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 QUAINTANCE,	§	
	§	
Defendant.	§	

MOTION TO RECONSIDER DENIAL OF MOTION TO DISMISS INDICTMENT

DANUEL DEAN QUAINTANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, moves the Court to reconsider its decision to deny Mr. Quaintance's motion to dismiss indictment in this cause, [Doc. 192], 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 the intent to distribute it, and with conspiracy to possess more than 100 kilograms of marijuana with the intent to distribute it. Mr. Quaintance is presently residing at his home in Pima, Arizona under conditions of release set by United States Magistrate Judge Martinez. Trial is set for May 21, 2007.

2. Mr. Quaintance moved for dismissal of the charges in this case on the grounds that his prosecution is proscribed by the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution, the Religious Freedom Restoration Act ("RFRA") and 22 U.S.C. § 6401(a) [Doc. 34]. The government responded [Doc. 41], and

Mr. Quaintance replied [Doc. 68]. Mary Helen Quaintance and Joseph Butts joined in that motion. A hearing was held on August 21, 22 and 23, 2006. The Court denied the motion to dismiss by Memorandum Opinion filed on December 22, 2006 [Doc. 192]. The Court held that Mr. Quaintance's professed religious beliefs do not fall within the legal definition of religion, and therefore do not qualify for the statutory and constitutional protections asserted; and that Mr. Quaintance's religious beliefs are not sincere. For the reasons set forth below, Mr. Quaintance respectfully requests that the Court reconsider its ruling.

THE MATRIX FOR DEFINING A RELIGION CREATED IN *UNITED STATES V. MEYERS* IS INAPPLICABLE BECAUSE THE RFRA DEFINITION OF RELIGIOUS PRACTICE WAS BROADENED FOLLOWING THE *MEYERS* DECISION

3. The Court's decision in this case was driven almost entirely by the Tenth Circuit's formulation in *United States v. Meyers*, 95 F.3d 1475 (10th Cir. 1996). In that case, the Tenth Circuit purported to define what is and what is not a religion. The Court established a set of criteria, a matrix, for determining what qualifies as a religion. The *Meyers* Court was operating under a broad concept of "exercise of religion" under the original version of RFRA, which was enacted in 1993. In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). Included in that legislation was a broadened definition of the concept of exercise of religion. After the 2000 amendment, exercise of religion under RFRA is defined to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000bb-2(4), 2000cc-5(7)(A). *See Navajo Nation v. United States Forest Service*, 479 F.3d 1024, 1033 (9th Cir. 2007) ("To the extent that our RFRA cases prior to RLUIPA depended on a narrower definition of 'religious exercise,' those cases are no longer good law").

4. *Meyers* was decided under that "narrower definition of religious exercise". Indeed, the main thrust of the *Meyers* majority opinion was to define religious exercise by reference to the hallmarks of mainstream, conventional "system[s] of religious belief". All of the criteria adopted by the *Meyers* court are tailor-made for the traditional church-and-steeple religious practices common in the Western world. The revised definition after RLUIPA directly rejects such a formulation by specifically eliminating any requirement that the religious practice be a part of a "system of religious belief". Because of the significant change in the statutory language, *Meyers* is no longer good law. This Court should reconsider its ruling, and on the strength of applicable definitions of religion, grant Mr. Quaintance's motion to dismiss.

THE DEFINITION OF "RELIGION" EMPLOYED IN THE COURT'S DECISION IS CONTRARY TO WELL ESTABLISHED SUPREME COURT PRECEDENT

5. In his motion to dismiss and the briefing and argument thereon, Mr. Quaintance submitted that the *Meyers* matrix was an improper and unconstitutionally restrictive definition of religion and religious practice. In the Memorandum Opinion, this Court indicated that Mr. Quaintance had not provided authority for that proposition.

