

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

§

Plaintiff,

§

§

§

v.

§

Cause No. CR 06-538 JH

§

DANUEL DEAN QUAINANCE,

§

§

Defendant.

§

**MR. QUAINANCE’S RESPONSE TO GOVERNMENT’S APPEAL OF ORDER  
AMENDING CONDITIONS OF RELEASE [DOC. 92] AND MOTION TO STAY  
AMENDMENT OF CONDITIONS OF RELEASE [DOC. 93]**

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, submits the following response to the government’s Notice of Appeal [Doc. 92] of the order amending Mr. Quaintance’s conditions of release [Doc. 101] and Motion to Stay implementation of that order [Doc. 93], and in support of his position would respectfully show the Court as follows:

1. United States Magistrate Judge Martinez entered an order amending the conditions of Mr. Quaintance’s release based on Mr. Quaintance’s motion [Doc. 48] and following a hearing. A proposed order was drafted, circulated, approved and entered. The government has appealed the order. The government has also sought a stay of Magistrate Judge Martinez’ order.

2. Mr. Quaintance had requested that the conditions of his pretrial release be amended to permit him to consume cannabis, in accordance with his religious practice; and that the prohibition against his contact with members of his church, the Church of Cognizance,

be lifted. Magistrate Judge Martinez determined that she could not lift the prohibition against Mr. Quaintance's consumption of cannabis until this Court determines that his religious practice is a sincere one, and thus declined to grant that relief. Magistrate Judge Martinez did, however, lift the ban on Mr. Quaintance's contact with other members of the Church of Cognizance. In so doing, the Court imposed restrictions on the content of any such communications, precluding any discussions relating to the acquisition or distribution of cannabis, and precluding any encouragement of the use of cannabis. *See* Doc. 101.

3. The government claims that the Magistrate Judge's order amending the conditions of release impliedly assumes that Mr. Quaintance's religious practice is sincere. It does not. No finding concerning the legitimacy of Mr. Quaintance's religious practice was made; such a finding was scrupulously avoided by the Magistrate Judge. To the extent that the order amending conditions of release mentioned the Church of Cognizance, it was simply to refer to a class of people with whom Mr. Quaintance will now be permitted to have limited contact. Identifying individuals as members of a group does not constitute a declaration of the validity of the group itself.

4. The government claims, without any support, that to permit contact between Mr. Quaintance and other members of the Church of Cognizance would pose a danger to the community. That claim is absurd. With the restrictions imposed by the Magistrate Judge, Mr. Quaintance will not be talking about the acquisition, distribution or use of cannabis. He is, and should be, free to discuss any other matter with his acquaintances and family members, whether or not they are members of the Church. Mr. Quaintance, as the leader of the church,

ministers to other members spiritually. Such spiritual ministry need not involve cannabis; as with any other religion, a pastor's communication with church members is not limited to consumption of sacrament. So it is with Mr. Quaintance and the Church of Cognizance. The prohibition against communication with church members has also hampered Mr. Quaintance's discussions with others about the defense of this case.

5. The First Amendment to the United States Constitution grants the freedom of association. The prohibition against communication with church members violated that freedom. Magistrate Judge Martinez' order restored that freedom to a limited extent. Those limitations are more than adequate to address any alleged danger that the government appears, without foundation, to fear.

6. "The right of freedom of association is a basic or fundamental constitutional freedom or right, derived from freedom of speech, and, like freedom of speech, is grounded on the requirements of a democratic form of government and lies at the foundation of a free society." 16B C.J.S. Constitutional Law, § 986 (updated 2005) (citations omitted). "[W]hen the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association ... may be implicated." *Boy Scouts of America v. Dale*, 530 U.S. 640, 678, 120 S.Ct. 2446, 147 L.Ed.2d 554 (2000) (internal quotations and citations omitted).

7. Magistrate Judge Martinez made her decision based on the information which was presented in the pleadings and which she heard at the hearing. It was a reasonable

response to a reasonable request. The government's appeal of Magistrate Judge Martinez' should be denied without a hearing.

8. The government has sought a stay of the Magistrate Judge's order pending the outcome of its appeal. There is no apparent basis for the stay save for the government's baseless assertion that the limited freedom of association permitted by the order creates a danger. No possible danger can or will result from the order amending conditions of release. There is no need to stay the Magistrate Judge's order. Preventing harmless and constitutionally protected communications pending a hearing on the government's motion will further and unnecessarily trample on Mr. Quaintance's constitutional rights. Mr. Quaintance requests that the Court deny the government's request for a stay.

**WHEREFORE**, for the foregoing reasons, DANUEL DEAN QUAINANCE, Defendant, respectfully prays that the Court enter an order denying the government's appeal of the order amending conditions of release, denying the government's request for a stay of that order, and providing such other and further relief to which the Court may find Mr. Quaintance to be justly entitled.

Respectfully Submitted,

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*filed electronically on July 4, 2006*  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Response to Government's Appeal was served on Assistant United States Attorney Amanda Gould, 555 Telshor, Suite 300, Las Cruces, New Mexico, 88011, by placing it in the box designated for the United States Attorney's Office at the United States District Court Clerk's office; Mr. Mario A. Esparza, P.O. Box 2468, Las Cruces, New Mexico 88004; and Mr. Leon Schydlower, 210 N. Campbell, El Paso, Texas 79901-1406 on July 5, 2006.

*filed electronically on July 4, 2006*  
MARC H. ROBERT

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