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North American Association of Visionary Churches, and
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ARIZONA YAGÉ ASSEMBLY, NORTH AMERICAN ASSOCIATION OF VISIONARY CHURCHES, and CLAY VILLANUEVA, Plaintiffs, vs. WILLIAM BARR, Attorney General of the United States; UTTAM DHILLON, Acting Administrator of the U.S. Drug Enforcement Administration; CHAD F. WOLF, Acting Secretary of the Dept. of Homeland Security; MARK A. MORGAN, Acting Commissioner of U.S. Customs and Border Protection; THOMAS PREVOZNIK, Deputy Assistant Administrator of the DEA Dept. of Diversion Control, in his personal capacity; the UNITED STATES OF AMERICA; the STATE OF ARIZONA; MARK BRNOVICH, Arizona Attorney General; MARICOPA COUNTY, a political subdivision of the State of Arizona; and, MATTHEW SHAY, Defendants.	Case No.: 3:20-CV-03098-WHO PLAINTIFFS' MOTION FOR PRELIMINARY INJU0NCTION Date: August 26, 2020 Time: 2:00 P.M. Courtroom: 2 (17th floor)

TO ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN, PLEASE TAKE NOTICE THAT at 2:00 p.m. on August 26, 2020 in Courtroom 2 on the 17th floor of the United States Courthouse at 450 Golden Gate Avenue, San Francisco, California, plaintiffs North

1 American Association of Visionary Churches ("NAAVC"), and NAAVC Board Member Clay
2 Villanueva ("Villanueva"), and Arizona Yagé Assembly ("AYA") will move the Court for an
3 order pursuant to L.R. 7-2, L.R. 65-2, F.R.Civ.P. 65, 42 U.S.C. § 1983, and 28 U.S.C. § 2201 –
4 2202, preliminarily enjoining all defendants from pursuing a conspiracy grounded in retaliatory
5 animus by the Drug Enforcement Administration ("DEA") towards plaintiff NAAVC, that
6 instigated state authorities to execute a retaliatory search against Villanueva, a *de facto*
7 represented party under the protection of this Court at the time of the retaliatory search. The
8 attack on Villanueva was an attack on this Court's power to do equity between and among all of
9 the parties by giving the defendants inappropriate advantage, and thus, the Court's aid is sought
10 to protect the dignity of the Court as the exclusive arbiter of plaintiff's claims against defendants.
11 The retaliatory animus of the DEA towards NAAVC poses a continuing threat to plaintiffs'
12 Security, Privacy, Free Exercise, Free Religious Expression, and Freedom of Association, for
13 which plaintiffs have no adequate remedy at law. Plaintiffs therefore seek an order that will re-
14 establish the *status quo ante* the search of Villanueva's home and church on May 19, 2020, by
15 prohibiting the defendants, and each of them, from retaining possession of property and evidence
16 seized during the search, or profiting from the unlawful search and custodial interrogation of
17 Villanueva in any way. Accordingly, plaintiffs will request the Court to enter a prohibitory order
18 enjoining defendants from interfering with NAAVC, its Board of Directors, AYA and its
19 congregation, and Villanueva and the VOLC congregation ("Plaintiff's Personnel") by:
20 1. Criminally investigating Plaintiff's Personnel and/or sharing information about
21 Plaintiff's Personnel with other law enforcement agencies, in any jurisdiction;
22 2. Making use of any of the materials seized, observed, photographed, or video-
23 recorded during the HIDTA raid of VOLC in this litigation against NAAVC,
24 AYA, VOLC, or any of Plaintiff's Personnel;
25 3. Retaining any of the property seized from Villanueva and VOLC;
26 4. Performing any acts intended to cause damage to the person, property, or Free
27 Exercise of NAAVC, AYA, Villanueva, or Stanley;
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5. Utilizing police resources such as the NCIC database, the DEA's Hemisphere program, or other resources designed for criminal investigation, to investigate Plaintiff's Personnel; and/or
6. Joining AYA's Facebook group for the purpose of surveilling its activities and personnel.

Plaintiff made a good faith effort to resolve the issues raised in this motion informally before filing by proposing a stipulation to achieve the same effect as the Order sought herein.

The motion will be made based on the attached memorandum of points and authorities, the declarations of Clay Villanueva, Charles Carreon, and Winfield Scott Stanley III, the associated exhibits, the proposed Order submitted herewith, and such further evidence and argument as the Court finds relevant.

Dated: July 22, 2020

CHARLES CARREON, ESQ.
By: /s/Charles Carreon
CHARLES CARREON (127139)
Attorney for Plaintiffs
Arizona Yagé Assembly.
North American Association of Visionary Churches,
Clay Villanueva

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PREFATORY STATEMENT

The United States was conceived in a vision of religious liberty that provided twin protections for Freedom of Conscience that are enshrined in the First Amendment – the Free Exercise Clause and the Establishment Clause. The first protection promises freedom to worship according to the dictates of one's own heart, the second, freedom from compulsion to worship in or pay to support a state-sponsored church. The definition of religious faith has proven flexible over the years, and First Amendment jurisprudence has expanded to provide protection for all sincere moral dictates of conscience, independent of formal doctrine.

It has often been said that religious freedom in America is accorded to all faiths, with bias toward none. The truth has been otherwise. Sects with unpopular practices have suffered retaliation for acts of Free Exercise and Religious Expression at the hands of local governments, federal institutions, private actors, and conspiracies among the three. Currently, "visionary churches" that dispense a pharmacologically active substance to their congregants as a communion sacrament are struggling to obtain a legal legitimacy that has been declared in theory but remains difficult to claim in practice.

Thousands of visionary religion practitioners have traveled to South America to drink plant medicines with native churches and tribal shamanic practitioners. Some of those international pilgrims, like plaintiff Clay Villanueva ("Villanueva"), returned to share the experience with peers in North America, where hundreds of visionary churches have sprung up during the last fifteen years.

A group of visionary church leaders, including Villanueva's Vine of Light Church ("VOLC"), formed the North American Association of Visionary Churches ("NAAVC"), a religious corporation asserting rights of Free Exercise to establish and pursue a ministry to, *inter alia*, import and distribute Ayahuasca to member churches. On behalf of its member churches, NAAVC petitioned the Drug Enforcement Administration ("DEA") for redress, sending a letter endorsed by hundreds of online petitioners requesting

1 changes in the DEA's system for issuing exemptions from the Controlled Substances Act
2 ("CSA")[1] under the Religious Freedom Restoration Act ("RFRA").[2] NAAVC's efforts to
3 petition the DEA for redress provoked retaliatory animus at the DEA, and the impulse to
4 punish NAAVC and its Board members. Accordingly, the DEA instigated a retaliatory
5 scheme in conspiracy with the DEA-funded Arizona SW HIDTA[3] joint task force and
6 directed an Arizona detective at the Maricopa County Sheriff's Office ("MCSO") to
7 conduct a search of Villanueva and VOLC. The DEA's retaliatory scheme had the
8 purpose and effect of punishing NAAVC for publicizing a detailed legal critique of DEA
9 policy. Further, as the herein action had been filed by the time the detective procured a
10 warrant for the search, the HIDTA search team indulged in *ex parte* contact with
11 Villanueva, violating the attorney-client relationship, custodially interrogating
12 Villanueva, and seizing Villanueva's sacramental Ayahuasca and other property, thus
13 obtaining improper leverage over NAAVC in this action. The DEA grievously torqued
14 the equities in the action by instigating state actors to attack an NAAVC Board member,
15 a represented party herein, by procuring a warrant in another jurisdiction

16 The raid abruptly truncated Villanueva's ministry to his congregation,
17 substantially burdening Villanueva and the VOLC congregation's Free Exercise, and the
18 prejudicial effects of the retaliatory raid go beyond the painful financial and emotional
19 effects on Villanueva personally. Villanueva and the VOLC congregation will continue
20 suffering irreparable harm until MCSO returns Villanueva and VOLC's sacramental
21 Ayahuasca, property, currency and data. These things, seized by the Arizona defendants
22 under a pretext of narcotics enforcement, are being held without legal justification,
23 retaliatory animus was a substantial cause of the HIDTA raid. Accordingly, the
24 defendants should relinquish all seized items to Villanueva's possession, and be
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[1] 21 U.S.C. § 801, *et. seq.*
[2] 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4
[3] HIDTA is an acronym for High Intensity Drug Trafficking Area, described *infra*. As noted in Exhibit 6 hereto, the DEA's 2019 budget for all HIDTA zones, of which Arizona is 1 of 22, was $254,000,000.

prohibited from exploiting unlawfully seized evidence or continuing to criminally investigate plaintiffs. Such an order will restore the *status quo ante,* level the litigation playing field, and confirm this Court's authority over all of the parties herein to adjudicate all of the issues raised by plaintiffs' claims for relief.

II. FACTS

NAAVC member churches are visionary churches that administer a communion sacrament that contains a controlled substance regulated by the DEA pursuant to the CSA. (Carreon Dec. ¶ 1.) For fourteen years, the DEA has refused to provide regulatory services to any visionary church seeking a religious exemption ("Free Exercise Exemption") from the CSA. (Carreon Dec. ¶ 1.)[4] The law permitting the use of sacraments containing a controlled substance was carved out by the North American branches of two South American visionary churches, the UDV and the Santo Daime (the "Daime"),[5] that both prevailed in litigation against the DEA. (Carreon Dec. ¶ 2.) Both the UDV and the Daime were provoked to file suit by DEA searches and seizures of visionary church sacraments that the courts later held to be improper. (FASC ¶ 82: Carreon Dec. ¶ 3; Exhibit 1.) Both the UDV and the Daime were raided by the DEA during the same two-day period, while both churches believed they were in negotiations with Janet Reno's DOJ. (Carreon Dec. ¶ 3; Exhibit 1, ¶ 26 at p. 8 and ¶45 at p. 15.)

Seen in the context of the DEA's past actions, the search of Villanueva's home and the VOLC sanctuary was merely a repeat from the DEA's coercive playbook. Following that playbook, the DEA responds to legal challenges with armed raids, and acquires evidence through criminal investigations to defend against the civil claims of visionary churches alleging that the DEA's enforcement regime burdens their Free Exercise. However, in the UDV and Daime cases, the DEA got federal warrants and conducted its own seizures, while in the case *sub judice*, it acted through Arizona SW

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[4] *Gonzalez v. O Centro Beneficente Uniao do Vegetal,* 546 U.S. 418, 126 S. Ct. 1211, 163 L.Ed.2d 1017 (2006)(upholding injunction requiring DEA to grant exemtion to UDV church).

[5] *Church of the Holy Light of the Queen v. Mukasey*, 615 .Supp.2d 1210, 1215 (Oregon , 2006)(vacated on other grounds).

HIDTA[6] to direct Maricopa County Sheriff's Office ("MCSO"), the Arizona Attorney General ("Arizona AG"), the State of Arizona, and Det. Matthew Shay ("Shay") (collectively, the "Arizona defendants") to search the VOLC sanctuary and Villanueva's home. (Carreon Dec. ¶ 8; Exhibit 6; Villanueva Dec. ¶ 15.)

Why did the DEA avoid overt involvement by engaging state law enforcement officers to pursue the same end that it had previously pursued with the UDV and the Daime? Perhaps because the last time the DEA tried to justify a search and seizure of Ayahuasca from the Daime in federal court, it lost the case, and was ordered to pay the Daime's attorney's fees. (Carreon Dec. ¶ 10; Exhibit 1.) Since the Daime victory in Oregon District Court, the DEA has not sought or obtained a federal search warrant to search for sacramental Ayahuasca in the United States, to the knowledge of plaintiffs. (Carreon Dec. ¶ 11.) But the reason may be even simpler. Given the status of RFRA law on Free Exercise use of Ayahuasca, the DEA likely suspects that a federal judge would be no more easily persuaded to issue a warrant to search for Ayahuasca in an Ayahuasca church, than would a Prohibition-era judge who had been asked to issue a warrant to search for communion wine in a Catholic sacristy.

The Arizona defendants were enlisted because the DEA required an outlet for its animus towards visionary religion, that had taken the concrete form of NAAVC and the person of Villanueva. Why did NAAVC and Villanueva merit special attention? Because the DEA has been hostile to visionary religion since it learned of it, and even after it saw all of its traditional arguments in opposition refuted in the *O Centro* decision, it persevered in its policy of refusing visionary churches regulatory services. (FASC ¶¶ 76 – 84, Docket # 12.)

NAAVC gained the DEA's attention in January 2020, when it critiqued the DEA's *Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act* (the "Guidance") in a letter to the

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[6] The Southwest Arizona SW HIDTA extends to San Diego, California, into New Mexico, and down the entire West coast of the Texas peninsula in the Gulf of Mexico. See page 2, Exhibit 5, a map of HIDTA areas taken from DEA.gov.

1 DEA that recommended the agency rescind the Guidance to comply with the
2 requirements of Executive Order 13891 (the "DEA Letter").[7]
3 The DEA was not amused. The Guidance has been the centerpiece of its strategy
4 to refuse regulatory services and Free Exercise Exemptions to visionary churches. The
5 Guidance imposes burdens on Free Exercise under the guise of implementing an
6 exemption procedure. As one legal commentator has observed, "the Guidance
7 establishes a new, substantive requirement for DEA registration for religious exercise
8 where none currently exists under Federal law."[8] By establishing this new, substantive
9 requirement, the DEA arrogated to itself the right to withhold or grant permission to
10 drink Ayahuasca as a religious sacrament. This was an unconstitutional violation of Free
11 Exercise, because the Supreme Court has announced that sacramental use of Ayahuasca
12 is protected Free Exercise, and Free Exercise may not be subjected to prior restraint.[9]
13 Finally, the DEA was likely not pleased with NAAVC's attack on the Guidance
14 because, after the DEA lost its last two Ayahuasca church RFRA lawsuits, it grew
15 uncertain about its ability to pursue prosecutions or obtain warrants under the CSA
16 against visionary churches, and devised an alternative strategy to burden the Free
17 Exercise of visionary churches, using the Guidance as a pretext to issue *de facto* cease
18 and desist orders. (Carreon Dec. ¶ 13.) These cease and desist orders "invited" visionary
19 church leaders to submit a Guidance-compliant petition for a Free Exercise Exemption,
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[7] A hardcopy of the DEA Letter was posted Priority Mail to William T. McDermott, Assistant Administrator for the Diversion Control Division shortly after the January 8, 2020 date, and copied in PDF format as confirmed-receipt email attachment to top Government attorneys at the DEA and the Department of Justice, at their official .gov domain email addresses. (Carreon Dec. ¶ 12.) Exhibit 2.

[8] B.Bartlett, *The U.S. Drug Enforcement Administration Problematic Process for Religious Exemption for Use of Prohibited Psychoactive Substances* (July 16, 2019). https://tinyurl.com/y8kplc73

[9] *Follet v. Town of McCormick,* 321 U.S. 573, 576, 64 S.Ct. 717, 88 L.Ed. 938 (1944).
10 *Cantwell v. Connecticut*, 310 U.S. 296, 307, 60 S. Ct. 900, 904-05, 84 L.Ed. 1213, 1219 (1940) (statute imposed "forbidden burdens" on Free Expression and Free Exercise by prohibiting religious door-to-door solicitation without a permit from a "public welfare council" authorized to "determine whether such cause is a religious one."

1 and directed them to use no Ayahuasca pending the processing of the petition.[10] (Carreon
2 Dec. ¶ 13; Exhibit 3.) These *de facto* cease and desist letters placed the recipients under
3 law enforcement scrutiny, chilling and substantially burdening their Free Exercise.
4 (Carreon Dec. ¶ 13.) The targets of the two DEA cease and desist letters were so
5 concerned that they submitted petitions, but neither petition received any attention from
6 the DEA. (Carreon Dec. ¶ 13.)
7 NAAVC's DEA Letter was disseminated throughout the visionary church
8 community through an online petition posted at Change.org, collecting signatures under
9 the petition title, "Stop the DEA from Regulating Visionary Religions."[11] (Carreon
10 Dec. ¶ 17.) NAAVC thus announced to the visionary church community that the
11 Guidance was unconstitutional and otherwise unlawful, and that the DEA's *de facto*
12 cease and desist orders violate the First Amendment prohibition on prior restraints on
13 Free Exercise.
14 Thus, sufficient retaliatory animus had accumulated in the DEA towards NAAVC
15 that, in February 2020, someone at the DEA prompted Shay to get a warrant to search
16 Villanueva's home and the VOLC sanctuary in Phoenix, Arizona. (Carreon Dec. ¶¶ 12-
17 22; Villanueva Dec. ¶ 15.) Shay certainly received this assignment from the DEA. Shay
18 is a 22-year veteran of the City of Phoenix drug squad, now detailed to the federally-
19 funded HIDTA Task Force. (Carreon Dec. ¶ 18.) Arizona SW HIDTA funds
20 collaboration between the DEA, the Arizona AG, and MCSO for purposes of disrupting
21 large scale drug organizations. (Carreon Dec. ¶ 18; Exhibit 5.) Several of the deputies
22 who served the warrant and conducted the search were wearing t-shirts printed
23 "SHERIFF HIDTA" on the back. (Villanueva Dec. ¶ 38; Carreon Dec. ¶ 26; Exhibit 11.)
24 Given that Shay is an expert narcotics officer with a specialty in disrupting large cartel
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[10] The recipients of the de facto cease and desist letters were Soul Quest and Ayahuasca Healing. An example of the letter the DEA sent to Soul Quest is attached as Exhibit 3.

[11] As of July 22, 2020, the petition has collected 472 signatures. See https://www.change.org/p/drug-enforcement-administration-keep-the-dea-s-hands-off-visionary-churches?recruiter=1003378382&utm_source=share_petition&utm_medium=copylink&utm_campaign=share_petition

1 drug manufacturing operations, it is virtually impossible that he would have
2 spontaneously developed an investigative interest in VOLC or Villaneuva's activities, or
3 that it would have fallen within the proper scope of his investigative duties if he had.
4 (Carreon Dec. ¶ 18.) Villanueva had no contact with drug cartels or money laundering,
5 indeed no criminal history whatsoever, putting him outside HIDTA's declared area of
6 expertise and interest. (Carreon Dec. ¶ 19; Exhibit 5.)
7 As a former Navy communications officer, Villanueva knows how to manage
8 information flow and attendant risks. (Villanueva Dec. ¶ 22.) VOLC had no interactions
9 with local law enforcement, health authorities, or other government agents. (Villanueva
10 Dec. ¶ 22.) VOLC's media profile was discreetly managed and generated no interest
11 from local news media. (Villanueva Dec. ¶ 22.) VOLC made no effort to proselytize, and
12 Villanueva held VOLC ceremonies only for trusted individuals whose religious sincerity
13 was confirmed. (Villanueva Dec. ¶ 22.) There was no "word on the street" about VOLC.
14 (Villanueva Dec. ¶ 22.)
15 There is no reasonable interpretation of the facts that does not conclude that, to
16 strike NAAVC, DEA commandeered HIDTA to procure a warrant to search Villanueva's
17 home and the VOLC sanctuary. Through its power to fund and direct HIDTA, MCSO,
18 Shay, and the other Arizona defendants, the DEA did was unwilling to do directly –
19 contrive probable cause to raid a church for its sacraments. (Carreon Dec. ¶ 22.) Thus,
20 the sole reasonable interpretation of the facts compels the conclusion that the DEA's
21 Arizona SW HIDTA task force funded operations and personnel to violate Villanueva's
22 civil rights.
23 Villanueva began the journey that set him on his collision course with the DEA in
24 2011, when he found a packet labeled "Ayahuasca" among some possessions he had been
25 carrying around for many years. (Villanueva Dec. ¶ 6.) When he looked up the word
26 "Ayahuasca" in the Google search engine, he was amazed to discover the world of
27 visionary religion, and felt an immediate attraction to the practice, even though he had
28 not previously considered himself to be a religious person. (Villanueva Dec. ¶¶ 6 - 8.)

Villanueva's background is in communications, electronics, sound recording, and computer-aided design, skills that he began accumulating as a communications technician during his 7 years in the Navy. (Villanueva Dec. ¶8.) He considered himself a hard-headed materialist, but became so interested in Ayahuasca that in 2011, he took a plane to Iquitos, Peru to attend his first Ayahuasca ceremony. (Villanueva Dec. ¶¶ 7 - 8.) This experience, continuing to the present day, has transformed Villanueva's view of the world. (Villanueva Dec. ¶¶ 8 - 9.) As Villanueva's personal practice of Ayahuasca communion became established, others began expressing interest in the practice. (Villanueva Dec. ¶ 9.) Accordingly, Villanueva began conducting small ceremonies in California and Arizona, that have blossomed into a small religious congregation that he incorporated as an Arizona religious nonprofit corporation in 2017 called the Vine of Light ("Vine of Light Church" or "VOLC"). (Villanueva Dec. ¶ 9.)

In 2019, Villanueva joined NAAVC as one of three founding Board members, with his friend Scott Stanley serving as the Director of the Board, and enrolled VOLC as the first visionary church to join NAAVC. (Villanueva Dec. ¶¶ 2 and 10; Stanley Dec.¶ 4.) Villanueva responded to NAAVC's message that more needs to be done with the DEA and the courts before visionary churches can truly enjoy the promise of Free Exercise held out by the O Centro decision, free of the fear of unlawful searches, seizures, and arrests. (Stanley Dec. ¶ 5.) Villanueva voted in favor of sending the DEA Letter and in favor of commencing this litigation on behalf of NAAVC. (Stanley Dec. ¶ 6; Villanueva Dec. ¶¶ 13 - 14.) By initiating the NAAVC lawsuit, Villanueva and Stanley placed themselves under the jurisdiction of this court. (Stanley Dec. ¶ 7; Villanueva Dec. ¶ 2.) Villanueva and Stanley both sought to protect their own religious Free Exercise and that of their congregations when they directed NAAVC's counsel to file this action. (Stanley Dec. ¶ 8; Villanueva Dec. ¶ 2.) Thus, attacks against Villanueva are attacks on NAAVC's Free Exercise, and those of all NAAVC Board members. (Stanley Dec. ¶ 9; Villanueva Dec. ¶ 2.) Villanueva did not expect that by taking action as a member of NAAVC's board that he would bring himself into a position of danger

1 with respect to the DEA. (Villanueva Dec. ¶ 14.) He fully expected that the DEA would
2 respond to NAAVC's claims through this Court, and not through an *ex parte* criminal
3 search warrant application in another state. (Villanueva Dec. ¶ 14.) His expectations
4 were mistaken.

5 Around 8:30 a.m., on May 19, 2020, Shay and a phalanx of six or seven MCSO
6 deputies wearing "SHERIFF HIDTA" t-shirts, and a finance investigator from the
7 Arizona AG Office, carrying long guns and a battering ram, parked around the corner
8 from Villanueva's home, gathering there for the assault on the Vine of Light Church.
9 (Villanueva Dec. ¶¶ 15, 34; Exhibit 11.) Although heavily armed, the deputies dressed
10 lightly, as if aware that they would only be confronting two senior citizens living in a
11 visionary church with no guns. (Villanueva Dec. ¶ 16.) As they marched to the church,
12 one of the neighbors asked, "Where are you going?" (Villanueva Dec. ¶ 16.) They
13 answered gaily, voices joined in sing-song -- *"We're going to serve a search warrant!"*
14 Moments later, after forcing the front gate with a pry-bar, the deputies stood banging
15 loudly on Villanueva's front door, threatening to bring it down if it wasn't opened
16 immediately. (Villanueva Dec. ¶ 17.) Dressed in only a t-shirt and jockey shorts,
17 Villanueva tumbled out of bed and rushed to open the door, where he was pulled out of
18 his house and put in handcuffs in his front yard, for his neighbors to witness his
19 humiliation. (Villanueva Dec. ¶ 17.) From the very start, Shay conducted the MCSO
20 raid with the intent to render Villanueva vulnerable to effective interrogation by
21 providing alternating stimuli, first threatening, then friendly. (Villanueva Dec. ¶¶ 17 –
22 18; ¶¶ 24 - 29.)

23 *First*, Shay threatened Villanueva by taking him into custody, with a substantial
24 show of lethal force, needlessly handcuffing him in his front yard, ignoring his concerns
25 about being exposed to COVID by the deputies swarming around his house without
26 masks, and forcing him to submit to custodial interrogation in his underwear, surrounded
27 by fully dressed law enforcement officers. (Villanueva Dec. ¶¶ 17 – 18; ¶¶ 24 and 32.)
28 This was done to frighten and humiliate Villanueva, who had no weapons, no record of

having sought to purchase a gun, and no concealed weapons permit; so his profile indicated little to no possibility of armed resistance to a search, and no reason to deploy a large group of heavily armed deputies. (Villanueva Dec. ¶¶ 19 – 21; Carreon Dec. ¶ 19.) Most notably, Shay knew Villanueva to be a declared Ayahuasca minister teaching a path of love and peace based on visionary communion with the spirit of life, who would respond peaceably if presented with a search warrant. (Villanueva Dec. ¶ 21.)

Second, Shay manifested a genteel demeanor, demonstrated sympathetic interest in Villaneuva's religious and travel activities, and thorough knowledge of his PayPal account. (Villanueva Dec. ¶¶ 25 and 29.) Notwithstanding Shay's recital of something that sounded like Miranda warnings, Villanueva cannot remember being told he had the right to have an attorney present during interrogation; accordingly, Villanueva did not think to call the NAAVC Board's attorney to attend an interrogation telephonically. (Villanueva Dec. ¶ 26.) The attorney could have obliged such a request. (Carreon Dec. ¶ 23.)

Shay made an audio recording of Villanueva's interrogation, and MCSO deputies recorded videos and took photographs of the VOLC sanctuary and Villanueva's house. (Villanueva Dec. ¶ 27.) The scope of the search went beyond Villanueva's private home and into that of a lodger who rents a space in the house, and some of the lodger's possessions were seized. (Villanueva Dec. ¶ 28.)

Before Shay left, he adopted a warm and understanding tone in his conversation with Villanueva, stating that it was apparent to him that Villanueva was not a drug dealer, and that he had no idea whether charges might be filed, because he would simply be filing a report, not making any arrest today, and it would be up to a prosecutor whether to proceed with criminal charges. (Villanueva Dec. ¶ 29.) Upon reflection, Villanueva realized that Shay's conduct and statements added up to a tacit admission that he lacked probable cause to believe Villanueva was a drug dealer, and knew all along that the presence of sacramental Ayahuasca at the VOLC church was not evidence of criminal conduct. (Villanueva Dec. ¶ 29.)

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Villanueva's life has been injured by the DEA's *ex parte* coup. (Villanueva Dec. ¶ 30.) He has no sacrament to share with the VOLC congregation. (Villanueva Dec. ¶ 31.) He is threatened with prosecution. (Villanueva Dec. ¶ 29.) His mobile phones were seized, and their contents copied. (Villanueva Dec. ¶ 31.) For the last couple of years, Villanueva had been saving U.S. currency in his home, and had saved enough to upgrade to a vehicle somewhat newer than his 2005 Toyota. (Villanueva Dec. ¶ 31.) Shay seized the entire amount that Villanueva had saved up, not even recording the amount seized on the receipt. (Exhibit 9; Villanueva Dec. ¶ 31.)

Villanueva and his wife are both nearly sixty years of age, at high risk of suffering lethal consequences from COVID, and were quarantining when the MCSO threatened to break down their door; nonetheless, MCSO deputies wore no masks and took no precautions to protect the Villanuevas from contamination by the group of eight or nine people who grabbed him and his wife, and handled all of the possessions in their home. (Villanueva Dec. ¶ 32.) Mrs. Villanueva has symptoms of post-traumatic stress – trouble sleeping, fear of going out, fear that she is not safe in her home, or that strangers could invade at any time and destroy their peace and tranquility. (Villanueva Dec. ¶ 33.) Due to the economic stress imposed by the HIDTA raid, Villanueva is unable to continue quarantining despite the risk to his health, and has resumed offering his services as an on-site computer consultant. (Villanueva Dec. ¶ 34.) The DEA and the Arizona defendants demonstrated deliberate indifference to the health and civil rights of the Villanuevas when they forced their way into the home where the vulnerable couple were quarantining, with a warrant obtained by a bad faith affidavit, not to search for evidence of crime, but merely to act out a pretext for a home invasion under color of law, at the behest of the DEA. (Villanueva Dec. ¶ 35.) The HIDTA raid has truncated Villanueva's Free Exercise and that of the VOLC congregation; additionally, it has chilled the Free Exercise rights of the other NAAVC Board members, and placed them in implicit peril of suffering the same assault on their civil rights as the HIDTA raid visited upon Villanueva. (Stanley Dec. ¶ 12.) The equities of the case have been violently disrupted,

1 and the prejudicial consequences can be remedied only through this Court's issuance of
2 an order restoring the *status quo ante,* to level the playing field going forward, and most
3 importantly, to protect the plaintiffs from irreparable harm to their First Amendment
4 freedoms of religion, speech, and association. (Carreon Dec. ¶ 24.)

5 **III. <u>ARGUMENT</u>**

6 **A. Plaintiffs Submitted Themselves to the Jurisdiction of This Court**

7 NAAVC and AYA filed this action in California, their states of incorporation, and
8 properly joined the federal defendants in this venue. Villanueva and Stanley, acting as
9 NAAVC's Board members, directed counsel to file suit against the DEA to protect
10 themselves and their congregations from the DEA conduct complained of in the
11 Complaint (Docket # 1). (Stanley Dec. ¶ 8; Villanueva Dec. ¶ 2.) While Villanueva was
12 not personally named in the original Complaint, as a Board member he was subject to the
13 Court's jurisdiction, and he has now been joined as a plaintiff in the FASC (Docket # 12).
14 As the Supreme Court explained in *Burwell v. Hobby Lobby Stores*:

15 > [T]he purpose of extending rights to corporations is to protect the rights of
16 > people associated with the corporation, including shareholders, officers,
> and employees. Protecting the free-exercise rights of closely held
17 > corporations thus protects the religious liberty of the humans who own and
> control them.

18 *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 683-684, 134 S. Ct.
19 2751, 2759, 189 L.Ed.2d 675, 683 (2014).

20 In this case, NAAVC and AYA came to Court seeking to protect, "the religious
21 liberty of the humans who control them," Villanueva and Stanley.

22 **B. The Conspiracy Injured NAAVC in This Litigation**

23 Shay, MCSO, and the Arizona AG transmitted the DEA's retaliatory animus to
24 NAAVC through its assault on Villanueva's civil rights. Arizona SW HIDTA's reach is
25 vast, and allows the DEA to strike anywhere in the nation, but the geographic location of
26 the search is incidental to the influence the DEA wished to have, and has had, on this
27 litigation. Villanueva had sought the Court's protection for his Free Exercise by asserting
28 the associational standing of all NAAVC visionary church members seeking the same
protection. The attack on Villanueva's rights was therefore an attack on the fair and

equitable character of these proceedings, which it is within this Court's power to protect by means of prohibitory orders, governing the conduct of the litigants. Tortious acts directed at interfering with the course of justice, like all tortious acts causing intentional injury, give rise to jurisdiction in the forum where the damage occurred.

> When an intentional tort claim is asserted, purposeful availment of the privilege of conducting activities in the forum state can be met by the "purposeful direction of a foreign act having effect in the forum state."
>
> *CE Distribution, LLC v. New Sensor Corp.*, 380 F.3d 1107, 1111 (9th Cir. 2004)

The damage was directed and caused injury to the plaintiffs' rights in this Court; therefore jurisdiction over the Arizona Defendants is proper here.

C. This Court May Enjoin the DEA and the Arizona Defendants

This Court has jurisdiction over all of the defendants, who have been served with the initiating process. Service on DEA and other federal defendants was accomplished per the proofs of service filed on June 3, 2020. (Docket # 11.) A supplemental Summons was issued for the Arizona Defendants (Docket # 15) to accompany the FASC (Docket # 12), and all were served on June 30, 2020. (Carreon Dec. ¶ 25; Exhibit 10.) This Court has supplemental jurisdiction over the FERA under 28 U.S.C. §1367.

The DEA is subject to injunction.[12] "It is well settled that federal officials sued in their official capacity are subject to injunctive relief under § 1983 if they 'conspire with or participate in concert with state officials who, under color of state law, act to deprive a person of protected rights.'" *Cabrera v. Martin*, 973 F.2d 735, 741 (9th Cir. 1992), *quoting Scott v. Rosenberg*, 702 F.2d 1263, 1269 (9th Cir. 1983). "[T]he relevant inquiry focuses not on whose law is being implemented, but rather on whether the authority of

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[12] Immunity is not an issue on this motion. "Congress expressly waived whatever sovereign immunity the United States enjoyed from prospective relief when it amended § 702 of the Administrative Procedure Act ("APA") in 1976. HN7 Section 702 now provides [**16] a broad waiver of immunity for injunctive actions filed against the federal government. Contrary to the assertions of the federal defendants, this Court has repeatedly found that § 702 waives the sovereign immunity of the United States with respect to any action for injunctive relief under 28 U.S.C. § 1331". *Cabrera v. Martin*, 973 F.2d 735, 741, (9th Cir., 1992), *citing* 5 U.S.C. § 702.

the state was exerted in enforcing the law." *Tongol v. Usery*, 601 F.2d 1091, 1097 (9th Cir. 1979), *quoting United States v. Classic*, 313 U.S. 299, 326, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941); *Green v. Dumke*, 480 F.2d 624, 628-29 (9th Cir. 1973). "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *Billings v. United States*, 57 F.3d 797, 801 (9th Cir. 1995), *quoting Scott v. Rosenberg*, 702 F.2d 1263, 1269 (9th Cir. 1983), *cert. denied*, 465 U.S. 1078, 79 L. Ed. 2d 760, 104 S. Ct. 1439 (1984), *quoting United States v. Classic*, 313 U.S. 299, 326, 85 L. Ed. 1368, 61 S. Ct. 1031 (1941).

Shay is subject to injunction. State officials sued in their personal capacity are persons for purposes of § 1983. See *Hafer v. Melo*, 502 U.S. 21, 31 (1991); *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir. 2003); *DeNieva v. Reyes*, 966 F.2d 480, 483 (9th Cir. 1992). "Personal-capacity suits seek to impose personal liability upon a government official for actions [the official] takes under color of state law." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Liability in a personal-capacity suit can be demonstrated by showing that the official caused the alleged constitutional injury. See id. at 166.

Maricopa County and the Arizona Attorney General, in his capacity as the State of Arizona, are subject to injunction. *Miranda v. Clark County, Nev.*, 319 F.3d 465, 469 (9th Cir. 2003), *en banc*; *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989), overruled on other grounds by *Bull v. City & County of San Francisco*, 595 F.3d 964 (9th Cir. 2010), *en banc*.

D. A Preliminary Injunction is Needed to Restore the *Status Quo Ante*

> The sole purpose of a preliminary injunction is to 'preserve the status quo ante litem pending a determination of the action on the merits.
>
> *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1023 (9th Cir. 2009), *quoting L.A. Memorial Coliseum Comm'n v. NFL*, 634 F.2d 1197, 1200 (9th Cir.1980).

In evaluating the merits of a motion for preliminary injunctive relief, the court considers whether the movant has shown that "he is likely to succeed on the merits, that

he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC, Inc*., 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

Section 1983 actions are not subject to the Anti-Injunction Act, 28 U.S.C. § 2283, that bars federal courts from enjoining state-court proceedings unless expressly authorized to do so by Congress. *See Mitchum v. Foster*, 407 U.S. 225, 242-43 (1972); *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 468 (9th Cir. 1984). As plaintiffs have set forth in the foregoing statement of facts, the DEA used its power to influence state law enforcement authorities to take action under color of law against Villanueva, a represented party, in a separate, *ex parte* judicial proceeding in the State of Arizona. The result has been a civil rights calamity. The equities in this proceeding have been intentionally attacked by the DEA, determined to get extrajudicial leverage against NAAVC, just as tried to obtain leverage against the UDV and the Daime by mounting criminal seizures in response to their petitions to the DOJ for CSA exemptions. The DEA simply will not compete on a level playing field if a tilted one can be arranged. This Court must deny the DEA the unlawful advantages it has sought to secure by executing a conspiracy against Villanueva, grounded in retaliatory animus. That is the purpose of the injunctive authority of 42 U.S.C. § 1983, and it is properly invoked here to remedy the DEA's unlawful acts.[13]

E. NAAVC Triggered the DEA's Retaliatory Animus by Submitting A Petition for Redress of Grievances to the DEA in January 2020

The Guidance issued by the DEA was the sole support of its policy justifying denial of regulatory services to visionary churches since it was issued in 2006, and well served the agency's policy of denying regulatory services to visionary churches.

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[13] The Court's authority does not end with Section 1983. In addition to the adjudicative authority of the declaratory relief statute, the Court has equitable authority over the conduct of its own proceedings. As long as a party receives an appropriate hearing, the party may be sanctioned for abuses of process occurring beyond the courtroom, such as disobeying the court's orders. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 57, 111 S. Ct. 2123, 2139 (1991). A breach of the ethical prohibition on *ex parte* contact with represented litigants would certainly be remediable under the Court's inherent powers.

(Carreon Dec. ¶ 13.) The Guidance was also a useful offensive weapon, providing a pretext for issuing *de facto* cease and desist orders to chill Free Exercise throughout the entire visionary church community. (Carreon Dec. ¶ 14.) Until AYA and NAAVC started sponsoring analysis of the constitutional and administrative law defects in the Guidance, there was no indication that visionary churches realized that the Guidance was actually a ruse to keep them from filing RFRA lawsuits. (Carreon Dec. ¶ 14.) NAAVC pushed the analytic process forward in the community of visionary church lawyers, and popularized the results of the analysis by drafting a letter to the DEA recommending that the Guidance be rescinded, combined with a petition campaign at Change.org to request the DEA to "stop regulating visionary religion." (Carreon Dec. ¶¶ 15 - 17.)

NAAVC's DEA Letter was a petition for redress of grievances under the First Amendment, sent by U.S. Mail to the Acting Director of the Office of Diversion Control, and to the personal email addresses of several DEA and DOJ attorneys. (Carreon Dec. ¶ 12.) Upon receiving it, the DEA conceived retaliatory animus towards NAAVC, because the Guidance had been the bedrock of the DEA's anti-visionary religion policy, and NAAVC had exposed it, and stimulated a dialogue that moved other lawyers to opine that the Guidance lacks all force of law. *Eg.,* B.Bartlett, *The U.S. Drug Enforcement Administration Problematic Process for Religious Exemption for Use of Prohibited Psychoactive Substances* (July 16, 2019).[14] Thus, rather than respond in this action with pen and paper, the DEA decided to reach out and touch Villanueva, and let him know just what kind of game he had gotten into.

Before it lost the UDV and Daime cases,[15] the DEA would have applied to a U.S. District Court to get a warrant, and send federal agents to execute it. However, the DEA ultimately lost the proceedings that it initiated by executing warrants in the UDV and Daime cases, when the UDV prevailed in the District Court of New Mexico, Fifth

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[14] https://tinyurl.com/y8kplc73

[15] *Gonzalez v. O Centro Beneficente Uniao do Vegetal,* 546 U.S. 418, 126 S. Ct. 1211, 163 L.Ed.2d 1017 (2006); and *Church of the Holy Light of the Queen v. Mukasey*, 615 F.Supp.2d 1210 (Oregon 2006).

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Circuit, in the Supreme Court, and also in the District Court of Oregon, winning a fee award. (Carreon Dec. ¶ 10.) Indeed, a cautious AUSA might well refuse to seek a warrant to search an Ayahuasca church, given the holdings in the UDV and Daime cases.

F. Pursuant to a DEA-Instigated Conspiracy Driven by Retaliatory Animus Against NAAVC, the Arizona Defendants Obtained and Executed a Search Warrant Against NAAVC Board Member Clay Villanueva

The search on May 19th was the product of a conspiracy incubated with HIDTA funding and direction, that brought together several actors – Shay, MCSO, and the Arizona AG's Office, who until then, had no interest in searching the homes of Ayahuasca ministers to seize their Ayahuasca sacrament. (Villanueva Dec. ¶¶ 20-23; Carreon Dec. ¶¶ 18-22.) The only connection any of them had with Ayahuasca was that they all had staff detailed to the DEA-funded HIDTA task force. Shay admitted he was directed to do the search in February 2020. (Villanueva Dec. ¶ 29.) Villanueva had done nothing to attract the attention of local law enforcement, and the only reference Shay made to the cause of the search was that it "came across his desk in February." (Villanueva Dec. ¶ 29.) There was only one logical source for this assignment – the DEA. (Carreon Dec. ¶ 22.)

G. The DEA/MCSO Raid Was Intended to Influence or Prevent Villanueva's Testimony in this Action, and Compromise the Fairness of This Proceeding

Villanueva was, from the outset, intended to be a key witness for plaintiffs, both as an NAAVC Board member who can articulate the nature and purpose of NAAVC's ministry and Free Exercise, and as the VOLC minister, with a congregation eager to receive sacramental Ayahuasca from a safe, reliable, lawfully-approved source free of CBP interdiction and DEA scrutiny. (Carreon Dec. ¶ 24; Villanueva Dec. ¶ 36.) The raid was concocted for retaliatory effect with intent to alter Villanueva's posture in this litigation, by influencing or preventing Villanueva's testimony, and by fishing for evidence outside of discovery in this action, to deter Villanueva from testifying for NAAVC, and to attempt impeachment when he testifies. This is the black-letter definition of witness tampering, made unlawful by 18 U.S.C. § 1512(a)(2(A) (using

physical force to influence, delay or prevent testimony in an official proceeding). The DEA and DOJ have in the past made use of evidence seized by warrant against the Daime church in the Oregon *CHLQ v. Mukasey* trial.[16]

Although 18 U.S.C. § 1152, the federal witness tampering statute, grants no private right of action,[17] in order to protect the integrity of these proceedings and the administration of justice, the Court may properly take notice that the acts of defendants are by nature so injurious to the processes of justice that they are subject to criminal prosecution. Under other circumstances, the DOJ has argued that a state court conviction for witness tampering was a conviction for a "crime involving moral turpitude."[18]

Certainly, the DEA's incursion on Villanueva's rights was a corrupting act that usurped the judicial authority of the State of Arizona to (1) satisfy retaliatory animus against Villanueva as NAAVC Director and civil litigant, (2) intimidate Villanueva as witness, and (3) chill Villanueva's personal and ministerial rights of Free Exercise. Unfortunately for plaintiffs, the federal prosecutors authorized to charge such misconduct as witness tampering are likely in sympathy with the perpetrators. Accordingly, for this ongoing injury to their rights of Free Exercise, they have no remedy at law. Plaintiffs' claims merit a remedy for manifest, Government-instigated state law enforcement misconduct. An order prohibiting the DEA from profiting from its misdeeds is necessary to protect the integrity of the judicial process, and thereby, to protect plaintiffs from the

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[16] The DOJ and the DEA introduced marijuana seized by DEA Agent Dan Lakin in the search of plaintiff Jonathan Goldman's property, to impeach his religious sincerity. Although Judge Panner dismissed the argument, pointing out that religious people don't have to adhere perfectly to every tenet of their religion to be sincere, the DOJ made the most of what it had obtained. "Defendants point out that when federal agents raided Goldman's house in 1999 to confiscate a shipment of Daime tea, they also seized an unspecified amount of marijuana from Goldman's bedroom." *Church of the Holy Light of the Queen v. Mukasey*, 615 F. Supp. 2d 1210, 1213-14 (D. Or. 2009)

[17] *Sepehry-Fard v. Dep't Stores Nat'l Bank*, No. 13-cv-03131-WHO, 2013 U.S. Dist. LEXIS 144985, at *32 (N.D. Cal. Oct. 4, 2013).

[18] *Vasquez-Valle v. Sessions*, 899 F.3d 834 (9th Cir. 2018) (reversing BIA finding that state court conviction for witness tampering was a crime involving moral turpitude as a matter of law).

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chilling of Free Exercise within their religious sanctuaries, and of their access to a level playing field in litigation within this Court.

H. The DEA/MCSO Raid Chilled Villanueva's Rights of Free Exercise, Free Religious Expression, and Freedom of Association

The HIDTA raid had no legitimate criminal prosecution purpose, because Shay lacked probable cause to believe a crime had been committed at the Villanueva home, and didn't acquire any evidence of criminal conduct while he was there. The seizures of VOLC's sacramental Ayahuasca, and his other property, interrupted his Free Exercise as VOLC's minister, and caused him economic injury that forced him to abandon quarantining from COVID to do computer consulting in people's homes and offices. (Villanueva Dec. ¶ 34.) Economic injury always leads to psychological stress, and the desire to reduce stressful stimuli, such as interacting with lawsuits and courts. The raid was therefore essentially a psychological operation, conducted for its projected effect on Villanueva and NAAVC, and it had negative psychological effects on Villanueva and his wife. (Villanueva Dec. ¶¶ 30 -33.) Villanueva's wife is now suffering post-traumatic stress. (Villanueva Dec. ¶ 33.) Being unable to remain in quarantine because he has lost his ministerial livelihood and savings, Villanueva cannot now enjoy the peace of mind of knowing that he is staying safe at home, and must venture forth into the commercial environment in a state where the infection rate has at times been the highest in the world. (Villanueva Dec. ¶ 34.) The arbitrary infliction of psychological trauma on the Villanuevas for strategic purposes makes the conduct of the DEA's conduct a fit target for this Court's strong censure, in order to deter future such misconduct.

I. Villanueva is Likely to Prevail on His Section 1983 Claim

Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

1 Villanueva has shown a probable likelihood of success on his claim that the DEA
2 and the Arizona Defendants conspired to make him the retaliatory target of the DEA's
3 animus towards NAAVC.

4 Official reprisal for protected speech "offends the Constitution [because] it
5 threatens to inhibit exercise of the protected right," and the law is settled
that as a general matter the First Amendment prohibits government officials
6 from subjecting an individual to retaliatory actions, including criminal
prosecutions, for speaking out.

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Hartman v. Moore, 547 U.S. 250, 256, 126 S. Ct. 1695, 1701, 164 L.Ed.2d
8 441, 451 (2006)(citations in note below).[19]

9 Villanueva's evidence establishes a clear case of retaliatory conduct directed at
10 punishing his participation, as Board member and VOLC minister, in NAAVC's pro-
11 visionary religion advocacy. The effect of the unlawful search has been to truncate
12 Villanueva's work as VOLC's minister by depriving him of the sacrament he
13 administers, thus destroying the basis for his relationship with his congregation, his Free
14 Exercise, his Free Expression, and his Freedom of Association. (Villanueva Dec. ¶¶ 30 –
15 31.) These facts establish a probable likelihood of prevailing on the Sec. 1983 claim.

16 To state a First Amendment infringement of freedom of association claim
*** plaintiffs must plead that the individuals actions imposed a "serious
17 burden upon, affect[ed] in a significant way, or substantially restrain[ed]"
the plaintiffs' ability to associate. To state a First Amendment claim for
18 infringement of free speech *** a plaintiff must allege facts showing that
"by his actions the defendant deterred or chilled the plaintiff's speech and
19 such deterrence was a substantial motivating factor in the defendant's
conduct." A plaintiff need not show that his or her speech was actually
20 inhibited or suppressed, but that "an official's acts would chill or silence a
21 person of ordinary firmness from future First Amendment activities."

22 *Mandel v. Bd. of Trustees. of the Cal. State University*, 2018 U.S. Dist.
LEXIS 39345, *27-28, 2018 WL 1242067 (N.D. Cal. March 9, 2018)
23 (Citations omitted.)

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27 [19] *Citing* *Crawford-El* v. *Britton,* 523 U.S. 574, 588, n. 10, 592, 118 S. Ct. 1584, 140 L. Ed. 2d 759
(1998), and *Perry* v. *Sindermann*, 408 U.S. 593, 597, 92 S. Ct. 2694, 33 L. Ed. 2d 570
28 (1972) (government may not punish for engaging in "constitutionally protected speech").

Villanueva's Section 1983 claim warrants injunctive relief because he was subjected to treatment that would chill or silence a person of ordinary firmness from future acts of Free Exercise, Free Expression, and Petitioning for Redress. His Free Exercise and Freedom of Association have been severely chilled by an actionable conspiracy instigated by the DEA, using Arizona SW HIDTA as a platform for all of the Arizona Defendants to do the DEA's bidding with DEA funding.

"[F]ederal officials, who act in concert or conspiracy with state officials to deprive persons of their federal rights, may be held liable for prospective relief under § 1983 when sued in their official capacity. *Cabrera*, 973 F.2d 735, 741 (9th Cir. 1992)(citations omitted). "This Circuit held that a federal health official who collaborated with a state official in publishing a report could be held liable under § 1983 since the state defendant had 'significantly participated in the [federal defendant's] challenged activity.'" *Cabrera*, 973 F.2d at 741, *quoting Merritt v. Mackey*, 932 F.2d 1317, 1323 (9th Cir. 1991).

> "The record reflects substantial cooperation between the state and federal governments, which cooperation carried significant legal implications. Accordingly, I find that the federal defendants acted under color of state law and are liable for attorney's fees." *Cabrera v. Martin*, 973 F.2d 735, 742 (9th Cir. 1992).

In this action, as in *Cabrera*, federal-state cooperation through HIDTA has lead to "significant legal implications," *i.e.*, Section 1983 liability. *Cabrera at id.*

J. Plaintiffs Will Suffer Irreparable Harm If Preliminary Injunctive Relief Is Not Granted

A prime purpose of injunctive relief is to prevent "intangible injuries" that are not remediable in damages, including physical injury, pain, suffering, death, and injury to reputation. *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (because they lack adequate remedies, "intangible injuries" constitute irreparable harm). In the current COVID pandemic, where the criminally accused are exposed to dangerously crowded and unsanitary conditions, being exposed to garden variety prosecutorial overreach could be fatal; accordingly, conduct that will cause such injury may be enjoined. *Harris v. Bd. of Supervisors, Los Angeles Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (physical harm including pain, suffering and death constitute irreparable injury

for purposes of injunctive relief). The MCSO/DEA raid was injurious to Villanueva's reputation, as any shadow of criminal accusation is for a person practicing a religious ministration. Accordingly, additional retaliatory acts to further damage his reputation may be enjoined. *Regents of Univ. of California v. Am. Broad. Companies, Inc.*, 747 F.2d 511, 520 (9th Cir. 1984) (harm to reputation is irreparable injury).

Villanueva will suffer irreparable harm if the conspiracy against him is not restrained by injunction. Having been the victim of an armed and unlawful search under color of law, he fears Government investigation and prosecution, injury to his Free Exercise and Freedom of Association, the complete interruption of his means of religious practice, and loss of privacy and personal security. (Villanueva Dec. ¶¶ 30 – 31.)

K. The Balance of the Hardships Tips Sharply Towards the Plaintiffs

The Court need not balance the equities where "the defendant's conduct has been willful." *United States EPA v. Environmental Waste Control, Inc.,* 917 F.2d 327, 332 (7th Cir. 1990). NAAVC, AYA, Villanueva, and Stanley are suffering irreparable harm to their Free Exercise and sense of civil security, an injury that continues as long as the DEA's conspiracy against them is allowed to continue unchecked, and may lead to further abuses if not promptly redressed. Nor will redressing the defendants' abuses cause them any cognizable legal harm, but merely blunt the illicit advantage obtained by unconstitutional acts under color of law. The defendants will suffer no hardship from being enjoined that will remotely compare with the potential future injury to plaintiffs' First and Fourth Amendment rights that arises from the DEA's misconduct, and the Arizona Defendants' collusion with them. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010).

Under the Court's power to control the litigation so as to do complete equity between plaintiffs and the DEA, this Court should enter prohibitory orders to restore the *status quo ante* the DEA's initiation of retaliatory action against NAAVC. The DEA and Arizona Defendants cannot seriously complain of this remedy, that eliminates the unlawful advantage they would otherwise obtain. Defendants would therefore "suffer no

cognizable hardship" because they are "merely being prevented from engaging in unlawful activity." *DISH Network L.L.C. v. Rios*, No. 2:14-cv-2549-WBS-KJN, 2015 U.S. Dist. LEXIS Case No. 3:15-cv-3522 21sf-3559156 18285, *17 (E.D. Cal. Feb. 13, 2015) (granting injunctive relief).

The defendants violated the constitutional rights of Villanueva to obtain evidence against him; accordingly, they have no right to distribute information that was "acquired by improper means." *See, e.g., DVD Copy Control Assn., Inc. v. Bunner*, 31 Cal. 4th 864, 887 (2003) (approving injunction enjoining defendant from distributing content that was "acquired by improper means").

L. To Restore the *Status Quo Ante,* The Court Should Prohibit Exploitation of Tactical Advantages Gained by Searching Villanueva's Home and Church

The Court has authority to issue any procedural orders that will protect the equitable character of these proceedings by prohibiting a party that has acted unlawfully to gain unfair advantage from its misdeeds. In the current situation, there is a considerable risk that, if not enjoined, the DEA and the Arizona Defendants will continue to use "law enforcement communications resources," such as HIDTA, to continue their conspiracy against NAAVC and Villanueva under the guise of working a joint defense. Accordingly, the Court should enter a prohibitory order enjoining all defendants from interfering with NAAVC, its Board of Directors, AYA and its congregation, and Villanueva and the VOLC congregation ("Plaintiff's Personnel") by:

1. Criminally investigating Plaintiff's Personnel and/or sharing information about Plaintiff's Personnel with other law enforcement agencies, in any jurisdiction;
2. Making use of any of the materials seized, observed, photographed, or video-recorded during the HIDTA raid of VOLC in this litigation against NAAVC, AYA, VOLC, or any of Plaintiff's Personnel;
3. Retaining any of the property seized from Villanueva and VOLC;

4. Performing any acts intended to cause damage to the person, property, or Free Exercise of NAAVC, AYA, Villanueva, or Stanley;
5. Utilizing police resources such as the NCIC database, the DEA's Hemisphere program, or other resources designed for criminal investigation, to investigate Plaintiff's Personnel; and/or
6. Joining AYA's Facebook group for purpose of surveilling its activities and personnel.

M. The Public Interest Favors Injunctive Relief

"[T]he public interest is a factor which courts must consider in any injunctive action in which the public interest is affected." *Am. Motorcyclist Ass'n v. Watt*, 714 F.2d 962, 967 (9th Cir. 1983). NAAVC's ministry includes increasing awareness of the substantial burdens on visionary church Free Exercise. The DEA Letter was written, and this action was filed, to advance the public interest in the Free Exercise of visionary religion for the benefit all people and society as a whole. For their troubles, plaintiffs' received a threatening message from the DEA. (Stanley Dec. ¶ 18.) The public interest favors the prophylactic prohibition of further unlawful governmental conduct that has already chilled First Amendment Free Exercise, Free Speech, and Free Association.

N. Plaintiffs Should Not Be Required to Post a Bond.

The Ninth Circuit allows no bond, or a nominal one, where there is little or no likelihood of harm to the party enjoined. *E.g., Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). Security may be waived where the injunction serves a public interest. *Barahona-Gomez*, 167 F.3d at 1237. That is the case here. Further, if the Court issues the requested injunction, the DEA, the DOJ, and the Arizona Defendants, will be where they should have been if they had not instigated and executed a retaliatory conspiracy to punish NAAVC for petitioning for redress of grievances. Accordingly, the defendants cannot show the good cause required by Civil L.R. 65-1(a) for requiring a bond.

IV. CONCLUSION

For all of the above reasons, the Court is requested to issue a preliminary injunction in the form submitted herewith, to remain in force until entry of final judgment.

Dated: July 22, 2020

CHARLES CARREON, ESQ.
By: /s/Charles Carreon
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Attorney for Plaintiffs
Arizona Yagé Assembly.
North American Association of Visionary Churches,
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ARIZONA YAGÉ ASSEMBLY, NORTH AMERICAN ASSOCIATION OF VISIONARY CHURCHES, and CLAY VILLANEUVA, Plaintiffs, vs. WILLIAM BARR, Attorney General of the United States; UTTAM DHILLON, Acting Administrator of the U.S. Drug Enforcement Administration; CHAD F. WOLF, Acting Secretary of the Dept. of Homeland Security; MARK A. MORGAN, Acting Commissioner of U.S. Customs and Border Protection; THOMAS PREVOZNIK, Deputy Assistant Administrator of the DEA Dept. of Diversion Control, in my personal capacity; the UNITED STATES OF AMERICA; the STATE OF ARIZONA; MARK BRNOVICH, Arizona Attorney General; MARICOPA COUNTY, a political subdivision of the State of Arizona; and, MATTHEW SHAY, Defendants.	Case No.: 3:20-CV-03098-WHO DECLARATION OF CLAY VILLANUEVA IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE* Date: August 26, 2020 Time: 2:00 P.M. Courtroom: 2 (17th floor)

Clay Villanueva declares and affirms:

1. I am one of the three founding members of the Board of Directors of the North American Association of Visionary Churches, plaintiff herein. I am also the founder of

the Vine of Light Church, that offers sacramental Ayahuasca communion as its form of religious Free Exercise and Free Religious Expression. I make this declaration in support of plaintiff's Ex Parte Application for Temporary Restraining Order and Preliminary Injunction to Restore *Status Quo Ante* on personal knowledge. If called as a witness, I could and would so competently testify.

2. I placed myself under the jurisdiction of this Court on May 5, 2020, when NAAVC filed this action, because I had been a founding Board member of NAAVC since the first day of incorporation, July 3, 2019. In my capacity as NAAVC Board member, I directly authorized the commencement of this litigation, by which we sought to protect the Vine of Light, my congregation, and my pastoral status from Government interference. My status as a Board member and my home address was determinable from the Statement of Information filed September 17, 2019, that since then and currently appears in public records online in the California Secretary of State business registry of California-incorporated religious nonprofit corporations, of which NAAVC is one.

3. I have now joined the action as a name plaintiff, and the plaintiff most centrally aggrieved by the acts alleged in the Third Claim for Relief alleging constitutional torts under Section 1983 in the First Amended and Supplemental Complaint (the "FASC").

4. I became a practitioner of visionary religion unexpectedly, and it transformed my life. I left my home in rural Florida in 1979 to join the Navy. I qualified for technical occupations based on vocational testing, and became trained in communications and diving. I was regularly promoted, and was honorably discharged in 1985 as a Petty Officer First Class, equivalent to a Army Sergeant in rank.

5. I worked successfully in various technical fields after my discharge from the Navy, in communications, multimedia systems, sound recording, and computer-aided design, eventually becoming the lead IT professional at a major business furnishings manufacturer that was acquired by Target in 2007, for whom I continued to work as a contract consultant until 2013.

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6. In 2011, I was prompted to use a search engine to look up the word, "Ayahuasca," when I discovered it written on a labeled packet among my personal effects from years past. I remembered that, almost twenty years before, someone had given me the packet with the statement, "I somehow feel that you should have this." That person had no knowledge of what the word "Ayahuasca" meant or what was in the packet. I had never investigated the packet contents or been curious enough to research the topic, so when I finally did, I was astounded to discover the existence of the world of Amazonian visionary religion, based on this sacrament called Ayahuasca.

7. I immediately felt compelled to travel to Peru and drink Ayahuasca at a shamanic healing center in Iquitos, Peru. When I arrived, I discovered that I was the only "passenger" (as the center described those who came to receive Ayahuasca) scheduled to attend ceremonies during the time I was there.

8. My experiences were unusually powerful, and radically restructured my view of reality. My background in the military, technology, and commerce had given me a materials-based perspective on reality that allowed me to manipulate material reality effectively. Ayahuasca communion revealed a realm of human action where the power of Divine Love is the central governing force, and harmonious human action flows from continuous compassionate awareness. The healing center facilitators perceived the unusual intensity of my communion experience, which were intensely visionary and unusually prolonged. During the communion state, I displayed an intuitive ability to play traditional shamanic musical instruments, and in other ways demonstrated a comfort level with the Ayahuasca communion experience rarely seen among novices.

9. My life slowly transformed over the next six years. I returned to Peru to receive communion again in 2014 and 2015, and eventually received guidance to drink Ayahuasca regularly on a weekly basis, a discipline I continued for approximately one year. Eventually, I began to share Ayahuasca with a small circle in California, and then in Arizona as well.

10. In 2017, I incorporated the Vine of Light Church as an Arizona nonprofit corporation. In 2019, the Vine of Light Church joined NAAVC as its first member church.

11. I have conducted ceremonies as the minister of the Vine of Light Church in California and Arizona on a substantial number of occasions over the last two years, placing special emphasis on ministering to veterans suffering from PTSD, and members of the African American community. I assert a state law claim against the Arizona defendants under the Court's supplemental jurisdiction,[1] arising under the same common nucleus of facts as the claims alleged in plaintiff's initiating Complaint (Docket # 1). I assert entitlement to a religious exemption from state law burdening my Free Exercise under the Arizona Free Exercise of Religion Act ("FERA"), A.R.S. § 41-1493.01.

12. My practice of Ayahuasca communion is the Free Exercise of religion and Free Religious Expression.

13. The decision to file this action was made directly by the NAAVC Board members. We initiated this action for the declared purpose of protecting ministers and congregations of visionary churches, including myself and the Vine of Light Church, from CSA enforcement action by the DEA and all agencies the United States Government. NAAVC and its Board of Directors, of which I am a founding member, placed themselves under the jurisdiction of this Court by filing this action, and prayed protection from DEA interference with our Free Exercise.

14. When I cast my vote as an NAAVC Board member to direct our counsel to initiate this action, I knew I could expect to be subject to discovery demands, and perhaps a deposition, but I did not think that I would open myself to an attack on my civil rights by the DEA. My wife and I live quiet lives, and were quarantining away from the world when suddenly, the quiet of our ordinary life was shattered.

15. The person the DEA used to disrupt my life was Maricopa County Sheriff's Office Detective Matthew Shay ("MCSO" and "Shay"). Around 8:30 a.m. on May 19, 2020,

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[1] 28 U.S.C. § 1367.

Shay and a phalanx of six or seven MCSO deputies, and a finance investigator from the Arizona AG Office, carrying long guns and a battering ram, parked around the corner from my home, gathering there for an assault on the Vine of Light Church ("VOLC").

16. Although heavily armed, the deputies dressed lightly, as if aware that they would only be confronting two senior citizens living in a visionary church with no guns. As they marched to the church, one of the neighbors asked, "Where are you going?" They answered gaily, voices joined in sing-song -- *"We're going to serve a search warrant!"*

17. Arriving at my home, the VOLC sanctuary, the deputies banged loudly on the door, threatening to bring it down if it wasn't opened immediately. I tumbled out of bed and rushed to open the door, dressed in a t-shirt and jockey shorts. Shay, the deputies and other law enforcement personnel, immediately took control of me and cuffed me in the front yard, for every neighbor and passerby to observe my humiliation.

18. Shay indulged in an extreme and unnecessary show of force to serve a warrant on a fifty-nine year-old religious man, a retired Navy non-commissioned officer, at my church-residence.

19. Shay delivered a search warrant issued by a Maricopa County Justice of the Peace, which I would have no reason or means to resist by force.

20. I have no weapons, no criminal record, and no criminal background whatsoever.

21. Before the raid described in this motion, I had a publicly viewable online record of conducting visionary church ceremonies using Ayahuasca as Free Exercise displayed on my website at www.smilequick.com. Shay told me he had studied the website contents in detail, and remarked on the beauty of the Amazon jungle scenery. From that website, he would have determined that, through VOLC, I am teaching a path of love and peace based on visionary communion with the spirit of life, and would respond peaceably if presented with a search warrant.

22. As a Navy communications officer, I was trained in keeping military secrets, and know how to manage information flow discreetly. VOLC had no interactions with local law enforcement, health authorities, or other government agents. VOLC's media profile

1 was discreetly managed, and generated no interest from local news media. VOLC made
2 no effort to proselytize, and I held VOLC ceremonies only for trusted individuals whose
3 religious sincerity was confirmed. There was no "word on the street" about VOLC.
4 **23.** VOLC's sacrament was secured from trusted sources that did not transmit
5 information to the DEA or the Arizona defendants.
6 **24.** I of course felt threatened and frightened by being arrested, placed in handcuffs, and
7 surrounded by men with guns and rifles. Shay threatened me by arresting me in my own
8 home with a substantial show of force, cuffing me unnecessarily, not allowing me to get
9 dressed in street clothes, and ignoring my concerns about being exposed to COVID by
10 the deputies swarming around my house without masks.
11 **25.** Shay also demonstrated sympathetic interest in my religious and travel activities, and
12 a thorough knowledge of my PayPal account.
13 **26.** Notwithstanding Shay's recital of something that sounded like Miranda warnings, I
14 cannot remember being told I had the right to have an attorney present during
15 interrogation; accordingly, I did not think to call the NAAVC Board's attorney to attend
16 an interrogation telephonically. I understand now that our attorney would have obliged
17 such a request, but I did not realize I had the right to make that request.
18 **27.** Shay audio-recorded my interrogation, and MCSO deputies recorded videos and
19 took photographs of the VOLC sanctuary and my house.
20 **28.** The scope of the search went beyond my private home and into that of a lodger who
21 rents a space in the house, and some of the lodger's possessions were seized.
22 **29.** Before Shay left, he adopted a warm and understanding tone in his conversation with
23 me, stating that it was apparent to him that I was not a drug dealer. Shay said that he
24 worked in "HIDTA."[2] He said the matter of VOLC had "come across his desk" in
25 February of this year, but he had not gotten the search warrant until now because of
26 delays due to the COVID pandemic. He said that he had greatly enjoyed the video of one
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[2] I had not heard of HIDTA before Shay mentioned the acronym.

of my trips to Peru, and that it looked like a fun adventure. I am confident he would not have said this if I he had believed I were engaged in criminal activity. He said he had no idea whether charges might be filed, because he would simply be filing a report, not making any arrest today, and it would be up to a prosecutor whether to proceed with criminal charges. Upon reflection, Shay's conduct and statements add up to a tacit admission that he never had probable cause to believe I was committing a crime. Before Shay left, he verbally assured me that his recommendation would be for leniency, and his manner expressed doubt that he had seen any evidence of criminal conduct. Accordingly, prior to the search, he must have had even less information, and therefore less basis for thinking VOLC's activities to be anything but sacramental Free Exercise.

30. My life and my wife's life have been injured by the DEA's coup against our privacy and property, and it has a chilling effect on my Free Exercise of religion to be shadowed by the fear of further harassment by MCSO, Shay, and the Arizona defendants, who continue to be at the disposal of the DEA through the HIDTA program.

31. My Free Exercise, and my ministry through VOLC, has been interrupted, because I have no sacrament to share with the VOLC congregation. My mobile phones were seized, and their contents copied. Shay seized a very substantial sum of U.S. currency in what I had presumed was a safe place in my home, that I was saving for a newer used vehicle. MCSO did not record the amount seized on the receipt.

32. My wife and I both are almost sixty years of age, at elevated risk of suffering severe and deadly consequences from COVID, so we were quarantining when the MCSO threatened to break down our door. MCSO took no precautions to protect us from contamination by the group of eight or nine people, none wearing masks, who grabbed me and my wife, and handled nearly all of the possessions in our home.

33. The invasion of our home by armed men has triggered strong emotional fears in my wife, who now fears to leave our home, and does not even feel safe in our home. Her sleep is disturbed, and she has symptoms of post-traumatic stress, a condition with which I am familiar from my work as the VOLC minister.

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34. Due to the economic stress imposed by the MCSO raid, I was unable to continue quarantining, so despite the risk to my health, I have resumed offering my services as an on-site computer consultant.

35. The DEA and the Arizona defendants demonstrated deliberate indifference to my health and civil rights when they used a warrant, secured on a pretext of narcotics enforcement by an HIDTA detective, to barge into a home where a vulnerable couple were quarantining. It is painful to know that they were not there to search for evidence of a crime, but merely to act out a pretext for a home invasion under color of law, at the behest of the DEA, to send me a message about just how much Free Exercise I would have without a court order to protect me. That means that the injuries my wife and I have suffered were intended by the DEA – indeed, they were the only purpose of the raid.

36. I have always planned to provide my testimony in this action as a witness for plaintiffs. As an NAAVC Board member, I can articulate the nature and purpose of NAAVC's ministry to promote Free Exercise and Free Religious Expression by the importation and distribution of Ayahuasca. As the VOLC minister, I would testify that I have a modest congregation eager to receive sacramental Ayahuasca from a safe, reliable, lawfully-approved source, free of the risk of CBP interdiction and DEA scrutiny.

37. I respectfully submit that the foregoing averments establish good cause for the Court to issue the *ex parte* order submitted herewith, to exercise jurisdiction over the DEA, the DOJ, and the Arizona defendants, and order them to restore the *status quo ante* the raid of May 19, 2020, by ceasing to conspire against me, ceasing to make use of wrongfully seized evidence, releasing my wrongfully-seized property, currency, and data, and preserving for expedited production all records of communications among defendants regarding the conspiracy alleged in the FASC.

38. The security cameras in my office captured images of MCSO deputies in HIDTA t-shirts searching my office. They disconnected the cameras once they saw them, but some

1 recordings had already been uploaded to the data cloud, and I retrieved these and
2 forwarded them to counsel.
3 I declare and affirm, pursuant to 28 U.S.C. § 1746(2), that the foregoing is true
4 and correct, and that this declaration was signed on July 22, at Phoenix, Arizona.
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7 ______________________________
8 Clay Villanueva, Declarant
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ARIZONA YAGÉ ASSEMBLY, NORTH AMERICAN ASSOCIATION OF VISIONARY CHURCHES, and CLAY VILLANUEVA, Plaintiffs, vs. WILLIAM BARR, Attorney General of the United States; UTTAM DHILLON, Acting Administrator of the U.S. Drug Enforcement Administration; CHAD F. WOLF, Acting Secretary of the Dept. of Homeland Security; MARK A. MORGAN, Acting Commissioner of U.S. Customs and Border Protection; THOMAS PREVOZNIK, Deputy Assistant Administrator of the DEA Dept. of Diversion Control, in his personal capacity; the UNITED STATES OF AMERICA; the STATE OF ARIZONA; MARK BRNOVICH, Arizona Attorney General; MARICOPA COUNTY, a political subdivision of the State of Arizona; and, MATTHEW SHAY, Defendants.	Case No.: 3:20-CV-03098-WHO DECLARATION OF WINFIELD SCOTT STANLEY III IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE* Date: August 26, 2020 Time: 2:00 P.M. Courtroom: 2 (17th floor)

Winfield Scott Stanley III declares and affirms:

1. I am the founder of plaintiff Arizona Yage Assembly ("AYA"), and the Chair of the Board of Directors of plaintiff North American Association of Visionary Churches ("NAAVC"). I make this declaration in support of all plaintiffs' Ex Parte Application for Temporary Restraining Order and Preliminary Injunction to Restore *Status Quo Ante* on personal knowledge. If called as a witness, I could and would so competently testify.

2. AYA and NAAVC are two religious nonprofit corporations whose religious exercise, and that of their member churches and congregants, is substantially burdened by laws prohibiting importation, distribution, and possession of Ayahuasca, an herbal tea that contains a small amount of Dimethyltryptamine ("DMT"), a Schedule I controlled substance under the Controlled Substances Act 21 U.S.C. § 801 et. seq. (the "CSA").

3. As RFRA claimants seeking religious exemptions from the proscriptions of general law, plaintiffs AYA and NAAVC allege a *prima facie* case of sincere religious belief. Plaintiffs further allege that specified statutes and regulations found in the CSA and 21 CFR 1300 *et seq.,* and the DEA's *Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act*[1] (the "Guidance") substantially burden their religious exercise. Plaintiffs further allege that the provisions of the CSA, 21 CFR 1300 *et seq.* and the Guidance, are not reasonably tailored to fit the needs of visionary churches, and impose a substantial burden on their rights of Free Exercise by way of visionary communion.

4. In 2019, Clay Villanueva ("Villanueva") joined NAAVC as one of three founding Board members. Villanueva also enrolled his own visionary church, the Vine of Light Church ("VOLC") as the first visionary church to join NAAVC.

5. Villanueva responded to NAAVC's message that more needs to be done with the DEA and the courts before visionary churches can truly enjoy Free Exercise, free of the

[1] *Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act*, https://www.deadiversion.usdoj.gov/pubs/rfra_exempt_022618.pdf.January 2009.

fear of unlawful searches, seizures, and arrests, all of which seem to be promised in the Supreme Court's seminal *O Centro* decision.

6. Villanueva voted in favor of sending the DEA Letter, and in favor of commencing this litigation on behalf of NAAVC.

7. By initiating the NAAVC lawsuit, Villanueva and I placed ourselves under the jurisdiction of this court.

8. Villanueva and I both sought to protect our own, personal religious Free Exercise, and that of our respective visionary church congregations, when, acting as Board members, we directed NAAVC's counsel to file this action.

9. Thus, attacks against Villanueva are attacks on NAAVC's Free Exercise, and those of all NAAVC Board members.

10. Neither Villanueva nor I expected that, by taking action as a member of NAAVC's Board, we would bring ourselves into a position of danger with respect to the DEA.

11. Villanueva and I fully expected that the DEA would respond to NAAVC's claims through this Court proceeding, and not by means of a secret application for a search warrant in a state court, before an Arizona Justice of the Peace.

12. The DEA/MCSO raid on Villanueva and VOLC has truncated Villanueva's Free Exercise and that of the VOLC congregation; additionally, it has chilled my Free Exercise, in my capacity as an NAAVC Board member.

13. The DEA/MCSO raid was a clear message to NAAVC. When Villanueva called and told me what had occurred, I immediately got the message that I believe I was intended to get: "You have angered the DEA, and you are now exposed to potential retaliatory action, just like Villanueva."

14. While NAAVC is willing to engage in adversarial exchanges with the DEA before this Court, the DEA has now gained unfair advantage. It has attacked Villanueva, and compelled the Board to consider the risks of proceeding. We have of course considered that I, as another identified Board member with a declared visionary church affiliation, may be exposed to investigation, surveillance, search and/or arrest by state agencies.

1 Like Villanueva, I too reside in the State of Arizona, and the federal law enforcement
2 presence here is considerable. The discovery, set forth in this *ex parte* application, that
3 the DEA funds and directs the activities of many local law enforcement agencies through
4 the High Intensity Drug Trafficking Area ("HIDTA") program, in Arizona and in twenty-
5 seven other HIDTA zones throughout the nation, causes us considerable concern that, as
6 the DEA has used this resource once to harass a NAAVC Board, it may do so again. I
7 believe it is reasonable for me to anticipate that, if not enjoined, the DEA may pursue
8 investigation, surveillance, search, and arrest me or the AYA congregation.
9 **15.** In 2009 I was introduced to Ayahuasca in the forests north of San Francisco from a
10 traveling troupe of Ayahuasqueros from South America. From that point forward I began
11 my ongoing introduction to the sacrament of Ayahuasca and the attendant plant
12 medicines of the Amazon, eventually conducting my own small ceremonies. In June
13 2015, I incorporated our small church, the Arizona Yagé Assembly ("AYA"). The
14 founding of the church was a group effort expressing the clear intention of our growing
15 congregation for healing. Our belief, born out of experience, is that a spiritual practice is
16 a healing practice and a healing practice is a spiritual practice. To that I would add, that
17 an organized spiritual practice is a religion. To that end, our church is engaged in a
18 sacred religious practice.
19 **16.** Since we founded our church, I have lead more than 300 ceremonies, participated in
20 many more, and have been privileged to work and learn with the extraordinarily
21 dedicated, focused, talented, and kind people in both our congregation and the people of
22 Peru. We continue to bring small groups for teaching and healing to the Upper Amazon
23 in Peru. I owe a debt of gratitude to our teacher, Eladio Melendez Garcia, a third
24 generation Ayahuasquero living and working in Jenaro Herrera, Peru, a small community
25 off the banks of the Ukayali River and 20 some kilometers upriver from the confluence of
26 the Ucayali, the Marañon, and the Amazon rivers.
27 **17.** I am heartened by the dedication and the personal growth of our church's
28 congregation. We have taken protections for our members quite seriously from our

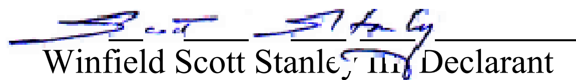
1 founding, including, of course, legal protections. It has taken us years of preparation to
2 begin redressing the conscious disregard of our free exercise by such a powerful federal
3 agency as the DEA. By powerful I mean one that using law-enforcement proxies, can
4 raid the home of any member of our church or religious movement, direct their
5 movements with the threat of weapons, place them in handcuffs in the view of their
6 neighbors, take their sacrament, halt their ceremonies, take any money they may have,
7 and leave with the parting suggestion that any court proceedings, if any, may not occur
8 until the following year. This certainly was Clay Villanueva's experience.
9 **18.** As Villanueva is a friend, a member of our community and religious movement, and
10 a board member of the NAAVC, I am troubled for my friend, our community, our
11 movement, our organizations, my family, and lastly myself. Even as it has ignored the
12 NAAVC's written requests, the DEA is abusing its power by using a home raid on Clay
13 Villanueva to send a message to the members of our religious community, including
14 myself, that "You are next." A threat to my friend's house is a threat to my house. I am
15 asking the court to immediately stop the DEA from its retaliatory threats against our
16 religious community.
17 **19.** Accordingly, in my capacity as the Chair of the NAAVC Board of Directors, I
18 request the Court to issue an injunction protecting NAAVC, its Board members, VOLC,
19 AYA, and their respective congregations ("Plaintiff's Personnel") from further civil
20 rights violations by prohibiting the defendants, and each of them from:
21 a. Continuing the DEA/MCSO conspiracy against NAAVC and Villanueva
22 under the guise of coordinating their defense in this action, by investigating
23 Plaintiff's Personnel and sharing information with other law enforcement
24 agencies, in any jurisdiction;
25 b. Making use of any of the materials seized, observed, photographed, or
26 video-recorded during the DEA/MCSO raid of Villaneuva and VOLC in
27 this litigation against NAAVC, AYA, VOLC, or any of Plaintiff's
28 Personnel;

c. Retaining any of the property wrongfully seized from Villanueva and VOLC;

d. Utilizing police resources such as the NCIC database, the DEA's Hemisphere program, or other resources designed for criminal investigation, to investigate Plaintiff's Personnel; and/or

e. Joining AYA's Facebook group for purpose of surveilling our activities and personnel.

I declare and affirm, pursuant to 28 U.S.C. § 1746(2), that the foregoing is true and correct, and that this declaration was signed on July 22, 2019, at Tucson, Arizona.



Winfield Scott Stanley III, Declarant

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Attorney for Plaintiffs Arizona Yagé Assembly,
North American Association of Visionary Churches, and
Clay Villanueva

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ARIZONA YAGÉ ASSEMBLY, NORTH AMERICAN ASSOCIATION OF VISIONARY CHURCHES, and CLAY VILLANUEVA,

Plaintiffs,

vs.

WILLIAM BARR, Attorney General of the United States; UTTAM DHILLON, Acting Administrator of the U.S. Drug Enforcement Administration; CHAD F. WOLF, Acting Secretary of the Dept. of Homeland Security; MARK A. MORGAN, Acting Commissioner of U.S. Customs and Border Protection; THOMAS PREVOZNIK, Deputy Assistant Administrator of the DEA Dept. of Diversion Control, in his personal capacity; the UNITED STATES OF AMERICA; the STATE OF ARIZONA; MARK BRNOVICH, Arizona Attorney General; MARICOPA COUNTY, a political subdivision of the State of Arizona; and, MATTHEW SHAY,

Defendants.

Case No.: 3:20-CV-03098-WHO

DECLARATION OF CHARLES CARREON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

Date: August 26, 2020
Time: 2:00 P.M.
Courtroom: 2 (17th floor)

Charles Carreon declares and affirms:

1. I am an attorney licensed to practice before all courts in the State of California and a member of the bar of this Court. I make this declaration in support of plaintiff's Motion

1 for Preliminary Injunction to Restore *Status Quo Ante* on personal knowledge. If called
2 as a witness, I could and would so competently testify.
3 **2.** In this action, "visionary churches" refers to churches that administer a communion
4 sacrament that contains a pharmacologically active controlled substance, some of which
5 are regulated by the Drug Enforcement Administration ("DEA") pursuant to the
6 Controlled Substances Act ("CSA").
7 **3.** It is not ordinarily your Declarant's practice to cite case law in declarations;
8 however, I find that this litigation makes the discussion of legal history unavoidable,
9 because this case is but one in a long chain of cases in which the DEA has played the role
10 of an institutional litigant deeply committed to a position adverse to the interests of a
11 single, discrete and insular minority group, *i.e.*, visionary churches and their
12 congregations, controlled substance users asserting religious exemptions from the CSA
13 pursuant to the Religious Freedom Restoration Act ("RFRA"). The DEA's refusal to
14 accord legitimacy to visionary churches, and their requests for religious exemptions, is by
15 now an unquestioned institutional obsession that, in this case, has driven the DEA to
16 violate the constitutional rights of two elderly religious people in order to satisfy
17 retaliatory animus against an activist visionary church association, plaintiff North
18 American Association of Visionary Churches ("NAAVC").
19 **4.** For fourteen years, since the Supreme Court handed down *Gonzalez v. O Centro*
20 *Beneficente Uniao do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211, 163 L.Ed.2d 1017 (2006),
21 the DEA has failed to provide regulatory services to any visionary church seeking a
22 religious exemption from the CSA (a "Free Exercise Exemption"), unless and until
23 compelled by injunction. It is no leap of inference to conclude that the cause of the
24 DEA's unwavering commitment, evidenced by consistent action with a consistent
25 purpose and effect over decades, spanning four administrations controlled by both
26 political parties, is due to a DEA policy that plaintiffs define as "the Policy." *See,* FASC,
27 Docket # 12, ¶¶ 76 – 125, alleging facts regarding the purpose and application of the
28

1 Policy to further the DEA's intent to substantially burden Free Exercise of visionary
2 churches.
3 **5.** The law permitting the use of sacramental substances containing a controlled
4 substance was carved out by two U.S. branches of South American visionary churches,
5 the Uniao do Vegetal ("UDV") and the Santo Daime (the "Daime"), who sequentially
6 prevailed in litigation against the DEA. The UDV won the seismically-disruptive
7 *O Centro* case cited *supra*. The Daime won its exemption in an opinion by the late Judge
8 Owen Panner that was highly critical of the DEA's evident unwillingness to fairly
9 evaluate evidence of the Daime's religious sincerity and Ayahuasca's physical and
10 psychological safety in *Church of the Holy Light of the Queen v. Mukasey*, 615 .Supp.2d
11 1210, 1215 (Oregon , 2006)(vacated on other grounds).
12 **6.** *O Centro* and *CHLQ v. Mukasey* are founded on the rights established by Congress
13 when it enacted RFRA, providing exemptions from general laws that substantially burden
14 First Amendment Religious Free Exercise and fail the strict scrutiny test. The strict
15 scrutiny test requires the Government to show that the burden imposed by the law is the
16 least restrictive means of advancing a compelling government interest. This requires a
17 case-by-case analysis of each Free Exercise claim of burden, considering whether, in the
18 case *sub judice*, the Government can carry its burden. In both *O Centro* and the *CHLQ v.*
19 *Mukasey* cases cited *supra*, the DEA could not carry that burden. Because the UDV and
20 the Santo Daime churches have rather similar practices, and use the exact same
21 Ayahuasca sacrament as many visionary churches, the principles applicable to the UDV
22 and the Daime should apply to other visionary churches with similar cases.
23 **7.** Both the UDV and the Santo Daime were provoked to file suit by DEA searches and
24 seizures of visionary church sacraments that the courts later held to be improper. Both
25 the UDV and the Santo Daime were raided by the DEA during the same two-day period
26 in May 1991, while both churches believed they were in negotiations with Janet Reno's
27 DOJ. This statement is made in reliance upon the statement of the Daime's attorneys
28 under Rule 11 requirements in the Daime's Complaint in *CHLQ v. Mukasey, supra.*

(Exhibit 1, ¶ 26 at p. 8 and ¶45 at p. 15.) To my knowledge, based on reading the case file extensively on PACER, this statement was not disputed by the Government.

8. In the UDV and Daime cases, the DEA obtained federal warrants and conducted its own seizures, while in the case *sub judice*, it enlisted the Maricopa County Sheriff's Office ("MCSO"), the Arizona Attorney General ("Arizona AG"), the State of Arizona, and Det. Matthew Shay ("Shay") (collectively, the "Arizona defendants") to search the Vine of Light Church sanctuary and Villanueva's home.

9. The only reasonable interpretation of the facts leads to the conclusion that the DEA directed MCSO and the Arizona AG to pursue the same end that it had previously pursued directly with the UDV and the Daime – to seize the Ayahuasca in the possession of an NAAVC Board member to "rein in" the activist organization.

10. But why did the DEA not get its *own* warrant and do its *own* search and seizure? The Phoenix Division of the DEA is one of 22 divisional centers, and its press releases announce Arizona drug seizures by a DEA Task Force.[1] One factor deterring the DEA may be that it is on notice that it should not be initiating criminal investigations against Ayahusca churches, arresting and interrogating their ministers, and asking for warrants to seize their sacramental Ayahuasca. After the DEA presented its trial defense to the search and seizure of the Daime Ayahuasca, and the arrest of Daime leader Jonathan Goldman, it lost the case and was ordered to pay the Daime's attorney's fees. The amount – well over a million dollars, was settled by stipulation.

11. Since the Daime victory in Oregon District Court, the DEA has not sought or obtained a federal search warrant to search for sacramental Ayahuasca in the United States, to the knowledge of your declarant. If the UDV case was the first strike, and the Daime case the second, the DEA likely did not want the NAAVC case to be the third.

12. NAAVC gained the DEA's attention in January 2020, when it critiqued the DEA's *Guidance Regarding Petitions for Religious Exemption from the Controlled Substances*

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[1] https://www.dea.gov/press-releases?sort_bef_combine=field_press_release_date_value%20DESC&field_press_release_drugs_target_id=All&organization=86&year=all&field_press_release_subject_target_id=All

1 *Act Pursuant to the Religious Freedom Restoration Act* (the "Guidance") in a letter to the
2 DEA that recommended the agency rescind the Guidance to comply with the
3 requirements of Executive Order 13891 (the "DEA Letter" attached as Exhibit 2). A
4 hardcopy of the DEA Letter was posted Priority Mail to William T. McDermott,
5 Assistant Administrator for the Diversion Control Division, shortly after the January 8,
6 2020 date, and copied in PDF format as confirmed-receipt email attachment to top
7 Government attorneys at the DEA and the Department of Justice, at their official .gov
8 domain email addresses.
9 **13.** After the DEA lost both Ayahuasca church RFRA lawsuits, and grew chary about
10 seizing Ayahuasca from churches and arresting its communion celebrants, it devised an
11 alternative strategy to burden the Free Exercise of visionary churches. The Guidance
12 became the sole support of the DEA's policy of denying regulatory services to visionary
13 churches since it was issued in 2006, and it has served the agency's purpose of
14 maintaining its policy of denying regulatory services to visionary churches well. The
15 DEA began using the Guidance as a pretext to issue *de facto* cease and desist orders.
16 These cease and desist orders "invited" visionary church leaders to submit a Guidance-
17 compliant petition for Free Exercise Exemption, and directed them to use no Ayahuasca
18 pending the processing of the petition.[2] (Exhibit 3.) These *de facto* cease and desist
19 letters placed the recipients under law enforcement scrutiny, chilling and substantially
20 burdening their Free Exercise. (FASC ¶¶ 103 - 110.) The recipients of these cease and
21 desist letters both submitted petitions, but neither was processed or received any attention
22 from the DEA. One of these petitioners has since filed suit in the Middle District of
23 Florida against the DEA in Case No. 6:20-cv-00701-WWB-DCI, filed April 22, 2020,
24 detailing the mystifying exchange with the DEA, that first demanded the filing of a
25 petition, then ignored it. (Exhibit 4.). Currently, I am advised that the DEA and Soul
26 Quest are in mediation, pursuant to a Court order.
27
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2 The recipients of the de facto cease and desist letters were Soul Quest and Ayahuasca Healing. An example of the letter the DEA sent to Soul Quest is attached as Exhibit 3.

14. The DEA's *de facto* cease and desist orders did not have to be sent to more than two visionary churches to have a chilling effect throughout the visionary church community. I have personal knowledge of the communication flow regarding legal issues that are moving the interests of the visionary church community, and the issuance of the *de facto* cease and desist letters initiated more discussion than any other event I can recall. The crucial question being asked, of course, was – "Do visionary churches all need to submit Guidance-compliant petitions to the DEA?" Until AYA and NAAVC began their advocacy work, sponsoring analysis of the constitutional and administrative law defects in the Guidance, there was no indication that visionary churches had more than an inkling that the Guidance was actually a ruse to keep them from filing RFRA lawsuits.

15. The answer came only after a group of attorneys working for the visionary church community had studied the Guidance through the lens of the First Amendment, the Fifth Amendment protections against compelled self-incrimination, and the Administrative Procedure Act, for an extended period of time. Once we had, we compared our research and analysis, and concluded that the Guidance was, in effect, a Trojan Horse, filled with legal detriments that the DEA wanted visionary churches to assume.[3]

16. NAAVC compiled its criticisms of the Guidance into a letter to the DEA dated January 8, 2020 (the "DEA Letter"). The DEA Letter had been reviewed and revised by a team of lawyers, and reflected a consensus among us that not only was the Guidance constitutionally defective, it was not published in the Federal Register or adopted pursuant to the notice and comment requirements of the Administrative Procedure Act ("APA"), 5 U.S.C. § 551, *et. seq*., and thus was unenforceable. Further, as of its issuance in October 2019, Executive Order 13891 required the Guidance to be re-evaluated and, as NAAVC recommended in the DEA Letter, rescinded on or before February 28, 2020. *See* the DEA Letter, Exhibit 2, at 11.

[3] At ¶¶ 90 – 127 of the FASC, plaintiffs allege how the DEA used the Guidance to substantially burden visionary church Free Exercise while purporting to advance it.

17. NAAVC used the process of drafting the DEA Letter to promulgate the new, critical analysis of the Guidance through the legal network of attorneys working for visionary churches. NAAVC also disseminated the DEA Letter through the membership and congregations of the visionary church community by promoting an online petition directed to the DEA, posted at Change.org, collecting signatures under the petition title, "**Stop the DEA from Regulating Visionary Religions**."[4] The petition campaign presented the DEA Letter's legal arguments in everyday language, and had gathered 472 signatures as of July 22, 2020.

18. Shay admitted he was directed to investigate Villanueva and VOLC by something that "came across his desk" at HIDTA in February 2020, but hadn't gotten around to getting the warrant due to the COVID crisis. This raises the question: From whom did the directive come? Shay is a 22-year veteran of the City of Phoenix drug squad, now detailed to the federally-funded HIDTA Task Force.[5] Arizona SW HIDTA funds collaboration between the DEA, the Arizona AG, and MCSO for purposes of disrupting international narcotics cartels and money laundering operations -- vast criminal enterprises. (Exhibit 5.) The DOJ's latest budget request notes that since 2019, HIDTA funding comes out of the DEA's budget, and DEA directly controls HIDTA:

> **High Intensity Drug Trafficking Areas (HIDTA) Programs: +254.0 million, transferred from the Office of National Drug Control Policy**
> The FY 2019 President's Budget permanently transfers $254 million to DEA from the Office of National Drug Control Policy (ONDCP) for the purpose of facilitating coordination of the HIDTA Program with other drug enforcement assets. DEA currently participates in and coordinates with the various HIDTAs. Transferring the administration of the program will allow HIDTA resources to be focused on combating drug trafficking in areas where the threat is the greatest and where there is a coordinated law enforcement presence. There are currently 28 HIDTAs located in 49 states, as well as in Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

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[4] As of last checking on July 22, 2020, the petition has collected 472 signatures. It is posted at https://www.change.org/p/drug-enforcement-administration-keep-the-dea-s-hands-off-visionary-churches?recruiter=1003378382&utm_source=share_petition&utm_medium=copylink&utm_campaign=share_petition

[5] HIDTA stands for "High Intensity Drug Trafficking Area," of which the Arizona-Southwest area is one of the largest out of the 28 HIDTA areas so designated by the Office of National Drug Control Policy, that funds operations, equipment, and training for local law enforcement.

1 U.S. Department of Justice FY 2019 Budget Request (Exhibit 6.)
2 **19.** Villanueva had no contact with drug cartels or money laundering, indeed no criminal
3 history whatsoever, which put him outside HIDTA's declared area of expertise and
4 interest. VOLC was not known by "word on the street." VOLC kept a very low profile,
5 as Villanueva administered the Ayahuasca sacrament only to trusted individuals whose
6 faith was confirmed. VOLC and Villanueva had no contacts with local law enforcement.
7 In law enforcement, only the DEA knew of his VOLC ministry, due to his NAAVC
8 Board membership.
9 **20.** Given that Shay is an expert narcotics officer with a specialty in disrupting large
10 cartel-funded manufacturing facilities,[6] he would have no investigative interest in a small
11 Ayahuasca church that would bring VOLC's activities to his attention.
12 **21.** Nor is there any indication that Maricopa County law enforcement had any interest
13 in policing Ayahuasca churches before Shay conducted the HIDTA raid of Villanueva's
14 home and the VOLC sanctuary. Quite the contrary. While the MCSO.org website is
15 filled with press releases about marijuana, heroin and meth busts, there are none
16 concerning Ayahuasca. A site-specific Google search for "Ayahuasca" at MCSO.org
17 produces zero results, two less than "Peyote," that appears on the MCSO job-application
18 form. *Compare* Exhibit 7 *with* Exhibit 8. MCSO has no interest in prosecuting
19 Ayahuasca use.
20 **22.** Eliminating the impossible – that someone at MCSO decided to waste Shay's time
21 by assigning him a fool's errand -- there remains only one answer. The DEA told Shay,
22 or someone else at HIDTA, to get a warrant and search Villanueva's house. By using
23 HIDTA to direct MCSO and Shay, DEA accomplished what it wouldn't do directly –
24 contrive probable cause to raid a third Ayahusaca church for its sacraments. Through
25 HIDTA, the federal Government funded a DEA conspiracy to retaliate against NAAVC
26 for exercising its right to petition the DEA for redress of grievances.
27
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[6] www.ecsforall.org/detective-matthew-shay.html

23. If Villanueva had called me by telephone when Shay asked to question him, I would have accepted the call from my current litigation client, and provided him with counsel during custodial interrogation.

24. As trial counsel for plaintiffs, I marked Villanueva as a key witness for plaintiffs, both as an NAAVC Board member who can articulate the nature and purpose of NAAVC's ministry, and as the VOLC minister, with a congregation eager to receive sacramental Ayahuasca from a safe, reliable, lawfully-approved source free of CBP interdiction and DEA scrutiny. As trial lawyer responsible for presenting evidence to carry plaintiffs' burdens of proof in this case, my ability to do that job has been negatively affected by the HIDTA raid on the Villanueva's home and church. I have spent several hours listening to their story and fears, and counseling to help them recover some of the sense of security that the HIDTA raid shattered. In my estimation, Villanueva has been affected as a witness, and were additional pressure placed on him by the workings of the conspiracy detailed in this motion, it could diminish his willingness to proceed with providing testimony or to participating further as an NAAVC Board member. Certainly, most reasonable people would feel their First Amendment rights chilled by the harrowing experience he and his wife endured. Many negative consequences have resulted from the raid, requiring plaintiffs to make this motion. An order restoring the *status quo ante* the May 19th raid and the conspiracy that led up to it can remedy the prejudice to plaintiffs by removing the improper advantages gained by defendants, and protecting plaintiffs from irreparable harm to their First Amendment freedoms going forward. Accordingly, I respectfully submit that plaintiffs have shown good cause to grant the requested preliminary injunction in the form of decree submitted herewith as a Proposed Order.

25. I caused all Arizona Defendants to be served on June 30, 2020, as affirmed by the registered process server's attestations attached as Exhibit 10, establishing service at each defendant's regular place of business, where the process was accepted in due course.

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26. I received video recording footage of MCSO deputies wearing t-shirts printed with "SHERIFF HIDTA" on the back, searching Villanueva's office. Screen captures of time-dated footage are shown in Exhibit 11. These are true and correct screencaptures that accurately reflect the video that Villanueva gave me. Each image is date and time stamped in the lower right corner.

27. The chart below indexes the Exhibits identified in the foregoing declaration.

Exhibit No.	Document
1.	Daime Complaint recording DEA raids on UDV and Daime
2.	DEA Letter (including attachments)
3.	*De Facto* DEA Cease and Desist Letter to Soul Quest
4.	Soul Quest lawsuit
5.	Webpages from DEA.gov, MCSO.org and AZHIDTA.org re HIDTA
6.	U.S. Department of Justice FY 2019 Budget Request
7.	Google Site-specific search of MCSO.org pages referring to "marijuana"= 77 results, "heroin"= 29 results, "meth" = 31 results
8.	Google Site-specific search of MCSO.org hyperlinked pages referring to "Ayahuasca"= 0, and "Peyote"= 2
9.	Maricopa County search warrant

10.	Proofs of service on all Arizona Defendants
11.	Screen captures of video recordings of the HIDTA raid

I declare and affirm, pursuant to 28 U.S.C. § 1746(2), that the foregoing is true and correct, and that this declaration was signed on July 22, 2020, at Tucson, Arizona.

/s/Charles Carreon
Charles Carreon, Declarant

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 1

FILED'08 SEP 05 09:21 USDC-ORM

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

THE CHURCH OF THE HOLY LIGHT OF THE QUEEN, a/k/a The Santo Daime Church, an Oregon Religious Corporation, on its own behalf and on behalf of all of its members, JONATHAN GOLDMAN, individually and as Spiritual Leader of the "Santo Daime Church," JACQUELYN PRESTIDGE, MARY ROW, M.D., MIRIAM RAMSEY, ALEXANDRA BLISS YEAGER and SCOTT FERGUSON, members of the Santo Daime Church, Plaintiffs,	CIV NO. 08-3095-HU
	COMPLAINT
	TEMPORARY RESTRAINING ORDER REQUESTED
	RELIGIOUS FREEDOM RESTORATION ACT {42 USC §§ 2000bb . 2000bb(4)}
vs.	
MICHAEL B. MUKASEY, Attorney General of the United States; KARIN J. IMMERGUT, United States Attorney, District of Oregon; HENRY M. PAULSON, Secretary of the U.S. Department of the Treasury, Defendants.	Declaratory and Preliminary and Permanent Injunctive Relief Sought

INTRODUCTION

1. This is a suit brought by the CHURCH OF THE HOLY LIGHT OF THE QUEEN (a.k.a. "The Santo Daime Church" or "CHLQ"), a Christian religion based in Ashland, Oregon, its Spiritual Leader, Members of the Board of CHLQ, and members of

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the Church on behalf of all of its members pursuant to 42 USC §§ 2000bb-2000bb(4), the Religious Freedom Restoration Act of 1993 ("RFRA"), to redress the deprivation of rights, privileges and immunities secured to plaintiffs by the First, Fifth, and Fourteenth Amendments to the Constitution of the United States. Specifically, plaintiffs seek a declaration that the defendants' threats to arrest and prosecute members of the Santo Daime religion who seek to bring their sacramental tea (the "Daime tea"), which contains trace amounts of a Schedule 1 chemical, into the United States to imbibe at their religious ceremonies is unconstitutional, unlawful and violates RFRA in that it burdens the central practice of the plaintiffs' religion, *i.e.* imbibing the Holy tea. Plaintiffs also seek a preliminary and then permanent injunction enjoining defendants from preventing the importation or use of tea in religious ceremonies and from threatening to arrest or prosecute Church members who seek to ingest their sacramental tea.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331 and 1343(3)-(4), because the case arises under the Constitution, laws and treaties of the United States and seeks to redress the deprivation of rights, privileges and immunities secured to plaintiff by the First, Fourth, and Fifth Amendments to the Constitution of the United States, and the Religious Freedom Restoration Act as well as to secure equitable or other relief under any Act of Congress providing for the protection of civil rights.

3. This court has authority pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 706, to grant declaratory relief and to issue preliminary and permanent injunctions.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) in that all of the defendants are agents or officers of the United States and were, at all times relevant to

this case, acting in their official capacities, and at least one defendant resides in the State of Oregon. Plaintiffs reside in this district and the cause of action arose in this district.

PARTIES

PLAINTIFFS

5. Plaintiff **THE CHURCH OF THE HOLY LIGHT OF THE QUEEN** is a religious corporation formed under the laws of the State of Oregon whose principle office is located in Ashland, Oregon and is the local United States Branch of the Centro Eclético da Fluente Luz Universal Raimundo Irineu Serra, CEFLURIS (the "Santo Daime Church" of Brazil,) a fully recognized religion in Brazil. The Church is adversely affected and aggrieved by the defendants' actions as more fully described below. The Ashland Church administers to a small congregation in Bend, Oregon.

6. Plaintiff **JONATHAN GOLDMAN** is the religious leader ("Padrinho") of CHLQ and resides in Ashland, Oregon. He brings this action in his own capacity as a member of the Santo Daime Church, on behalf of members of the Church and as a representative and agent of CEFLURIS, in the United States.

6A. **ALEXANDRA BLISS YEAGER**, is the spiritual leader of the Céu da Divina Rosa (The church of the Divine Rose), a Santo Daime Curch located in Portland, Oregon.

7. Plaintiff **JACQUELYN PRESTIDGE** is Chairperson and Member of the Board of Directors of CHLQ. She resides in Bend, Oregon.

8. **SCOTT FERGUSON** is a member of CHLQ and resides in Bend, Oregon

9. PlaintifF **MARY ROW, M.D**.. is a member of CHLQ and resides in Oregon.

10. **MIRIAM RAMSEY** is a member of CHLQ, the salaried administrator of the Church and resides in Ashland, Oregon

DEFENDANTS

11. Defendant **MICHAEL B. MUKASEY** is the Attorney General of the United States and the Chief Law Enforcement Officer of the United States. MR. MUKASEY resides in Washington, D.C.

12. **KARIN J. IMMERGUT**, United States Attorney, District of Oregon and resides in Portlan, Oreogn.

13. Defendant **HENRY M. PAULSON**, Secretary of the Treasury of the United States, is responsible for administering and enforcing the customs laws, the Controlled Substances Import and Export Act and regulations promulgated thereunder. MR. PAULSON resides in Washington, D.C.

13.(a) At all times relevant to this litigation, all of the defendants acted in and are sued in their official capacities.

FACTS

14. For hundreds and, perhaps, thousand of years, a tea called ayahuasca has been brewed by indigenous tribes in the Brazilian and Peruvian Amazon region and has been used for sacramental and healing purposes. As noted in greater detail below, the ayahuasca tea contains trace amounts of N,N-5,5-dimethyltryptamine (DMT), a chemical listed on the Controlled Substances Act (CSA), and ensuing regulations. 21 U.S.C. §§ 801 et seq.

15. Beginning in the 1800's, Christian religious missionaroies made contact with many indigenous tribes in the Peruvian and Brazilian Amazon. These tribes then adopted Christian beliefs and practices and syncretic religions emerged. In the early twentieth century, a Brazilian rubber tapper, Mastre Raimundo Irineu Serra, had a direct revelation to found a new religion based upon the concept that Jesus Christ was the Savior and that the Ayahuasca tea was to become the central ritual and sacrament of the religion; and that the tea was to be renamed "Santo (Holy) Daime" which, in Portuguese, means "give me," interpreted to mean "give me light and give me love." The Santo Daime Church blends Christian theology with traditional indigenous religious beliefs. Church doctrine instructs that Daime tea is a sacrament and that the body of Christ is present in the tea. Church members ingest the tea during and only during church services.

16. The taking of the Daime sacrament is necessary for the Church to conduct its services. It is believed that only by taking the tea can a Church member have a direct experience with Jesus Christ, believed by members of the Church to be the savior. The Holy Daime tea is believed to be not only a vehicle for direct communion with God, but itself embodies the Divine Spirit; thus, it is prayed to directly as the manifestation of the Holy Spirit as contained in the Hymnals of the Church. According to Church doctrine, the presence of the Daime is the presence of Christ. Without the tea, there is essentially no religion because it is an essential element of the Church ritual in which the members have placed their faith. All Church members imbibe the holy tea as a form of communion.

17. The Santo Daime Church's doctrine is taught through the Hymnals received by its religious leaders over the past century. These are received during the ceremonies at which the Holy sacramental tea is taken.

18. From the making of the Holy Daime tea to the ingestion of the tea at ceremonies, the tea is accounted for in a structured distribution and accounting program under the direction of the elders of the Church, who have been trained to maintain high security surrounding the making, storage and transport of the tea. Each Church in the United States that receives the tea accounts for the amount received as well as the amount consumed at services.

19. The making of the Holy Daime tea is a highly ritualized sacred practice called the "feitio." The tea is made from cooking two plants, a vine named *Banisteriopsis Caapi,* and the leaves of *Psychotria viridis,* which grows in certain jungle areas of South America. The preparation of the tea requires the intensive labor of many Church members and is very time consuming. The vine and the leaves are boiled in water for many hours in a highly structured ceremony undertaken in prayer accompanied by the singing of Hymns. It is only when the tea is brewed under these very specific conditions that it is considered to be the Holy Daime sacrament. The Church considers the loss of any of the tea a sacrilege and takes great pains to protect it from diversion from its very limited and specific use.

20. *Banisteriopsis caapi* is a large, rugged vine containing three chemical alkaloids, harmaline, harmine, and 1,2,3,4-tetrahydroharmine, none of which are listed in any Schedule of the Controlled Substances Act of 1970.

21. *Psychotria viridis* is a small plant containing trace amounts of the Schedule 1 chemical N,N-5,5-dimethyltryptamine (DMT). Numerous other trees, shrubs, and plants found in the Western Hemisphere (including in the United States) also contain DMT. However, none of these plant species, including the *Psychotria viridis,,* are listed as Controlled Substances.

22. DMT is listed as a Schedule 1 controlled substance because in some chemical forms, particularly the synthetic forms, it may be viewed by some as a substance with abuse potential. One criterion for listing a chemical as a Schedule 1 Controlled Substance is that it has "a high potential for abuse." The CSA, however, does not list the *Psychotria viridis* plant as a controlled substance because the scientific evidence establishes that the DMT contained therein is not in a form with a "high potential for abuse."

23. In addition to not listing the *Psychotria viridis* plant as a controlled substance, and in spite of repeated requests to comment on the subject, the defendants have never communicated in any form that they consider the *Psychotria viridis* plant a controlled substance or that the plant is a substance with a "high potential for abuse."

24. Upon information and belief, DMT is only considered a substance of "high potential for abuse" when it is taken in its synthetic form intravenously, or by inhalation. The Holy Daime tea is a natural, organic non synthetic sacrament, that is ingested orally, and the processes that go on in the digestion of the DMT in this natural form ensure that the DMT is not and cannot become a substance with a "high potential for abuse."

25. On or about May 20, 1999, the defendants intercepted a shipment of the Holy Daime tea lawfully sent from the Santo Daime Church in Brazil to plaintiff Goldman, who is authorized by the Santo Daime Church in Brazil to receive, store, account for, and administer the tea which is used solely for sacramental purposes at services in the United States.

26. Upon information and belief, upon the instructions of defendants DEA, Treasury Department, and Department of Justice agents and employees and/or persons acting under their direction, DEA Special Agent Daniel Lakin obtained a search warrant to search the home of plaintiff Goldman. On or about May 20, 1999, the premises were searched by defendants' agents. Articles belonging to the plaintiffs and personal items of plaintiff Goldman and his family were confiscated by the agents. Some, but not all, of those items have since been returned.

27. The defendants' agents entered plaintiff Goldman's home with attack weapons, arrested plaintiff Goldman, and dragged him off to jail. Plaintiff Goldman spent 12 hours in jail before being released on bond.

28. The defendants seized the Holy Daime Tea from Mr. Goldman's home; and, upon information and belief, the Holy Daime tea may still be in defendants' possession.

29. While charges have never been filed against plaintiff Goldman and there is no continuing investigation into the facts surrounding the importation of the Holy Daime tea, the former Oregon United States Attorney advised plaintiffs by letter dated October 11, 2001 that "[T]he decision to prosecute your client for his conduct remains an open question pending the decision of the United States Department of Justice regarding your

request for a controlled substance exemption." Eight days later, on October 19, 2001, the United States Department of Justice advised that it "believes the prohibition on the importation, distribution and possession of ayahuasca tea is the least restrictive means of furthering a compelling government interest." Defendants did not advise plaintiffs what that compelling interest was. While no further action has been taken against plaintiff Goldman, all plaintiffs and members of the Church live under the constant threat of arrest, prosecution and imprisonment for quietly practicing their religion because the government refuses to respond to their requests that it abandon threats to arrest and prosecute Santo Daime Church members designated to transport the tea from Brazil to Ashland, Oregon for services. Thus the continuing threat of further arrest and prosecution looms heavy over plaintiffs and all Church members who attempt to practice the central tenet of this religion in the United States of America.

30. Plaintiffs petitioned the State of Oregon's Board of Pharmacy, which has concurrent jurisdiction with the defendants over distribution of controlled substances and abuse of controlled substances in the State of Oregon, to permit the Church to take its Holy Sacrament at Church services held in the State of Oregon. The Oregon Pharmacy Board held a hearing on November 8, 2000, at which time it carefully considered some of the same evidence that will be placed before this Court. The Board ruled that the State of Oregon "does not consider sacramental use of the Santo Daime tea in the Church's religious ceremonies to constitute abuse of a controlled substance." The Board then held that it "neither possesses nor plans to exercise regulatory authority with regard to the religious practices of the Santo Daime Church in Oregon."

31. Despite the ruling of the Oregon Pharmacy Board, which under principles of federalism has the primary responsibility to pass on matters of public health, the federal defendants threaten to override the findings of the Oregon Pharmacy Board by unilaterally declaring the tea unsafe and a threat to public health. The government has no evidence to support such a claim. Its attempts to avoid the Oregon findings are arbitrary and are not grounded in existing fact or jurisprudence.

32. The continuing threat of arrest and prosecution of Church members who attempt to bring the tea in from Brazil or hold services eviscerates Oregon's favorable ruling precluding it from having any practical effect in protecting plaintiffs' freedom to practice their religion, even in Oregon. Plaintiffs are still in great fear that defendants' agents and employees will arrest them and throw them in jail for practicing their religion, even in the State of Oregon.

33. In the late 1980's, the Brazilian Federal Narcotics Council ("CONFEN") embarked on an extensive two-jyear study of the religious practices of the Santo Daime Church, including the central practice of ingesting the tea at its ceremonies. The members of CONFEN traveled to many cities in Brazil and deep into the Amazon interior to the town of Mapia, which became the spiritual center of the Santo Daime religion, to investigate the religious practices and the community. After these extensive studies (which included participation by a wide variety of medical, social, psychological, historical, anthropological, law enforcement and drug policy experts), the Brazilian CONFEN ruled that the religious use of the Daime tea would be legally recognized and protected from government interference in Brazil.

Attempts to Settle and Obtain a Memorandum of Understanding with DOJ

34. On October 7, 2000, plaintiffs' counsel sent a Memorandum of Law and copies of the expert reports submitted with the instant Motion for Temporary Restraining Order to then Attorney General of the United States, Janet Reno, along with introductory letters from Congressman Peter DeFazio and a professional acquaintance of Ms. Reno (who is an expert for the plaintiffs), Mr. Allan F. Breed, urging that the matter be resolved without litigation through an Attorney General Memorandum of Understanding.

35. Ms. Reno appointed a task force composed of a dozen federal agencies concerned with drug use and abuse to meet with plaintiffs' representatives and attempt to resolve the matter.

36. At the request of plaintiffs' counsel, the offices of several Members of Congress conracted the Department of Justice voicing concerns over the treatment of the Santo Daime Church. On December 8, 2000, at the direction of Attorney General Reno, the Assistant Attorney General of the Criminal Division held a meeting with plaintiffs at Main Justice in Washington, D.C. Representatives from the U.S. Attorneys Office, Office of the Drug Czar, the Civil Rights Division, the Criminal Division, the Drug Enforcement Agency, and others were present. Padrinho Alex Polari de Alverga,[1] Executive Director of CEFLURIS Doctrinarian Board of the Santo Daime Church of Brazil, traveled from Brazil to the United States to attend this meeting, to convey the respect of the Spiritual Leader of the Santo Daime, Padrinho Alfredo Gregorio de Melo, and to be available to answer any questions that members of the Task Force might have about the Church and its practices. The DOJ provided a Portuguese interpreter to assist at

[1] "Padrinho" refers to an elder or leader of a Church. The literal term is "Godfather."

the meeting. On December 11, 2000, Associate Attorney General Michael Greenberger advised that an interagency task force had been formally established to "consider the important issues that you have raised."[2]

37. Plaintiffs advised the interagency members that the burden was on the United States to establish that it had a compelling reason to prevent the import of the sacramental tea into the United States. Though participants at that meeting were invited to present plaintiffs with any compelling government interest for prohibiting the importation of the sacred tea, none was provided.

38. On December 8, 2000, Congressman Peter DeFazio sent a letter to DOJ, asking, again, what compelling interest the government might have in preventing the Santo Daime from practicing their religion. Justice replied on December 12, 2000 it would be "premature to provide such a response." That response was curious at best as it illustrated that the government was claiming that it had "compelling interests" but could not quite figure out what they were, even though government agents had seized the tea and arrested Plaintiff Goldman based upon these not yet formulated "compelling interests." Thus, as of that date, the defendants had not identified even one colorable "compelling government interest" to justify their continuing effort essentially to ban the Church in the United States. This establishes that the defendants were and continue to be violating RFRA by substantially burdening religious exercise without compelling justification.

[2] Also present at the meeting were representatives from the DEA, Narcotics and Dangerous Drugs, the Office of the Solicitor General, Office of Legal Counsel, Office of Legislative Affairs, the Criminal Division, the Civil Division, the Civil Rights Division, Health and Human Services, the Office of National Drug Control Policy, United States Customs Service, and the Executive office of the United States Attorneys.

39. On December 21, 2000, Deputy Associate Attorney General Greenberger sent a letter stating that the defendants hoped to advise plaintiff by mid-January 2001, whether they would voluntarily agree to the cessation of the illegal activity complained of herein. On January 10, 2001, plaintiffs' counsel met again in Washington with members of the interagency task force. That meeting proved to be fruitless in either narrowing down issues or obtaining any temporary agreements with the defendants to permit the tea to be used in religious services.

40. Plaintiffs' counsel had suggested that the defendants agree to permit the tea to be imported temporarily under agreed upon DEA controls including an accounting system to ensure no diversion. Under a proposed Justice Department Memorandum of Understanding, submitted to the defendants, the government would study the religion more, attend and observe the services as did the Brazilian drug enforcement agencies, and undertake any studies that it might wish.

41. After the change in administrations in January 2001, Attorney General Reno was replaced by Attorney General Ashroft. On February 2, 2001, Deputy Assistant Attorney General Stuart E. Schiffer wrote plaintiffs inviting the Santo Daime to respond to the government's Opposition Brief in *O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft, 282 F.Supp2d 1236 (D. N.M., 2002), aff'd, Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418 (2006)("UDV".) [3] Its brief was filed in January, 2001, stating, "We would be happy to consider any additional information that you may wish to provide in response to the position set out by the government in that filing . . ." On October 19, 2001, Assistant Attorney General McCullum advised

[3] Referring to *UDV v. Ashcroft* discussed at length below. The UDV is also a Brazilian religion using tea made form the same plants as the Daime tea.

plaintiffs that the Department of Justice would not voluntarily desist from continuing to threaten plaintiffs with arrest and prosecution for attempting to quietly practice their religion.

The O Centro Espírita Beneficente União do Vegetal (UDV) Decisions

42. Similar to the plaintiffs in this case, the O Centro Espírita Beneficente União do Vegetal (UDV)[4] is a religious organization formed under the laws of Brazil, with its headquarters in Brasilia, Brazil[5].

43. As in this case, where the Santo Daime sacred tea is the central ritual of the religion and is seen as the religion's sacrament, central and essential to the UDV Christian religion is the sacramental, ritual use of *Hoasca,* a tea made from the same two plants native to the Amazon River basin that comprise the sacred Daime tea. As in the case of the sacred Daime tea, the sacramental *Hoasca* tea contains a small amount of naturally-occurring dimethyltryptamine (DMT). And as in the case of the sacred Daime tea, the UDV *Hoasca* is tea imported from Brazil, after religious leaders (*Mestres*) of the UDV prepare *Hoasca* during a religious ritual held in Brazil for that purpose.[6]

44. As in the case of the Santo Daime sacred tea, it is a central and essential tenet of the UDV that its members receive communion by partaking of *Hoasca* as a sacrament during religious rites. When UDV adherents receive sacramental *Hoasca,* they

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[4] *O Centro Espírita Beneficente União do Vegetal (UDV) v. Ashcroft,* CIV. No. 00-1647 JP/RLP (D. NM, 2000).
[5] The corporate plaintiff in the UDV case is the United States Branch of the UDV, O Centro Espírita Beneficente União do Vegetal (USA), Inc.
[6] O Centro v. Clement, CV 00-1647JP RLP (D. New Mexico, First Amended Complaint) (September 21, 2007).

receive the Divine Holy Spirit. For disciples of the UDV, the spirit of the *Hoasca*—a manifestation of God—is present within the tea.

45. On May 21, 1999, one day after plaintiff Goldman's home was searched, the sacred Daime tea was seized pursuant to a search warrant and he was arrested, the UDV-USA President's offices were then raided by federal officers who had intercepted a shipment of *Hoasca* sent by the UDV in Brazil to the UDV Church in Santa Fe, New Mexico. The federal agents seized records and documents from the President's office.

46. Upon information and belief, the UDV negotiated with the same task force that was formed by Attorney General Reno to negotiate with the plaintiff Santo Daime Church.

47. On November 21, 2000, the UDV filed suit in United States District Court, District of New Mexico seeking a preliminary and permanent injunction to prevent some of the same defendants as in this case from interfering with the importation, distribution and ingestion of the *Hoasca* tea.

48. Shortly after the filing of the UDV case, as noted above, on January 21, 2001, DOJ informed plaintiffs that anything they wanted to submit should be done so in the UDV litigation forum. The UDV plaintiffs alleged that the interference with the tea by the government violated their First Amendment Rights to freedom of religion and the Religious Freedom Restoration Act.[7] The district court granted a preliminary injunction based upon its findings that the government failed to establish that it had a compelling interest in totally prohibiting the importation, distribution and ingestion of the holy *Hoasca* tea and preliminarily enjoined Defendants from enforcing the CSA against the

[7] And other allegations not pertinent to this Complaint.

UDV Plaintiffs. *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 282 F. Supp. 2d 1236 (D.N.M. 2002). Defendants appealed to a panel of the Court of Appeals which affirmed. *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 342 F.3d 1170 (10th Cir. 2003). On rehearing en banc, the Court of Appeals again affirmed. *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973 (10th Cir. 2004) (en banc). On February 26, 2006, the Supreme Court of the United States unanimously affirmed the granting of the preliminary injunction and remanded the case to the district court for further proceedings. *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418 (2006).

49. The Solicitor General's Merits Brief to the Supreme Court asserted that the Santo Daime and UDV religions were very similar.

Thus the government defendants argued that:

> At a minimum, an equivalent exemption will be demanded by other religious groups that use ayahuasca, like the Santo Daime Church. While the Santo Daime Church has more broadly opened its hoasca ceremonies to others, courts may consider differences in evangelistic theology to be a tenuous basis for selectivity in governmental accommodations. Courts might also be concerned that a selective accommodation would effectively give the UDV a competitive advantage over the Santo Daime church in the religious "marketplace of ideas.
> In any event, the evangelistic differences between UDV and Santo Daime may not be that great.[8]

[8] Solicitor's Merits Brief, 21-22. The Solicitor's use of the phrase "will be demanded" was not entirely accurate. The Solicitor's brief was written in 2005. The Santo Daime began negotiations with the defendants under Attorney General Reno's explicit direction in 2000. Indeed, at the first meeting held at Attorney General Reno's direction in Washington, the Solicitor General's office had a representative present. Thus, at the time of the writing of the Solicitor's brief, he already knew that the Santo Daime had made demands that the government cease its illegal activity of interfering with transporting the same tea into the United States.

50. With regard to the factual and legal issues in this case, the plaintiffs are similarly situated to the UDV.

51. In the UDV case, at the preliminary injunction phase of the case, the Supreme Court upheld the district court's finding that the same federal defendants as in this case failed to establish that the government had a compelling interest to prevent the importation, distribution and ingestion of the *Hoasca* tea as the sacrament of the Church at religious ceremonies.

52. The government failed to establish that the tea was dangerous to the health of the members of the UDV or to the public, or that it was likely that the tea would be diverted to illicit consumption.

53. On remand to the district court, the defendants notified the district judge, "[t]hat they did not intend to present additional evidence concerning the government's compelling interest in banning Plaintiffs' use of *Hoasca*."[9]

54. The government defendants have thus abandoned their attempt to prevent the importation, distribution and ingestion of the *Hoasca* tea. Similarly, the government has no compelling interest to prohibit the importation of the Daime tea, which, as noted above, is considered by the defendants to be similarly situated to the *Hoasca* tea in terms of the government's professed "interests." However, the defendants continue to claim that they have "compelling interests" that justify criminalizing the Daime tea.

55. Regarding issues of safety and health, the government is precluded from relitigating those issues[10] in this case, as they were fully aired in the UDV case and the

[9] Motion to Dismiss UDV Amended Complaint, Civ 00-1647 (D. N.M), November 1, 2007, at page 10.

[10] "Collateral estoppel."

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government stated in November 2007, only a few short months ago, that it has no more evidence to support its essentially abandoned "compelling interests" defense. And there is no additional evidence that the government intends to offer regarding diversion of the tea to illicit markets.

56. The continuing threats of prosecution and threats to seize the Holy sacramental tea in the United States has had the effect of chilling plaintiffs' rights as United States citizens to practice their religion in this country without fear of reprisals by federal agents acting outside the law.

57. There are Brazilian nationals in the United States as well as citizens who hold both Brazilian and American citizenship who can practice their religion in Brazil but are subject to arrest and prosecution in the United States by the defendants and their agents if they attempt to practice their religion in this country.

58. At all times relevant to this litigation, the defendants acted in their official capacities.

59. At all times relevant to this Complaint, defendants engaged in the illegal acts complained of herein to the injury of the plaintiffs and deprived plaintiffs of their rights, privileges and immunities secured to them under the First, Fourth, Fifth, Fourteenth Amendment, the Religious Freedom Restoration Act and the laws, regulations and decisions of the State of Oregon.

60. The actions of the defendants in arresting, threatening to arrest and threatening to prosecute plaintiffs serves no compelling government interest and are not the least restrictive means to protect any colorable government interests.

61. The actions committed by the defendants were calculated to and in fact, have punished plaintiffs for asserting their First Amendment rights and rights provided to them by Congress under RFRA.

62. The acts complained of were taken willfully and without the defendants undertaking a review of their legal responsibilities prior to engaging in the illegal acts set forth above.

63. Defendants continue to engage in the illegal acts set forth above after having been advised by the plaintiffs of their illegality.

64. The actions complained of were and are geared to intimidating and thereby preventing plaintiffs from practicing their deeply held religious beliefs and engaging in the sacrament of their Church.

65. The acts complained of were done by the defendants in excess of any authority conferred on them under the Constitution and the laws of the United States.

66. The United States Commission on International Religious Freedom established under the International Religious Freedom Act of 1998, in its "Year 2000" Report recognized and honored Brazil's tolerance for its syncretic religions of which the Santo Daime is one of the most recognized in Brazil both by the Brazilian government and by the Brazilian Catholic Church. 22 U.S.C. §§ 6401, et seq., Public Law 105-29 (105th Con. 1988), The actions of the defendants in arresting, threatening prosecution and confiscating the Holy Daime tea is a particularly egregious violation of the principle of comity in light of this country honoring Brazil's protection of the Daime tea in, while at the same time refusing to permit its sacramental use in the United States.

67. Plaintiffs have no adequate remedy at law and will continue to suffer irreparable injury and harm unless defendants are enjoined by this court from taking any further action against the plaintiffs.

FIRST CLAIM FOR RELIEF

(FIRST AMENDMENT FREE EXERCISE OF RELIGION)

68. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 67 as though more fully set forth herein.

69. The actions of the defendants in arresting plaintiff Goldman, confiscating the Holy sacramental tea, continuing to hold the threat of prosecution over his head and the continuing threats to confiscate the Holy sacrament, and to arrest, prosecute and imprison other members of the Santo Daime Church who in the future attempt to practice the central tenet of their religion, violate plaintiffs' rights to the free exercise of their religion under the Free Exercise Clause of the First Amendment to the United States Constitution.

70. Plaintiffs have no adequate remedy at law and will continue to suffer irreparable injury and harm unless defendants are enjoined by this court from taking any further action against the plaintiffs.

SECOND CLAIM FOR RELIEF

(RELIGIOUS FREEDOM RESTORATION ACT)

71. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 67 as though more fully set forth herein.

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72. The actions of the defendants in arresting plaintiff Goldman, confiscating the Holy sacramental tea and continuing to hold the threat of prosecution over his head, and the continuing threats to confiscate the Holy sacrament, and to arrest, prosecute, and imprison plaintiffs and other members of the Santo Daime Church who in the future attempt to practice the central tenet of their religion violate the Religious Freedom Restoration Act of 1993, 42 USC §§ 2000bb-2000bb(4).

THIRD CLAIM FOR RELIEF

(FIFTH AMENDMENT DUE PROCESS)

73. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 67 as though more fully set forth herein. Plaintiffs have a property right in the ownership, possession, and use of the Holy sacramental Daime tea.

74. Defendants' seizure of the Holy Daime tea without prior notice and an opportunity to be heard deprived plaintiffs of their ownership, possession, and use of the tea in violation of plaintiffs' rights to both substantive and procedural due process pursuant to the Due Process Clause of the Fifth Amendment to the United States Constitution.

75. Plaintiffs have no adequate remedy at law and will continue to suffer irreparable injury and harm unless defendants are enjoined by this court from taking any further action against the plaintiffs.

FOURTH CLAIM FOR RELIEF

(FOURTH AMENDMENT SEARCH AND SEIZURE)

76. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 67 as though more fully set forth herein.

77. The Holy Daime tea seized by the defendants and their agents did not constitute unlawful importation or distribution of a controlled substance under the CSA. The defendants did not have probable cause to seize the tea or to seek a search warrant to search plaintiff Goldman's home on or about May 20, 2000.

78. Defendant's obtaining a search warrant, searching plaintiff Goldman's home, and seizing the Daime tea and other property from Mr. Goldman's home constituted an unlawful search and seizure in violation of the Fourth Amendment to the United States Constitution.

FIFTH CLAIM FOR RELIEF

(FIFTH AND FOURTEENTH AMENDMENT
EQUAL PROTECTION OF THE LAWS)

79. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 67 as though more fully set forth herein.

80. Plaintiffs are similarly situated to UDV members in their sacramental use of the Holy Daime tea that Defendants consider a Schedule I controlled substance under the CSA, just as they have considered the Hoasca tea. Nevertheless, Defendants have accommodated the UDV and no longer seek to ban its importation, distribution, and ingestion while refusing to accommodate plaintiffs' sincere, sacramental use of the Holy Daime tea.

81. Defendants' decision to allow the members of the UDV to use Hoasca for religious purposes, while denying the same protection to plaintiffs, violates the equal

protection rights of plaintiffs guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

82. As a result of Defendants' violation of Plaintiffs' rights to equal protection, plaintiffs are entitled to appropriate injunctive and declaratory relief.

SIXTH CLAIM FOR RELIEF

(COMITY AND VIOLATION OF INTERNATIONAL LAW)

83. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 67 as though more fully set forth herein.

84. The defendant's actions in arresting plaintiff Goldman, confiscating the Holy sacramental tea and continuing to hold the threat of prosecution over his head and the continuing threats to confiscate the Holy sacrament, and to arrest, prosecute, and imprison other members of the Santo Daime Church who in the future attempt to practice the central tenet of their religion are in violation of the policies of the United States under the doctrine of comity, as is defendants' refusal to recognize the acts, records and judicial proceedings of foreign sovereign nations that do not directly conflict with lawful policies of the Untied States.

85. Specifically, the actions of the defendants as set forth above, fail to give comity to the findings of the Brazilian Federal Narcotics Council ("CONFEN") which specifically ruled that the Santo Daime Church may lawfully utilize the Holy Daime tea for sacramental purposes.

86. The actions of defendants violate the United Nations International Covenant on Civil and Political Rights ("ICCPR") and Article 18 of its Universal

Declaration of Human Rights which declares that "Everyone has the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom,. . . to manifest his religion or belief in worship, observance, practice, and teaching."

87. Plaintiffs have no adequate remedy at law.

88. The balance of the equities weighs in favor of an injunction preventing Defendants from further interfering with plaintiffs' religious conduct.

89. Injunctive relief is reasonably necessary to protect Plaintiffs' constitutional right to equal protection of the law.

90. Plaintiffs will suffer irreparable harm without injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs seeks declaratory and injunctive relief against the defendants as follows:

1. A Declaratory Judgment that the actions described in this Complaint violated plaintiffs' rights to freedom of religion under the First Amendment to the United States Constitution and a violation of the Religious Freedom Restoration Act.

2. A Declaratory Judgment that the defendants' actions described in this Complaint, including the obtaining of a search warrant, the interception of the Holy Daime tea, the search and seizure at plaintiff Goldman's house, the arrest of plaintiff Goldman, the continuing threat of prosecution of plaintiffs, and the threats of arrest and prosecution of all Santo Daime Church members in the United States who wish to engage in taking the sacrament, the Holy Daime tea, violate 42 USC §§ 2000bb-2000bb(4) the Religious Freedom Restoration Act ("RFRA") of 1993.

3. A Declaratory Judgment that the defendants' actions described in this Complaint in confiscating the Holy Daime tea violated plaintiffs' rights to substantive and procedural due process of law under the Due Process Clause of the Fifth Amendment to the United States Constitution.

4. A Declaratory Judgment that the defendants' actions in confiscating the Holy Daime tea, obtaining and executing a search warrant against plaintiff Goldman as described in this Complaint, violated plaintiff Goldman's rights to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution.

5. A Declaratory Judgment that the actions of defendants in threatening to arrest and prosecute Santo Daime Church members for practicing their religion violate plaintiffs' rights to the equal protection of the laws.

6. A preliminary and permanent injunction enjoining the defendants as follows:

a. From arresting, prosecuting, or threatening plaintiffs and members of the Santo Daime Church with arrest, prosecution and/or imprisonment for importing, distributing and ingesting the Daime tea solely at Santo Daime Church services.

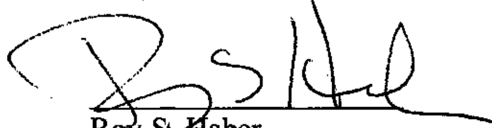
b. Ordering that within 30 days after the date of issuance of declaratory relief, the parties present the Court with a plan to effectuate the importation, distribution, and accounting for the Holy Daime tea consistent with the rights of the Church members to use the Holy tea in ceremonies.

c. An Order awarding plaintiffs attorney's fees, costs and expenses pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and The Civil Rights Attorneys Fees Award Act of 1976, 42 U.S.C. § 1988.

d. Such other and further relief as the Court may deem just and proper.

Dated: August 12, 2008

Respectfully submitted,



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CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 2

CHARLES CARREON

LAW FOR THE DIGITAL AGE

January 8, 2020

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Diversion Control Division
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8701 Morrissette Drive
Springfield, Virginia 22152

Re: *Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act*

Dear Mr. McDermott:

The North American Association of Visionary Churches ("NAAVC") is a non-profit corporation whose Associate Members are churches that use Ayahuasca as their sacrament ("Visionary Churches"). Individual member-churches have standing to object when aggrieved by administrative actions, and delegate that standing to NAAVC to advocate on this issue of shared importance. NAAVC sends this letter on behalf of its members regarding their Constitutional right to engage in religious ceremonies making use of Ayahuasca.

1. The Agency's Guidance Document

Ten years ago, the Drug Enforcement Administration (the "Agency") made a document available on its website entitled *Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act* (the "Guidance"). (Exhibit 1.) The Guidance describes an administrative procedure for submitting Petitions for Religious Exemption ("Petitions") from the Controlled Substances Act ("CSA"). The Guidance was adopted without public notice and comment, and has not been published in the Federal Register.

In the ten years since the Guidance was announced, there is no public record of any Petition being granted. Two Petitions were submitted by groups that were "invited" to submit a Petition by way of letters on the Agency's letterhead.[1]

2. Analysis of the Agency's Guidance Document

There are several levels of legal analysis applicable to the Guidance, all of which support the conclusion that it does not pass constitutional muster or conform to recently-

[1] The DEA's Invitation Letter to Soul Quest is attached as Exhibit 2; the response from Soul Quest's lawyers is attached as Exhibit 3; and, the DEA's response to that letter is attached as Exhibit 4. NAAVC has not obtained a copy of the Invitation Letter to Ayahuasca Healings. The Petition submitted by Ayahuasca Healings is Exhibit 5. Soul Quest submitted a "157 page response" to the DEA, but copies of the same have not been obtained. https://www.clickorlando.com/news/2017/11/16/orlando-church-battles-to-use-hallucinogenic-tea/

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promulgated standards for guidance documents. The presentation of authorities relevant to the Agency's review of the Guidance first sets forth the substance of three Executive Orders. Discussions of First and Fifth Amendment protections follow. The letter applies the requirements of the Executive Orders and Administrative Procedure Act to the Guidance, and suggests the Agency rescind the Guidance within the regulatory deadlines imposed upon the Agency by Executive Order 13892 (Exhibit 10) and the Office of Management and Budget's Implementing Memo (Exhibit 9.).

3. Three Executive Orders Require the Agency to Evaluate the Guidance and Decide Whether to Rescind or Carry On With It

The President has issued three Executive Orders that directly bear upon the manner in which the Agency should review the Guidance. In particular, EO 13891 imposes a deadline of February 28, 2020 for the Agency to rescind or officially affirm the continued viability of the Guidance. To summarize briefly the importance of these three Executive Orders, in the chronological order of their issuance:

Promoting Free Speech and Religious Liberty, **EO 13798, 82 FR 21675 (May 4, 2017).** This EO commits the Executive Branch and all administrative agencies to protect churches from regulatory entanglement and impingement upon rights of free exercise by structuring future programs and policies, and reviewing existing ones, to ensure that they effectively accommodate the needs of religious communities for exemptions from general law and special accommodations. (EO 13798 is attached as Exhibit 6.) A detailed Memorandum from Attorney General Sessions on the manner in which federal agencies should review and overhaul their practices is attached as Exhibit 7, *Federal Law Protections for Religious Liberty* (the "AG Memo"). The AG Memo devoted the bulk of its policy-formulation to explaining how administrative agencies must act to properly provide RFRA protections to churches and believers, and directed all federal agencies to "proactively consider the burdens on the exercise of religion and possible accommodation of those burdens," when "formulating rules, regulations, and policies."[2] The AG Memo states:

> "Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity…."[3]

This principle applies to "all actions by federal administrative agencies, including rulemaking, adjudication, and other enforcement actions…."[4] A companion document that was circulated to all Asst. US Attorneys, entitled *Implementation of Memorandum on Federal Law Protections for Religious Liberty*, urging all agencies to review their

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[2] AG Memo, Exhibit 7, page 7.

[3] AG Memo, Exhibit 7, page 1, "Principles of Religious Liberty."

[4] AG Memo, Exhibit 7, page 3, Principle 10.

regulatory systems for compliance with RFRA with the aid of the Department of Justice's Office of Legal Policy, is attached as Exhibit 11.

Promoting the Rule of Law Through Improved Agency Guidance Documents**, EO 13891, 84 FR 55235 (Oct. 15, 2019).** This EO establishes "the policy of the executive branch … to require that agencies treat guidance documents as non-binding both in law and in practice,"[5] Pursuant to Section 3 of EO 13891, the Office of Management and Budget issued an Implementing Memorandum (the "OMB Memo") that requires the Agency to decide, by February 28, 2020, whether to rescind the Guidance as Agency doctrine, or to publish it on "a single, searchable, indexed website that contains, or links to, all of the agencies' respective guidance documents currently in effect." (OMB Memo, p.1, attached as Exhibit 9.) Rescinded guidance documents will be citable only "to establish historical facts." (EO 13891, Sec. 3(b); 84 FR 55236; Exhibit 8.)

EO 13891 also directs the Agency, by February 28, 2020, to issue regulations for issuing guidance documents that: (i) require any future guidance document to "clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract;" (ii) establish a procedure "for the public to petition for withdrawal or modification of a particular guidance document," and (iii) require a thirty-day public notice and comment period for all "significant guidance documents."[6] (EO 13891, Sec. 2(c); 84 FR 55236.)

***Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication* EO 13892, 84 FR 55239 (Oct. 15, 2019).** EO 13892, attached as Exhibit 10, provides a number of new procedural protections for parties subject to an assertion of administrative jurisdiction or authority over them. Most relevant to our discussion here, EO 13892 adjured Administrative Agencies to end the practice of using "guidance"[7] documents (1) to "impose new standards of conduct except as expressly authorized by law or contract," or, (2) to establish a regulated party's liability based on "noncompliance with a standard of conduct announced solely in a guidance document." Section 5 of EO 13892 also requires that agencies publish, in the Federal Register, documents supporting an agency's assertion of regulatory jurisdiction over new fields of activity (such as the Agency's declared intent to use the Guidance procedure to adjudicate requests for religious exemptions from the CSA pursuant to RFRA.)[8]

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[5] "[E]xcept as incorporated into a contract." (EO 13891, Sec. 1; 84 FR 55235.)

[6] One definition of a "significant guidance document" is that it raises "novel legal or policy issues arising out of legal mandates." Thus, guidance that seeks to harmonize the Agency's obligations under the CSA with those of RFRA, based on the legal mandate of *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418 (2006), would likely be a "significant guidance document." Further regarding the significance of this provision, infra at page 10.

[7] "Guidance document" means an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation," and excludes rules promulgated pursuant to notice and comment under 5 U.S.C § 553. EO 13892, Sec. 2(c); 84 FR 55240.

[8] Neither the CSA nor RFRA authorize the Drug Enforcement Agency to establish an administrative procedure of the sort the Guidance purports to create; accordingly, the Agency is required to carry the

4. Under EO 13892, Before Asserting Jurisdiction Under the Guidance, The Agency Must Articulate and Publish a Jurisdictional Basis for the Regulatory Activity

The Guidance does not state the basis for the Agency's assertion of jurisdiction over the activities of Visionary Churches. The only reason that the Agency has ever been involved in regulating a religious group's importation, manufacturing, distribution, or possession of controlled substances stems from settlement agreements reached with the UDV and Santo Daime churches. Those settlement agreements would not sustain an assertion of jurisdiction over unrelated, third-party Visionary Churches, under EO 13892.

> "No person should be subjected to a civil administrative enforcement action or adjudication absent prior public notice of both the enforcing agency's jurisdiction over particular conduct and the legal standards applicable to that conduct."[9]

There is no statutory basis for the Agency to assert administrative jurisdiction over Visionary Churches. The CSA contains no provision for granting religious exemptions from its proscriptions, and gives the Agency no authority to administer such a system. RFRA authorizes the District Courts to issue injunctions, and to adjudicate claims of religious exemption from civil and criminal general laws; however, it accords no role to any administrative agency.

Under the new requirements of EO 13892, if the Agency intends to use private contractual agreements as precedent for the assertion of jurisdiction over churches and believers who were not parties to those cases, it must publish both the agreements and the rationale for extending jurisdiction to prospective regulatory subjects who had no connection with the prior litigation.[10] If the DEA cannot assert and publish a valid jurisdictional basis for the Guidance, it must rescind it.

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burden of showing that it has jurisdiction over the field, and has provided notice of the same to the potentially regulated parties.

[9] (EO 13892, Section 1; 84 FR 55239; Exhibit 10.)

[10] "If an agency intends to rely on a document arising out of litigation (other than a published opinion of an adjudicator), such as a brief, a consent decree, or a settlement agreement, to establish jurisdiction in future administrative enforcement actions or adjudications involving persons who were not parties to the litigation, it must publish that document, either in full or by citation if publicly available, in the Federal Register (or on the portion of the agency's website that contains a single, searchable, indexed database of all guidance documents in effect) and provide an explanation of its jurisdictional implications."
EO 13892, Section 5.

5. The Guidance's Requirement That Petitioners Stop Taking Controlled Substances While Their Petition is Pending Imposes an Unconstitutional Prior Restraint on the Free Exercise Rights of Visionary Churches

a. The Guidance Requires Petitioners to Stop Taking Sacramental Controlled Substances Until the Agency Grants the Requested Certificate of Exemption

Paragraph 7 of the Guidance contains its most significant feature. Paragraph 7 requires every Petitioner to promise that its members will refrain from consuming controlled substances until the DEA issues a Certificate of Exemption.

b. The First Amendment Bars Prior Restraints on Free Expression

The First Amendment provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

In *Near v. Minnesota,*[11] the seminal case on prior restraints on secular speech, the Supreme Court invalidated a Minnesota statute that established a judicial procedure to enjoin the publication of scandalous newspapers. The Court explained that it had to protect the "preliminary freedom" to speak that "does not depend … on proof of truth." Subjecting a publisher to a duty to "produce proof of the truth of his publication, or of what he intended to publish, and of his motives, or stand enjoined" leaves "but a step to a complete system of censorship."[12]

c. Religious Practices are Protected From Prior Restraints, Like Secular Speech

In *Cantwell v. Connecticut*,[13] the Court invalidated a statute that required religious groups to prove their legitimacy in order to obtain a license, by an administrative procedure similar to the Guidance. The law at issue in *Cantwell* made it unlawful to "solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause … unless such cause shall have been approved by the secretary of the public welfare council."[14] Reversing the Connecticut courts, the Supreme Court explained that the First Amendment forbids governments from gate-keeping the right of free exercise:

> "It will be noted … that the Act requires an application to the secretary of the public welfare council of the State; that

[11] *Near v. Minnesota*, 283 U.S. 697 (1931).

[12] *Near v. Minnesota*, 283 U.S. 697, 721, *citing Patterson v. Colorado*, 205 U.S. 454, 462 (1907).

[13] *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

[14] *Id.*, 310 U.S. at 301-302.

> he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. … He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth."[15]

Such a system cannot survive constitutional scrutiny, because "to condition aid for the solicitation of religious views or systems upon a license, the grant of which rests in the determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty forbidden by the Constitution."[16]

The Agency's use of the Guidance to exert a prior restraint on free exercise is evident from the text of the letter the Agency sent to Soul Quest:

> "We encourage you to file a petition and obtain a response to your request for an exemption *before* engaging in the distribution of DMT under the assumption that this conduct qualifies as an exempt religious exercise."[17]

Like the ordinance in *Cantwell*, the Guidance empowers an official to determine whether a Petitioner will be allowed to engage in the free exercise of religion. Not long after *Cantwell*, in *Follett v. Town of McCormick*,[18] the Supreme Court held that Jehovah's Witnesses had properly refused to pay dollar-a-day city tax on bookselling where it operated as a prior restraint on free exercise and proselytizing and expressly stated in familiar language what was implicit in *Cantwell*: "Religious freedom, *i.e.*, free exercise, must not be subject to prior restraint."[19]

d. The Guidance Imposes an Unconstitutional Prior Restraint by Compelling Abstention From Religious Sacraments

Paragraph 7 of the Guidance requires that Petitioner's entire congregation voluntarily abstain from taking any sacrament that is a controlled substance while the Agency evaluates their Petition over an undefined time period. The chilling effect of this requirement is evident in the response from Soul Quest's attorney to the DEA's invitation to submit a Petition: "[T]he correspondence has effectively shuttered the ability of the Church to tend to its members."[20] Because a Petitioner's congregation must wait to engage in free exercise until the Agency issues a Certificate of Exemption, the Guidance bans a Petitioner from engaging in religious practice during the pendency of its Petition.

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[15] *Cantwell v. Connecticut*, 310 U.S. at 305 (emphasis added).

[16] *Cantwell v. Connecticut*, 310 U.S. at 307.

[17] (Exhibit 2, DEA Invitation Letter to Soul Quest, page 1, emphasis added.)

[18] *Follett v. Town of McCormick*, 321 U.S. 573 (1944).

[19] *Id.*, 321 U.S. at 576 (emphasis added).

[20] (Exhibit 3, page 1.)

Such a ban substantially burdens the free exercise of an important religious practice by Visionary Church members.

> "In general, a government action that bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, will qualify as a substantial burden on the exercise of religion."[21]

Nothing in the Guidance indicates how long the Agency will take to review a Petition. Ayahuasca Healings submitted a Petition in April 2016,[22] and as of the date of this correspondence in January 2020, it has neither been approved nor denied.

e. Visionary Churches Should Not be Required to Surrender Their Free Exercise Rights to Apply For an Exemption From the CSA

> "[I]ndividuals and organizations do not give up their religious-liberty protections by … interacting with federal, state, or local governments."[23]

The Agency's failure to act on petitions submitted under the Guidance stands in marked contrast to the manner in which the Agency administers requests for licensure from physicians, pharmacies, and pharmaceutical manufacturers. After holding the Guidance forth as the sole avenue for seeking exemption from the CSA, the Agency's failure to act on the pending Petitions provides dispositive evidence that the Guidance imposes a substandard process on applications for religious exemptions from the CSA. Long delay, or an indefinite term for processing applications for licensure, is an important factor in establishing the unconstitutionality of a non-judicial system of prior restraint.

> "Because the censor's business is to censor, there inheres the danger that he may well be less responsive than a court—part of an independent branch of government—to the constitutionally protected interests in free expression. And if it is made unduly onerous, by reason of delay or otherwise, to seek judicial review, the censor's determination may in practice be final."[24]

The Agency's inaction has left the only known actual Petitioners in suspense and legal peril for an extended period of time. The Agency's failure to timely process their Petitions shows that the Guidance process interferes with free exercise in violation of RFRA.[25] Finally, unreasonable processing delay is inconsistent with AG Sessions'

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[21] AG Memo, page 4, Principle 13.

[22] Exhibit 5.

[23] AG Memo, page 2, Principle 4.

[24] *Freedman v. State of Maryland*, 380 U.S. 51, 57-58 (1965).

[25] "A [legal proscription] burdens the free exercise of religion if it 'put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs,'" including when, if enforced, it "results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution.'" *Guam*

exhortations to administrative agencies to act with alacrity when addressing the needs of religious organizations for exemptions from the constraints of general law, because even brief interference with the free exercise of religion can be constitutionally offensive.

6. The Guidance Imposes a Disparate Impact on Religious Applications for Exemption as Compared to The Agency's System for Secular Registrants

In the Agency's Guidance-driven system, religious Petitions have the appearance of being abandoned promptly upon filing; whereas, secular applications for licensure or renewal are easily submitted via the DEA website, that allows applicants to establish accounts, update their status, obtain timely issuance of needed credentials, and various other administrative services. Meanwhile, religious Petitioners subject to the Guidance face a daunting system that compromises their Constitutional rights and demands they abstain from religious practice to obtain – nothing! Cast into a legal netherworld, Petitioners are left by the Agency to await a decision that the Agency shows no inclination to render.

Such unfair systems, founded on fundamental disrespect for religious beliefs, were condemned by Justice Samuel Alito, then sitting as a judge for the Third Circuit Court of Appeals, in *Blackhawk v. Pennsylvania*,[26] (affirming District Court injunction compelling Pennsylvania Game Commission to grant religious exemption from license requirements to Native American man who kept two bears for use in religious ceremonies, where licensure exemptions to circuses and researchers were liberally allowed). In *Blackhawk,* Justice Alito drew support from three cases that overturned exemption systems that refused to accommodate exemption requests from religious applicants, while allowing secular requests. The first was *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*,[27] (declaring ordinance unconstitutional that allowed exemption from animal cruelty laws for virtually all reasons except the religious exemption sought by a cult that practices animal sacrifice). Such a system is an unconstitutional "prohibition [because] society is prepared to impose [it] upon [religious outsiders] but not upon itself." This, Justice Alito noted, is the "precise evil" to be condemned as unconstitutional.

The second case was *Fraternal Order of Police v. Newark*,[28] holding unconstitutional a police conduct rule that allowed police to wear beards for "health reasons," but barred wearing a beard for religious reasons. The ban on religious beards was unconstitutional because government agencies may not use government policy to impose "a value judgment that secular (i.e., medical) motivations for wearing a beard are important enough to overcome its general interest in uniformity but that religious motivations are not."

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v. Guerrero, 290 F.3d 1210, 1222 (9th Cir. 2002), *quoting Thomas v. Review Bd. of Ind. Employment Sec. Div*., 450 U.S. 707, 718, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981) and *Braunfeld v. Brown*, 366 U.S. 599, 605, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961).

[26] *Blackhawk v. Pennsylvania*, 381 F.3d 202, (3rd Cir. 2004).

[27] *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (3rd Cir. 1993).

[28] *Fraternal Order of Police v. Newark*, 170 F.3d 359 (3rd Cir. 1999).

The third case, *Tenafly Eruv Association v. The Borough of Tenafly*,[29] held unconstitutional the City of Tenafly's refusal to allow Orthodox Jews to use power poles to support a network of fibers that create an "eruv," a designated space in which observant Jews are permitted to carry loads or push carts on the Sabbath, without breaking religious vows. Since virtually every other interest group had been allowed to hang papers and objects from power poles, the Borough's denial of the request "violates the neutrality principle … judging [the religious rationale] to be of lesser import than nonreligious reasons," and thus singles out "religiously motivated conduct for discrimination."[30]

7. The Guidance Violates the Establishment Clause, Because it Makes Intrusive Inquiries That Lead to Regulatory Entanglement

Paragraph 2 of the Guidance, entitled *Contents of Petition,* requires every Petition to state, under oath:[31]

> "(1) the nature of the religion (e.g., its history, belief system, structure, practice, membership policies, rituals, holidays, organization, leadership, etc.); (2) each specific religious practice that involves the manufacture, distribution, dispensing, importation, exportation, use or possession of a controlled substance; (3) the specific controlled substance that the party wishes to use; and (4) the amounts, conditions, and locations of its anticipated manufacture, distribution, dispensing, importation, exportation, use or possession."

The Guidance does not define the outermost scope of the Agency's power to investigate Petitioner's activities. Paragraph 5 gives the Agency an unlimited right to ask for more information, that must be provided within 60 days, or the Petition will be deemed "withdrawn."

The Guidance requires disclosures that administrative agencies may not compel from churches, because such informational demands lead to regulatory entanglement that violates the establishment clause of the First Amendment. In *Surinach v. Pequera de Busquets,*[32] a federal appeals court quashed a subpoena from a Puerto Rican government agency that had been served on the Superintendents of the Roman Catholic schools on the island, demanding production of extensive records about how the Catholic schools were being operated. The First Circuit held that the very demand to produce the records chilled free exercise. The Establishment Clause, that forbids the government from becoming "entangled" in the internal affairs of religious groups, was offended by the government's effort to pry into the Church's private affairs. The First Circuit held: "This

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[29] *Tenafly Eruv Association v. The Borough of Tenafly*, 309 F.3d 144 (3rd Cir. 2002).

[30] *Tenafly Eruv Assoc.*, 309 F.3d at 168 (*quoting Lukumi, infra,* 508 U.S. at 537; *Fraternal Order of Police, infra*, 170 F.3d at 364–65).

[31] Paragraph 3 requires a Petition to be submitted under penalty of perjury.

[32] *Surinach v. Pequera de Busquets*, 604 F.2d 73 (1st Cir. 1979).

kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids."[33]

8. The Guidance Demands a Waiver of Fifth Amendment Rights As the Cost of Submitting a Bid to Confirm First Amendment Free Exercise Rights

a. Compliance With the Guidance Requires Petitioners to Self-Incriminate

The Agency is a law enforcement agency, and the Guidance contains no limitations on the extent to which the disclosures required by the Petition could be used by the Agency. The statements in the Petition itself could provide probable cause to arrest the individual who signed the Petition, and to issue search warrants of the places where sacramental controlled substances are kept or distributed. The Petition would provide a roadmap for prosecution of church members for conspiracy to distribute controlled substances. At trial for violating the CSA, the Petition could be admitted to impeach contrary testimony denying guilt by the person who signed the Petition or church members charged as co-conspirators. Accordingly, the Guidance procedure is objectionable as a violation of the Fifth Amendment guarantee of freedom from self-incrimination.[34]

b. The Agency's "Invitations" to Submit Petitions Cross the Line from Promulgating the Guidance on Faulty Grounds to Using the Guidance to Compel Self-Incrimination

On at least two occasions, the DEA has sent an "invitation to submit a Petition," that has been treated by these churches as a *de facto* investigative demand (Ayahuasca Healings and Soul Quest).[35] In each case, these groups submitted Petitions. This was an unsurprising result, because the "invitation" to submit a Petition carries the implied threat of enforcement action if a Petition were not submitted. This threat of enforcement took the Agency from the position of having promulgated a Guidance document on faulty Constitutional grounds to actually seeking to compel individuals to engage in self-incrimination.

As the OMB Memo makes clear, the Agency's coercive issuance of "invitations" to submit a Petition were also a violation of the proper agency use of Guidance documents:

> "[A] *guidance document should never be used to establish new positions that the agency treats as binding*; any such requirements must be issued pursuant to applicable notice-and-comment requirements of the Administrative Procedure Act or other applicable law. *Nor should agencies use guidance documents*-including those that describe themselves as non-binding effectively *to coerce private-party conduct*, for instance by suggesting that a standard in

[33] *Surinach*, 604 F.2d at 78, *quoting Lemon v. Kurtzman*, 403 U.S. 602, 620 (1971).

[34] *Leary v. United States*, 395 U.S. 6 (1969); *Marchetti v. United States*, 390 U.S. 39 (1968).

[35] *See* note 1, *supra*.

> a guidance document is the only acceptable means of complying with statutory requirements, or by threatening enforcement action against all parties that decline to follow the guidance."[36]

c. Compliance With the Guidance Compels Individual Petition Signers to Risk Perjury by Representing Future Compliance by Other Individuals

An individual must sign the Petition under penalty of perjury, because an organization cannot take the oath, and that person would be directly incriminated by making the statements required in the Petition. While it is understandable that the Agency wishes to obtain reliable information in a Petition, without protections from having the Petition used for prosecutorial purposes, the requirement violates the Fifth Amendment rights of the signer. Further, given the implied duty to comply with the provisions of the Guidance while the Petition is pending, perjury charges could be premised on material omissions, or if some members of the church failed to keep the promise required by paragraph 7 to abstain from taking a sacramental controlled substance. Thus, the proscription on sacramental use of the controlled substance under paragraph 7 presents a risk of perjury for the signer. This presents an unacceptable risk posed by the conduct of church members who may feel spiritually compelled to practice their religion by consuming the sacramental controlled substance, notwithstanding the fact that this would place the person who signed the Petition under penalty of perjury at risk of criminal liability.

9. Conclusion: The Guidance Should Be Rescinded

After conducting the review required by Executive Orders 13891 and 13892, and the OMB Memo, the Agency should rescind the Guidance. Under the plain language of these two Executive Orders, guidance documents may not be used to accomplish the purposes for which it was evidently promulgated – to establish new legal responsibilities for Visionary Churches and their congregations. It was prepared by an administration that had not been directed, as the Agency has been by Executive Order 13798 and the AG Memo, to proactively accommodate religious requests from exemption from general laws that infringe upon the right of free exercise. The Guidance suffers from many Constitutional flaws, and is a supreme demonstration of administrative overreach.

The above analysis identifies what NAAVC considers to be the most egregious defects, and they cannot be remedied through small alterations. The Guidance was adopted without sufficient administrative forethought, and has survived this long only because it has never been subjected to judicial testing. It should now be rescinded and relegated to a past period of Agency history.

Finally, if the Agency decides to issue new guidance documents regarding the manner in which it will deal with requests for religious exemption from the CSA, those would be

[36] OMB Memo, Exhibit 9, p. 3, emphasis added.

"significant guidance documents."[37] Accordingly, the Agency would be required to provide a minimum period of thirty days public notice and comment before adoption.[38]

NAAVC respectfully suggests that a thirty-day public comment period would be insufficient, given the amount of interest that such a process would generate, and the large number of persons affected by the Agency's rulemaking in the field of visionary religion. Several peer-reviewed scientific studies establishing the safety and efficacy of Visionary Church practice have been conducted during the ten years since the Guidance was issued, and such materials belong in the Agency rulemaking record. Visionary Churches have grown in number and size, and many of their members have experienced benefits from their practice. These interested parties may wish to engage in the comment process, and could make invaluable contributions to the rulemaking process. Thus, NAAVC requests that the Agency allow at least three months for public comment.

NAAVC and all members of the Visionary Church community thank you for your thoughtful consideration of these matters.

Very truly yours,

Charles Carreon (Cal. Bar # 127139)
Counsel to North American Assn. of Visionary Churches

[37] Sec. 2 of EO 13891; 84 FR 55236; Exhibit 8.
[38] EO 13891, Sec. 4(iii); 84 FR 55237; Exhibit 8

EXHIBIT LIST

Exhibit	Document Title
1.	Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act
2.	DEA "Invitation Letter" to Soul Quest
3.	Soul Quest's Response to DEA's Invitation Letter
4.	DEA's Response to Soul Quest's Response
5.	Petition submitted by Ayahuasca Healings
6.	Executive Order 13798, Promoting Free Speech and Religious Liberty
7.	Federal Law Protections for Religious Liberty
8.	Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents
9.	OMB Implementation Memorandum
10.	Executive Order 13892, Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication
11.	Implementation of Memorandum on Federal Law Protections for Religious Liberty

EXHIBIT 1

Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act

In recent years, the Drug Enforcement Administration (DEA) has seen an increase in requests from parties requesting religious exemptions from the Controlled Substances Act (CSA) to permit the use of controlled substances. The Religious Freedom Restoration Act (RFRA) provides that the "Government shall not substantially burden a person's exercise of religion" unless the Government can demonstrate "that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-l. In **Gonzales** v. **O Centra Espirita Beneficente Uniao do Vegetal,** 126 S.Ct. 1211 (2006), the Supreme Court held that government action taken pursuant to the CSA is subject to RFRA. In order to obtain an exemption under RFRA, a party must, as a preliminary matter, demonstrate that its (1) sincere (2) religious exercise is (3) substantially burdened by the CSA. 42 U.S.C. § 2000bb et seq**.**

The guidelines that follow are an interim measure intended to provide guidance to parties who wish to petition for a religious exemption to the CSA:

1. *Filing Address.* All petitions for exemption from the Controlled Substances Act under RFRA shall be submitted in writing to Susan A. Gibson, Deputy Assistant Administrator, Diversion Control Division, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152.

2. *Content of Petition.* A petition may include both a written statement and supporting documents. A petitioner should provide as much information as he/she deems necessary to demonstrate that application of the Controlled Substances Act to the party's activity would (1) be a substantial burden on (2) his/her sincere (3) religious exercise. Such a record should include detailed information about, among other things, (1) the nature of the religion {e.g., its history, belief system, structure, practice, membership policies, rituals, holidays, organization, leadership, etc.); (2) each specific religious practice that involves the manufacture, distribution, dispensing, importation, exportation, use or possession of a controlled substance; (3) the specific controlled substance that the party wishes to use; and (4) the amounts, conditions, and locations of its anticipated manufacture, distribution, dispensing, importation, exportation, use or possession. A petitioner is not limited to the topics outlined above, and may submit any and all information he/she believes to be relevant to DEA's determination under RFRA and the Controlled Substances Act.

3. *Signature.* The petition must be signed by the petitioner, who must declare under penalty of perjury that the information provided therein is true and correct. See *28 U.S.C. § 1746*.

4. *Acceptance of Petition for Filing.* Petitions submitted for filing are dated upon receipt by DEA. If it is found to be complete, the petition will be accepted as filed, and the petitioner will receive notification of acceptance. Petitions that do not conform to this guidance will not generally be accepted for filing. A petition that fails to conform to this guidance will be

returned to the petitioner with a statement of the reason for not accepting the petition for filing. A deficient petition may be corrected and resubmitted. Acceptance of a petition for filing does not preclude DEA from making subsequent requests for additional information.

5. *Requests for Additional Information.* DEA may require a petitioner to submit such additional documents or written statements of facts relevant to the petition as DEA deems necessary to determine whether the petition should be granted. It is the petitioner's responsibility to provide DEA with accurate contact information. If a petitioner does not respond to a request for additional information within 60 days from the date of DEA's request, the petition will be considered to be withdrawn.

6. *Applicability of DEA Regulations.* A petitioner whose petition for a religious exemption from the Controlled Substances Act is granted remains bound by all applicable laws and Controlled Substances Act regulations governing registration, labeling and packaging, quotas, recordkeeping and reporting, security and storage, and periodic inspections, among other things. See *21 C.F.R. §§ 1300-1316*. A petitioner who seeks exemption from applicable CSA regulations (as opposed to the CSA itself) may petition under *21 C.F.R. § 1307.03.* Such petition must separately address each regulation from which the petitioner seeks exemption and provide a statement of the reasons for each exemption sought.

7. *Activity Prohibited Until Final Determination.* No petitioner may engage in any activity prohibited under the Controlled Substances Act or its regulations unless the petition has been granted and the petitioner has applied for and received a DEA Certificate of Registration. A registration granted to a petitioner is subject to subsequent suspension or revocation, where appropriate, consistent with CSA regulations and RFRA.

8. *Final Determination.* After the filed petition—along with all submissions in response to any requests for additional information—has been fully evaluated, the Deputy Assistant Administrator of the Diversion Control Division shall provide a written response that either grants or denies the petition. Except in the case of affirming a prior denial or when the denial is self-explanatory, the response shall be accompanied by a statement of reasons upon which the decision is based. This written response is a final determination under *21 U.S.C. § 877*.

9. *Application of State and Other Federal Law.* Nothing in these guidelines shall be construed as authorizing or permitting any party to take any action which such party is not authorized or permitted to take under other Federal laws or under the laws of the State in which he/she desires to take such action. Likewise, compliance with these guidelines shall not be construed as compliance with other Federal or State laws unless expressly provided in such other laws.

EXHIBIT 2

U. S. Department of Justice
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, Virginia 22152

www.dea.gov

DEC 2 1 2016

Derek B. Brett
Burnside Law Group
Park Central, Suite 9
109 Ilsley Avenue
Dartmouth, Nova Scotia B3B 1S8
Canada

Dear Mr. Brett:

The Drug Enforcement Administration ("DEA") is in receipt of your December 6, 2016, letter regarding the Soul Quest Church of Mother Earth. Your letter references DEA's August 22, 2016, letter to your client in which we informed them that DEA was aware that they were offering "retreats" involving substances listed in Schedule I of the Comprehensive Drug Abuse Prevention and Control Act of 1970, also known as the "Controlled Substances Act" ("CSA"). As we noted in that August 22 letter, under the CSA and its implementing regulations, Congress prohibits the importation and distribution of Schedule I Controlled Substances except as authorized by law, Title 21, United States Code, Sections 841(a), 952(a)(2), 960 (21 U.S.C. §§ 841(a), 952(a)(2), 960). DEA informed your client that, if they were purporting to distribute or use controlled substances for the purposes of religious exercise, the Religious Freedom Restoration Act ("RFRA") may be applicable. For your clients' information, DEA included a copy of its guidance for those who seek to petition DEA for an exemption from the CSA pursuant to RFRA.

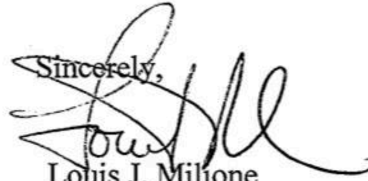
Your December 6, 2016, letter seeks "elaboration on what criteria are utilized by the DEA in scrutinizing exemption applications" and indicates your view that DEA is using "enhanced authority . . . to wield absolute discretion over the process." I wish to assure you that DEA implements its petition process in full compliance with the requirements of RFRA. DEA exercises no "enhanced authority" and has no "absolute discretion." Rather, we apply the criteria set forth in the statute, as interpreted by the Supreme Court in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. § 418 (2006), and subsequent case law. As we noted in our August 22, 2016, letter, RFRA provides that the "[g]overnment shall not substantially burden a person's exercise of religion" unless the Government can demonstrate that "application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest," 42 USC § 2000bb-1. To establish a *prima facie* case under RFRA, a claimant must demonstrate that application of the CSA's prohibitions on use of the specified controlled substances to the claimant would (1) substantially burden, (2) religious exercise (as opposed to a philosophy or way of life), (3) based on a belief that is sincerely held by the claimant. *O Centro Espirita,* 546 U.S. at 428. Once a claimant has established these threshold requirements, the burden shifts to the government to demonstrate that the challenged prohibition furthers a compelling governmental interest by the least restrictive means. RFRA requires DEA to demonstrate that the compelling interest test is satisfied on a case by case basis, through application

of the CSA to the particular claimant who believes that this sincere exercise of religion is being substantially burdened. 546 U.S. at 430-31.

Section 2 of DEA's "Guidance Regarding Petitions for Religious Exemption" provides further information about the contents of a petition, should you require it. Once a petition is received, DEA fully considers the information provided and evaluates it in light of the statutory RFRA criteria noted above. If necessary, DEA may request additional information from a petitioner as set forth in section 5 of the Guidance. After the petition and any supplemental submissions have been evaluated, DEA provides a written response that either grants or denies the petition as provided in section 8 of the Guidance.

We trust this letter addresses your inquiry. For information regarding the DEA Diversion Control Division, please visit www.DEAdiversion.usdoj.gov. If you have additional questions on this issue, please contact the Diversion Control Division Liaison and Policy Section at (202) 307-7297.

Sincerely,



Louis J. Milione
Assitant Administrator
Diversion Control Division

EXHIBIT 3

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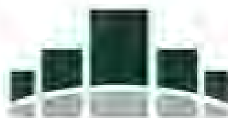

BURNSIDE

LAW GROUP

Derek B. Brett
dbb@burnsidelaw.net

December 6, 2016

VIA Registered Mail:

Joseph T. Rannazzisi
Deputy Assistance Administrator
Office of Diversion Control
Drug Enforcement Administration
8701 Morrissette Drive,
Springfield, Virgina 22152

Dear Mr. Rannazzisi:

I represent the interests of Soul Quest Church of Mother Earth ("Soul Quest"), a religious institution based in Orlando, Florida. I write in response to the correspondence your agency had previously directed to my client. That correspondence advised my client to cease and desist the use of Ayahuasca as a sacrament during its religious ceremonies.

The specific religious faith of Soul Quest and its members is a hybrid of Native American spirituality and Christianity, very much akin – in many ways to the institution that was the subject of the Supreme Court's 2006 decision in the O Centro Espirita Beneficente Uniao Do Vegetal matter. In other words, the ritual use of Ayahuasca in the Soul Quest ceremonies and services is deemed to be fundamental to its religious practices.

Soul Quest would normally be deemed to be protected in these practices under both the Religious Freedom Restoration Act of 1993, the subject of the O Centro Espirita decision before the Supreme Court. As federal authorities, of course, the DEA is subject to that decision, its progeny, and in recognizing the fundamental constitutional right of Soul Quest and its members to freely practice its religious beliefs.

The correspondence from the DEA – dated August 22, 2016, and attached, hereto – is troubling for several reasons. First, the correspondence has effectively shuttered the ability of the Church to tend to its members. As the use of Ayahuasca is so fundamental to its religious ceremonies, the Church and its members are wholly unable to exercise their sincere religious beliefs. It is the underlying nature of your

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agency, and its ability to arrest and have prosecuted the leadership and members of Soul Quest that has resulted in the shutdown of most Church operations and all affiliated religious services.

Second, even though the DEA will attest to the presence of an exemption process, that very process seems rife with defects that – we reasonably believe violate both the spirit of the RFRA and the letter of the Free Exercise Clause of the First Amendment. Such an exemption process, for which there appears virtually no definition, appears to allow for your agency – presumably, with the assistance of a designated Assistant U.S. Attorney – to wield absolute discretion over the process. Again, such enhanced authority seems in direct conflict with my client and its members' ability to freely exercise their faith according to the tenets of that faith. Further, our analysis of the DEA's exemption process further solidifies the impression that few, if any, exemptions are actually granted.

Indeed, the exemption process, for which there seems to be no mandated timetable for completion, serves to only exacerbate the injury to Soul Quest and its followers. Already, the Soul Quest Church has lost many of its members. Consequently, those adherents in the Central Florida area are left without any suitable religious venue upon which to practice their faith. The harm that has ensued is quickly approaching a permanent status.

We are seeking input from agency. We are seeking elaboration on what criteria are utilized by the DEA in scrutinizing exemption applications. We are seeking information to better understand a process which – despite the sincere nature of the religious beliefs being expressed by Soul Quest and its followers – would – on its face, at the very least – seems geared only to denying an exemption despite such actual, veritable sincerity and the core nature of the use of Ayahuasca. Of course, it is our ultimate hope that a suitable dialogue could be achieved between the DEA and Soul Quest to permit for a reputable exemption process allowing for Soul Quest to – in the near future – resume engagement in its religious sacraments.

I look forward to your forthcoming response. Due to the continuing nature of the injury to Soul Quest, we are requesting your response, via correspondence to this office, by no later than December 24, 2016.

Sincerely,

DEREK B. BRETT
Counsel for Soul Quest

EXHIBIT 4

U. S. Department of Justice
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, Virginia 22152

www.dea.gov

DEC 2 1 2016

Derek B. Brett
Burnside Law Group
Park Central, Suite 9
109 Ilsley Avenue
Dartmouth, Nova Scotia B3B 1S8
Canada

Dear Mr. Brett:

The Drug Enforcement Administration ("DEA") is in receipt of your December 6, 2016, letter regarding the Soul Quest Church of Mother Earth. Your letter references DEA's August 22, 2016, letter to your client in which we informed them that DEA was aware that they were offering "retreats" involving substances listed in Schedule I of the Comprehensive Drug Abuse Prevention and Control Act of 1970, also known as the "Controlled Substances Act" ("CSA"). As we noted in that August 22 letter, under the CSA and its implementing regulations, Congress prohibits the importation and distribution of Schedule I Controlled Substances except as authorized by law, Title 21, United States Code, Sections 841(a), 952(a)(2), 960 (21 U.S.C. §§ 841(a), 952(a)(2), 960). DEA informed your client that, if they were purporting to distribute or use controlled substances for the purposes of religious exercise, the Religious Freedom Restoration Act ("RFRA") may be applicable. For your clients' information, DEA included a copy of its guidance for those who seek to petition DEA for an exemption from the CSA pursuant to RFRA.

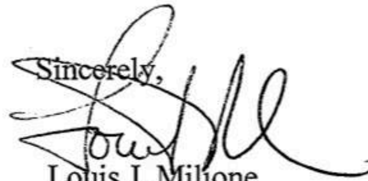
Your December 6, 2016, letter seeks "elaboration on what criteria are utilized by the DEA in scrutinizing exemption applications" and indicates your view that DEA is using "enhanced authority . . . to wield absolute discretion over the process." I wish to assure you that DEA implements its petition process in full compliance with the requirements of RFRA. DEA exercises no "enhanced authority" and has no "absolute discretion." Rather, we apply the criteria set forth in the statute, as interpreted by the Supreme Court in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. § 418 (2006), and subsequent case law. As we noted in our August 22, 2016, letter, RFRA provides that the "[g]overnment shall not substantially burden a person's exercise of religion" unless the Government can demonstrate that "application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest," 42 USC § 2000bb-1. To establish a *prima facie* case under RFRA, a claimant must demonstrate that application of the CSA's prohibitions on use of the specified controlled substances to the claimant would (1) substantially burden, (2) religious exercise (as opposed to a philosophy or way of life), (3) based on a belief that is sincerely held by the claimant. *O Centro Espirita,* 546 U.S. at 428. Once a claimant has established these threshold requirements, the burden shifts to the government to demonstrate that the challenged prohibition furthers a compelling governmental interest by the least restrictive means. RFRA requires DEA to demonstrate that the compelling interest test is satisfied on a case by case basis, through application

of the CSA to the particular claimant who believes that this sincere exercise of religion is being substantially burdened. 546 U.S. at 430-31.

Section 2 of DEA's "Guidance Regarding Petitions for Religious Exemption" provides further information about the contents of a petition, should you require it. Once a petition is received, DEA fully considers the information provided and evaluates it in light of the statutory RFRA criteria noted above. If necessary, DEA may request additional information from a petitioner as set forth in section 5 of the Guidance. After the petition and any supplemental submissions have been evaluated, DEA provides a written response that either grants or denies the petition as provided in section 8 of the Guidance.

We trust this letter addresses your inquiry. For information regarding the DEA Diversion Control Division, please visit www.DEAdiversion.usdoj.gov. If you have additional questions on this issue, please contact the Diversion Control Division Liaison and Policy Section at (202) 307-7297.

Sincerely,



Louis J. Milione
Assitant Administrator
Diversion Control Division

EXHIBIT 5

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To. Joseph T. Rannazzisi
Deputy Assistant Administrator
Office of Diversion Control
Drug Enforcement Administration

From: Blaine B. McGivern, Esq.
Counsel for Petitioners

Date: April 4, 2016

AYAHUASCA HEALINGS NATIVE AMERICAN CHURCH'S PETITION FOR A CONTROLLED SUBSTANCES ACT EXEMPTION UNDER THE RELIGIOUS FREEDOM RESTORATION ACT

Petitioners (b)(6) Christopher "Trinity" de Guzman, and (b)(6) ("Petitioners"), individually and on behalf of and in their capacities as members and leaders of Ayahuasca Healings Native American Church ("AHNAC"), hereby respectfully petition the Drug Enforcement Administration ("DEA") for an Exemption from the Controlled Substances Act's ("CSA") prohibitions regarding Dimethyltryptamine ("DMT" or "Ayahuasca"), as provided by the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1, *et seq.*

RFRA provides, in relevant part, that—

> Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except . . . . [where the Government] demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.[1]

In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*[2] (*UDV*), a case involving a church whose members engaged in the sacramental use of Ayahuasca, the Supreme Court held that federal governmental actions that are taken pursuant to the CSA and which substantially burden a person's exercise of religion are subject to the strict scrutiny test set forth in RFRA. Thus, a person who demonstrates that his or her "sincere exercise of religion [is] substantially burdened" by the CSA has thereby established a *prima facie* claim for an exemption under RFRA[3], whereupon the burden of proof shifts to the government to show that enforcement of the relevant CSA prohibitions is the least restrictive means of furthering a compelling governmental interest.[4]

This petition will demonstrate: (1) that enforcement of the CSA against Petitioners would substantially burden their sincere exercise of religion; and (2) assuming the government does have a compelling interest, that there are less restrictive means to further that interest.

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1 42 U.S.C. § 2000bb-1(a) and (b).
2 126 S.Ct. 1211 (2006).
3 *Id.* at 1219.
4 42 U.S.C. §2000bb-1(b).

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I. Factual Background[5]

Ayahuasca Healings Native American Church is a 501(c)(3) organization formed by Petitioners for religious purposes. Petitioners intend very soon—within a few weeks of submitting this Petition—to change AHNAC's name to "Heart Energy Medicine Native American Church."

Petitioner (b)(6) title within the AHNAC organization is Creative Director and Spiritual Guide. Her role is to manage the creative aspects of AHNAC's activities, events, and community projects, and to coordinate the management team, volunteers, and members.

Petitioner (b)(6) (b)(6) roles and titles within the AHNAC organization are Chief Medicine Man and Church Director.

Petitioner (b)(6) His role and title within the AHNAC organization is Visionary Director.

Petitioners (b)(6) and Mr. de Guzman met in December of 2013. In May of 2015, they experienced a revelation "that the Creator had brought [them] together for a big and important reason," which was "to create healing communities all over the globe." In what Petitioners believe was "a series of divinely orchestrated events," Mr. (b)(6) and Mr. de Guzman felt divinely ordained to pursue the first step in fulfilling their mission to create such communities: "to partner up to bring this sacred medicine of Ayahuasca to the American public."

In pursuit of that goal, Petitioners began speaking out online about their intention of "bringing Ayahuasca to America." Petitioners also reached out to and received guidance from (b)(6) (b)(6) the founder of New Haven Native American Church (NHNAC—an independent branch of ONAC), who advised them that they "would have the complete and total legal protection of [a Native American Church], to be able to share Ayahuasca . . . with [AHNAC's] members" if AHNAC were a branch of NHNAC." Petitioners agreed and were inducted into NHNAC's fold.

Believing that they were now legally entitled to possess and distribute Ayahuasca to members of their church, Petitioners leased a plot of land in Elbe, Lewis County, Washington. There, with the help of volunteers, they erected a tipi for sacred ceremonial purposes and otherwise worked to prepare the land for its intended religious ceremonial purposes. Petitioners also began conducting interviews with prospective church members and began accepting contributions from members.

Petitioners scheduled and publicly announced (online) their first ceremonial retreat for January 22, 2016; following these announcements, AHNAC's social media presence "went viral." At that point, they were contacted by (b)(6) the founder of Oklevueha Native American Church (ONAC), who signaled his desire to support their mission. Petitioners saw in ONAC a church which shared "the same core beliefs [as AHNAC], as an Earth-based religion." Both churches "look at plants as teachers and spirits, and . . . turn to them for healing and guidance," and "share the same mission, to spread healing, truth, and love in the world, and together [ONAC and AHNAC] are working towards a vision where humans can live in harmony with each other and Mother Nature."

[5] Unless otherwise noted, all content in this Petition that is placed in quotation marks is quoted from Mr. de Guzman's account, as related to Petitioner's counsel.

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However [(b)(6)] took issue with AHNAC's claims of legal protections, on the ground that NHNAC "did not have the full legal protections that ONAC has, and that . . . in order to have the full legal protection available, [AHNAC] would need to be" directly under the aegis of ONAC. [(b)(6)] provided Petitioners with guidance "on how to re-structure [their] organization and public image," and assured Petitioners that they "would receive the full legal protection that [ONAC itself has], to be able to share Ayahuasca . . . with [AHNAC's] members."

Based on Mr. [(b)(6)] advice, Petitioners took down their website and completely rewrote and restructured its content in order to comply with ONAC's Code of Ethics and Code of Conduct. Petitioners "followed all of [Mr. [(b)(6)] instructions, and [on December 22, 2015,] after a week of being offline," received "the full blessing from [(b)(6)] and ONAC, thus creating an official independent branch of ONAC."[6]

Believing once again that that they were now legally entitled to possess and distribute Ayahuasca to members of their church, Petitioners brought their new website online and continued receiving applications from prospective church members, conducting interviews, and receiving contributions to fund the building of their church.

Prior to hosting their first Ayahuasca retreat on January 22, 2016, Petitioners sent letters to (1) the Lewis County office and (2) the Lewis County District Attorney's office, informing the local government of their intent to host religious ceremonies involving scheduled substances. The County replied with approval to proceed, and a business number.

Between January 22, 2016 and February 29, 2016, Petitioners led a total of six retreats involving the sacramental use of Mother Ayahuasca and Father San Pedro.

In late January or early February of 2016, Petitioners received notice from the IRS that AHNAC had obtained status as a 501(c)(3) charitable organization.[7]

In mid-February of 2016, Petitioners received DEA's letter advising them of the necessity of obtaining an exemption from CSA prohibitions under RFRA. On February 29, 2016, Petitioners retained *pro bono* counsel, Blaine B. McGivern, for the purposes of assisting them in preparing this Petition. On advice of said counsel, Petitioners ceased all CSA-prohibited activities pending DEA's final decision on this Petition.

II. Enforcement of the CSA against Petitioners would substantially burden their sincere exercise of religion.

A. *Petitioners' belief system constitutes a religion.*

Petitioners derive their religious beliefs directly from the shamanic, animist religions of the Amazon in South America, which also incorporate elements of other belief systems, most prominently that of Christianity. Many of the indigenous South American cultures have *curanderos*, medicine men and women, or shamans, who act as their tribes' priests and healers. These cultures believe, as do Petitioners,

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[6] *See* Exhibit A, Declaration of [(b)(6)] Also, a video of [(b)(6)] ceremonial induction of AHNAC into the fold of ONAC is available at: https://www.youtube.com/watch?v=poUuORM3P1Q (last viewed 3/28/2016).

[7] *See* Exhibit B, attached.

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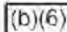
that all diseases and illnesses have spiritual root causes; the role of the *curanderos* or shamans is to enter the spirit world through the highly ritualized use of entheogenic substances—in Petitioners' case, Ayahuasca—in order to perform the tasks necessary to effectuate spiritual healing. Such tasks may include cleansing a diseased person's soul, or chasing away the evil spirits who are believed to be the cause of the disease.

The role of "Mother Ayahuasca" in Petitioners' belief system cannot be overstated. Petitioners believe, as do their spiritual forebears, that Ayahuasca is both a manifestation of the divine will and a divine, conscious entity in her own right. They consider Ayahuasca a "teacher plant," and the most powerful of all such plants. Petitioners believe that the ritualistic use of Ayahuasca as a sacrament—in combination with millennia-old prescribed rituals for cleansing and fasting, music, chanting, and shamanic guidance—allows those who partake in the Ayahuasca ceremonies not only a glimpse of the spirit world, but of the Great Spirit[8] that permeates and unites all of creation. This journey into the spirit world inevitably entails a journey into one's own soul. This journey of self-discovery is, to the voyager, indistinguishable from his or her "exterior" journey into the spirit world; indeed, the two journeys are in fact the same, and are inseparable. The effect is a simultaneous awakening of the sacramental Ayahuasca user to the Great Spirit, his or her own place in the Great Spirit, and the Great Spirit's place within him or her. The end result is almost always an indescribably profound religious experience.

The following is excerpted from an as-yet unpublished writing by Mr. de Guzman:


(b)(6)

As illustrated by the above excerpt, Petitioners' beliefs are indisputably religious in nature. As such, and for the following reasons, Petitioners ask that the government recognize their religion as one that is entitled to the protections afforded by RFRA and the Free Exercise Clause of the First Amendment to the U.S. Constitution.

[8] Petitioners have a number of different names for their deity, including: the Universe, the Creator, the Great Spirit, or simply Spirit. For the purpose of clarity, this Petition will refer to Petitioners' deity as "Great Spirit" or "Spirit."

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1. Petitioners' religion is not merely a "philosophy" or "way of life."

Petitioners' beliefs are primarily metaphysical in nature, as their belief system revolves around psychic entry into the spirit world. Naturally, there is some degree of overlap between Petitioners' non-secular belief system and secular concerns; however, such overlap is inevitable and common to virtually all religions. For example, Petitioners believe that the propagation of their religion will result in the medical and social betterment of people around the world—a belief which is analogous to the belief of Christians that Jesus Christ was (and is) able to cure the medical and social ills of the First Century (and today).

The critical point is that although Petitioners' goal is to catalyze a "Global Awakening," they believe that such an awakening hinges entirely on working with Mother Ayahuasca to enter the spirit world and heal the world's ills. This is not a philosophy or way of life; it is a belief in the metaphysical power of a corporeal manifestation of a divine, spiritual being (i.e., Ayahuasca).

Moreover, the Free Exercise case law is clear that a belief system need not be theistic—i.e., adhere to a belief in a Supreme Being—to qualify as a religion. It is enough for it to be "based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent."[9] Here, Petitioners' belief system inarguably includes a "transcendental or all-controlling force" in the forms both of Mother Ayahuasca and the omnipresent Great Spirit; thus, even a theistic definition of religion would have to encompass Petitioners' belief system. Nevertheless, application of a non-theistic definition would also necessarily encompass Petitioners' belief system, since everything in Petitioners' worldview is "ultimately dependent" upon working with Mother Ayahuasca.

Lastly, AHNAC has an express policy of taking "no position on any public or private controversy."[10] This stated policy should counsel against characterizing Petitioners' religion as a "philosophy" or "way of life," since it clearly eschews secular concerns in favor of spiritual matters.

2. Petitioners' religion satisfies the "indicia/guidelines for religion."

a. *Fundamental and ultimate ideas that address reality beyond the physical world.*

As noted by the Third Circuit in *Africa*, 662 F.2d at 1033, "above all else, religions are characterized by their adherence to and promotion of certain 'underlying theories of man's nature or his place in the Universe.'"[11]

Petitioners' belief system does address such "fundamental and ultimate ideas." Their belief in the existence of a metaphysical spirit world wherein human souls exist and interact with other spiritual beings and thereby incur benefit or harm to themselves or to others, combined with their belief in an omnipresent Great Spirit and the manifestations of its many facets—most prominently Mother Ayahuasca—provides a fundamental structure for answering such basic questions. For example, the perennial question of *purpose* is answered thusly:

> I've walked this path for countless years, or really, countless lifetimes, and this is all about one thing...

---

9 *United States v. Seeger*, 380 U.S. 163, 176 (1965); *see also Africa v. Commonwealth*, 662 F.2d at 1031 (3d Cir. 1981).

10 *Available at* https://ayahuascahealings.com/ayahuasca-usa-church-vision/ (last viewed March 21, 2016).

11 Quoting *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1160 (D.C. Cir. 1969.

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> Our Global Awakening.
>
> You, me, the people around us, the communities we build, we are all serving something so much greater than us. We are serving the Whole, Mother Earth, our Collective Humanity, to achieve the peace that is destined for us.
>
> Mother Ayahuasca, . . . our conscious communities, the infinite love that flows from all we live and exist as, this is all just in service for the Divine Plan to flow through.
>
> . . . [AHNAC is] here to support you in this Divine Remembering.
>
> Finding your purpose. Your reason for why you're really here. And helping you live that, unquestionably, unshakably, and without a doubt about any single aspect of it.[12]

In other words, Petitioners believe that humanity's purpose is to serve "something greater," namely "the Whole" (or the "Divine Plan," Great Spirit, etc.), Mother Earth, and Collective Humanity. Moreover, the following excerpt from AHNAC's website provides an informative description of Petitioners' mission:

> To enhance our awareness, feeling and sensitivity to life, the spirit and the energy in the universe, through the interaction with others from around the globe and our living breathing planet.
>
> To explore the mystery of life, question consciousness, reality, and the power of the mind.
>
> . . .
> To restore our deep inner connection with the natural world, and in doing so help guide people to guide themselves in re-discovering the path to spiritual enlightenment and the power of living in the now.
>
> . . .
> To be responsible volunteers, guardians, caretakers and protectors of these lands and the sacred sites of our ancestors.[13]

Themes of environmentalism, and even of filial piety through environmental stewardship, are ubiquitous throughout Petitioners' teachings. These themes may be analogized to, and in some cases rightly conflated with, those present in religions (or religious genera) such as Gaianism, Animism, and Shamanism.

Petitioners' religion, like the religions from which it derives, places great emphasis on environmental stewardship, recognizing that there are no actual (as opposed to invented) boundaries between humanity and nature, nor between matter and spirit, nor the self and the Whole. Having thus rejected Cartesian dualism and accepted this metaphysical understanding of universal interconnectedness, Petitioners' religion obligates its practitioners to alter their behaviors such that they are in alignment with the ecological and supernatural needs of the environment.

To put it another way (insofar as it is susceptible to verbal distillation), Petitioners' teleological reasoning is as follows: (1) we are part of the whole of existence, and the whole of existence is us—there is no distinction other than that which humanity has imagined; (2) the whole of existence is the Great Spirit; therefore, (3) any action taken by an individual affects not only that individual and his or her immediate

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12 *Available at* https://ayahuascahealings.com/trinitys-welcome-message/ (last viewed March 21, 2016).

13 Https://ayahuascahealings.com/ayahuasca-usa-church-vision/ (last viewed March 21, 2016).

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surroundings, but the entirety of existence and the Great Spirit; (4) actions not in alignment with the ecological and supernatural needs of the environment are contrary to the needs of ourselves and the plans of the Divine Consciousness; therefore, (5) our purpose and our moral duty is to conduct ourselves such that we act in harmony with the environment.

To be clear, the foregoing is only one facet of Petitioners' belief system. Petitioners have other non-secular reasons for their envirocentric morality, including their animistic beliefs (e.g., it is morally wrong to destroy a mountain to mine its minerals, in part because the mountain has a soul and is a conscious entity).

As for the question of life after death, Petitioners' belief in souls, a spirit world, and a fundamentally interconnected spiritual-physical ecology necessitates a belief in reincarnation. As Mr. de Guzman has publicly stated: "I've walked this path for countless years, or really, countless lifetimes . . . ." *See supra.*

Clearly, Petitioners' religion provides metaphysical answers to those questions that have haunted mankind from its first moments of self-awareness: our purpose in life; the meaning of self; and what happens after we die.

b. *A comprehensive moral or ethical belief system.*

Petitioners believe that the question of their moral or ethical belief system has been adequately addressed in the foregoing subsection; nevertheless, they reiterate here that their religion imposes upon them a moral duty to act in accordance with the spiritual and ecological needs of the environment. The consequences of breaching that duty are analogous to those imposed by the Hindu principle of karma: whatever action one takes against anyone or anything else is simultaneously an action taken against oneself, and the effects of such actions will manifest either in this life or in the next.

By extension—by the transitive properties of animistic belief—Petitioners' religion also imposes upon them a moral duty to act in accordance with the spiritual and physical needs of other persons. This is analogous to the "Golden Rule," the most famous permutations of which are attributed to Jesus Christ: "Do unto others as you would have them do unto you."[14]

Lest there be any confusion about how Petitioners' religion characterizes particular conduct as "right" or "wrong," AHNAC has published on its website a comprehensive set of moral imperatives, which it refers to as "Philosophies" (which is, admittedly, something of a misnomer). These guidelines have been wholly adopted from AHNAC's parent church, the Oklevueha Native American Church, and Petitioners expect all members of AHNAC to adhere to them. As an example, consider the following:

> **Fifth Philosophy – TO THE EARTH**
>
> Our Mother Earth is the source of all life, whether it be plants, the two-legged, four-legged, winged ones or human beings. The Mother Earth is the greatest teacher, if we listen, observe and respect her. When we live in harmony with the Mother Earth, she will recycle the things we consume and make them available to our children. As an Indian man, I must teach my children how to care for the Earth so it is there for the future generations.
>
> So from now on, I realize the Earth is our Mother. I will treat her with honor and respect.
> I will honor the interconnectedness of all things and all forms of life.

[14] Matthew 7:12.

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> I will realize the Earth does not belong to us, but that we belong to the Earth.
>
> The natural law is the ultimate authority upon the lands and water. I will learn the knowledge and wisdom of the natural laws. I will pass this knowledge on to my children.
>
> The Mother Earth is a living entity that maintains life. I will speak out in a good way whenever I see someone abusing the Earth. Just as I would protect my own mother, so I will protect the Earth. I will ensure that the land, water, and air will be intact for my children and for my children's children-the unborn.[15]

AHNAC's/ONAC's other "Philosophies" include extensive moral guidelines specifically regarding the treatment of women (e.g., ". . . I will look upon women in a sacred manner. . . . I will refrain from any form of emotional or physical abuse"); the treatment of children ("We are the caretakers of the children for the Creator. They are his children, not ours"); the treatment of one's family ("I will nurture our family's spiritual, cultural and social health"); the relationship to community (specifically Native American communities); and the Creator ("I will look with new eyes on the powers of our ceremonies and religious ways, for they are important to the very survival of our people").[16]

In addition, AHNAC has adopted in whole ONAC's Code of Ethics[17], and ONAC's Code of Conduct[18]. The Code of Ethics is generally applicable to ONAC/AHNAC clergy/leaders, which the Code of Conduct is applicable to church members. The Code of Conduct requires members to make such pledges as:

> I commit to making effort to spend time each day in meditation and prayer, drawing closer to the Great Spirit and all of creation, the two-leggeds and the four-leggeds. . . .
>
> I will never share sacraments or sell medicines to those who are not members of ONAC. I understand that doing so removes my legal protection and exposes me to prosecution.

c. *Structural characteristics.*

i. Formal ceremonies or rituals.

Sacred ceremony is critical to Petitioners' exercise of religion, and is inextricably intertwined with their sacramental use of Ayahuasca. Petitioners believe that the rituals which comprise their ceremonies have been handed down from shaman to shaman over millennia, and that they were originally given to mankind by Mother Ayahuasca herself.

Petitioners employ a prescribed series of distinct ceremonies leading up to each sacramental use of Ayahuasca. The first ceremony is the Sweat Lodge, a traditional Native American cleansing and purification ceremony intended to allow the ceremonial congregants to "sweat out toxins" inside a steam-filled tipi. The Sweat Lodge ceremony is led by [(b)(6)] a septuagenarian Native American Elder whom Petitioners describe as "a powerful and important part" of their church.

15 Https://ayahuascahealings.com/ayahuasca-usa-church-vision/ (last viewed 3/21/2016).
16 *Id.*
17 *Available at* https://ayahuascahealings.com/about-oklevueha/onac-code-of-ethics/ (last viewed 3/21/2016).
18 *Available at* https://ayahuascahealings.com/about-oklevueha/onac-code-of-conduct/ (last viewed 3/21/2016).

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Following the Sweat Lodge is another cleansing or purgative ceremony. Petitioners believe that both body and soul must be cleansed prior to consuming Ayahuasca, so that Mother Ayahuasca's magic can penetrate deeper to find the roots of the individual's problems. The cleansing ceremony comprises a series of rituals, performed over the course of at least a full day; these rituals include fasting, incantations/prayers, meditation, and consumption of plant-based emetics and purgatives. Following the cleansing ceremony is a ceremony intended to express gratitude for the sacrament the participants are about to receive, and to prepare the congregants' bodies and spirits for their rigorous journey into the spirit world and into their own souls. This ceremony comprises a series of prescribed rituals including prayers, incantations, drumming and singing.

Following the preparatory ceremonies is another ceremony—analogous in some ways to Communion for Catholics—for the ritualized ingestion of the Ayahuasca brew. Following ingestion, a prescribed series of songs and chants are performed while the congregants wait for their journey to begin. Once the journey is underway, the shaman overseeing the ceremony observes the congregants and helps them find their way through difficult passageways through the use of prescribed prayers and incantations, among other tools in the shaman's kit. Lastly, once the congregants have returned from their journeys, a ceremony is held to give thanks to Mother Ayahuasca and to mentally and emotionally process the profound knowledge that was gleaned from the experience.

ii. Gathering places.

AHNAC's congregants gather in their sacred tipi, which they constructed themselves. This tipi is for ceremonial and sacramental use only, and it is where all spiritually significant activities undertaken by AHNAC take place.

iii. Clergy and/or prophets.

AHNAC's clergy consists of shamans (or, in AHNAC's parlance, Medicine Men/Women) who have undergone long and extensive training with *curanderos* in the Amazonian jungles. They have experienced the medicine of Mother Ayahuasca and learned, over the course of many years, how to administer that medicine to others safely and in alignment with the ancient, sacred rituals prescribed by the *curanderos*' ancestors and, legend has it, by Mother Ayahuasca herself.

iv. Structure and organization.

AHNAC's organizational structure is not intended to be hierarchical; in the eyes of Great Spirit and Mother Ayahuasca, all humans are equal in dignity. However, the church requires an executive body, and that consists, in part, of Petitioners Mr. (b)(6), Mr. de Guzman, and Ms. (b)(6) is the Chief Medicine Man and Church Director. He is charged with leading, supervising and/or coordinating with other medicine men and women to run the ceremonies each week, and in general is responsible for the oversight of all church activities, from inception to on-the-ground management. Mr. de Guzman is the Visionary Director of the church, whose role is to act as a spiritual teacher to church members, often in the form of sermon-like videos published online, and often in one-on-one consultation with church members. Ms. (b) is Creative Director and Spiritual Guide; her role is partly administrative, functioning as a creative/operational coordinator, and partly ecclesiastical, giving spiritual guidance to persons seeking the church's help in spiritual matters.

In addition, there is the aforementioned clergy consisting of trained shamans, and the church's Code of Ethics provides that "'Controlled' substances must be used under the direction of medicine people [i.e., shamans] . . . ." https://ayahuascahealings.com/about-oklevueha/onac-code-of-ethics/.

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Therefore, all Ayahuasca ceremonies conducted under the auspices of AHNAC are required to be done only at Petitioners' direction and under the guidance of a shaman.

v. Efforts at propagation.

The teleological sense of purpose held by Petitioners (*see* section (A)(2)(a), *supra*), in conjunction with their belief that Mother Ayahuasca's guidance is essential to fulfilling that purpose, means that Petitioners' faith requires them to grow their church and to spread the gospel of Mother Ayahuasca and Great Spirit.

However, Petitioners also recognize that propagation is a double-edged sword, as they have a strong countervailing interest in being in the good graces of the law, such as it is, and with those who are charged with enforcing the law. Petitioners are determined not to let their belief in the necessity of propagation derail any hope they have of fulfilling their divine purpose.

Moreover, ONAC/AHNAC's own Code of Ethics provides that growth may be attained not by "proselytizing for membership," but "through attraction through service."[19]

Petitioners humbly acknowledge that some of the materials that have been published by AHNAC may be interpreted as "marketing" efforts. In their religious zeal for spreading knowledge of Mother Ayahuasca, and armed with a misguided understanding of the state of the law, Petitioners admit that they went overboard in their efforts at propagation. To cure this and to improve the optics of their online presence, they have been working in earnest with counsel to amend their published materials as necessary. In addition, they would be happy to cede to DEA the right of pre-publication review and authorization for any written or audio/visual materials prepared for publication on AHNAC's website (provided that DEA's exercise of said oversight does not infringe upon Petitioners' statutory or constitutional rights). Petitioners reiterate that they are committed to working within the confines of the law, and look forward to cooperating with DEA to make sure of it.

Additionally, Petitioners have had a change of heart with respect to their publicly stated plans for the growth of their church. After much fasting and prayer, they have determined that they would better serve the Divine Plan for now by focusing their efforts in the U.S. on their church center in Elbe, Washington only. Petitioners still wish to grow their church at some point in the future; therefore, they do not want to foreclose on the possibility of opening additional ceremonial facilities elsewhere in the U.S. Petitioners still believe in the spiritual necessity of spreading the gospel of Mother Ayahuasca; they have simply readjusted their spiritual ambitions to a fuller understanding of the societal parameters and cultural and legal barriers confronting them.

vi. Diet or fasting.

Diet and fasting are of enormous importance to the exercise of Petitioners' religion, for both spiritual and practical reasons. Fasting prior to taking part in an Ayahuasca ceremony is an essential part of the physical and spiritual cleansing ceremony, as Petitioners believe that a pre-ingestion period of fasting, emesis, and purgation will allow Mother Ayahuasca's magic to work its way deeper into the sojourner.

Dietary proscriptions are also strictly adhered to, due to *Banisteriopsis Caapi*'s biochemical attributes: in the human body it acts as a monoamine oxidase inhibitor (MAOI), which means that it inhibits the action

19 Https://ayahuascahealings.com/about-oklevueha/onac-code-of-ethics/ (last viewed 3/22/2016).

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of the enzymes that break down certain neurotransmitters. Ingestion of certain foods within a window of time prior to or following ingestion of Ayahuasca can have deleterious effects.[20]

Aside from the chemical necessity of adhering to a certain diet, there are also religious rationales for these dietary restrictions:

> From the perspective of this shamanic tradition, each plant represents and holds a different spirit . . . . These plant spirits must be totally respected within the body. They can intensely heal and transform you, but if you disrespect their gifts by contaminating your body once they are inside you, there can be very serious consequences. Following the Ayahuasca diet can go a long way in demonstrating respect to these spirits.[21]

Petitioners provide their ceremony participants with a traditional Peruvian Ayahuasca diet, "cutting out salt, sugar, fatty foods, meat, and anything else that would counter the effects of the medicine that we are working to achieve."[22] The purpose of this diet is explained thusly:

> There is a current of energy flowing from the top of your head, down to the bottom of your spine. This is your connection to Father Sky, and Mother Earth; Divine Consciousness, and Unconditional Love. [An improper diet would clog] your energy flow, and your strong connection with these energies. That would slow down the movement and transmission of energy, and ultimately, your healing process, and the potential to give and receive life-changing insights and clarity.[23]

vii. Belief in supernatural entities.

In addition to Mother Ayahuasca, Father San Pedro, and Great Spirit, Petitioners also believe in a number of other spiritual entities. The following is excerpted from an as-yet unpublished writing by Mr. de Guzman:

> We believe there are thousands, tens of thousands, of angels around us in every moment. They are here to support us, to guide us, to show us, and to be with us, to help us on our journey, and give us direction when we need it. They are here to protect us, and to remind us of what we need to be reminded of, when we need it most.

Petitioners' belief in angels encompasses a number of Archangels, including, among others: Rafael, who "wields the green sacred fires of healing;" Gabriel, "protector of Divine Truth;" Uriel, "archangel of compassion and change;" Azrael, "archangel of death and rebirth," and Raziel, "archangel of past lives, and the remembering of what once was."

Sitting above the Archangels in Petitioners' pantheon are the Ascended Masters Buddha and Jesus. Petitioners see Buddha as "the teacher of non-attachment and the path of liberation through the releasing of suffering via the letting go of desire." Petitioners see Jesus as "the master of compassion, forgiveness and grace," who "walks the path of the heart, and shows us the path to our spiritual truth through the loving of all beings and things."

[20] Petitioners have published a dietary guide on AHNAC's website, available at https://ayahuascahealings.com/ayahuasca-retreats-usa/ayahuasca-dietary-guidelines/ (last viewed 3/22/2016).
[21] *Id.*
[22] Https://ayahuascahealings.com/ayahuasca-retreats-usa/ (last viewed 3/22/2016)
[23] *Id.*

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However, aside from Great Spirit, Mother Ayahuasca, and Father San Pedro, the most important supernatural entities in Petitioners' belief system are the animistic spirits:

> The animal spirits, plant spirits, mountain spirits, and spirits of all that exists around us. . . . . We never open up a ceremony without first asking permission from the spirits of the land, for the permission to open sacred space on this land, and invite them to join us . . . . We offer our ceremonies, our prayers, and our highest intention for the service of all beings, but first, always to the spirits immediately around us.

B. *Petitioners' Belief in their Religion is Sincerely Held.*

1. Petitioners' religion was not created as an *ad hoc* justification.

Petitioners did not invent their religion; they learned it from its traditional practitioners in the Amazon, and founded AHNAC in an effort to bring their religion to the United States.

Further, Ayahuasca is not a "recreational drug." Rather, it is a powerful medicine which induces an intense revelatory experience that is frequently difficult or unpleasant. For this reason, Petitioners herein aver that they would not, did not, and cannot imagine anyone adopting their religion merely for the sake of being able to ingest Ayahuasca legally. It is also Petitioners' strongly-held belief that anyone who has experienced the magic of Mother Ayahuasca would necessarily be sincere in their belief in Her power and in Great Spirit.

2. Petitioners regularly hold and participate in ceremonies and rituals.

Petitioners hold ceremonies frequently and regularly—weekly, when possible—and faithfully perform (or ensure the performance of) the many rituals attendant to each such ceremony. As noted above, these ceremonies are an integral and essential aspect of their religious practice. Just as removing Mother Ayahuasca from their religion would render their ceremonies empty, so would abandoning their ceremonies vastly diminish the spiritual power of the Ayahuasca; the two are inextricably linked.

3. Other substances.

Petitioners believe, as do their spiritual teachers and forebears, that all plant medicines have a spirit and a divine purpose. Petitioners have in the past made sacramental use of Father San Pedro (*Trichocereus pachanoii*, a mescaline-containing cactus), as was taught to them by their *curanderos*. San Pedro is believed to be a male spirit counterpart to the female spirit Ayahuasca and, as such, holds an important place in the religious and ethnobotanical pantheon of the *curanderos*.

However, Petitioners are not seeking an exemption for mescaline. Although San Pedro is an important part of their exercise of religion, Ayahuasca is *absolutely essential* to it; and given the (non-controlling) precedent established by the Tenth Circuit in *United States v. Quaintance*,[24] Petitioners have decided to use and seek exemption for Ayahuasca only.

[24] 471 F. Supp. 2d 1153, 1174 (finding the defendants' use of "other illegal substances"—i.e., cocaine—to be evidence of insincerity).

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That said, Petitioners believe that RFRA and the Free Exercise Clause do protect their right to sacramental use of both Ayahuasca and San Pedro, and do not believe that the district court's reasoning in *Quaintance* is applicable to the particular facts their case. Therefore, Petitioners do intend to petition for an exemption for mescaline at some point in the future, after having established a settled and cooperative working relationship with DEA Diversion Control.

4. Evidence of Commerce.

Petitioners have little or no commercial incentive to invent or adopt an Ayahuasca-based religion. They do not sell and have never sold Ayahuasca, and the contributions the church has received have gone almost entirely into overhead costs (e.g., rent payments, improvements to the land, food, fuel, etc.)[25].

In addition, Petitioners have recently recalibrated their goals. Petitioners do intend eventually to expand their presence in the U.S. beyond their center in Elbe, Washington. However, they retract previous announcements regarding existing plans to open numerous other retreat centers across the U.S. Rather, Petitioners wish to proceed with caution and humility, first testing the waters with their Elbe center, and then, resources and social and legal climate permitting, test the waters further with a second retreat center. This would likely be years down the road, and of course would be done in compliance with all applicable laws and in cooperation with DEA.

C. *Enforcing the CSA's Prohibition on DMT Would Substantially Burden Petitioners' Exercise of Religion.*

As set forth in greater detail *supra*, Mother Ayahuasca is central to Petitioners' religious beliefs. Not only do they believe that Ayahuasca is the most important and viable "path up the mountain" to Great Spirit, but also that Mother Ayahuasca is a divine entity (a deity) in her own right. Not to receive her guidance would be a forsaking of her divinity—in other words, a sacrilege.

Moreover, Petitioners believe that the ceremonies and rituals attendant to the sacramental ingestion of Ayahuasca were given to mankind by Mother Ayahuasca herself, and passed down from generation to generation over untold millennia. Since the purpose of these religious traditions pertains directly to Ayahuasca, prohibiting Petitioners from using Ayahuasca would render their traditions useless and devoid of meaning, other than as an empty relic, like an oyster shell with no meat and no pearl.

In short, enforcement of the CSA's prohibition on DMT in Petitioners' case would substantially burden their exercise of their sincerely held religious beliefs.

III. Enforcement of the CSA's Prohibition on DMT is Not the Least Restrictive Means of Furthering Compelling Government Interests.

In determining whether enforcement of a particular CSA prohibition is the least restrictive means of furthering a compelling government interest, the government must "'scrutinize the asserted harm of granting specific exemptions to particular religious claimants' and 'to look to the marginal interest in enforcing' the challenged government action in that particular context."[26] In this case, RFRA requires the

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[25] Petitioners are in the process of gathering their receipts for expenditures and compiling and identifying contributions from members. This information will be available to DEA shortly.

[26] *Holt v. Hobbs*, 135 S. Ct. 853, 863 (2015), citing *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2779 (2014).

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government to consider how its compelling interest in protecting persons' health and safety and in preventing diversion of Ayahuasca into the illicit drug market would be harmed by Petitioners' particular use of Ayahuasca.[27]

A. *Accommodating Petitioners would not harm the Government's interest in protecting Health and Safety.*

As noted by the Supreme Court in *UDV*, "[t]he fact that the [CSA] itself contemplates that exempting certain people from its requirements would be 'consistent with the public health and safety' indicates that congressional findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them."[28] Moreover, noting that there had long "been a regulatory exemption for use of peyote—a Schedule I substance—by the Native American Church," the Court observed that--

> —[i]f such use is permitted in the face of the congressional findings in § 812(b)(1) for hundreds of thousands of Native Americans practicing their faith, it is difficult to see how those same findings alone can preclude any consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs. See *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U.S. 520, 547 (1993) ("It is established in our strict scrutiny jurisprudence that 'a law cannot be regarded as protecting an interest 'of the highest order' ... when it leaves appreciable damage to that supposedly vital interest unprohibited'" (quoting *Florida Star* v. *B. J. F.*, 491 U.S. 524, 541-542 (1989) (SCALIA, J., concurring in part and concurring in judgment))).[29]

In the case of Ayahuasca, the Government has already made exceptions under RFRA; for example, the UDV and Santo Daime churches. If the Government's interest in protecting the health and safety of UDV and Santo Daime church members is not harmed by exempting their use of Ayahuasca, the same interest in Petitioners' health and safety would likewise be unharmed by granting Petitioners the same exemption.

Furthermore, Petitioners hereby aver that their safety record is unimpeachable. They and their church's medicine men and women have received many years of training from *curanderos*, whose practice in administering Ayahuasca goes back countless generations. Moreover, Petitioners have implemented a quality assurance regime with respect to their Ayahuasca/

(b)(7)(E)

Petitioners also wish to note that they "deeply pray over the medicine to clear it of any energy that is less than the highest serving energy of love and light for our Church members, before sharing it in any Ceremony."

B. *Accommodating Petitioners would not harm the Government's interest in Preventing Diversion.*

DEA has a system already in place for accommodating persons whose exercise of religion would be unduly burdened by CSA enforcement, while at the same time protecting the Government's interest in preventing diversion of scheduled substances into the illicit drug market. Thus, the Government "itself

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27 *UDV*, 126 S. Ct. at 1220-1221.

28 *UDV*, 546 U.S. at 432 – 433, citing 21 U.S.C. § 822(d).

29 *Id.* at 433.

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has demonstrated that it has at its disposal an approach that is less restrictive" than enforcement of the CSA against Petitioners.[30] While bringing Petitioners into DEA's diversion control program would undoubtedly result in a marginal increase in DEA's operating expenses, the Supreme Court has held that RFRA "may in some circumstances require the Government to expend additional funds to accommodate citizens' religious beliefs."[31]

Denying Petitioners' request for a RFRA exemption on the ground that CSA enforcement is the least restrictive means of preventing diversion would require a finding that the particular circumstances of Petitioners' case renders it so. Admittedly, there are facts which distinguish Petitioners' case from those of the UDV and Santo Daime churches. However, to the extent that any such distinctions are not in Petitioners' favor, Petitioners hereby reiterate their sincere desire to be within the law and the good graces of the Government, and aver that they will modify their behavior and circumstances in whatever way DEA deems necessary for them to qualify for an exemption under RFRA (provided that any such modifications do not violate Petitioners' statutory or constitutional rights). For example, as noted *supra*, Petitioners are willing to give DEA the right of pre-publication review of any of Petitioners' written or audio/visual materials prepared for online publication.

With respect to the source of Petitioners' supply of Ayahuasca, (b)(3),(CR RE) Petitioners will gladly submit to any protocols DEA deems necessary for purposes of safety and diversion control.

Regarding quantities of Ayahuasca to be imported, possessed, and distributed, Petitioners aver the following facts:

(b)(3)(E)

30 *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2782 (2014).

31 *Id.*, at 2781.

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(b)(7)(E)

Petitioners believe that it would be a simple matter to (b)(7)(E)
Such a manageable amount of the substance should not be considered a threat to the government's interest in diversion prevention.

IV. CONCLUSION.

Enforcing the CSA's prohibitions on Ayahuasca as to Petitioners would substantially burden their exercise of the sincerely held religious beliefs. Furthermore, given DEA's extant accommodation programs and Petitioners' sincere assurances of cooperation, enforcement of said CSA prohibitions is not the least restrictive means of furthering the government's interests in public safety and diversion control. Therefore, Petitioners respectfully ask that DEA grant their request for an exemption under RFRA for their sacramental use of Ayahuasca.

Respectfully submitted,

Declaration:

I, (b)(6), do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 03/29/2016

Signed

(b)(6)

32 Considering the factors listed above, AHNAC's medicine men and women require higher doses than the typical congregant

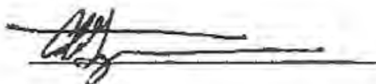
Declaration:

I, Christopher de Guzman, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 3-30-2016

Signed,



Declaration:

I, (b)(6), do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 03/31/16

Signed,

(b)(6)

Attached:

Exhibit A – Declaration of ONAC (b)(6)

Exhibit B – IRS 501(c)(3) Status Letter

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OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING
Declaration

The undersigned, being the Chief Executive Officer of Oklevueha Earthwalks Native American Church of Utah Inc.[1] a Utah State nonprofit Corporation[2] and Co-Founder of the allied and communal Native American Church with the Lakota Sioux Nation Native American Church of South Dakota[3]. And, as an American Native Indigenous 'earth' based and 'healing' religion that is known as Oklevueha Native American Church, Native American Church, ONAC and / or NAC.

I, (b)(6) solemnly swear and:

A. Declare that OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING is a Branch ("Free Church") of Oklevueha Native American Church as long as the trees and grasses grow and rivers flow.
B. Declare that OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING Chief Executive Officer is MARC SHACKMAN, President is TRINITY DE GUZMAN, and COO is KIGAN M. HENSE as long as they walk Mother Earth.
C. Declare OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING will receive all rights and protections that the "Free Church" of Oklevueha Earthwalks Native American Church of Utah Inc. (Federal ID Number: 841-402-815) receives.
D. OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING is authorized to utilize Oklevueha Native American Church symbol as being exhibited and or with similar alterations:

As Chief Executive Officer of Oklevueha EarthWalks Native American Church of Utah Inc and Co-Founder of Oklevueha Native American Church, I have personal knowledge of the facts of these declarations for OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING. With my signature, I acknowledge these facts to be true and accurate.

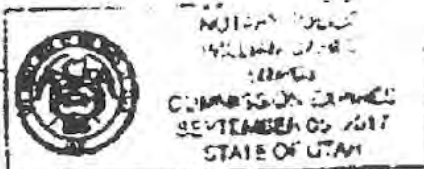
(b)(6)

Chief Executive Officer of Oklevueha EarthWalks Native American Church of Utah Inc
Co-Founder Oklevueha Lakota Sioux Nation Native American Church of South Dakota

Subscribed (b)(6) this 22 day of December, 2015

By ______________________
Notary Republic

Residing in: 2[illegible] [illegible] ________ My Commission Expires: Sept 05 2017



[1] Federally Registered with the Federal ID number 841402815, page 3
[2] State of Utah Division of Corporations – Certificate of Existence Registration #1353164-0140, page 6
[3] Oklevueha Lakota Sioux Nation Native American Church ARTICLES, page 11

Declaration of the organization and acceptance
Of
OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING
DECEMBER 10, 2015

EXHIBIT 6

Federal Register / Vol. 82, No. 88 / Tuesday, May 9, 2017 / Presidential Documents **21675**

Presidential Documents

Executive Order 13798 of May 4, 2017

Promoting Free Speech and Religious Liberty

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to guide the executive branch in formulating and implementing policies with implications for the religious liberty of persons and organizations in America, and to further compliance with the Constitution and with applicable statutes and Presidential Directives, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom. The Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government. For that reason, the United States Constitution enshrines and protects the fundamental right to religious liberty as Americans' first freedom. Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.

Sec. 2. *Respecting Religious and Political Speech.* All executive departments and agencies (agencies) shall, to the greatest extent practicable and to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech. In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury. As used in this section, the term ''adverse action'' means the imposition of any tax or tax penalty; the delay or denial of tax-exempt status; the disallowance of tax deductions for contributions made to entities exempted from taxation under section 501(c)(3) of title 26, United States Code; or any other action that makes unavailable or denies any tax deduction, exemption, credit, or benefit.

Sec. 3. *Conscience Protections with Respect to Preventive-Care Mandate.* The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate promulgated under section 300gg–13(a)(4) of title 42, United States Code.

Sec. 4. *Religious Liberty Guidance.* In order to guide all agencies in complying with relevant Federal law, the Attorney General shall, as appropriate, issue guidance interpreting religious liberty protections in Federal law.

Sec. 5. *Severability.* If any provision of this order, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other individuals or circumstances shall not be affected thereby.

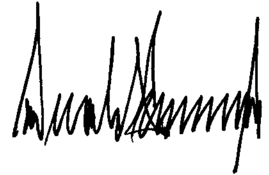
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
May 4, 2017.

[FR Doc. 2017–09574
Filed 5–8–17; 11:15 am]
Billing code 3295–F7–P

EXHIBIT 7

Office of the Attorney General

Washington, D.C. 20530

October 6, 2017

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and executive departments in the execution of federal law.

Principles of Religious Liberty

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of federal law. As James Madison explained in his Memorial and Remonstrance Against Religious Assessments, the free exercise of religion "is in its nature an unalienable right" because the duty owed to one's Creator "is precedent, both in order of time and in degree of obligation, to the claims of Civil Society."[1] Religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. The following twenty principles should guide administrative agencies and executive departments in carrying out this task. These principles should be understood and interpreted in light of the legal analysis set forth in the appendix to this memorandum.

1. The freedom of religion is a fundamental right of paramount importance, expressly protected by federal law.

Religious liberty is enshrined in the text of our Constitution and in numerous federal statutes. It encompasses the right of all Americans to exercise their religion freely, without being coerced to join an established church or to satisfy a religious test as a qualification for public office. It also encompasses the right of all Americans to express their religious beliefs, subject to the same narrow limits that apply to all forms of speech. In the United States, the free exercise of religion is not a mere policy preference to be traded against other policy preferences. It is a fundamental right.

[1] James Madison, Memorial and Remonstrance Against Religious Assessments (June 20, 1785), *in* 5 THE FOUNDERS' CONSTITUTION 82 (Philip B. Kurland & Ralph Lerner eds., 1987).

2. The free exercise of religion includes the right to *act* or *abstain from action* in accordance with one's religious beliefs.

The Free Exercise Clause protects not just the right to believe or the right to worship; it protects the right to perform or abstain from performing certain physical acts in accordance with one's beliefs. Federal statutes, including the Religious Freedom Restoration Act of 1993 ("RFRA"), support that protection, broadly defining the exercise of religion to encompass all aspects of observance and practice, whether or not central to, or required by, a particular religious faith.

3. The freedom of religion extends to persons *and* organizations.

The Free Exercise Clause protects not just persons, but persons collectively exercising their religion through churches or other religious denominations, religious organizations, schools, private associations, and even businesses.

4. Americans do not give up their freedom of religion by participating in the marketplace, partaking of the public square, or interacting with government.

Constitutional protections for religious liberty are not conditioned upon the willingness of a religious person or organization to remain separate from civil society. Although the application of the relevant protections may differ in different contexts, individuals and organizations do not give up their religious-liberty protections by providing or receiving social services, education, or healthcare; by seeking to earn or earning a living; by employing others to do the same; by receiving government grants or contracts; or by otherwise interacting with federal, state, or local governments.

5. Government may not restrict acts or abstentions because of the beliefs they display.

To avoid the very sort of religious persecution and intolerance that led to the founding of the United States, the Free Exercise Clause of the Constitution protects against government actions that target religious conduct. Except in rare circumstances, government may not treat the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons. For example, government may not attempt to target religious persons or conduct by allowing the distribution of political leaflets in a park but forbidding the distribution of religious leaflets in the same park.

6. Government may not target religious individuals or entities for special disabilities based on their religion.

Much as government may not restrict actions only because of religious belief, government may not target persons or individuals because of their religion. Government may not exclude religious organizations as such from secular aid programs, at least when the aid is not being used for explicitly religious activities such as worship or proselytization. For example, the Supreme Court has held that if government provides reimbursement for scrap tires to replace child playground surfaces, it may not deny participation in that program to religious schools. Nor may

government deny religious schools—including schools whose curricula and activities include religious elements—the right to participate in a voucher program, so long as the aid reaches the schools through independent decisions of parents.

7. Government may not target religious individuals or entities through discriminatory enforcement of neutral, generally applicable laws.

Although government generally may subject religious persons and organizations to neutral, generally applicable laws—e.g., across-the-board criminal prohibitions or certain time, place, and manner restrictions on speech—government may not apply such laws in a discriminatory way. For instance, the Internal Revenue Service may not enforce the Johnson Amendment—which prohibits 501(c)(3) non-profit organizations from intervening in a political campaign on behalf of a candidate—against a religious non-profit organization under circumstances in which it would not enforce the amendment against a secular non-profit organization. Likewise, the National Park Service may not require religious groups to obtain permits to hand out fliers in a park if it does not require similarly situated secular groups to do so, and no federal agency tasked with issuing permits for land use may deny a permit to an Islamic Center seeking to build a mosque when the agency has granted, or would grant, a permit to similarly situated secular organizations or religious groups.

8. Government may not officially favor or disfavor particular religious groups.

Together, the Free Exercise Clause and the Establishment Clause prohibit government from officially preferring one religious group to another. This principle of denominational neutrality means, for example, that government cannot selectively impose regulatory burdens on some denominations but not others. It likewise cannot favor some religious groups for participation in the Combined Federal Campaign over others based on the groups' religious beliefs.

9. Government may not interfere with the autonomy of a religious organization.

Together, the Free Exercise Clause and the Establishment Clause also restrict governmental interference in intra-denominational disputes about doctrine, discipline, or qualifications for ministry or membership. For example, government may not impose its nondiscrimination rules to require Catholic seminaries or Orthodox Jewish yeshivas to accept female priests or rabbis.

10. The Religious Freedom Restoration Act of 1993 prohibits the federal government from substantially burdening any aspect of religious observance or practice, unless imposition of that burden on a particular religious adherent satisfies strict scrutiny.

RFRA prohibits the federal government from substantially burdening a person's exercise of religion, unless the federal government demonstrates that application of such burden to the religious adherent is the least restrictive means of achieving a compelling governmental interest. RFRA applies to all actions by federal administrative agencies, including rulemaking, adjudication or other enforcement actions, and grant or contract distribution and administration.

11. RFRA's protection extends not just to individuals, but also to organizations, associations, and at least some for-profit corporations.

RFRA protects the exercise of religion by individuals and by corporations, companies, associations, firms, partnerships, societies, and joint stock companies. For example, the Supreme Court has held that Hobby Lobby, a closely held, for-profit corporation with more than 500 stores and 13,000 employees, is protected by RFRA.

12. RFRA does not permit the federal government to second-guess the reasonableness of a religious belief.

RFRA applies to all sincerely held religious beliefs, whether or not central to, or mandated by, a particular religious organization or tradition. Religious adherents will often be required to draw lines in the application of their religious beliefs, and government is not competent to assess the reasonableness of such lines drawn, nor would it be appropriate for government to do so. Thus, for example, a government agency may not second-guess the determination of a factory worker that, consistent with his religious precepts, he can work on a line producing steel that might someday make its way into armaments but cannot work on a line producing the armaments themselves. Nor may the Department of Health and Human Services second-guess the determination of a religious employer that providing contraceptive coverage to its employees would make the employer complicit in wrongdoing in violation of the organization's religious precepts.

13. A governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.

Because the government cannot second-guess the reasonableness of a religious belief or the adherent's assessment of the religious connection between the government mandate and the underlying religious belief, the substantial burden test focuses on the extent of governmental compulsion involved. In general, a government action that bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, will qualify as a substantial burden on the exercise of religion. For example, a Bureau of Prisons regulation that bans a devout Muslim from growing even a half-inch beard in accordance with his religious beliefs substantially burdens his religious practice. Likewise, a Department of Health and Human Services regulation requiring employers to provide insurance coverage for contraceptive drugs in violation of their religious beliefs or face significant fines substantially burdens their religious practice, and a law that conditions receipt of significant government benefits on willingness to work on Saturday substantially burdens the religious practice of those who, as a matter of religious observance or practice, do not work on that day. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden.

14. The strict scrutiny standard applicable to RFRA is exceptionally demanding.

Once a religious adherent has identified a substantial burden on his or her religious belief, the federal government can impose that burden on the adherent only if it is the least restrictive means of achieving a compelling governmental interest. Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion, and such interests must be evaluated not in broad generalities but as applied to the particular adherent. Even if the federal government could show the necessary interest, it would also have to show that its chosen restriction on free exercise is the least restrictive means of achieving that interest. That analysis requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program.

15. RFRA applies even where a religious adherent seeks an exemption from a legal obligation requiring the adherent to confer benefits on third parties.

Although burdens imposed on third parties are relevant to RFRA analysis, the fact that an exemption would deprive a third party of a benefit does not categorically render an exemption unavailable. Once an adherent identifies a substantial burden on his or her religious exercise, RFRA requires the federal government to establish that denial of an accommodation or exemption to that adherent is the least restrictive means of achieving a compelling governmental interest.

16. Title VII of the Civil Rights Act of 1964, as amended, prohibits covered employers from discriminating against individuals on the basis of their religion.

Employers covered by Title VII may not fail or refuse to hire, discharge, or discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of that individual's religion. Such employers also may not classify their employees or applicants in a way that would deprive or tend to deprive any individual of employment opportunities because of the individual's religion. This protection applies regardless of whether the individual is a member of a religious majority or minority. But the protection does not apply in the same way to religious employers, who have certain constitutional and statutory protections for religious hiring decisions.

17. Title VII's protection extends to discrimination on the basis of religious observance or practice as well as belief, unless the employer cannot reasonably accommodate such observance or practice without undue hardship on the business.

Title VII defines "religion" broadly to include all aspects of religious observance or practice, except when an employer can establish that a particular aspect of such observance or practice cannot reasonably be accommodated without undue hardship to the business. For example, covered employers are required to adjust employee work schedules for Sabbath observance, religious holidays, and other religious observances, unless doing so would create an undue hardship, such as materially compromising operations or violating a collective bargaining agreement. Title VII might also require an employer to modify a no-head-coverings policy to allow a Jewish employee to wear a yarmulke or a Muslim employee to wear a headscarf. An

employer who contends that it cannot reasonably accommodate a religious observance or practice must establish undue hardship on its business with specificity; it cannot rely on assumptions about hardships that might result from an accommodation.

18. The Clinton Guidelines on Religious Exercise and Religious Expression in the Federal Workplace provide useful examples for private employers of reasonable accommodations for religious observance and practice in the workplace.

President Clinton issued Guidelines on Religious Exercise and Religious Expression in the Federal Workplace ("Clinton Guidelines") explaining that federal employees may keep religious materials on their private desks and read them during breaks; discuss their religious views with other employees, subject to the same limitations as other forms of employee expression; display religious messages on clothing or wear religious medallions; and invite others to attend worship services at their churches, except to the extent that such speech becomes excessive or harassing. The Clinton Guidelines have the force of an Executive Order, and they also provide useful guidance to private employers about ways in which religious observance and practice can reasonably be accommodated in the workplace.

19. Religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers' religious precepts.

Constitutional and statutory protections apply to certain religious hiring decisions. Religious corporations, associations, educational institutions, and societies—that is, entities that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes—have an express statutory exemption from Title VII's prohibition on religious discrimination in employment. Under that exemption, religious organizations may choose to employ only persons whose beliefs and conduct are consistent with the organizations' religious precepts. For example, a Lutheran secondary school may choose to employ only practicing Lutherans, only practicing Christians, or only those willing to adhere to a code of conduct consistent with the precepts of the Lutheran community sponsoring the school. Indeed, even in the absence of the Title VII exemption, religious employers might be able to claim a similar right under RFRA or the Religion Clauses of the Constitution.

20. As a general matter, the federal government may not condition receipt of a federal grant or contract on the effective relinquishment of a religious organization's hiring exemptions or attributes of its religious character.

Religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs. Such organizations generally may not be required to alter their religious character to participate in a government program, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their federal statutory protections for religious hiring decisions.

Guidance for Implementing Religious Liberty Principles

Agencies must pay keen attention, in everything they do, to the foregoing principles of religious liberty.

Agencies As Employers

Administrative agencies should review their current policies and practices to ensure that they comply with all applicable federal laws and policies regarding accommodation for religious observance and practice in the federal workplace, and all agencies must observe such laws going forward. In particular, all agencies should review the Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, which President Clinton issued on August 14, 1997, to ensure that they are following those Guidelines. All agencies should also consider practical steps to improve safeguards for religious liberty in the federal workplace, including through subject-matter experts who can answer questions about religious nondiscrimination rules, information websites that employees may access to learn more about their religious accommodation rights, and training for all employees about federal protections for religious observance and practice in the workplace.

Agencies Engaged in Rulemaking

In formulating rules, regulations, and policies, administrative agencies should also proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens. Agencies should consider designating an officer to review proposed rules with religious accommodation in mind or developing some other process to do so. In developing that process, agencies should consider drawing upon the expertise of the White House Office of Faith-Based and Neighborhood Partnerships to identify concerns about the effect of potential agency action on religious exercise. Regardless of the process chosen, agencies should ensure that they review all proposed rules, regulations, and policies that have the potential to have an effect on religious liberty for compliance with the principles of religious liberty outlined in this memorandum and appendix before finalizing those rules, regulations, or policies. The Office of Legal Policy will also review any proposed agency or executive action upon which the Department's comments, opinion, or concurrence are sought, *see, e.g.*, Exec. Order 12250 § 1-2, 45 Fed. Reg. 72995 (Nov. 2, 1980), to ensure that such action complies with the principles of religious liberty outlined in this memorandum and appendix. The Department will not concur in any proposed action that does not comply with federal law protections for religious liberty as interpreted in this memorandum and appendix, and it will transmit any concerns it has about the proposed action to the agency or the Office of Management and Budget as appropriate. If, despite these internal reviews, a member of the public identifies a significant concern about a prospective rule's compliance with federal protections governing religious liberty during a period for public comment on the rule, the agency should carefully consider and respond to that request in its decision. *See Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015). In appropriate circumstances, an agency might explain that it will consider requests for accommodations on a case-by-case basis rather than in the rule itself, but the agency should provide a reasoned basis for that approach.

Agencies Engaged in Enforcement Actions

Much like administrative agencies engaged in rulemaking, agencies considering potential enforcement actions should consider whether such actions are consistent with federal protections for religious liberty. In particular, agencies should remember that RFRA applies to agency enforcement just as it applies to every other governmental action. An agency should consider RFRA when setting agency-wide enforcement rules and priorities, as well as when making decisions to pursue or continue any particular enforcement action, and when formulating any generally applicable rules announced in an agency adjudication.

Agencies should remember that discriminatory enforcement of an otherwise nondiscriminatory law can also violate the Constitution. Thus, agencies may not target or single out religious organizations or religious conduct for disadvantageous treatment in enforcement priorities or actions. The President identified one area where this could be a problem in Executive Order 13798, when he directed the Secretary of the Treasury, to the extent permitted by law, not to take any "adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of *similar character*" from a non-religious perspective has not been treated as participation or intervention in a political campaign. Exec. Order No. 13798, § 2, 82 Fed. Reg. at 21675. But the requirement of nondiscrimination toward religious organizations and conduct applies across the enforcement activities of the Executive Branch, including within the enforcement components of the Department of Justice.

Agencies Engaged in Contracting and Distribution of Grants

Agencies also must not discriminate against religious organizations in their contracting or grant-making activities. Religious organizations should be given the opportunity to compete for government grants or contracts and participate in government programs on an equal basis with nonreligious organizations. Absent unusual circumstances, agencies should not condition receipt of a government contract or grant on the effective relinquishment of a religious organization's Section 702 exemption for religious hiring practices, or any other constitutional or statutory protection for religious organizations. In particular, agencies should not attempt through conditions on grants or contracts to meddle in the internal governance affairs of religious organizations or to limit those organizations' otherwise protected activities.

* * *

Any questions about this memorandum or the appendix should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

APPENDIX

Although not an exhaustive treatment of all federal protections for religious liberty, this appendix summarizes the key constitutional and federal statutory protections for religious liberty and sets forth the legal basis for the religious liberty principles described in the foregoing memorandum.

Constitutional Protections

The people, acting through their Constitution, have singled out religious liberty as deserving of unique protection. In the original version of the Constitution, the people agreed that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." U.S. Const., art. VI, cl. 3. The people then amended the Constitution during the First Congress to clarify that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I, cl. 1. Those protections have been incorporated against the States. *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15 (1947) (Establishment Clause); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (Free Exercise Clause).

A. Free Exercise Clause

The Free Exercise Clause recognizes and guarantees Americans the "right to believe and profess whatever religious doctrine [they] desire[]." *Empl't Div. v. Smith*, 494 U.S. 872, 877 (1990). Government may not attempt to *regulate* religious beliefs, *compel* religious beliefs, or *punish* religious beliefs. *See id.*; *see also Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Torcaso v. Watkins*, 367 U.S. 488, 492–93, 495 (1961); *United States v. Ballard*, 322 U.S. 78, 86 (1944). It may not lend its power to one side in intra-denominational disputes about dogma, authority, discipline, or qualifications for ministry or membership. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185 (2012); *Smith*, 494 U.S. at 877; *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724–25 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969); *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 116, 120–21 (1952). It may not discriminate against or impose special burdens upon individuals because of their religious beliefs or status. *Smith*, 494 U.S. at 877; *McDaniel v. Paty*, 435 U.S. 618, 627 (1978). And with the exception of certain historical limits on the freedom of speech, government may not punish or otherwise harass churches, church officials, or religious adherents for speaking on religious topics or sharing their religious beliefs. *See Widmar v. Vincent*, 454 U.S. 263, 269 (1981); *see also* U.S. Const., amend. I, cl. 3. The Constitution's protection against government regulation of religious belief is absolute; it is not subject to limitation or balancing against the interests of the government. *Smith*, 494 U.S. at 877; *Sherbert*, 374 U.S. at 402; *see also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.").

The Free Exercise Clause protects beliefs rooted in religion, even if such beliefs are not mandated by a particular religious organization or shared among adherents of a particular religious

tradition. *Frazee v. Illinois Dept. of Emp't Sec.*, 489 U.S. 829, 833–34 (1989). As the Supreme Court has repeatedly counseled, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531 (1993) (internal quotation marks omitted). They must merely be "sincerely held." *Frazee*, 489 U.S. at 834.

Importantly, the protection of the Free Exercise Clause also extends to acts undertaken in accordance with such sincerely-held beliefs. That conclusion flows from the plain text of the First Amendment, which guarantees the freedom to "*exercise*" religion, not just the freedom to "believe" in religion. *See Smith*, 494 U.S. at 877; *see also Thomas*, 450 U.S. at 716; *Paty*, 435 U.S. at 627; *Sherbert*, 374 U.S. at 403–04; *Wisconsin v. Yoder*, 406 U.S. 205, 219–20 (1972). Moreover, no other interpretation would actually guarantee the freedom of belief that Americans have so long regarded as central to individual liberty. Many, if not most, religious beliefs require external observance and practice through physical acts or abstention from acts. The tie between physical acts and religious beliefs may be readily apparent (e.g., attendance at a worship service) or not (e.g., service to one's community at a soup kitchen or a decision to close one's business on a particular day of the week). The "exercise of religion" encompasses all aspects of religious observance and practice. And because individuals may act collectively through associations and organizations, it encompasses the exercise of religion by such entities as well. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 199; *Church of the Lukumi Babalu Aye*, 508 U.S. at 525–26, 547; *see also Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770, 2772–73 (2014) (even a closely held for-profit corporation may exercise religion if operated in accordance with asserted religious principles).

As with most constitutional protections, however, the protection afforded to Americans by the Free Exercise Clause for physical acts is not absolute, *Smith*, 491 U.S. at 878–79, and the Supreme Court has identified certain principles to guide the analysis of the scope of that protection. First, government may not restrict "acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display," *id.* at 877, nor "target the religious for special disabilities based on their religious status," *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ___, ___ (2017) (slip op. at 6) (internal quotation marks omitted), for it was precisely such "historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause." *Church of the Lukumi Babalu Aye*, 508 U.S. at 532 (internal quotation marks omitted). The Free Exercise Clause protects against "indirect coercion or penalties on the free exercise of religion" just as surely as it protects against "outright prohibitions" on religious exercise. *Trinity Lutheran*, 582 U.S. at ___ (slip op. at 11) (internal quotation marks omitted). "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Id.* (quoting *Sherbert*, 374 U.S. at 404).

Because a law cannot have as its official "object or purpose . . . the suppression of religion or religious conduct," courts must "survey meticulously" the text and operation of a law to ensure that it is actually neutral and of general applicability. *Church of the Lukumi Babalu Aye*, 508 U.S. at 533–34 (internal quotation marks omitted). A law is not neutral if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; visits "gratuitous restrictions

on religious conduct"; or "accomplishes . . . a 'religious gerrymander,' an impermissible attempt to target [certain individuals] and their religious practices." *Id.* at 533–35, 538 (internal quotation marks omitted). A law is not generally applicable if "in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief," *id.* at 543, including by "fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than . . . does" the prohibited conduct, *id.*, or enables, expressly or de facto, "a system of individualized exemptions," as discussed in *Smith*, 494 U.S. at 884; *see also Church of the Lukumi Babalu Aye*, 508 U.S. at 537.

"Neutrality and general applicability are interrelated, . . . [and] failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Id.* at 531. For example, a law that disqualifies a religious person or organization from a right to compete for a public benefit—including a grant or contract—because of the person's religious character is neither neutral nor generally applicable. *See Trinity Lutheran*, 582 U.S. at ___–___ (slip op. at 9–11). Likewise, a law that selectively prohibits the killing of animals for religious reasons and fails to prohibit the killing of animals for many nonreligious reasons, or that selectively prohibits a business from refusing to stock a product for religious reasons but fails to prohibit such refusal for myriad commercial reasons, is neither neutral, nor generally applicable. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 533–36, 542–45. Nonetheless, the requirements of neutral and general applicability are separate, and any law burdening religious practice that fails one or both must be subjected to strict scrutiny, *id.* at 546.

Second, even a neutral, generally applicable law is subject to strict scrutiny under this Clause if it restricts the free exercise of religion and another constitutionally protected liberty, such as the freedom of speech or association, or the right to control the upbringing of one's children. *See Smith*, 494 U.S. at 881–82; *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1295–97 (10th Cir. 2004). Many Free Exercise cases fall in this category. For example, a law that seeks to compel a private person's speech or expression contrary to his or her religious beliefs implicates both the freedoms of speech and free exercise. *See, e.g.*, *Wooley v. Maynard*, 430 U.S. 705, 707–08 (1977) (challenge by Jehovah's Witnesses to requirement that state license plates display the motto "Live Free or Die"); *Axson-Flynn*, 356 F.3d at 1280 (challenge by Mormon student to University requirement that student actors use profanity and take God's name in vain during classroom acting exercises). A law taxing or prohibiting door-to-door solicitation, at least as applied to individuals distributing religious literature and seeking contributions, likewise implicates the freedoms of speech and free exercise. *Murdock v. Pennsylvania*, 319 U.S. 105, 108–09 (1943) (challenge by Jehovah's Witnesses to tax on canvassing or soliciting); *Cantwell*, 310 U.S. at 307 (same). A law requiring children to receive certain education, contrary to the religious beliefs of their parents, implicates both the parents' right to the care, custody, and control of their children and to free exercise. *Yoder*, 406 U.S. at 227–29 (challenge by Amish parents to law requiring high school attendance).

Strict scrutiny is the "most rigorous" form of scrutiny identified by the Supreme Court. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546; *see also City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) ("Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law."). It is the same standard applied to governmental classifications based on race, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007), and

restrictions on the freedom of speech, *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015). *See Church of the Lukumi Babalu Aye*, 508 U.S. at 546–47. Under this level of scrutiny, government must establish that a challenged law "advance[s] interests of the highest order" and is "narrowly tailored in pursuit of those interests." *Id.* at 546 (internal quotation marks omitted). "[O]nly in rare cases" will a law survive this level of scrutiny. *Id.*

Of course, even when a law is neutral and generally applicable, government may run afoul of the Free Exercise Clause if it interprets or applies the law in a manner that discriminates against religious observance and practice. *See, e.g.*, *Church of the Lukumi Babalu Aye*, 508 U.S. at 537 (government discriminatorily interpreted an ordinance prohibiting the unnecessary killing of animals as prohibiting only killing of animals for religious reasons); *Fowler v. Rhode Island*, 345 U.S. 67, 69–70 (1953) (government discriminatorily enforced ordinance prohibiting meetings in public parks against only certain religious groups). The Free Exercise Clause, much like the Free Speech Clause, requires equal treatment of religious adherents. *See Trinity Lutheran*, 582 U.S. at __ (slip op. at 6); *cf. Good News Club v. Milford Central Sch.*, 533 U.S. 98, 114 (2001) (recognizing that Establishment Clause does not justify discrimination against religious clubs seeking use of public meeting spaces); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 837, 841 (1995) (recognizing that Establishment Clause does not justify discrimination against religious student newspaper's participation in neutral reimbursement program). That is true regardless of whether the discriminatory application is initiated by the government itself or by private requests or complaints. *See, e.g.*, *Fowler*, 345 U.S. at 69; *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

B. Establishment Clause

The Establishment Clause, too, protects religious liberty. It prohibits government from establishing a religion and coercing Americans to follow it. *See Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1819–20 (2014); *Good News Club*, 533 U.S. at 115. It restricts government from interfering in the internal governance or ecclesiastical decisions of a religious organization. *Hosanna-Tabor*, 565 U.S. at 188–89. And it prohibits government from officially favoring or disfavoring particular religious groups as such or officially advocating particular religious points of view. *See Galloway*, 134 S. Ct. at 1824; *Larson v. Valente*, 456 U.S. 228, 244–46 (1982). Indeed, "a significant factor in upholding governmental programs in the face of Establishment Clause attack is their *neutrality* towards religion." *Rosenberger*, 515 U.S. at 839 (emphasis added). That "guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Id.* Thus, religious adherents and organizations may, like nonreligious adherents and organizations, receive indirect financial aid through independent choice, or, in certain circumstances, direct financial aid through a secular-aid program. *See, e.g.*, *Trinity Lutheran*, 582 U.S. at ___ (slip. op. at 6) (scrap tire program); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (voucher program).

C. Religious Test Clause

Finally, the Religious Test Clause, though rarely invoked, provides a critical guarantee to religious adherents that they may serve in American public life. The Clause reflects the judgment

of the Framers that a diversity of religious viewpoints in government would enhance the liberty of all Americans. And after the Religion Clauses were incorporated against the States, the Supreme Court shared this view, rejecting a Tennessee law that "establishe[d] as a condition of office the willingness to eschew certain protected religious practices." *Paty*, 435 U.S. at 632 (Brennan, J., and Marshall, J., concurring in judgment); *see also id.* at 629 (plurality op.) ("[T]he American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti-establishment interests or less faithful to their oaths of civil office than their unordained counterparts.").

Statutory Protections

Recognizing the centrality of religious liberty to our nation, Congress has buttressed these constitutional rights with statutory protections for religious observance and practice. These protections can be found in, among other statutes, the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq.*; the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*; and the American Indian Religious Freedom Act, 42 U.S.C. § 1996. Such protections ensure not only that government tolerates religious observance and practice, but that it embraces religious adherents as full members of society, able to contribute through employment, use of public accommodations, and participation in government programs. The considered judgment of the United States is that we are stronger through accommodation of religion than segregation or isolation of it.

A. Religious Freedom Restoration Act of 1993 (RFRA)

The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, prohibits the federal government from "substantially burden[ing] a person's exercise of religion" unless "it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Id.* § 2000bb-1(a), (b). The Act applies even where the burden arises out of a "rule of general applicability" passed without animus or discriminatory intent. *See id.* § 2000bb-1(a). It applies to "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," *see* §§ 2000bb-2(4), 2000cc-5(7), and covers "individuals" as well as "corporations, companies, associations, firms, partnerships, societies, and joint stock companies," 1 U.S.C. § 1, including for-profit, closely-held corporations like those involved in *Hobby Lobby*, 134 S. Ct. at 2768.

Subject to the exceptions identified below, a law "substantially burden[s] a person's exercise of religion," 42 U.S.C. § 2000bb-1, if it bans an aspect of the adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, *see Sherbert*, 374 U.S. at 405–06. The "threat of criminal sanction" will satisfy these principles, even when, as in *Yoder*, the prospective punishment is a mere $5 fine. 406 U.S. at 208, 218. And the denial of, or condition on the receipt of, government benefits may substantially burden the exercise of religion under these principles. *Sherbert*, 374 U.S. at 405–06; *see also Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141 (1987); *Thomas*, 450 U.S. at 717–18. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself

regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden. *See, e.g.*, *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 448–49 (1988); *Bowen v. Roy*, 476 U.S. 693, 699–700 (1986).

As with claims under the Free Exercise Clause, RFRA does not permit a court to inquire into the reasonableness of a religious belief, including into the adherent's assessment of the religious connection between a belief asserted and what the government forbids, requires, or prevents. *Hobby Lobby*, 134 S. Ct. at 2778. If the proffered belief is sincere, it is not the place of the government or a court to second-guess it. *Id.* A good illustration of the point is *Thomas v. Review Board of Indiana Employment Security Division*—one of the *Sherbert* line of cases, whose analytical test Congress sought, through RFRA, to restore, 42 U.S.C. § 2000bb. There, the Supreme Court concluded that the denial of unemployment benefits was a substantial burden on the sincerely held religious beliefs of a Jehovah's Witness who had quit his job after he was transferred from a department producing sheet steel that could be used for military armaments to a department producing turrets for military tanks. *Thomas*, 450 U.S. at 716–18. In doing so, the Court rejected the lower court's inquiry into "what [the claimant's] belief was and what the religious basis of his belief was," noting that no one had challenged the sincerity of the claimant's religious beliefs and that "[c]ourts should not undertake to dissect religious beliefs because the believer admits that he is struggling with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ." *Id.* at 714–15 (internal quotation marks omitted). The Court likewise rejected the lower court's comparison of the claimant's views to those of other Jehovah's Witnesses, noting that "[i]ntrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences." *Id.* at 715. The Supreme Court reinforced this reasoning in *Hobby Lobby*, rejecting the argument that "the connection between what the objecting parties [were required to] do (provide health-insurance coverage for four methods of contraception that may operate after the fertilization of an egg) and the end that they [found] to be morally wrong (destruction of an embryo) [wa]s simply too attenuated." 134 S. Ct. at 2777. The Court explained that the plaintiff corporations had a sincerely-held religious belief that provision of the coverage was morally wrong, and it was "not for us to say that their religious beliefs are mistaken or insubstantial." *Id.* at 2779.

Government bears a heavy burden to justify a substantial burden on the exercise of religion. "[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." *Thomas*, 450 U.S. at 718 (quoting *Yoder*, 406 U.S. at 215). Such interests include, for example, the "fundamental, overriding interest in eradicating racial discrimination in education—discrimination that prevailed, with official approval, for the first 165 years of this Nation's history," *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983), and the interest in ensuring the "mandatory and continuous participation" that is "indispensable to the fiscal vitality of the social security system," *United States v. Lee*, 455 U.S. 252, 258–59 (1982). But "broadly formulated interests justifying the general applicability of government mandates" are insufficient. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). The government must establish a compelling interest to deny an accommodation to the particular claimant. *Id.* at 430, 435–38. For example, the military may have a compelling interest in its

uniform and grooming policy to ensure military readiness and protect our national security, but it does not necessarily follow that those interests would justify denying a particular soldier's request for an accommodation from the uniform and grooming policy. *See, e.g.*, Secretary of the Army, Army Directive 2017-03, Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation (2017) (recognizing the "successful examples of Soldiers currently serving with" an accommodation for "the wear of a hijab; the wear of a beard; and the wear of a turban or under-turban/patka, with uncut beard and uncut hair" and providing for a reasonable accommodation of these practices in the Army). The military would have to show that it has a compelling interest in denying that particular accommodation. An asserted compelling interest in denying an accommodation to a particular claimant is undermined by evidence that exemptions or accommodations have been granted for other interests. *See O Centro*, 546 U.S. at 433, 436–37; *see also Hobby Lobby*, 134 S. Ct. at 2780.

The compelling-interest requirement applies even where the accommodation sought is "an exemption from a legal obligation requiring [the claimant] to confer benefits on third parties." *Hobby Lobby*, 134 S. Ct. at 2781 n.37. Although "in applying RFRA 'courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries,'" the Supreme Court has explained that almost any governmental regulation could be reframed as a legal obligation requiring a claimant to confer benefits on third parties. *Id.* (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)). As nothing in the text of RFRA admits of an exception for laws requiring a claimant to confer benefits on third parties, 42 U.S.C. § 2000bb-1, and such an exception would have the potential to swallow the rule, the Supreme Court has rejected the proposition that RFRA accommodations are categorically unavailable for laws requiring claimants to confer benefits on third parties. *Hobby Lobby*, 134 S. Ct. at 2781 n.37.

Even if the government can identify a compelling interest, the government must also show that denial of an accommodation is the least restrictive means of serving that compelling governmental interest. This standard is "exceptionally demanding." *Hobby Lobby*, 134 S. Ct. at 2780. It requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program. *Id.* at 2781. Indeed, the existence of exemptions for other individuals or entities that could be expanded to accommodate the claimant, while still serving the government's stated interests, will generally defeat a RFRA defense, as the government bears the burden to establish that no accommodation is viable. *See id.* at 2781–82.

B. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

Although Congress's leadership in adopting RFRA led many States to pass analogous statutes, Congress recognized the unique threat to religious liberty posed by certain categories of state action and passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to address them. RLUIPA extends a standard analogous to RFRA to state and local government actions regulating land use and institutionalized persons where "the substantial burden is imposed in a program or activity that receives Federal financial assistance" or "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes." 42 U.S.C. §§ 2000cc(a)(2), 2000cc-1(b).

RLUIPA's protections must "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by [RLUIPA] and the Constitution." *Id.* § 2000cc-3(g). RLUIPA applies to "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," *id.* § 2000cc-5(7)(A), and treats "[t]he use, building, or conversion of real property for the purpose of religious exercise" as the "religious exercise of the person or entity that uses or intends to use the property for that purpose," *id.* § 2000cc-5(7)(B). Like RFRA, RLUIPA prohibits government from substantially burdening an exercise of religion unless imposition of the burden on the religious adherent is the least restrictive means of furthering a compelling governmental interest. *See id.* § 2000cc-1(a). That standard "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." *Id.* § 2000cc-3(c); *cf. Holt v. Hobbs*, 135 S. Ct. 853, 860, 864–65 (2015).

With respect to land use in particular, RLUIPA also requires that government not "treat[] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution," 42 U.S.C. § 2000cc(b)(1), "impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination," *id.* § 2000cc(b)(2), or "impose or implement a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction," *id.* § 2000cc(b)(3). A claimant need not show a substantial burden on the exercise of religion to enforce these antidiscrimination and equal terms provisions listed in § 2000cc(b). *See id.* § 2000cc(b); *see also Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 262–64 (3d Cir. 2007), *cert. denied*, 553 U.S. 1065 (2008). Although most RLUIPA cases involve places of worship like churches, mosques, synagogues, and temples, the law applies more broadly to religious schools, religious camps, religious retreat centers, and religious social service facilities. Letter from U.S. Dep't of Justice Civil Rights Division to State, County, and Municipal Officials re: The Religious Land Use and Institutionalized Persons Act (Dec. 15, 2016).

C. Other Civil Rights Laws

To incorporate religious adherents fully into society, Congress has recognized that it is not enough to limit governmental action that substantially burdens the exercise of religion. It must also root out public and private discrimination based on religion. Religious discrimination stood alongside discrimination based on race, color, and national origin, as an evil to be addressed in the Civil Rights Act of 1964, and Congress has continued to legislate against such discrimination over time. Today, the United States Code includes specific prohibitions on religious discrimination in places of public accommodation, 42 U.S.C. § 2000a; in public facilities, *id.* § 2000b; in public education, *id.* § 2000c-6; in employment, *id.* §§ 2000e, 2000e-2, 2000e-16; in the sale or rental of housing, *id.* § 3604; in the provision of certain real-estate transaction or brokerage services, *id.* §§ 3605, 3606; in federal jury service, 28 U.S.C. § 1862; in access to limited open forums for speech, 20 U.S.C. § 4071; and in participation in or receipt of benefits from various federally-funded programs, 15 U.S.C. § 3151; 20 U.S.C. §§ 1066c(d), 1071(a)(2), 1087-4, 7231d(b)(2), 7914; 31 U.S.C. § 6711(b)(3); 42 U.S.C. §§ 290cc-33(a)(2), 300w-7(a)(2), 300x-57(a)(2), 300x-65(f), 604a(g), 708(a)(2), 5057(c), 5151(a), 5309(a), 6727(a), 9858l(a)(2), 10406(2)(B), 10504(a), 10604(e), 12635(c)(1), 12832, 13791(g)(3), 13925(b)(13)(A).

Invidious religious discrimination may be directed at religion in general, at a particular religious belief, or at particular aspects of religious observance and practice. *See, e.g.*, *Church of the Lukumi Babalu Aye*, 508 U.S. at 532–33. A law drawn to prohibit a specific religious practice may discriminate just as severely against a religious group as a law drawn to prohibit the religion itself. *See id.* No one would doubt that a law prohibiting the sale and consumption of Kosher meat would discriminate against Jewish people. True equality may also require, depending on the applicable statutes, an awareness of, and willingness reasonably to accommodate, religious observance and practice. Indeed, the denial of reasonable accommodations may be little more than cover for discrimination against a particular religious belief or religion in general and is counter to the general determination of Congress that the United States is best served by the participation of religious adherents in society, not their withdrawal from it.

1. Employment

i. Protections for Religious Employees

Protections for religious individuals in employment are the most obvious example of Congress's instruction that religious observance and practice be reasonably accommodated, not marginalized. In Title VII of the Civil Rights Act, Congress declared it an unlawful employment practice for a covered employer to (1) "fail or refuse to hire or to discharge any individual, or otherwise . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion," as well as (2) to "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a); *see also* 42 U.S.C. § 2000e-16(a) (applying Title VII to certain federal-sector employers); 3 U.S.C. § 411(a) (applying Title VII employment in the Executive Office of the President). The protection applies "regardless of whether the discrimination is directed against [members of religious] majorities or minorities." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 71–72 (1977).

After several courts had held that employers did not violate Title VII when they discharged employees for refusing to work on their Sabbath, Congress amended Title VII to define "[r]eligion" broadly to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j); *Hardison*, 432 U.S. at 74 n.9. Congress thus made clear that discrimination on the basis of religion includes discrimination on the basis of any aspect of an employee's religious observance or practice, at least where such observance or practice can be reasonably accommodated without undue hardship.

Title VII's reasonable accommodation requirement is meaningful. As an initial matter, it requires an employer to consider what adjustment or modification to its policies would effectively address the employee's concern, for "[a]n *ineffective* modification or adjustment will not *accommodate*" a person's religious observance or practice, within the ordinary meaning of that word. *See U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (considering the ordinary

meaning in the context of an ADA claim). Although there is no obligation to provide an employee with his or her preferred reasonable accommodation, *see Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68 (1986), an employer may justify a refusal to accommodate only by showing that "an undue hardship [on its business] would *in fact* result from *each available* alternative method of accommodation." 29 C.F.R. § 1605.2(c)(1) (emphasis added). "A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship." *Id.* Likewise, the fact that an accommodation may grant the religious employee a preference is not evidence of undue hardship as, "[b]y definition, any special 'accommodation' requires the employer to treat an employee . . . differently, *i.e.*, preferentially." *U.S. Airways*, 535 U.S. at 397; *see also E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2034 (2015) ("Title VII does not demand mere neutrality with regard to religious practices—that they may be treated no worse than other practices. Rather, it gives them favored treatment.").

Title VII does not, however, require accommodation at all costs. As noted above, an employer is not required to accommodate a religious observance or practice if it would pose an undue hardship on its business. An accommodation might pose an "undue hardship," for example, if it would require the employer to breach an otherwise valid collective bargaining agreement, *see, e.g.*, *Hardison*, 432 U.S. at 79, or carve out a special exception to a seniority system, *id.* at 83; *see also U.S. Airways*, 535 U.S. at 403. Likewise, an accommodation might pose an "undue hardship" if it would impose "more than a de minimis cost" on the business, such as in the case of a company where weekend work is "essential to [the] business" and many employees have religious observances that would prohibit them from working on the weekends, so that accommodations for all such employees would result in significant overtime costs for the employer. *Hardison*, 432 U.S. at 80, 84 & n.15. In general, though, Title VII expects positive results for society from a cooperative process between an employer and its employee "in the search for an acceptable reconciliation of the needs of the employee's religion and the exigencies of the employer's business." *Philbrook*, 479 U.S. at 69 (internal quotations omitted).

The area of religious speech and expression is a useful example of reasonable accommodation. Where speech or expression is part of a person's religious observance and practice, it falls within the scope of Title VII. *See* 42 U.S.C. §§ 2000e, 2000e-2. Speech or expression outside of the scope of an individual's employment can almost always be accommodated without undue hardship to a business. Speech or expression within the scope of an individual's employment, during work hours, or in the workplace may, depending upon the facts and circumstances, be reasonably accommodated. *Cf. Abercrombie*, 135 S. Ct. at 2032.

The federal government's approach to free exercise in the federal workplace provides useful guidance on such reasonable accommodations. For example, under the Guidelines issued by President Clinton, the federal government permits a federal employee to "keep a Bible or Koran on her private desk and read it during breaks"; to discuss his religious views with other employees, subject "to the same rules of order as apply to other employee expression"; to display religious messages on clothing or wear religious medallions visible to others; and to hand out religious tracts to other employees or invite them to attend worship services at the employee's church, except to the extent that such speech becomes excessive or harassing. Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, § 1(A), Aug. 14, 1997 (hereinafter "Clinton

Guidelines"). The Clinton Guidelines have the force of an Executive Order. *See Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order*, 24 Op. O.L.C. 29, 29 (2000) ("[T]here is no substantive difference in the legal effectiveness of an executive order and a presidential directive that is styled other than as an executive order."); *see also* Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies (Aug. 14, 1997) ("All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully."). The successful experience of the federal government in applying the Clinton Guidelines over the last twenty years is evidence that religious speech and expression can be reasonably accommodated in the workplace without exposing an employer to liability under workplace harassment laws.

Time off for religious holidays is also often an area of concern. The observance of religious holidays is an "aspect[] of religious observance and practice" and is therefore protected by Title VII. 42 U.S.C. §§ 2000e, 2000e-2. Examples of reasonable accommodations for that practice could include a change of job assignments or lateral transfer to a position whose schedule does not conflict with the employee's religious holidays, 29 C.F.R. § 1605.2(d)(1)(iii); a voluntary work schedule swap with another employee, *id.* § 1065.2(d)(1)(i); or a flexible scheduling scheme that allows employees to arrive or leave early, use floating or optional holidays for religious holidays, or make up time lost on another day, *id.* § 1065.2(d)(1)(ii). Again, the federal government has demonstrated reasonable accommodation through its own practice: Congress has created a flexible scheduling scheme for federal employees, which allows employees to take compensatory time off for religious observances, 5 U.S.C. § 5550a, and the Clinton Guidelines make clear that "[a]n agency must adjust work schedules to accommodate an employee's religious observance—for example, Sabbath or religious holiday observance—if an adequate substitute is available, or if the employee's absence would not otherwise impose an undue burden on the agency," Clinton Guidelines § 1(C). If an employer regularly permits accommodation in work scheduling for secular conflicts and denies such accommodation for religious conflicts, "such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness." *Philbrook*, 479 U.S. at 71.

Except for certain exceptions discussed in the next section, Title VII's protection against disparate treatment, 42 U.S.C. § 2000e-2(a)(1), is implicated *any time* religious observance or practice is a motivating factor in an employer's covered decision. *Abercrombie*, 135 S. Ct. at 2033. That is true even when an employer acts without actual knowledge of the need for an accommodation from a neutral policy but with "an unsubstantiated suspicion" of the same. *Id.* at 2034.

ii. Protections for Religious Employers

Congress has acknowledged, however, that religion sometimes *is* an appropriate factor in employment decisions, and it has limited Title VII's scope accordingly. Thus, for example, where religion "is a bona fide occupational qualification reasonably necessary to the normal operation of [a] particular business or enterprise," employers may hire and employ individuals based on their religion. 42 U.S.C. § 2000e-2(e)(1). Likewise, where educational institutions are "owned, supported, controlled or managed, [in whole or in substantial part] by a particular religion or by a particular religious corporation, association, or society" or direct their curriculum "toward the

propagation of a particular religion," such institutions may hire and employ individuals of a particular religion. *Id.* And "a religious corporation, association, educational institution, or society" may employ "individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." *Id.* § 2000e-1(a); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335–36 (1987).

Because Title VII defines "religion" broadly to include "all aspects of religious observance and practice, as well as belief," 42 U.S.C. § 2000e(j), these exemptions include decisions "to employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *see also Killinger v. Samford Univ.*, 113 F.3d 196, 198–200 (11th Cir. 1997). For example, in *Little*, the Third Circuit held that the exemption applied to a Catholic school's decision to fire a divorced Protestant teacher who, though having agreed to abide by a code of conduct shaped by the doctrines of the Catholic Church, married a baptized Catholic without first pursuing the official annulment process of the Church. 929 F.2d at 946, 951.

Section 702 broadly exempts from its reach religious corporations, associations, educational institutions, and societies. The statute's terms do not limit this exemption to non-profit organizations, to organizations that carry on only religious activities, or to organizations established by a church or formally affiliated therewith. *See* Civil Rights Act of 1964, § 702(a), *codified at* 42 U.S.C. § 2000e-1(a); *see also Hobby Lobby*, 134 S. Ct. at 2773–74; *Corp. of Presiding Bishop*, 483 U.S. at 335–36. The exemption applies whenever the organization is "religious," which means that it is organized for religious purposes and engages in activity consistent with, and in furtherance of, such purposes. Br. of Amicus Curiae the U.S. Supp. Appellee, *Spencer v. World Vision, Inc.*, No. 08-35532 (9th Cir. 2008). Thus, the exemption applies not just to religious denominations and houses of worship, but to religious colleges, charitable organizations like the Salvation Army and World Vision International, and many more. In that way, it is consistent with other broad protections for religious entities in federal law, including, for example, the exemption of religious entities from many of the requirements under the Americans with Disabilities Act. *See* 28 C.F.R. app. C; 56 Fed. Reg. 35544, 35554 (July 26, 1991) (explaining that "[t]he ADA's exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations").

In addition to these explicit exemptions, religious organizations may be entitled to additional exemptions from discrimination laws. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 180, 188–90. For example, a religious organization might conclude that it cannot employ an individual who fails faithfully to adhere to the organization's religious tenets, either because doing so might itself inhibit the organization's exercise of religion or because it might dilute an expressive message. *Cf. Boy Scouts of Am. v. Dale*, 530 U.S. 640, 649–55 (2000). Both constitutional and statutory issues arise when governments seek to regulate such decisions.

As a constitutional matter, religious organizations' decisions are protected from governmental interference to the extent they relate to ecclesiastical or internal governance matters. *Hosanna-Tabor*, 565 U.S. at 180, 188–90. It is beyond dispute that "it would violate the First Amendment for courts to apply [employment discrimination] laws to compel the ordination of

women by the Catholic Church or by an Orthodox Jewish seminary." *Id.* at 188. The same is true for other employees who "minister to the faithful," including those who are not themselves the head of the religious congregation and who are not engaged solely in religious functions. *Id.* at 188, 190, 194–95; *see also* Br. of Amicus Curiae the U.S. Supp. Appellee, *Spencer v. World Vision, Inc.*, No. 08-35532 (9th Cir. 2008) (noting that the First Amendment protects "the right to employ staff who share the religious organization's religious beliefs").

Even if a particular associational decision could be construed to fall outside this protection, the government would likely still have to show that any interference with the religious organization's associational rights is justified under strict scrutiny. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (infringements on expressive association are subject to strict scrutiny); *Smith*, 494 U.S. at 882 ("[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns."). The government may be able to meet that standard with respect to race discrimination, *see Bob Jones Univ.*, 461 U.S. at 604, but may not be able to with respect to other forms of discrimination. For example, at least one court has held that forced inclusion of women into a mosque's religious men's meeting would violate the freedom of expressive association. *Donaldson v. Farrakhan*, 762 N.E.2d 835, 840–41 (Mass. 2002). The Supreme Court has also held that the government's interest in addressing sexual-orientation discrimination is not sufficiently compelling to justify an infringement on the expressive association rights of a private organization. *Boy Scouts*, 530 U.S. at 659.

