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United States District Court for the District of Maine

U. S. A. v Daniels 2:18 -cr- 63

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**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

RICHARD DANIELS,)	
)	
Petitioner,)	
)	
v.)	Docket no. 2:18-cv-00063-GZS
)	2:21-cv-000312-GZS
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	

ORDERING AFFIRMING RECOMMENDED DECISION

On April 8, 2022, the United States Magistrate Judge filed with the Court his Recommended Decision (ECF No. 1105). On April 26, 2022, Petitioner filed his objection to the Recommended Decision (ECF No. 1113).

The Court has made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision and concurs with the recommendations of the Magistrate Judge for the reasons set forth in that order. As a result, the Court determines that no further proceedings are necessary with respect to this Recommended Decision.

It is therefore **ORDERED** that:

1. The Recommended Decision (ECF No. 1105) is hereby **AFFIRMED**.
2. An evidentiary hearing is not warranted under Rule 8 of the Rules Governing Section 2255 cases.
3. Petitioner's Motion for habeas relief pursuant to 28 U.S.C. § 2255 (ECF No. 1071) is hereby **DENIED**.

4. A certificate of appealability pursuant to Rule 11 of the Rules Governing Section 2255 Cases is hereby **DENIED** because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 19th day of May, 2022.

App. 2

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RICHARD DANIELS,)	
)	
Petitioner,)	
)	
v.)	2:18-cr-00063-GZS-1
)	2:21-cv-00312-GZS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent)	

RECOMMENDED DECISION ON 28 U.S.C. § 2255 MOTION

Petitioner moves pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. (Motion, ECF No. 1071.) Following a guilty plea, Petitioner was convicted of conspiracy to manufacture, distribute, and possess with intent to distribute marijuana; the Court sentenced Petitioner to seventy-two months in prison. (Amended Judgment, ECF No. 1035.) Petitioner did not file an appeal.

Petitioner claims that the criminalization of marijuana is unconstitutional and that his attorney provided ineffective assistance for failing to present that argument. The Government requests dismissal. (Response, ECF No. 1078.)

Following a review of the record and after consideration of Petitioner’s motion and the Government’s request for dismissal, I recommend the Court grant the Government’s request and dismiss Petitioner’s motion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Between 2015 and February 2018, Defendant and others processed and distributed marijuana to members of the public who were not involved in Maine’s Medical Marijuana

program, including to people who were out-of-state. (Prosecution Version, ECF No. 634; Presentence Investigation Report ¶ 20.) In April 2018, following an investigation of the organization, Petitioner was charged in six counts of a nine-count indictment, two other defendants, and in October 2018, Petitioner was charged with seven counts of a thirty-nine-count superseding indictment, with multiple other defendants. (Indictment, ECF No. 24; Superseding Indictment, ECF No. 82.)

In November 2019, Petitioner pled guilty to one count of conspiring to manufacture, distribute, and possess with intent to distribute 100 or more marijuana plants or more than 100 kilograms of marijuana in violation of 21 U.S.C. §§ 841(a)(1) and 846. (Change of Plea Hearing, ECF No. 656.) In consideration for Petitioner's guilty plea, the Government agreed to dismiss the other six charges against him. (Plea Agreement, ECF No. 637.) In June 2021, the Court sentenced Petitioner to seventy-two months in prison. (Sentencing Hearing, ECF No. 1029; Amended Judgment, ECF No. 1035.) Petitioner did not file an appeal.

Petitioner filed this § 2555 motion in November 2021. (Motion, ECF No. 1071.)

DISCUSSION

A. Legal Standards

A person may move to vacate his or her sentence on one of four different grounds: (1) "that the sentence was imposed in violation of the Constitution or laws of the United States"; (2) "that the court was without jurisdiction" to impose its sentence; (3) "that the sentence was in excess of the maximum authorized by law"; or (4) that the sentence

“is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a); *see Knight v. United States*, 37 F.3d 769, 772 (1st Cir. 1994).

