

INTRODUCTION

Having successfully completed over three years of probation, Ms. CLIENT NAME now seeks termination of her probation. Ms. NAME has fully complied with her probation. She meets the statutory requirements for early termination under 18 U.S.C. § 3564(c), and therefore no longer needs continued supervision. Given her history and characteristics, her spotless record on probation, and the nature of Ms. NAME's crime, neither the government nor the Probation Office oppose this motion. For the additional reasons detailed below, Ms. NAME respectfully moves the Court for early termination.

BACKGROUND

On July 10, 2018, Ms. NAME was indicted for False Statement in Application for Passport in violation of 18 U.S.C. § 1542. The charges stem from an incident on July 1, 2016, when Ms. NAME applied for a United States Passport to the U.S. Passport Office at 450 Golden Gate Avenue in San Francisco, California. On the application, Ms. NAME used another person's name, date of birth, and social security number. Further inquiry revealed Ms. NAME had used the same individual's identity to apply for a passport in 2002. Neither passport was ever issued.

On January 31, 2019, Ms. NAME pleaded guilty to Unlawful Transfer, Possession or Use of the Means of Identification of Another in violation of 18 U.S.C. § 1028(a)(7). On May 13, 2019, Ms. NAME was sentenced to a four-year term of probation. Though Ms. NAME was sentenced in the Northern District, the Eastern District of California oversees her probation because of her residency in Lodi, California. Ms. NAME's probation is set to expire on May 13, 2023.

Ms. NAME has had no violations or issues with probation since her sentencing. Her probation officer, Miriam Olea, confirms there have been no violations of any conditions of her supervision. Exhibit A, Email from Miriam Olea. Given Ms. NAME's compliance for three years, Ms. Olea indicated she would not oppose this motion to terminate Ms. NAME's probation. *Id.* Similarly, considering the Probation Office's position and Ms. NAME's spotless

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record, the Government does not oppose early termination either. Exhibit B, Email from AUSA.

Ms. NAME has not only complied with but exceeded the requirements of her probation. Ms. NAME has made several positive changes in her life since her conviction. Ms. NAME has become extremely involved in her local religious community. She attends both St. Anne's Catholic Church, and Thornton Mater Ecclesia. Exhibit C, Declaration of J. Hanna McCrum (herein after McCrum Decl.) ¶ 5, Ex. C. The Director of Religious Education, Isabel Abril describes Ms. NAME as a "good member" of both churches. Along with preparing for church sponsored events and gatherings, Ex. C. McCrum Decl ¶ 8, Ms. NAME even "helps [Ms. Abril] in the office, cleaning and organizing" and participating in Mass. *See* Exhibit D, Letter from St. Anne's Catholic Church In recent weeks, now that Spanish language opportunities are available, Ms. NAME has been attending prayer and Bible study groups with the churches. Ex. C, McCrum Decl ¶ 7. The participation at church makes Ms. NAME "very happy and enthusiastic." Exhibit. E, Letter of Lizet Alfaro.

A new addition to Ms. NAME's family—a grandson—has also inspired changes in Ms. NAME's life. Having a new grandson has inspired Ms. NAME to become a better role model for the child. *See* Exhibit G, Letter of Daniel Mejia. She is already a loving and caring grandmother, *see* Exhibit F, Letter of Alonso Mejia, but now wishes to work to help and benefit the child. *See* Exhibit H, Letter of CLIENT NAME; Exhibit I, Daniel Mejia Guerrero.

However, Ms. NAME is having difficulty achieving this goal while on probation. Ms. NAME cannot work while on probation without an active work permit. *See* Ex. C, McCrum Decl. ¶ 4. Having learned the consequences of rule-breaking and shortcuts from her conviction and punishment, Ms. NAME is fearful to break any regulation of her probation. *Id.* She wants to do everything correctly, which means either terminating the conditions of her probation or applying for an active work permit. *Id.* Given the time remaining on her probation, the most efficient and prudent course of action is to move for early termination. After over three years of excellent compliance, Ms. NAME hopes to fully re-enter society as a productive, working

individual. Therefore, to help Ms. NAME achieve her goals of working and helping her family, the Court should terminate her probation.

