UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 3: 02-CV-1736
(Judge Conaboy)

ALFRED W. TRENKLER,
Petitioner

v.

MICHAEL PUGH, Warden, USP-Allenwood,
Respondent

PETITIONER'S REPLY MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY

INTRODUCTION

In his memorandum-in-chief, petitioner Alfred Trenkler ["Trenkler"] demonstrated that he is entitled to relief under 28 U.S.C. § 2241 because the conduct for which he was convicted no longer falls within the scope of 18 U.S.C. §§ 844(i) and 844(d) in light of *United States v. Jones*, 529 U.S. 848 (2000) ["Jones"]. Nothing in the government's memorandum diminishes the validity of Trenkler's position. In its attempt to stave off the legal force of Trenkler's claims for relief, the government makes three erroneous arguments. First, the government wrongly asserts that the *de minimis* trial evidence of Shay Sr.'s occasional use of his personal vehicle in connection with his sporadic, part-time auto body work was sufficient to meet the interstate commerce element of § 844(i). Second, the government falsely claims that *de minimis* trial evidence that the explosive had crossed state lines by unknown means at some point in the unspecified past was sufficient to meet the interstate commerce element of § 844(d). Third, the government erroneously argues several procedural defenses, none of which affects the availability of § 2241 as an appropriate procedural rubric for litigating the substantive merits of Trenkler's claims.

I. THE GOVERNMENT'S ARGUMENT THAT *JONES* DID NOT INVALIDATE TRENKLER'S SECTION 844(i) CONVICTION IS WITHOUT MERIT.

In his memorandum-in-chief, Trenkler established that under *Jones* and its progeny, the trial evidence respecting Shay, Sr.'s 1986 Buick was insufficient to meet the interstate commerce element of § 844(i). In response, the government argues that where a building or vehicle is used for any commercial purpose, that use is sufficient to meet the interstate commerce test "regardless of whether the use is *de minimis*." (*Gov. Mem.* pp. 35, 46-47, 49). The government is wrong. The Supreme Court in *Jones* held that a building or vehicle is "'used' in an activity affecting interstate commerce" only when it is being "active[ly] employ[ed] for commercial purposes," which requires more than a "merely a passive, passing, or past connection to commerce." 529 U.S. at 854-55. Accordingly, "[t]he mere engagement in commercial activities may not necessarily provide the requisite nexus between the function of the building [or vehicle] and interstate commerce." *United States v. Odom*, 252 F.3d 1289, 1295 (11th Cir. 2001). *See also United States v. Ryan*, 227 F.3d 1058, 1061 (8th Cir. 2000) (explaining that a commercial property must still have an active connection to interstate commerce to satisfy § 844(i)).

Not all commercial activities affect interstate commerce; some are merely local. In *United States v. McGuire,* 178 F.3d 203 (3rd Cir. 1999), the Third Circuit both

ridiculed and rejected the interpretation which the government propounds here, stating: "[To hold] that a *de minimis* effect on interstate commerce (no matter how attenuated) can support the exercise of federal jurisdiction. . . can be stretched to include driving one's daughter to a neighbor's house to deliver a single box of Girl Scout cookies. . ." *Id.* at 209-210. In *McGuire,* the Third Circuit reversed a § 844(i) conviction, concluding that there was insufficient evidence to support a finding that the vehicle damaged by a pipe-bomb was used in an activity affecting interstate commerce. *Id.* at 208. The damaged car was one of several vehicles used to transport items for a locally operated catering business co-owned by the car's owner. *Id.* at 205. Examining the nature of the car's use in the catering business and the extent to which the catering business affected interstate commerce, *id.* at 206-207, the Third Circuit concluded that the "periodic" use of a personal car in the local catering business and the presence in the trunk of a bottle of Florida orange juice intended for a catering event could not be a sufficient basis for sustaining a § 844(i) conviction. *Id.* at 211. The Court concluded that the government must prove more than the "dubious" and "so very nebulous" nexus to interstate commerce of a bottle of orange juice used in a "family business" that was "concededly local in character." *Id.* at 212.

