

**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 FIRST MOTION IN LIMINE

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, presents his First Motion in Limine, and in support of his motion would respectfully show the Court as follows:

1. Mr. Quaintance is charged by superseding indictment filed on May 17, 2006 [Doc. 65] with possession of more than 50 kilograms of marijuana with intent to distribute it and conspiracy to possess more than 100 kilograms of marijuana with intent to distribute it. Mr. Quaintance was arraigned on June 2, 2006 and entered not guilty pleas to both charges. Mr. Quaintance has filed a motion to dismiss the indictment [Doc. 34] on the basis that the indictment violates his Constitutional and statutory rights to religious freedom. The government responded [Doc. 41] and Mr. Quaintance replied [Doc. 68]. Before other tenets of the Religious Freedom Restoration Act (RFRA) could be addressed, Mr. Quaintance first bore the burden to establish the sincerity of his religious beliefs. A hearing on that aspect of Mr. Quaintance’s RFRA claim was held on August 21 through 23, 2006 in Albuquerque. Following the hearing, Mr. Quaintance submitted a written closing argument [Doc. 160]. The

government responded with its argument [Doc. 163], and Mr. Quaintance submitted a reply [Doc. 166]. That motion remains pending. Trial is set for January 16, 2007 in Albuquerque.

2. Mr. Quaintance contends that his alleged possession of marijuana, and the alleged conspiracy, were integral to the practice of his religion. Under RFRA, his sincere religious practice is a part of his defense to the charges.

3. The question of the sincerity of Mr. Quaintance's religious belief is a question of fact for the jury. *United States v. Seeger*, 380 U.S. 163, 185 (1965); *United States v. Hsia*, 24 F.Supp.2d 33, 46 (D.D.C. 1998).

4. Mr. Quaintance intends to present evidence of his religious practice; his religious beliefs; its origins; anthropological evidence of other religions, modern and ancient, and their use of entheogens (psychoactive substances) in religious practice in defense of the charges at trial.

5. RFRA provides that once a litigant's religious sincerity is determined, and that the sincere religious practice is burdened by the government's action (in this case, by the enforcement of the Controlled Substances Act (CSA)), the government must establish a compelling interest in burdening the religious practice, and that the manner of the particular burden is the least intrusive means of furthering that compelling interest. *See* 42 U.S.C. § 2000bb-1(b).

6. Mr. Quaintance further intends to present evidence regarding the RFRA factors involving whether the government's enforcement of the Controlled Substances Act meets a

compelling interest, and that such enforcement is the least intrusive means of accomplishing that goal.

7. Mr. Quaintance hereby provides notice of such intent so that the Court, and the government, might be able to plan for the length and substance of the trial.

8. The undersigned counsel has conferred with Assistant United States Attorney Luis A. Martinez regarding this motion. The government opposes this motion.

WHEREFORE, for the foregoing reasons, DANUEL DEAN QUAINANCE, Defendant, respectfully prays that the Court permit the presentation of the above described evidence during the trial of this cause, and provide 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 December 8, 2006

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Counsel for Mr. Quaintance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion in Limine was served on Assistant United States Attorneys Luis A. Martinez and 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 Ms. Bernadette Sedillo, 201 N. Church St., Suite 330, Las Cruces, New Mexico 88001 on December 8, 2006.

filed electronically on December 8, 2006
MARC H. ROBERT

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