

NO. \_\_\_\_\_

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

October Term, 2018

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**LANCE EDWARD GLOOR**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit

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**APPENDIX TO THE PETITION  
FOR A WRIT OF CERTIORARI**

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# **APPENDIX A**

1a

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001**

July 3, 2018

Lance Edward Gloor  
#44270-086  
PO Box 5000  
Sheridan, OR 97378

RE: Gloor v. United States  
USAP9 No. 16-30142

Dear Mr. Gloor:

The above-entitled petition for writ of certiorari was postmarked June 28, 2018 and received July 3, 2018. The papers are returned for the following reason(s):

The notarized affidavit or declaration of indigency does not comply with Rule 39 in that all questions must be answered completely.

The petition fails to comply with the content requirements of Rule 14. A guide for in forma pauperis petitioners and a copy of the Rules of this Court are enclosed. The guide includes a form petition that may be used.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,

Scott S. Harris, Clerk

By:

Clayton R. Higgins, Jr.

(202) 479-3019

Enclosures

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

MAR 30 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LANCE EDWARD GLOOR,

Defendant-Appellant.

No. 16-30142

D.C. No.

3:13-cr-05659-RBL-1

Western District of Washington,  
Tacoma

ORDER

Before: GOULD and PAEZ, Circuit Judges, and MCSHANE,\* District Judge.

The panel has voted to deny the petition for rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App.

P. 35.

The petition for panel rehearing and the petition for rehearing en banc are  
DENIED.

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\* The Honorable Michael J. McShane, United States District Judge for the District of Oregon, sitting by designation.

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 20 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 16-30142

Plaintiff-Appellee,

D.C. No.

v.

3:13-cr-05659-RBL-1

LANCE EDWARD GLOOR,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the Western District of Washington  
Ronald B. Leighton, District Judge, Presiding

Argued and Submitted February 5, 2018  
Seattle, Washington

Before: GOULD and PAEZ, Circuit Judges, and MCSHANE,\*\* District Judge.

Lance Gloor appeals the district court's denial of his motion to dismiss the indictment without an evidentiary hearing. We affirm.

Gloor was charged with, *inter alia*, conspiracy to distribute marijuana and

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Michael J. McShane, United States District Judge for the District of Oregon, sitting by designation.

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manufacture of marijuana. He filed a pretrial motion to dismiss the indictment, arguing that the government's expenditure of funds to prosecute him violated a congressional appropriations rider ("section 538") that barred the Department of Justice from using funds to prevent Washington's implementation of its medical marijuana laws.<sup>1</sup> The district court denied the motion without holding an evidentiary hearing to determine whether Gloor had acted in strict compliance with Washington's medical marijuana laws. Following a five-day jury trial, Gloor was convicted of conspiracy to distribute marijuana and manufacture of marijuana, and sentenced to 120 months imprisonment. Gloor timely appealed.

While this appeal was pending, we decided *United States v. McIntosh*, 833

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<sup>1</sup> See Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. B., Title V, § 538, 128 Stat. 2130, 2217 (2014). Section 538 provides: "None of the funds made available in this Act to the Department of Justice may be used, with respect to the State[] of . . . Washington," among other states, "to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." Congress extended the appropriations rider until September 30, 2016, in the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. B., § 542, 129 Stat. 2242, 2232–33 (2015) ("section 542"). Section 538 was the rider in effect at the time of Gloor's pretrial proceedings, while section 542 was the rider in effect at the time of Gloor's trial and sentencing. The relevant funding prohibition remains in effect as of the filing of this memorandum disposition. See Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, Div. B, Title II, § 537, 131 Stat. 135, 228 (2017); Continuing Appropriations Act, 2018, Pub. L. No. 115-56, Div. D., § 101, 131 Stat. 1129, 1139 (2017); Bipartisan Budget Act of 2018, Pub. L. No. 115-123, Div. B., Subdiv. 3, § 20101, 132 Stat. 64, 120 (2018). As the above appropriations riders are materially the same, for simplicity we refer to the applicable rider at each juncture of Gloor's case as "section 538."

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F.3d 1163 (9th Cir. 2016) and *United States v. Kleinman*, 859 F.3d 825 (9th Cir. 2017), *as amended*, No. 14-50585, 2017 WL 6997333 (9th Cir. Jan. 22, 2018). In *McIntosh*, we held that a defendant may obtain an injunction under section 538 against a federal prosecution charging him with conduct that was “completely authorized by state law.” 833 F.3d at 1172–73, 1179. We also concluded that the defendants in *McIntosh* were entitled to pretrial evidentiary hearings “to determine whether their conduct was completely authorized by state law, by which we mean[t] that they strictly complied with all relevant conditions imposed by state law on the use, distribution, possession, and cultivation of medical marijuana.” *Id.* at 1179. Faced with a similar issue in *Kleinman*, however, we declined to remand for an evidentiary hearing after trial and sentencing because “the record clearly demonstrate[d] that [Kleinman] violated” California’s medical marijuana laws. 2017 WL 6997333, at \*5.

Here, the record clearly demonstrates that Gloor did not strictly comply with Washington’s medical marijuana laws, which provided only affirmative defenses to state marijuana charges at the time of his relevant conduct. As for the conspiracy to distribute marijuana count, the evidence at trial demonstrates that Gloor operated for-profit marijuana dispensaries rather than the “collective gardens” permitted under the relevant statutory affirmative defense. *See* Wash. Rev. Code § 69.51A.085(1) (2012); *see also Cannabis Action Coal. v. City of Kent*,



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351 P.3d 151, 155–56 (2015). Gloor has not argued on appeal or before the district court that his operations were not for-profit, or that he could otherwise prove the elements of the “collective gardens” affirmative defense. Thus, in light of the evidence presented at trial, Gloor has not made factual allegations sufficient to warrant an evidentiary hearing.

With regard to the manufacture of marijuana count, the record similarly demonstrates that Gloor could not prove an affirmative defense. The jury returned a special verdict finding that Gloor manufactured between 50 and 99 marijuana plants. To prove the relevant affirmative defense under state law, Gloor would have to demonstrate that (1) he was a “designated provider”; (2) he possessed a written authorization to act as a designated provider; (3) he possessed no more than fifteen plants per qualifying patient; and (4) he presented the required paperwork to law enforcement upon request. Wash. Rev. Code § 69.51A.040(2)–(4) (2008); *see also State v. Markwart*, 329 P.3d 108, 119–120 (Wash. Ct. App. 2014) (explaining that a “designated provider” can grow up to 15 plants per patient); *State v. Shupe*, 289 P.3d 741, 747–49 (Wash. Ct. App. 2012) (same). At trial, Detective Menge testified that Gloor did not present the required paperwork upon request as required to satisfy the affirmative defense. Gloor did not challenge that testimony at trial, nor has he done so on appeal. Thus, Gloor has not made any factual allegations

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sufficient to warrant an evidentiary hearing.<sup>2</sup>

Gloor argues that the evidence presented at trial is not dispositive because the district court granted the government's pretrial motion in limine to exclude evidence "to the extent it . . . direct[s] the jury that compliance (or intended compliance) with state law is a defense for alleged violations of federal law." On appeal, however, Gloor has not made any factual allegations, which, if proven at an evidentiary hearing, would demonstrate that he strictly complied with the conditions necessary to prove his affirmatives defenses. Gloor is not entitled to an evidentiary hearing under *McIntosh* in the absence of a genuine factual dispute as to his strict compliance with state law.<sup>3</sup>

**AFFIRMED.**

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<sup>2</sup> We need not decide whether the district court erred in failing to hold a pretrial evidentiary hearing because any such error was harmless for the reasons stated herein.

<sup>3</sup> Because we conclude that Gloor did not act in strict compliance with state law, we reject his claim that the government violated section 538 by expending funds to litigate this appeal.

## **APPENDIX B**



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01:41:41PM 1 THE CLERK: This is in the matter of the United  
01:41:43PM 2 States of America versus Lance Gloor,  
01:41:49PM 3 Cause No. CR13-5659RBL. Counsel, please make their  
01:41:51PM 4 appearances.

01:41:51PM 5 MR. LOMBARDI: Good afternoon, your Honor. Vince  
01:41:55PM 6 Lombardi and Marci Ellsworth on behalf the United States.

01:41:58PM 7 MR. KRADEL: Good afternoon, your Honor. Jeffrey  
01:41:59PM 8 Kradel on behalf of Mr. Gloor, who is present in custody.

01:42:03PM 9 THE COURT: Mr. Kradel, Mr. Gloor, good afternoon.

01:42:03PM 10 This is a motion for reconsideration. I have reviewed  
01:42:06PM 11 the defendant's motion, the government's response, the  
01:42:15PM 12 defense's reply. I have reviewed the transcript of the  
01:42:25PM 13 motion to dismiss, motion in limine, the order following  
01:42:32PM 14 of that hearing. I have reviewed the jury verdict. I  
01:42:37PM 15 have reviewed McIntosh. That is what I have done. I will  
01:42:48PM 16 hear from Mr. Kradel.

01:42:51PM 17 MR. KRADEL: Thank you, your Honor. Your Honor, I  
01:42:55PM 18 will try to be brief. You have looked at everything that  
01:42:58PM 19 is relevant here. Obviously we are here for  
01:42:59PM 20 reconsideration, because the law in the circuit was  
01:43:01PM 21 different at the time that we were here before asking the  
01:43:06PM 22 court to stay. It was an open question whether or not  
01:43:08PM 23 this motion to dismiss that was raised had merit, whether  
01:43:11PM 24 the funding rider, in fact, prohibited the federal  
01:43:14PM 25 government from prosecuting individuals involved in

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medical marijuana.

The Ninth Circuit gave us, what I would call, a clear answer on one hand, that asks a lot of other questions. What McIntosh said is, "Government, you are not right," and, "Defense, you are not right either. Defense, you think this means the cases all have to be dismissed. It doesn't mean that. Government, you think you are free to proceed. It doesn't mean that either."

What it means is that someone who is being prosecuted in a state that has medical marijuana laws, by the federal government, with this rider in place, that the federal government is prohibited from prosecuting those individuals if it is shown in an evidentiary hearing that those individuals were in full compliance with the state law in the state in which they live. That is my reading of McIntosh.

I think in some ways both my motion to reconsider and the government's response was almost starting that evidentiary hearing, starting the arguments about whether or not -- what the result of that evidentiary hearing would be in this case. And I don't think that is really the issue right now.

The issue right now is whether or not Mr. Gloor did have an opportunity to present evidence that he was in compliance with Washington state law, such that it would

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01:44:35PM 1 prohibit the federal government from expending funds to  
01:44:38PM 2 prosecute him.

01:44:39PM 3 I have reviewed the transcript of the motion hearing,  
01:44:42PM 4 as well, when Ms. Unger was counsel. I know that the  
01:44:47PM 5 government did not just respond, and say, "You should not  
01:44:50PM 6 dismiss this case." The government took an additional  
01:44:53PM 7 step and said, "You should be prohibited from arguing that  
01:44:58PM 8 compliance with state law is a defense."

01:45:02PM 9 At one moment your Honor actually said, "Well, they  
01:45:06PM 10 will be able to go ahead and try to demonstrate that they  
01:45:08PM 11 were in compliance." And Mr. Lombardi responded, "I  
01:45:12PM 12 respectfully disagree." I think the court went back after  
01:45:15PM 13 that and looked at the existing case law and determined  
01:45:18PM 14 that Mr. Lombardi was right.

