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Holly Burch
DEA Office of Chief Counsel
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

VIA EMAIL ONLY: holly.burch@dea.gov

RE: Master Memorandum on the Constitutional and other Deficiencies of the Current DEA Guidance Document.

Dear Ms. Burch:

By way of introduction, I am George Lake, an attorney licensed in the State of Texas and several federal courts across the Country. Over the last four years, I have dedicated my legal career to advancing the rights of entheogen-based religious practitioners like those the Supreme Court addressed in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006). Over the last three years I have contributed over $500,000.00 in pro bono attorney fees representing entheogen-based religious practitioners in various civil cases across the country. Furthermore, I have taught several CLE courses to attorneys in Oregon, Washington, and California about building entheogen-based religious organizations.

In addition to consulting entheogen-based religious practitioners on best practices as it relates to safety and staying within the strictures of RFRA, I have also authored two books on the subject: "The Law of Entheogenic Churches in the United States" and "The Law of Entheogenic Churches (Vol. II): The Definition of Religion under the First Amendment." I have included a copy of these books with this Memorandum, please feel free to share them with your staff and others at your discretion.

I am writing this Memorandum at the request of the U.S. Attorney's Office in Maine, as they have expressed interest in negotiating a deal with a client of mine currently operating an ayahuasca church in their jurisdiction. However, as the law currently stands, the only way we can negotiate and solidify a settlement is through litigation. This state of affairs is detrimental not only to my client, an honest and sincere religious practitioner, but also the American taxpayer. Not to mention, our court systems, state and federal, are already clogged and adding cases to their dockets is counterproductive to ensuring judges have the adequate amount of time and resources to

properly address cases which are much more concerning than those involving sincere religious practitioners.

After speaking with a representative from the DEA, we learned the DEA can not negotiate outside of the strictures of the Guidance Document, which, due to the unconstitutional provisions contained therein, prevents attorneys from filing petitions pursuant thereto. Ultimately, this has incidental and arguably a negative impact on the free exercise rights of more and more Americans every day according to religious experts, who are publishing papers about the rapid movement towards entheogen-based religious practices in this country.[1]

While the thrust of this Memorandum is to point out the unconstitutional aspects of the current DEA Guidance Document, please do not take this as an attack on the DEA or a sign of disrespect for you, your office, or your agents. My goal is to work together to craft an APA-compliant Guidance Document which would be a mandatory requirement for those wishing to "legally" engage in entheogen-based religious practices in this country. The overwhelming majority of my clients (I have helped establish approximately 70 entheogen-based religious organizations over the last three years) are upstanding citizens and pillars in their communities. Moreover, most are hard working professionals, including medical professionals, who have found direct communion with the Divine through the sacramental consumption of entheogens, to be their now preferred method of religious practice. Additionally, many of these organizations work with veterans and other vulnerable populations who have been spiritually broken by various traumas they have experienced.

UNCONSTITUTIONALITY OF THE DEA GUIDANCE DOCUMENT

I. Overview of Issues with the Current DEA Diversion Control Guidance Document

Shortly after starting to help people form entheogen-based religious entities (churches) I became aware of the DEA Guidance Document. When I first read the document, the process didn't feel equitable in nature although I couldn't point out all the unconstitutional aspects therein. Regardless, I could tell there was a certain amount of one-sidedness to it that was probably not congruent with the First Amendment and/or RFRA.

Within a week or so the Arizona Yage Assembly, with Clay Vilanueva as the lead plaintiff, sued the federal government and his attorney, Charles Carreon, who has now become a good colleague and friend of mine, filed a beautiful 80-plus page complaint which addressed the main constitutional issues with the Guidance Document. As such, a lot of the cases I cite here, and many of the arguments I make, are those inspired by Charles back in 2020 when the first post-Santo Daime RFRA suit was filed. I want to thank Charles for all his support and tenacity supporting visionary practitioners.

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[1] *See* Stoddard, Brad. (2023) Entheogens: Psychedelic Religion in the United States, part one. *Religious Compass*. 2023:17:e12474. https://doi.org/10.1111/rec3.12474.; Stoddard, Brad. (2023) Entheogens: Psychedelic Religion in the United States, part two. *Religious Compass*. 2023:17:e12477.

Before I delve into the specifics of why the DEA Guidance Document falls way short of being congruent with traditional notions of fair play and substantial justice and/or basic notions of constitutional law, I want to remind the DEA of a statement/promise it made in the Court record on the first day the AYA litigation in front of Judge Orrick of the Northern District of Arizona. During that hearing, I believe in late 2020, early 2021, the government asked Judge Orrick to stay the case while they revised the Guidance Document to make it more palatable for religious practitioners and also force the AYA plaintiffs exhaust that administrative remedy before regaining standing to sue the government under RFRA.

Judge Orrick gently laughed at the government's proposition as he reminded everyone that he once worked for the government and stated his belief that those statements were meaningless as his experience working for the government informed him that the government normally does not move quickly enough to justify a stay at that time. Here we are about four years later, and Judge Orrick's hunch remains correct. Hopefully, now that the growth of entheogen-based religious practices and practitioners has exploded post-COVID 19, the DEA will take seriously the suggestions and requests the Guidance Document be amended and hopefully put through the APA process. If not, then it will remain meaningless to the handful of attorneys in this space who know that litigation is the only way to get an overt exemption to the Controlled Substances Act. In all honesty, I consider any attorney who submits a petition under the Guidance Document as potential legal malpractice.

Before we get into the specifics of the guidance it is important to note that, "…more Americans are equating the use of psychoactive substances with religion than at any point in history."[2] And in turn, "…more Americans are legally consuming psychoactive substances for religious or spiritual reasons than at any point in U.S. history."[3] According to Dr. Stoddard, "[b]ased largely on preliminary research, it's safe to conclude that multiple entheogenic communities exist in every state, they are growing, and that new entheogenic communities are forming across the nation."[4] "[T]he proliferation of entheogenic churches is one of the fastest growing aspects of the PR (psychedelic renaissance)."[5] Because of the rapid rise in public awareness of the entheogenic effects of psychedelics, "[o]ne activist anticipates that the United States needs roughly 10,000 entheogenic communities to adequately serve the nation's religious and spiritual needs."[6]

In addition to newly established entheogen-based religious traditions being created daily across the country, established religious traditions, such as certain Christian sects, are also seeking to incorporate the sacramental consumption of entheogens into their existing religious practices which are primarily based on secondary religious phenomena such as holy texts and clergy. In a sense, these traditions are seeking to go back to the root of religious practice which is the primary religious or mystical experience of the Divine, which was the primary mode of religious worship

[2] Id. at pg. 2.
[3] Id.
[4] Id. at 8.
[5] Id. at 10.
[6] Id. (citing Danny Peterson: psychedelics, religion, and freedom. Psychedelics Today Podcast).

worldwide until, "Around 1500, moveable type and the printing press democratized access to religious texts."[7]

A. Religious Freedom and Restoration Act of 1993 (42 U.S.C.§ 2000bb et seq. versus the Controlled Substances Act (21 U.S.C.§ 801, et seq.; Which is the Supreme Law of the Land

According to the title of the Guidance Document itself, it is a assist those who seek "Guidance Regarding Petitions from the Controlled Substances Act Pursuant to the Religious Freedom and Restoration Act." However, nowhere in the RFRA statute does it give the DEA, or any other executive agency the authority to exempt anyone from the strictures of any law.[8] In fact, the statute quite plainly states that it is to provide a claim or defense in a JUDICIAL PROCEEDING.[9] So if the guidance document does not obtain authority from RFRA itself, where does it gain its authority from?

