

EXPERT WITNESS STATEMENT OF DENISE CURRY

1. I am an employee of the United States Department of Justice, Drug Enforcement Administration (DEA). I currently serve as the Deputy Director of the Office of Diversion Control in DEA Headquarters in Arlington, Virginia, a position I have held since February 2005.

2. I make the factual statements which follow out of personal knowledge, as well as information provided to me as part of my official duties with DEA.

I. Description of Qualifications

3. I entered on duty with DEA as a Compliance Investigator (now called Diversion Investigator) in May 1974 and have over 30 years of service at all levels of DEA's Diversion Control Program.

4. After completing DEA's basic diversion training program, I was initially assigned to DEA's Detroit Field Division. While stationed there, I earned a Master's degree in Public Administration from the University of Detroit in 1980. As a Compliance Investigator and team leader, I performed the full range of diversion functions and was responsible for, among other things, the conduct of scheduled investigations and unannounced audits of registered handlers of controlled substances to ensure that proper record-keeping, labeling, security, and other required procedures were being followed.

5. In 1986, I was promoted to the position of Supervisory Diversion Investigator in DEA's Los Angeles Field Division, where I directly supervised a staff of ten Diversion Investigators handling the full range of registrant investigations and audits. While assigned to the Los Angeles Division, I also earned a J.D. degree from Whittier College School of Law in 1991.

6. In 1992, I was reassigned to the Liaison Unit in DEA's Office of Diversion Control in DEA Headquarters, where I provided advice and consultation to the field concerning interpretations of various statutes, regulations, and policies and their impact on investigations. I also conducted liaison activities with representatives of the pharmaceutical industry, health care professionals, state and local authorities, foreign governments, and other federal agencies. I also developed written policy and guidance for the implementation of diversion programs. I was promoted to Chief of the Liaison Unit in October 1997.

7. After serving briefly as an Inspector in DEA's Office of Inspections from July through December 2003, I was promoted to the position of Executive Assistant to the Deputy Assistant Administrator for the Office of Diversion Control. I was appointed to my current position in February 2005.

8. As Deputy Director of the Office of Diversion Control, I manage all administrative and operational aspects of DEA's Diversion Control Program, both foreign and domestic under the supervision of the Director.

II. Compensation and Previous Testimony

9. As a federal employee, I receive no compensation for my work on and testimony in this litigation other than my salary.

III. Summary of Conclusions

10. **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. Based on my over thirty years' experience at all levels of DEA's Diversion Control Program, the collective experience and knowledge of the Office of Diversion Control with respect to DMT and other tryptamine hallucinogens, and the materials which I have reviewed in connection with this sworn statement, it is my opinion that the importation and use of ayahuasca containing DMT described by Plaintiffs presents very serious human health risks and a very significant risk of diversion to illicit use. A list of sources which I have considered is attached to this declaration. Finally, I believe that Plaintiffs' submissions leave very significant questions unanswered and that these questions could and should be resolved through the administrative process established by Congress and administered by DEA.

IV. Analysis

A. The DEA Diversion Control Program

11. DEA's mission is carried out through 227 domestic offices, organized into 21 Divisions, as well as 87 offices in 63 foreign countries. www.usdoj.gov/dea/agency/domestic/html. DEA's worldwide workforce numbers approximately 10,000, of whom approximately 500 are Diversion Investigators.

12. The mission of the Office of Diversion Control (OD or the Office) is to prevent, detect, and investigate the diversion of pharmaceutical controlled substances and listed chemicals from legitimate channels while ensuring an adequate and uninterrupted supply of pharmaceutical controlled substances and listed chemicals to meet legitimate medical, commercial, and scientific means. See generally www.deadiversion.usdoj.gov.

13. The Office's activities include: program prioritization and field management oversight; coordination of major investigations; drafting and promulgating regulations; establishment of drug production quotas; analysis and proposals concerning legal control of drugs and chemicals not previously subject to the CSA; control of imports and exports of controlled substances and chemicals; computerized monitoring and tracking the distribution of certain controlled substances and chemicals; providing distribution intelligence to cooperating state agencies; industry liaison, and program resource planning and allocation.

14. The Controlled Substances Act (CSA), 21 U.S.C. §§ 801 *et seq.*, became law in 1970. The CSA consolidated previous laws regulating the manufacture and distribution of narcotics, stimulants, depressants and hallucinogens. The CSA does not simply control substances whose possession is illegal for all purposes. It comprehensively regulates substances which have legitimate uses, but a potential for diversion into illicit channels. In enacting the CSA, Congress "devised a comprehensive regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA." *Gonzales v. Raich*, 545 U.S. 1 (2005).

15. One of Congress' objectives in enacting the CSA was to address the diversion of legitimate pharmaceuticals into illicit drug traffic. One factor in the diversion problem was the import and manufacture of greater amounts of pharmaceuticals than were needed to satisfy legitimate demands.

16. The CSA therefore created a closed system of legitimate importation, exportation, manufacture, distribution, and dispensing of controlled substances within the United States. The

purpose of this closed system is to deter and prevent trafficking in legitimately imported and manufactured controlled substances and to ensure that controlled substances and listed chemicals are used only for lawful purposes. DEA ensures that controlled substances that have legal uses are available within the closed system of the CSA, but not outside that system.

17. The closed system established by the CSA requires persons who engage in the manufacture, importation, distribution, and dispensing of controlled substances to hold DEA registrations. The CSA requires registrants to maintain written records and strict security controls. It also authorizes law enforcement investigators to inspect the physical plants and audit the records maintained by registrants. The CSA also authorizes DEA to establish quotas for the manufacture of controlled substances, based on estimates of the needs of the legitimate market in this country. Registrations may be limited to particular controlled substances and, with certain exceptions, must be obtained for each location at which controlled substances are manufactured (which includes repackaging), distributed, or dispensed. Through this closed regulatory system, registrants must account for, and DEA must be able to verify, the total amounts of controlled substances from their importation or manufacture through licit commercial channels to their ultimate use or disposal.

18. DEA implements these statutory provisions through comprehensive regulations, 21 C.F.R. §§ 1301-1316. Registrants are subject to a variety of regulations, including recordkeeping, reporting, and security requirements, and restrictions (such as production quotas, inventory reporting, requirements, and labeling and packaging requirements). They are subject to inspection and audit.

19. DEA's predecessor agency, the Bureau of Narcotics and Dangerous Drugs (BNDD), established a Compliance Program and created a job series of employees dedicated to the regulation and investigation of legitimately produced controlled substances. This segment of the workforce was initially known as Compliance Investigators and is now known as Diversion Investigators. See generally DEA, "A Tradition of Excellence 1973-2003," accessible at www.usdoj.gov/dea/pubs/history/index.html.

