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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

CHAD ANTHONY RAY,

Movant,

V.

UNITED STATES OF AMERICA,

Respondent.

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NO. 7:20-CV-049-O  
(NO. 7:19-CR-010-O)

**FINAL JUDGMENT**

In accordance with the opinion and order signed this date,

The court **ORDERS, ADJUDGES, and DECREES** that all relief sought by Chad Anthony Ray in the motion he filed under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody be, and is hereby, **DENIED**.

**SO ORDERED** on this 16th day of April, 2021.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE

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#### IV. ANALYSIS

Movant's ground is clearly one that could and should have been raised on appeal. It cannot be raised here without a showing of cause and prejudice. *Shaid*, 937 F.2d at 232. Movant says that he did not raise this ground before due to ineffective assistance of counsel. Doc. 6 at PageID 22. In particular, movant's counsel believes that marijuana laws are constitutional. *Id.* Ineffective assistance can be cause, but movant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also Missouri v. Frye*, 566 U.S. 133, 147 (2012). "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Strickland*, 466 U.S. at 697; *see also United States v. Stewart*, 207 F.3d 750, 751 (5th Cir. 2000). "The likelihood of a different result must be substantial, not just conceivable," *Harrington v. Richter*, 562 U.S. 86, 112 (2011), and a movant must prove that counsel's errors "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (quoting *Strickland*, 466 U.S. at 686). Judicial scrutiny of this type of claim must be highly deferential and the defendant must overcome a strong presumption that his counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689. Simply making conclusory allegations of deficient performance and prejudice is not sufficient to meet the *Strickland* test. *Miller v. Johnson*, 200 F.3d 274, 282 (5th Cir. 2000).

In this case, movant simply makes conclusory allegations to the effect that he disagrees with marijuana laws. That his counsel did not share his opinion is not evidence that counsel was

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ineffective. 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). Because movant cannot show cause for his procedural default, he cannot proceed with his ground here. *Shaid*, 937 F.2d at 232.

#### V. CONCLUSION

For the reasons discussed herein, the relief sought in movant's motion is **DENIED**.

Further, pursuant to 28 U.S.C. § 2253(c), for the reasons discussed herein, a certificate of appealability is **DENIED**.

**SO ORDERED** on this 16th day of April, 2021.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District	Of Northern Texas, Wichita Falls Division
Name (under which you were convicted): CHAD ANTHONY RAY		Docket or Case No.: 7:19-CR-00010-O(05)	
Place of Confinement: FCI LA TUNA SAT. LOW P.O. BOX 6000 ANTHONY, NM 88021		Prisoner No.: 59011-177	
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
V.		CHAD ANTHONY RAY	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court, 1000 Lamar St #203, Wichita Falls, TX 76301

- (b) Criminal docket or case number (if you know): 7:19-CR-00010-O(05)

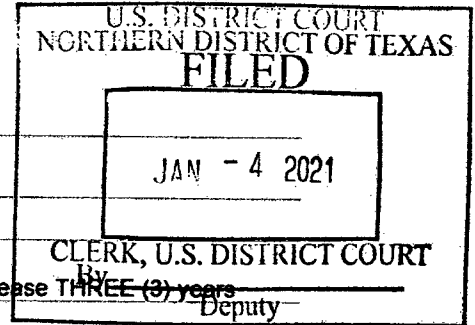
2. (a) Date of the judgment of conviction (if you know): January 24, 2020.

- (b) Date of sentencing: January 24, 2020.

