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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12
13 UNITED STATES OF AMERICA,) No. CR. S-06-358 FCD
14 Plaintiff,)
15 v.) **DEFENDANT'S SENTENCING MEMORANDUM**
16 JEFFRE SANDERSON,) Date: February 19, 2008
17 Defendant.) Time: 10:00 a.m.
18) Judge: Hon. Frank C. Damrell
19)

20 **I. Introduction.**

21 Jeff Sanderson's friends, neighbors, and family join together to
22 urge the Court to show leniency in sentencing Jeff. They know Jeff and
23 they know that his motives in cultivating cannabis for medical and
24 spiritual use were entirely beneficent. They know Jeff and they know he
25 would never profit off the suffering of others, or contribute to others'
26 suffering. They know Jeff and they know that he is conscientious,
27 hardworking, and sincere. All of them are also mindful of this Court's
28 dual responsibilities to uphold the law and show justice.

1 For the reasons stated below, the circumstances of this case,
2 including the history and characteristics of Mr. Sanderson, warrant a
3 sentence of probation. The Supreme Court recognized only two months ago
4 that "[p]robation is not granted out of a spirit of leniency [and] is
5 not merely "letting an offender off easily."" Gall v. United States,
6 ___ U.S. ___, 128 S. Ct. 586, 596 n. 4 (2007). The not-for-profit
7 cultivation of cannabis for medical purposes differs profoundly from the
8 illicit sale or recreational "weed," but federal sentencing guidelines -
9 written more than 10 years before California amended its constitution to
10 authorize the therapeutic use of cannabis - were written to address the
11 latter conduct, not the former. None of the other factors that guide the
12 Court at sentencing favor imprisonment of a humanitarian who has run
13 afoul of a law that was written without foresight about the merits of his
14 conduct.

15 **II. Factual Background.**

16 **A. Jeff's Character.**

17 Jeff Sanderson is a 27-year-old Plumas County man, born and raised
18 a Christian, who has worked at many jobs and who today regards himself as
19 a self-sustaining organic farmer. For most of the past five years he has
20 supported himself and his family by growing and trading his own food and
21 by working to help others. His character is well described by the 20
22 friends, neighbors, and family who have written letters to the Court on
23 his behalf.¹

24 Jeff differs from other defendants in federal drug cases because he
25 cultivated cannabis to help others, without compensation, believing after
26 a series of personal experiences that cannabis is healthful and that it

27
28 ¹ The probation officer has also forwarded three letters to the
Court that are critical of Mr. Sanderson's activities. These letters
are discussed below.

1 holds a unique and effective ability to heal. Two events in Jeff's life
2 led him to believe in the therapeutic value of medical cannabis.

3 First, Jeff himself was born with chronic asthma that required him
4 at one time in his life to use six different inhalers, some of which
5 contained steroids. Use of these prescription medications kept him out
6 of sports when he was a schoolboy until, around age 16, a friend from his
7 local youth ministry recommended he try taking a single inhalation of
8 cannabis whenever he began to feel short of breath. In a narrative about
9 his experience, Jeff writes:

10 I did as I was instructed on the following day when I noticed
11 myself wheezing. I was astonished at how considerably the herb
12 assisted me in breathing entirely deep breaths. Superior
13 results were realized over the pharmaceutical inhalers (which
14 also had many ill side effects).

15 Since that time, Jeff has returned to prescribed medicine when cannabis
16 is unavailable, but each time he has had to curtail his physical
17 exertion. He believes that his past use of cannabis has increased his
18 endurance, bolstered his immune system, and improved his overall health.

19 The second incident occurred in 2001 and 2002, when Jeff's
20 girlfriend, Meegan Wieczorek, was diagnosed with osteosarcoma, a rare
21 form of bone cancer. Meegan's story is documented in her letter to the
22 Court (provided under separate cover) and in a news article (exhibit A).

23 Meegan writes:

24 It was during my chemotherapy treatments that Jeff and I
25 learned about medicinal marijuana. The doctors at UCSF had me
26 on a regular dose of Marinol (synthetic THC), and another
27 doctor wrote me a letter of recommendation for the use of
28 medical cannabis. The same doctor introduced us to a medical
marijuana caretaker who provided us with both medicine and
knowledge. The doctors at UCSF allowed me to use cannabis in
the hospital through the form of vaporization because that was
the only relief I could get from the ill effects of the
chemotherapy. After my treatments were over Jeff was inspired
to help others in need. At this point Jeff apprenticed under
our medical marijuana caretaker. He learned all there was to
know about medical marijuana and the laws to protect both the
patients and caretakers.

1 Jeff stood by Meegan during her months of therapy and the removal of her
2 leg, and he remembers every moment spent in the hospital. He recalls the
3 oncologist suggesting that Meegan use cannabis to deter "the violent
4 nausea, lack of appetite, and depression" that were side-effects of the
5 chemical treatments. He writes,

6 Meegan started acupuncture therapy prior to chemotherapy the
7 following week. During discussions with the acupuncturist,
8 again the herb was suggested as a preventative and deterrent .
9 . . . [He also] suggested using the herb in infused meals, in
10 a vaporizer, in a topical massage oil, and in a smoking pipe.
11 He explained that the more THC present in Meegan's system
12 during these treatments, the increased probability of cancer-
13 free survival in her life. He added that cannabis is one of
14 the safest therapeutic substances known to man and an overdose
15 has never been recorded.

16 Jeff recalls that, despite the oncologist's advice, Meegan did not
17 begin using cannabis until after her initial treatments, which "went
18 worse than expected" -- "violent nausea, hourly vomiting, absence of
19 appetite, alopecia, constipation, and depression were upon Meegan at
20 once."

21 While in the hospital, Jeff and Meegan were approached by a man who
22 held himself out to be a Buddhist Monk and who had been told by another
23 patient or visitor that Meegan needed assistance.

24 I ushered the man into Meegan's hospital room and we began
25 conversing with Meegan. She was very weak and tired, but she
26 tried her best. The man had brought for us a paper grocery bag
27 full of female cannabis buds and edibles laced with herb oil.
28 I remember him saying, "Use them up as quickly as Meegan's body
will allow. The herb will pull you through. Here is my phone
number. Please call when you run low. I will donate as much
as I can, as long as you promise me one thing - that you do not
sell what I'm donating to you. This is for your healing. God
bless you," and he left.

29 In the coming months, the man continued to provide cannabis for Meegan
30 and also provided a vaporizer, one of 100 donated to him by the
31 manufacturer for people in need.

1 Eventually, Jeff asked the monk what he could do in exchange for
2 what Meegan had been given, and during a visit from Meegan's family, Jeff
3 departed to Petaluma "to help the compassionate monk who so graciously
4 helped us, at his temple. I arrived and realized how simple this monk's
5 life was. Chickens, goats, geese, a small wood-heated mobile home, and
6 a large vegetable/herb garden." Over the next few months, Jeff helped
7 the man split wood and tend to his own home.