“[P]ro se habeas petitions normally should be construed liberally in petitioner’s favor.” *United States v. Ciampi*, 419 F.3d 20, 24 (1st Cir. 2005) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). The burden is on the section 2255 petitioner to establish by a preponderance of the evidence that he or she is entitled to section 2255 relief. *David v. United States*, 134 F.3d 470, 474 (1st Cir. 1998); *United States v. DiCarlo*, 575 F.2d 952, 954 (1st Cir. 1978). When “a petition for federal habeas relief is presented to the judge who presided at the petitioner’s trial, the judge is at liberty to employ the knowledge gleaned during previous proceedings and make findings based thereon without convening an additional hearing.” *United States v. McGill*, 11 F.3d 223, 225 (1st Cir. 1993).

A collateral challenge is not a substitute for an appeal. *United States v. Frady*, 456 U.S. 152, 165 (1982); *Berthoff v. United States*, 308 F.3d 124, 127 (1st Cir. 2002). “[A] defendant’s failure to raise a claim in a timely manner at trial or on appeal constitutes a procedural default that bars collateral review, unless the defendant can demonstrate cause for the failure and prejudice or actual innocence.” *Berthoff*, 308 F.3d at 127–28. Procedural default is an affirmative defense. *Sotirion v. United States*, 617 F.3d 27, 32 (1st Cir. 2010). The First Circuit has recognized that “federal courts have the authority to consider procedural default *sua sponte*.” *Rosenthal v. O’Brien*, 713 F.3d 676, 683 (1st Cir. 2013) (citing *Brewer v. Marshall*, 119 F.3d 993, 999 (1st Cir. 1997)); *see also Daniels v. United States*, 532 U.S. 374, 382–83 (2001) (recognizing that “procedural default rules

developed in the habeas corpus context apply in § 2255 cases”) (citing *Fraday*, 456 U.S. at 167-68).

An allegation of ineffective assistance of counsel can excuse a procedural default if a petitioner demonstrates that counsel’s representation “fell below an objective standard of reasonableness.” *Strickland v. Washington*, 466 U.S. 668, 688 (1984). A petitioner must also demonstrate that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. A district court reviewing a claim of ineffective assistance of counsel need not address both prongs of the *Strickland* test because a failure to meet either prong will undermine the claim. *Id.* at 697. If a petitioner’s “claims fail on the merits, his related claims that counsel rendered ineffective assistance in failing to press the claims at trial or on appeal must also fail.” *Tse v. United States*, 290 F.3d 462, 465 (1st Cir. 2002) (per curiam).

Under the law of the case doctrine, “issues disposed of in a prior appeal will not be reviewed again by way of a 28 U.S.C. § 2255 motion.” *Singleton v. United States*, 26 F.3d 233, 240 (1st Cir. 1994) (internal modifications and quotation marks omitted); *see also Elwell v. United States*, 95 F.3d 1146, 1996 WL 516138 at *5 (1st Cir. 1996) (holding that a petitioner “is not entitled on collateral review to relitigate issues raised on direct appeal, absent an intervening change in the law”); *White v. United States*, 371 F.3d 900, 902 (7th Cir. 2004) (collecting cases and explaining limited exceptions).

“Evidentiary hearings on § 2255 petitions are the exception, not the norm, and there is a heavy burden on the petitioner to demonstrate that an evidentiary hearing is warranted. An evidentiary hearing ‘is not necessary when a [§] 2255 petition (1) is inadequate on its face, or (2) although facially adequate, is conclusively refuted as to the alleged facts by the files and records of the case.’” *Moreno-Morales v. United States*, 334 F.3d 140, 145 (1st Cir. 2003) (citation omitted) (quoting *DiCarlo*, 575 F.2d at 954 (quotation marks omitted)).

Summary dismissal of a motion is permitted when the allegations are “‘vague, conclusory, or palpably incredible,’” even “‘if the record does not conclusively and expressly belie [the] claim.’” *David*, 134 F.3d at 478 (quoting *Machibroda v. United States*, 368 U.S. 487, 495 (1962)). A court can reasonably require a petitioner to supply the court with salient details of the claim prior to permitting discovery or a hearing. *Id.* (holding that “the district court did not abuse its discretion in refusing to license a fishing expedition”).