20. DEA was established in 1973 through the merger of several federal entities, including the BNDD. In 1976, DEA established the Office of Compliance and Regulatory Affairs (now the Office of Diversion Control) in DEA Headquarters to provide oversight to the specialized workforce of Compliance Investigators (now Diversion Investigators), who were tasked to focus on the diversion of licitly manufactured controlled substances and to implement the closed regulatory system established by the CSA. *Id.* I have worked in this field since 1974.

21. The CSA places all controlled substances into one of five Schedules, based on each substance's medical use, if any, potential for abuse, safety, and likelihood of dependence. Schedule I is the most highly regulated; substances in Schedule I have been determined to have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision. 21 U.S.C. § 812.

22. The CSA authorizes the Attorney General, who has delegated this authority to the Administrator of DEA, to conduct rulemaking proceedings to add or remove a substance from a

Schedule or to transfer substances between Schedules. In making findings as to scheduling any substance, DEA must consider eight factors specified by Congress in the CSA:

- (1) Its actual or relative potential for abuse;
- (2) Scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the drug or other substance;
- (4) Its history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) What, if any, risk there is to the public health;
- (7) Its psychic or physiological dependence liability;
- (8) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

21 U.S.C. § 811(c). Before initiating a proceeding to control a substance or remove it from the Schedules, DEA must "gather the necessary data" and forward it to the Secretary of the Department of Health and Human Services, requesting a scientific and medical evaluation and the Secretary's recommendations as to scheduling.

23. To perform the eight-factor analysis required by the CSA, including such specialized functions as reviewing scientific evidence of the pharmacological effects of substances and monitoring and analyzing the state of current scientific knowledge regarding each substance, the Office of Diversion Control in DEA Headquarters has established the Drug and Chemical Evaluation Section. Our staff includes Diversion Investigators, Special Agents, chemists, pharmacologists, program analysts, and other subject matter experts.

24. The Office of Diversion Control encourages communication and cooperation between DEA and registrant communities, such as the pharmaceutical and chemical industries and health care professionals. As part of this outreach effort, the Office issues handbooks and

other guidance documents and sponsors periodic industry conferences. DEA professional staff remain active in their fields and are encouraged to attend professional conferences, conduct original research, and publish in peer-reviewed journals.

25. DEA's Office of Forensic Sciences also publishes and posts electronically on DEA's public website a law enforcement forensic chemistry newsletter, the *Microgram Bulletin*, and a research publication, the *Microgram Journal*. The notices and scientific articles published in *Microgram* are written by individuals active in research and analysis, including within and outside DEA.. Several publicly available notices and technical articles concern ayahuasca and DMT. *See*, for example, Blackledge, Robert D., and Taylor, Charlotte M., "Psychotropia viridis: Botanical Source of Dimethyltryptamine (DMT)," 1 *Microgram Journal*, 3 (Jan. 2003); "Intelligence Alert: 2,5-dimethoxy-4-ethylphenethylamine (2C-3) Encountered in Ft. Pierce, Florida and Royal Oak, Michigan," 37 *Microgram Bulletin* (Nov. 2004).

26. The quota process established by the CSA enabled DEA to establish by rulemaking the maximum quantity of commonly abused substances which could be legally manufactured in the United States or imported into this country each year to correspond to the legitimate demand for these substances. Regulatory oversight also significantly reduced diversion at the manufacturing and distribution levels. Therefore, by the end of the 1970s, most diversion of legally manufactured or imported controlled substances occurred at the pharmacy or practitioner levels. "A Tradition of Excellence," *supra*.

27. DEA created the Automated Reports and Consummated Orders System (ARCOS), a computerized system containing sales data reported to DEA by manufacturers and distributors.

ARCOS is an automated, comprehensive drug reporting system which monitors the flow of controlled substances from their point of manufacture through commercial distribution channels to the point of sale or distribution by hospitals, retail pharmacies, registered practitioners, and teaching institutions. By analyzing this data, DEA can better estimate legitimate requirements for controlled substances and identify sources of illicit distribution in the legal distribution chain. ARCOS data has enabled DEA to initiate significant regulatory and investigative actions.

28. As legally manufactured or imported controlled substances became more difficult for violators to divert, illicit distributors turned more and more to illicit manufacture of their desired controlled substances. Many drugs of abuse, including Dimethyltryptamine (DMT), can be synthesized by amateur chemists in clandestine laboratories. To minimize their risk of criminal prosecution in doing so, violators also increasingly attempted to manufacture and illegally distribute analogues, that is, substances which had similar pharmacological effects to controlled substances, but which differed slightly in their chemical makeup and were not listed in the CSA Schedules.

29. In the 1980s, Congress amended the CSA to more effectively combat the growing problem of the illicit manufacture of controlled substances and their chemical analogues. Completion of a formal rule-making proceeding to place a controlled substance analogue in the appropriate Schedule can take months or even years. To enable DEA to take immediate action against so-called "designer drugs," Congress amended the CSA in 1984 to authorize DEA to place a substance in the appropriate Schedule on an emergency basis for a one-year period on the basis of "imminent hazard to the public safety" while the formal rulemaking proceeds.

30. In 1988, Congress further amended the CSA to provide that a “controlled substance analogue shall, to the extent intended for human consumption, be treated, for the purposes of any federal law as a controlled substance in schedule I.” 21 U.S.C. § 813. Under this provision, DEA can prosecute individuals and organizations who manufacture and distribute analogues to controlled substances with the intent of human consumption, even if the particular analogue is not specifically listed in a CSA Schedule. The Chemical Diversion and Trafficking Act of 1988 amended the CSA to extend the closed regulatory system to the essential and precursor chemicals most often used for the illicit manufacture and synthesis of drugs of abuse.

31. The Office of Diversion Control therefore monitors available intelligence and investigative information to identify and appropriately respond to changing trends in drug abuse. We also monitor and analyze newly available scientific information relating to drugs of abuse.

B. DEA Regulation and Investigation of Diversion and Abuse of DMT and Related Tryptamine Hallucinogens

32. When Congress enacted the CSA in 1970, it initially specified the Schedules into which various substances, including several hallucinogens, would fall. Like the better-known hallucinogen lysergic acid diethylamide (LSD), the hallucinogen DMT was initially placed in Schedule I. Congress also placed the closely related substance N,N-diethyltryptamine (DET) into Schedule I. All three remain in Schedule I today. See 21 C.F.R. § 1308.11(d)(17), (18), and (21). Descriptions of all drugs and chemicals of concern, including these three, can be found on DEA’s web site. See, www.deadiversion/usdoj.gov/drugs_concern.htm.

