

**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 GOVERNMENT’S
RESPONSE TO MOTION TO DISMISS INDICTMENT**

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 response to Mr. Quaintance’s motion to dismiss indictment, and in support of his motion would respectfully show the Court as follows:

1. Mr. Quaintance has moved [Doc. 34] to dismiss the indictment [Doc. 25] against him because the indictment and prosecution violates his rights under the United States Constitution and the Religious Freedom Restoration Act. The government has filed a response to that motion [Doc. 41]. Co-defendant Mary Helen Quaintance has joined in that motion [Doc. 35]. Mr. Quaintance replies to the government’s response¹.

¹ The government has filed a superseding indictment [Doc. 65]. That indictment adds separate events to the charge of conspiracy and increases the potential consequences to include a minimum mandatory sentence of five years in custody where no minimum mandatory sentence was previously threatened. Arraignment on that indictment is scheduled for June 2, 2006. Mr. Quaintance reserves the right to make additional arguments within the new motion deadline to be set on the superseding indictment.

2. The government predictably contends that Mr. Quaintance is not practicing a “religion” and that his reliance on the RFRA is therefore unavailing. The government would presume to tell the Court, and Mr. Quaintance, what is and is not a religion. The government is incorrect on several levels.

3. Webster’s Third International (unabridged) offers seven definitions of “religion”. Religion is “the personal commitment to and serving of God or a god with worshipful devotion, conduct in accord with divine commands esp. as found in accepted sacred writings or declared by authoritative teachers, a way of life recognized as incumbent on true believers, and typically the relating of oneself to an organized body of believers (definition 1). Religion is also “one of a the systems of faith and worship (definition 3(a)). Religion is “the body of institutionalized expressions of sacred beliefs, observances and social practices found within a given cultural context (definition 3(b)). Religion is “the profession or practice of religious beliefs” (definition (4)). Religion is “a personal awareness or conviction of the existence of a supreme being or of supernatural powers or influences controlling one’s own, humanity’s or all nature’s destiny (definition 6).

4. The government’s position in response to Mr. Quaintance’s motion to dismiss is that Mr. Quaintance’s beliefs constitute a “lifestyle” or “philosophy”, not a religion. Undoubtedly, Mr. Quaintance’s beliefs do not coincide with the prosecutor’s own beliefs, and are different from the religious beliefs of many other people. To dismiss them as a “lifestyle”, shorn of their history and theology, is as inaccurate as it is offensive. The government suggests that Mr. Quaintance and the Church of Cognizance is nothing more than a group of

people who believe that cannabis should not be legally proscribed. That suggestion ignores the ancient religious tradition which underlies the beliefs of the members of the Church of Cognizance (COC).

5. Every society of people has explained their existence as originating in mystical times and circumstances and have sought ways to reconnect and/or influence those forces from which they come. *See, e.g.,* Mircea Eliade, Patterns in Comparative Religion, New York: Sheed and Ward, 1949. Societies thus seek to connect with the supernatural forces believed to describe their source, and they do so in a wide variety of ways. Each of the ways that various human societies describe the supernatural source of their existence is a religion. Many of these belief systems may be written down and may include formal institutions, and many may not. These things are commonly found in rigorous studies of the wide variety of the manifestations of religion in human history, and even in present times.

6. Mr. Quaintance founded the COC in 1991. In 1994, Mr. Quaintance registered the church with Arizona authorities. Mr. Quaintance has been practicing his beliefs for many years.

7. Mr. Quaintance has ministered to the members of the Church of Cognizance in many ways for many years. He has presided at weddings and funerals. He has provided spiritual guidance to inmates incarcerated in prison. At the evidentiary hearing on his motion to dismiss, Mr. Quaintance will testify to the various things he has done in his capacity as the leader of his church, and will provide such documentary proof of his activities as remain in

his possession². It is also anticipated that members of the COC will testify to the manner in which the church ministers to their spiritual needs.

8. The Church of Cognizance is a religion based on the precepts of Zoroastrian religious beliefs. The Zoroastrian religious tradition is thousands of years old. There is historical and archeological evidence of that religious tradition. The study of such things is a serious academic pursuit. Counsel anticipates presenting testimony from an expert in the study of ancient and modern religious practices to provide the Court with an empirical basis for the discussion of the Zoroastrian system of beliefs, and the place of those beliefs in the theology which provides the foundation for the Church of Cognizance.

