

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 98-721-CR-LENARD

UNITED STATES OF AMERICA,

Plaintiff,

v.

RENE GONZALEZ,

Defendant.

**ORDER GRANTING DEFENDANT'S RENEWED MOTION TO MODIFY
CONDITIONS OF SUPERVISED RELEASE (D.E. 1826) AND MODIFYING
CONDITIONS OF SUPERVISED RELEASE**

THIS CAUSE is before the Court on Defendant Rene Gonzalez's Renewed Motion to Modify Conditions of Supervised Release (D.E. 1826, 6/26/12). The Government initially filed a Response in Opposition (D.E. 1829, 7/16/12), and Defendant filed a Reply (D.E. 1830, 7/30/12). Upon Order of this Court (D.E. 1831, 10/1/12), the Parties filed supplemental Memoranda on Defendant's Proposed Loss of Nationality (D.E. 1836, 10/26/12; D.E. 1837, 11/16/12; D.E. 1838, 11/30/12). Defendant has since filed a Supplement to his Memorandum (D.E. 1845, 4/29/13). The Government filed a Response to Defendant's Supplement (D.E. 1846, 5/2/13), and Defendant filed a Reply (D.E. 1847, 5/3/13). Having considered the referenced filings and the record, the Court finds as follows.

In 2001, Defendant was convicted in the above-captioned matter of acting as an agent of a foreign government, the Republic of Cuba, without notifying the Attorney General, 18 U.S.C. § 951, and conspiring to act as an agent of a foreign government and to defraud the United States of and concerning its governmental functions and rights, id. § 371. The Court sentenced Defendant to an aggregate term of fifteen years' imprisonment plus three years' supervised release. (See Judgment, D.E. 1437 at 2.)

Defendant was released from federal custody on October 7, 2011, and is now serving his term of supervised release.

On June 26, 2012, Defendant filed the present Renewed Motion to Modify Conditions of Supervised Release. (See Renewed Motion, D.E. 1826 at 1.) Defendant moves to modify his conditions of supervised release so that he may return to Cuba and serve the remainder of his term on a non-reporting basis. (Id.) Defendant argues that he has fully complied with all current conditions of supervised release and that various factors favor modification under 18 U.S.C. §§ 3853(e)(2) and 3553(a). (Id. at 2–4.)

Defendant, who is a dual citizen of Cuba and the United States, further states that he is “willing to renounce his United States citizenship if it means that he is permitted to return to his home and his family.” (Id. at 15.) Defendant offers to renounce his United States citizenship, in Cuba, “to give the United States confidence that he will never re-enter this country.” (Id. at 6.)

The Government originally opposed Defendant's Motion, arguing in relevant part that Defendant's proposed renunciation in Cuba was an unsound and unenforceable condition on which to modify Defendant's supervision. (See Response, D.E. 1829 at 16.)

On April 3, 2013, while the present Motion was still pending, Defendant filed a Motion to Travel, seeking leave to visit Cuba for two weeks to attend a memorial service for his deceased father. (See Motion to Travel, D.E. 1839 at 2.) The Court granted that Motion on various conditions. (See Order Granting Motion to Travel, D.E. 1844 at 1–2.) Defendant departed for Cuba on April 22, 2013, and is now in Havana. He is scheduled to return to the United States on May 6, 2013.

On April 29, 2013, Defendant filed a Supplement in further support of his Renewed Motion to Modify Conditions of Supervised Release. (See Supplement, D.E. 1845 at 1.) Defendant states that, with the Court’s permission, he is willing to proceed to the United States Interests Section in Havana and formally renounce his citizenship pursuant to 8 U.S.C. § 1481(a)(5) if allowed to serve the remainder of his supervised-release term in Cuba. (Id. at 2.)

