

No. 21-715

Supreme Court, U.S.
FILED

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In The
Supreme Court of the United States

◆

In re JODY TREMAYNE WAFER

ON PETITION FOR AN EXTRAORDINARY
WRIT OF HABEAS CORPUS TO THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF OREGON

PETITION FOR AN EXTRAORDINARY
WRIT OF HABEAS CORPUS

“ADDRESSED TO”

CHIEF JUSTICE JOHN ROBERTS

THE SUPREME COURT OF THE UNITED STATES

28 U.S. Code § 2241, § 2242

◆

JODY TREMAYNE WAFER
Pro Se
BOP #80606-065
FCI Yazoo City Med.
P.O. Box 5000
Yazoo City, MS 39194

RECEIVED

NOV 15 2021

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SUPREME COURT, U.S.

I. QUESTION PRESENTED

Jody Tremayne Wafer petitions for writ of habeas corpus from Chief Justice John Roberts of the Supreme Court of the United States inquiring into the reasonableness, the validity of criminal laws that caused Petitioner's confinement. "The writ of habeas corpus . . . is the liberation of those who may be imprisoned without sufficient cause." *Ex Parte Watkins*, 28 U.S. 193, 202 (1830) Chief Justice Marshall

1. Is being incarcerated a substantial denial of Petitioner's constitutional right of liberty, without "sufficient cause," without compelling reasons for the United States Congress to proscribe marijuana as a dangerous substance, (a drug crime), therefore without due process of law in violation of Amendments IV and V of the Constitution of the United States and unconstitutional?

II. PARTIES TO THE PROCEEDING

Jody Tremayne Wafer, prisoner, is in the custody of:

W. Vereen, Warden
FCI Yazoo City Medium,
2255 Haley Barbour Parkway,
Yazoo City, MS.

SCOTUS Rule 36. Custody of Prisoners.

III. RELATED CASE

U.S.A. v. Wafer 3:17-cr-435-JO-1, United States District Court, District of Oregon. Motion to Vacate conviction under Title 28 Chapter 153 Habeas Corpus § 2255, by a person in federal custody. (App.10) Judgment 03/29/21 (App. 1)

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U.S.A. v. Wafer 3:17-cr-435-JO-1, United States District Court, District of Oregon. Court's Opinion and Order, 3/26/2021. (App. 2) Citation not known.

VI. ORIGINAL JURISDICTION

Writs of habeas corpus may be granted by the "Supreme Court, any justice thereof." Title 28 U.S.C. § 2241, § 2242, § 2243.

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Constitution of the United States

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;

2. 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. (App. 11)

21 U.S.C. § 846 Conspiracy to Manufacture, possess with intent to deliver and distribute marijuana and maintain drug involved premise.

28 U.S.C. § 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.C. § 2242

If addressed to the Supreme Court, a justice thereof . . . 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.C. § 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 required.

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.C. § 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.

IX. INTRODUCTION AND STATEMENT OF THE CASE

1. Rule 20.4(a)(b)

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

Motion to Vacate under Title 28 Chapter 153 Habeas Corpus § 2255 by a person in federal custody, was filed in District Court of Oregon where applicant was convicted.

2. STATEMENT OF RELATED CASE Title 28 U.S.C. § 2242.

Petitioner proceeded with an Article III case and controversy by filing § 2255 Motion to Vacate, for habeas relief in the United States District Court, District of Oregon. *U.S.A. V Wafer* 3:17-cr-435-JO-1. (App. 10)

Judgment was 03/29/2021. (App. A) The Court's Opinion and Order is dated 3/26/2021. (App. B) Citations of opinion and order not known.

Petitioner's § 2255 Motion to Vacate: (App. 13)

"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 liberty without compelling reasons for Congress to proscribe marijuana therefore without due process of law."

Court's Judgment: (App. 1) "Based on the record, Defendant's Motion to Vacate, Set Aside or Correct his Sentence under 28 U.S.C. § 2255, ECF No. 258, is DENIED. The Court declines to issue a certificate of appealability because Defendant has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2)."