ARGUMENT

Under 18 U.S.C. § 3564(c), the Court has authority to grant early termination of probation if the defendant's conduct and the interests of justice warrant termination. This standard is similar to the standard for early termination of supervised release. *Compare* 18 U.S.C. § 3564(c) *with* 18 U.S.C. § 3583(e)(1). *See also United States v. Hartley*, No. 22-3010, No. 22-3044, 2022 WL 1548483, at *7 (10th Cir. May 17, 2022) (noting the “striking” similarities between the statutes.). Courts have applied supervised release early termination cases in probation early termination cases. *See, e.g., United States v. Hilton*, No. CR 13–172 PJH, 2014 WL 3728176, at *2 (N.D. Cal. July 28, 2014).

Courts enjoy discretion when determining whether to grant early termination. *See United States v. Emmett*, 749 F.3d 817, 819 (9th Cir. 2014). The Ninth Circuit held the “expansive phrases ‘conduct of the defendant’ and ‘interest of justice’ make clear that a district court enjoys discretion to consider a wide range of circumstances.” *Id.* This discretion is guided by the § 3564(c) directive that the court weigh the factors in 18 U.S.C. § 3553(a).

Nothing in § 3553(a), § 3583(e)(1) or its analog § 3564(c) requires a defendant to demonstrate changed circumstance, exceptional behavior or undue hardship. Changed circumstances may be “sufficient, but not necessary” to justify modification or termination of supervised release. *United States v. Bainbridge*, 749 F.3d 943 (9th Cir. 2002). *Emmett* specifically held that a showing of “undue hardship” was unnecessary to a grant of supervised release. 749 F.3d at 819. More recently, the Ninth Circuit reversed a district courts’ blanket policy requiring a showing of exceptional behavior to grant early termination. *United States v. Ponce*, 22 F.4th 1045 (9th Cir. 2022). The court emphatically denounced any “exceptional behavior” rule as “incorrect as a matter of law.” *Id.* at 1047. Though such circumstances may be considered, no showing of undue hardship, changed circumstance, or exceptional behavior is required to grant early termination.

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Rather than employ blanket policies or stringent requirements, courts should conduct an individualized assessment when determining whether early termination is warranted. *See Hartley*, 2022 WL 1548483, at *6. The Ninth Circuit has renounced any practice of making such a determination based on a single factor, *Emmett*, 749 F.3d at 820, or under a “blanket policy.” *Hartley*, 2022 WL 1548483, at *6. Courts should consider the factors in § 3553(a), the defendant’s conduct and the interest of justice in its individualized assessment.

In addition, courts consider the government and probation’s positions regarding the defendant’s motion. Courts generally give great weight to a joint non-opposition by the government and probation. *See, e.g., United States v. Hamlin*, LA CR 10-00684-VBF, 10-00689-VBF, 2014 WL 11737321, at *1 (C.D. Cal. Sept. 18, 2014) (granting early termination of probation when neither probation nor the government oppose the motion); *United States v. Marquez*, No. 1:06-mj-00186, 2007 WL 1847637, at *2-3 (E.D. Cal. June 27, 2007) (granting motion for early termination of probation when probation does not oppose the motion). *Cf. United States v. Alexander*, No. 18-cr-00520-SI-1, 2020 WL 5691499, at *1 (N.D. Cal. June 25, 2020)(granting early termination of supervised release when no government or probation opposition). Probation’s position is often given great consideration. *See, e.g., United States v. Sahakari*, No. CR 10–936 PJH, 2014 WL 3845166, at *1, *3 (N.D. Cal. Aug. 4, 2014) (denying motion for early termination of supervised release despite government’s non-oppositional position, because probation opposed early termination); *Hilton*, 2014 WL 3728176, at *1 (denying early termination motion when probation opposed, but government had no position on the motion). *But see United States v. Nunez*, 14-CR-00400 JST, Dkt 12, at *2 (N.D. Cal. Apr. 17, 2015) (granting early termination over the objection of the Probation Office and holding that extraordinary circumstances are not required for early termination under § 3583(e)(1)). Here, both the government and Miram Olea, Ms. NAME’s probation officer, do not oppose Ms. NAME’s motion. Ex. A, Ex. B. Accordingly, this Court should give strong weight to their positions in its consideration of Ms. NAME’s motion.

