

Case No.

21-5821
IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
AUG 13 2021
OFFICE OF THE CLERK

IN RE EDUARDO PINEDA

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

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QUESTIONS PRESENTED

- [1] Does the constitutional right to "liberty" as contained in the due process clause still mean freedom from physical restraint by government police power?
- [2] Are the operations and effects of federal marijuana laws an Article III case and controversy subject to the strict scrutiny judicial review standard?
- [3] Is being incarcerated a substantial denial of the Petitioner's constitutional right to liberty considering Congress' proscription of marijuana as a dangerous substance fails to provide due process of law in violation of Amendments IV and V of the Constitution of the United States?

LIST OF PARTIES

All parties appear in the caption on the cover page.

TABLE OF AUTHORITIES CITED

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS
.....

Petitioner respectfully prays that a writ of habeas corpus issue to relieve the judgment below.

OPINIONS BELOW

[x] For cases from federal courts:

- The Final Judgment (ORDER) of the United States District Court for the Eastern District of Texas (Tyler Division) appears at Appendix A to the petition and is unpublished.
- The ORDER Adopting the Report and Recommendation of the United States Magistrate Judge appears at Appendix B and is unpublished.
- The Report and Recommendation of the United States Magistrate Judge appears at Appendix C and is unpublished.

JURISDICTION

The ORDER of the United States District Court denying relief under 28 U.S.C. § 2255 was entered on June 28, 2021. [Appendix A].

A Certificate of Appealability was denied sua sponte in the same ORDER. [id.].

This Court has proper jurisdiction as a venue of last resort pursuant to 28 U.S.C. §§ 2241, 2242, and 2243.

This Court alternatively has jurisdiction under 28 U.S.C. § 1254(1):

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petitioner of any party to any civil or criminal case, before or after rendition of judgment or decree.

[id.].

This case will be in the aid of this Court's appellate jurisdiction because it will provide an opportunity to address the application of strict scrutiny to 21 U.S.C. § 812, and will evaluate the categorization of marijuana as a schedule I controlled substance.

Due to the simultaneous legality/illegality of marijuana as a function of one's location, this Court should utilize evolving standards of decency to address federal laws criminalizing marijuana. No other drug is similarly situated.

Essentially, the treatment of millions of Americans remains in limbo as the federal government outlaws marijuana completely. Yet, this Government has no reasonable interest in proscribing marijuana; therefore showing exceptional cir.

Pineda cannot obtain relief elsewhere: District Court has already ruled on and rejected the merits, and no reason applies to reconsideration, nor to Rule 59(e) or 60(b); Appellate Court's deadlines have already passed, as has any reasonable opportunity for motion to recall the mandate. Moreover, both are bound by Fifth Circuit precedent that continues to hold arbitrarily that the Government maintains an interest in continuing to proscribe marijuana. A decision, therefore, from this Court, will address whether marijuana should receive strict scrutiny, and whether it should remain unlawful.

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

21:841(a)(1), 21:841(b)(1)(B), 18:2- Manufacture and Possession With Intent to Manufacture and Distribute 100 or More Marihuana Plants and Aiding and Abetting

STATEMENT OF THE CASE

The ground of a federal question was first raised in the motion under 28 U.S.C. § 2255 as ground one. [Appendix D at 04]. It claimed ineffective assistance of counsel. [id. at 09].

GROUND ONE: Mr. Pineda 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 interest in proscribing marijuana nor due process of law.

The District Court opined Pinedo, "[F]ailed to present a substantial showing of a denial of a constitutional right. [Appendix C at 12]. Additionally, the District Court's Final Judgment denied the Petitioner a Certificate of Appealability.

ARGUMENT

•LIBERTY: Freedom from Physical Restraint•

Incarceration represents a substantial denial of the Petitioner's inalienable, constitutional right to liberty, freedom, and, specifically, freedom from unwarranted physical restraint. "Every person has a fundamental right to liberty..." [Chapman v. United States, 500 U.S. 453, 465 (1991)]. Concerning standard of review applicable here, "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)]. Essentially, "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)]. Moreso, "Criminal statutes [must] be subjected to the most rigid scrutiny ... if they are ever to be upheld, they must be shown to be neces-

sary to the accomplishment of some permissible [government] objective." [Loving v. Virginia, 388 U.S. 1, 11 (1967)].

•Relevant Constitutional Amendments•

AMENDMENT IV. In part, this amendment holds, "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizure shall not be violated:..." [id.]. This section is often referenced in terms of the reasonableness of the law that authorized police power to seize the Petitioner's person and deprive him of his liberty. The constitutionality of the Controlled Substance Act [codified at 21 U.S.C. § 801, et seq.] proscribing marijuana under the guise that it is a dangerous substance is "without support in reason because the article, although within the prohibited class, is so different from others of the [same] class [e.g., heroin] as to be without the reason for prohibition." [United States v. Carolene Products Co., 304 U.S. 144, 153-54 (1938)]. This Court has previously addressed regulatory measures:

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 these 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)].

AMENDMENT V. In part, this amendment holds, "No persons shall...be deprived of life, liberty, and property without due process of law." [id.]. This petition for habeas relief concerns the due process of having created the law, the substance thereof,

and the compelling reasons for Congress to have proscribed cannabis.

Criminal laws are an Article III case and controversy. "[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 the strict scrutiny standard, meaning governmental "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)].

This petition for a writ of habeas corpus seeks the Court's determination of whether the marijuana proscription laws of the United States were imposed pursuant to compelling reasons, government interests, and lawful authority; and whether such laws may be predicated upon marijuana being deemed a dangerous substance and, ultimately, rises to the necessity to deprive the Petitioner of liberty and freedom from physical restraint (i.e., federal imprisonment).

COMPELLING REASONS FOR GRANTING THE WRIT

Exceptional circumstances warrant the exercise of this Court's original habeas jurisdiction. The compelling reason for granting this extraordinary writ is due to the district court having denied that imprisonment is a substantial denial of the Petitioner's federal constitutional right to liberty and freedom from physical restraint. The court dismissed the Petitioner's motion under 28 U.S.C. § 2255 and sua sponte denied a certificate of appealability. The court denied that liberty deprivation for violating federal marijuana laws is not an Article III case and controversy.

In justifying the granting of this petition for a writ of habeas corpus, the Petitioner has shown that exceptional circumstances warrant the exercise of this Court's discretionary powers, and that adequate relief was not obtained from the district court. This Court should exercise supervisory power to ameliorate the inherent injustice herein.

CONCLUSION

This Court should award the Petitioner a writ of habeas corpus or issue an order directing the United States to show cause concerning the proscription of marijuana as a dangerous drug and delineating why the writ should not be granted.

Respectfully Submitted,



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