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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE
WESTERN DISTRICT OF MISSOURI.

United States of America,
Plaintiff,

-vs-

No. 8647.

Frank DeMayo, Abe Schneider, Jack Clarkson, Joe Maniscalao, alias Joe Mancello, and Joe
DeBlume,

Defendants,

PLEA IN BAR.

Now comes the defendant, Frank DeMayo, and respectfully represents and states to this
court:

First. That on or about May 24, 1928, in the District Court of the United States, within and
for the Northern District of the State of Oklahoma, an indictment was duly and regularly
returned against him, and his co-defendants herein, by a grand jury, theretofore duly and
regularly empaneled, sworn, and charged, in the aforesaid court, within and for the aforesaid
district, charging him, and his co-defendants herein, in the first count thereof, with having on or
about April 11, 1928, and within the jurisdiction of the aforesaid court, unlawfully, wrongfully,
knowingly, and feloniously conspired, combined, confederated, and agreed, together and with
one L. L. Kelsey, to commit an offense and offenses against the laws of the United States of
America, that is to say, that he, and his co-defendants therein, and each of them, did, then and
there unlawfully conspire, confederate, and agree together, and with each other, and with the
said L. L. Kelsey, to wilfully, wrongfully, corruptly, unlawfully, and feloniously introduce, carry
into, and cause to be carried into, the city of Tulsa, in Tulsa County,

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Oklahoma, to-wit, from Kansas City, in the State of Missouri, by automobile and by common
carrier, certain intoxicating liquor, to-wit, alcohol and whiskey, the said place into which said
liquor was to have been introduced, carried, and caused to be carried, as aforesaid, by him, and
his co-defendants, and including also said L. L. Kelsey, being within the limits of the Indian
Territory, and a part thereof, prior to its admission into the Union as one of the United States of
America, the same being then and there a place where the introduction of spirituous and
intoxicating liquor was then and there prohibited by federal statutes, contrary to the form of
such statute in such case made and provided, and against the peace and dignity of the United
States of America.

Second. That a just, true, and correct copy of said indictment, marked Exhibit A, is hereto
attached and made a part hereof.

Third. That thereafter, on or about June 22, 1928, he was duly and regularly arraigned upon
the aforesaid indictment, in the aforesaid court; and, entering his plea of not guilty thereto, he
was immediately put upon his trial thereon, in the aforesaid court, by and before a jury, duly
and regularly empaneled, and sworn to hear the same and a true verdict render.

Fourth. That thereafter, on June 23, 1928, the trial of said cause having been concluded, and
the same, under the charge of the court, having been submitted to the aforesaid jury, It, said
jury, thereupon returned into the aforesaid court its finding and verdict in said cause, finding
him guilty, as charged in the first count of said indictment.

Fifth. That thereafter, on June 25, 1928, in accordance with the aforesaid finding and
verdict, he was duly and regularly sentenced, by the aforesaid court, upon the first count of the
aforesaid indictment, to imprisonment in the federal penitentiary at

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Atlanta, Georgia, for a period of two years, and to pay a fine unto the United States of America
in the sum of \$10,000.00; and, in default thereof, to stand committed until such fine was paid,

or until released by due process of law.

Sixth. That thereafter, on June 29, 1928, he gave due, proper, and timely notice of his appeal, from the aforesaid judgment of conviction, and sentence, to the United States Circuit Court of Appeals, for the Eighth Circuit, and said cause is now pending, upon his aforesaid appeal, in said court; and it has not, as yet, been passed upon or determined by said court.

Seventh. That the offense, with which he and his co-defendants were charged in the first count of the aforesaid indictment, and upon which he was tried, convicted, and sentenced, as aforesaid, is the same offense with which he, and his co-defendants herein, stand charged by the indictment which has been returned in this cause.

Eighth. That, inasmuch as the offense with which he and his co-defendants were charged in the first count of the indictment, to which reference is first made herein, and the offense with which he and those same co-defendants now stand charged, by the indictment which has been returned in this court, are one and the same offense, to compel him to be placed upon his trial, in this cause, would be to place him twice in jeopardy for the same offense, and deprive him of his liberty without due process of law, contrary to and in violation of the provisions of the 5th Amendment to the Constitution of the United States of America.

Ninth. That, by reason of the premises, he here and now pleads his indictment, trial, conviction, and sentence, upon the first count of the indictment, to which reference is just made herein, as a final and complete bar to his further prosecution upon the offense with which he stands charged, by the indictment herein; and, accordingly,

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prays that this, his plea in bar herein, be sustained, and that the indictment herein be dismissed with prejudice as to any further prosecution of the offense charged therein.

