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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
(Medford Division)

**THE CHURCH OF THE HOLY LIGHT OF  
THE QUEEN**, a/k/a The Santo Daime Church,  
an Oregon religious corporation, on its own  
behalf and on behalf of all of its members,  
**JONATHAN GOLDMAN**, individually and as

Civil No. 08-cv-03095-PA

**REBUTTAL STATEMENT OF  
JIMMY GURULÉ**

Spiritual Leader of the "Santo Daime Church,"  
**JACQUELYN PRESTIDGE, MARY ROW,  
M.D., MIRIAM RAMSEY, ALEXANDRA  
BLISS YEAGER and SCOTT FERGUSON,**  
members of the Santo Daime Church,

Plaintiffs,

v.

**MICHAEL B. MUKASEY**, Attorney General  
of the United States; **KARIN J. IMMERGUT**,  
United States Attorney, District of Oregon;  
**HENRY M. PAULSON**, Secretary of the U.S.  
Department of the Treasury,

Defendants.

## **I. Summary of Rebuttal Statement**

I have filed an expert witness statement in the above-captioned case on behalf of the plaintiffs. Plaintiffs have now asked me to review the statement of Denise Curry, Deputy Director of the Office of Diversion Control, U.S. Drug Enforcement Administration (DEA), and determine whether it alters, in any way, my previously expressed expert opinion on the public policy implications of exempting dimethyltryptamine (DMT), in the form of ayahuasca /Daime tea, from the Controlled Substances Act (CSA) for importation and use by members of the Santo Daime Church as a sacrament in their religious ceremonies. First, it continues to be my strongly held opinion that the government has failed to establish that criminalizing and punishing the importation and use of Daime tea as a sacrament in Santo Daime religious ceremonies is necessary to further a compelling government interest. More specifically, I do not believe that there is an illicit market in the United States for ayahuasca tea. Further, defendants, including their expert Ms. Curry, have failed to establish the nature and size of such alleged illicit market. Second, I further believe that a reasonable set of procedures can be implemented to ensure that any Daime tea imported into the United States is used only for Santo Daime religious purposes and not diverted for unintended uses. In short, despite Ms. Curry's statements to the contrary, banning the tea is not the least

restrictive means of protecting any legitimate public policy interests that may exist.

## **II. Denise Curry's Unfounded Opinion That an Illicit Market Exists for DMT and Ayahuasca**

In Ms. Curry's statement, page 35, paragraph 109, dated December 8, 2008, she opines:

It is my opinion that an illicit market exists in the United States for DMT and related compounds, in tablet, powder and liquid form. It is also my opinion that an illicit market already exists in this country for ayahuasca and that any ayahuasca diverted from purportedly religious channels would find a ready illicit market.

Ms. Curry's statement that an illicit market exists in the United States for DMT and related compounds is unfounded. Her conclusion is largely based on a few random cases (seven cases over seven years) cited in her statement involving the seizure of some unknown quantity of DMT. In addition to failing to specify the quantity involved in these seizures, Ms. Curry fails to disclose the monetary value of the DMT seized. For a federal drug enforcement agency that prides itself in large seizures of illicit drugs, the failure to identify either the quantity or monetary value of the DMT involved in these seizures is a curious omission. Furthermore, if the quantity or value of the DMT seized was *de minimis*, for example, valued at a few hundred dollars, this would severely undermine any claim that an illicit market exists for trafficking in DMT. Finally, Ms. Curry fails to disclose whether any of the cases cited in her declaration resulted in criminal prosecution and conviction. If the U.S. Attorneys Office failed to file criminal charges in these cases, this would further undermine Ms. Curry's claim that DMT poses a serious drug enforcement concern for the DEA.

Ms. Curry's statement that an illicit market already exists in this country for ayahuasca is even more specious. In support of her conclusion, Ms. Curry cites one case in 2001, involving the seizure of plants which she claims are used to brew ayahuasca, and a 2002 case, involving the controlled delivery of a package containing ayahuasca tea. Of the

thousands of drug arrests conducted every year by the DEA and state drug enforcement agencies, Ms. Curry could only cite two cases, the most recent of which occurred seven years ago, involving the seizure of ayahuasca, not Daime. The dearth of cases cited seriously undercuts Ms. Curry's claim that an illicit market exists for trafficking in ayahuasca tea. The other principal basis for her opinion consists of some internet sites referenced in her statement discussing the use of ayahuasca. In *Gonzales, et al. v. O Centro*, 546 U.S. 418 (2006), defendants listed some internet sites as evidence of the existence of an illicit market in the United States for ayahuasca tea. Such evidence failed to persuade any of the courts involved in the litigation, from the District Court to the United States Supreme Court, that there existed a significant illicit market in this country for ayahuasca. Ms. Curry's statement does not provide any evidence that there is a greater demand today for ayahuasca tea than existed in 2001-05, when the *O Centro* case was being litigated. In short, Ms. Curry's opinion that an illicit market exists for trafficking in ayahuasca tea is based on such flimsy evidence that it lacks any credibility.

