UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-721-Cr-LENARD (s)(s)

UNITED STATES OF AMERICA,

v.

RENE GONZALEZ,
Defendant
_____/

UNITED STATES'S RESPONSE IN OPPOSITION TO DEFENDANT'S RENEWED MOTION TO MODIFY CONDITIONS OF SUPERVISED RELEASE

Defendant Rene Gonzalez ("Movant" or "Defendant") has renewed his previous motion, Docket Entry ("DE") 1808, to Modify Conditions of Supervised Release. *See* DE 1826. The United States opposed the previous motion, DE 1814, and the court denied it, DE 1819. The United States also opposes the renewed motion, and for similar reasons: The court's initial sentence, including the term of supervised release, was sound, and properly based on statutory sentencing factors reflected in 18 U.S.C. §3553; the Movant fails to show significant unforeseeable changes pertinent to those sentencing factors; and the Movant seeks essentially to bring the court's supervision of him, as previously ordered, to an untimely end, without justification. The Probation Office also opposes the Renewed Motion.

By way of background, the United States reiterates and repeats the Factual and Procedural Background as stated in the United States' response, DE 1814, in opposition to the original motion to modify conditions of supervised release, which apply as well to this Renewed Motion:

Factual and Procedural Background

> Defendant Gonzalez was charged with, and convicted of, two counts in this multi-defendant case: Count 1, a dual-object conspiracy for defendant and his

co-conspirators to act as agents of a foreign government – that is, the Republic of Cuba – without notification to the Attorney General, and to defraud the United States of and concerning its governmental functions and rights; and Count 15, a substantive count of knowingly acting as an agent of a foreign government without notification to the Attorney General, in violation of Title 18 United States Code, §951. *See* DE 224 (second superseding indictment).

As the court which tried this case knows, the facts in the case are voluminous and lengthy. The United States respectfully submits that the defendant's Pre-Sentence Report ("PSR") provides a helpful overview both of the entire case facts, *see* PSR ¶¶ 3-5, and of each defendant's role and offense conduct. Gonzalez's role and offense conduct are set forth at ¶¶ 40-45 of his PSR.[1] *See also* DE 1426:1-10 (government's memorandum in aid of sentencing Gonzalez). In very summary fashion, Gonzalez's proven role in the spy conspiracy that called itself *La Red Avispa* ("the wasp network") included:

- using his status as a commercial airplane pilot to penetrate and report on activity in south Florida organizations the Government of Cuba perceived as "counter-revolutionary," including at Brothers to the Rescue ("BTTR") and at Movimiento Democracía, a Cuban exile group where Gonzalez's false depiction of himself as an anti-Castro sympathizer was so successful that he was proposed to head an intelligence division of its aviation group;

- taskings from Cuba's Directorate of Intelligence ("DI") to assess and implement "active measures" intended to harass, discredit and foment distrust among Miami anti-Castro groups, including with anonymous letters, threatening phone calls and correspondence conveying death threats and character-smears, in the purported anonymous voice of other, rival anti-Castro groups and persons;

- taskings from a Miami-based Cuban intelligence officer for Gonzalez to scout and assess BTTR's vulnerabilities, including the prospect of its warehouse being burnt and its equipment and communications being disabled, making it seem like negligence or a BTTR insurance fraud;

- Gonzalez insinuating his wife, who was trained to become part of the *Red Avispa* spy ring, to move from Cuba to the United States, including through an elaborate charade of enlisting United States political support sympathetic to Gonzalez's false legend as an anti-Castro activist;[2]

[1] The final version of Gonzalez's PSR, bearing the notation "Revised 01/03/02" in the lower right corner of each page, reflects and incorporates the court's rulings at Gonzalez's sentencing.

[2] Indeed, Gonzalez's wife, Olga Salanueva, succeeded in gaining entry to the United States on these false pretenses, and lived in Miami with Gonzalez prior to his arrest. She attended meetings of Gonzalez with his spy handler-officer in Miami, and was herself a member of the spy ring. (footnote continued)

- endeavoring to manipulate the FBI and to distort information provided to the FBI in Gonzalez's role, prescribed for him by the DI, as a purported FBI informant. Gonzalez consulted closely with his DI handlers and supervisors as to the best way to trick the FBI; as Gonzalez reported, "I thwarted [the FBI agent] diplomatically, but I left the door open a crack. I think that I was very convincing and my 'sincerity' impressed him."