As a statutory matter, RFRA too might require an exemption or accommodation for religious organizations from antidiscrimination laws. For example, "prohibiting religious organizations from hiring only coreligionists can 'impose a significant burden on their exercise of religion, even as applied to employees in programs that must, by law, refrain from specifically religious activities.'" *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162, 172 (2007) (quoting *Direct Aid to Faith-Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001*, 25 Op. O.L.C. 129, 132 (2001)); *see also Corp. of Presiding Bishop*, 483 U.S. at 336 (noting that it would be "a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court w[ould] consider religious" in applying a nondiscrimination provision that applied only to secular, but not religious, activities). If an organization establishes the existence of such a burden, the government must establish that imposing such burden on the organization is the least restrictive means of achieving a compelling governmental interest. That is a demanding standard and thus, even where Congress has not expressly exempted religious organizations from its antidiscrimination laws—as it has in other contexts, *see, e.g.*, 42 U.S.C. §§ 3607 (Fair Housing Act), 12187 (Americans with Disabilities Act)—RFRA might require such an exemption.

2. Government Programs

Protections for religious organizations likewise exist in government contracts, grants, and other programs. Recognizing that religious organizations can make important contributions to government programs, *see, e.g.*, 22 U.S.C. § 7601(19), Congress has expressly permitted religious organizations to participate in numerous such programs on an equal basis with secular

organizations, *see, e.g.*, 42 U.S.C. §§ 290kk-1, 300x-65 604a, 629i. Where Congress has not expressly so provided, the President has made clear that "[t]he Nation's social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs." Exec. Order No. 13559, § 1, 75 Fed. Reg. 71319, 71319 (Nov. 17, 2010) (amending Exec. Order No. 13279, 67 Fed. Reg. 77141 (2002)). To that end, no organization may be "discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs." *Id.* "Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization)" are eligible to participate in such programs, so long as they conduct such activities outside of the programs directly funded by the federal government and at a separate time and location. *Id.*

The President has assured religious organizations that they are "eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social services programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character." *See id.*; *see also* 42 U.S.C. § 290kk-1(e) (similar statutory assurance). Religious organizations that apply for or participate in such programs may continue to carry out their mission, "including the definition, development, practice, and expression of . . . religious beliefs," so long as they do not use any "direct Federal financial assistance" received "to support or engage in any explicitly religious activities" such as worship, religious instruction, or proselytization. Exec. Order No. 13559, § 1. They may also "use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities," and they may continue to "retain religious terms" in their names, select "board members on a religious basis, and include religious references in . . . mission statements and other chartering or governing documents." *Id.*

With respect to government contracts in particular, Executive Order 13279, 67 Fed. Reg. 77141 (Dec. 12, 2002), confirms that the independence and autonomy promised to religious organizations include independence and autonomy in religious hiring. Specifically, it provides that the employment nondiscrimination requirements in Section 202 of Executive Order 11246, which normally apply to government contracts, do "not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." Exec. Order No. 13279, § 4, *amending* Exec. Order No. 11246, § 204(c), 30 Fed. Reg. 12319, 12935 (Sept. 24, 1965).

Because the religious hiring protection in Executive Order 13279 parallels the Section 702 exemption in Title VII, it should be interpreted to protect the decision "to employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." *Little*, 929 F.2d at 951. That parallel interpretation is consistent with the Supreme Court's repeated counsel that the decision to borrow statutory text in a new statute is "strong indication that the two statutes should be interpreted pari passu." *Northcross v. Bd. of Educ. of Memphis City Sch.*, 412 U.S. 427 (1973) (per curiam); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559

U.S. 573, 590 (2010). It is also consistent with the Executive Order's own usage of discrimination on the basis of "religion" as something distinct and more expansive than discrimination on the basis of "religious belief." *See, e.g.*, Exec. Order No. 13279, § 2(c) ("No organization should be discriminated against on the basis of religion *or* religious belief . . . " (emphasis added)); *id.* § 2(d) ("All organizations that receive Federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of the social services programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice."). Indeed, because the Executive Order uses "on the basis of religion or religious belief" in both the provision prohibiting discrimination against religious organizations and the provision prohibiting discrimination "against beneficiaries or potential beneficiaries," a narrow interpretation of the protection for religious organizations' hiring decisions would lead to a narrow protection for beneficiaries of programs served by such organizations. *See id.* §§ 2(c), (d). It would also lead to inconsistencies in the treatment of religious hiring across government programs, as some program-specific statutes and regulations expressly confirm that "[a] religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation, or receipt of funds from, a designated program." 42 U.S.C. § 290kk-1(e); *see also* 6 C.F.R. § 19.9 (same).

Even absent the Executive Order, however, RFRA would limit the extent to which the government could condition participation in a federal grant or contract program on a religious organization's effective relinquishment of its Section 702 exemption. RFRA applies to all government conduct, not just to legislation or regulation, *see* 42 U.S.C. § 2000bb-1, and the Office of Legal Counsel has determined that application of a religious nondiscrimination law to the hiring decisions of a religious organization can impose a substantial burden on the exercise of religion. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. O.L.C. at 172; *Direct Aid to Faith-Based Organizations*, 25 Op. O.L.C. at 132. Given Congress's "recognition that religious discrimination in employment is permissible in some circumstances," the government will not ordinarily be able to assert a compelling interest in prohibiting that conduct as a general condition of a religious organization's receipt of any particular government grant or contract. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. of O.L.C. at 186. The government will also bear a heavy burden to establish that requiring a particular contractor or grantee effectively to relinquish its Section 702 exemption is the least restrictive means of achieving a compelling governmental interest. *See* 42 U.S.C. § 2000bb-1.

The First Amendment also "supplies a limit on Congress' ability to place conditions on the receipt of funds." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321, 2328 (2013) (internal quotation marks omitted)). Although Congress may specify the activities that it wants to subsidize, it may not "seek to leverage funding" to regulate constitutionally protected conduct "outside the contours of the program itself." *See id.* Thus, if a condition on participation in a government program—including eligibility for receipt of federally backed student loans—would interfere with a religious organization's constitutionally protected rights, *see, e.g.*,

Hosanna-Tabor, 565 U.S. at 188–89, that condition could raise concerns under the "unconstitutional conditions" doctrine, *see All. for Open Soc'y Int'l, Inc.*, 133 S. Ct. at 2328.

Finally, Congress has provided an additional statutory protection for educational institutions controlled by religious organizations who provide education programs or activities receiving federal financial assistance. Such institutions are exempt from Title IX's prohibition on sex discrimination in those programs and activities where that prohibition "would not be consistent with the religious tenets of such organization[s]." 20 U.S.C. § 1681(a)(3). Although eligible institutions may "claim the exemption" in advance by "submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions . . . [that] conflict with a specific tenet of the religious organization," 34 C.F.R. § 106.12(b), they are not required to do so to have the benefit of it, *see* 20 U.S.C. § 1681.

3. Government Mandates

Congress has undertaken many similar efforts to accommodate religious adherents in diverse areas of federal law. For example, it has exempted individuals who, "by reason of religious training and belief," are conscientiously opposed to war from training and service in the armed forces of the United States. 50 U.S.C. § 3806(j). It has exempted "ritual slaughter and the handling or other preparation of livestock for ritual slaughter" from federal regulations governing methods of animal slaughter. 7 U.S.C. § 1906. It has exempted "private secondary school[s] that maintain[] a religious objection to service in the Armed Forces" from being required to provide military recruiters with access to student recruiting information. 20 U.S.C. § 7908. It has exempted federal employees and contractors with religious objections to the death penalty from being required to "be in attendance at or to participate in any prosecution or execution." 18 U.S.C. § 3597(b). It has allowed individuals with religious objections to certain forms of medical treatment to opt out of such treatment. *See, e.g.*, 33 U.S.C. § 907(k); 42 U.S.C. § 290bb-36(f). It has created tax accommodations for members of religious faiths conscientiously opposed to acceptance of the benefits of any private or public insurance, *see, e.g.*, 26 U.S.C. §§ 1402(g), 3127, and for members of religious orders required to take a vow of poverty, *see, e.g.*, 26 U.S.C. § 3121(r).

Congress has taken special care with respect to programs touching on abortion, sterilization, and other procedures that may raise religious conscience objections. For example, it has prohibited entities receiving certain federal funds for health service programs or research activities from requiring individuals to participate in such program or activity contrary to their religious beliefs. 42 U.S.C. § 300a-7(d), (e). It has prohibited discrimination against health care professionals and entities that refuse to undergo, require, or provide training in the performance of induced abortions; to provide such abortions; or to refer for such abortions, and it will deem accredited any health care professional or entity denied accreditation based on such actions. *Id.* § 238n(a), (b). It has also made clear that receipt of certain federal funds does not require an individual "to perform or assist in the performance of any sterilization procedure or abortion if [doing so] would be contrary to his religious beliefs or moral convictions" nor an entity to "make its facilities available for the performance of" those procedures if such performance "is prohibited by the entity on the basis of religious beliefs or moral convictions," nor an entity to "provide any personnel for the performance or assistance in the performance of" such procedures if such performance or assistance "would be contrary to the religious beliefs or moral convictions of such

personnel." *Id.* § 300a-7(b). Finally, no "qualified health plan[s] offered through an Exchange" may discriminate against any health care professional or entity that refuses to "provide, pay for, provide coverage of, or refer for abortions," § 18023(b)(4); *see also* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. H, § 507(d), 129 Stat. 2242, 2649 (Dec. 18, 2015).

Congress has also been particularly solicitous of the religious freedom of American Indians. In 1978, Congress declared it the "policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." 42 U.S.C. § 1996. Consistent with that policy, it has passed numerous statutes to protect American Indians' right of access for religious purposes to national park lands, Scenic Area lands, and lands held in trust by the United States. *See, e.g.*, 16 U.S.C. §§ 228i(b), 410aaa-75(a), 460uu-47, 543f, 698v-11(b)(11). It has specifically sought to preserve lands of religious significance and has required notification to American Indians of any possible harm to or destruction of such lands. *Id.* § 470cc. Finally, it has provided statutory exemptions for American Indians' use of otherwise regulated articles such as bald eagle feathers and peyote as part of traditional religious practice. *Id.* §§ 668a, 4305(d); 42 U.S.C. § 1996a.

* * *

The depth and breadth of constitutional and statutory protections for religious observance and practice in America confirm the enduring importance of religious freedom to the United States. They also provide clear guidance for all those charged with enforcing federal law: The free exercise of religion is not limited to a right to hold personal religious beliefs or even to worship in a sacred place. It encompasses all aspects of religious observance and practice. To the greatest extent practicable and permitted by law, such religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952) ("[Government] follows the best of our traditions . . . [when it] respects the religious nature of our people and accommodates the public service to their spiritual needs.").

EXHIBIT 8

Federal Register
Vol. 84, No. 199
Tuesday, October 15, 2019

Presidential Documents

Title 3—

The President

Executive Order 13891 of October 9, 2019

Promoting the Rule of Law Through Improved Agency Guidance Documents

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that Americans are subject to only those binding rules imposed through duly enacted statutes or through regulations lawfully promulgated under them, and that Americans have fair notice of their obligations, it is hereby ordered as follows:

Section 1. *Policy.* Departments and agencies (agencies) in the executive branch adopt regulations that impose legally binding requirements on the public even though, in our constitutional democracy, only Congress is vested with the legislative power. The Administrative Procedure Act (APA) generally requires agencies, in exercising that solemn responsibility, to engage in notice-and-comment rulemaking to provide public notice of proposed regulations under section 553 of title 5, United States Code, allow interested parties an opportunity to comment, consider and respond to significant comments, and publish final regulations in the *Federal Register*.

Agencies may clarify existing obligations through non-binding guidance documents, which the APA exempts from notice-and-comment requirements. Yet agencies have sometimes used this authority inappropriately in attempts to regulate the public without following the rulemaking procedures of the APA. Even when accompanied by a disclaimer that it is non-binding, a guidance document issued by an agency may carry the implicit threat of enforcement action if the regulated public does not comply. Moreover, the public frequently has insufficient notice of guidance documents, which are not always published in the *Federal Register* or distributed to all regulated parties.

Americans deserve an open and fair regulatory process that imposes new obligations on the public only when consistent with applicable law and after an agency follows appropriate procedures. Therefore, it is the policy of the executive branch, to the extent consistent with applicable law, to require that agencies treat guidance documents as non-binding both in law and in practice, except as incorporated into a contract, take public input into account when appropriate in formulating guidance documents, and make guidance documents readily available to the public. Agencies may impose legally binding requirements on the public only through regulations and on parties on a case-by-case basis through adjudications, and only after appropriate process, except as authorized by law or as incorporated into a contract.

Sec. 2. *Definitions.* For the purposes of this order:

(a) ''Agency'' has the meaning given in section 3(b) of Executive Order 12866 (Regulatory Planning and Review), as amended.

(b) ''Guidance document'' means an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, but does not include the following:

(i) rules promulgated pursuant to notice and comment under section 553 of title 5, United States Code, or similar statutory provisions;

(ii) rules exempt from rulemaking requirements under section 553(a) of title 5, United States Code;

(iii) rules of agency organization, procedure, or practice;

(iv) decisions of agency adjudications under section 554 of title 5, United States Code, or similar statutory provisions;

(v) internal guidance directed to the issuing agency or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; or

(vi) internal executive branch legal advice or legal opinions addressed to executive branch officials.

(c) ''Significant guidance document'' means a guidance document that may reasonably be anticipated to:

(i) lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(iii) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

(d) ''Pre-enforcement ruling'' means a formal written communication by an agency in response to an inquiry from a person concerning compliance with legal requirements that interprets the law or applies the law to a specific set of facts supplied by the person. The term includes informal guidance under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Title II), as amended, letter rulings, advisory opinions, and no-action letters.

Sec. 3. *Ensuring Transparent Use of Guidance Documents.* (a) Within 120 days of the date on which the Office of Management and Budget (OMB) issues an implementing memorandum under section 6 of this order, each agency or agency component, as appropriate, shall establish or maintain on its website a single, searchable, indexed database that contains or links to all guidance documents in effect from such agency or component. The website shall note that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract.

(b) Within 120 days of the date on which OMB issues an implementing memorandum under section 6 of this order, each agency shall review its guidance documents and, consistent with applicable law, rescind those guidance documents that it determines should no longer be in effect. No agency shall retain in effect any guidance document without including it in the relevant database referred to in subsection (a) of this section, nor shall any agency, in the future, issue a guidance document without including it in the relevant database. No agency may cite, use, or rely on guidance documents that are rescinded, except to establish historical facts. Within 240 days of the date on which OMB issues an implementing memorandum, an agency may reinstate a guidance document rescinded under this subsection without complying with any procedures adopted or imposed pursuant to section 4 of this order, to the extent consistent with applicable law, and shall include the guidance document in the relevant database.

(c) The Director of OMB (Director), or the Director's designee, may waive compliance with subsections (a) and (b) of this section for particular guidance documents or categories of guidance documents, or extend the deadlines set forth in those subsections.

(d) As requested by the Director, within 240 days of the date on which OMB issues an implementing memorandum under section 6 of this order, an agency head shall submit a report to the Director with the reasons for maintaining in effect any guidance documents identified by the Director.

The Director shall provide such reports to the President. This subsection shall apply only to guidance documents existing as of the date of this order.

Sec. 4. *Promulgation of Procedures for Issuing Guidance Documents.* (a) Within 300 days of the date on which OMB issues an implementing memorandum under section 6 of this order, each agency shall, consistent with applicable law, finalize regulations, or amend existing regulations as necessary, to set forth processes and procedures for issuing guidance documents. The process set forth in each regulation shall be consistent with this order and shall include:

(i) a requirement that each guidance document clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract;

(ii) procedures for the public to petition for withdrawal or modification of a particular guidance document, including a designation of the officials to which petitions should be directed; and

(iii) for a significant guidance document, as determined by the Administrator of OMB's Office of Information and Regulatory Affairs (Administrator), unless the agency and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements, provisions requiring:

(A) a period of public notice and comment of at least 30 days before issuance of a final guidance document, and a public response from the agency to major concerns raised in comments, except when the agency for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest;

(B) approval on a non-delegable basis by the agency head or by an agency component head appointed by the President, before issuance;

(C) review by the Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, before issuance; and

(D) compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866, 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), 13771 (Reducing Regulation and Controlling Regulatory Costs), and 13777 (Enforcing the Regulatory Reform Agenda).

(b) The Administrator shall issue memoranda establishing exceptions from this order for categories of guidance documents, and categorical presumptions regarding whether guidance documents are significant, as appropriate, and may require submission of significant guidance documents to OIRA for review before the finalization of agency regulations under subsection (a) of this section. In light of the Memorandum of Agreement of April 11, 2018, this section and section 5 of this order shall not apply to the review relationship (including significance determinations) between OIRA and any component of the Department of the Treasury, or to compliance by the latter with Executive Orders 12866, 13563, 13609, 13771, and 13777. Section 4(a)(iii) and section 5 of this order shall not apply to pre-enforcement rulings.

Sec. 5. *Executive Orders 12866, 13563, and 13609.* The requirements and procedures of Executive Orders 12866, 13563, and 13609 shall apply to guidance documents, consistent with section 4 of this order.

Sec. 6. *Implementation.* The Director shall issue memoranda and, as appropriate, regulations pursuant to sections 3504(d)(1) and 3516 of title 44, United States Code, and other appropriate authority, to provide guidance regarding or otherwise implement this order.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Notwithstanding any other provision in this order, nothing in this order shall apply:

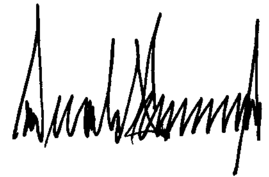
(i) to any action that pertains to foreign or military affairs, or to a national security or homeland security function of the United States (other than guidance documents involving procurement or the import or export of non-defense articles and services);

(ii) to any action related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related investigation by the Department of Justice, including any action related to a civil investigative demand under 18 U.S.C. 1968;

(iii) to any investigation of misconduct by an agency employee or any disciplinary, corrective, or employment action taken against an agency employee;

(iv) to any document or information that is exempt from disclosure under section 552(b) of title 5, United States Code (commonly known as the Freedom of Information Act); or

(v) in any other circumstance or proceeding to which application of this order, or any part of this order, would, in the judgment of the head of the agency, undermine the national security.



THE WHITE HOUSE,
October 9, 2019.

[FR Doc. 2019–22623
Filed 10–11–19; 11:15 am]
Billing code 3295–F0–P

EXHIBIT 9

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 31, 2019

M-20-02

MEMORANDUM FOR REGULATORY POLICY OFFICERS AT EXECUTIVE DEPARTMENTS AND AGENCIES AND MANAGING AND EXECUTIVE DIRECTORS OF CERTAIN AGENCIES AND COMMISSIONS

FROM: Dominic J. Mancini, Acting Administrator
Office of Information and Regulatory Affairs

SUBJECT: Guidance Implementing Executive Order 13891, Titled "Promoting the Rule of Law Through Improved Agency Guidance Documents"

OMB issues this memorandum to implement Executive Order (EO) 13891, titled "Promoting the Rule of Law Through Improved Agency Guidance Documents," per Section 6 of that Order. A central principle of EO 13891 is that guidance documents should only clarify existing obligations; they should not be a vehicle for implementing new, binding requirements on the public. Even guidance documents that do not create binding requirements, however, can significantly affect the public, and EO 13891 recognizes that these documents warrant a thorough review prior to issuance. This memorandum provides agencies with instructions for complying with the requirements of EO 13891; agencies should refer to this memorandum when developing or reviewing new or existing guidance documents, as well as when proposing and finalizing regulations under Section 4 of the Order. OMB may revise or supplement this memorandum in light of agency experience with this new Order.

Deadlines

Q1: What are the key deadlines for agencies?

A: The EO builds upon the requirements in FOIA and requires each agency by February 28, 2020 to establish a single, searchable, indexed website that contains, or links to, all of the agencies' respective guidance documents currently in effect. By that same date, agencies should send to the Federal Register a notice announcing the existence of the new guidance portal and explaining that all guidance documents remaining in effect are contained on the new guidance portal. Agencies should also make the notice available on the new guidance portal. In addition, since some stakeholders may not see the Federal Register Notice, agencies are encouraged to send the notice to their stakeholders through the normal means of distributing important announcements.

If an agency determines that it failed to include on its new guidance portal a guidance document that existed on October 31, 2019 it may reinstate the guidance document provided it does so by June 27, 2020. Any rescinded guidance document that has not been reinstated by June 27, 2020, may be reinstated only by following all necessary steps associated with the issuance of a new guidance document.

The EO requires agencies to finalize new or amend existing regulations that set forth a process for issuing guidance documents no later than April 28, 2020. To meet this deadline, agencies should submit proposed regulations or amendments to OIRA for review by January 29, 2020.

Definition of a Guidance Document

Q2: What constitutes a "guidance document" under this EO?

A: Guidance documents come in a variety of formats, including interpretive memoranda, policy statements, manuals, bulletins, advisories, and more. Any document that satisfies the definition of "guidance" under Section 2(b) of the EO would qualify, regardless of name or format. If an agency is unsure if an item qualifies as guidance, it should consult with its OIRA desk officer prior to publication.

While broad, the term "guidance" as used in the EO is not boundless. The definition excludes the following:

- Agency statements of specific, rather than general, applicability. This would exclude from the definition of "guidance" advisory or legal opinions directed to particular parties about circumstance-specific questions; notices regarding particular locations or facilities; and correspondence with individual persons or entities, including congressional correspondence or notices of violation. If, however, an agency issues a document ostensibly directed to a particular party but designed to guide the conduct of the broader regulated public, such a document would qualify as guidance.

- Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation. This would exclude from the definition of "guidance" documents that merely communicate news updates about the agency, such as most speeches and press releases (although a speech or press release could be a guidance document if it sets forth for the first time a new regulatory policy).

- Legislative rules promulgated under 5 U.S.C. 553 (or similar statutory provisions), or exempt from rulemaking requirements under 5 U.S.C. 553(a).

- Rules of agency organization, procedure, or practice. Whether a document is exempt as a rule of agency organization, procedure, or practice is a functional test; the exemption does not exclude from the definition of "guidance" statements of agency practice that are designed to shape the behavior of regulated parties. For instance, a memo addressed to regional agency officials directing them to issue permitting

decisions based on a particular construction of a statute, and to be released to the public with the predictable result of dissuading regulated parties from pursuing permits not consistent with the statute as thus construed, would be a guidance document within the terms of the EO.

- Decisions of agency adjudication.

- Documents that are directed solely to the issuing agency or other agencies (or personnel of such agencies) and that are not anticipated to have substantial future effect on the behavior of regulated parties or the public. This includes the typical documents issued for government-wide use by GSA, OPM, OMB, and similar departments and agencies. Such documents are often publicly released by the relevant agencies according to standard agency disclosure practices. This type of standard release would not trigger coverage under this EO, and we encourage agencies to continue their transparency practices in this area. Documents that are not publicly disseminated would also be excluded. Internal agency documents that are made public only because release is required under FOIA or agency disclosure policies would be presumptively excluded as well.

- Legal briefs and other court filings, because these are intended to persuade a court rather than affect the conduct of regulated parties.

- Legal opinions by the Office of Legal Counsel at the Department of Justice.

Q3: How does this memorandum interact with the 2007 OMB Good Guidance Bulletin?

A: Where they apply, EO 13891 and this memorandum supersede the 2007 Bulletin. We note, however, that many of the practices specified by the EO and explained in this memorandum are identical to practices discussed in the Good Guidance Bulletin; therefore, in specific instances identified below, this Q and A document refers to the Good Guidance Bulletin which continues to describe best practices that agencies should follow.

Q4: What types of policies may appropriately be issued through guidance documents?

A: Guidance documents can provide a valuable means for an agency, *inter alia*, to interpret existing law through an interpretive rule or to clarify how it intends to enforce a legal requirement through a policy statement. However, a guidance document should never be used to establish new positions that the agency treats as binding; any such requirements must be issued pursuant to applicable notice-and-comment requirements of the Administrative Procedure Act or other applicable law. Nor should agencies use guidance documents—including those that describe themselves as non-binding—effectively to coerce private-party conduct, for instance by suggesting that a standard in a guidance document is the only acceptable means of complying with statutory requirements, or by threatening enforcement action against all parties that decline to follow the guidance.

Calculating the Economic Impact of a Guidance Document

Q5: How should agencies calculate the economic impact of a guidance document?

A: OMB Circular A-4 sets forth principles governing analysis of the costs and benefits of regulations.[1] For the most part, the same principles apply when assessing guidance; however, there may be some differences as compared with the regulatory context. Some of these potential analytic differences are discussed below:

- Estimating behavior change. Because guidance is non-binding, and regulated parties are thus legally free to decline to conform their behavior to it, estimating behavior change due to a new guidance document can present unique challenges. In estimating behavior change, agencies should focus on how the guidance affects the incentives of regulated parties, including, e.g., incentives to avoid investigation by or litigation with the government, as well as potential pressure from industry peers or consumers to conform to "best practices" or norms provided or recommended by the agency. Agencies should rely on empirical estimates of behavior change whenever reasonably available, but should discuss potential behavior changes qualitatively where such empirical estimates are unavailable. In some instances, analysis of the impact of a guidance document should reflect an assumption that, because the document is not legally binding, less than all affected entities or individuals will conform their behavior to the policy set forth in the document.[2]

- Baseline. With guidance as with regulations, the analytic baseline is the state of the world in the absence of the document at issue. Where a guidance document materially alters the interpretation or implementation of a statute or regulation, the baseline is ordinarily the prior interpretation or implementation, adjusted for any non-conformity as discussed above. Where a guidance document instead simply provides specificity that falls within the range of the possible interpretive or implementation choices, agencies should attempt to acquire information about the interpretive or

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[1] Other helpful references include OIRA's Regulatory Impact Analysis FAQ, available at www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf, which among other things, provides a list of examples of transfer impacts and offers guidance on valuing time costs; the 'Recommendations for Reform' chapter of OMB's 2015 Report to Congress on the Benefits and Costs of Federal Regulations, available at www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/2015_cb/2015-cost-benefit-report.pdf, which elaborates on often-misunderstood analytic concepts; and OIRA's Regulatory Impact Analysis Primer, available at www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf, which provides a more condensed introduction to RIA concepts than the full Circular A-4.

[2] Although the estimation of non-compliance may be more widely necessary in the guidance context than with regulations, non-compliance merits serious analytic attention as a general matter.

implementation choices that regulated parties made in the absence of the guidance.

- Rigor of Analysis. When an agency is assessing or explaining whether it believes a guidance document is significant, it should, at a minimum, provide the same level of analysis that would be required for a major determination under the Congressional Review Act.[3] When an agency determines that a guidance document will be economically significant, the agency should conduct a Regulatory Impact Analysis of the sort that would accompany an economically significant rulemaking, to the extent reasonably possible.

Agencies with further questions about how to apply or adapt the concepts of Circular A-4 to the assessment of guidance should consult with their OIRA desk officers.

Q6: Which guidance documents require a separate Regulatory Impact Analysis?

A: An analysis is required for any guidance document that may bring about $100 million in benefits, costs, or transfer impacts in at least one year (i.e., in one consecutive twelve-month period), or that otherwise qualifies as economically significant under Executive Order 12866.

Q7: Is a separate document needed for the analysis?

A: No, a separate document is not needed for the analysis, although it is permitted. In choosing between placing a guidance and its accompanying analysis in the same or separate documents, agencies should prioritize clarity and transparency for the public.

Q8: Will the analysis be published?

A: Yes, absent highly unusual and compelling circumstances.

Process for Complying with Section 3(a)

Q9: How should agencies set up their guidance portal for public access to all guidance documents?

A: Agency guidance portals should comply with all existing Federal web policies such as OMB Memorandum M-17-06, with particular emphasis on ensuring that all guidance documents are machine readable and can be indexed and searched by commonly used commercial search engines.[4]

Additionally, agencies must ensure that their guidance portal is either located at, or can be accessed from (through a URL redirect) the domain on their site **www.[agencyname].gov/guidance.** Some agencies may already group guidance

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[3] See OMB Memorandum M-19-14, Guidance on Compliance with the Congressional Review Act (April 11, 2019).

[4] https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-06.pdf

documents by program or subject matter throughout various webpages on their main agency website. In such cases, the specific websites housing those guidance documents should be linked from the main guidance portal.

Agencies should also review their web traffic analytics and ensure the guidance portal is accessible from the main points of entry through which most users come to their main agency website.

Q10: What information should agencies provide on their guidance portal for each guidance document?

A: For each guidance document agencies publish on their guidance portal established under the EO, they should include the following information:

- A concise name for the guidance document.
- The date on which the guidance document was issued.
- The date on which the guidance document was posted to the website.
- An agency unique identifier.
- A hyperlink to the guidance document.
- The general topic addressed by the guidance document (e.g., pensions, healthcare, vehicle safety standards).
- One or two sentences summarizing the guidance document's content.

Q11: What is the "unique identifier" that an agency should include on a guidance document?

A: The agency should develop a system that will allow a member of the public easily to search for and locate a specific guidance document by its unique identifier. This identifier can be a series of letters and numbers and should be preceded by a well-known acronym for the agency (example: OMB 1X34). In addition, if a guidance is deemed "significant" by OIRA, the document should be assigned a Z-RIN in the ROCIS system, and the agency should include that as an identifier, or at least part of the guidance name, on its website.

Q12: What other information should agencies provide on their guidance portal?

A: In addition to the information associated with each guidance document, agencies should also include a clearly visible note expressing that (a) guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract; and (b) the agency may not cite, use, or rely on any guidance that is not posted on the website existing under the EO, except to establish historical facts. The agency should also include a link to the proposed or final regulations required by Section 4 of the EO.

Process for Complying with Section 3(b)

Q13: How should agencies notify the public that all guidance documents remaining in effect may be found on the new guidance portal?

A: Agencies should publish in the Federal Register a notice announcing the existence of the guidance portal required by the EO and explaining that, by February 28, 2020, all guidance documents remaining in effect may be found on the guidance portal. At the same time as publication in the Federal Register, agencies should also make the notice available on the new guidance portal and send the notice to its stakeholders through its normal means of distributing important announcements.

Q14: How should an agency reinstate a guidance document under Section 3(b)?

A: If an agency wishes to reinstate a guidance document that it rescinded under Section 3(b) of the EO by June 27, 2020 it may do so by uploading the guidance document to its guidance portal, ensuring that it includes the date on which it posted the guidance document to the guidance portal. The agency should, at the time it uploads the document, notify OIRA for purposes of implementing Section 3(d) of the Order.

Q15: How should an agency determine which documents or statements are appropriate for inclusion on the website existing under the EO?

A: Agencies should post on their guidance portal all guidance documents as defined in the EO which the agency expects to cite, use, or rely upon. If any agency is uncertain whether a particular document should be posted to its guidance portal, it should consult with its OIRA desk officer.

Process for Requesting a Waiver under Section 3(c)

Q16: How should agencies request a waiver from the OMB Director?

A: Requests for waivers from the OMB Director should be submitted through OIRA. The request should come in the form of a letter signed by a senior policy official at the agency.

Q17: What information should agencies provide to the OMB Director when requesting a waiver?

A: If the agency requests that the Director waive the requirement to upload a particular guidance document or category of guidance documents, the agency should clearly explain the purpose of the document(s) and why making the document(s) publicly available on an agency website would cause specific harm or otherwise interfere with the agency's mission. If the agency requests an extension of the timing requirements in sections 3(a) or 3(b), the agency should clearly explain the circumstances that prevent the agency from complying with the timing requirements and why an extension would alleviate those circumstances.

Process for Submitting a Report under Section 3(d)

Q18: For any guidance document for which the OMB Director has asked for a report under Section 3(d), what information should agencies provide to the Director to explain the need for retaining in effect the guidance document in question?

A: The head of the agency should draft a response to the OMB Director, which the OMB Director will make available to the President, explaining how the guidance document in question aligns with the President's priorities and is net beneficial. The letter should clearly explain why rescinding the guidance document would cause public harm, as well as any alternatives the agency considered regarding possibly amending the guidance document in question and why the agency rejected those alternatives.

Q19: How will the report be evaluated?

A: The report will be evaluated in a review by the Executive Office of the President as coordinated by OIRA. The review will evaluate whether the guidance document is net beneficial and whether the policy outlined in the document aligns with the President's priorities. The OIRA Administrator may issue a letter summarizing the conclusions reached in the review.

Compliance with Section 4(a)(i) and (ii) (all guidance documents)

Q20: What language should agency regulations require to be included in their guidance documents to make clear that the documents do not bind the public?

A: Agencies should include the following disclaimer prominently in each guidance document:

> "The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies."

When an agency's guidance document is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, the agency should modify the disclaimer above to reflect either of those facts.

Q21: What information should agency regulations require that agencies provide to the public regarding a request to withdraw or modify an existing guidance document?

A: Agencies should provide clear instructions on the agency's website to members of the public regarding how to request the withdrawal or modification of an existing guidance document, including, but not limited to, an email address or web portal where requests can be submitted, a mailing address where hard copy requests can be submitted, and an office at the agency responsible for coordinating such requests. The agency should respond to all requests in a timely manner, but no later than 90 days after receipt of the request.

Q22: What information should agency regulations require to be included in a published guidance document?

A: In general, each guidance document should, at a minimum:

- Include the term "guidance."
- Identify the agency or office issuing the document.
- Identify the activities to which and the persons to whom the document applies.
- Include the date of issuance.
- Note if it is a revision to a previously issued guidance document and, if so, identify the guidance document that it replaces.
- Provide the title of the guidance and the document identification number.
- Include the citation to the statutory provision or regulation (in Code of Federal Regulations format) to which it applies or which it interprets.
- Include the disclaimer from Q20 above.
- Include a short summary of the subject matter covered in the guidance document at the top of the document.

Compliance with Section 4(a)(iii) (significant guidance documents)

Q23: When should agency regulations require publication of a significant guidance document for notice and comment?

A: Section 4(a)(iii)(A) of the EO requires that, at a minimum, significant guidance documents must receive 30 days of public notice and comment before issuance, as well as a public response from the agency to major concerns raised in comments.

Agencies should follow best practices for collecting and responding to public comments associated with their significant guidance documents. An agency should publish a notice in the Federal Register announcing the availability of a significant guidance document and should also make the draft guidance document available on the agency's website; additional methods of notice may be appropriate as well. Persons with disabilities should be able reasonably to access and comment during the guidance development process. Agencies should also make the public comments available to the public for review online, on or linked to the website existing under this Order.

For more specific details and best practice recommendations regarding notice and comment processes for guidance documents, see OMB's *Final Bulletin for Agency Good Guidance Practices*, 72 Fed. Reg. 3432, 3438–39 (Jan. 18, 2007).

Q24: How should an agency present its responses to public comments?

A: After reviewing the public comments on a draft guidance document, agencies should incorporate any suggested changes as appropriate into a final version and then make the final guidance document available to the public. Agencies should also provide a public response-to-comments document that is similar to the response-to-comments that typically appears in the preamble to a final rule. The response to comments may appear in the final guidance document itself or in a companion document. Agencies need not respond to every comment or every issue raised; the goal, rather, is to provide a robust explanation of the agency's choices in the final guidance document, including why the agency did not agree with relevant suggestions from commenters.

Q25: Which official should agency regulations require to sign a significant guidance document?

A: On a non-delegable basis, a significant guidance document should be signed by an agency head, or by a component head who is appointed by the President (with or without confirmation by the Senate), or by an official who is serving in an acting capacity as either of the foregoing.

Q26: When should agencies explain how the guidance document complies with the relevant EOs?

A: When an agency submits a guidance document to OIRA for review, it should demonstrate how the guidance document complies with EOs 12866, 13563, 13609, 13771, and 13777, under EO 13891 section 4(a)(iii)(D). Such demonstration may be similar to the corresponding demonstration in a regulation's preamble.

- EO 12866 and EO 13563: The agency should explain the analysis it has conducted that shows that the regulation at issue maximizes net benefits, as well as the alternatives the agency has considered. The agency should also explain if it is issuing the guidance as a result of any retrospective review.

- EO 13609: The agency should explain how the guidance, if applicable, promotes international regulatory cooperation and how the agency considered the effect the guidance may have on interactions with other countries.

- EO 13771: The agency should explain whether the guidance is a "regulatory" or "deregulatory" action per the definitions in OMB's EO 13771 Implementing Memorandum, or whether the guidance falls into one of the other categories under EO 13771.[5]

[5] See M-17-21 Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs" April 5, 2017.

- EO 13777: The agency should explain whether the guidance is being issued as a result of the agency's regulatory reform agenda or through a recommendation from the agency's Regulatory Reform Task Force, noting that EO 13777 charges agency Task Forces with identifying regulatory reforms consistent with the previous EOs mentioned here.

Process for Determining If a Guidance Document Meets the Definition of "Significant Guidance Document"

Q27: What is the process for seeking significance determinations from OIRA?

A: Agencies should seek significance determinations for guidance documents from OIRA in the same manner as for rulemakings. Prior to publishing the guidance document, and with sufficient time to allow OIRA to review the document in the event that a significance determination is made, agencies should provide their OIRA desk officer with an opportunity to review the document to determine if it meets the definition of "significant" or "economically significant" under EO 13891.

Q28: What information do agencies need to submit to OMB regarding upcoming guidance documents?

A: Each agency should notify OIRA regularly of upcoming guidance documents. An agency may provide such a notification by submitting a list of planned guidance documents, including summaries of each guidance document and the agency's recommended designation of "not significant," "significant," or "economically significant," as well as a justification for that designation. For example, an agency may recommend that a guidance document should not be deemed significant by explaining in the summary that it is routine, ministerial, or otherwise does not meet the EO criteria for a significant guidance document. To make the significance determination, OIRA may request additional information from the agency.

Q29: How may agencies request categorical determinations that classes of guidance documents presumptively do not qualify as significant under the EO?

A: To request categorical exemptions, agencies should submit to OIRA a written request signed by a senior policy official that explains why the proposed category of guidance document generally is only routine or ministerial, or is otherwise of limited importance to the public. The agency should provide examples of such guidance documents to support the request. Should OIRA grant a categorical exemption, agencies remain responsible for determining if a future planned document in the category may trigger one of the four criteria for significant guidance and should submit such a document to OIRA for review pursuant to the requirements of EO 13891. OIRA reserves the right to revoke categorical exemptions or to deem significant, and hence to review, a particular guidance document notwithstanding a presumption that documents of that category are not significant.

Q30: How should agencies submit significant guidance documents for OIRA review?

A: The agency should submit the significant guidance document for review electronically in the ROCIS system. At the time of submission, the agency should also upload any supporting documents as part of the same package.

Q31: Does OIRA need to review all significant guidance documents?

A: Agencies should work with their OIRA desk officer to determine the appropriate process for reviewing guidance documents that have been deemed significant. An agency should assume that any guidance document that has been deemed significant will be reviewed unless told otherwise by its OIRA desk officer.

Q32: When can an agency publish a significant guidance document?

A: Agencies may publish significant (including economically significant) guidance documents only when OIRA has concluded review under EO 13891. If an agency is not sure if review has concluded, it should consult its OIRA desk officer.

Q33: Is it possible to waive the need for a significance determination or EO 12866 review in the event of an emergency?

A: Agencies may request that a significance determination or review be waived due to exigency, safety, or other compelling cause. A senior policy official must explain the nature of the emergency and why following the normal clearance procedures would result in specific harm. The OIRA Administrator will review and make a determination as to whether granting such a request is appropriate.

Exemptions

Q34: What categories of documents that might otherwise constitute guidance are excepted from the requirements of this EO? What is the process for requesting additional exceptions?

A: Section 4(b) of the EO authorizes the Administrator of OIRA to articulate exceptions from the requirements of the EO for certain categories of documents as may be appropriate. Please contact your OIRA desk officer if you would like to suggest an exception under section 4(b). OIRA will release a list of government-wide exceptions, as well as of categorical presumptions of non-significance, at a future date.

OMB has found that standard issue documents associated with grants and procurements such as Notices of Funding Opportunities (NOFOs) and Requests for Proposals (RFPs) are, as a general matter, not significant guidance documents. OMB also clarifies this EO is not meant to alter any existing OMB process for reviewing documents of this nature. OMB further notes, however, that OIRA has on a few occasions found documents of this type to be significant regulatory actions under EO 12866 and has reviewed accordingly. accordingly.

EXHIBIT 10

Presidential Documents

Executive Order 13892 of October 9, 2019

Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The rule of law requires transparency. Regulated parties must know in advance the rules by which the Federal Government will judge their actions. The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* was enacted to provide that ''administrative policies affecting individual rights and obligations be promulgated pursuant to certain stated procedures so as to avoid the inherently arbitrary nature of unpublished *ad hoc* determinations.'' *Morton* v. *Ruiz,* 415 U.S. 199, 232 (1974). The Freedom of Information Act, America's landmark transparency law, amended the APA to further advance this goal. The Freedom of Information Act, as amended, now generally requires that agencies publish in the *Federal Register* their substantive rules of general applicability, statements of general policy, and interpretations of law that are generally applicable and both formulated and adopted by the agency (5 U.S.C. 552(a)(1)(D)). The Freedom of Information Act also generally prohibits an agency from adversely affecting a person with a rule or policy that is not so published, except to the extent that the person has actual and timely notice of the terms of the rule or policy (5 U.S.C. 552(a)(1)).

Unfortunately, departments and agencies (agencies) in the executive branch have not always complied with these requirements. In addition, some agency practices with respect to enforcement actions and adjudications undermine the APA's goals of promoting accountability and ensuring fairness.

Agencies shall act transparently and fairly with respect to all affected parties, as outlined in this order, when engaged in civil administrative enforcement or adjudication. No person should be subjected to a civil administrative enforcement action or adjudication absent prior public notice of both the enforcing agency's jurisdiction over particular conduct and the legal standards applicable to that conduct. Moreover, the Federal Government should, where feasible, foster greater private-sector cooperation in enforcement, promote information sharing with the private sector, and establish predictable outcomes for private conduct. Agencies shall afford regulated parties the safeguards described in this order, above and beyond those that the courts have interpreted the Due Process Clause of the Fifth Amendment to the Constitution to impose.

Sec. 2. *Definitions.* For the purposes of this order:

(a) ''Agency'' has the meaning given to ''Executive agency'' in section 105 of title 5, United States Code, but excludes the Government Accountability Office.

(b) ''Collection of information'' includes any conduct that would qualify as a ''collection of information'' as defined in section 3502(3)(A) of title 44, United States Code, or section 1320.3(c) of title 5, Code of Federal Regulations, and also includes any request for information, regardless of the number of persons to whom it is addressed, that is:

(i) addressed to all or a substantial majority of an industry; or

(ii) designed to obtain information from a representative sample of individual persons in an industry.

(c) ''Guidance document'' means an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, but does not include the following:

(i) rules promulgated pursuant to notice and comment under section 553 of title 5, United States Code, or similar statutory provisions;

(ii) rules exempt from rulemaking requirements under section 553(a) of title 5, United States Code;

(iii) rules of agency organization, procedure, or practice;

(iv) decisions of agency adjudications under section 554 of title 5, United States Code, or similar statutory provisions;

(v) internal guidance directed to the issuing agency or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; or

(vi) internal executive branch legal advice or legal opinions addressed to executive branch officials.

(d) ''Legal consequence'' means the result of an action that directly or indirectly affects substantive legal rights or obligations. The meaning of this term should be informed by the Supreme Court's discussion in *U.S. Army Corps of Engineers* v. *Hawkes Co.,* 136 S. Ct. 1807, 1813–16 (2016), and includes, for example, agency orders specifying which commodities are subject to or exempt from regulation under a statute, *Frozen Food Express* v. *United States,* 351 U.S. 40, 44–45 (1956), as well as agency letters or orders establishing greater liability for regulated parties in a subsequent enforcement action, *Rhea Lana, Inc.* v. *Dep't of Labor,* 824 F.3d 1023, 1030 (DC Cir. 2016). In particular, ''legal consequence'' includes subjecting a regulated party to potential liability.

(e) ''Unfair surprise'' means a lack of reasonable certainty or fair warning of what a legal standard administered by an agency requires. The meaning of this term should be informed by the examples of lack of fair notice discussed by the Supreme Court in *Christopher* v. *SmithKline Beecham Corp.,* 567 U.S. 142, 156 & n.15 (2012).

(f) ''Pre-enforcement ruling'' means a formal written communication from an agency in response to an inquiry from a person concerning compliance with legal requirements that interprets the law or applies the law to a specific set of facts supplied by the person. The term includes informal guidance under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Title II), as amended (SBREFA), letter rulings, advisory opinions, and no-action letters.

(g) ''Regulation'' means a legislative rule promulgated pursuant to section 553 of title 5, United States Code, or similar statutory provisions.

Sec. 3. *Proper Reliance on Guidance Documents.* Guidance documents may not be used to impose new standards of conduct on persons outside the executive branch except as expressly authorized by law or as expressly incorporated into a contract. When an agency takes an administrative enforcement action, engages in adjudication, or otherwise makes a determination that has legal consequence for a person, it must establish a violation of law by applying statutes or regulations. The agency may not treat noncompliance with a standard of conduct announced solely in a guidance document as itself a violation of applicable statutes or regulations. When an agency uses a guidance document to state the legal applicability of a statute or regulation, that document can do no more, with respect to prohibition of conduct, than articulate the agency's understanding of how a statute or regulation applies to particular circumstances. An agency may cite a guidance document to convey that understanding in an administrative enforcement action or adjudication only if it has notified the public of such document in advance through publication, either in full or by citation if publicly available, in the *Federal Register* (or on the portion of the agency's website

that contains a single, searchable, indexed database of all guidance documents in effect).

Sec. 4. *Fairness and Notice in Administrative Enforcement Actions and Adjudications.* When an agency takes an administrative enforcement action, engages in adjudication, or otherwise makes a determination that has legal consequence for a person, it may apply only standards of conduct that have been publicly stated in a manner that would not cause unfair surprise. An agency must avoid unfair surprise not only when it imposes penalties but also whenever it adjudges past conduct to have violated the law.

Sec. 5. *Fairness and Notice in Jurisdictional Determinations.* Any decision in an agency adjudication, administrative order, or agency document on which an agency relies to assert a new or expanded claim of jurisdiction—such as a claim to regulate a new subject matter or an explanation of a new basis for liability—must be published, either in full or by citation if publicly available, in the *Federal Register* (or on the portion of the agency's website that contains a single, searchable, indexed database of all guidance documents in effect) before the conduct over which jurisdiction is sought occurs. If an agency intends to rely on a document arising out of litigation (other than a published opinion of an adjudicator), such as a brief, a consent decree, or a settlement agreement, to establish jurisdiction in future administrative enforcement actions or adjudications involving persons who were not parties to the litigation, it must publish that document, either in full or by citation if publicly available, in the *Federal Register* (or on the portion of the agency's website that contains a single, searchable, indexed database of all guidance documents in effect) and provide an explanation of its jurisdictional implications. An agency may not seek judicial deference to its interpretation of a document arising out of litigation (other than a published opinion of an adjudicator) in order to establish a new or expanded claim or jurisdiction unless it has published the document or a notice of availability in the *Federal Register* (or on the portion of the agency's website that contains a single, searchable, indexed database of all guidance documents in effect).

Sec. 6. *Opportunity to Contest Agency Determination.* (a) Except as provided in subsections (b) and (c) of this section, before an agency takes any action with respect to a particular person that has legal consequence for that person, including by issuing to such a person a no-action letter, notice of noncompliance, or other similar notice, the agency must afford that person an opportunity to be heard, in person or in writing, regarding the agency's proposed legal and factual determinations. The agency must respond in writing and articulate the basis for its action.

(b) Subsection (a) of this section shall not apply to settlement negotiations between agencies and regulated parties, to notices of a prospective legal action, or to litigation before courts.

(c) An agency may proceed without regard to subsection (a) of this section where necessary because of a serious threat to health, safety, or other emergency or where a statute specifically authorizes proceeding without a prior opportunity to be heard. Where an agency proceeds under this subsection, it nevertheless must afford any person an opportunity to be heard, in person or in writing, regarding the agency's legal determinations and respond in writing as soon as practicable.

Sec. 7. *Ensuring Reasonable Administrative Inspections.* Within 120 days of the date of this order, each agency that conducts civil administrative inspections shall publish a rule of agency procedure governing such inspections, if such a rule does not already exist. Once published, an agency must conduct inspections of regulated parties in compliance with the rule.

Sec. 8. *Appropriate Procedures for Information Collections.* (a) Any agency seeking to collect information from a person about the compliance of that person or of any other person with legal requirements must ensure that such collections of information comply with the provisions of the Paperwork Reduction Act, section 3512 of title 44, United States Code, and section

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1320.6(a) of title 5, Code of Federal Regulations, applicable to collections of information (other than those excepted under section 3518 of title 44, United States Code).

(b) To advance the purposes of subsection (a) of this section, any collection of information during the conduct of an investigation (other than those investigations excepted under section 3518 of title 44, United States Code, and section 1320.4 of title 5, Code of Federal Regulations, or civil investigative demands under 18 U.S.C. 1968) must either:

(i) display a valid control number assigned by the Director of the Office of Management and Budget; or

(ii) inform the recipient through prominently displayed plain language that no response is legally required.

Sec. 9. *Cooperative Information Sharing and Enforcement.* (a) Within 270 days of the date of this order, each agency, as appropriate, shall, to the extent practicable and permitted by law, propose procedures:

(i) to encourage voluntary self-reporting of regulatory violations by regulated parties in exchange for reductions or waivers of civil penalties;

(ii) to encourage voluntary information sharing by regulated parties; and

(iii) to provide pre-enforcement rulings to regulated parties.

(b) Any agency that believes additional procedures are not practicable—because, for example, the agency believes it already has adequate procedures in place or because it believes it lacks the resources to institute additional procedures—shall, within 270 days of the date of this order, submit a report to the President describing, as appropriate, its existing procedures, its need for more resources, or any other basis for its conclusion.

Sec. 10. *SBREFA Compliance.* Within 180 days of the date of this order, each agency shall submit a report to the President demonstrating that its civil administrative enforcement activities, investigations, and other actions comply with SBREFA, including section 223 of that Act. A copy of this report, subject to redactions for any applicable privileges, shall be posted on the agency's website.

Sec. 11. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Notwithstanding any other provision in this order, nothing in this order shall apply:

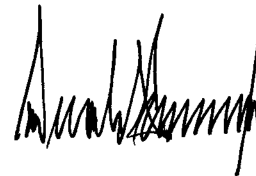
(i) to any action that pertains to foreign or military affairs, or to a national security or homeland security function of the United States (other than procurement actions and actions involving the import or export of non-defense articles and services);

(ii) to any action related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related investigation by the Department of Justice, including any action related to a civil investigative demand under 18 U.S.C. 1968;

(iii) to any action related to detention, seizure, or destruction of counterfeit goods, pirated goods, or other goods that infringe intellectual property rights;

(iv) to any investigation of misconduct by an agency employee or any disciplinary, corrective, or employment action taken against an agency employee; or

(v) in any other circumstance or proceeding to which application of this order, or any part of this order, would, in the judgment of the head of the agency, undermine the national security.



THE WHITE HOUSE,
October 9, 2019.

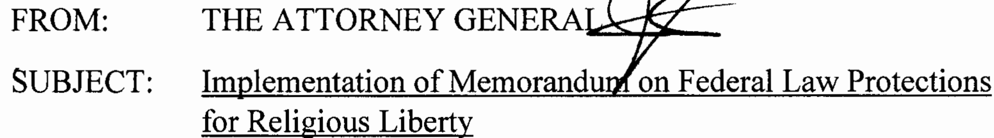
[FR Doc. 2019–22624
Filed 10–11–19; 11:15 am]
Billing code 3295–F0–P

EXHIBIT 11

Office of the Attorney General

Washington, D.C. 20530

October 6, 2017



MEMORANDUM FOR ALL COMPONENT HEADS AND UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

SUBJECT: Implementation of Memorandum on Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law. Exec. Order 13798, § 4 (May 4, 2017). Pursuant to that instruction and consistent with my authority to provide advice and opinions on questions of law to the Executive Branch, I have undertaken a review of the primary sources for federal protection of religious liberty in the United States, along with the case law interpreting such sources. I also convened a series of listening sessions, seeking suggestions regarding the areas of federal protection for religious liberty most in need of clarification or guidance from the Attorney General.