Ms. Curry's argument that an illicit market exists for trafficking in DMT and ayahuasca or Daime is unpersuasive for other reasons. In her Declaration, Ms. Curry fails to establish the size and nature of the purported illicit market for DMT and ayahuasca. For example, what is the demand for DMT and ayahuasca in the United States? Stated another way, how many users are there in the United States for DMT and ayahuasca? What quantity of DMT and ayahuasca is illegally imported and distributed annually in the United States? Is DMT imported and distributed principally in tablet, powder or liquid form? When distributed in powder form is DMT sold by the ounce, pound or kilogram? When distributed in liquid form is DMT sold by the quart, gallon or some other measurement? What is the wholesale and retail price for a tablet of DMT and quart or gallon of ayahuasca? What is the profit margin for trafficking in DMT and ayahuasca? In other words, how profitable is the purported illicit market in DMT and ayahuasca? What is the dollar value of the DMT and

ayahuasca distributed illegally in the United States last year? Over the last five years? Further, is trafficking in DMT and ayahuasca concentrated in particular regions of the country? In large urban centers? Rural areas? Finally, how many cases were prosecuted last year by the U.S. Department of Justice (DOJ) for trafficking in DMT or ayahuasca tea? Over the past five years? Ms. Curry's statement fails to provide answers to any of these questions, seriously undermining her claim that an illicit market exists for trafficking in DMT and ayahuasca.

If an illicit market existed for DMT, ayahuasca and Daime, and these substances truly posed a serious drug enforcement concern, the size and nature of the problem would be known to the DEA and documented in DEA and Office of National Drug Control Policy (ONDCP) reports. Such information has not been included in Ms. Curry's statement, undermining her claim that DMT and ayahuasca pose a serious threat of illicit trafficking. Further, I am not aware of any reports by the DEA or ONDCP discussing the illicit market in DMT and ayahuasca. In short, no credible evidence has been presented that there is anything more than a *de minimis* market in the United States for the DMT and ayahuasca tea. Moreover, the evidence presented in Ms. Curry's statement does not rise to the level of a compelling government interest.

In Ms. Curry's Declaration, paragraph 32, she states:

Since the 1960s, federal, state, and local law enforcement authorities have made seizures of DMT in tablet, powder, and liquid form.

Once again, Ms. Curry fails to identify the quantity of DMT seized since 1960, the quantity seized in liquid form, and the quantity of ayahuasca tea seized during that time period. As stated in my draft memo in 2000, except for the ayahuasca tea seized in the instant case, I am unaware of any seizures of liquid DMT in the form ayahuasca or Daime tea.

### III. Risk of Diversion

In Ms. Curry's statement, she states that there is a greater risk of diversion from Plaintiffs than from the UDV. However, defendants admit in their response to plaintiffs interrogatories that there is no evidence that DMT tea imported by Plaintiffs has been diverted from Plaintiffs to the recreational markets outside of their ceremonies. Moreover, the mere *possibility* that ayahuasca tea could be diverted for illicit purposes does not establish a compelling government interest. Ms. Curry further maintains that because the Santo Daime Church is decentralized that would make the closed regulatory system in which Plaintiffs could be held accountable for, and DEA would be able to verify, the chain of custody of all Daime tea imported into this country more difficult to enforce. However, large quantities of prescription and non-prescription drugs are imported into the United States from around the world and are shipped by common carrier throughout the country. The DEA permits this activity with various oversight procedures to minimize diversion. The administrative burden of controlling the importation of these drugs is substantially greater than the oversight needed to protect from the diversion of relatively small quantities of Daime tea. The components of the closed system discussed by Ms. Curry can be applied quite easily to the importation, distribution and consumption of the tea. There is nothing remarkable about this substance that makes it any more difficult to regulate than the complex pharmaceuticals and large quantity of other drugs the defendants sanction being imported and distributed in the United States. Finally, it should be emphasized that plaintiffs have continuously expressed their willingness to meet with DOJ lawyers to develop a set of procedures to ensure reasonable oversight for the importation and distribution of ayahuasca tea. Defendants have ignored plaintiffs requests for such a meeting. In short, administrative oversight is a less restrictive alternative than banning the tea.

