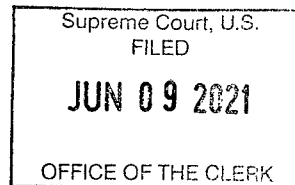


Case No. 21-334



IN THE
SUPREME COURT OF THE UNITED STATES

IN RE JODY TREMAYNE WAFER

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

JODY TREMAYNE WAFER
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QUESTIONS 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 Jody Tremayne Wafer’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 Jody Tremayne Wafer is in custody of the United States of America.

Warden
FCI Yazoo City Medium
2255 Haley Barbour Parkway
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Solicitor General of the United States,
Room 5616, Department of Justice,
950 Pennsylvania Ave., N. W.,
Washington, DC 20530-0001.

STATEMENT OF RELATED CASE

28 U.S. Code 2242

U.S.A. V Wafer 3:17-cr-435-JO-1. United States District Court, District of Oregon. Judgment was 03/29/2021. 28 U.S. Code § 2255 Motion to Vacate. Certificate of Appealability denied. (A-1)

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PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Jody Tremayne Wafer 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. 28 U.S.C. 2241. United States District Court, District of Oregon. *U.S.A. V Wafer* 3:17-cr-435-JO-1. Judgment was 03/29/2021. (A-1) Citations of the opinion and order entered in this case is not known. The Court's Opinion and Order is dated 03/26/2021. (A-2)

STATEMENT OF JURISDICTION

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. Date of Judgment of related case *U.S.A v. Wafer* Case No. 3:17-cr-00435-JO, U.S. District Court of Oregon was 03/29/2021.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Article I, Section 9, Clause 2, Clause 2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

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

18 U.S.C. §§ 924(c)(1)(A)(i) and (ii) Using and carrying a firearm during and in relation to a drug trafficking crime (A-8, 14)

21 U.S.C. § 846 Conspiracy to Manufacture, possess with intent to deliver and distribute marijuana and maintain drug involved premise. (A-8,14)

28 U.S. Code § 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 . . .

28 U.S. Code § 2242, If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

28 U.S. Code § 2243 (A-14)

28 U.S.C. 2253 (c) (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S. Code § 2255. (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution of the United States, . . . or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate . . . the sentence.

SUPREME COURT RULE 20.4 STATEMENT 28 U.S. Code § 2242,

Exceptional Circumstances Warrant the Exercise of This Court's Original

Habeas Jurisdiction

The District “court declines to issue a certificate of appealability because Defendant has not ‘made a substantial showing of a denial of a constitutional right.’” 28 U.S.C. 2253(c)(2). (A.-1.) The District Court decided/ignored an important federal case and controversy presented by Ground One (A. -10) in a way that conflicts with relevant decisions and should be settled by this Court.

The District Court has 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. Political, rational police power (A-5) 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.

STATEMENT OF THE CASE

The Article case and controversy sought to be reviewed by this court was first raised in the 2255 motion to vacate in Ground One. (A-10)

GROUND ONE: Mr. Wafer 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 judgment, the "court declines to issue a certificate of appealability because Defendant has not 'made a substantial showing of a denial of a constitutional right.'" (A-1)

ARGUMENT

Being incarcerated is a substantial denial of Wafer's inalienable, constitutional right of liberty interest in liberty, freedom from unreasonable physical restraint, freedom from government intrusion.

"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 Wafer'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, 154 (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. Wafer is being deprived of his constitutional right of liberty by United States of America for violating criminal laws. (A-8) “[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).

Wafer is being illegally deprived of his liberty without compelling reasons for Congress to proscribe marijuana as a dangerous substance, a drug crime, without due process of law contravening Amendments IV and V of the Constitution of the United States. Rational, (A-5) political police power, enforcing criminal laws, is beyond the constitutional limitations of Amendments IV and V. (A-5) 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 trafficking crime, and deprive Wafer'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, a drug crime. There are no compelling reasons based on fact. Just deprivation of liberty without due process of law, 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 laws Wafer was convicted of (A-8) are an Article III case and controversy. Judicial review of criminal laws is strict scrutiny. Without compelling reasons, proscribing marijuana as a dangerous controlled

substance, a drug trafficking crime, by the U. S. Congress was unconstitutional.

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, a drug trafficking crime, to justify why the extraordinary writ of habeas corpus should not be granted. § 2243. (A-14).

Respectfully submitted this 27 day of August 2021,

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