

Excerpt from “The Law of Entheogenic Churches in the United States (Volume II): The Definition of Religion Under the First Amendment in Light of the Sacramental Consumption of Entheogens” by George G. Lake, Esq.
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CHAPTER SIX: A LITIGATOR’S ANALYSIS OF THE SOUL QUEST LETTER

INTRODUCTION:

I have included in this PDF file an advance copy of the sixth chapter from my third book “The Law of Entheogenic Churches in the United States (Volume II): The Definition of Religion Under the First Amendment in Light of the Sacramental Use of Entheogens.” This book will be published no later than November 1, 2021.

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Much Love!!!!

George G. Lake, Esq.

CHAPTER SIX: A LITIGATOR’S ANALYSIS OF THE SOUL QUEST LETTER

In this Chapter, I will conduct an analysis of select portions of the denial letter sent to Soul Quest Church of Mother Earth from the DEA on or about April 16, 2021. Before I jump into my analysis, I would like to briefly discuss some background facts, as I appreciate them.

Soul Quest is an ayahuasca church based outside of Orlando, Florida. Soul Quest has been openly operating as an ayahuasca church since at least 2017. Sometime in 2017 or 2018 Soul Quest filed a petition with the DEA seeking exemption from the Controlled Substances Act pursuant to the Religious Freedom and Restoration Act. The DEA never responded to Soul Quest’s petition despite numerous requests from Soul Quest’s attorney, which then precipitated Soul Quest filing a lawsuit in the Middle District of Florida.¹ After filing suit, the DEA reached out to Soul Quest and requested a stay of the proceedings so it could investigate and rule on Soul Quest’s exemption application. Soul Quest agreed to this proposal and the litigation was stayed pending the DEA’s decision. The letter discussed in this Chapter was sent in April 16, 2021 and provides the basis of why the DEA denied Soul Quest’s exemption petition.

The DEA letter provides great insight into how the federal government is likely to attack entheogenic religions in the future. More specifically, it reveals the federal government will likely attempt to controvert both the sincerity and religiousness of entheogenic religions. As the research showing the efficacy and safety of entheogens continues to mount, the government’s ability to show a “compelling governmental interest” sufficient to justify a substantial burden on entheogenic religions diminishes by the day. Therefore, as we see in the Soul Quest letter, the

¹ See *Soul Quest Church of Mother Earth, et. al. v. Attorney General, United States of America, et. al.*, Case No. 6:20-cv-701-WBB-DCI (M.D. Fla. Apr. 22, 2020).

government will attempt to show these religious organizations are unable to meet their burden of proving their practices to be both religious and sincere under RFRA.

It is important to note the specific factual allegations proffered by the DEA in its denial letter are probably not admissible in court, absent direct testimony from the individual(s) mentioned therein. It is obvious, the DEA cherry picked facts from its investigation to paint Soul Quest as insincere and non-religious. However, during a trial, the witnesses mentioned in the letter can be examined in full and their whole testimony be considered; versus what the DEA has done and only discuss the pieces of testimony which bolster the conclusion it already wanted to reach: that Soul Quest is unable to satisfy its burden under RFRA. Moreover, while the Soul Quest letter was filed in the clerk’s record, I do not believe the letter itself could be entered into evidence for the purpose of proving any of the substantive content contained therein. At best, it could be introduced for the purpose of establishing the fact a denial was made. Other evidence would need to be proffered in support of the factual contentions and conclusions made in the letter.

It is my impression the statements referenced in the Soul Quest letter were not made under oath and/or under custodial interrogation. Therefore, it is my opinion that any of the statements made to the DEA could not be used to cross examine those witnesses. Therefore, if those individuals appear at trial and give other testimony, the government and Soul Quest would be bound to that testimony. Considering the foregoing, the DEA’s denial letter has little or no impact on the outcome of the pending litigation.

Sincere Religious Exercise

Before discussing specific portions of the DEA’s letter, I would like to quickly discuss 11th Circuit precedent on the issue of determining sincerity in religious exercise cases. In addition to identifying the specific principles which guide a court’s sincerity analysis, I also want to reiterate

that the DEA, an administrative body organized under the executive branch, has absolutely zero business making sincerity determinations.

“A determination of religious beliefs and the sincerity with which they are held are subjective matters and are incapable of direct proof.”² In *United States ex rel. v. Beatty*, the Southern District of Georgia states that, “In making such fact determinations [as to sincerity] a judge senses rather than knows. However, doubt as to sincerity cannot be predicated upon mere speculation.” *** And the fact-trier must give great weight to the Applicant’s claim that his beliefs are an essential part of his religious faith.”³

Generally speaking, “[a] secular, civil court is a poor forum to litigate the sincerity of a person’s religious beliefs, particularly given that faith is, by definition, impossible to justify through reason.”⁴ According to the Middle District of Florida, the court where Soul Quest’s civil claim is now pending, “In recognizing the importance of religious liberty, courts are fairly deferential when adjudicating religious sincerity claims.”⁵ “When inquiring into a claimant’s sincerity, then, our task is limited to asking whether the claimant is (in essence) seeking to perpetuate a fraud on the court—whether he actually holds the beliefs he claims to hold—a comparatively familiar task for secular courts that are regularly called on to make credibility assessments—and an important task, too, for ensuring the integrity of the judicial system.”⁶

² *O’Conner v. McKean*, 325 F.Supp. 38, 48 (N.D. Ala. 1970).

³ *Id.* (citing *United States ex rel. Healy v. Beatty*, 300 F.Supp. 843, 846-847 (S.D. Ga. 1969), *aff’d*, 424 F.2d 299 (5th Cir. 1970)).

⁴ *Davila v. Gladden*, 777 F.3d 1198 (11th Cir. 2105). (citing *Hernandez v. Comm’r*, 490 U.S. 680, 699, 19 S.Ct. 2136, 2148, 104 L.Ed.2d 766 (1989)).

⁵ *Pass-A-Grill Beach Cmty. Church, Inc. v. City of St. Pete Beach*, No. 8:20-cv-1952-TPB-SPF *10 (M.D. Fla. Jan 26, 2021) (Emphasis Added).

⁶ *Id.* at *11-12.

As stated in the above-cited case law from the 11th Circuit and the Middle District of Florida, determining sincerity is a matter strictly left to the judicial system, whose judges are competent to make credibility determinations. Because the sincerity of one’s beliefs is subjective in nature and incapable of direct proof, such careful determinations, by a court, is the only way to prove or disprove sincerity. As is discussed later in this Chapter, the DEA has not presented any direct and/or admissible evidence which would call into question the sincerity of Soul Quest (as a religious organization), Chris Young, other Soul Quest leaders, or Soul Quest’s members.

I would like to mention that in terms of sincerity, every time Soul Quest serves ayahuasca in a sacred ceremony subsequent to receiving the DEA denial letter, said act bolsters Soul Quest’s claims of sincerity. In the Santo Daime case, the government raided and confiscated a significant amount of ayahuasca from the home of its leader, Goldman.⁷ After the raid, the Santo Daime started practicing their religion underground and discontinued keeping records of its ayahuasca inventory and consumption.⁸ The government then tried to take this fact and make a sincerity issue out of plaintiffs’ move underground.⁹ In response to this assertion, the District Court in Oregon states as follows:

“Here, however, defendants challenge plaintiffs’ sincerity, citing plaintiffs’ decision to conduct ceremonies in secret until the Supreme Court ruling in favor of the UDV plaintiffs. Instead, it shows that plaintiffs remained committed to practicing their religion despite the threat of criminal prosecution and loss of professional status.”¹⁰

⁷ *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *6-7 (D. Or. 2009).

⁸ *Id.* at *8.

⁹ *Id.* at *19.

¹⁰ *Id.*

Because the Santo Daime continued to practice their religion, even after its leader had been raided, the District Court viewed this as evidence of sincerity, not evidence showing a lack thereof. To the best of my knowledge, Soul Quest continues to openly practice its religion even after receiving the DEA’s denial letter (i.e. while under imminent threat of prosecution). Therefore, using the same line of reasoning set forth in the Santo Daime opinion, this fact would only bolster Soul Quest’s claims to religious sincerity. Therefore, through its own actions and inactions, the DEA is helping Soul Quest prove, based upon a preponderance of the evidence (its burden under RFRA) that it is sincere in its religious exercise (i.e. the sacramental use of ayahuasca).