33. DMT is part of a class of chemical compounds known as tryptamines. DMT and its analogues in the class of tryptamines are hallucinogenic substances that exist naturally in some plants and seeds, but can also be produced synthetically in clandestine laboratories. *See generally* "Drugs and Chemicals of Concern," *supra*, "N,N-Dimethyltryptamine (DMT)," DEA, Drugs of Abuse, ch. 8, "Hallucinogens," accessible at www.usdoj.gov/dea/pubs/abuse/8-hallu.html#lsd. I understand that Srihari Tella, PhD., a pharmacologist in this Office's Drug and Chemical Evaluation Section, is addressing this issue in greater depth in a statement being submitted concurrently with this sworn statement.

34. Since the 1960s, federal, state, and local law enforcement authorities have made seizures of DMT in tablet, powder, and liquid form. When ingested by itself, DMT is usually snorted, smoked, or injected. Its oral bioavailability, however, is very poor. Liquid DMT is therefore often combined with a substance, such as harmala alkaloids, which permit it to remain intact in the digestive system long enough to be absorbed in sufficient amounts to affect brain function and produce psychoactive effects.

35. The onset of hallucinogenic effects after ingestion of DMT is very rapid, but usually resolves in less than one hour. In this respect, it differs from LSD, where altered perceptions can last for an extended period of time. Psychological effects include intense visual hallucinations, depersonalization, auditory distortions, and an altered sense of time and body image.

36. Physiological effects include hypertension, increased heart rate, agitation, seizures, dizziness, and muscular incoordination. At high doses, respiratory arrest and coma have

occurred. Simultaneous intake of DMT and some types of anti-depressants potentiates the effects of DMT and can cause severe, even fatal, intoxication.

37. Tryptamines are highly dose-dependent; the greater the size and frequency of dosage, the greater the psychoactive and physiological effects in humans.

38. DMT has no approved medical use in the United States. DEA has, however, granted Schedule I researcher registrations to scientific and medical researchers whose proposals and research protocols relating to DMT are approved by both the Food and Drug Administration and by DEA.

39. In the nearly forty years since Congress initially placed DMT in Schedule I, no interested party has ever petitioned DEA to transfer DMT to a less restrictive Schedule or to decontrol it. The Office of Diversion Control has therefore not had occasion to prepare a formal report concerning DMT, such as DEA would provide to HHS in connection with a proposed scheduling action. We have, however, continued to monitor the scientific literature concerning DMT and other related hallucinogens. I am not aware of any scientific or medical development which would call into question the continued scheduling of DMT in Schedule I.

40. The illicit market for hallucinogens is not limited to LSD and DMT, but includes similar chemical compounds and substances in the tryptamine family. In DEA's experience, when one hallucinogen becomes less readily available on the illicit market, violators readily shift to diversion or manufacture and distribution of other more accessible hallucinogens.

41. DEA has repeatedly used the additional authority granted it by Congress in the 1980s to investigate for criminal prosecution individuals and organizations which illicitly manufactured

or sold DMT-like tryptamines which were not yet specifically listed in Schedule I. DEA has also repeatedly used these statutory authorities to regulate hallucinogens which have similar pharmacological effects to DMT, DET, and LSD and which are illicitly manufactured and sold in the United States in addition to, or in replacement for, DMT, DET, and LSD.

42. For example, DEA first encountered alpha-ethyltryptamine (AET), an analogue of DMT, for example, in 1986 at a clandestine laboratory in Nevada. It was illicitly manufactured and sold for human consumption, especially to high-school and college-aged individuals. Illicit use was documented in the United States, Germany and Spain, where two deaths resulted from overdoses. In 1993, DEA used its emergency scheduling authority to temporarily place this substance in Schedule I, where it remains today. 58 Fed. Reg. 4370-02 (Jan. 14, 1993) (notice of proposed rule-making); 58 Fed. Reg. 13533-01 (Mar. 12, 1993) (final rule).

43. The early 1990s saw a resurgence of LSD use, especially among young people, as evidenced by rising LSD-related arrests, violence, and hospital emergency room reports. In late 2000, however, DEA seized a clandestine LSD laboratory containing almost 4 million dosage units of LSD in an abandoned missile site in Kansas. LSD arrests and seizures dropped dramatically thereafter. "A Tradition of Excellence, *supra*, 1999-2003, "LSD Laboratory Seizure (2000)." Illicit demand for hallucinogens, however, continued. *Id.*

44. In 1997, DEA sponsored the National Forensic Laboratory Information System (NFLIS), a project which systematically collects results from analyses conducted by state and local forensic laboratories around the country. Despite its methodological limitations, NFLIS provides a key national level source of data for increasing knowledge and understanding of

trends in drug trafficking. NIFLIS reports are posted on DEA's external web site. *See* www.deadiversion.usdoj.gov/nflis/index.html.

45. DEA has also established a System to Retrieve Information from Drug Evidence (STRIDE), which reflects results of evidence analyzed at DEA forensic laboratories around the United States. These include analytical results for drug cases submitted by DEA and other federal law enforcement agencies, as well as some local jurisdictions, such as the District of Columbia.

46. My staff has conducted STRIDE searches for drug exhibits containing DMT between January 1, 2001, and October 14, 2008. These searches resulted in identification of 50 exhibits, of which fourteen were liquid samples that also contained harmaline and/or harmine. Eight others were plant material. The remaining 28 drug exhibits were DMT in powder or tablet form. These figures do not include seizures of analogues of DMT.

47. Reviews of DEA investigative reports prepared in connection with criminal investigations into suspected violations of the federal narcotics laws indicate that, when DMT has been seized, the investigating Agents and officers have often also seized other drugs of abuse. In August 2002 in Florida, for example, DEA Agents seized DMT, methamphetamine, and hashish oil pursuant to a search warrant. In January 2003 in Oregon, DEA Agents seized both DMT and marijuana. In January 2004, Customs and Border Protection inspectors seized over 100 pounds of marijuana at a port of entry in Idaho; they also seized hashish oil and DMT. In April 2004, DEA Agents in Hawaii executed a federal search warrant, seizing marijuana, hashish, and DMT. In August 2005, execution of a state search warrant in Vermont led to the

seizure of LSD and DMT, together with bags of suspect mushrooms. In March 2006, DEA Agents in Vermont executed a federal search warrant, seizing marijuana, hashish, and DMT. In March 2007, a vehicle search in Alaska led to the seizure of both cocaine and DMT. Other examples could be given.

