

ALFRED W. TRENKLER

Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

CIVIL ACTION NO. 99-10074-RWZ

**PETITIONER ALFRED W. TRENKLER'S
APPLICATION FOR CERTIFICATE OF APPEALABILITY**

Pursuant to 28 U.S.C. §2253(c) and F.R.A.P. Rule 22, the Petitioner Alfred W. Trenkler (hereinafter "the Petitioner") hereby applies for a certificate of appealability from the denial of his Motion pursuant to 28 U.S.C. §2255. The issues that were the subject of this Court's ruling are eminently debatable, and the questions thereby presented are adequate to deserve encouragement to proceed further. Therefore, it is respectfully suggested and urged that a certificate of appealability issue.

I. STATEMENT OF THE CASE.

A. Prior Proceedings.

The Petitioner was convicted in 1993 of violations of 18 U.S.C. §§844(d) and (i) and conspiracy in violation of 18 U.S.C. §371. The judgment of conviction was affirmed and mandate issued on September 5, 1995. On December 22, 1995, Petitioner filed a motion for a new trial based on new evidence, pursuant to Rule 33, Fed.R.Crim.P. The denial of that motion was affirmed on January 28, 1998. On January 7, 1999, Petitioner filed a petition under 28 U.S.C. §2255 seeking a vacation of the judgment of conviction

Although I adhere to my view that the petition is time barred, petitioner's tolling arguments are not frivolous. Accordingly, the application is granted as to these issues. Ryan W. Zobel. 11/9/00