Walter W. Calvin
Attorney for Defendant Frank DeMayo.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

Frank DeMayo, of lawful age, being first duly sworn, upon his oath says:

That he is the defendant in the above entitled cause, on behalf of whom the above and foregoing motion has been prepared.

That he has read the same and knows full well the contents thereof, and that the matters and things therein set forth and stated are true.

Frank DeMayo

Subscribed and sworn this November 2, 1928.

Van Estes
Notary Public within and for
Jackson County, Missouri.

My commission expires February 16, 1932.

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EXHIBIT A.

UNITED STATES OF AMERICA
SS

NO. 2862.

NORTHERN DISTRICT OF OKLAHOMA

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA, AT THE SPECIAL MARCH A. D. 1928 TERM THEREOF, SITTING AT TULSA, OKLAHOMA.

The Grand Jurors of the United States of America, duly empaneled, sworn and charged in the District Court of the United States within and for the Northern District of Oklahoma, to inquire into and due presentment make of all offenses against the laws of the United States of America, committed and triable within said District, do, upon their oaths, find, present and charge, that

JACK CLARKSON ,

of the City of Tulsa, in the State of Oklahoma, and

FRANK DE MAYO,
ABE SCHNEIDER
JOE BURENCIO
JOE PANITTIO, and
JOSEPH MANISCALIE,

all of the City of Kansas City, in the State of Missouri, whose more true, full and correct names are to the Grand Jurors unknown, in Tulsa County, State of Oklahoma, Northern District of Oklahoma and within the jurisdiction of this court, did, on or about the 11th day of April A. D. 1928, unlawfully, wrongfully, knowingly and feloniously conspire, combine, confederate and agree together, and with one L. L. Kelsey, to commit an offense and offenses against the laws of the United States of America, that is to say, the said defendants, Jack Clarkson, Frank DeMayo, Abe Schneider, Joe Burencio, Joe Panittio, and Joseph Maniscalie, and each of them, whose more true, full and correct names are to the Grand Jurors unknown, did, then and there unlawfully conspire, confederate and agree together, and with each other and with the said L. L. Kelsey aforesaid, to wilfully, wrongfully, corruptly, unlawfully, and feloniously introduce, carry into and cause to be carried into the City of Tulsa, Tulsa County, State

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of Oklahoma, Northern District of Oklahoma, and within the jurisdiction of this court, from without the State of Oklahoma, to-wit, from the City of Kansas City, in the State of Missouri, by automobile and by common carrier, certain intoxicating liquor, to-wit, ALCOHOL AND WHISKEY, the said place into which said liquor was to have been introduced, carried and caused to be carried as aforesaid, by the said defendants, Jack Clarkson, Frank DeMayo, Abe Schneider, Joe Burencio, Joe Panittio, and Joseph Maniscalie, and each of them, and the said L. L. Kelsey, having been within the limits of the Indian Territory, and a part thereof, prior to the admission of the State of Oklahoma into the Union as one of the United States of America, said place being then and there a place where the introduction of spirituous and intoxicating liquor is and was prohibited by Federal Statutes, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge, that while said conspiracy, combination, confederation and agreement existed between the said defendants, Jack Clarkson, Frank DeMayo, Abe Schneider, Joe Burencio, Joe Panittio, and Joseph Maniscalie, and the said L. L. Kelsey, and each of them as aforesaid, and in pursuance thereof, and for the purpose of effecting the unlawful object and objects of said conspiracy and for the purpose of executing and attempting to execute the aforesaid conspiracy, the said defendants, Jack Clarkson, Frank DeMayo, Abe Schneider, Joe Burencio, Joe Panittio, and Joseph Maniscalie, and each of them, did, then and there unlawfully, wrongfully, knowingly, and feloniously commit overt acts as follows:

FIRST OVERT ACT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that while said conspiracy existed and was in full force and effect as aforesaid, and for the purpose