48. The repeated seizures of DMT in polydrug settings are cause for concern. As Dr. Tella explains in greater detail in his statement, ingestion of DMT poses very significant health risks. These risks increase still further when multiple drugs are ingested.

49. While DMT has never been one of the top 25 most abused controlled substances listed in NFLIS reports, an illicit market for DMT and related substances has existed throughout DEA's history and continues today. In fact, DEA Agents and cooperating state and local law enforcement officers in western New York seized a DMT clandestine laboratory as recently as November 20, 2008. Four individuals were arrested; one was charged with conspiracy to distribute LSD. I understand that the Office of the United States Attorney for the Western District of New York has issued a press release concerning this matter.

50. Illicit manufacture and distribution of other tryptamine derivatives also persists. For example, law enforcement officials first encountered alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT or "Foxy"), for example, in 1999. Their recreational abuse was reported at raves and clubs in several states. In the late 1990s, raves became venues for the abuse and trafficking not only of MDMA ("Ecstasy"), but new substances distributed as substitutes for, or in addition to, MDMA, including AMT and 5-MeO-DIPT.

51. Since 2001, federal, state, and local authorities have seized numerous samples of AMT and "Foxy." DEA's Washington, D.C, Field Division seized chemicals, including AMT, at a polydrug clandestine laboratory in 2001, while the Naval Criminal Investigative Service arrested three men in Virginia in 2002 for conspiracy to manufacture and distribute AMT and "Foxy."

52. In the notice of proposed emergency scheduling prepared by the Office of Diversion Control, DEA stated:

Many tryptamine-based substances are illicitly available from United States and foreign chemical companies and from individuals through the Internet. . . . There is recent evidence suggesting the attempted clandestine production of AMT and 5-MeO-DIPT in Nevada, Virginia, and Washington, D.C.

AMT and 5-MeO-DIPT share substantial chemical and pharmacological similarities with other Schedule I tryptamine-based hallucinogens in Schedule I of the CSA (AET and DMT)). This makes it likely that these drugs cause similar health hazards. Tryptamine, the parent molecule of AMT and 5-MeO-DIPT, is known to produce convulsions and death in animals. . . . Further, there have been several self-reports on Internet websites describing the reported abuse of these substances in combination with other controlled drugs, namely MDMA, marijuana, gamma hydroxybutyric acid (GHB), and 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7). This practice of drug abuse involving combinations poses additional health risks to the users and the public.

68 Fed. Reg. 4127-01 (Jan. 28, 2003) (citations omitted). DEA exercised its emergency scheduling authority to place these substances in Schedule I, where they remain today. 68 Fed. Reg. 16427-01 (April 4, 2003). *See also* 69 Fed. Reg. 16838-01 (March 31, 2004) (notice of rule-making proceeding) and 69 Fed. Reg. 58050-01 (Sept. 29, 2004) (final rule).

53. STRIDE data also shows seizures of still more tryptamine derivatives. Between January 1999 and July 2007, for example, federal law enforcement authorities seized 31 drug

exhibits and filed 21 criminal actions relating to the trafficking, distribution, and abuse of 5-methoxy-N,N-dimethyltryptamine (5-MeO-DPT) and 5-methoxy-alpha-methyltryptamine (5-MeO-AMT), which are analogues of DMT and AMT. Both are abused for their hallucinogenic effects; teenagers and young adults are the main abusers of these substances. 5-MeO-AMT is most often ingested orally as a powder, in capsules, tablets, or liquid. It has also been found impregnated on small squares of blotter paper or embedded in "Sweetart" candy or sugar cubes, which are techniques often seen for the distribution and abuse of LSD. 5-MeO-DMT is usually smoked or snorted in powder form.

54. 5-MeO-DMT and 5-MeO-AMT are currently not listed as controlled substances under the CSA. However, they are considered analogues of DMT and AMT and are therefore treated as CSA Schedule I controlled substances when intended for human consumption.

55. The Office of Diversion Control continues to monitor emerging patterns of abuse of hallucinogens in the tryptamine family, as well as current medical and scientific literature relating to them, and consults closely with the Food and Drug Administration (FDA).

56. For these reasons, it is my opinion that an illicit market continues to exist for DMT and related compounds, in tablet, powder and liquid form.

C. Existence of an Illicit Market for DMT in the Form of Ayahuasca

57. It is also my opinion that an illicit market already exists in this country for ayahuasca.

58. DEA investigative reports reveal that in January 2001, for example, U.S. Customs Inspectors advised DEA of the seizure of about 450 kilograms (almost 1,000 pounds) of plant material from Peru. The plants were *Banisteriopsis caapi* and *diploteryx cabrerana*, from which

ayahuasca can be brewed. DEA made a controlled delivery to the recipients in Atlanta, Georgia, after which two individuals were arrested. One of the arrested individuals, who was released on bond following his arraignment, is currently a fugitive.

59. Over the past decade, moreover, ayahuasca has been receiving increasing attention from Americans in non-religious settings. The term “ayahuasca tourism” has been used to describe Westerners who want a taste of an exotic ritual and who attend modified services geared toward North Americans and Europeans. *See, e.g.*, discussing this phenomenon, Grunwell, John N., “Ayahuasca Tourism in South America,” 8 Newsletter of the Multidisciplinary Association for Psychedelic Studies (MAPS) 59 (Autumn 1998), accessed at www.maps.org/newsletters/v08n3/08359gru.html.

60. Even a cursory search shows that “Shamanic tours” and “retreats” are commonly advertised on the Internet. One organization, for example, offers an “ayahuasca retreat” in Brazil in May 2009 during which attendees can participate in “four rituals with Ayahuasca” as well as “daily sessions of pilates/yoga.” www.yatra.yage.net/ayahuascabr.htm. Others can be accessed at www.ayahuasca-info.com/links, www.ayahuasca-healing.net, and numerous other sites.

