

Appendix / Exh 1

06/16/2022

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

June 13, 2022

Mr. Antoine Mayes
Prisoner ID 78351-053
USP Allenwood
P.O. Box 3000
White Deer, PA 17887

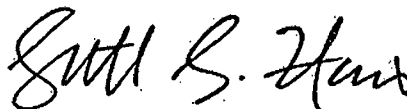
Re: Antoine Mayes
v. United States
No. 21-7895

Dear Mr. Mayes:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris", written in a cursive style.

Scott S. Harris, Clerk

Appendix / Exh 1A

07/22/2022

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

July 20, 2022

Antoine Mayes
#78351-053
USP Allenwood
P.O. Box 3000
White Deer, PA 17887

RE: Petition for Rehearing
No: 21-7895

Dear Mr. Mayes:

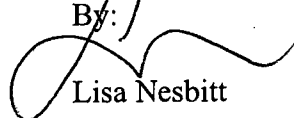
The petition for rehearing in the above-entitled case was postmarked July 8, 2022 and received July 19, 2022 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

You must also certify that the petition for rehearing is presented in good faith and not for delay.

Also, the petition exceeds the 15 page limitation set out in Rule 33.2(b).

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Sincerely,
Scott S. Harris, Clerk
By:



Lisa Nesbitt
(202) 479-3038

Enclosures

Appendix / Exh. 1B

Appendix/Exh 2

10/18/2021

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

John Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 21-2119

Caption [use short title]

Motion for: COA and Reinstate Appeal

United States

v.

Set forth below precise, complete statement of relief sought:

Antoine Mayes

To Reinstate COA

MOVING PARTY: Antoine Mayes

OPPOSING PARTY: United States

☐ Plaintiff

☒ Defendant

☐ Appellant/Petitioner

☐ Appellee/Respondent

MOVING ATTORNEY: Antoine Mayes

OPPOSING ATTORNEY: DAVID C. JAMES

[name of attorney, with firm, address, phone number and e-mail]

USP Allenwood, P.O. Box 3000, White Deer, PA 17887

271 Cadman Plaza East, Brooklyn, New York 11201

Court-Judge/Agency appealed from: Eastern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☐ Unopposed ☐ Opposed ☒ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☒ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☒ No

Has this relief been previously sought in this Court?

☐ Yes ☒ No

Requested return date and explanation of emergency:

N/A

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date: N/A

Signature of Moving Attorney:

Date: 10/11/21

Service by: ☐ CM/ECF

☒ Other [Attach proof of service]

***UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT***

_____/

UNITED STATES OF AMERICA,

v.

Docket No. 21-2119

ANTOINE MAYES,

Petitioner.

_____/

**APPLICATION FOR CERTIFICATE OF
APPEALABILITY**

RELIEF SOUGHT

Petitioner, Antoine Mayes ("Mayes" or "Petitioner"), moves this Court for a Certificate of Appealability within the meaning of Section 2253(c) of Title 28 of the United States Code and Rule 22(b) of the Federal Rules of Appellate Procedure. A Certificate of Appealability (hereinafter "COA") from the final order of denial in a proceeding under 28 U.S.C. section 2255 in the United States District Court for the Eastern District of New York on July 7th, 2021. Doc. # 393. (The Court also decline to issue a certificate of appealability.

invalid predicate offense. See *United States v. Rodriguez*, supra, 2020 WL 1878112, at *17; *United States v. Jones*, 935 F.3d 266, 273-74 (5th Cir. 2019).

The Petitioner has made a substantial showing of the denial of a constitutional right and that although the lower court rejected his constitutional claims, he has demonstrated herein that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. As Petitioner has shown in *Rodriguez*, *In re Gomez*, *Lettiere*, *McCall*, and *Berry*, there has been considerable debate regarding this issue, which shows reasonable jurists could disagree with the lower court's decision, which also, conflicts with binding Supreme Court precedent in *Stromberg*, *Griffin*, *Zant*, *Stephens*, *Sandstrom*, and *Bachellar*.

More specifically, reasonable jurists might find the district court's assessment of the constitutional claims debatable or wrong as to whether the Petitioner is required to prove that it is more likely than not that he was adjudicated guilty solely under § 924(c)'s residual clause. Or, as in *Wainwright v. United States*, 2020 U.S. Dist. LEXIS 63247 (S.D. Fla. Apr. 6, 2020), that court found the Supreme Court's decision in *Stromberg* controlling in that case, that involved the same issue as in this case, which shows that another jurist found the same issue debatable and could be resolved differently.

This Court should issue a certificate of appealability as to (1) whether the jury instruction on Count Eight violated Petitioner's right not to be convicted based on an unconstitutionally vague law, § 924(c)(3)(B) or invalid ground, as determined by *United States v. Davis*, 139 U.S. 2319, where two of the predicate offenses no longer qualify as "crimes of violence."; (2) whether the district court's denial of Petitioner's § 2255 claims has failed to conduct a harmless error analysis on the trial errors, that the jury instruction on Count Eight included two predicate offenses that no longer qualifies as valid predicates under *Davis*; (3) has Petitioner's Right to an unanimous jury verdict been denied where the verdict is ambiguous; and (4) does the lower court have the authority to circumvent the role of the jury by judicial factfinding to decide an element of the crime of § 924(c).

Finally, This COA should be held in abeyance until the United States Supreme Court decides *United States v. Taylor*, No. 20-1459, in which the petition for certiorari was granted on July 2, 2021. *Taylor* presents the same issue as Mr. Mayes' case.