This has been and is still a mystery. RFRA itself states in 42 U.S.C. 2000bb-3(a) that, "This chapter applies to all Federal law, and implementation of that law, whether statutory or otherwise, and whether implemented before or after November 19, 1993." As we are all aware, the Federal Controlled Substances Act was promulgated first in the early 70's I believe. As such, the Controlled Substances Act in and of itself is subject to the strictures of RFRA. Now 42 U.S.C. § 2000bb-3(b) states that "Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter." To the best of my knowledge, the CSA contains no new provisions which make such a reference, thereby imparting preeminence of any part of the CSA over the strictures of RFRA.

If we go back to 42. U.S.C. § 2000bb, the "Congressional findings and declaration of purposes" section of RFRA, we are reminded that Congress's intent was to restore the compelling interest test of *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder* (1972). Under the "compelling interest" analysis advanced by this line of cases, any law that burdened a sincere religious exercise, even incidentally, required the government show some compelling justification for doing so and that the chosen means represented the least restrictive and most constitutionally protective way to advance the government's compelling interest. As such, the strictures of 42 U.S.C. 2000bb-3(a)-(b) are congruent with the line of cases upon which the statute is based and, in my opinion, on sound First Amendment free exercise (of religion) principles, as intended by the framers of the First Amendment.

So far, the government has asserted the primacy of the CSA's petition process over RFRA and has lost twice and won once so far. The government in every case thus far has argued that the Guidance Document imparts an exhaustion requirement on entheogen-based religious practitioners seeking to adjudicate their religious freedom claims under RFRA. That argument was first shot down by Hon. Judge Silver of the Arizona District Court in the AYA litigation on March

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[7] Roberts, Thomas. (2022). From the 500-year Blizzard of Words to to Personal Sacred Experiences -- The New Religious Era.

[8] See 42 U.S.C. 2000bb et seq.

[9] 42 U.S.C.2000bb-1 (C) "Judicial Relief"

30, 2022. In that case, Judge Silver held blatantly that, "…the Guidance does not impose an exhaustion requirement for suit seeking CSA exemptions under RFRA.

Guidance documents are used by federal agencies to help guide citizens in navigating various programs and requirements of federal agencies, but if they are not first subject to the APA rulemaking or adjudicatory procedure, generally do not have the effect of law and not controlling on courts."[10] And while there is a provision in the administrative code, 21 C.F.R. §137.03, which requires persons seeking exemption from the CSA to file a written request with the DEA Office of Diversion Control, the Ninth Circuit held persons seeking a RFRA exemption from the DEA are not required to exhaust that administrative prior to initiating litigation under RFRA.[11]

It is apparent that the RFRA statute itself in 42 U.S.C. 2000bb-3(b) only allows congress, not administrative bodies, to render any law or administrative process superior to the strictures of RFRA. Considering the foregoing, did both the district judge and and 11th Circuit panel get it right when they ruled §893 took primacy over RFRA and divested the trial court of jurisdiction? In my opinion no, and unfortunately Soul Quests' attorney failed to argue the obvious, 42 U.S.C. 2000bb-3(a)-(b), where the statute plainly states that all prior federal law is subject to it and that relief under RFRA can be obtained by asserting it as a claim or defense in a judicial proceeding, which Soul Quest had done in the Middle District of Florida.

At the time the DEA denied Soul Quest's exemption application by entering its denial letter into the record, Soul Quest's RFRA claim was still alive and ripe for adjudication. As such, RFRA's promise that it could be asserted in a judicial proceeding as a claim or defense and that all federal law was subject to it, seems to have been subverted by the Middle District of Florida when it sent a live RFRA claim up to the 11th Circuit in clear contravention of the plain language contained in the statute.

In any event, what happened in the Soul Quest litigation provides even more reason why an entheogoen-based religious practitioner would be extremely hesitant to submit a petition for exemption to the DEA before filing a RFRA suit. While I think the Supreme Court will reverse the 11th Circuit and District Court's decisions, until then, submitting anything to the DEA asking for a CSA exemption, in addition to the constitutional issues, could potentially lose their ability to litigate their claims in a federal district court as the statute clearly allows.[12]

In wrapping up this section, there are three main takeaways. First, all federal law is subject to RFRA.[13] Second, there is no administrative exhaustion requirement that an entheogen-based practitioner apply for an exemption from DEA before seeking redress in an appropriate district

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[10] See *Arizona Yage Assembly, et al., v. Merrick B. Garland, et al.*, No. CV-20-02373-PHX-ROS

[11] Id. (citing Oklevueha I, 676 F.3d at 838 ("We decline…to read an exhaustion requirement into RFRA where the statute contains no such condition and the Supreme Court has not imposed one."); "Judge Orrick of the Northern District of California noted that even a new substantive agency rule might not be able to impose a binding administrative requirement under Okleveha I. (Doc. 57 at 14) ("[I]t is possible that regardless of any new regulations [DEA may promulgate], the plaintiffs will not have to seek an exemption from the DEA prior to seeking judicial redress.").

[12] See 42 U.S.C § .2000bb-1 (C) "Judicial Relief"

[13] 42 U.S.C. § 2000bb-3(a)-(b).

court.[14] Finally, applying to the DEA for an exemption, as it stands, is too risky from both a constitutional rights and jurisdictional standpoint and as such, any attorney who recommends and/or files a petition with the DEA under the Guidance Document, could be committing legal malpractice, in my humble opinion.

One way around the jurisdictional conundrum, is the Guidance Document itself stating that any and all decisions made pursuant thereto will not be considered a final agency decision under §893, and thereby assuring an applicant that the DEA will respect the plain terms of the RFRA statute and will ensure that petitioners retain their full rights under RFRA to file against the DEA and all other interested and necessary federal agencies in federal district court, congruent with 42 U.S.C. § 2000bb-1(c).

B. The DEA is not competent to make decisions about a practitioner's sincerity or the religiosity of their beliefs and practices.

To the best of my knowledge, no one in the DEA is a theologian or competent enough to qualify as an expert in religion. Moreover, how religion is defined under the law (First Amendment) is slightly different than traditional definitions of religion. In the guidance document, under bullet 2, entitled "Content of Petition" the DEA encourages an applicant to provide as much supporting documents as possible or deems necessary to demonstrate that they are sincere religious practitioners. Either as a prompt or a required item to be addressed, the DEA writes that, in relation to the religion and sincerity questions, the petitioner should address detailed information about things like "the nature of the religion (e.g. its history, belief system, structure, practice, membership policies, rituals, holidays, organization, leadership, etc.). As will be explained in much detail below, statements like this strongly indicate DEA is not adequately knowledgeable about how religion is defined under the law (First Amendment) and therefore should not be holding themselves out as competent enough to make such decisions.

It is obvious from both looking at the Guidance Document itself, and by reading the completely citationless denial letter in the Soul Quest litigation, that the DEA adjudges the bona fides of one's religion by very westernized standards, which is contrary to the intention of the framers of the First Amendment, who intended to protect minority religious practitioners. Federal case law has been adamant that courts must put aside all their personal preconceived notions of what is and what is not religious to truly adjudge the bona fides of a purported religion which is not "established" (i.e. a religion that we all know and are familiar with). The framers of the First Amendment knew that the majority, or "established" religions, would be able to easily fill local, state, and the federal legislature with representatives from their religions. As such, the First Amendment was essential to protecting the rights of minority religious practitioners who would not have adequate representation in the legislatures.[15]

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[14] See FN 10 & 11, supra.

[15] See Concurrence of Justice Alito in *Fulton v. City of Phila*., 141 S.Ct. 1868, 1908 (2021) (noting that early in American history, legislators from the majority religions were very accommodating to minority practitioners thereby vitiating the need for them to rely heavily on the First Amendment Free Exercise Clause. "The population was overwhelmingly Christian and Protestant, the major protestant denominations made up the great bulk of the religious adherents, and other than with respect to the issue to of taxes to support an established church, it is hard to think of conflicts between the members of these denominations and generally applicable laws that a state legislature might have enacted. **Members of minority religions are most likely to encounter such conflicts**, and the largest group,

I have included with this memorandum a copy of my third book, "The Law of Entheogenic Churches (Vol. II): The Definition of Religion Under the First Amendment" as it provides a comprehensive look at how the law and academics view the religious consumption of entheogens, which has been the primary focus of my academic work over the last several years. While most people in our country view religion as consisting of holy books, holy men, steeples, and hierarchies, this is not what the First Amendment of the Constitution requires for a set of beliefs or practices to be religious and worthy of its protections.

As so aptly put by the Eastern District of New York in *Stevens v. Berger*:[16]

> "Neither the trapping of robes, nor temples of stone, nor an extensive literature or history is required to meet the test of beliefs cognizable under the Constitution as religious. So far as our law is concerned, one person's religious belief held for one day are presumptively entitled to the same protection as the beliefs of millions of millions which have been shared for thousands of years. Nevertheless, it is—as a matter of evidence and probative force—far easier to satisfy triers that beliefs are religious if they are widely-held and clothed with substantial historical antecedents and traditional concepts of a deity than it is where such factors are absent. Judges recognize intellectually the existence of new religious harmonies, but they respond more readily and feelingly to the tones the founding fathers recognized as spiritual."

So as the Court makes clear, being tied to a religious group or set of practices which are ancient and/or have some significant historical antecedents is very helpful, but it is in no way a prerequisite for a religion to be cognizable under the First Amendment. On this point, there has been considerable anthropological research done and evidence analyzed which suggests that the sacramental consumption of entheogens happened all over the world in ancient times and as such, it constitutes our "universal religious heritage."[17]

So, while the exact rituals, ceremonies, or practices of these ancient peoples remains largely unknown, it is not unusual or out of line for someone to believe in the assertions of Dr. Winkleman and decide that they too want to implement entheogens into their religious practice. Again, there are significant historical antecedents for these types of religious practices. Lastly, as noted in U.S. v. Meyers, requiring antecedents to religions would mean that mainstream religions like Christianity, Hinduism, Buddhism, etc. would not have been worthy of First Amendment protection at the time of their inception.[18]

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the Quakers, who totaled about 10% of religious adherents had received exemptions for the practices that conflicted with generally applicable laws.")

[16] 428 F.Supp. 896, 900 (E.D.N.Y. 1977).

[17] See Winkleman, Michael. "Introduction: Evidence for Entheogen Use in Prehistory and World Religions." *Journal of Psychedelic Studies*, vol. 3, no. 2, 2019, pp. 43-62. DOI: 10.1556/2054.2019.024. Accessed 9 Sept. 2021

[18] *U.S. v. Meyers*, 906 F. Supp. 1494, 1499 n.3 (D. Wyo. 1995) ("The court in *Saint Claire v. Cuyler,*481 F. Supp. 732, 736 (E.D.Pa. 1979), *rev'd on other grounds,*634 F.2d 109 (3d Cir. 1980), was simply wrong when it stated that "[s]o long as no idiosyncratic religious claims are made, particular to the individual asserting the right to the practice, the court is bound only to assess the sincerity of the believer and not the significance of the belief." Long ago, Judaism, Christianity, and Islam were "idiosyncratic" and particular to a few individuals. The same can be said of newer

Beyond the archeological record providing sufficient historical antecedents to justify the sacramental consumption of entheogens as a religious exercise cognizable and worthy of protection under the First Amendment and hence, RFRA, both medical and scientific studies of the effects of entheogens/psychedelics also bolsters the religiosity and sincerity of those who choose to partake of these types of substances in a safe and reverent way. The number of modern studies covering psilocybin, LSD, and even MDMA as agents for effectuating primary religious/mystical experiences goes without note. Should you wish to see these, please do not hesitate to reach out and I will provide those for you.

In regard to psilocybin, it has been observed by the researchers at Imperial College London, one of the top psilocybin research institutions in the world, that seventy to eighty percent of those consuming Psilocybin in a strictly secular/clinical setting report having primary religious/mystical experiences.[19] Therefore, as a purely statistical matter, someone who states they have had a religious experience after consuming psilocybin, and have now included it as a mainstay in their religious practice are way more likely than not, from a purely statistical standpoint, absolutely being genuine and sincere in their assertions.[20] In fact, the researchers at Imperial College London are asking for those qualified in the psychology of religion to get more involved with their research so they may better understand the true nature and spiritual benefits of these experiences.

Considering the foregoing, other potential problems start to arise, the most primary of which is how do we discern between dispensing or consuming an entheogen for a medical purpose as opposed to religious purposes? If a person is in a doctor's office at NYU for a clinical trial and takes a sufficient dose of psilocybin and has a primary religious/mystical experience, did they just engage in act protected under RFRA and the First Amendment? Or does the experience have to happen somewhere else or in some other circumstances for it to be cognizable as a protected religious practice?

As an experienced trial and appellate attorney, I can say that things become difficult when the great weight of scientific/medical evidence is against you. And I think this is where the DEA has found itself in many ways. First, modern science and medicine prove what Dr. Winkleman's research revealed, that these substances (entheogens) have been used for thousands of years for the purpose of healing and divination. We have a lot to thank for the Quichol and South American tribes, amongst other tribes around the world, for keeping these practices alive, but now they are being revived in many different variations. Instead of relying on secondary instances of religion like Holy Books and priests, people are now seeking to commune directly with the Divine, and in that, to the extent they are safe and peaceful, they are protected under RFRA and the First Amendment, according to my extensive research and personal experiences with the sacramental consumption of entheogens.

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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.")

[19] Aaron D. Cherniak, Joel Gruneau Brulin, Mario Mikulincer, Sebastian Östlind, Robin Carhart-Harris & Pehr Granqvist (2022): Psychedelic Science of Spirituality and Religion: An Attachment-Informed Agenda Proposal, The International Journal for the Psychology of Religion, DOI: 10.1080/10508619.2022.2148061:

[20] Id.

After all the research I've done on religion generally, and under the law, the district court in *Meyers* puts it most succinctly as to why consuming consciousness-altering substances for the proper purposes is religious. To this end, the Court states, "The Court also recognizes that certain religions use mind-altering substances or engage in mind-altering physical activities (such as fasting or sitting in sweat lodges), as a means to a spiritual end. The end usually is movement toward, or the perception of, a different reality or dimension."[21] This comment relates to the metaphysical aspect of defining religion.,

One page later, when discussing the comprehensiveness of Meyers' beliefs, the Court states that, "In other religions, such as Native American religions, ancient Mexican religions, and primitive tribal religions, mind-altering plants are sacred. The plants are not, however, the focus of these religions. Rather, they are a means to an end, the end being to attain a state of religious, spiritual, or revelatory awareness. When believers achieve this state, they are privy to all manner of visions and revelations concerning the past, present, and future. After experiencing these states — which are intense and transitory — they rely on their visions and revelations to guide their actions.[22]

These two statements, put together, paint what is probably the proper standard by which new entheogen-based religions should be adjudged. First, is the purpose of consuming entheogens for entering intense but transient alterations of consciousness? And second, is this for the purpose of answering life questions or seeking guidance through life? Does the person or group take these visions and alterations of consciousness seriously and work to improve their lives through discussing and working to embody what was relayed to them through these experiences? If these are all answered in the affirmative, then I would say that the person or group is engaging in a cognizable and protected religious practice. As such, unless there is some other glaring indicia to indicate otherwise, a person or group's sincerity and religiosity should be assumed. That assumption would be in accord with modern scientific/medical, historical, anthropological, and archeological studies, amongst many other disciplines studying these issues.

Before we move on to how religiosity should be determined, there a couple more subjects, made obvious by the Soul Quest denial letter which should be addressed, because this point has been firmly established in the case law but has been used by the DEA as a means of denying or doubting religiosity. More specifically, the interrelation of secular and religious beliefs. Per the DEA denial letter in Soul Quest, they lacked religiosity because there was discussion of healing in some of its' online materials and past attendants discussed being relieved of what they considered "medical conditions."

Again, in *Meyers*, the Court states that, "The Court recognizes that secular and religious beliefs can overlap. Indeed, to the extent religious beliefs are sincere, they probably will spill over into the secular."[23] This observation by the Court in Meyers came from a 9th Circuit case *Callahan v. Woods*[24] where the Court commented that, "a coincidence of religious and secular [beliefs] in no way extinguishes the weight appropriately accorded the religious [beliefs]." Considering the

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[21] *U.S. v. Meyers*, 906 F. Supp. 1494, 1505 (D. Wyo. 1995).
[22] *U.S. v. Meyers*, 906 F. Supp. 1494, 1506 (D. Wyo. 1995).
[23] *Meyers*, 906 F.Supp. 1494, 1508.
[24] 658 F.2d 679, 684 (9th Cir. 1981).

foregoing, it can be very difficult at times to separate medical from religious use of entheogens to a meaningful degree, entheogen-based religious practitioners who state they have experienced some kind of physical or mental healing or betterment after a deep religious/spiritual experience doesn't detract from or make not religious the original act of consuming entheogens as a Sacrament.

Next, is the idea that one must be a member of an entheogen-based religious organization or "church" for their sacramental use of entheogens to be cognizable, protected, and legal under the First Amendment and/or RFRA. As stated infra, our right to religious freedom is an individual right and so there is no requirement that one be a "member" of an organization before partaking in communion, or that one's beliefs and practices be congruent with others in the same religious sect or group[25] or if one's beliefs and attendant practices are purely idiosyncratic in nature.[26]

Admittedly, the government has previously asserted and does have an interest in protecting the health and safety of those who choose to partake in entheogen-based religious practices and/or ceremonies.[27] To this end, those who are serving entheogens need to know certain health-based facts about potential participants. However, there is no legal requirement that one be a member of a Church or religious organization in order to legally commune with entheogens. If this were not true, then how could the Catholic Church still be operating? It is Catholic Church policy to serve alcohol, communion wine, (one of the most addictive and dangerous substances known) to minors between the age of 10 and 21, without any kind of membership requirement. The undersigned has participated in communion at several Catholic churches over the years and has yet to be required to apply or be a member prior to partaking in communion.

In terms of equal protection of the laws, as guaranteed by the 14th Amendment to the U.S. Constitution, there seems to be a lack thereof considering the fact that alcohol, which has been scientifically proven to be much more dangerous and addictive than most, if not all, entheogens, is regularly served to minors in clear violation of most state and federal[28] law, yet the serving of alcohol to minors between the ages of 10-21 (which is Catholic Church policy) doesn't even raise an eye brow by the ATF. Moreover, and contrary to the Guidance Document's attempted unconstitutional treatment of entheogen-based religious practitioners, there is no statutory or regulatory proceed through which any state or the federal government allege the Catholic Church must undergo prior to exercising its rights under the Free Exercise of Religion Clause of the First Amendment. As such, suggesting that entheogen-based religious practitioners must undergo any kind of regulatory "exemption" process, such as the DEA alleges, is not only offensive to the First

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[25] See *Thomas v. Review Bd. of the Ind. Emp't Sec. Div*., 450 U.S. 715-16 (1981) ("…the guarantees of free exercise is not limited to beliefs which are shared by all members of a religious sect.").

[26] See *U.S. v. Meyers*, 906 F.Supp. 1494 (D. Wyo. 1995) (citing *Africa v. Commonwealth*, 662 F.2d 1025, 1030 (3d Cir. 1981) (stating in FN 3, "The court in *Saint Claire v. Cuyler,* 481 F.Supp. 732, 736 (E.D.Pa. 1979), *rev'd onother grounds,* 634 F.2d 109 (3d Cir. 1980),was simply wrong when it stated that "[s]o long as no idiosyncratic religious claims are made, particular to the individual asserting the right to the practice, the court is bound only to assess the sincerity of the believer and not the significance of the belief." 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.")

[27] See *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418 (2006)

[28] See *Uniform Minimum Drinking Age Act of 1984, H.R. 4892, 98th Cong.*

Amendment, but also very clearly flies in the face of even the most basic notions of Equal Protection under the 14th Amendment.

In the denial letter, the DEA also takes issue with Soul Quest's failure to require new participants to sign a document denoting a sincere belief in the Church's belief system. However, in this author's opinion, to require a potential participant to do so is absolute evidence of insincerity. Because the DEA lacks the necessary religious academics necessary to even attempt to assess the bona fides of one's religion, the fact that consuming entheogens, such as ayahuasca, is a very direct and personal experience which is so individual and unique to the specific adherent that professing a belief in such a system without ever having had such an intense and direct connection with the Divine, is undoubtedly insincere. Additionally, as most scientific and medical studies make clear, much of what is relayed during an entheogen-induced primary religious/mystical experiences is "ineffable" in nature, thereby escaping being reduced to words. As such, the vast majority of new entheogen-based religious groups do not have vast collections of religious doctrinal works, yet their communities are very tightly and share essentially the same moral and ethical codes without having to even speak about it to another person or adherent.

As opposed to engaging in activities such as bible study or listening to sermons, entheogen-based religious practitioners engage in what is called integration. During an integration session, which usually occurs some time post-ceremony, participants describe their experiences to one another. Relevant to integration are what problem, issue, or trauma the individual sought to address through the experience and speak with others in the group about the meaning of their experience and how that should instruct them moving forward in terms of their intention for coming to ceremony. Considering the foregoing, if the DEA expects huge lists of belief statements and/or Holy Books or texts as a necessary or essential part of a valid and protected religion under the First Amendment, then it should also expect a marked increase in litigation over time as more and more people are called to consume entheogens religiously.[29]

The DEA must also realize that most entheogen-based religious groups now operating in the United States are multi-sacrament in nature. As all entheogens have their own special "effects profile," this fact is being used by modern practitioners to fashion a religious practice that accommodates them using all the tools (entheogens) at their disposal. This conduct is consistent with what anthropologists understand about how our ancient ancestors used entheogens. However, like the sacramental use of entheogens generally, there are historical antecedents to these practices. In fact, Dr. Winkleman notes that, "….the widespread practice of mixing other psychoactive substances in the fermentation process" when discussing the fact that ancients would mix multiple entheogens in the same alcoholic brew.[30] He also discusses the multi-entheogenic and sophisticated pharmacological combinations made by women in ancient Europe for the purpose of indicing, "…a variety of ecstatic alterations of consciousnss."[31] Today, multi-sacrament practices

[29] For a full analysis of the Soul Quest denial letter please see Chapter 6 of "The Law of Entheogenic Churches (Vol. II): The Definition of Religion Under the First Amendment, pp. 268-305.
[30] See Winkleman, Michael. "Introduction: Evidence for Entheogen Use in Prehistory and World Religions." *Journal of Psychedelic Studies*, vol. 3, no. 2, 2019, pp. 46. DOI: 10.1556/2054.2019.024. Accessed 9 Sept. 2021
[31] Ibid. at 52

are usually limited to one per session since each has their own unique experience, but some do mix entheogens together in single sessions.[32]

The reality is that most, if not all, entheogen-based religious groups in this country are syncretic in nature much like the UDV and Santo Daime in that both belief systems and practices from a variety of religious sources are incorporated into various religious belief systems and practices. However, instead of primarily integrating Christian views and practices into the entheogen-based ones, most groups and/or practitioners implement eastern-based religious belief systems to complement their entheogen-based practices. As such, the religiosity of those that claim some kind of syncretic tie to these established religions, should go uncontested as did the Santo Daime and UDV, if found to be sincere.

It is important for the DEA to understand that the right to free exercise guaranteed by the First Amendment and RFRA is an individual right. As citizens of the U.S. we are welcome to believe and practice whatever religion we like. While belief if absolute, practice is only tempered by injury to others, physically or peacefully. As will be discussed, at least tangentially below, "religion" status cognizable under the First Amendment, as a matter of course, is not tied to any other person or group. The U.S. Supreme Court made this clear in the conscientious objector cases.[33] However, although an individual right, that right includes the ability to propagate their religion-even if those methods include some commercial element.[34] For many entheogen-based religious practitioners, spreading the word of the "divine" is spreading the consumption of their sacrament. According to the Supreme Court, this exchange, even if commercial[35] in nature, doesn't detract from the religiousness of the underlying act.

As the jurisprudential record in this country makes clear, what is and is not a cognizable religion the First Amendment is often a very difficult question for the courts to wrestle with.[36] For what it's worth, my definition has been reduced to a multi-factor examination:

a. Whether the alleged adherent holds the Sacrament out to be sacred; meaning that the purported practitioner only uses, and/or encourages others to use the substance with intention and in specifically tailored set and settings;

b. Whether there is some type of ritual or ceremonial aspect to the consumption of said Sacrament;[37]

c. Whether the reasoning behind the consumption of said Sacrament is to receive some type of answers or guidance to either ultimate issues or current life issues which are affecting one's day to day existence; and,

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[32] With the plethora of scientific and medical knowledge regarding almost any conceivable entheogen, those who are competent enough to do proper research can safely and effectively mix entheogenic substances for highly specialized experiences. These practices are not generally encouraged within the community and are usually done in small groups of practitioners who have a significant number of years' experience working with entheogens religiously.
[33] See *Welsh v. United States*, 398 U.S. 333 (1970); *United States v. Seeger*, 380 U.S. 163 (1965).
[34] See *Murdock v. Pennsylvania*, 319 U.S.105 (1943).
[35] See Id. at
[36] See *U.S. v. Meyers,* 906 F.Supp. 1494-1502 (D. Wyo. 1995).
[37] See *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979).

d. Whether the entheogen experiences are followed up with some type of integration or other modes of spirituality to help act or not act in accordance with what is learned during the entheogen-based session.

As I work from day to day and meet people wanting me to help them "enshrine" their rights under the free exercise laws, this is the test that I use to help determine whether or not this person/people are involved in the religious use of entheogens. And lastly, I always use the "rule of thumb" test: if I were a Christian and I had an issue what would I do? I would probably search the Bible alone or with the assistance of a Pastor to see what it says about the question I have or guidance I need and then try and follow through with what it says I do. As we know, Holy Books, at least in their original versions, are nothing but collections of primary religious/mystical experiences. So, under my definition of religion, the outcome is the same-the will of the Divine is sought, an act in furtherance of discernment is taken, knowledge and guidance are obtained, and action is taken in that direction.

So, if the DEA is not qualified to make a religiosity determination, who should be called upon to make that call? I have heard a couple good suggestions over the last few years and have thought of a couple myself. I believe having a learned and independent third-party make these determinations would render the application process fairer and more congruent with long-standing jurisprudential principles, which disfavors executive agencies making such delicate determinations.

The first suggestion comes from my colleague Gary Smith and seems to be the easiest and most cost-effective way to overcome a process particularly prone to constitutional violations. His suggestion is simple: have those who seek an overt exemption give a brief description of their beliefs and practices and sign under oath that such constitutes their sincere religious beliefs and exercise. Since strictly secular belief systems do not qualify as religious, then those can be denied without the potential of violating a person's constitutional rights.[38] Under this method, if the DEA later finds that the applicant perjured themselves, then an extra charge of perjury could be added to any other CSA violations attendant with applying for an overt exemption from the CSA under false pretenses.

My first suggest would entail the implementation of either a single expert or a panel of experts. Perhaps the applicant can find an appropriate expert, usually a PhD in psychology of religion, to generate an opinion and report on behalf of the applicant, with the facts given to the expert being written or recorded under oath. In that case, if the DEA disagreed with the expert's conclusion or methodology then it could hire its own to render a contrary opinion. If the conclusions of each expert are at odds, then perhaps the district court could be called upon to hold an adversarial hearing and render a declaratory judgment one way or the other, thereby cutting down the number of issues litigated.

My last suggestion also involves experts. However, under this scenario, the DEA would charge the applicant a fee which would be used to empanel a group of experts to review the

[38] See *U.S. v. Meyers,* 906 F.Supp. 1494, 1504 (D. Wyo. 1995) (citing Africa v. Commonwealth, 662 F.2d 1025, 1036 (3d Cir. 1981)).

submitted materials and vote on the issue. I would offer myself to sit on such a panel if needed. Harvard Divinity School has been deeply studying the religious use of psychedelics, even holding their own entheogen-based religious rituals, and I am sure would have plenty of students and/or faculty willing to sit on the panel.

In any event, the DEA, nor any of its agents, that I am aware of, are competent or constitutionally authorized to decide the religiosity of someone's beliefs and/or practices. As such, there needs to be a third-party or panel of third parties, all independent, who would opine on these matters or, as Gary Smith has suggested, the person/group signs a document under oath attesting to these requisite items. However, as it stands, the DEA is attempting to make this determination and as we saw in the Soul Quest denial letter, they failed to cite to a single case or authority, which gives the impression that they are just making it up as they go-something not tolerated by the First Amendment. Something has to change.

C. Asking Someone to Forfeit their Fifth Amendment Right Against Self-Incrimination in Exchange for a Governmental Benefit, has Been Held Unconstitutional.

As if having to describe, under oath, your religious beliefs and practices to an entity tasked with controlling the flow of psychoactive substances around the world, hoping the facts of your religious beliefs and practices fits their very westernized model of religion isn't enough, the Guidance Document asks that one also state, "each specific religious practice that involves the manufacture, distribution, dispensing, importation, exportation, use or possession of a controlled substance (3) the specific controlled substances that the party wishes to use; and (4) the amounts, conditions and locations of its anticipated manufacture, distribution, dispensing, importation, exportation, use or possession. A petitioner is not limited to the topics outlined above and may submit any and all information he/she believes to be relevant to the DEA's determination under RFRA and the Controlled Substances Act."

As previously stated, being required to admit under oath to future crimes to receive a current government benefit is highly unconstitutional. As stated by Charles Carreon in the initial Complaint filed on behalf of AYA and the other plaintiffs in that case, "The Wagering Act was held unconstitutional because "[t]he terms of the wagering system make quite plain that Congress intended information be obtained as a consequence of registration and payment of the occupational tax to be provided to interested prosecuting authorities."[39] The *Marchetti* case was significant because it overruled two prior cases *United States v. Kahringer*, 345 U.S. 22 (1953) and *Lewis v. United States*, 348 U.S. 419 (1955) to the extent those cases held the right against self-incrimination did not apply to statements made under oath relating to future conduct, exactly what the DEA is requesting applicants do under the Guidance Document. Why is the DEA asking applicants to violate their own constitutional rights to obtain recognition from the DEA to engage in acts which are already constitutionally protected and therefore legal? And why would anyone even consider getting involved in something like that?

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[39] *Arizona Yage Assembly, and North American Association of Visionary Churches, v. William Barr* ,et al., Case No. 2:20 -cv-02373-ROS (N.D. Cal. 5-5-2020), pg. 34. Complaint drafted by Charles Carreon (citing *Marchetti v. United States*, 390 U.S. 39, 58-59, 88 S.Ct. 697, 708, 19 L.Ed.2d 889, 90 (1968)). In his Complaint, Charles also cites to *Leary v. United States*, 395 U.S. 6, 10, 89 S. Ct. 1532, 1534, 23 L.Ed.2d 57, 66 (1969) (Federal Marihuana Tax Act held unconstitutional as compelling self-incrimination under guise of taxing regime).

As the above-mentioned line of cases makes clear, requiring an applicant to sign under oath, statements which could later be used to charge that person with a conspiracy, in exchange that the DEA might overtly recognize their already existing and inalienable right to safely and peacefully practice their religion, as guaranteed by the First Amendment, is extremely incongruent with existing U.S. Supreme Court case law. As such, why would the DEA insist these statements be made under oath as part of the application process pursuant to the Guidance Document? Is the DEA concerned with citizens exercising their basic and fundamental constitutional rights if done so safely and peacefully? What are the reasons, beyond collecting potentially incriminating information, that statements made in a petition pursuant to the Guidance Document must be made under penalty of perjury?

Without answers to the above questions, there really isn't much to say about that requirement of the Guidance Document. As an attorney, I would never suggest that a client sign such a statement and would likely withdraw as counsel should they insist on doing so. Unlike those in *Marchetti* who wanted to gamble, an activity in which there is no guarantee to engage in under the Constitution, the DEA's Guidance Document deals with the substantial and inalienable right to one's free exercise of religion. "The liberties guaranteed by the First Amendment are in a preferred position"[40] In order to put oneself at risk of prosecution, not merely by practicing with substances covered under the CSA, but by actually signing statements relating to how they intend to acquire, manufacture, store, etc. those substances are beyond any notion reasonableness.

Beyond the deficiencies already pointed out in the Guidance Document, this one is by far the most troubling. There is no doubt the DEA will receive little to no applications in the future based upon this provision alone. It's becoming well known amongst the growing contingent of attorneys working in this niche area, that complying with that provision alone is ill-advised. And U.S. Attorneys are unable to provide nothing more than a letter stating that the petitioner is not currently being investigated as assurance that those admissions will not be used in the future to prosecute the applicant.

In summary, two things must be said: First, this is an easy fix-remove the requirement that statements be made under oath. Second, if perhaps we could get some answers back from the DEA as to why they insist upon the "under penalty of perjury" requirement, we might be able to find some middle ground, should those reasons carry some weight and validity to them beyond gaining evidence for a future prosecution.