61. The medical anthropologist and therapist, Marlene Dobkin de Rios, and the Peruvian journalist Roger Rumrill have recently articulated their very significant concerns over the growth in ayahuasca tourism in a book, A Hallucinogenic Tea, Laced With Controversy: Ayahuasca In the Amazon and in the United States (Praeger Publishers, New York, July 30, 2008). Dr. de Rios is also the author of a 1972 book, Visionary Vine: Hallucinogenic Healing in the Peruvian

Amazon, which helped spread awareness of ayahuasca among Westerners. Her analysis of the effect of this phenomenon on both cultures is therefore enlightening. Dr. de Rios states:

There is a real difference between the new religions' sacramental use of plant hallucinogens -- for example, that of the Uniao do Vegetal Church in Brazil, to be discussed in Chapter 5 -- compared to trendy hallucinogenic ingestion by urban-educated baby boomers and New Age men and women. This drug tourism causes harm to participants. It also changes and effectively destroys traditional urban and rural hallucinogenic healing that has its roots in the prehistoric past.

In the process of examining esoteric drug rituals, the anthropologist and other social scientists must take some responsibility, at some level, for the outcome of their work. There has been an increase in drug-related tourism, caused by unsuspecting men and women who are seeking help for their psychological problems, to alleviate past traumas, or who are looking for spiritual insights. However, before we rush to condemn the unsuspecting or uncaring tourist, we need to comprehend the charlatans in whose the tourists find themselves. These so-called 'neo-shamans' are mostly men without any special training, with little -- if any -- knowledge of disease process or biochemistry, and who are prone to use local witchcraft plants (read poisons), to ensure that their clients have a good trip. Many of the plants are quite toxic and cause damage to individuals. A number of the plants interact negatively with antidepressant medications, as well as with antibiotics and common foods. Moreover, the suggestibility properties of these substances, first discussed by de Rios and Grob, are, on occasion, used by some new ayahuasqueros to aid in the seduction of female participants in rituals.

Hallucinogenic Tea, *supra*, at pp. 71-72 (citations omitted).

62. Dr. de Rios asserts that ayahuasca is disappearing as a sustainable plant in the Amazon and describes nonauthentic folk healers who provide hallucinogenic plant drugs to cater to Westerners for financial gain, causing numerous psychological casualties, both in Brazil and in the United States. *Id.*

63. Readily accessible web sites offer instructions on cultivating plants and making ayahuasca from them. *See, e.g.,* www.a1b2c3.com/drugs/aya_01.htm. Still others claim to sell

live plants, seeds, and even “ayahuasca kits,” both by mail and on E-bay. *See, e.g.,*

www.ethnobotanicals.com/ayahuasca-banisteriosis-caapi.html;

www.bouncingbearbotanicals.com/ethnobotanicals-ayahuasca-products-c-60_70.html;

www.shamanhut.com, www.shaman-extracts.com/xcart/shamanic-ethnobotanicals/ayahuasca-kit/. The process is also demonstrated on videos which are available on YouTube.

64. In November 26, 2007, post on www.Ayahuasca.com, entitled “Celebrity Endorsements,” Steve Beyer commented that “you know that ayahuasca has hit the mainstream when it is endorsed by international celebrities.” His post cited endorsements by the musicians Sting, Tori Amos, and Paul Simon. www.singingtotheplants.blogspot.com/2007/11/celebrity-endorsements-ayahuasca-both.html.

65. On February 3, 2008, the Los Angeles Times Magazine published an article by Gina Piccalo, “Ayahuasca: a strange brew, or Can a psychotropic jungle potion cure the existential angst of the McMansion set?” The author begins by describing a self-described ahahuasquero and his clients:

For ayahuasqueros such as Truenos and the eclectic mix of button-down professionals and New Age acolytes joining him on this night, the potion may be a conduit to higher consciousness. Who exactly are these psychotropic explorers? Truenos won’t reveal much about them, except to say that the owners of the house in which they are meeting are retirees (young ones, it appears) and that participants typically include doctors, lawyers, celebrities, New Age healers and academics. They’re working folks, he says. “People from all walks of life.”

For them, the vision-inducing elixir made from Amazonian jungle vines and leaves opens doors to parallel realities where mystical creatures reign. Because ayahuasca must be exactly prepared and administered to achieve the desired benefits, a cadre of itinerant shamans such as Truenos has emerged, roaming the U.S. to host marathon candlelight ceremonies in yoga studios, private homes, and remote open spaces, and charging as much as \$200 a person for each session.

Accessed at www.mail.psychedelic-library.org/pipermail/theharderstuff/20080206/00565.htm.

66. These sources are consistent with DEA intelligence. In June 2002, for example, DEA Agents in Colorado conducted a controlled delivery of a package containing ayahuasca tea which had been mailed from Peru. The recipients of the package told the DEA Agents and Task Force Officers that the packages had been sent by a shaman in Peru who had asked them to hold the tea for his use while traveling in the United States giving "seminars."

67. In her Los Angeles Times Magazine article, Piccalo quoted Daniel Pinchbeck, the author of the 2002 book Breaking Open the Head: A Psychedelic Journey Into the Heart of Contemporary Shamanism and the 2006 book 2012: The Return of Quetzalcoatl. "When I published my first book in 2002 and I spoke to audiences, 50% to 80% of the people hadn't heard of ayahuasca," Pinchbeck was quoted as saying. "Now everywhere I go, people are familiar with it."

68. When National Geographic Adventure Magazine sends a film crew to Peru to shadow two Americans on their quest to try ayahuasca and publishes a lengthy article on their experiences in its March 2006 issue, this phenomenon has expanded beyond niche interest and is entering the mainstream. *See* www.nationalgeographic.com/adventure/0603/features/peru_adventure_guide.html.

69. It is therefore my opinion that an illicit market for ayahuasca exists in this country.

70. The contrary conclusions asserted by Plaintiffs and in expert witness statements which they have filed in this litigation do not persuade me otherwise.

71. I have reviewed, for example, the November 18, 2008, amended expert witness statement of John Baptista das Neves (Edward) MacRae. Dr. MacRae, an anthropologist, concluded based on his knowledge of the rituals and practices of the Santo Daime Church in Brazil that the Church maintains effective controls against diversion into illicit markets in Brazil. This, if true, has not prevented an illicit market from emerging in the United States.

72. In his amended statement, Dr. MacRae expressed the belief that the setting in which psychoactive plants are used "determines in large part the individual and social effects resulting from their use." I note that, while Dr. MacRae discussed in considerable detail the rituals and practices of the Santo Daime Church in Brazil, he described no expertise in and expressed no opinion as to the actual practices of Americans who ingest the daime tea. His expert statement therefore does not shed light on American use of hallucinogens, including, but not limited to, ayahuasca.

73. I have also reviewed the November 24, 2008, amended expert witness statement of Dr. Michael Winkelman. Dr. Winkelman considers it unlikely that daime tea could become a source of drugs of abuse. At page 17 of his amended statement, Dr. Winkelman asserted:

There are several reasons why we can expect that the Daime tea will not become a source of drugs of abuse. First, the foul taste of the tea and the vomiting which often accompanies its ingestion are good reasons why, from a public health perspective, we can be confident that the Daime tea will not become a recreational drug.

74. Dr. Winkelman's assertion, however, is not based on empirical observation or experience, but only upon his "expectation." At page 10 of her deposition, Plaintiff Miriam

Ramsey stated that, in her experience, only about 10% of participants in Plaintiffs' ceremonies vomited.

75. Even if Dr. Winkelman were correct in asserting that vomiting "often" accompanies ingestion of ayahuasca, it would not follow that this would prevent abuse of the substance. The many web sites and other venues in which its use is promoted and glamorized argue to the contrary.

76. In DEA's experience, moreover, unpleasant side effects cannot be relied upon to prevent substances from becoming drugs of abuse. With heroin, for example, the initial rush is usually accompanied by a warm flushing of the skin, dry mouth, and a heavy feeling in the extremities, which may be accompanied by nausea and vomiting. *See, e.g.,* www.nida.nih.gov/ResearchReports/Heroin/heroin3.html#short. The truly alarming side effects of PCP, including auditory hallucinations, paranoia, violent hostility, and even a psychosis indistinguishable from schizophrenia, did not prevent it from being widely abused in this country. This is also true of hallucinogens. The possibility of a "bad trip," including frightening delusions and even psychotic breaks, did not prevent LSD from being an extremely popular drug of abuse. DEA therefore cannot accept Dr. Winkelman's "expectation."

D. DEA's Concerns With Respect to Plaintiffs' Use of a Liquid Containing DMT

77. Based on my own thirty years' experience at all levels of DEA's Diversion Control Program, the collective experience and knowledge of the Office of Diversion Control with respect to DMT and other tryptamine hallucinogens, and the materials which I have reviewed in connection with this sworn statement, it is my opinion that the importation and use of ayahuasca

containing DMT described by Plaintiffs presents very serious human health risks and a very significant risk of diversion to illicit use. A list of sources which I have considered is attached to this declaration.

78. The documents and sworn statements which Plaintiffs have filed in connection with this litigation do not provide sufficient reliable information to quantify the degree of risk

E. Plaintiffs' Refusal to Seek Exemption from Otherwise Applicable DEA Regulations

79. The DEA regulations which implement the closed regulatory system created by the CSA predate the passage of the Religious Freedom Restoration Act (RFRA) and therefore do not specifically address religious use of controlled substances. Our regulations do, however, provide: "Any person may apply for an exception to the application of any provision of this chapter by filing a written request stating the reasons for such exception." 21 C.F.R. § 1307.03.

80. Since the Supreme Court's 2006 decision in *O Centro Espirita Beneficente Uniao do Vegetal v. Ashcroft*, 546 U.S. 418, the Office of Diversion Control has urged individuals and organizations which seek to import, distribute, and/or use a controlled substance for asserted religious purposes to request exemptions from any specific regulations which they believe would substantially burden their sincere religious exercise.

81. Through this process, DEA could, for example, consider whether to waive the substantial fees otherwise required of applicants for DEA registration to import, manufacture, distribute, or dispense controlled substances. DEA could also explore accommodations such as agreements not to audit or inspect facilities in a manner which would interrupt or interfere with

religious ceremonies. Each application receives an individual review based on the particular facts of each case, as revealed through the application process, and required by RFRA.

82. DEA has received several such requests to date. The religious group begins the process by contacting DEA. The Office of Diversion Control sends a detailed questionnaire which poses questions relevant to RFRA claims to individuals or groups seeking religious exemptions. We work with applicants to assemble a full record on the basis of which DEA's Administrator can determine whether or not to grant the request. If the request were granted, the requester would apply for DEA registration to import, manufacture, or distribute the particular controlled substance, but would be relieved from compliance with the exempted regulatory provisions.

83. The Administrator's final agency decision on a request for exemption is appealable to the appropriate U.S. Court of Appeals. 21 U.S.C. § 877. The first appeal from a final agency decision denying the requested exemption was recently filed with the Ninth Circuit Court of Appeals. *Church of Reality v. U.S. Department of Justice*, Petition No. 08-74457 (October 27, 2008).

84. It is unfortunate that Plaintiffs have not pursued this administrative process. Through this process, DEA could have pursued a dialogue to obtain answers to many significant questions which, in my view, remain unresolved.

E. The Sincerity and Actual Practices of the Plaintiffs

85. I understand that, throughout this litigation, Plaintiffs have compared themselves to the O Centro Espirita Beneficiente Uniao do Vegetal (UDV) and have demanded equivalent

treatment. The information available to DEA to date, however, suggests some very significant differences between the two groups.

86. Shipments of ayahuasca intended for the UDV and Plaintiffs were both intercepted by Customs officials in May 1999. The UDV responded by filing a complaint in federal court in November 2000 seeking declaratory and injunctive relief on behalf of the entire UDV in the United States. In that action, the UDV asserted that it had ceased using the tea in the United States. The Plaintiffs here, however, did not respond by seeking immediate relief in the courts and did not cease importing or using the tea. Instead, Plaintiffs chose, in Plaintiff Goldman's words, to "operate underground." November 6, 2008, Amended Witness Statement, p. 31.

87. The controlled delivery of the intercepted ayahuasca to Plaintiffs, moreover, did not simply result in the seizure of ayahuasca and the arrest of Plaintiff Goldman. The December 1, 2008, sworn statement of DEA Special Agent Daniel Lakin show that the DEA Agents and officers seized from the Goldman residence not only ayahuasca, but also marijuana and the Schedule I hallucinogen bufotenine. It is troubling that Plaintiff Goldman's various statements do not mention or attempt to explain his possession of these controlled substances. This significant omission calls into question the reliability of Plaintiff Goldman's other representations and his belated expression of willingness to enter into a "constructive conversation" with DEA. Plaintiff Goldman's amended statement at 29.

88. The presence of marijuana and bufotenine at the Goldman residence could indicate that, contrary to his protestations otherwise, Plaintiff Goldman was making recreational use of

controlled substances. This would call his sincerity into question as well as whether Plaintiffs' claims to maintain security and other precautions against diversion can be trusted.

89. The presence of marijuana at the Goldman residence could also indicate that Plaintiffs have been less than candid about a significant difference between the reported practices of the UDV and Santo Daime Churches in Brazil and their own practices.