Finally, one more issue to consider before examining the DEA’s denial letter is whos’ sincerity is on trial in a RFRA case. For instance, in this case, the DEA is essentially saying that Soul Quest as an organization is not sincere, but mentions interviews with individual leaders and members as its basis for making that determination. As a corporate entity and not a person, Soul Quest itself cannot hold beliefs, sincere or not. Instead, the sincerity of Soul Quest is presumably attached to the subjective beliefs of its leaders and members. However, how do we determine whether an organization is sincere if its leaders and members all have different subjective beliefs. After an extensive view of the case law, it is my belief that the courts mostly consider the sincerity of the church’s leaders and then imputes that upon the church as an organization.¹¹ Therefore, for purposes of my analysis of the DEA denial letter, I will focus on the statements and actions of Soul Quest’s leaders, as asserted by the DEA.

¹¹ See *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *2 (D. Or. 2009); *Pass-A-Grill Beach Cmty. Church, Inc. v. City of St. Pete Beach*, No. 8:20-cv-1952-TPB-SPF *13 (M.D. Fla. Jan 26, 2021); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768, 189 L.Ed. 675, 696 (2014).

After the introductory paragraphs, the DEA starts the substantive part of the letter under the heading “Sincere Religious Practice.” The first paragraph under this heading reads as follows:

“DEA 's investigation indicates that Soul Quest has offered inconsistent information about the religious basis for its petition. You have repeatedly stated that, in a series of visions, you adopted as Soul Quest's foundational text the "Ayahuasca Manifesto: Ayahuasca and its Planetary Mission, in 2012." See,for example, page 102 of your January 29, 2021 deposition in Begley v. Soul Quest, Case No. 2020-CA-003387 (9th Jud.Cir. Fla.). You described the "Manifesto"as playing a role in Soul Quest akin to the Bible or the Koran, id., while at page 9 of a letter counsel sent to DEA on August 21, 2017, it is compared to the Jewish Talmud and Mishnah. However, in the background information provided to DEA by multiple Soul Quest leaders and members interviewed over the course of six months, the Ayahuasca Manifesto was mentioned only once.”

The DEA places great emphasis on the fact that while Soul Quest’s leader, Chris Young, stated on multiple occasions, including in certain pleadings, that the Ayahuasca Manifesto is Soul Quest’s foundational text, other leaders and members barely mentioned the Manifesto during their interviews with the DEA. It is unclear from the DEA letter whether it is attempting to attack Soul Quest’s sincerity or its religiousness by highlighting these facts. For the purposes of my analysis, I will assume this is an attack on both.

In terms of the definition of religion under the first amendment, whether or not Soul Quest has a foundational text is not dispositive of the religion issue. As we saw in *Meyers*,¹² an important writing or foundational text is but one of the many factors to be considered by a court when defining religion under the first amendment. Therefore, even if the Ayahuasca Manifesto was not Soul Quest’s foundational text, this would not be dispositive of whether Soul Quest qualifies as a religion under the first amendment.

¹² *U.S. v. Meyers*, 906 F.Supp. 1494, 1502 (D. Wyo. 1995).

Moreover, as it relates to defining religious beliefs, the Supreme Court has made clear that not all members of a religious sect must believe the same things. More specifically, in this instance, if Chris Young places a different level of importance on the Ayahuasca Manifesto than does other leaders and members of Soul Quest, this does not affect whether any of their individual beliefs rises to the level of religious. In *Thomas v. Review Bs. Of the Ind. Emp’t Sec. Div.*, the Supreme Court states that:

“...the guaranty of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly, in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.”¹³

As the holding in *Thomas* makes clear, it is of no consequence that Chris Young may place greater emphasis on the Ayahuasca Manifesto than other members of Soul Quest. Such a difference of opinion does not invalidate the religious nature of the views held by each of the individuals interviewed. Moreover, as discussed in greater detail below, failing to mention something is not the same as making an inconsistent statement, especially as it relates to determining sincerity.

According to the 11th Circuit Court of Appeals in *Mezvrishvlli v. U.S. Attorney General*:

“[D]etailed knowledge of [religious] doctrine may be irrelevant to the sincerity of an applicant’s belief [because] a recent convert may well lack detailed knowledge of religious custom,” *Yan v. Gonzales*, 438 F.3d 1249, 1255 (10th Cir. 2006) (citing *Ahmadshah v. Ashcroft*, 396 F.3d 917, 920 n.2 (8th Cir. 2005)), and “many deeply religious people know very little about the origins, doctrines, or even observances of their faith,” *Iao v. Gonzales*, 400 F.3d 530, 534 (7th Cir. 2005).”¹⁴

Clearly, the 11th Circuit is cognizant that not every member of a religious sect, even members who

¹³ 459 U.S. 707, 715-16 (1981).

¹⁴ 467 F.3d 1292 (11th Cir. 2006).

are deeply religious, are not going to possess the same level of detailed knowledge of religious custom and/or be very knowledgeable regarding religious origins or doctrines. Therefore, the lack of such knowledge on the part of any member of a religious organization is not probative of the sincerity of any individual within a religious sect, or the group as a whole. Therefore, the DEA’s reliance on these facts is entirely misplaced in terms of 11th Circuit and U.S. Supreme Court precedent on the issue.

Next, the DEA goes into examining certain aspects of becoming a member of Soul Quest and the admissions process at its’ retreats:

Soul Quest does not require individuals to profess belief in Soul Quest's Ayahuasca Manifesto (or any other religion, such as the Christian syncretic religion professed in paragraph one of the FAC) before participating in a Soul Quest ayahuasca retreat. February 1 8, 2021, DEA-6. Nor does Soul Quest require or expect individuals to have any continuing involvement with Soul Quest or membership in any congregation or other group of believers, and, in fact, individuals frequently participate only once in Soul Quest's ayahuasca retreats. Id. An individual who wishes to consume ayahuasca in a Soul Quest ceremony must complete various intake forms, including a medical questionnaire, a consent form to participate in activities involving the use of Schedule I controlled substances (such as a waiver of the individual 's right to take legal action against Soul Quest), and a form in which the applicant becomes a member of Soul Quest's alleged "church." Id. However, membership in Soul Quest appears to be a purely pro forma matter to obtain access to ayahuasca, rather than an expression of sincere religious devotion.”

Fundamentally, defining religion under the first amendment is “religion by analogy.”¹⁵ The *Meyers* factors are merely guideposts, erected from an examination of established religions, which helps guide a court in making its determination. Therefore, anytime we can obtain specific

¹⁵ See *U.S. v. Meyers*, 906 F.Supp. 1494, 1503 (D. Wyo. 1995); *Malnak v. Yogi*, 592 F.2d 197, 207 (3rd Cir. 1979).

examples from other established religions and compare them to a purported religion, we should. Here, we see that the DEA takes issue with the fact that Soul Quest, "...does not require individuals to profess belief in Soul Quest's Manifesto....before participating in a Soul Quest ayahuasca retreat."

When we think about this observation and apply a common-sense analysis, we see this statement is completely irrational and has no bearing on either the religion or sincerity analysis. Growing up in northeast Texas, I had the opportunity to attend numerous Christian church services. Moreover, I was able to attend services held by many different Christian sects. I have never been asked, not one time, to profess my belief in anything prior to participating in a Christian ceremony or ritual, including communion. Therefore, the fact that Soul Quest "...does not require individuals to profess belief in Soul Quest's Manifesto....before participating in a Soul Quest ayahuasca retreat" is absolutely meaningless to the analysis and if anything goes to bolster their religious claim because it is operating in the same manner as other established religions.