D. Petitioners could use some more guidance on what information is needed for the DEA to make its determination.

Bullet number 4 of the guidance states, "Petitions submitted for filing are dated upon receipt by DEA. If it is found to be complete, the petition will be accepted as filed, and the petitioner will receive notification of acceptance. Petitions that do not conform to this guidance will not generally be accepted for filing. A petition that fails to conform to this guidance will be returned to the petitioner with a statement for the reason for not accepting the petition for filing.

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[40] *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

A deficient petition may be corrected and resubmitted. Acceptance of a petition for filing does not preclude the DEA from making subsequent requests for additional information."

It is hard for us attorneys to understand how a mere three paragraphs loosely describing the information needed to constitute an acceptable petition is sufficient for us to even start putting one together. Most of the document requests focus on the signing the incriminating information under oath. Based upon this alone, it seems the real intention behind the "Guidance Document" is not to assist practitioners in getting the DEA's acknowledgement their religious practice does not implicate a compelling governmental interest. Because in reality, since our right to practice our religion is guaranteed by the First Amendment and is not reliant upon the permission of any governmental entity, applying to the DEA does not really accomplish anything.

As opposed to giving incriminating information to the DEA, it is in the best interests of most entheogen-based religious practitioners to not make any application to the DEA and just practice their religion. If they are safe and peaceful, then theoretically the government has no compelling interest in preventing them from practicing their religion. And if so, should the DEA intervene in a manner that substantially burdens their religious exercise, then RFRA provides them with a claim for equitable and injunctive relief,[41] as well as monetary damages against those agents who are involved in the events or actions that lead to the substantial burden.[42]

While the Guidance Document does promise to return an insufficient or incomplete application, it only gives the applicant sixty days to return the application before it is considered withdrawn. However, the Guidance Document never explains the consequences of the application being withdrawn? Does that mean if an application is submitted with incriminating statements made under oath that a prosecution will then commence? Does it mean that a new file will be created when it is returned after sixty days? These questions, in conjunction with the myriad of other issues highlighted herein, left unanswered in the Guidance Document, counsel against making an application pursuant thereto.

Overshadowing the foregoing, is who is even receiving and reviewing these petitions? And what parameters are they following in reviewing the petitions? The Guidance Document does not place any time restraints on the DEA to return or to provide an answer to the petition. And some have waited longer than three years without a response. Yet, a petitioner is constrained to a sixty-day period to repair their applications. There are just too many unknowns within this paradigm for an attorney and/or honest entheogen-based religious practitioner to make an application pursuant to the Guidance Document. Until substantial changes are made, it is unlikely the DEA will see many applications come across their desk.

E. Bullets 6 and 7 are seemingly contradictory and seven is highly unconstitutional

In order to understand the inherently contradictory nature of bullets 6 and 7, which we will discuss in tandem here, we must first read bullet number seven which states as follows:

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[41] See 42 U.S.C. 2000bb et seq.

[42] See *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020) (holding RFRA allows for monetary damage claims against federal officials in their personal capacities.)

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

This specific provision is perhaps as troubling as the third which requires an applicant to forego their Fifth Amendment rights to fulfill the application requirements. Without citing thousands of cases which clearly hold that government schemes like those contained in Bullet Seven constitute an untenable and unconstitutional prior restraint on First Amendment rights, which RFRA was passed to protect. As such, this provision seems completely antithetical to the RFRA statute itself and highlights why litigation is the better choice than applying to the DEA under this Guidance Document. But again, no need to even litigate an issue like the scope of a constitutional right until the government steps in and substantially burdens that right, which is what RFRA requires for standing to even file a suit.

In 2021, the U.S. Supreme Court stated that those who are denied their right to free exercise of religion "for even minimal periods of time" are "irreparably harmed."[43] As such, with no timeline or time restrictions placed upon the DEA in making its determination, it is essentially causing what could be honest and sincere entheogen-based religious practitioners irreparable harm without any recourse other than to go and file the original RFRA petition which should have been filed in the first instance if the DEA has substantially burdened their practice in any way. It is a complete misnomer that one must get permission to engage in entheogen-based religious practices and in fact, will be unable to get a court of competent jurisdiction to weigh in until they have been substantially burdened. As such, it seems the law assumes religious practices are legal until the court is forced to weigh in once a RFRA claim or defense is asserted.

Bullet seven contradicts bullet six because it states that all DEA regulations remain applicable to a petitioner during the decision-making process. However, if bullet seven demands that a practitioner not engage in their religious exercise during the pendency of the application process, then why would it be necessary to add bullet six? And while bullet six lists the citations to the relevant DEA regulations, it provides no further explanation of how that can or would affect a practitioner waiting years to hear back from the DEA.

Considering the foregoing, I will end this section of this Memorandum with a citation and copy of Charles Carreon's description of these two provisions in his Original Complaint in the AYA litigation, because it really sums up everything I have just said in a very direct and succinct way:

J. The Guidance Adjudication Process Substantially Burdens Free Exercise

[43] See *Tandon v. Newsom*, 141 S.Ct. 1294, 1297 (2021) (per curiam) (citing *Roman Catholic Diocese*, 141 S.Ct.63 (2020)).

89. The Guidance establishes an adjudicative body (the "Guidance Adjudictor")[44] that works in secret to determine the validity of any applicant's claim of religion in order to determine their entitlement to Free Exercise of Religion. The identity or qualifications of the Guidance Adjudicator are not disclosed.[45]

90. The DEA has drafted no rules to guide the activities of the Guidance Adjudicator. There is no timeline for processing applications, and inquiries to the DEA regarding the status of applications that have been pending for over two years go unanswered. The Guidance Adjudicator has unfettered authority to delay decision indefinitely, which renders the process a sham.

91. The Guidance Adjudicator may request "additional information" of an applicant as a condition of processing an application, and may dismiss any application if the applicant declines to respond to a request for additional information. The Guidance leaves the term "additional information" open to unlimited interpretation, and thus presents an unlimited basis for overreaching demands and pretextual dismissals.

92. The Guidance provides no avenue to prompt final judicial determination of the validity of the Guidance Adjudicator's decision.

93. The Guidance Adjudicator's activities chill the Free Exercise of visionary churches who are the targets of the Guidance process, particularly by using the Guidance to compel disclosure of the internal church operations, and subjecting them to prior restraint of Free Exercise, and

[44] I believe that the Guidance Document has been reworded a bit since 2020 when Charles filed his Complaint because not bullet 8 lists the Assistant Administrator of the Diversion Control Division as the arbiter, or the person to provide the final response to applications submitted. This is just a matter of form but wanted to point out that some revisions have been made since 2020, but none that make the Guidance Document any more attractive of an option.