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of effecting the unlawful object and objects of the same and for the purpose of executing and attempting to execute said conspiracy and in furtherance thereof, the said defendant, Jack Clarkson, did, on or about the 11th day of April A. D. 1928, in the City of Tulsa, Tulsa County, State of Oklahoma, in the Northern District of Oklahoma and within the jurisdiction of this court, deliver to the said L. L. Kelsey, one certain order in writing directed to the defendant Frank DeMayo, in which said order the said defendant, Jack Clarkson stated in substance, that the bearer of said order was O. K., and that the said defendant Frank DeMayo, should give the bearer anything that he wanted; that thereafter, the said order was carried by the said L. L. Kelsey to the City of Kansas City, in the State of Missouri, and delivered to the said defendant, Frank DeMayo, on or about the 12th day of April A. D. 1928, that as a result of the delivering of the said order by the said defendant Jack Clarkson to the said L. L. Kelsey in the City of Tulsa, in the State of Oklahoma, as aforesaid, and the delivery of the same by the said L. L. Kelsey to the said defendant, Frank DeMayo, in the City of Kansas City in the State of Missouri, the said intoxicating liquor to-wit, GRAIN ALCOHOL, hereinafter alleged to have been introduced, carried into and caused to be carried into the City of Tulsa, Tulsa County, State of Oklahoma, was so introduced, carried into and caused to be carried into the said City of Tulsa, Tulsa County, State of Oklahoma, as well be more specifically hereinafter alleged, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND OVERT ACT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge, that while said conspiracy existed and was in full force and effect as aforesaid, and for the purpose of effecting the unlawful object and objects of the same and for the purpose of executing and attempting to execute said conspiracy,

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and in furtherance thereof, said defendants, Jack Clarkson, Frank DeMayo, Abe Schneider, Joe Burencio, Joe Panittio, and Joseph Maniscalie, whose more true, full and correct names are to the Grand Jurors unknown, on or about the 14th day of April A. D. 1928, did, unlawfully, knowingly, wilfully, and feloniously introduce, carry into and cause to be carried into the said City of Tulsa, Tulsa County, State of Oklahoma, Northern District of Oklahoma and within the jurisdiction of this court, from without the state of Oklahoma, to-wit, from the City of Kansas City in the State of Missouri, through and by the said L. L. Kelsey, by automobile, certain intoxicating liquor, to-wit, FIFTY GALLONS OF GRAIN ALCOHOL, the said place into which said intoxicating liquor as aforesaid, was introduced, carried and caused to be carried, having been within the limits of the Indian Territory and a part thereof prior to the admission of the State of Oklahoma into the Union as one of the United States of America, and being then and there a place where the introduction of spirituous and intoxicating liquor is and was prohibited by Federal Statutes, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD OVERT ACT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge, that while said conspiracy existed and was in full force and effect as aforesaid, and for

the purpose of effecting the unlawful object and objects of the same and for the purpose of executing and attempting to execute said conspiracy, said defendants Jack Clarkson, Frank DeMayo, Abe Schneider, Joe Burencio, Joe Panittio, and Joseph Maniscalie, whose more true, full and correct names are to the Grand Jurors unknown, on or about the 23rd day of April A. D. 1928, did, unlawfully, knowingly, wilfully, and feloniously introduce, carry into and cause to be carried into the City of Tulsa, Tulsa County, State of Oklahoma, Northern District

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of Oklahoma and within the jurisdiction of this court, from without the State of Oklahoma, to-wit, from the City of Kansas City, in the State of Missouri, by and through the said L. L. Kelsey, by automobile, certain intoxicating liquor, to-wit, FIFTY GALLONS OF GRAIN ALCOHOL, the said place into which said intoxicating liquor as aforesaid, was introduced, carried and caused to be carried, having been within the limits of the Indian Territory, and a part thereof prior to the admission of the State of Oklahoma into the Union as one of the United States of America, and being then and there a place where the introduction of spirituous and intoxicating liquor is and was prohibited by Federal Statutes, contrary to the form of the Statute in such case made and provided and against the pace and dignity of the United States of America.

FOURTH OVERT ACT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge, that while said conspiracy existed and was in full force and effect as aforesaid, and for the purpose of effecting the unlawful object and objects of the same and for the purpose of executing and attempting to execute said conspiracy, said defendants, Jack Clarkson, Frank DeMayo, Abe Schneider, Joe Burencio, Joe Panittio, and Joseph Maniscalie, whose more true, full and correct names are to the Grand Jurors unknown, on or about the 17th day of May A. D. 1928, did, unlawfully, knowingly, wilfully, and feloniously introduce, carry into, and cause to be carried into the City of Tulsa, Tulsa County, State of Oklahoma, Northern District of Oklahoma and within the jurisdiction of this court, from without the State of Oklahoma, to-wit, from the City of Kansas City, in the State of Missouri, by and through the said L. L. Kelsey, by automobile, certain intoxicating liquor, to-wit, FORTY GALLONS OF GRAIN ALCOHOL, the said place into which said intoxicating liquor as aforesaid, was introduced, carried and caused to be carried, having been within the limits of the Indian Territory and a part thereof prior to the admission of

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the State of Oklahoma into the Union as one of the United States of America, and being then and there a place where the introduction of spirituous and intoxicating liquor is and was prohibited by Federal Statutes, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

A TRUE BILL:

Ray Bartholomew, Jr.

Foreman of the Grand Jury.

Harry Seaton

Assistant United States Attorney.