Here, as in *McGuire*, the government seeks to elevate Shay, Sr.'s occasional use of his car in connection with his sporadic, local tinkering into a "significant,

integral, on-going use" of his vehicle in the "auto body repair business" which "affect[ed] interstate and foreign commerce." (*Gov. Mem.* p. 50). This spin of the facts is belied by the trial evidence. At trial, there was no evidence that Shay Sr. had any significant income, any employees, advertised his services, or was incorporated as a business to conduct this work. *Cf. United States v. Jimenez*, 256 F.3d 330, 339 (5th Cir. 2001) (home office of family-owned construction business with significant amounts of gross receipts and wages met interstate commerce test). To the contrary, the trial evidence established that Shay, Sr.'s part-time work was conducted while he was receiving Social Security disability payments for his permanent disability from October 1989 until the explosion in October 1991. *Tr.* 6/44-45 (*App.* 8-9) The Social Security Act provides monetary benefits only to individuals "under a disability," which is defined as an "inability to engage in any substantial gainful activity by reason of any . . . physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §423(d)(1)(A). In order for Shay, Sr. to receive disability benefits, his impairment must have been "of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . . ." 42 U.S.C. § 423(d)(2)(A). Accordingly, whatever Shay, Sr. may have been doing, he was

apparently not engaged in "substantial gainful work" existing in the "national economy." *Id.*

The government insists that Shay "actively" used his car in or affecting interstate commerce by driving to intrastate shops to purchase automobile parts that were manufactured out-of-state. (*Gov. Mem.* 46) However, "servicing businesses which are linked to interstate commerce and purchasing equipment which has traveled through interstate commerce are both passive connections to commerce." *United States v. Laton*, 180 F. Supp. 2d 948, 952 (W.D.Tenn. 2002)(city fire station did not meet interstate commerce test, even though fire station, *inter alia*, had purchased equipment that had traveled through interstate commerce). Accordingly, the in-state purchase of materials which have traveled from out-of-state is insufficient to prove the requisite interstate commerce nexus. *See, e.g., United States v. Ballinger*, 312 F.3d 1264, 1275 (11th Cir. 2002) (church's interstate commercial activities including, *inter alia*, purchase of books from out-of-state vendors, was insufficient); *Odom*, 252 F.3d at 1296-97 (interstate activities including, *inter alia*, purchases of out of state prayer books were "too passive, too minimal and too indirect to substantially affect interstate commerce"); *United States v. Rea*, 223 F.3d 741, 743 (8th Cir. 2000) (church's use of materials purchased in interstate commerce was insufficient basis for finding interstate commerce test met); *McGuire*, 178 F.3d at

211 (in-state transportation of out-of-state orange juice container insufficient).

The government insists that Shay, Sr. "actively" used his car in or affecting interstate commerce by driving to customers' houses to give quotes and advice regarding auto body repair. (*Gov. Mem.* p. 46). A vehicle does not affect interstate commerce merely by being used to drive back and forth to a work site. *United States v. Monholland*, 607 F.2d 1311, 1316 (10th Cir. 1979). Moreover, as in *McGuire*, this is not a situation where the 1986 Buick was necessary or integral to Shay, Sr.'s auto body work. The trial evidence established that Shay Sr. also owned a 1983 General Motors van and a 1969 Pontiac GTO, and sometimes used a 1989 Lincoln Town Car owned by the woman he lived with. *Tr.* 6/41, 55-56, 59 (*App.* 2, 16-17, 20). *See McGuire*, 178 F.3d at 211 n. 8 (noting that the vehicle at issue was only one of several vehicles which might have been used in local catering business).

The government claims that some of Shay Sr.'s customers were from out-of-state. (*Gov. Mem*, p. 46). However, there was no evidence as to when Shay Sr.'s last out-of-state customer had used his services and not a shred of evidence that he had any out-of-state customers in or near October 1991, when the explosion occurred. A past connection to interstate commerce is insufficient. *See Ryan*, 227 F.3d at 1063-1064 (evidence of former fitness center's past interstate commercial use insufficient). Shay, Sr. testified that typically his customers came from the Boston area and

surrounding towns. *Tr.* 6/53 (*App.* 14). The only evidence presented regarding specific customers consisted of customers from local towns. *Tr.* 6/56-68 (*App.* 17-29). Clearly, as in *McGuire*, this was a purely local operation.