In addition to the seriousness of his crimes, and defendant's firm allegiance to furthering the interests of a foreign government, covertly, in the United States, Gonzalez was resolutely and expressly unrepentant during and following his trial. At his sentencing on December 14, 2001, Gonzalez made a lengthy and articulate full-bodied expression of lack of remorse, and entitlement – indeed, patriotic duty – to promote what he perceived as Cuban interests through covert activity. *See* DE 1452:13-26: "I can only feel proud to be here and I can only thank the prosecutors for giving me this opportunity to confirm that I am on the right path and that the world still has a lot of room left for improvement" (DE 1452:16); "The manner in which I acted fits perfectly with the conduct described in the statutes under which I was charged. . . .Thus, I don't even have the right to ask for clemency for myself . . . I would like to believe you will understand why I have no reason to be remorseful"(DE 1452:23-24); "[my co-defendants] were convicted for having committed the crime of being men of honor" (DE 1452:25).

In light of the seriousness of the offenses, of defendant's defiant insistence on the right to have committed his crimes, and on his apparent relish for continuing his conduct, the United States sought the maximum sentence, including for reasons of incapacitation and protecting the public.

The court, before pronouncing sentence, noted that terrorism wherever it occurs cannot excuse wrongful and illegal conduct by this, or any other defendant, DE 1452:42-43. The court also noted that the defendant used his United States citizenship as a tool of convenience, while actually serving a different master:

> This defendant also stands before the Court as an American citizen. Upon his return to the United States, he asserted his United States citizenship has [sic] the basis for his re entry from Cuba, but his reclamation of that status was not for the pursuit of liberty or even the unalienable right of the pursuit of happiness.

(footnote continued)
Her role in the ring was somewhat passive, and following arrests in the case she was not herself arrested, but was rather deported to Cuba. She is a Cuban national, as is the older daughter of Gonzalez and his wife. A younger daughter was born during Olga Salanueva's time in the United States, and has United States citizenship. Both daughters returned to Cuba with their mother.

> His purpose in asserting his United States citizenship to re enter and live in the United States was to serve a different master.

DE 1452:43. The court recognized the defendant's lack of remorse, "driven perhaps, by his personal political belief; but these personal political beliefs do not justify his criminal conduct." DE 1452:44. The court also took due notice of, and applied, statutory sentencing factors of Title 18, United States Code §3553, DE 1452:43-44. The court sentenced Gonzalez to ten years on Count 15 and five years on Count 1, to run consecutively; and, following release from imprisonment, concurrent terms of three years supervised release, reporting promptly after release to the probation office in the federal district where he is released. In addition to standard terms of supervised release, the court set that "[a]s a further special condition of supervised release the defendant is prohibited from associating with or visiting specific places where individuals or groups such as terrorists, members of organizations advocating violence, and organized crime figures are known to be or frequent." DE 1452:45-46. *See also* DE 1437 (judgment order).

Movant began serving his three-year term of supervised release in October, 2011, after the court denied his motion to convert it to non-supervised release to be served in Cuba. *See* DE 1819. While on supervised release, Movant sought, DE 1821, and was granted, DE 1825, leave to travel to Cuba for two weeks to visit his seriously ill brother, who since has passed away.

One other factual matter pertinent to Movant's Renewed Motion to Modify Conditions of Supervised Release is that he is a United States citizen. Movant was born in Chicago, IL. and brought as a young child to Cuba, where he grew up. *See* PSR ¶¶ 77-78. He lived in Cuba until December 1990, when he flew to Key West after allegedly stealing a bi-plane from a Cuban government-sponsored youth group. Movant eventually made his way to Miami-Dade County, *id.* ¶ 79, where he resided at the time of his arrest.

