

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2018

LANCE EDWARD GLOOR

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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

JONATHAN S. SOLOVY, Esq.
LAW OFFICE OF JONATHAN S. SOLOVY, PLLC
705 Second Avenue, Suite 1300
Seattle, WA 98104-1705
(206) 388-1090
solovylaw@earthlink.net

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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):

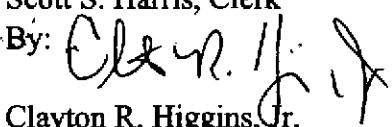
The notarized affidavit or declaration of indigency does not comply with Rule 39 in that all questions must be answered completely.

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.

* 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
FOR THE NINTH CIRCUIT

FEB 20 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

MEMORANDUM*

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

* 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.

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.¹ 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

¹ 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.²

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.³

AFFIRMED.

² 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.

³ 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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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN TACOMA

UNITED STATES OF AMERICA,)
Plaintiff,) No. CR13-5659RBL
vs.)
LANCE E. GLOOR,)
Defendant.)

MOTION HEARING

BEFORE THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT COURT JUDGE

September 8, 2016

APPEARANCES:

Vince Lombardi
Marci Ellsworth
Assistant United States Attorneys
Representing the Plaintiff

Jeffrey Kradel
Attorney at Law
Representing the Defendant

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THE CLERK: This is in the matter of the United States of America versus Lance Gloor, Cause No. CR13-5659RBL. Counsel, please make their appearances.

MR. LOMBARDI: Good afternoon, your Honor. Vince Lombardi and Marci Ellsworth on behalf the United States.

MR. KRADEL: Good afternoon, your Honor. Jeffrey Kradel on behalf of Mr. Gloor, who is present in custody.

THE COURT: Mr. Kradel, Mr. Gloor, good afternoon. This is a motion for reconsideration. I have reviewed the defendant's motion, the government's response, the defense's reply. I have reviewed the transcript of the motion to dismiss, motion in limine, the order following of that hearing. I have reviewed the jury verdict. I have reviewed McIntosh. That is what I have done. I will hear from Mr. Kradel.

MR. KRADEL: Thank you, your Honor. Your Honor, I will try to be brief. You have looked at everything that is relevant here. Obviously we are here for reconsideration, because the law in the circuit was different at the time that we were here before asking the court to stay. It was an open question whether or not this motion to dismiss that was raised had merit, whether the funding rider, in fact, prohibited the federal government from prosecuting individuals involved in

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01:43:17PM 1 medical marijuana.

01:43:18PM 2 The Ninth Circuit gave us, what I would call, a clear
01:43:20PM 3 answer on one hand, that asks a lot of other questions.
01:43:26PM 4 What McIntosh said is, "Government, you are not right,"
01:43:29PM 5 and, "Defense, you are not right either. Defense, you
01:43:32PM 6 think this means the cases all have to be dismissed. It
01:43:36PM 7 doesn't mean that. Government, you think you are free to
01:43:39PM 8 proceed. It doesn't mean that either."

01:43:41PM 9 What it means is that someone who is being prosecuted
01:43:44PM 10 in a state that has medical marijuana laws, by the federal
01:43:47PM 11 government, with this rider in place, that the federal
01:43:51PM 12 government is prohibited from prosecuting those
01:43:53PM 13 individuals if it is shown in an evidentiary hearing that
01:43:56PM 14 those individuals were in full compliance with the state
01:43:59PM 15 law in the state in which they live. That is my reading
01:44:02PM 16 of McIntosh.

01:44:04PM 17 I think in some ways both my motion to reconsider and
01:44:09PM 18 the government's response was almost starting that
01:44:12PM 19 evidentiary hearing, starting the arguments about whether
01:44:17PM 20 or not -- what the result of that evidentiary hearing
01:44:19PM 21 would be in this case. And I don't think that is really
01:44:24PM 22 the issue right now.