6. In his written closing argument [Doc. 160], Mr. Quaintance cited and quoted from *United States v. Seeger*, 380 U.S. 163, 174-75 (1965). In *Seeger*, the Supreme Court held that a person who holds a sincere belief which "in his life fills the same place as a belief in God fills in the life of an orthodox religionist" was entitled to consideration as a conscientious objector to the draft. *Id*. at 192-93. *Seeger* involved three people who challenged the denials of their applications for conscientious objector status under the Selective Service Act. Under

the SSA, conscientious objector status required a belief system which was based in a belief in a supreme being. Mr. Seeger argued that his skepticism in the existence of a supreme being did not indicate a lack of faith in anything, and citing Plato, Aristotle and other philosophers, maintained that his world-view occupied a place in his life as significant as the place God occupies in the life of a believer. Mr. Jakobsen "defined religion as the 'sum and essence of one's basic attitudes to the fundamental problems of human existence'". *Seeger*, 380 U.S. at 168. He submitted a long memorandum discussing his spiritual beliefs, espousing a belief in a horizontal approach to "Godness, toward Mankind and the World", as distinguished from a "vertical" approach. *Id.* Mr. Peter declined to directly comment on his belief in a supreme being by saying that it depended on the definition of "supreme being", but indicated that the taking of life violated his moral code, and that that moral code was superior to his obligation to the state. *Id*. at 169. He "quoted with approval Reverend John Haynes Holmes' definition of religion as 'the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands * * * (; it) is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best.'" *Id*. Mr. Peter arrived at his conviction through reading and meditation.

7. The Supreme Court enunciated the standard thus: "does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption [by virtue of a manifest belief in a supreme being]?" *Id*. at 184. "'Surely a scheme of life designed to obviate (man's inhumanity to man), and by removing temptations, and all the allurements of ambition and avarice, to nurture the virtues of unselfishness, patience, love, and service, ought not to be denounced as not pertaining to

religion when its devotees regard it as an essential tenet of their religious faith.'" *Id*. (quoting *State v. Amana Society*, 132 Iowa 304, 109 N.W. 894, 8 L.R.A.,N.S., 909 (1906)).

8. In his testimony at the hearing on the motion to dismiss last August, Mr. Quaintance described at length his decades-long study of the Bible and earlier religious texts, and his syncretic[1] formulation of his own religious philosophy. He went to the extent of learning ancient languages and attempting to understand religious texts from thousands of years ago. His religious philosophy, embodied in the phrase "Good Thoughts, Good Words, Good Deeds" was the product of a lifetime of seeking a connection with his spiritual essence. His religious philosophy and practice do not fit neatly within the catechism of mainstream religions. Like the members of the Iowa Amana Colonies nearly 100 years ago, however, his philosophy, which Mr. Quaintance regards as a central tenet of his religious belief, "ought not be denounced as not pertaining to religion", particular in view of the Supreme Court's properly expansive view of the nature and definition of religion.

9. Such was Judge Brorby's point in his impassioned dissent in the *Meyers* case, cited and quoted in Mr. Quaintance's motion to dismiss. He recognized that excluding a belief system which does not fit into neat categories is centrally antithetical to this country's history and tradition of religious tolerance.

10. The Supreme Court revisited the question in *Welsh v. United States*, 398 U.S,. 333 (1970). The Court noted the similarities between that case and *Seeger*: "[B]oth Seeger and

[1] Dr. Deborah Pruitt, who also testified at the hearing as an expert in religious anthropology, pointed out that a religious philosophy taking elements of other religious traditions, which she named syncretism, is no less a legitimate religion for not falling into one of the previously identified and more commonly adopted belief systems.

Welsh were brought up in religious homes and attended church in their childhood, but in neither case was this church one which taught its members not to engage in war at any time for any reason. Neither Seeger nor Welsh continued his childhood religious ties into his young manhood, and neither belonged to any religious group or adhered to the teachings of any organized religion during the period of his involvement with the Selective Service System. At the time of registration for the draft, neither had yet come to accept pacifist principles. Their views on war developed only in subsequent years . . .". *Id*. at 335-36. The *Welsh* Court noted that the *Seeger* Court "made it clear that these sincere and meaningful beliefs that prompt the registrant's objection to all wars need not be confined in either source or content to traditional or parochial concepts of religion." *Welsh*, 398 U.S. at 339. Mr. Welsh stepped further from religion than had Messrs. Seeger, Peter and Jakobsen: he specifically denied that his beliefs were based in religion, stating instead that his beliefs were derived from his readings in history and sociology. *Id*. at 341. The Court accepted the lower court's conclusion that Mr. Welsh held his beliefs with the strength of more traditional religious convictions, *id*. at 343, and reversed his conviction. *Id*. at 344.

