

**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
MOTION IN LIMINE NUMBER ONE TO DISMISS INDICTMENT**

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, responds to the government's Motion in Limine Number 1 [Doc. 217], and in support of his position would respectfully show the Court as follows:

1. The government has indicated that it intends to present evidence at trial of membership in the Church of Cognizance as evidence of a conspiracy. The government then asks this Court to prevent the defense from explaining that evidence, from putting it into proper context. The government's motion should be denied and Mr. Quaintance should be permitted to present his defense to the jury.

2. Mr. Quaintance's defense in this case is that his actions are grounded in religious principles, and that he is protected from prosecution by the Religious Freedom Restoration Act as amended, by other statutory enactments, and by the United States Constitution. His defense goes to the heart of the notion of intent. To deny him the right to present that defense will prevent him from addressing the jury on the issue of intent. Preventing him from presenting

his defense to the jury would deny him the right to a fair trial, effective assistance of counsel, and due process, in violation of the Sixth and Fourteenth Amendments to the Constitution. “Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants “a meaningful opportunity to present a complete defense.” *Crane* [*v. Kentucky*, 476 U.S. 683] at 690, * * * (quoting *California v. Trombetta*, 467 U.S. 479, 485 * * *.” *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 1731 (2006).

3. The question of Mr. Quaintance’s religious sincerity is undoubtedly 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) (“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”). Mr. Quaintance cannot adequately and reasonably present that issue to the jury without fully explaining his religious beliefs and their origins. Sincerity cannot be evaluated without an adequate context, without knowing about that with respect to which sincerity is claimed. Granting the government’s motion would prevent Mr. Quaintance from presenting the issue fairly to the jury; it would prevent the jury from receiving a complete picture and adequate facts upon which to base a reasoned and informed decision; and would deny Mr. Quaintance his right to a fair trial.

For that reason and all the other reasons discussed herein, Mr. Quaintance respectfully requests that this Court deny the government’s Motion in Limine Number 1, 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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electronically filed on May 3, 2007
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Counsel for Mr. Quaintance

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Motion in Limine Number 1 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 May 4, 2007.

electronically filed on May 3, 2007
MARC H. ROBERT

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