01:44:25PM 23 The issue right now is whether or not Mr. Gloor did
01:44:28PM 24 have an opportunity to present evidence that he was in
01:44:31PM 25 compliance with Washington state law, such that it would

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prohibit the federal government from expending funds to
prosecute him.

I have reviewed the transcript of the motion hearing, as well, when Ms. Unger was counsel. I know that the government did not just respond, and say, "You should not dismiss this case." The government took an additional step and said, "You should be prohibited from arguing that compliance with state law is a defense."

At one moment your Honor actually said, "Well, they will be able to go ahead and try to demonstrate that they were in compliance." And Mr. Lombardi responded, "I respectfully disagree." I think the court went back after that and looked at the existing case law and determined that Mr. Lombardi was right.

THE COURT: He was right on the compliance with the law -- the technical compliance with the law. But I said, "They are going to tell their story." And the story was there were a hell of a lot more marijuana plants than were authorized under the statute.

He proffered that he wasn't a medical marijuana user. He ventured a guess that he was -- his clients were maybe ten percent medical marijuana users, and 90 percent were recreational.

How do you get into the lifeboat of strict compliance 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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01:47:39PM 1 there is a loophole in the law.

01:47:42PM 2 I know this court's opinion from reading the previous
01:47:46PM 3 hearings of this case. I think a lot of people share this
01:47:50PM 4 court's opinion about medical marijuana and how it was
01:47:53PM 5 structured in the state before.

01:47:55PM 6 But the reality is that if somebody writes a law, and
01:47:59PM 7 there are loopholes in that law, somebody exploiting the
01:48:02PM 8 loopholes is still in compliance with the law.

01:48:06PM 9 An opportunity was never given here. And I am not
01:48:09PM 10 saying there was any reason for the court to think that
01:48:13PM 11 there should have been. But there was not an opportunity
01:48:15PM 12 here to present the kind of case and the kind of evidence
01:48:17PM 13 that I will present in the evidentiary hearing in this
01:48:20PM 14 case about whether or not Mr. Gloor and his companies or
01:48:24PM 15 companies he is associated with were complying with
01:48:27PM 16 Washington's medical marijuana law.

01:48:30PM 17 It was a poorly written law. It was one that had
01:48:32PM 18 holes that this court is aware of. I could pull up right
01:48:38PM 19 now and show you individuals whose legal careers were
01:48:43PM 20 built upon looking at that law, and telling individuals,
01:48:45PM 21 "If you do these things, you are still in compliance."

01:48:47PM 22 People were prosecuted in state court and were found
01:48:50PM 23 not guilty by juries, offering it as a defense. Cases
01:48:53PM 24 were not pursued because of compliance with it. The fact
01:48:55PM 25 that he was charged in state court tells us nothing about

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01:48:59PM 1 whether or not he was in compliance with state law.

01:49:01PM 2 If the government has the evidence to convince the
01:49:06PM 3 court that they are able to proceed on this case, we are
01:49:09PM 4 moving into the other areas that become the questions that
01:49:11PM 5 McIntosh left unanswered.

01:49:14PM 6 And those are the questions that -- if the government
01:49:16PM 7 presents a five-year period, and they show that for two
01:49:20PM 8 years Mr. Gloor was not in compliance with state medical
01:49:23PM 9 marijuana laws, but for three years he was, is the
01:49:27PM 10 evidence from the three years going to be excluded?

01:49:31PM 11 Mr. Gloor was sentenced not for any particular
01:49:34PM 12 breaking down of a minute period of time, he was hit with
01:49:38PM 13 everything that happened during that time. If he was in
01:49:42PM 14 compliance with state law in some of those actions, the
01:49:47PM 15 government is prohibited from prosecuting him.

01:49:49PM 16 I didn't want to go down that worm hole, because I
01:49:52PM 17 think it is a worm hole, and I think there are many issues
01:49:55PM 18 that are going to arise out of it. They didn't have to
01:49:58PM 19 deal with McIntosh, so they didn't. They left it to the
01:50:01PM 20 trial courts to deal with it.