In the Santo Daime opinion, the Court never mentions the Church required anyone to profess belief in something prior to participating in an ayahuasca ceremony. While the Court in the Santo Daime opinion noted that, "...CHLQ attempts to select only those who are serious about the Santo Daime religion, and to turn away would-be recreational users or thrill-seekers,"¹⁶ it in no way suggests that those individuals had to profess a belief in anything prior to sitting in ceremony. Moreover, in discussing this fact in its opinion, the Court in the Santo Daime opinion never relates these facts to a showing of sincerity. The way I read the opinion, the fact the Santo Daime screen people and turn away thrill seekers was probative of a lack of a compelling

¹⁶ *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *13 (D. Or. 2009).

governmental interest (i.e. safety).¹⁷

Considering an ayahuasca religion, by the nature of ayahuasca, is an experiential religion, how could one profess belief in the religion prior to experiencing it? More specifically, if a religions’ beliefs emanate from the experience one undergoes after having consumed a sacrament, how can one profess a belief in the religion absent having consumed the sacrament? Perhaps one could express a desire and willingness to partake in the sacrament and to respect the ceremony and its participants, but expressing any sincerity in the religion’s beliefs beyond that, would be speculative at best.

What the DEA is suggesting is that because Soul Quest doesn’t attempt to gauge the sincerity of those who sign up for its retreats, then it is not being sincere in its practice. However, as we learned at the beginning of this Chapter, determining someone’s sincerity is a purely subjective matter that requires the type of credibility determinations which only a court of law is ultimately competent to make. As such, anyone at Soul Quest trying to determine the sincerity of a person who professes “...belief in Soul Quest’s manifesto” is meaningless.

As stated several times throughout this Book, the presence of a foundational writing or text is not determinative of a religion. Under the *Meyers* test, this is but one factor of many to examine when defining religion under the first amendment. Obviously, the DEA misses this point entirely and continues throughout its letter to place emphasis on various writings. If the government plans to hang its hat on the existence or non-existence of various writings or texts in attacking Soul Quest as a religion, it really has its work cut out for it.

The next part states that, while there are various intake and membership forms which a

¹⁷ Id. at *8-16.

perspective retreat participant must complete and sign before participating in a Soul Quest retreat, it is merely a “pro forma” matter and not indicative of a “sincere religious devotion.” To bolster this conclusion, the DEA also notes that “Nor does Soul Quest require or expect individuals to have any continuing involvement with Soul Quest or membership in any congregation or other group of believers, and, in fact, individuals frequently participate only once in Soul Quest’s ayahuasca retreats.”

Again, when we think about the DEA’s assertions through a common sense lens, they quickly fall apart. During my lifetime, I have been to perhaps twenty different Christian churches across the United States, and not once have I ever had to commit to anything, or was I ever required to continue to attend the church and its services. Moreover, even without such a commitment, I was allowed back for subsequent church services, with open arms. Therefore, the DEA’s point here, when we consider the religion by analogy approach, bolsters Soul Quest’s claim that it is indeed a religion. Moreover, how a religious organization would require anyone to do anything, absent violations of criminal laws, is beyond me.

While the District Court found the Santo Daime religion requires a serious commitment of time and energy from its members, there was no mention of the Church requiring some type of formal commitment to fulfill these requirements prior to engaging in its ceremonies.¹⁸ Therefore, the fact that Soul Quest does not require or expect such commitment is of absolutely no consequence. There are perhaps millions of people in the U.S. alone that have gone to a specific church’s services one time and never returned. Does this make that church’s religious exercises not sincere or religious? Are the Catholic churches where I have taken communion not sincere

¹⁸ *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *13 (D. Or. 2009).

because I never returned to their church or committed to returning to their church? What if a minor consumes communion wine without making such commitments? Does that make the Catholic church not sincere? If such facts called into the question the sincerity or religiousness of a faith-based organization, then perhaps we would have very few of them exempt from the general laws pursuant to RFRA.

The DEA describes Soul Quest’s intake process as “...a purely pro forma matter to obtain access to ayahuasca, rather than an expression of sincere religious devotion.” As stated above, one cannot, in good faith, express devotion to an ayahuasca religion prior to consuming the sacrament; nor do other established religions require such an expression. The core beliefs of ayahuasca religions arise from the experience of consuming the sacrament. Therefore, expressing religious devotion to an ayahuasca religion prior to consuming the sacrament would be a pro forma matter to appease the DEA’s mistaken view of the first amendment, not credible evidence of someone’s sincerity.

As was discussed earlier in this Chapter, the DEA obviously cherry-picked facts to paint Soul Quest in a negative light. It is my understanding that indeed many people who have participated in Soul Quest’s ayahuasca ceremonies do in fact go back and attend further ceremonies, participate in various integration and other psycho-spiritual groups, and attend Soul Quest’s Sunday services. Moreover, there is a large online Facebook group created by Soul Quest where members are constantly communicating with one another and Soul Quest staff regarding the consumption of ayahuasca and other related topics, including religious ones. Finally, it is my understanding that Soul Quest has an entire cadre of volunteers who come back and assist in conducting ceremonies on a regular basis. These facts are never mentioned by the DEA. Therefore, the DEA’s analysis in its letter is obviously short-sided and likely insufficient to defeat Soul

Quest's burden under RFRA.

After discussing Soul Quest's intake process and drawing erroneous and inconsequential conclusions regarding same, the DEA then goes into discussing its interview with Dr. Scott, a former Soul Quest leader:

"During interviews with Soul Quest's leadership conducted on January 12, 2021, DEA gathered additional information regarding the Soul Quest organization and weekend-retreat ceremonies . Dr. Scott L. Irwin, Ph.D., the "Senior Minister" and a corporate officer of Soul Quest, described Soul Quest's use of ayahuasca not in religious terms but instead as a natural or "integrative" medicine or therapy, designed to help people deal with trauma or other issues such as depression. February 18, 2021, DEA-6 . Dr. Irwin never mentioned the Ayahuasca Manifesto, a document which Soul Quest identifies as its sacred text, in this interview. Rather, Dr. Irwin described ayahuasca use as 5, 15, or 20 years of "psychotherapy in a weekend ." He explained that spiritual "integration" sessions are offered to "unpack your experience" in either individual or group therapy. Dr. Irwin stated that the "psycho-spiritual" side falls under the ministry and that there are up to 20 different aftercare groups meeting Monday through Friday, primarily online. When interviewed, Dr. Irwin explained that Soul Quest does not tell people what to believe; he also conceded that participants could "leave after their weekend retreat is over and have no further required contact or investment with the group."

As a preliminary matter, I would like to point out that it is not apparent from the DEA's letter whether the proffered evidence is being used a means to controvert Soul Quest's sincerity or whether this is being used to show that Soul Quest's practices are not religious. Unfortunately for the DEA, these highlighted facts bear no weight in making either determination.

To begin, the DEA states that it interviewed Dr. Scott and that he explained Soul Quest's use of ayahuasca "...not in religious terms but instead as a natural or "integrative medicine or therapy designed to help people deal with trauma or other issues such as depression." First, I would like to point out that whether Dr. Scott explained Soul Quest's use of ayahuasca in religious

terms or not in religious terms, is simply a matter of opinion. I’m sure when one cherry picks statements made by Dr. Scott to bolster the baseless conclusion that Soul Quest is not a religion; then it will use those selected portions in a way to show Soul Quest isn’t a religion. This is what the DEA has poorly attempted to do here. Therefore, on this basis alone, the DEA’s observations and determinations should be taken with a grain of salt.

For purposes of this analysis, let us assume that the DEA’s characterization of Dr. Scott’s testimony as not “in religious terms,” is a fair characterization. If this is the case, then by implication his characterization would be secular in nature. As has been stated repeatedly by the federal courts, “...a coincidence of religious and secular claims in no way extinguishes the weight appropriately accorded the religious one.” While the Supreme Court in *Yoder* stated that beliefs based upon “purely secular considerations” merits no protection under the first amendment,¹⁹ “...it did not limit the scope of First Amendment to “purely religious” claims; the area of overlap is presumable protected.”²⁰

The district court in *Meyers* discussed this exact principle in terms of the belief system proffered in support of the Church of Marijuana.²¹ On this issue, the Meyers court states:

“Marijuana’s medical, therapeutic, and social effects are secular, not religious. The Court recognizes that secular and religious beliefs can overlap. Indeed, to the extent that religious beliefs are sincere, they probably will spill over into the secular. This overlap led the court in *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981), to comment that “a coincidence of religious and secular [beliefs] in no way extinguishes the weight appropriately accorded the religious [beliefs].” *Accord Wiggins*, 753 F.2d at 666. Here, the Court cannot give Meyers’ “religious” beliefs much weight because those beliefs appear to be derived entirely from his secular beliefs. In other

¹⁹*Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1532 (1977)).

²⁰ *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (Emphasis Added).

²¹ *Meyers*, 906 F.Supp. 1494, 1508 (D. Wyo. 1995).

words, Meyers’ secular and religious beliefs overlap only in the sense that Meyers hold secular beliefs which he believes in so deeply that he has transformed them into a “religion.”²²

In this case, Soul Quest, unlike the situation in *Meyers*, has elucidated religious beliefs, as it relates to ayahuasca, in other places such as its website.²³ In *Meyers*, the defendant did not produce a written Statement of Beliefs or any other church writings to establish the Church of Marijuana’s religious doctrine.²⁴ While I will forego an extensive analysis of Soul Quest’s website content, please note that it is my opinion the beliefs expressed therein rise to the level of religious under the first amendment; and the overlap between Soul Quest’s religious and secular beliefs related to ayahuasca is clear. Therefore, unlike the defendant in *Meyers*, Soul Quest has religious beliefs sufficient to justify the overlap with its secular claims.

By the DEA’s own admission, Dr. Scott’s discussion about Soul Quest’s use of ayahuasca was not solely in secular terms. Dr. Scott describes the integration process as “spiritual” in nature and that the “psycho-spiritual” aspects of Soul Quest’s operations fall under the church’s ministry. Moreover, Dr. Scott states, according to the DEA, that the “spiritual” integration meetings are to “unpack the experience” (presumably the ayahuasca experience). The fact Dr. Scott describes these groups as “spiritual” implies that his beliefs related to the ayahuasca experience are not only secular in nature. Moreover, these religious beliefs are weighted no less because he used some secular terms to describe the secondary effects of the ayahuasca experience, an experience which is primarily religious/mystical in nature.

²² Id.

²³ <https://www.ayahuascachurches.org/statement-of-beliefs/>

²⁴ *Meyers*, 906 F.Supp. 1494, 1505 (D. Wyo. 1995) (the defendant in *Meyers* only testified in open court regarding the belief system of The Church of Marijuana; no writings or other documents evidencing the belief system were produced).

As I have previously discussed, shamanic religions, like Soul Quest’s ayahuasca religion, have always been an inextricable mixing of medicine and religion. Separating the medicinal from religious aspects of an ayahuasca religion is almost impossible, as the psychological healing that occurs is a probable and secondary effect of the primary religious/mystical experience. Therefore, the fact Dr. Scott described the secondary effects of the ayahuasca experience as multiple years of psychotherapy in a weekend is meaningless in terms of a religion analysis under the first amendment.

I would also like to point out that the therapeutic effects of entheogens are a secondary after-effect of the primary religious/mystical experience. People experiencing relief from mental health issues by consuming ayahuasca in a sacred ceremony is to be expected and has been a part of shamanic traditions for thousands of years, and confirmed by entheogenic research since its inception. Therefore, the DEA’s attempt to undercut Soul Quest’s religious claims by highlighting these facts is a very poor attempt considering the long-standing legal and historical precedents herein discussed.

The DEA points out that Soul Quest does not “...tell people what to believe.” This is of no consequence. Under the *Meyers* analysis, attempting to propagate a belief system (i.e. witnessing, converting, proselytizing) is but one factor to consider when defining religion. Moreover, regardless of whether Soul Quest tells its members what to believe or not is irrelevant because, as we have seen, members within the same religious sect can hold different beliefs and still be worthy of protection under the first amendment. Therefore, even if Soul Quest did attempt to tell its members what to believe, it wouldn’t ultimately matter under the religion analysis

because it does not require that all members hold the same beliefs.²⁵

After discussing its’ interview with Dr. Scott, the DEA next goes into discussing the nature of Soul Quest’s advertising materials. To this end the DEA writes:

“Similarly, Soul Quest's website and public advertisements also do not support the claim that Soul Quest offers ayahuasca solely for religious purposes and only to members who are exercising religion pursuant to a sincerely held religious belief. January 9, 2017, DEA-6; Non-drug exhibits N- 1, N-2. Soul Quest does business as the Soul Quest Ayahuasca Retreat and Wellness Center (Wellness Center). The Wellness Center offers a broad range of alternative medicinal and wellness services; ayahuasca ceremonies are one item on an extensive menu of services ranging from yoga and acupuncture to marital counseling. Id. Soul Quest offers weekend ayahuasca retreats that are open to any individual who is willing to sign various forms and pay a fee ranging from \$350 to \$900.00 for the retreat. Feb. 18, 2021, DEA-6.”

Here, the DEA again tries to paint Soul Quest as a secular, as opposed to a religious organization, by pointing out that it has (presumably) secular offerings above and beyond its ayahuasca ceremonies. To begin my analysis, I just want to reiterate that a mix of secular and religious offerings in no way detracts the weight appropriately accorded the religious ones.²⁶ Therefore, the DEA is dead wrong in implying that Soul Quest must offer only ayahuasca ceremonies. In *Malnak v. Yogi*, Transcendental Meditation in conjunction with the Science of Creative Intelligence, was found to be a religion under the first amendment.²⁷ Therefore, it is easy to see how something like yoga, in conjunction with an ayahuasca ceremony, would be considered a religious exercise. Furthermore, there are numerous established churches which offer marital counseling. When we delve into a “religion by analogy” assessment of these facts, we realize, again, they are essentially

²⁵ *Thomas v. Review Bs. Of the Ind. Emp’t Sec. Div.*, 459 U.S. 707, 715-16 (1981).

²⁶ See *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1532 (1977)); *Meyers*, 906 F.Supp. 1494, 1508 (D. Wyo. 1995).

²⁷ *Malnak v. Yogi*, 592 F.2d 197, 207 (3rd Cir. 1979).

meaningless in terms of defining religion or gauging sincerity.

Finally, the assertion that "Soul Quest offers weekend ayahuasca retreats that are open to any individual who is willing to sign various forms and pay a fee ranging from \$350 to \$900.00 for the retreat" is likely very misleading. By implication, if Soul Quest is having potential participants fill out forms and applications, then obviously some people will not qualify to sit for their ayahuasca ceremonies. What exactly Soul Quest's parameters are, I cannot say; but I am aware that they have a dedicated medical staff who undoubtedly would turn away potential participants for reasons such as safety (i.e. contraindicated medications and/or health issues).

The DEA then goes into discussing the corporate structure of Soul Quest's church and its related entities:

"When interviewed, Dr. Irwin explained that, while he is the "Senior Minister" and a corporate officer of Soul Quest, he is actually employed by the Soul Quest Natural Healing Center (SQNHC), a for-profit company. Feb. 18, 2021, DEA-6. SQNHC and its employees are contracted by Soul Quest. In materials provided to DEA by counsel for Soul Quest on February 3, 2021, Soul Quest is described as an IRS compliant 501c(3) non-profit organization, while the Wellness Center is described as an independent branch or "Free Church" of Soul Quest. It would therefore appear that, despite its denials, Soul Quest sells ayahuasca as part of its for-profit secular offerings to the general public."

First, this paragraph is extremely vague. I have noticed in my legal career that when parties make vague assertions, it's usually because their arguments are highly attenuated at best, and they know it. How the DEA goes from saying that there is a for-profit company involved with Soul Quest's church to "Soul Quest sells ayahuasca as part of its for-profit secular offerings to the general public" is as murky as the waters of the Mississippi River. As we all know, if the evidence was clear, the DEA would have undoubtedly delineated same. Therefore, it is obvious that its interpretation of the facts doesn't rest on solid ground.