01:45:20PM 15 THE COURT: He was right on the compliance with  
01:45:25PM 16 the law -- the technical compliance with the law. But I  
01:45:30PM 17 said, "They are going to tell their story." And the story  
01:45:36PM 18 was there were a hell of a lot more marijuana plants than  
01:45:39PM 19 were authorized under the statute.

01:45:45PM 20 He proffered that he wasn't a medical marijuana user.  
01:45:53PM 21 He ventured a guess that he was -- his clients were maybe  
01:46:02PM 22 ten percent medical marijuana users, and 90 percent were  
01:46:07PM 23 recreational.

01:46:09PM 24 How do you get into the lifeboat of strict compliance  
01:46:14PM 25 with the law?

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01:46:16PM 1 MR. KRADEL: There was no effort to try to get  
01:46:19PM 2 into the lifeboat. When the court said the story will be  
01:46:21PM 3 told, the way that unfolded at the trial, and the manner  
01:46:24PM 4 in which counsel at that trial interpreted it, was that we  
01:46:28PM 5 weren't going to excise out they were advertising out, we  
01:46:31PM 6 weren't going to excise out that it was out and in the  
01:46:34PM 7 open.

01:46:35PM 8 An entire industry of legal counsel in this state grew  
01:46:39PM 9 up around medical marijuana dispensaries. The  
01:46:44PM 10 government's position that they were never authorized is  
01:46:46PM 11 not correct. There would have been no need to abolish  
01:46:51PM 12 them if they were not authorized. That's what the  
01:46:54PM 13 legislation did when we moved to recreational.

01:46:57PM 14 Mr. Gloor's proffer to the government in 2011 is  
01:47:01PM 15 approximately two years into the charged period here, I  
01:47:04PM 16 believe. I could be off, but not by very much. The  
01:47:08PM 17 government presented evidence at this trial of conspiracy  
01:47:11PM 18 lasting for a period of five years.

01:47:13PM 19 They did not present evidence of Mr. Gloor's proffer.  
01:47:17PM 20 Mr. Gloor didn't offer evidence of his proffer. Mr. Gloor  
01:47:21PM 21 did not call the counsel who advised him as to how to  
01:47:25PM 22 administer in compliance with Washington state law. He  
01:47:28PM 23 didn't call an expert witness on the statute. He didn't  
01:47:31PM 24 call any witnesses in an effort to prove that if you have  
01:47:35PM 25 73 plants, and you have this many authorizations, that



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there is a loophole in the law.

I know this court's opinion from reading the previous hearings of this case. I think a lot of people share this court's opinion about medical marijuana and how it was structured in the state before.

But the reality is that if somebody writes a law, and there are loopholes in that law, somebody exploiting the loopholes is still in compliance with the law.

An opportunity was never given here. And I am not saying there was any reason for the court to think that there should have been. But there was not an opportunity here to present the kind of case and the kind of evidence that I will present in the evidentiary hearing in this case about whether or not Mr. Gloor and his companies or companies he is associated with were complying with Washington's medical marijuana law.

It was a poorly written law. It was one that had holes that this court is aware of. I could pull up right now and show you individuals whose legal careers were built upon looking at that law, and telling individuals, "If you do these things, you are still in compliance."

People were prosecuted in state court and were found not guilty by juries, offering it as a defense. Cases were not pursued because of compliance with it. The fact that he was charged in state court tells us nothing about

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whether or not he was in compliance with state law.

If the government has the evidence to convince the court that they are able to proceed on this case, we are moving into the other areas that become the questions that McIntosh left unanswered.

And those are the questions that -- if the government presents a five-year period, and they show that for two years Mr. Gloor was not in compliance with state medical marijuana laws, but for three years he was, is the evidence from the three years going to be excluded?

Mr. Gloor was sentenced not for any particular breaking down of a minute period of time, he was hit with everything that happened during that time. If he was in compliance with state law in some of those actions, the government is prohibited from prosecuting him.

I didn't want to go down that worm hole, because I think it is a worm hole, and I think there are many issues that are going to arise out of it. They didn't have to deal with McIntosh, so they didn't. They left it to the trial courts to deal with it.

But Mr. Gloor never had notice and an opportunity to be heard on trying to prove compliance with Washington's medical marijuana laws.

THE COURT: You have been a criminal defense lawyer for a lot of years. You are a very good criminal

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01:50:18PM 1 defense lawyer. Have you had a suppression motion where  
01:50:22PM 2 the court did not grant a hearing because the issue is  
01:50:32PM 3 resolved on its face?

01:50:35PM 4 MR. KRADEL: Yes.

01:50:35PM 5 THE COURT: I can give an example of a pole  
01:50:38PM 6 camera. Somebody wants to exclude the evidence from the  
01:50:41PM 7 pole cam. There have been a number of cases on pole  
01:50:44PM 8 cameras. If that's the issue you are bringing, the motion  
01:50:50PM 9 is denied.

01:50:52PM 10 MR. KRADEL: The only time was Judge Coughenour,  
01:50:55PM 11 that I can think of off the top of my head. Judge  
01:50:58PM 12 Coughenour did not in a situation that involved  
01:51:00PM 13 suppression of an individual's statements after he had  
01:51:03PM 14 been taken into custody.

01:51:06PM 15 I think when we look at an issue like, "Is it so  
01:51:10PM 16 obvious that you don't even need to have another  
01:51:13PM 17 evidentiary hearing," I think the issue comes back to due  
01:51:16PM 18 process and the setting.

01:51:20PM 19 I think that Ms. Unger is a fantastic attorney. I  
01:51:23PM 20 think she is one of the best attorneys in the state,  
01:51:26PM 21 frankly. I don't think the setting that they were in at  
01:51:32PM 22 that moment was that, "We are going to have an evidentiary  
01:51:35PM 23 hearing where I am going to present as much evidence and  
01:51:38PM 24 argument from all sources to show compliance with the  
01:51:42PM 25 law -- with the state medical marijuana law." It was just

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01:51:47PM 1 sort of thrown out there during the argument, and then  
01:51:50PM 2 addressed more specifically in the government's motion  
01:51:52PM 3 in limine and the court's order, that the advise of  
01:51:55PM 4 counsel defense was not going to be available, because  
01:51:58PM 5 anyone giving that advice at the end, as everybody has  
01:52:01PM 6 always observed, would say you are still -- this doesn't  
01:52:04PM 7 save you. I mean, the state does on the website, back  
01:52:08PM 8 when they had the marijuana regulations.

01:52:11PM 9 But McIntosh and this rider -- I think this rider is  
01:52:14PM 10 a very unusual thing for any of us to confront.

01:52:16PM 11 THE COURT: It is a very curious situation. I was  
01:52:27PM 12 advised not to use this metaphor: Have you ever been on a  
01:52:33PM 13 boat under the narrows bridge and get in the whirlpool,  
01:52:40PM 14 just going nowhere? In a lot of instances that's what we  
01:52:47PM 15 are doing in the rule of law today.

01:52:52PM 16 MR. KRADEL: And I don't disagree with the court,  
01:52:55PM 17 but the reality that we are faced with in Mr. Gloor's case  
01:52:59PM 18 is that the court's view of the evidence, as it was  
01:53:03PM 19 presented at the trial -- It was a trial where it had  
01:53:06PM 20 been ordered that compliance -- I am not questioning this  
01:53:10PM 21 at all from the court, that compliance with Washington  
01:53:14PM 22 state law was not going to be argued, was not going to be  
01:53:17PM 23 instructed. So there would have been no purpose.

01:53:21PM 24 And I don't see through the questioning that was done  
01:53:24PM 25 of even the government's witnesses an effort to show

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compliance.

THE COURT: Isn't it a question for the court, not for the jury?

MR. KRADEL: My reading of McIntosh is it is a question for the court, but it is a question for the court to determine after the individual defendant is given an opportunity to try to prove that point.

So an evidentiary hearing wouldn't just be Mr. Lombardi putting up an agent to provide his recall of a conversation that took place five years ago with Mr. Gloor in an unrecorded interview. It would also be Mr. Gloor offering testimony in that regard. It would be a description of the exact day-to-day operations of any one of those particular dispensaries.

It would be focused not on -- The focus in this case was not to try to show, "I complied with state law," because that was not a defense. And while it remains not a defense, it is now a defense pretrial. If you can show that you were, then the prosecution is not committed to go forward.

What I'm saying to the court is that in this uncertainty, in this whirlpool under the narrows bridge, he should not have to sit in prison while that goes on.

THE COURT: Thank you, Mr. Kradel. Mr. Lombardi.

MR. LOMBARDI: Let me start where defense counsel

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01:54:56PM 1 left off. We could easily wander far afield here. The  
01:55:00PM 2 precise relief asked for today is that Mr. Gloor get out  
01:55:04PM 3 of jail, because in the defense's view, and I will address  
01:55:06PM 4 this in a minute, their chances on appeal have improved as  
01:55:10PM 5 a result of the McIntosh case.

01:55:11PM 6 I don't agree with that. But let's leave that aside  
01:55:14PM 7 for a minute. Let's take that as a given, that his  
01:55:18PM 8 chances on appeal have increased by some quantum. The  
01:55:21PM 9 fact remains that Mr. Gloor, while out on bond, you know,  
01:55:26PM 10 behaved about as bad as you can. He didn't fall this  
01:55:29PM 11 court's requirements. He was defiant. He threatened  
01:55:32PM 12 witnesses. He did almost everything you can do without  
01:55:35PM 13 actually hurting somebody. And those facts have not gone  
01:55:40PM 14 away as a result of McIntosh.

01:55:45PM 15 They have filed a notice of appeal. The Court of  
01:55:48PM 16 Appeals has jurisdiction over this case. This court could  
01:55:52PM 17 certainly revisit its bond decision, but that is really  
01:55:55PM 18 the only thing at issue here.

01:55:56PM 19 And so unless the court, having read McIntosh,  
01:56:00PM 20 concludes as a matter of law, "Boy, the government is out  
01:56:05PM 21 of luck, they are going to lose this case," it doesn't  
01:56:08PM 22 change anything, because Mr. Gloor is still a poor release  
01:56:11PM 23 candidate based on his own conduct, based on decisions  
01:56:15PM 24 that he made.

01:56:16PM 25 So that's really the only relief before the court, the

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01:56:19PM 1 only thing for the court to decide, are you going to let  
01:56:22PM 2 Mr. Gloor out today, or is he going to stay detained while  
01:56:26PM 3 these proceedings grind on in the Court of Appeals.

01:56:29PM 4 Well, let's talk about whether or not McIntosh is  
01:56:31PM 5 going to make a difference here. Again, McIntosh is a  
01:56:34PM 6 narrow decision.

01:56:35PM 7 First off, procedurally it is very different. The  
01:56:38PM 8 appellants or the petitioners in McIntosh had filed  
01:56:43PM 9 motions to dismiss or to stay their different proceedings.  
01:56:49PM 10 Mr. Gloor never asked for the second one. He asked to  
01:56:52PM 11 dismiss the case.

01:56:54PM 12 If you read McIntosh, McIntosh makes it clear that  
01:56:57PM 13 this court made the right decision in refusing to do that.  
01:57:00PM 14 He never asked to stay the case. He never asked to take  
01:57:04PM 15 an interlocutory appeal from this court's decision. The  
01:57:07PM 16 trial went forward.

01:57:08PM 17 At the motion hearing they could have said, "We want  
01:57:12PM 18 to present evidence. We want to make an offer of proof  
01:57:15PM 19 about how Mr. Gloor was not in violation of state law,"  
01:57:20PM 20 how prosecuting him would interfere with state law. They  
01:57:23PM 21 didn't do that either.

