THE LAW OF ENTHEOGENIC CHURCHES IN THE UNITED STATES

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FOREWORD AND ACKNOWLEDGEMENTS

My foray into the law of entheogenic churches began immediately after I published my first book, "Psychedelics in Mental Health Series: Psilocybin" back in June of 2020. The same week I published that book, I wash asked about my knowledge of the law concerning the legality of entheogenic churches in the United States. Not knowing much, if any, about that specific area of law, I dove head-first into the research. Within a month, I had covered most, if not all the cases and statutes concerning free exercise of religion, especially as it relates to consuming entheogenic sacraments.

Eventually, I was asked to consult several ayahuasca churches on getting their paperwork in order so they could go "above board." Over the span of about six months, I participated in approximately fifteen of these projects. Along the way, I was inspired to create the website www.entheoconnect.com, which will provide a worldwide social media platform for those in the entheogen/spirituality community, as well as ceremony and retreat listings in the U.S. and abroad.

Even before I sat down to write my first book, I decided that I would dedicate my life to the widespread legalization and acceptance of entheogens across the world. Seeing the mass decay in mental and spiritual health around the world, I knew these substances could provide the relief that many seek but never find through traditional western medicine. To

that end, I have worked non-stop since June 2020 to push the movement ahead.

I see the movement or push towards overall legalization and acceptance of entheogens split into three separate camps: research, decriminalization, and religion. The research community has obviously been flourishing over the last ten years or so, especially regarding psilocybin. Great strides have been made showing psilocybin to be both safe and efficacious. Next, the decriminalization movement, particularly in the U.S., has also made great strides over the last several years getting numerous local measures passed. Most notably, Decriminalize Nature was able to get a decriminalization measure passed in Washington D.C. in November 2020. For me, this was a great signal that people's attitudes towards these medicines was starting to shift. Lastly, the religious use of entheogens also plays a significant role in the movement and has made great strides over the last several years. For most, attending an entheogenic ceremony or retreat will be their only way to legally engage these medicines until the laws change.

While I am a subscriber to the religious use of entheogens, I do not under value the importance of the decriminalization movements or the research. As will be discussed later in this book, the research plays a significant role in Religious Freedom and Restoration Act claims. Every time a clinical dose of psilocybin is administered without incident, it bolsters a religious adherent's claims that the sacrament is safe, which factors into a RFRA analysis. Moreover, the decriminalization movement cites to clinical trials in the laws and ordinances they push on local municipalities. Therefore, the research is very much the cornerstone of this overall push towards widespread legalization and acceptance of entheogens.

I would like to thank my business partner Hector. When him and I met back in July, it was as if we had known each other our whole lives. Since then, we have grown as close as brothers and have seen each other grow mentally and spiritually since that time. I chose to go into business

with Hector because I know that he has the heart and spirit to make a project like EntheoConnect a success.

I would like to thank Kevin Ferry of Ferry Law in Connecticut. Mr. Ferry is one outstanding individual who has supported the EntheoConnect project, no questions asked. When we met at a gathering in Virginia, I knew that he was a very grounded and spiritual man. We are now working on some non-profit projects together and I have no doubt we will be able to positively impact thousands of lives through that work. I look forward to working with you brother. Much Love!!!!

I would like to thank all of the people that run the ceremonies and retreats I have worked with over the last six months. Thank you for putting your faith in me. It has been such an honor to be involved in these projects. It is the first time in my life that I have been so closely connected with something much larger than myself. Doing the work for y'all has given me a sense of fulfillment I never had before. At the end of the day, y'all are the real heroes in all of this. And I have no doubt that history will look back at all of us very kindly. Keep fighting the good fight!!!!

I would like to thank my web developers at TCB Solutions in Baton Rouge, Louisiana. Specifically, I would like to think Brad and Tim. I will never forget when I asked Brad to get me a meeting with his boss, Tim, about EntheoConnect. My thoughts were "this guy will never want anything to do with this project." Instead, I was told how interested Tim was and everyone at the company has shown a superior level of commitment since the first day we started running. I look forward to many years of fruitful projects with y'all. Much Love!!!

I want to thank the guys at Curious Chimps podcast. I have been on the show twice since I published my first book. Please keep doing the work you do or as you call it your "labor of love." These are very special times we are living in and everything you do highlights all the best aspects of these times. I wish y'all the best in the future and I am looking forward to stopping back in early next year after I get this book published. Much Love!!!!!

I would like to thank Jonathan Glazer of the Thank You Plant Medicine Community. I was kind of in my feelings a bit when we met, but quickly connected on a very real level. Shortly thereafter, he had me come on for a live Facebook talk in the Thank You Plant Medicine Facebook group. It was a great talk, and I am grateful for it. I will continue to support the Thank You Plant Medicine Community any way I can. Much Love!!!!

I would like to acknowledge all Facebook group administrators that allow people in this space to advertise and promote. If we view everything we do in this space as a movement towards general acceptance and legalization of entheogenic sacraments, then supporting those that stick their neck out and try to make a living in this space is as crucial as lobbying the legislature. The more people we can support in this space the better. The more people who are able to live comfortably, while expending all their efforts into this space, the better off we will be in the long run. Many of these group administrators are enemies of the movement and do not even know it. By shunning those that pour their heart and soul into producing works that strengthen this movement, you are working against everything those of us who care are trying to build. If we cannot support those producers within this community, how do we expect those same people to go out and change the minds of people outside this community? Would a ten-year old kid feel comfortable acting in a school play if their parents told them not to practice or recite their lines at home? Love and support is the name of the game. All I ask is to act consistent with the messages you receive from the plant teachers. Much Love!!!!

I would like to thank Ms. Eva Ars. Ms. Eva is a Russian born medicine woman in Bulgaria. I had been searching for over five years for a balance of feminine energy in my life. I needed someone who understood the intricate balance of energy exchanges between the divine feminine and divine masculine. In her I found this person. My life changed

in a very significant way once we started talking and exchanging energies. I look forward to many more years with you in my life!!!! AHO!!!! Much Love!!!!!

One special acknowledgement I would like to make is Ms. Emily Collins with Union Tribe Church in the DC area. She is a very special person and is very committed to this movement. I had the privilege of attending one of her ceremonies just prior to the election this year. It was a very special time, and I am extremely grateful for the opportunity. The ceremony was incredible. I look forward to many more years working in tandem with you to keep pushing this movement along. AHO!!!! Much Love!!!!

CHAPTER 1

THE RELIGIOUS FREEDOM AND RESTORATION ACT

I must begin this book with the following disclaimer: **NOTHING IN THIS BOOK IS MEANT TO BE OR SHOULD BE CONSTRUED AS GIVING LEGAL ADVICE TO ANY OF MY READERS; NOR DOES THIS BOOK DOES NOT ESTABLISH A LAWYER-CLIENT RELATIONSHIP BETWEEN MYSELF AND ANY OF MY READERS.**

This chapter will discuss the Religious Freedom and Restoration Act of 1993 ("RFRA")[1] and U.S. Supreme Court precedent both prior and subsequent to passage of the Act. The Religious Freedom and Restoration Act is the cornerstone of free exercise of religion at both the federal and, to a large extent, the state level. Specifically, as it relates to entheogenic churches and retreats, the RFRA provides the primary legal protection. As we will see, the RFRA was passed in response to a case out of Oregon wherein a law was upheld which denied unemployment benefits to a native American man who used peyote as a religious sacrament.

1 42 U.S.C. § 2000bb et. seq.

A. Pre-RFRA Case Law

The Religious Freedom and Restoration Act of 1993[2] was passed by the United States Congress in 1993 as a response to the U.S. Supreme Court's decision in *Employment Division Department of Human Resources of Oregon v. Smith*.[3] In *Smith*, the Supreme Court held the Free Exercise clause of the First Amendment does not prohibit governments from burdening religious practices through generally applicable laws.[4] The Supreme Court rejected the challenge to the Oregon statute at issue, which denied unemployment benefits to drug users, including Native Americans engaged in the sacramental use of peyote.[5]

In a nutshell, the Supreme Court's decision in *Smith*[6] was a radical departure from its prior holdings in *Wisconsin v. Yoder*[7] and *Sherbert v. Verner*.[8] Under the *Yoder* regime, a court might well grant a "free exercise" exception to an otherwise illegal religious practice if: (1) the religion was of a respectable vintage; (2) it was recognized as a legitimate faith; (3) the beliefs were sincerely held; (4) the practice which was proscribed by law did not cause others any direct harm; and (5) uniform application of the law was not essential to maintaining public order.[9]

Under the *Yoder*[10] regime, laws of general applicability were subject to the above-mentioned case-by-case analysis. Laws of general applicability are laws that apply equally to everyone across the board. In other areas of constitutional law, these types of laws are generally presumed to be constitutional. However, according to the Supreme Court's decision

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2 42 U.S.C. § 2000bb et. seq.

3 494 U.S. 872 (1990).

4 Id.

5 Id. at 890.

6 Id.

7 406 U.S. 205 (1972).

8 374 U.S. 398 (1963).

9 *Yoder*, 406 U.S. at 235-36.

10 406 U.S. 205 (1972).

in *Yoder*,[11] as it relates to "free exercise" of religion, a case-by-case analysis of the religious beliefs and the government's interest in enforcing the law at issue were required.[12] As we will see, the RFRA requires a case-by-case analysis very similar to that promulgated in *Yoder*,[13] even when the challenged law is one of general applicability like the Oregon unemployment law challenged in *Smith*.[14]

The Supreme Court's decision in *Smith*[15] eliminated the prior case-by-case approach required under *Yoder*.[16] Under *Smith*,[17] laws of general applicability, which did not target any specific religion, would be held constitutional even if they had secondary effects of burdening religious exercises. Basically, the Oregon unemployment statute which denied benefits to drug users applied to all peoples in the State of Oregon, regardless of their religion, and was therefore constitutional.[18] Thus, the *Smith*[19] decision represented a radical departure from *Yoder*[20] and its progeny.

The takeaway here is this: Under *Yoder*, if a religious exercise was technically illegal, the courts would examine the public interest served by the law and weigh it against the religious practice at issue. Upon balancing, if the religious exercise does not affect or directly harm other people and/or usurp any compelling governmental interest, it was a protected activity. This test would have been applied regardless of whether the law

11 Id.

12 During the *Yoder* era, even some state courts held that drug laws forbidding the use of hallucinogens impermissibly infringed on the Native American Church's use of peyote during religious ceremonies. See *State v. Whittingham*, 19 Ariz. App. 27, 504 P.2d 950 (Ariz.Ct.App. 1973); *Whitehorn v. State*, 561 P.2d 539 (Okla.Ct.Crim. App. 1977).

13 Id.

14 494 U.S. 872 (1990).

15 Id.

16 406 U.S. 205 (1972).

17 494 U.S. 872 (1990).

18 Id.

19 Id.

20 406 U.S. 205 (1972).

generally applied to all people or if it targeted a particular religious exercise. All laws would undergo the same analysis. However, the Supreme Court's decision in *Smith* did away with that analysis all together. Under *Smith*, generally applicable laws were deemed to be constitutional regardless of its effects on any particular religious exercise; there would be no more case-by-case analysis conducted for laws that were generally applicable. In the next section, we will see how congress reacted to the Supreme Court's decision in *Smith*.

B. The Religious Freedom and Restoration Act of 1993

As stated above, the Religious Freedom and Restoration Act of 1993[21] was passed in direct response to the Supreme Court's decision in *Smith*.[22] The support in Congress for the RFRA was largely bipartisan. Considering its swift response to the Supreme Court's decision and the language contained in the statute, Congress clearly disapproved of the result reached in *Smith*. The first section of the RFRA, entitled "Congressional Findings and Declaration of Purpose" states the following:

> **(a) Findings:** The Congress finds that—
>
> (1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;
>
> (2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;
>
> (3) governments should not substantially burden religious exercise without compelling justification;
>
> (4) in *Employment Division v. Smith*, 494 U.S. 872

21 42 U.S.C. § 2000bb et. seq.

22 494 U.S. 872 (1990).

(1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) **Purposes** The purposes of this chapter are—

(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and,

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.[23]

This section makes clear Congress was not impressed with the Supreme Court's decision in *Smith* and desired to reinstate the *Yoder* regime. To that end, Congress, through enacting the RFRA, mandated a case-by-case analysis of any law that operates to substantially burden a person's free exercise of religion, regardless is the law is facially neutral (generally applicable) or not.

The next section of the RFRA lays out the test to be applied by the courts in "free exercise" cases:

(a) In general: Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b);

(b) Exception: Government may substantially burden a

23 42 U.S.C. § 2000bb.

> person's exercise of religion only if it demonstrates that application of the burden to the person-
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest.
>
> **(c)** Judicial relief: A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.[24]

This section of the RFRA lays out the test to be applied by federal courts in determining whether a particular religious exercise is protected from government interference in any given case. Again, this section is basically a codified version of the pre-*Smith* tests espoused in *Yoder* and its progeny. As we will see in the next chapter, what constitutes an "exercise of religion" has been defined by the federal courts and in and of itself is a whole other field of inquiry which must be undertaken in appropriate cases.

It is worth noting here that a religious claimant may both assert the RFRA as a claim and a defense. As we will cover in the next chapter on RFRA claims, in most cases involving entheogenic churches, the organizations assert a claim against the government before any criminal charges have been filed or arrests made. In a nutshell, government action, usually through the DEA, comes to a point where the imminent threat of prosecution becomes so great it rises to the level of a "substantial burden" on an individual's exercise of religion, thereby giving the organization standing to sue the government in federal court under the RFRA.

As to what constitutes a protected "exercise of religion," RFRA

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24 42 U.S.C. § 2000bb-1

defines that as "the exercise of religion under the First Amendment to the Constitution".[25] Again, we will delve further into what "the exercise of religion under the First Amendment to the Constitution" means in the next chapter. It is important to know the federal courts have developed workable tests over the years that help to define exactly what exercises of religion are protected by the First Amendment.

The takeaway here is this: Congress did not like the result reached by the Supreme Court in *Smith*, a case involving the sacramental use of peyote. In response, Congress enacted the RFRA, which mandates all religious exercise cases be examined on a case-by-case basis, regardless of whether the law at issue is facially neutral (generally applicable) or not. This represents prior Supreme Court precedent under the *Yoder* regime, which predated the *Smith* decision.

C. The Federal Religious Freedom and Restoration Act does not Apply to the States: City of Boerne v. Flores.[26]

In 1997, in the seminal case *City of Boerne v. Flores*,[27] the Supreme Court held the federal Religious Freedom and Restoration Act does not apply to the states. I will forego an extensive and exhaustive review of the constitutional law and principles underlying the rationale in this case to keep this book understandable and relatable to the lay reader. However, it is very important for the reader to understand, especially in the context of entheogenic churches, that the federal RFRA does not apply to state or local authorities. Therefore, whether an entheogenic church will be fully protected will not only depend on the federal RFRA, but also depend on state laws regarding the free exercise of religion. This fact underscores the importance of retaining competent counsel in these areas to assist in drafting church filings, doctrine, and practices.

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25 42 U.S.C. § 2000bb-2.

26 521 U.S. 507 (1997).