9. The government suggests that the Church of Cognizance does not fit within the *Meyers* list of factors for the definition of a religion. Mr. Quaintance rejects the *Meyers* formulation as inconsistent with the First Amendment. The definition of what is and is not a religion with reference to markers drawn from the mainstream religious practices is inaccurate in its application to present day spiritual endeavors and offensive to the Constitution. However, Mr. Quaintance submits that even under the skewed *Meyers* analysis he is engaged in sincere religious practice. The Court should so find.

10. The government suggests that because Mr. Quaintance has not identified the meaning of life his religious pursuit does not meet the *Meyers* standard. The Church of

² Since his arrest in February, 2006, Mr. Quaintance has suffered an invasion by various law enforcement officers, who have taken many computers and records containing information about Mr. Quaintance's ministry. Mr. Quaintance expects that the contents of those computers and records will be returned to him as soon as possible after government experts have obtained all the information to be found there, and that the government will provide to Mr. Quaintance's counsel all discovery resulting from the search and harvesting of these resources.

Cognizance believes in basic precepts for living a health life. COC seeks to maximize mankind's potential with the aid of Haoma (cannabis), which is believed to be "the ancient teacher of wisdom, compassion, and the way to the kingdom of glory in heaven on earth, while humans let ego block their own, and others, path to this kingdom of glory". *Church of Cognizance Introduced*. A copy of that tract will be submitted to the Court as Attachment A in hard copy. The COC believes that *cannabis sativa* in all its forms is the "tree of life" referred to in the bible, and is also referred to in other ancient religious texts. Many religious traditions are based on or involve psychoactive plants or substances and psychoactive experiences. See, e.g., Huston Smith, *Cleansing the Doors of Perception: The Religious Significance of Entheogenic Plants and Chemicals*, Putnam 2000; Walter Houston Clark, *The Psychology of Religion*, MacMillan 1958; Walter Houston Clark, *Chemical Ecstasy*, Sheed & Ward, 1969; Robert Forte, *Entheogens and the Future of Religion*, Council on Spiritual Practices, 1997; Mircea Eliade, *Patterns in Comparative Religion*, Sheed and Ward, 1949. In short, COC believes that cannabis is not just a pathway to spiritual enlightenment and achievement, but is a sacrament and a deity, and is used and worshiped as such.

11. COC believes that cannabis is the provider of not only spiritual transcendence, but also corporeal sustenance. The seeds are processed into a thoroughly nutritious food. The fibre is processed into fabric and other useful products.

12. The government contends that COC is not a sincere and legitimate religion because it draws "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 [sic].” Response at 9. This is a meaningless diversion. Christianity itself, in early times, was marked by many competing beliefs reflected in various writings. Gnostics were a significant part of early Christianity until they were branded as heretics by St. Irenaeus and relegated to the spiritual basement. Most religious traditions developed from evolving theses and writings, and many borrowed traditions and written theology from others. Yet others have no written theology or cosmology; notable among them is the Native American Church, which is broadly recognized as a legitimate religion.

13. A distinction is to be made between what may be characterized as religions based on faith (that written doctrine is *truth*) and religions based on experience, which involve creating an environment in which practitioners can experientially expand their understanding and knowledge of life and their place in the universe. Experiential practitioners engage in active or passive meditation, isolation or sensory deprivation, scarification, sleep deprivation, sweat lodges, and psychoactive substances, or entheogens. Entheogens are broadly used in religious practice as a source of divine inspiration. Examples are legion throughout the history of religious practice, as can be seen in the authorities on religious practice cited above.

14. The government suggests that the Church of Cognizance is not moral or ethical, as contemplated by the *Meyers* formulation, because their practice violated the law. This is a vacuous solipsism. Recall that the very practice of early Christianity was illegal, and still is in some parts of the world. Recall that a man was sentenced to death (later commuted) in a Muslim country for converting to Christianity. That a religious practice may violate the law

does not equate to an absence of a moral code. “Good Thoughts, Good Words, Good Deeds” is the Zoroastrian and COC creed. COC believes in family and helping those less fortunate.