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, in the name and by the authority of the United States of America, do further find, present and charge, that the said defendants,

JACK CLARKSON

FRANK DEMAYO

JOE BURENCIO
ABE SCHNEIDER
JOE PANITTIO, and
JOSEPH MANISCALIE,

whose more true, full and correct names are to the Grand Jurors unknown, did, on or about the 14th day of April A. D. 1929, wilfully, wrongfully, unlawfully and feloniously introduce, carry into and cause to be carried into the City of Tulsa, Tulsa County, State of Oklahoma, Northern District of Oklahoma, and within the jurisdiction of this court, from without the State of Oklahoma, to-wit, from the City of Kansas City in the State of Missouri, by and through one L.L. Kelsey, by automobile, certain intoxicating liquor, to-wit FIFTY GALLONS OF GRAIN ALCOHOL, the said place into which said alcohol was so introduced, carried into and caused to be carried into as aforesaid, to-wit, the City of Tulsa, Tulsa County, State of Oklahoma, having been within the limits of the Indian Territory and a part thereof prior to the admission of the State of Oklahoma into the Union as one of the United States of America, and being then and there a place where the introduction of spirituous and intoxicating liquor is and was prohibited

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by Federal Statutes, contrary to the Form of the Statute in such Case made and provided and against the peace and dignity of the United States of America.

Harry Seaton
Assistant United States Attorney

A TRUE BILL:
Ray Bartholomew, Jr.
Foreman of the Grand Jury.

THIRD COUNT

And the Grand Jurors aforesaid, upon their oaths, aforesaid, in the name and by the authority of the United States of America, do further find, present and charge that the said defendants,

JACK CLARKSON
FRANK DEMAYO
JOE BURENCIO
JOE PANITTIO
ABE SCHNEIDER, and
JOSEPH MANISCALIE,

whosomore true, full and correct names are to the Grand Jurors unknown, did, on or about the 23rd day of April A. D. 1928, wilfully, wrongfully, unlawfully and feloniously introduce, carry into and cause to be carried into the City of Tulsa, Tulsa County, State of Oklahoma, Northern District of Oklahoma, and within the jurisdiction of this court, from without the State of Oklahoma, to-wit, from the City of Kansas City in the State of Missouri, by and through one L. L. Kelsey, by automobile, certain intoxicating liquor, to-wit, FIFTY GALLONS OF GRAIN ALCOHOL, the said place into which said alcohol was so introduced, carried into and caused to be carried into as aforesaid, to-wit, the City of Tulsa, Tulsa County, State of Oklahoma, having been within the limits of the Indian Territory and a part thereof prior to the admission of the State of Oklahoma into the Union as one of the United States of America, and being then and there a place where the introduction of spirituous and intoxicating liquor is and was prohibited by Federal Statutes, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States

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of America.

Harry Seaton
Assistant United States Attorney

A TRUE BILL:
Ray Bartholomew, Jr.
Foreman of the Grand Jury.

FOURTH COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, in the name and by the authority of the United States of America, do further find, present and charge, that the said defendants,

JACK CLARKSON
FRANK DEMAYO
ABE SCHNEIDER
JOE BURENCIO
JOE PANITTIO, and
JOSEPH MANISCALIE,

whose more true, full and correct names are to the Grand Jurors unknown, did, on or about the 17th day of May A. D. 1928, wilfully, wrongfully, unlawfully and feloniously introduce, carry into and cause to be carried into, the City of Tulsa, Tulsa County, State of Oklahoma, Northern District of Oklahoma and within the jurisdiction of this court, from without the State of Oklahoma, to-wit, from the City of Kansas City, in the State of Missouri, by and through one L. L. Kelsey, by automobile, certain intoxicating liquor, to-wit, FORTY GALLONS OF GRAIN ALCOHOL, the said place into which said alcohol was so introduced, carried into and caused to be carried into as aforesaid to-wit, in the City of Tulsa, Tulsa County, State of Oklahoma, having been within the limits of the Indian Territory and a part thereof prior to the admission of the State of Oklahoma into the Union as one of the United States of America, and being then and there a place where the introduction of spirituous and intoxicating liquor is and was prohibited by Federal Statutes, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

Harry Seaton
Assistant United States Attorney

A TRUE BILL:
Ray Bartholomew Jr.
Foreman of the Grand Jury.

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NO. 8647

United States of America,
Plaintiff,

-vs-

Frank DeMayo, et al,
Defendants.

PLEA IN BAR.

FILED
NOV 5 1928

EDWIN R. DURHAM, CLERK
BY E. O'Keefe
DEPUTY

WALTER W. CALVIN
Attorney for Defendant
Frank DeMayo.