IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v. CR 06-538 JH

MARY HELEN QUAINTANCE,

Defendant.

DEFENDANTS' JOINT, SECOND MOTION TO DISMISS THE INDICTMENT

COMES NOW the Defendants Danuel Quaintance and Mary Quaintance, by and through their respective attorneys Jerry Daniel Herrera and John F. Robbenhaar, and pursuant to the Fifth and Sixth Amendments to the United States Constitution, respectfully move the Court to dismiss the charges contained in the *Superseding Indictment*.

The Government, by and through its Assistant United States Attorney Luis Martinez, opposes the relief sought in this motion.

As grounds in support, Defendants state as follows:

BACKGROUND AND INTRODUCTION

1. The Defendants Mary Helen Quaintance, along with her husband Danuel Dean Quaintance, have been charged in a *Superseding Indictment* with Count 1, Conspiracy to Possess with the Intent to Distribute 100 Kilograms or More of Marijuana, contrary to 21 U.S.C. § 841(a)(1) and 21 U.S.C. § (b)(1)(B), and Count 2, Possession with the Intent to Distribute 50 Kilograms or More of Marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and 846. Doc. 25.

2. Co-Defendant Danuel Quaintance filed a *Motion to Dismiss the Indictment* and *Reply*, Docs. 34, 68, which were joined by the Defendant Mary Quaintance. Docs. 35, 69. The *Motion to Dismiss* sought a ruling that the Controlled Substances Act (CSA) constitutes a substantial burden on the Defendants' exercise of their religion as leaders and members of their church, the Church of Cognizance. Defendants argued that application of the CSA to the Church of Cognizance is not in furtherance of a compelling governmental interest, and even if application of the CSA to the Church of Cognizance furthers a compelling governmental interest, it is not the least restrictive means of furthering that interest, thereby violating the Defendants' rights as guaranteed by the Religious Freedom and Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb *et seq.* (2006). Defendants argued below that application of the CSA to members of the Church of Cognizance violates the RFRA as well as the Free Exercise Clause of the First Amendment to the United States Constitution.

3. The Court held an evidentiary hearing on August 21–23, 2006, and ultimately denied the *Motion to Dismiss*. Doc. 192. Defendant Danuel Quaintance filed a *Motion to Reconsider*, Doc. 219, which was joined by Mary Quaintance. Doc. 220. The *Motion to Reconsider* was denied by the Court on May 9, 2006. Doc. 235.

4. Both the Defendant Danuel Quaintance and the United States filed separate *Motions in Limine*, seeking a ruling on the ability of the Defendants to present a religious use defense at trial. Docs. 187, 188. The district court denied the Defendants' *Motion in Limine* and granted the United States' *Motion in Limine*, ordering that the Defendants are precluded from offering a religious-use defense. Doc. 236.

5. Defendants assert that the Court should dismiss the *Superseding Indictment,* based

upon the fact that the case upon which the District Court previously relied in denying Defendants' earlier motions to dismiss, *United States v. Meyers*, 95 F.3d 1475 (10th Cir. 1996), doesn't control the instant case, as the RFRA, upon which *Meyers* relied, has been amended by the passage of the RLUIPA in 2000. 42 U.S.C. §§ 2000cc *et seq.*; 42 U.S.C. § 2000bb-2(4).

6. Trial is scheduled to commence on or about August 18, 2008.

ARGUMENT

MEYERS DOESN'T CONTROL THE INSTANT CASE, AS THE RFRA HAS BEEN AMENDED

7. The Tenth Circuit decided *United States v. Meyers* in 1996, just three years after RFRA was signed into law. *Meyers* is based upon the RFRA definition of "exercise of religion", as the "exercise of religion under the First Amendment to the Constitution." *See* 42 U.S.C. § 2000bb-2(4) (1999); 95 F.3d at 1482. In 2000, Congress responded to the Supreme Court's decision in *City of Boerne v. Flores*, 521 U.S. 507, 117 S.Ct. 2157 (1997), which invalidated RFRA as applied to the States and their subdivisions, and passed the RLUIPA, which effectively amended the RFRA's definition of "exercise of religion" to now mean "religious exercise, as defined in [42 U.S.C. §] 2000cc-5." *Id.*, § 2000bb-2(4). "Religious exercise" is defined in 42 U.S.C. § 2000cc-5(7)(A) to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *See Kikumura v. Hurley*, 242 F.3d 950, 960-61 (10th Cir. 2001); *see also Cutter v. Wilkinson*, 544 U.S. 709 (2005). RLUIPA states that it is to be construed in favor of a broad protection of religious exercise, "to the maximum extent permitted" by the terms of the RLUIPA and the United States Constitution. 42 U.S. C. § 2000cc-3(g).