27 Id.

Luckily, in response to the Supreme Court's decision in *City of Boerne v. Flores,* many states adopted their own analogous RFRA statutes. At this time, to the best of my knowledge, 21 states have adopted analogous RFRA statutes, which includes the following:

Jurisdiction	Statute
Alabama	Ala. Const. Art. I §3.01
Arizona	Ariz. Rev. Stat. §41-1493.01
Arkansas	2015 SB 975, enacted April 2, 2015
Connecticut	Conn. Gen. Stat. §52-571b
Florida	Fla. Stat. §76.01, et. seq.
Idaho	Idaho Code §73-402
Illinois	Ill. Rev. Stat. Ch. 775, §35/1, et. seq.
Indiana	2015 SB 101, enacted March 26, 2015; 2015 SB 50, enacted April 2, 2015.
Kansas	Kan. Stat. §60-5301, et. seq.
Kentucky	Ky. Rev. Stat. §446.350
Louisiana	La. Rev. Stat. §13:5231, et. seq.
Mississippi	Miss. Code §11-61-1
Missouri	Mo. Rev. Stat. §1.302
New Mexico	N.M. Stat. §28-22-1, et. seq.
Oklahoma	Okla. Stat. tit. 51, §251, et. seq.
Pennsylvania	Pa. Stat. tit. 71, §2403
Rhode Island	R.I. Gen. Laws §42-80.1-1, et. seq.
South Carolina	S.C. Code §1-32-10, et. seq.
Tennessee	Tenn. Code §4-1-407
Texas	Tex. Civ. Prac. & Remedies Code §110.001, et. seq.
Virginia	Va. Code §57-2.02

Now it is important to remember that just because these states enacted RFRA legislation, many even in direct response to the *City of Boerne v. Flores* decision, it can not necessarily be inferred their protections would extend as far as the federal RFRA statute. However, it is reasonable to infer, at least to some degree, that these states did intend to extend the same amount of protection, or greater, by enacting their own RFRA statutes.

As we will see in the next chapter, federal case law has supported the sacramental use of ayahuasca as a protected activity pursuant to the federal RFRA statute, in certain instances. In fact, the federal RFRA statute was enacted in response to the *Smith* decision, which was a case where a Native American man was denied unemployment benefits because of his use of peyote as a religious sacrament. Therefore, there is no doubt Congress at least had entheogenic sacraments in mind when they enacted the federal RFRA in 1993. By extension, it would also be fair to say the states which enacted analogous RFRA statutes, were also aware of the *Smith* decision and Congress's swift response in enacting the federal RFRA statute. A valid argument could be made that the states would have specifically excepted entheogenic sacraments from their RFRA statutes, had they not intended to extend religious protection to their use. As we will see, in 2006 the Supreme Court upheld the ceremonial use of ayahuasca as a protected religious activity under the federal RFRA statute. It can be strongly inferred, in my opinion, that any state RFRA statute enacted subsequent to that decision, which doesn't specifically except entheogenic sacraments from its purview, would include them in appropriate circumstances as a protected activity.

Note on State v. Mack[28]

In *State v. Mack*, the New Hampshire Supreme Court decided that its freedom of religion constitutional provision required a RFRA-type analysis

28 State v. Mack, No. 2019-0171 (N.H. Dec. 22, 2020).

when laws of general applicability were challenged.[29] In *Mack*, the defendant was a member of the Oklevueha Native American Church and had been practicing shamanic, earth-based religions for several years.[30] In 2017, the defendant was found in possession of psilocybin mushrooms, which were tucked away in a safe in his home.[31] Later, in April of 2018, he was indicted for possessing the psilocybin mushrooms[32] The trial court conducted a hearing and denied the defendant's motion to dismiss the indictment pursuant to Part I, Article 5 of the New Hampshire Constitution, which reads as follows:

> "Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship."

The defendant appealed the trial court's decision. The New Hampshire Supreme Court then had to decide whether the defendant's actions, in possessing and consuming psilocybin mushrooms in his own home, constituted a disturbance of the public peace. Without going into laborious details about the intricacies of the Court's analysis, suffice it to say that the New Hampshire Supreme Court decided that its constitution

29 Id.
30 Id. at *2.
31 Id. at *3.
32 Id.

required an analysis similar to the RFRA, when laws of general applicability were challenged under Article I, Part 5 of the New Hampshire constitution.[33]

This decision is important for several reasons. First, it showed that state supreme courts are willing to depart from the Supreme Court's decision in *Smith*, in favor of a RFRA-type analysis. Second, it showed that sacraments beyond just ayahuasca will be taken seriously and that courts will uphold religious exercises which include consuming such sacraments, in the appropriate circumstances. Lastly, I have a client who runs an ayahuasca retreat in New Hampshire. Him and I did a YouTube video on this decision, as it boosted our confidence in the legality of his religious practice, especially at the state level.[34]

It is important to keep in mind as we move forward, that free exercise claims are decided on a case-by-case basis. There is no blanket protection for the sacramental use of entheogenic sacraments. However, as we examine the precedent on this issue, we will be able to discern which facts are important to the courts in deciding these cases. This in turn helps inform us on how to structure entheogenic churches, ceremonies, and retreats in a manner most likely to be protected by the courts under the federal and state RFRA statutes. This chapter was merely the framework from which everything in the subsequent chapters is built.

33 State v. Mack, No. 2019-0171 at *19.

34 https://www.youtube.com/watch?v=rFR8rrJ8SIE&t=4s

CHAPTER 2

CLAIMS AND DEFENSES UNDER THE RELIGIOUS FREEDOM AND RESTORATION ACT: A CASE LAW SURVEY

In this Chapter I will dissect claims and defenses under the Religious Freedom and Restoration Act. Specifically, I will address the federal courts' analysis of RFRA claims made by ayahuasca churches. The two cases I will address are *O Centro Espirita Beneficiente v. Ashcroft*[35] ("UDV case") and *Church of Holy Light and Queen v. Mukasey*[36] ("Santo Daime case"). In these cases, the federal courts conduct an analysis under the RFRA as applied to the consumption of ayahuasca as a religious sacrament. From these analyses, we can get a feel for what the federal courts will consider in determining whether any specific religious practice incorporating the consumption of entheogens is exempt from the Controlled Substances Act[37] pursuant to the RFRA.

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35 342 F.3d 1170 (10th Cir. 2003); I will also discuss the Supreme Court decision in this case (*Gonzales v. O Centro Espirita Beneficiente Uniao Vegetal*, 546 U.S. 418 (2006)).

36 Church of Holy Light of Queen v. Mukasey, 615 F.Supp. 2d 1210 (D. Or. 2009).

37 21 U.S.C. § 801 et seq.

The first section in this Chapter will examine what constitutes a "religious" practice or exercise under the RFRA. The next two sections will examine the government's burden in RFRA claims in the context of the two above-mentioned cases. The last section will contain a "takeaway" of what can be gleaned from the courts' analysis in these two cases.

A. CLAIMANT'S BURDEN UNDER THE RFRA: "A SUBSTANTIAL BURDEN ON A SINCERE RELIGIOUS EXERCISE."

When asserting a claim or defense under the RFRA, the plaintiff/defendant must first establish the government action has imposed a substantial burden on a sincere exercise of religion.[38] At the outset, I would like to note in the UDV case, the government conceded that the Controlled Substances Act placed a substantial burden on the UDV's sincere exercise of religion.[39] However, in the Santo Daime case the government did not concede this point and disputed both the sincerity of the church's religious beliefs and whether their use of sacramental ayahuasca constituted a "religious exercise."[40] I will cover the district court's analysis in the Santo Daime case later in this chapter, but suffice it to say for now the district court had no problem finding the church met their burden of proof under the first prong of their RFRA claim.[41]

1. What Constitutes "Sincere".

What constitutes sincerity in the context of a RFRA claim? Unfortunately, there is no "bright line" test to determine whether a religious belief is sincerely held. For the most part, that determination is primarily made

38 *O Centro Espirita Beneficiente v. Ashcroft*, 342 F.3d 1170, 1173 (10th Cir. 2003).

39 Id.

40 *Church of Holy Light of Queen v. Mukasey*, 615 F.Supp. 2d at *18-19.

41 Id.

through an assessment of the claimant's credibility.[42] The Fifth Circuit shares this sentiment on a Court's foray into determining sincerity, "[t]hough the sincerity inquiry is important, it must be handled with a light touch, or 'judicial shyness.'"[43] "[E]xamin[ing] religious convictions any more deeply would stray into the realm of religious inquiry, an area into which we are forbidden to tread"[44]; "…claims of sincere religious belief in a particular practice have been accepted on little more than the plaintiff's credible assertions."[45]

Unfortunately, in the Santo Daime case the government argued the fact the church conducted ceremonies in secrecy for a period of time, was evidence their consumption of ayahuasca wasn't a sincere religious exercise.[46] As will be discussed in greater detail later in this Chapter, the district court did not buy the government's argument, as the government had created the conditions which drove the Santo Daime church underground for that specific period of time.

I have been made aware of a few different instances where the DEA has sent threatening letters to ayahuasca churches informing them they are not to consume ayahuasca until they are granted a DEA exemption[47] and inviting them to apply for the exemption. However, this is more

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42 *See Tagore v. United States*, 735 F.3d 324, 328 (5th Cir. 2013) (citing *Moussazadeh v. Tex. Dept. of Ciminal Justice*, 703 F.3d 781, 791 (5th Cir. 2012).

43 *Moussazadeh v. Tex. Dept. of Ciminal Justice*, 703 F.3d 781, 792 (5th Cir. 2012) (*quoting A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist*., 611 F.3d 248, 262 (5th Cir. 2010).

44 Id. (fn. Omitted).

45 *Tagore v. United States*, 735 F.3d 324, 318 (5th Cir. 2013) (citing *Garner v. Kentucky*, 713 F.3d 237, 241 (5th Cir. 2013 (Mulsim prisoner's desire to wear a beard not challenged by TDCJ); (*Betenbaugh*, 611 F.3d at 261-62) (Native American schoolboy wearing long hair a sincere religious belief; Texas RFRA parallels RFRA); *Mayfield v. Tex. Dept. of Criminal Justice*, 529 F.3d 599 (5th Cir. 2008) (Odin worshiper's religious need for runestones and rune literature not challenged by TDCJ)).

46 *Church of Holy Light of Queen v. Mukasey*, 615 F.Supp. 2d at *19.

47 I will cover the DEA exemption process in great detail in Chapter IV.

than likely a ruse to get churches to discontinue their religious practice, so they can later use it as evidence of a lack of sincerity. Whether a pause in a religious practice, due to government coercion, would be dispositive on the issue of sincerity is not clear. However, I believe it is fair to say that if a religious conviction or belief is truly sincere, even government coercion, outside of physical confinement, should not stop the practice. That is just my opinion.

2. What makes a belief or practice "religious?"

Meyers Factors

While there is no "bright line" test to determine what makes a belief or practice "religious," the federal courts have created a couple different tests to gauge whether the belief or practice at issue is "religious." The first standard I will discuss was initially promulgated by the district court in *U.S. v. Meyers*.[48] In *Meyers*, the district court conducted an exhaustive review of prior case law in order to create a list of the relevant factors that have been considered by courts throughout the years in determining what constitutes a "religion."[49] As a practical matter, I usually advise my

48 906 F.Supp 1494 (D. Wyo. 1995).

49 Id. The district court examined the following cases in formulating its list of factors: *Africa v. Commonwealth,* ,662 F.2d 1025 (3rd Cir. 1981); *Malnak,* 592 F.2d 197 (3rd Cir. 1979); *United States v. Sun Myung Moon,*718 F.2d 1210 (2d Cir. 1983); *Founding Church of Scientology v. United States,*409 F.2d 1146 D.C. Cir. 1969); *Washington Ethical Soc'y v. District of Columbia,* 249 F.2d 127 (D.C. Cir. 1957); United States v. *Kauten,*133 F.2d 703 (2nd Cir. 1943); *Sherr v. Northport-East Northport U. Free,* ,672 F. Supp. 81 (E.D.N.Y); *Jacques v. Hilton,* 569 F. Supp. 730 (D.N.J. 1983); *Church of the Chosen People v. United States,* 548 F. Supp. 1247 (D.Minn. 1982); *Womens Services, P.C. v. Thone,*483 F. Supp. 1022 (D. Neb. 1979), *aff'd,*636 F.2d 206 (8th Cir. 1980); *Stevens v. Berger,* 428 F. Supp. 896 (E.D.N.Y. 1977); *Remmers v. Brewer,* 361 F. Supp. 537 (S.D. Iowa 1973); United States v. *Kuch,* 288 F. Supp. 439 (D.D.C. 1968); *Fellowship of Humanity v. Co. Alameda,* 315 P.2d 394 (Cal. Ct. App. 1957).

clients to use the *Meyers*[50] factors when drafting their internal church documents, as it provides a good framework for elucidating the statement of beliefs. However, before I get into the factors, I would like to go over some of the other rules and observations quoted by the district court.

First, the district court quotes the following excerpt from the Fifth Circuit case *Theiault v. Carlson*:

> "While it is difficult for the courts to establish precise standards by which the bona fides of a religion may be judged,[*] such difficulties have proved to be no hindrance to denials of First Amendment protection to so-called religions which tend to mock established institutions and are obviously shams and absurdities and whose members are patently devoid of religious sincerity."[51]

I quote this because I have seen instances where certain organizations, which use psychedelic or entheogenic sacraments and claiming to be religious, go out of their way to mock other religious institutions and it never bodes well for them in court.

Second, the district court espouses the following two "prudential propositions" which it purportedly used when examining the prior case law:

> "The first is that one man's religion will always be another man's heresy. The Court will not, therefore, find that a particular set of beliefs is not religious because it disagrees with the beliefs. *See Kuch,*288 F. Supp. at 443 (court must not use own moral and ethical standards to determine whether beliefs are "religious"). Nor will the Court find that a particular set of beliefs is not

50 Id.

51 *U.S. v. Meyers*, 906 F. Supp. 1494, 1498 (D. Wyo. 1995) (citing "*Theriault v. Carlson,* 495 F.2d 390, 395 (5th Cir. 1974).

> religious because the beliefs are, from either the Court's or society's perspective, idiosyncratic, strange, solipsistic, fantastic, or peculiar. *See Africa v. Commonwealth,*662 F.2d 1025, 1030 (3d Cir. 1981) (judges are not "oracles of theological verity"); *Stevens v. Berger,*428 F. Supp. 896, 899 (E.D.N.Y. 1977) (apparently preposterous beliefs can be religious and merit constitutional protection). The second proposition is that if there is any doubt about whether a particular set of beliefs constitutes a religion, the Court will err on the side of freedom and find that the beliefs are a religion. In a country whose founders were animated in large part by a desire for religious liberty, to do otherwise would ignore a venerable (albeit checkered) history of freedom and tolerance."[52]

As *Meyers* involved a criminal defendant making a RFRA claim in defense to his conviction for trafficking marijuana, the district court briefly quotes another case, *Founding Church of Scientology v. United States*, which stated, "Not every enterprise cloaking itself in the name of religion can claim the constitutional protection conferred by that status. . . . When otherwise proscribed substances are permitted to be used for purposes of worship, worship must be defined."[53]

In making very clear that the factors enunciated in its decision are not dispositive and will be applied in a manner to include, rather than exclude, beliefs and practices as "religious," the district court states the following:

> "In an attempt to avoid these dangers, this Court has canvassed the cases on religion and catalogued the many factors that the courts have used to determine whether a set of beliefs is "religious" for First Amendment purposes. These factors, as listed

52 *U.S. v. Meyers*, 906 F. Supp. 1494, 1499 (D. Wyo. 1995).

53 Id. (citing *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir. 1969) (emphasis added).

> below, impose some structure on the word "religion." The structure necessarily is calico, composed — as it is — of language, history, theology, philosophy, psychology, and law. It is, nonetheless, structure. The Court will use this structure to include, not exclude. By this, the Court means that it will examine Meyers' beliefs to determine if they fit the factors. To the extent they do, it indicates to the Court that his beliefs are religious. The threshold for inclusion — i.e., that Meyers' beliefs are religious — is low. This minimal threshold, uncertain though it may be, ensures that the Court errs where it should, on the side of religious freedom. The Court will not, on the other hand, examine Meyers' beliefs and conclude that they are not religious because they do not fit the factors. Bluntly stated, there is no absolute causal link between the fact that Meyers' beliefs do not fit the criteria and the conclusion that his beliefs are not religious.[54]"

As we can see here, the factors listed below are more so guideposts than a "bright-line" test as to what beliefs or practices are "religious." The district court makes clear that even if a set of beliefs do not fit the criteria, does not necessarily mean they are not "religious." Moreover, the district court states the structure of the factors should be used to include beliefs as religious as opposed to using the structure to exclude. Admittedly, it is not clear whether any one of these factors should receive more weight than the others when the courts analyze a set of beliefs. However, it is fair to say that if a set of beliefs or practices fits into a majority of the categories, it should be considered "religious."

The factors used by the district court in *Meyers* to determine whether a set of beliefs are "religious" for purposes of the RFRA are as follows:

1. *Ultimate Ideas:* Religious beliefs often address fundamental questions about life, purpose, and death. As one court

54 Id. at 1501-02 (emphasis added).

has put it, "a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters." *Africa,* 662 F.2d at 1032. These matters may include existential matters, such as man's perception of life; ontological 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.

2. *Metaphysical Beliefs:* Religious beliefs often are "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.
3. *Moral or Ethical System:* Religious beliefs often prescribe a particular manner of acting, or 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.
4. *Comprehensiveness of Beliefs:* Another hallmark of "religious" ideas is that they are comprehensive. More often than not, such beliefs provide a *telos,* an overarching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans. In other words, religious beliefs generally are not confined to one question or a single teaching. *Africa,* 662 F.2d at 1035.
5. *Accoutrements of Religion:* By analogy to many of the established or recognized religions, the presence of the following

external signs may indicate that a particular set of beliefs is "religious":

a. *Founder, Prophet, or Teacher:* Many religions have been wholly founded or significantly influenced by a deity, teacher, seer, or prophet who is considered to be divine, enlightened, gifted, or blessed.
b. *Important Writings:* Most religions embrace seminal, elemental, fundamental, or sacred writings. These writings often include creeds, tenets, precepts, parables, commandments, prayers, scriptures, catechisms, chants, rites, or mantras.
c. *Gathering Places:* Many religions designate particular structures or places as sacred, holy, or significant. These sites often serve as gathering places for believers. They include physical structures, such as churches, mosques, temples, pyramids, synagogues, or shrines; and natural places, such as springs, rivers, forests, plains, or mountains.
d. *Keepers of Knowledge:* Most religions have clergy, ministers, priests, reverends, monks, shamans, teachers, or sages. By virtue of their enlightenment, experience, education, or training, these people are keepers and purveyors of religious knowledge.
e. *Ceremonies and Rituals:* Most religions include some form of ceremony, ritual, liturgy, sacrament, or protocol. These acts, statements, and movements are prescribed by the religion and are imbued with transcendent significance.
f. *Structure or Organization:* Many religions have a congregation or group of believers who are led, supervised, or counseled by a hierarchy of teachers, clergy, sages, priests, etc.

g. *Holidays:* As is etymologically evident, many religions celebrate, observe, or mark "holy," sacred, or important days, weeks, or months.
h. *Diet or Fasting:* Religions often prescribe or prohibit the eating of certain foods and the drinking of certain liquids on particular days or during particular times.
i. *Appearance and Clothing:* Some religions prescribe the manner in which believers should maintain their physical appearance, and other religions prescribe the type of clothing that believers should wear.
j. *Propagation:* Most religious groups, thinking that they have something worthwhile or essential to offer non-believers, attempt to propagate their views and persuade others of their correctness. This is sometimes called "mission work," "witnessing," "converting," or proselytizing."[55]

I believe this list of factors is a great guide for drafting a set of beliefs and practices for an entheogenic church. Most clients do not have any trouble laying out beliefs and accoutrements provisions that address most, if not all, of these factors. The district court in *Meyers* goes on to say that "…no one of these factors is dispositive, and that the factors should been seen as criteria that, if minimally satisfied, counsel the inclusion of beliefs within the term "religion."[56] While recognizing that many of the factors were compiled while looking at other established religions, it makes clear that courts cannot "…rely solely on established or recognized religions to guide it in determining whether a new or unique set of beliefs warrants inclusion."[57] As far as what is excluded from being "religious" according to these factors, the district court states, "Purely personal, political, ideological, or secular beliefs probably would not satisfy

55 *U.S. v. Meyers*, 906 F. Supp. at 1502-03.
56 *U.S. v. Meyers*, 906 F. Supp. at 1503.
57 Id.

enough criteria for inclusion."[58] "Examples of such beliefs are: nihilism, anarchism, pacifism, utopianism, socialism, libertarianism, Marxism, vegetism, and humanism."[59]

The *Meyers* factors, again, are merely guideposts in determining whether a set of beliefs qualifies as "religious." None of the factors are dispositive in and of themselves. This test is more concrete than the "functional" test we will examine in the next subsection. However, I find these factors to be a good guide to use when drafting a statement of beliefs and accoutrements provisions for an entheogenic church. I will cover more about drafting those documents in the Chapter on non-profit churches.

Functional Approach

The next standard discussed has been described as a "functional approach" to determining whether a set of beliefs qualifies as "religious." This standard is followed in the Ninth Circuit and was first promulgated by the United States Supreme Court in *United States v. Seeger*[60] and later adopted by the Ninth Circuit in *United States v. Ward*.[61] Under the "functional approach," the courts analyze, "whether the beliefs professed…are sincerely held and whether they are, in [a claimant's] own scheme of things, religious."[62] "'Religious' beliefs, then, are those that stem from a person's

58 Id. (citing *Africa,*662 F.2d at 1036 (holding that beliefs are secular, not religious); *Berman,*156 F.2d at 380-81 (holding that beliefs are moral and social, not religious); *Jacques,*569 F. Supp. at 736 (holding that beliefs are personal, not religious); *Church of the Chosen People,*548 F. Supp. at 1253 (holding that beliefs are sexual and secular, not religious).

59 Id.

60 380 U.S. 163, 174, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965).

61 989 F.2d 1015 (9th Cir. 1992).

62 *United States v. Hoffman*, 436 F. Supp.3d 1272, 1280 (D. Ariz. 2020) (citing *Ward*, 989 F.2d at 1018).

'moral, ethical, or religious beliefs about what is right and wrong' and are 'held with the strength of traditional religious convictions.'"[63]

This approach has been called "a generous functional (and even idiosyncratic)" approach to determining religiosity. The test is functional in the sense that, instead of relying on a general definition of religion, it looks to whether a set of beliefs serves the same function as traditional religion in an individual's life.[64] In *Hoffman*, the government asked the district court in Arizona to use the *Meyers* approach, to which it declined, noting the approach was discarded by the Ninth Circuit in *United States v. Lepp*.[65]

The functional approach is focused on what place the beliefs at issue hold in relation to the individual claiming them. As opposed to the *Meyers* factors, this approach does not analyze the beliefs in relation to any other points of reference. Therefore, I venture to say the functional approach is more forgiving in the sense that what might not qualify as religious under the *Meyers* factors, could qualify under the functional approach.

3. What Constitutes a "substantial" Burden.

While there is no definition of what constitutes a "substantial" burden in the RFRA, the legislative history of the law states the "term 'substantial burden' as used in this Act is not intended to be given any broader interpretation than the Supreme Court's articulation of the concept of substantial burden or religious exercise."[66] "In the 'Free Exercise' context,

63 Id.

64 *See Ward*, 989 F.2d at 1018.

65 No. CR 04-00317 MHP, 2008 WL 3843283, at *4 (N.D. Cal. Aug. 14, 2008), *aff'd* 446 F. App'x 44 (9th Cir. 2011).

66 *Living v. Township*, 285 F.App'x 729, 733 (6th Cir. 2007) (citing 146 CONG. REC. S7774-01, 7776 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy).

the Supreme Court has made clear the "substantial burden" hurdle is high and that determining its existence is fact intensive."[67]

For purposes of RFRA claims in the context of entheogenic churches and religions, know that the Supreme Court generally has found a "substantial burden" where the government action in question placed "substantial pressure on an [religious] adherent to modify his behavior and to violate his beliefs."[68] In the context of entheogenic churches and religions, this standard should always be met. Under the Controlled Substances Act, those who violate the Act face hefty prison sentences and other harsh penalties. Therefore, the choice for those religious practitioners is either discontinue their sacramental use of entheogens, thereby modifying their behavior and violating their beliefs, or possibly face severe consequences.

In the UDV and Santo Daime cases, those churches filed suit as a result of having their sacramental ayahuasca seized. The government action made it impossible for them to practice their religion as the sacramental use of ayahuasca was central to their beliefs and practice. I will discuss this in greater detail later when I cover the current regulatory framework and Arizona Yage Complaint.

Now that we have seen how the courts determine whether a RFRA claimant has met their burden to show that a government action has placed "a substantial burden on a sincere religious exercise," we will now turn to the other half of the equation: the government's burden to demonstrate that the application of the burden to the person both (1) furthers a compelling governmental interest and (2) is the least restrictive means of furthering that compelling governmental interest.

B. GOVERNMENT'S BURDEN UNDER THE RFRA: COMPELLING GOVERNMENTAL INTEREST AND

67 Id.

68 *See Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Thomas v. Review Bd. Of the Ind. Emp't Sec. Div*., 450 U.S. 707, 717-18 (1981).

LEAST RESTRICTIVE MEANS.

Once the claimant in a RFRA suit meets their initial burden of showing the governmental action substantially burdens a sincere exercise of religion, the burden then shifts to the government to show the application of the burden to the individual furthers a compelling governmental interest and is the least restrictive means of furthering that compelling interest. In this Section, we will examine this burden in light of two cases involving ayahuasca churches, the UDV and Santo Daime cases.

It is important to remember from the outset that RFRA claims are decided on a case-by case-basis. Therefore, just because the UDV and Santo Daime churches were exempted from the Controlled Substances Act via the RFRA, does not mean that every ayahuasca church will also be excepted from the Controlled Substances Act. However, these cases can provide a point of reference to guide other entheogenic churches in structuring their organization and belief systems to achieve a greater level of potential protection. Therefore, my analysis of these cases will be very fact intensive and I will discuss all arguments and counterarguments made by both the government and the churches.

1. O Centro Espirita Benficiente v. Ashcroft[69] *(UDV case)*

The UDV case I will be referencing here, is the Tenth Circuit case which was decided prior to it eventually making it to the Supreme Court,[70] which affirmed the Tenth Circuit's decision. While I will cover the Supreme Court case some towards the end of this section, the Tenth Circuit opinion is very detailed and gives an accurate account and analysis of the evidence put forward by both sides during the two-week preliminary injunction hearing in the district court. As such, it provides

69 342 F.3d 1170 (10th Cir. 2003).

70 *Gonzales v. O Centro Espirita Benificiente Uniao do Vegetal*, 546 U.S. 418 (2006).

the most information regarding the "meat and potatoes" of the court's analysis under RFRA.

Uniao de Vegetal (UDV) is a syncretic religion of Christian theology and indigenous South American beliefs. It was founded in Brazil in 1961 by a rubber-tapper who discovered hoasca (the Portuguese translation of ayahuaca) in the Amazon rainforests.[71] The UDV is a highly structured religion with elected administrative and clerical officials.[72] The UDV use hoasca as a link to divinities, a holy communion, and a cure for physical and psychological ailments.[73] UDV church doctrine dictates members only can perceive and understand God by drinking hoasca.[74] Hoasca is ingested at least twice monthly at guided ceremonies lasting about four hours.[75] These ceremonies include the recitation of sacred law, singing of chants by the leader, question and answer exchanges, and religious teaching.[76] The UDV has been in the United States since 1993 and at the time of the UDV opinion (2003) had about 130 members, 30 of which were Brazilian citizens.[77] The court notes they had been granted tax exempt status by the IRS.[78]

On May 21, 1999, United States Customs Service agents seized a shipment of hoasca labeled "tea extract" bound for Jeffery Bronfman and Uniao do Vegetal-United States.[79] Subsequent to the seizure of hoasca, a search was conducted on Bronfman's residence which resulted in the seizure of thirty gallons of hoasca. The government never filed criminal charges in relation to the seizures and possession of the hoasca but

71 *O Centro Espirita Benficiente*, 342 F.3d at 1174.
72 Id.
73 Id.
74 Id. (emphasis added).
75 Id.
76 Id.
77 Id. at 1174-75.
78 Id. at 1175.
79 *O Centro Espirita Benficiente*, 342 F.3d at 1175.

threatened to do so. Consequently, the UDV ceased drinking hoasca in the U.S.

Eventually, UDV's president of the U.S. chapter, Jeffery Bronfman, and several other church members filed a complaint for declaratory and injunctive relief and a motion for preliminary injunction against the United States Attorney General, United States Attorney for the District of New Mexico, the Drug Enforcement Administration (DEA), the United States Customs Service, and the Department of the Treasury, alleging violation of the First, Fourth, and Fifth Amendments; Equal Protection principles; the Administrative Procedures Act (APA); international laws and treaties; and the Religious Freedom and Restoration Act (RFRA), 42 U.S.C. § 2000bb-1.[80]

As stated earlier, the government in the UDV case conceded the church met its initial burden of showing the government action of confiscating its hoasca imposed a substantial burden on its sincere religious exercise.[81] Therefore, the case centered around the government's attempts to prove it had a compelling governmental interest in enforcing the Controlled Substances Act against the UDV. To that end, the government asserted the following three compelling governmental interests: (1) protection of the health and safety of Uniao do Vegetal members; (2) potential for diversion of hoasca from the church to recreational users; and (3) compliance with the 1971 United Nations Convention on Psychotropic Substances (Convention).[82]

The Health and Safety of UDV Members

In order to meet their burden of showing a compelling governmental interest, the government attempted to prove that the health and safety of UDV members was at risk by consuming hoasca. The district court

80 Id. at 1172-73.

81 Id. at 1173.

82 *O Centro Espirita Benficiente*, 342 F.3d at 1173.

required the government prove the consumption of hoasca posed a "serious" health risk to UDV members, which is in line with proving a "compelling" governmental interest.[83]

At the outset, I would like to note the research into the health, safety, and/or efficacy of ayahuasca was in its infancy at the time of this opinion in the early 2000's. On this point, the Court stated, "The dearth of conclusive research on DMT and hoasca fuels the controversy in this case."[84] I am assuming because the research was not conclusive in either direction, the government did not want to concede the health and safety argument. As we will see, they attempted to back door other research the Court found only marginally applicable to the sacramental consumption of ayahuasca.

The UDV presented a preliminary study, conducted in 1993 by Charles Grob, which examined fifteen long-term UDV members who drank hoasca for several years against fifteen control subjects who never ingested the tea.[85] After putting the subjects through a series of psychiatric, neuropsychological and physical tests, the results were published in several scientific journals.[86] The results reported indicated an overall positive assessment of the safety of hoasca.[87] Dr. Grob acknowledged the limitations of his study's small population size, however, he testified that:

> "[it] did identify that in a group of randomly collected male subjects who had consumed ayahuasca for many years, entirely within the context of a very tightly controlled syncretic church, there had been no injurious effects caused by their use of ayahuasca. On the contrary, our research team was consistently impressed with the very high functional status of the ayahuasca subjects."[88]

83 Id.
84 Id. at 1180.
85 Id.
86 Id.
87 *O Centro Espirita Benficiente*, 342 F.3d at 1180.
88 Id.

In response, the government emphasized that DMT's schedule one listing represented a Congressional finding that the substance "has a high potential for abuse," no currently accepted safety for use," and a "lack of accepted safety for use under medical supervision." [89] They further pointed out methodological limitations in the Grob study such as: small size, male-only subjects, and selection bias.[90]

In an attempt to rebut the results of the Grob study offered by the UDV, the government had Dr. Sandy Gesner, Chief of the Medical Consequences of Drug Abuse at the National Institute of the Center on AIDS and other Medical Consequences of Drug Abuse at the National Institute of Health, testify that, "existing studies have raised red flags regarding potential negative physical and psychological effects of hoasca." In support of her position, she cited to a study in which two male subjects were injected with DMT; one subject suffered a high rise in blood pressure and the other had a recurrence of depression.[91] The government also introduced information regarding dangerous effects of other hallucinogenic drugs, which Dr. Gesner said raises red flags as to the safety of hoasca.[92]

The UDV countered the government's evidence by emphasizing the important differences in ceremonial use and reported effects of hoasca.[93] To this end, they had Dr. David Nichols, Professor of Medical Chemistry and Molecular Pharmacology at Purdue University testify that, "[o]rally ingested hoasca produces a less intense, more manageable, and inherently psychologically safer altered state of consciousness."[94] He further testified that the "set and setting in which individuals takes a hallucinogen are critical in determining the experience."[95] Dr. Nichols also noted the

89 Id.
90 Id.
91 Id.
92 Id.
93 *O Centro Espirita Benficiente*, 342 F.3d at 1180.
94 Id.
95 Id.

absence of evidence of flashbacks from hoasca use and the milder intensity and shorter duration of hoasca's effects compared to those of other hallucinogens.[96] Lastly, he declared the ritual setting of UDV members' consumption minimizes danger and optimizes safety.[97]

Both the UDV and the government acknowledged the potential dangers associated with ingesting the beta carbolines in the banisteriopsis. The Court noted that individuals who ingest hoasca while on certain medications, such as anti-depressants, are at an increased risk of developing serotonin syndrome. While the government's expert, Dr. Gesner, testified that "irreversible" MAO inhibitors may harmfully interact with many medicines, as well as with a chemical found in some common foods; the UDV pointed out that hoasca does not contain any "irreversible" MAOs and that the UDV leadership has addressed the possible danger of adverse drug interactions.[98]

The Court notes the UDV has instituted a system of screening members' use of medications.[99] Dr. Grob testified that through his teams' conversations with UDV physicians, all prospective participants in ceremonial hoasca session have been carefully interviewed to rule out the presence of ancillary medications that might induce adverse reactions with hoasca.[100] Moreover, the UDV insisted that adverse drug reactions with hoasca falls within the normal spectrum of concerns.[101]

Government experts highlighted other various dangers associated with the use of hoasca, including the increased risk of psychotic episodes, which Dr. Gesner testified was based on data collected from the medical-scientific department of the Brazilian Uniao do Vegetal.[102] In response, UDV experts stated the link between psychotic disturbances

96 Id.
97 Id.
98 Id. at 1181.
99 Id.
100 *O Centro Espirita Benficiente*, 342 F.3d at 1181.
101 Id.
102 Id.

and hoasca is coincidental rather than causal, and the reported, very low, occurrence of psychosis among church members in Brazil is equal or less than the rate in the general population.[103]

In agreeing with the district court that the evidence related to health and safety was "in equipoise" and thereby declaring the government failed to meet its burden under the RFRA, the Circuit Court made some parting notes regarding evidence it found particularly probative:

> "Although studies of hoasca are limited, Dr. Grob's research indicates an overall positive assessment of the health effects of the substance. Dr. Nichols, expert for the UDV, cogently highlighted the differences between the effects of hoasca versus intravenously injected DMT. He further stressed the importance of "set and setting"—for Uniao do Vegetal, a guided, calm, ceremony—in determining the psychological impact of hallucinations."[104]

The Court then goes on to highlight the fact the government's burden under the RFRA was to demonstrate a ban on hosasca consumed by the UDV, and not a ban on all hallucinogens in general, promotes a compelling governmental interest in health and safety.[105] Again, this goes to the point I have been making, that RFRA claims are decided on a case-by-case basis. The government wrongfully assumed that generalized arguments about the dangers of hallucinogens would be germane to overcoming the health and safety burden under the RFRA.

Risk of Diversion to Non-Religious Use

In addition to health and safety of UDV members, the government also advanced the argument, in an effort to show a compelling governmental

103 Id.
104 Id.
105 Id.

interest, that hoasca used by the UDV would be vulnerable to diversion.[106] To this end, the government had Terrance Woodworth, Deputy Director of the Drug Enforcement Administration's Office of Diversion Control testify regarding the factors the agency uses to identify the diversion potential of a controlled substance.[107] Those factors are as follows: the existence of an illicit market, the presence of marketing or publicity, the form of the substance, and the cost and opportunity of diversion.[108]

Applying the factors to hoasca, Mr. Woodworth testified there had been a recent substantial increased interest in hallucinogens in the country.[109] He further noted advertisements for hosaca on the internet and rising consumption of the tea in Europe as evidence of demand in the illicit market for hoasca.[110] According to Mr. Woodworth, the low level of hoasca consumption at that time was attributable to the lack of native plants in the U.S.[111] However, he believed were the UDV allowed to import hoasca the likelihood of diversion would increase.[112] Further, he testified the fact that the hoasca would be imported from Brazil, where hoasca is unregulated, along with the uncooperative relationship between DEA and UDV, suggested that an exemption for sacramental use would result in illegal diversion.[113]

Regarding the abuse potential of hoasca, the government had Dr. Janski, Professor of Medicine at the Johns Hopkins School of Medicine testify.[114] He stated that he believed the abuse potential of hoasca was substantial.[115] After noting the typical reinforcing or "euphoric" effects

106 *O Centro Espirita Benficiente*, 342 F.3d at 1182.
107 Id.
108 Id.
109 Id.
110 Id.
111 Id.
112 Id.
113 *O Centro Espirita Benficiente*, 342 F.3d at 1182.
114 Id.
115 Id.

of drugs of abuse were transient alterations in mood, thinking, feeling, and perceptions, he stated that research on intravenously injected DMT and preliminary studies on hoasca indicated they produced euphoric effects.[116] However, he admitted the euphoric effects of hoasca are slower in onset, milder in intensity, and longer in duration.[117]

Dr. Janski acknowledged the negative effects of hoasca, nausea and vomiting, may act as a deterrent to some people, but pointed out the percentage of those that suffer these effects are unknown.[118] Regardless, Dr. Jasinski argued the negative effects may not outweigh the positive to the extent necessary to deter use.[119] Finally, Dr. Jasinski testified the pharmacological similarities between LSD and DMT support an inference that hoasca has an abuse potential.[120]

In response, the UDV had Dr. Kleiman, Professor of Policy Studies at the University of California, Los Angeles testify. Dr. Kleinman stated his belief that the negative effects of hoasca and the availability of pharmacologically equivalent substitutes indicated demand for the hosaca would be low.[121] According to Dr. Kleinman, the tea like mixture of hoasca consumed by the UDV would not be an attractive choice for those seeking oral DMT as any mixture containing DMT and a sufficient amounts of an MAOI would suffice.[122] Moreover, plants containing these two alkaloids are available in the U.S., some of which don't induce vomiting.[123] Therefore, the risk of diversion of UDV hoasca was greatly reduced by other, more desirable alternatives readily available in the U.S. [124]

Next, Dr. Kleinman recounted several factors he believed would

116 Id.
117 Id.
118 Id.
119 Id.
120 Id.
121 Id.
122 *O Centro Espirita Benficiente*, 342 F.3d at 1183.
123 Id.
124 Id.

counteract hoasca diversion. Those four factors are as follows: (1) UDV in the United States is a very small church and would only import about 3,000 doses per year; (2) the relatively thin market for hoasca would reduce likelihood of diversion; (3) the bulky form of hoasca would deter diversion; and (4) the UDV has strong incentives to keep its hoasca supply from being diverted as the consumption of the tea outside of the ceremonial context is considered sacrilegious.

In the end, the Court did not find the government met its burden to show a compelling governmental interest in preventing the diversion of hoasca for non-religious use.[125] In fact, the Court found the evidence was "virtually balanced" and that the testimony of Dr. Kleinman for the UDV might have even tipped the scales slightly in favor of the UDV.[126]

1971 U.N. Convention on Psychotropic Substances

In its final effort to prove a compelling governmental interest, the government argued that allowing the UDV a religious exemption for the import and sacramental use of hoasca would violate the 1971 U.N. Convention on Psychotropic Substances and undermine the United States' leadership role in curtailing international drug trafficking.[127] In short, the government was not able to meet its burden in these regards, as it only introduced the affidavits of two State Department officials espousing a generalized interest in complying with the U.N. Convention.[128] As with the other generalized, non-case specific arguments advanced by the government, it fell flat on its face.[129] The Court held that the government failed to meet its burden under the RFRA.[130]

125 Id.
126 Id. at 1182.
127 Id. at 1184.
128 Id.
129 Id.
130 Id.

Other Issues

The Court noted some other miscellaneous issues at the end of the opinion. Some of them are worth noting here. First, the Court observed the sincerity of the UDV's religious practice and the substantial burden placed thereon by the Controlled Substances Act were uncontested.[131] As stated above, it is hard to imagine a case where the Controlled Substances Act wouldn't place a substantial burden on a religious practice centered around consuming sacraments listed as Schedule 1 substances.

Second, the Court emphasizes the fact that "[…] Uniao do Vegetal's use of hoasca occurs in a "traditional, precisely circumscribed ritual" where the drug "itself is an object of worship" and using the sacrament outside of the religious context is sacrilege."[132] For the reader's edification, this observation was made in reference to prior federal case law disallowing a religious exemption for religious use of marijuana, as most of those cases involved parties who were distributing marijuana and encouraging its use outside of a religious context.[133]

The government also advanced the following as alternative "compelling governmental interests": the uniform application of the Controlled Substances Act; the need to avoid burdensome and constant official supervision and management of the UDV; and the possibility of opening the door to a myriad of claims for religious exemptions.[134] The Court found the need to uniformly apply the Controlled Substances Act and the burden of constant official supervision to be unavailing, as the Native American's use of peyote had been exempted under a separate statute for many years prior to the RFRA.[135] The Court noted the peyote exemption did not place any extra burden upon the DEA and peyote remained low

131 Id.

132 Id. (citing *Olsen v. DEA*, 878 F.2d 1458, 1464 (D.C. Cir. 1989).

133 See *United States v. Bauer*, 84 F.3d 1549 (9th Cir. 1996); *Guam v. Guerrero*, 290 F.3d 1210 (9th Cir. 2002).

134 *O Centro Espirita Benficiente*, 342 F.3d at 1185.

135 Id.

on the list of abused substances.[136] Lastly, the Court quickly dismissed the government's claim that an exemption for the UDV would create a flood of religious exemption claims.[137] On this point the Court stated, "[…] the bald assertion of a torrent of religious exemptions does not satisfy the governments burden."[138]

I would like to note the relief granted to the UDV at the district court level was upheld by the circuit court and eventually the Supreme Court. The district court mandated the DEA work with the UDV to create a DEA licensing number under which they would be able to import hoasca. Generally, these licenses require the church to keep meticulously record the amounts of ayahuasca both imported and consumed, as well as requiring strict substance handling procedures. I will speak more on these issues in the regulation chapter, but it suffices to know that the DEA regulates how the substances can be kept and maintained and who is allowed to handle the substances within the organization. Also, the courts generally allow the DEA to randomly inspect and test the ayahuasca being imported into the U.S. Therefore, once an RFRA claimant wins in federal court, the relief is to obtain a DEA license number and begin DEA monitoring.

The Supreme Court Case: Gonzales v. O Centro Espirita Beneficiente Uniao de Vegetal[139]

For the sake of keeping this book within the confines of the laymen's understanding, I will spare the reader a detailed analysis of the Supreme Court's opinion in the UDV case. However, it is important to know that the case was appealed by the government to the Supreme Court. The Supreme Court rendered its opinion, authored by Chief Justice John

136 Id.
137 Id.
138 Id.
139 546 U.S. 418 (2006).

Roberts, in 2006. The Supreme Court upheld the Tenth Circuit's opinion and dives a little deeper into the statutory nuances of the Controlled Substances Act and the RFRA. I encourage anyone interested in the finer points of constitutional law, as it relates to the RFRA and Controlled Substances Act, to give the opinion a read.

2. Church of Holy Light of Queen v. Mukasey[140] *(the Santo Daime case)*

The next case we will examine is the Santo Daime case, which was heard by the District Court in Oregon. This case was different from the UDV case in that the government contested the sincerity of the Santo Daime religion.[141] Below I will give a brief recitation of the more material facts the district court covered in its sincerity analysis.

At the outset, the district court noted that Goldman was the Santo Daime spiritual leader in the U.S.[142] He had been studying the Santo Daime religion for 21 years, traveling frequently to Brazil to receive instruction from church leaders.[143] He had learned Portuguese in order to understand the Daime hymns that constituted church doctrine.[144] He had been an initiate of the Santo Daime church for 19 years and founded the U.S. chapter in 1993 with the blessing of church leaders in Brazil.[145] The district court found Goldman's testimony to this effect to be credible and that his conduct over the years to evidence his sincerity and dedication to the Santo Daime religion and its members.[146]

The district court gave an account of the Santo Daime religion as a whole, which resembles to a large degree that of the UDV and contains

140 615 F.Supp.2d 1210 (D. Or. 2009).

141 Id. at *2.

142 Id.

143 Id.

144 Id.

145 Id.

146 615 F.Supp.2d 1210, *2 (D. Or. 2009).

all the trappings of what legally would be considered a religion.[147] The court noted the Catholic church in Brazil considers the Santo Daime a religion and the two religions work together on certain humanitarian and environmental issues.[148] The government had found an "unspecified amount of marijuana" in Goldman's bedroom when they seized some ayahuasca from his home in 1999, and tried to use this fact to argue the church's religious beliefs were not sincere.[149] The district court quickly dismissed this argument by stating, "Regardless of why marijuana was in Goldman's bedroom nearly ten years ago, a spiritual leader's possible personal failings should not discredit the entire church."[150] The government also attempted to use the fact that a small minority of Santo Daime members answered they used marijuana occasionally on a questionnaire, to throw doubt upon the sincerity of the Santo Daime religion. Yet again, the district court swiftly dismissed this argument by stating, "This does not reflect on CHLQ itself or the majority of church members."[151]

At this juncture, it is important to note some of the events that led up to the Santo Daime case. As mentioned earlier, the government had raided Goldman's home in 1999 and seized some ayahuasca.[152] After the raid, the Santo Daime attempted to negotiate an agreement with the U.S. Department of Justice.[153] However, the Department refused to grant a religious exemption to the Santo Daime.[154] Despite the Justice Department refusing to grant an exemption, the Santo Daime were successful in obtaining an exemption from the State of Oregon, as the Board

147 Id. at *2-4.
148 Id. at *5.
149 Id. at*6.
150 Id.
151 Id. at *6-7.
152 Id. at *7.
153 615 F.Supp.2d 1210, *7 (D. Or. 2009).
154 615 F.Supp.2d 1210, *7 (D. Or. 2009).

of Pharmacy granted the Santo Daime an exemption from state laws by finding their use of ayahuasca was a "non-drug" use.[155]

Around the same time the government raided Goldman's home, the UDV had also been raided by federal agents. [156] In response to the UDV raid, the UDV filed in district court for an injunction against the government, asking for an exemption under the RFRA, which we know they received in 2002.[157] Subsequent to the raid on Goldman's home, the Santo Daime decided to resume their religious practice underground and stopped keeping records of the Daime tea supplied to them or other church activities.[158] After the UDV had their case affirmed by the Supreme Court, the Santo Daime resumed practicing above ground and once again began keeping records.[159]

Health and Safety of Santo Daime Members

As in the UDV case, the safety of consuming ayahuasca was a contested issue in this litigation. At the outset, the district court noted, "There is no question that Daime tea could be dangerous if used improperly. Almost any substance can be toxic under the right circumstances."[160] The district court goes on to discuss the process by which the Santo Daime brew their ayahuasca as "an elaborate religious ritual."[161] The district court highlights that the men harvest and pound the ayahuasca vine (B. Caapi) while the women collect and strip the DMT containing leaves (P. Viridis), which is then boiled for many hours and not added until the very end of the process.[162] The district court then notes that the church

155 Id.
156 Id.
157 Id.
158 Id.
159 Id.
160 Id. at *8.
161 Id.
162 615 F.Supp.2d 1210, *8 (D. Or. 2009).

members usually drink between 45 to 150 milliliters of the tea which consists of approximately 15 to 60 milligrams of DMT.[163]

As far as the negative effects of the Daime tea, the district court states as follows:

> "Users may experience anxiety and discomfort soon after drinking Daime tea. In perhaps a third of users, Daime tea initially causes nausea and vomiting. It less frequently causes diarrhea. Church members view these ostensibly unpleasant effects as a beneficial purging or cleansing. Daime tea may also cause mild increases in heart rate (5 to 15 beats per minute) and blood pressure."

Goldman testified that in all his years as leader of the church, he had not observed anyone who suffered serious physical or mental harm from the Daime tea.[164] Moreover, evidence was presented that showed no apparent ill effects were found in Brazilians who had regularly consumed ayahuasca during religious services for over thirty years.[165] Moreover, the Santo Daime offered expert testimony to the effect that the Daime tea may actually benefit church members mental and physical health, although it was cautioned that larger and more vigorous studies were necessary to confirm these assertions.[166]

The government was not able, according to the district court, to present evidence that Daime tea was addictive or caused long-term health problems.[167] Their experts were only able to cite to studies of LSD, pure DMT and other powerful hallucinogens, which the district court found only "marginally relevant" in evaluating the risk of consuming Daime tea in a religious ceremony.[168] One researcher had noted the "[…] har-

163 Id.
164 Id. at *9.
165 Id.
166 Id.
167 Id.
168 615 F.Supp.2d 1210, *9-10(D. Or. 2009).

mala alkaloids in hoasca and Daime tea appear to render the DMT far less potent."[169]

The Santa Daime entered into evidence a study conducted in 2006 by Dr. John H. Halpern, a psychiatrist who has written extensively on the use and abuse of hallucinogenic drugs, including a paper on the health of members of the Native American Church who consume peyote as a sacrament.[170] In 2008, Dr. Halpern published the 2006 study which evaluated Santa Daime church members in the United States.[171] The study interviewed 32 of the 40 active church members in the U.S.[172] The interviewees' experience ranged from between 20 to 1300 Daime tea ceremonies.[173] Dr. Halpern discovered that the church members interviewed were generally mentally healthy and appeared to have benefited from their participation in church ceremonies.[174] While some of the church members interviewed were still battling addictions, the district court noted that the study of the Santo Daime mirrored the UDV study in that it found long-term church members typically had lost their interest in alcohol and other addictive substances.[175]

Interestingly, the Halpern study found that approximately 60% of Santo Daime members interviewed reported history of psychiatric conditions, which ultimately suggested that the Santo Daime church "[…] is not proving harmful even to those members most susceptible to mental health problems."[176] Moreover, Dr. Halpern cited to a double-blind study of Brazilian Santo Daime members which noted acute amelioration of anxiety and panic in church ceremonies.[177]

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169 Id. at *10.
170 Id.
171 Id.
172 Id.
173 Id.
174 Id. at *10-11.
175 Id. at *11.
176 Id.
177 Id.

The government presented expert testimony that raised the possibility that Daime tea could cause acute long-term psychosis.[178] In quickly dismissing this testimony, the district court states, "[…] defendants rely more on speculation than empirical evidence to support this assertion."[179] The district court found the evidence presented on this point overall "[…] indicates only a small risk that Daime tea will cause a transient psychotic episode, and an even smaller risk that Daime tea will cause long-term psychosis."[180]

As to set and setting, the district court acknowledges its importance in determining how a drug will affect a person and further states, "I find that the set and setting fostered by the CHLQ reduce the potential danger posed by Daime tea. Plaintiffs' screening and orientation process attempts to ensure that when applicants first drink Daime tea during a church service, they do so with a proper frame of mind."[181]

The district court notes the propagation techniques of the Santo Daime normally include word of mouth from friends and relatives and new members must usually have a sponsor who is already a member of the church.[182] Overall, Goldman testified that the Santo Daime attempts to select only those who are serious about the religion, and turn away would be thrill seekers.[183] It was also noted that the Santo Daime give would be church members detailed medical questionnaires to determine whether any pre-existing medical conditions or any medications might disqualify them from participating in ceremonies.[184] Lastly, the district court makes mention the Santo Daime require their members to refrain from certain food and drink in the days leading up to the ceremonies.[185]

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178 615 F.Supp.2d 1210, *11 (D. Or. 2009).

179 Id.

180 Id. at *12.

181 Id.

182 Id.

183 Id at *13.

184 Id.

185 615 F.Supp.2d 1210, *13 (D. Or. 2009).

The government attempted to criticize the Santo Daime for not conducting an even more thorough screening of potential church members.[186] However, the district court again quickly undercut this assertion by observing the Native American church merely required potential members to provide their name, address, phone number, tribe and tribal enrollment as part of their application process.[187]

The district court notes the members of the Santo Daime are only allowed to consume Daime tea in a controlled and supportive religious ceremony, and that consumption of the tea outside of the church is a serious sacrilege.[188] Additionally, access to the tea is limited to three or four church leaders and the spiritual leader conducting the ceremony, who dispenses the tea individually to each worshiper.[189]

Also noted is the existence of experienced church members who are designated as "guardians" to monitor the congregation during the services and tend to members who are suffering from the negative effects of the tea.[190] The spiritual leader conducting the ceremony tends to the congregants that appear anxious or upset.[191] Furthermore, the district court mentions that three church members are physicians and two registered nurses, so a person with medical training is often present during services.[192]

It was brought out that occasionally the Santo Daime allow children and pregnant women to consume the Daime tea.[193] However, the district court found the amount given to children was a token or symbolic amount. The government attempted to argue that Daime tea would be harmful to an unborn fetus but were unable to produce any evidence

186 Id at *14.

187 Id.

188 Id.

189 Id.

190 Id.

191 Id.

192 Id.

193 615 F.Supp.2d 1210, *15 (D. Or. 2009).

to support that position.[194] To the contrary, the district court states the Brazilian UDV church routinely gives hoasca to pregnant members and studies have shown that no harm has ever been caused by the consumption.[195]

Despite the government's insistence that Daime tea could be fatal, the district court takes note that one researcher has asserted, to his knowledge, "there have been no deaths caused by hoasca or any other traditional ayahuasca brews."[196] The two deaths that were submitted as evidence by the government were not attributable to ayahuasca.[197]

Risk of Diversion

In support of its position that the Santo Daime would possibly allow diversion of the Daime tea to non-church members, including recreational users, the government presented testimony of deputy director of the DEA, Denise Curry, who testified that the amount of Daime tea confiscated in 1999 from Goldman's home was more than what was needed for its membership.[198] In response, the district court noted the government failed to present any evidence that the Santo Daime ever allowed Daime tea to be used without the church's authorization and because the church believes the tea is a sacrament, use outside of the ceremonial context violates church doctrine.[199] It is further noted the government failed to present any evidence that there is a viable illicit market for Daime tea.[200]

In response to the government's assertions, the Santo Daime presented evidence that even when they practiced their religion underground from 1999 to 2006, they kept detailed logs tracking the supply of Daime

194 Id.
195 Id.
196 Id. at *16.
197 Id.
198 Id. at *17.
199 Id.
200 615 F.Supp.2d 1210, *17 (D. Or. 2009).

tea.[201] Lastly, the court again notes that only three or four church leaders have access to the supply of Daime tea.[202]

District Court's Opinion

In regards to the Santo Daime's initial showing of a substantial burden on a sincere religious exercise, the district court found that the Santa Daime met their burden.[203] On this point, the district court notes the Santo Daime were successful in showing that they are sincere in their religious beliefs and that the ceremonial use of Daime tea is essential to their religion.[204] Moreover, because the consumption of Daime tea is the only way which the Santo Daime can experience their religion, prohibiting its ingestion would constitute a substantial burden on their religious exercise.[205] The government attempted to undercut the Santo Daime's sincerity claim by highlighting the fact the Santo Daime practiced their religion in secret from 1999-2006. This argument was not persuasive to the district court, who simply stated such conduct doesn't show a lack of sincerity but rather showed they were committed to practicing their religion despite the threat of criminal prosecution and loss of professional status.[206]

Addressing the health and safety arguments of the government, the district court notes the evidence shows Daime tea is consumed in a ritual setting by church members who have been screened for physical and mental problems and potential drug conflicts.[207] The government also argued that because the tea is not produced in a lab and is made with natural ingredients, its strength varies. In turn, the district court observed

201 Id.
202 Id.
203 Id. at *18.
204 Id.
205 Id. at *19.
206 Id.
207 615 F.Supp.2d 1210, *20 (D. Or. 2009).

there is no evidence to show that the variable strength has ever caused any issues and that said problem can be addressed by allowing the DEA to periodically test the tea being imported.[208]

As to the government's diversion risk arguments, the court highlights the fact the government failed to produce any evidence of a significant market for Daime tea or that the Santo Daime has allowed one single drop to ever be diverted.[209] Again, the district court observes this problem is best addressed through reasonable guidelines for storing and inventorying the Santo Daime's supply of tea.[210]

It is worth mentioning the district court observed that the favorable research conducted on the safety of ayahuasca since the UDV case was decided in 2002, further undermines the government's health and safety arguments.[211] This fact is even more true today, as there has been additional research done since 2009 regarding the safety of ayahuasca consumption.

C. THE TAKEAWAY

So what does all of the above case analysis mean in terms of the rise of entheogenic churches and ceremonies in the U.S. today? Below I will go through some points that should be kept in mind when thinking of entheogenic churches and retreats, as it relates to a RFRA claim or defense.

First, regarding a RFRA claimant's burden of proving a substantial burden on a sincere religious exercise, it is important to keep the following points in mind:

a. The courts have upheld as "religious" the consumption of entheogenic sacraments used as a means to commune with higher spiritual forces or entities;

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208 Id.

209 Id.

210 Id. at *21.

211 Id.

b. If the court feels as if the RFRA is being used as a shield from prosecution under the Controlled Substances Act, then the exercise at issue will not be deemed "sincere" or "religious";
c. In all cases where controlled substances were being distributed, outside of the ceremonial context, as part of a purported religion, the courts have uniformly held that beliefs or exercises at issue were either not "religious" and/or not "sincere";
d. The DEA has been known to threaten entheogenic churches with prosecution and/or execute raids on church leaders' homes, then later claim their religious exercise is not sincere when they either stop practicing or go underground after the initial harassment. Best practice is to always to continue safely exercising one's sincerely held religious beliefs;
e. There is not a "bright line" test to determine whether any given set of beliefs are "religious." The courts will either use the *Meyers* factors or the "functional approach." Using the Meyers factors is a great way to structure a belief system as it provides a framework most closely linked to traditional religions and therefore is more easily identifiable as "religious" to most judges;
f. Do not mock established religions….it never ends well;
g. Any other "non-sacramental" substances found on church property can and will be used by the government to try and controvert the sincerity of the religious exercise;

Second, in considering the government's burden of proving a compelling governmental interest, it is important to keep the following points regarding the health and safety of church members in mind:

a. The research evidencing the safety of ayahuasca and other entheogenic sacraments has developed since 2009;
b. The courts consider religious and ceremonial use of entheogenic sacraments less dangerous or harmful than other set and settings;

c. The courts discount the government's health and safety arguments when there is a thorough screening process in place. The screening process should account for current medications and adverse health conditions. The process should also attempt to screen out those who are not intending to consume entheogenic sacraments in a sacred or religious manner;
d. Church doctrine that forbids non-religious use of entheogenic sacraments outside of church ceremonies is favored by the courts;
e. All ceremony participants should be monitored by the ceremony leader/shaman and other facilitators; and,
f. If possible, though not required, it is favorable to have a medically trained person available at every ceremony where entheogenic sacraments are being consumed.

Finally, in considering the government's burden of proving a compelling governmental interest, it is important to keep the following points regarding the risk of substance diversion in mind:

a. Factors that influence the DEA's assessment of diversion risk are as follows: existence of an illicit market; presence of marketing and publicity; form of the substance; and cost and opportunity of diversion. As it relates to ayahuasca specifically, the illicit market has likely increased, at least marginally, since 2009;
b. Potential for abuse of the entheogenic substance influences the courts' diversion risk assessment;
c. Other pharmacologically similar substitutes for the entheogenic sacraments cut against a finding of diversion risk; and,
d. The number of doses served/ingested will influence the diversion risk analysis.

Now that we have covered in depth the federal courts' analysis under the RFRA, the next chapter will discuss the current regulatory regime

promulgated by the DEA. In doing so, we will consider the recent complaint filed in the Northern District of California by the Arizona Yage Assembly and the National Association of Visionary Churches. I would like to note that this case has subsequently been transferred to the District Court in Arizona.[212]

212 *Arizona Yage Assembly, et. al. v. William Barr, et. al.*, Case No. 2:20-cv-02373 (D. Ct. Ariz. 2021).

CHAPTER 3

DEA'S REGULATION OF ENTHEOGENIC CHURCHES

Now that we have thoroughly analyzed a RFRA claim in the context of ayahuasca churches seeking an exemption to the Controlled Substances Act, we will now explore the DEA's attempt to regulate entheogenic churches. As we saw in the last chapter, merely winning an exemption in federal court is not the end of the road for entheogenic churches. The courts then require the church and DEA work together to regulate the importation and distribution of the sacraments. To this end, the DEA preemptively promulgated an administrative process by where entheogenic churches could apply for an exemption through the agency, instead of having to seek relief through the courts. As outlined in greater detail below, the DEA's attempt to regulate entheogenic churches has been an utter failure and has led to litigation over its ability to legally promulgate and enforce administrative regulations in this area.

In 2009, the DEA promulgated its Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom and Restoration Act (the "Guidance"), which sought to create a regulatory application process whereby entheogenic churches

could apply for exemption from the Controlled Substances Act.[213] Not surprisingly, the Guidance has not resulted in the registration of a single religious group or granting of a single DEA exemption to date.[214] As such, the Arizona Yage Assembly and the North American Association of Visionary Churches sued multiple federal government agencies seeking an exemption from the Controlled Substances Act, in spite of the DEA regulation.[215] Moreover, the DEA was also sued by Soul Quest Church of Mother Earth, Inc., as it has been waiting well over two years to get a response to their application under the Guidance.[216] The discussion that follows will cover legal and administrative issues with the DEA's attempt to regulate entheogenic churches.

A. The DEA Does not Have Legal Authority to Regulate Entheogenic Churches

The DEA has no statutory authority under the Controlled Substances Act, the RFRA, or any other federal statute to regulate free exercise claims. Yet under the Guidance, the DEA is attempting to exercise such authority. "There is no allowance for a "certificate of registration" from the DEA for constitutionally protected religious exercise, which is not contemplated as a registered activity under the CSA and administrative regulations."[217]

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

214 Martha Hartney, E., & Bard Bartlett, E. (2020, October 13). DEA and the Religious Exemption: A Fox Guarding the Henhouse. Retrieved November 23, 2020, from https://chacruna.net/dea-prohibition-religious-freedom-ayahuasca-ceremonies.

215 *See Arizona Yage Assembly, et. al. v. William Barr, et. al.*, Case No. 3:20-cv-03098-WHO, Northern District of California, "Complaint," Filed May 5, 2020 (hereinafter "Yage Complaint").

216 *Soul Quest Church of Mother Earth, Inc. v. Barr*, 20-cv-00701-WWB-DCI (D. Ct. Middle Dist. FL) (Apr. 22, 2020).

217 See pg. 26, Yage Complaint (FN 46).

As stated above, the Controlled Substances Act does not give the DEA authority to regulate entheogenic churches, only authority to register applicants engaged in "legitimate medical, scientific, research, and industrial purposes."[218] Moreover, the RFRA does not bestow upon the DEA, or any other governmental agency, the power to adjudicate free exercise claims. The RFRA leaves it to the federal court system to determine the validity of religious exercise claims. Historically, Congress has shied away from giving federal agencies the power to administratively determine the validity of claims of religious exercise. One instance where Congress has granted authority to administratively determine the validity of free exercise claims is conscientious objectors seeking an exception to combat training and service in the armed forces.[219] Congress has not granted the DEA authority to regulate free exercise claims pursuant to Controlled Substances Act, the RFRA, or any other federal law.

In order for regulatory requirements promulgated by an administrative agency to have the force of law, they must first go through certain procedural requirements mandated by the Administrative Procedures Act ("APA").[220] One foundational requirement under the APA, is the governmental agency promulgating the regulations must reference the specific legal authority (i.e. statute, etc.), pursuant to which the rule is to be imposed.[221] As discussed above, the DEA has no legal authority to reference, as no existing federal law gives them the authority to regulate entheogenic churches.

Under the APA there are rulemaking and notice-and-comment requirements that must be met before an administrative agency's regulations can obtain the independent force of law. For instance, the DEA must have invited public comment from interested parties before promulgating the Guidance. Here, the Guidance did not undergo the

218 21 U.S.C. §823.
219 50 U.S.C. § 456.
220 5 U.S.C. § 553.
221 5 U.S.C. § 553(b)(2).

required rulemaking and notice-and-comment process, therefore it did not obtain the independent force of law. Moreover, the Guidance was not published in the Federal Register, which is also a requirement to make agency regulations legally binding.[222]

The Guidance is also invalid because it runs contrary to executive branch policy and violates an Executive Order. On May 4, 2017, President Trump issued Executive Order 13789 entitled, "Promoting Free Speech and Religious Liberty."[223] Approximately five months later, U.S. Attorney General Jeff Landry published a document entitled, "Memorandum on Federal Law Protections for Religious Liberty."[224] The Memorandum stressed the fact that governmental agencies must proactively accommodate the needs of religious groups seeking exemptions from laws.[225] As such, the Memorandum directed governmental agencies to review policies affecting the right of religious groups and to bring them into compliance with the RFRA and the other principles espoused in the Memorandum.[226]

The Memorandum stated as follows:

> "Except in the narrowest of circumstances, no one should be forced to choose between living our his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all Government activity[…]"[227]

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222 See pg. 25 of Yage Complaint (FN 44).

223 Federal Register 21675 (May 4, 2017); See also pg. 32, ¶ 113 of Yage Complaint.

224 Federal Register 49668 (Oct 26, 2017). See also pg. 32, ¶ 113 of Yage Complaint.

225 See pgs. 32-33, ¶ 113 of Yage Complaint.

226 See pg. 33, ¶ 113 od Yage Complaint.

227 Federal Register 49668 (Oct 26, 2017). See also pg. 32, ¶ 113 of Yage Complaint.

It comes as no surprise the DEA completely ignored the Attorney General's directive and did absolutely nothing to remedy the defects in the Guidance. In fact, everything the DEA has done in relation to entheogenic churches flies in the face of, and is contrary to, the spirit of the Memorandum. Instead of reasonably accommodating religious observance and practice, the DEA chose to substantially burden the religious practice of entheogenic churches. The DEA Guidance requires adherents refrain from consuming entheogenic sacraments while it did nothing, for years, to process their applications for an exemption from the Controlled Substances Act.

Additionally, the DEA Guidance failed to comply with Executive Order 13891. This provides yet another reason why the Guidance is invalid and unenforceable. Executive Order 13891 which is entitled "Promoting the Rule of Law Through Improved Agency Guidance Documents," sought to "[…] remedy the abuse of administrative agency guidance documents that subject the public to ad hoc rulemaking without the notice-and-comment procedure required by the APA."[228] To this end, the Office of Management and Budget issued an Implementing Memorandum, pursuant to Executive Order 13891, which required that federal administrative agencies review all guidance documents.[229]

The Implementing Memorandum set a deadline of February 28, 2020, whereby administrative agencies would either rescind existing guidance documents or confirm their validity and publish them on a special website.[230] Executive Order 13891 states that federal agencies are not to use guidance documents to promulgate law.[231] The Implementing Memorandum condemns the use of guidance documents as a means to try and force compliance with demands of the administrative agency. However, as covered in greater detail below, the DEA used the Guidance

228 Pg. 33, ¶115 of Yage Complaint.

229 Id.

230 Pgs. 33-34, ¶115 of Yage Complaint.

231 Pg. 34, ¶ 116 of Yage Complaint.

and other tactics to force entheogenic churches to make certain disclosures contrary to their penal interest "[…] under the cloak of "invitations" to submit petitions for exemption."[232] In any event, the DEA failed to do anything with the Guidance and missed the February 28, 2020 deadline, thereby even further invalidating the Guidance.[233]

Due to the DEA's inaction in relation to the Guidance, it has been officially withdrawn as government policy. According to Executive Order 13891:

> "No agency shall retain in effect any guidance document without including it in the relevant database referred to in subsection (a) of this section, not shall any agency, in the future, issue a guidance document without including it in the relevant database. No agency may cite, use, or rely on guidance documents that are rescinded, except to establish historical facts."[234]

As this portion of the Executive Order makes crystal clear, the DEA Guidance document is no longer viable as official government policy and is not applicable to nor enforceable upon entheogenic churches.

Finally, the Guidance imposes no exhaustion requirement. This means, in the context of a RFRA claim, the plaintiff does not have to apply for a DEA exemption and be denied prior to filing a lawsuit against the government. Under normal circumstances, if an agency regulation is properly promulgated, a party would have to go through the administrative process and be denied something to have standing to file a lawsuit against the government. In this context, if the DEA regulations had the independent force of law, a RFRA claimant would have to be denied an exemption before their religious exercise would have been "substantially

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232 Id.

233 Pg. 34, ¶117-118 of Yage Complaint.

234 See pg. 35, ¶121 of Yage Complaint.

burdened." However, because the Guidance lacks the independent force of law, it does not constitute a barrier to standing under the RFRA.

B. The DEA Guidance Operates as an Unconstitutional Prior Restraint on Free Exercise

In addition to the above issues, the Guidance also acts as an unconstitutional prior restraint on free exercise of religion. Paragraph seven of the guidance states that "No petitioner may engage in any activity prohibited under the Controlled Substances Act or its regulations unless the petition has been granted and the petitioner has applied for and received a DEA certificate of Registration." As written, the Guidance requires a religious adherent apply for and receive a DEA Certificate of Registration prior to engaging in any activity that is prohibited by the Controlled Substances Act. This paragraph, on its face, is a prior restraint on the free exercise of religion. If an individual consumes entheogenic substances as part of their sincere religious practice, then according to paragraph seven, they would be unable to practice their religion unless they were first granted authority to do so by the DEA. So far, this process has taken years for those churches who have applied. Therefore, under the Guidance religious practice is forbidden and substantially burdened until the petitioner receives the DEA Certificate of Registration.

The guidance establishes an adjudicative body called the "Guidance Adjudicator" which works to determine the validity of the petitioner's claim to a religious exemption. Again, the Guidance attempts to give the DEA authority to determine the validity or sincerity of a petitioner's claim for a religion exemption under the RFRA, when there exists no statutory authority for the DEA to make those types of determinations. The Yage Complaint highlights the fact the Guidance provides no timeline for the Guidance Adjudicator to process applications and further notes there have been some applications pending with the DEA for

over two years.[235] Moreover, the Yage Complaint suggests the Guidance Adjudicator has "[…]unfettered authority to delay decision indefinitely, which renders the process a sham."[236]

Also germane to the prior restraint argument, is the fact the Guidance Adjudicator has unlimited authority to request "additional information" from an applicant and may dismiss the application if such a request goes unanswered.[237] Moreover, as noted in the Yage Complaint, the term "additional information" escapes definition in the Guidance, leaving it "[…] open to unlimited interpretation, and thus presents an unlimited basis for overreaching demands and pretextual dismissals."[238] Finally, "[t]he Guidance provides no avenue for a prompt final judicial determination of the validity of the Guidance Adjudicator's decision.[239] According to the Yage Complaint, the Guidance Adjudicator's activities, "[…] chill the Free Exercise of visionary churches who are the targets of the Guidance process[…]"[240]

The Guidance also lays a heavy, and according to the Yage Complaint "useless" financial barrier for entheogenic churches, as most if not all entheogenic churches would seek advice and guidance from legal counsel before proceeding to file an application for a DEA exemption.[241] To this end, an entheogenic church would need to fund considerable research into both Constitutional and administrative law.[242] However, eventually the attorney would figure out the DEA exemption process does not produce the Certificate of Exemption the client was seeking. Therefore, they would be forced to file a lawsuit in federal court seeking the exemption,

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235 Pg. 27; ¶ 90 of Yage Complaint.

236 Id.

237 See Pg. 27; ¶91 of Yage Complaint.

238 Id.

239 Pg. 27, ¶ 92 of Yage Complaint.

240 Pg. 27, ¶93 of Yage Complaint.

241 See pg. 28, ¶94 of Yage Complaint.

242 See pg. 28, ¶95 of Yage Complaint.

which would also add a significant amount of expense. In fact, this exact scenario led the Arizona Yage and NAAVC to file their Complaint.[243]

The Guidance also burdens Free Exercise when it is used as a pretext for issuing de facto stop orders and administrative subpoenas.[244] On at least two separate occasions, the DEA has written letters requesting churches cease and desist their practices involving schedule one substances and inviting them to submit applications for a DEA exemption.[245] In response, the two churches submitted applications for DEA exemptions which went unanswered for years.[246] Furthermore, both churches received no responses from the DEA after making repeated requests for information regarding the status of their applications.[247] As written, these letters operate as de facto cease and desist orders and therefore act as a prior restraint on the free exercise rights of entheogenic churches.

C. The DEA Guidance Violates 5th Amendment Rights Against Self-Incrimination

The Guidance requires entheogenic church leaders to sign inculpatory statements under oath, describing conduct that violates the Controlled Substances Act. Such a statement could be used against those leaders in a prosecution for violation of the Controlled Substances Act. Therefore, the Guidance violates the Fifth Amendment's prohibition on compelled self-incrimination.

The Fifth Amendment guarantees that a person "shall [not] be compelled in any criminal case to be a witness against himself." It is well and long established Supreme Court precedent that "[a]dministrative regimes that attempt to institute compelled self-disclosure of prosecutable

243 See pg. 28, ¶96 of Yage Complaint.

244 See pg. 29, ln. 5-6 of Yage Complaint.

245 See pg. 29 of Yage Complaint.

246 See pg. 30 of Yage Complaint.

247 Id.

conduct under the rubric of taxation or regulatory reporting are unconstitutional violations of the Fifth Amendment prohibition on compelled self-incrimination."[248] In this instance, the Guidance requires an applicant disclose the organization's membership policies and leadership, list the controlled substances it wishes to use, where the controlled substances will be used, as well as the amounts, conditions, and location of its anticipated manufacture, distribution, and possession of controlled substances. A church leader disclosing this information in a sworn statement, as required by the Guidance, amounts to them submitting a signed confession which puts them and church members in danger of prosecution under the Controlled Substances Act.

As stated above, to comply with the Guidance procedures for a DEA exemption, the signatory must sign under penalty of perjury. The information requested in the application necessarily requires that person disclose facts which could lead to their arrest and prosecution under the Controlled Substances Act. Considering the DEA is the same agency that would investigate the potential criminal conduct described in the application, applying for the DEA exemption under the Guidance, as written, amounts to nothing less than playing Russian roulette with the freedom of an entheogenic church's leadership and membership. As such, the consensus amongst attorneys in this space has been to advise clients against applying for the DEA exemption pursuant to the Guidance.

D. Current Status of DEA Regulations

Now that we have discussed at length the massive shortcomings in the DEA exemption process, it is now appropriate to discuss the current state of affairs between the entheogenic church community and DEA. As stated above, the consensus amongst lawyers in this space, which are very few

248 Pg. 31, ¶ 107 of Yage Complaint (citing *Marchetti v. United States*, 390 U.S. 39, 58-59, 88 S.Ct. 697, 708, 19 L.Ed2d 889, 904 (1968); *Leary v. Unites States*, 395 U.S. 6, 10, 89 S.Ct. 1532, 1534, 23 L.Ed.2d 57, 66 (1969).

and far between, is to advise clients not to apply for a DEA exemption. The RFRA and analogous state statutes provide all the protection needed to practice in relative peace without government interference. Moreover, without a statutory mandate or basis to regulate religious exercise exemption claims, the DEA lacks the necessary authority to grant exemptions to religious adherents under the Controlled Substances Act.

In June of this year, I was able to attend a court hearing in the Arizona Yage case via Zoom. At that hearing, the government represented to the court the DEA was in the process of re-writing the Guidance documents and that a new Guidance would be "substantially complete" by June 2021. Whether this will come to fruition remains to be seen. Regardless, without authority to regulate free exercise claims, it is hard to imagine a set of enforceable guidance documents.

I would like to note, subsequent to filing their initial complaint, the Maricopa County Sheriff's department raided the home Arizona Yage leader, Clay Villanueva.[249] The sheriff's department did not arrest Mr. Villanueva but did seize ayahuasca and cash from his residence.[250] According to the Arizona Yage, the Maricopa County sheriff's department was coerced into executing the raid by the DEA via federal funds for their High Intensity Drug Trafficking Area unit.[251] While these are merely allegations made by the Arizona Yage, the timing of the raid, which took place subsequent to the Arizona Yage's filing of a lawsuit in the Northern District of California, seems to lend credence the assertion that the DEA was ultimately behind this unfortunate sequence of events.

In response to the raid, the Arizona Yage then filed for a preliminary injunction against the federal government and the Maricopa County Sheriff's Department.[252] That lawsuit is pending in the same suit as the

249 *See* Arizona Yage Assembly, et. al. v. William Barr, et. al., Case No. 3:20-cv-03098-WHO, Northern District of California, "Plaintiff's Motion for a Preliminary Injunction," Filed July 22, 2020 (hereinafter "Yage Injunction").

250 Id. at pg. 2, ⁋ 20-21.

251 See Yage Injunction, pg. 2, ⁋ 4-12.

252 See Yage Injunction.

original Complaint, both of which have been transferred to the District Court in Arizona. It will be interesting to see the outcome of this litigation as its resolution will shed light on the federal courts' position on the DEA's ability to regulate entheogenic churches. Moreover, if the Arizona Yage are granted their DEA exemption by the federal court, it will be yet another case where the federal courts upheld the religious freedom claims of an ayahuasca church.

Presently, there exists several organizations of ayahuasca/plant medicine churches which have banded together to form support organizations under a common umbrella. These organizations provide for a common legal defense fund and work to promulgate safety and substance handling standards amongst the member organizations. This quasi-internal regulation of the plant medicine church space provides much needed cohesion. By self-regulating within the space, these churches increase their chances of being held exempt from the Controlled Substances Act via the RFRA.

One of these organizations, the North American Association of Visionary Churches, which joined in the Yage litigation, apparently envisions a system by where the DEA would grant an exemption to the master organization, the NAAVC, which would then distribute imported sacraments to its member churches.[253] This type of scheme would obviously make the exemption process much simpler, efficient, and cost effective for all parties involved. As the number of entheogenic churches continues to grow, such a system would help alleviate administrative burdens on the DEA and help increase the number exempted churches. Moreover, this system would help to standardize safety and substance handling practices nationwide, thereby making the traditional ayahuasca/plant medicine ceremonies safer and lower the risk of diversion.

Personally, I am cautiously hopeful the new DEA Guidance documents will constitute a reasonable and efficient method by which entheogenic churches can obtain an exemption from the Controlled Substances

253 See Yage Complaint, pg. 18, ⁋ 9-19.

Act. From working in the industry, it is obvious and understandable that those operating entheogenic churches will not ever have that complete feeling of security until they have a stamped government document in their hand evidencing their right to import, distribute and consume their sacraments. For the most part, entheogenic churches do not represent a threat to or undermine the ability of the DEA to enforce the Controlled Substances Act. The sacraments at these entheogenic churches are only handled by a few church leaders and are consumed on premises by those who come to seek healing and communion with the spiritual realm. Generally, those who attend these entheogenic church ceremonies are there in furtherance of a sincere religious exercise and wish no harm to anyone else. These people just want to practice their religion in peace without fear of prosecution or government interference. Sometimes I want to ask the naysayers….."What if you went to the church house every Sunday having to look over your shoulder during the sermon? How would that feel?" This is the exact situation confronted by many entheogenic churches in this country. But I feel things are changing for the better!!!!!

Note on Tanzin v. Tanir[254]

In *Tanzin v. Tanir*, three practicing Muslims were placed on the No-Fly List in retaliation for their refusal to act as informants against their religious communities. Consequently, the three claimants lost money in wasted airline tickets and income from lost job opportunities. In response, the claimants filed suit against the government agents who placed them on the No-Fly List, in their individual capacities, for money damages. The district court dismissed the claims, stating that the RFRA did not permit government agents to be sued in their individual capacities. The Second Circuit reversed the district court, and the Supreme Court upheld the Second Circuit's decision. Therefore, under Supreme Court

254 592 U.S. _____ (2020).

precedent, federal government officials can be sued for money damages, in their individual capacities, for substantially burdening a person's sincere exercise of religion under the RFRA.

What does this Supreme Court decision mean for entheogenic churches in the U.S.? Likely, this will make governmental authorities, particularly the DEA, tread very lightly when deciding whether to seize entheogenic sacraments or send a cease-and-desist letter to an entheogenic church or retreat. As many in the entheogenic community are already aware, the costs of operating an entheogenic church or retreat are high. The average donation to participate in these ceremonies range anywhere from $200 to $1,000. If the government were to wrongfully shut one of these churches or retreats down, or seize their sacraments, the monetary damages suffered by the organization will add up quickly. Therefore, it is my belief and hope that this Supreme Court decision will help protect entheogenic churches and retreats from senseless and arbitrary interference from the government.

THE TAKEAWAY

Below are the main points to take away from this chapter:

- **a.** The DEA has no statute enabling it to regulate entheogenic churches;
- **b.** The Guidance documents were not promulgated in accordance with the Administrative Procedures Act;
- **c.** The Guidance documents do not constitute official government policy as they did not embody the principles espoused in the Attorney General's Memorandum and did not comply with the mandates in the Executive Order 13891 via the OMB's Implementing Memo;
- **d.** The Guidance documents are an unconstitutional prior restraint on free exercise for a multitude of reasons;

e. The Guidance documents violate the Fifth Amendment right against self-incrimination;
f. The DEA has claimed it will be implementing a new Guidance document in late 2021;

CHAPTER 4

GENERAL GUIDE TO FORMING A NON-PROFIT CHURCH

In this Chapter, I will give some general guidelines and ideas to consider when forming a non-profit church. Again, I want to reiterate that nothing contained in this book constitutes legal advice and I absolutely recommend anyone serious about forming a non-profit church, especially if church practice and doctrine will include the sacramental consumption of entheogens, consult with an attorney knowledgeable in those areas. My purpose in writing this Chapter is to give my readers a general idea of what forming a non-profit church looks like.

At the outset, I would like to note my opinion that a sacred ceremony involving entheogens, consummated in a manner that places safety and substance handling as a priority, is generally a protected activity under the federal RFRA. Now just because I say that it is generally protected, does not mean that it is a good idea to start holding sacred ceremonies without regard to other formalities that can offer greater protection. If we consider legal protections extended to the sacramental consumption of entheogens on a spectrum, following the formalities in this Chapter should generally place an organization more towards the "protected" end of the spectrum.

I say this because obviously the federal RFRA statute does not

specifically require that a religious adherent be organized as a non-profit to be protected. However, when the courts examine these cases, it is easier for them to recognize and associate a practice as "religious" when the organization has followed generally accepted formalities of forming a church. Moreover, the need for a non-profit church becomes very evident when we consider how the money coming in and out of the organization is to be treated under the state and federal tax codes.

In this Chapter, I will discuss the three main documents that usually go into the formation of a non-profit church. As this book concerns free exercise in the context of the sacramental consumption of entheogens, I will cover these documents and steps in light of what the typical entheogen-based church should consider. The three main documents I will discuss are: state non-profit filings (articles of incorporation, certificate of formation, etc.), non-profit bylaws, and statements of belief and accoutrements clauses.

A. State Non-Profit Filings

The first document that a non-profit church will want to file is the state non-profit filing. As this filing occurs at the state level, every state will have slightly different requirements. For instance, some states require that you name the initial board members on the filing, some require that you have five incorporators, etc. It is very important that an organizer fully understand what those requirements are and how to meet them. Generally, from what I have seen, most states will have forms for these filings on the secretary of state's website. Moreover, most forms I have seen also have a detailed list of instructions attached. Therefore, one can get a general idea of what is required for the state-level filing by simply going to the Secretary of State's website and downloading or printing the non-profit filing form with instructions.

As a practical matter, an organizer will want to have their board of directors picked before submitting the state filing. Not all states require

that you name the board of directors in the state filing, but most require that a non-profit have a board of directors. However, any definitive answer on what is required or allowed under any state's laws will need to be obtained from that states business organizations code or analogous statutes.

To the best of my knowledge, every state requires that a non-profit name a registered agent in the non-profit filing. A registered agent needs to be a natural person or an organization that maintains a physical address within the state. Please note that a post office box will not suffice as a physical mailing address for a registered agent. A registered agent does not necessarily have to be involved in the administration of the non-profit, as a registered agent is named only for service of process purposes only. Again, this person can be someone involved in the management of the non-profit but does not necessarily have to be involved. In fact, there are whole companies that serve as registered agents for other organizations.

Most state non-profit filings require the organization list its purpose in the document. Usually, this consists of a one to two sentence, very generalized, statement of the non-profit's purpose. It is important to know that a non-profit must operate in furtherance of the purpose statement. Any activities outside of that purpose, must usually be approved by the board of directors. It is also important to note that for non-profits, this section is also where the organizer will want to place a sentence denoting which section of the IRS code the non-profit intends to operate under. As it relates to non-profit churches, there are really only two options of which I am aware, that is 501(c)(3) and 508(c)(1)(a).

A 501(c)(3) is a tax-exempt non-profit organization under the IRS Code. If a church intends to file under 501(c)(3), they must file the long form 1023, not the 1023ez. One obstacle that most, if not all, entheogenic churches will face when filing under 501(c)(3), are the characteristics the IRS examines to determine if a church qualifies as tax exempt under 501(c)(3). For informational purposes only, I will list those characteristics below:

a. Distinct legal existence;
b. Recognized creed and form of worship;
c. Definite and distinct ecclesiastical government;
d. Formal code of doctrine and discipline;
e. Distinct religious history;
f. Membership not associated with any other church or denomination;
g. Organization of ordained ministers;
h. Ordained ministers selected after completing prescribed courses of study;
i. Literature of its own;
j. Established places of worship;
k. Regular congregations;
l. Regular religious services;
m. Sunday schools for the religious instruction of the young; and,
n. Schools for the preparation of minsters.[255]

The same document states below this list:

"The IRS generally uses a combination of these characteristics, together with other facts and circumstances, to determine whether an organization is considered a church for federal tax purposes. The IRS makes no attempt to evaluate the content of whatever doctrine a particular organization claims I religious, provided the particular beliefs of the organization are truly and sincerely, held by those professing them and the practices and rites associated with the organization's belief or creed are not illegal or contrary to public policy."[256]

It is worth note, that the UDV had received a certification of

255 See Pg. 37 of 40, https://www.irs.gov/pub/irs-pdf/p1828.pdf
256 See Pg. 37 of 40, https://www.irs.gov/pub/irs-pdf/p1828.pdf

tax-exempt status from the IRS. As such, an entheogenic church, per se, is not excluded from meeting these criteria to the satisfaction of the IRS. However, many entheogenic churches have yet to develop their organization and structure to the point of having most or all these criteria fulfilled.

One must also note that by applying and receiving a tax-exempt certification under 501(c)(3), they voluntarily agree to abide by the following rules;

a. Their net earnings may not inure to any private shareholder or individual;
b. They must not provide a substantial benefit to private interests;
c. They must not devote a substantial part of their activities to attempting to influence legislation;
d. They must not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office; and,
e. The organization's purposes and activities may not be illegal or violate fundamental public policy.[257]

Obviously, these restrictions would not necessarily interfere with a typical entheogenic non-profit church's activities, but it is something to consider.

As mentioned above, the other IRS Code provision for non-profit churches is 508(c)(1)(a). This provision is specifically for non-profit "faith-based" organizations. The reason this code provision exists is because typically, as noted in Chapters 3-4, the government should not delve too deep into trying to determine what constitutes a "religion." However, it is clear that applying for 501(c)(3) tax-exempt status more or less allows the IRS to do exactly that. The IRS has set out these factors it considers in determining whether the organization applying for

257 See Pg. 8 of 40, https://www.irs.gov/pub/irs-pdf/p1828.pdf.

a tax-exempt determination is worthy of "church" status under 501(c)(3). If you look at the factors, they are used to ascertain whether the particular organization is religious. Moreover, it appears, in my opinion, as though the factors were manufactured with the picture-perfect orthodox church in mind. Therefore, many entheogenic non-profit churches will likely not qualify under that provision.

508(c)(1)(a) is pretty much a default provision whereby a non-profit church can operate as tax-exempt but escape the rigors of qualifying as "church" under 501(c)(3). 501(c)(3) is a voluntary application, non-profit churches are tax exempt regardless of whether they have received a 501(c)(3) determination. The only requirement to operate under 508(c)(1)(a) is the organization denoting their intention to operate under that provision in the state non-profit filing.

B. By-Laws

Any non-profit church will need to draft a set of by-laws. The variance of laws governing bylaws between states is so great that I will not dive too deep into the particulars in this book. However, this underscores the need to retain competent counsel to draft a set of conforming by-laws that makes the most sense for the organization yet still meets the requirements of state law. These documents can get tricky and are not easily understood by the lay person.

In a nutshell, the bylaws establish the rules for internal governance of the non-profit church. Usually they include, but are not limited to the following:

a. How to appoint the initial board of directors and officers;
b. How board meetings will be held and at what frequency;
c. What ratio of board members will constitute a quorum;
d. The duties and standard of care of directors and officers;
e. How to amend the by-laws or other internal documents;

f. What happens to the non-profit's assets upon dissolution;
g. How directors are elected and whether their terms are staggered; and,
h. How corporate documents are to be executed.

Again, this is just a preview into the different subjects covered in a typical set of bylaws. Overall, in my opinion, the bylaws really do not go much towards the protection an entheogenic church would receive under the RFRA, but it is highly recommended that such an organization hire an attorney competent in RFRA claims to draft all the formation documents.

C. Statement of Beliefs and Accoutrements Clauses

In terms of legal protections afforded under the RFRA and accompanying case law, this is the most important document in forming an entheogenic church. The contents of this document will establish, in many respects, the "sincerity" of the particular religious practice(s). This document should also contain provisions related to the safety of the church's members, and provisions related to substance handling procedures. In a nutshell, this document should embody everything the church would argue in defense of their religious practices under the RFRA.

As stated earlier in this book, my opinion is the *Meyers*[258] factors serve as the best guide to drafting the statement of beliefs and accoutrement clauses. For the sake of clarity, below are the *Meyers* factors:

1. *Ultimate Ideas:* 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. "*Africa,* 662 F.2d at 1032. These matters may include

258 *U.S. v. Meyers*, 906 F. Supp. at 1502-03.

existential matters, such as man's perception of life; ontological 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.