11. The Ninth Circuit in *Navajo Nation* has said that the definition of religion after RFRA and RLUIPA is even broader than the definition set forth by the Supreme Court before the passage of those statutes.

12. In its ruling, this Court cited *Africa v. Pennsylvania*, 662 F.2d 1025 (3d Cir. 1981). In that case, John Africa, founder of the political organization MOVE, sought an order of the court compelling the Pennsylvania prison system to provide him with a special diet. Discussing the definition of religion, the *Africa* court cited *Seeger* and said that "[i]t is

inappropriate for a reviewing court to attempt to assess the truth or falsity of an announced article of faith. Judges are not oracles of theological verity, and the Founders did not intend for them to be declarants of religious orthodoxy." *Africa*, 662 F.2d at 1030. The court also cited the Supreme Court's decision in *Torcaso v. Watkins*, 367 U.S. 488 (1961) in which Justice Black, "writing for a unanimous Court, concluded that a state could not favor 'those religions based on a belief in the existence of God as against those religions founded on different beliefs'; in a footnote, he observed that a number of religious groups within the United States do not hold to theistic doctrines." *Africa*, 662 F.2d at 1031-32. The court also quoted Judge Adams' concurring opinion in *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979): "beliefs holding the same important position for members of one of the new religions as the traditional faith holds for more orthodox believers are entitled to the same treatment as the traditional beliefs". *Malnak*, 592 F.2d at 207 (Adams, J. concurring). The *Africa* court recognized that a pantheistic philosophy would qualify as a religion, *Africa*, 662 F.2d at 1033, but declined to find that MOVE was an organization with a pantheistic philosophy. *Africa* was decided in the Third Circuit, and before either RFRA or RLUIPA. Aside from those obvious caveats, the case at bar presents an entirely different situation. Mr. Quaintance's protracted and exhaustive spiritual journey has led him to a spiritual, religious philosophy which he described in detail during the hearing. He testified to his belief in a spiritual interconnectedness with the world central to which is the cannabis plant; and to his research, which indicated that the plant was integral to many religious cultures at various times in the development of humankind. Mr. Quaintance's beliefs are not political or "revolutionary", as were MOVE's; he is a seeker after spiritual knowledge. His testimony demonstrated that. His

beliefs are not personal or secular (*see Africa*, 662 F.2d at 1034); they occupy for him the same place that belief in God does for mainstream Christians.

13. This Court also cited *Yoder v. Wisconsin*, 406 U.S. 205 (1972), in the Memorandum Opinion denying the motion to dismiss. *Yoder* was decided just two years after *Welsh*, and barely referred to the *Welsh* decision in Chief Justice Burger's opinion for the Court. Certainly, *Yoder* did not overrule *Welsh* or *Seeger*. In *Yoder*, the Court made reference to the long and organized tradition of the Amish religion in determining that religious, and not secular, matters were at issue in the respondents' decision not to place their children in public school after the eighth grade. Chief Justice Burger wrote that personal or secular concerns would not rise to a level protected by the First Amendment, specifically pointing out the secular views of Henry David Thoreau as not qualifying as "religious". *Yoder*, 406 U.S. at 216 .

14. In *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981), the Supreme Court took another look at the definition of religion. In this case, the petitioner, a Jehovah's Witness, had quit his job because his employer changed his work from making rolled steel to making tank turrets. Making tank turrets offended his religious beliefs. Because he had struggled to articulate his religious objection to the change of work, and because it found Thomas' particular belief system unclear, the Indiana supreme court rejected his claim for unemployment benefits, holding that he had quit for personal, not religious reasons. The Supreme Court noted that

> "[t] determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. However, the resolution of that question is not to turn upon a judicial

> perception of the particular belief or practice in question; religious beliefs need not be *acceptable, logical, consistent, or comprehensible to others* in order to merit First Amendment protection.

