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 REPLY TO THE GOVERNMENT'S RESPONSE [DOC. 355] TO DEFENDANTS' JOINT, SECOND MOTION TO DISMISS THE INDICTMENT [DOC. 347]

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 submit this *Reply* to the Government's *Response* to their *Second Motion to Dismiss*.

The Government submitted a one paragraph *Response*, simply claiming that the United States renews its argument set forth in its *Response to Defendant's Motion to Dismiss Indictment* [Doc. 41] and its *Response to Defendant's Motion for Reconsideration of Order Denying Motion to Dismiss* [Doc. 223], and relies on the *Memorandum Opinion and Order* issued by the Court [Doc. 192]. The Government fails to provide any meaningful response to the arguments set forth by the Defendants, despite the fact that the Defendants, in their *Second Motion to Dismiss*, elaborate more fully on the claims made previously.

The Defendants cited to *United States v. Seeger*, 380 U.S. 163, 185 (1965), a "conscientious objector" case, where the Court couched sincerity in terms of a belief which "fills

the same place as a belief in God fills in the life of an orthodox religionist." 380 U.S. at 192-93. The Government previously dismissed *Seeger* as inapposite to the present case. In the *Second Motion to Dismiss*, the Defendants have renewed their reliance on *Seeger* in light of this Court's finding that the Defendants lack "sincerity" of their beliefs. *See Gillette v. United States,* 401 U.S. 437, 457 (1971) ("`[T]he "truth" of a belief is not open to question'; rather, the question is whether the objector's beliefs are `truly held'" (quoting *United States* v. *Seeger,* 380 U. S. 163, 185 (1965)); *also see Cutter v. Wilkinson*, 544 U.S. 709, 725 n13. (2005) (although RLUIPA bars inquiry into whether a particular belief or practice is "central" to a prisoner's religion, *see* 42 U. S. C. § 2000cc-5(7)(A), the Act does not preclude inquiry into the sincerity of a prisoner's professed religiosity). Accordingly, the Government's flat rejection of *Seeger* is misplaced.

The United States Supreme Court has recently instructed that RFRA requires an individualized analysis applied "to the person". See *Gonzales v. O Centro Espiritu Beneficente Uniao Do Vegetal,* 546 U.S. 418, 430-31 (2006) (RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person" - the particular claimant whose sincere exercise of religion is being substantially burdened.). The plain meaning of RFRA demonstrates congressional intent that RFRA applies to the "person", and <u>not</u> to the church to which the person belongs. *See* 42 U.S.C § 2000bb–1 (a) (Government shall not substantially burden "<u>a person</u>'s" exercise of religion); (c) Judicial relief "<u>A person</u>" whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding. . .).

Thus, rather than looking to the Church of Cognizance and whether or not it contains the sufficient "trappings" of conventional churches around the United States or even throughout the

world, in order to comport with Supreme Court jurisprudence on First Amendment religion claims, district courts must turn to the individual's beliefs. The Defendants submit that the specifics of their religious practice, or religious beliefs, are not determinative of whether they receive protection under the RFRA. It matters not whether the Defendants belong to a "church", whether they profess "ultimate ideas" that are understandable to a non-believer, whether their beliefs are" comprehensive", or whether or not their religion requires a specific moral and ethical code. The Supreme Court has "made it clear that these sincere and meaningful beliefs... need not be confined in either source or content to traditional or parochial concepts of religion." *Welsh*, 398 U.S. at 339.

> "It held that [the conscientious objector statute] does not distinguish between externally and internally derived beliefs"... and also held that 'intensely personal' convictions which some might find 'incomprehensible' or 'incorrect' come within the meaning of "religious belief"... What is necessary under *Seeger*.. to be "religious" within the meaning... is that this... stem from... moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with the strength of traditional religious convictions."

Welsh, 398 U.S. at 339-40 (citations omitted).

Defendants submit that the Court erred by finding that their beliefs were not religious in nature and, even if they were religious, that they are not sincerely held. Enough evidence was presented, through the testimony of witnesses such as Dr. Pruitt, Mr. Senger, Ms. Dibble, and Defendant Danuel Quaintance, to support the conclusion that the Defendants sincerely practice a neo-Zoroastrian faith which treats the cannabis plant as a deity and a sacrament. While Defendants' faith may not be "mainstream" in terms of the tradition and history of the United States, the First Amendment guarantees to all faiths the ability to practice their religion. It matters not that the Defendants' beliefs did not comport with those of the "Fire Priest", and even

Meyers does not teach that courts are to determine whose beliefs are more "correct" in their interpretation of Zoroastrianism. Furthermore, it is not the business of the courts to determine whether or not a believer is "correct" or reasonable in his interpretation of religious thought. *See Thomas v. Review Bd.*, 450 U.S. 707, 714-16, 101 S.Ct. 1425, 1430-31 (1981) ("Courts should not undertake to dissect religious beliefs... Courts are not arbiters of scriptural interpretation."). By ruling that the Defendants beliefs are not religious and are not sincere, the Court disregarded the evidence and has rendered the First Amendment protection a nullity.

The Defendants' submit that as soon as it was established that their beliefs were rooted in a recognized religion (i.e. Zoroastrianism), the inquiry into whether these beliefs were religious in nature should have been complete. Defendants respectfully request that the *Superseding Indictment* should be dismissed, or as an alternative, the Government should be compelled to prove its "compelling interest".

Respectfully submitted:

Filed Electronically
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 7, 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