01:57:25PM 22 And there is still no offer of proof, really, from the  
01:57:28PM 23 defense about what this hearing is going to show. And I  
01:57:30PM 24 will talk about why it can't show what Mr. Gloor thinks it  
01:57:33PM 25 is going to show here in a minute.

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01:57:35PM 1 But, you know, procedurally, the case is just in a  
01:57:38PM 2 very different posture. The trial is over. Mr. Gloor has  
01:57:41PM 3 been convicted. So what's the remedy at this point if it  
01:57:45PM 4 turns out that someone concludes that we should not have  
01:57:49PM 5 spent money prosecuting Mr. Gloor? It is not that the  
01:57:53PM 6 case goes away. It is not that the conviction gets  
01:57:55PM 7 vacated, because it has already happened. You can't  
01:57:58PM 8 enjoin something that has already happened. The most that  
01:58:01PM 9 one could hope for here is that the government would be  
01:58:04PM 10 told, well, you can't continue to spend money to further  
01:58:07PM 11 this case. What, we don't file a response brief on  
01:58:12PM 12 appeal? I don't even know what that looks like.

01:58:14PM 13 But here, Mr. Gloor is asking the court to close the  
01:58:18PM 14 barn door after the horse is already long gone.

01:58:22PM 15 What McIntosh authorizes is something the court really  
01:58:26PM 16 couldn't give him because of where it is.

01:58:28PM 17 Imagine a slightly different set of facts, someone who  
01:58:32PM 18 is prosecuted five years ago. Medical marijuana has been  
01:58:36PM 19 around for a while. So they are prosecuted. They are  
01:58:38PM 20 charged before the funding limitation comes into effect.  
01:58:41PM 21 The case proceeds, proceeds, and hypothetically the trial  
01:58:45PM 22 starts the day after the funding then comes into effect.  
01:58:48PM 23 And nobody even thinks to raise the issue. And that  
01:58:51PM 24 defendant gets convicted. Maybe he appeals, maybe he  
01:58:53PM 25 doesn't. It is affirmed. And then someone says, oh,



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01:58:56PM 1 wait, the government shouldn't have been able to prosecute  
01:59:01PM 2 that case. Does that person suddenly get out of jail?  
01:59:05PM 3 Probably not.

01:59:07PM 4 THE COURT: That is in the boat deal. We are  
01:59:10PM 5 dealing with those cases all the time. We've got a bigger  
01:59:16PM 6 rearview mirror than we have a windshield, as the  
01:59:21PM 7 judiciary dealing with criminal law.

01:59:24PM 8 MR. LOMBARDI: I know what the court is talking  
01:59:26PM 9 about in that case. But remember what McIntosh says.  
01:59:29PM 10 This funding limitation, it was put in place in, I guess,  
01:59:33PM 11 2014. It is in 2015. Who knows if it is going to be in  
01:59:39PM 12 the next budget? Who is the president going to be? Who  
01:59:43PM 13 is going to get elected to Congress? If that doesn't get  
01:59:46PM 14 passed next year or reinstated next year, this whole issue  
01:59:49PM 15 goes away.

01:59:50PM 16 The only thing the defendant gets out of McIntosh,  
01:59:53PM 17 really, is a stay. At some point, if the stay drags on  
01:59:59PM 18 long enough, you get speedy trial issues and due process  
02:00:00PM 19 issues. The case gets timed out because the department  
02:00:04PM 20 doesn't have money to prosecute it. It doesn't get  
02:00:06PM 21 dismissed. What the defendant did doesn't become legal.  
02:00:11PM 22 It is just a timeout. It is a very narrow thing that  
02:00:14PM 23 doesn't apply here, because he has already been convicted.

02:00:17PM 24 THE COURT: Could you take me back to the motions  
02:00:22PM 25 in limine, the motion to dismiss the indictment, and with

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the presence of McIntosh?

MR. LOMBARDI: Yes.

THE COURT: Have you ever responded to a suppression hearing where the judge did not order an evidentiary hearing?

MR. LOMBARDI: Many times.

THE COURT: Yeah.

MR. LOMBARDI: I have a sentencing -- This is fresh in my mind. I have a sentencing next week. It is in front of Judge Coughenour. But, again, he is not the only judge who has done this. The defendant made a motion to suppress a search. Judge Coughenour looked at the papers, and just denied the motion on the papers, and did not have a hearing.

THE COURT: A superior court judge signed a search warrant that there was probable cause to believe there was a grow operation, a big grow operation. Then we've got a motion to dismiss the indictment. I saw the pictures. I read the proffer. Even at pretrial I said, "You can tell your story, but these defenses are not valid." And then the exclamation point is the jury on just the amount of marijuana. That strikes me to be outcome determinative on the volume, at least, I mean, without the other bells and whistles that were argued on your list and all that.

MR. LOMBARDI: Let's kind of just take a couple of

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examples from the trial. There is the grow, the manufacturing count, which the defendant was convicted on, 73 plants.

Remember the testimony, your Honor. They didn't find any medical marijuana paperwork, to the best of my recollection, at that grow. They certainly didn't find the paperwork you would need from different patients to justify there being more than the 15-plant limit allowed if you yourself were a medical marijuana patient.

Remember, they Mirandized Mr. Gloor, and went, "Are you claiming this is a medical marijuana grow?" The detective's testimony was his response was a smirk. He knows it is a joke. It is not a medical marijuana grow. That's one.

Second, the evidence that came in about them not consistently checking cards. There is Mr. Gloor's admission in his proffer that he did not track what vendors supplied him with marijuana, because he didn't want to. There is ample evidence just from his own proffer that he knew he wasn't complying with state medical marijuana laws.

The defense is like, well, you have to look at it at different periods of time. Think about the evidence that came in during the trial. After the 2011 search warrants, when Mr. Gloor reopens ostensibly under new management,

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but still controlling things behind the scenes, we had two different witnesses testify that Mr. Gloor had his dispensary employees ship him marijuana in Las Vegas. Nobody can say that is authorized by state medical marijuana laws.

Again, the case is very straightforward and very clear, we are only limited, stayed, during this funding limitation from prosecuting individuals whose conduct was, and this is a direct quote from the opinion, "completely authorized by state law, by which we mean they strictly complied with all relevant conditions imposed by state law on distribution, manufacturer," whatever.

No one could sit through that trial and think Mr. Gloor could hit that standard. That is a difficult standard to hit.

The defense suggests you have to look at it monthly or daily: Did you comply with state law today? Did you comply with state law to today? Did you comply with state law today? It is only the days where they didn't that the government gets to prosecute. That's not what McIntosh says.

McIntosh says you better be dotting your Is and you better be crossing your Ts. If you are, then prosecuting you does interfere with the state's implementation of its medical marijuana laws. If you're not, prosecuting you

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does not interfere with the state implementing its medical marijuana laws, because you are outside those laws, and now you are just committing a federal felony offense.

Here is the other problem with the defense analysis: Again, McIntosh talks about how it is a temporal -- It is the whirlpool. This funny limitation was not in place when this case was investigated. It was not in place when this case was indicted. It came into place partway through the prosecution. It is in place now.

Again, at what point does the government's prosecution of Mr. Gloor interfere with Washington's implementation of its medical marijuana laws? Does maintaining this case today interfere with Washington state's implementation of its medical marijuana laws? No. Because they look very different today than they did when this case was first investigated. Now you have to get a license. That's what the regime is today.

And here is what we know: There is no way in heck that Mr. Gloor gets a license from the Washington State Liquor and Cannabis Board, because he doesn't qualify. He has too much criminal history. He has too much baggage. He would not be approved for a license under 502, which is now expanded to encompass the medical marijuana system.

So the system that is in place today is different from the system that was in place when Mr. Gloor was

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investigated. Continuing to prosecute Mr. Gloor, prosecuting whatever appeal comes up, will not change Washington's system by one iota, because he doesn't qualify now. He didn't qualify back then either, for different reasons. But now he is just completely out of the system. I'm not sure he could get a job with one. He certainly could not get a license doing what he was purporting to do back in 2011, 2012, 2013. He doesn't qualify.

Yes, there was a cottage industry of lawyers who gave advice on how you could comply with state law. As we talked about in prior hearings, Mr. Gloor consulted with some of those lawyers.

We interviewed pretty much all of Mr. Gloor's employees, and they talked about that. "Oh, yeah, we were given training. We had to call people giving us money for marijuana a donation. We had to call giving the marijuana back a donation." "Why did you call it that?" "Well, that's what the lawyers told us we had to do, because you can't buy and sell marijuana under state law." Follow-up question: "Isn't that what you were doing?" "Oh, yes, that's exactly what we were doing."

So, sure, he talked to some lawyer or two, and pretended to follow their advice, right or wrong. But he wasn't --

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02:07:39PM 1 THE COURT: They used the term "cooperative."

02:07:43PM 2 MR. LOMBARDI: Yes. Cooperative, 45 plants, I  
02:07:47PM 3 can't remember the exact numbers at the time. He had  
02:07:50PM 4 thousands of people go through that store.

02:07:52PM 5 But also, on the flip side, there is a cooperative in  
02:07:57PM 6 terms of people who contribute the marijuana. You have to  
02:07:59PM 7 keep records of that. He didn't do that, by his own  
02:08:02PM 8 admission.

02:08:02PM 9 And that is the real problem. With all due respect  
02:08:05PM 10 with Mr. Kradel, which, as the court said, and I have had  
02:08:07PM 11 a number of cases with him, he is a very fine lawyer.

02:08:09PM 12 THE COURT: And he is a good guy, too.

02:08:12PM 13 MR. LOMBARDI: And he is a very good guy. But he  
02:08:14PM 14 has ethical responsibilities to this court. Now,  
02:08:16PM 15 Mr. Kradel is the third lawyer in this case. He was not  
02:08:19PM 16 at that proffer. He can not ethically present to this  
02:08:22PM 17 court, "My client was complying with state law," when his  
02:08:24PM 18 client in his proffer said, "No, I really wasn't."

02:08:28PM 19 We just had this issue come up in front of Judge Jones  
02:08:31PM 20 in the Seleznev case. Mr. Seleznev came in and he  
02:08:36PM 21 proffered, "Yeah, I did that." It turned out there was at  
02:08:40PM 22 least a colorable argument that Mr. Seleznev didn't  
02:08:44PM 23 understand -- by saying that he wasn't allowed to maintain  
02:08:48PM 24 an inconsistent defense at trial.

02:08:50PM 25 So Judge Jones said, "Okay. Well, in that respect you

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can. But, defense counsel, be very careful about what evidence you present, because you know he confessed, and you can't present evidence that is inconsistent with that."

The same thing is going to apply here. Mr. Gloor: "I am not sick. I have a medical marijuana card, but I am not sick. I got it under false pretenses. Which, of course, means he is not supposed to be doing any of this stuff. You can't be a member of a cooperative if you're not sick.

Remember what the evidence was, your Honor. We put a bunch of undercovers on it. You go into Lacey Cross, they send you to their pet doctor, doc in a box, who will give you a card no matter what. And they give you a discount if you are coming from Lance. He knows these people aren't sick. And he admitted that.

He can't now come in, "I want an evidentiary hearing where I can put in evidence that contradicts my proffer, that contradicts the testimony of my own employees that I was really complying with state law.

I didn't take great notes at sentencing, but I remember the court saying that Mr. Gloor has pulled one over on a bunch of people. This is part of the same thing. Mr. Gloor has been dealing with marijuana since he was a kid.



