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 QUAINTANCE,	§	
	§	
Defendant.	§	

MR. QUAINTANCE'S FOR SUPPRESSION OF EVIDENCE AND INCORPORATED MEMORANDUM

DANUEL DEAN QUAINTANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, moves the Court for the suppression of evidence set forth below, and in support of his motion would respectfully show the Court as follows:

1. Mr. Quaintance is charged by indictment filed on March 15, 2006 [Doc. 25] with possession of more than 50 kilograms of marijuana with intent to distribute it and conspiracy. Mr. Quaintance was arraigned on March 29, 2006 and entered a not guilty plea to both charges. Trial is not presently scheduled. Pretrial motions are due on April 18, 2006. Mr. Quaintance is presently free on conditions of release.

2. Mr. Quaintance has filed a motion to dismiss the indictment against him on religious freedom grounds. That motion is pending.

3. The undersigned counsel has attempted to confer with Assistant United States Attorney Luis A. Martinez regarding this motion. Mr. Martinez was unavailable; however, counsel believes that the government opposes this motion.

4. Mr. Quaintance requests an evidentiary hearing on this motion.

5. In connection with the requested evidentiary hearing and if the Government does not otherwise disclose the information, Mr. Quaintance further requests, pursuant to Rule 26.2 of the Federal Rules of Criminal Procedure, that the government disclose to defense counsel at least forty-eight hours before the hearing any statements, including grand jury testimony, of suppression hearing witnesses. This request is made to avoid delays in the conduct of the hearing which would result if counsel is required to seek multiple recesses to review materials provided by the government at the hearing.

6. Mr. Quaintance requests the opportunity to raise any other motions and arguments the need for which may arise from based on the evidence that may be developed during any evidentiary hearings in this case.

FACTS

7. On February 22, 2006, Mr. Quaintance and members of his family and his church were traveling through Lordsburg, New Mexico in two vehicles, a Chrysler sedan and a minivan. They stopped at a fast food restaurant to get something to eat. A Border Patrol agent determined that there was something suspicious about the amount of food which they ordered.

8. After Mr. Quaintance obtained his food, the vehicles got onto Interstate Highway 10 going east. The agent followed them. The vehicles exited the interstate and drove south on NM highway 113. The agent followed them. He observed the vehicles doing nothing wrong. The agent noted that they were on a road he considered suspicious. He noted that the vehicles were dusty. He noted that there were handprints on the vehicles. The agent had a hunch that something illegal was going on, and he advised other agents of his hunch. Other agents stopped the Chrysler and the minivan as it approached I-10 from the south on highway 113. Mr. Quaintance and the others were questioned about their immigration status. An agent claimed to smell marijuana from one of the vehicles and a drug dog was brought to the scene. Marijuana with a total gross weight of approximately 172 pounds was discovered.

ARGUMENT AND AUTHORITY

I. The Stop of Mr. Quaintance's Vehicle was Illegal Because it was Not Based on Reasonable Suspicion that Mr. Quaintance was Engaged in Criminal Activity.

Border Patrol agents on roving patrol may stop vehicles "only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country." *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *United States v. Venzor-Castillo*, 991 F.2d 634, 637 (10th Cir. 1993); *United States v. Monsisvais*, 907 F.2d 987, 990 (10th Cir. 1990). In order for a Border Patrol agent to constitutionally stop a vehicle traveling on a road or highway, the agent must "have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-18 (1981). Determination of the existence of a sufficient basis for a stop considers the totality of the

circumstances. *United States v. Arvizu*, 534 U.S. 266, 274 (2002);*United States v. Guillen-Cazares*, 989 F.2d 380, 383 (10th Cir. 1993).

The Supreme Court has outlined certain "specific articulable facts" that this Court should consider when determining whether enough reasonable suspicion exists to justify a roving Border Patrol stop. Those facts are: (1) the characteristics of the area in which the vehicle is stopped; (2) patterns of traffic on the road; (3) proximity to the border; (4) previous experiences with alien trafficking in the area; (5) information about recent border crossings; (6) attempts to evade detection; (7) appearance of the vehicle; (8) appearance and behavior of the driver and passengers; and (9) other relevant information. *Brignoni-Ponce*, 422 U.S. at 884-85.

The Court must look at the totality of the circumstances to determine whether the agents had a "particularized and objective basis for suspecting [Defendant] of criminal activity." *United States v. Lopez-Martinez*, 25 F.3d 1481, 1487 (10th Cir. 1994) (quoting *Cortez*, 449 U.S. at 417-18). Although the reasonableness of the agents' conduct is assessed under a totality of the circumstances test, it is useful to evaluate each factor separately because "[s]ome facts must be outrightly dismissed as so innocent or susceptible to varying interpretations as to be innocuous." *United States v. Lee*, 73 F.3d 1034, 1039 (10th Cir. 1996). Indeed, any attempt to assess the quantum of evidence constituting the totality of the circumstances without evaluating the individual components which make up that totality is farcical. That is not "divide and conquer", as the government is wont to argue; that is simply common sense.

The fact the agents may have had some knowledge that Highway 113 had been used in the past to transport drugs or aliens further into the United States does not, without more, justify the stop of Defendant's vehicle. That would mean that anyone driving on Highway 113 could by stopped for no other reason, resulting in the seizures of many innocent people. *See Reid v. Georgia*, 448 U.S. 348,

441 (1980) (holding reasonable suspicion cannot include circumstances which "describe a very large category of presumably innocent travelers, who would be subject to virtually random seizures ....").

"General profiles that fit large numbers of innocent people do not establish reasonable suspicion." *United States v. Yousif*, 308 F.3d 820, 828 (8th Cir. 2002). "An individual's presence in an area of expected criminal activity, standing alone, is not enough top support a reasonable, particularized suspicion that the person is committing a crime." *Illinois v. Wardlaw*, 528 U.S. 119 (2000).

The agents in this case lacked a sufficient particularized and objective factual basis to stop Mr. Quaintance and the vehicles. This is so whether the supporting factors are considered individually or collectively. The agents suspected criminal activity on the unlikely basis of the amount of fried chicken which was purchased at a fast food store. The agents followed the vehicles for miles without observing anything like a basis for reasonable suspicion. Considering the totality of the circumstances, there was not an constitutionally adequate basis for the agents' decision to stop the vehicles. The agents were acting on a hunch. The stop was unconstitutional. All evidence seized as a result of the stop must be suppressed as the fruit of a poisoned tree. Such evidence cannot be considered to have been obtained under circumstances sufficiently purged of the original taint of the illegal stop. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

WHEREFORE, for the foregoing reasons, DANUEL DEAN QUAINTANCE, Defendant, respectfully prays that the Court suppress all of the evidence obtained as a result of the unconstitutional search of the vehicles as related herein, any statement made by Mr.

Quaintance following the unconstitutional search, and provide such other and further relief to which the Court may find Mr. Quaintance to be justly entitled.

Respectfully Submitted,

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filed electronically on April 18, 2006
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Counsel for Mr. Quaintance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Suppression of Evidence was served on Assistant United States Attorney Luis A. Martinez, 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; and Mr. Leon Schydlower, 210 N. Campbell, El Paso, Texas 79901-1406 on April 19, 2006.

filed electronically on April 18, 2006
MARC H. ROBERT

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