

**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 MOTION TO AMEND CONDITIONS OF RELEASE

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, moves the Court for an order amending conditions of release, 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 set for May 23, 2006 on a trailing calendar. Mr. Quaintance is presently free on conditions of release [Doc. 23].

2. Mr. Quaintance has filed a motion to dismiss the indictment against him on religious freedom grounds [Doc. 34], and a motion for suppression of evidence [Doc. 39]. Co-defendant Mary Helen Quaintance moved to join the motion to dismiss [Doc. 35], which motion was granted [Doc. 37]. The government has responded to Mr. Quaintance's motions, [Docs. 41, 43], and Mr. Quaintance is preparing his replies, which are due shortly. Co-

defendant Mary Helen Quaintance has filed a motion to sever defendants [Doc. 38]. All those motions remain pending, and hearings have not yet been scheduled on the motions. Trial, however, has been set for May 23, 2006. Mr. Quaintance has filed a motion for continuance of that trial setting contemporaneously with the filing of this motion.

3. Included in Order Setting Conditions of Release were two requirements with which Mr. Quaintance takes issue. Mr. Quaintance was ordered not to consume any unprescribed drugs, including cannabis. Cannabis is a deity and a sacrament in Mr. Quaintance's religion. That order has prevented Mr. Quaintance from practicing his sincerely held religious beliefs. Mr. Quaintance was also ordered not to have contact with members of his Church, the Church of Cognizance. That has prevented him from associating with people who share his religious beliefs.

CONSUMPTION OF CANNABIS

4. Mr. Quaintance should be permitted to consume cannabis as a part of his regular religious practice. *See United States v. Valrey*, 2000 WL 692647 (W.D.Wash.) (unpublished). In *Valrey*, a case from the Western District of Washington, the defendant was a practicing Rastafarian, another religious tradition in which the consumption of cannabis is a central part of the religious practice. Under the authority of the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.*, and the First Amendment to the United States Constitution, the court in that case held that denying Mr. Valrey the right to practice his religion by prohibiting his use of cannabis was a substantial burden on his statutory and constitutional rights. The court found that the government had failed to show that the

prohibition of the consumption of cannabis was the least restrictive way of enforcing a compelling government interest. The court amended the conditions of Mr. Valrey's supervised release to permit his consumption of cannabis.

5. Likewise, Mr. Quaintance should be permitted to continue in the practice of his religion, which includes the consumption of cannabis. There are measures which would permit Mr. Quaintance to continue to practice his religion and also honor the Court's need to make sure he complies with the law, as well as address any alleged compelling interest in a less restrictive way. Mr. Quaintance could and would self-report his consumption of cannabis for religious purposes. In that way, Pretrial Services would be able to keep a record of religious use of the sacrament and advise the court of Mr. Quaintance's status. Mr. Quaintance could continue to be tested for use of other un-prescribed substances, so that the Court could be sure that Mr. Quaintance is not consuming anything which is prohibited under the Controlled Substances Act, or any pharmaceutical medication without a prescription. Mr. Quaintance could continue to report to Pretrial Services, which would continue to provide the Court with a source of information about Mr. Quaintance's activities and his adherence to the conditions of pretrial release¹. Given the availability of less restrictive measures to ensure the achievement of the aims of pretrial release, and the possibility of integrating the aims of pretrial release with practices central to Mr. Quaintance's religion, the present conditions of

¹ Mr. Quaintance has followed all the conditions imposed on him, including the prohibition against his consumption of the sacrament central to his religion, and the prohibition against his having contact with friends and members of his church.

release are unconstitutionally restrictive and should be amended to permit his consumption of cannabis for purposes of his religious practice.

