

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

CASE NO. 98-721-CR-LENARD

**UNITED STATES OF AMERICA,**

v.

**RENE GONZALEZ,**

Defendant.

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**ORDER DENYING DEFENDANT’S MOTION TO MODIFY CONDITIONS OF  
SUPERVISED RELEASE (D.E. 1808)**

**THIS CAUSE** is before the Court on Defendant Rene Gonzalez’s Motion to Modify Conditions of Supervised Release (“Motion,” D.E. 1808), filed on February 16, 2011. On March 7, 2011, the Government filed its response in opposition (“Response,” D.E. 1814), to which Defendant filed his reply (“Reply,” D.E. 1817), on March 25, 2011. Having considered the Motion, Response, Reply, related pleadings, and the record, the Court finds as follows.

**I. Background**

Defendant seeks to modify the conditions of his supervised release such that he be permitted to travel to and reside in Cuba, rather than serve his term of supervised release in the United States, and his supervised release be non-reporting while in Cuba. Defendant is currently serving the remainder of his term of imprisonment at the Federal Correctional Institution at Marianna, Florida. Defendant was sentenced to a three-year term of supervised

release which includes standard conditions of supervised release and certain special conditions, *inter alia*, requiring him to file tax returns for the prosecution years, prohibiting him “from associating with or visiting specific places where individuals or groups such as terrorists, members of organizations advocating violence, organized crime figures are known to be or frequent,” and subjecting Defendant “to a search of his person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.” (See D.E. 1437.) He is scheduled to be released from prison on October 7, 2011.

The Government opposes modification of Defendant’s term of supervised release on the grounds that the Court lacks authority to do so while he is still incarcerated and it is substantively unwarranted. Specifically, the Government argues that Defendant is not permitted under 18 U.S.C. § 3583(e) to seek termination or modification where supervised release has not yet commenced.

In reply, Defendant urges that 18 U.S.C. § 3583(e) and Rule 32.1(c) of the Federal Rules of Criminal Procedure permit the modification of a term of supervised release “at any time.” Moreover, Defendant argues that modification is warranted based upon consideration of the “nature and circumstances of the offense and the history and characteristics of the defendant” under 18 U.S.C. § 3553(a).

## **II. Discussion**

18 U.S.C. § 3583(e)(2) provides that, “[t]he court may, after considering the factors set forth in section 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.”

The Court finds that Defendant’s Motion is premature. In United States v. Johnson, 529 U.S. 53, 57 (2000) (citing 18 U.S.C. § 3624(e)), the Supreme Court held that a term of supervised release does not commence until an individual is “released from imprisonment.” Defendant is still in the custody of the Bureau of Prisons and has not finished his term of imprisonment. As noted by the Johnson court, supervised release is a “unique method of postconfinement supervision invented by the Congress for a series of sentencing reforms.” Johnson, 529 U.S. at 60 (quoting Gozlon-Peretz v. United States, 498 U.S. 395, 410 (1991)). Congress could not have intended that prisoners use 18 U.S.C. § 3583(e)(2) as a vehicle to modify terms of supervised release any time after a defendant was sentenced but prior to the actual commencement of any term of supervised release. Otherwise, the courts would be flooded with prisoners challenging their terms of supervised release while incarcerated, and again once supervised release had actually begun.

More importantly, under 18 U.S.C. § 3583(e)(2), the Court must consider various factors under 18 U.S.C. § 3553(a) as part of the determination of whether modification is appropriate. The factors the Court must consider include: the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed -- to afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational

training, medical care, or other correctional treatment in the most effective manner; the Sentencing Guidelines and policy statements; the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense. With regard to many of these factors, the Court is unable to evaluate them as they relate to the standard and special conditions of supervised release while the defendant is still imprisoned. For example, some amount of time on supervised release needs to pass before the Court is able to properly evaluate the characteristics of the defendant once he or she has been released from prison or whether there is a continued need to protect the public from further crimes. Furthermore, Defendant's term and conditions of supervised release were fashioned by the Court at sentencing after due consideration of the factors set forth in 18 U.S.C. § 3553(a). Defendant does not indicate how any of those factors has changed since he was sentenced. Accordingly, it is **ORDERED AND ADJUDGED** that Defendant Rene Gonzalez's Motion to Modify Conditions of Supervised Release (D.E. 1808), is **DENIED** with leave to re-file after commencement of supervised release should the circumstances warrant modification.

**DONE AND ORDERED** in Chambers at Miami, Florida this 16th day of September, 2011.

  
**JOAN A. LENARD**  
**UNITED STATES DISTRICT JUDGE**