90. Plaintiffs' own expert witness, Dr. MacRae, has reported that the Santo Daime Church in Brazil incorporated marijuana into its religious rituals. Given its feminine association with the "Queen of the Forest," marijuana was renamed "Santa Maria" and consumed in complement with ayahuasca, particularly during the ritual of concentration. Considerable public controversy arose over the use of cannabis, about which the UDV was highly critical, and the practice has reportedly moved underground. *See, e.g., Dawson, Andrew, New Era, New Religions: Religious Transformation in Contemporary Brazil (2007), p. 84; MacRae, Edward, "Santo Daime and Santa Maria: The licit ritual use of ayahuasca and the illicit use of cannabis in a Brazilian Amazonian religion," 9 Int'l J. Of Drug Policy 325-338 (1998).*

91. Dr. MacRae stated:

[T]he followers of Padrinho Sebastiao have since felt compelled to avoid their ritual use of Santa Maria, however, unwilling they may be to deny its sacred nature, which they continue to consider as elevated as that of Santo Daime itself and as its female counterpart.

This, however, has not been easy, sicne Padrinho Sebastiao's flock bears the mark of his tolerance and even predilection for 'difficult cases.' He taught that nobody should ever be denied Santo Daime, since he believed that it was only through coming into contact with the 'divine being' of the drink that they might be indoctrinated. Consequently, compared to the members of the other religions [i.e., UDV] who are much more selective of whom they accept into their fold, his followers to this day seem particularly rebellious and unruly. Many of them have

a long past history of drug use and only considered joining this religion because of the dignity it accorded certain psychoactive substances. They especially prize its rejection of the more narrow-minded prejudices against marijuana, a plant already used by a great number of them prior to their religious conversions. Thus, moves to cease the ritual use of Santa Maria can only be justified by pragmatic arguments, which are often questioned under the argument that earthly laws cannot go against spiritual truths.

So, although official authorization is nowadays systematically denied by the leaders of the group for the use of Santa Maria in the Santo Daime ceremonies, it is very difficult for them to impose the total ban on its private, somewhat 'wild' use as suggested by the religious doctrine. So, as they cannot make the ritually correct use of Santa Maria, it is common for the followers of this particular branch of the religion to smoke before and after the ceremonies and sometimes even to sneak out of the rituals to take a few puffs away from the sight of the others. It is even more common for them to show a pattern of relatively frequent use in their daily lives.

Id., p. 336. This would provide an explanation for the presence of marijuana in the Goldman residence at a time when it also served as Plaintiffs' ritual center.

92. This would also explain a passage beginning at page 125 in the deposition of a Santo Daime member who calls herself "Mary Row." When Government counsel asked her what the term "Santa Maria" meant, she immediately responded that "this church does not use Santa Maria" and eventually admitted that one meaning of the term "Santa Maria" is marijuana. In discovery, Plaintiffs also released redacted copies of applications to participate in church ceremonies. I have reviewed one such application in which the applicant referred to the "sacred nature" of marijuana.

93. In so stating, I am not dismissing out of hand the possibility that an individual or organization could have a sincere religious belief relating to marijuana. While DEA would not prejudge an application for exemption from otherwise applicable regulations for claimed

religious use of marijuana, I do note that, as the Tenth Circuit Court of Appeals stressed in the UDV litigation, marijuana is associated with far more widespread problems of abuse and control than ayahuasca. *O Centro Espirita Beneficiente Uniao do Vegetal v. Ashcroft*, 342 F.3d 1170, 1185 (10th Cir. 2003).

F. Risks of Diversion Presented by the Practices Plaintiffs Describe

94. In my view, Plaintiffs' admitted willingness to go "underground," coupled with Plaintiff Goldman's failure to inform this Court of his prior possession of bufotenine and marijuana, suggest a greater risk of diversion from Plaintiffs than from the UDV, which confronted the legal issue more promptly, directly and forthrightly.

95. The risk of diversion is also increased by what Plaintiffs have described, albeit vaguely, as a decentralized system of importing and recording amounts of ayahuasca. Plaintiff Goldman has stated that, as each group of adherents in this country grows, it acquires the status of a Church which can import daime independently of him; he declined to identify any other groups for which he may now be importing and to which he may be distributing daime tea. Ms. Bliss Yeager testified during her deposition that her group in Portland began to import daime directly from Brazil in 2005. This vague and decentralized process would make it significantly more difficult for DEA to maintain a closed regulatory system in which Plaintiffs could be held accountable for, and DEA would be able to verify, the chain of custody of all hoasca tea imported into this country.

96. At pages 31 to 33 of his deposition, moreover, Mr. Seligman mentioned a series of telephone conversations among Santo Daime churches in the United States, including churches

in Hawaii, Los Angeles, Washington, D.C., Texas, and New York, and stated that there was “an attempt to have a national church.” Mr. Goldman acknowledged the existence of other Santo Daime congregations in this country which are not Plaintiffs in this lawsuit, but his attorney instructed him not to answer whether Plaintiffs contend that other associated churches are also entitled to whatever relief the Plaintiffs might obtain from this Court. None of these groups are parties to this lawsuit. All of these churches appear to use ayahuasca. Like Plaintiffs, none has the legal right to import ayahuasca, and none has contacted DEA to seek exemption from otherwise applicable regulations or to apply for DEA registration. If Plaintiffs were permitted to import ayahuasca, there is a risk of diversion from Plaintiffs to other unidentified ‘congregations’ around the United States whose entitlement to relief has been neither alleged nor proven.

97. Another factor which I considered in concluding that Plaintiffs’ proposed importation of ayahuasca presents significant risk of diversion to illicit channels is the limited information made available to date about Plaintiffs’ membership. When Plaintiffs’ expert witness, Dr. Halpern, interviewed members of the Church of the Holy Light of the Queen at the recommendation of Plaintiffs’ counsel, he recorded a series of voluntary self-disclosures, including the fact that 24 of the 32 individuals interviewed had histories of past or present drug or alcohol abuse or addiction. At page 15 of his November 6, 2008, amended witness statement, Plaintiff Goldman stated:

People who come to the Daime addicted or using drugs like alcohol and tobacco, not to mention illegal drugs, almost universally tend to reduce and often eliminate the use of these substances in their lives.

This statement strongly implies that Plaintiffs' membership includes individuals who currently use illegal drugs. This causes DEA concern as to security, risk of diversion, and public health.