Finally, the government claims that Shay, Sr. "actively" used his car in or affecting interstate commerce by loaning the car to his customers while their cars were being repaired. (*Gov. Mem.* p. 46). The evidence established, at most, that Shay, Sr. "sometimes" allowed the 1986 Buick to be used as a loaner car "from time to time" while he was working on a customer's car. *Tr.* 6/53-54 (*App.* 14-15). There was not a shred of evidence of any rental payments or formal lease arrangements involved in Shay, Sr.'s sporadic and casual "loaning" of his personal car. In *United States v. Carr II*, 202 F.Supp. 2d 467 (E.D.N.C. 2002), the court examined whether an owner-occupied mobile home, serving primarily as a residence and secondarily as a church, with some isolated child care activities taking place therein, qualified as property used in interstate commerce. While accepting the general proposition that involvement in the national rental market would meet the interstate commerce test, citing *Russell v. United States*, 471 U.S. 858, 862 (1985), the court found no evidence that the defendant had "actively rented his mobile home." The court held that even if the owner-resident accepted small payments from other residents to help pay the bills, "such informal and insubstantial arrangements cannot suffice to establish a

proper interstate connection." *Id.* In sum, in this case, as in *Carr II*, "the government's attempt to cobble together an interstate commerce theory by joining together disconnected shards of evidence" is unpersuasive and should be rejected. *Id.* at 470. Under *Jones*, the evidence was insufficient to prove that Trenkler violated §844(i) or conspired to commit such a violation under 18 U.S.C. §371. He is entitled to relief.

II. THE GOVERNMENT'S ARGUMENT THAT *JONES* DID NOT INVALIDATE TRENKLER'S SECTION 844(d) CONVICTION IS WITHOUT MERIT.

The government fares no better with its defense of Trenkler's § 844(d) conviction. In his memorandum-in-chief, Trenkler conducted a detailed and extensive analysis demonstrating why any analogy to the federal felon-in-possession of firearms statute, 18 U.S.C. § 922(g), utterly fails to control the interpretation of 18 U.S.C. § 844(d). (*Pet. Mem.*, pp. 30-45) Apparently unable to respond to Trenkler's argument, the government simply cites to *United States v. Singletary*, 268 F.3d 196 (3rd Cir. 2001), and *Scarborough v. United States*, 431 U.S. 563 (1977), both of which upheld the federal felon-in-possession of firearms statute, and baldly asserts that § 844(d) is "precisely such a statute." (Gov. Mem. 42). Yet, the government utterly ignores the inescapable fact that the difference in statutory language between §

844(d) ("in interstate commerce") and § 922(g) ("in *or affecting* interstate commerce") (emphasis supplied) constitutes a critical distinction.

The plain language of the statutes illustrates that they are not the same. Section 844(d) punishes whoever "transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive . . ." The phrase "affecting commerce" does not appear within § 844(d). In contrast, 18 U.S.C. § 922(g) renders it illegal for a felon to "ship or transport in interstate or foreign commerce, or possess *in or affecting* commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." (emphasis supplied). Similarly, § 922(g)'s predecessor statute, 18 U.S.C. § 1202(a), made it unlawful for a felon to "receive, transport or possess *in or affecting commerce*, any firearm or ammunition." (emphasis supplied).

The government's myopic insistence that the interstate commerce elements of §§ 844(d) and 922(g) are the same evinces a lack of understanding, both of Trenkler's argument and of interstate commerce clause jurisprudence generally. The government fails to recognize that the words "affecting commerce" are jurisdictional words of art, signaling a congressional intent to exercise its Commerce Clause power as far as the Constitution permits. *See Russell*, 471 U.S. at 859 (the phrase "affecting commerce". . . "expresses an intent by Congress to exercise its full power under the

