

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

§

Plaintiff,

§

§

v.

§

Cause No. CR 06-538 JH

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DANUEL DEAN QUAINANCE,

§

§

Defendant.

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**MR. QUAINANCE’S REBUTTAL ARGUMENT**

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, submits the following rebuttal argument concerning first phase of the hearing on Mr. Quaintance’s motion to dismiss indictment [Doc. 34]. Mr. Quaintance submitted a closing argument on August 30, 2006. The government’s reply was filed on August 31, 2006. Since Mr. Quaintance has the burden of proof as to this phase of the hearing, Mr. Quaintance is entitled to a rebuttal argument.

**Mr. Quaintance and the Church of Cognizance Meet the *Meyers* Criteria**

The government suggests that Mr. Quaintance has failed to satisfy the criteria set forth in *United States v. Meyers*, 95 F.3d 1475 (10<sup>th</sup> Cir. 1996). The government ignores the broader definitions of religion in cases decided by the United States Supreme Court, cited in Mr. Quaintance’s closing argument [Doc. 160]. Mr. Quaintance submits that the *Meyers* criteria are unconstitutional and should not be applied. However, notwithstanding that argument, the government is incorrect. The government’s conclusory and argumentative assertions about

what the Church stands for fail in the face of the obvious depth and sincerity of Mr. Quaintance's beliefs.

Mr. Quaintance testified at length about the basis and content of his beliefs and the principles of the Church of Cognizance. His beliefs and practices are different from those propounded in the large edifice with the stained-glass windows and the cross on the steeple. Mr. Quaintance doesn't don richly appointed and colored vestments. He does, however, have a belief system in which he has invested significantly more time, energy and intellectual inquiry than most practitioners of mainstream religious systems. He has studied various religious systems from around the world. He has learned that cannabis was worshiped in various ancient traditions, including the early Zoroastrian tradition. Dr. Bagli confirmed this. His etymological studies convinced him that the cannabis plant was a plant referred to as sacred in the Avesta and various other ancient religious texts, including the Bible. Dr. Pruitt confirmed this. Most people who think of themselves as religious have not read the Bible in its entirety. Mr. Quaintance, dissatisfied with the reliability of the King James Bible, written in the 1600s, plunged deeper in time to attempt to discern the truths which underlay modern religious belief. The government engages in arrogant sophistry when it dismisses Mr. Quaintance's beliefs as "lifestyle" or "philosophy". Mr. Quaintance's beliefs are deeply held and hard-earned.

**Ultimate Ideas.** Mr. Quaintance discussed his beliefs and has expressed them in the document submitted as Defendant's Exhibit 7<sup>1</sup>. Among his beliefs is the principle that

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<sup>1</sup> Mr. Quaintance submitted Defendant's 7 without objection. However, by omission, the document was not formally offered and admitted. Counsel will submit a written stipulation to the

human beings are called upon to be the best that they can be, and to treat other human beings in a moral and principled manner. Good Thoughts, Good Words, Good Deeds is the creed. There are other major religious traditions which seek to maximize the spiritual growth of the individual by focusing inward, among them Hindus and Buddhists. Indeed, the early Gnostic Christians preached a gospel based on their renditions of the teachings of Jesus Christ suggesting that the pursuit of God, and of heaven, was best conducted inside one's own mind, spirit and life on earth. *See Elaine Pagels, The Gnostic Gospels, Vintage Books 1979.* To suggest as the government does that a spirituality, a religious belief system, focusing inward is illegitimate simply ignores major religious belief systems engaging millions of people.

**Metaphysical Beliefs** Mr. Quaintance testified that he prayed to Haoma to help to vanquish the “evil and deception” and to help him prevail in this case. He believes that Haoma, cannabis, manifests a power in the world with the capacity to influence the course of events. That power is engaged with a power intrinsic to the world and all in it, a notion similar to the concept of “Gaia”, accepting mystical forces at work of and in the world. It is a power that Mr. Quaintance believes is available to those who become aware of it and study it. Mr. Quaintance believes that cannabis, “the teacher and provider”, is a sacred pathway to such knowledge. The government complains that Mr. Quaintance does not believe in an afterlife, which is of course a prominent feature in most mainstream American religions. The government's complaint ignores the broader reach of this criterion. It also reminds us that a belief system need not mirror mainstream religious practices to be legitimate. Whether Mr.

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admission of Defendant's Exhibit 7.

Quaintance believes in an afterlife as such, he has certainly explained his belief in what *Meyers* calls metaphysical manifestations.

**Moral or Ethical Code** Here, the government complains that Mr. Quaintance’s beliefs do not require that he abnegate elemental self-interest. That complaint could not be more plainly baseless. Mr. Quaintance has studied and adopted a belief system which has subjected him to persecution and possible lengthy incarceration. His very presence in court and in this case are manifestations of his “abnegation”; he risks all, including life and health, in the pursuit of his beliefs. More generally, Mr. Quaintance’s beliefs regarding the treatment of other people is modest in the fashion of Jesus, who urged the rich to surrender their worldly possessions and follow him. As demonstrated in the photographs admitted into evidence, Mr. and Ms. Quaintance live a very modest life. Certainly, their existence is not consistent with the government’s claim that his possession of cannabis is profit-driven. They give to others of themselves and what little they possess. Rather than proclaiming their beliefs once a week, they live their beliefs every day. Their moral code is one from which the world would profit greatly in widespread observation.

