

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 2002-_____

ALFRED W. TRENKLER,
Petitioner

v.

MICHAEL PUGH, Warden, USP-Allenwood,
Respondent

**PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN FEDERAL CUSTODY**

Pursuant to 28 U.S.C. § 2241, Alfred W. Trenkler hereby petitions this Court for issuance of a writ of habeas corpus. In support of this petition, petitioner, by his attorney, states:

1. The petitioner, Alfred W. Trenkler ("Trenkler") is presently incarcerated at USP-Allenwood, Unit 1-A, P.O. Box 3000, White Deer, PA 17887. The prisoner number assigned to him by the Bureau of Prisons is Register #19377-038.
2. The respondent, Michael Pugh, is the Warden of USP-Allenwood, and, as such, has custody of Trenkler.
3. The court which imposed sentence is the United States District Court for the District of Massachusetts, One Courthouse Way, Boston, MA 02210.
4. Trenkler was charged under a Superceding Indictment in United States District Court, District of Massachusetts, Criminal No. 92-10369-Z, with attempted malicious destruction of property by means of explosive under 18 U.S.C. § 844(i), receipt of explosive materials under 18 U.S.C. § 844(d), and conspiracy under 18 U.S.C. § 371.
5. On March 8, 1994, judgment was entered against Trenkler and he was sentenced to concurrent terms of life imprisonment on the counts of attempted

malicious destruction of property by means of explosives and receipt of explosive materials and to a concurrent term of sixty months imprisonment on the count of conspiracy.

6. A finding of guilty was made after a plea of not guilty. The finding of guilty was made following a jury trial at which the Honorable Rya W. Zobel presided.
7. Following his conviction and sentencing, Trenkler appealed the judgment of conviction to the United States Court of Appeals for the First Circuit, asserting (1) that the district court erred by improperly admitting evidence at trial of Trenkler's prior alleged bad acts; (2) that the district court abused its discretion by admitting against Trenkler statements by a nontestifying convicted co-conspirator in violation of his Sixth Amendment rights; and (3) that the prosecution engaged in numerous instances of misconduct. Trenkler's convictions were affirmed on direct appeal on July 18, 1995. *United States v. Trenkler*, 61 F.3d 45 (1st Cir. 1995).
8. In this petition, Trenkler contends that he is being held in custody unlawfully because, under the United States Supreme Court decision in *United States v. Jones*, 529 U.S. 848 (2000), which was decided subsequent to his conviction, appeal, and first petition under 28 U.S.C. § 2255, the conduct of which he was convicted no longer falls within the scope of 18 U.S.C. §§ 844(i) and 844(d),

the statutes under which he was convicted. The facts and law supporting petitioner's claim that he is being held in custody unlawfully are set forth in detail in the *Memorandum of Law in Support of Petition for Writ of Habeas Corpus*, filed herewith.

9. The grounds set forth by this petition under 28 U.S.C. § 2241 have not previously been presented to this or any other federal court by way of a petition for habeas corpus, motion under 28 U.S.C. § 2255, or any other petition, motion or application. Trenkler's prior petitions, motions, and applications are described below:
 - a. On December 6, 1993, Trenkler filed a motion for new trial pursuant to Fed. R. Crim. P. 33, alleging various errors relating to the admission and exclusion of various items of evidence by the trial court. The trial court denied the motion for new trial by marginal notation on January 21, 1994.
 - b. On December 22, 1995, Trenkler filed, pursuant to Fed. R. Crim. P. 33, a Motion for New Trial or, in the Alternative, for an Evidentiary Hearing on the grounds of newly-discovered evidence. On February 4, 1997, the district court denied the motion. On November 19, 1996, Trenkler filed a Motion for Judicial Inquiry into Possible Juror Misconduct and For a New Trial, on grounds of juror misconduct. On May 22, 1997 the district court

denied that motion. Trenkler appealed from these two denials in a consolidated appeal. The First Circuit affirmed the denials of the two motions on January 6, 1998. *United States v. Trenkler*, 134 F.3d 361 (1st Cir. 1998).

- c. On August 10, 2000, Trenkler filed an additional motion for new trial pursuant to Fed. R. Crim. P. 33 on grounds of newly-discovered evidence. The district court denied the motion for new trial on December 28, 2000. Trenkler filed a notice of appeal, but the appeal was dismissed on April 6, 2001. Trenkler filed a petition for writ of certiorari in the Supreme Court, which was denied on October 9, 2001. *United States v. Trenkler*, 122 S.Ct. 345 (2001).
- d. On January 5, 1999, Trenkler filed a petition under 28 U.S.C. § 2255, alleging that trial counsel rendered ineffective assistance by not introducing certain expert testimony. On April 18, 2000, the district court denied Trenkler's 2255 petition. The United States Court of Appeals for the First Circuit affirmed the trial court's denial of Trenkler's 2255 petition on October 16, 2001. *United States v. Trenkler*, 268 F.3d 16 (1st Cir. 2001).

10. Petitioner's remedy by way of a second and successive 2255 petition is inadequate or ineffective to test the legality of his detention. At the time of Trenkler's trial, settled law established that a *de minimis* connection between the defendant's acts and interstate commerce was sufficient to support a conviction under these statutes. Subsequent to Trenkler's conviction, direct appeal, and motion to vacate under 28 U.S.C. §2255, the Supreme Court decided *United States v. Jones*, 529 U.S. 848 (2000).¹ That decision significantly heightened the requirements for proving the interstate commerce element, thereby removing the conduct for which Trenkler was convicted from the ambit of §§ 844(i) and 844(d). Because the evidence at trial as to the interstate commerce element was insufficient to support his convictions, Trenkler remains imprisoned for an act which §§ 844(i) and 844(d) do not prohibit. His conviction under 18 U.S.C. § 371 for conspiracy to violate those statutes has been rendered invalid as well. Trenkler cannot satisfy the gatekeeping provisions of § 2255 because the new *Jones* rule is one of statutory construction, rather than constitutional law. Accordingly, the remedy


¹ The decision in *United States v. Jones*, 529 U.S. 848 (2000) was issued on May 22, 2000. Thus, at the time petitioner filed his § 2255 petition on January 5, 1999, and at the time the district court denied the § 2255 petition on April 18, 2000, *Jones* had not yet been decided.

of a second and successive § 2255 motion is inadequate or ineffective to test the legality of his detention. Under the circumstances, Trenkler may seek relief under 28 U.S.C. § 2241. *See In re Dorsainvil*, 119 F.3d 245 (3rd Cir. 1997). *See Memorandum of Law in Support of Petition for Writ of Habeas Corpus*, filed herewith.

11. Trenkler was represented at trial by Terry Philip Segal, 8 Salt Island Rd., Gloucester, MA 01930. He was represented on direct appeal, on each of his motions for new trial under Fed. R. Crim. P. 33, and on his petition under 28 U.S.C. § 2255 by Morris M. Goldings, formerly of Mahoney, Hawkes, & Goldings, now Mahoney, Hawkes, L.L.P., 75 Park Plaza, Boston, MA 02116. On the appeal of the denial of his final Rule 33 motion for new trial and on the appeal of the denial of his 2255 petition, he was represented by undersigned Massachusetts counsel.

WHEREFORE, Alfred Trenkler petitions the Court for issuance of a writ of habeas corpus.

Respectfully submitted
ALFRED TRENKLER,
By his counsel,



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Verification

I declare under penalty of perjury that the foregoing is true and correct. Executed on June

12, 2002.


Alfred W. Trenkler