Again, a mix of secular and religious offerings does not detract from the weight appropriately accorded the religious ones. Moreover, other established churches also have offerings similar to the allegedly "secular" ones which Soul Quest offers. I think the main point the DEA misses here is that "for-profit" companies are also protected under RFRA. In *Burwell v. Hobby Lobby Stores, Inc.*,²⁸ the U.S. Supreme Court held that for-profit corporations have free exercise rights under RFRA. In that case, the Supreme Court allowed Hobby Lobby and the other plaintiffs to avoid tens of millions of dollars in government penalties by holding their free exercise rights had been violated by a law which mandated they provide contraception coverage to their female employees, which was contrary to their religious beliefs regarding abortion. Along those same lines, if Soul Quest is offering its ayahuasca ceremonies under the purview of a for-profit company, which has not been established, such does not change the analysis under RFRA. However, due to the murky assessment offered here by the DEA, I have serious doubts it will be able to show that indeed Soul Quest is offering ayahuasca ceremonies on a strictly for-profit basis. Finally, for-profit entities and non-profit churches do business in conjunction with each other all the time. Churches, like other business entities, are in the business of collecting donations and making money. The comparison between Soul Quest and other established religions, again, does not bode well for the DEA.

After vaguely describing the interplay between Soul Quest's church and its related for-profit entity, the DEA then switches back to Soul Quest's promotional materials:

"According to its website, Soul Quest uses SQNHC, an "independent medical service," to provide medical support throughout the retreat; Soul Quest also reportedly offers "psycho-spiritual integration" services, before, during, and after its retreats, including "transformational coaching services" intended to support

²⁸ 134 S.Ct. 2751, 189 L.Ed. 675 (2014).

recovery from addictions, post-traumatic stress disorder (PTSD), and other conditions. Under the FAQ section of Soul Quest's website, it is stated that "Ayahuasca is used primarily as a medicine ... It is a natural remedy for depression, anxiety, posttraumatic stress, anxiety, drug addiction, and it also releases emotional blocks ." January 9, 2017 DEA-6, Exhibits N- 1, N-2 (FAQ, www.ava.huascachurch.cs.org). This language from the website supports a conclusion that Soul Quest understands and advertises the use and distribution of ayahuasca to the public as fundamentally medicinal.”

The DEA continues to try and paint Soul Quest as a secular versus religious organization. To do this, the DEA continuously highlights the fact that Soul Quest speaks in medicinal terms in promotional materials. I will again reiterate that a mix of secular and religious claims does not detract from the weight appropriately accorded the religious ones.²⁹ Conveniently, the DEA never mentions any religious claims or beliefs espoused by Soul Quest, even though their website contains a copious amount of them³⁰ Additionally, as previously stated, shamanic religions such as Soul Quest’s ayahuasca religion have always been an inextricable mix of medicine and religion. Therefore, the fact there are religious and medicinal claims on Soul Quest’s materials should be of no surprise as such is consistent with the history of shamanic religions.

In the UDV case, the Court observed the church’s claims that ayahuasca effectuated physical and psychological healing.³¹ Despite these claims, the government and/or the Court did not contest the sincerity or religiousness of the UDV. Therefore, the government will need to explain why it contests Soul Quest’s sincerity and religiousness but not the UDV’s, when both churches have the same “secular” beliefs as it relates to ayahuasca.

²⁹ See *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1532 (1977)); *Meyers*, 906 F.Supp. 1494, 1508 (D. Wyo. 1995).

³⁰ <https://www.ayahuascachurches.org/statement-of-beliefs/>

³¹ *O Centro Espirita Beneficiente v. Ashcroft*, 342 F.3d 1170, 1174 (10th Cir. 2003).

The DEA mentions “psycho-spiritual” counseling as if that is a strictly medical term or concept. However, in this instance, it is my belief Soul Quest’s “psycho-spiritual” counseling essentially refers to integration, which is usually done post-ayahuasca journey. What is essentially taking place during these “psycho-spiritual” sessions, is the counselor or integration specialist is assisting a participant in making sense of their ayahuasca journey, which we have learned is a primary religious/mystical experience. Therefore, just like a Christian pastor reading a 2,000 year old primary religious experience from the bible and helping congregants make sense of it in relation to their own lives; here the “psycho-spiritual” counselor is attempting to help congregants make sense of their own primary religious/mystical experience. Therefore, in terms of Soul Quest’s religion and established religions, there is a lot of overlap. The fact that Christians call their leader a pastor and Soul Quest calls theirs a “psycho-spiritual” counselor is a matter of form and not substance. This is obviously a point of comparison the DEA completely misses.

I would like to note here, however, that Soul Quest’s materials might run afoul of FDA advertising regulations in that it mentions relief from specific diagnoses such as PTSD and depression. I am not up to speed on those regulations, so I will not make any specific comment on whether the materials referenced by the DEA violate those rules. However, I would like to note that running afoul of FDA advertising rules and the Controlled Substances Act, in terms of consequences, are two entirely different things.

Along the same lines as the above paragraph, the DEA next writes the following paragraph regarding Soul Quest’s public materials:

“On its website and in interactions with the public and prospective participants, Soul Quest describes the ayahuasca ceremony as plant medicine, a tool for physical health and spiritual growth, an "add-on" to whatever journey the individual chooses, and as treatment for use with whatever counseling methodology a person wishes to

pursue. Exhibits N-1, N-2. Internet reviews and public comments left by participants in Soul Quest retreats consistently speak of the psycho-social, medicinal, and therapeutic properties of the ayahuasca experience, rather than of a religious experience. Id. The same is true of participants interviewed during the preregistration investigation and in "(Un)well," a documentary series about the wellness industry that premiered on Netflix Episode 5 of the series is titled "Ayahuasca"; it focuses on use of ayahuasca, and includes, among other things, interviews and footage of Soul Quest leadership, members, and ayahuasca retreats. The individuals interviewed in the episode described the use of ayahuasca by Soul Quest participants as an aid in their healing journeys and for wellness, as opposed to a religious experience. In practice, Soul Quest thus promotes ayahuasca to the public for self-help and therapeutic reasons, rather than solely to fellow believers for the religious ritual purposes described in the Ayahuasca Manifesto. DEA therefore concludes that Soul Quest's promotion of ayahuasca to the public in this manner does not constitute a sincere exercise of religion under RFRA. Moreover, even if the organizers, officers, and leadership of Soul Quest could establish the sincerity of their own individual religious belief in the use of ayahuasca (which they have not established), they cannot establish that the participants in their ceremonies are using ayahuasca as part of a sincere religious exercise given the ease with which those participants can gain access to controlled substances in Soul Quest events, without meaningful commitment to a coherently religious practice."

To avoid beating a dead horse, I will simply refer to my above comments regarding the mix of secular and religious claims to address the bulk of this paragraph. However, there are a couple specific things I would like to discuss. First, whether someone describes their use of ayahuasca in terms of healing and self-help is irrelevant. Research of the entheogenic experience has noted, since the beginning, that these substances effectuate primary religious experiences. Moreover, as I discussed in Chapter 3, Grof observed that mental, emotional, spiritual, and sometimes physical healing are a probable secondary effect of these experiences. Therefore, if someone who participated in a Soul Quest ceremony describes the healing effects of the primary religious experience, that does not detract from the underlying fact that those effects arise from the

sacramental consumption of ayahuasca (i.e. a primary religious/mystical experience). Congregants claiming psychological or physical healing through participation in a liturgical act is as old as religion itself. Therefore, claims a congregant has been healed through participation in a liturgical act (i.e. an ayahuasca ceremony) does nothing to call into question the religious nature of the act itself or the sincerity of those involved. Also, remember that when determining the sincerity of a religious organization, or a for-profit company, the courts routinely look strictly at the organization's leaders. As such, the statements made by participants in a Soul Quest's ceremonies are irrelevant to the sincerity analysis as it relates to Soul Quest.

Finally, we have made it to my favorite paragraph in the whole Soul Quest letter. Here, the DEA attempts to call into question the sincerity of Soul Quest through discussing the church's prior associations. In doing so, the DEA states as follows:

"Soul Quest's historical associations also call into question its sincerity claims. When DEA first contacted Soul Quest on or about August 2, 2016, about its lack of authorization to obtain, handle, or distribute controlled substances under the CSA, the organization operated under the name "Oklevueha Native American Church Somaveda of Soul Quest, Inc." The Oklevueha Native American Church (ONAC) does not consider the Ayahuasca Manifesto to be its foundational text, but offers a Code of Ethics. It provides support and legal defense of the ceremonial use of various natural plant medicines by its member churches, ranging from peyote, ayahuasca, San Pedro, and psilocybin to cannabis. See www.nativeamericanchurches.org.

