

Rudy Davis

From: HINKSON DAVID ROLAND (08795023)
Sent Date: Tuesday, June 12, 2018 9:51 AM
To: ruddavis@yahoo.com
Subject: 2241 Amended

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON

DAVID ROLAND HINKSON,
PLAINTIFF-PETITIONER,

VS.) No. 6:18-CV-104-DLB

C. GOMEZ, ACTING WARDEN,
DEFENDANT(S)-RESPONDENT.

PETITIONER'S MOTION TO BRING NEW SUPREME COURT
PRECEDENT TO THE ATTENTION OF THE COURT IN
SUPPORT OF REQUESTED 28 USC SECTION 2241 RELIEF

NOW COMES the Petitioner, David Roland Hinkson, pro se and pursuant to Fed. R. Civ. P. 7 (b), *Haines v Kerner*, 404 U.S. 519 (1972), and any and all other applicable legal authority, hereby brings to the court's attention and requests that the Court consider a new rule by the Supreme Court invalidating 18 U.S.C. Section 16 (b) as articulated in *Sessions v Dimaya*, 138 S. Ct. 1204 (2018) as it relates to the Petitioner's "crime of violence" claim set forth in his habeas corpus petition under 28 U.S.C. Section 2241, and for the following reasons:

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1. Hinkson was convicted of three counts of solicitation to commit a crime of violence (murder for hire) in violation of 18 U.S.C. 373.

2. At the time of his sentencing, direct appeal, and previous post conviction proceedings, the Ninth Circuit, where Hinkson was convicted, had held that solicitation to commit murder was a crime of violence. See *United States v Cox*, 74 F.3d 189 (9th Cir. 1996) and *United States v Raymundo*, 628 F. 3d 1169 (9th Cir. 2011).

3. The Federal Criminal Code's definition of "crime of violence" is articulated in 18 U.S.C. Section 16 as follows:

"The term crime of violence" means--

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

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4. Conspiracy and solicitation to commit murder are treated the same under the United States Sentencing Guidelines (U.S.S.G.) Section 2A1.5.

5. In *United States v McCollum*, 2018 U.S. App. Lexis 6953, No. 17-4296 (4th Cir. 2018) the court held that, after *Johnson v United States*, 135 S. Ct. 2551 (2015) and *Mathis v United States*, 136, Ct. 2243 (2016), conspiracy to commit

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murder is not a crime of violence.

6. Solicitation to commit murder can be a crime of violence only under the residual clause of 18 U.S.C. Section 16 (b).

7. In *Sessions v Dimaya*, 138 S. Ct. 1204 (2018) the Supreme Court held that the residual clause contained in Section 16 (b) is unconstitutionally vague and void.

8. In his Section 2241 petition, Hinkson raises the claims (1) that his three convictions for solicitation to commit murder should have only been one unit of prosecution, not three, and therefore he should have received a single sentence; (2) that his solicitation convictions are not "crimes of violence," and (3) that his sentences should have run concurrently.

9. The Supreme Court's recent decision in *Sessions v Dimaya*, supra, pertains directly to Hinkson's three solicitation offenses and compels the relief he seeks in his Section 2241 petition.

10. For these reasons, Hinkson brings *Sessions v Dimaya*, 138 S. Ct. 1204 (2018) to the attention of the Court, and asks that the Court consider this case in reference to his claims raised in his Section 2241 petition.

WHEREFORE Hinkson respectfully moves the Court to take judicial notice of *Sessions v Dimaya*, 138 S. Ct. 1204 (2018) and its relevance to his offenses and Section 2241 claims.

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Respectfully submitted

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CERTIFICATE OF SERVICE

I David R. Hinkson, hereby certify under 28 USC Section 1746 that I served a true and correct copy of the instant motion, via the institutional legal mail system and first-class postage prepaid, on this ____ day of June, 2018, to : Mr. C. Gomez, Acting Warden, USP McCreary, P.O. Box 3000, Pine Knot, KY 42635.

David R. Hinkson, Pro Se