Argument

The Defendant argues that the court should modify his supervised release by converting it to unsupervised release to be served by him in Cuba, on the grounds that the regimen of

supervision of him in the United States is unduly burdensome to him; that he is deserving of relief from supervision due to his having complied with all conditions; and that he is being treated unfairly in comparison to co-defendants and to other defendants in other cases who have been allowed to return to their home countries notwithstanding sentences including post-incarceration terms of supervision. The Defendant's arguments lack merit. First, service by him of supervised release is not extraordinarily or unfairly burdensome. Second, compliance with the terms of supervised release is expected of all supervisees as a baseline, and is not in and of itself a reason for modification or early termination of supervision. And third, Movant wrongly compares himself with convicted persons who are not United States citizens and who are therefore *deportable* and *permanently excludable* from returning to this country, whereas he, as a United States citizen, is not deportable and does not face such constraints on access to United States territory.

1. ***The court's sentence of supervised release was proper, and is not unduly or unfairly burdensome.***

At the time of Movant's sentencing, the court gave explicit, thorough and correct consideration to the statutory sentencing factors set forth at 18 U.S.C. §3553. *See* DE 1452:43-44. The sentencing court also noted that the defendant "has shown no remorse for his illegal and criminal activities," *id.* at 44, a circumstance that remains unchanged to this day. The court's significant sentence properly served sentencing factors of deterrence to criminal conduct,[1] and

[1] This corresponds to 18 U.S.C. §3553(a)(2)(B) ["to afford adequate deterrence to criminal conduct"], and also reflects factors referenced at 18 U.S.C. §3553(a)(1) and (a)(2)(A) ["(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed-- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"].

protecting the public from further crimes by the defendant,[2] *see* DE 1452:44, and provided for a period of supervised release, and special terms such as the non-association with terrorists or organizations advocating violence which further those goals. Those protections should not be removed now. Nor did the court ignore any of the statutory sentencing factors, such as the history and characteristics of the defendant, 18 U.S.C. §3553(a)(1); *see* DE 1452:41, where the court acknowledged its consideration of a videotape from the Defendant's friends, family and neighbors in Cuba, as well as other materials.

The Defendant's serious crimes, his vitriolic sentencing statement, and his explicit insistence on the right to continue to improve the world as he sees fit all counsel the appropriateness of the court's original sentence, and of the extra measure of control the court provided by ordering a period of meaningfully supervised release, which should not be disturbed.

Termination and modifications of conditions of supervised release are governed by statute, 18 U.S.C. §3583(e). The statute allows the court to *terminate* supervised release "after the expiration of one year of supervised release." *See* 18 U.S.C. §3583(e)(1). [3] The statute allows the court to "extend . . . modify, reduce, or enlarge the conditions of supervised release, at any

[2] This corresponds to 18 U.S.C. §3553(a)(2)(C) ["to protect the public from further crimes of the defendant"], and also reflects factors referenced at 18 U.S.C. §3553(a)(1) and (a)(2)(A) ["(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed-- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"].

[3] The United States respectfully submits that Gonzalez's motion, regardless of how it is styled, is not actually a motion to *modify* supervised release, but functionally one to *terminate* or *eliminate* entirely the supervised release. That is, the relief Gonzalez seeks would effectively put him beyond any supervision by the court. He would depart the United States, pass beyond the court's jurisdiction, and spend the remainder of the three-year term in Cuba, leaving the probation office and the court with no ability to enforce any of the court's standard or special conditions of supervised release. Since the Defendant has not yet served one year of supervised release, 18 U.S.C. §3583(e)(1) precludes it being terminated at this time.

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…" *See* 18 U.S.C. §3583(e)(2). (The referenced provisions of the Federal Rules of Criminal Procedure relating to modification of probation are found at FRCrP 32.1(c).)