01:50:02PM 21 But Mr. Gloor never had notice and an opportunity to
01:50:05PM 22 be heard on trying to prove compliance with Washington's
01:50:09PM 23 medical marijuana laws.

01:50:13PM 24 THE COURT: You have been a criminal defense
01:50:15PM 25 lawyer for a lot of years. You are a very good criminal

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defense lawyer. Have you had a suppression motion where
the court did not grant a hearing because the issue is
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.

01:51:06PM 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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01:53:26PM 1
compliance.01:53:27PM 2
THE COURT: Isn't it a question for the court, not
01:53:30PM 3
for the jury?01:53:32PM 4
MR. KRADEL: My reading of McIntosh is it is a
01:53:34PM 5
question for the court, but it is a question for the court
01:53:39PM 6
to determine after the individual defendant is given an
01:53:43PM 7
opportunity to try to prove that point.01:53:48PM 8
So an evidentiary hearing wouldn't just be
01:53:52PM 9
Mr. Lombardi putting up an agent to provide his recall of
01:53:56PM 10
a conversation that took place five years ago with
01:53:58PM 11
Mr. Gloor in an unrecorded interview. It would also be
01:54:01PM 12
Mr. Gloor offering testimony in that regard. It would be
01:54:05PM 13
a description of the exact day-to-day operations of any
01:54:10PM 14
one of those particular dispensaries.01:54:12PM 15
It would be focused not on -- The focus in this case
01:54:15PM 16
was not to try to show, "I complied with state law,"
01:54:21PM 17
because that was not a defense. And while it remains not
01:54:24PM 18
a defense, it is now a defense pretrial. If you can show
01:54:29PM 19
that you were, then the prosecution is not committed to go
01:54:36PM 20
forward.01:54:36PM 21
What I'm saying to the court is that in this
01:54:39PM 22
uncertainty, in this whirlpool under the narrows bridge,
01:54:43PM 23
he should not have to sit in prison while that goes on.01:54:46PM 24
THE COURT: Thank you, Mr. Kradel. Mr. Lombardi.01:54:53PM 25
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?

02:00:27PM 1 MR. LOMBARDI: Yes.

02:00:33PM 2 THE COURT: Have you ever responded to a

02:00:40PM 3 suppression hearing where the judge did not order an

02:00:45PM 4 evidentiary hearing?

02:00:47PM 5 MR. LOMBARDI: Many times.

02:00:48PM 6 THE COURT: Yeah.

02:00:52PM 7 MR. LOMBARDI: I have a sentencing -- This is

02:00:54PM 8 fresh in my mind. I have a sentencing next week. It is

02:00:58PM 9 in front of Judge Coughenour. But, again, he is not the

02:01:02PM 10 only judge who has done this. The defendant made a motion

02:01:03PM 11 to suppress a search. Judge Coughenour looked at the

02:01:08PM 12 papers, and just denied the motion on the papers, and did

02:01:13PM 13 not have a hearing.

02:01:13PM 14 THE COURT: A superior court judge signed a search

02:01:17PM 15 warrant that there was probable cause to believe there was

02:01:19PM 16 a grow operation, a big grow operation. Then we've got a

02:01:26PM 17 motion to dismiss the indictment. I saw the pictures. I

02:01:32PM 18 read the proffer. Even at pretrial I said, "You can tell

02:01:49PM 19 your story, but these defenses are not valid." And then

02:01:56PM 20 the exclamation point is the jury on just the amount of

02:02:03PM 21 marijuana. That strikes me to be outcome determinative on

02:02:13PM 22 the volume, at least, I mean, without the other bells and

02:02:20PM 23 whistles that were argued on your list and all that.

02:02:23PM 24 MR. LOMBARDI: Let's kind of just take a couple of

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02:02:25PM 1 examples from the trial. There is the grow, the
02:02:27PM 2 manufacturing count, which the defendant was convicted on,
02:02:30PM 3 73 plants.