Commerce Clause."); *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 258, (1964) (statute regulating all activity that "affects [interstate] commerce" shows congressional intent to reach as far as the Commerce Clause permits). The Supreme Court in *Jones* pointed out the "recognized distinction between legislation limited to activities 'in commerce' and legislation invoking Congress' full power over activity substantially 'affecting . . .commerce.'" 529 U.S. at 856. Congress is aware of the "distinction between legislation limited to activities 'in commerce,' and an assertion of its full Commerce Clause power so as to cover all activity substantially affecting interstate commerce." *United States v. American Bldg. Maint. Indus.*, 422 U.S. 271, 280 (1975). Since § 844(d) does not use the phrase "affecting commerce," there is no intent by Congress to exercise its fullest Commerce Clause power with respect to § 844(d). Accordingly, § 844(d)'s elements must be more narrowly defined.

The government's *Scarborough/Singletary* analogy actually clarifies Trenkler's claim. As Trenkler discussed at length in his memorandum-chief, in *Scarborough*, 431 U.S. at 568, the Supreme Court held, purely as a matter of statutory construction based on the "affecting commerce" language, that in order to convict a defendant for being a felon in possession of a firearm, the government only had to prove that "the firearm possessed by the convicted felon traveled at some time in interstate

commerce."[1] Following *Scarborough*'s analysis, in *Singletary*, the Third Circuit held that proof of past transport of a weapon across state lines was sufficient to support a felon-in-possession conviction, again based on the "affecting interstate commerce" language. *Singletary*, 268 F.3d at 205.[2] By contrast, § 844(d), which requires that Trenkler must have "transported or received" the explosives "in interstate or foreign commerce" cannot be satisfied by mere proof that the movement of explosives at some time in the past "affected" interstate commerce. The phrase "in commerce" is a more narrow and restrictive jurisdictional requirement than the phrase "affecting interstate commerce," and denotes "only persons or activities within the flow of

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[1] In *Scarborough*, 431 U.S. at 571-574, the Supreme Court explained the significance of the "affecting commerce" language on its holding: "As we have previously observed, Congress is aware of the 'distinction between legislation limited to activities 'in commerce' and an assertion of its full Commerce Clause power so as to cover all activity substantially affecting interstate commerce.'. . . [B]y prohibiting both possessions in commerce and those affecting commerce, Congress must have meant more than to outlaw simply those possessions that occur in commerce or in interstate facilities. . . . We see no indication that Congress intended to require any more than the minimal nexus that the firearm have been, at some time, in interstate commerce." *Id.* (internal citations omitted).

[2] The Third Circuit cited the continuing vitality of the *Scarborough* analysis and stated that § 922(g) "regulates those weapons *affecting interstate commerce* by being the subject of interstate trade." (emphasis added). The Court in Singletary rejected the argument that a firearm which had previously traveled interstate insufficiently "affected commerce." 268 F.3d at 204. In contrast, in this case, whether or not an explosive "affected" interstate commerce is both insufficient and irrelevant under 844(d), which instead proscribes the direct transportation or receipt of explosives by the defendant "in ...commerce" and specifically does not mention "affecting" commerce as a basis for jurisdiction. Thus, contrary to the government's garbled misunderstanding of Trenkler's argument (*Gov. Mem.*, p. 45), instead of arguing insufficiency of the evidence that the explosives "affected" interstate commerce, Trenkler argues insufficiency of the evidence showing that Trenkler had anything to do with transporting or receiving the explosives "in . . . commerce," which is an entirely different question.

interstate commerce--the practical, economic continuity in the generation of goods and services for interstate markets and their transport and distribution to the consumer." *American Building Industries*, 422 U.S. at 276-280. A party is "in commerce" when it is "directly engaged in the production, distribution, or acquisition of goods and services in interstate commerce." *United States v. Robertson*, 514 U.S. 669, 671 (1995) (*per curiam*)(internal citation omitted). Under this more restrictive definition, the mere purchase from a local supplier of goods which at one time traveled in interstate commerce does not constitute engaging "in commerce." *See American Building Industries*, 422 U.S. at 280 (company did not engage "in commerce" based on local purchases of supplies manufactured out-of-state where "the flow of commerce had ceased"); *Robertson*, 514 U.S. at 671 (Alaskan gold mine that directly purchased equipment from out-of-state supplier was engaged "in commerce," contrasted with a company that purchases all items from local suppliers).