CONTACT WITH CHURCH MEMBERS

6. Mr. Quaintance has been prohibited from having any contact with members of the Church of Cognizance. The Order Setting Conditions of Release says in part: “no use of marijuana; no contact with known drug users, including persons involved in the church organization”. Doc. 23. This condition is a violation of Mr. Quaintance’s right to association included in the First Amendment to the United States Constitution, as well as his right to practice his religion. At the time at which the Magistrate Judge imposed conditions of release, she indicated that she did not want Mr. Quaintance associating with “known drug users”. Since cannabis is a central part of the religious practice of the Church of Cognizance, that prohibition would prohibit Mr. Quaintance from contact with members of the church he founded 15 years ago. However, not all members of the Church of Cognizance consume cannabis. The conditions of release prevent Mr. Quaintance from having contact with even these people. Thus, the condition prohibiting contact with church members is overbroad.

7. The condition prohibiting contact with people who use cannabis for religious purposes is unnecessary and unconstitutional as a whole. Generally, such a condition is imposed as a way of keeping a defendant from others who are considered criminals. In this case, “known drug users” include people whose consumption of cannabis is a central part of a religious practice. Cannabis is consumed by church members as a vehicle to a greater understanding of their spirituality, for their spiritual learning, for their spiritual and even

physical health. Cannabis is considered to be a deity, following a religious tradition thousands of years old (*see* Mr. Quaintance's Motion to Dismiss). Members pledge to use cannabis for religious purposes only and not for recreational or commercial purposes. Members pledge not to use other controlled substances. Members of the Church of Cognizance may (or may not) be "known drug users", but only in the sense that they consume a substance which the government has determined must be prohibited, religion or not. They do not occupy the same status as people generally included in this prohibition in other release orders.

8. "The right of freedom of association is a basic or fundamental constitutional freedom or right, derived from freedom of speech, and, like freedom of speech, is grounded on the requirements of a democratic form of government and lies at the foundation of a free society." 16B C.J.S. Constitutional Law, § 986 (updated 2005) (citations omitted). "[W]hen the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association ... may be implicated." *Boy Scouts of America v. Dale*, 530 U.S. 640, 678, 120 S.Ct. 2446, 147 L.Ed.2d 554 (2000) (internal quotations and citations omitted). The Court's order violates this right.

9. Various governments have begun an assault on the Church of Cognizance and its members. The federal government is prosecuting Mr. Quaintance and his wife in this case; in another federal case in Missouri, another Church of Cognizance member is charged with violating the Controlled Substances Act. Local authorities have hovered over the Quaintance's home for months, trying unsuccessfully to inveigle members of Mr. Quaintance's family into violations of the law. Those authorities raided Mr. Quaintance's home and the homes of

family members, taking numerous computers and other property, even including a blanket bearing an image of the cannabis plant, held holy by the Quaintances and the Church of Cognizance. The authorities have kept the property seized during its raid, causing harm to the Quaintances and the Church of Cognizance. Mr. Quaintance is the leader of the Church of Cognizance. The Court's Order Setting Conditions of Release prevents Mr. Quaintance from talking with other church members and officials at a time when the very existence of the church is under concerted attack. It is unfair and unconstitutional to prevent Mr. Quaintance from talking to church members. That condition should be deleted.

10. The undersigned counsel has conferred with Assistant United States Attorney Luis A. Martinez regarding this motion. The government opposes this motion.

WHEREFORE, for the foregoing reasons, DANUEL DEAN QUAINANCE, Defendant, respectfully prays that the Court enter an order amending the conditions of release to delete the prohibition against the sacramental consumption of cannabis, and to delete the prohibition against contact with members of the Church of Cognizance; and providing such other and further relief to which the Court may find Mr. Quaintance to be justly entitled.

Respectfully Submitted,

FEDERAL PUBLIC DEFENDER
500 S. Main St., Suite 600
Las Cruces, NM 88001
(505) 527-6930
Fax (505) 527-6933

filed electronically on May 1, 2006
MARC H. ROBERT
Assistant Federal Public Defender
Las Cruces Office

Counsel for Mr. Quaintance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Amend Conditions of Release 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 May 1, 2006.

filed electronically on May 1, 2006
MARC H. ROBERT

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