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United States District Court for the District of Eastern Texas

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**ENTERED**

March 23, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

ROBERTO VILLAREAL,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

§  
§  
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§  
§

CIVIL ACTION NO. 5:21-CV-96

CRIMINAL ACTION NO. 5:20-CR-1298

**ORDER**

Petitioner has filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Civ. Dkt. No. 1). Essentially, Petitioner argues his conviction for a marijuana offense is unconstitutional and his attorney rendered ineffective assistance by not raising this argument (*id.*).

A habeas petitioner in the Eastern District of Texas recently raised these exact arguments, which were rejected. *See Pineda*, No. 6:20-cv-559, 2021 WL 2661020 (E.D. Tex. June 10, 2021), *R. & R. adopted*, 2021 WL 2646266 (E.D. Tex. June 28, 2021). Indeed, Petitioner's arguments are nearly identical to the ones filed in *Pineda*. Compare Civ. Dkt. No. 1 with *Pineda*, Dkt. No. 1 (E.D. Tex. Oct. 19, 2020). The *Pineda* court denied the movant's motion for postconviction relief, in part, because there was no constitutional right to possess, use, or distribute marijuana. *See Pineda*, 2021 WL 2661020, at \*5. The Court agrees.

For the reasons stated in *Pineda*, Petitioner's § 2255 motion (Civ. Dkt. No. 1) is **DENIED**. A certificate of appealability is **DENIED**. The Court will enter final


*Appendix A*

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judgment under separate cover.

It is so **ORDERED**.

**SIGNED** March 23, 2022.

  
\_\_\_\_\_  
Marina Garcia Marmolejo  
United States District Judge

**ENTERED**

March 23, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

ROBERTO VILLAREAL,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

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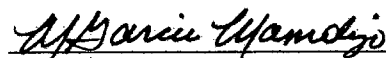
CIVIL ACTION NO. 5:21-CV-96  
CRIMINAL ACTION NO. 5:20-CR-1298

**FINAL JUDGMENT**

Because the Court has denied Petitioner's motion to vacate, set aside, or correct sentence and denied a certificate of appealability, the Court hereby **ENTERS** this final judgment. Petitioner's claims are **DISMISSED WITH PREJUDICE**, and the Clerk of Court is **DIRECTED** to close this civil action.

It is so **ORDERED**.

**SIGNED** March 23, 2022.

  
\_\_\_\_\_  
Marina Garcia Marmolejo  
United States District Judge

Appendix B.

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AUG 23 2021

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

Nathan Ochsner, Clerk  
Laredo Division

<b>United States District Court</b>		District	Southern District of Texas
Name (under which you were convicted): ROBERTO VILLARREAL		Docket or Case No.: 5:20CR01298-001	
Place of Confinement: FCI Three Rivers, PO Box 4200 Three Rivers, TX 78071		Prisoner No.:	5:21-cv-96 59214-179
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
V.		ROBERTO VILLARREAL	

**MOTION**

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

U.S. District Court  
1300 Victoria St.  
Laredo, TX 78040

(b) Criminal docket or case number (if you know): 5:20CR01298-001

2. (a) Date of the judgment of conviction (if you know): 12/2/2020

(b) Date of sentencing: 12/2/2020

3. Length of sentence: 120 months, Supervised release 8 yrs. Each of counts one & two, concurrently.

4. Nature of crime (all counts):

Count 1: 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(B), and 851 Conspiracy to possess with intent to distribute 100 kilograms and more of a mixture and substance containing a detectable amount of marijuana.

Count 2: 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), 851 and 18 U.S.C. § 2 possess with intent to distribute a quantity of 100 kilograms and more of a mixture and substance containing a detectable amount of 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?

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

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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. 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) 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.
5. The operation and effect of federal prosecution in the enforcement of Counts 1 & 2, was the seizure of Mr. Villarreal 's person and deprivation of his constitutional right of liberty by the bounds of prison.
6. Marijuana is safe to use without medical supervision.
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. Villarreal 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. Rational police power, Mr. Villarreal 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: \_\_\_\_\_

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.

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 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. Villarreal 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.

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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:

David Castillo, AFD 1202 Houston Street, Laredo, TX 78040-8018

---

(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

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Therefore, movant asks that the Court grant the following 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  
\_\_\_\_\_ 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 \_\_\_\_\_  
(month, date, year)

Executed (signed) on \_\_\_\_\_ (date)

Roberto Villarreal  
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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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS Holding Session in Laredo

ENTERED December 02, 2020 David J. Bradley, Clerk

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ROBERTO VILLARREAL

CASE NUMBER: 5:20CR01298-001

USM NUMBER: 59214-179

David Castillo, AFPD Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1 and 2 on August 4, 2020.
pleaded nolo contendere to count(s) which was accepted by the court.
was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Table with 4 columns: Title & Section, Nature of Offense, Offense Ended, Count. Row 1: 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(B), and 851; Conspiracy to possess with intent to distribute 100 kilograms and more of a mixture and substance containing a detectable amount of marijuana; 03/16/2020; 1

- See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
Count(s) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 24, 2020 Date of Imposition of Judgment

Signature of Judge (Handwritten: Marina Garcia Marmolejo)

MARINA GARCIA MARMOLEJO UNITED STATES DISTRICT JUDGE Name and Title of Judge

December 2, 2020 Date

Appendix D

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DEFENDANT: **ROBERTO VILLARREAL**  
CASE NUMBER: **5:20CR01298-001**

**ADDITIONAL COUNTS OF CONVICTION**

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), 851 and 18 U.S.C. § 2	Possess with intent to distribute a quantity of 100 kilograms and more of a mixture and substance containing a detectable amount of marijuana	03/16/2020	2

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DEFENDANT: **ROBERTO VILLARREAL**  
CASE NUMBER: **5:20CR01298-001**

### IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 120 months, as to each of counts one and two, to run concurrently.  
The defendant was advised of the right to appeal the sentence, including the right to appeal in forma pauperis, upon proper documentation.

- See Additional Imprisonment Terms.
- The court makes the following recommendations to the Bureau of Prisons:  
The defendant participates in a 500-hour Residential Drug Abuse Program (RDAP).  
The defendant be designated to a facility as close to Laredo and Zapata, Texas, possibly to FCI Three Rivers located in Three Rivers, Texas, as long as the security needs of the Bureau of Prisons are met.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
  - at \_\_\_\_\_ on \_\_\_\_\_
  - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
  - before 2 p.m. on \_\_\_\_\_
  - as notified by the United States Marshal.
  - as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

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