The District Court has declared being incarcerated is not a substantial denial of a constitutional right of liberty, freedom physical restraint.

X. REASONS FOR GRANTING EXTRAORDINARY WRIT OF HABEAS CORPUS

Mr. Wafer has been deprived of his constitutional right of liberty by being incarcerated for drug crimes related to marijuana and possessing a firearm. (App.11)

"Every person has a fundamental right to liberty . . ." *Chapman v. United States*, 500 U.S. 453, 465 (1991). "[L]iberty . . . freedom from bodily restraint." *Meyer v. Nebraska* 262 U.S. 390, 399 (1923).

"[C]riminal statutes, be subjected to the most rigid scrutiny." *Loving v. Virginia*, 388 U.S. 1, 11 (1967) "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).

Petitioner's person has been illegally seized and deprived of his liberty without "sufficient cause,"

without compelling reasons for the Congress of the United States to proscribe marijuana as a dangerous substance, a drug crime, therefore without due process of law contravening Amendments IV and V of the Constitution of the United States. There is no victim of a crime buying and selling marijuana. (App. 13, 14)

This writ for habeas relief is for this Court to order the Respondents to address the allegation of the Question Presented. Then determine whether an Act of Congress of the United States had "sufficient cause," compelling government reasons (interest), to proscribe marijuana as a dangerous substance, a drug trafficking crime, depriving Petitioner's liberty by incarceration and supervised release for years.

U. S. Congress proscribing marijuana as a controlled dangerous substance "is without support in reason because the article, although within the prohibited class, is so different from others of the class as to be without the reason for the prohibition." *United States v. Carolene Products Co.*, 304 U.S. 144, 154 (1938). Marijuana is safe to use without medical supervision.

Due process of law requires the government to provide compelling reasons to use police power to protect the rights of others, public health and safety, to deprive Petitioner's constitutional right of liberty. The government cannot show that marijuana is a noxious, deleterious, plant to be a federal controlled dangerous substance, a drug crime.

"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)

XI. CONCLUSION

For the foregoing reasons, Chief Justice John Roberts should forthwith award the writ of habeas corpus, the great writ of liberty, freedom from physical restraint, freedom from federal custody.

OR issue an order directing the Solicitor General of the United States to show "sufficient cause," compelling reasons for the Congress of the United States to proscribe marijuana as a dangerous substance, a drug crime. To respond within 3-20 days to justify why this writ of habeas corpus should not be granted. (§ 2243, 2nd clause)

Respectfully submitted,

/s/ JODY TREMAYNE WAFER Pro Se
BOP #80606-065
FCI Yazoo City Medium
P.O. BOX 5000
Yazoo City, MS 39194

November 10, 2021

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APPENDIX A
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.)	No. 3:17-cr-
)	00435-JO
JODY TREMAYNE WAFER,)	JUDGMENT
Defendant.)	

Based on the record, Defendant's Motion to Vacate, Set Aside or Correct his Sentence under 28 U.S.C. § 2255, ECF No. 258, is DENIED. The Court declines to issue a certificate of appealability because Defendant has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED March 29, 2021.

/s/ Robert E. Jones
Robert E. Jones
United States District Judge

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

UNITED STATES OF AMERICA,)	No. 3:17-cr-
Plaintiff,)	00435-JO
)	
v.)	OPINION
)	AND ORDER
JODY TREMAYNE WAFER,)	
Defendant.)	(Filed
)	Mar. 26, 2021)

JONES, J.

Defendant Jody Tremayne Wafer pleaded guilty to conspiracy to distribute marijuana and to use of a firearm in furtherance of a drug trafficking crime. This court sentenced Defendant to no time in prison on the marijuana count and to 84 months in prison on the firearm count.

Defendant, representing himself, now moves to vacate his conviction under 28 U.S.C. § 2255, claiming that he received ineffective assistance of counsel. ECF No. 258. For the following reasons, I deny Defendant's Motion.