Although no court to date has addressed the specific question of whether the principles of *Jones* apply to the interpretation of § 844(d), relief should not be denied to Trenkler merely because he has raised a matter of first impression. The crux of *Jones* is that it is "appropriate to avoid the constitutional question[s]" raised by *United States v. Lopez*, 514 U.S. 549 (1995), by construing statutes which raise Commerce Clause issues narrowly to avoid encroachment on the authority of the

states. 529 U.S. at 858-859. Under this broader holding of *Jones*, an interpretation of §844(d) by which mere proof of past interstate transportation of an explosive is sufficient would be "constitutionally doubtful"; therefore, the statute must be construed more narrowly. Under the plain terms of § 844(d), something more directly linking the defendant to the movement of the explosives is required. While there was evidence in this case that the explosives had, at some time in the past, been shipped in interstate commerce, there was absolutely no evidence that Trenkler had anything whatsoever to do with that interstate shipment. Under the government's evidence, the flow of commerce may well have ceased and the explosives may well have been stored in Massachusetts for many years prior to allegedly coming into Trenkler's possession. Accordingly, the evidence was insufficient to prove that Trenkler violated § 844(d) or conspired to commit such a violation under 18 U.S.C. § 371. Trenkler is entitled to relief.

III. THE GOVERNMENT GROSSLY MISAPPREHENDS THE AVAILABILITY OF 28 U.S.C. § 2241 FOR LITIGATING THE SUBSTANTIVE MERITS OF TRENKLER'S CLAIMS.

Unable to overcome Trenkler's claims on the substantive merits, the government invokes several procedural defenses, including lack of jurisdiction, procedural default, and "mootness." None of these arguments has any merit, as explained in detail below.

A. This Court Has Jurisdiction under 28 U.S.C. § 2241.

The government argues that "because Trenkler is not actually innocent of either the 844(d) or 844(i) charges . . . , his 2241 petition is jurisdictionally defective and should be dismissed." (*Gov. Mem.*, p. 29). This is nothing more than the government's position on the merits masquerading as a jurisdictional defense. After all, if Trenkler is right that his alleged conduct did not violate the federal criminal statutes at issue, properly construed in light of *Jones*, then he is "actually innocent" of those charges. *See Ryan*, 227 F.3d at 1062 ("[W]e conclude that there is insufficient evidence to satisfy the interstate commerce requirement of section 844(i), an essential element of this statute. Thus because Ryan stands convicted for conduct not prohibited by section 844(i), we must reverse the judgment.") Of course, a district court does not first decide the merits of a claim in order to determine whether it has proper jurisdiction over it. Rather the court has jurisdiction to resolve the substantive claim if the petitioner has sufficiently alleged each of the requirements of the savings clause such that a possibility of relief exists under § 2241. *See In re Dorsainvil*, 119 F.3d 245, 252 (3rd Cir. 1997)(where petitioner presented "colorable claim" that the intervening Supreme Court decision in *Bailey v. United States*, 516 U.S. 137 (1995), had rendered his conduct non-criminal for purposes of 18 U.S.C. § 924(c), he was entitled to substantive review on the merits by the district court under

§ 2241); *United States v. Prevatte*, 300 F.3d 792, 802 (7th Cir. 2002) (where petitioner presented "non-frivolous challenge" that due to the intervening Supreme Court decision in *Jones*, he was convicted for conduct that Congress did not intend to make criminal under § 844(i), substantive review on the merits by the district court under § 2241 was appropriate). Here, as in *Dorsainvil* and *Prevatte*, because Trenkler has properly alleged all of the bases for a claim under § 2241 (*see Pet. memorandum-in-chief*, pp. 46-55), this Court has jurisdiction to hear the substantive merits of his claims. Accordingly, Trenkler's claims cannot be dismissed at the outset for lack of jurisdiction; rather, this Court must resolve the substantive claims on their merits.