Ms. NAME anticipates potential concerns that mere compliance with the conditions of

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probation does not warrant early termination. Although mere compliance may “not justify early termination in every case” it certainly may be sufficient in conjunction with other factors. *United States v. Nunez*, 14-CR-00400 JST, at *2. *See, e.g., United States v. Mahabir*, 14-CR-00559 JSW, Dkt. 16, at *3 (N.D. Cal. Apr. 6, 2016) (granting early termination in reliance on, inter alia, whether defendant was employed, fully complied with all conditions of supervision, did not engage in any criminal conduct while on supervision, did not appear to need any special vocational or educational training, or medical care, and his early termination would have costs); *United States v. Carter*, 03-CR-00695 AHM, Dkt. 117, at *4–5 (C.D. Cal. Jan 26, 2015) (giving “defendant’s record of compliance great weight [in early termination of supervised release] determination because defendant has complied with every condition for nearly four years.”). Ms. NAME has not merely complied with the conditions of her probation. With the § 3553(a) factors discussed below, and the support of her family, she has exceeded the conditions of her probation compelling the conclusion that early termination is warranted.

THE NATURE AND CIRCUMSTANCES OF MS. NAME’S OFFENSE SUPPORT EARLY TERMINATION.

Ms. NAME took full responsibility for her crime as illustrated in her guilty plea. Ex. J. At sentencing, the government acknowledged the mitigating factors in Ms. NAME’s case: “NAME has no criminal history or any contact with law enforcement.” Govt Sentencing Mem. at 3. In particular, the government noted that this criminal conduct was not to harm another, but “was aimed at masking her undocumented immigration status.” *Id.* at 2–3. The nature and circumstances of Ms. NAME’s offense support the modest, ten-month early termination of her probation. *See* § 3553(a)(1).

MS. NAME’S HISTORY AND CHARACTER SUPPORT EARLY TERMINATION OF HER PROBATION.

Since her probation, Ms. NAME has made positive changes in her life, demonstrating she no longer needs probation. Her friends describe a new “very happy and enthusiastic” Ms. NAME. *See* Ex. E. Others remark on her generosity and supportive manner. *See* Exhibit K,

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Letter of Lucero Sanchez. Ms. NAME is also heavily involved in her local Church community, from attending services, to organizing the offices, to helping organize events. *See* Ex. D; Ex. C, McCrum Decl. ¶ 8. Her new grandson has also inspired her to become a better role model. *See* Ex. G. Ms. NAME is motivated to become a productive, and supportive member of her community. Her conduct demonstrates her impeccable character. *See* § 3553(a)(1).

THE SENTENCE MS. NAME HAS SERVED REFLECTS THE SEVERITY OF THE OFFENSE, PROMOTES RESPECT FOR THE LAW, AND HAS AFFORDED ADEQUATE DETERRENCE TO PROTECT THE PUBLIC.

Ms. NAME was sentenced to four years' probation; she has served over three of those years. Since being sentence, Ms. NAME has fully complied her conditions. She has not offended again, and has become an active member in her church and community since her probation was imposed. She does not smoke or drink, Ex. H., and she is not a danger to the public. Her crime did not harm another, rather it was to obfuscate her own immigration status. *See* Govt. Sentencing Memo 2–3. Her own son testifies to her repentance: that she understands the severity of her past actions and has learned her lesson. Ex. F. The dual purposes of the sentence to protect the public and afford adequate deterrence have been met. A final year of Ms. NAME's sentence will not further these goals. Terminating Ms. NAME's probation will allow her to be a better benefit to her household and her community; she is eager to get a job and support her family and new grandchild. Ms. NAME has learned her lessons, reflected on her mistakes, and seeks to be a productive member of society. Ms. NAME has fully complied with her probation. *See* § 3553(a)(2)(a)–(c). The factors in § 3553(a)(2)(a)–(c) support a conclusion that the modest grant of early termination is warranted.

CONCLUSION

Based on Ms. NAME's successful performance on probation, she requests this Court terminate her probation pursuant to 18 U.S.C. § 3564(c).

[Proposed] Order

Defendant CLIENT NAME moves for early termination of probation pursuant to 18 U.S.C. § 3583(e)(1). Ms. NAME meets the statutory requirements for early termination. This Court, after considering the applicable factors set forth in section 3553(a), is satisfied that termination of supervised release is warranted by Ms. NAME's conduct and the interest of justice. The Court ORDERS that defendant CLIENT NAME's term of probation is hereby terminated pursuant to 18 U.S.C. § 3583(e)(1).

IT IS SO ORDERED.