In considering a motion for modification of a term of supervised release, the court should consider the familiar sentencing factors prescribed at Title 18, United States Code, §3553. *United States v. Nonahal*, 338 F.3d 668 (7th Cir. 2003); *United States v. Lussier*, 104 F.3d 32, 35 (2nd Cir. 1992); *United States v. Liptak*, 2007 WL 1795748, *2 (W.D. Va. 2007). These are the very factors the sentencing court carefully, thoroughly and correctly considered and applied on December 14, 2001, at Movant's original sentencing. Where circumstances affecting those factors have changed, 18 U.S.C. §3583(e) provides the district court with retained authority to modify conditions of supervised release "in order to account for new or unforeseen circumstances," *United States v. Miller*, 205 F.3d 1098, 1101 (9th Cir. 2000), quoting *United States v. Lussier, supra*, 104 F.3d at 36; *see also United States v. Smith*, 445 F.3d 713, 716-717 (3rd Cir. 2006); *United States v. Liptak, supra*, 2007 WL 1795748.

But re-arguing, and re-allocuting, a defendant's initial sentencing is not the purpose, or authority, for modification of terms of supervised release. *See United States v. Garrasteguy*, 559 F.3d 34, 40, 41 (1st Cir. 2009) (limiting ability of defendant belatedly to raise objections to terms of supervised release that could have been but were not stated at time of sentencing). This is especially so where the underlying crimes are serious ones that posed risks to the public and to the United States. "Subsection 3583(e) on its face authorizes the court to modify conditions of supervised release only when general punishment goals would be better served by a modification." *United States v. Lussier, supra*, 104 F.3d at 35. *See also United States v. Johnson,*

529 U.S. 53, 59 (2000) (conditions of supervised release should be informed by, among other things, "the need . . . to afford adequate deterrence to criminal conduct; . . . . to protect the public from further crimes of the defendant").

The Movant seeks to come within the "new or unforeseen consequences" doctrine, and seeks to avoid the appearance of quarreling with the court's original sentencing decision, by arguing that circumstances have changed since 2001 in ways that were then unforeseeable, but that is not correct. The Movant's arguments are basically a rehash of points that he either did make or could have made at his original sentencing, and that have not in fact changed. The United States respectfully submits that Movant should not be able, 10 years after his sentencing, to revive and reargue points that he could have made then. 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.

For instance, the Movant argues that he is unfairly hampered in his job and education prospects while on supervised release because he cannot get a driver's license, because the state of his residence does not permit licenses to be obtained in P.O. Box addresses, and because he cannot expose his address due to fear of reprisals from people "who harbor anti-Cuba and anti-Castro views," *see* DE 1826:8-11. Movant has not reported any threats to his probation officer.[4] Movant does not address whether the state of his residence makes statutory provision for protection of driver's license information; it does. Whatever Movant's complaints about his job and education prospects, he says he is employed full time, *see id.* at 3, 6, 17, and studying

[4] A website of the Defendant's supporters reported a radio talk-show conversation they considered threatening to Defendant. The information has been provided to the FBI for review, to the Probation Office, and to counsel for Defendant.

economics through the University of Havana, *id.* at 10.[5] His complained-of difficulties do not seem to be of extraordinary proportions. Nor, most tellingly, are they any different from what he could have anticipated, and argued, at the time of his initial sentencing; certainly at that time he was at least as mistrustful and critical as he is now of people who harbor anti-Cuba and anti-Castro views. *See* DE 1452:13-26 (Gonzalez sentencing allocution).

Movant also argues humanitarian concerns of wanting to be closer to his family, and complaining of unfair treatment in that regard. *See* DE 1826:3, 5, 11-13. But his family circumstances were known to him at the time of initial sentencing – the ages and nationality of his daughters, and parents; the exclusion of his wife from the United States as a deportee – and his arguments now are not new or unforeseen circumstances, but an effort to reargue initial sentencing concerns. The United States does not belittle defendants' concerns for their families. The toll of sentencing sanctions on family members is a reality in nearly every criminal sentencing, and one which this court is fully aware of and tries to deal equitably with, for all defendants. That is the very reason why although it may be an important concern, it is not an *extraordinary* one, nor one as to which circumstances have changed or that the court failed to consider previously.

