

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) CR No. 06-538 JH
)
 DANUEL DEAN QUAINANCE and)
 MARY HELEN QUAINANCE,)
)
 Defendants.)

**GOVERNMENT’S RESPONSE TO DEFENDANTS
DANUEL DEAN QUAINANCE’S AND MARY HELEN QUAINANCE’S
MOTION TO DISMISS INDICTMENT**

COMES NOW the United States of America by and through DAVID C. IGLESIAS, United States Attorney for the District of New Mexico and Luis A. Martinez, Assistant United States Attorney for said District, and hereby responds to defendants’ motion to dismiss indictment and further states:

I. Background

A. An incident in Missouri.

On February 13, 2006, Joseph Allen Butts, the brother of defendant Mary Quaintance, was arrested pursuant to a traffic stop in Franklin County, Missouri. Mr. Butts was traveling eastbound on Interstate 44 in Franklin County, Missouri. Mr. Butts was driving a Chevrolet pickup truck which contained approximately 338 pounds (152 kilograms) of marijuana in the bed underneath a locked pickup bed cover.

When officers first asked Mr. Butts for consent to search the vehicle Mr. Butts said, “No, it’s my sister’s and she doesn’t like people in their vehicles.” The marijuana was

discovered pursuant to a K-9 alert to the vehicle's bed. Mr. Butts stated that the marijuana was for his church and that it was a hate crime to arrest him.

Twelve boxes containing eighteen bundles of marijuana wrapped in plastic wrap and clear tape were seized. Pursuant to an inventory search of the vehicle the following items were seized: 1) paper work indicating Butts' affiliation with the Church of the Cognizance, including a Certified Courier Certificate in Mr. Butts' name, purportedly signed by defendant Danuel Quaintance (addendum A), 2) an open title for the vehicle, current insurance cards for the vehicle, and the vehicle registration, 3) Yahoo maps and directions showing the destination of Indianapolis, Indiana, (addendums B 1-4); 4) Butts' wallet containing membership cards to the church, and 5) \$1,511.00 U.S. currency. Mr. Butts stated in response to a question by law enforcement officers referring to the contraband found that, "there was 300 pounds of marijuana in the vehicle."

B. The Defendants Are Arrested Near Lordsburg, New Mexico.

On February 22, 2006, defendants Danuel Dean and Mary Helen Quaintance along with Timothy Jason Kripner were arrested near Lordsburg, New Mexico. Mary Quaintance was driving a mini van with Danuel Quaintance as the sole passenger. Mr. Kripner was driving a leased Chrysler 300. The aforementioned vehicles traveled east together on Interstate 10 for about ten miles, exited and traveled south on N.M. Highway 113. After a relatively short time both vehicles headed north on 113 in tandem. Based on a totality of the circumstances both vehicles were stopped by U.S.B.P. Agents.

The Chrysler driven by Mr. Kripner contained square bundles of marijuana packaged in clear plastic wrap. The bundles were contained in burlap bags. Three bundles were found in the vehicle's trunk. (Photograph; addendum C). Another bundle was discovered in the vehicle's backseat. Also found in the vehicle was a hand held, short distance

capacity, two-way radio set to channel six. Mr. Kripner was in possession of a Church of Cognizance certificate in his name identical to that possessed by Mr. Butts, purportedly signed by Danuel Quaintance. (Addendum D).

The mini van in which the Quaintances traveled contained an identical two-way radio to that found in the Chrysler, also set to channel six. Mr. Quaintance, subsequent to his arrest, stated, "I am the head of my church and I have the right to have 'that' marijuana." The four bundles of marijuana weighed approximately 172.42 pounds (77.58 kilograms). The defendants were arrested and transported to the Lordsburg USBP station.

As task force agents arrived at the Lordsburg USBP station, Mr. Quaintance asked if the agents were with DEA. Upon receiving an affirmative response Mr. Quaintance immediately began shouting among other things, that they belonged to the Cognizance Church and they were allowed to possess and transport marijuana.

Post Miranda, Mr. Quaintance stated he was not going to admit ownership of the marijuana but that he is allowed under his church to transport and possess marijuana.

Post Miranda, Mr. Kripner stated that Mr. Quaintance had deposited some money into an ATM account so his (Kripner's) cousin could rent the Chrysler. Kripner went on to say that Mr. Quaintance had also purchased a cellular telephone for his (Kripner's) use, but to be thrown away if they were captured. Mr. Kripner went on to say that he was going to get paid to transport the marijuana to the Quaintances' residence in Pima, Arizona. Kripner stated that the Quaintances' residence or compound is made up of two trailers. Kripner went on to say that the Quaintances are both unemployed and sustain their lifestyle by selling the marijuana, not only to members, but to anyone willing to buy it. Kripner further stated that he knows Mr. Quaintance and his religion are not real, but figured that

if he would be able to smoke, transport and possess marijuana, that was reason enough to join the church.