B. Trenkler Has Not Defaulted His Claims.

The government claims that Trenkler somehow procedurally defaulted on his claims by not raising them during the course of his previously-filed § 2255 motion, which was denied on April 18, 2000. The government insists that even though *Jones* was not decided until May 22, 2000, the oral argument in *Jones,* held on March 21, 2000, should have put Trenkler on notice of the *Jones* issue so that he should have amended his § 2255 motion prior to its denial. (*Gov. Mem.*, p. 29) The government's argument is patently absurd.

Section 2241 "applies to a claim . . .based on a retroactively applicable Supreme Court decision which establishes that petitioner may have been convicted

of a nonexistent offense." *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). *Jones* is such a decision. *See Prevatte*, 300 F.3d at 802. The government cites no legal precedent for the fanciful notion that oral argument held in the *Jones* case prior to the actual *Jones* decision constituted a retroactively applicable Supreme Court decision effecting a substantive change in law. To the contrary, a Supreme Court decision cannot be considered "available" for these purposes until it is actually decided. In *Grey-Bey v. United States*, 209 F.3d 986, 988 (7th Cir. 2000) (*per curiam*), for example, the Seventh Circuit held that the rule in *Bailey*, 516 U.S. 137, was unavailable to Gray-Bey at the time of his trial, direct appeal, and the beginning of his collateral attack, until December 6, 1995 when *Bailey* was actually decided. "[A]lthough there was a conflict among the circuits on the subject, and the Supreme Court granted *certiorari* in *Bailey* on April 17, 1995, while Gray-Bey's collateral attack was pending . . . a rule is 'unavailable' until the Supreme Court renders its decision." *Id. See also In re Jones*, 226 F.3d 328, 330 (4th Cir. 2000) (§ 2241 motion on *Bailey* claim allowed, even though *certiorari* in *Bailey* was granted while prior § 2255 motion was pending from February to June 1995). In sum, the government's insistence that oral argument in *Jones* somehow made the *Jones* rule available to Trenkler while his § 2255 motion was pending is utterly devoid of merit.

C. Concurrent Sentences Do Not Render Either of Trenkler's Claims "Moot."

Finally, the government argues that because Trenkler is serving concurrent life sentences on his §§ 844(i) and 844(d) convictions, if one of his claims fails, his other claim "is moot and need not be addressed by this Court, as Trenkler will still be subject to a life imprisonment sentence." (*Gov. Mem.* p. 4). The so-called "concurrent sentence doctrine" allows a reviewing court discretion to avoid resolution of legal claims if such resolution does not affect each count for which a defendant is concurrently sentenced. *United States v. McKie*, 112 F.3d 626, 628 n.4 (3rd Cir. 1997). However, the concurrent sentence doctrine may not be invoked where the sentences are not truly concurrent or where a defendant may suffer collateral consequences from each of the multiple convictions. *Id.*

This doctrine is now rarely invoked in federal court due to the mandatory special assessment imposed on each count resulting in conviction. *Id.* In *Ray v. United States*, 481 U.S. 736, 737 (1987) (*per curiam*), the Supreme Court held that the concurrent sentence doctrine did not apply where the District Court imposed a $50 assessment on each count of conviction, for a total of $150. "Since petitioner's liability to pay this total depends on the validity of each of his three convictions, the sentences are not concurrent." *Id. See also United States v. Barel*, 939 F.2d 26, 35

(3rd Cir. 1991) (imposition of special assessment as to each count means that defendant is not serving concurrent sentences and concurrent sentence doctrine does not apply, citing *Ray*). In this case, as in *Barel* and *Ray*, Trenkler was assessed a $50 assessment on each of three counts of conviction for a total of $150. *See Judgment* (appended hereto as Exhibit A). Thus, Trenkler's sentences are not fully concurrent and the concurrent sentence doctrine does not apply. Accordingly, this Court must necessarily resolve both of his substantive claims on their merits.