02:02:32PM 4 Remember the testimony, your Honor. They didn't find
02:02:35PM 5 any medical marijuana paperwork, to the best of my
02:02:38PM 6 recollection, at that grow. They certainly didn't find
02:02:40PM 7 the paperwork you would need from different patients to
02:02:43PM 8 justify there being more than the 15-plant limit allowed
02:02:47PM 9 if you yourself were a medical marijuana patient.

02:02:50PM 10 Remember, they Mirandized Mr. Gloor, and went, "Are
02:02:53PM 11 you claiming this is a medical marijuana grow?" The
02:02:56PM 12 detective's testimony was his response was a smirk. He
02:03:00PM 13 knows it is a joke. It is not a medical marijuana grow.
02:03:03PM 14 That's one.

02:03:03PM 15 Second, the evidence that came in about them not
02:03:09PM 16 consistently checking cards. There is Mr. Gloor's
02:03:12PM 17 admission in his proffer that he did not track what
02:03:14PM 18 vendors supplied him with marijuana, because he didn't
02:03:18PM 19 want to. There is ample evidence just from his own
02:03:21PM 20 proffer that he knew he wasn't complying with state
02:03:24PM 21 medical marijuana laws.

02:03:26PM 22 The defense is like, well, you have to look at it at
02:03:30PM 23 different periods of time. Think about the evidence that
02:03:32PM 24 came in during the trial. After the 2011 search warrants,
02:03:35PM 25 when Mr. Gloor reopens ostensibly under new management,

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02:03:39PM 1 but still controlling things behind the scenes, we had two
02:03:42PM 2 different witnesses testify that Mr. Gloor had his
02:03:45PM 3 dispensary employees ship him marijuana in Las Vegas.
02:03:49PM 4 Nobody can say that is authorized by state medical
02:03:53PM 5 marijuana laws.

02:03:56PM 6 Again, the case is very straightforward and very
02:04:00PM 7 clear, we are only limited, stayed, during this funding
02:04:05PM 8 limitation from prosecuting individuals whose conduct was,
02:04:09PM 9 and this is a direct quote from the opinion, "completely
02:04:12PM 10 authorized by state law, by which we mean they strictly
02:04:15PM 11 complied with all relevant conditions imposed by state law
02:04:19PM 12 on distribution, manufacturer," whatever.

02:04:22PM 13 No one could sit through that trial and think
02:04:24PM 14 Mr. Gloor could hit that standard. That is a difficult
02:04:26PM 15 standard to hit.

02:04:27PM 16 The defense suggests you have to look at it monthly or
02:04:29PM 17 daily: Did you comply with state law today? Did you
02:04:32PM 18 comply with state law to today? Did you comply with state
02:04:35PM 19 law today? It is only the days where they didn't that the
02:04:38PM 20 government gets to prosecute. That's not what McIntosh
02:04:40PM 21 says.

02:04:41PM 22 McIntosh says you better be dotting your Is and you
02:04:45PM 23 better be crossing your Ts. If you are, then prosecuting
02:04:49PM 24 you does interfere with the state's implementation of its
02:04:54PM 25 medical marijuana laws. If you're not, prosecuting you

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02:04:57PM 1 does not interfere with the state implementing its medical
02:04:59PM 2 marijuana laws, because you are outside those laws, and
02:05:02PM 3 now you are just committing a federal felony offense.

02:05:05PM 4 Here is the other problem with the defense analysis:
02:05:08PM 5 Again, McIntosh talks about how it is a temporal -- It is
02:05:13PM 6 the whirlpool. This funny limitation was not in place
02:05:16PM 7 when this case was investigated. It was not in place when
02:05:19PM 8 this case was indicted. It came into place partway
02:05:24PM 9 through the prosecution. It is in place now.