LEGAL STANDARDS

I. Motions Under 28 U.S.C. § 2255

Under 28 U.S.C. § 2255, a federal prisoner may file a motion in the court that imposed the sentence to vacate, set aside, or correct the sentence because:

[T]he 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 . . .

28 U.S.C. § 2255(a). To prevail on a motion under § 2255, a defendant must show that an error of constitutional magnitude occurred and that the error had a substantial and injurious effect or influence on the guilty plea or the jury's verdict. *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993).

II. Ineffective Assistance of Counsel

To prevail on a claim for ineffective assistance of counsel, the defendant must show both that his attorney's performance was unreasonable under prevailing professional standards and that the deficient performance prejudiced his defense. *See Strickland v. Washington*, 466 U.S. 668, 694-95 (1984). If the defendant fails to show either incompetent performance or prejudice, the court "must dismiss the claim." *United States v. Sanchez-Cervantes*, 282 F.3d 664, 672 (9th Cir. 2002). "Review of counsel's performance is highly deferential." *United States v. Ferreira-Alameda*, 815 F.2d 1251, 1253 (9th Cir. 1986). To establish prejudice, the defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

DISCUSSION

Defendant contends that his conviction should be vacated because Congress's decision to "proscrib[e] marijuana as a controlled dangerous substance in 1970 was political, arbitrary, unreasonable and unconstitutional contravening Amendments IV and V of the United States Constitution." Def 's Mem. 3, ECF No. 259. Defendant further argues that his lawyer was ineffective for failing to challenge marijuana's legal status. Def.'s Mot. 4, ECF No. 258.

I. Strict Scrutiny Review Does Not Apply

Defendant argues that this court should use the strict scrutiny standard of review to evaluate his challenge to the federal prohibition of marijuana. Strict scrutiny review applies to the denial of a fundamental right. *See Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). The Due Process Clause "specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrifices." *Id.* (internal quotation marks and citations omitted). "[T]he right must be carefully stated and narrowly identified before the ensuing analysis can proceed." *Raich v. Gonzales*, 500 F.3d 850, 864 (9th Cir. 2007) (*Raich II*); *Glucksberg*, 521 U.S. at 721 (requiring "a 'careful description' of the asserted fundamental liberty interest").

Here, Defendant contends he has been deprived of his fundamental right to be free from physical restraint. *See Chapman v. United States*, 500 U. S. 453, 465 (1991) (recognizing fundamental right to liberty “in the sense that the government may not punish” a person “unless and until it proves [the person’s] guilt beyond a reasonable doubt at a criminal trial conducted in accordance with the relevant constitutional guarantees”). However, Defendant’s description of the fundamental right at stake is too broad. For example, in *Raich II*, the Ninth Circuit addressed the claim of a plaintiff who sought to use marijuana medicinally, asserting a fundamental right to make medical decisions needed to preserve her bodily integrity, avoid intolerable physical pain, and preserve her life. *Id.* The court rejected the plaintiff’s “carefully crafted” asserted interest because it did not “narrowly and accurately reflect the right that she seeks to vindicate. Conspicuously missing from [the plaintiff’s] asserted fundamental right is its centerpiece: that she seeks the right to use *marijuana* to preserve bodily integrity, avoid pain, and preserve her life.” *Id.* (original italics) (footnote omitted). Similarly, here Defendant’s assertion of the fundamental right to liberty is based on his argument that the federal prohibition of marijuana is “unreasonable and unconstitutional.” Def.’s Reply 2, ECF No. 266. In effect, Defendant asks this court “to determine whether he has a fundamental right to use, sell, or possess marijuana without facing incarceration.” *United States v. Green*, 14-cr-6038 (EAW), 2016 WL 11483508, at *3 (W.D.N.Y. June 27, 2016) (addressing similar claim). As Defendant acknowledges,

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“marijuana is not a fundamental right.” Def. ‘s Reply 2. Courts addressing challenges to the federal prohibition of marijuana have consistently rejected Defendant’s characterization of the fundamental right at stake. *United States v. Kiffer*, 477 F.2d 349, 352-53 (2d Cir. 1973); *United States v. Oakland Cannabis Buyers’ Co-op*, 259 F. App’x 936, 938 (9th Cir. 2007) (rational basis review applies to the defendants’ challenge to federal prohibition of medical marijuana).

