

MARKHAM & READ

One Commercial Wharf West
Boston, Massachusetts 02110

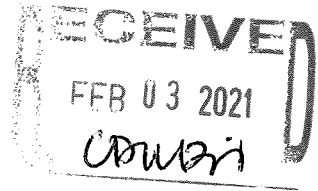
Tel: (617) 523-6329

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www.markhamread.com

January 19, 2021

Tracey W. Johns, Warden
FMC BUTNER
Federal Medical Center
P.O. Box 1600
Butner, NC 27509



Re: David Hinkson – Reg. No 08795-023
COVID-19-Based Request for Release to Home Confinement

Dear Warden Johns:

We are the attorneys for David Hinkson (Reg. No. 08795-023) and we are writing on his behalf. Mr. Hinkson is incarcerated at your facility. Please consider this letter a request by Mr. Hinkson for release to home confinement pursuant to 18 U.S.C.A. § 3582(c)(1)(A), any other applicable authority under §3582; and we also refer to the supporting, applicable policy guidelines found in:

- (1) BOP Program Statement 5050.50 (January 17, 2019); and
- (2) Attorney General William Barr's directives of March 26 and April 3 of 2020.

Mr. Hinkson Has Stage IV Cancer¹

At present, Mr. Hinkson is at your facility having moved there because he has stage IV cancer of the liver and of the colon. The medical records and transfer papers at your facility bear this out. We believe that just before he was sent to Butner, a hospital in Indiana (he was previously at FCI Terre Haut) recently operated on him and removed a substantial tumor (approximately six inches in length) from somewhere in his intestinal tract. This did not, however, remove the cancer in his intestine nor that in his liver which unfortunately have both been diagnosed as Stage IV, and he has been told by medical personnel both are terminal. Finally, we understand that he is going to be undergoing chemotherapy, again, in the near future if he has not started that therapy already.

¹ The medical records at your facility will show Hinkson's unfortunate medical condition.

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Given the sad nature of his cancer, he seeks compassionate release at this time. The ongoing treatment he will need would be quite difficult or likely impossible and costly from within the Bureau of Prisons. Mr. Hinkson most certainly will have to be confined to a bed or chair more than 50% of waking hours and he will not be able, without substantial assistance, to complete self-care activities independently, including feeding, bathing, and dressing.

Moreover, his current condition and the medications he is on, and will remain on, will make him much more vulnerable to COVID-19 than the ordinary inmate. The combination of the COVID-19 pandemic, the conditions of confinement within any prison setting given the close quarters involved, and Mr. Hinkson's cancer and resulting vulnerabilities, create extraordinary and compelling circumstances which could not reasonably have been foreseen by the court at the time of his sentencing. As they clearly appear now, we believe that they warrant his release to home confinement and ask that you determine his qualification for home confinement for the reasons that follow. We thank you in advance for any prompt consideration that you can give.

We want to make it clear that we are not challenging the efforts of your facility to make a safe environment for its inmates and staff. Unfortunately, however, given the realities and space limitations with which all prison facilities are faced, the virulent nature of COVID-19, the fact that it seems to be spiking again now that the cold weather is upon us, and the vulnerable state of Mr. Hinkson due to his Stage IV cancer, his continued presence in prison will be unsafe for his health and life despite all best efforts. He is not only much more vulnerable to becoming infected with the virus, he is much more vulnerable to being killed by it, given his weakened immune system, if he contracts the virus.

Mr. Hinkson's Sentence and Current Confinement

On June 6, 2005, Mr. Hinkson was sentenced to a term of imprisonment entered by the United States District Court for the District of Idaho for soliciting the killing of federal officials under 18 U.S.C. section 373. No one was killed, harmed, or touched. He was sentenced to a term of 360 months. His current release date is listed as April 21, 2040. He was already in custody when he was indicted on these charges and he began getting credit for time served on these charges when he was indicted on June 22, 2004. He has thus served over 40 percent of his sentence. Since in prison, he has had no history of major infractions nor any action that even hinted at violence. In his current debilitated state, he is certainly not now a threat of any harm to the community.

Mr. Hinkson was advised at his last facility that he was eligible for the release herein sought and has a "Low" recidivism score. Indeed, in his condition he presents no risk at all to anyone. He is dying.

The COVID-19 Pandemic

The nature and deadly effects of the COVID-19 is currently the overarching concern of everyone's daily life. All health and public officials stress in public announcements made daily that the key to avoiding this horrible virus is social distancing, staying six feet away from other people. Indeed, many in the country are on home self-quarantine to avoid such contact even

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though it is wreaking havoc on our national economy. Those who are not in quarantine are socially distancing and taking other precautions. Conditions of confinement create the ideal environment for the transmission of the disease, which has both been recognized and sadly proven. Attorney General William Barr found in his April 3, 2020 Memorandum that the COVID-19 "emergency conditions are materially affecting the functioning of the Bureau of Prison" and authorized the "BOP to transfer inmates to home confinement even if electronic monitoring is not available." Most tellingly, AG Barr requested the implementation of his Memoranda "as quickly as possible" stating "Given the speed with which this disease has spread through the general public, it is clear that time is of the essence." (Memorandum for Director of Bureau of Prisons, April 3, 2020, p.2) Since the date of the quoted directive, the number of confirmed COVID-19 cases in the federal prison system has continued to increase and given the current spiking of the disease, and the new and more virulent strain, the risks, particularly for someone in Mr. Hinkson's condition, will only increase.