02:05:27PM 10 Again, at what point does the government's prosecution
02:05:30PM 11 of Mr. Gloor interfere with Washington's implementation of
02:05:35PM 12 its medical marijuana laws? Does maintaining this case
02:05:38PM 13 today interfere with Washington state's implementation of
02:05:41PM 14 its medical marijuana laws? No. Because they look very
02:05:45PM 15 different today than they did when this case was first
02:05:48PM 16 investigated. Now you have to get a license. That's what
02:05:52PM 17 the regime is today.

02:05:54PM 18 And here is what we know: There is no way in heck
02:05:57PM 19 that Mr. Gloor gets a license from the Washington State
02:05:59PM 20 Liquor and Cannabis Board, because he doesn't qualify. He
02:06:05PM 21 has too much criminal history. He has too much baggage.
02:06:08PM 22 He would not be approved for a license under 502, which is
02:06:12PM 23 now expanded to encompass the medical marijuana system.

02:06:17PM 24 So the system that is in place today is different from
02:06:19PM 25 the system that was in place when Mr. Gloor was

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02:06:22PM 1 investigated. Continuing to prosecute Mr. Gloor,
02:06:24PM 2 prosecuting whatever appeal comes up, will not change
02:06:27PM 3 Washington's system by one iota, because he doesn't
02:06:31PM 4 qualify now. He didn't qualify back then either, for
02:06:33PM 5 different reasons. But now he is just completely out of
02:06:36PM 6 the system. I'm not sure he could get a job with one. He
02:06:40PM 7 certainly could not get a license doing what he was
02:06:43PM 8 purporting to do back in 2011, 2012, 2013. He doesn't
02:06:48PM 9 qualify.

02:06:49PM 10 Yes, there was a cottage industry of lawyers who gave
02:06:52PM 11 advice on how you could comply with state law. As we
02:06:56PM 12 talked about in prior hearings, Mr. Gloor consulted with
02:07:00PM 13 some of those lawyers.

02:07:02PM 14 We interviewed pretty much all of Mr. Gloor's
02:07:04PM 15 employees, and they talked about that. "Oh, yeah, we were
02:07:08PM 16 given training. We had to call people giving us money for
02:07:13PM 17 marijuana a donation. We had to call giving the marijuana
02:07:17PM 18 back a donation." "Why did you call it that?" "Well,
02:07:21PM 19 that's what the lawyers told us we had to do, because you
02:07:23PM 20 can't buy and sell marijuana under state law." Follow-up
02:07:27PM 21 question: "Isn't that what you were doing?" "Oh, yes,
02:07:29PM 22 that's exactly what we were doing."

02:07:33PM 23 So, sure, he talked to some lawyer or two, and
02:07:35PM 24 pretended to follow their advice, right or wrong. But he
02:07:39PM 25 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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02:08:53PM 1 can. But, defense counsel, be very careful about what
02:08:56PM 2 evidence you present, because you know he confessed, and
02:08:59PM 3 you can't present evidence that is inconsistent with
02:09:02PM 4 that."

02:09:02PM 5 The same thing is going to apply here. Mr. Gloor: "I
02:09:07PM 6 am not sick. I have a medical marijuana card, but I am
02:09:10PM 7 not sick. I got it under false pretenses. Which, of
02:09:13PM 8 course, means he is not supposed to be doing any of this
02:09:15PM 9 stuff. You can't be a member of a cooperative if you're
02:09:19PM 10 not sick.

02:09:20PM 11 Remember what the evidence was, your Honor. We put a
02:09:23PM 12 bunch of undercovers on it. You go into Lacey Cross, they
02:09:27PM 13 send you to their pet doctor, doc in a box, who will give
02:09:31PM 14 you a card no matter what. And they give you a discount
02:09:34PM 15 if you are coming from Lance. He knows these people
02:09:38PM 16 aren't sick. And he admitted that.

02:09:39PM 17 He can't now come in, "I want an evidentiary hearing
02:09:42PM 18 where I can put in evidence that contradicts my proffer,
02:09:46PM 19 that contradicts the testimony of my own employees that I
02:09:50PM 20 was really complying with state law.

02:09:52PM 21 I didn't take great notes at sentencing, but I
02:09:55PM 22 remember the court saying that Mr. Gloor has pulled one
02:10:01PM 23 over on a bunch of people. This is part of the same
02:10:04PM 24 thing. Mr. Gloor has been dealing with marijuana since he
02:10:07PM 25 was a kid.

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02:10:07PM 1 I think it was Josh Hoelzer who said, "The great thing
02:10:13PM 2 about medical marijuana is it let us do what we were
02:10:16PM 3 always doing, except now it kind of looked like it was
02:10:19PM 4 legal." The problem is it wasn't, not the way they were
02:10:22PM 5 doing it. Not under state law, and certainly not under
02:10:25PM 6 federal law. Nothing in McIntosh can change that
02:10:28PM 7 conclusion.

02:10:29PM 8 THE COURT: Thanks, Mr. Lombardi. Mr. Kradel.

02:10:32PM 9 MR. KRADEL: Yes, your Honor. I will try not to
02:10:34PM 10 belabor my points, but I'm sure I will.

02:10:37PM 11 People go to lawyers for advice about taxes and what
02:10:40PM 12 to do with their money. They may donate thousands of
02:10:44PM 13 dollars to a non-profit, something for environmental
02:10:48PM 14 concerns, but they are not really environmentalists, but
02:10:51PM 15 they want to lessen their taxes. They are evading taxes.
02:10:54PM 16 They are taking advantage of loopholes in the law.

02:10:57PM 17 When the government stands up here describing how they
02:11:00PM 18 interviewed employees who talked about training, who
02:11:03PM 19 talked about following a program lined out by attorneys,
02:11:09PM 20 that's the business.

02:11:13PM 21 Separating the individual from the business -- What
02:11:17PM 22 happened in this case was Mr. Gloor was indicted,
02:11:20PM 23 prosecuted, and sentenced for everything that the
02:11:23PM 24 businesses were doing. He wasn't indicted and prosecuted
02:11:28PM 25 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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opinion, and, frankly, this court's opinion about whether or not what happened was a lot of people were recreational marijuana users, medical marijuana came into law, and people tried to find a way to fit themselves within that. What this case now says is that if you were in compliance with the law, you get to put on -- you get to come in -- you are not prohibited, and there is not an order that says you can't present it.

THE COURT: What's the argument on, just a discrete issue, the volume of marijuana? What is your argument at hearing?

MR. KRADEL: The thing is, the way the medical marijuana was written at the time, and what attorneys -- and I am not putting myself in this category, because I did not do it, but what attorneys with were advising people is that if you examine it, and you take the number of plants, and you are a provider for this individual, you can have this many plants; and for this individual, you can have this many plants. If there is three of you living in a home, you are going to be a provider for this person, this person, and this person.

So 73 plants in and of itself does not mean you are out of compliance with Washington's medical marijuana law. That was most of the case that is were filed in pursuit.

If you look at McIntosh, they could have said that

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02:14:02PM 1 Kynaston, or however you say that name --

02:14:05PM 2 THE COURT: Frem Nielsen's case.

02:14:08PM 3 MR. KRADEL: Yeah. You don't get an evidentiary
02:14:09PM 4 hearing. Look at how many plants are there.

02:14:12PM 5 THE COURT: They were careful to say "alleged."

02:14:16PM 6 In this case there were not any allegations. The pictures
02:14:25PM 7 were proof positive there were more than a discrete
02:14:28PM 8 number, a certain number.

02:14:30PM 9 MR. KRADEL: Right. And there wasn't any effort
02:14:32PM 10 made, because it was different, to try and -- I don't
02:14:38PM 11 want to put the giant due process billboard up, but it is
02:14:42PM 12 really -- when you think about that concept of notice and
02:14:45PM 13 opportunity to be heard, and a lawyer is making strategic
02:14:49PM 14 decisions about what to present as far as evidence at a
02:14:53PM 15 pretrial hearing, at a trial, you have to take into
02:14:56PM 16 account what has been prohibited, am I going to be wasting
02:14:59PM 17 my time, boring this jury to death with stuff they are
02:15:02PM 18 going to be told to disregard.