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I think it was Josh Hoelzer who said, "The great thing about medical marijuana is it let us do what we were always doing, except now it kind of looked like it was legal." The problem is it wasn't, not the way they were doing it. Not under state law, and certainly not under federal law. Nothing in McIntosh can change that conclusion.

THE COURT: Thanks, Mr. Lombardi. Mr. Kradel.

MR. KRADEL: Yes, your Honor. I will try not to belabor my points, but I'm sure I will.

People go to lawyers for advice about taxes and what to do with their money. They may donate thousands of dollars to a non-profit, something for environmental concerns, but they are not really environmentalists, but they want to lessen their taxes. They are evading taxes. They are taking advantage of loopholes in the law.

When the government stands up here describing how they interviewed employees who talked about training, who talked about following a program lined out by attorneys, that's the business.

Separating the individual from the business -- What happened in this case was Mr. Gloor was indicted, prosecuted, and sentenced for everything that the businesses were doing. He wasn't indicted and prosecuted and this jury wasn't presented with evidence just about

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02:11:31PM 1 marijuana being shipped to Las Vegas. Mr. Lombardi  
02:11:35PM 2 wouldn't have been interested in that prosecution. What  
02:11:39PM 3 was presented was about the dispensaries, and the  
02:11:42PM 4 calculations were based on the dispensaries.

02:11:45PM 5 If somebody has, during the time of this funding  
02:11:48PM 6 rider, a checklist-by-checklist compliance with state  
02:11:54PM 7 medical marijuana law, and they wander out to the parking  
02:11:57PM 8 lot and give their friend a joint, the federal government  
02:12:00PM 9 is then not -- I don't believe -- I don't believe the  
02:12:03PM 10 intention of McIntosh, is they can turn around and  
02:12:06PM 11 prosecute the entire medical marijuana operation at that  
02:12:08PM 12 point.

02:12:08PM 13 That's why I said I think McIntosh is clear on some  
02:12:11PM 14 things, but it leaves open some questions. And I do think  
02:12:14PM 15 that one of those questions is going to be -- And, again,  
02:12:18PM 16 the proffer in this case took place in 2011. I can't in  
02:12:24PM 17 good faith stand here and tell the court Mr. Gloor does  
02:12:26PM 18 not possess a juris doctor, that Mr. Gloor followed  
02:12:30PM 19 instructions from individuals who did, and have an  
02:12:33PM 20 evidentiary hearing about whether or not those businesses  
02:12:35PM 21 were complying with Washington's medical marijuana law.  
02:12:39PM 22 We are going to be able to put on lots of evidence about  
02:12:42PM 23 that.

02:12:44PM 24 There is going to be the same evidence that he was  
02:12:45PM 25 talking about, trainings, language. And my opinion, his

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02:12:51PM 1 opinion, and, frankly, this court's opinion about whether  
02:12:53PM 2 or not what happened was a lot of people were recreational  
02:12:56PM 3 marijuana users, medical marijuana came into law, and  
02:13:00PM 4 people tried to find a way to fit themselves within that.  
02:13:04PM 5 What this case now says is that if you were in compliance  
02:13:06PM 6 with the law, you get to put on -- you get to come in --  
02:13:10PM 7 you are not prohibited, and there is not an order that  
02:13:13PM 8 says you can't present it.

02:13:14PM 9 THE COURT: What's the argument on, just a  
02:13:17PM 10 discrete issue, the volume of marijuana? What is your  
02:13:22PM 11 argument at hearing?

02:13:24PM 12 MR. KRADEL: The thing is, the way the medical  
02:13:26PM 13 marijuana was written at the time, and what attorneys --  
02:13:28PM 14 and I am not putting myself in this category, because I  
02:13:31PM 15 did not do it, but what attorneys with were advising  
02:13:34PM 16 people is that if you examine it, and you take the number  
02:13:36PM 17 of plants, and you are a provider for this individual, you  
02:13:39PM 18 can have this many plants; and for this individual, you  
02:13:42PM 19 can have this many plants. If there is three of you  
02:13:45PM 20 living in a home, you are going to be a provider for this  
02:13:47PM 21 person, this person, and this person.

02:13:50PM 22 So 73 plants in and of itself does not mean you are  
02:13:53PM 23 out of compliance with Washington's medical marijuana law.  
02:13:56PM 24 That was most of the case that is were filed in pursuit.

02:13:59PM 25 If you look at McIntosh, they could have said that

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Kynaston, or however you say that name --

THE COURT: Frem Nielsen's case.

MR. KRADEL: Yeah. You don't get an evidentiary hearing. Look at how many plants are there.

THE COURT: They were careful to say "alleged." In this case there were not any allegations. The pictures were proof positive there were more than a discrete number, a certain number.

MR. KRADEL: Right. And there wasn't any effort made, because it was different, to try and -- I don't want to put the giant due process billboard up, but it is really -- when you think about that concept of notice and opportunity to be heard, and a lawyer is making strategic decisions about what to present as far as evidence at a pretrial hearing, at a trial, you have to take into account what has been prohibited, am I going to be wasting my time, boring this jury to death with stuff they are going to be told to disregard.

While the story was this was medical marijuana was in front of the jury because of what was told, the way that it was presented was, "We are just going to show you" -- It doesn't matter. A number of times the government has said it doesn't matter whether they were complying with state law. That was the setting when this came through.

When it comes back -- I think that it is clear from

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02:15:26PM 1 McIntosh this case is going to come back. The court in  
02:15:30PM 2 McIntosh did give this court discretion to fashion  
02:15:33PM 3 remedies. I think one of those remedies is going to have  
02:15:36PM 4 to be an evidentiary hearing at which Mr. Gloor is given  
02:15:39PM 5 the opportunity -- and I won't be acting in bad faith, and  
02:15:42PM 6 I won't be trying to mislead this court, I will be putting  
02:15:45PM 7 on evidence to show compliance with Washington's medical  
02:15:48PM 8 marijuana law.

02:15:49PM 9 THE COURT: Thank you, Mr. Kradel. I granted this  
02:15:53PM 10 hearing because it is an interesting issue. It is a  
02:16:07PM 11 curious decision. But the role of multiple participants  
02:16:23PM 12 from the judiciary, the jury, and the observations of  
02:16:37PM 13 Mr. Gloor during his time on bond make me conclude that  
02:16:52PM 14 the motion should be denied, and it is denied.

02:17:00PM 15 I don't know how many shoes are going to drop on this  
02:17:05PM 16 issue between today's date and the argument and the  
02:17:14PM 17 decision from the Ninth Circuit.

02:17:22PM 18 I would not routinely schedule an evidentiary hearing  
02:17:30PM 19 under the circumstances of this case that were presented  
02:17:32PM 20 to me in the motions in limine and the motion to dismiss  
02:17:38PM 21 the indictment.

02:17:48PM 22 I wrestle with the speculation that an argument  
02:18:05PM 23 contrary to the evidence would persuade me that the  
02:18:13PM 24 government was in violation of the appropriations rider in  
02:18:24PM 25 participating and furthering this prosecution.

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02:18:35PM 1       There is a question in my mind about retroactivity.  
02:18:48PM 2       In McIntosh there was no mention of it. I am satisfied  
02:18:56PM 3       that the processes were ordinary, and I will live with  
02:19:12PM 4       that.

02:19:13PM 5       Anything further?

02:19:15PM 6           MR. LOMBARDI: Not from the government.

02:19:18PM 7           MR. KRADEL: One thing. The court had previously  
02:19:20PM 8       signed an order keeping Mr. Gloor in the jurisdiction  
02:19:23PM 9       that, I think, ran out September 5th. That was extended  
02:19:27PM 10      for purposes of this hearing. I can submit a written  
02:19:31PM 11      motion and proposed order in that regard, but I thought as  
02:19:32PM 12      long as I am here I would bring it up, that I would be  
02:19:35PM 13      asking the court to extend that. We are still finalizing  
02:19:38PM 14      who is going to continue to be appellate counsel, whether  
02:19:42PM 15      it will be me or somebody --

02:19:42PM 16           THE COURT: That's fine. I will extend that.  
02:19:44PM 17      Just present the order.

02:19:45PM 18           MR. KRADEL: Thank you.

02:19:47PM 19           MR. LOMBARDI: Thank you, your Honor.

02:19:58PM 20           THE COURT: Court will be in recess.

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C E R T I F I C A T E

/s/ Barry Fanning  
Barry Fanning, Court Reporter

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HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LANCE EDWARD GLOOR,

Defendant.

CASE NO. CR13-5659 RBL

ORDER

DKT. #130

THIS MATTER is before the Court on the government's Motion *in Limine* [Dkt. #130], asking the Court to exclude any evidence, testimony, or argument relating to Defendant Lance Gloor's defenses: (1) the government committed entrapment by estoppel when it misled him into thinking the sale of medical cannabis was legal, (2) the government violated his alleged right as a medical marijuana distributor to equal protection by selectively prosecuting him, (3) the government cannot interfere with Washington State's ability to implement its law authorizing the sale of medical marijuana under the Consolidated and Further Continuing Appropriations Act of 2015 (Pub. L. No. 113-235, 128 Stat. 2130 (2014)), and (4) he acted on the advice of counsel.



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1 The government argues that Gloor cannot make a *prima facie* showing of entrapment by  
2 estoppel, selective prosecution and the effect of the appropriations rider are not proper issues for  
3 the jury, and the legality or illegality of his operation under state law is irrelevant. Gloor did not  
4 respond except to the extent he supported his preceding Motion to Dismiss. [Dkt. #131].

5 The Court orders:

- 6 1. Exclusion of Entrapment by Estoppel — **GRANTED**.
- 7 2. Exclusion of Selective Prosecution — **GRANTED**.
- 8 3. Exclusion of Appropriations Act — **GRANTED**.
- 9 4. Exclusion of Advice of Counsel Defense — **GRANTED**. Advice of counsel is a partial  
10 defense offered to disprove a mens rea element of a crime. *See Bisno v. United States*, 299 F.2d  
11 711, 719 (9th Cir. 1961). It is unavailable as a defense to general-intent crimes. *See United States*  
12 *v. Smith*, 7 F. App'x 772, at \*2 (9th Cir. 2001); *see also United States v. French*, 2014 WL  
13 5421210, at \*12 (E.D. Wash. Oct. 24, 2014). Gloor was charged with conspiring to distribute and  
14 with manufacturing marijuana in violation of 21 U.S.C. §§ 841 and § 846, both of which are  
15 general intent crimes. Furthermore, compliance with state law is not a defense for alleged  
16 violations of the Controlled Substances Act. *See Gonzales v. Raich*, 545 U.S. 1, 32, 125 S. Ct.  
17 2195 (2005); *United States v. Rosenthal*, 454 F.3d 943, 948 (9th Cir. 2006); *State of Washington*  
18 *v. Reis*, 183 Wash.2d 197, 209, 351 P.3d 127, 132 (2015). Accordingly, Gloor is barred from  
19 presenting an advice of counsel defense.

20 The Court expects the parties will present evidence that Gloor was operating a purported  
21 medical marijuana dispensary where marijuana was sometimes dispensed to individuals carrying  
22 medical marijuana cards. Such evidence will be allowed to the extent it does not conflict with  
23 this Order, e.g. to the extent it does not direct the jury that compliance (or intended compliance)  
24

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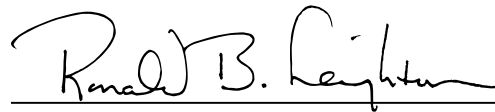
1 with state law is a defense for alleged violations of federal law. Therefore, if the Court  
2 determines the evidence is marginally relevant and not unfairly prejudicial, it will be admitted.