Thomas, 450 U.S. at 714 (footnote omitted, emphasis added). The fact that other Jehovah's Witnesses found the work "scripturally acceptable" to be relatively unimportant. "Intrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses." *Thomas*, 450 U.S. at 715. This statement by the Supreme Court highlights the irrelevance of the testimony of the Zoroastrian priest, Dr. Bagli, at the evidentiary hearing to a determination of the qualification of Mr. Quaintance's beliefs as religious. "Particularly in this sensitive area [religion], it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation." *Thomas*, 450 U.S. at 716.

15. The importance of the Court's statement that a religious belief need not be "acceptable, logical, consistent or comprehensible" cannot be overstated. The Court sends a clear message that the courts should not disqualify a religious belief simply because its thesis is different from, or even abhorrent to, more conventional beliefs. It is natural that one who strongly holds a religious belief will be resistant to, even offended by, a less mainstream, more esoteric religious pursuit. The Supreme Court's holding avoids the risk of declaring illegitimate a deeply held but unusual religious belief because that belief may be at extreme odds with the beliefs of the deciding judge.

MR. QUAINTANCE EXPRESSED BELIEFS WHICH FALL WITHIN THE SUPREME COURT'S DEFINITION OF RELIGION

Mr. Quaintance expressed a simple but profound religious philosophy in his testimony. Like Mr. Thomas in the *Thomas* case, Mr. Quaintance may have had difficulty expressing that philosophy to this Court's satisfaction. However, as expressed the Court's Memorandum Opinion, Mr. Quaintance expressed a spiritual philosophy in his testimony. *See* Memorandum Opinion at 6. The Court, again referring to *Meyers*, objects that Mr. Quaintance's expressed philosophy was insufficiently "imponderable", "inexplicable" or "profound". The Supreme Court does not require such rigor. Mr. Quaintance's religious beliefs are simple and profound. He believes, based on years of exhaustive anthropological research, that cannabis was worshiped in ancient religions and is a deity and a sacrament, a healer and a teacher. He believes that cannabis played a central role in events related in both the Old and New Testaments of the Bible, as well as in the seminal texts of other religions. As noted by Dr. Pruitt, and in other resources cited by Mr. Quaintance in his briefing of this matter, his beliefs in this regard are shared by other scholars. *See, e.g.*, *Entheogens and the Future of Religion*, Albert Hofmann, et al., ed. (Council on Spiritual Practices, 2000); *Persephone's Quest: Entheogens and the Origin of Religion*, R. Gordon Wasson, Stella Kramrisch, Carl Ruck, Jonathan Ott (Yale University Press, 1992). Mr. Quaintance believes that our purpose in life is to live honestly, simply and fairly; to help others; to be true and faithful to one's own beliefs; to always strive to do good. His beliefs form the genuine core of his spiritual being. His beliefs clearly occupy the same space as a belief in God occupies in a devout Christian, and a belief in Allah in a devout Muslim.

16. This Court compares Mr. Quaintance to Meyers, about whom the *Meyers* court said that the smoking of 10 to 12 marijuana cigarettes a day appeared to be an end in itself. *See* Memorandum Opinion at 9. Mr. Quaintance and Mr. Senger both testified to their strong and long-held beliefs that cannabis consumption is not an end in itself, but a sacred vehicle to achievement of a higher spiritual plane, much as the use of peyote assists the spiritual pursuits of practitioners of the Native American church. This Court opines that the change in mental state results from the physical effects of cannabis on the body and mind. The same could be said of the NAC's use of peyote, which enjoys a specific exclusion from criminal sanction. Disparate treatment of cannabis from that of peyote constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. No rational basis can be identified to justify this disparity. *See Johnson v. Robison*, 415 U.S. 361, 375, n. 14 (1974); *see also McDaniel v. Paty*, 435 U.S. 618 (1978).