Mr. Hinkson's At-Risk Health Status

As stated above, Mr. Hinkson has stage IV terminal liver and colon cancer. It is inoperable. He is on a series of drugs, his immune system is compromised, and will only become more so. It is extremely important that all measures be taken to prevent Mr. Hinkson from contracting Covid-19. As BOP Director Michael Carvajal stated in his memo on April 21, 2020 "Although planning and preparations have been going on since January, and BOP has fully implemented its COVID-19 Action Plan, no amount of preparation could have left our institutions unaffected."²

A Release and Home Confinement Plan is quite simple and sound. If released, he would be picked up at the prison by a family member, his brother Craig Hinkson who can be reached at telephone number: (970) 318-1422. Craig Hinkson has absolutely no criminal history and is a solid citizen in his local community. Mr. David Hinkson, if thus released, would be taken directly to his parents' family home in the small town of Ouray, Colorado. David Hinkson would be living with his Mother (Faye) and Father (Roland) at their ADA compliant home at 310 2nd Street, Ouray, Colorado. This home has a guest bedroom where David can stay and be treated by local care providers. He will obviously not be able to work or move around much but his parents have the financial resources to care for him.

The parents telephone number is (970) 318-8984. David's mother and his brother, Craig Hinkson, will provide for his basic physical care. Brother Craig and his wife, Chris Hinkson, live one mile away from the home of David's parents and their address is 1980 Oak Street, Ouray, Colorado. Their home also has plenty of space for David if needed. There are other family members and friends in this small town who are available to help David in any way he might need. His return would have community support. His parents are able to, and will, provide for all his financial needs as well. They are and always have been law-abiding and have absolutely no criminal record; nor do either his brother Craig or his wife Chris.

² https://www.bop.gov/resources/news/pdfs/202004211_memo_to_inmate_families_and_friends.pdf

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The town of Ouray is a Home Rule Municipality that is the county seat. The city population was 1,000 as of the 2010 census. The Hinkson family is well known there, and David will be cared for by his family and will pose no danger to anyone. There is a good local hospital, Montrose Memorial Hospital, 36 miles away. Ouray itself has a local hospice program available to all and Ouray County offers home health care where nurses come to home to provide nursing services including bathing, washing, pain management and other nursing services. His parents are able to and will pay for all such services which will include hospital care, home nursing and hospice care.

Home Confinement is Consistent with the Attorney General's Directives and U.S.S.G. 1B1.13

This request for Hinkson's home confinement is based upon four combined grounds: (1) the high risks to health and life of contracting COVID-19, to which all inmates are exposed while in the confined quarters while in prison have been recognized by a growing number of medical experts and the Bureau of Prisons; (2) Mr. Hinkson is dying of cancer and thus has a medical condition making him much more vulnerable to both contracting COVID-19 than healthy individuals and a heightened risk of serious illness or death if he becomes infected, (3) both the Bureau of Prisons and the Attorney General have recognized the substantial risks of continued incarceration to inmates who have heightened vulnerability to contracting COVID-19 if they remain housed in BOP facilities, and (4) Mr. Hinkson's performance since he was incarcerated shows that home confinement would present no risk whatsoever to the community.

We also note that if Mr. Hinkson remains in prison and does indeed contract the virus, he there is a risk that he will pass it on. We briefly discuss the applicability of the policy guidelines. We are sure that you know them better than we do but we discuss how they are applicable to Mr. Hinkson's situation.

First Directive: On March 26, 2020, Attorney General William Barr issued a directive to the Bureau of Prisons entitled "Prioritization of Home Confinement as Appropriate in Responses to COVID-19 Pandemic." The Barr Memo both acknowledges the risks of in-custody housing of inmates and recommends that suitable prisoners be transferred from in-custody housing to home confinement where appropriate. The Barr Memo then specified factors to consider in determining whether any inmate should be converted to home confinement. Most of these are met by Mr. Hinkson:

- The age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) Guidelines;
- The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities;
- The inmate's conduct in prison, with inmates who have engaged in violent or gang related activity in prison or who have incurred a BOP violation within the last year not receiving priority treatment under this Memorandum;

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- The inmate's score under PATTERN, with inmates who have anything above a minimum score not receiving priority treatment under this Memorandum;
- Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;
- The inmate's crime of conviction, and assessment of the danger posed by the inmate to the community. (See, Memorandum for Director of Bureau of Prisons, March 26, 2020, pp. 1-2)

[As to this last point, while Mr. Hinkson's conviction long ago was solicitation of a violent act. It never occurred, and given the intervening many years and his current condition, there really is no risk of violence at all.]