8. The passage of the RLUIPA amended the RFRA in several important ways. First,

as the RLUIPA was Congress' reaction to the Supreme Court's 1997 decision in *City of Boerne*, it should be viewed as Congress' attempt to reapply the compelling interest test to state and local laws, at least when the claimants are persons who object to land use regulations or are prisoners in state facilities. But RLUIPA did more than that, in ways that directly impact Defendants' claimed exemption from application of the CSA. RLUIPA altered the RFRA's definition of what kind of "exercise of religion" might support a RFRA-plaintiff's claim. Both pre-1990 Supreme Court doctrine interpreting the Free Exercise Clause and RFRA cases between 1993 and 2000, recognized a religious claimant's arguable right to be exempt only when the religious activity was mandated by or, at the very least, central to the claimant's religion. *See, e.g., Frazee v. Ill. Dep't of Employment Sec.*, 489 U.S. 829 832, 109 S.Ct 1514, 1517 (1989) ("Our judgments in [*Sherbert v. Verner* and *Thomas v. Review Bd.*] rested on the fact that each of the claimants had a sincere belief that religion required him to refrain from the work in question."); *also see City of Boerne*, 521 U.S. 507, 117 S.Ct. 2157 (1997). By contrast, the RLUIPA defines the protected "exercise of religion" for purposes of both RLUIPA and RFRA to "include[] any exercise of religion, whether or not compelled by, or central to, a system of religious belief. 42 U.S.C. § 2000cc-5(7)(A). The RLUIPA definition broadens the notion of religious liberty, insofar as to permit conduct by religious claimants that the RFRA by itself may not have permitted. Post-RLUIPA, then, a wider range of religious sensibilities are protected: if a person's religion directs or even mildly inclines him to do something–for example, use cannabis as a sacrament–then such activity could still be protected and may compel a government exemption.

9. The Tenth Circuit recently acknowledged that the passage of the RLUIPA

"substantially modified and relaxed the definition of 'religious exercise.'" *Grace United Methodist Church v. City of Cheyenne,* 451 F.3d 643, 663 (10th. Cir. 2006). In that case, the church relied on *Kikumura* to contend that the RLUIPA's relaxed definition of "religious exercise" was not limited to "fundamental" church activities, as *Kikumura* noted that "a religious exercise need not be mandatory for it to be protected under RFRA." 451 F.3d at 662, *citing Kikumura*, 242 F.3d at 960-61. *Grace United* concluded that a jury instruction regarding a government's "substantial burden" was erroneous, even though harmless, in that the instruction articulated the substantial burden test in terms of activities that are "fundamental" to religion. 451 F.3d at 663-64.

10. In *Navajo Nation v. United States Forest Service*, the Ninth Circuit Court of Appeals addressed the impact that the passage of the RLUIPA had on the RFRA. 479 F.3d 1024 (9th Cir. 2007), *reh'g en banc granted*, ___ F.3d ___, 2007 WL 3010747 (9th Cir. 2007). The Ninth Circuit concluded that RLUIPA's new definition of "exercise of religion" was "broader" than RFRA's original, constitution-based definition of "exercise of religion".

> "Under the amended definition... RFRA now protects a broader range of religious conduct than the Supreme Court's interpretation of 'exercise of religion' under the First Amendment. 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."

479 F.3d at 1033 (internal citations omitted). The Ninth Circuit in *Navajo Nation* reversed the district court for not considering the amended definition of "exercise of religion", and for requiring the religious groups to prove that the Forest Service's action prevents them from engaging in conduct or having a religious experience "which the faith mandates." *Id.* (citation omitted).

11. In the present case, the use of cannabis as a sacrament is central and fundamental to the Defendants' religious practice, and consequently RLUIPA's amended definition of "exercise of religion" strengthens Defendants' claim to a compelled government exemption. In light of the passage of the RLUIPA and its effects on the RFRA, *see* Doc. 235, it is error to view this case through a narrow (and fundamentally flawed) *Meyers'* construct. At a minimum, based upon the Government's concession that the CSA results in a substantial burden on the Defendants' exercise of religion, this Court should dismiss the Superseding Indictment based upon the protections offered by the RFRA and the RLUIPA. In the alternative, the Court should compel the Government to prove that the burden is in furtherance of a "compelling governmental interest" and is the "least restrictive means of furthering that compelling governmental interest."

CONCLUSION

12. The Supreme Court noted that a plaintiff need not hew to any particular religious orthodoxy to make a prima facie free exercise claim; "it is enough for the plaintiff to demonstrate that a government has interfered with the exercise or expression of his or her own deeply held faith." *Thomas v. Review Bd.*, 450 U.S. at 714-16, 101 S.Ct. at 1430-31. The free exercise of religion necessarily includes the rights of individuals to define their own religion, *Meyers*, 95 F.3d at 1489-90 (Brorby, J. diss.), and such religion may be incomprehensible or even repugnant to others. The concept of "religion" is certainly not easily defined by law, but because one has difficulty expressing his or her religious beliefs, or defining his or her deity, does not mean the individual's beliefs are any less religious than those of a mainstream religious believer.

13. Defendants submit that they have "passed" the *Meyers'* multi-factor test, and have proven both legally and factually that their beliefs are "religious" and "sincerely held".

Furthermore, *Meyers* ultimately is inapplicable, since the RFRA definition of "exercise of religion" was broadened following the *Meyers* decision by the passage of the RLUIPA. Just as the Ninth Circuit in *Navajo Nation* concluded that RLUIPA expanded the reach of religious exercise, so should the Tenth Circuit and this Court. Due to the RFRA and the RLUIPA, the *Meyers'* decision becomes inapposite to the instant appeal.

14. Defendants submit that the *Meyers'* criteria are unconstitutional and tend to relegate non-mainstream religions beyond the protection of the First Amendment. In *United States v. Seeger*, 380 U.S. 163 (1965), 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. 380 U.S. at 192-93. "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.* at 184 (citation omitted). Similarly, Defendants' religious beliefs, with the essential tenet they live consistent with "good words, good thoughts, good deeds" through the sacramental use of their deity the cannabis plant, demand the same amount of respect as any other religion.

15. Application of the CSA to the Defendants interferes with the free exercise of their religion. This Court should dismiss the *Superseding Indictment*.

Respectfully submitted:

Filed Electronically
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2008 I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing: LUIS MARTINEZ, Assistant U.S. Attorney; JERRY DANIEL HERRERA, Attorney at Law.

Filed Electronically
JOHN F. ROBBENHAAR