The Government filed a Response to Defendant’s Supplement on May 2, 2013, indicating that it does not oppose Defendant’s request. (See Response to Supplement, D.E. 1846 at 1.) The Government proposes the following modified supervised-release condition: “If the defendant voluntarily renounces his U.S. citizenship pursuant to 8 U.S.C. § 1481(a)(5) while he is authorized by this Court to be in Cuba and is issued a certificate of loss of nationality by the U.S. Department of State, then thereafter the defendant shall serve the remainder of his supervised release term in Cuba, the remainder of that supervised release term shall be non-reporting, and the defendant shall not return to the United States.” (Id. at 1, 2–3.) The Government indicates that “the FBI has concluded that the security interests of the United States are furthered if the defendant,

while already in Cuba, is allowed to voluntarily renounce his United States citizenship and thereafter does not return to the United States.” (Id. at 2.)

In reply, and in light of the Government’s conditional agreement to Defendant’s proposal, Defendant asks that his current leave to travel be extended by ten days for the purpose of completing renunciation procedures with his attorney present and obtaining a certificate of loss of nationality. (See Reply in Support of Supplement, D.E. 1847 at 2–3.)

“The court may, after considering the factors set forth in [18 U.S.C. §] 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7),” “modify, reduce or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision.” 18 U.S.C. § 3583(e)(2); United States v. Baker, 497 F. App’x 874, 875 (11th Cir. 2012). Relevant factors set forth in 18 U.S.C. § 3553(a) include the nature and circumstances of the offense and the history and characteristics of the defendant, 18 U.S.C. § 3553(a)(1), the need to afford adequate deterrence to criminal conduct, id. § 3553(a)(2)(B), and the need for the sentence imposed to protect the public from further crimes of the defendant, id. § 3553(a)(2)(C). Rule 32.1(c)(2) of the Federal Rules of Criminal Procedure further allows the Court to modify conditions of supervised release without a hearing if (A) the person waives the hearing; or (B) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and (C) an attorney for the

government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so. Fed. R. Crim. P. 32.1(c)(2).

Pursuant to 8 U.S.C. § 1481(a)(5), a person who is a national of the United States shall lose his nationality by, among other things, making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State, with the intention of relinquishing United States nationality. 8 U.S.C. § 1481(a)(5). When such a renunciation is made—or whenever a consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality—that officer shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State, and if the report of the consular officer is approved by the Secretary of State, then a certificate of loss of nationality shall issue. Id. § 1501.

The Court has considered the relevant modification factors set forth in 18 U.S.C. § 3553(a), as required by 18 U.S.C. § 3583(e)(2), and the Court has considered the proposals and representations of the Parties. In light of the Section 3553(a) factors and the security interests of the United States, the Court finds Defendant's proposed modification of supervised release appropriate, contingent upon his voluntary renunciation of his United States citizenship and the issuance of a certificate of loss of nationality by the U.S. Department of State. It is therefore **ORDERED AND ADJUDGED** that Defendant Rene Gonzalez's Renewed Motion to Modify Conditions of

Supervised Release (D.E. 1826, 6/26/12) is **GRANTED**. The conditions of Defendant's term of supervised release are hereby modified as follows:

1. If Defendant voluntarily renounces his United States citizenship pursuant to 8 U.S.C. § 1481(a)(5) while presently authorized by this Court to be in Cuba, and if he is issued a certificate of loss of nationality by the U.S. Department of State, then Defendant shall serve the remainder of his supervised-release term in Cuba on a non-reporting basis, and he shall not return to the United States.
2. If Defendant does not voluntarily renounce his United States citizenship while presently authorized by this Court to be in Cuba, and/or he is not issued a certificate of loss of nationality by the U.S. Department of State, Defendant shall return to the United States and to the district of his supervised release as previously ordered (see Order Granting Motion to Travel, D.E. 1844 at 2), and all original conditions of supervised release shall remain in full force and effect (see Judgment, D.E. 1437 at 3–4).
3. Defendant's present leave to travel pursuant to this Court's Order Granting Motion to Travel (D.E. 1844, 4/12/13) is extended until May 16, 2013, for the purpose of completing renunciation procedures and obtaining a certificate of loss of nationality from the U.S. Department of State.

4. By May 23, 2013, Defendant shall file with the Court a status report as to renunciation and a certified copy of any issued certificate of loss of nationality.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of May, 2013.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE