



**U.S. Department of Justice  
Drug Enforcement Administration**

www.dea.gov

Springfield, Virginia 22152

**OCT 01 2008**

Marc Perkel  
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Dear Mr. Perkel:

This letter sets forth the Drug Enforcement Administration's (DEA) response to your petition for a religious exemption from the Controlled Substances Act (CSA) to allow members of the Church of Reality to use marijuana. DEA has evaluated your petition in accordance with the framework set forth in the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1, and the Supreme Court's decision in *Gonzales v. O Centro Espirita Beneficente Uniao de Vegetal*, 126 S.Ct. 1211 (2006) ("the UDV decision").

Based on our review of your initial petition and subsequent submissions, we understand your request to encompass two separate requests for exemptions. Specifically, you request as follows:

[W]hat we are now asking for is an exemption for medical marijuana, to both give and receive it. We want immunity from prosecution for all realists whether formal members or not. We are [also] asking for immunity from prosecution for full members, a classification that we will define in the future, and the church officials including the Council, monks, and clergy for the purpose of using marijuana for non-medical religious reasons.<sup>1</sup>

After full consideration of your initial letter as well as your supplemental submissions and all documentation accompanying those submissions, we have determined that your requests must be denied. The reasons for our denial are set forth below.

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<sup>1</sup> The nature of your request for an exemption appears to have evolved in your responses to our questions. Because your May 24, 2007, letter is the most detailed and specific iteration of your request, we are using that articulation as the basis for the response that follows.

### **Procedural History**

On March 24, 2006, you sent a letter to DEA requesting an exemption to allow members of the Church of Reality to use marijuana "as part of our religious practices." [3/24/06 Letter p.1] DEA responded to that letter, informing you that your request would be treated as a petition for a religious exemption from the CSA. DEA further noted that your petition did not provide sufficient information to permit full consideration, and requested more detailed information about, among other things, your religion (its structure, organization, and belief system), the specific religious practice at issue, and the conditions of your anticipated use, possession, or distribution of marijuana. Our response offered you the opportunity to send DEA a supplemental submission, and we provided a detailed list of questions for you to use as guidance for that submission.

In February and March of 2007, you took advantage of this opportunity, and submitted three separate supplemental submissions. The first, dated February 19, 2007, provided answers to most of the questions in the DEA response. [2/19/07 Letter #1] The second submission, also dated February 19, 2007, addressed aspects of the Church of Reality that you considered to be relevant to demonstrating that it was a religion. [2/19/07 Letter #2] Finally, the third submission, dated March 19, 2007, "assert[ed] a RFRA right to the use of medical marijuana for members of the Church of Reality." [3/19/07 Letter p.1]

After evaluating your three supplemental submissions, DEA sent you another letter dated May 16, 2007, in which we noted that you failed to address an important question posed in DEA's January 29, 2007, letter, and asked that you clarify your response to another question. You responded to those questions in a letter dated May 24, 2007. Having received that response, DEA considered your petition to be complete. We have since received two additional letters from you dated August 8, 2007, and September 21, 2007, that we have considered as well.

### **The Church of Reality**

What follows is a brief description of the Church of Reality, based on your submissions. A more detailed discussion is set forth below in the "Analysis" section of this letter. The Church of Reality was founded by you, Marc Perkel, on November 7, 1998. You are both the founder and the leader of the Church of Reality. You describe the Church of Reality as "a religion based on believing in everything that is real and the exploration of reality the way it really is." [3/24/06 Letter p.1]. Your letter indicates that the Church was "a [m]arijuana inspired idea" and that marijuana inspires "creative thinking, the kind of thinking that is necessary . . . to write the doctrine of the church." [3/24/06 Letter p.1] You state that most of the Church's "Sacred Principles and all of the Sacred Missions and the Sacred Contemplations were written while [you were] stoned." [2/19/07 Letter #1 p.5] The Church's belief structure and "Sacred Principles" are set forth in the "Kernel," which is an evolving document. [2/19/07 Letter #1 p.1]. You describe the Church of Reality as "an Internet based religion" which is "not organized by location and [is] . . . independent of geography." [2/19/07 Letter #1 p.2]. The Church of Reality refers to the Internet as the "Sacred Network," and you describe the Church's organization as "somewhat like Open Source Software projects," through which you are "writing the Operating System of the human race." [2/19/07 Letter #1 p.3] The Church of Reality has no formal membership process. [2/19/07 Letter #1 p.3]

### Legal Framework

Marijuana is a controlled substance listed in schedule I of the CSA and its governing regulations. See 21 U.S.C. § 812(c), schedule I(c)(10); 21 C.F.R. § 1308.11(d)(22). Accordingly, under federal law, marijuana generally may not be manufactured, possessed, or distributed within the United States. 21 U.S.C. § 841, 844. Under RFRA 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 (1) is in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1.

To establish a *prima facie* case under RFRA, a claimant must demonstrate that application of the CSA’s prohibitions on use of a specific controlled substance 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. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal* (“UDV”), 126 S.Ct. 1211, 1219 (2006); *United States v. Meyers*, 95 F.3d 1475, 1482 (10<sup>th</sup> Cir. 1996). Once the 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 through application of the CSA to the particular claimant who believes that this sincere exercise of religion is being substantially burdened. *UDV*, 126 S.Ct. at 1220.

### Analysis

In formulating the following response, DEA has carefully considered your initial letter dated March 24, 2006, all subsequent correspondence, and all documentation accompanying those submissions. We have determined that your request must be denied on two separate and independent grounds. First, the Church of Reality cannot demonstrate that enforcement of the CSA against it substantially burdens its sincere exercise of religion. Second, even if the Church of Reality were to make out a *prima facie* case under RFRA, we find that enforcement of the CSA’s prohibition on marijuana use against the Church is the least restrictive means of furthering compelling government interests. It should be noted that the treatment of these issues below is particularly exhaustive because this is the first DEA response to a request for an exemption under RFRA since the Supreme Court’s decision in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 126 S.Ct. 1211 (2006).

#### **I. Enforcement of the CSA Does Not Substantially Burden the Church of Reality’s Sincere Exercise of Religion.**

As noted above, to establish a *prima facie* case under RFRA, a claimant must demonstrate that application of the CSA’s prohibitions on use of a specific controlled substance to the claimant would (1) substantially burden the claimant’s (2) sincere (3) religious exercise (as opposed to a philosophy or way of life). *UDV*, 126 S.Ct. at 1219; *Meyers*, 95 F.3d at 1482. We conclude that the Church of Reality has failed to satisfy each of these three independent requirements. In the analysis that follows we consider first whether the Church of Reality’s belief system qualifies under the prevailing legal standards as religious exercise (Section A). We then address whether those beliefs (with particular emphasis on the beliefs related to marijuana use) are sincerely held (Section B). Finally, we address whether the Church’s beliefs are substantially burdened by the challenged action—in this case, the prohibitions on marijuana use and distribution (Section C).



### A. *Exercise of Religion*

As a threshold matter, the Church of Reality's request for a religious exemption under RFRA requires that we undertake the sensitive task of assessing whether your set of beliefs qualifies as a religion.

Nothing in RFRA defines the term religion.<sup>2</sup> Accordingly, in applying this criterion, courts have looked to decisions that have addressed the question of what constitutes religion for First Amendment purposes. See *United States v. Meyers*, 906 F. Supp. 1494, 1499 (D. Wyo. 1995); *United States v. Meyers*, 95 F.3d 1475, 1482-84 (10th Cir. 1996). The Supreme Court and lower courts have grappled with this question in many different contexts. Some approaches have involved distinguishing those beliefs that are religious from others that are philosophical or ideological. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Others have attempted to identify various indicia, guidelines and factors that tend to be common to religious beliefs. See *Alvarado v. City of San Jose*, 94 F.3d 1223, 1229 (9th Cir. 1996); *Africa v. Commonwealth of Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981). Still other courts have conducted a combination of the "holistic" analysis that distinguishes religion from other types of belief systems and the guidelines or indicia approach. See *Meyers*, 95 F.3d at 1484; *United States v. Quaintance*, 471 F.Supp.2d 1153, 1170 (D.N.M. 2006). Under any approach, we find that your beliefs fail to qualify as a religion.<sup>3</sup>

#### 1. The Church of Reality is Best Characterized as a Philosophy, Not a Religion.

In *Wisconsin v. Yoder*, the Supreme Court contrasted religious beliefs with beliefs that are secular or philosophical. *Yoder* distinguished the beliefs of the Amish, which the Court found were religious, from Henry David Thoreau's beliefs, which the court held were not. Thoreau's beliefs, the Court held, were "philosophical and personal rather than religious." 406 U.S. at 216. The Court reiterated this point several years later in *Frazee v. Illinois Dep't of Employment Sec.*, 489 U.S. 829, 833 (1989), emphasizing that "[p]urely secular views" do not suffice to state a Free Exercise claim. Since the passage of RFRA, several other courts have also applied this approach and concluded that the beliefs at issue were more aptly characterized as philosophical, ideological, medical, political, and/or social—i.e., "secular, not religious." *Meyers*, 906 F. Supp. at 1503-04, 1508; *Quaintance*, 471 F. Supp. at 1170; *Kiczinski v. Gonzales*, 237 Fed. Appx. 149, 2007 WL 1493801 (9th Cir. 2007).

We have examined the extensive written materials that you submitted as well as significant portions of the Church of Reality website that you brought to our attention. Based on our review, we conclude that the Church of Reality's beliefs are most aptly characterized as philosophical and technological—perhaps even medical, political and social—but not religious.

The Church of Reality's mission of exploring the "real world" appears strongly rooted in a philosophy that prioritizes and emphasizes science and technology. Specifically, the Church's

<sup>2</sup> In 2000, Congress amended RFRA to change the statutory definition of the phrase "exercise of religion" as follows: "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C.

§ 2000bb-2(4) (citing 42 U.S.C. § 2000cc-5).

<sup>3</sup> DEA also remains mindful of two admonitions in the case law that evaluates religious beliefs. First, in devising a workable definition of religion, courts generally will not "find that a particular set of beliefs is not religious because [the court] disagrees with the beliefs." *Meyers*, 906 F. Supp. at 1499; *United States v. Kuch*, 288 F. Supp. 439, 443 (D.D.C. 1968). Second, a decision maker "cannot rely solely on established or recognized religions . . . in determining whether a new and unique set of beliefs warrants inclusion." *Meyers*, 906 F. Supp. at 1503; see also *Church of the Lukumi Babalu Aye v. City of Hialeah*, 113 S. Ct. 2217 (1993) (Free Exercise clause recognizes non-traditional faith of Santeria).



philosophy and organization is oriented around the Internet. The “religion” is described as “Internet-based” and “independent of geography.” Your technological philosophy (for lack of a better phrase) is described as follows:

In the early 1990s humanity evolved and created the Internet. We call it the “Sacred Network” and we recognize it as one of the most significant advances in human evolution since the printing press. . . . Our religion is organized somewhat like Open Source Software projects. We look at the Kernel (named after the Linux kernel) as if it were software. We are essentially writing the Operating System of the human race . . . . Computers and the Internet are extensions of our biological mind and we are adapting and evolving to integrate our biological evolution with our technical evolution.

[2/19/07 Letter #1 p.2] Elsewhere, you describe the Church of Reality as the “religion of innovation.” [2/19/07 Letter #1 p.10] Furthermore, you refer to a website preserving the history of the internet as “the Sacred Internet Archive.” [[www.churchofreality.org/wisdom/terminology/the\\_sacred\\_internet\\_archive.html](http://www.churchofreality.org/wisdom/terminology/the_sacred_internet_archive.html)] We believe that this elevation of the power and significance of technology and science is more accurately understood as espousing a philosophy and/or way of life rather than a religion.

Other aspects of the Church of Reality’s beliefs seem to be more political and/or medical, than religious. Your submissions focus extensively on what you describe as the Church of Reality’s religious right to use marijuana for “medical” and therapeutic purposes. Your “Edict” entitled “Realist [sic] Have a Religious Right to Medical Marijuana” was issued in direct response to the case of *Gonzales v. Raich*, 545 U.S. 1 (2005).<sup>4</sup> You acknowledge that you have adopted this “religious” tenet in order to achieve a particular political and legal outcome:

Governments are often slow to respond and the job of the courts is to interpret the law, and not to write the law, even when they know the law is wrong. Fortunately for those of us in the Church of Reality are able to more quickly respond to things that just don’t make any sense. [sic] Our evolution is faster than that of the governments. . . . The courts however have upheld the right to religious freedom under the First Amendment and recognized the strict scrutiny test when it comes to the imposition of federal law on religious freedom . . . . Because religious law trumps federal law, we in the Church of Reality are not dependent upon the courts and the legislature to figure out that we have a fundamental religious right to break federal law in order to preserve our lives and avoid pain and suffering. [3/16/2007 Edict].

You further state that you seek this exemption because “if DEA recognizes the religious rights of the Church of Reality that [sic] it can substitute our religious law for federal law.” [2/19/07 Letter #1 p.15]

Many of your religious beliefs, edicts and principles related to marijuana appear to be a means for expressing your legal, political, and scientific disagreement with prevailing federal law, court decisions, and drug policy. In one submission you state that “there have been a few court decisions where the Supreme Court has failed to recognize a constitutional basis for a right to health. One of these cases involved medical marijuana and the other involved a late term abortion procedure. In both cases, the Church of Reality has issued religious edicts to extend religious rights which are spelled out in the Constitution to health rights which are not. Thus,

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<sup>4</sup> Indeed, the date of your Edict on medical marijuana (3/16/07) post-dates the date of your initial submission to DEA (3/24/06).

under RFRA a realist has the right to receive medicines they need for health reasons.” [5/24/07 Letter p.3] Elsewhere, you observe that the Church of Reality also believes that individuals who need drug treatment should not be prosecuted for violations of federal drug laws: “We therefore assert a religious right to not be prosecuted for a medical problem and that members who are drug addicts be diverted to drug treatment programs rather than to be put in jail.” [2/19/07 Letter #1 p.13] Finally, you summarize your political and scientific beliefs about marijuana as follows: “The Church of Reality recognizes that anti-marijuana laws are just totally wrong and that there is no basis in reality to support these laws.” [3/19/07 Letter p.6]

Certain other aspects of your beliefs seem grounded in marijuana’s purported therapeutic, social and recreational attributes, rather than theology. When asked for a detailed description of the context in which marijuana is used by Church of Reality members, you answered as follows:

We see marijuana as a drug that inspires creative thinking as well as having significant medical benefits and the ability to lower stress. We consider it to be superior in many cases to antidepressants and good for people who have anger issues they need to control. We see marijuana as a substance that has been misclassified and is a relatively harmless substance as compared to tobacco and alcohol. Marijuana would be used as a substance to inspire creative thinking, for medical purposes, relaxation, and socially like social drinking.

[2/19/07 Letter #1 p.6]. We must agree with the court in *United States v. Quaintance*: “Beliefs regarding marijuana’s uses and marijuana’s medical, physical and social effects are secular and not religious.” 471 F. Supp. 2d at 1171 (citing *Meyers*, 906 F. Supp. at 1508)).

While it is of course true that the secular and the religious can overlap, see *Meyers*, 906 F. Supp. at 1508, in this case, your religion appears to be entirely derived from your secular beliefs in technology, science, and philosophy. To quote the *Meyers* court, your “secular and religious beliefs overlap only in the sense that [you] hold[] secular beliefs which [you] believe[] in so deeply that [you] [have] transformed them into a ‘religion.’” *Id.* Thus, we do not find your beliefs to be religious as that term is understood in the case law. While you may disagree with the Controlled Substances Act, Supreme Court jurisprudence, and federal drug policy, petitions for religious exemption are not available as a means of vindicating your political beliefs. Nor are they an opportunity to legalize your social and recreational practices—even if you believe that those practices have medical benefits. No matter how fervent your belief, it does not rise to the level of a religion that triggers RFRA’s protections. Accordingly, we find that your beliefs more accurately espouse a philosophy and/or a way of life, rather than a “religion,”<sup>5</sup> and we conclude that you have failed to meet your burden of demonstrating that your beliefs are religious for purposes of RFRA.

## 2. The Church of Reality Does Not Satisfy the Indicia/Guidelines for Religion.

Other courts that have approached this issue have identified certain “indicia of religion” or guidelines that help to assess whether a particular set of beliefs can be fairly characterized as a religion. These indicia and guidelines are typically compiled from free exercise cases involving belief systems that were found to constitute religions. For example, in *Africa v. Commonwealth*

<sup>5</sup> Furthermore, while we are mindful of the warning from the courts that we must not limit our understanding of religion to “established religions,” the Church of Reality does not have a sufficiently developed belief structure to qualify as a religion. Your own submission states that the Church is “in the early stages of development.” You note that “[w]e still haven’t gotten to version 1.0 yet and the initial code of the religion is still being written.” You also observe that the “Church of Reality is still in the pre-release beta testing stage where it is open for scrutiny and suggestions.” [5/24/07 Letter pp. 11-12]

of *Pennsylvania*, 662 F.2d at 1032, the Third Circuit identified three “useful indicia” of religion as follows:

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.

See also *Alvarado*, 94 F.3d at 1229 (applying same three indicia in the context of an Establishment Clause claim). The Tenth Circuit has adopted a similar, but slightly more detailed set of guidelines that asks whether the set of beliefs in question addresses the following concerns: (1) *Ultimate ideas*: fundamental questions about life, purpose, and death; (2) *Metaphysical beliefs*: beliefs addressing a reality that transcends the physical and immediately apparent world; (3) *Moral or ethical system*: proscription of a particular manner of acting or a way of life that is moral or ethical; (4) *Comprehensiveness of beliefs*: an overarching array of beliefs that coalesce to provide the believer with answers to many of the problems and concerns that confront humans; and (5) *Accoutrements of religion*: the presence of various external signs of religion. 95 F.3d at 1483-84; *Meyers*, 906 F. Supp. at 1502-03.

For purposes of evaluating your petition, we will condense these various approaches into the following three guidelines: (1) whether the beliefs involve fundamental and ultimate questions about life, purpose and death that address a reality beyond the physical and apparent world; (2) whether the beliefs represent a comprehensive moral or ethical system; and (3) whether the belief system includes certain structural and external signs characteristic of religions generally. We conclude that the Church of Reality does not satisfy the general indicia/guidelines for a religion.<sup>6</sup>

a. Fundamental and Ultimate Ideas that Address Reality Beyond the Physical World

“Religious beliefs often address fundamental questions about life, purpose, and death. As one court has put it, ‘a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters.’” *Meyers*, 95 F.3d at 1483 (quoting *Africa*, 662 F.2d at 1032). “These matters may include existential matters, such as man’s sense of being; teleological matters, such as man’s purpose in life; and cosmological matters, such as man’s place in the universe.” *Id.* The district court in *Meyers* concluded that the beliefs at issue in that case did not deal with “ultimate concerns” such as life, purpose, and death; they did not address “a fear of the unknown, the pain of loss, a sense of alienation, feelings of purposelessness, the inexplicability of the world, and the prospects of eternity.” 906 F. Supp. at 1505; see also *Africa*, 662 F.3d at 1033. “Religious beliefs are also typically ‘metaphysical,’ that is, they address a reality which transcends the physical and immediately apparent world. Adherents to many religions believe that there is another dimension, place, mode, or temporality, and they often believe that these places are inhabited by spirits, souls, forces, deities, and other sorts of inchoate or intangible entities.” *Meyers*, 95 F.3d at 1483.

Based on your submissions, we conclude that the Church of Reality does not meet this criterion. In the portion of your submission addressing this factor, you note that the “Church of Reality is the exploration of reality by people. . . . The Church of Reality is based on the acceptance of the axiom that our existence is important and that expanding our understanding of

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<sup>6</sup> Our analysis focuses primarily on your two submissions dated February 19, 2007. The first includes your responses to DEA’s questions [2/19/07 Letter #1], and the second specifically addresses various indicia of religion [2/19/07 Letter #2].



reality has value. . . . We see how the ideas and thoughts of people in the past are still with us today and that we can achieve some measure of immortality through inventing great things and being remembered for what we contributed to society.” [2/19/07 Letter #2 p.2] As evidence of the ultimate ideas or fundamental questions addressed by the Church of Reality, you refer to a web page that states as follows: [2/19/07 Letter #1 p.4] “The Church of Reality is a new breed of religion that is based on reality rather than mythology. We answer the great questions that other religions address, like what is right and wrong, how do people live together in a community, and what are our responsibilities to ourselves and to each other. . . . [W]e believe in The One True Reality. This reality is the sum of everything that actually exists.” [www.churchofreality.org/wisdom/welcome\\_home](http://www.churchofreality.org/wisdom/welcome_home).

We do not believe your answer is sufficient to qualify as an “ultimate idea” as understood by the *Meyers* court. The Church’s mission of understanding the real world is extraordinarily vague, and does not appear to differentiate the Church’s pursuits from that of science or philosophy. Beyond the purpose of understanding the “real world,” the other “great” questions that you claim the Church addresses are: “what is right and wrong, how do people live together in a community, and what are our responsibilities to ourselves and each other.” We will address the Church of Reality’s understanding of what is right and wrong in greater detail in the section below on Moral and Ethical Systems. For now, we note that these questions are rather generic and do not reflect “a comprehensive, profound, inexplicable, or imponderable *religious* philosophy that addresses purpose in relationship to the spiritual or intangible world.” *Quaintance*, 471 F. Supp.2d at 1157 (emphasis in original).

Further, your submissions admit that your Church does not incorporate metaphysical beliefs.

This doesn’t apply to us. It’s not that we fail on this point but that there are different types of religions with different types of doctrines. . . . In the Church of Reality we believe that nothing exists outside of reality and if deities exist they exist within the context of this reality. In our religion we reject the supernatural. The only exception would be if this universe turned out to be some sort of simulation where all of what we know is controlled by some master computer and this universe is an artificial construct. But we have not real evidence of that.

[2/19/07 Letter #2 p.2].

b. A Comprehensive Moral or Ethical Belief System

“Religious beliefs often prescribe a particular manner of acting, or a way of life, that is ‘moral’ or ‘ethical.’ In other words, these beliefs often describe certain acts in normative terms, such as ‘right and wrong,’ ‘good and evil,’ or ‘just and unjust.’ The beliefs then proscribe those acts that are ‘wrong,’ ‘evil,’ or ‘unjust.’ A moral or ethical belief structure also may create duties—duties often imposed by some higher power, force, or spirit—that require the believer to abnegate elemental self interest.” *Meyers*, 95 F.3d at 1483. A religion should provide a “*telos*, an overreaching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans.” *Meyers*, 95 F.3d at 1483. It should “consist of something more than a number of isolated, unconnected ideas.” *Africa*, 662 F.2d at 1035.

We conclude that the Church of Reality does not prescribe a comprehensive moral or ethical system for its adherents as that concept is understood in the case law. In your submission, you state that “[t]he Church of Reality addresses these issues extensively in our Sacred Principles. Our pillars lead to the conclusion that if we are going to explore reality that the human race must continue to evolve in a positive direction and that we are evolving through

knowledge and information systems. We evolve by growing the Tree of knowledge which represents the sum total of human understanding. We explore reality as a society. So what is good for society is good for the exploration of reality. . . . [B]y accepting the axioms of the Church of Reality we give artificial meaning to our existence and create a system for good and evil, justice, and morality. We in the Church of Reality make a moral commitment to the pursuit of the understanding of reality as it really is." [2/19/07 Letter #2 pp.3-4]

You note that "[o]ur moral and ethical systems are based on the concept that the exploration of reality depends on a strong healthy society that embraces the exploration of reality." [2/19/07 Letter #1 p.4] Your submission refers to your website, which describes the purpose of your Sacred Principles. You state that these principles "define the basic belief system and create a moral and ethical framework for the church and they create and protect the kind of environment needed to be Realists." [[www.churchofreality.org/wisdom/the\\_sacred\\_principles/](http://www.churchofreality.org/wisdom/the_sacred_principles/)] The Church's "Sacred Moral Question" asks "Is this a good thing?" and the Church uses the Sacred Principles to "test morality against" this question. [[www.churchofreality.org/wisdom/welcome\\_home](http://www.churchofreality.org/wisdom/welcome_home); [www.churchofreality.org/wisdom/the\\_sacred\\_principles](http://www.churchofreality.org/wisdom/the_sacred_principles)] Your website lists twenty-four sacred principles (each separately explained) that you describe as "a beginning attempt to create a basis of determining right from wrong and to create and define a positive direction for the human race to make progress." [[www.churchofreality.org/wisdom/the\\_sacred\\_principles](http://www.churchofreality.org/wisdom/the_sacred_principles)] These principles are as follows: positive evolution, exploration, curiosity, honesty and integrity, freedom, peace, courage, patience and persistence, environmentalism, compassion, communication, justice, inclusiveness, respect, scrutiny and doubt, humility, reason, wisdom, personal responsibility, bulls\*\*\*, activism and maintenance, personal privacy, historical preservation, and humor and fun.

We believe that the origins of your Sacred Principles preclude us from finding them to comprise a moral or ethical system as that concept is set forth in the case law. In the recent decision of *U.S. v. Quaintance*, the district court found no moral or ethical system where the defendants "set forth no evidence that this alleged system has a religious, as opposed to secular or philosophical, connotation." 471 F. Supp.2d at 1161. The court noted that, to qualify as a religion, a system ordinarily should create duties imposed by some higher power, force or spirit, and should have religious consequences if the principles are not followed. *Id.* You give no indication that your Sacred Principles are based on spiritual or religious inspiration, nor do you indicate any religious consequences of failure to adhere to the principles. Accordingly, the Church's principles do not satisfy these requirements. Second, we believe that these principles are best understood as a collection of disparate personal values, rather than "an ethics or morality" as those terms are described in *Meyers*. This is particularly evident in the inclusion of "Principles" such as privacy, historic preservation, and bulls\*\*\*. Finally, your statements about the impetus for the Sacred Principles (and Sacred Missions) lead us to question their legitimacy. In your submission dated May 24, 2007, you describe the development of the Sacred Principles as follows:

When we applied for IRS 501C3 status we had to fill out forms that asked question [sic] for which we hadn't yet come up with fully developed answers and we recognized that if we are going to be a religion we should have answers to those questions. If not for the IRS we wouldn't have the Sacred Principles or the Sacred Missions. In fact, the IRS process was one of the most significant events inspiring the development of Church of Reality doctrine.

[5/24/07 Letter p.2] Insofar as your submissions admit that your Sacred Principles were generated in order to obtain 501(c)(3) tax exempt status (as opposed to being derived from a

cohesive moral or ethical imperative), we do not believe they constitute a moral and ethical system.

c. Structural Characteristics

A third indicia of a religion is the presence of “formal, external, or surface signs that may be analogized to accepted religions.” *Africa*, 662 F.2d at 1035; *see also Meyers*, 95 F.3d at 1483. Such signs can include formal ceremonies or rituals, gathering places, clergy and/or prophets, structure and organization, important writings, observance of holidays, efforts at propagation, diet or fasting, prescribed clothing and appearance, and other similar manifestations associated with traditional religions. *See Africa*, 662 F.2d at 1035; *Meyers*, 95 F.3d at 1483.

The Church of Reality appears to lack many of the identifying characteristics common to most recognized religions. While absence of one or more of these items is not determinative, the fact that the Church of Reality does not possess most of these structural characteristics is a further indicator of your failure to satisfy the “religion” criterion of RFRA.

The Church of Reality lacks any ceremony or ritual. Your submission states that “[t]he Church of Reality is both a new religion and a natural religion (as opposed to supernatural) and by nature we are not given to ceremony and ritual. However, as the religion develops we are likely to develop more ceremonies and rituals.” Elsewhere on your website, you confirm that the Church of Reality is “not into rituals.” [www.churchofreality.org/wisdom/different] Similarly, you state explicitly that “[t]he Church of Reality doesn’t yet have physical gathering places. The Church of Reality evolved on the Internet and we gather in virtual space in the Reality Development Lab, which is an online discussion system that allows people from all over the world to participate in the development of the Kernel. We will eventually have physical gathering places but because we are a new religion we have yet to have a large concentration of members in one physical area.” [2/19/07 Letter #2 p.5]

Likewise, your Church does not appear to have traditional clergy or formal prophets or teachers who “by virtue of [ ] enlightenment, experience, education, or training . . . are keepers and purveyors of religious knowledge.” *Meyers*, 95 F.3d at 1483. In your submission, you refer to the “Council of Realists,” the “clergy” and “monks.” However, none of these three groups appear to be keepers and purveyors of religious knowledge. The descriptions of the two members of the Council of Realists on your website emphasize their experience in technology, copyright, patent, and privacy issues—not any “ministry” associated with the Church of Reality. [5/24/07 Letter p.6] Your “clergy” are described as “people who have important blogs or radio talk shows who are preaching the gospel of Reality.” [5/24/07 Letter p.4] And finally, the monks are described as “volunteers who do things for the church.” [5/24/07 Letter p.4] For instance, “[a] person who creates art work for the web site would be an art monk. Someone who corrects spelling errors is a spelling monk.” [5/24/07 Letter p.4] We do not believe the monks qualify as part of the “hierarchy of teachers, clergy, sages, priests, etc.,” insofar as they appear to be little more than volunteers who assist with graphic design and spelling. You also admit that while you founded the Church of Reality, you are “not gifted or blessed by a deity or ‘the chosen one’ but I’m the one who started it and developed it and I give credit to my current use of marijuana and my past use of marijuana and LSD for the creation and development of the church doctrine.” [2/19/07 Letter #2 p.4] Based on the descriptions above and the Church’s lack of a formal membership process, we also conclude that the Church of Reality has a very limited structure and organization. From your submissions, it does appear that the Church engages in propagation insofar as you provide that one of your “Sacred Missions” is “the evangelizing of reality.”



The Church of Reality lacks any prescribed diet or fasting, as well as any prescribed manner in which believers should maintain their physical appearance or clothing. As a technical matter, your submissions note celebration of “holidays” such as Newton’s Birthday (December 25—also referred to as “Crispness”), the Day of Self-Realization (November 7—celebrating the day that you were “smoking a joint” and founded the Church of Reality); and the Celebration of Two Cubed (a celebration of mathematics that corresponds to the dates of Hanukkah). However, these celebrations appear to be manifestations of the Church’s “Sacred Principle” of humor, rather than events of religious significance.

With respect to important writings, your submission states that “[t]he Church of Reality web site contains the ‘Kernel’ which is our sacred writings. We call it the operating system for the human race. It contains the Sacred Missions, the Sacred Principles, and the Sacred Contemplations.” [2/19/07 Letter #2 p.5] We have been unable to identify a single place on the Church of Reality web site that includes the text of “the Kernel.” We have identified separate pages that list the Sacred Principles, Sacred Contemplations, Sacred Goals, and Sacred Missions. We are troubled by the fact that your submissions indicate that the Kernel is “an evolving document” and that, consequently, you “don’t have to get everything right the first time.” [2/19/07 Letter #1 p.1] In the *Quaintance* decision, the district court found the fact that the religion’s text was “evolving” indicated that it was not an “important writing.” 471 F. Supp.2d at 1165-66. Further, several of the Church of Reality’s principles, contemplations, missions, or goals (for example, the “Principle of Bulls\*\*\*) fail to touch upon “the lofty or fundamental issues associated with religious work.” *Meyers*, 906 F. Supp. at 1507.

#### d. Summary of Indicia of Religion

Based on our evaluation of the three guidelines/indicia outlined above, we conclude that the Church of Reality fails to qualify as a religion.

#### B. *Sincerely Held*

Although your petition can be denied solely on the basis that you have failed to demonstrate that your beliefs are religious, we also deny your petition on the ground that your beliefs are not sincerely held. A person claiming that the government has placed a substantial burden on his or her practice of religion must establish the existence of a *sincerely held* religious belief. *Meyers*, 95 F.3d at 1482. While we appreciate the sensitivity of inquiring into the sincerity of religious beliefs, we are obliged to do so. See *Gatrell v. Ashcroft*, 191 F. Supp.2d 23, 39 (D.D.C. 2002) (“governmental agencies not only can assess bona fides when deciding whether to accommodate religious beliefs, but often must do so in order to properly assess religious accommodation claims”) (citing *U.S. v. Seeger*, 380 U.S. 163, 184-85 (1965)). In a recent decision in *United States v. Quaintance*, 471 F.Supp.2d 1153, the court found five separate bases to conclude that the defendants were not sincere in their religious beliefs for purposes of their RFRA claim. We find that the first three of these bases also apply here.

*Ad Hoc Beliefs.* We believe that your submissions support the conclusion that your “religious” beliefs about marijuana were manufactured on an *ad hoc* basis to justify your lifestyle and your political, scientific and social beliefs that marijuana use should not be prohibited. The court in *Quaintance* refers to these as “ad hoc beliefs.” 471 F. Supp.2d at 1171-72. As discussed in the preceding section, you fully acknowledge that your views on the religious need for “medical” marijuana were generated in response to *Gonzales v. Raich*, and your Edict on the subject actually post-dates your initial inquiry to DEA about RFRA. You indicate in one of your submissions that your advocacy for “medical” marijuana (and in fact, your distribution of marijuana to a sick individual) pre-dates the founding of the Church. [5/24/07 Letter p.3] Furthermore, your Edict and your other submissions admit that you are using RFRA and your

professed “religious” beliefs on this topic to “trump” federal law and achieve your goals of allowing marijuana to be used for “medical” purposes. [3/16/2007 Edict pp. 2-3 and 5/24/07 Letter pp.2-3] You have also declared a “religious” right to prosecutorial immunity for Church members who are drug addicts because you believe that they are entitled to treatment rather than punishment. [2/19/07 Letter #1 p.13] These newfound religious beliefs appear to be rationalizations designed to justify your long-held political and medical views about the alleged benefits of marijuana use.

Your beliefs about using marijuana to inspire creative thinking also seem to justify “therapeutic,” social and recreational practices that predate the founding of the Church of Reality. See *Quaintance*, 471 F. Supp.2d at 1171-72. First, you acknowledge that you were using marijuana recreationally the night that you invented the idea of the Church of Reality in 1998. [3/24/06 Letter p.2] Furthermore, you indicate in another of your submissions that you used LSD (and perhaps other drugs) as far back as 25 years ago—which predates the founding of your Church by more than 15 years: “Marijuana is not the only drug that is illegal that is beneficial. I personally have had amazing insights from the use of LSD 25 years ago that are still with me today. Other drugs include Peyote, Mescaline, Mushrooms and other substances in the psychedelic classification.” [2/19/07 Letter #1 p.8] Like the defendant in *Quaintance*, you have “conveniently founded a ‘religion’ that affirms your right to use the same substance for ‘religious’ purposes” that you believed you were entitled to use *before* the founding of your church. *Quaintance*, 471 F. Supp.2d at 1172.

Finally, the fact that you describe your application to the IRS for 501(c)(3) tax-exempt status as “one of the most significant events inspiring the development of Church of Reality doctrine” leads us to conclude that your beliefs have the ad hoc quality that concerned the court in *Quaintance*. [5/24/07 Letter p.2] While sincere religious beliefs may be inspired by many sources, there is good reason to doubt the sincerity of a faith that claims that its “sacred principles” and “sacred missions” were devised in response to forms from the IRS.

Finally, your most recent submission, dated September 21, 2007, suggests that your beliefs about marijuana are an opportunistic use of RFRA, rather than a sincere religious exercise. There, you note:

[I]f there is any question that the use of Marijuana is a “religious exercise” of the Church of Reality, the way I understand the law is that it is because I say it is I am the founder and I have declared it to be so. My assertion that of my belief [sic] the Church of Reality would not exist if not for smoking Marijuana is sufficient to assert a religious right even if I’m wrong.

[9/21/07 Letter p.2]

*Lack of Ceremony or Ritual.* In the *Quaintance* decision, the court concluded that the absence of a ceremony or ritual associated with membership in the organization is indicative of a lack of a sincere religious belief. Your submissions state specifically that the Church of Reality does not use marijuana as part of a formal ceremony. [2/19/07 Letter #1 p.11] Your website also states that you are “not into rituals,” and the lack of any formal membership policy for the Church of Reality (*see infra*) further supports the conclusion that the Church has no relevant ceremony or ritual. See [www.churchofreality.org/wisdom/different](http://www.churchofreality.org/wisdom/different). We conclude that the absence of ceremony for the Church of Reality, combined with the other facts set forth above, supports a finding of insincerity.

*Other Illegal Substances.* The final indicator of insincerity addressed by the *Quaintance* court is the fact that the defendants in that case admitted to use of other illegal substances. The

use of other illegal drugs by you and other Church of Reality members similarly undermines your argument that marijuana is a sacrament consumed for religious (rather than recreational or other secular) purposes. Your initial letter and your response to the questions posed by DEA state that Church of Reality members have used other drugs such as “LSD, Mushrooms, Peyote, and Hoasca” and that members “rarely” may use “Methamphetamine, Heroin, Opium, or Cocaine.” [3/24/06 Letter pp.1-2; 2/19/07 Letter #1 pp. 8-9, 12] (“Although our request at this time is for the use of marijuana, we are not limiting ourselves to just that one drug. I personally used LSD in the time period from 1977 to 1985 and these drugs too lead to incredibly profound revelations about reality that have stuck with me all my life.”). Finally, your submission discussing what you term to be “medical marijuana” states that your members should have access to “any other drug in general that they determine has medical value to them.” [3/19/07 Letter p.4]. These statements suggest that your request is driven by a desire to use illegal substances, rather than a sincere religious belief.

### C. Substantial Burden

The final factor required to establish a *prima facie* case under RFRA is the substantial burden test. In this instance, you must demonstrate that the CSA’s prohibition on marijuana substantially burdens the Church of Reality’s exercise of religion. We conclude that on balance, you have not established a substantial burden on your religious exercise. This is a third and independent basis on which we find that you have failed to make a *prima facie* showing.

The D.C. Circuit has addressed the substantial burden standard with respect to religion in two separate decisions. In *Leviton v. Ashcroft*, 281 F.3d 1313, 1320-21 (D.C. Cir. 2002), the court held that the burden on the litigant’s religious practice must be “*substantial*, as opposed to *inconsequential*.”<sup>7</sup> (Emphasis added.) Similarly, in *Henderson v. Kennedy*, 265 F.3d 1072, 1074 (D.C. Cir. 2001) (denial of petition for rehearing), the court noted that a decisionmaker must “inquir[e] into the *importance* of a religious practice when assessing whether a substantial burden exists.”<sup>8</sup> (Emphasis added). *Henderson* involved a group of evangelical Christians who sought a religious exemption to spread the Gospel through T-shirt sales on the National Mall, a practice that is otherwise prohibited by Park Service regulations. The panel held that the regulation did not substantially burden their religion because selling T-shirts on the National Mall did not rise to a sufficient level of significance in the group’s religion. Because their religion called for spreading the Gospel by “all available means,” the court concluded that the “ban on sales on the Mall is at most a restriction on one of a multitude of means . . . not a substantial burden on their vocation.” *Henderson v. Kennedy*, 253 F.3d 12, 17 (D.C. Cir. 2001) (panel decision). In essence, the availability of feasible alternatives to engage in the relevant religious practice negated any finding of substantial burden. See also *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) (“substantial burden” must place more than an inconvenience on religious exercise”). While we do not ask whether a particular practice is “central” or “mandatory” as part of the substantial burden analysis, we do ask whether it is “important” and whether there are feasible alternatives that would allow the religious practice to continue with only an incidental effect on religious exercise.

<sup>7</sup> While *Leviton* was a case brought under the First Amendment, its analysis suggests that the standard is equally applicable to RFRA.

<sup>8</sup> RFRA was amended in 2000 to define “exercise of religion” as “any exercise of religion, whether or not compelled by or central to, a system of religious belief.” However, the *Henderson* court specifically held that these amendments “did not alter RFRA’s basic prohibition that the ‘[g]overnment shall not substantially burden a person’s exercise of religion.’” *Henderson*, 265 F.3d at 1073.



Your organization argues that the prohibition on marijuana use is a substantial burden on the Church of Reality's religious practice. Your submissions on this topic indicate that marijuana is used by the Church of Reality to inspire creative thinking in order to help advance human understanding: "Our focus is on reality and we use marijuana as a tool to inspire creative thinking towards our goal of exploring reality." [2/19/07 Letter #1 p. 3] You declare that marijuana is not used by all members and that its use is rare, but that nonetheless it is essential to development of the Church's religious doctrine:

Not all realists are required to use these drugs. These are substances that we consider need to be available to members who wish to expand their mental functions by using psychotropic substances in a responsible way in order to inspire creative visionary thinking. Although we rarely use drugs, that [sic] are absolutely necessary to our religious development. We need to make it available to those who desire it.

[3/24/06 Letter p.2] Elsewhere you state that "If not for the continued use of marijuana, the doctrine of the Church of Reality would develop at a far slower pace than it is now." [2/19/07 Letter #1 p.5]

These statements, however, are contradicted by others that lead us to conclude that the prohibition is not a substantial burden. In at least two separate places, you suggest that members may explore reality and engage in creative thinking without use of marijuana. In one statement, you note that "Church members can choose to [use marijuana] if they are inclined to. . . . *Different people pursue reality in different way* [sic] and different people respond to marijuana in different ways. For many people marijuana is not the right drug for them and should not use it." [sic] (Emphasis added.) [2/19/07 Letter #1 p.6] Elsewhere you reiterate the same point: "Marijuana is for those members who desire it. *Not everyone chooses to use marijuana for creative thinking and some people have adverse reactions to it.*" (Emphasis added.) [2/19/07 Letter #1 p.7] These statements are particularly significant when they are considered in light of your other statements about the Church's religious practices. You repeatedly note that the Church of Reality is not centered on marijuana and that marijuana itself has no independent significance in the Church. It plays a role in your religious practice only insofar as it aids creative thinking and assists members in exploring reality:

Unlike some religions the Church of Reality is not a religion that centers on marijuana or drug experiences. We are a reality based religion and reality is our focus. I have found as have others that when certain drugs are used in small quantities and when used properly and responsibly that these drugs inspire creative thinking that leads to really good ideas. So our connection with drugs is as a necessary tool or a means to and [sic] end to explore the concepts a reality based religion and that it is not an object of worship.

[2/19/07 Letter #2 p.1] Insofar as the Church of Reality admits that there are ways (other than marijuana use) to foster creative thinking and that its members are permitted to use these alternatives, we conclude that the prohibition on marijuana does not constrain conduct that rises to a level of significance within the Church of Reality. Accordingly, you have not established that you are substantially burdened in your religious exercise.

## II. Enforcement of the CSA's Prohibition on Marijuana Use is the Least Restrictive Means of Furthering Compelling Government Interests.

Even if the Church of Reality could establish a *prima facie* case by demonstrating that this application of the CSA would substantially burden its sincere exercise of religion, DEA believes that the Church is not entitled to an exemption under RFRA. DEA concludes that applying the CSA to the Church of Reality's desired uses of marijuana is the least restrictive means of achieving two important compelling governmental interests: (1) protecting the health and safety of the public, including Church of Reality members; and (2) preventing diversion of marijuana from the Church of Reality's "religious" users to non-religious users.<sup>9</sup> In the analysis that follows, we consider first the specific uses of marijuana for which the Church of Reality seeks an exemption (Section A). We then address the government's compelling interests in prohibiting marijuana use (Section B). Finally, we address the Church of Reality's specific uses of marijuana in light of these compelling interests and consider whether enforcement of the CSA against the Church is the least restrictive means of furthering those interests (Section C).

### A. The Church of Reality's Use of Marijuana

In the *UDV* decision, the Supreme Court held that RFRA requires the government to conduct its compelling interest analysis by considering the harms to the government's compelling interests that would be posed by the *particular* use of the substance at issue to the *particular* religious claimant. *UDV*, 126 S.Ct. at 1220-1221.

In your submissions, you indicate that the Church of Reality desires an exemption to use marijuana in two separate ways: (1) for inspiring creative thinking by Church members who wish to contribute to "the sum of human understanding" through the Church's practice of "intellectual tithing," and (2) for distribution to and use by the sick and the dying. [5/24/07 Letter p.4] Below we summarize our understanding of these two uses based on your submissions, along with other relevant aspects of the Church of Reality's use of marijuana.

#### 1. Use of Marijuana to Inspire Creative Thinking

Your submissions state that marijuana is a sacrament in the Church of Reality because the Church itself, its "Kernel," the "Sacred Principles," and the "Sacred Missions and Contemplations" were all marijuana inspired ideas. [2/19/07 Letter #1 p.5] Specifically, you note that "I was stoned when I came up with the idea of the Church of Reality and most of the Kernel was either written while stoned or came from ideas I had while stoned that I wrote down later." [5/24/07 Letter p.2] You note that marijuana use aids in the development of church doctrine, which you describe as "intellectual tithing." [5/24/07 Letter p.3] Intellectual tithing is part of the Church's "Sacred Mission" of "increas[ing] the understanding of reality by all humanity" and contributing "new original ideas" to the human race. [2/19/07 Letter #1 p.2] Marijuana is used, according to your petition, during brainstorming sessions when people explore new ideas and concepts. [2/19/07 Letter #1 p.4, 5]. Your petition states that members would also use marijuana "for medical purposes, relaxation, and socially like social drinking." [2/19/07 Letter #1 p.6]

<sup>9</sup> In addition to these two interests, we believe there also may be a third compelling governmental interest in adherence to the United States's treaty obligations under the 1961 Single Convention on Narcotic Drugs. A failure by the U.S. to comply faithfully with the treaty not only might cause diplomatic repercussions, but also could detract from our ability to influence other countries to comply with the treaty, undermining the government's efforts to curtail illicit international drug trafficking. We reserve the right to present additional evidence and arguments on this issue in subsequent proceedings.

The Church of Reality has not defined what it means to be a member of the religion. [5/24/07 Letter p.1] There are no formal requirements for membership. [2/19/07 Letter #1 p.14 & 5/24/07 Letter pp. 1, 4] In your petition, you note that “the issue of what is a Realist and what is a member of the Church of Reality is something that we are not entirely clear on.” [5/24/07 Letter p.1] While your submissions indicate that you may decide to develop a “formal membership policy” in the future, [2/19/07 Letter #1 p.14] you have not done so. The Church of Reality’s “Membership” web page states that “[e]ven if a person only thinks about reality for one minute a day, they are still a Realist and are as entitled to the right to practice their religion as anyone else.” [www.churchofreality.org/wisdom/membership] Your petition states that “[w]hen people contemplate reality or any of the Sacred Contemplations then they are performing a religious ritual.” [2/19/07 Letter #1 p.7] Accordingly, you note that “the Church of Reality has the potential for a very broad membership and under our current structure, we can not easily identify who is and who is not a member.” [2/19/07 Letter #1 p.14]

Your supplemental submission states that you consider anyone who reads your website and agrees with its contents “to be at least an associate member.” [5/24/07 Letter p.4] You note that you have “1060 names in [your] email list,” “however, there are likely tens of thousands who [you] would call Realists at some level having accepted the principles of [your] church.” [5/24/07 Letter p.4] You have no mechanism or status of “full membership,” although you indicate that such a status may be developed in the future. [2/19/07 Letter #1 p.14; 5/24/07 Letter p.2] In addition, even if the Church of Reality did have means of defining its membership, it would still have no information as to the number of members who use (or wish to use) marijuana as part of their religious practice because of the Church’s “Sacred Principle of Privacy” which prevents the Church from involving itself “in other people’s private choices.” [5/24/07 Letter p.4; 2/19/07 Letter #1 p.6]. The Church of Reality places no restrictions or limitations on who can use the sacrament of marijuana, or who can administer it. [2/19/07 Letter #1 pp.6-7] While you indicate that it is not part of church policy to share marijuana with non-members,<sup>10</sup> you state candidly that you are “sure it happens for a variety of purposes.” Further, you note that the Church “consider[s] use of small quantities of marijuana to be a non-issue.” [2/19/07 Letter #1 p.8]

The Church of Reality places no specific limits on the amount or frequency of marijuana use by members for the purposes of creative thinking. While your petition describes use as “limited” or “infrequent” [3/24/06 Letter p.1; 2/19/07 Letter #1 p.6], you indicate that you personally use marijuana three times a week on average. [2/19/07 Letter #1 p.6] You state that “it is up to the individual to make those decisions” about how often to use marijuana. [2/19/07 Letter #1 p.6] You further indicate that members would use an amount “[w]ithin the range of what is called personal use quantities.” [2/19/07 Letter #1 p.6] However, you also emphasize that yours “is not an enforcement based religion” and accordingly places no restrictions on the amount or frequency of use by members other than the instruction to “use good judgment.” [2/19/07 Letter #1 pp. 8, 9]

According to the Church of Reality website, the Church has no rituals. [www.churchofreality.org/wisdom/introduction/home/what\_the\_church\_of\_reality\_is\_not.html] Thus, marijuana use is not associated with any Church ritual. There are no limitations on the circumstances under which it is used. You state elsewhere that according to Church doctrine,

<sup>10</sup> This claim is contradicted by your submissions pertaining to the distribution of marijuana to the sick and the dying. There, you indicate that members are obligated by Church doctrine to distribute marijuana to anyone (member or non-member) to alleviate pain and suffering. See discussion below at § II.A.2.



whenever members contemplate reality, they are practicing their religion. [2/19/07 Letter #1 p.7] The Church of Reality has no central meeting place, and it does not specify any particular location where members may use marijuana, except that they use it in “appropriate situations in a thoughtful and responsible manner.” [2/19/07 Letter #1 p.7] According to your submission, members participate in the church online and may use marijuana individually in their homes, but they may also meet in small groups “to talk about reality, often smoke marijuana, and come up with new ideas about how the universe works.” [2/19/07 Letter #1 p.4] Finally, the Church places no restrictions on the activity of members after marijuana use, noting that “reality itself is the enforcer.” [2/19/07 Letter #1 p.8]

## 2. Marijuana for Distribution to and Use by the Sick and Dying

The second religious exemption that you seek from the CSA is permission to distribute marijuana to the sick and dying for use to relieve pain and suffering [3/19/07 Letter]. In your submissions, you refer to this practice as “medical marijuana as a religious exercise.” [3/19/07 Letter p.1]. You attached to your submissions a March 16, 2007 “Edict” which declares that Realists have a religious right to medical marijuana. This Edict appears to advocate two separate uses of marijuana for “medical” purposes: (1) use of marijuana, and (2) distribution of marijuana by Church members. [3/19/07 Letter pp. 2-6]

First, the Edict states that “[m]embers of the Church of Reality have an absolute right to use Marijuana for any medical purpose that they see fit regardless of whether it is lawful to do so.” [3/19/07 Letter p.3] Church doctrine does not appear to place any conditions on the use of marijuana for “medical” purposes. There is no limitation to particular circumstances, particular amounts, or to instances involving the recommendation of a physician. Indeed, the Edict states that it applies not only to marijuana, but to all drugs that a Church member determines to have medical value:

It is obvious that individuals possess a fundamental right to alleviate their pain and suffering and just because the government has yet to figure that out doesn't mean that we are subject to the same restrictions. I therefore declare specifically that the Church of Reality recognizes as a religious right that church members have access to marijuana specifically and *any other drug in general that they determine has medical value to them.*

(Emphasis added.) [Edict, 3/19/07 Letter p.4]

Second, the Edict states that members of the Church of Reality have a “religious duty to provide marijuana to a person who is not a church member as an act of compassion” if the Church member “reasonably believes” that a person would medically benefit from the marijuana. [Edict, 3/19/07 Letter p.5] You also indicate that both the practice of using marijuana and the practice of distributing marijuana for “the purpose of protecting the health of the individual we feel compassion for” applies not only to Church of Reality members, but also to people who generally identify themselves as realists: “In light of that, the use of medical marijuana based on one's right to self ownership and to protect one's health or the giving of marijuana to people who need it medically would come under general Realism and would apply to both formal members and people who identify themselves as Realists but are not in a fuller status of membership that I have yet to create.” [5/24/07 Letter p.3] Once again, nothing in your submissions suggests restrictions on amount or frequency, or any other limitation other than a determination by the individual supplying the marijuana that it would relieve the recipient's pain or suffering.

### *B. The Government's Compelling Interest in Prohibiting Marijuana Use*

This section addresses the compelling interests that justify the application of the prohibition on marijuana generally to those who claim to use the controlled substance for religious purposes. In Section C, we discuss why applying this prohibition to the Church of Reality is the least restrictive means of achieving this compelling interest.

A substance designated to be in schedule I of the CSA is one that has been determined to have (1) a high potential for abuse; (2) no currently accepted medical use in treatment in the U.S.; and (3) a lack of accepted safety for use under medical supervision. 21 U.S.C. § 812. As noted above, marijuana is a controlled substance under schedule I of the CSA and its governing regulations.

Twice in the past fifteen years, DEA has had occasion to consider and evaluate data on the public health and safety harms and the diversion risks associated with marijuana use. While these evaluations were made in the context of petitions to reschedule marijuana pursuant to 21 U.S.C. § 811(a) (rather than petitions for religious exemption), they evaluated data relevant to the assessment of DEA's compelling interests in the RFRA context. In a final order dated March 26, 1992, DEA denied a petition by the National Organization for the Reform of Marijuana Laws (NORML) to reschedule marijuana from schedule I to schedule II of the CSA, concluding that marijuana had no currently accepted medical use. 57 Fed. Reg. 10499 ("the NORML petition"). DEA's denial of the NORML petition evaluated all relevant scientific data after extensive hearings before an administrative law judge and concluded that smoking marijuana has significant short-term side effects and poses serious long-term risks to the public. Those conclusions were summarized as follows:

Marijuana is likely to be more cancer-causing than tobacco; damages brain cells; causes lung problems, such as bronchitis and emphysema; may weaken the body's antibacterial defenses in the lungs; lowers overall blood pressure, which could adversely affect the supply of blood to the head; causes sudden drops in blood pressure (orthostatic hypotension), rapid heart beat (tachycardia), and heart palpitations; suppresses luteinizing hormone secretion in women, which affects the production of progesterone, an important female hormone; causes anxiety and panic in some users because of its mind-altering effects; produces dizziness, trouble with thinking, trouble with concentrating, fatigue, and sleepiness; and impairs motor skills.

57 Fed. Reg. at 10500.

In 2001, DEA also denied a petition from Jon Gettman to reschedule marijuana from schedule I to schedule II, concluding that marijuana has a high potential for abuse. 66 Fed. Reg. 20038 (April 18, 2001) ("the Gettman petition"). DEA's denial of this petition was based both on its own review of the relevant data and the Department of Health and Human Services's review of current scientific and medical evidence. In assessing abuse potential, both HHS and DEA considered whether marijuana was used by the public in amounts sufficient to create a hazard to their health or the safety of themselves or others and whether there was a significant likelihood of diversion of the drug for illegitimate purposes. Factors evaluated included the prevalence and frequency of marijuana use, the amount of marijuana available for illicit use, the ease with which marijuana is obtained, and its reputation "on the street." In addition, both DEA and HHS conducted comprehensive reviews of scientific and medical evidence on abuse potential, which included marijuana's "receptor binding affinity, preclinical pharmacology,

reinforcing effects, discriminative stimulus effects, dependence producing potential, pharmacokinetics and route of administration, toxicity, clinical abuse liability studies and the public health risks following introduction of [marijuana] to the general population.” 66 Fed. Reg. at 20040. This denial of the Gettman petition included evaluation of marijuana’s detrimental effects on the central nervous system (e.g., decrements in motivation, cognition, judgment, memory, motor coordination and perception); the cardiovascular system (e.g., increases in heart rate and blood pressure); and the respiratory system (e.g., inflammation, edema and cell injury). Finally, both DEA and HHS analyzed the statistical results of various surveys and databases assessing marijuana use, drug trafficking, and diversion data. DEA’s denial of the Gettman petition concluded that marijuana posed serious health and safety risks to users and the general public, was the most readily available illicit drug in the United States, and was the most widely used illicit drug among Americans.

In considering your petition, we have reviewed the final orders denying both the NORML petition and the Gettman petition to reschedule marijuana.<sup>11</sup> In addition, we have considered updated data and reviewed more recent studies on the health, safety, and diversion risks associated with marijuana, which are discussed below.<sup>12</sup> We find that DEA has a continued compelling interest in (1) protecting users and the general public from the public health and safety harms associated with marijuana use and (2) preventing diversion of marijuana to non-religious users.

#### 1. Protecting Public Health and Safety

The CSA’s prohibition of marijuana use furthers the compelling governmental interest of protecting the public health and safety.<sup>13</sup>

Our updated review of scientific and medical studies reveals further evidence that marijuana has been found to impair cognitive function. Acute exposure to marijuana can produce altered perceptions of space and time, including impairment of the ability to recognize images and the ability to estimate elapsed time. Studies also show that moderate to high doses of marijuana cause a general depressant effect and overall psychomotor slowing that both slows reaction times and disrupts fine motor control. Sustained attention to simple visual and auditory tasks has been shown to be impaired by marijuana use. And, studies involving dual/concurrent tasks (situations in which one task requires continuous attention and another involves the detection of stimuli at the periphery of vision) reveal that performance is almost always adversely affected by marijuana. Dual/concurrent tasks are believed to be comparable to skills required for driving a car. In addition, memory impairment is the most reported adverse behavioral effect of marijuana in humans. A recent review of the research on the acute effects of marijuana on memory tasks concluded that marijuana impairs all stages of memory including encoding, consolidation of information and retrieval of information. Several studies reveal that cognitive impairments in cannabis users can be observed anywhere from twelve hours to seven days after the use of the

<sup>11</sup> DEA does not oppose legitimate scientific/medical research into the properties and compounds found in marijuana. In fact, DEA has placed in Schedule III a pill, Marinol, which contains a synthetic form of the psychoactive ingredient in marijuana, THC. 21 C.F.R. § 1308.13(g).

<sup>12</sup> The studies discussed in this section are listed in the bibliography at the end of this document.

<sup>13</sup> Even the Church of Reality’s own “Edict” declaring that “Realist[s] have a Religious Right to Medical Marijuana” acknowledges that “there is a legitimate government purpose to prevent the abuse of narcotics.” [3/19/07 Letter p.3]. Similarly, the Church’s own website ([www.churchofreality.org/wisdom/marijuana](http://www.churchofreality.org/wisdom/marijuana)) links to another site ([www.perkel.com/politics/issues/pot.htm](http://www.perkel.com/politics/issues/pot.htm)) that acknowledges some of the harms associated with marijuana use, including memory loss and increased risk of cancer.



drug, and after as much as a month of abstinence in very heavy adult users and certain adolescent users. Finally, studies demonstrate that prenatal exposure to marijuana can significantly impair children's cognitive and behavioral development.

Research over several decades has resulted in an accumulated body of evidence linking marijuana use to the development of psychotic symptoms similar to those of schizophrenia. The most recent epidemiological research using longitudinal designs supports the hypothesis that marijuana use is an independent causal factor for the development of psychosis or psychotic symptoms, particularly schizophrenia in vulnerable individuals. Recent studies have also associated marijuana use with acute anxiety attacks or panic attacks in some users.

Notably, studies indicate that psychological and physical dependence on marijuana can be a significant health consequence of repeated marijuana use. An overwhelming percentage of habitual marijuana users report cravings for the drug, which is a recognized component of drug dependence. Furthermore, disruption of chronic marijuana use can produce identifiable withdrawal symptoms in humans, which include restlessness, irritability, insomnia, mild agitation, nausea, cramping, sweating, tremor, chills, and decrease in mood and appetite. Indeed, the American Psychiatric Association recognizes psychological dependence on marijuana as a distinct mental disorder based on specific criteria listed in the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> edition (DSM-IV).

There is also strong and consistent evidence that marijuana use almost invariably precedes the use of other illegal drugs. For example, a 2002 study revealed that while most marijuana users did not proceed to use other illegal drugs like cocaine and heroin, 90% of cocaine users reported that they used marijuana before using cocaine. A 1994 study by Columbia University found that users of marijuana were 85 times more likely than non-users to use other illicit drugs. And a 2000 study found that those who used marijuana weekly were 59 times more likely to engage in other illicit drug use.

The public health harms caused by marijuana use are also apparent in data on drug treatment admissions. For example, the Treatment Episode Data Set (TEDS) of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Drug and Alcohol Services Information System reveals that roughly 16% of all treatment admissions in 2005 and 2006 were for primary abuse of marijuana and hashish. The National Survey on Drug Use and Health (NSDUH) reported that out of an estimated 4 million individuals who received treatment for a substance abuse problem in 2006, an estimated 1.2 million persons received treatment specifically for marijuana use.

Chronic marijuana smoking also has a significant impact on the respiratory tract, leading to chronic bronchitis and a tendency towards acute bronchitis. The lungs of marijuana smokers who smoke a few marijuana cigarettes a day have been shown to have the same significant airway inflammation and damage as that detected in tobacco smokers who smoke 20 to 30 cigarettes per day. Studies show that regular marijuana smoking produces long-term pulmonary consequences, including chronic cough and sputum, histopathological evidence of widespread airway inflammation and injury, and evidence of dysregulated growth of respiratory epithelial cells that may be precursors to lung cancer. A recent epidemiological study showed that the risk of lung cancer increased by 8% for each joint-year of cannabis smoking (1 joint-year is defined as a year in which a study participant smoked the equivalent of one marijuana cigarette per day).

Marijuana can lead to serious cardiovascular effects that may be particularly deleterious in older people, especially those with vascular disease in the heart and brain (affecting the coronary and cerebrovascular blood vessels). Among persons who have experienced heart attacks, marijuana users have 4.8 times the risk of another heart attack within the first hour after smoking marijuana as non-users. Marijuana users also may have substantial tachycardia (increase in heart rate) as well as an increase in blood pressure.

Finally, our review of the studies and data on marijuana use reveals that it poses substantial harm not just to users themselves, but to the general public. Marijuana, even in moderate doses, impairs cognitive and psychomotor functions that are of crucial importance for driving. Impaired abilities include coordination, tracking of objects, perception, and vigilance. Data from the U.S. Census Bureau and a national survey of American adolescents indicate that approximately 600,000 of 4 million high school seniors drive under the influence of marijuana. The impairments caused by marijuana, when considered in light of this data, can be expected to result in increased safety risks to both drivers under the influence of marijuana and the general public. Furthermore passive inhalation of marijuana smoke (second hand smoke) has been found to lead to absorption of THC and significant airway irritation. Accordingly, it is possible that those not actively participating in marijuana use may be subject to the effects of marijuana discussed above.

## 2. Preventing Diversion

The second compelling interest furthered by applying the CSA to religious use of marijuana is the prevention of diversion of marijuana to non-religious users. While there is no single test or measure of the diversion risk for a particular substance, a comprehensive evaluation of the risks of diversion involves an examination of (a) the nature of the illegal market for that substance; (b) the publicity and the reputation of the substance in the general public; and (c) the form in which the substance is available.

### a. Nature of the Illegal Market for Marijuana

The first factor, the nature of the illegal market for marijuana, is a complex determination that involves many different dimensions. We generally look to three different indicators (each of which, in turn, is separately comprised of multiple complex factors): (i) illicit trafficking data and statistics; (ii) actual abuse patterns and trends; and (iii) abuse potential.

#### i. Trafficking and Diversion Data

Illicit trafficking and diversion data are the first and most obvious considerations in assessing the nature of the illegal market for marijuana. Marijuana is in wide demand in the United States, as demonstrated by increased production at domestic grow sites as well as increased smuggling from Mexico and Canada. In order to determine the pattern and incidence of trafficking and diversion of a particular controlled substance, DEA relies on data collected from a number of sources. According to the Federal-wide Drug Seizure System (FDSS), which tracks drug seizures by federal law enforcement within the United States, 1,192,957.5 kilograms of marijuana were seized in 2007. Indeed, over the past five years, the United States has consistently seized over a thousand metric tons of marijuana each year. In 2006, the Domestic Cannabis Eradication and Suppression Program (a partnership between federal, state, and local agencies) reported eradication of 4,830,766 marijuana plants in outdoor cannabis cultivation areas in the United States—including major areas in California, Kentucky, Tennessee, and Hawaii. Furthermore, over 400,000 plants were also found and destroyed in indoor cultivation operations.

The National Forensic Laboratory System (NFLIS), which compiles information on drug exhibits analyzed in state and local law enforcement laboratories, indicates that marijuana was the most frequently identified drug between January 2001 and December 2007. It accounted for between 34% and 41% of all drug exhibits analyzed during that time. A comparable database for DEA laboratories, the System to Retrieve Information from Drug Evidence (STRIDE), reports that 24% to 29% of samples analyzed during the same time period were marijuana.

The 2007 National Drug Threat Assessment (NDTA) provides further evidence of the high risk of diversion of marijuana for illegal use. The NDTA is a yearly comprehensive assessment of the threat posed to the U.S. by the trafficking and abuse of illicit drugs. It is a detailed analysis of law enforcement, intelligence and public health data that includes information from over three thousand state and local law enforcement agencies. According to the 2007 NDTA, there is a rising prevalence of marijuana—particularly high potency marijuana—throughout the U.S. Furthermore, increasing supplies of marijuana from Mexico and Canada are coming across U.S. borders, and there has been a notable increase in outdoor grow sites in the Pacific Northwest.

#### ii. Actual Abuse Patterns and Trends

The existence of a strong market for a controlled substance depends in significant part on whether the substance is actually abused, and therefore in demand by the public. Simply put, according to all commonly cited indicators of drug abuse and trafficking, marijuana remains the most widely abused and most readily available illicit drug in the United States. DEA compiles evidence of actual abuse patterns and trends from a number of sources including the National Survey on Drug Use and Health (NSDUH), the Monitoring the Future (MTF) study, the Youth Risk Behavior Surveillance System (YRBSS), and the Treatment Episode Data Set (TEDS). Collectively, these sources are the best available indicators of the extent of marijuana abuse within the U.S.

The NSDUH is conducted annually by SAMHSA and is the primary source for estimates of alcohol, tobacco, and illicit drug use in the U.S. The survey is based on a nationally representative sample of the civilian, non-institutionalized population. According to the NSDUH report for 2006, marijuana was the most commonly used illicit drug, with over 14.8 million people having used it in the preceding month. An estimated 6% of all persons age 12 or older reported marijuana use in the preceding month. Among persons reporting a substance dependence or abuse problem, marijuana was the most abused drug (4.2 million persons), followed by cocaine (1.7 million) and pain relievers (1.6 million). Finally, the survey estimates that more individuals (over 1 million) received treatment for marijuana use than for any other illicit drug.

The demand for marijuana is high among American adolescents, as reflected in the annual Monitoring the Future (MTF) survey conducted by the University of Michigan. This survey tracks drug use trends among students in the eighth, tenth, and twelfth grades. Marijuana was the most commonly used illicit drug reported in the 2005, 2006, and 2007 MTF reports. In 2007, 5.7% of 8<sup>th</sup> graders, 14.2% of 10<sup>th</sup> graders, and 18.8% of 12<sup>th</sup> graders reported marijuana use during the month prior to the survey, and 14.2%, 31.0%, and 41.8%, respectively, reported marijuana use at some point during their lifetime. These numbers are echoed by the Youth Risk Behavior Surveillance System (YRBSS) developed by the Centers for Disease Control and Prevention, which monitors health-risk behaviors among high school students. The YRBSS reports that in 2005, 38.4% of students in grades 9-12 reported using marijuana one or more



times during their life, and 20.2% of high school students reported using marijuana within 30 days of the survey.

Data reflecting admissions to drug treatment programs for marijuana use are a further indicator of the prevalence and severity of marijuana abuse—particularly among young adults. The Treatment Episode Data Set (TEDS) is comprised of data on treatment admissions that are routinely collected by states.<sup>14</sup> In 2005 and 2006, admissions for primary abuse of marijuana accounted for roughly 16% of all treatment admissions, making it the third most popular reason for treatment (after alcohol and opiate addiction). The average age of those treated for marijuana abuse or dependence was 24. More than half (55.7% in 2006) of all individuals between ages 15 and 19 who received drug treatment were treated for marijuana abuse.

### iii. Abuse Potential

In addition to actual abuse data, DEA also considers the factors that contribute to a substance's abuse potential. This analysis is a familiar one to DEA because our scheduling analysis generally involves an evaluation of a substance's potential for abuse. While a wide range of factors contribute to a substance's abuse liability, the most significant are: (1) the substance's pharmacology, as well as indicators of the potential for physical and psychological dependence; (2) the prevalence and frequency of use of the substance; and (3) the amount of the substance available for use. Our review of the scientific and medical studies, as well as law enforcement data, demonstrates that marijuana has a very high potential for abuse.

First, both clinical and preclinical studies of pharmacology and dependence demonstrate that marijuana and THC (its primary psychoactive constituent) have the scientific attributes associated with drugs of abuse: (a) reinforcing effects to maintain drug seeking behavior; (b) the ability to function as a discriminative stimulus; and (c) dependence potential.

The term "reinforcing effect" refers to self-administration of a substance for pleasurable effects. In animal (pre-clinical) studies, reinforcement effects are often measured by intravenous self-injection of psychoactive substances by laboratory animals. These pre-clinical studies are considered to be useful predictions of human abuse liability of the same compounds. Recent studies of primates demonstrate that THC can act as a strong positive reinforcer in animals and that its intravenous self-administration can be comparable in intensity to that of cocaine under identical conditions. Studies have also shown that THC can act as an effective positive reinforcer when administered directly into the ventricles of the brain (intracerebroventricularly) in rats and directly into the abdominal cavity (intraperitoneally) in mice. These animal studies support the observation that THC, whether smoked or administered by other routes, produces reinforcing effects in humans that can account for repeated abuse of marijuana. Finally, and most persuasively, there are numerous studies that show that both smoked marijuana and oral THC can serve as positive reinforcers in human subjects under laboratory conditions.

Marijuana and THC also have what scientists refer to as "discriminative stimulus effects," which means that test subjects can identify the specific stimulus effects caused by marijuana and THC, and they can differentiate those specific stimuli from those caused by other substances or from a placebo. A substance has greater potential for abuse if substance-specific effects can be identified. Accordingly, this type of study is routinely used within the scientific

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<sup>14</sup> TEDS does not include data on all patient admissions for substance abuse. It includes admissions to facilities that are licensed or certified by state substance abuse agencies to provide substance abuse treatment (or are otherwise tracked by the state agency).

and regulatory community to evaluate drugs for abuse liability. Animals, including primates and rats, can differentiate the stimulus effects of marijuana/THC from that of stimulants, other hallucinogens, opioids, barbiturates, or benzodiazepines.

Marijuana also produces dependence in laboratory animals and humans. While it is difficult to observe signs of spontaneous withdrawal in laboratory animals, THC-dependent animals treated with a particular cannabinoid antagonist (that abruptly displaces THC from its receptors in the drug-dependent animal's brain) will demonstrate withdrawal symptoms. These withdrawal symptoms include dramatic motor impairment, shakes, facial rubbing, front paw tremors, hunched posture, body tremors, ptosis (drooping eyelids), piloerection (raising of the hair coat), mastication, licking, rubbing and scratching. These withdrawal effects in animals support the findings that chronic use of marijuana by humans can result in the development of physical dependence.

Studies show that chronic use of marijuana or intake of THC by humans produces concrete signs of withdrawal such as restlessness, irritability, insomnia, mild agitation, nausea, cramping, sweating, tremors, chills and decrease in mood and appetite. The appearance of such withdrawal symptoms is evidence of physical dependence. The withdrawal syndrome begins less than 24 hours after cessation of marijuana use and resolves within 4 to 28 days. Studies indicate that most adults and many adolescents in treatment for marijuana dependence report a withdrawal symptom profile consistent with that observed in the laboratory. In a recent study of chronic marijuana abusers seeking treatment for their dependence, 85% of subjects reported at least moderately severe withdrawal symptoms, and 47% experienced symptoms rated as severe. The most reported mood symptoms associated with marijuana withdrawal were irritability, nervousness, depression, and anger. Other reported behavioral characteristics included craving, restlessness, sleep disruptions, strange dreams, changes in appetite, and violent outbursts.

Psychological dependence on marijuana is demonstrated by studies of drug cravings. A drug craving is an urge or desire to re-experience the drug's effects and is considered to be responsible, in part, for continued drug use and relapse after a period of drug abstinence. In a recent study of marijuana-dependent adults seeking treatment, 93% reported mild cravings for marijuana, while 44% rated their past craving as severe. The American Psychiatric Association recognizes cannabis dependence as a specific mental disorder in the DSM-IV characterized by three or more of the following symptoms: (1) cannabis tolerance (need for increased amounts to achieve intoxication); (2) use of greater amounts of cannabis than intended; (3) unsuccessful efforts to curtail use; (4) significant time spent using cannabis or recovering from hangovers; (5) reduction in social, occupational or recreational activities due to cannabis use; and (6) continued use of cannabis despite knowledge of persistent psychological and /or physical problems posed by use.

A second factor that indicates marijuana's abuse potential is its prevalence and frequency of use. As discussed in greater detail in the section on Actual Abuse Patterns and Trends (§ II.B(2)(a)(ii)), illegal marijuana use is widespread in the United States. Marijuana was the most commonly used illicit drug in 2006 with over 14.8 million people reportedly using the drug in the month preceding the survey. And, among persons age 12 or older who reported using any marijuana in the year preceding the survey, 12.3% reported using marijuana on 300 or more days in the past 12 months. This amounts to approximately 3.1 million people using marijuana on a daily or almost daily basis over a 12-month period.

The third indicator of abuse potential is the amount of the substance available for use. While marijuana is only available through legitimate channels for very limited research purposes, there is vast availability of illicit cannabis. Notwithstanding the staggering amounts of marijuana and marijuana plants that are seized and/or destroyed or eradicated each year by federal, state, and local law enforcement, marijuana continues to be illicitly grown in all states. It remains the most readily available illicit drug in the United States. Over a million kilograms per year of marijuana were seized by federal law enforcement between 2002 and 2006. And, in 2006 alone, over four and half million cannabis plants were destroyed in outdoor cannabis cultivation areas in the U.S. Further exacerbating the situation is the fact that the available marijuana is more potent than ever. According to the University of Mississippi's Potency Monitoring Project, the potency of all tested samples of marijuana has increased 52.4 percent between 2001 and 2006.

The factors discussed above essentially correspond to the discussion of abuse potential in the legislative history of the CSA. Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91-1444, 91<sup>st</sup> Cong., Sess. 1 (1970), reprinted in 1970 U.S.C.C.A.N. 4566, 4601. The legislative history noted three considerations in discussing how the government might evaluate a substance's potential for abuse: (1) individuals taking the substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; (2) significant diversion of the substance; and (3) individuals taking the substance on their own initiative (rather than on the basis of medical advice from a practitioner licensed by law to administer marijuana in the course of professional practice). The evidence discussed above satisfies the first two considerations. Notwithstanding the recent movement in certain states to permit the use of so-called "medical" marijuana, no medical practitioner is currently licensed by federal law to administer marijuana (outside of very limited research settings). Marijuana remains a schedule I drug with "no currently accepted medical use in treatment in the United States" and "a lack of accepted safety for use . . . under medical supervision." 21 U.S.C. § 812(b)(1). Accordingly, the third consideration is also met.

Having evaluated the primary factor—i.e., the nature of the illegal market for marijuana—for assessing whether DEA has a compelling interest in preventing the diversion of marijuana to non-religious users, we also must consider two additional factors: the publicity and reputation that marijuana garners among the general public and the form in which marijuana is available.

#### b. Publicity and Reputation

Notwithstanding the significant harms associated with marijuana use, it is frequently perceived by the public to be a harmless substance. Images of marijuana use in the mainstream media, including television and movies, contribute to this perception by glamorizing marijuana use and suggesting that marijuana is not hazardous to users. There are also numerous internet websites and message boards that encourage marijuana use and convey the impression that it is a harmless substance that can be used without adverse consequences.

A number of studies, several sponsored by the Office of National Drug Control Policy (ONDCP), demonstrate that visual, verbal and written references to marijuana and marijuana abuse are pervasive in mainstream media, including music videos, movies, song lyrics, television, websites and message boards. While references vary in the message they convey about marijuana use, references in music videos and movies in particular tend to present drug use in a favorable manner and frequently fail to show the consequences of illicit drug use.



Studies have shown that that perceptions based on media portrayals have a significant impact on marijuana use, especially by adolescents. In a longitudinal study of news media effects on adolescent marijuana use, researchers found that news media coverage had a significant impact on personal disapproval and perceived harmfulness of marijuana—two significant predictors of adolescent marijuana use. Likewise, adolescents' perceived risk associated with marijuana has been shown to have a strong influence on marijuana use. One study revealed that a decrease in the perceived risk of the harmfulness of marijuana by 8<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> graders surveyed between 1991 and 1996 was correlated with increased marijuana use by students in all three grades.

Furthermore, studies of both high school and college students reveal that perceived acceptability and perceived prevalence of use among peers are strong predictors of both intentions to use marijuana and actual marijuana use. Accordingly, the perception of marijuana as a harmless substance further contributes to the already overwhelming demand for marijuana by non-religious users. This, in turn, creates an even greater risk that marijuana will be diverted for illicit use.

#### c. Form of Substance

Petitioners are seeking a religious exemption for plant-material marijuana, which is the same form of marijuana that predominates the illicit market. As outlined above, plant material marijuana has a high potential for abuse and remains the most widely abused and readily available illicit drug in the United States. In addition, smoking marijuana is a powerful route of administration for producing euphoric and other subjective effects. The form of marijuana sought by the Church of Reality is likely to increase the risk of diversion because of the extraordinary demand.

Furthermore, the plants themselves are easily concealed in both outdoor grow areas and increasingly in indoor grow houses throughout the U.S. The plant material is also easily converted into marijuana cigarettes, which are extraordinarily simple to conceal, to transport, and to divert for recreational and other non-religious uses. Furthermore, as discussed above, laboratory testing reveals that over the last five years, the potency of marijuana seized by law enforcement has increased by over 50%.

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In summary, DEA has a compelling interest in enforcing the CSA's prohibition on marijuana use against religious users in order to prevent diversion of marijuana for recreational and other illicit uses. Marijuana has a high abuse potential. Despite marijuana's status as a schedule I controlled substance and despite continued efforts by federal, state and local law enforcement to seize and eradicate marijuana supplies, a significant demand for marijuana persists. It remains the most abused controlled substance in the U.S., with notable usage among young adults. The perception of marijuana as a "harmless" drug that is glamorized in the media and on the internet further contributes to the risk that it will be diverted for illegal purposes. And finally, marijuana can be easily concealed and transported, which adds to the burden that law enforcement faces in enforcing controlled substances laws and keeping even more supplies of marijuana from entering the pipeline available to recreational users.

### 3. Prior Court Decisions Upholding DEA's Compelling Interests

While the Supreme Court's *UDV* decision obligates DEA to address its compelling interests in the context of the religious user's specific use of marijuana (and we do so below), it is worth noting that there is "unanimous precedent establishing an overriding governmental

interest in regulating marijuana use.” *United States v. Rush*, 738 F.2d 497, 512-13 (1<sup>st</sup> Cir. 1984); *see also United States v. Greene*, 892 F.2d 453, 456-57 (6<sup>th</sup> Cir. 1989) (“Every federal court that has considered this issue has accepted Congress’ determination that marijuana poses a real threat to individual health and social welfare.”). Both pre-RFRA and post-RFRA cases provide useful guidance on this issue.<sup>15</sup> In 1989, the D.C. Circuit rejected the argument that accommodation of sacramental use of marijuana could be permitted without undue interference with the government’s compelling interests and noted that three other circuits agreed. *Olsen v. DEA*, 878 F.2d 1458, 1462 (D.C. Cir. 1989); *Rush*, 738 F.2d at 513; *Olsen v. Iowa*, 808 F.2d 652, 653 (8<sup>th</sup> Cir. 1986); *United States v. Middleton*, 690 F.2d 820, 824-25 (11<sup>th</sup> Cir. 1982). *See also United States v. Kuch*, 288 F.Supp. 439, 446 (D.D.C. 1968) (noting “substantial evidence that the use of marihuana creates a health hazard, is often the first step toward serious drug addiction in the progression to heroin, and is frequently associated with the commission of non-drug crimes, often crimes of violence.”).

Since the passage of RFRA in 1996, other courts have recognized that the government has a compelling interest in prohibiting marijuana notwithstanding the resulting burden on religious exercise. *United States v. Israel*, 317 F.3d 768, 771 (7<sup>th</sup> Cir. 2003) (government has compelling interest in enforcing prohibition on marijuana use despite claims of Rastafarian because “there is ample medical evidence establishing the fact that the excessive use of marijuana often times leads to the use of stronger drugs such as heroin and crack cocaine.”); *see also United States v. Jefferson*, 175 F.Supp.2d 1123 (N.D. Ind. 2001). Most recently, the district court held in *Multidenominational Ministry of Cannabis and Rastafari, Inc. v. Mukasey*, 2008 WL 914448 (N.D. Cal. March 21, 2008), that the government has a compelling interest in enforcing the CSA’s prohibition on marijuana. The court noted that the threat of diversion of marijuana was high, and the circumstances were further exacerbated by the fact that the plaintiffs intended to distribute marijuana to non-members. *Id.* at \*4-\*5.

### C. DEA’s Compelling Interest in Prohibiting the Church of Reality’s Use of Marijuana

In the preceding section, we established the government’s compelling interest in enforcing the CSA’s prohibition on the use of this *particular substance*, marijuana. Next, we consider whether the compelling interests discussed above are furthered by prohibiting the *particular uses* of marijuana sought by the Church of Reality and whether there are any less restrictive means available to further those interests. We find that the government’s compelling interests are best served by prohibiting both proposed uses and that there are no less restrictive means of furthering these compelling interests.

#### 1. Use of marijuana to inspire creative thinking

The Church of Reality’s first claimed use of marijuana—to inspire creative thinking—would jeopardize the government’s compelling interests in protecting public health and preventing diversion of marijuana for non-religious uses.

Church of Reality members who use marijuana to inspire creative thinking for their “religious” purposes are subject to the significant public health and safety harms of marijuana use catalogued above. These include, among other things, significant impairment of cognitive

<sup>15</sup> RFRA’s legislative history urges courts to look to free exercise cases that pre-date the Supreme Court’s decision in *Employment Division v. Smith*, 494 U.S. 872 (1990) “for guidance in determining whether the exercise of religion has been substantially burdened and that [] least restrictive means have been employed in furthering a compelling governmental interest.” S. Rep. No. 103-11 at 8-9 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1892, 1989, *cited with approval in Olsen v. Gonzales*, No. 07-0023 (S.D. Iowa) (July 16, 2007).

function, the potential emergence of psychotic symptoms, the development of psychological and physical dependence, respiratory and cardiovascular damage, and increased risk of motor vehicle accidents and fatalities. As we have discussed, the Church of Reality does not have any membership policy and therefore, is unable to define or identify its members. Your submissions acknowledge that over a thousand people subscribe to the Church's email list and that the Church has the potential for a very broad membership. According to your website, anyone who "thinks about reality for one minute a day" is "still a Realist" [and] "entitled to the right to practice their religion." [[www.churchofreality.org/wisdom/membership](http://www.churchofreality.org/wisdom/membership).] Thus, the harms of marijuana use by Church of Reality members have the potential to reach very large numbers of people.

Equally troubling is the fact that the Church of Reality places no limits on the amount of marijuana that church members may use or the frequency with which they use it. Accordingly, Church of Reality members (to the extent they can be identified as such) are particularly vulnerable to the harms of chronic and long-term marijuana use. While you claim to use marijuana three times a week and advise that your members use marijuana "infrequent[ly]," you candidly observe that the Church does not dictate how much marijuana members use, how often they use it, or the circumstances under which it is used. [2/19/07 Letter #1 p.6] Essentially, the Church of Reality places no restrictions on marijuana use, except that members exercise "good judgment." [2/19/07 Letter #1 p.8] This cannot override the government's compelling interests in protecting the public from the health harms and risks associated with marijuana use. Marijuana is not used by the Church of Reality in conjunction with any specific Church ritual or at any particular location, nor are there any restrictions placed on members' activity before or after using marijuana. Indeed, according to Church doctrine, members are practicing their religion whenever they think about reality, and are therefore entitled to use marijuana. We believe that this broad and potentially limitless use by Church of Reality members would only exacerbate the already significant public health and safety harms associated with marijuana use.

Your submissions note that the Church disagrees with DEA's evaluation of the medical and scientific data on the public health and safety risks associated with marijuana use. You note that "marijuana has been mischaracterized as a schedule 1 drug and that this characterization is not supported by good science." [2/19/07 Letter #1 p.8]. However, you offer no specific medical or scientific information whatsoever. As recently as 2001, DEA and HHS considered and evaluated the health and safety risks associated with marijuana in the context of a petition to reschedule marijuana under the CSA. 66 Fed. Reg. 20038.<sup>16</sup> Our review of the studies and literature published since 2001 has not altered our conclusions.

Furthermore, this use of marijuana by the Church would seriously compromise DEA's compelling interest in preventing diversion of marijuana for illegal uses. Marijuana is a schedule I substance under the CSA, and its use is strictly prohibited except for a very narrow and strictly regulated exception for research institutions. 21 U.S.C. § 872(e); 21 C.F.R. § 1301.13 & 1301.18. The broad exception sought by the Church of Reality would cause overwhelming harm to DEA's ongoing efforts to stem the tide of marijuana that is available for illegal use in this country.

The lack of a Church membership policy would allow this "religious exception" to be invoked by anyone who visits your website and agrees with its principles, or anyone "who thinks

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<sup>16</sup> See also *Gonzales v. Raich*, 545 U.S. at 15 n.23 ("The Court of Appeals for the District of Columbia Circuit has reviewed the petition to reschedule marijuana on five separate occasions over the course of 30 years, ultimately upholding the Administrator's final order.")



about reality for one minute a day.” [www.churchofreality.org/wisdom/membership] Federal, state, and local law enforcement would have no means to track, monitor, or control usage of marijuana. Furthermore, they could not verify a person’s claim of Church membership because the Church has no list of members, no membership policy, and a “principle of privacy” that prohibits inquiries into whether a person is a member. Your own submissions acknowledge that the Church is an “Internet-based religion,” resulting in “the potential for a very broad membership.” [2/19/07 Letter #1 pp. 2, 14] In essence, virtually anyone could claim membership in the Church, think about reality for some period, and entitle himself or herself to unrestricted marijuana use.

Even if membership were limited, Church doctrine places no restrictions on the marijuana that a “member” may use. Thus, if DEA were to allow this exception for the Church of Reality, we would be permitting untold numbers of Church “members” to use unspecified and unlimited quantities of marijuana. Because the Church has no specific ritual associated with marijuana use and no specific central location where marijuana is used, these quantities of marijuana would be consumed in small groups and on an individual basis in people’s homes. As documented above, DEA and its partners in federal, state and local law enforcement already face an extraordinarily difficult challenge to enforce the CSA’s prohibition on marijuana. This particular exception would put indeterminate quantities of marijuana into circulation and authorize its use in decentralized locations, including private homes, without any limitations other than the Church’s exhortation to “use good judgment.” In addition, because of the decentralized nature of the Church’s use of marijuana, there is no central facility for storage purposes. This would create significant security issues, and further contribute to the burden of keeping marijuana from being used for illegal purposes.

The Church also seems to blur the line between religious, “therapeutic,” and recreational use of marijuana. While your submissions explain in some detail that the Church uses marijuana for creative thinking to allow members to contribute to the “Tree of Knowledge,” you have also candidly acknowledged that your members would use marijuana for numerous other purposes:

We see marijuana as a drug that inspires creative thinking as well as having significant medical benefits and the ability to lower stress. We consider it to be superior in many cases to antidepressants and good for people who have anger issues they need to control. . . . Marijuana would be used as a substance to inspire creative thinking, for medical purposes, relaxation, and socially like social drinking.

[2/19/07 Letter #1 p.6] This nebulous grouping of religious, “medical,” therapeutic, and recreational uses would make it virtually impossible for law enforcement to determine, track and monitor whether Church members were using marijuana for religious purposes or one of the other three uses for which there is no exception to the CSA under RFRA.

Furthermore, an exception for Church of Reality members would not limit the availability of marijuana to only those members. While you state in one of your submissions that it is not Church policy to share marijuana with non-members [2/19/07 Letter #1 p.8], this is contradicted by your statement that Church members are affirmatively obligated to share marijuana with anyone, including non-members, as an act of compassion if the Church member believes that someone would medically benefit from marijuana. [3/19/07 Letter pp.4-5] This Church-sanctioned distribution of marijuana would only place more into the pipeline and further harm efforts to prevent diversion.

In addition to placing more marijuana into circulation for diversion for illegal purposes, an exception for the Church of Reality would create a new market by encouraging non-members to violate the CSA in order to supply the Church's potentially limitless "membership" with unspecified quantities of the drug. This would encourage more suppliers to grow marijuana illegally and increase the challenges faced by law enforcement.

Your submissions contend that the Church of Reality's use of marijuana would not impact law enforcement. First, you claim that storage and security of marijuana would not be a problem because you are "only talking about small quantities" and a "member's possession will be limited to personal use quantities." [2/19/07 Letter #1 pp. 6, 11, 13-14] However, what constitutes "small" or "personal use" quantities is subjective. The Church of Reality's doctrine places no specific limits on the amount of marijuana that a member may use, and possession of any amount of an illegal controlled substance that is in great demand is likely to present security problems. You further indicate that the Church advocates "responsible use of drugs and not drug abuse" and would not "be a source that obtains and leaks supply to 'the street.'" [2/19/07 Letter #1 p. 11] However, the vast potential reach of your membership and the indeterminate quantities of marijuana involved make this guarantee virtually impossible to fulfill. The Church intends, according to your submissions, to acquire marijuana through what you refer to as "legal channels," such as the "medical marijuana" dispensaries in California. [3/24/06 Letter pp. 1-2; 2/19/07 Letter #1 p.13] Regardless of what may be permitted under state law, these dispensaries are not legal under the CSA. Indeed, by obtaining marijuana from these sources, Church members would only be contributing to the illegal supply chain for marijuana.

## 2. Distribution of marijuana and use by the sick and the dying

For substantially the same reasons discussed above, we similarly conclude that the Church of Reality's second claimed "religious" use of marijuana—for use and distribution to the sick and dying—would irreparably harm the government's compelling interests in protecting public health and safety and preventing the diversion of marijuana for non-religious use.

First, notwithstanding your claims to the contrary, this so-called "medical"<sup>17</sup> use of marijuana would subject users to all of marijuana's public health and safety harms. We understand that you disagree with DEA (and HHS's) determinations that there is no currently accepted medical use for marijuana. However, nothing in your petition has changed DEA's judgment about the public health and safety harms of marijuana use outlined in the previous sections. Regardless of the intentions of the user or the distributor of the marijuana, the health and safety consequences of its use remain the same.

The same is true with respect to the government's compelling interest in preventing diversion of marijuana for illegal use. Your submissions do not suggest any limitation on the amount of marijuana that a member is obligated to distribute to the sick or on the number of people to whom marijuana may be distributed. Accordingly, this exception has the potential to place large amounts of marijuana into wide circulation. Church members are obligated to give marijuana to non-members "to relieve the pain and suffering." [3/19/07 Letter p.5] Use of marijuana by these non-members is, by definition, a non-religious and illicit use of marijuana.

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<sup>17</sup> We use the term "medical" in quotations marks because it is our understanding that your members would be free to provide marijuana "for the purpose of protecting the health of the individual we feel compassion for" without input from any medical professional. [5/24/07 Letter p.3] Furthermore, regardless of whether marijuana is recommended by a physician or other medical professional, it remains a schedule I substance for which there is no currently accepted medical use.

Thus, this distribution of marijuana by Church of Reality members has the potential to increase the illegal usage of marijuana by the public significantly. See *Multidenominational Ministry of Cannabis and Rastafari, Inc.*, 2008 WL 914448 at \*5. Also, as noted above, you propose that members would keep these “personal use quantities” of marijuana in their homes, as opposed to any central location. [2/19/07 Letter #1 pp. 7, 9] This lack of appropriate security measures creates even more opportunities for theft and diversion for recreational use.

### 3. Least Restrictive Means

We conclude that in light of the health and safety risks of marijuana, the high demand for this substance, and the pervasive marijuana abuse problem in this country, enforcement of the CSA’s prohibition on marijuana use in this particular case is the least restrictive means to further the government’s interests in preventing illegal diversion of marijuana for recreational and other non-religious uses and protecting public health and safety.<sup>18</sup>

In this specific case, there is no less restrictive means for effectuating the governmental interests involved. The Church has proposed no less restrictive means of enforcing the CSA that might mitigate the health and safety harms associated with marijuana use, and we cannot conceive of any either. Likewise, the unconstrained, decentralized, and potentially widespread marijuana use permitted under Church doctrine simply cannot be accommodated in a manner that would allow DEA to pursue its compelling interest in preventing illegal diversion of marijuana to recreational and other non-religious users. See *Multidenominational Ministry of Cannabis and Rastafari, Inc.*, 2008 WL 914448 at \*5.

The alternatives or limitations proposed by the Church of Reality are simply not less restrictive means of furthering the government’s compelling interest. First, you argue that the issues presented by your petition are identical to that of the plaintiffs in the *UDV* decision. [3/24/06 Letter p.1; 9/21/07 Letter p.3] Pursuant to a preliminary injunction entered in the district court, the UDV is currently permitted to use small amounts of sacramental hoasca tea during a specific religious ritual. However, the facts of the UDV litigation are much different from the facts here. As discussed extensively above, marijuana presents a severe diversion problem due to the immensity of the demand and the extraordinary abuse problem in this country. In the UDV case, the plaintiffs “emphasized the thinness of any market for hoasca, the relatively small amounts of the substance imported by the church, and the absence of any diversion problem in the past.” 126 S.Ct. at 1218. In contrast, the market for marijuana in the United States is robust. The Church of Reality places no inherent limits on the amounts of marijuana, the frequency of use, or the circumstances under which it is used by Church members. Nor is the Church of Reality entitled to any exemption along the lines of that permitted for peyote use by the Native American Church (NAC). The NAC exemption was created pursuant to

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<sup>18</sup> As a preliminary matter, we note that courts have previously rejected similar requests for exceptions by other religious groups seeking to use marijuana on the grounds that they were inconsistent with the government’s compelling interest in preventing diversion for non-religious purposes. See *United States v. Israel*, 317 F.3d 768, 772 (7<sup>th</sup> Cir. 2003) (rejecting Rastafarian’s claim to use marijuana on ground that “any judicial attempt to carve out a religious exemption in this situation would lead to significant administrative problems”); *United States v. Jefferson*, 175 F. Supp.2d 1123, 1131 (N.D. Ind. 2001) (rejecting Rastafarian’s claim to use marijuana on ground that his acquisition of marijuana extends beyond his personal consumption, “requires him to engage others in illegal activity,” and “perpetuates illegal drug distribution”); *Olsen v. DEA*, 878 F.2d 1458 (D.C. Cir. 1989) (rejecting claim for exception for marijuana use after concluding that Ethiopian Zion Coptic Church could not be accommodated without undue interference with the government’s interest in controlling the drug).



the United States's unique trust obligation to Native American tribes,<sup>19</sup> which is not applicable to the Church of Reality.

The other limitation you propose is to limit your request for an exemption to the Church of Reality's Council of Realists, its "clergy" and its monks. [2/19/07 Letter #1 p.14] In your May 24, 2007 submission responding to DEA's inquiries, you described the Council of Realists as the Church of Reality's three member Board of Directors, which includes yourself:

We [also] have very few clergy and they are appointed by me. They are people who have important blogs or radio talk shows who are preaching the Gospel of Reality. Monks are volunteers who do things for the church. A person who creates art work for the web site would be an art monk. Someone who corrects spelling errors is a spelling monk. We have people who are philosophy monks, advertising monks, and administrators of the Reality Development Lab monks. All these currently represent a few dozen people.

[5/24/07 Letter p.4]

We do not believe that this limitation is a feasible means of achieving the government's compelling interests. First, this limitation of the exception to a few select members of the Church of Reality does not appear to be consistent with the doctrine of the Church as you have described it. Your description indicates that Church members are obligated to contribute to the Tree of Knowledge and that marijuana is used for the creative thinking required to make those contributions. [2/19/07 Letter #1 pp. 1-2, 11; 5/24/08 Letter pp. 2-3] Accordingly, we do not believe this artificial limitation would be self-enforcing. For DEA to attempt to enforce such a restriction in light of the Church's expansive teachings would be extraordinarily difficult. *See Olsen v. DEA*, 878 F.2d at 1462 (making similar determination with respect to limitations proposed by Ethiopian Zion Coptic Church). Second, we believe that even this limitation would permit marijuana use by a potentially large number of people. While it "currently" would only apply to a "few dozen people," the lack of *bona fide* qualifications for monks and clergy means the group could be significantly expanded. For example, by your own description, anyone who volunteers for the Church in any capacity would be a monk and be eligible for the marijuana exemption. Third, even if the number of persons eligible for the exemption were more narrowly limited, we conclude that the Church's lack of constraints on member usage and the lack of an associated ritual present an insurmountable diversion problem. Furthermore, since all members are obligated to share marijuana with others "for the purpose of protecting the health of . . . individual[s] [you] feel compassion for" [5/24/07 Letter p.3], an exception for the Council of Realists, clergy and monks would still amount to an open-ended exception for distribution of marijuana to non-members for non-religious uses. This would jeopardize the government's compelling interests in public health and safety as well as prevention of diversion.

Finally, we can conceive of no less restrictive means of permitting the Church of Reality to distribute marijuana to the sick and the dying. As noted above, permitting this exception would allow the creation of a massive distribution network for so-called "medical" marijuana.

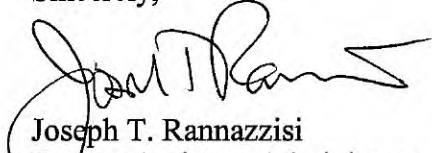
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<sup>19</sup> "The Congress shall have the Power To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. article I, section 8, clause 3.

Accordingly, we reject this use on the ground that we cannot tailor the restriction to accommodate the Church of Reality and still protect against the misuses that the CSA seeks to prevent.

DEA considers this letter to be a final determination under 21 U.S.C. § 877.

Sincerely,



Joseph T. Rannazzisi  
Deputy Assistant Administrator  
Office of Diversion Control