2. *Metaphysical Beliefs:* Religious beliefs often are "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.
3. *Moral or Ethical System:* Religious beliefs often prescribe a particular manner of acting, or 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.
4. *Comprehensiveness of Beliefs:* Another hallmark of "religious" ideas is that they are comprehensive. More often than not, such beliefs provide a *telos,* an overarching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans. In other words, religious beliefs generally are not confined to one question or a single teaching. *Africa,* 662 F.2d at 1035.
5. *Accoutrements of Religion:* By analogy to many of the established or recognized religions, the presence of the following external signs may indicate that a particular set of beliefs is "religious":

a. *Founder, Prophet, or Teacher:* Many religions have been wholly founded or significantly influenced by a deity, teacher, seer, or prophet who is considered to be divine, enlightened, gifted, or blessed.
b. *Important Writings:* Most religions embrace seminal, elemental, fundamental, or sacred writings. These writings often include creeds, tenets, precepts, parables, commandments, prayers, scriptures, catechisms, chants, rites, or mantras.
c. *Gathering Places:* Many religions designate particular structures or places as sacred, holy, or significant. These sites often serve as gathering places for believers. They include physical structures, such as churches, mosques, temples, pyramids, synagogues, or shrines; and natural places, such as springs, rivers, forests, plains, or mountains.
d. *Keepers of Knowledge:* Most religions have clergy, ministers, priests, reverends, monks, shamans, teachers, or sages. By virtue of their enlightenment, experience, education, or training, these people are keepers and purveyors of religious knowledge.
e. *Ceremonies and Rituals:* Most religions include some form of ceremony, ritual, liturgy, sacrament, or protocol. These acts, statements, and movements are prescribed by the religion and are imbued with transcendent significance.
f. *Structure or Organization:* Many religions have a congregation or group of believers who are led, supervised, or counseled by a hierarchy of teachers, clergy, sages, priests, etc.
g. *Holidays:* As is etymologically evident, many religions celebrate, observe, or mark "holy," sacred, or important days, weeks, or months.

h. *Diet or Fasting:* Religions often prescribe or prohibit the eating of certain foods and the drinking of certain liquids on particular days or during particular times.
i. *Appearance and Clothing:* Some religions prescribe the manner in which believers should maintain their physical appearance, and other religions prescribe the type of clothing that believers should wear.
j. *Propagation:* Most religious groups, thinking that they have something worthwhile or essential to offer non-believers, attempt to propagate their views and persuade others of their correctness. This is sometimes called "mission work," "witnessing," "converting," or proselytizing."[259]

The first four *Meyers* factors are to serve as a guide for drafting the "Statement of Beliefs." This portion of the document should list the belief system of the church. It is important to note that a statement of beliefs does not have to address or embody all the *Meyers* factors to be considered "religious" for purposes of the RFRA. Again, these first four factors should be used only as guideposts in formulating belief statements.

The remaining *Meyers* factors, which I term "accoutrements" provisions, are traditional outward manifestations of religions. Again, if the particular organization does not meet or address each one of these elements in its statement of beliefs, it is not dispositive of whether a court would consider its beliefs "religious" or not. While I encourage my clients to try their best to address as many as possible, it is not mandatory.

As we learned in Chapter III, the courts examine the safety protocols in place to ensure the safety of church members participating in ceremonies. Sub-factor (e) above is where this type of information should be listed in the statement of beliefs. The courts have noted the ceremonial context of consuming entheogenic substances can provide the

259 *U.S. v. Meyers*, 906 F. Supp. at 1502-03.

safety necessary to overcome the government's compelling governmental interest in the health and safety of the church's members. Therefore, it is important to outline these practices in this section. Ideally, this would include extensive information regarding the screening of potential members/ceremonial participants for medications and medical conditions that might prevent them from safely participating in ceremony. Any information related to safety should be denoted in the statement of beliefs or other internal church documents.

Finally, the statement of beliefs/accoutrements clauses should contain information related to internal substance handling procedures. As we saw in previous chapters, the way that entheogenic substances are handled and stored will play a significant role in a court's RFRA analysis. It is imperative that an entheogenic church implement very strict and thorough substance handling/storage procedures. Most importantly, an entheogenic church's leadership should strictly follow and enforce those guidelines and procedures.

Generally, the DEA requires research and other organizations to keep Schedule I substances behind at least three locks. While this requirement is not necessarily applicable to entheogenic churches, it is a great guideline to follow. Again, this will help appease a court's concerns about possible diversion of the entheogenic substances from religious to non-religious use.

As far as actual substance handling is concerned, the courts in the UDV and Santo Daime cases noted the substances were only handled by a few high-ranking church members/officials. As such, any entheogenic church should restrict the handling of these substances in a like or similar fashion. Obviously, whoever is serving the substances and/or facilitating a particular ceremony should be able to handle the substances, even if they are not necessarily a high-raking church member/official. I say this because many entheogenic churches have shamans and other healers, who are not necessarily affiliated, to come and serve entheogenic substances at ceremony. As such, it should be acceptable for such an

individual to handle and dispense the substances in accordance with their ceremonial guidelines.

I will end this Chapter by reiterating the need to retain competent legal counsel when drafting the formation documents for an entheogenic church. Merely reading the information in this book and/or conducting one's own independent research is not an acceptable substitute for consulting with a legal professional competent in these matters. The purpose of this Chapter is merely to give my reader an idea of what establishing an entheogenic church on paper looks like. One must understand that drafting these documents is no easy task and much attention must be paid to detail. The government in a RFRA case will attempt to use any deficiency in these documents and/or church practice to make its case. Therefore, hiring competent legal counsel is paramount in establishing the maximum protection afforded under the RFRA.

CHAPTER 5

FREQUENTLY ASKED QUESTIONS

In this Chapter, I will answer some frequently asked questions that have arisen during the course of my work in the entheogenic church space. The questions addressed here came from my good friend and associate, Darren Wendroff, who is an integration specialist. The list of questions he sent me, the ones I will answer below, mirrored many of the same questions I have been receiving over the last six months or so. I am going to answer these questions without many citations to authorities, although I might reference other parts of this book or other sources generally. I hope this helps to address some of the questions my readers might have after reading the first five chapters.

1. **"MOST OF THE CHURCHES I SEE ARE AYAHUASCA CHURCHES. WHAT IF I WANT TO CREATE A MUSHROOM OR CANNABIS CHURCH?"**

   This is a very good questions and probably one of the more common questions that I have addressed. I will first address the question of a mushroom (Psilocybin) church and then answer the question relating to the possibility of a cannabis church.

It is my opinion that a psilocybin church would absolutely be protected under the RFRA if established properly. As far as sincerity of practice is concerned, it is no secret that psilocybin or psychoactive mushrooms have been consumed by man, in a ceremonial context, for at least 10,000 years, if not longer. The best evidence to date is the mushroom bee shaman cave painting in Algeria. The art has been dated back to over 10,000 years ago and was discovered in the Saharan Desert. In my opinion, the psilocybin mushroom is perhaps the most ancient and sacred of entheogenic sacraments on earth. If one subscribes to McKenna's "Stoned Ape Theory" then the psilocybin mushroom becomes even more ancient and more sacred than any other entheogenic sacrament.

The safety of psilocybin itself has been established in clinical trials and other government and university sanctioned research over the last 60 years. In fact, the clinical research concerning the safety and efficacy of psilocybin has made a lot of progress over the last ten years. In my first book, "Psychedelics in Mental Health Series: Psilocybin" I cover all the psilocybin research from the beginning through February 2020. It is my impression the current FDA-sanctioned psilocybin studies will be rolling into Phase III very soon. Therefore, the government would have a tough time proving psilocybin to be a safety hazard for ceremonial participants.

The biggest concern with a psilocybin church would be the potential for diversion from religious to non-religious use. It is no secret, and the government would not have a hard time proving, there is a rather sizeable illicit market for psilocybin mushrooms. As such, the handling and storage procedures of the church would need to be very strict and comprehensive. What exactly those procedures should be or look like is beyond the scope of this book. However, the reader should be aware that the potential for diversion would be the government's sticking point in arguing against a RFRA exemption for a psilocybin church.

As far as a cannabis church is concerned, it is starting to look as if a RFRA exemption would no longer be a concern for such an organization. In December 2020, the U.S. Congress passed the MORE Act, which would remove cannabis from the list of Schedule I substances under the Controlled Substances Act. Moreover, many states this last election outright legalized cannabis. This is in addition to the numerous states that have already legalized cannabis. Therefore, it will likely be unnecessary in the future for a cannabis religion to structure itself any certain way in order for the religious consumption of cannabis to be a protected activity.

However, for purposes of the RFRA, I do not believe that a cannabis church has ever received protection from the courts. Most of the cases I have seen, including *Meyers*, involved cannabis churches which mostly operated as a front for widescale sale and distribution of cannabis. As such, the courts have been extremely reluctant to grant a religious exemption to such an organization. Note, that anytime the court believes the RFRA defense is manufactured purely in response to criminal charges, they will likely find the beliefs to not be sincere.

Perhaps the only way I could see a cannabis church receiving protection under the RFRA, is if the cannabis sacrament is only held and consumed on the church premises. Otherwise, the courts are generally reluctant and uncomfortable with cannabis, or any other scheduled substance, leaving church grounds and seeping into the streets (aka being diverted to non-religious use). This is true for every church that consumes a Schedule I substance as part of its religious practice. The sacraments should never leave the church premises except for when being transported to and from a ceremony. No church member should be allowed to leave the church premises with sacraments or be able to handle sacraments outside of their participation in ceremony. Otherwise, the courts are likely to see the church as a front for distribution of the Schedule I substance.

2. **"Does the church have to be based on an existing religious or ceremonial doctrine."**

I am assuming this question is really asking whether a particular belief system must be based on an existing religious doctrine or practice (i.e. "have a pedigree"). I believe that a belief system it does not have to be tied to an existing religious or spiritual practice or doctrine. In *Meyers*, the district court states, "Nor will the Court find that a particular set of beliefs is not religious because the beliefs are, from either the Court's or society's perspective, *idiosyncratic*, strange, solipsistic, fantastic, or peculiar."[260] Additionally, the district court in Meyers states:

"Long ago, Judaism, Christianity, and Islam were "idiosyncratic" and particular to a few individuals. The same can be said of newer religions, such as the Church of Mormon and the Unification Church. Under the Saint Claire court's approach, none of these religions at their inception would have been entitled to First Amendment Protection."[261]

So the quick answer to this question is NO. Religious doctrine does not have to be tied to or related to an existing church or doctrine in order to receive protection under the RFRA. In my opinion, as far as entheogenic church doctrine is concerned, the only requirement to receive protection under the RFRA is the sacraments are being used, and are the only or primary way, to commune with a higher spiritual force. I do not believe that merely secular beliefs related to

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260 *U.S. v. Meyers*, 906 F.Supp 1494, 1499 (D. Wyo. 1995)(citing *Africa v. Commonwealth*, 662 F.2d 1025, 1030 (3d Cir. 1981)("judges are not "oracles of theological verity")) (emphasis added).

261 Id. at 1500 (fn. 3).

entheogenic sacraments will suffice to receive protection under the RFRA. Again, this is only my opinion. Great question!!!!!

3. **"Am I able to grow my own sacraments on the premises or do I need to purchase this from an existing church or community?"**

For purposes of this question, I am going to assume that we are speaking of a psilocybin church growing its own psilocybin mushrooms. The short answer to this question would be yes. However, we must always remember, especially with a psilocybin church, diversion of sacraments from religious to non-religious use is of paramount concern.

Considering there is currently no government-sanctioned psilocybin mushroom growing operation, formed to supply religious adherents, it is only logical that a psilocybin church would need to grow its own sacraments. As a side note, I would like to mention the sustainability of psilocybin mushrooms as sacraments. The ultimate question here, is how to grow the psilocybin sacraments, while at the same time taking precautions to prevent against the risk of diversion from religious to non-religious use.

As with many projects or tasks in life, there are many ways to skin this proverbial cat. Without discussing, ad nauseum, the various operational possibilities associated with growing psilocybin sacraments, I will briefly discuss some ideas I have floated around in these regards. First, a church propagating their own psilocybin sacraments will want to keep extremely detailed records of the amounts of sacraments grown, consumed, and stored at all times. Second, it would be advisable, if possible, to grow the sacraments somewhere away from the church premises, by a high-ranking church official. If the psilocybin church becomes well known, and the location of the church well known, the possibility that the psilocybin sacraments would be

diverted to non-religious use increases. Therefore, propagating the psilocybin sacraments off church premises becomes advisable at a certain point.

Finally, as with all other entheogenic sacraments, the church will want only certain high-ranking church officials handling, storing, serving, and growing the psilocybin sacraments. This should be accounted for in internal church documents and should be strictly followed. Again, the government will argue the potential for diversion from religious to non-religious use is high. Another great question!!!!

4. **"Is my church able to work with various plant medicines or are we limited to one sacrament"**

The short answer here, in my opinion, is NO. The only sacraments that has been squarely addressed by the courts at this juncture are ayahuasca and peyote. However, we can take the ayahuasca RFRA analysis, extrapolate, and apply to other entheogenic sacraments. Therefore, the two main concerns when considering extra sacraments is always the safety of church members and the risk of diversion from religious to non-religious use.

As far as sincerity of religious exercise is concerned, I do not think that any entheogenic sacrament, if used properly and in a sacred manner, could be excluded for lack of sincerity. For the most part, entheogenic-based religions operate on the premise that these natural entheogens were placed on earth, by the creator, for humans to commune with it and the spiritual realm. Therefore, as far as sincerity is concerned, it would be hard for the government to argue that a church engaged in a sacred ceremony lacks sincerity. The nature of the substances themselves and the experience they impart on the ceremonial participant lends itself to a finding of sincerity. Another great question!!!!!

5. **"Are there requirements for the church property? Does it have to be a certain size or have other property requirements?"**

This is a very broad and open-ended question. The short answer here is NO. To be honest, I do not think it is even necessary that the church own or lease a certain property per se. However, it is always advisable that an entheogenic church own or lease its own property. Technically, the church could meet or commune wherever it pleased. It would not be advisable to meet and consume entheogenic sacraments on public property. Finally, any time a church purchases or leases a property, it would be advisable to check on the local zoning laws, ordinances, and/or HOA restrictions when deciding whether to conduct a ceremony on site.

6. **What do I do if I open a church and we get raided by law enforcement?"**

This question is highly dependent on the circumstances at hand in any given situation. However, I would advise anyone that is confronted by law enforcement in connection with a potential law violation to not speak with authorities until you have consulted competent legal counsel. It would be best to simply allow law enforcement to search and confiscate whatever they want. In the event the church has to go to court, pursuant to the RFRA, in order to get an injunction against the government, they are entitled to recover their attorney fees and costs from the government. Furthermore, any federal government officials involved in substantially burdening an adherent's sincere religious exercise can be sued, personally, in federal court for money damages. Just remain calm and quiet.

7. "How can I create an intentful church that gives back to the communities where the plant medicines come from?"

There are a number of ways that one can create an intentful church and give back to indigenous communities. I am going to assume this question is mostly centered towards ayahuasca churches, which normally have the most cultural appropriation involved with their medicines and ceremonies. There are many ways to give back to indigenous communities. My opinion is that this type of energy exchange would start with actually going to South America and befriending some indigenous tribes and establishing a relationship with them. Next, I would set up a separate non-profit that would be used to collect donations and distribute the money back to the indigenous tribes in a manner consistent with the non-profit's stated purpose.

Another way would be to have shamans or healers from those tribes come and stay in the U.S. and serve at the church's ceremonies for a period of time. At the end of the period, give the shaman or healer a percentage or portion of the donations received at the ceremonies in which they facilitated. This is another way to go about giving back. In either event, it will become more and more important as the U.S. entheogenic church scene grows, to give back to the communities where it all started. As the Amazon rainforest shrinks it becomes more and more important to give resources back to those that have been tasked by Pachamama to protect it. My company EntheoConnect plans on forming a non-profit which will give money to indigenous tribes for specific infrastructure projects in villages. If anyone needs to establish a connection in South America to facilitate giving back, feel free to reach out I can put you in touch with an organization can help facilitate the energy exchange.