In response to DEA's initial contact, you called then-DEA Unit Chief James Arnold and asked him not to address the letter to the Oklevueha Native American Church (ONAC), Soul Quest, but to the Soul Quest Church of Mother Earth, Inc. You explained to Mr. Arnold that you and your group were disassociating yourself from ONAC and explained that you would be submitting a petition under the organization's current name. See August 26, 2016, Form DEA-6, Report of Investigation. When subsequently interviewed by DEA, you confirmed that Soul Quest had affiliated with ONAC to obtain legal coverage for Soul Quest's use of ayahuasca and other

substances. Feb. 19, 2021 DEA-6. You also conceded that you had purchased the right to use ONAC documents which you incorporated into your own writings as founder and leader of Soul Quest. Id. at 175. These facts suggest that Soul Quest changed its religious affiliation in order to use RFRA 's legal protections to enable Soul Quest to obtain and distribute controlled substances, rather than an expression of a consistently and sincerely held religious belief.”

While at first glance, these two paragraphs might call into question the sincerity of Soul Quest, as a litigator I am obliged to question every single assertion advanced by an opposing party. Here, because the DEA fails to present any precedent establishing why the fact Soul Quest changed affiliations is material in determining sincerity, I immediately suspected they were not. In researching relevant case law, I soon discovered that another case out of the Middle District of Florida had the answer I was looking for.

In *Pass-A-Grill Beach Cmty. Church, Inc. v. City of St. Pete*, the Middle District of Florida observed that, “Well respected religious leaders and institutions change their minds on certain matters from time to time, and no one would suggest that those changes evidence insincere religious beliefs.”³² In this case, the church had changed its mind over the years about whether it would charge for parking in its parking lot. In defense of its decision to allow free parking, the Church stated that offering free parking helped the church bring in new members.³³ However, because the church had previously charged for parking at various times in the past, the City claimed that the church’s religious assertions regarding free parking were insincere.³⁴ The Court disagreed and made the observation that religious leaders and institutions change their minds on matters all

³² Case No. 8:20-cv-1952-TPB-SPF at *15 (M.D. Fla. Jan. 26, 2021).

³³ *Id.*

³⁴ *Id.*

the time; and that such does not call into question the sincerity of their beliefs.³⁵ In bolstering its assertion, the Court cites to an article which references the Catholic Church switching its views on gay marriage.³⁶

Here, it is extremely doubtful the Middle District of Florida would call into question the sincerity of Soul Quest because its leader, Chris Young, chose to create his own church as opposed to operating under ONAC. While I don't know any specific instances off the top of my head, I am willing to bet that there are numerous instances of religious leaders, sincere in their practices and beliefs, switching their church's affiliation.

I would also like to point out the DEA again places too much emphasis on the Ayahuasca Manifesto. Foundational texts and writings are not required to find that set of beliefs or practices are religious and/or sincere. I venture to say that if the Catholic church can alter its view on gay marriage without its sincerity being called into question, then Chris Young can break away from ONAC and start his own church without Soul Quest's sincerity being called into question either. Moreover, who is to say that Chris Young didn't start Soul Quest because ONAC didn't subscribe to the Manifesto? Either way, Chris Young changing his association is inconsequential, especially in the Northern District of Florida.

At this juncture, I would like to note a general practice of the U.S. Government as it relates to free exercise cases under RFRA. What I see is the government creates an extremely hostile environment for religious practitioners, then when they do what they can to try and avoid imminent prosecution, the government uses those facts to throw doubt on their sincerity. This is the exact scenario which played out in the Santo Daime case, when the government raided its leader and

³⁵ Id.

³⁶ Id.

then called into question the sincerity of the group for then practicing underground. As was the case in the Santo Daime opinion, I believe the judge in the Middle District of Florida would not assign any probative value to these facts. The government can't create a hostile environment wherein adherents feel the pressure of imminent prosecution, and then use their reaction to doubt sincerity. Trying to associate with another group to feel secure in one's religious practice is obviously a reaction to the hostile environment (threat of imminent prosecution) created by the DEA by not approving religious exemption applications.

Finally, the DEA fails to mention any specific, articulable facts which would warrant a finding of insincerity on the part of Soul Quest. More specifically, the DEA fails to elucidate why switching from ONAC to Soul Quest proves Chris Young to be insincere. In these regards, it could potentially be probative of sincerity if the DEA could point out some glaring inconsistency between Soul Quest's and ONAC's beliefs. However, the DEA provides no such analysis. Regardless of whether the DEA could advance such a set of facts, religious beliefs don't have to be logical or consistent to warrant protection under RFRA.³⁷ Unfortunately for the DEA, it mistakenly hangs its hat on its belief the Ayahuasca Manifesto is somehow pivotal in the court's analysis of whether Soul Quest is a religion and/or sincere.

The DEA has failed to provide probative evidence of any consequence in trying to defeat Soul Quest's burden of showing its consumption of ayahuasca is a “sincere religious exercise.” While there are many legal commentators in the space that give much credence to the DEA's position in these regards, I respectfully disagree. As stated in great detail above, a reading of the case law in conjunction with the one-sided set of facts the DEA advances, clearly shows the DEA

³⁷ *Stevens v. Burger*, 428 F.Supp. 896, 899 (S.D.N.Y. 1977).

is misplaced in its findings and assertions. To try and defeat Soul Quest’s burden of showing a “sincere religious exercise,” the DEA will need to step its game up. If the facts cited in its letter are the worst set of facts that it could surmise, then it likely won’t be able to defeat Soul Quest’s burden of showing by a preponderance of the evidence it’s consumption of ayahuasca is a “sincere religious exercise.”

Compelling Governmental Interest

Now that we have covered the DEA’s failure to effectively challenge Soul Quest’s ability to meet their burden under RFRA (sincere religious exercise), it is time to turn to examine whether the government can meet its burden of showing a “compelling governmental interest” in enforcing the Controlled Substances Act against Soul Quest. On this issue, the DEA devotes the last probably third of its letter to this issue. As we will see, the DEA will likely be unable make such a showing.

At the outset, let us remember that in the UDV case, the U.S. Supreme Court held that the government did not have a compelling governmental interest in enforcing the Controlled Substances Act against the UDV.³⁸ Moreover, the Oregon District Court held the same in the Santo Daime opinion.³⁹ The burden to prove a compelling governmental interest is an “onerous” one.⁴⁰ Therefore, the DEA really has its work cut out for it to show that there is a compelling governmental interest in enforcing the CSA against Soul Quest.

When we talk about a compelling governmental interest in enforcing the CSA, there are essentially two issues which are addressed. The first issue is whether there is a safety risk involved

³⁸ *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 481, 439 (10th Cir. 2003).

³⁹ *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *19-21 (D. Or. 2009).

⁴⁰ *O Centro Espirita Benficiente v. Ashcroft*, 342 F.3d 1170, 1174 (10th Cir. 2003).

in the particular religious practice at issue. In this context, the government must show that there exists a “serious health risk” to the members of the religious group.⁴¹ The second issue is whether there is a sufficient risk of diversion from religious to non-religious use.⁴² Here, the government’s burden is to prove that if the exemption is granted, there would be significant diversion to non-religious use. When examining this issue, we look to see what kind of substance handling and storage protocols the religious group has in place.⁴³

When the UDV case was ultimately decided in approximately 2004, and when the Santo Daime opinion was decided in approximately 2009, the government was unable to show there was a serious health risk to the churches’ members sufficient to create a compelling governmental interest. Even though there was an utter lack of ayahuasca research concerning safety and efficacy at the time these cases were decided, the government was still unable to meet its burden under RFRA. With the amount of research which has been conducted subsequently, and especially in the last three years, in these regards, I venture to say that absent some non-existent or grossly negligent safety protocols, the government today would even fare worse than it did over ten years ago. Therefore, it is unlikely that the government would be able to meet its burden of showing a serious health risk to members of ayahuasca churches, absent some exigent circumstances.