Indeed, Gonzalez's counsel did make family-focused arguments seeking mitigation of sentencing at his 2001 sentencing, *see, e.g.*, DE 1452:8, and the court considered and acknowledged the defendant's humanitarian arguments and videotape, *see* DE 1452:41, 42. To isolate this emotional argument, nearly 10 years later, from the rest of the context of this

[5] 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. *See* DE 1826:16.

sentencing, with its many countervailing arguments, *see, e.g.*, DE 1452:26-40, would unfairly distort the sentencing process and concepts of finality.

The Movant's complaints about impediments to his wife, Olga Salanueva, visiting him in the United States are particularly ill placed. As the evidence at Defendant's trial showed, the Defendant's wife was sent to the United States by the Government of Cuba to be a covert spy, and entered this country under false pretenses, after her husband, the Defendant – then still acting the part of an anti-Cuban-government activist – pursued a fraudulent charade of seeking advice and help to bring her to this country, from duped United States officials, including elected officials, and of other activists he pretended to befriend. At the time of the Defendant's arrest, his wife was herself a member of *la Red Avispa*, living in south Florida, whose relatively passive role in the ring was commensurate with her deportation. Her deportation barred her re-entry to the United States. Nonetheless, she and the Defendant were afforded extraordinary accommodation by the United States in that regard. When the Movant claimed, inaccurately, in his initial motion for modification of conditions of supervised release, that he and his wife had been involuntarily separated for more than 10 years, *see* DE 1808:5, the United States corrected the record by noting in its response, *see* DE 1814:11, that the United States had been willing to, and had "effectuated, some accommodation in that regard, so that husband and wife have been able to visit." Movant's present claim, *see* DE 1826:2-3, 5,11, that this somehow shows a broken promise by the United States to afford future, repeated, or unmonitored, access to the United States by a deported spy is baseless.

The Movant's complaints about his current conditions of supervised release are overblown and do not amount to new or unforeseen circumstances warranting modification or termination of supervised release.

2. Being compliant with conditions of supervised release is not in itself a reason for early termination of supervision.

Movant supports his motion with the argument that he is in full compliance with the terms of his supervised release. *See* DE 1826:3, 6-7, 16-18. But "mere compliance with the terms of probation or supervised release is what is expected of probationers, and without more, is insufficient to justify early termination," *United States v. Caruso*, 241F. Supp. 2d 466, 469 (D. N.J. 2003); *United States v. Sheckley*, 1997 WL 701370, **2 (2nd Cir. 1997); *United States v. McKay*, 325 F. Supp. 2d 359, 360 (E.D.N.Y. 2005); *United States v. Paterno*, 2002 WL 1065682, *2, *3 (D. N.J. 2002); *United States v. Herrera*, 1998 WL 684471, *2 (S.D.N.Y. 1998). *See also United States v. Medina*, 17 F. Supp. 2d 245, 247 (S.D.N.Y. 1998)(compliant post-incarceration behavior "alone cannot be sufficient reason to terminate the supervised release since, if it were, the exception would swallow the rule"); *United States v. Gerritson*, 2004 WL 2754821, *3 (S.D.N.Y. 2004). Nor does such mere compliance amount to the "exceptionally good behavior" that courts look for in considering claims for early termination of supervision. *See United States v. McKay, supra*, 325 F. Supp. 2d at 360 (defendant in full compliance with supervision conditions nonetheless "fails to present facts and circumstances that demonstrate the 'exceptionally good' behavior referred to in the precedents;" early termination denied); *United States v. Sheckley, supra*, 1997 WL 701370 at **1-2 (no abuse of discretion where court denied early termination for fully compliant defendant; early termination is not warranted as a matter of course; on the contrary, it is only occasionally justified due to changed circumstances such as defendant's exceptionally good behavior, quoting *Lussier*); *United States v. Caruso, supra*, 241F. Supp. 2d at 468; *United States v. Paterno, supra*, 2002 WL 1065682, *2.