B. Analysis of Claims

Petitioner asserts that because marijuana is safe to use without a medical prescription, his conviction is unconstitutional as there are no compelling reasons for Congress to proscribe marijuana use and distribution. (Motion at 3.) As a freestanding claim for relief, however, Petitioner procedurally defaulted the argument by failing to file an appeal and raise it before the First Circuit. *See Bousley v. United States*, 523 U.S. 614, 621 (1998); *Berthoff*, 308 F.3d at 127–28.

The only potential cause to excuse the procedural default is an ineffective assistance of counsel claim. Because Petitioner’s argument lacks merit, however, his attorney’s

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The only potential cause to excuse the procedural default is an ineffective assistance of counsel claim. Because Petitioner’s argument lacks merit, however, his attorney’s

performance was not substandard. “Every federal circuit court to consider the constitutionality of the scheduling of marijuana as a Class I drug has applied the rational basis standard of review and upheld the statute.” *United States v. Olea*, No. CR 14-10304-DPW, 2016 WL 8730167, at *5 (D. Mass. Aug. 12, 2016) (collecting cases). Petitioner appears to conflate the issues of standing to sue, the “strict scrutiny” standard of review for suspect classifications or regulations burdening certain fundamental rights, and the rational basis test, which the Supreme Court has applied to most legal restrictions since the New Deal. *See Gonzales v. Raich*, 545 U.S. 1, 22 (2005) (discussing some history of the rational basis test and applying it to uphold Congress’s power under the Commerce Clause to restrict local cultivation and use of medical marijuana).

In sum, counsel did not act unreasonably by not asserting an argument on which Petitioner could not prevail, Petitioner was not prejudiced by his attorney’s performance, and Petitioner’s underlying claim would fail even if it were not procedurally defaulted. Petitioner, therefore, is not entitled to postconviction relief.

CONCLUSION

Based on the foregoing analysis, an evidentiary hearing is not warranted under Rule 8 of the Rules Governing Section 2255 Cases. In addition, I recommend that the Court deny Petitioner’s motion for habeas relief under 28 U.S.C. § 2255. I further recommend that the Court deny a certificate of appealability pursuant to Rule 11 of the Rules Governing Section 2255 Cases because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 8th day of April, 2022.

10/12/2021

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

United States District Court		District OF MAINE
Name (under which you were convicted): RICHARD DANIELS aka Stitch		Docket or Case No.: 2:18-cr-63-GZS-001
Place of Confinement: FCI ALLENWOOD P.O. BOX 1000, Rte 15 WHITE DEER, PA 17887		Prisoner No.: 13251-036
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. RICHARD DANIELS aka Stitch

MOTION

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

U. S. District Court, District of Maine
156 Federal Street
Portland, ME 04101

(b) Criminal docket or case number (if you know): 2:18-cr-63-GZS-001

2. (a) Date of the judgment of conviction (if you know): 6/15/2021

(b) Date of sentencing: 6/15/2021

3. Length of sentence: 72 Months; 5 years supervised release

4. Nature of crime (all counts):

Count 1 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) and 846

Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute 100 More Marijuana Plants and 100 Kilograms of Marijuana

2021 NOV - 1 P 1:01
 U.S. DISTRICT COURT
 DISTRICT OF MAINE
 PORTLAND
 RECEIVED & FILED
 DEPUTY CLERK

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):

- 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. Daniels is in federal custody in violation of Amendments IV and V of the Constitution of the United States. There is a substantial denial of Mr. Daniels' constitutional right of 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. Marijuana is not a constitutional right.
3. The historical definition of a crime requires a victim.
4. Original meaning of liberty a constitutional right is freedom from physical restraint.
5. Ground One is not about selective, arbitrary enforcement of the marijuana laws, violating due process of law.
6. Ground One is not about probable cause
7. The operation and effect of federal prosecution in the enforcement of Count One, was the seizure of Mr. Daniels' person and deprivation of his constitutional right of liberty by the bounds of prison.
8. Marijuana does not meet all three criteria to be a controlled substance. It is safe to use without medical supervision.
9. 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.
10. Daniels' plead guilty, was convicted, deprived of his liberty, without compelling government reasons for a political crime, a victimless crime, a political crime.
11. Political police power, Mr. Daniels 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. Daniels' to be secure against unreasonable deprivation of his constitutional right of liberty, freedom from physical restraint, secured by Amendments IV and V.