3 If the parties have any questions about what argument, testimony, or other evidence is  
4 permissible on the subject of medical marijuana, counsel may ask the Court outside the jury's  
5 presence.

6 The government's Motion *in Limine* [DKT #130] is GRANTED.

7 IT IS SO ORDERED.

8 Dated this 14th day of December, 2015.

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11 Ronald B. Leighton  
12 United States District Judge  
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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT TACOMA

UNITED STATES OF AMERICA,	)	NO. CR13-5659 RBL
	)	
Plaintiff,	)	December 11, 2015
	)	
vs.	)	Tacoma, Washington
	)	2:00 p.m.
LANCE E. GLOOR,	)	
	)	
Defendant.	)	

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TRANSCRIPT OF MOTION TO DISMISS AND MOTION IN LIMINE  
BEFORE THE HONORABLE RONALD B. LEIGHTON  
UNITED STATES DISTRICT COURT JUDGE

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Tacoma, WA 98407

(Proceedings recorded by mechanical stenography; transcript  
produced with aid of computer.)

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(Defendant present; on bond, not in custody.)

MADAM CLERK: All rise, United States District Court, the Honorable Ronald B. Leighton presiding, is now in session.

THE COURT: Please be seated. Good afternoon.

MADAM CLERK: This is in the matter of the United States of America versus Lance Gloor, Cause No. CR13-5659 RBL.

Counsel, please make their appearances.

MR. LOMBARDI: Good afternoon, Your Honor, Vince Lombardi and Marci Ellsworth for the United States.

THE COURT: Good afternoon, Mr. Lombardi, Ms. Ellsworth.

MS. UNGER: Good afternoon, Your Honor, Karen Unger. I am here with my client, Lance Gloor.

THE COURT: Good afternoon, Ms. Unger, Mr. Gloor.

All right. This matter is before the Court on the Defendant's Motion to Dismiss the Indictment and a cross motion to punctuate the issue on a Motion in Limine by the Government, to exclude any evidence or argument of this kind at trial, is a short form way of saying it.

I have reviewed the Defendant's Motion and Memorandum and attachment. I read the declaration of Kirk Pike. I have reviewed the United States' Opposition and attachments. I've reviewed the Reply Memorandum and attachments. I think

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1 that's about it. So if there is anything I should have  
2 reviewed, would you please bring it to my attention before  
3 we start?

4 Okay, Ms. Unger.

5 MS. UNGER: Thank you, Your Honor. If I might  
6 approach, I was able to find another correspondence from the  
7 Members of Congress who sponsored the statutory language.  
8 And if I might approach.

9 THE COURT: Sure.

10 MS. UNGER: I provided a copy of this to the  
11 Government.

12 (Whereupon, Counsel hands document  
13 to the clerk, who hands it to the  
14 Court.)

15 MS. UNGER: This is -- this is a Motion to Dismiss,  
16 Your Honor, based on several different grounds. And I know  
17 that the -- one of the issues, I believe, will be raised by  
18 the Government is that my client, if he was involved in  
19 operating a medical marijuana cooperative, that somehow he  
20 was doing it illegally, and that these references all talk  
21 about legal operation.

22 And I think it's -- the argument could be made pretty  
23 clearly that Mr. Gloor and these dispensaries -- and I'll  
24 call them "dispensaries" for ease of discussion. We're not  
25 acknowledging that they are "dispensaries" in the sense they

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1 were cooperatives that were involved in the distribution of  
2 medical marijuana pursuant to RCW 69.51, I believe.

3 THE COURT: 69.51A.

4 MS. UNGER: Yes. The letter I just handed up to  
5 the Court, Paragraph 3 says that after discussing the  
6 writer's concerns about the Government's ongoing prosecution  
7 of medical marijuana cases, it indicates that, quoting from  
8 the letter, it says, *This interpretation of our amendment is*  
9 *emphatically wrong. Rest assured, the purpose of our*  
10 *amendment was to prevent the Department from wasting its*  
11 *limited law enforcement resources on prosecution and asset*  
12 *forfeiture actions against medical marijuana patients and*  
13 *providers, including businesses that operate legally under*  
14 *state law.*

15 In our Reply to the Government's motion, we attached  
16 some pleadings from an action that was filed in state court  
17 in Thurston County that involved -- around Lacey, a Cross,  
18 and its attempt to get a business license to operate in  
19 Lacey. And these individuals who are before the Court, I  
20 believe it was Mr. Lucas, who has already entered a plea of  
21 guilty and is a co-defendant of Mr. Gloor, retained the  
22 services of attorneys out of Seattle whose major focus in  
23 their practice is -- was helping medical marijuana  
24 cooperatives set up their -- their locations. And these  
25 individuals had business -- had registered with the

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1 Secretary of State. They were identifiable businesses, they  
2 had bank accounts. And it is a little bit hard to imagine  
3 that the bank -- the Bank of America, where the account was  
4 called "Seattle Cross," can say with a straight face that  
5 they didn't know that this money that was being deposited in  
6 the bank came from a marijuana -- a medical marijuana  
7 cooperative. All of this was done openly and notoriously,  
8 nobody was hiding anything.

9 THE COURT: But the ethicists, the people who --  
10 the lawyers who operate those CLE's about marijuana  
11 business, they -- they tell those lawyers who are going to  
12 advise people who want to enter in businesses, that they  
13 have to comply. They have to be within the narrow confines  
14 of the state law, or they are going to run afoul of the law.  
15 And even at that, they're -- they're violating their oath  
16 just by advising their clients, because they are going to be  
17 violating the federal law. I mean our oath, as a state --  
18 as a Washington state lawyer, is to not counsel a client to  
19 violate the state, federal laws. That's where we are now.

20 MS. UNGER: Well, what do you do with somebody who  
21 goes to a lawyer and the lawyer tells you, "This is how to  
22 do this." And the lawyer files actions and appears at  
23 public hearings to challenge denial of a business license,  
24 and goes through all the appeal process, and files an action  
25 in superior court for judicial review. So you've got lay

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1 people who are contacting attorneys, and so that's when the  
2 estoppel argument, in a way, comes into play. I understand  
3 the Government doesn't like marijuana, apparently, or it  
4 is -- it is illegal under federal law, until you have an  
5 amendment that is passed by the Congress.

6 THE COURT: The people who made the list, who were  
7 interested in being considered for a federal judge position  
8 for the three judges who are going senior, they were all  
9 told if they have ever used marijuana, they are ineligible.  
10 Federal judges. They can't. They can't. And I don't know  
11 what we are going to do with the millennials when the next  
12 generation of judges arrive.

13 MS. UNGER: Well, I think that's a policy that is  
14 going to be subject to review, as every federal statute. I  
15 mean slavery used to be legal. I mean things change.  
16 Attitudes change. And in this particular --

17 THE COURT: But let me dispense with this first.  
18 Because there is a dispute between the Congress and the  
19 executive branch. The issue is not joined in this court  
20 right now. We are a coequal branch of government. And  
21 perhaps the Western District of Washington should have their  
22 hand slapped by the DOJ if this interpretation is, in fact,  
23 the position of the executive branch. But until or unless  
24 they resolve that issue, it's not -- I don't think it is a  
25 valid reason to halt a criminal prosecution.



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1 In a civil case, you can weigh the law and -- and you  
2 can enjoin future conduct. But this is a prosecution of  
3 past conduct. And it just seems to me that this is a  
4 misplaced argument in this context.

5 MS. UNGER: Well, but this is essentially  
6 telling -- this is the legislative branch telling the  
7 executive branch to stop prosecuting people, because we  
8 passed a statute that says you shouldn't do it.

9 THE COURT: Right. And I've got a case in  
10 controversy before me, and without one party's  
11 participation, the Congress --

12 MS. UNGER: Well, when there is statutory authority  
13 to support an argument, though, my understanding is there is  
14 this -- this continuing --

15 THE COURT: Those memos -- those memos by the  
16 experts that I -- they have caveat after caveat after  
17 caveat. They are -- they are not worth the paper they are  
18 written on. It is Swiss cheese. And that's my frustration  
19 with all of this subject. I mean between the immigration  
20 law and -- and the drug laws, how do we -- how do we  
21 cultivate respect for the law any more? I mean it's -- it's  
22 tough.

23 MS. UNGER: Well, you know, in the State of  
24 Washington, in the State of Oregon now, in the State of  
25 Colorado --

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1 THE COURT: I know.

2 MS. UNGER: -- you're allowed to legally possess a  
3 certain amount of marijuana. And my understanding of what  
4 these letters reference are a statute that was passed by the  
5 legislative branch, that specifically ended -- requires the  
6 Government not to bother with people in states where  
7 marijuana has been legalized. That's how I read this. So  
8 if that's the case, does the Ninth Circuit then have to  
9 decide that issue? Is that an issue for the Ninth Circuit?  
10 There is a congressional statute, a statute that says, Hey,  
11 Mr. Holder -- it's not Mr. Holder anymore --

12 THE COURT: No.

13 MS. UNGER: -- stop this in states where the  
14 state -- and let the states prosecute who they think are  
15 violating their statutes in regard to this particular drug.  
16 And common sense doesn't have a place in any of this  
17 argument, I guess, because the common sense would tell you  
18 to -- "What are you doing?" In a sense -- but yet the  
19 federal law says this is illegal, so how do you --

20 THE COURT: Right.

21 MS. UNGER: You know, what happened? I guess  
22 during prohibition --

23 THE COURT: There are a few -- there are a few  
24 counts in the Indictment that are not protected by this  
25 memo, even if -- even if it were --

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1 MS. UNGER: I understand that one of the things in  
2 this memo says, "Why don't you let the States go after these  
3 people if they want to?" Why didn't the State -- at the  
4 time that this happened, back in 2011, they didn't -- they  
5 chose not to prosecute.

6 THE COURT: Why, Mr. Lucas just pled guilty to a  
7 state charge, didn't he?

8 MS. UNGER: No, I thought he pled here.

9 MR. LOMBARDI: Both.

10 THE COURT: Huh?

11 MR. LOMBARDI: Both.

12 THE COURT: Both.

13 MS. UNGER: But my client's in a different --

14 THE COURT: I thought he did it --

15 MS. UNGER: Well, Mr. Lucas also had other drugs on  
16 him. He was found with other controlled substances other  
17 than marijuana.

18 THE COURT: Right.

19 MS. UNGER: And his situation is different. The  
20 only drug that my client has been associated with is  
21 marijuana. As far as these charges are concerned, there was  
22 a grow that was found somewhere that was allegedly  
23 associated with Mr. Gloor. But that was all that was ever  
24 found.

25 So Mr. Lucas is in a different place too. Mr. Lucas'

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1 name was on the business licenses. Mr. Lucas is the one  
2 that had the bank account. So there -- we can probably  
3 stand here for hours debating this, and I don't want to do  
4 that.

5 THE COURT: No.

6 MS. UNGER: So I wanted to have this oral argument  
7 also to give my client an opportunity to be in your  
8 courtroom. He has been in the magistrate's courtroom more  
9 times that he wants to think about.

