

**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 REPLY TO THE GOVERNMENT'S
RESPONSE TO MOTION FOR RECONSIDERATION**

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, submits the following Reply to the government's Response to Mr. Quaintance's Motion for Reconsideration of his Motion to Dismiss Indictment, and in support of the Motion for Reconsideration would respectfully show the Court as follows:

1. The government claims that the Supreme Court's definitions of religion in the *Seeger* and *Welsh* cases are inapplicable to this case. The government then claims that no definition of religion exists. It is precisely because of the paucity of clear statements by the Supreme Court about the definition of religion and religious practice that the *Seeger* and *Welsh* formulations are so important in determining the issues in this case. Notwithstanding their provenance, different from this case, they represent the nation's highest Court's rare statements on this critical issue. To that extent, the definitions contained in those cases supersede inconsistent Tenth Circuit law and guide the Court's decision in this case.

2. The government calls Mr. Quaintance's citation of the *Navajo Nation* case from the Ninth Circuit an "act of desperation". *Navajo Nation* describes a critical amendment of a critical part of the Religious Freedom Restoration Act, a part which bears directly on the Court's consideration of the issues presented here. The amendment described in *Navajo Nation* was not a Ninth Circuit amendment, but a Congressional enactment which applies to all the circuits. Mr. Quaintance contends that the Ninth Circuit's interpretation of that statutory amendment is highly relevant to this Court's evaluation of the issues. *See also Cutter v. Wilkinson*, 544 U.S. 709, 715 (2005) (discussing the definition of religious exercise under RLUIPA, 42 U.S.C. § 2000cc-1 *et seq.*).

3. Mr. Quaintance believes that the Court misunderstood his description of his religious beliefs and practices during the evidentiary hearing on August 21-23, 2006. Attached to this Reply is a Statement of Danuel D. Quaintance which provides additional information about those beliefs and practices and their origins.

WHEREFORE, for the foregoing reasons, DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned counsel, respectfully prays that the Court reconsider its decision denying Mr. Quaintance's motion to dismiss the indictment in this cause, enter an order dismissing the indictment, and providing for such other and further relief to which the Court may find Mr. Quaintance to be justly entitled.

Respectfully Submitted,

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Counsel for Mr. Quaintance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Response to Motion to Reconsider Denial of Motion to Dismiss Indictment was served on Assistant United States Attorney 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; Ms. Bernadette Sedillo, 201 N. Church St., Suite 330, Las Cruces, New Mexico 88001 on May 8, 2007.

filed electronically on May 7, 2007

MARC H. ROBERT

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