15. The government continues a litany of bombast and insult by characterizing the beliefs of COC as “bastardized” (Response at 10) and not in keeping with Zoroaster (although the government does not say how). As with most religious traditions, the COC has adopted those parts of Zoroastrian belief which comport with their own spiritual mission. Technically, one could not convert to Zoroastrianism; one had to be born into the church or be a descendant of Zarathustra in order to become a part of that group. Forming a spiritual construct by reference to a variety of ancient and modern religious traditions is not “bastardized” or “hodgepodge” or “disjointed” or “pick and choose”. It is a thoughtful, reasoned approach to gaining an understanding of the spiritual being and man’s place in the universe.

16. The government compares Mr. and Mrs. Quaintance’s decision to accept the Court’s conditions of release with the apostle Peter’s denials of Christ (Response at 11). This is as contemptible as it is absurd. The Quaintances were offered two choices by the Court. Be denied their sacrament and healer at home, or be denied their sacrament and healer while locked up. They logically chose the former. They have never wavered in their belief or declaration that cannabis is their deity and sacrament.

17. The government calls Mr. Quaintance’s home a “compound”, invoking images of the burning buildings of the David Koresh/Branch Davidian compound. Mr. Quaintance lives in a trailer. Members of his family live in two other trailers in the same general area on the same piece of property. The property is not barricaded or fortified. It is a neighborhood

and a home. It is one of the places where members meet to engage in their religious practice. Like the Quakers, COC members meet in other members' homes rather than have grand edifices for religious purposes.

18. The government suggests that the presence of scales in the area including Mr. Quaintance's residence belies the claim that cannabis is used in sacramental practice (Response at 6). Of course, the government has no idea of the manner in which the COC handles its sacramental material, and of the church's need for quantities of its sacrament. The government assumes and implies that the church, and Mr. Quaintance, is engaged in the commercial sale of cannabis. Agents of law enforcement tried repeatedly to inveigle church members into selling cannabis in order to make this claim. They failed every time. The government has provided no evidence of a single sale as a result of its vast, expensive, multi-jurisdictional and protracted investigation.

19. The government suggests that co-defendant Tim Kripner told them that the church, and Mr. Quaintance, support themselves by selling cannabis to any willing buyer (Response at 3). That is not true. On information and belief, Mr. Kripner said no such thing. The Quaintances live on their social security payments. They have few expenses and live modestly. They do not sell marijuana.

20. The government contends that Mr. Quaintance's son-in-law, Tim Wiedmeyer, told Graham County (Arizona) sheriff's officers that he wasn't involved in the "drug trafficking" on the Quaintance property (Response at 4). Mr. Wiedmeyer said no such thing. Mr. Wiedmeyer, who believes that agents endowed with the authority to enforce the law and

who represent the government should represent the highest standards of integrity, is deeply troubled at the mischaracterization of his words by those very agents.

21. The government questions both the sincerity of Mr. Quaintance's beliefs and that those beliefs constitute a religion (Response at 7-8). The first challenge, to Mr. Quaintance's sincerity, is nothing more than an uninformed opinion held by the prosecutor. The prosecutor knows nothing of Mr. Quaintance and the length, breadth and depth of his religious belief and practice. At the evidentiary hearing on Mr. Quaintance's motion, Mr. Quaintance will describe the arc of the development of his religious beliefs.

22. In sum, the government's attack on Mr. Quaintance's religious beliefs and the practices of the Church of Cognizance reflects the prejudice held by the prosecutor, possibly borne of the depth and sincerity of his own religious tradition. It is difficult for one steeped in the beliefs and traditions of any religious tradition, particularly a mainstream religious tradition, to take seriously any religious tradition which includes things that are considered to be outside the mainstream or strange. Yet such religions exist, in this country and abroad. The number and nature of various religious traditions are limited only by the number of places people can gather, talk, ask questions and seek after knowledge and insight. The Church of Cognizance is exactly such a religion, and Mr. Quaintance is a sincere practitioner.

23. The briefing so far has discussed the sincerity of Mr. Quaintance's religious practice, a threshold consideration for the Court. Additional briefing and evidence will be needed for the other criteria under RFRA.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply to Response to Motion to Dismiss 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 May 23, 2006.

electronically filed on May 23, 2006
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