In his reply brief at 2-3, Defendant quotes the following statement from the *Kiffer* opinion: “in the absence of compelling justification, the police power does not extend so far as to permit the Government to protect an individual against himself and that the concern for public health and safety is relevant only insofar as the actions of one individual may threaten the wellbeing of others.” 477 F.2d at 354. But the *Kiffer* opinion prefaces the quoted statement with the phrase, “An argument might perhaps be made,” so the quoted statement is not the court’s holding. *Id.* The *Kiffer* opinion distinguished between the federal prohibition on personal possession and use of marijuana, which was not at issue, versus the prohibition on the commercial distribution of marijuana to others, which was at issue. 477 F.2d at 355. Similarly, here the issue is the validity of the federal prohibition of possession of marijuana with intent to distribute, not the prohibition on the personal use or possession of marijuana.

II. Defendant's Challenge Fails Under Rational Basis Review

Because there is no fundamental right to distribute marijuana, this court applies the rational basis standard of review, which requires that courts uphold a statutory classification “if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Oakland Cannabis Buyers' Co-op*, 259 F. App'x at 938 (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 312, 320 (1993)). Under rational basis review, the Ninth Circuit has rejected due process challenges to the federal prohibition of marijuana. *United States v. Christie*, 825 F.3d 1048, 1066 (9th Cir. 2016) (rejecting Fifth Amendment due process challenge) (citing *United States v. Miroyan*, 577 F.2d 489, 495 (9th Cir. 1978) (rejecting challenge to federal classification of marijuana), *partially overruled on other grounds as recognized by United States v. Pineda-Moreno*, 688 F.3d 1087, 1090-91 (9th Cir. 2012)); *Sacramento Nonprofit Collective v. Holder*, 552 F. App'x 680, 683 (9th Cir. 2014); *see also Kiffer*, 477 F.2d at 355 (rejecting argument that “Congress acted irrationally in prohibiting the commercial distribution of marijuana”). In *Christie*, the Ninth Circuit explained that “while it may be true that marijuana’s legal status continues to evolve, as does its standing in the medical and scientific communities, those developments do not come close to demonstrating that changes since 1978 have left *Miroyan*’s ‘central holding obsolete.’” *Id.* (quoting *Planned Parenthood v. Casey*, 505 U.S. 833, 860 (1992)); *see also James v. City of Costa Mesa*, 700

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F.3d 394, 405 (9th Cir. 2012) (“Local decriminalization notwithstanding, the unambiguous *federal* prohibitions on medical marijuana . . . continue to apply”) (original italics)). Defendant’s due process challenge to the federal prohibition of marijuana therefore fails. Similarly, to the extent Defendant relies on the right to equal protection, that challenge also fails. *See Chapman*, 500 U.S. at 465 (“an argument based on equal protection essentially duplicates an argument based on due process”).

Because a challenge to the federal prohibition of marijuana distribution would have been futile, Defendant cannot show that he was prejudiced by his counsel’s failure to raise the issue. Were this court to hold otherwise, defense counsel would be required to raise every conceivable issue despite controlling precedent to the contrary. Gov’t Resp. 6, ECF No. 264.

Defendant argues that he was deprived of a property interest without due process. Because marijuana is contraband *per se* under federal law, Defendant has no cognizable property interest at stake. *See Gonzales v. Raich*, 545 U.S. 1, 27 (2005) (“The [Controlled Substances Act] designates marijuana as contraband for any purpose.”); *United States v. Jeffers*, 342 U.S. 48, 54 (1951) (the defendant not entitled to return of illegally seized contraband).

Defendant also argues that he is a political prisoner and that he cannot be convicted of a victimless crime. These arguments have no basis in law or fact.

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Here, "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). I therefore deny an evidentiary hearing.

CONCLUSION

Defendant's Motion to Vacate, Set Aside or Correct his Sentence under 28 U.S.C. § 2255, ECF No. 258, is DENIED.