Admittedly, since the interest in ayahuasca has grown over the last several years, the issue of whether the government could prove a substantial risk of diversion to non-religious use is not as cut and dry. Moreover, those types of determinations are expert driven. Therefore, while I will

⁴¹ Id. at 1173.

⁴² Id. at 1182.

⁴³ *O Centro Espirita Beneficiente v. Ashcroft*, 342 F.3d 1170, 1182-83 (10th Cir. 2003); *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *16-17 (D. Or. 2009).

point out the facts relating to the diversion analysis, I will refrain from commenting on the ability of the government to meet this burden while analyzing the DEA letter.

Unfortunately, the DEA is now relying on the Chacruna Institute to help satisfy its burden of showing a compelling governmental interest in preventing diversion of religious sacrament. In a footnote, the DEA cites to a 2019 article published by the Chacruna Institute entitled, “The Commodification of Ayahuasca: How Can we do Better.” The DEA relies on this article for the proposition that, “The globalization of ayahuasca raises complex questions, including how to distinguish between cultural appropriation and commodification of indigenous cultural practices from sincere cultural integration and syncretism, and has inspired a growing body of research and analysis.” Exactly how these issues play into the diversion analysis isn’t clear, but it seems the DEA has acquired another issue on which to attack sincere religious practitioners in this country.

Now that I have covered the preliminary matters, let us now take a look at select portions of the DEA letter regarding its compelling governmental interest. First, the DEA discusses in very vague and general terms why Soul Quest could not be accommodated with the CSA’s regulatory framework:

“Unlike the plaintiffs in 0 Centro, supra, and Church of the Holy Light of the Queen, supra, whose religious use of ayahuasca (also known as hoasca or Daime) DEA has accommodated within the CSA’s comprehensive regulatory scheme by treating the plaintiffs as registered importer, Soul Quest does not import its tea directly from co-religionists in South America. Instead, Soul Quest obtains the plants from which the ayahuasca tea is made outside the CSA’s regulatory framework from a business in the Netherlands, “Waking Herbs.” As described below, it is not possible for DEA to track these shipments to ensure that none are diverted into illicit channels. Moreover, the manager of Waking Herbs, Philip van Schaik, confirmed to DEA investigators that its products are sold only for purposes of soap and candle making and ethnobotanical research and are not for human consumption. Plant shipments intended for and/or received by Soul Quest bore labels such as “aromatic herbs,”

"samples," and "packaging materials." Use of plants which are not intended for human consumption in teas or other preparations for human ingestion poses obvious potential risks to human health and safety. Because DEA's attempts to obtain further information about Waking Herbs were rebuffed, it is not possible to determine the level of risk involved in use of these plant materials.

Under the CSA and DEA regulations, controlled substances that are imported into the United States must be directly shipped to the DEA registrant to keep the controlled substances within the closed system and to comply with Federal law. On November 18, 2019, while screening international mail, a Customs and Border Protection (CBP) Officer at the Chicago Customs and Border Protection Mail and Inspection Center inspected a parcel containing a dry green leafy substance that tested positive for DMT by the CBP Chicago Laboratory. The parcel, which was seized by the Department of Homeland Security (OHS), contained six bags with a total weight of approximately 7,866.3 grams. The parcel sender was located in the Netherlands. The addressee was Dr. Irwin's father in Nebraska, who subsequently shipped the bags to Soul Quest in Florida. January 24, 2020 DEA-6. Dr. Irwin's father is not a DEA registrant. DEA learned that the November 2019 shipment was not an isolated incident but that similar packages had been previously illegally shipped in this manner to Soul Quest. Id.

On August 27, 2020, DEA inspected Soul Quest's controlled substance storage unit, located at Security Self Storage, 12280 E. Colonial Drive, Orlando, Florida, 32826. Investigators noted that boxes of plant material received by Soul Quest bore the address of Palosanto Shop, a business using a virtual mailbox located at 1297 Grand Avenue, PMB #1032, Baldwin, New York, 11510. The plant material had been shipped from www.wakingherbs.com in the Netherlands to Palosanto Shop and were then transferred to Soul Quest in Orlando, Florida. Palosanto Shop is not registered with DEA as an importer. February 12, 2021, DEA-6 .

Because Soul Quest's sources are not DEA registrants, and because neither they nor Soul Quest will answer questions on the subject, DEA cannot determine how much of the controlled substance is being imported, or inspect its chain of custody within the United States to determine if diversion has occurred."

Here, the DEA fails to explain what it means by being inside the CSA's regulatory framework. It suggests that because the UDV and Santo Daime get ayahuasca from coreligionists in South

America, that they are within the CSA's regulatory framework. However, let us not forget that prior to getting slammed with an injunction from the federal courts, obtaining ayahuasca from coreligionists was also not within the CSA's regulatory framework. So it seems that the only way to get within the CSA's regulatory framework, the only tried and true method, is to sue the government and have it enjoined them from enforcing the CSA. Therefore, it is blatantly obvious Soul Quest is not within the CSA's regulatory framework, as their lawsuit against the government is still pending. This paragraph is both meaningless and nonsensical.

There is nothing in the UDV or Santo Daime opinions which suggests that obtaining ayahuasca from coreligionists is the only valid way under RFRA to obtain an exemption. Although it seems the DEA wants to read that into the opinions, there is nothing stated overtly by the courts which leads to this conclusion. It could be argued that desiring to cook one's own ayahuasca (if done with prayer and intention) goes more towards showing that Soul Quest is indeed a religion under the first amendment. Absent some exigent circumstances, I highly doubt that a court would deny an exemption simply because the applicant acquires and cooks its own plant material. As it relates to diversion, it is likely that an expert would testify that receiving the component plants, versus a completed brew, would likely cut against a finding of significant risk of diversion because most people either wouldn't know what the plant materials are or what they contain, and also, would not know the proper way to prepare the ayahuasca brew. Again, the DEA does not connect the dots with its position. If they want to prevail in federal court they will need to clearly elucidate where they are going here.

It is also important to note that CBP has been seizing copious amounts of liquid and paste ayahuasca coming across the border. It should be expected that sincere religious practitioners would try and find a way around this governmental burden and intrusion. Because Soul Quest

desires to acquire its plant materials from elsewhere and cook its own ayahuasca goes towards showing sincerity in these regards.

We also see the DEA making an issue out of the fact that Soul Quest's provider of ayahuasca components "...is not a DEA registrant." However, as stated above, absent suing the government and getting an injunction, it is impossible for an ayahuasca church to become a DEA registrant. Also, we must consider the DEA failed to approve one religious exemption petition during the nine years or so it had published the guidance document. Therefore, as already discussed, we have the DEA creating these environments where sincere religious practitioners must get creative in order to preserve their religious freedoms.

Next, the DEA goes into Soul Quest's failure to cooperate with it during its investigation of the claims made in Soul Quest's petition:

"Candor is essential to the closed regulatory scheme established by Congress to prevent diversion of controlled substances from authorized channels. Millions of individual health care practitioners and researchers, institutions, and companies hold DEA registrations, and DEA's resources limit the scope and frequency of inspections and audits of registrants. For this reason, DEA "places great weight on a registrant's candor, both during an investigation and in any subsequent proceeding." See, e.g., Belinda R. Mori, N.P.; Decision and Order, 78 Fed. Reg. 36,582-02, 36,589 (2013) (citing Robert H. Hunt, 75 Fed. Reg. 49,995, 50,004 (2010)). It is well-settled that "[c]andor during DEA investigations, regardless of the severity of the violations alleged, is considered by the DEA to be an important factor when assessing whether a [respondent's] registration is consistent with the public interest," and "[t]he DEA properly considers the candor of the [respondent] and his forthrightness ... in determining whether the [respondent's] registration should be revoked." Hoxie v. DEA, 419 F.3d 477, 483 (6th Cir. 2005).