8 As Meegan's last chemotherapy treatment neared the doctors were
9 amazed as how well she was doing: mentally, emotionally, and
10 physically. Her body scans revealed no signs of cancer
11 whatsoever! We felt honored when several hospital board
12 members asked if they could interview us privately concerning
13 the ultimately very successful outcome It was our firm
14 belief that the healing herb utilized in its many forms during
15 the chemical treatments were the secret to Meegan's great
16 success overall. To this day, UCSF allows vaporizing of herb
17 and consumption of herb-laced edibles on all cancer floors.

18 Today, Meegan writes, "I think Jeff is an amazing person. I don't
19 know if I could have survived my surgeries and the treatments without
20 him. No one I have ever met has ever done anything so selfless for me
21 before or since."

22 After Meegan's recovery, Jeff moved to Alaska. "I felt like doing
23 something completely different for a short time, something for myself,"
24 so he landed a job placer mining in Alaska. After returning to Meegan
25 and Plumas County in 2003, Jeff apprenticed to the Petaluma man who had
26 assisted in Meegan's therapy. "For the next two years I resided in the
27 Buddhist temple, learning to live life sustainably. I also assisted in
28 transportation to hospitals, hospices, and homes of sick patients, many
of whom had cancer or AIDs." The monk:

 taught me that assisting people with this healing herb was a
very fulfilling life. His main piece of advice was to never
become involved in the sales of herb. We are tricked into
thinking one needs money in this time and space that we find
ourselves in. And that the life of the farmer is the holiest
occupation available, yet it requires a very simple life.

1 Everything you really need in this life can come from your
2 garden.

3 In 2004, Jeff returned to Plumas County, where he began dating Alice
4 Wiegand, who is now his wife and codefendant. Alice's mother, Mary,
5 writes from Quincy, California:

6 I have found Jeff to be trustworthy and honest, home and family
7 oriented, health and nutrition conscious, and extremely
8 intelligent. He is energetic and a tireless worker. Since he
9 and my daughter have been together, he spends the majority of
his time working on the property, which is an organic vegetable
farm.

10 **B. The Presentence Report and the Critical Letters.**

11 As is often the case, the presentence report focuses on the police
12 investigation, pretrial matters, and the guidelines. Although Jeff
13 volunteered to answer any questions the reporter wished to ask, the
14 reporter expressed his preference for a written statement, leaving to
15 defense counsel and to the character references the task of illuminating
16 Jeff's history and characteristics. Accordingly, a number of statements
17 made in the report merit comment.

18 **1. Motion to Strike or Not Consider Disputed Information.**

19 The revised PSR added a paragraph not appearing in the draft
20 describing "three character letters . . . against the defendant." PSR at
21 ¶ 38. These three letters were submitted to the Court atop a packet of
22 18 favorable letters, presumably so that the Court would read them first,
23 before it reads the letters from Jeff's father, parenting counselor,
24 brother-in-law, mother-in-law, or former girlfriend.

25 As Jeff's attorney, I move to strike paragraph 38 of the presentence
26 report and to strike the first of these letters, which is signed, "A
27 Plumas County Resident." I also move the Court to determine that it will
28 not consider in sentencing certain unsupported factual assertions made in

1 the remaining two letters. I make this motion pursuant to Federal Rule
2 of Criminal Procedure 32(i)(3)(B), which requires the Court to either
3 rule on "any disputed portion of the presentence report or other
4 controverted matter" or to "determine that a ruling is unnecessary
5 because the matter will not affect sentencing, or because the court will
6 not consider the matter in sentencing."

7 The first letter is anonymous and cannot be considered for any
8 purpose because it contains false information and no indicia of
9 reliability. The guarantee of due process has long assured that a man
10 cannot be sentence based on information that is untruthful or cannot be
11 proved. United States v. Tucker, 404 U.S. 443, 447 (1972) ("we deal here,
12 not with a sentence imposed in the informed discretion of a trial judge,
13 but with a sentence founded at least in part upon misinformation of
14 constitutional magnitude"); Townsend v. Burke, 334 U.S. 736 (1947). The
15 Sentencing Guidelines provide that, while the court may "consider
16 relevant information" without regard to the Rules of Evidence, the
17 information must have "sufficient indicia of reliability to support its
18 probable accuracy." U.S.S.G. § 6A1.3(a). The Ninth Circuit also
19 requires indicia of reliability before hearsay may be considered. United
20 States v. Berry, 258 F.3d 971, 976 (9th Cir. 2001).

21 This letter, which should never have been provided to the Court,
22 makes numerous claims about Mr. Sanderson that are refuted by the
23 presentence report or by the character references²: that Mr. Sanderson
24 "Smokes Marijuana day and night", "Has never been gainfully employed nor
25 paid taxes", "Has no respect for the law", has never voted, never
26 attended church, or never volunteered in any organization. Each of these

27
28 ² Many of the character references were signed under oath and
subject to the penalty of perjury, rather than subject to the "complete
autonomy" requested by "A Resident."

1 claims is refuted in the PSR or in the references, as is the suggestion
2 that Jeff sold marijuana.

3 After the probation officer forwarded the letters to the Court and
4 counsel, Mr. Sanderson read them for the first time and sent letters of
5 apology to the two men who signed their names. However, because the
6 authors of these letters also make factual claims that Mr. Sanderson
7 disputes, counsel asked an investigator to contact them. Only one, the
8 author of the letter dated December 3, responded to our inquiry. On
9 January 24, 2008, he told defense investigator Henry Hawkins that he had
10 no evidence to back up his suggestions that Jeff sold marijuana. Ex. B.
11 He admitted also "that he had no evidence that Mr. Sanderson's motive was
12 other than altruistic." Id.

13 To the extent these letters express anxiety about Mr. Sanderson's
14 conduct in cultivating cannabis in Rush Creek canyon, the writers are
15 free to express their opinions and the Court may consider them. But the
16 unsupported and false factual inferences they make may not be considered
17 without violating due process. Accordingly, Mr. Sanderson asks the Court
18 to determine that these factual assertions will not be used in
19 determining the sentence.

20 **2. Additional Comments About the PSR.**

21 The PSR makes a number of factual assertions that require
22 illumination or correction to assure that the Court has an accurate and
23 fair picture of Mr. Sanderson and his conduct.

24 **a. ¶ 8 re Income Verification.**

25 This paragraph states that Jeff, while on Pretrial Services
26 supervision, "did not provide any verification of his income or efforts
27 to secure verifiable employment." In informal objections, we provided an
28 affidavit explaining why this was so and asked the probation officer to

1 revise the report, but he declined to do so. The probation officer has
2 Jeff's sworn affidavit, in which he describes his regular communication
3 with Pretrial Services about his employment and about obligations that
4 made employment difficult.

5 During the first six months of his release, he was unable to seek
6 employment because of preexisting obligations (primarily, the education
7 and reunification process he was required to complete by Child Protective
8 Services). At the end of that period, in April 2007, he sought work
9 through Work Connection in Quincy but met with little success because his
10 pending charges were known in the local community. Shortly afterwards,
11 in May, Alice gave birth to Jahson, their second son. Despite her need
12 for care, Jeff worked numerous odd jobs, frequently for absentee owners
13 who did not provide written verification of his work.

14 Despite the statement in paragraph 8, many of the references and the
15 PSR itself attest to Jeff's character for hard work. His mother-in-law
16 describes him as "a tireless worker." Digger Dan of Belden, a few miles
17 down river from where Rush Creek meets the Middle Fork Feather, writes
18 that "Jeff and his wife Alice have a large vegetable garden (now gone
19 fallow) that was a sort of co-op for the neighborhood." His wife's aunt
20 from Medford, Oregon, writes that, during her two-week visit in June
21 2007, Jeff

22 would go to work before 7 a.m., at physical labor where he
23 piled rocks on palettes until the heat of the day a little past
24 noon. Sometimes after he got home he would play with Jamie or
25 work in the garden and hold the baby while his wife attended to
another task Often he went out after a rest to clear
a waterline or help a neighbor with a project like chopping or
stacking wood.

26 A neighbor in Twain, retired after 33 years with Chevron at the Richmond
27 oil refinery, writes that Jeff "is well regarded as a cement finisher,
28 rock wall builder, and carpenter. Many of my neighbors have used him to

1 do work at their homes and he is highly recommended." The general
2 manager of the Quincy Natural Foods Co-op writes that Jeff "is a very
3 hard worker. He has been extremely helpful to many people in our
4 community who needed assistance. From helping someone get firewood to
5 construction and repair on a neighbors' home, he is the type of person
6 who will bend over backwards to help out anyone in need."

7 **b. ¶¶ 8 & 10 re Follicle Testing of James.**

8 At numerous places, including the justification section of the
9 report, the PSR notes that Jamie Sanderson's hair tested positive for
10 cannabis - "15 times above the cutoff limit for marijuana."

11 This information should play no part in determining the sentence in
12 this case. The reasons are many and will be specifically enumerated
13 here.

14 First, the actual test result (ex. C) does not bear the boy's
15 correct name (it lists a result for Jamie Sanders, although the date the
16 sample was taken is the day of the Sandersons' arrests).

17 Second, this writer cannot find a single federal case deeming the
18 results of hair follicle testing to be reliable and admissible under
19 Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).³

20 Third, hair follicle testing is useless to determine whether a
21 substance has been *ingested* because hair may test positive based solely
22 on environmental exposure, such as to smoke or perspiration. On January
23 18, 2008, toxicologist Jeffrey Zehnder of Sacramento explained to defense
24 counsel that results of follicle testing are generally not used in court

26 ³ The only reported case, United States v. Nimmer, 43 M.J. 252
27 (1995), is from the Court of Appeals for the Armed Forces, which
28 remanded a case to a new convening authority to determine whether the
results of hair follicle testing for drugs could be admitted. In
California, a single unreported case was found, rejecting a follicle-
testing report for lack of authentication.

1 for that reason. Federal Probation does not use hair-testing for persons
2 under supervision. In federally-regulated employment programs, only
3 urine is tested. Substance Abuse and Mental Health Services Admin.,
4 "Drug Testing in the Workplace" (attached as exhibit D). SAMHSA notes
5 that hair testing is only used in "unregulated, private sector programs"
6 and that urine testing is favored "because of its proven accuracy,
7 reliability, and fairness." Id.

8 Fourth, the ¶ 8 comment about "15 times the cutoff limit" is
9 misleading. The "cutoff limit" is simply a floor below which THC is not
10 reported and no study known to this writer enables this Court to
11 determine whether a hair test result of "1.56 pg/mg" is significant of
12 anything other than environmental exposure.

13 The Sandersons recognize that, despite the above considerations,
14 their son would have had many chances to encounter THC in his
15 environment. Like any child, he played outside in the garden, where
16 cannabis grew. Cannabis was used in the home. In their religious
17 practice, the Sandersons also use cannabis in an anointing oil having no
18 psychoactive properties (generally, cannabis must be heated to activate
19 psychoactive components, but the oil the Sandersons use is not heated).
20 It is also likely that the boy was exposed to cannabis through nursing.

21 However, it would not be just to punish either of the Sandersons
22 more harshly based on evidence that their children were exposed to
23 cannabis, for a number of reasons.

24 First, Jeff's knowledge and awareness of the benefits and
25 liabilities of cannabis far exceeds the average person's knowledge about
26 that substance and also exceeds the average person's knowledge about
27 common substances known to be more harmful, such as alcohol and tobacco.
28 For example, during Alice's pregnancy, Jeff reviewed studies concerning

1 the effects of cannabis on children, and, when asked by this writer, was
2 able to call to mind the work of Dr. Melanie Dreher, Dean of Rush
3 University College of Nursing, who in 1994 published "Prenatal Marijuana
4 Exposure and Neonatal Outcomes in Jamaica: an Ethnographic Study" in
5 *Pediatrics* (Feb. 1994) vol. 93, no. 2 (abstracted in exhibit E). Dr.
6 Dreher's study found no differences at various ages between Jamaican
7 children who were exposed to cannabis and those who were not.

8 Second, with few exceptions, scientific studies have generally found
9 prenatal and natal exposure to cannabis not to be harmful:

10 Dozens of studies have compared the newborn babies of women
11 who used marijuana during pregnancy with the babies of women
12 who did not. Mainly, they have looked for differences in birth
13 weight, birth length, head circumference, chest circumference,
14 gestational age, neurological development, and physical
abnormalities. Most of these studies, including the largest
study to date with a sample of over twelve thousand women, have
found no differences between babies exposed to marijuana
prenatally and babies not exposed.

15 L. Zimmer & J. Morgan, MARIJUANA MYTHS MARIJUANA FACTS: A REVIEW OF THE SCIENTIFIC
16 EVIDENCE (Lindesmith Ctr. 1997).

17 This evidence is consistent with evidence that cannabis is
18 significantly less harmful than alcohol and tobacco, to which countless
19 American children are exposed daily. In March 2007, a leading medical
20 journal published an article assigning "mean harm scores" to drugs of
21 potential misuse and ranking their potentials for harm, from most
22 dangerous to least dangerous, as follows:

- 23 1. Heroin
- 24 2. Cocaine
- 25 3. Barbiturates
- 26 4. Street methadone
- 27 5. Alcohol
- 28 6. Ketamine
7. Benzodiazepines
8. Amphetamine
9. Tobacco
10. Buprenorphine
11. Cannabis

1 "Development of a rational scale to assess the harms of drugs of
2 potential misuse," The Lancet, v. 369, pp. 1047-1053 (March 24, 2007)(an
3 article from the London Times about the study and a copy of the study
4 itself may be found in exhibit F).

5 This evidence is cited not to defend or justify the exposure of any
6 child to cannabis, but to show that Jeff Sanderson studied the evidence
7 that exposure to cannabis, deliberate or inadvertent, would not harm his
8 child. The evidence also points out the hypocrisy of claiming, on one
9 hand, that evidence of Jamie's exposure to cannabis aggravates Jeff's
10 offense, when courts are rarely mindful of the routine exposure of
11 countless other children to tobacco and alcohol.

12
13 **c. ¶ 68 re "offense . . . is aggravated by"
son's testing positive for marijuana.**

14 The PSR states that the offense is "aggravated" by the boy's
15 positive test for marijuana. The preceding section identified reasons
16 why the Court should not use this uninformed assumption in determining
17 the sentence. This section notes evidence largely ignored in the PSR
18 that refutes the implicit suggestion that Jeff lacks concern about the
19 health and welfare of his children.

20 The PSR mentions that Jeff was "drug tested 2 or 3 times a week" by
21 CPS in Plumas County after his son Jamie was taken, PSR at ¶ 8, and
22 concludes that Jeff and Alice regained full custody of Jamie in February
23 2007. PSR at ¶ 9. However, it fails to mention that from the time of
24 their arrest in August 2006 until after Jamie returned in February 2007
25 both of the Sandersons participated in an extensive reunification program
26 requiring them to prove their worth as parents on a daily basis.

27 Their program required them to meet frequently with counselors and
28 social workers, undergo psychological evaluations, and to travel

1 extensively just to visit Jamie, who was first placed with Jeff's sister
2 in Sacramento County, about three hours from home, and then later with
3 Jeff's grandparents in Chico, about an hour away from home. Although
4 cannabis is not addictive and neither of the Sandersons are addicted to
5 any substance, both attended AA/NA meetings twice weekly, per the
6 County's requirements. Both parents actively participated in parenting
7 classes and completed an eight-week Healthy Families Parent Education
8 Program at the Indian Valley Resource Center. Both parents participated
9 in 12 weeks of individual child development and parenting instruction
10 with an early childhood development specialist. Both parents underwent
11 separate mental health assessments and psychological evaluations during
12 Jamie's absence.

13 In addition, many of the character references specifically note
14 Jeff's excellence as a father. Susie Wilson, an early childhood
15 development specialist assigned to his case by Plumas County, writes in
16 a letter to the Court that, while she was "dismayed by Jeff's second
17 arrest" in October, for which he remains detained by this Court,

18 During the months I have known and worked with him, he has
19 impressed me with being an outstanding individual. I have seen
20 him to be hardworking in his role as a father and family
21 provider. He has constantly been gracious, well mannered and
22 thoughtful in our interchanges. He is tender and nurturing
23 with his children and partner. He demonstrates kindness, and
24 a community spirit

25 Possibly the most enjoyable part of my association with Jeff
26 Sanderson has been the lively exchange of child development
27 information. Regardless of what age/stage Jeff's sons are at,
28 he has made the effort to educate himself about developmental
29 issues related to those stages so that he is prepared to parent
30 in the most effective way possible. He asks appropriate and
31 well thought out questions, and has shared information with me
32 that is often far beyond that possessed by most parents. In
33 fact, Jeff's level of interest and knowledge about parenting
34 and child development equals that of many early childhood
35 development professionals.

36 In months of observing Jeff with his children, I was further
37 impressed with his role-modeling of appropriate behaviors, the

1 quality of his interactions, and the appropriateness of
2 boundaries being established for their safety and education.

3 Meegan's friend Thea McGaffey writes, "Now, as a new father, [Jeff] has
4 shown me how much love he is really capable of. Seeing him with his
5 children is a joy. He is one of the sweetest, most loving fathers I have
6 ever seen." Mary Wiegand, grandmother of the boys, writes that Jeff

7 spends countless hours with both babies, carrying them around
8 the farm in their slings, feeding and changing them, lulling
9 them to sleep and playing with them.

10 He especially emphasized early learning with Jamie and has
11 taught him his colors and shapes as well as letters and
12 numbers. The lack of this daily reinforcement while his father
13 is gone is very noticeable in Jamie since [he] has been in
14 foster care.

15 During her June 2007 visit, Alice's aunt, Ellen Wakefield, observed that
16 Jeff, although "as weary as Alice from lack of sleep[,] never wavered in
17 his attentiveness to both babies and thoughtfulness to Alice and to me –
18 the helper." Nearly all who have written comment on Jeff's qualities as
19 a father. Friend Micah Bigelow writes, "I have never met a family with
20 so much time spent with their children teaching them and loving them.
21 Jeff and Alice are devoted parents and have provided the safest and
22 healthiest environment I have ever witnessed for their children." Ms.
23 McGaffey and Mr. Bigelow, of course, observed Jeff as a parent long
24 before Jamie was taken from him.

25 In light of this powerful evidence, it would be unjust to punish
26 Jeff Sanderson more harshly because one of his children tested positive
27 for exposure to cannabis. Both boys are healthy. Both parents are wise,
28 skilled, and loving. No evidence shows that Jamie had ingested cannabis
and, indeed, a much stronger argument may be made that greater harm was
done to him when he was taken from his parents.

//////

1 d. ¶ 68 re "offense is aggravated by him continuing
2 to grow marijuana while on pretrial
3 supervision."

4 During 2007, while pending trial on the indictment, Jeff planted
5 cannabis once again. When police raided his property on October 3, they
6 counted "43 plants." Specifically, they found four plants in one
7 greenhouse, five in another, and about eight in the basement; the rest of
8 the "plants" were unrooted cuttings from some of the 17 plants that had
9 matured. Posted near the plants were religious documents reflecting the
10 spiritual purpose of this cannabis.

11 The PSR argues that this conduct is unlawful and "aggravates" the
12 offense. However, the argument rests on two assumptions that are belied
13 by other evidence: first, that Jeff's conduct violated the law and,
14 second, that he knew or believed his conduct violated the law. Because
15 the government opted to dismiss the charge based on this conduct, the
16 Court need not decide whether Jeff's conduct *did* violate the law, but the
17 Court must note *why* Jeff acted, because -- contrary to the PSR's
18 assumption -- his purpose was once again *not* grounded in criminality

19 As the PSR reflects, Jeff is an adherent of Rastafari. The Ninth
20 Circuit Court of Appeals describes Rastafari:

21 It is a religion which first took root in Jamaica in the
22 nineteenth century and has since gained adherents in the United
23 States It is among the 1,558 religious groups
24 sufficiently stable and distinctive to be identified as one of
25 the existing religions in this country Standard
26 descriptions of the religion emphasize the use of marijuana in
27 cultic ceremonies designed to bring the believer closer to the
28 divinity and to enhance unity among believers. Functionally,
 marijuana - known as ganja in the language of the religion -
 operates as a sacrament with the power to raise the partakers
 above the mundane and to enhance their spiritual unity.

26 United States v. Bauer, 84 F.3d 1549, 1556 (9th Cir. 1995)(citations
27 omitted).

28 /////

1 When Jeff planted new cannabis in the summer of 2007, he understood
2 that, in light of the Supreme Court's decision in Gonzales v. Raich, 545
3 U.S. 1 (2005)(holding that the Controlled Substance Act applies to the
4 intrastate cultivation of marijuana for medical purposes), he would have
5 to suffer penal consequences for violating federal law. However, when he
6 acted, he was convinced -- not without good reason -- that the First
7 Amendment authorized him to cultivate cannabis for spiritual use.

8 While most of what he planted in 2006 was earmarked for designated
9 medical patients, some of that cannabis had been intended for his own
10 spiritual use. Cannabis has long held a spiritual allure to him, as it
11 has to others for thousands of years.⁴ Its allure is unsurprising,
12 perhaps, given Jeff's experience with relief from asthma as a young man
13 and the recovery of his girlfriend Meegan from a virulent form of cancer
14 only a few years later.

15 In cultivating cannabis for either reason -- medical or spiritual --
16 Jeff consulted with persons of authority before acting. Before he became
17 a "caregiver" under California law, for example, he met with attorneys in
18 San Francisco who are known for handling cultivation cases.⁵ Before he

20 ⁴ For example:

21 According to the *Vedas*, the four seminal books of the Hindu
22 faith written in Vedic (early Sanskrit) about 1100 BC, the
23 god Shiva brought cannabis down from the Himalayas for the
24 pleasure of mankind The *Atharva Veda*, the fourth
25 book, says one communes with Shiva through the use of
26 cannabis, calls it one of the five sacred plants and contains
27 a prayer asking it to deliver mankind from disaster, disease
28 and demons.

29 M. Booth, *CANNABIS: A HISTORY*, p. 20 (St. Martin's Pr. 2003).

30 ⁵ As discussed more fully below, they provided him with
31 extensive advice about adhering to California law authorizing
32 cultivation of marijuana for medical use. They also provided him with
33 Exhibit G, a letter from the Sheriff in Plumas County explaining County
34 policy regarding medical marijuana: "we follow the guidelines set

1 planted cannabis for religious use, he consulted with spiritual leaders.
2 Two men in particular -- Rev. Tom Brown and Rev. Roger Christie, both of
3 whom run Rastafari-affiliated U.S. churches promoting the spiritual use
4 of cannabis⁶ -- advised him that it is entirely lawful to cultivate
5 cannabis for religious use.⁷

6 This evidence refutes the assertion at ¶ 68 that "the offense . . .
7 is aggravated by him continuing to grow marijuana while on pretrial
8 supervision" and the suggestion inherent in ¶ 62 that his conduct was
9 unquestionably wrongful. Jeff's belief that it is lawful to possess
10 cannabis for religious use is supported not merely by his religion, but
11 by the federal courts.

12 There is no need in this *sentencing* proceeding to decide whether
13 Jeff's cultivation in 2007 was lawful. But the Court should recognize
14 that, notwithstanding the narrow view of the PSR, Jeff's *beliefs* rested
15 on specific legal precedents that both the government and the Court are
16 entrusted to uphold:

17 (1) The First Amendment to the Constitution, which has
18 provided for the past 217 years that "Congress shall make no
19 law respecting an establishment of religion, or prohibiting the
20 free exercise thereof"

21 (2) The Religious Freedom Restoration Act of 1993, 107 Stat.
22 1488, as amended, 42 U.S.C. § 2000bb *et seq.* Congress enacted
23 RFRA specifically to undo the Supreme Court's ruling in
24 Employment Div., Dept. Of Human Resources of Ore. v. Smith, 494
25 U.S. 872, which rejected a challenge to an Oregon statute that

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6 For more information on Rev. Christie, see www.thc-ministry.org, and for more information on Rev. Brown, see www.FirstChurchMagi.org.

7 Some of the related documents found when his house was searched in October 2007 may be found in exhibit H. Exhibit I, a version of which he also had, is a news article from the Hawaii Tribune-Herald specifically describing United States v. Bauer, 84 F.3d 1549 (9th Cir. 1995), which expressly recognized a defense to marijuana-possession charges resting on the Religious Freedom Restoration Act.

1 denied unemployment benefits to drug users, including Native
2 Americans who use peyote sacramentally. Under RFRA, the
3 federal government may not substantially burden a person's
4 exercise of religion, even by a rule of general applicability,
5 unless it can "demonstrat[e] that application of the burden to
6 the person - (1) is in furtherance of a compelling government
7 interest; and (2) is the least restrictive means of furthering
8 that compelling governmental interest." 42 U.S.C. § 2000bb-
9 1(b).

6 (3) The two published Ninth Circuit cases recognizing a
7 defense founded on RFRA to criminal charges for possession of
8 marijuana: (a) United States v. Bauer, 84 F.3d at 1559
9 (vacating convictions of possessing marijuana and holding that,
10 "[u]nder RFRA . . . , the government had the obligation, first,
11 to show that the application of the marijuana laws to the
12 defendants was in furtherance of a compelling governmental
13 interest and, second, to show that the application of these
14 laws to these defendants was the least restrictive means of
15 furthering that compelling governmental interest"); and (b)
16 Guam v. Guerrero, 290 F.3d 1210 (9th Cir. 2002)(reiterating rule
17 of Bauer but holding it to be no defense to distribution
18 charges).

13 (4) The unanimous opinion of the Supreme Court in Gonzales
14 v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418
15 (2006), affirming an order enjoining the United States from
16 enforcing the Controlled Substances Act to ban importation of
17 hoasca, from which members of the Uniao do Vegetal make a
18 sacramental tea used in communion ceremonies. Hoasca contains
19 a hallucinogen, DMT, that, like cannabis, is a Schedule 1
20 controlled substance. In upholding the injunction, the Court
21 specifically rejected the argument that "the Controlled
22 Substances Act establishes a closed regulatory system that
23 admits of no exceptions under RFRA." Id. at 435. First, the
24 government has long excepted peyote, a Schedule 1 substance
25 used in Native American religious ceremonies, from CSA
26 prohibition when used for religious purposes. The Court
27 observed:

21 The Government's argument echoes the classic rejoinder of
22 bureaucrats throughout history: If I make an exception
23 for you, I'll have to make one for everybody, so no
24 exceptions. But RFRA operates by mandating consideration,
25 under the compelling interest test, of exceptions to
26 "rule[s] of general applicability." Id. at 436.

25 The opinion in Uniao do Vegetal lends credence to Jeff's belief that
26 his cultivation of cannabis cannot be prohibited by the Controlled
27 Substances Act in light of RFRA. Chief Justice Roberts, in one of his
28 first opinions, cautioned the government not to select which laws it

1 chooses to enforce: "The Government repeatedly invokes Congress'
2 findings and purposes underlying the Controlled Substances Act, but
3 Congress had a reason for enacting RFRA, too." Id. at 439.

4 Jeff's decision to cultivate cannabis for religious use led to his
5 arrest and he has been held in federal custody since, based on the
6 magistrate judge's finding that he violated his conditions of release.
7 But the worst that can be said about his conduct is that, when he sought
8 advice from others, he cast his net too short and did not seek advice
9 from those who might have recommended caution in tilting at too many
10 windmills at once. Since that time, he has agreed that he will not act
11 "until I have been given permission" to do so. PSR at ¶. Based on his
12 character as his many references have described it, his word can be
13 trusted.

14 **e. ¶¶ 63 & 67 re Jeff's "strong belief."**

15 The PSR notes Jeff's "strong belief" in religious and medicinal use
16 of marijuana. While it does not name Jeff's belief as a reason for a
17 guideline sentence, it ignores the possibility that Jeff's case might
18 differ from any other marijuana-cultivation case brought before this
19 Court.⁸

20 What is the Court to make of Jeff's strong belief? He asks that the
21 Court bear in mind the following.

22 First, and most important, it is a belief shared with millions of
23 others in the United States, including the majority of voters in the 12
24 states that have enacted laws decriminalizing the medical use of

25 ⁸ At ¶ 58, for example, the report states, "There are no
26 factors that warrant an upward or downward departure in this case."

27 When the defense suggested that Jeff's not-for-profit cultivation
28 of medical cannabis consistent with state law might differ from the
typical illicit cultivation of recreational weed for profit, the
probation officer replied, "This is not a State of California case."

1 cannabis: Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada,
2 New Mexico, Oregon, Rhode Island, Vermont, and Washington.

3 Second, it is a belief grounded in history. "The potential of hemp
4 as a healing plant has been known for centuries wherever cannabis was
5 grown and it is still a folk remedy in many countries." M. Booth,
6 CANNABIS: A HISTORY, *supra*, at 292.

7 Third, it is a belief grounded in science. The British Medical
8 Association recommended in 1997 that medical cannabis be made legal. *Id.*
9 at 297. In the United States, the National Academy of Sciences Institute
10 of Medicine published MARIJUANA AND MEDICINE: ASSESSING THE SCIENCE BASE (1999),
11 which recognized the many medical uses of cannabis and recommended
12 further study.⁹

13 Fourth, it is a belief supported by the knowledge that, in the
14 United States, public opinion about cannabis has been shaped by decades
15 of misinformation dating back to Harry Anslinger, the first commissioner
16 of the former Federal Bureau of Narcotics, who exaggerated the dangers of
17 marijuana in order to bolster the status of his agency, then a sad
18 stepsister to J. Edgar Hoover's glamorous FBI:

19 Within two years of the establishment of the FBN [it opened
20 for business in August 1930], it was in trouble. The
21 Depression caused a considerable fall in tax revenue and
22 government spending plummeted. The FBN budget was
23 substantially cut. In order to boost his organization,
24 Anslinger had to find a new target – a new drug menace – upon
25 which to peg his budget increase. Although he had previously
26 given marijuana little thought and deferred putting it under
27 federal legislation, he now set about demonizing it,
28 circulating pamphlets and planting stories in the press about
murders committed whilst under marijuana intoxication.

25 *Id.* at 149.

26
27 ⁹ The medicinal value of cannabis was recently made clear to
28 this writer when he learned that medical staff at the Sacramento County
Jail were providing Marinol, synthetic THC, to a client afflicted with
HIV.

1 Jeff's "strong belief" mitigates rather than aggravates the
2 sentence. An offender who is sentenced solely by reference to the
3 guidelines rarely presents evidence that his conduct was well-
4 intentioned. An offender who is sentenced solely by reference to the
5 guidelines rarely presents evidence that his conduct is protected by the
6 law of his State. The typical federal offender, whether he traffics in
7 stolen identities, dangerous drugs, or prohibited firearms, cannot claim
8 he has acted in good faith.

9 **III. Applicable Law.**

10 **A. 18 U.S.C. § 3553.**

11 Section 3553(a) of Title 18, United States Code, directs the Court
12 to "impose a sentence sufficient, but not greater than necessary, to
13 comply with" the following "purposes":

14 (A) to reflect the seriousness of the offense, to promote
15 respect for the law, and to provide just punishment for the
16 offense;

17 (B) to afford adequate deterrence to criminal conduct;

18 (C) to protect the public from further crimes of the
19 defendant; and

20 (D) to provide the defendant with needed educational or
21 vocational training, medical care, or other correctional
22 treatment in the most effective manner;

23 In imposing sentence, the Court must consider not only "the need for
24 the sentence imposed" to achieve these goals, but must also consider:

25 (1) the nature and circumstances of the offense and the
26 history and characteristics of the defendant;

27 (3) the kinds of sentences available;

28 (4) the kinds of sentence and the sentencing range
[established by the sentencing guidelines].

 (5) any pertinent policy statement . . . issued by the
Sentencing Commission

 (6) the need to avoid unwarranted sentence disparities among

1 defendants with similar records who have been found guilty of
2 similar conduct; and

3 (7) the need to provide restitution to any victims of the
4 offense.

5 **B. The Sentencing Guidelines.**

6 In the three years since it decided Booker v. United States, 543
7 U.S. 220 (2005), the Supreme Court has frequently reminded the district
8 and appellate courts that all of section 3553(a), not just the
9 guidelines, guides sentencing discretion.

10 In Rita v. United States, 551 U.S. ___, 127 S. Ct. 2456, 2465
11 (2007), the Court held that the district court may consider arguments
12 that "the Guidelines sentence itself fails properly to reflect § 3553(a)
13 considerations," and that the Courts of Appeals may presume a guidelines
14 sentence to be reasonable when the sentencing court determines that the
15 case accords with "the mine run of cases" as identified by the Sentencing
16 Commission.

17 In Kimbrough v. United States, ___ U.S. ___, 128 S. Ct. 558, 564
18 (2007), the Court reiterated that "[t]he judge may determine . . . that,
19 in the particular case, a within-Guidelines sentence is 'greater than
20 necessary' to serve the objectives of sentencing," and that the judge may
21 consider anomalies in the guidelines (e.g., the notorious disparity
22 between crack- and powder-cocaine offense levels) in so doing.

23 In Gall v. United States, ___ U.S. ___, 128 S. Ct. 586, 591 (2007),
24 the Court reminded that, while section 3553 still requires a court to
25 give respectful consideration to the Guidelines, Booker "permits the
26 court to tailor the sentence in light of other statutory concerns as
27 well." For that reason, all sentences – "whether inside, just outside,
28 or significantly outside the Guidelines range" – are to be reviewed
"under a deferential abuse-of-discretion standard." Id.

1 **IV. Argument.**

2 A sentence of probation is sufficient but not greater than necessary
3 to achieve the purposes of sentencing in Jeff's case.

4 **A. The Guidelines Do Not Address Factors Relevant to Jeff's Case.**

5 The facts of Mr. Gall's case shed light on this case.

6 Mr. Gall, a user of cocaine, ecstasy, and marijuana, earned \$30,000
7 over the course of seven months delivering 2.5 kilos of ecstasy pills
8 (the guidelines equivalent of 87.5 kilos of marijuana) that were then
9 sold to consumers. Id. at 592. Before his arrest, he quit using and
10 selling ecstasy, graduated college, and found work as a master carpenter.
11 Id. When government indicted him, more than three years had passed since
12 he left the conspiracy. Id. His PSR noted:

13 that Gall had no significant criminal history; that he was not
14 an organizer, leader, or manager; and that his offense did not
15 involve the use of weapons. The report stated that Gall had
16 truthfully provided the Government with all of the evidence he
17 had concerning the alleged offenses The report also
18 described Gall's substantial use of drugs prior to his offense
19 and the absence of any such use in recent years.

20 Id. at 592-593. Mr. Gall's relatives, friends, and neighbors uniformly
21 praised his character and work ethic. Id. at 593. After hearing this
22 evidence, the district judge rejected the within-guidelines
23 recommendation of the PSR and the government and sentenced Mr. Gall to
24 three years of probation. Id.

25 Most of what was true of Mr. Gall is true of Jeff. Rather than
26 having no "significant" criminal history, however, Jeff has no criminal
27 history whatsoever. He was not a leader. He had no weapons. He
28 willingly provided the government all evidence he had concerning his
conduct. Unlike Mr. Gall, he never used cocaine or ecstasy. He has not
ingested cannabis since before his arrest in August 2006. His friends,
neighbors, and family applaud his work ethic and character.

1 But there are also significant differences between Mr. Gall and Jeff
2 and they further mitigate the sentence in Jeff's case. First, Mr. Gall
3 had no reason to claim, and did not claim, that he sold ecstasy to help
4 others. Second, Mr. Gall had no reason to claim, and did not claim, that
5 state law protected his conduct. Third, Mr. Gall, who made \$30,000 in
6 seven months selling ecstasy, had to admit that his lawlessness was
7 motivated by profit. Fourth, Mr. Gall had no reason to claim, and did
8 not claim, that the Sentencing Commission had not considered his motives
9 when writing the guidelines.

10 The Supreme Court upheld Mr. Gall's sentence of probation,
11 recognizing that the district court's evaluation of the statutory factors
12 was reasonable and concluding that probation was a reasonable sentence.
13 In so holding, the Court reminded that, while "custodial sentences are
14 qualitatively more severe," persons sentenced to probation "are
15 nonetheless subject to several standard conditions that substantially
16 restrict their liberty." Id. at 595.

17 Probationers may not leave the judicial district, move, or
18 change jobs without notifying, and in some cases receiving
19 permission from, their probation officer or the court. They
20 must report regularly to their probation officer, permit
21 unannounced visits to their homes, refrain from associating
22 with any person convicted of a felony, and refrain from
23 excessive drinking Most probationers are also subject
24 to individual "special conditions" imposed by the court.

25 Id. at 595-596.

26 The Court in Gall also noted that the guidelines are crucial to
27 determining a sentence because they are "the product of careful study
28 based on extensive empirical evidence derived from the review of
29 thousands of individual sentencing decisions." Id. at 594. However,
30 that important rationale is diminished in this case for three reasons.

31 /////

1 First, in the years since California and 11 other states enacted
2 laws to protect medical use of cannabis, the Commission has never
3 considered whether persons who manufacture marijuana for therapeutic use
4 should be treated differently from those who grow illicit weed for sale
5 on the black market.

6 Second, the Commission has never considered whether a person who
7 manufactures marijuana for no profit should be treated differently from
8 one who manufactures for sale. The federal prohibition of controlled
9 substances and the guidelines that give teeth to that prohibition rest on
10 the Commerce Clause, which authorizes Congress to regulate activities
11 that have a substantial effect on interstate commerce. In Raich, the
12 Court observed that:

13 Given the enforcement difficulties that attend distinguishing
14 between marijuana cultivated locally and marijuana grown
15 elsewhere . . . and concerns about diversion into illicit
16 channels, we have no difficulty concluding that Congress had a
rational basis for believing that failure to regulate the
intrastate manufacture and possession of marijuana would leave
a gaping hole in the CSA.

17 545 U.S. at 22. However, non-profit distribution of medical cannabis to
18 a handful of designated patients in a rural county differs from
19 distribution of marijuana for profit. While it may be "rational" under
20 the Commerce Clause to prohibit both interstate distribution of drugs for
21 profit and intrastate cultivation of medical cannabis, nothing about the
22 regulatory scheme prevents this Court from determining that one act is
23 less blameworthy than the other. This difference was not considered by
24 the Commission when it wrote the drug guidelines.

25 Third, the guidelines in this case (specifically, the offense level)
26 rest on an arbitrary measure that exaggerates the seriousness of the
27 offense. The weight of marijuana (60 to 80 kilos) used to set the
28 guidelines in this case is the weight of the marijuana plants taken from

1 Jeff's garden after they were stripped of their stalks, left to dry for
2 two weeks on the floor of a Plumas County Sheriff's warehouse, and then
3 bagged.¹⁰ Although reports describe the bagged material as "leaf and
4 bud," Jeff's plants had yet to bud and most had yet to "sex."¹¹ Jeff's
5 garden, grown in mountainous Plumas County, was raided in August, when
6 the plants were far from mature. Thus, the 60 to 80 kilos used to set
7 the guidelines is material that would never have been used by any
8 patient. In short, it was future compost.

9 In Kimrough, the Court held that the sentencing courts may consider
10 guidelines anomalies. This case presents one. The guideline range based
11 on the number Jeff's plants would be no higher than 18, assuming the
12 Court were used the Sheriff's 200-plus-count, and as low as 14, if the
13 Court counted only the 50-to-100 plants Jeff planned to harvest. See
14 U.S.S.G. § 2D1.1(c). An offense level of 14, after appropriate
15 adjustments, would correspond to a guideline sentence of probation. See
16 U.S.S.G. Ch. 5.

17 For these reasons, while the guidelines call for a sentence of
18 imprisonment of 24 to 30 months, they do so without considering the facts
19 and circumstances that make the offense unique; without considering
20 Jeff's history and characteristics, which make him unique; and the
21 guidelines ultimately rest on anomalies that result in a sentencing range
22 higher than appropriate.

24 ¹⁰ During a visit in 2007, a Sheriff's Deputy illustrated for
25 defense counsel how he stripped the greenery from the stalks: he held
26 the stalk in one hand, closed his other hand around it, and then
27 stripped the greenery from the stalk by sliding his closed hand from
the butt of the stalk to the tip. The stalks were tossed and the
remaining leaves and stems were left to dry before they were bagged and
weighed.

28 ¹¹ Only female plants produce buds containing THC sufficiently
concentrated to be useful for either medical or psychoactive purposes.

1 **B. Evaluation of Remaining Statutory Factors.**

2 Preceding sections of this brief have extensively considered the
3 nature and circumstances of the offense and the history and
4 characteristics of Jeff. There is only one matter left to mention.

5 Jeff scrupulously followed California law in planting his garden and
6 identifying his patients. Discovery includes the legal papers he
7 collected as well as the recommendations issued to his patients
8 authorizing them to use medical cannabis. Plumas County seized 10
9 patient recommendations from Jeff's property. California Health & Safety
10 Code § 11362.7 permits patients to have up to six mature and 12 immature
11 plants unless more have been deemed necessary by the doctor. Raich, 545
12 U.S. at 31, n. 41. Three of Jeff's patients had recommendations
13 authorizing 10 mature and 20 immature plants. In other words, Jeff had
14 written authorizations permitting him to have on hand up to 72 mature
15 plants and up to 144 immature plants. His garden consisted of about 64
16 mature plants, about 20 immature plants, and cuttings well below the
17 authorized numbers. His conduct displayed a conscientious effort to
18 follow state law. It was his personal choice not to seek payment for any
19 cannabis he grew.

20 **1. "To reflect the seriousness of the offense."**

21 Jeff accepts that the United States remains staunchly opposed to the
22 use of medical cannabis and views all cultivation of cannabis as a
23 serious violation of federal law. However, he asks the Court to
24 appreciate the seriousness with which he entered his plea of guilty to a
25 felony offense. That plea deprives him of valuable civil rights,
26 permanently clouds his reputation, and will result in additional loss of
27 liberty during his probation term. For a man of Jeff's character, the
28 conviction alone is sufficient to reflect the seriousness of the offense.

1 **2. "To promote respect for the law."**

2 Jeff's respect for the law is evident in the care he took to follow
3 California law and his lack of any criminal history. His respect for the
4 law is also evident in the care he took to educate himself before acting,
5 whether in planting medical cannabis in 2006, or planting cannabis for
6 spiritual use in 2007. Disagreement with the law is not disrespect of
7 it. Nor does disobedience of the law in all instances amount to
8 disrespect of the law. Jeff has vowed to respect the law and not to act
9 without permission of the court. A sentence of probation is sufficient
10 but not greater than necessary to assure that he does so.

11 **3. "To provide just punishment."**

12 As noted above, probation is a significant restraint of any man's
13 liberty. However, it is especially strong punishment in this case, where
14 the man before the Court acted from a good faith and selfless belief that
15 his conduct helped others. A sentence of probation is sufficient to
16 provide just punishment in Jeff's case.

17 **4. "To afford adequate deterrence to criminal conduct."**

18 There are two kinds of deterrence – general and specific. Specific
19 deterrence is intended to assure that a particular offender does not
20 repeat his crime, while general deterrence is intended to send a message
21 to others not to offend.

22 In this case, a sentence of probation is adequate to serve the goal
23 of specific deterrence, because while he is on probation Jeff's
24 activities will be monitored and scrutinized, depriving him of any
25 opportunity to cultivate cannabis in violation of the law. The time he
26 has spent in presentence detention, which has severely dampened his
27 spirits, has impressed upon him the need to cast a broader net when
28 advocating changes in the law. The letters from the two neighbors who

1 were critical of his conduct made him think more deeply about views that
2 may be contrary to his own. Needless to say, Jeff is a man who wishes to
3 do only good and need not be specifically deterred from causing harm.

4 However, the Court and the government may have a "general
5 deterrence" concern about the message sent by sentencing Jeff to
6 probation. Two factors help alleviate this concern.

7 First, other courts have already sent that message in cases far more
8 notorious: In San Francisco, for example, District Judge Breyer
9 sentenced famed "Ganja Guru" Edward Rosenthal to a single day in jail
10 after he was convicted by a jury of manufacturing and conspiring to
11 manufacture 673 marijuana plants. See United States v. Rosenthal, 266 F.
12 Supp. 2d 1091 (N.D. Cal. 2003).

13 Second, it is the rare person who is willing to risk a felony
14 conviction and federal imprisonment in order to vindicate a strong belief
15 in the righteousness of his conduct. Courts have long been able, and
16 will always be able, to distinguish those who hide a profit motive behind
17 California's medical marijuana law from those, who, like Jeff, believe
18 that the law exists only to help others, and should be practiced.

19 **5. "To protect the public from further crimes of the defendant."**

20 Jeff, who turned 27 in federal custody, has never committed a crime
21 under the laws of California and he committed the federal crime for which
22 he is to be sentenced in order to help rather than harm the public. In
23 this case, the need for public protection is sufficiently addressed by a
24 sentence of probation.

25 **6. "To provide the defendant with" training or care.**

26 Congress has recognized that this factor always favors a sentence of
27 probation. Section 3582(a) to Title 18 provides that, "in determining
28 whether to impose a sentence of imprisonment" and "in determining the

1 length of the term," a court must "recogniz[e] that imprisonment is not
2 an appropriate means of promoting correction and rehabilitation."

3 **7. "The kinds of sentences available."**

4 This factor has been extensively considered above.

5 **8. "The need to avoid unwarranted sentence disparities."**

6 This memorandum has identified the differences between Jeff's case,
7 which differs from the "mine run" of marijuana cases seen in this
8 district: the remote gardens tended by aliens from Michoacan brought
9 across the border by others who are never caught; the suburban houses
10 filled with grow lights and hundreds of plants; and countless other
11 gardens growing cannabis earmarked for the black market. The profits of
12 all of these crimes line the pockets of drug traffickers. A sentence of
13 probation in this case constitutes a warranted disparity from the low-end
14 guideline sentences typically imposed in these cases.

15 **V. Conclusion.**

16 In conclusion, Jeff respectfully asks the Court to sentence him to
17 probation, for the reasons stated above and considering the words of
18 those who know him best:

19 His parenting counselor, Susie Wilson:

20 I am convinced that had Jeff really recognized the threat
21 posed to his family by his recent actions, he would have
22 never made the choices he made. It is, in my experience,
23 his basic honesty and integrity that have led him to this
24 outcome. I truly believe that Mr. Sanderson does regret
his actions, and will not make choices in the future that
could interrupt his presence and loving influence for his
family. I believe it is a disservice to our society, and
certainly to Jeff's children, that he be incarcerated.

25 Ellen Wakefield, Alice Wiegand's aunt:

26 I do not believe Jeff has ever harbored criminal intent in
27 any way. His biggest fault may be trusting other people
28 and being naive about the conflict between state law and
federal law. Hw is a wonderful young man who has shown
himself to all who know him well as a kind friend,
generous neighbor and tender father.

1 John Poland, a retired Navy man living in Indian Falls:

2 I also understand that the local Sheriff and the Courts
3 are doing their job to comply with Federal mandates. I
4 can only plead for compassion in Jeff's situation as one
5 can see he is not a hardened criminal and that prison
6 could only harm his gentle character. As I talked with
7 Jeff I could tell he realizes his error and is very
8 concerned for the well being of his family.

9 Meegan Wieczorek, Jeff's first "patient" :

10 I believe that Jeff has learned from this experience. Now
11 that he knows that he is not protected under state law I
12 truly believe he will not do this again. Jeff has the
13 utmost respect for the law. Jeff is a very smart and
14 talented man. I truly believe he will take his talents
15 and passion to help people and use them in a very
16 productive and law abiding way.

17 Respectfully submitted,

18 DANIEL J. BRODERICK
19 Federal Defender

20 Dated: February 8, 2008

21 /s/ T. Zindel
22 TIMOTHY ZINDEL
23 Assistant Federal Defender
24 Attorney for JEFFRE SANDERSON
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