CONCLUSION

Trenkler has established that the *Jones* decision significantly heightened the requirements for proving the interstate commerce element, thereby removing his alleged conduct from the ambit of §§ 844(i) and 844(d). Because the evidence at trial was insufficient to support his convictions, Trenkler remains imprisoned for alleged "traditionally local criminal conduct" which the substantive federal criminal law does not prohibit. This petition under § 2241 provides the appropriate means for his claims to be heard, and there is no procedural or jurisdictional obstacle to this Court's resolution of both of his claims on their merits. The government has failed to demonstrate any reason why Trenkler should not be granted relief.

For the foregoing reasons, and for the reasons set forth in his previously-filed memorandum-in-chief, Trenkler's Petition for Writ of Habeas Corpus should be granted.

Respectfully submitted
ALFRED W. TRENKLER,
By his counsel,

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Respondent by mailing a copy thereof, U.S. mail, postage prepaid, to Kevin McGrath, Assistant U.S. Attorney, District of Massachusetts, United States Courthouse, Suite 9200, 1 Courthouse Way, Boston, MA 02110 on February 10, 2003.

Catherine J. Hinton

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

Alfred W. Trenkler

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 1:92CR10369-002

Terry Philip Segal, Esq.
Defendant's Attorney

THE DEFENDANT:
[ ] pleaded guilty to count(s) _____
[ ] pleaded nolo contendere to count(s) _____ which (was) (were) accepted by the court.
[X] was found guilty on count(s) 1.2.3 after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Numbers
18:371	Conspiracy	10/91	1
18:844(d), 2	Receipt of Explosive Materials, Aiding and Abetting	10/91	2
18:844(i), 2	Attempted Malicious Destruction by Explosives, Aiding and Abetting	10/28/91	3

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s) _____
[ ] Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 033-38-2461

Defendant's Date of Birth: 2/6/56

Defendant's USM No.: _____

Defendant's Mailing Address:
Hillsboro County Jail
Hillsboro, NH

Defendant's Residence Address:
Hillsboro County Jail
Hillsboro, NH

March 8, 1994
Date of Imposition of Judgment

Signature of Judicial Officer

Rya W. Zobel
U.S. District Judge
Name & Title of Judicial Officer

March 10, 1994
Date

EXHIBIT A

DEFENDANT: Alfred W renkler
CASE NUMBER: 1:92CR10369-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of life on counts 2 and 3 concurrent.

60 months on Count(s): one to be served concurrent with counts 2 and 3.

[ ] The court makes the following recommendations to the Bureau of Prisons:

[X] The defendant is remanded to the custody of the United States Marshal.

[ ] The defendant shall surrender to the United States Marshal for this district.

[ ] at _____ a.m./p.m. on _____.
[ ] as notified by the United States Marshal.

[ ] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.
[ ] before 2 p.m. on _____.
[ ] as notified by the United States Marshal.
[ ] as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By_____
Deputy Marshal

FINANCIAL PENALTIES

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below.

Count	Assessment	Fine	Restitution
1,2,3	$50.00		
Totals:	$150.00		

FINE

No fines have been imposed in this case.

RESTITUTION

Restitution has not been ordered in this case.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The total fine and other monetary penalties shall be due as follows:

[X] in full immediately.
[ ] in full not later than _____.
[ ] in _____ installments of $_____ over a period of _____ to commence 30 days after the date of this judgment. If this judgment imposes a period of incarceration, payment shall be due during the period of incarceration.
[ ] in installments to commence 30 days after the date of this judgment. If this judgment imposes a period of incarceration, payment shall be due during the period of incarceration. During a period of probation or supervised release supervision payment of any unpaid balance shall be a condition of supervision and the U.S. probation officer shall establish and may periodically modify the payment schedule provided that the entire financial penalty is paid no later than the termination of supervision but in no event no later than 5 years after release from incarceration.

[ ] The defendant shall pay the costs of prosecution.
[ ] The defendant shall forfeit the defendant's interest in the following property to the United States.

All financial penalty payments are to be made to the Clerk of Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

Defendant: Alfred W. Trenkler
Case Number: 92-10369

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 43

Criminal History Category: I

Imprisonment Range: life to _____ months

Supervised Release Range: ____ to ____ years

Fine Range: $ 25,000 to $ 250,000

☒ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $ _____

☒ Full restitution is not ordered for the following reason(s):

no money

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following reason(s):