

06/17/21  
MD

Case No.

21-54

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE CHAD ANTHONY RAY

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

CHAD ANTHONY RAY

#59011-177

F.C.I. LA TUNA

SATELLITE LOW P.O. Box 6000

ANTHONY. NM 88021

## QUESTION PRESENTED

Federal marijuana laws are constitutional because marijuana is not a fundamental right. Judicial review of these criminal laws has been rational basis, a political question. Petitioner is a political prisoner. Marijuana laws are a political question because of ineffective assistance of officers of the court.

1. Whether "liberty" in the due process clause still means freedom from physical restraint by government police power?
2. Whether the operation and effects of the marijuana laws are an Article III case and controversy?
3. Whether being incarcerated is a substantial denial of Chad Anthony Ray's constitutional right of liberty without compelling reasons for Congress to proscribe marijuana as a dangerous substance, therefore without due process of law in violation of Amendments IV and V of the Constitution of the United States and is unconstitutional?

## PARTIES TO THE PROCEEDING

Petitioner Chad Anthony Ray is in custody of the United States of America. He is incarcerated in the Federal Corrections Institution, La Tuna, 8500 Doniphan Rd. Anthony, TX 79821. S. Hjar, is the Warden.

## PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Chad Antony Ray respectfully petitions for an extraordinary writ of habeas corpus.

## DECISION BELOW

This petition for an extraordinary writ of habeas corpus is an original proceeding in this Court. There is only one court proceeding directly related to this case. It is from the United States District Court, District of Northern Texas. *Ray v. U.S.A.* Case No. 7:20-CV-049-O. The case caption is: *Motion to Vacate, under 28 U.S.C. § 2255 Set Aside, or Correct a Sentence By a Person in Federal Custody.* 28 U.S. Code CHAPTER 153—HABEAS CORPUS. (A. 5) Judgment was 4/16/2021. Citations of the opinion and order entered in this case is not known but the Court's Opinion and Order is attached. (A. 1)

## STATEMENT OF JURISDICTION

Date of Judgment of related case *Ray v. U.S.A.* Case No. 7:20-CV-049-O was 4/16/2021. (A-1)

The statutory provision believed to confer on this Court jurisdiction to review an Extraordinary Writ of Habeas Corpus are Title 28 U.S. Code §§ 2241, 2242, 2243. (A. 13)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (A. 13)

### UNITED STATES CONSTITUTION

Article I, Section 9, Clause 2, The Privilege of the Writ of Habeas Corpus . . .

Article III Section 2. The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . to Controversies to which the United States shall be a Party;

Amendment IV The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, . .

Amendment V. No person shall be . . . deprived of life, liberty, or property, without due process of law;

#### UNITED STATES CODE

28 U.S. Code CHAPTER 153—HABEAS CORPUS

§ 2241, (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, . . .  
(c)The writ of habeas corpus shall not extend to a prisoner unless . . .(3) He is in custody in violation of the Constitution . . .

§§ 2242, 2243, 2255

#### STATEMENT OF THE CASE

The federal questions sought to be reviewed was first raised in the 2255 motion to vacate in Ground One. (A. 8)

GROUND ONE: Mr. Ray is in custody in violation of Amendments IV and V of the Constitution of the United States. He is being deprived of his constitutional right of liberty, without compelling government reasons for Congress to proscribe marijuana, therefore without due process of law.

In the district court's Opinion and Order, "Movant's ground is clearly one that could and should have been raised on appeal." (A. 3). This federal question can not be raised for the first time on appeal.

The court declared Ground One was a "meritless argument." (A. 5)

Congress has the authority to regulate and criminalize marijuana under the Commerce Clause. *Gonzales v. Raich*, 545 U.S. 1 (2005). Movant's counsel cannot have been ineffective for failing to raise a meritless argument. *Clark v. Collins*, 19 F.3d 959, 966 (5th Cir. 1994).

Ground One was not raised in *Gonzales v Raich* 545 U.S. 1 (2005). Judicial review in this case was by rational basis because of ineffective assistance of counsel. (A. 9 § 13)

#### ARGUMENT

##### LIBERTY: FREEDOM FROM PHYSICAL RESTRAINT

Being incarcerated is a substantial denial of Ray's inalienable, constitutional right of liberty, freedom from unreasonable physical restraint. "Every person has a fundamental right to liberty . . ."