10/12/2021

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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:

LUKE RIOUX 97A EXCHANGE ST #404 PORTLAND, ME 04101

(b) At the arraignment and plea:

LUKE RIOUX 97A EXCHANGE ST #404 PORTLAND, ME 04101

(c) At the trial:

(d) At sentencing:

LUKE RIOUX 97A EXCHANGE ST #404 PORTLAND, ME 04101

(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

10/12/2021

AO 243 (Rev. 09/17)

Therefore, movant asks that the Court grant the following relief:
To vacate Mr. Daniels' conviction, restore his liberty, because Congress proscribing marijuana as a controlled dangerous substance was unreasonable, without compelling reasons, without due process of law violating Amends. IV & V.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

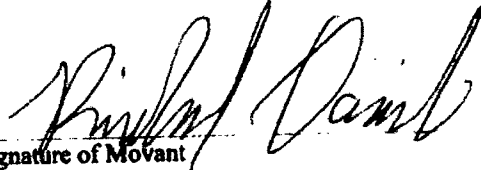
I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 10/25/21
(month, date, year)

Executed (signed) on

10/25/21

(date)

Signature of Movant



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

United States District Court District of Maine

UNITED STATES OF AMERICA **AMENDED JUDGMENT IN A CRIMINAL CASE**

v.

RICHARD DANIELS aka STITCH

Case Number: 2:18-cr-63-GZS-001

USM Number: 13251-036*

Date of Original Judgment: 6/15/2021
(Or Date of Last Amended Judgment)

Luke Rioux, Esq.
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) One of the Superseding Indictment
- 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:

<u>Title & 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) and 846	Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute 100 More Marijuana Plants and 100 Kilograms of Marijuana	2/27/2018	One

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) 2, 4, 6, 7, 9, and 10 of the Superseding Indictment is are 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 shall notify the court and United States attorney of material changes in economic circumstances.

June 15, 2021
Date of Imposition of Judgment

/s/ George Z. Singal
Signature of Judge

George Z. Singal, U.S. District Judge
Name and Title of Judge

July 7, 2021
Date

RICHARD DANIELS aka STITCH

DEFENDANT:
CASE NUMBER: 2:18-cr-63-GZS-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 72 months.

- The court makes the following recommendations to the Bureau of Prisons:
The defendant for enrollment in the 500 Hour Comprehensive Drug Treatment Program.
Defendant be incarcerated at a facility in the Northeast to be as close to family as possible
- 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 _____ a.m. p.m. 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

RICHARD DANIELS aka STITCH

DEFENDANT:

CASE NUMBER: 2:18-cr-63-GZS-001

SUPERVISED RELEASE

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 5 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two additional drug tests during the term of supervision, but not more than 120 drug tests per year thereafter, as directed by the probation officer.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments of this judgment.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

TABLE OF AUTHORITIES

I. Rules of the Supreme Court of the United States

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 and in particular with the provision in the last paragraph of §2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." [. . .] To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Rule 20. 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.

II. Constitutional Provisions

Article I, Section 9, Clause 2: 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 § 2. The Judicial Power shall extend to all Cases [. . .] arising under this Constitution [. . .] to Controversies to which the United States shall be a Party;

Article VI This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;

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."

III United States Code

21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) and 846 Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute 100 More Marijuana Plants and 100 Kilograms of Marijuana.

28 U.S.C. § 2071 Rule making powers 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 . . .

28 U.S.C. § 2241

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(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 or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution [. . .]

28 U.S.C. § 2242. If addressed to the Supreme Court, a justice thereof or a circuit judge 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 [. . .] It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

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.