Today, I sent out a memorandum to the heads of all executive departments and agencies summarizing twenty principles of religious liberty and providing an appendix with interpretive guidance of federal-law protections for religious liberty to support those principles. That memorandum and appendix are no less applicable to this Department than to any other agency within the Executive Branch. I therefore direct all attorneys within the Department to adhere to the interpretative guidance set forth in the memorandum and its accompanying appendix.

In particular, I direct the Department of Justice to undertake the following actions:

- All Department components and United States Attorney's Offices shall, effective immediately, incorporate the interpretative guidance in litigation strategy and arguments, operations, grant administration, and all other aspects of the Department's work, keeping in mind the President's declaration that "[i]t shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom." Exec. Order 13798, § 1 (May 4, 2017).
- Litigating Divisions and United States Attorney's Offices should also consider, in consultation with the Associate Attorney General, how best to implement the guidance with respect to arguments already made in pending cases where such arguments may be inconsistent with the guidance.
- Department attorneys shall also use the interpretive guidance in formulating opinions and advice for other Executive Branch agencies and shall alert the appropriate officials at such agencies whenever agency policies may conflict with the guidance.
- To aid in the consistent application of the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, and other federal-law protections for religious liberty, the Office of Legal Policy shall coordinate with the Civil Rights Division to

review every Department rulemaking and every agency action submitted by the Office of Management and Budget for review by this Department for consistency with the interpretive guidance. In particular, the Office of Legal Policy, in consultation with the Civil Rights Division, shall consider whether such rules might impose a substantial burden on the exercise of religion and whether the imposition of that burden would be consistent with the requirements of RFRA. The Department shall not concur in the issuance of any rule that appears to conflict with federal laws governing religious liberty, as set forth in the interpretive guidance.

- In addition, to the extent that existing procedures do not already provide for consultation with the Associate Attorney General, Department components and United States Attorney's Offices shall notify the Associate Attorney General of all issues arising in litigation, operations, grants, or other aspects of the Department's work that appear to raise novel, material questions under RFRA or other religious liberty protections addressed in the interpretive guidance. The Associate Attorney General shall promptly alert the submitting component of any concerns.

Any questions about the interpretive guidance or this memorandum should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

Thank you for your time and attention to this important matter.

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 3

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U. S. Department of Justice
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, Virginia 22152

www.dea.gov

AUG 2 2 2016

Christopher Young
Soul Quest Church of Mother Earth Inc.
1371 Hancock Lone Palm Road
Orlando, Florida 32828

Dear Mr. Young:

It has come to our attention that prior to August 4, 2016, you were involved in offering "retreats" through your website, www.soulquest-retreat.com, at which you provided ayahuasca and other controlled substances to your clientele. As you are aware, ayahuasca contains the hallucinogen dimethyltryptamine ("DMT"), a substance that is listed on Schedule I of the Comprehensive Drug Abuse Prevention and Control Act of 1970, also known as the "Controlled Substances Act" ("CSA"), and its implementing regulations, 21 U.S.C. § 812(c)(I)(c)(6); 21 C.F.R. § 1308.11(d)(19). Your website also referenced the use of Sananga, which commonly contains ibogaine, another Schedule I hallucinogen, 21 U.S.C. § 812(c)(I)(c)(8); 21 C.F.R. § 1308.11(d)(21), and San Pedro, which contains mescaline, also a Schedule I hallucinogen. 21 U.S.C. § 812(c)(I)(c)(11); 21 C.F.R. § 1308.11(d)(24). Your website also contained a section explaining to potential clients that your provision of such substances at your retreats will be legal because it is exempt from federal controlled substance laws.

Under the CSA and its implementing regulations, Congress has prohibited the importation and distribution of Schedule I Controlled Substances except as authorized by law. 21 U.S.C. §§ 841(a), 952(a)(2), 960. Under the Religious Freedom Restoration Act (RFRA), Congress provided that the "Government shall not substantially burden a person's exercise of religion" unless the Government can demonstrate "that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1. These competing mandates require the DEA to consider the "application of the [CSA] to the person—the particular claimant whose sincere exercise of religion is being substantially burdened" and engage in a "case-by-case consideration of religious exemptions to generally applicable rules" so that it may "strike sensible balances" of interests based on "the particular practice at issue." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430, 437, 439 (2006).

The DEA has published guidance on our website for those who seek to petition for an exemption under RFRA, a copy of which is attached with this letter. We invite you to submit such a petition so that the DEA may consider it based on the specific facts regarding your plans to distribute controlled substances. We encourage you to file a petition and obtain a response to your request for an exemption before engaging in the distribution of DMT under the assumption that this conduct qualifies as an exempt religious exercise. If you are relying on something other than RFRA as

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authority to distribute controlled substances, we would welcome all of the facts and law that you would want the DEA to consider in determining whether such practices are lawful.

We would be happy to answer any questions you might have about the petition process. Please contact James Arnold, Chief of Policy at the Liaison and Policy Section of the Office of Diversion Control at (202) 353-1414 if you have questions.

Sincerely,

Louis J. Milione
Deputy Assistant Administrator
Office of Diversion Control
Drug Enforcement Administration

Enclosure

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Guidance Regarding Petitions
for Religious Exemption from the Controlled Substances Act
Pursuant to the Religious Freedom Restoration Act

In recent years, the Drug Enforcement Administration (DEA) has seen an increase in requests from parties requesting religious exemptions from the Controlled Substances Act (CSA) to permit the use of controlled substances. The Religious Freedom Restoration Act (RFRA) provides that the "Government shall not substantially burden a person's exercise of religion" unless the Government can demonstrate "that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1. In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 126 S.Ct. 1211 (2006), the Supreme Court held that government action taken pursuant to the CSA is subject to RFRA. In order to obtain an exemption under RFRA, a party must, as a preliminary matter, demonstrate that its (1) sincere (2) religious exercise is (3) substantially burdened by the CSA. 42 U.S.C. § 2000bb *et seq.*

The guidelines that follow are an interim measure intended to provide guidance to parties who wish to petition for a religious exemption to the CSA:

1. **Filing Address.** All petitions for exemption from the Controlled Substances Act under RFRA shall be submitted in writing to Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152.

2. **Content of Petition.** A petition may include both a written statement and supporting documents. A petitioner should provide as much information as he/she deems necessary to demonstrate that application of the Controlled Substances Act to the party's activity would (1) be a substantial burden on (2) his/her sincere (3) religious exercise. Such a record should include detailed information about, among other things, (1) the nature of the religion (*e.g.*, its history, belief system, structure, practice, membership policies, rituals, holidays, organization, leadership, *etc.*); (2) each specific religious practice that involves the manufacture, distribution, dispensing, importation, exportation, use or possession of a controlled substance; (3) the specific controlled substance that the party wishes to use; and (4) the amounts, conditions, and locations of its anticipated manufacture, distribution, dispensing, importation, exportation, use or possession. A petitioner is not limited to the topics outlined above, and may submit any and all information he/she believes to be relevant to DEA's determination under RFRA and the Controlled Substances Act.

3. **Signature.** The petition must be signed by the petitioner, who must declare under penalty of perjury that the information provided therein is true and correct. *See* 28 U.S.C. § 1746.

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4. **Acceptance of Petition for Filing.** Petitions submitted for filing are dated upon receipt by DEA. If it is found to be complete, the petition will be accepted as filed, and the petitioner will receive notification of acceptance. Petitions that do not conform to this guidance will not generally be accepted for filing. A petition that fails to conform to this guidance will be returned to the petitioner with a statement of the reason for not accepting the petition for filing. A deficient petition may be corrected and resubmitted. Acceptance of a petition for filing does not preclude DEA from making subsequent requests for additional information.

5. **Requests for Additional Information.** DEA may require a petitioner to submit such additional documents or written statements of facts relevant to the petition as DEA deems necessary to determine whether the petition should be granted. It is the petitioner's responsibility to provide DEA with accurate contact information. If a petitioner does not respond to a request for additional information within 60 days from the date of DEA's request, the petition will be considered to be withdrawn.

6. **Applicability of DEA Regulations.** A petitioner whose petition for a religious exemption from the Controlled Substances Act is granted remains bound by all applicable laws and Controlled Substances Act regulations governing registration, labeling and packaging, quotas, recordkeeping and reporting, security and storage, and periodic inspections, among other things. *See* 21 C.F.R. §§ 1300-1316. A petitioner who seeks exemption from applicable CSA regulations (as opposed to the CSA itself) may petition under 21 C.F.R. § 1307.03. Such petition must separately address each regulation from which the petitioner seeks exemption and provide a statement of the reasons for each exemption sought.

7. **Activity Prohibited Until Final Determination.** No petitioner may engage in any activity prohibited under the Controlled Substances Act or its regulations unless the petition has been granted and the petitioner has applied for and received a DEA Certificate of Registration. A registration granted to a petitioner is subject to subsequent suspension or revocation, where appropriate, consistent with CSA regulations and RFRA.

8. **Final Determination.** After the filed petition—along with all submissions in response to any requests for additional information—has been fully evaluated, the Deputy Assistant Administrator of the Office of Diversion Control shall provide a written response that either grants or denies the petition. Except in the case of affirming a prior denial or when the denial is self-explanatory, the response shall be accompanied by a statement of reasons upon which the decision is based. This written response is a final determination under 21 U.S.C. § 877.

9. **Application of State and Other Federal Law.** Nothing in these guidelines shall be construed as authorizing or permitting any party to take any action which such party is not authorized or permitted to take under other Federal laws or under the laws of the State in which he/she desires to take such action. Likewise, compliance with these guidelines shall not be construed as compliance with other Federal or State laws unless expressly provided in such other laws.

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 4

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SOUL QUEST CHURCH OF MOTHER EARTH, INC., a Florida Domestic Non-Profit Corporation, on its own behalf and on behalf of its members; and CHRISTOPHER YOUNG, individually and as spiritual leader of Soul Quest Church of Mother Earth,

Plaintiffs,

v. Case No. 6:20-cv-

WILLIAM BARR, Attorney General of the United States of America;
UTTAM DHILLON, acting administrator of the U.S. Drug Enforcement Administration; and
the U.S. DRUG ENFORCEMENT ADMINISTRATION,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND
PERMANENT INJUNCTIVE RELIEF (INJUNCTIVE RELIEF SOUGHT)

The Plaintiffs, Soul Quest Church of Mother Earth, Inc., a Florida Domestic Non-Profit Corporation, on its own behalf and on behalf of its members, and Christopher Young, individually and as the spiritual leader of Soul Quest Church of Mother Earth [hereinafter collectively "Plaintiffs"], by and through the undersigned counsel, hereby allege as follows:

I. INTRODUCTION

1. Plaintiff Soul Quest Church of Mother Earth, Inc. [hereinafter "Soul Quest Church"], is a Christian syncretic religion based in Orlando, Florida, and registered as a Florida domestic non-profit corporation.

2. Plaintiff Christopher Young is the spiritual leader of Plaintiff Soul Quest Church, who resides in the State of Florida.

3. The Plaintiffs bring this Complaint on behalf of all members of Soul Quest Church, pursuant to 42 U.S.C. §§ 2000bb–2000bb-4. [hereinafter collectively the "Religious Freedom Restoration Act" or "RFRA"], and 42 U.S.C. § 1983, to redress the deprivation of rights, privileges, and immunities secured to Plaintiffs by the First, Fifth, and Fourteenth Amendments to the United States Constitution.

4. Specifically, Plaintiffs seek a declaration that the Defendants' threats to arrest and prosecute members of Soul Quest Church who seek to practice their religious rituals, which involve the sacramental consumption of trace amounts of a Schedule 1 chemical (21 U.S.C. § 812), at Soul Quest Church's religious ceremonies, is unconstitutional, unlawful, and violates the RFRA, in that these threats burden the central practice of Plaintiffs' religion, i.e. the imbibing of the sacramental tea.

5. Plaintiffs also seek a permanent injunction enjoining the Defendants from preventing the importation or use of Soul Quest Church's sacramental tea in religious ceremonies, and from threatening to arrest or prosecute members of Soul Quest Church who seek to exercise their religion.

II. JURISDICTION AND VENUE

6. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343(3)-(4), because the case arises under the Constitution, laws, and treaties of the United States, and seeks to redress the deprivation of rights, privileges, and immunities secured to Plaintiff by the First, Fourth, and Fifth amendments to the Constitution of the United States, and the Religious Freedom Restoration Act, as well as to secure equitable or other relief under any Act of Congress providing for the protection of civil rights.

7. Pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 706, this Court has the authority to grant declaratory relief, and to issue preliminary and permanent injunctions.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because this is a civil action in which the Defendants are officers and/or employees of the United States, an agency thereof acting in their official capacity or under color of legal authority, and an agency of the United States, and the Middle District of Florida, Orlando Division, is where a substantial part of the events or omissions giving rise to the claims occurred and where the plaintiff reside, where no real property is involved.

III. PARTIES

A. Plaintiffs

9. Plaintiff Soul Quest Church is a registered domestic non-profit corporation incorporated under the laws of the State of Florida, with a principal office located in Orlando, Florida. Thus, pursuant 28 U.S.C. § 1391(c)(2), Plaintiff Soul Quest Church resides in the Middle District of Florida, Orlando Division for venue purposes. Soul Quest Church is adversely affected and aggrieved by the Defendants' actions, as more fully set forth below.

10. Plaintiff Christopher Young is a natural person who is domiciled in Orlando, Florida. Thus, pursuant 28 U.S.C. § 1391(c)(1), Plaintiff Christopher Young is deemed to reside in the Middle District of Florida, Orlando Division. Plaintiff Christopher Young is the religious leader of Soul Quest Church. Plaintiff Christopher Young brings this action in his own capacity as a member of Soul Quest Church, and on behalf of the members of Soul Quest Church.

B. Defendants

11. Defendant William Barr is the Attorney General of the United States of America, and resides in Washington, District of Columbia.

12. Defendant Uttam Dhillon is the acting Administrator of the United States Drug Enforcement Authority.

13. The United States Drug Enforcement Authority (hereinafter, "DEA") is the federal agency in charge of drug enforcement within the United States. As such, it is the only agency empowered to grant religious exemptions, like the one sought by the Plaintiffs in the instant Complaint, to United States drug laws.

IV. PROCEDURAL HISTORY & FACTUAL BACKGROUND

A. Procedural History

14. The Plaintiffs have made concerted, long-term efforts to secure a religious-based exemption to the Controlled Substances Act's prohibition against the ingestion of N,N-5,5-dimethyltryptamine ("DMT") from the Defendants.

15. On August 21, 2017, the Plaintiffs dispatched, through legal counsel, their exemption application to the DEA (hereinafter, "DEA Exemption Application"). A true and

correct copy of the Plaintiffs' DEA Exemption Application is attached hereto, and incorporated by reference herein, as Exhibit 1. The DEA, in conjunction with the U.S. Department of Justice (hereinafter, "DOJ") is assigned the process of considering religious-based exemptions to enforcement of provisions of the Controlled Substances Act. As set forth below, these respective government departments/agencies are responsible for constructing the framework for consideration and review of exemption applications – including the Plaintiffs' DEA Exemption Application, which was remitted nearly three (3) years ago by the Plaintiffs. This framework was anticipated to be in conformity with the provisions of the RFRA, as well as the Supreme Court's decision in Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006) (hereinafter, "O Centro").

16. The Plaintiffs anticipated that the guidelines which should have been developed but, based upon information and belief, were never so developed, would be narrowly tailored to not clash with the First Amendment's Free Exercise Clause. The Plaintiffs also anticipated that such guidelines would have been constructed with various safeguards including, but not limited to, expressed time limitations for review and ruling, as well as specific standards designed to allow for the uniform application of such guidelines. A copy of these DEA's guidelines regarding petitions for religious exemptions to the Controlled Substances Act are attached hereto, and incorporated by reference herein, as Exhibit 2.[1]

[1] Indeed, despite diligent research, the Plaintiffs have been unable to locate any historical copy of what should be publicly-available "guidelines," in force in August 2017 – with the only document stemming from February 2018 – when the Plaintiffs submitted their application for a religious exemption. The lack of a historic database for these documents is a problem in and of itself given the Defendants' propensity for delay. However, the Plaintiffs' religious exemption application met the requirements of the Defendants' "guidelines" in force at the

17. This has not occurred. Indeed, to the best of the Plaintiffs' knowledge, the Plaintiffs' DEA Exemption Application continues to sit at the assigned office, located in Springfield, Virginia, with no timetable for completion and with no stated standards upon which to guide the Defendants' scrutinizing and ruling on such applications. In fact, through information and belief, since the 2006 decision in O Centro, supra, it is believed that – despite dozens of submitted religious exemption applications submitted to the Defendants by a variety of religious-based groups – the Defendants have only granted two (2) applications. Of these two (2) granted applications, one was to the group prosecuting the successful RFRA challenge in O Centro, while the other application for a religious exemption also resulted from judicial action by groups affiliated to that organization. Church of the Holy Light of the Queen v. Mukasey, 615 F. Supp. 2d 1210 (D.C. Oregon 2009) [hereinafter, "CHLQ"].

18. In the case-at-bar, there was no acknowledgment of receipt of the DEA Exemption Application directly by the Defendants. Notwithstanding this, it was independently confirmed – in approximately October 2018 – that Defendants had received the Plaintiffs' DEA Exemption Application. At that time, a Freedom of Information Act [hereinafter "FOIA"] request was forwarded to Plaintiffs' counsel, pertaining to a request to disclose the DEA Exemption Application pursuant to FOIA. Later discussions between Plaintiffs' counsel and the Defendants' FOIA office affirmed the receipt of the DEA Exemption Application shortly following its August 21, 2017 transmission to Defendants.

19. Furthermore, from March through May 2019, Plaintiffs' counsel made regular telephone calls and left regular voicemail messages at the Defendants' office tasked with

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time of submission, and from that basis the Plaintiffs conclude that the "guidelines" presently in force would not materially differ from those in effect in August 2017.

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assessing religious exemption applications including, but not limited to, multiple voicemails with this office's supervisor, Lorne Miller. The Plaintiffs received no return calls from Mr. Miller or anyone else with the authority to address the status of the Plaintiffs' DEA Exemption Application.

20. Since May 2019, the Defendants have failed to make any contact with the Plaintiffs' legal counsel regarding the DEA Exemption Application – or any other matter.

B. Factual & Legal Background

1. Plaintiff Soul Quest Church

a. Overview

21. Plaintiff Soul Quest Church rests its religious principles and sacred beliefs upon a foundation of ancient teachings, writings, records, and common cultural and religious practices and traditions of indigenous peoples from across the globe.

22. These same foundations constitute the source for Plaintiff Soul Quest Church's traditional, natural healing practices.

23. Plaintiff Soul Quest Church believes that it honors and fulfills these ancient traditions and practices through its rituals from its church in Orlando, Florida, and that such rituals help to spread its teachings through the Earth and cosmos.

24. Pursuant to its core teachings and beliefs, Plaintiff Soul Quest Church passes its message to others through its operation of a healing ministry, counseling and natural medicine school. Further, it provides street-level ministry outreach, spiritual activities, and spiritual/faith-based education.

25. Plaintiff Soul Quest Church holds spiritual classes and services in a style akin to various Native American religious practices – based upon the seasons. Religious services

involve music and song, and the sharing of personal professions of faith and faith in-action, as well as the enactment of plays.

b. Soul Quest Church's Faith-Based Principles

26. Plaintiff Soul Quest Church and its members embrace and espouse the following faith-based principles as fundamental to its religion:

a. The Creator, the Great Spirit, and that the Great Spirit created all beings to exist as free and equal.

b. The Creator granted to all beings eternal, inherent, ancestral, and sovereign rights, and to all humans a conscience upon which to govern human activities throughout the planet.

c. All humans derive from, and are intended to exist akin to, traditional, indigenous communities. Further, through the descendants of these indigenous communities, there exist the need and priority to form and maintain organizations and practices premised upon indigenous teachings, wisdom and customs.

d. Spiritually-based, natural health care and related sacred expression – arising from the sacred texts of traditional, indigenous religions and their ritualistic practices – are sacrosanct and must be practiced as sacraments to the faith.

e. The fundamental mission of the faith is the restoration of divine wisdom, and knowledge of the benefits to health and life provided by the Great Spirit through Mother Earth.

f. The restoration of divine wisdom can only occur through traditional ceremonies, rituals, sacraments, scriptural and a spiritually-valid moral science. Such is based upon the teachings and practices reflecting the guidance of the Great Spirit as bequeathed to all people as children of Mother Earth.

g. The traditions and teachings espoused within the faith's sacred texts and scriptures provide insight for

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the restoration of spiritual, physical and mental health of all beings. These traditions and teachings require the assessment, improvement and restoration of physical, mental and spiritual health.

h. The belief that, as children of the Great Spirit, there is entitlement to, as part of natural law, the various fundamental freedoms including, but not limited, to freedom of thought and expression; the free exercise of sacred rights of worship and methods of healing; freedom of personal security; and freedom of self-determination.

i. All men and women are endowed with sufficient intelligence for self-governance to ensure the guarantees of those freedoms; to establish just and morally righteous methods of interacting with one another; and to the provide for maintenance of a tranquil and secure domestic life infused by the blessings of the faith.

c. Fundamental Moral & Ethical Tenets

27. Plaintiff Soul Quest Church adheres to seven (7) fundamental moral and ethical tenets, revealed to it and its members by and through the actions of the Great Spirit, *to wit*:

a. Mother Earth, is the embodiment of an indivisible, living community of interrelated and interdependent beings with a common destiny; and that Mother Earth is the source of life, nourishment and learning, and providing everything needed to live a fulfilled existence; Mother Earth is part of a greater creation, composing all existence throughout the cosmos, as originated by the Great Spirit.

b. All forms of depredation, exploitation, abuse and contamination – in whatever form and including, but not limited to certain economic systems – have endangered Mother Earth by causing massive destruction, degradation and disruption of natural systems. Amoral and

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immoral practices and systems must be discarded and replaced with the faith's moral tenets – guided by the Great Spirit – and premised upon the embracing of practices designed to protect and sanctify Mother Earth.

c. As a part of a globally interdependent living community, and consistent with the teachings of the Great Spirit, all beings are imbued with natural rights requiring equal respect. Human beings are just one component of Mother Earth and a homocentric approach creates imbalance within Mother Earth.

d. In order to fulfill the design of the Great Spirit to equal dignity and rights among humans, it is concurrently necessary to recognize and defend the rights of Mother Earth and all its beings.

e. Consistent with the teachings of the Great Spirit, collective action must be taken to transform structures and systems destructive to Mother Earth including, but not limited to, the catastrophic consequences of modern climate change.

f. Indigenous plant life is sacred and embodied by the Great Spirit. All materials stemming from plant life must be accorded dignity, protected from threat or violation, and defended as a holy sacrament. The ritual use of ayahuasca and its natural healing treatments is embraced as a fulfillment of this holy sacrament.

g. An obligation to embody and promote the principles of the Universal Declaration of the Rights of Mother Earth, via fundamental respect for the sacred nature of the planet and its occupants, as one with the Great Spirit.

28. These fundamental tenets of Plaintiff Soul Quest Church's faith were described in greater detail in the DEA Exemption Request that the Plaintiffs submitted to the Defendants. See Exhibit 1.

d. Scriptural & Liturgical Foundations; Mission

29. Plaintiff Soul Quest Church's origins, and its teacher-prophet, the Spirit of Ayahuasca, are comprised within two sacred plants "Banisteriopsis Caapi" and "Psychotria Viridis."

30. The beliefs, purposes and guidelines are further defined within the sacred writings titled the "Ayahuasca Manifesto." A copy of the Ayahuasca Manifesto is attached hereto, and incorporated by reference herein, as Exhibit 3.

31. The Ayahuasca Manifesto is very much akin, and serves a similar purpose, to other faiths' sacred writings, explaining the tenets of the faith, such as the Jewish Talmudic writings and the Mishnah.

32. The sacred nature of the Spirit of Ayahuasca is proclaimed within the Ayahuasca Manifesto as follows:

> I am the spirit of Ayahuasca. For the first time, I reveal myself through the "Word" to make an emergency call to all the Human Beings on the Planet, especially to the Light Seekers, as I must expand beyond the Amazon River Basin. With my physical expansion, I intend to facilitate the spiritual transformation currently stirring the human species. . . .
>
> I am a spirit of spirits. I operate from a vibration superior to the spirits who compose me. I am of a hierarchy superior to that of the spirit of Ayahuasca and of Chacruna. I am the medicine resulting from the mixture of Ayahuasca and Chacruna. Although they give me the name of one of them, my sacred magic does not come from either one of them. My magic resides in the synergy created by the sacred mixture.

See Exhibit 3 at 5-6.

33. Plaintiff Soul Quest Church's beliefs, purposes and guidelines are provided through channeled material documented in Ayahuasca Manifesto. The Manifesto provides knowledge and direction, inclusive of details about Plaintiff Soul Quest Church's mission, as well as instructions on the following topics:

a. Role in the Expansion of the Human Consciousness;
b. Purpose with Human Beings;
c. Respect and the Sacred Nature of Ayahuasca;
d. Benefits of Use;
e. Guide for Conducting Ayahuasca Ceremonies; and
f. Planetary Mission.

See Exhibit 3.

34. Other fundamental religious ethical requirements of Plaintiff Soul Quest Church are included in its Code of Ethics. The Code of Ethics contains key principles, edicts and other educational statements regarding Soul Quest and its sacraments – inclusive of the use of ayahuasca. A copy of the Code of Ethics is attached hereto, and incorporated by reference herein, as Exhibit 4.

35. Plaintiff Soul Quest Church's mission is achieved through its advocacy and educational initiatives by: producing disciples who will celebrate the teachings and wisdom of the Great Spirit in cooperative worship; are devoted to the four (4) boundless and unequaled states of mind – Love, Compassion, Joy and Equanimity; are possessed with love for everyone and every living being; and are permeated and bound by the spheres of influence and dynamic teachings of our elders.

36. On a liturgical level, Plaintiff Soul Quest Church's requires staff to observe proper liturgical dress during religious retreats and ceremonies. This entails the wearing of white vestments.

37. The color *white* is critical to the practice of Plaintiff Soul Quest Church's religious ceremonies and retreats, and performance of sacraments of the faith, for the following reasons:

a. It represents the color of eternal light and is an emblem of the divine.

b. It projects purity, cleanliness and neutrality.

c. It aids in mental clarity, encourages staff and participants to clear mental and spiritual clutter and obstacles, evokes purification of thoughts and actions and enables fresh beginnings.

d. It accentuates free movement, all while maintaining maximum respect to the Great Spirit, and all others participating in such functions.

e. Holidays

38. Plaintiff Soul Quest Church's and its members celebrate the following holidays:

a. December 23 - Winter Solstice;
b. March 21 - Vernal Equinox'
c. April 22 - Earth Day;
d. June 21 - Summer Solstice; and
e. September 21 - Autumnal Equinox.

39. Plaintiff Soul Quest Church's holidays, akin to many diverse cultural and religious traditions, are premised upon the ancient tradition of celebrating the change of seasons and complementary astronomical events.

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f. Dietary & Fasting Rituals

40. Plaintiff Soul Quest Church's and its members adhere to the traditional diet of the Medicine People. The diet not only requires abstention from consumption of certain foods; rather, it also requires discipline, sacrifice and commitment, akin to those of various Judeo-Christian and Eastern religious sects.

41. The constraints imposed by Plaintiff Soul Quest Church's dietary laws are designed to cleanse the body and, by doing so, cleanse the spirit and permit for the effective, efficient use of plant medicine. These constraints are described, in greater detail in the Plaintiff's DEA Exemption Application. See Exhibit 1.

42. These constraints directly impact Plaintiff Soul Quest Church's ayahuasca sacrament ceremony. Prior to any ayahuasca ceremony, Plaintiff Soul Quest Church members and adherents are to comply with the following dietary and sexual edicts, designed to purify body and soul:

a. Seven days prior to involvement in any ayahuasca ceremony, refraining from:

    i. Drug use, including prescription drugs (medical interaction forms, including in the supplement to this religious exemption application provide further instruction), and any and all recreational drugs.
    ii. Alcoholic beverages
    iii. Sexual activity (whether with a partner or from self-stimulation).

b. Three days prior to involvement in any ayahuasca ceremony, refrain a wide variety of foods and beverages. See Exhibit 1.

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c. All Plaintiff Soul Quest Church's facilitators are expected to fast for the period spanning the day prior to any ayahuasca ceremony, through to completion of any ceremony. In doing so, those individuals also demonstrate a commitment to the Great Spirit as embodied within the plant medicine, and prepare for acting as a surrogate for the Great Spirit during the ayahuasca ceremony. See Exhibit 1.

g. Church Governance

43. Ultimate authority lies in the Creator/Great Spirit of Ayahuasca as the head of the church and in the sacred beliefs, and doctrines expressed as the basis for Plaintiff Soul Quest Church's faith and practice.

44. The government of Plaintiff Soul Quest Church is vested in its membership and administered by its officers. In function, final authority shall reside in the membership.

45. Plaintiff Soul Quest Church members approve and/or affirm Plaintiff Soul Quest Church's qualified leadership, to carry out the purposes of the spirit of Ayahuasca.

46. Plaintiff Soul Quest Church's leadership holds leadership meetings to talk, brainstorm and agree on any discipline or change that may be required.

47. Akin to other religious institutions, Plaintiff Soul Quest Church maintains multiple instruments for governance of its affairs. Presently, this includes the following lay and religious officials/bodies:

a. Chief Executive Officer, Chief Medicine Man, Pastor, Chief Elder and Counselor: Plaintiff Christopher Young;
b. President, Elder and Counselor: Verena Young;
c. Senior Minister: Scott Irwin;
d. Senior Medicine Man/Shaman: Don Gaspar;
e. Medicine Man/Ayahuascaro: Anthony Chetta;
f. Medicine Woman: Tersa Shiki;

g. Council of Elders: Constituted of selected senior members of Plaintiff Soul Quest Church, and occupying various areas of specialization, as necessary for the maintenance and welfare of the Church.

48. Further, other officers such as church administrator, secretary, visiting ministers and teachers/elders will be assigned with Board permission. Presently, pending future growth of the Plaintiff Soul Quest Church, the Senior Pastor fills such duties.

h. Membership

49. Plaintiff Soul Quest Church receives all individuals as members who accept the spiritual and religious principles of the Church, as well as recognize the fruits of the Great Spirit in their lives, and who agree to abide by Plaintiff Soul Quest Church's doctrine. The only requirement for membership is a singular request: the individual must express a belief in the foundation principles of the Plaintiff Soul Quest Church.

i. Soul Quest Church's Federal & State Religious-Based, Non-Profit Entity Recognition

50. Plaintiff Soul Quest Church holds the following federal and state tax treatments as a religious-based, non-profit entity:

a. Soul Quest Church of Mother Earth Inc. (SQCME) – Non-Profit Corporation Federal Identification No.: 841402813, and Florida State Non-Profit Corporation, founded by Medicine Man, Pastor, Chief Elder and Counselor, Chris Young; and its Elder and Counselor, Verena Young.

b. Soul Quest Ayahuasca Church of Mother Earth Retreat and Wellness Center (SQACME), as an independent branch or Free Church of SQCME; Florida State Non-Profit Corporation 501 IRS-compliant Non-Profit was first incorporated July 15, 2016, with its Charter Declaration also entered on July 15, 2016, recognizing its founders, Medicine Man,

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Pastor, Chief Elder and Counselor Chris Young; and
Elder and Counselor Verena Young.

2. Plaintiff Soul Quest Church's Ayahuasca Sacrament

51. The ayahuasca sacrament is performed three (3) times per month, with approximately 60-80 individuals in attendance, alongside approximately twenty, skilled (20) facilitators (spiritual counselors) also present throughout the sacramental ceremony. These facilitators work alongside a team – at the ceremony – which includes a licensed physician as medical director, a licensed paramedic, a licensed emergency medical technician [hereinafter "EMT"], a psychologist, and a research scientist.

52. The ayahuasca sacrament involves the consumption of tea using the received wisdom and learning of Plaintiff Soul Quest Church to elevate its petitioners above the mundane world, and so bring them closer to the divine realm.

53. Plaintiff Soul Quest Church limits attendance (and enhances the ratio of ceremonial facilitators) in order to maximize safety and security to all involved throughout the ritual.

54. Plaintiff Soul Quest Church has designed and implemented safety and security protocols, intended to maximize the protection of those participants in Ayahuasca ceremonies.

55. Those individuals designated to conduct and facilitate Plaintiff Soul Quest Church ceremonies must first prove that they have attained the requisite knowledge and expertise in the following areas:

a. The Pharmacology of Ayahuasca;
b. The Risks & Contra-Indications of Ayahuasca;
c. The Legal Implications Surrounding the Dispensing of Ayahuasca;
d. First Aid;

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e. The Theory of Non-Ordinary States of Consciousness, and Therapeutic Approaches;
f. Possession of Extensive, Prior Personal Experience with Ayahuasca;
g. The Ability to Work as a Team Member; and
h. Understanding of Soul Quest's Religious Principles, Therapeutic Purposes of Consuming Ayahuasca, and the Fundamental Moral & Ethical Tenets.

56. Additional measures are imposed to prepare Plaintiff Soul Quest Church members for participation in Ayahuasca ceremonies:

a. Prior to any ceremony, the Church transmits, via electronic mail, educational material on Ayahuasca to all members anticipating participation in the Ayahuasca ceremony. It is critical to ensure that members are well-informed regarding the ceremony, and the requirements for properly conducting themselves before, during and after the ceremony. The following information is conveyed to these Soul Quest members:

   i. The properties of Ayahuasca, its composition, its effects and the potential risk.
   ii. The implications of drinking Ayahuasca.
   iii. The dietary restrictions before and after the session.
   iv. The responsibilities of the staff and the participants.
   v. The procedure and operation of the session.
   vi. The process, in its entirety.

b. All Plaintiff Soul Quest Church members intending participation in the sacramental ceremonies involving ayahuasca are required to complete and return a medical form prior to participation, to ascertain whether or not there are potential medical limitations to such participation.

c. Plaintiff Soul Quest Church conducts individualized interviews with the member intending to participate in the ayahuasca ceremony. The purpose for these interviews is to:

   i. Establish a rapport with the individual; ascertain their basis and willingness to

participate in the sacred Ayahuasca ritual; and to qualitatively assess current psychological and physical status; and

ii. (Re)assess an individual who has previously participated in the ayahuasca ceremony.

d. Plaintiff Soul Quest Church presents and explains the mandatory consent form.

e. Plaintiff Soul Quest Church uses the information gathered through its described written and oral questions/interviews to determine whether or not to permit any given individual to participate in the Church's sacred ayahuasca ceremony. The acceptance of an individual's participation in the ceremony is premised upon:

i. Members demonstrating their understanding of the personal, religious process entailed by their participation.

ii. Accepting only members whose personal participation is unlikely to require greater assistance (in time or resources) than is available in the current context of the ayahuasca ceremony.

iii. Determining whether members perhaps require additional therapy prior to consuming the sacramental ayahuasca tea. Such additional therapy might potentially involve advising the member to seek appropriate, external professional assistance.

f. In cases where any member's participation in the sacred ayahuasca ceremony is declined by the Church, Plaintiff Soul Quest Church provides that member with an explanation for its decision, and suggests alternative methods for achieving suitable religious and therapeutic fulfillment. If Plaintiff Soul Quest Church determines there to be doubts about any member's suitability, then participation in the ayahuasca ceremony is not permitted.

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57. Further details of the pre-ceremonial, ceremonial and post-ceremonial procedures involving the sacred ayahuasca ceremony are articulated within the Plaintiffs' DEA Exemption Application. See Exhibit 1.

58. Despite the efforts made to maximize safety throughout the ayahuasca sacrament, the Plaintiffs have fallen victim to actions by the Defendants to hold such ceremonies, thus abridging fundamental freedoms and statutory rights.

3. Federal Prohibitions on Ayahuasca

59. The Controlled Substances Act [hereinafter "CSA"] was enacted by Congress to erect prohibitions upon the use of a large variety of identified, controlled substances. 21 U.S.C. § 801, et seq.

60. To be classified as a controlled substance, a substance must, among others, have a "high potential for abuse." 21 U.S.C. § 812(b)(1)(A).

61. One of the substances classified as a controlled substance is dimethyltryptamine [hereinafter "DMT"]. 21 U.S.C. § 812(c)(c)(6).

62. DMT is a naturally-occurring substance found in many plants native to the Western Hemisphere, including North America.

63. None of these plants containing DMT are listed as controlled substances, because the scientific evidence establishes that the DMT contained within these plants is not in a form with a "high potential for abuse." See 21 U.S.C. § 812(c)(a), et seq.

64. Psychotropia viridis is a small plant, not listed within the CSA, containing trace amounts of DMT. This plant is part of the Plaintiffs' sacramental tea.

65. Upon information and belief, DMT is only considered a "substance with a high potential for abuse" when its synthetic form is either taken intravenously or inhaled.

66. By contrast, the Plaintiffs' sacramental tea is a natural, organic, and non-synthetic sacrament. In addition, the natural processes of digesting this organic sacrament further reinforce and ensure that the DMT entering the body through the Plaintiffs' sacramental tea cannot become a substance with a "high potential for abuse."

4. Defendants' Actions to Undermine the Plaintiffs' Rights

67. Consistent with the United States Supreme Court's decision in *O Centro supra*, the Plaintiffs – in August 2017 – submitted the aforementioned DEA Exemption Application to the Defendants. Since that time, despite Plaintiffs' repeated efforts to gauge the status of their DEA Exemption Application, the Defendants have failed to act upon the application. Instead, the Defendants have locked up the DEA Exemption Application in a state of limbo.

68. The Plaintiffs' DEA Exemption Application describes, in painstaking fashion, Plaintiff Soul Quest Church's eligibility for the faith-based exemption to the proscriptions imposed under the Drug Enforcement Act. See Exhibit 1.

69. The Defendants appear to have not even put into place any real procedure for processing the application, much less one narrowly tailored to minimize the impact upon the ability of citizens to freely exercise religious-based practices.

70. The Plaintiffs assert that the failure of the Defendants to abide by the O Centro decision, and its jurisprudential progeny; the strictures of the RFRA; and even to established DOJ policies pertaining to the free exercise of religious practices have resulted in a direct abridgement of their rights, as articulated, herein. See O Centro, supra; 42 U.S.C. §

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2000bb. et seq. A copy of the established, internal DOJ policies that the Defendants' conduct violated is attached hereto, and incorporated by reference herein, as Exhibit 5 and Exhibit 6, respectively.

COUNT ONE

VIOLATION OF PLAINTIFFS' FIRST AMENDMENT RIGHTS TO FREEDOM OF RELIGION (42 U.S.C. § 1983)

71. Plaintiffs re-allege, and incorporate by reference herein, the allegations of paragraphs 1-70, as if fully set forth herein.

72. The Plaintiffs, as individual and corporate citizens of the United States of America, have an inalienable right to practice their religion freely.

73. The Defendants, as the sole entities with the ability to grant religious exemptions to churches and faiths similarly-situated to the Plaintiffs, carry the burden of interpreting and enforcing the laws of the United States so as not to infringe upon valid exercises of the First Amendment right to freedom of religion.

74. The Defendants' absolute silence upon Plaintiffs' DEA Exemption Application, a silence that has now extended for years without follow-up from the Defendants, constitutes an effective denial through silence of the Plaintiffs' application.

75. For the reasons set forth in this Complaint and the attached Exhibits, the Plaintiffs' religious requirement to use ayahuasca is part of a legitimate religious ritual, and one with deep significance to the members of the Plaintiff Soul Quest Church.

76. Therefore, the Defendants' denial through silence of Plaintiffs' valid application constitutes an infringement of the Plaintiffs' rights arising under the Freedom of Religion clause of the First Amendment to the United States Constitution.

COUNT TWO

VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION ACT (42 U.S.C. §§ 2000bb–2000bb-4)

77. Plaintiffs re-allege, and incorporate by reference herein, the allegations of paragraphs 1-76 as if fully set forth herein.

78. The Defendants have, through silence, burdened the Plaintiffs' legitimate exercise of their religion.

79. The Religious Freedom Restoration Act obligates the Defendants to refrain from burdening the Plaintiffs' lawful exercise of their faith unless the Defendants can show that such a burden both furthers a compelling government interest, and is the least-restrictive means of furthering that compelling interest. See 42 U.S.C. § 2000bb-1(b).

80. Despite years of time in which to act, the Defendants have not been able to provide any evidence of a compelling governmental interest they are preserving, or any indicia to suggest that the Defendants' silence is the least-restrictive means of preserving that interest.

81. Therefore, the Defendants have violated Plaintiffs' rights under the Religious Freedom Restoration Act.

COUNT THREE

VIOLATION OF THE PLAINTIFFS' RIGHTS TO PROCEDURAL DUE PROCESS (42 U.S.C. § 1983)

82. Plaintiffs re-allege, and incorporate by reference herein, the allegations of paragraphs 1-81, as if fully set forth herein.

83. The Defendants have, as part of the judicial mandate to allow exemptions pursuant to RFRA to individuals like the Plaintiffs, promulgated a set of "guidelines" to the public, which purport to govern filings for this type of exemption. See Exhibit 2.

84. Upon information and belief, the Defendants continue to abide by these guidelines to the present day.

85. Part of these guidelines obligate the Defendants to, if they accept an application for filing, to provide a "notice of acceptance" to the applicant. See Exhibit 2.

86. If the Defendants should deny an application, these guidelines obligate the Defendants to return the application to the applicant "with a statement of the reason for not accepting the petition for filing." See Exhibit 2.

87. However, as discussed, supra, the Defendants have taken neither step with regards to the Plaintiffs' application, and, instead, the Defendants have remained silent upon the Plaintiffs' application for several years, effectively denying it without granting the Plaintiffs access to a fair and timely consideration of their application.

88. Therefore, the Defendants have violated the Plaintiffs' right to procedural due process, arising under the Fourteenth Amendment to the United States Constitution.

COUNT FOUR

VIOLATION OF THE PLAINTIFFS' RIGHT TO SUBSTANTIVE DUE PROCESS
(42 U.S.C. § 1983)

89. Plaintiffs re-allege, and incorporate by reference herein, the allegations of paragraphs 1-88 as if fully set forth herein.

90. The guidelines promulgated by the Defendants obligate the Defendants to provide reasons to the applicant for an exemption, both in case of a denial at the application stage, and in case of a final denial of the application.

91. However, at no point in Defendants' guidelines do the Defendants ever explain what they will be searching for in an application, or what reasons may compel the Defendants to refuse to accept an application for filing, or what may lead to a denial of an application.

92. The Defendants can, therefore, deny any application for any reason.

93. The Defendants' ongoing silence concerning the Plaintiffs' DEA Exemption Application constitutes a denial of the Plaintiffs' application through this silence.

94. As stated, supra, the Defendants have never provided any reasons for this denial to the Plaintiffs, nor is it clear from the Defendants' guidelines what any such "reason" would be or consist of.

95. Therefore, the Defendants' guidelines empower them to arbitrarily approve or deny an application for a religious exemption, like the Plaintiffs'.

96. In addition, nowhere in the Defendants' guidelines does it state how long the Plaintiffs, or another similarly-situated applicant, will be expected to wait for their application to be processed.

97. Thereby, even if Plaintiffs' application were accepted for filing, the Defendants could simply continue to remain silent for an indeterminate period of time.

98. Therefore, the Defendants' guidelines leave Plaintiffs with no idea of how their application will be judged, or how long it may take the Defendants to do so.

99. Therefore, the processing of the Defendants' application under the Defendants' guidelines should be deemed an arbitrary one, in terms of both content evaluation and the time in which the Defendants have to respond to the Plaintiffs' application.

100. Therefore, the Defendants' processing of the Plaintiffs' DEA Exemption Application under these guidelines constitutes an arbitrary government act, in violation of the Plaintiffs' right to substantive due process under the Fourteenth Amendment to the United States Constitution.

COUNT FIVE

VIOLATION OF PLAINTIFF'S RIGHT TO FREEDOM OF SPEECH
(42 U.S.C. § 1983)

101. Plaintiffs re-allege, and incorporate by reference herein, the allegations of paragraphs 1-100, as if fully set forth herein.

102. As is fitting for a religion based around ayahuasca, the Plaintiffs' ongoing proselytization and promotional efforts around the United States feature ayahuasca heavily.

103. As discussed, supra, the Defendants' denial through silence and inaction of the Plaintiffs' application for a religious exemption effectively functions as a prior restraint upon the Plaintiffs' speech.

104. The Defendants' denial through silence and inaction of the Plaintiffs' application for a religious exemption therefore severely burdens the Plaintiffs' rights to freedom of speech, in violation of the First Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, for all the foregoing reasons, the Plaintiffs respectfully request that this Court grant the following relief:

a. declare that the Defendants' actions in denying the Plaintiffs' application through silence are in violation of the Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution, and the Religious Freedom Restoration Act;

b. declare that the Defendants' promulgated guidelines to the public are an arbitrary government action, in violation of the Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution;

c. enter an Order that, within 30 days of the aforementioned declaratory relief, the Parties present to the Court a plan to effectuate the importation, distribution, and accounting for the Plaintiffs' sacramental tea consistent with the rights of the Plaintiff to use their sacramental tea in their religious services;

d. enter an Order permanently enjoining the Defendants from enforcing the prohibitions of the Controlled Substances Act against the Plaintiffs for the Plaintiffs' sacramental use of ayahuasca;

e. enter an Order awarding the Plaintiffs attorneys' fees, costs, and expenses, pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, and the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988; and

f. award such other and further relief as this Court deems proper.

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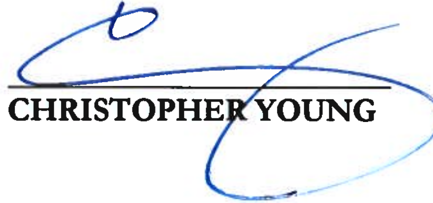
VERIFICATION OF FACTUAL ALLEGATIONS IN COMPLAINT

With respect to the factual allegations in the instant Complaint, I, Christopher Young, Plaintiff herein, declare (certify, verify, or state) under penalty of perjury that the foregoing factual allegations are true and correct, as provided in 28 U.S.C. § 1746.

Executed on this 18th day of April, 2020.



CHRISTOPHER YOUNG

Dated this 15 day of April 2020.

Respectfully submitted,

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CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 5

High Intensity Drug Trafficking Areas (HIDTA)

The High Intensity Drug Trafficking Areas (HIDTA) program, created by Congress with the Anti-Drug Abuse Act of 1988, provides assistance to Federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug-trafficking regions of the United States. This grant program is administered by the Office of National Drug Control Policy (ONDCP). There are currently 29 HIDTAs, which include approximately 19.6 percent of all counties in the United States and 67 percent of the U.S. population. HIDTA-designated counties are located in 50 states, as well as in Puerto Rico, the U.S. Virgin Islands, and the District of Columbia. The DEA plays a very active role and has nearly 600 authorized special agent positions dedicated to the program. At the local level, the HIDTAs are directed and guided by Executive Boards composed of an equal number of regional Federal and non- Federal (state, local, and tribal) law enforcement leaders. The 2018 HIDTA annual budget is $280 million.

The purpose of the HIDTA program is to reduce drug trafficking and production In the United States by:

- Facilitating cooperation among Federal, state, local, and tribal law enforcement agencies to share Information and Implement coordinated enforcement activities;
- Enhancing law enforcement intelligence sharing among Federal, state, local, and tribal law enforcement agencies;
- Providing reliable law enforcement Intelligence to law enforcement agencies to facilitate the design of effective enforcement strategies and operations; and
- Supporting coordinated law enforcement strategies that make the most of available resources to reduce the supply of Illegal drugs in designated areas of the United States and in the nation as a whole.

(Click the below map to view a larger size)

High Intensity Drug Trafficking Areas Program Counties

as of May 2018

HIDTA Headquarters
Southwest Border Regions
Alaska
Appalachia
Atlanta-Carolinas
Central Florida
Central Valley California
Chicago
Gulf Coast
Hawaii
Houston
Indiana
Liberty Mid-Atlantic
Los Angeles
Michigan
Midwest
Nevada
New England
New York/New Jersey
North Central
North Florida
Northern California
Northwest
Ohio
Oregon-Idaho
Puerto Rico/US VI
Rocky Mountain
South Florida
Southwest Border
Texoma
Washington/Baltimore
Not a HIDTA County

Source: Office of National Drug Control Policy, High Intensity Drug Trafficking Areas Program (HIDTA), May 2018.

To qualify for consideration as a HIDTA, an area must meet the following criteria:

- The area is a significant center of illegal drug production, manufacturing, importation, or distribution;
- State, local, and tribal law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem;
- Drug-related activities in the area are having a significant harmful impact in the area and in other areas of the country; and
- A significant increase in allocation of Federal resources is necessary to respond adequately to drug related activities in the area.

(/)

Special Operations / HIDTA Task Force & International Drug Trafficking

HIDTA Task Force & International Drug Trafficking

The landscape of illegal drug use changes over time. Some decades see a huge increase in the use and sales of marijuana; others in cocaine or methamphetamine or heroin.

The fluidity of drug use and sales means that law enforcement must be attentive to the changes not only in usage but in delivery systems, manufacturing methods as well as locations where narcotics are being made or sold.

One of the ways the Maricopa County Sheriff's Office fights the illegal narcotics trade is through a unit called **HIDTA**. The Sheriff's High Intensity Drug Trafficking Areas (HIDTA) initiative, established in 1997, is a federal program funded by a grant from the Office of National Drug Control Policy (ONDCP) which provides assistance to federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug trafficking regions of the United States.

Maricopa County is definitely one of those areas.

Today our HIDTA initiative is known as the Maricopa County Drug Suppression Task Force (MCDST). It originally began as a collaborated law enforcement response to the clandestine methamphetamine laboratories which were a community epidemic during the late 1990's through the early 2000's. Our primary mission at that time was to identify, respond, safely dismantle, investigate and prosecute those responsible for the illegal and highly dangerous manufacturing of methamphetamine throughout Arizona.

Today, law enforcement agencies from across the entire Maricopa County area are a part of our Task Force, including prosecutors from the State Attorney General's Office and agents from the DEA.

While clandestine laboratories remain the priority of our Task Force, based on enacted legislation, we see that presently the manufacturing of methamphetamine locally has significantly declined and has now moved to Mexico.

Select Language ▼ Pc

(/)

Arizona has long been established as a source state for illegal narcotics smuggled from Mexico, and we are currently experiencing an increase in narcotics being smuggled in from Mexican cartels which use our state and County as a launching point for their sales and distribution throughout the United States.

Our Task Force today is multi-faceted to address the illegal drug trade on many fronts. Emphasis is now placed on investigations focusing on cartel-led drug transportation organizations (DTO's), and money laundering organizations (MLO's). Our focus is to identify, disrupt, degrade and dismantle these organizations by utilizing desert interdiction, highway interdiction, wiretap investigations, and undercover operations.

This unit has been and remains very successful in its goal of drug interdiction. From 2003 to 2016, for example, the MCDST has served over 605 warrants resulting in the seizures of:

- Over 1275 pounds of meth, 567 tons of marijuana, 3615 marijuana plants, 78 kilos of heroin and 250 kilos of cocaine. The street value of the seized drugs is estimated to be nearly $1,240,000.
- The Task Force also dismantled over 320 clandestine laboratories, including the latest epidemic of highly volatile butane hash oil labs, found at nearly all marijuana grow operations.
- And, most significantly, over 200 children have been rescued by deputies and officers working in the HIDTA unit from the hazardous environments of the labs.

Get in Touch (/Home/ContactUs)

Contact Us

(/Home/ContactUs)

Address: 550 West Jackson, Phoenix Arizona 85003, United States

Phone: (602) 876-1000

Follow Us

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(http://www.beyondsecurity.com/vulnerability-scanner-verification/www.mcso.org)

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ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)
Excellence in Partnership, Leadership, and Innovation

PARTICIPATING AGENCIES

HIDTA helps improve the effectiveness and efficiency of drug control efforts by facilitating cooperation between drug control organizations through resource and information sharing, co-locating, and implementing joint Initiatives. HIDTA funds help Federal, state, and local law enforcement organizations invest in infrastructure and joint Initiatives to confront drug trafficking organizations. Funds are also used for demand reduction and drug treatment Initiatives.

