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' MOTION TO RECONSIDER THE DENIAL OF THEIR *MOTION IN LIMINE* [DOCS. 187, 188] (REGARDING "RELIGIOUS USE" DEFENSE)

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 and the Religious Freedom Restoration Act, respectfully move the Court to reconsider its former ruling denying the Defendants the ability to raise a "religious use" defense at trial.

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 move the Court to reconsider its previous ruling that precludes the Defendants from offering a "religious use" defense at trial, as said ruling contravenes the Defendants' Fifth and Sixth Amendment rights to due process of law, and the clear intent of the RFRA and the RLUIPA.

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

ARGUMENT

THE COURT SHOULD RECONSIDER ITS RULING THAT APPELLANTS MAY NOT PRESENT A "RELIGIOUS USE" DEFENSE AT TRIAL

7. This Court previously ruled that the Defendants were precluded from offering a defense at trial that they possessed marijuana in order to practice their faith. Doc. 236. Defendants submit that this ruling deprives them of their constitutional right to put forth a defense. U.S. Const., amends V, VI.

8. The purposes of the RFRA are to "restore the compelling interest test... and to guarantee its application in all cases where the free exercise of religion is substantially burdened", and "to provide a claim or defense to persons whose religious exercise is substantially burdened by government." 42 U.S.C. § 2000bb(b). Regarding "judicial relief", RFRA specifically provides that an individual whose "religious exercise has been burdened" may assert such violation as a "claim or defense in a judicial proceeding...." 42 U.S.C. § 2000bb-1(c).

9. This Court has ruled that the Defendants' beliefs are not "religious", and that the Defendants were not "sincere" in their beliefs. Docs. 192, 219. Defendants submit that the issue concerning the sincerity of their beliefs is a factual matter and is properly resolved by the jury. Additionally, whether or not the Defendants' "knowingly or intentionally" violated the CSA is

properly determined in light of the Defendants' religious views. Defendants should be able to rely on the RFRA as a defense to the allegations that they violated the CSA.

10. 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.

11. In this vein, it is error for a district court to act as arbiter over the issue of whether one's beliefs are religious or sincerely held. 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, Defendants submit that *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.

12. Defendants further 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. The jury should decide whether or not the Defendants are exempt from prosecution under the CSA.

CONCLUSION

13. The purposes of the RFRA are to "restore the compelling interest test... and to guarantee its application in all cases where the free exercise of religion is substantially burdened", and "to provide a claim or defense to persons whose religious exercise is substantially burdened by government." 42 U.S.C. § 2000bb(b). Regarding "judicial relief", RFRA specifically provides that an individual whose "religious exercise has been burdened" may assert such violation as a "claim or defense in a judicial proceeding...." 42 U.S.C. § 2000bb-1(c). Based upon the clear language of the RFRA and upon notions of fundamental fairness, this Court should reconsider its prior ruling and authorize the Defendants to present a "religious use" defense at trial.

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