10 THE COURT: Right. Right.

11 MS. UNGER: And I think this is -- this is probably  
12 an issue for academics more than me. I'm not an academic.

13 THE COURT: Oh, come on, you're plenty smart.

14 MS. UNGER: Well, but I'm more here to argue things  
15 than to make policy, I think. And I've gone over this with  
16 my client. I've tried to debate with him his position, and  
17 I see what he's saying. You know, these lawyers come along,  
18 they tell you how to label the marijuana, they tell you  
19 where to put the marijuana, they tell you how to open the  
20 bank account. They tell you how to go and get a business  
21 license. They try to get you the business license, and you  
22 try to follow along. This -- this -- and the medical  
23 marijuana statute that was passed in 1998 left very little  
24 direction for people that were trying to get involved in  
25 this business. It's way more specific now, since 502 came

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1 into play, than it was back when all of this was happening.  
2 So people were trying to comply. And that's where the  
3 selective prosecution argument -- maybe not -- but I listed  
4 all of these dispensaries or cooperatives. None of them are  
5 here. None of them have ever been here. I mean there is  
6 hundreds of them that were in -- back in 2011, I believe the  
7 Government raided 11 or 12 of them, and my client, the Cross  
8 ones -- the Seattle Cross, Lacey Cross, Tacoma Cross --  
9 those are the ones that were owned by Mr. Lucas and  
10 Mr. Roberts. And my client was, according to the  
11 Government, involved back in 2011. And they are claiming he  
12 was involved in 2013, which I don't -- that is another  
13 issue. But I don't know that my client should be  
14 presumed -- should be precluded from having his defense of  
15 he was relying -- I don't think there is any dispute that  
16 there were attorneys involved in this, who set this up. And  
17 if that puts the attorney at risk for sort of disciplinary  
18 action, I -- that's -- that's that lawyer's -- they jumped  
19 into that, knowing what they were doing.

20 THE COURT: Well, that's debatable. But that's  
21 what everybody is looking for, a buck in this -- in this  
22 enterprise.

23 MS. UNGER: Without a doubt.

24 THE COURT: Including the State.

25 MS. UNGER: Well, of course. And now the State has

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1 an opportunity to make some money and determined that this  
2 was -- this is what they were going to do. It's a big  
3 problem.

4 THE COURT: Playing croquet before the Queen of  
5 Hearts.

6 MS. UNGER: Yeah. Well, and I don't know what the  
7 federal government eventually is going to do about any of  
8 this. You know, frankly, we're talking about -- there's so  
9 many problems that need to be addressed, is this one of them  
10 that needs a priority? I mean, you know, you could debate  
11 this from today until tomorrow. Marijuana -- marijuana is  
12 out there. People have been using it for years. It's --

13 THE COURT: I know. I know.

14 MS. UNGER: It's obviously for people who go on to  
15 more dangerous drugs. It's always a gateway drug. You  
16 always start with marijuana. But people start with beer,  
17 and then they become alcoholics by drinking fifths of vodka.  
18 I mean is beer a gateway drug? Maybe. You can use that  
19 argument for anybody who cannot maintain their sobriety.

20 So I understand that argument, but I don't think it's  
21 very valid, because I think people that become drug addicts  
22 are going to be drug addicts whether there is marijuana or  
23 not. People who abuse substances have other things driving  
24 them and underlying problems and a propensity -- maybe a  
25 genetic propensity to be an alcoholic, a genetic propensity

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1 to use drugs.

2 THE COURT: I think the Government is going to  
3 present a broader picture. And I'll give -- I'll give --  
4 both sides will leave the courtroom having said everything  
5 they want to say on this issue. So it is not your last  
6 word.

7 MS. UNGER: I think my arguments have been set out  
8 in my written memorandums. I appreciate the opportunity to  
9 come here and have some -- something to say other than what  
10 is written down. I think it is a pretty clear-cut argument,  
11 maybe this needs to go up to the Ninth Circuit to decide  
12 whether or not the congressional edicts apply here, and  
13 whether the Government really is precluded from prosecuting  
14 medical marijuana. And there needs to be a finding, whether  
15 this was done legally, illegally. And I would argue it was  
16 as legal as it could have been, given the parameter of the  
17 state law at the time. The statute is different now than it  
18 was back then. It is way more specific. And ironically, a  
19 lot of the people who were supporting 502, there were a lot  
20 of people who weren't, because of what it did to the medical  
21 marijuana situation. I think it made it a lot stricter and  
22 whatever. But I don't think my client, if the Court isn't  
23 going to grant this motion, should be precluded from relying  
24 on the advice and what he interpreted to be the requirements  
25 under the old 69.51A.

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1 THE COURT: All right.

2 MS. UNGER: Unless the Court has some questions.

3 THE COURT: No. But I will get you up here again.

4 MS. UNGER: Okay. Thank you.

5 THE COURT: Mr. Lombardi.

6 MR. LOMBARDI: Yes, Your Honor. So a couple of  
7 things -- first, I think I heard something a little  
8 different. You know, it sounds like the defense is now at  
9 least bringing up an advice of counsel defense. And that's  
10 the first it's been asserted. It's not in the pleadings.

11 THE COURT: Right.

12 MR. LOMBARDI: This case has been pending since  
13 2013. It has never been raised as an issue before today.

14 But I think the Court has hit the nail on the head. I  
15 don't know -- well, I take that back. I have a pretty good  
16 idea what lawyers they're referring to, from interviewing  
17 some of Mr. Gloor's associates.

18 And what I can tell the Court is, as that becomes an  
19 issue at trial, which really shouldn't, this is what the  
20 evidence will be: Yeah, well, I interviewed a bunch of  
21 people in this case. They would all basically say the same  
22 thing:

23 "What did you do?"

24 "I was a budtender."

25 "What do you do as a budtender?"



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1 "People would come in, and they would donate money to  
2 us, and then we would donate marijuana back to them."

3 I did enough of these interviews that it kind of became  
4 like a shtick.

5 "Well, you know, if I go to the food bank, and I donate  
6 cans of food, they don't donate anything back to me."

7 "Oh, yeah."

8 "So why do you call it a 'donation'?"

9 "Because if you sell marijuana" -- we were told, as the  
10 flunkies, "If you just sell marijuana for cash, that's  
11 illegal under state law."

12 "Okay. Isn't that what you were doing?"

13 "Oh, yes."

14 It's a sham. The idea that this was a collective is a  
15 sham. A collective garden has a limited number of members.  
16 We recovered records during the search just of Lacey Cross,  
17 which is one of four dispensaries. They are well over a  
18 thousand patients/customers, you know, people they were  
19 supplying drugs to. Call it what you will. It is not a  
20 collective garden. It's a joke. That's all it is.

21 THE COURT: I've been walking on this planet for 64  
22 years. I haven't met many people -- some -- some who had a  
23 medical necessity for their cards.

24 MR. LOMBARDI: Well --

25 THE COURT: All of them were recreation dopers and

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1 they liked it recreational. And I don't -- I don't judge  
2 them. But I mean if they want it, they can buy it. They  
3 want to get high; they want to get high. But, you know,  
4 they make a mockery of the law. And it's always, since this  
5 decriminalization and legalization process, has all been  
6 tongue-in-cheek arguments.

7 MR. LOMBARDI: The bigger problem with the argument  
8 that defense counsel makes -- and I think it's a little  
9 unfair to current defense counsel, again, she came into this  
10 case fairly late -- is it ignores Mr. Gloor's proffer.

11 Mr. Gloor, despite the fact that on Facebook he  
12 criticizes people for being snitches, Mr. Gloor wanted to  
13 cooperate. First thing out of his mouth when he gets  
14 arrested, "I want to cooperate." And I, together with the  
15 case agent, who is here in the courtroom, we interviewed him  
16 when he was represented by Mr. Schwartz, pre-charging. And  
17 the Court knows how those proffers work. We promised  
18 Mr. Gloor we won't use anything you say in our case in  
19 chief. And it won't be used to calculate your sentence.  
20 But there are exceptions to that kind of promise. And one  
21 of them is if we go to trial, you don't get to put on a  
22 defense that is inconsistent with what you told us during  
23 this proffer. And during his proffer, Mr. Gloor said he  
24 knew this was a sham. I specifically asked him, "Do you  
25 have a medical marijuana card?"

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1 "Yes, I do."

2 "Do you have a qualifying condition?"

3 "No, of course not."

4 "Mr. Gloor, how many people do you think came into your  
5 shop actually were sick?"

6 "I don't know, maybe 10 percent."

7 So he knew it was a sham, and he told us that. And he  
8 is not going to get to go to trial and put this defense on  
9 and not have that statement be introduced at trial if, you  
10 know, we have something to say about it. In the end, it  
11 will be up to the Court.

12 The thing about the Lacey litigation, I mean leave aside  
13 for the fact that from an estoppel standpoint, what some  
14 state government official, what some city council member or  
15 zoning person said is irrelevant to estopping the federal  
16 government in enforcing federal law.

17 During his proffer, Mr. Gloor admitted -- I don't want  
18 to be too specific here, because I don't want to defame  
19 somebody -- certain improprieties in his contact with a city  
20 council member that may have involved giving the person free  
21 weed in return for their support for his zoning application.  
22 So if they want to put that argument at trial, I don't think  
23 they get to, because it is irrelevant in a federal  
24 courtroom. But to the extent they do, we get to put that  
25 evidence in. That doesn't help Mr. Gloor. So, you know,

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1 the things he wants to advance now are inconsistent with  
2 what he said when we interviewed him back in 2011. And you  
3 don't get to do that. You don't get to have your cake and  
4 eat it too. What Mr. Gloor was doing at the time was not  
5 legal under state law. He knew that, and he kept doing it.

6 On the estoppel argument, I'll just be brief. They  
7 still haven't identified a single statement by a responsible  
8 federal government official that meets the criteria --

9 THE COURT: A partial statement by Jenny Durkin,  
10 so --

11 MR. LOMBARDI: Taken out of context, and delivered  
12 at a timeframe when Mr. Gloor couldn't have conceivably been  
13 relying on it. That press release was issued because we  
14 kicked his door in --

15 THE COURT: Right.

16 MR. LOMBARDI: -- and said -- which is kind of a  
17 clue that the federal government thinks what you are doing  
18 is not legal. And so then U.S. Attorney Durkin issues a  
19 press release which says, "We're not going to prosecute  
20 individual sick people. We are not going to prosecute that  
21 person's caregiver. But if you're someone like Mr. Gloor,  
22 who is engaged in the large scale commercial sale of  
23 marijuana under the sham that it is medical marijuana, we're  
24 absolutely going to prosecute you." And so you can't rely  
25 on taking part of that statement out of context. It's

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1 delivered towards the end of the first part of the  
2 investigation, so he couldn't have been relying on it. And  
3 when you read the whole thing, it says the opposite of what  
4 he says.

5 But again, they pointed to some state website, the  
6 Department of Health. They don't say when he looked at it.  
7 They don't say what it really said. They don't provide it  
8 to the Court. But when you pull up the current version,  
9 which I'm pretty sure is the same one in effect then, there  
10 is a big fat disclaimer, "By the way, this doesn't make it  
11 legal under federal law." So you couldn't conceivably rely  
12 on that to estop the Government in this action.

13 Similarly, the selective prosecution argument, it's  
14 based on a factual misstatement. As defense counsel said,  
15 we did a bunch of marijuana raids on the same timeframe in  
16 2011. All of them were dispensaries. As I tried to explain  
17 in our memo, DOJ policy did change. We're going to exercise  
18 our discretion to not prosecute most medical marijuana  
19 cases. But there were exceptions to that, and the decision  
20 was made by the top people of my office, endorsed by main  
21 justice, that we were going to pick out cases where we  
22 thought people were way outside that envelope. And so we  
23 did a bunch of search warrants, all on the same day, all on  
24 November 15, 2011.