17. This Court says that Mr. Quaintance presented no evidence that a higher power expects him to act in accordance with the precepts he described. *See* Memorandum Opinion at 14. Demanding proof of the veracity of a particular religious belief is the essence of what the Supreme Court has said cannot be done by this nation's courts. Many of the most important, central precepts of the world's most prevalent and powerful religions are taken on pure faith, in the absence of evidence in the ordinary, legal sense. The veracity of a belief is not for the courts to decide. *See Seeger*, 380 U.S. at 185.

18. The Court notes that some of Mr. Quaintance's beliefs about the bounty of the cannabis plant are secular, not religious. *See* Memorandum Opinion at 18, n. 12. Mr. Quaintance would point out that many religious beliefs derive from practical things. An

example is the Jewish and Muslim prohibitions against eating pork, which can be said to have derived from the very secular concern that untreated or refrigerated pork can kill if eaten. The versatility of the cannabis plant explains why is has been revered in various religious traditions for thousands of years, as Dr. Pruitt told us. A secular component to a religious symbol or belief does not make the belief any less religious.

19. The Court said that there is no ritual associated with the Church of Cognizance. *See* Memorandum Opinion at 24-25. Mr. Quaintance and Mr. Senger testified about the ritual of making the drink haoma, which has passed down through millennia through ancient writings. The oils produced by the cannabis seed are used in anointing, also rituals passed down through millennia.

20. The Court said that the Church of Cognizance does not propagate its beliefs. *See* Memorandum Opinion at 29. Mr. Quaintance testified that the Church website is used for this purpose.

21. The Court concluded that the evidence supports the conclusion that Mr. Quaintance formed his religion for the purpose legitimizing his secular use of marijuana. *See* Memorandum Opinion at 33. In fact, the evidence supports the opposite conclusion. Mr. Quaintance testified that he research ancient theology for years in arriving at his beliefs. His research was spurred by his dissatisfaction with other religious teachings. Dr. Pruitt, an expert in the anthropology of religion and the use of entheogens, found Mr. Quaintance to be more knowledgeable than she in the areas he had studied. Mr. Quaintance formed the Church of Cognizance in 1991, fifteen years before his arrest.

THE QUESTION OF THE SINCERITY OF MR. QUAINTANCE'S RELIGIOUS BELIEFS IS A QUESTION OF FACT FOR DETERMINATION BY THE JURY

22. In addition to holding that Mr. Quaintance's beliefs do not constitute a religion, this Court ruled that Mr. Quaintance's beliefs are not sincerely held. Mr. Quaintance strongly disputes that conclusion. However, the question of Mr. Quaintance's sincerity is an issue of fact and must be presented to the jury for determination. *See United States v. Seeger*, 380 U.S. at 185; *United States v. Hsia*, 24 F.Supp. 2d 33, 46 (D.D.C. 1998) ("juries are routinely asked to determine whether a person sincerely holds a religious belief and whether she acted out of or was motivated by that belief or for some other reason".)

The definition of religious exercise employed by the Tenth Circuit in *Meyers* is different from the one which is to be employed now, as recognized in *Navajo Nation*. The change in definition goes directly to the flaws in the *Meyers* approach to defining a religion, and fundamentally alters the way the question should be assessed. Accordingly, *Meyers* is no longer good law. To the extent that the Court's decision in this case was based on *Meyers*, that decision should be reconsidered.

CONCLUSION

For that reason and all the other reasons discussed herein, Mr. Quaintance respectfully requests that this Court reconsider its decision regarding Mr. Quaintance's motion to dismiss, order the dismissal of the indictment in this cause, and grant such other and further relief to which the Court may find Mr. Quaintance to be justly entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Reconsider Order Denying Motion to Dismiss was served upon Assistant United States Attorneys Luis A. Martinez and Amanda Gould, 555 S. Telshor, Suite 300, Las Cruces, New Mexico 88011 (fax number 505.522.2391), by placing a copy of the same in the United States Attorney's box at the Las Cruces office of the United States District Court Clerk; and on Mr. Mario A. Esparza, counsel for Mary Quaintance, P.O. Box 2468, Las Cruces, New Mexico 88004; and Ms. Bernadette Sedillo, counsel for Joseph Butts, 201 N. Church St., Suite 330, Las Cruces, New Mexico 88001 on April 26, 2007.

electronically filed on April 26, 2007
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