[45] Perhaps actually identifying the title of the person making the final call helps alleviate some of the issue with only naming the individual "guidance adjudicator."

entangle the government in unconstitutional regulation of religion in violation of the Establishment Clause.[46]

I included the foregoing because it succinctly promulgates the inherent inequities and unconstitutional aspects of the Guidance Document and its procedure(s). I would like to thank Charles for his dedication and tenacity to defending and advancing the rights of visionary religious practitioners.

To end this section of this Master Memorandum I would like to address an issue in bullet 8 which states that any written or final response by the DEA is to be considered a "final determination" under 21 U.S.C. §877, which under normal circumstances, would divest a federal district court of jurisdiction. But considering that RFRA, in 42 U.S.C. § 2000bb-3(a) states that all prior federal law is subject to it, it is doubtful that without some legislative mandate to the contrary, a final determination letter from the DEA would undermine one's ability to then go file a RFRA claim in a federal district court. Otherwise, I think there would be a good argument that having the right to file in federal district court is inherent in RFRA and no other law supersedes that, especially administrative provisions created outside of the strictures of the APA. Hopefully the Supreme Court will speak on this issue soon.

F. Considerations in promulgating a new Guidance Document

Before I conclude this Master Memorandum, I want to take some time to discuss some facts to consider if the DEA decides to edit the Guidance Document in a way which makes it constitutional and attractive for practitioners to apply. Most of what I am about to say are just observations of mine and facts on the ground, that the DEA probably not be fully aware of.

First, the number of entheogen-based religious practitioners in this country is multiplying exponentially by the day. And as an attorney, consultant, and litigator, I can personally attest to this. But please do not take my word for it, it would be best to consult Dr. Brad Stoddard's articles referenced supra. Currently, according to the experts, this country is short almost seven thousand entheogen-based religious groups/churches to meet the increasing needs of Americans who wish to commune with the Divine through the sacramental consumption of entheogens Many are going at it alone, for the first time, without anyone to watch over them, or with much education or harm reduction information about how to safely navigate an intense entheogenic experience.

As an attorney who has helped over seventy individuals/groups "enshrine" their rights under the free exercise (of religion) laws, I can attest that most of the people engaging in these religious practices are not criminals and have no criminal history. In fact, most are highly educated and well-respected members of their communities. These people potentially risk a lot to consistently engage in communion with entheogens and I have much respect for them for

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[46] *Arizona Yage Assembly, and North American Association of Visionary Churches, v. William Barr* ,et al., Case No. 2:20 -cv-02373-ROS (N.D. Cal. 5-5-2020), pg. 34. Complaint drafted by Charles Carreon, discussing the Guidance Document on pages 27-28 and citing at the end of paragraph 93 *Surinach v. Pequera de Busquets*, 604 F.2d 73 (1st Cir. 1979) (quashing subpoena from Puerto Rican Government Agency to the Superintendents of the Roman Catholic Schools on Establishment and Free Exercise grounds).

continuing to stand up for what they believe and exercise their inherent and inalienable right that not many in this world are so lucky to possess. But does the First Amendment and/or RFRA require that these individuals must risk so much just to find some peace and fulfilment in their spiritual/religious lives? Without going into a 200-page tangent on this issue, I will say that scholars are pretty sure that the First Amendment was meant to protect minority religious practitioners like those of today who choose to commune with entheogens.

However, despite their minority status of today, I predict within the next 5-10 years that entheogen-based religious practices will be the predominant and most popular in the United States, and that includes communion occurring within already established religions like Christianity. As such, I further predict that rights to commune with entheogens will eventually be spelled out statutorily and will probably lead to the creation a whole new administrative body to deal with these entheogen-based religious groups.

Unfortunately, because of the lack of communication between entheogen-based religious practitioners and the DEA and other federal and state law enforcement agencies, everyone is left in the dark of what to expect from the other. For instance, many people order their Sacrament from co-religionists in South America. As of late, most of it has been confiscated without due process or charges being filed. Moreover, people want to be as safe and compliant as possible with what the government would expect them to do as far as safety, substance handling, and accounting goes, but there have been no standards promulgated or expectations relayed as to what the DEA or the Government generally would like to see in these regards.

Instead, it is kind of like the wild west. While most people do screen ceremony participants and try to keep an accurate accounting of their sacrament, what standard would satisfy the DEA in these regards? There are several interest groups which have formed, such as the North American Association of Visionary Churches which do issue edicts related to these matters and members are expected to follow them as part of their continued membership. However, while these standards are elucidated with safety and substance control/diversion in mind, does the DEA or the government find them sufficient?

In the same vein as allowing harm reduction activities to occur in cities with major drug abuse issues, I think it is time for the DEA or any other governmental agency to at least state what is expected of entheogen-based religious practitioners in these regards. This request is being made purely from a health and safety perspective, and from a desire to keep these Sacraments sacred and in the hands of those who hold them out to be so. The government doesn't have to green light everyone to start taking entheogens as their religion just by publishing edicts which give guidance on what expectations are generally, even if they are commensurate with the restrictions placed upon secular Schedule I license holders.

Once we can all agree on some effective and realistic expectations, then we can work from there to improve and make this transition to a predominantly entheogen-based religious practice nation much smoother and with less feathers being ruffled. It is no surprise that very resource rich and connected people, both within and without the government are engaging in these activities. This issue is the absolute opposite of the real crisis this Country faces with fentanyl and other addictive and dangerous opioids, which are still being dispensed to end users from pharmacies.

Next, what is obtaining an exemption from the DEA even worth? And I do not mean this in a mean or condescending manner. In fact, I see much less interdiction occurring from the DEA than I do CBP and DHS. As such, does a DEA exemption mean that the practitioner(s) are also immune from investigation and prosecution from these agencies? I think this needs to be addressed because perhaps more agencies need to be brought to the table to hammer this thing out through and through. Otherwise, while a group may be free to practice in the States, getting its sacrament across the border might be near impossible. In such a situation, what is the DEA exemption even worth?

Finally, the DEA, as I am sure it already has, needs to consider that *Tanzin* has finally been decided and the Supreme Court does allow for claims for monetary damages against federal officials in their individual capacities. Should someone today apply to the DEA under the Guidance Document, according to the Supreme Court, they would be suffering irreparable harms for every moment the DEA sits on the application and requires they not practice their religion. Would *Tanzin* allow the practitioner(s) to sue the DEA for this loss of religious freedom even though they voluntarily submitted an application?

In closing, I hope that this Master Memorandum sheds some light on the inadequacies of the current rendition of the DEA's Guidance Document and inform the agency of exactly what they, and other federal agencies will be facing should they choose to not work with entheogen-based religious groups in a manner which seeks balance between its interests and the fundamental rights of those communing with entheogens. As always, I am here to lend a helping hand to both the government and to the sincere entheogen-based religious practitioners I work with daily. I offer my expertise and guidance free of charge to the Government and will work tirelessly to help bring some clarity to the law and the situation at hand between practitioners and the government.

With kindest regards, I remain

Sincerely, and with Much Love,

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