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Marcello Seeks Legal Review Of Assault Law

Carlos Marcello, facing arraignment July 1 on still another charge, has filed suit in federal district court seeking to have declared unconstitutional a law under which he was convicted of assaulting an agent of the Federal Bureau of Investigation.

Marcello is under a two-year sentence and a \$5,000 fine in the assault case, following his conviction in Houston federal court in 1968.

HE RECENTLY was indicted again for illegal presence in the United States following his deportation to Guatemala in 1961.

Attorney Dean A. Andrews Jr. filed the new Marcello action yesterday, asking a temporary restraining order, then an injunction against enforcement of the penal provisions of the law.

Andrews also asked a writ of habeas corpus, claiming his client is in "constructive custody," although at liberty under bond.

EXECUTION OF the judgment of conviction "is now imminent and will occur in the unpredictable future," Andrews said.

Marcello now has pending before Judge John V. Singleton in Houston a motion for a new trial of the assault case on grounds of newly discovered evidence.

The new suit asks that a three-judge court be convened to rule on the constitutionality of the statute, claiming the law is repugnant to the due process clause of the Fifth Amendment.

Marcello did not know the alleged assault victim was an FBI agent Sept. 30, 1966, when he arrived from New York and was surrounded by newsmen and photographers, said the suit.