IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DANUEL DEAN QUAINTANCE, MARY HELEN QUAINTANCE, and JOSEPH ALLEN BUTTS,	)	**No. CR 06-538 JH**
	)	
Defendants.	)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER DENIAL OF MOTION TO DISMISS INDICTMENT

THE UNITED STATES OF AMERICA, by and through Larry Gomez, Acting United States Attorney for the District of New Mexico, and Luis A. Martinez, Assistant United States Attorney for said District, files this Response in Opposition to Defendants' Motion to Reconsider Denial of Motion to Dismiss Indictment.

I.

DEFENDANTS' RELIANCE ON *UNITED STATES v. SEEGER* AND *UNITED STATES v. WELSH* IS MISPLACED.

The Defendants' reliance on *United States v. Seeger*, 380 U.S. 163 (1965), is misplaced. *Seeger* involves and is limited to cases involing claims of conscientious objectors under §6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. §456(j) (1958 ed.) *Seeger* at 164. *Seeger* is further inapplicable in an analysis of the case at bar, in that *Seeger* does not define religion per se. *Seeger* teaches that all "religions are embraced pursuant to the meaning of religious training and belief. *Seeger* goes on to

exclude political, sociological and philosophical views. Id. But *Seeger* does not define religion. The issue is *Seeger* was what Congress meant by the term "Supreme Being" as used in §6(j), whether it means orthodox God or the broader concept of a power or being or faith. *Seeger* at 174. Hence, *Seeger* is irrelevant to the case at bar.

Likewise, Defendants' reliance on *United States v. Welsh*, 398 U.S. 333 (1970), is misplaced. *Welsh*, too, is a conscientious objector case and therefore inapplicable. *United States v. Meyers*, 906 F. Suppl. 1494, FN 5.

II.

DEFENDANTS' BELIEFS CANNOT FALL WITHIN THE SUPREME COURT'S DEFINITION OF RELIGION BECAUSE NO SUCH DEFINITION EXISTS.

The Defendants assert boldly that ". . . *Meyers* is no longer good law." Doc. 219, pp. 3; 13 and offer no legal support for this assertion. *Meyers* is the definitive Tenth Circuit case on the issue of religion for RFRA purposes. It has not been overruled and is based on sound legal reasoning. The defendants are unable to reference any Supreme Court established definition of Religion, because none exists.

The impetus for the Defendants' assertion that *Meyers* is no longer "good" law appears to be derived from the Ninth Circuit Court of Appeals' decision in *Navajo Nation v. United States Forest Service*, 479 F. 3d 1024. The Ninth Circuit said in *Navajo Nation*, "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." Id. At 1033.

III.

RLUIPA AND THE DECISION IN *NAVAJO NATION v. UNITED STATES FOREST SERVICE* HAS NO EFFECT ON THE *MEYERS* DECISION.

Meyers is a Tenth Circuit Appellate decision and cannot be overruled by a Ninth Circuit Appellate decision.

The Defendants rely on *Navajo Nation* to argue that the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) somehow overrules the Tenth Circuit decision in *Meyers*. This is simply not the case. Congress enacted RLUIPA to address a need which RFRA did not. RLUIPA applies to state and local governments and is not applicable to the case at bar. "Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") Pub. I. No. 106-274, 114 stat. 803 (cofified at 42 U.S.C. §§ 2000 cc et seq.). RLUIPA prohibits state and local governments from imposing substantial burdens on the exercise of religion through prisons or land-use regulations. 42 U.S.C. §§ 2000 cc, 2000 cc-1," *Navajo Nation* at 1032. RFRA is still the law of the case since it is the standard to be applied to the federal government. RLUIPA cannot and does not expand the definition of religion as it relates to the case at bar. To cite *Navajo Nation* for the porposition that RLUIPA overrules *Meyers* is beyond the pale.

RLUIPA is applicable only to state and local governments and applies only to prisoner and land use regulations. The Defendants' attempt to apply RLUIPA by extrapolation to RFRA and the Federal government is borne of desperation.

IV.

THE COURT PROPERLY FOUND THE DEFENDANTS' BELIEFS WERE NOT SINCERELY HELD.

This Honorable Court found, and the government agrees, "The evidence further indicates that Defendants created their 'religion' to justify their civil and social belief that marijuana produces no victim and should be legalized." Doc. 178, p. 33. The Court went on to find the "defendants possessed marijuana for commercial, as opposed to religious, purposes." Id p. 34.

Further, since the Court has found the Defendants' beliefs do not rise to the level of "religion" for RFRA purposes, the issue of sincerity before the jury is moot. Assuming, *arguendo*, that sincerity, in this context, were an issue of fact for the jury, standing alone it cannot provide the Defendants RFRA protection. It is the government's position, however, that sincerity in this context, although a factual matter, is the sole province of the Court. Sincerity is a factual matter, and a **district court's** [emphasis added] findings shall not be overturned unless clearly erroneous. *Meyers*, 95 F. 3d at 1482.

CONCLUSION

Defendants' Motion to Reconsider should be denied. The legal analysis contained therein is suspect and its conclusions weak and unsupported. *United States v. Meyers* continues to be "good" law and the law of the case. RLUIPA is inapplicable to the case at bar. *United States v. Seeger* and *United States v. Welsh* are conscientious objector cases and apply to the Universal Military Training and Service Act. The aforementioned case law is irrelevant to RFRA and further offers no working definition of "religion" for RFRA

purposes. On the contrary, *United States v. Meyers*, the law of the case, as well as that of the Tenth Circuit does.

The Supreme Court has not set out a definition of religion for RFRA purposes.

And, as the court has ruled, the Defendants' beliefs are neither sincere nor "religious" for RFRA purposes.

Based on the foregoing the United States requests this Honorable Court to deny defendants' Motion to Reconsider denial of motion to dismiss indictment.

Respectfully submitted,

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I HEREBY CERTIFY that a true copy of the foregoing pleading was delivered to opposing counsel of record on the 3rd day of May, 2007.

/s/
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