3. Length of sentence: Imprisoned for a term of FIFTY (50) months; Supervised release THREE (3) years

4. Nature of crime (all counts):

Count One; 21 U.S.C. § 846 Conspiracy to Distribute a Schedule I Controlled Substance (marijuana)



5. (a) What was your plea? (Check one)

(1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest)

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

Count One

6. If you went to trial, what kind of trial did you have? (Check one) Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No

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8. Did you appeal from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

(a) Name of court: IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(b) Docket or case number (if you know): No. 20-10145

(c) Result: Dismissed

(d) Date of result (if you know): 02/13/2020

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: \_\_\_\_\_

Under FED. R. APP. P. 42(b), the appeal is dismissed as of February 13, 2020, pursuant to appellant's motion.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court? Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

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- 12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**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 liberty, without compelling government reasons for congress to proscribe marijuana therefore witho due process of law.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. Liberty, freedom from physical restraint, IS a constitutional right.
2. Marijuana is NOT a constitutional right.
3. Marijuana is federally classified as a dangerous controlled substance.
4. The operation and effect of federal prosecution in the enforcement of 21 U.S.C. § 846, was the seizure of Mr. Rays person and deprivation of his constitutional right of liberty by the bounds of prison.
5. Marijuana is not a dangerous, lethal substance for personal consumption. Marijuana has proven to be safe to use by adults without medical supervision. No one has died from overdosing by smoking marijuana.
6. A reasonable regulated interstate commerce of this property, marijuana, does not present a substantial threat to the rights of others, to public safety or health. requiring the use of federal police power.
7. Mr. Ray plead guilty, was convicted, deprived of his liberty, without compelling government reasons for a victimless crime.
8. Ground One is not about selective, arbitrary enforcement violating due process of law

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No

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Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Ground One has not been raised because of "ineffective assistance of counsel." that was prejudicial.

1. Counsel believes the marijuana laws are constitutional because marijuana is not a fundamental right.

2. Counsel treats laws that authorize the use of police power as a political question thus violating the solemn oath to the court to support the Constitution of the United States.

3. Counsel did not protect the right of Mr. Ray to be secure against unreasonable deprivation of his constitutional right of liberty, freedom from physical restraint, and his right of property secured by Amendments IV and V.

4. Counsel doesn't know criminal laws are an Article III justiciable controversy ripe for adjudication by this court under strict scrutiny standard of review.

5. It is not in the best interest for counsel to raise ground one.

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- 14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

- 15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial:

(d) At sentencing:

Law Office of Greg Merkle 1407 9th St Wichita Falls, TX 76301

(e) On appeal:

Law Office of Greg Merkle 1407 9th St Wichita Falls, TX 76301

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

- 16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

- 17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

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**The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.**

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the **application for the writ and the return present only issues of law** the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

Dated:

12/28/20

\_\_\_\_\_  
CHAD ANTHONY RAY  
#59011-177  
FCI LA TUNA  
SATELLITE CAMP  
P.O. BOX 8000  
ANTHONY, NM 88021

*Chad Ray* N/A

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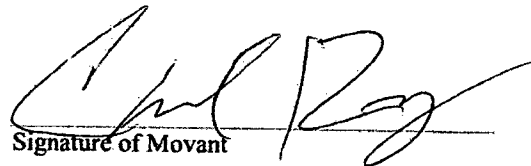
Therefore, movant asks that the Court grant the following relief:  
to declare liberty is freedom from physical restraint and the U.S. Congress proscribing marijuana as a controlled substance was arbitrary and unreasonable regulation of property, depriving Mr. Ray's liberty without compelling reasons, without due process of law contravening 4th and 5th Amendments of the U.S. Constitution thus vacating his conviction and sentence.

or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 12/29/20  
(month, date, year)

Executed (signed) on 12/28/20 (date)

  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

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## APPENDIX

### CONSTITUTIONAL PROVISIONS

Article I, Section 9, Clause 2, of the United States Constitution provides: 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, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—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 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 § 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—

- (1) He is in custody under or by color of the authority of the United States . . .
- (2) He is in custody for an act done . . . in pursuance of an Act of Congress,
- (3) He is in custody in violation of the Constitution or laws or treaties of the United States . . .

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 court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require

#### 28 U.S. Code § 2255. Federal custody; remedies on motion attacking sentence

(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 or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

#### 21 U.S. Code SUBCHAPTER I—CONTROL AND ENFORCEMENT

##### 21 U.S.C. § 846 Conspiracy to Distribute a Schedule I Controlled Substance

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.