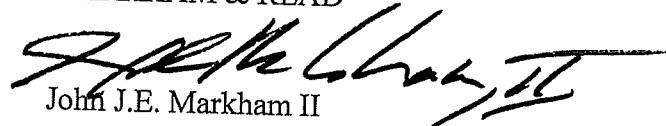
Second Directive: On April 3, 2020, just one week after the first directive issued, Attorney General William Barr issued a another, more alarming, Memorandum as a directive to the Bureau of Prisons, entitled "Increasing Use of Home Confinement at Institutions Most Affected by COVID-19." In this Directive, the Attorney General recognized that there have been "significant levels of infection at various BOP facilities," and directed that the BOP commence transferring prisoners, "giving priority to the most vulnerable inmates," to, where appropriate, a suitable residence.

We respectfully submit that Mr. Hinkson qualifies for release to home confinement under these factors set out by the Attorney General and presents none of the enumerated risks for the reasons explained above.

Thank you for considering this release request. Please do not hesitate to have someone from your office contact the undersigned if you need any further information and do not hesitate to contact any of the hinkson family.

Very truly yours,

MARKHAM & READ


John J.E. Markham II


BP-A0148

INMATE REQUEST TO STAFF CDFRM

JUNE 10

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Social Work	DATE:  2/4/21
FROM: Hinkson, David	REGISTER NO.: 08795-023
WORK ASSIGNMENT:	UNIT: D04-431

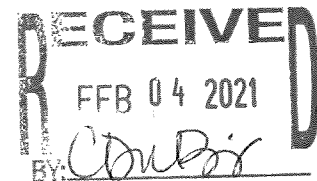
SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.

I would like to be considered for a Reduction in Sentence (RIS). I meet the qualifications listed under: (circle one) Terminal Medical Condition, / Debilitated Medical Condition, / Elderly with Medical Conditions.

1. Identified caregiver, address and phone number *Faye + Roland Hinkson (Parents)*
P.O. 5 Duray Colo. 81427 Craig Hinkson 970-318 8984 1422 (G)
2. Any medical benefits received prior to being incarcerated *VA*
3. Name of facility for continuity of care *Montrose Co*

(Do not write below this line)

DISPOSITION:



Signature Staff Member	Date
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Record Copy - File; Copy - Inmate

PDF

Prescribed by P5511

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94

FILE IN SECTION 6 UNLESS APPROPRIATE FOR Privacy Folder

SECTION 6

BP-S621.060 AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION CDFRM

FEB 05

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Inmate Name:	Register Number:	Date:
Hinkson, David	08795-023	2/4/21
	Date of Birth:	Social Security Number:
	07/18/50	568-04-0625

I hereby authorize and request the Federal Bureau of Prisons to:

☒ release information to, or☒ obtain information fromPLEASE CONTACT IF
PAYMENT IS REQUIRED
PRIOR TO FILLING
REQUEST

Name/Facility: All Agencies and Individuals Relevant to Release Planning

Address: _____

City, State, Zip: _____

I understand the information is to be used for (specific reason for release of information):

☒ Continuation of care, or ☒ Other Discharge PlanningInformation to be Released/Obtained: Copy of and/or information from my medical file pertaining to my evaluation and treatment received from BUH Admission to Present.This is to include: ☒ Complete Record ☒ Discharge Summary ☒ History & Physical☒ Operative Reports ☒ Consultations ☒ Progress Notes ☒ X-ray Reports☒ Laboratory Reports ☒ Pathology Reports ☐ Actual Films** ☐ Actual Slides*☐ Other: _____ *will be returned #duplicates accepted

I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand that information used or disclosed pursuant to this authorization could be subject to redisclosure by the recipient and, if so, may not be subject to federal or state law protecting its confidentiality. I understand that I may revoke this consent at any time by sending a written notice to the Supervisor of Medical Records. I understand that any release which has been made prior to my revocation and which was made in reliance upon this authorization shall not constitute a breach of my rights to confidentiality. This authorization will automatically expire three months from the date of the signature.

Signature of Patient <i>David R. Hinkson</i> FAX SIGNATURE VALID ORIGINAL	Date (Month, Day, Year) 2-4-21	Staff Witness <i>CDUB</i>
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SPECIFIC AUTHORIZATION FOR RELEASE OF INFORMATION PROTECTED BY STATE OR FEDERAL LAW.
Must sign below, to Release Protected Information.

I specifically authorize the release of data and information relating to:

☒ 1. Substance Abuse☒ 2. Mental Health☒ 3. HIV

Signature

Date

Deliver Records To: (Institution Address & Fax number)

FMC Butner

Attn: Health Information

PO Box 1600

Butner, NC 27509

Phone: (919)-575-3900

Fax: (919)-575-4843