In paragraph 76, Ms. Curry discusses plaintiffs expert Dr. Michael Winkelman's statement that the Daime tea and hoasca are unlikely to become recreational drugs because ingestion often results in vomiting. Ms. Curry states that [i]n DEA's experience, moreover, unpleasant side effects cannot be relied upon to prevent substances from becoming drugs of abuse. However, Ms. Curry does not contest that the negative side effect of vomiting remains a significant factor that would tend to lesson the likelihood of the tea becoming a major part of the illicit drug market in this country. I further agree with Dr. Winkelman's assessment that vomiting is a factor that would tend to limit the teas use as a recreational drug.

#### **IV. Refusal to Seek Exemption from Applicable DEA Regulations**

Ms. Curry's statement that the plaintiffs have refused to seek agreement with the DEA prior to filing this litigation is misleading to the court in the extreme. In 2000, at the request of Attorney General Janet Reno, I attended a meeting at the DOJ with Mr. Haber, a Santo Daime church leader from Brazil, and senior staff from approximately ten federal agencies, including representatives from the DEA. I attended this meeting with the intent of reaching a reasonable resolution of the instant matter. Subsequent meetings were held with Mr. Haber, and several letters were exchanged between DOJ officials in both Attorney General Janet Reno's and Attorney General John Ashcroft's administrations. The defendants made it quite clear that they had no intention of granting any exemption to permit the tea to enter the country. In October, 2001, defendants notified plaintiffs by mail that they would continue to enforce the ban against importation. Further, in the *O Centro* case the DEA argued to the Supreme Court that it had no process by which a person or religious group could seek an exemption for religious purposes. It further argued that it would never grant an exemption. Implying that the plaintiffs would have received an impartial review by the drug agency is inconsistent with the actual decision already made and communicated to plaintiffs in October 2001 that the defendants would continue to enforce the ban. In short, the DEA

has consistently held that it has no authority under the CSA to entertain any requests for exemptions. Thus, Denise Curry's claims to the contrary are disingenuous.

Finally, defendants have stated that my expert opinion regarding the policy implications of exempting the importation and use of Daime tea for religious purposes is based on legal conclusions. This statement is false. For example, my expert opinion, based on my years of experience as a state and federal prosecutor and senior-level positions held in federal law enforcement, including Assistant Attorney General, U.S. Department of Justice, and Under Secretary (Enforcement), U.S. Department of the Treasury, that I am unaware of any person ever being prosecuted for possession of or trafficking in ayahuasca tea is a fact, not a legal opinion. Further, my statement that DEA and ONDCP annual reports that I have read do not even mention Daime is not a legal opinion, but a fact. Moreover, my opinion that defendants, including their expert Ms. Curry, have failed to establish the size and nature of the alleged illicit market in DMT and ayahuasca tea is a fact, not a legal conclusion. Finally, my opinion that there is no significant illicit market for DMT and ayahuasca/Daime tea is based on my prosecutorial, policy and academic experience, and does not amount to a legal conclusion.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: January 9, 2009.

Respectfully submitted,

/s/ Jimmy Gurulé  
Jimmy Gurulé

\* \* \* \* \*

\* \* \* \* \*

Dated this 9<sup>th</sup> day of January, 2009.

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing REBUTTAL STATEMENT OF  
JIMMY GURULÉ on:

Eric Joseph Beane / Brigham J. Bowen / Julie Straus / Lily Farel  
Civil Division, Federal Programs Branch  
U.S. Department of Justice  
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Attorneys for Defendants

by mailing a copy thereof in a sealed, first-class postage prepaid envelope,  
addressed to each attorney's last-known address and depositing in the U.S. mail at Portland,  
Oregon on the date set forth below;

by causing a copy thereof to be hand-delivered to said attorneys at each  
attorney's last-known office address on the date set forth below;

by sending a copy thereof via overnight courier in a sealed, prepaid envelope,  
addressed to each attorney's last-known address on the date set forth below;

by faxing a copy thereof to each attorney's last-known facsimile number on  
the date set forth below; or

by filing electronically via the court's CM/ECF system.

DATED this 9<sup>th</sup> day of January, 2009.

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