*Chapman v. United States*, 500 U.S. 453, 465. (1991). "The only cases that require a stricter standard of review are those that involve an infringement of a right explicitly enunciated in the Constitution." *United States v. Kiffer*, 477 F.2d 349, 352 (2d Cir. 1973). "One's right to life, liberty, and property, . . . may not be submitted to vote; they depend on the outcome of no elections. *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 638 (1943). "Criminal statutes, be subjected to the most rigid scrutiny . . . if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible [government] objective." *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

Amendment IV. "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizure shall not be violated: . . ." This part has been referred to the reasonableness of the law that authorized police power to seize Ray's person and deprive him of his liberty. The constitutionality of the Controlled Substance Act, (21 U.S. Code § 801 et seq.) proscribing marijuana as a dangerous substance "is without support in reason because the article, although within the prohibited class, is so different from others of the class [heroin] as to be without the reason for the prohibition." *United States v. Carolene Products Co.*, 304 U.S. 144, 153-54 (1938).

Amendment V. "No persons shall . . . be deprived of life, liberty, and property without due process of Law." This application for habeas relief is about the "due process" of creating the law, the substance of the law, the compelling reasons for United States' Congress to proscribe cannabis.

Criminal laws are an Article III case and controversy. Ray is being deprived of his constitutional right of liberty by United States of America for violating a criminal law. (App. 6.) "[T]he case and controversy limitation . . . [is an] . . . American institution of judicial review . . . for the preservation of individual rights." *Rescue Army v. Municipal Court* 331 U.S. 549, 72 (1947). The constitutionality of criminal laws is reviewed by strict scrutiny. Government "police power which trenches upon the constitutionally protected freedom . . . bears a heavy burden of justification . . . and will be upheld only

if it is necessary and not merely rationally related, to the accomplishment of a permissible [government] policy.” *McLaughlin v. Florida*, 379 U.S. 184, 196 (1964).

Ray is being illegally deprived of his liberty without compelling reasons for Congress to proscribe marijuana as a dangerous substance, therefore without due process of law contravening Amendments IV and V of the Constitution of the United States. Rational, political police power enforcing criminal laws is beyond the constitutional limitations of Amendments IV and V. Laws that authorize government police power are either reasonable or unreasonable.

This writ for habeas relief is for the court to determine whether an Act of Congress of the United States had compelling reasons, government interest, to proscribe marijuana as a dangerous substance, a drug crime and deprive Ray’s liberty, freedom from physical restraint, federal custody.

Due process of law requires the government to provide facts that marijuana is a noxious, deleterious, dangerous plant to be a federal controlled substance. There are no compelling reasons based on fact. Just deprivation of liberty under the color of law.

“The validity of regulatory measures may be challenged on the ground that they transgress the Constitution, and thereupon it becomes the duty of the court, in the light of the facts in the case, to determine whether the regulation is reasonable and valid or essentially unreasonable, arbitrary and void.” *Norfolk & W.R. Co. v Public Service Commission of West Virginia* 265 U.S. 70, 74 (1924)

The marijuana law he was convicted of (A. 6) is an Article III case and controversy. Judicial review of criminal laws is strict scrutiny. Without compelling reasons, proscribing marijuana as a dangerous controlled substance by the United States Congress was unconstitutional.

#### COMPELLING REASONS FOR GRANTING THE WRIT

Exceptional Circumstances Warrant the Exercise of This Court’s Original Habeas Jurisdiction

By declaring the argument of Ground One of the 2255 motion to vacate as “meritless”, the District Court denied Certificate of Appealability, standing. The District Court decided/ignored an important federal question presented by Ground One in a way that conflicts with relevant decisions and should be settled by this Court. The District Court declared being incarcerated is not a substantial denial of Petitioner’s constitutional right of liberty, freedom from unreasonable physical restraint. The District Court is continuing the systemic treatment of the marijuana laws, criminal laws, as a political question and not as an Article III case and controversy. (A. 9, § 13). Political, rational police power is repugnant to Amendment IV and V.

This shows that exceptional circumstances warrant the exercise of the Court’s discretionary powers, and that adequate relief was not obtained from the district court and was prejudicial.

#### CONCLUSION

This court should award the extraordinary writ of habeas corpus forthwith or issue an order directing the respondent to show cause, compelling reasons to proscribe marijuana as a dangerous substance, to justify why the extraordinary writ of habeas corpus should not be granted. § 2243.

Respectfully submitted,

Dated:

6/30/21



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