FEDERAL

Bureau of Alcohol, Tobacco, Firearms and Explosives
Bureau of Indian Affairs
Bureau of Land Management
Drug Enforcement Administration
Federal Bureau of Investigation
Internal Revenue Service
United States Attorney's Office
United States Border Patrol
United States Customs and Border Protection
United States Fish and Wildlife Service
United States Forest Service
United States Immigration and Customs Enforcement - Homeland Security Investigations
United States Marshals Service
United States National Park Service

STATE

Arizona Attorney General's Office
Arizona Department of Corrections
Arizona Department of Public Safety
Arizona National Guard
University of Arizona Police Department

TRIBAL

Colorado River Indian Tribes Police Department
Salt River Tribal Police Department
Tohono O'odham Nation Police Department

LOCAL

Apache Junction Police Department
Buckeye Police Department
Bullhead City Police Department
Chandler Police Department
Cochise County Attorney's Office
Cochise County Sheriff's Office
Coolidge Police Department
Douglas Police Department
El Mirage Police Department
Eloy Police Department
Flagstaff Police Department
Florence Police Department
Gilbert Police Department
Glendale Police Department
Kingman Police Department
La Paz County Attorney's Office
La Paz County Sheriff's Office
Lake Havasu City Police Department
Marana Police Department
Maricopa County Attorney's Office
Maricopa County Probation Office
Maricopa County Sheriff's Office
Mesa Police Department
Mohave County Adult Probation
Mohave County Attorney's Office
Mohave County Sheriff's Office
Navajo County Sheriff's Office
Nogales Police Department
Oro Valley Police Department
Peoria Police Department
Phoenix Police Department
Pima County Attorney's Office
Pima County Probation Office
Pima County Sheriff's Department
Pinal County Sheriff's Office

Quartzsite Police Department
Santa Cruz County Attorney's Office
Santa Cruz County Sheriff's Office
Show Low Police Department
Sierra Vista Police Department
Snowflake-Taylor Police Department
Surprise Police Department
Tempe Police Department
Tucson Police Department
Winslow Police Department
Yuma County Adult Probation
Yuma County Attorney's Office
Yuma County Sheriff's Office
Yuma Police Department

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ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)
Excellence in Partnership, Leadership, and Innovation

HIDTA INITIATIVES

The Arizona HIDTA is organized into three primary Initiatives: Enforcement (interdiction, investigation, fugitive arrests, and prosecution); Intelligence (coordination, deconfliction, investigative case support, threat analysis, and intelligence gap identification); and Support (management and training).

Fully understanding the drug-related threat in Arizona and using an intelligence-driven enforcement strategy, the Arizona HIDTA Task Forces are having a significant impact on the drug trafficking and money laundering organizations operating in Arizona and throughout the United States.

The Arizona HIDTA also supports the Domestic Highway Enforcement program and demand reduction and education efforts.

The Initiatives are located throughout Arizona in the counties of Cochise, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, and Yuma.

ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)
Excellence in Partnership, Leadership, and Innovation

INVESTIGATIVE SUPPORT CENTER (ISC)

The Arizona HIDTA Investigative Support Center (ISC) is a combined Federal, state, local, and tribal intelligence and information sharing Initiative. The ISC facilitates intelligence sharing among law enforcement agencies through the systematic collection, analysis, and dissemination of secure, accurate, and timely intelligence.

This cooperative model of sharing promotes interagency communication and coordination of activity regarding counter-drug efforts; enhances officer safety through deconfliction; eliminates duplication of effort; and is critical to combating the increasing threat of narcotics traffickers and criminal organizations.

The Arizona HIDTA ISC provides operational, tactical, and strategic support to investigations conducted by the HIDTA Initiatives. The ISC also supports the National HIDTA strategy and goals by developing intelligence related to regional, national, and international drug trafficking threats.

The dissemination of actionable intelligence, along with ongoing case support and drug trend/threat analysis, enables Arizona law enforcement entities to disrupt and dismantle drug trafficking organizations and other associated criminal groups at the highest level, substantially reducing the flow and distribution of illicit drugs and drug proceeds into and through Arizona.

The Arizona ISC consists of four units:

Research, Leads and Targeting (RLT)
The RLT unit researches and deconflicts information to the fullest extent using all available investigative and analytical tools. Using a systematic approach, phone numbers, names, addresses, seizure data, license plates and other identifying information are queried against Case Explorer, criminal databases, motor vehicle files, state systems, open source databases, federal proprietary databases, EPIC and phone deconfliction systems, such as DICE and DARTS, to fully identify investigative overlaps and provide intelligence products to law enforcement.

Case Support
The Case Support unit provides analytical case support to HIDTA Initiative investigations ranging from telephone toll analysis, pen register analysis, Title III analysis, and seizure analysis. The Case Support unit also identifies overt acts, stash house locations, sources of supply, organizational members and co-conspirators, trafficking routes and methods, relevant seizure information and key events, links to other investigations, and provides investigators with potential targets and relevant information to expand the investigation.

Threat Analysis and Production
The Threat Analysis and Production unit prepares and disseminates a range of strategic products pertaining to drug trends, drug availability, price changes,

ISC CONTACTS:

Research, Leads and Targeting (RLT)
Phoenix: phoenixrlt@azhidta.org
Tucson: tucsonrlt@azhidta.org

Case Support
Phoenix: phoenixcs@azhidta.org
Tucson: tucsoncs@azhidta.org

Threat Analysis and Production
threat@azhidta.org

Interdiction Response Group
irg@azhidta.org

ISC Administrative Office
602.845.8326 (Phoenix)
520.719.2002 (Tucson)
iscmanager@azhidta.org

Top

smuggling methods and changes, trafficking routes, emerging drug threats, officer safety issues, and drug trafficking organizations most impacting Arizona law enforcement.

Interdiction Response Group (IRG)

The IRG provides 24/7 real-time analytical support to interdictors and investigators. IRG analysts exploit the most appropriate criminal systems and intelligence databases and provide a quick response to interdictors to help them obtain reasonable suspicion, or probable cause, to search a vehicle. Pursuant to the seizure, the IRG provides first level analytical support using all available intelligence systems to enhance the initial investigation.

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FINANCIAL INVESTIGATIONS

JULY 30, 2020

8 a.m. to 5 p.m.

Location:

ARIZONA HIDTA TRAINING CENTER

5350 North 48th Street, Suite 105, Chandler, AZ 85226

AZ POST credit will be offered

Prerequisite: Students must be full-time, commissioned peace officers, crime analyst.

Course Description: This course is designed to help investigators identify sources of income, location of accounts, and location of other assets. It will show you how to understand bank records and money laundering techniques. You will learn how to identify techniques and resources used to locate financial institutions used by drug trafficking and money laundering targets. Will cover FINCEN and TRACC and how they can be used to progress a case. You will understand the processing of bank documents and identify money laundering methods within a case.

Who Should Attend: Investigators, Detectives, Officers, Analysts.

Continuing Education Hours: This course has been determined to qualify for AZ POST continuing training credit.

Dress Code: Uniform or business casual.

Lodging: Students are responsible for their own hotel and per diem costs. Hotel information will be included with the confirmation email.

Registration Limitations: Substitutions for confirmed attendees are not permitted.

Apply for Training: To register, visit www.azhidta.org – Click Training – View Training Calendar – Locate the event and Apply for Training.

Contact:

Training Assistant, Francine Gonzales at fgonzales@azhidta.org or 602-845-1984, or
Training Coordinator, Phil Hawk at phawk@azhidta.org or 602-845-1983

SEARCH & SEIZURE AND CONFESSIONS

Presented by: ***Asst. U.S. Attorney Christina M. Cabanillas***

APRIL 9, 2019

½ DAY TRAINING - 8:00am to 12:00pm

LOCATION:

ARIZONA HIDTA TRAINING CENTER

5350 North 48th Street, Suite 105, Chandler, AZ 85226

AZ POST credit will be offered

Prerequisite: Students must be full-time, commissioned peace officers.

Course Description: This training will discuss Federal and Arizona rules governing how law enforcement officers may lawfully obtain physical evidence under the Fourth Amendment and statements under the Fifth, Sixth and Fourteenth Amendments. The Search and Seizure portion will cover preliminary issues, arrest and search warrants, and the exceptions to the warrant requirement, including: expectation of privacy and standing, open fields v. curtilage, knock & talks, stops and detentions of people and vehicles, borders and checkpoints, arrests, frisks, plain view, vehicle searches, consent searches, searches incident to arrest, inventory searches, exigent circumstances, emergency aid, protective sweeps, hotel searches, and administrative searches. The Confessions portion will cover Miranda v. Arizona principles, custody, interrogation, admonishment and waiver, invocations and re-initiations, exceptions to the Miranda rule, voluntariness and Fourteenth Amendment due process issues, Sixth Amendment issues, and more. The class will include various scenarios and will stress the importance of accurate paperwork and reports.

Who Should Attend: Officers, Detectives, Investigators, Agents, Supervisors, Prosecutors

Continuing Education Hours: This course has been determined to qualify for AZ POST continuing training credit.

Dress Code: Uniform or business casual.

Lodging: Students are responsible for their own hotel and per diem costs. Hotel information will be included with the confirmation email.

Registration Limitations: Each agency is limited to **five** approved attendees. Substitutions for confirmed attendees are not permitted.

Apply for Training: To register, visit www.azhidta.org – Click Training – View Training Calendar – Locate the event and Apply for Training.

Contact:
Training Executive Assistant, Sara Ayres at sayres@azhidta.org or 602-845-1984, or
Training Coordinator, Phil Hawk at phawk@azhidta.org or 602-845-1983

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 6

U.S. Department of Justice
FY 2019 Budget Request

DRUG ENFORCEMENT AND THE OPIOID CRISIS

+$295 Million in Program Enhancements and Transfers

FY 2019 Overview

The United States is in the midst of the deadliest drug epidemic in American history. According to the Centers for Disease Control and Prevention (CDC), more than 63,600 Americans died from drug overdoses in 2016, a 21% increase from the previous year.[1] Over 42,200, or approximately two-thirds, of these overdose deaths were caused by heroin, fentanyl, and prescription opioids. The President declared this scourge a National Public Health Emergency in October 2017, and the Department remains committed to doing its part to protect the American people from the impact of drugs and drug-related crime nationwide.

The FY 2019 budget requests $295 million in program enhancements and transfers to combat the opioid crisis and bolster drug enforcement efforts. These resources will enable the Department to target those drug trafficking organizations most responsible for the opioid epidemic and drug-related violence in our communities, as well as ensure the life and safety of first responders who are on the front lines protecting the American people.

New Program Enhancements

Combating the Opioid Crisis: +$40.5 million and 145 positions (106 Agents)

Heroin Enforcement Groups and Additional Enforcement Personnel: +$31.2 million and 140 positions (106 Agents)
Funds eight new heroin enforcement groups (90 positions, 56 Agents) to be deployed to DEA Field Divisions that have identified heroin as the first or second greatest threat to their area. These groups will target the link between the cartels and the drug trafficking networks operating within the United States. These resources will also increase agents (50 positions, 50 Agents) at DEA Field Divisions to target the Mexican Transnational Criminal Organizations (TCOs) that pose the greatest drug threat to the United States.

Fentanyl Signature Profiling Program: +$6.8 million and 5 positions
Resources will expand DEA's Fentanyl Signature Profiling Program (FSPP) and provide additional chemists to analyze fentanyl seizures in the United States. The FSPP has

[1] Hedegaard H, Warner M, Miniño A. Drug Overdose Deaths in the United States, 1999-2016. NCHS Data Brief, no 294. Hyattsville, MD: National Center for Health Statistics. 2017. Available from: https://www.cdc.gov/nchs/data/databriefs/db294.pdf.

allowed DEA to link fentanyl seizures in an attempt to identify the international and domestic trafficking networks responsible for fueling the opioid crisis.

Law Enforcement Safety: +$2.5 million
Funding would allow DEA to acquire drug identification technology and personal protective equipment for agents in the field to minimize exposure to deadly opioids during enforcement actions. Resources would also allow DEA to purchase an additional 2,700 naloxone kits for DEA field personnel. Naloxone is an opiate antidote that blocks the effects of opioids and reverses an overdose, ensuring the safety of DEA personnel and the public who may come in contact with dangerous opioids inadvertently.

Combating Transnational Criminal Organizations (TCOs): +$400,000

Sensitive Investigative Unit (SIU) Program: +$400,000
Resources will support DEA's flagship Sensitive Investigative Unit (SIU) Program to combat highly sophisticated TCOs known for supplying illicit substances to distributors and users in the United States. Funding will allow DEA to convert the El Salvador Formal Vetted Unit to an SIU.

High Intensity Drug Trafficking Areas (HIDTA) Programs: +254.0 million, transferred from the Office of National Drug Control Policy

The FY 2019 President's Budget permanently transfers $254 million to DEA from the Office of National Drug Control Policy (ONDCP) for the purpose of facilitating coordination of the HIDTA Program with other drug enforcement assets. DEA currently participates in and coordinates with the various HIDTAs. Transferring the administration of the program will allow HIDTA resources to be focused on combating drug trafficking in areas where the threat is the greatest and where there is a coordinated law enforcement presence. There are currently 28 HIDTAs located in 49 states, as well as in Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

FY 2019 Program Enhancement Summary
(Amount in $000s)

Component/Initiative	Component	Positions	Agts/ Attys	Amount
Combating the Opioid Crisis				
Heroin Enforcement Groups and Additional Enforcement Personnel	DEA	140	106	$31,241
Fentanyl Signature Profiling Program (FSPP)	DEA	5	0	6,775
Law Enforcement Safety	DEA	0	0	2,498
Combating TCOs				
Sensitive Investigative Unit (SIU) Program	DEA	0	0	$400
High Intensity Drug Trafficking Areas (HIDTA) Program (transfer from ONDCP)	DEA	0	0	$254,000
Total, Program Increases		**145**	**106**	**$294,914**

Discretionary Enhancements Pending in FY 2018 President's Budget Request

<u>Drug Enforcement Administration</u>:

Heroin Enforcement: $8.5 million
Transnational Organized Crime: $6.5 million

<u>Organized Crime Drug Enforcement Task Force Program</u>:

Addressing the National Opioid Epidemic: $1.1 million

Total: $16.1 million

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 7

Google marijuana site:mcso.org

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www.mcso.org › Multimedia › PressRelease PDF

Maricopa County Drug Suppression Task Force Seizes Over ...

Apr 8, 2020 - Over $265k in Cash, Firearms, Heroin, **Marijuana** and. Vehicles from Criminal Enterprise. Phoenix, AZ – The Maricopa County Drug ...

www.mcso.org › Multimedia › PressRelease › Massive ... PDF

Maricopa County Sheriff's Office Joe Arpaio, Sheriff

Apr 19, 2016 - Massive **Marijuana** Enterprise Broken Up in Phoenix. Warehouse site is among largest operations of its kind ever discovered in Arizona.

www.mcso.org › Multimedia › Tonopah_Bust_10_11_19 PDF

Tonopah Marijuana Bust - Maricopa County Sheriff's Office

Oct 11, 2019 - suspects were illegally growing and selling **marijuana** in violation of the Arizona Medical **Marijuana** Act (AMMA). The suspects had 8 rooms ...

www.mcso.org › PressRelease › Marijuana Stop

Maricopa County Sheriff's Office Joe Arpaio, Sheriff

Facts: Traffic stop / **Marijuana** load vehicle. Dates and Time: February 7th at 0500hrs. Location: SR 85 just north of the Lewis Prison. Vehicle: White Chevy SUV ...

www.mcso.org › MultiMedia › PressRelease › Efrain Nun...

Maricopa County Sheriff's Office arrests driver of van in ...

Mar 5, 2013 - in Glendale containing half-million dollar haul of **marijuana**. (Phoenix, AZ) The Maricopa County Sheriff's Office is announcing today the arrest ...

www.mcso.org › PressRelease › StolenVehicles&Marijuana

Maricopa County Sheriff's Office Joe Arpaio, Sheriff

Mar 8, 2013 - Summary: Maricopa County Sheriff's Office Announces a **Marijuana** Seizure Weighing. Nearly 2,000 Pounds. Facts: Two Stolen Vehicles ...

Google

heroin site:mcso.org

All Images News Videos Shopping More Settings Tools

About 29 results (0.30 seconds)

www.mcso.org › FINAL Heroin Seizure 9-14-18 ▼ PDF

MCSO Detectives Seize Ten Pounds of Heroin Task force ...

Sep 14, 2018 - On Wednesday, September 12, 2018 at 1am MST, Phoenix Police stopped a vehicle around. 3500 West Maricopa Freeway in an assist to ...

www.mcso.org › Simulcast on heroin addiction ▼ PDF

Maricopa County Sheriff's Office Joe Arpaio, Sheriff

Jan 12, 2015 - **HEROIN** ADDICTION IS. MUCH NEEDED AND LONG OVERDUE. (Maricopa County, AZ) In his 22 years as Sheriff and 32 years with U.S..

www.mcso.org › PressRelease › FIN... ▼ PDF Translate this page

Detectives de MCSO Confiscan Diez Libras de Heroína Cuerpo ...

Detectives del Cuerpo Especial de Supresión de Drogas de la Oficina del Sheriff del Condado. Maricopa (MCDST por sus siglas en inglés) recientemente ...

www.mcso.org › Multimedia › PressRelease ▼ PDF

Maricopa County Drug Suppression Task Force Seizes Over ...

Apr 8, 2020 - Over $265k in Cash, Firearms, **Heroin**, Marijuana and. Vehicles from Criminal Enterprise. Phoenix, AZ – The Maricopa County Drug ...

www.mcso.org › Street bust on Heroin and Meth ▼ PDF

3 April 2002 - Maricopa County Sheriff's Office

Aug 4, 2016 - Sheriff's Detectives make arrests and Seize Meth and **Heroin**. (Maricopa County, AZ) On 08/04/2016 Detectives with the Maricopa County ...

www.mcso.org › MultiMedia › PressRelease ▼ PDF

Maricopa County Sheriff's Office Joe Arpaio, Sheriff

of **heroin** valued at close to $1.7 million and 93 pounds of methamphetamine with a street value of $2.95 million. "Emphasis today is placed on the big dealers ...

Google meth site:mcso.org

All Images News Videos Shopping More Settings Tools

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www.mcso.org › MCDST Meth and fentanyl operation PDF

For Release: August 21, 2018 3 Suspects Arrested In ...

Aug 21, 2018 - 15 pounds **methamphetamine**, 519 fentanyl pills, marijuana, cocaine, cash and vehicles seized. The Maricopa County Drug Suppression Task ...

www.mcso.org › 51 Pounds of Meth Seized in Arrest PDF

Maricopa County Sheriff's Office Joe Arpaio, Sheriff

Jun 4, 2013 - Sheriff's Office Scores One of Biggest **Meth** Busts To Date. Mexico Now Filling **Meth** Lab Void Created by Aggressive. Arizona Law Enforcement.

www.mcso.org › Meth Lab Search Warrant doc

3 April 2002 - Maricopa County Sheriff's Office

Apr 27, 2016 - 2016. Deputy Joaquin Enriquez (480) 318-4846. **Meth**, Heroin, Ecstasy, Marijuana, Cocaine, LSD and Hash Oil all found in Phoenix home after ...

www.mcso.org › SpecialOps › Hidta

HIDTA Task Force & International Drug Trafficking - Maricopa ...

Some decades see a huge increase in the use and sales of marijuana; others in cocaine or **methamphetamine** or heroin. The fluidity of drug use and sales ...

www.mcso.org › Street bust on Heroin and Meth PDF

3 April 2002 - Maricopa County Sheriff's Office

Aug 4, 2016 - Sheriff's Detectives make arrests and Seize **Meth** and Heroin. (Maricopa County, AZ) On 08/04/2016 Detectives with the Maricopa County ...

www.mcso.org › MultiMedia › PressRelease PDF

Maricopa County Sheriff's Office Joe Arpaio, Sheriff

of heroin valued at close to $1.7 million and 93 pounds of **methamphetamine** with a street value of $2.95 million. "Emphasis today is placed on the big dealers ...

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 8

Google ayahuasca site:mcso.org

All Shopping Videos News Images More Settings Tools

Your search - **ayahuasca site:mcso.org** - did not match any documents.

Suggestions:

- Make sure all words are spelled correctly.
- Try different keywords.
- Try more general keywords.
- Try fewer keywords.

Ad · www.amazon.com/

Shop Ayahausca Tea - Amazon - Fast Free Delivery with Prime.

Find Deals on Ayahausca Tea in Novelty Apparel on Amazon.

★★★★★ Rating for amazon.com: 4.5 - On-time delivery: 94%+

Shop Amazon Fashion · Amazon Prime Benefits · Explore Amazon Handmade

Ad · www.twobirdschurch.com/

Ayahuasca Ceremony in USA - Retreat In Nature

501c3 nonprofit, **ayahuasca** retreats. Trained in Peru. Est. 2010. Integration. Ceremonies. Highlights: A Non-Denominational Church, Online Donation Option Available, Online Registration Available.

Integration Circles · Register Online · Church Shop · Outreach Programs · Donate Online

Google

peyote site:mcso.org

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2 results (0.24 seconds)

It looks like there aren't any great matches for your search

Tip: Try using words that might appear on the page you're looking for. For example, "cake recipes" instead of "how to make a cake."

Need help? Check out other tips for searching on Google.

www.mcso.org › Documents › Career ▾ PDF

MARICOPA COUNTY SHERIFF'S OFFICE Joseph M. Arpaio ...

(B). Hallucinogens. LSD, PCP, Acid,. Mushrooms,. Mescaline,. **Peyote**. TOTAL times tried before Age 21. 0. 1. 2-5 6-10 11-20 21-50 51+. (C) Dangerous. Drugs.

www.mcso.org › Documents › Career › posse ▾ PDF

Maricopa County Sheriff's Office

Peyote. TOTAL times tried before Age 21. 0. 1. 2-5. 6-10. 11-20. 21-50. 51+. (C) Dangerous. Drugs. Opium,. Morphine,. Ecstasy,. Heroin, GHB. TOTAL times tried ...

85716, Tucson, AZ - From your Internet address - Use precise location - Learn more

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 9

MARICOPA COUNTY DRUG SUPPRESSION TASK FORCE (HIDTA)

IR 20-004616

SEARCH WARRANT

COUNTY OF MARICOPA, STATE OF ARIZONA

WARRANT No. SW 2020 . 006651

TO ANY PEACE OFFICER IN THE STATE OF ARIZONA:

Proof by affidavit having been made this day to me by :

MCSO Deputy Detective **Matthew Shay** #S2148

I am satisfied that there is probable cause to believe that

[x] on the **persons** known as:

Subj. 1: **Clay L Villanueva** (W/M) 05/21/1961 AZDL D00298777 510/145 Bro/Grn
Subj. 2: **Cecilia P Villanueva** (W/F) 04/19/1961 AZDL D03180864 500/125 Blk/Bro

[x] on the **premise**(s) known as :

1134 W Glenrosa Ave, Phoenix AZ. This is a single story home, tan or brick in color of stucco and brick construction that lies on the north side of W Glenrosa Avenue and is the third property east of N 13th avenue. This property is bordered by a cement wall separating it from the houses north east and west and with in those walls are several smaller structures that appear to be sheds and small work shop style structures. Each structure on the property is subject to search. The home has a short brick wall and two rod iron gates that separate it from Glenrosa to the south . The numerals "1134" are posted vertically on tan and brick colored tiles to the right (east) of the front patio of the home.

in the County of Maricopa, State of Arizona, there is now being possessed or concealed certain property, persons or things described as:

1. A usable amount of **Marijuana;**
2. A Usable amount of **DMT** (N,N-Dimethyltryptamine)
3. A usable amount of "**Ayahuasca**" containing DMT

4. Growing or drying **marijuana plants**
5. **Equipment and chemicals used to grow marijuana**, including, but not limited to;
   a. Lights: High Pressure Sodium, Metal Halide, High Intensity Discharge (HID) lights, Halogen, florescent or other similar bulbs and housings used to replicate the rays of the sun in maximizing plant growth and the wattage/amperage adjusting devices known as "ballasts" that are used to regulate electricity to the lights
   b. Grow medium: pellets, foam cutouts, peat moss, rock wool, soil, fiber, clay perlite or other similar items used to retain, strengthen and assist in the feeding of the cannabis root during various stages of grow.
   c. Hydroponic equipment: water pumps, air pumps, tubing, water reservoirs, tanks, buckets, tubs, water regulating devices, purifying devices and other items utilized in the movement and distribution of water and nutrients to and from growing marijuana plants.
   d. Electrical equipment: timers, power strips, extension cords, electric boxes, conduit, wiring, voltage meters, voltage regulators, and electrical testing equipment
   e. General tools used in the manufacture of "grow room" equipment and structures: circular saws, drills, drill bits, hand saws, hammers, levels, tape measures, clamps, conduit bending tools, wire strippers, plastic sheeting, vacuums, and other items obviously used to establish , maintain and clean the various marijuana grow areas utilized, abandoned, disassembled or under construction by the suspects
   f. Nutrients, chemicals, additives , foods and fertilizers used in the growing of marijuana plants
6. **Chemicals and equipment used to manufacture DMT** (N,N-Dimethyltryptamine) including , but not limited to :

a. base precursor plants such as Mimosa Tenuiflora , Mimosa Hostilis Root Bark, San Pedro Cactus, Psychotria viridis, Grow medium: pellets, foam cutouts, peat moss, rock wool, soil, fiber, clay perlite or other similar items used to retain, strengthen and assist in the feeding of the cannabis root during various stages of grow.

b. non-polar hydrocarbon solvent such as Naptha, Heptane, Hexane, Butane, or Propane and a base solvent such as sodium hydroxide

c. separating , and adjusting agents such as vinegar, hydrogen peroxide, lye, and acetone

d. Buckets, bowls cooking pots and mixing equipment such as 5 gallon "homer buckets" metal and pyrex cook wear, stirring utensils, strainers, filters, syringes, hot plates, turkey fryers, tubing, scales, grinders, pipettes,

7. **Paraphernalia** for packaging, manufacturing, using, weighing, and distributing illegal drugs, including but not limited to, wax paper, paper sandwich baggies, duffle bags, back packs, boxes, zip lock baggies heat sealed baggies, heat sealing devices, weigh scales, baggies, grinders, diluents, wrapping materials (new and used), tape, razor blades, cutting boards, glass pipes, cigarette papers, cooking devices, butane torches, and shipping materials such as boxes, deodorants, plastic wrapping, mail labels, and any other evidence used by persons to manipulate drugs in any way.

8. **Indicia of occupancy**, residency, rental and/or ownership of the premises described herein, including, but not limited to, utility and telephone bills, canceled envelopes, rental, purchase or lease agreements, and keys. These items may be on paper or contained electronically on a computer, tablet, cell phone, thumb drive, hard drive, or other removable media.

9. **Arizona "Medical Marijuana" paperwork,** cards , receipts and pamphlets, current or expired, signed agreements with DHS, mail receipts, envelopes specifically, but not limited to mail referring to the listed suspects , their previous addresses, mailing addresses and this current address,
10. **Ledgers**; money chits; equipment lists; purchase orders or receipts; electric water or trash bills; air conditioning, electrical or general contracting work bills , receipts or other paperwork; price lists, names and nomenclature; financial statements or other financial notations tending to prove or disprove purchase chemicals and equipment used in the production of marijuana. These items may be on paper or contained electronically on a computer, tablet, cell phone, thumb drive, hard drive, or other removable media.
11. **"PayPal"** documents, account information, and receipts
12. **Money**, cash, American currency or the equivalent.
13. **Electronic communication device or Cell Phones** and any flash drives used to store photos/videos identified as belonging to one of the listed suspects and capable of text messaging and/or social media posts. **(a second search warrant, post investigation will be drafted, if necessary for a search of these items)**

which property, persons or things

[x] were used as a means for committing a public offense

[x] is (are) being possessed with the intent to use as a means of committing a public offense

[x] constitutes evidence tending to show that a public offense has been committed, or tending to show that **Clay and Cecelia Villanueva** and/or co-conspirators both known and unknown has (have) committed a public offense(s).

such public offense(s) being

MANUFACTURING A DANGEROUS DRUG (DMT), PRODUCING MARIJUANA, SALE/TRANSFER OR OFFER TO SELL /TRANSFER OF A DANGEROUS DRUG (DMT) , FRAUDULENT SCHEMES AND ARTIFICES, TAX FRAUD , CONSPIRACY, POSSESSION OF DMT, POSSESSION OF MARIJUANA

which occurred between March, 2012, and May 15th, 2020 in the State of Arizona , County of Maricopa and specifically at the property described as 1134 W Glenrosa Avenue, Phoenix as previously described

YOU ARE THEREFORE COMMANDED

[x] in the daytime (excluding the time period between 10 PM and 6:30 AM)

[ ] or nighttime (good cause therefore having been shown)

to make a search of the above named or described person(s), premise(s) and vehicle(s) with in five (5) days of issuance, for the herein above described persons, property or things, and if you find the same or any part thereof, to retain such in your custody or in the custody of the Maricopa County Sheriff's Office, as provided by A.R.S. §13-3920.

It is ordered that any hazardous chemicals and contaminated glass wear/equipment be promptly disposed of , as directed by ARS 13-3918

Return this warrant to me within three (3) days of the date of execution, as directed by A.R.S. §13-3918.

Upon completion of all court actions or proceedings of any type which would necessitate the further use of the listed property, pursuant to A.R.S. §13-3920 and/or §13-3941, the property may be disposed of as authorized by law.

Given under my hand and dated this 17th day of MAY, 2020.

Gregory J. Gnepper

JUDGE, JUSTICE OF THE PEACE, OR MAGISTRATE

of **MARICOPA COUNTY SUPERIOR** Court

HONORABLE GREGORY J. GNEPPER
MARICOPA COUNTY SUPERIOR COURT

MARICOPA COUNTY SHERIFF'S OFFICE
Paul Penzone, Sheriff

Search Log

Search Warrant#_____-____________
Incident Report#_____-____________

ITEM # 115
Time: 1150 hrs
Finder: [illegible]

Description: [illegible]
Location: [illegible]

Comments:

ITEM # 116
Time: 1150 hrs
Finder: [illegible]

Description: [illegible]
Location: [illegible]

Comments: 83.5 g

ITEM # 117
Time: 1150 hrs
Finder: [illegible]

Description: [illegible]
Location: [illegible]

Comments:

ITEM # 118
Time: 1150 hrs
Finder: [illegible]

Description: [illegible]
Location: [illegible]

Comments: 13.5 g

ITEM # 119
Time: 1150 hrs
Finder: [illegible]

Description: [illegible]
Location: [illegible]

Comments:

ITEM # ________
Time: _______ hrs
Finder: ________

Description: 1200
Location: 1556

Comments:

PAGE: 1 OF 1

Recorder's Initials: [illegible]

5000-899 R 4-17 96636-233

MARICOPA COUNTY SHERIFF'S OFFICE

Paul Penzone, Sheriff

Search Log

Search Warrant# 20-006637
Incident Report# 20-004616

ITEM # 200
Time: ____ hrs
Finder: BENSON

Description: (27) MJ PLANTS
Location: MAIN GROW ROOM
Comments: TOTAL WET WEIGHT: 23.2 LBS MJ PLANTS

ITEM # 201
Time: ____ hrs
Finder: BENSON

Description: (12) DRIED MJ PLANTS
Location: MAIN GROW ROOM
Comments: TOTAL WEIGHT: 6.8 LBS

ITEM # 202
Time: ____ hrs
Finder: ____

Description: (4) TSL - HORTI TECH MODEL ROI-E680 LIGHTS (GROW ROOM) 680W
Location:
Comments: $750 EACH

ITEM # 203
Time: ____ hrs
Finder: ____

Description: BUREAU ARIZONA BEST MED MJ
Location:
Comments:

ITEM # 204
Time: ____ hrs
Finder: ____

Description: (68) MJ PLANTS FROM INSIDE ROOM HOUSE
Location:
Comments: TOTAL WET WEIGHT: 3.6 LBS

ITEM # 205
Time: ____ hrs
Finder: ____

Description: (4) PLASTIC TRIM BIN TRAYS
Location: N of GROW SHED IN BACKYARD
Comments: 205A - TRIM FROM TRAYS (APPROX 1 LB)

PAGE: ___ OF ___

Recorder's Initials: ____

5000-899 R 4-17 96636-233

MARICOPA COUNTY SHERIFF'S OFFICE
Paul Penzone, Sheriff

CALDERON E3766

Search Log

Search Warrant# 20 - 006651
Incident Report# ____ - ________

ITEM # 300
Time: 1016 hrs
Finder: BREEN

Description: 3 CLEAR BAGS WITH WHITE /CRYSTAL SUBSTANCE ZIPLOC SEAL FIELD TEST POS. FOR METH.
Location: 1. .5 INSIDE DRESSER TOP RIGHT DRAWER
2. .5
3. 2 SOUTHEAST BEDROOM / ANTHONYS ROOM

Comments: RICO FIELD TEST FOR METH

ITEM # 301
Time: 1026 hrs
Finder: BREEN

Description: BLACK WALLET w/ US. CURRENCY APPROX. $6,000.00
Location: INSIDE DRESSER DRAWER TOP RIGHT
" "

Comments: WALLET NOT TAKEN

ITEM # 302
Time: 1055 hrs
Finder: [illegible]

Description: ~~[illegible]~~ glass JARS w/ HASH ~~[illegible]~~
Location: LIVINGROOM NORTH of ANTHONY'S ROOM

Comments: RICO FIELTEST POS FOR THC

ITEM # 303
Time: 1058 hrs
Finder: CALDERON

Description: ZIPLOC BAG w/ EDIBLE BROWNIES INSIDE BLUE GIFT BAG
Location: " "

Comments:

ITEM # 304
Time: 1115 hrs
Finder: CALDERON

Description: BLACK LG CRICKET SMART PHONE IN CASE LAST # 5406
Location: KITCHEN COUNTER NEXT TO STOVE

Comments: IN AIRPLANE MODE

ITEM # 305
Time: 1118 hrs
Finder: CALDERON

Description: BLACK MOTOROLA SMART PHONE IN CASE LAST # IMEI 5874
Location: " "

Comments:

PAGE: 1 OF 1

Recorder's Initials: EHC

5000-899 R 4-17 96636-233

MARICOPA COUNTY SHERIFF'S OFFICE
Paul Penzone, Sheriff

Search Log

Search Warrant#_____-_____________
Incident Report#_____-_____________

ITEM # 100
Time: 0950 hrs
Finder: [illegible]
Description: 2 WHITE VIALS OF 1. SAN PEDRO PASTE 2. DIEGO [illegible]
Location:
Comments: OFFICE CLOSET ON SHELF [illegible]

ITEM # 101
Time: [illegible] hrs
Finder: [illegible]
Description: BAG OF [illegible] ([illegible] BAG)
Location:
Comments:

ITEM # 102
Time: [illegible] hrs
Finder: [illegible]
Description: [illegible] UNKNOWN SUBSTANCE ([illegible]) IP
Location:
Comments:

ITEM # 103
Time: [illegible] hrs
Finder: [illegible]
Description: [illegible] BAGS OF [illegible] POWDER [illegible] STONES WITH UNKNOWN [illegible]
Location:
Comments: [illegible] OFFICE CLOSET

ITEM # 104
Time: [illegible] hrs
Finder: [illegible]
Description: BAG OF [illegible] BROWN POWDER, PASTE
Location:
Comments: OFFICE CLOSET FLOOR

ITEM # 105
Time: [illegible] hrs
Finder: [illegible]
Description: BLACK BODY ARMOR
Location: FLOOR BY OFFICE CLOSET
Comments:

PAGE: 1 OF 3

Recorder's Initials: [illegible]

5000-899 R 4-17 96636-233

MARICOPA COUNTY SHERIFF'S OFFICE
Paul Penzone, Sheriff

Search Log

Search Warrant#_____-___________
Incident Report#_____-___________

ITEM # 106
Time: 1050 hrs
Finder: [illegible]
Description: U.S. CURRENCY
Location: IN OFFICE CLOSET WITHIN [illegible]
Comments:

ITEM # 107
Time: 1054 hrs
Finder: [illegible]
Description: MARIJUANA FROM BAGS JARS 13 6
Location: BLUE TOTE FROM ROOM IN OFFICE
Comments: 266 [illegible]

ITEM # 108
Time: 1054 hrs
Finder: [illegible]
Description: MUSHROOMS (5 BAGS)
Location:
Comments: 126g

ITEM # 109
Time: 1056 hrs
Finder: [illegible]
Description: DRUG LEDGER, AND [illegible]
Location: [illegible] ROOM OFFICE
Comments:

ITEM # 110
Time: 1110 hrs
Finder: [illegible]
Description: 5 BOXES OF BROWN LIQUID [illegible] AYAHUASCA [illegible]
Location: [illegible] CABINET IN OFFICE
Comments: + 2 BOXES FROM HALL [illegible] SPACE

ITEM # 111
Time: 1115 hrs
Finder: [illegible]
Description: 2 BAGS OF MUSHROOMS [illegible] GROUND [illegible]
Location: [illegible]
Comments: 51g

PAGE: 2 OF 2

Recorder's Initials: [illegible]

5000-899 R 4-17 96636-233

MARICOPA COUNTY SHERIFF'S OFFICE
Paul Penzone, Sheriff

Search Log

Search Warrant#_____-____________
Incident Report#_____-____________

ITEM # 112
Time: [illegible] hrs
Finder: [illegible]

Description: [illegible]

Location: [illegible]

Comments: 20.5 oz

ITEM # 113
Time: [illegible] hrs
Finder: [illegible]

Description: [illegible]

Location: [illegible]

Comments: 9 oz

ITEM # 114
Time: [illegible] hrs
Finder: [illegible]

Description: 85 [illegible] (DMT) [illegible]

Location: [illegible]

Comments:

ITEM # __________
Time: ________hrs
Finder: __________

Description:

Location:

Comments:

ITEM # __________
Time: ________hrs
Finder: __________

Description:

Location:

Comments:

ITEM # __________
Time: ________hrs
Finder: __________

Description:

Location:

Comments:

PAGE: 3 OF 3

Recorder's Initials: [illegible]

SEARCH WARRANT

MARICOPA COUNTY SHERIFF'S OFFICE

County of Maricopa, State of Arizona

DR: 20-004616
SW#: D20-006181

TO ANY PEACE OFFICER IN THE STATE OF ARIZONA:

Proof by affidavit having been made this day to me by Detective M.Shay #2148, I am satisfied that there is probable cause to believe that:

In the cellular communication device(s) currently under the custody and control of the **MARICOPA COUNTY SHERIFF'S OFFICE** whose primary business address is **550 WEST JACKSON STREET, PHOENIX, MARICOPA COUNTY, ARIZONA 85003** and can be described as:

- Item 304 Black Lg Cricket Smartphone Last #5406
- Item 305 Black Motorola Smartphone in Case Last # 5877

in the County of Maricopa, State of Arizona,

There is now being possessed or concealed certain items of evidentiary value that may be located on and in the above-described cellular communication device(s) and/or associated peripheral equipment, including by way of example but not limitation, subscriber identity module (SIM) card(s), removable storage media, and/or paired or synced device(s):

- Data that may identify the owner or user of the above-described cellular communication device(s);
- Address books and calendars;
- Call histories and call logs;
- Audio files, and associated metadata, to include any voicemail and voice notes;
- Photographs and associated metadata;
- Video files and associate metadata;
- Documents and other text-based files;
- Text messages (SMS), multimedia messages (MMS) and their attached multimedia files, and other recorded messages, whether read or unread;
- Third party application data, to include usernames, passwords, account information, contacts and phonebooks, location information, correspondence, instant messages, and files;

SEARCH WARRANT

MARICOPA COUNTY SHERIFF'S OFFICE

County of Maricopa, State of Arizona

DR: 20-004616
SW#: P20-006781

TO ANY PEACE OFFICER IN THE STATE OF ARIZONA:

Proof by affidavit having been made this day to me by Detective M.Shay #2148, I am satisfied that there is probable cause to believe that:

In the cellular communication device(s) currently under the custody and control of the **MARICOPA COUNTY SHERIFF'S OFFICE** whose primary business address is **550 WEST JACKSON STREET, PHOENIX, MARICOPA COUNTY, ARIZONA 85003** and can be described as:

- Item 304 Black Lg Cricket Smartphone Last #5406
- Item 305 Black Motorola Smartphone in Case Last # 5877

in the County of Maricopa, State of Arizona,

There is now being possessed or concealed certain items of evidentiary value that may be located on and in the above-described cellular communication device(s) and/or associated peripheral equipment, including by way of example but not limitation, subscriber identity module (SIM) card(s), removable storage media, and/or paired or synced device(s):

- Data that may identify the owner or user of the above-described cellular communication device(s);
- Address books and calendars;
- Call histories and call logs;
- Audio files, and associated metadata, to include any voicemail and voice notes;
- Photographs and associated metadata;
- Video files and associate metadata;
- Documents and other text-based files;
- Text messages (SMS), multimedia messages (MMS) and their attached multimedia files, and other recorded messages, whether read or unread;
- Third party application data, to include usernames, passwords, account information, contacts and phonebooks, location information, correspondence, instant messages, and files;

- Third party applications, to include, Skype, Google Voice and other applications that can assign a second roaming telephone number;
- E-mail messages and attachments, whether read or unread;
- Internet files, to include browser history, browser cache, stored cookies, browser favorites, auto-complete form history and stored passwords;
- Global navigation satellite system (GNSS) data, which includes US NAVSTAR GPS and other navigation satellite systems. This data to include latitude and longitude coordinates, way points and tracks and other location data;
- Wireless network information, to include Service Set Identifier (SSID) and network location information;
- Recoverable deleted data from all above-referenced items;

Which items:

☒ were used as a means for committing a public offense

☐ is (are) being possessed with the intent to use as a means of committing a public offense

☒ constitute(s) evidence tending to show that a public offense has been committed, or tending to show **Clay and Cecelia Villanueva** and other co-conspirators both known and unknown, committed the offenses

such public offenses being:

- Possession of Marijuana for Sale – ARS 13-3405
- Possession of Dangerous Drugs for sale – ARS 13-3407
- Possession of Narcotic Drugs for Sale – ARS 13-3408
- Illegal Control of Enterprise – ARS 13-2312
- Conspiracy – ARS 13-1003

which occurred between March 2012 and May 19th, 2020.

YOU ARE THEREFORE COMMANDED

In the daytime (The time between, 6:30 A.M. and 10:00 P.M)

To make a search of the above named or described cellular communication device(s) for the herein above described items, and if you find the same or any part thereof, to retain such in your custody or in the custody of the Maricopa County Sheriff's Office, as provided by A.R.S. 13-3920.

This warrant provides authorization for agents of the Maricopa County Sheriff's Office or their designee to search the above-listed device(s) and/or associated peripheral equipment, including by way of example but not limitation, subscriber identity module

(SIM) card(s), removable storage media, and/or paired or synced device(s), for the evidence listed in the affidavit and warrant using a range of data analysis techniques. However, in some cases, the cellular communication device(s) may be damaged beyond repair, password protected, or otherwise inoperable and less invasive data analysis techniques will not accomplish the forensic goals of the examination. In these cases, an analysis technique referred to as "chip off" may be implemented to conduct the data extraction process. "Chip off" is a process where the BGA (ball grid array or memory chip) is removed from the cell phone using infrared light and the chip itself is analyzed. This process renders the cellular communication device unusable.

Said search shall begin within five (5) business days, initiated by the initial receipt and examination of the physical device, continuing through a reasonable period for a forensic examination, and end when the examiner has extracted the data or information requested.

RETURN OF SEARCH WARRANT

Once completed, return this warrant to me within three (3) days of the date thereof, as directed by A.R.S. 13-3918.

You are ordered to retain all documentation compiled as a result of your examination of the cellular communication device(s), obtained under this warrant in your custody or in the custody of the Maricopa County Sheriff's Office.

Upon completion of all court actions or proceedings of any type which would necessitate the further use of the listed property, pursuant to A.R.S. 13-3920 and/or 13-3941, the property may be disposed of as authorized by law.

Given under my hand and dated this 19 day of May, 2020

[signature]

JUDGE, JUSTICE OF THE PEACE, OR MAGISTRATE
OF THE MARICOPA COUNTY SUPERIOR COURT

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 10

Civil Action No. 3:20-cv-03098-WHO

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* The State of Arizona
was received by me on *(date)* 06/25/2020 .

☐ I personally served the summons on the individual at *(place)* ______ on *(date)* ______ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* ______ , a person of suitable age and discretion who resides there, on *(date)* ______ , and mailed a copy to the individual's last known address; or

☑ I served the summons on *(name of individual)* Scott Madsen, Admin III , who is designated by law to accept service of process on behalf of *(name of organization)* Arizona Attorney General's Office on *(date)* 06/30/2020 ; or

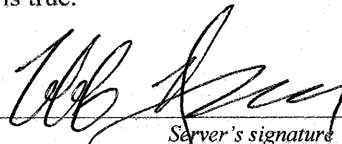
☐ I returned the summons unexecuted because ______ ; or

☐ Other *(specify)*:

My fees are $ ______ for travel and $ ______ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 07/02/2020



Server's signature

Jeff Bourne #MC-5585
Printed name and title

1753 E. Broadway Rd. #302
Tempe, AZ 85282
480 736 1282
Server's address

Additional information regarding attempted service, etc:

Civil Action No. 3:20-cv-03098-WHO

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Detective Mark Shay, Maricopa Co. Sheriff's Office
was received by me on *(date)* 06/25/2020 .

☐ I personally served the summons on the individual at *(place)* ______________________ on *(date)* __________ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* ______________________ , a person of suitable age and discretion who resides there, on *(date)* __________ , and mailed a copy to the individual's last known address; or

☑ I served the summons on *(name of individual)* Luke Stafford, Detention Officer , who is designated by law to accept service of process on behalf of *(name of organization)* Maricopa County Sheriff's Office on *(date)* 06/30/2020 ; or

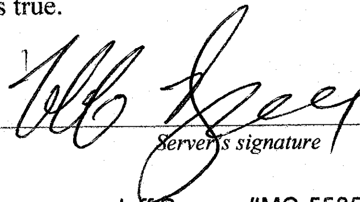
☐ I returned the summons unexecuted because ______________________ ; or

☐ Other *(specify)*:

My fees are $ ________ for travel and $ ________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 07/02/2020



Server's signature

Jeff Bourne #MC-5585
Printed name and title

1753 E. Broadway Rd. #302
Tempe, AZ 85282
480 736 1282
Server's address

Additional information regarding attempted service, etc:
Served at 550 W. Jackson St., Phoenix, AZ 85003.

Civil Action No. 3:20-cv-03098-WHO

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Maricopa County
was received by me on *(date)* 06/25/2020 .

❐ I personally served the summons on the individual at *(place)* ______ on *(date)* ______ ; or

❐ I left the summons at the individual's residence or usual place of abode with *(name)* ______ , a person of suitable age and discretion who resides there, on *(date)* ______ , and mailed a copy to the individual's last known address; or

☑ I served the summons on *(name of individual)* Mirey Alvarado, Special Deputy Clerk , who is designated by law to accept service of process on behalf of *(name of organization)* Maricopa County on *(date)* 06/30/2020 ; or

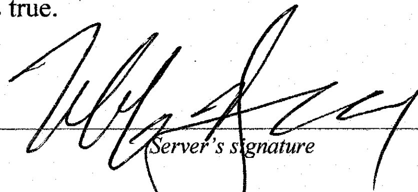
❐ I returned the summons unexecuted because ______ ; or

❐ Other *(specify)*:

My fees are $ ______ for travel and $ ______ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 07/02/2020



Server's signature

Jeff Bourne #MC-5585
Printed name and title

1753 E. Broadway Rd. #302
Tempe, AZ 85282
480 736 1282
Server's address

Additional information regarding attempted service, etc:

Civil Action No. 3:20-cv-03098-WHO

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Arizona Attorney General Mark Brnovich

was received by me on *(date)* 06/25/2020 .

❒ I personally served the summons on the individual at *(place)* ____________________

____________________ on *(date)* __________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* __________

__________, a person of suitable age and discretion who resides there,

on *(date)* __________ , and mailed a copy to the individual's last known address; or

☑ I served the summons on *(name of individual)* Scott Madsen, Admin III , who is designated by law to accept service of process on behalf of *(name of organization)* Arizona Attorney General's Office on *(date)* 06/30/2020 ; or

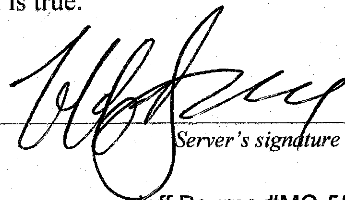
❒ I returned the summons unexecuted because __________ ; or

❒ Other *(specify)*:

My fees are $ ______ for travel and $ ______ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 07/02/2020



Server's signature

Jeff Bourne #MC-5585

Printed name and title

1753 E. Broadway Rd. #302
Tempe, AZ 85282
480 736 1282

Server's address

Additional information regarding attempted service, etc:

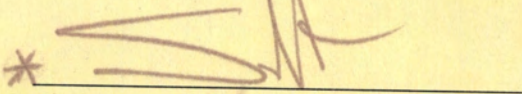
OFFICE OF THE ARIZONA ATTORNEY GENERAL

Date: 6/30/20 Case #: CV 03098-WHO

For the referenced case number, the Arizona Attorney General's Office is only accepting **SUMMONS** for the following individual(s) and/or entity(s):

STATE OF ARIZONA VOID

VOID VOID



* **AG Employee Signature** * **Process Server Signature**

PRINT NAME

CARD # MC-5585 JEFF BOURN

RECEIVED AZ ATTORNEY GENERAL 2020 JUN 30 PM 3:53

Arizona Attorney General's Office | 2005 N. Central Avenue, Phoenix, AZ 85004 | Phone: 602.542.5025

CASE # 3:20-cv-03098-WHO
MOTION FOR PRELIMINARY INJUNCTION TO RESTORE *STATUS QUO ANTE*

EXHIBIT 11

Save
Say something
0:51 / 2:34
SHERIFF

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Save
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0:18 / 0:18
SHERIFF

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ARIZONA YAGÉ ASSEMBLY, NORTH AMERICAN ASSOCIATION OF VISIONARY CHURCHES, and CLAY VILLANUEVA, Plaintiffs, vs. WILLIAM BARR, Attorney General of the United States; UTTAM DHILLON, Acting Administrator of the U.S. Drug Enforcement Administration; CHAD F. WOLF, Acting Secretary of the Dept. of Homeland Security; MARK A. MORGAN, Acting Commissioner of U.S. Customs and Border Protection; THOMAS PREVOZNIK, Deputy Assistant Administrator of the DEA Dept. of Diversion Control, in his personal capacity; the UNITED STATES OF AMERICA; the STATE OF ARIZONA; MARK BRNOVICH, Arizona Attorney General; MARICOPA COUNTY, a political subdivision of the State of Arizona; and, MATTHEW SHAY, Defendants.	Case No.: 3:20-CV-03098-WHO [PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION

Plaintiffs North American Association of Visionary Churches ("NAAVC"), Arizona Yagé Assembly ("AYA") and Clay Villanueva ("Villanueva") moved the Court for a preliminary injunction to restore the *status quo ante* the May 19, 2020 search of plaintiff Villanueva's home and church, and the criminal investigation leading up to the search.

FINDINGS

Having considered the evidence and arguments, the Court finds that Villanueva has shown a likelihood of prevailing on his Section 1983 claim, and that as a result of the events of May 19, 2020, plaintiffs Villanueva, NAAVC, its Board members including Winfield Scott Stanley III, and AYA, are exposed to the risk of irreparable harm to their rights of First Amendment Free Exercise, Free Expression, and Free Association.

The Court finds that the requested injunction will serve the public interest in protecting First Amendment rights from prior restraint and threats of prosecution that impose prior restraint on Free Exercise, and chill Free Expression and Freedom of Association.

The Court further finds that the protection of plaintiffs from irreparable harm due to the DEA's retaliatory animus requires an order restoring the *status quo ante*, prohibiting defendants from profiting from their misconduct and/or continuing their conspiracy against plaintiffs.

ORDER

WHEREFORE,

The Drug Enforcement Administration, the DEA's Arizona SW HIDTA task force, Maricopa County, Matthew Shay, and the Arizona Attorney General, are prohibited, until further Order of this Court, from performing any of the following action, or procuring the aid of agents to perform such acts in their stead:

1. Criminally investigating Clay Villanueva or his Vine of Light Church, NAAVC and its Board, and Arizona ("Plaintiff's Personnel") and/or sharing information about Plaintiff's Personnel with other law enforcement agencies, in any jurisdiction;
2. Making use of any of the materials seized, observed, photographed, or video-recorded during the DEA/MCSO raid of VOLC in this litigation against NAAVC, AYA, VOLC, or any of Plaintiff's Personnel;
3. Retaining any of the property seized from Villanueva and VOLC;

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4. Performing any acts intended to cause damage to the person, property, or Free Exercise of NAAVC, AYA, Villanueva, or Winfield Scott Stanley III;
5. Utilizing police resources such as the NCIC database, the DEA's Hemisphere program, or other resources designed for criminal investigation, to investigate Plaintiff's Personnel; and/or
6. Joining AYA's Facebook group for purpose of surveilling its activities and personnel.

IT IS SO ORDERED.

Dated: August __, 2020

____
Hon. William Orrick III
UNITED STATES DISTRICT COURT JUDGE

Respectfully submitted this 22nd day of July, 2020,

By: /s/ Charles Carreon
CHARLES CARREON (CSB #127139)
Attorney for Plaintiffs,
Arizona Yagé Assembly
North American Association of Visionary Churches
Clay Villanueva