02:15:06PM 19 While the story was this was medical marijuana was in
02:15:09PM 20 front of the jury because of what was told, the way that
02:15:12PM 21 it was presented was, "We are just going to show you" --
02:15:16PM 22 It doesn't matter. A number of times the government has
02:15:19PM 23 said it doesn't matter whether they were complying with
02:15:22PM 24 state law. That was the setting when this came through.

02:15:24PM 25 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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I, Barry Fanning, Official Court Reporter for the
United States District Court, Western District of
Washington, certify that the foregoing is a true and
correct transcript from the record of proceedings in the
above-entitled matter.

/s/ Barry Fanning
Barry Fanning, Court Reporter

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1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 LANCE EDWARD GLOOR,

Defendant.

CASE NO. CR13-5659 RBL

ORDER

DKT. #130

14 THIS MATTER is before the Court on the government's Motion *in Limine* [Dkt. #130],
15 asking the Court to exclude any evidence, testimony, or argument relating to Defendant Lance
16 Gloor's defenses: (1) the government committed entrapment by estoppel when it misled him into
17 thinking the sale of medical cannabis was legal, (2) the government violated his alleged right as a
18 medical marijuana distributor to equal protection by selectively prosecuting him, (3) the
19 government cannot interfere with Washington State's ability to implement its law authorizing the
20 sale of medical marijuana under the Consolidated and Further Continuing Appropriations Act of
21 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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Ronald B. Leighton
United States District Judge

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1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF WASHINGTON

3 AT TACOMA

4

5 UNITED STATES OF AMERICA,) NO. CR13-5659 RBL
6)
7 Plaintiff,) December 11, 2015
8 vs.)
9 LANCE E. GLOOR,) Tacoma, Washington
Defendant.) 2:00 p.m.

10

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

14 For the Plaintiff: MR. VINCE LOMBARDI
15 MS. MARCI ELLSWORTH
16 Assistant United States Attorney
17 700 Stewart Street, Suite 5220
18 Seattle, WA 98101

19 For the Defendant: MS. KAREN UNGER
20 332 East 5th Street
21 Port Angeles, WA 98362-3207

22 Court Reporter: Kari Davidson, CSR
23 3641 N. Pearl Street, Bldg. D
24 Tacoma, WA 98407

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

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

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

5 THE COURT: Please be seated. Good afternoon.

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

9 Counsel, please make their appearances.

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

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

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

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

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

22 I have reviewed the Defendant's Motion and Memorandum
23 and attachment. I read the declaration of Kirk Pike. I
24 have reviewed the United States' Opposition and attachments.
25 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 any more --

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 --

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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 --

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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.

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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

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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

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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

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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.)

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1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
3 County of King) ss.4 I, the undersigned Notary Public in and for the
5 State of Washington, do hereby certify:6 That the foregoing transcript of Motion to Dismiss
7 and Motion in Limine proceedings was transcribed under my
8 direction; that the transcript is a full, true and complete
9 transcript of the testimony of said witness, including all
10 questions, answers, objections, motions and exceptions;11 That I am not a relative, employee, attorney or
12 counsel of any party to this action or relative or employee
13 of any such attorney or counsel, and that I am not
14 financially interested in the said action or the outcome
15 thereof;16 That I am herewith securely sealing this transcript
17 and delivering the same to the Clerk of the Court via
18 electronic filing.19 IN WITNESS WHEREOF, I have hereunto set my hand and
20 affixed my official seal this 21st day of April, 2016.21
22 /S/Kari Lee Davidson
23 Notary Public in and for the State
of Washington, residing at Vashon.
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
after a plea of not guilty. Jury Verdict: 01/15/2016