25 THE COURT: Right.

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1 MR. LOMBARDI: And someone got prosecuted off of  
2 every one of those cases. And some of them got significant  
3 jail time. Some didn't. It depended on what we found  
4 during searches. But every case that we were investigating,  
5 someone was charged. And so Mr. Gloor was not selectively  
6 prosecuted, leaving aside the fact that he's obviously -- to  
7 look at him, not in some suspect or protected class. They  
8 have not even advanced a motive that would make this  
9 prosecution improper.

10 And so that brings us last to the funding rider. And if  
11 you read the language, they put in some letters from  
12 Congress, people that are talking about prosecutions --

13 THE COURT: Be nice. My mom is represented by Sam  
14 Farr.

15 MR. LOMBARDI: Yeah. You know, most of those  
16 letters talk about California cases --

17 THE COURT: Right.

18 MR. LOMBARDI: -- No. 1. But No. 2, it's pretty  
19 clear that letters written by individual Congress people,  
20 after the fact, don't have any persuasive effect as to what  
21 a statute does or doesn't mean. I think we cited the case  
22 from the Eastern District of Washington that looked at this  
23 exact same issue, and it's on all fours with this case.

24 Our allegation -- and this is a motion to dismiss, so  
25 the facts are construed in the light most favorable to the

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1 Government. And the defense hasn't really put on any  
2 evidence anyway, supporting their motion. But the evidence  
3 shows that Mr. Gloor was selling a lot of marijuana. He was  
4 selling it for a profit. The reason this case was  
5 attractive to the Government was it's a chain. And  
6 Mr. Gloor is a partner in this.

7 THE COURT: Right.

8 MR. LOMBARDI: The defense is saying it was all  
9 Mr. Lucas and Mr. Roberts. They were partners. Mr. Gloor  
10 was primarily responsible for the Lacey location and the  
11 Kitsap Peninsula location. But in 2011, it is all one big  
12 business. And it's a chain. And as I think I put in our  
13 brief, you look at the bank account, you know, it is seven  
14 figures going through that bank account. And our evidence  
15 shows most of the money was cash that wasn't going through  
16 the bank account at all. It's the large scale commercial  
17 sale of marijuana. It wasn't legal under state law, and we  
18 cited cases to that effect, and it sure as heck isn't legal  
19 under federal law. And to the extent that that's true, the  
20 funding rider has no application to this case whatsoever.  
21 It says, *DOJ shall not spend money to interfere with the*  
22 *State's administration of the State's medical marijuana law.*  
23 And if you just apply that plain language, it doesn't have  
24 anything to do with this case, because this is not really a  
25 medical marijuana case. They said -- they pretended it was

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1 medical marijuana, because they wanted a fig leaf to protect  
2 them from prosecution.

3 And you know what the best evidence of that is? And  
4 again, defense counsel came to this case late, and so she's  
5 forgetting something. The Lacey part of the case was  
6 charged in state court. And so to back up for a second,  
7 again, in 2011, we're looking for what we think are the  
8 worst of the worst of the medical marijuana dispensaries.  
9 And as we are trying to identify what cases to do, we found  
10 out that the Thurston County Narcotics Task Force had a  
11 preexisting investigation into Mr. Gloor and his operation  
12 in Lacey. They're only looking at the one location that's  
13 in Thurston County, but they're investigating that for  
14 violations of state law. They did the control buys, they  
15 got state search warrants. And the Lacey part of the case  
16 was charged in Thurston County Superior Court. And  
17 Mr. Gloor was a charged defendant in that case. Mr. Lucas  
18 was a charged defendant in that case. And there was a bunch  
19 of other people too. They charged that because the  
20 allegation, and a judge, certainly for search warrant  
21 purposes, found probable cause that they were just pure  
22 out -- purely violating state law. Forget the fact that it  
23 is all illegal under federal law. Now, that case is  
24 ultimately dismissed. Why? Because we charged it.

25 THE COURT: Right.



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1 MR. LOMBARDI: We adopted the case. Not because  
2 they didn't think they could prevail, not because they  
3 decided it was a bad idea; because I talked to the  
4 prosecutor. I said, Hey, we're going to take this guy off  
5 your hands. So, you know, defense counsel says, If it was  
6 illegal under state law, why didn't they prosecute it? They  
7 were fully prepared to do that. They filed the case and  
8 that is pretty good evidence here that this funding  
9 restriction doesn't apply. Because if Thurston County  
10 thought there was probable cause to think that Mr. Gloor  
11 wasn't complying with state law, that is probably enough for  
12 us to get around this funding rider. And let's not mistake  
13 what the funding rider does. It doesn't make marijuana  
14 legal under federal law. Nobody's repealed any part of  
15 Title 21. It just says to DOJ, *Spend money on this; don't*  
16 *spend money on that.* Well, we're not. We're spending money  
17 on enforcing Title 21 in a way that does not interfere with  
18 what Washington State is doing.

19 So let me turn, if I could quickly, to the Motion in  
20 Limine. You know, it's sort of the mirror image. The  
21 defense should not get to make these arguments to the jury.  
22 The funding that the appropriation rider, it's not a proper  
23 jury argument. It is not a defense to the jury. The  
24 estoppel argument, again, they failed to even make a prima  
25 facie case that the Government estopped --

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1 THE COURT: They obviously have a right to the  
2 defense that they -- they ran a business compliant with the  
3 State of Washington, if they -- if they -- if they can make  
4 it.

5 MR. LOMBARDI: I would actually respectfully  
6 disagree with that, because this Court applies federal law.  
7 The jury instructions in this case are going to be just  
8 regular Title 21 instructions. There is no defense in Title  
9 21 that you're complying with state law.

10 Now, I will grant the Court, there's really no way to  
11 try this case without the fact that they're calling it  
12 medical marijuana --

13 THE COURT: Right.

14 MR. LOMBARDI: -- coming in on some sense.

15 THE COURT: Right.

16 MR. LOMBARDI: Because I mean the pictures from the  
17 searches --

18 THE COURT: Right.

19 MR. LOMBARDI: -- the undercover videos of the  
20 control buys, it -- that sort of thing, it will come in.

21 THE COURT: Right.

22 MR. LOMBARDI: And so our motion is a little  
23 narrower than that. It is: The defense can't argue that  
24 the defendant thought -- or that somehow it is a defense to  
25 this prosecution that he thought he was prosecuting --

**63a**

1 complying with state law, you know, that he was trying to  
2 comply with state law. Because it just legally is not a  
3 defense in this courtroom. The State can legalize or  
4 criminalize whatever it wants. It doesn't change federal  
5 law one iota. And as the Court, I think, alluded to  
6 earlier, the Defendant knew. Everybody who does medical  
7 marijuana or was doing medical marijuana at this point in  
8 time, they knew that if we bestirred ourselves in federal  
9 law enforcement to come prosecute them, that they were -- to  
10 not put too fine a point on it -- screwed. Because they all  
11 know that if we come knocking, they don't have a legal  
12 defense. Their lawyers tell them that. There's disclaimers  
13 on everything they get, the disclaimer on the state website  
14 that I referred to earlier, so it's just not a defense in  
15 this case. I mean I think the fact that he was allegedly  
16 running a medical marijuana business may come up, but it is  
17 not a defense, and the defense shouldn't get to argue that  
18 it is.

19 THE COURT: Well, the evidence is going to come in.  
20 The evidence is going to come in. I mean how they  
21 operated --

22 MR. LOMBARDI: Sure.

23 THE COURT: -- how they -- the logistics, the  
24 system and -- and --

25 MR. LOMBARDI: It --

**64a**

1 THE COURT: And we'll have to deal with the -- with  
2 the advice of counsel defense argument and whether that is  
3 timely and all that. But they are going to tell their  
4 story.

5 MR. LOMBARDI: And I -- they are going to hear it  
6 from us. We can't help but put some of that in. And I'm  
7 certainly not meaning to suggest -- I mean, you know, I'm  
8 not meaning to suggest that we should introduce a redacted  
9 picture of his store --

10 THE COURT: Right.

11 MR. LOMBARDI: -- that -- that, like, somehow  
12 blacks-out the fact that they are claiming it is medical. I  
13 mean it's not practical to produce -- to put the evidence  
14 any other way. Our motion is: The defense can't get up in  
15 opening or closing and say, *You should acquit my client*  
16 *because he was complying with state law*, because it's just  
17 not legally a defense. There should not be a jury  
18 instruction given to the jury saying, *If you find that*  
19 *Mr. Gloor was complying with state law* -- which he wasn't --  
20 *but if you find that that is somehow a defense, that's the*  
21 *only purpose of that part of the motion*. The other  
22 defenses, the defense shouldn't get to bring up at all --

23 THE COURT: Right.

24 MR. LOMBARDI: -- because, again, they haven't made  
25 a showing that shows that they should.

**65a**

1 THE COURT: Okay.

2 MR. LOMBARDI: Thank you, Your Honor.

3 THE COURT: Thank you.

4 Ms. Unger?

5 MS. UNGER: Thank you, Your Honor. I'm sitting  
6 here and I'm listening to the Government's argument, and I'm  
7 well aware of the challenges that I have before me. But I  
8 believe that if Mr. Gloor -- if the allegations against him  
9 came -- were alleged today, Mr. Gloor would not be in  
10 violation of state law. I don't believe there is anything  
11 that in today's -- under today's statutory scheme, that  
12 Mr. Gloor would be prosecuted in state court for anything.

13 THE COURT: Wait. That's two different questions.  
14 You said he wouldn't be prosecuted and he wouldn't be in  
15 violation.

16 MS. UNGER: Both. The Government is saying that  
17 Mr. Gloor was charged in state court, but the state court  
18 dismissed the case because the federal prosecutor agreed to  
19 take over the prosecution, so to speak, and the charges  
20 against Mr. Gloor and everyone else was dismissed, including  
21 one of the non-disclosed witnesses, that I believe is going  
22 to be a witness. But in any event, she was prosecuted, I  
23 believe, or charged in Pierce County and the charges were  
24 dismissed against her. But in today's -- under today's  
25 statutory scheme in Washington, Mr. Gloor would not be in

**66a**

1 violation of state law. He just wouldn't. Medical -- well,  
2 marijuana stores are everywhere now. And they sell for  
3 money. They don't sell for, "Oh, I'll donate to you, and  
4 you donate it back to me." No, it's money. And people have  
5 installed big safes, because theoretically you can't put the  
6 money in banks. And so that is another problem. But the  
7 Government is prosecuting Mr. Gloor right now for something  
8 that is now legal. It is legal now. And I guess for  
9 whatever argument the Government is making about going after  
10 Mr. Gloor for whatever it was, whatever he said in his  
11 proffer and all of those things, the bottom line is you are  
12 going to have people on the jury who are going to be sitting  
13 there thinking, "This is legal now." And maybe that doesn't  
14 mean anything.

15 THE COURT: I pass -- I pass five -- I think five  
16 medical marijuana dispensaries between here and my home.

17 MS. UNGER: Not even medical, they're just  
18 regular --

19 THE COURT: Regular --

20 MS. UNGER: Recreational marijuana dispensaries are  
21 everywhere, even more than there are liquor stores. I  
22 suppose you can buy liquor in the supermarket now, so you  
23 don't have any liquor stores. They are in the Safeway and  
24 they are at Albertson's and everywhere.