During the preregistration investigation, Soul Quest made no commitment to lawfully import or acquire the plant material containing DMT within the comprehensive regulatory system established under the CSA. Soul Quest representatives refused even

to discuss importation, citing the Fifth Amendment prohibition against self-incrimination. This failure to provide essential information evidencing specific plans and a concrete commitment to the legal importation of the plant material constitutes a lack of candor which is fatal to the Soul Quest petition. This failure, moreover, is not justified by the Fifth Amendment. DEA's RFRA petition guidance clearly requests information about a petitioner's future plans, rather a confession of previous unlawful activity. Supra p. 1 n.1 (requesting the name of the controlled substance the party "wishes to use" and details about its "anticipated" handling of the substance)."

As stated in detail in The Law of Entheogenic Churches in the United States, the DEA's Guidance Document and the petition procedures described therein were both illegal and unconstitutional. These two paragraphs evidence exactly why the process was illegal and unconstitutional. Here, the DEA tries to attack the candor of Soul Quest for its refusal to incriminate its leaders in describing to the DEA how it imported its ayahuasca. While the DEA argues that refusal isn't justified under the Fifth Amendment, this is not the case. Discussing future plans, under oath, can constitute substantial evidence of a conspiracy.

The Guidance Document constituted a prior restraint on first amendment rights because it mandated that applicants discontinue their religious practice while the petition was pending. In Soul Quest's case, more than three years. Therefore, while the DEA might have requested statements regarding future plans, all sincere religious practitioners would likely be disclosing evidence of an ongoing CSA violation, as they would probably seek to import their sacrament the same way they always had. In either event, it is highly illegal and unconstitutional to mandate that a person forego their Fifth Amendment rights in order to comply with a government registration scheme.⁴⁴

⁴⁴ See *Marchetti v. United States*, 390 U.S. 39, 58-59, 88 S.Ct. 697, 708 10 L.Ed.2d 889, 904 (1968); *Leary v. United States*, 395 U.S. 6, 10, 89 S.Ct. 1532, 1534, 23 L.Ed.2d 57, 66 (1969).

The DEA is making similar assertions in its denial letter that were advanced by the government in the UDV case. The government in the UDV case argued that an exemption for the sacramental consumption of ayahuasca would lead to illegal diversion because: 1) the ayahuasca had to be shipped from Brazil where it was unregulated; and 2) the uncooperative relationship between the UDV and the DEA.⁴⁵ These arguments did not persuade the 10th Circuit and Supreme Court. Similarly, it is unlikely that arguments regarding the source of Soul Quest’s ayahuasca material and/or its uncooperative attitude towards working with the DEA will persuade the Middle District of Florida that a substantial increase in diversion will occur.

Next, the DEA discusses the potential health risks for those who participate in Soul Quest’s ayahuasca ceremonies:

“In its petition and supporting materials, moreover, Soul Quest described detailed screening procedures for participants, as well as monitoring of ayahuasca consumption by trained health care professionals. However, DEA’s investigation revealed troubling allegations that Soul Quest has failed to follow its own procedures. In 2018, for example, a participant named Joseph Begley died after ingesting both ayahuasca and kambo (the secretion of a South American frog). Mr. Begley’s estate has sued Soul Quest for wrongful death, and in that ongoing litigation, Mr. Begley’s father claims that a three-hour delay in summoning medical aid contributed to his son’s death. A participant in a September 6, 2020 ayahuasca “Warrior Quest” retreat also recently reported to DEA that, after she began experiencing adverse effects from an unknown substance also administered to her during an ayahuasca ceremony, Soul Quest staff members delayed calling 911; she also alleged that hospital emergency room personnel had told her that Soul Quest staff members had repeatedly dropped off customers experiencing adverse reactions off at the emergency room. April 12, 2021 DEA-6.7 While DEA has served an administrative subpoena upon the local hospital to corroborate these reports, it has not yet received any response.”

⁴⁵ *O Centro Espirita Beneficiente v. Ashcroft*, 342 F.3d 1170, 1182 (10th Cir. 2003).

My understanding is that Soul Quest has trained medical staff present during all of its ayahuasca ceremonies, which is good, but not required, to show that there is not a serious health risk to participants. Here, the DEA is relying on essentially unfounded allegations from an unrelated civil case to establish that Soul Quest does not follow its own procedures and protocols. I do not want this paragraph to be construed as me commenting one way or another about the viability of Mr. Begly's estate's claim. It must be noted here that allegations in a civil case are just that, allegations, and do not have any probative force in the RFRA action Soul Quest filed against the government. Therefore, absent direct testimony elicited under oath, none of these statements are admissible in Soul Quest's RFRA case.

As it relates to the second incident described, it is also wholly founded upon hearsay. Unless the DEA is able to subpoena the person who reported this incident, none of this material is admissible. The statements allegedly made by the medical personnel at the hospital are also hearsay and inadmissible. Moreover, it would likely be difficult to introduce evidence of these other alleged incidents without violating patient privacy laws.

What is most troubling for the DEA in regards to proving a severe health risk, is that they have allowed Soul Quest to operate continuously despite having knowledge of these incidents. A good lawyer will obviously point out that, if the DEA thought that Soul Quest presented such a serious health risk, it would have gone and shut Soul Quest down long ago when Mr. Begley passed away. However, Soul Quest continues to serve ayahuasca every weekend. This is going to present a major hurdle for the government to prove a compelling governmental interest in safety under these facts.

In conclusion, based upon the facts I have before me, it is my opinion the DEA will be unable to defeat Soul Quest's burden of showing that, based on a preponderance of the evidence,

its sacramental consumption of ayahuasca is a sincere religious exercise. The DEA places too great an emphasis on the Ayahuasca Manifesto and on Soul Quest’ secular claims. As discussed, long-standing court precedent eschews any requirement that a religion be founded upon or utilize any writings or texts; for the existence of such is merely one factor of the *Meyers* analysis. Moreover, a mix of secular and religious claims does not detract the weight appropriately accorded the religious ones. Therefore, Soul Quest’s discussion of secular/medical benefits derived from the sacramental consumption of ayahuasca does not detract from the religious aspects of Soul Quest’s belief system.

In terms of sincerity, the DEA has committed a grave error in allowing Soul Quest to continue to serve ayahuasca subsequent to their denial letter. As happened in the Santo Daime case, this fact will likely go to bolster Soul Quest’s claims of sincerity. Moreover, the DEA has not advanced any facts that would call into question the sincerity of Soul Quest’s leaders or members.

The DEA will also unlikely be able to prove that it has a compelling governmental interest in enforcing the CSA against Soul Quest. As discussed, the safety data on ayahuasca has increased dramatically over the last ten years since the Santo Daime opinion was published. Absent some exigent circumstances, there is little chance the government will be able to prove there to be a “serious health risk” to Soul Quest’s members. While I am going to refrain on drawing any hard conclusions on the diversion potential, I would like to note that the same concerns expressed by the DEA in the Soul Quest letter are the same ones expressed by the government in the UDV case, save and except the convoluted issues raised by the Chacruna Institute. As such, absent some exigent circumstances of which I am unaware, it seems likely that the government will not be able to prove the risk of diversion rises to the level of a compelling governmental interest. However,

Excerpt from “The Law of Entheogenic Churches in the United States (Volume II): The Definition of Religion Under the First Amendment in Light of the Sacramental Consumption of Entheogens” by George G. Lake, Esq.

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as previously stated, that analysis is heavily driven by expert testimony, the substance of which can not now be predicted. Therefore, drawing any hard conclusions about the resolution of that issue would be premature at this time.

It will be important that, as a community, we follow Soul Quest’s journey through the federal court system. While many people in this community are not fans of Soul Quest for one reason or the other, it and its members are part of our community and what happens to Soul Quest will have ripple effects throughout the entheogenic church space in the United States. I respectfully request everyone put aside any negative attitudes or feelings they may have towards Soul Quest and show love and support for the organization as it navigates this extremely difficult and highly specialized area of law. I am pro-religious freedom, especially as it relates to the sacramental consumption of entheogens, which I believe to be the foundation of religion as we know it. To this end, I will continue to research, write, and litigate until those who sincerely seek to consume entheogens as part of their religious practice, can do so without fear of reprisal or persecution from the government.

Much Love!!!!

George G. Lake, Esq.