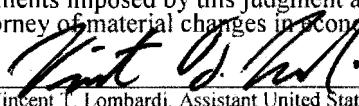
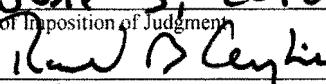
The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
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, Assistant United States AttorneyJune 3, 2016
Date of Imposition of Judgment
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
 The court makes the following recommendations to the Bureau of Prisons:
 to Count 1

*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 Reconation 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>
TOTALS	\$ 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>
TOTALS	\$ 0.00	\$ 0.00	

TOTALS \$ 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.

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1 HONORABLE RONALD B. LEIGHTON
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6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

CASE NO. CR13-5659 RBL

12 VERDICT FORM

13 v.

14 LANCE EDWARD GLOOR,

15 Defendant.

16
17 We, the Jury, being duly empanelled and sworn upon oath, unanimously state the
18 following verdicts:

19 **COUNT 1: CONSPIRACY TO DISTRIBUTE MARIJUANA**

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

22 NOT GUILTY _____ GUILTY X _____

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

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

- 5 (i) 1000 or more kilograms of a mixture or substance containing marijuana; | |
- 6 (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|
- 7 (iii) Between 50 and 99 kilograms of a mixture or substance containing
 marijuana or between 50 and 99 marijuana plants
 (regardless of weight); | |
- 8 (iv) Less than 50 kilograms of a mixture or substance containing
 marijuana and less than 50 marijuana plants. | |

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

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

15 NOT GUILTY _____ GUILTY _____

17 **COUNT 3: MANUFACTURE OF MARIJUANA**

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

20 NOT GUILTY _____ GUILTY X

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

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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 1
6 (ii) less than 50 marijuana plants 1

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

16 I, Lance Edward Gloor, declare as follows:

17
18 1. I am the petitioner in the above captioned case.

19
20 2. The medical marijuana grow authorizations and patient forms were clearly posted
21 on the wall of the garage of the grow room.

22
23 3. The authorization forms posted on the wall were provided by a Washington State
24 licensed doctor. I understood that under Washington law, we could grow 15 plants per patient.
25 We did not grow the maximum allowed, we only grew 73 plants believing we followed
26 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.

81a

1 7. If given the opportunity for an evidentiary hearing, I would ask the following
2 people to testify: a) Dr. Karen La who issued the medical marijuana authorizations for my
3 grow operation; b) Hilary Bricken and Charles Moure who made sure each store was properly
4 licensed in Washington State and in each city and county where each individual store was
5 located plus who drafted our system for customers to sign in and out of the collective garden
6 (previously known as a co-operative) and who set up all new patient paperwork to create a
7 patient file to follow state law for each individual patient and who made sure the stores were
8 set up to strictly comply with Washington State law and medical marijuana guidelines as
9 issued by the state of Washington; c) our Washington state licensed accountant who paid our
10 taxes and issued employee checks; d) Washington state licensed vendors and patients; and
11 e) Washington medical marijuana experts to show we "strictly complied" with Washington
12 State medical marijuana laws.

13

14 8. All of our businesses were properly licensed as non profit in Washington state and
15 non profit businesses can accept cash donations to a) pay employees; b) pay owners' salaries;
16 c) pay utilities; d) pay inventory (medical marijuana and related items); and e) pay for medical
17 marijuana advertising.

18

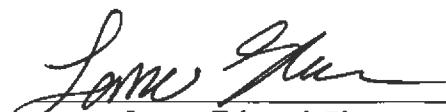
19 9. We were advised by counsel, Hilary Bricken and Charles Moure, that we were
20 complying with all requirements to be a collective garden.

21

22 I declare under penalty of perjury under the laws of the State of Washington that the
23 above is true and correct to the best of my knowledge and information.

24

Executed at Seattle, Washington this 3rd day of March 2018.

25 
26 Lance Edward Gloor