25 So I hear what the Government is saying. I understand

**67a**

1 all that. My guy, according to him, was a bad guy in 2011.  
2 But guess what? In 2015, he is not a bad guy any more,  
3 because it's not illegal in Washington. Yes, in Washington  
4 D.C. it's illegal, and maybe in Idaho it's illegal. But in  
5 Washington, it isn't; in Oregon, it isn't; in Colorado, it  
6 isn't. So I hear the Government's position.

7 I don't have anything else, unless the Court has some  
8 questions.

9 THE COURT: Thank you.

10 A motion to dismiss an Indictment in a criminal case is  
11 a rarity. The -- the benefit of the doubt goes to the  
12 nonmoving party. And the defenses of entrapment, selective  
13 prosecuting -- prosecution, and the funding, the Continuing  
14 Appropriations Act of 2015, from my vantage point, lack --  
15 lack merit, and the motion is dismiss -- is denied.

16 However, I am going to issue a written opinion on the  
17 Motion in Limine because the Motion in Limine is more  
18 complicated.

19 But what evidence comes in, and what evidence doesn't  
20 come in, and we'll -- I think -- can we get that out in  
21 about a week?

22 So the brain trust up there, we have talked about this  
23 case a lot. I appreciate oral argument, and the right to  
24 your views. And we'll -- we'll drill down a little further  
25 on the Motion in Limine about what -- what the story will be

**68a**

1 allowed -- you know, I'm a big proponent of each side  
2 getting to tell their story. But if -- if it does not  
3 comply with the legal prescription, we'll -- we'll -- we'll  
4 tailor it to what is allowable, and then we'll have that  
5 opinion out next week.

6 MS. UNGER: Thank you, Your Honor.

7 THE COURT: Have a great weekend and we'll see you  
8 soon.

9 MR. LOMBARDI: Thank you, Your Honor.

10 (Hearing concluded at 2:42 p.m.)  
11  
12  
13  
14  
15  
16  
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24  
25





# **APPENDIX C**

## UNITED STATES DISTRICT COURT

Western District of Washington

UNITED STATES OF AMERICA

v.

LANCE EDWARD GLOOR

## JUDGMENT IN A CRIMINAL CASE

Case Number: 3:13CR05659RBL-001

USM Number: 44270-086

Jeffrey Kradel

Defendant's Attorney

## THE DEFENDANT:

- ☐ pleaded guilty to count(s) \_\_\_\_\_
- ☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- ☒ was found guilty on count(s) 1 & 3 of the Indictment Jury Verdict: 01/15/2016  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1), (b)(1)(B), and 846	Conspiracy to Distribute Marijuana	11/26/2013	1
21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2	Manufacture of Marijuana	09/20/2010	3

The defendant is sentenced as provided in pages 2 through 6 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) 4 of the Indictment
- ☒ Count(s) 2 ☒ 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 must notify the court and United States Attorney of material changes in economic circumstances.

*Vincent T. Lombardi*  
\_\_\_\_\_  
Vincent T. Lombardi, Assistant United States Attorney

June 3, 2016  
\_\_\_\_\_  
Date of Imposition of Judgment

*Ronald B. Leighton*  
\_\_\_\_\_  
Signature of Judge

Ronald B. Leighton, U.S. District Judge

\_\_\_\_\_  
Name and Title of Judge

June 3, 2016  
\_\_\_\_\_  
Date

DEFENDANT: **LANCE EDWARD GLOOR**  
CASE NUMBER: 3:13CR05659RBL-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Count 1 - One-Hundred and Twenty (120) months  
Count 3 - One-Hundred and Twenty (120) months, Concurrent to Count 1  
The court makes the following recommendations to the Bureau of Prisons:

Sheridan, OR or next closest facility to Seattle.

- ☒ 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

DEFENDANT: LANCE EDWARD GLOOR

CASE NUMBER: 3:13CR05659RBL-001

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

Five (5) years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or from imprisonment and at least two periodic drug tests thereafter, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- ☐ The defendant shall 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 sheet of this judgment

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

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **LANCE EDWARD GLOOR**  
CASE NUMBER: 3:13CR05659RBL-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall participate as instructed by the U.S. Probation Officer in a program approved by the probation office for treatment of narcotic addiction, drug dependency, or substance abuse, which may include testing to determine if defendant has reverted to the use of drugs or alcohol. The defendant shall also abstain from the use of alcohol and/or other intoxicants during the term of supervision. Defendant must contribute towards the cost of any programs, to the extent defendant is financially able to do so, as determined by the U.S. Probation Officer. In addition to urinalysis testing that may be a part of a formal drug treatment program, the defendant shall submit up to eight (8) urinalysis tests per month.
2. The defendant shall submit his or her person, property, house, residence, storage unit, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
3. The defendant shall participate as directed in a mental health program approved by the United States Probation Office. The defendant must contribute towards the cost of any programs, to the extent the defendant is financially able to do so, as determined by the U.S. Probation Officer.
4. The defendant shall participate as directed in the Moral Reconciliation Therapy program approved by the United States Probation and Pretrial Services Office. The defendant must contribute towards the cost of any programs, to the extent the defendant is financially able to do so, as determined by the U.S. Probation Officer.
5. The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.

DEFENDANT: LANCE EDWARD GLOOR

CASE NUMBER: 3:13CR05659RBL-001

## CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 200	\$ Waived	\$ None

- ☐ The determination of restitution is deferred until \_\_\_\_\_ An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below. If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

<b>TOTALS</b>	\$ 0.00	\$ 0.00
---------------	---------	---------

- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:
- ☒ The court finds the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **LANCE EDWARD GLOOR**  
CASE NUMBER: 3:13CR05659RBL-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- ☒ PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.
- ☒ During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.
- ☒ During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.
- ☐ During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
- (a) \$1,178.00 in United States currency seized from Key Peninsula Collective dba KPN Cross on July 24, 2013; and
  - (b) \$6,640.00 in United States currency seized from Rainier ATM, LLC on July 24, 2013.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



76a

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v,

LANCE EDWARD GLOOR,

Defendant.

CASE NO. CR13-5659 RBL

VERDICT FORM

We, the Jury, being duly empanelled and sworn upon oath, unanimously state the following verdicts:

**COUNT 1: CONSPIRACY TO DISTRIBUTE MARIJUANA**

As to the offense of Conspiracy to Distribute Marijuana, as charged in Count 1, we, the Jury, unanimously find the defendant, Lance Edward Gloor,

NOT GUILTY \_\_\_\_\_ GUILTY   X   \_\_\_\_\_

If you find the defendant not guilty of this offense, proceed to Count 2, below. If you find the defendant guilty as charged, proceed to the question below.

## 77a

1A. We, the Jury, having found the defendant Lance Edward Gloor guilty of the offense charged in Count 1 of the indictment, further unanimously find that the quantity of marijuana involved in the conspiracy that was reasonably foreseeable to the defendant was (place an X in the appropriate box for the highest quantity unanimously agreed to by the jury):

- |       |   |  |   |
|-------|---|--|---|
| (i)   | 1000 or more kilograms of a mixture or substance containing marijuana;  |  |   |
| (ii)  | Between 100 and 999 kilograms or more of a mixture of substance containing marijuana, or between 100 and 999 marijuana plants (regardless of weight); |  | X |
| (iii) | Between 50 and 99 kilograms of a mixture or substance containing marijuana or between 50 and 99 marijuana plants (regardless of weight);              |  |   |
| (iv)  | Less than 50 kilograms of a mixture or substance containing marijuana and less than 50 marijuana plants.  |  |   |

**COUNT 2: CONSPIRACY TO COMMIT MONEY LAUNDERING**

As to the offense of Conspiracy to Commit Money Laundering, as charged in Count 2, we, the Jury, unanimously find the defendant, Lance Edward Gloor,

NOT GUILTY \_\_\_\_\_ GUILTY \_\_\_\_\_

**COUNT 3: MANUFACTURE OF MARIJUANA**

As to the offense of Manufacturing Marijuana, as charged in Count 3, we, the Jury, unanimously find the defendant, Lance Edward Gloor,

NOT GUILTY \_\_\_\_\_ GUILTY X \_\_\_\_\_

If you find the defendant not guilty of this offense, proceed to Count 4, below. If you find the defendant guilty as charged, proceed to the question below.

78a

1 (A. We, the Jury, having found the defendant Lance Edward Gloor guilty of the  
 2 offense charged in Count 3 of the indictment, further unanimously find that the defendant  
 3 manufactured, or aided and abetted the manufacture of, marijuana in the amount shown (place an  
 4 X in the appropriate box for the highest quantity unanimously agreed to by the jury):

- 5 (i) between 50 and 99 marijuana plants ☒   
 6 (ii) less than 50 marijuana plants ☐

7  
 8 **COUNT 4: POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG**  
 9 **TRAFFICKING CRIME**

10 *[Note - Answer this Question only if you have first unanimously found the Defendant*  
 11 *Guilty of Count 1 and/or Count 3].*

12 As to the offense of Possession of a Firearm in Furtherance of a Drug Trafficking Crime,  
 13 as charged in Count 4, we, the Jury, unanimously find the defendant, Lance Edward Gloor,

14 NOT GUILTY X GUILTY \_\_\_\_\_

15  
 16 DATED this 15 day of January, 2016.

17  
 18  
 19  
 20 PRESIDING JUROR

# **APPENDIX D**

79a

ORIGINAL

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff,

v.

LANCE EDWARD GLOOR,

Petitioner.

No. 16-30142

AFFIDAVIT OF LANCE EDWARD  
GLOOR IN SUPPORT OF PETITION FOR  
PANEL REHEARING AND REHEARING  
EN BANC

I, Lance Edward Gloor, declare as follows:

1. I am the petitioner in the above captioned case.

2. The medical marijuana grow authorizations and patient forms were clearly posted on the wall of the garage of the grow room.

3. The authorization forms posted on the wall were provided by a Washington State licensed doctor. I understood that under Washington law, we could grow 15 plants per patient. We did not grow the maximum allowed, we only grew 73 plants believing we followed Washington State law.



## 80a

1  
2 4. During the raid on the grow room, authorities did not ask me to provide medical  
3 marijuana documents, not the arresting officers on the scene nor any other time. At the time of  
4 my arrest, after I was told I had the right to remain silent and the right to not answer  
5 questions, they asked me if I *had* medical marijuana documents and I chose not to answer any  
6 questions without a lawyer present but they never asked me to *provide* medical marijuana  
7 documents.  
8

9 5. When I was released on bail, I went back to my house to collect my things because  
10 the landlord evicted me. The legal authorities did not take the medical marijuana grow  
11 authorizations or patient forms posted on the wall of the grow room, so I took them to my trial  
12 lawyer, Michael Schwartz, who later withdrew because he became a judge for the Pierce  
13 County Superior Court. A new trial lawyer was assigned as my counsel in my case, Karen  
14 Unger. Mr. Schwartz gave my file to Ms. Unger with the authorizations and patient forms  
15 inside. I did not present them to the district court because I was prohibited from presenting  
16 evidence of compliance with Washington state law as a defense to the federal Title 21  
17 charges.  
18

19 6. During the raid of Lacey Cross, the federal authorities seized the binder locked in a  
20 safe that contain valid medical marijuana authorization forms set up by a Seattle law firm,  
21 Harris Moure (now known as Harris Bricken), by the attorneys Hilary Bricken and Charles  
22 Moure. I do not know what the federal authorities did with the binder but it was not presented  
23 as evidence to the district court because I was prohibited from presenting evidence of  
24 compliance with Washington state law as a defense to the federal Title 21 charges.  
25  
26

