meeting with the probation officer that the Defendant was informed that he had to notify every one of his new acquaintances of his legal impediment of being under supervised release. Such a simple requirement –impossible to foresee at the time of sentencing–imposes a form of isolation on the part of the defendant as to human contact since this would reveal his identity and thereby placing him in danger. As a result, the Defendant cannot befriend his most immediate neighbors, or even establish any form of casual friendship. The Defendant cannot engage in any type of activity where his identity may be compromised, which puts him on a unique condition of “voluntary” house arrest, removed from any normal social contact or activity.

The situation is compounded by the lack of a driver’s license due to the same security concerns. The government states that “Defendant says his supervised release makes that study logistically difficult, but he coped with the situation while pursuing this study in prison, which could hardly have been less challenging” (Response at

Pages 8-9). It was impossible to foresee that his own protection would take from the Defendant the elemental right to facilitate his reintegration to society through his professional and vocational development. 18 U.S.C. §3553 doesn't establish a contest between the challenges of prison versus supervised release in regards to such development. On the contrary, it seeks to facilitate and encourage the Defendant's professional and vocational development.

If the rationale applied by the government to the inability by the Defendant to pursue his professional training was to be applied to his ability to obtain health care; then the government should be the most enthusiastic supporter of the motion to modify. The access to health care was remarkably and unexpectedly much higher in prison than it could ever be under the current conditions of supervised release for the Defendant. Only his continued good health would prevent him from having to put this condition to the test.

Rather than being exaggerated, the unforeseen hardships imposed on the Defendant by the conditions of his supervised release, on account of factors which couldn't have been foreseen at the time of sentencing, were understated on the motion to modify conditions of supervised release.

Factors pursuant to 18 U.S.C. §3553

In their response the government states: "(m)ovant's focus instead on why supervision is onerous to him misses the point that the court's job is to consider all the statutory factors, not only the ones that have some social-service aspect personally to him" (Response at Page 12). In order to assist the court, the Defendant wishes to reply by analyzing the factors themselves.

Protecting the public from further crimes by the defendant. Incapacitation:

Although it is hard to establish which danger, in the eyes of the government, the Defendant represents to the “public” at large, the government avoids the obvious which is they would be better protected by the complete and permanent removal of the Defendant from the United States. Granting the motion would serve that purpose.

Deterrence to criminal conduct: As the court well knows the Defendant has no criminal history points at the time of his sentencing and has acquired none since the date of his release. The circumstances and motives surrounding the commission of the offense are unique and can’t be repeated. Nevertheless, whatever remote the likelihood of another offense by the Defendant, the granting of the motion would prevent him from doing anything at all, good or bad, in the United States now and forever.

Nature and characteristics of the offense and characteristics of the defendant: As both the government and the court have amply acknowledged, the particular offense dealt with on this case relies on the covert nature of the defendant’s relationship with the groups and individuals that the government seek to protect from him. Although such a relationship can’t be repeated; removing the Defendant from the geographical proximity of those groups and individuals would further guarantee their protection from his dangerous presence.

The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense: The Defendant was sentenced consecutively to the maximum sentence of imprisonment (15 years) on each of the two counts of conviction, which means that his sentence was

taken to the absolute maximum limit of the punishment that Congress thought was appropriate for each offenses. The Defendant respectfully submits that such a lengthy sentence satisfies whatever drive for punishment derived from his offenses. Using the period of supervised release as a further tool of punishment was clearly not the intent of Congress.

Consistency: The Defendant respectfully submits that using the supervised release in this case is tantamount to a further punishment to both Defendant and his family is not consistent with the Congressional intent. Nothing can be more inconsistent with 18 U.S.C. §3553 than keeping a Defendant away from his family and social structure of support for one day longer. Only the granting of this motion would be consistent with that intent. The current situation of the Defendant sets him apart from tens of thousands of former inmates on supervised release now living with their families both in the United States and abroad.

Rehabilitation: The factors dealing with rehabilitation have been amply expressed by the Defendant in his prior submission. It should be noted however that “lack of remorse” as the government continues to phrase it, is *not* a §3553 factor.

The offer by the Defendant of renouncing his U.S. citizenship is not a mere prediction as suggested by the government.

The government’s arguments present the Defendant as a sinister character attempts to once again dismiss the weight of the Defendant’s own words to this court regarding his disposition to renounce his United States citizenship if the motion is granted. As a reminder, this court permitted the defendant to travel to Cuba just three short months ago to visit with his terminally ill brother and the defendant was a man

of his word and returned as order and complied with each and every aspect of this court's order.

Furthermore, the Defendant respectfully reminds this court that if he had wanted to take an opportunity to break away from his supervised release he would have remained in Cuba two months ago, when the court allowed him to visit his ill brother there. Though the Defendant has absolutely no obligation to do so, he will make good on his promise to this court in regards of his renouncing his United States citizenship should this court so order.

Conclusion

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

1. That the Court permit the 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 30th day of July 2012.

Respectfully submitted,

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