**Comprehensiveness of Beliefs** The government dismisses this factor with one line, claiming that Mr. Quaintance’s beliefs are focused solely on cannabis, and are thus not comprehensive. The government simply ignores Mr. Quaintance’s testimony, and his materials, regarding the origins and nature of his beliefs. The government’s dismissiveness is no substitute for evidence or argument. The evidence presented by Mr. Quaintance on this score is itself comprehensive.

## **Accoutrements of Religion**

The government criticizes Mr. Quaintance's writings as illogical and disjointed, and thus apparently unworthy of consideration. If poor grammar and syntax are disqualifiers for valid religion, then the Constitution's guarantees of religious freedom truly are meaningless. Mr. Quaintance discussed at length the things he has read, and submitted and discussed his accumulated materials. The other factors, such as a gathering place, keeper of knowledge, ceremonies and rituals, structure or organization, holidays, diet and fasting, appearance and clothing and propagation, are dangerous criteria in the determination of what is a valid religious belief. These things are drawn from common American Sunday experience, anthropomorphizing the mainstream religious experience and rejecting those which look different. This is a bigotry which the Constitution does not permit. Mr. Quaintance testified as to the Church of Cognizance's beliefs and practices as to each of these things.

The government claims that Mr. Quaintance backtracked on his religious foundations when he discovered the content of the testimony of the Zoroastrian priest which the government presented in court. That claim wholly lacks support. Mr. Quaintance has, from the beginning, described his religion as neo-Zoroastrian. Dr. Bagli claimed to be Zoroastrian<sup>2</sup>. Mr. Quaintance described in detail the origins and derivations of his beliefs, which included early Zoroastrian writings. His description was consistent with his writings. Mr. Quaintance never claimed to be what Dr. Bagli claims to be, which is why Dr. Bagli's testimony was of

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<sup>2</sup> Although, as Dr. Bagli noted, members of that belief system originally held that one could not convert to Zoroastrianism; one must be born to the religion. Since those bloodlines were lost long ago, under that formulation there can be no modern Zoroastrians. Dr. Bagli's own claim may thus be suspect.

no value whatever. Dr. Bagli claims that marijuana is a desecration, but acknowledges that early practitioners of his religion worshiped it. Conservative Jews refrain from practices engaged in by Reform Jews. Would the government claim that Reform Judaism is not a religion, but simply a lifestyle?

The government asserts that Mr. Quaintance's lack of sincerity is "patent". No number of repetitions of what the government wishes were true will make those wishes a reality. Mr. Quaintance has engaged in spiritual study to an extent that most of us cannot comprehend, and has come to a deeply held belief in many things, among them the sanctity of the cannabis plant. Obviously, one who believes in the sanctity of the cannabis plant must also believe that secular governmental proscription of its use is wrong. That such a belief is also held by many people for secular reasons does not belie the genuine, hard-earned spiritual origins of Mr. Quaintance's beliefs. As Dr. Pruitt testified, Mr. Quaintance is by no means alone in a religious belief in the power and value of the cannabis plant as well as more powerfulentheogens.

**Timothy Kripner** The government manifests an unquestioning belief in the veracity of Timothy Kripner, as I suppose it must. By any objective standard, that faith is misplaced. Mr. Kripner himself told the Court that he had and would lie to stay out of jail. He then testified, under oath, that he had no thought at all of shortening his own jail term by testifying. That is palpably and wholly unworthy of belief. That he would say such a thing makes it clear that there is no lie that he will not tell to earn his way out of prison. His mendacity, and his purpose, are made more clear by the embellishments he added to his story as he testified. It

is beyond dispute that Kripner was not involved in the transportation of this cannabis for religious purposes, his oath to Mr. Quaintance notwithstanding. His contrast to Mr. Quaintance could not be more stark.

Mr. Quaintance respectfully requests that the Court find that he is engaged in sincere religious practice, and set this matter for a further hearing at which the government will bear the burden to show a compelling interest to oppress Mr. Quaintance's religious practice, and that the means of so doing are the least oppressive available.

Respectfully Submitted,

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*electronically filed on September 6, 2006*  
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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Rebuttal Argument was served upon Assistant United States Attorneys Luis A. Martinez and Amanda Gould, 555 S. Telshor, Suite 300, Las Cruces, New Mexico 88011 (fax number 505.522.2391), by placing a copy of the same in the United States Attorney's box at the Las Cruces office of the United States District Court Clerk on September 6, 2006.

*electronically filed on September 6, 2006*  
MARC H. ROBERT

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