Far from demonstrating "exceptionally good behavior" over and above mere compliance

with his conditions of supervised release, Movant continues, more than a decade after his sentencing, to show no remorse for his crimes. There is no reason to conclude that he would change a word of his December 14, 2001 allocution: "I can only feel proud to be here and I can only thank the prosecutors for giving me this opportunity to confirm that I am on the right path and that the world still has a lot of room left for improvement. . . . The manner in which I acted fits perfectly with the conduct described in the statutes under which I was charged. . . .Thus, I don't even have the right to ask for clemency for myself . . . I would like to believe you will understand why I have no reason to be remorseful." *See* DE 1452:16, 23-24.

Movant's focus instead on why supervision is onerous to him misses the point that the court's job is to consider *all* the statutory sentencing factors, not only the ones that have some social-service aspect personally for him. On the contrary, 18 U.S.C. §3583(e) on modification or revocation of supervised release "requires the court to consider general punishment issues such as deterrence, public safety, rehabilitation, proportionality, and consistency" when it considers requests to change the term or conditions of supervised release. *United States v. Lussier*, *supra*, 104 F.3d at 35. The Movant's compliance with supervised release is a particularly inapt rationale for relief in his case. His faults, proven at trial, are not of lack of discipline; on the contrary, it is exactly his proven course of disciplined obedience to a foreign power – including to defraud the United States, to impose on its officials, and to spread dissension and character assassination in its communities – that pose risk, and that call for adherence to the court's original sentencing plan.

The relief Movant seeks is essentially to end the court's supervision, by sending him to Cuba to serve the remainder of his three-year term unsupervised. But supervised release may not be terminated before the defendant has served one year of supervised release, which the Movant

has not done. Title 18 U.S.C. §3583(e)(1) provides that the court may terminate supervised release only "after the expiration of one year of supervised release." This provision "strongly implies Congress's judgment," *see United States v. Joseph*, *supra*, 109 F.3d at 39, as to the need for one year's experience and control through supervised release, before considering such a drastic step as Movant proposes.

The case of *United States v. Nonahal*, 338 F.3d 668 (7th Cir. 2003), is instructive. The defendant there served 31 months in prison for counterfeiting, and was serving a three-year term of supervised release when he petitioned the court to modify his terms of supervised release so as to allow him to move to Pakistan to study dentistry there, and to be relieved of the requirements to reside within the federal district and report monthly in person to the probation officer there. The government opposed this, "arguing that the proposed modifications would terminate effectively his supervised release by placing him beyond the reach of meaningful supervision," *id.* at 669-670. The district court agreed, and the Court of Appeals affirmed: "As the Government observes, to allow [defendant] to relocate to Pakistan, far outside the oversight of his probation officer, is antithetical to the concept of supervised release and would effectively constitute a premature end of the supervision term," *id.* at 671. The Movant's motion is even more "antithetical" to the concept of supervised release than was Nonahal's. This Movant seeks to go even farther "outside the oversight" of the court than Pakistan, as he seeks to eliminate any reporting requirements while taking up residence in a country with which the United States has no diplomatic relations and at best limited mechanisms of cooperation.

3. Defendant's sentence of supervised release does not subject him to unfair or disparate treatment.

Movant's argument that requiring him to serve his term of supervised release subjects

him to disparate treatment, *see* DE 1826:5-6, 13-15, is specious. He compares himself to co-defendants in his case – such as Gerardo Hernandez, Luis Medina and Ruben Campa – whose sentences provide that at the completion of each of these defendants' terms of incarceration:

> The defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, or the defendant voluntarily leaves the United States, he shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of supervised release, the defendant is to report to the nearest U.S. Probation Office within 48 hours of the defendant's arrival.

See DE 1780, 1784, judgment orders for Medina and Campa; Hernandez's judgment order, DE 1430, is to the same effect. Thus, the Movant basically complains that after their incarceration is over, these co-defendants may be sent directly to a foreign country to serve their terms of supervised release abroad, and essentially unsupervised, and that he should be afforded the same treatment. The Movant gives the court examples of other cases, which he likens to his, where similar provisions have been made for other defendants. *See* DE 1826:14-15.

