

21-7973

Case No.

**ORIGINAL**

Supreme Court, U.S.  
FILED

APR 14 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In re ROBERTO VILLARREAL

ON PETITION FOR A WRIT OF HABEAS CORPUS  
UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTHERN TEXAS

PETITION FOR EXTRAORDINARY  
WRIT OF HABEAS CORPUS  
AN ORDER FOR A RESPONSE

Roberto Villarreal Pro se  
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## I. QUESTION PRESENTED

“The writ of habeas corpus is a high prerogative writ, known to the common law, the great object of which 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. Whether applicant/petitioner, denied certificate of appealability for habeas relief from the District Court, has no other court to go to but here.

2. Whether the Supreme Court will comply with 4(b) and order a response to question presented, an Article III case and controversy.

3. THE QUESTION is whether being incarcerated a substantial denial, seizure, deprivation of Roberto Villarreal’s constitutional right of liberty, without “sufficient cause,” without compelling reasons for the United States Congress to proscribe, to criminalize 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 unconstitutional.

**II. PARTIES TO THE PROCEEDING**

Roberto Villarreal, prisoner, is in the custody of:

Jason W. Cox  
Warden  
FCI Three Rivers  
P.O. Box 4000  
Three Rivers, TX 78071

**III. RELATED CASES 28 U.S.C. 242**

Rule 20. 4. (b)

United States District Court, District of Southern Texas.

1. *Roberto Villarreal v United States of America* 5:21-CV-96. Judgment 03/23/2022
2. *United States of America v Roberto Villarreal* 5:20-CR-1298 Judgment 11/24/2020

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**V. HABEAS CASE BELOW**  
28 U.S.C. 2242

*Roberto Villarreal v. U.S.A.* Case No. 6:20 cv 599; United States District Court, District of Southern Texas. Habeas relief § 2255 Motion to Vacate conviction filed 8/23/2021 appendix C. Order, entered 3/23/2022. Appendix. A.; Judgment, entered 3/23/2021. Appendix B. (Citations not known).

**VI. ORIGINAL JURISDICTION**  
Title 28 U.S. Code §§ 2241, 2242, 2243  
SCOTUS Rule 20

Under statute, “application” for writs of habeas corpus may be granted by the “Supreme Court, any justice thereof.” Title 28 U.S.C. § 2241, § 2242. A justice of this court has original jurisdiction to grant, deny or order a response to show cause why the writ should not be granted. 28 U.S. C § 2243.

Rule 20. 4. (b). requires the petition to be distributed to the Court, not a justice thereof, The court declines to order a response, denies the petition. The petitioner has to make application to another court for the relief sought.

**VII. SUPREME COURT RULE 20, CONSTITUTIONAL AND  
STATUTORY PROVISIONS INVOLVED**

**1. Supreme Court Rule 20.**

4. (a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U. S. C. §§ 2241 and 2242,

4.(b). Habeas corpus proceedings, except in capital cases, are ex parte, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. . . . Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U. S. C. § 2241(b), is an adjudication on the merits, and

therefore does not preclude further application to another court for the relief sought.

## 2. United States Code

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.

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 § 2071 Rule-making power generally. (a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress.

## VIII. STATEMENT OF RELATED CASE

Title 28 U.S.C. § 2242, Rule 4. (b)

Petitioner made application for habeas relief to the District Court of Southern Texas in which the applicant was convicted. Applicant filed Title 28 Chapter 153 Habeas Corpus § 2255 Motion to Vacate conviction. (A. 4, 9) *Villarreal U.S.A.* 6:20 cv 599. The Court's Order is dated 3/23/2021. (A. 1); Judgment was

03/23/2021. (A. 3) (Citations of JUDGMENT and ORDER not known.)

PETITIONER § 2255 MOTION TO VACATE CONVICTION

“GROUND ONE: Mr. Villarreal 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.” (A-3)

RELIEF: “To vacate Mr. Villarreal’s conviction, restore his liberty, because Congress proscribing marijuana as a controlled dangerous substance was unreasonable, without compelling reasons, without due process of law. Amends. IV & V.” (A.-9)

COURT’S ORDER (A. 1)

There is “no constitutional right to possess, use, or distribute marijuana.”. For this reason “Petitioner’s § 2255 motion (Civ. Dkt. No. 1) is DENIED. A certificate of appealability is DENIED.”

**IX. REASON FOR ORDERING A RESPONSE TO EXTRAORDINARY WRIT OF HABEAS CORPUS**

Where does the petitioner/applicant claim marijuana is a fundamental right?

By denying certificate of appealability, the District Court of Southern Texas declared being incarcerated is not a substantial denial petitioner’s constitutional, enumerated right of liberty. 28 U.S.C. 2253 (c)(2). (A. 1)

Mr. Villarreal is in federal custody, Habeas relief is to show sufficient cause, compelling reasons to justify criminal laws that seized petitioner’s person and deprived his liberty, freedom from physical restraint.

“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).

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 in protecting 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)

## X. CONCLUSION

The Supreme Court should issue an order to the Solicitor General of the

United States to respond showing “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 days to justify why this writ of habeas corpus should not be granted. (28 U.S.C. § 2243, 2<sup>nd</sup> clause)

Respectfully submitted,

*/s/ Roberto Villarreal*  
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Dated: May 19, 2020