IT IS SO ORDERED.

DATED March 26, 2021,

/s/ Robert E. Jones
Robert E. Jones
United States District Judge

APPENDIX C

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

United States District Court District of Oregon	
Name (<i>under which you were convicted</i>): JODY TREMAYNE WAFER	Docket or Case No.: 3:17-CR-00435-JO-1
Place of Confinement: FCI YAZOO CITY MEDIUM P.O. BOX 5000 YAZOO CITY, MS 39194	Prisoner No.: 80606-065
UNITED STATES OF AMERICA	Movant (<i>include name under which convicted</i>) V. JODY TREMAYNE WAFER

MOTION

(Filed Dec. 15, 2020)

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
Mark O. Hatfield United States Courthouse
Room 1007
1000 Southwest Third Avenue
Portland, Oregon 97204-2946
(b) Criminal docket or case number (if you know): 3:17-CR-00435-JO-1
2. (a) Date of the judgment of conviction (if you know): 1/8/2020
(b) Date of sentencing: 1/8/2020

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3. Length of sentence: Count 1: No time; Count 9: 7 years, 3 years supervised release.
4. Nature of crime (all counts):
COUNT 1: 21 U.S.C. §846 CONSPIRACY TO MANUFACTURE, POSSESS WITH INTENT TO DISTRIBUTE AND DISTRIBUTE MARIJUANA AND MAINTAIN DRUG INVOLVED PREMISES
COUNT 9: 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
-
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?
-
6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
8. Did you appeal from the judgment of conviction? Yes No
9. If you did appeal, answer the following:
(a) Name of court: _____
(b) Docket or case number (if you know): _____

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- (c) Result: _____
(d) Date of result (if you know): _____
(e) Citation to the case (if you know): _____
(f) Grounds raised:

(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): _____

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.

Mr. Wafer is in custody in violation of Amendments IV and V of the Constitution of the United States. He is

GROUND ONE: being deprived of his liberty, without compelling reasons for Congress to proscribe marijuana, therefore without due process of law.

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

1. There is no constitutional amendment proscribing marijuana.
2. The historical definition of a crime requires a victim.
3. Original meaning of liberty, freedom from physical restraint, IS a constitutional right.
4. Marijuana is NOT a constitutional right. It is property. To acquire property is a constitutional right.
5. The operation and effect of federal prosecution in the enforcement of 21 U.S.C. § 846, was the seizure of Mr. Wafer's person and deprivation of his constitutional right of liberty by the bounds of prison.
6. Marijuana does not meet all three criteria to be a controlled substance. It is safe to use without medical supervision.

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7. 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.

8. Mr. Wafer plead guilty, was convicted, deprived of his liberty, without compelling government reasons for a victimless crime, a political crime.

9. Ground One is not about selective, arbitrary enforcement of the marijuana laws,violating due process of law.

10. Political police power, Mr. Wafer is a political prisoner.

(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: _____

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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

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

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(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. Counsel believes criminal laws are not an Article III case or controversy ripe for adjudication by this court under strict scrutiny standard of review. Counsel believes the marijuana laws are constitutional because marijuana is not a fundamental right. Counsel treats laws that authorize the use

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of police power as a political question. Counsel violated solemn oath to uphold Amend IV limiting police power to be reasonable not rational. Counsel did not protect the right of Mr. Wafer 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.

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:

Barry W Engle

(b) at the arraignment and plea:

Barry W Engle

(c) At the trial:

(d) At sentencing:

Barry W Engle PC 12901 SE 97th Avenue Suite
395 Clackamas, OR 97015

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(e) On appeal:

(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

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

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controlled substance was arbitrary and unreasonable regulation of property, depriving Mr. Wafer's liberty without compelling reasons, without due process of law violating Amends. IV, V of the U.S. Constitution thus vacating both convictions 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 Dec. 7, 2020

(month, date, year)

Executed (signed) on Dec. 7, 2020 (date)

Jody Tremayne Wafer
Signature of Movant

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