

**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 REPLY TO THE GOVERNMENT’S  
RESPONSE TO MOTION TO AMEND CONDITIONS OF RELEASE**

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, submits the following reply to the government’s amended response [Doc. 58] to his motion to amend conditions of release [Doc. 48], and in support of that motion would respectfully show the Court as follows:

1. Mr. Quaintance has requested that the conditions of his release be amended in two ways. First, he asks that he be permitted to consume cannabis, which is a central part of his religion. Second, he asks that the condition which prevents him from having contact with members of his religion be deleted. The government responds by saying that both requests are premature; that the Court must wait until it is determined that Mr. Quaintance’s religion is really a religion. The government’s response betrays a prejudice that often attends discussion of religion and religious beliefs.

2. The government, in its response to Mr. Quaintance’s motion to dismiss based on the Religious Freedom Restoration Act [Doc. 34], takes the position that Mr. Quaintance’s

beliefs, while sincere, are a *philosophy* or a *lifestyle*, but not a religion. What is a religion? It is often mistakenly identified with establishment institutions. But religion is more accurately understood as a set of beliefs and practices that address the relationship of people to sacred, mystical power. Thus religion manifests in many forms in different societies and may or may not include formal doctrine and institutions but often does not.

3. Mr. Quaintance established the Church of Cognizance in 1991, 15 years ago. He filed papers with Arizona state authorities identifying his organization as a religion. Mr. Quaintance and the Church of Cognizance believe that haoma, or cannabis, was revered and deified in religious traditions thousands of years old. The seeds of the cannabis plant provide nourishment; from the fiber (hemp) can be made fabric, paper and many other useful things. The leaves are, in the Zoroastrian belief system which the Church of Cognizance practices, a means of a more perfect realization of man's nature and role in the universe, and a manifestation of the deity. Their beliefs, in which cannabis plays a central role, hold that cannabis connects people to their spirituality. They believe that it heals, a belief with substantial support from modern science. They believe that cannabis is the "tree of life" referred to in texts sacred to many religious traditions. Their beliefs are intensely spiritual, although in ways that seem strange to practitioners of more mainstream religions.

4. Mr. Quaintance performs marriages. He presides over funeral services. He ministers to members of the church in ways that would be readily recognizable to people who benefit from similar ministries from mainstream clergy. Members of the church take an oath

that they will not use other intoxicants, and that they will not use cannabis for other than spiritual, religious purposes.

5. The government's suggestion that Mr. Quaintance's deeply and sincerely held religious beliefs are no more than a lifestyle is presumptuous and offensive. The government suggests that Mr. Quaintance is engaged in the commercial trafficking of marijuana. Various law enforcement agencies have tried to entrap church members into selling cannabis. The evidence will show that they have been unsuccessful; the government will not be able to show any sales of cannabis by the Church of Cognizance.

6. The changes in the conditions of release requested by Mr. Quaintance are intended to permit him to return to the practice of his religion and his ministry to the members of his church. The two requests are, however, separable.

7. The denial of access to the sacramental use of cannabis, which has a physical as well as spiritual healing impact, has constituted a significant hardship on Mr. Quaintance. Mr. Quaintance seeks the opportunity to return to his religious practice as soon as possible.

8. However, Mr. Quaintance's other request, that he be permitted to communicate with members of his church, is different. While the consumption of cannabis is nominally against the law, it is not a crime for Mr. Quaintance to talk with members of his church. Preventing him from talking to church members has not only impeded the spiritual process; it impairs his right to prepare a defense. Various levels and branches of government are attacking the Church of Cognizance in various ways. Gagging the members of the church, and preventing them from discussing what is happening around the country, impairs not only their

freedom of association but Mr. Quaintance's right to due process and a fair trial. The condition of his release that denies him the freedom to associate with his co-religionists need not wait for a judicial determination of what constitutes a religion; that condition should be deleted immediately.

9. The government will suffer no prejudice if both of these conditions are deleted. In particular, the government will suffer no prejudice if Mr. Quaintance is allowed to have contact with church members. It is believed that Mr. Quaintance, his family, his friends and his church are under several different kinds of surveillance. If that is so, nothing that Mr. Quaintance says will be unknown to the prosecution, and it is anticipated that the government will peruse the fruits of that surveillance for information or statements usable in later proceedings.

**WHEREFORE**, for the foregoing reasons, DANUEL DEAN QUAINANCE, Defendant, respectfully prays that the Court grant his motion to amend conditions of release, 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 May 10, 2006*  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Reply was served on Assistant United States Attorneys Luis A. Martinez and Amanda Gould, 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 11, 2006.

*filed electronically on May 11, 2006*  
MARC H. ROBERT

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