The fallacy in Movant's argument is that these other defendants – the co-defendants in his case, and the named defendants in the other cases he cites – are not United States citizens. They are foreign nationals,[6] who are subject to removal based on their convicted status, after which they will not be able lawfully to re-enter the United States, ever, without express permission from the Attorney General. Movant, by contrast, is a United States citizen, and as such may not be deported from United States territory or excluded from re-entering it. Thus he is not, as he claims, "similarly situated" to the other persons and cases he references.

[6] The co-defendants' foreign-national status is a matter of record in this case, including in their Pre-Sentence reports. The United States proffers that the defendants in the other two cases Defendant cites also are foreign nationals.

Title 18 U.S.C. §3583(d) provides:

> (d) Conditions of supervised release.-- . . . If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation.

The court's sentences of co-defendants Hernandez, Medina and Campa (and, we submit, the sentences of the defendants in the two other cases Movant references) were proper because each of them is "an alien . . . subject to deportation," as prescribed by the statute. Defendant Gonzalez, by contrast, is not an alien subject to deportation, and would not properly have been subject to such a sentencing provision. Nor is the United States protected from Movant's future re-entry, pursuant to his United States citizenship.

Notwithstanding his "disparate treatment" argument, Movant does not ask to be treated like the alien co-defendants. Movant is not asking to be surrendered to ICE custody, or to be placed in removal proceedings; nor is he conceding that he could be so detained or proceeded against.

He makes a logically unsound argument that the Bureau of Prisons, the Department of Justice, the Department of State and this court have recognized his Cuban citizenship as somehow trumping his United States citizenship, for instance by allowing him consular visitation in prison from Cuban officials, and therefore he is now entitled to go to Cuba, notwithstanding the court's sentence. *See, e.g.* DE 1826:6, 7 (Defendant claims that court said Defendant more properly regarded as Cuban; recognized that Defendant regarded himself as primarily a Cuban citizen); DE 1826:5-6, 7-8, 15 (Defendant claims that U.S. government recognizes "primacy" of his Cuban citizenship by affording him consular visitation, as purportedly reflected in heavily redacted attachment at DE 1826-1:1-2; U.S. government has acknowledged that his U.S.

citizenship "takes a back seat to his Cuban citizenship"). The Movant's characterizations are incorrect. The court never passed judgment on the legal viability of Movant's United States citizenship; it simply noted, correctly, that he exploited that citizenship "to serve a different master," DE 1452:43. Nor has the United States passed on the "primacy" of his citizenship claims, or otherwise "acknowledged" a "back-seat" status to his United States citizenship. Indeed the unredacted copy of the diplomatic note Movant appended at DE 1826-1:1-2, refutes Movant's argument that affording him consular visits in prison from Cuban officials was due to some assertedly diminished aspect of his United States citizenship.[7]

Movant also dangles the prospect that if the court lets him go to Cuba to serve the rest of his term unsupervised, he will renounce his United States citizenship, obviating any concern that at some point in the future he could return to this country. These statements are at most a mere prediction by him, and have no element of enforceability. We respectfully submit that the court should recall that this is the same defendant who assured his spy handlers, *see* Government trial exhibit DG107:65-67, of his prowess in manipulating and deceiving the F.B.I. agent to whom the Defendant was pretending to be an anti-Castro cooperating individual: "In short," Gonzalez wrote to co-defendant Hernandez, "I thwarted [the FBI agent] diplomatically, but I left the door open a crack. I think that I was very convincing and my 'sincerity' impressed him." We respectfully submit that the Defendant's unenforceable proffer that he "is willing to renounce his United States citizenship if it means that he is permitted to return" to Cuba, *see* DE 1826:15, is not a sound basis for the court to relinquish its supervision.

In short, the Defendant does not present compelling or plausible reasons why the court should alter his sentence as he now requests, only that he would prefer to be in Cuba. The United

[7] The United States can provide the unredacted version, if the court wishes.

States respectfully submits that the court's original sentencing plan was sound, was based on concerns of deterrence, public protection and incapacitation that remain valid, and that the Defendant's Renewed Motion to Modify Conditions of Supervised Release should be denied. This also is the recommendation of the Probation Office.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 16, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Caroline Heck Miller
CAROLINE HECK MILLER
ASSISTANT UNITED STATES ATTORNEY