C. Law Enforcement Officers Speak to the Defendants' Son-In-Law, Tim Wiedmeyer.

Tim Wiedmeyer is married to Zina Wiedmeyer. Ms. Wiedmeyer is the daughter of Danuel and Mary Quaintance. The Wiedmeyers live in a separate trailer, but on the same or adjacent property on which the defendant's trailer is located. On December 21, 2005, Mr. Wiedmeyer advised officers of the Graham County Sheriff's Office, Safford, Arizona, that he "is not involved in the drug trafficking that takes place on Dan and Mary's property." Mr. Wiedmeyer went on to say that he was worried about losing his property to law enforcement due to Dan and Mary's drug activities.

D. Graham County Sheriff's Office Deputies Search the Defendants' Resident.

On March 3, 2006, Graham County Deputies searched the defendants' trailer in Pima, Arizona. Several items were seized, among which were several burlap bags (Addendum E). These burlap bags closely resembled those which contained marijuana seized on February 22, 2006 from the vehicle driven by Mr. Kripner (Addendum C). Also seized from the residence was an Ultraship Ultra-50 digital scale (Addendum F) and an Ohaus non-electric scale (Addendum G).

E. Defendants Are Released on Bond.

On March 9, 2006, Defendants Danuel and Mary Quaintance appeared before Magistrate Judge Martinez in Las Cruces, New Mexico Federal District Court. The Defendants were released on a \$10,000.00 secured bond. The government was not opposed. As a condition of release, the Defendants agreed not to ingest marijuana.

F. A Grand Jury sitting in Las Cruces, New Mexico returned a true bill against the Defendants on March 15, 2006.

II. Discussion

A. The Defendants Are Not Entitled to RFRA Protection Because They Lack a Sincere Religious Belief.

Within two weeks, law enforcement officers seized approximately 510 pounds of marijuana from the Church of the Cognizance. It is difficult to contemplate that such prodigious amounts of contraband were destined for use as a “sacrament”.

Joseph Butts, Church of Cognizance Courier, was arrested traveling east bound on Interstate 44 in Missouri. The Church compound is in Pima, Arizona, hundreds of miles away. Further, Butts was in possession of “Yahoo” maps and directions indicating a final destination as Indianapolis, Indiana (Addendum B1-4). The marijuana was packaged in a manner and in an amount clearly indicating distribution. Additionally, Mr. Butts was in possession of \$1,500.00 U.S. currency, sufficient expense money for a trip from Arizona to Indianapolis, Indiana.

The Missouri seizure strongly corroborates Mr. Kripner’s statements referring to the defendants, “They sell the marijuana to sustain their lifestyle. . .” and “I know the religion is not real.”

The Lordsburg seizure further clarifies the picture of a marijuana distribution organization using religion as contingency should the conspirators be apprehended. A particularly succinct and apropos summation of what occurred in the case at bar is set out by Justice Brimmer of the District of Wyoming. “As is true of the First Amendment RFRA

could easily become the first refuge of scoundrels if defendants could justify illegal conduct simply crying 'religion'." *U.S. v Meyers*, 900 F. Supp. 1494 @ 1498 (1995).

Defendants Mary and Danuel Quaintance provided their couriers, Mr. Butts and Mr. Kripner, with the aforementioned courier certificates. They instructed Mr. Kripner as to what responses to provide law enforcement officers in case of apprehension.

Further illustrating the government's point are Mr. Wiedmeyer's statement and two large scales (Addendums F & G). Scales of this size cannot reasonably be thought of as instruments needed to weigh "sacrament" amounts of a substance. They are, however, large enough to weigh bundles the size of which were seized from the Church of the Cognizance within a two week period in February, 2006.

The defendants must show as a threshold matter that their beliefs constitute a "religion". *Id.* @1498. The government submits the defendants have failed to do so. The defendants argue that they should not have to justify the sincerity of their religious beliefs. (Defendants' Motion pg. 5). They then acknowledge that the present state of the law could be interpreted to require a showing that the defendants have a sincerely held religious belief. In this the government and the defendants agree. The government does not, however, agree that the threshold question is whether the use of cannabis in the church's religion is part of a sincere religious practice (Defendants' motion pg. 6). The government does **not** concede the defendants are engaged in a sincere religious practice. The defendants may participate in a sincere life style which advocates the ingestion of marijuana. The government opines that the defendants' lifestyle also includes maintaining their lifestyle through marijuana sales.

Hence, the threshold issue is whether or not the defendants have established that their possession of approximately 510 pounds of marijuana is protected as a sincere religious belief.

The defendants seek the protection of the Religious Freedom Restoration Act (RFRA). Under RFRA, a plaintiff must establish, by a preponderance of the evidence, three threshold requirements to state a prima facie free exercise claim. *United States v. Meyers*, 95 F. 3d, 1475 @1482 (10th Cir. 1996). The governmental action must (1) substantially burden, (2) a religious belief rather than a philosophy or way of life, (3) which beliefs are sincerely held by the plaintiff. The government need only accommodate the exercise of actual religious convictions. *Id.* There is no RFRA protection for the defendants unless they first meet the aforementioned criteria. Once the plaintiff has established the threshold requirements by a preponderance of the evidence, the burden shifts to the government to demonstrate that the challenged regulation furthers a compelling state interest in the least restrictive manner. *Id.* Citing *Werner v McCotter*, 49 F.3d 1476 @1480 n.2 (citing 42 U.S.C. §2000bb-1(b)).

This honorable court should first make a finding as to the defendants' sincerity; sincerity is a factual matter. . . *Id.* @1482. The Tenth Circuit Court of Appeals further noted in *Meyers* that "our review of the requirements, although largely factual in nature, presents mixed questions of fact and law." *Id.* citing *Thirty v. Carlson*, 78 F.3d 1492, 1994 (10th Cir. 1996).

Secondly, this honorable court should then determine what constitutes religious belief and the ultimate determination as to whether RFRA has been violated. *Id.*

The government does not dispute that the defendants' beliefs are substantially burdened, the third threshold question which must be found before the defendants can gain RFRA protections.

The government submits that the factual background of this case requires a finding that the defendants' beliefs are not sincere.

If and only if the defendants make a showing of the sincerity of their beliefs by a preponderance of the evidence can they gain RFRA protection. The government would then be required to show that the substantial burden on the defendants' religion (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest. RFRA, 42 U.S.C. § 2000bb-1 (a) and (b).

The latest pronouncement on this issue by the Supreme Court, *Gonzalez v. O Centro Espirita Beneficente Viniao Do Vegetal, et al*, 126 S.Ct. 1211 (2006) does not yet apply. In *O Centro* the government conceded that the challenged application would substantially burden a sincere exercise of religion. *Id.* @ 1212. The government does no such thing in the case at bar.

B. The Defendants Are Not Entitled to RFRA Protection Because Their Life Style and/or Philosophy Do Not Qualify as a "Religion" nor do They Meet the Meyers Factors.

Assuming arguendo, the court finds the defendants hold sincere beliefs, the government submits that these beliefs amount to a lifestyle/philosophy and fall short of "religion" for RFRA purposes.

There is no question the defendants hold a philosophy which maintains that marijuana should not be censured by the government. Likewise, there is no question the defendants advocate marijuana consumption as part of their lifestyle. *U.S. v Meyers*, 95

F.3d 1475 (10th Cir. 1996) sets out factors which this honorable court should use in determining whether the defendants' beliefs rise to the level of "religion" sufficient for RFRA protection.

The defendants refer to these factors as a "matrix of sorts". (Defendants' Motion, pg. 6). The defendants go on to set out the five areas of inquiry or factors in determining whether a belief is a religion for RFRA purposes.

The five (5) factors are: 1) Ultimate Ideas; 2) Metaphysical Beliefs; 3) Moral or Ethical System; 4) Comprehensiveness of Beliefs; and 5) Accoutrements of Religion. The fifth factor is sub-divided into external signs that may indicate a particular set of beliefs are "religious".

The defendants draw from a hodgepodge of unsupported speculations for most of their assertions, referring to excerpts from writing of various established religions in an effort to cloak themselves in a religious mantel. The defendants make the unsupported statement that cannabis was the active ingredient in anointing oils of the ancient Hebrews. (Defendants' motion, pg. 10). They go on to suggest that the oil used with the "anointed one", the Hebrew Messiah, is cannabis oil. The diatribe continues for three pages. The argument is an attempt to justify the defendants' criminal action under the guise of religion. The defendants' motion is rife with unsupported assertions using such phrases as, "It is believed", "Thus, it is believed", "Cannabis is believed", and, "Cannabis is believed to be the 'tree of life'" (Defendants' motion, pg. 10.)

The use of or worship of cannabis as a sacrament and deity is the hallmark of the defendants' beliefs. (Defendants' motion, pg. 13). This does not address the first *Meyers* factor, fundamental questions about life, purpose and death. *Meyers*, Id. @ 1483. The defendants' beliefs also do not address the second *Meyers* factor, Id, metaphysical beliefs,

that is they do not address a reality which transcends the physical and immediately apparent world. A marijuana high does not qualify as such.

It is unclear to the government if the defendants meet the third *Meyers* factor, Id. moral or ethical system. What is clear is that, if the defendants are in violation of the law, as the government asserts, the defendants and their belief system are less than moral and ethical.

The defendants fail to meet factor four (4), Id., comprehensiveness of beliefs. That is, an answer to many if not most, of the problems and concerns that confront humans. The ingestion of cannabis or its worship can hardly be seen to answer many, and certainly not most, of humankind's problems. On the contrary excessive marijuana ingestion may in fact compound problems facing an individual. Research clearly demonstrates that marijuana has potential to create problems in daily life or make a person's existing problems worse. NIDA Infofacts: Marijuana, March 2004, <http://www.nida.nih.gov/infofacts/marijuana.html>.

Meyers' fifth factor; Accoutrements of Religion is sub-divided into ten sub-factors, Id. 1483-84. Sub-factor one, Founder, Prophet or Teacher, is difficult to analyze. Defendant Danuel Quaintance claims to have founded the Church of the Cognizance. The defendants claim to observe a form of Zoroastrianism in which cannabis is both a deity and sacrament (Defendants motion, pg. 2). Zoraster and his belief system is a far cry from the defendants' philosophy. Zoraster was a teacher with a belief system which included a spiritual deity and meets all of the *Meyers* factors. The bastardized form created and/or followed by the defendants does not. Danuel Quaintance does not rise to the level of Zoraster.

With regard to sub-part two, the defendants lack important writings and rely on a disjointed “pick and choose” philosophy. The defendants take ideas and symbolism from many of the world’s great religions. The defendants focus on any writing from the religions which mention symbolically or otherwise, any plant, tree, shrub, or oil/ointment derived thereof. The defendants then appropriate and reinterpret the writing for their own purposes.

As to sub-part three, Gathering Place(s), the defendants do have a gathering place: a trailer compound.

The defendants have no keepers of knowledge. Lifestyles do not require keepers of knowledge. Therefore, the defendants do not meet sub-part four. And, other than partaking in marijuana on any given hour, day, week or month, the defendants, the government submits, do not meet the remaining five sub-parts under the fifth *Meyers* factor. *Id.* @ 1483.

III. Summary

The Church of the Cognizance must certainly have a substantial membership in Indianapolis, Indiana judging from the amount of “sacrament” seized in Missouri. Clearly, the defendants, including Mr. Butts, were involved in a conspiracy to possess and distribute marijuana.

Within two weeks another sizeable load of “sacrament” was seized. Mr. Kripner’s statements indicate what the circumstances show, a commercial criminal enterprise. Mr. Kripner told authorities that the Quaintances gave him money to have his cousin to lease the “load” vehicle. Mr. Kripner also indicated that the defendants’ religion was a farce. Mr. Wiedmeyer’s statement regarding the defendants’ drug trafficking further corroborates Mr. Kripner when he (Kripner) said that the defendants sell marijuana. Rounding out the

portrait of defendants as drug traffickers are two large scales seized from the defendants' compound.

Sincerity is a factual matter in reference to RFRA protections. The defendants' profane worldly activities highlight the insincerity of their premeditated "religion defense". The defendants distanced themselves from Mr. Kripner by financing the lease of the vehicle that would bear the precious "sacrament". The defendants also provided Mr. Kripner with a "disposable" cellular telephone; disposable if arrest is eminent. As Peter distanced himself from Jesus by his denials, so the defendants distanced themselves from their "deity". They also agreed not to partake of the sacrament in exchange for conditions of release. Damaclean yes, but not demonstrative of a sincere faith.

As noted by the defendants, peyote has been allowed by the courts for use by Native Americans in worship services. These practitioners do not worship peyote but instead use it in an effort to commune with God. (Defendants' motion, pg. 8). This practice traces its origins to the beginning of recorded time. Further, Native Americans have died in defense of their faith and way of life. The defendants, however, surrendered their sacrament and readily agreed to forsake their deity as a condition of bond release.

The defendants adhere to a lifestyle certainly, a philosophy perhaps, but not a "religion" for RFRA purposes. The Church of the Cognizance was set up to challenge the drug laws in an attempt to circumvent prosecution for their drug trafficking.

The principle of religious freedom is one of the pillars upon which the nation's strength depends. RFRA exists to protect sincere religious belief from government intrusion. The defendants' attempt to abuse the protections afforded the people of the United States is disturbing. The government asks this honorable Court to find as a matter of fact and law that the defendants have not demonstrated a sincerity of belief and that

their lifestyle does not rise to the level of “religion” for purposes of RFRA. Further, the government asks the honorable Court to deny the defendants’ Motion to Dismiss Indictment.

Respectfully submitted,

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Electronically filed 4/24/06
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I HEREBY CERTIFY that a true copy of the foregoing response was mailed to counsel for Defendants, on this 25th day of April, 2006.

/s/ Luis A. Martinez
LUIS A. MARTINEZ
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