98. DEA has no interest in the identities of individual members as such. The security requirements specified in DEA regulations for registrants, which reflect many years of experience, however, include comprehensive screening of employees of registrants who will have access to controlled substances. Our regulations provide:

It is the position of DEA that the obtaining of certain information by non-practitioners is vital to fairly assess the likelihood of an employee committing a drug security breach. . . . In this regard, it is believed that conviction of crimes and unauthorized use of controlled substances are activities that are proper subjects for inquiry.

21 C.F.R. § 1301.90. Plaintiffs' steadfast refusal to identify the individuals, other than Plaintiffs Goldman and Yeager, who have access to ayahuasca outside religious ceremonies increases DEA's concern over the risk of diversion presented by the practices they describe. Plaintiffs' general assurances that diversion is not a problem are therefore unconvincing.

G. Human Health Risks Presented by Plaintiffs' Use of Daime Tea

99. The District Court in the *UDV* action noted that, as of 2001, that the UDV Church in the United States was a very small group, numbering only about 130 individuals, which sought to import only about 3,000 doses per year for all its satellite churches. *Id.*, 282 F.Supp.2d at 1262.

100. Here, however, DEA records appended to DEA S/A Lakin's sworn statement reveal that, following the controlled delivery of 80 kilos of ayahuasca to the Goldman residence in May 1999, DEA Agents and officers seized 18 large plastic jugs of the tea, as well as numerous small containers of the tea. The total exceeded 400 gallons -- more than ten times the amount seized

from the UDV. In 1999, moreover, Plaintiffs contend that their Church in Oregon had only approximately 40 members -- 1/3 of the number reported by the UDV. The amount of ayahuasca seized from Plaintiffs therefore dwarfs that seized from the UDV.

101. I see three possibilities, which are not mutually exclusive: Plaintiffs may be ingesting more ayahuasca on a *per capita* basis than did members of the UDV. Plaintiffs may allow significant numbers of non-members and visitors to ingest ayahuasca. Finally, it is possible that significant amounts of imported ayahuasca may be available for diversion into other channels. On the basis of the limited information provided by Plaintiffs to date, it is not possible to reliably quantify the amounts of tea being ingested and to determine the extent of the additional health risks presented by these amounts. However, all three of these possibilities present significant human health and/or diversion risks.

102. The District Court in the *UDV* action cited testimony by the UDV's leader in this country to the effect that UDV members drink hoasca only during regular religious services which start at 8:00 p.m. and which last for four hours and that the service begins with distribution of measured glasses of tea to each participant. *Id.*, 282 F.Supp.2d at 1255. At page 22 of her deposition in this action, by contrast, Plaintiff Miriam Ramsey stated that the number of servings of daime ingested varied:

In a mass it may be one serving. And it depends on the person. In a shorter, seated concentration Work of four hours, it may be twice - two servings. In a longer service, a Work that is eight or ten hours, we may have servings where we drink several times; three or four times sometimes. Even sometimes more where the amounts are diminished throughout the service.

Another Plaintiff, John Seligman, estimated that participants might drink as often as five or six times.

103. It therefore seems likely that Plaintiffs' members may be ingesting more ayahuasca on a *per capita* basis than did members of the UDV. In her deposition, Plaintiff Alexandra Bliss Yeager conceded at page 83 that no one in her Church monitors or records the amount of the tea a person drinks during a week. The amended expert witness reports submitted by Plaintiffs do not even try to quantify the amount of ayahuasca ingested during the ceremonies described by witnesses such as Ms. Ramsey and Ms. Bliss Yeager. Since we know that tryptamines such as DMT are dose-responsive, this is a very serious omission. In my view, it calls into serious question the reliability of Plaintiffs' conclusory assurances that their practices present no human health risks which should concern DEA or this Court.

104. The inadequacy of Plaintiffs' analysis of potential human health risks is made still worse by the lack of reliable information about the potency of the ayahuasca imported by the Plaintiffs and administered to its members and guests. At pages 55 through 58 of her deposition, Ms. Ramsey explained that the tea imported by Plaintiffs comes in containers which identify three different "concentrations" or strengths, ranging from "1X," the least concentrated, to "3X," the most potent. Ms. Ramsey stated that 1X tea would be used in a "dance Work when you actually want people up on their feet, less inwardly focused," while a 3X tea might be distributed at the start of a lengthy "concentration Work." Plaintiffs, however, have offered no concrete information whatsoever about the amount of DMT in the different strengths of teas they imbibe.

This very significant omission increases DEA's concern over the potential human health effects posed by the practices Plaintiffs describe.

105. The various statements submitted on Plaintiffs' behalf and their depositions make it clear that the Plaintiffs' ranks include members of high-risk populations. Because the information provided by Plaintiffs seems to have been based on self-reporting, the problem may have been understated. It is, however, clear that Plaintiffs' ranks have included persons who are still struggling with drug or alcohol abuse, as well as individuals who have taken powerful medications for serious psychiatric and medical conditions. I was particularly concerned by evidence that children have been permitted to participate in the Plaintiffs' "Works." See Yeager transcript at pages 46-47; Goldman transcript at 40.

106. The potential public health risks presented by the activities Plaintiffs describe are not limited to the Plaintiffs' membership. Plaintiff Goldman has stated that the Church includes only about 40 members, but admitted at page 31 of his deposition that up to 130 people have participated in a single ceremony. He also admitted at page 34 that 90% of the people who express interest are permitted to attend a "Work." Ms. Yeager also stated at page 29 of her deposition that non-member participants are rarely turned away. Plaintiffs' apparent willingness to administer ayahuasca to a changing population of curious visitors increases my concern about the risks to public health presented by the practices they describe.

107. In reaching this conclusion, I have also considered the documentation describing a screening process which Plaintiffs have produced to the Government, including the application forms, consent and waiver form, and confidential medical and "psychosocial" histories. These

documents do not adequately protect Plaintiffs' members and visitors from the significant potential human health risks presented by the ayahuasca use they describe. Plaintiffs created these forms only recently, and appear to have done so as much to impress the Court as to govern their own affairs. In fact, the depositions of the Church leaders and "screeners" indicate that the elaborate precautions described in Plaintiffs' writings and in Plaintiff Goldman's testimony are not consistently followed.

108. In conclusion, then, the limited and sometimes self-serving documentation and information which Plaintiffs have made available indicates that they are giving people multiple doses of varying strengths of a powerful and toxic Schedule I hallucinogen to hundreds of people. Plaintiffs do so, moreover, without knowing how powerful a dose each person receives, while relying upon self-reporting to screen out members of high-risk groups. In fact, when asked during his deposition about the interviews he conducts with prospective members, John Seligman stated: "I think I have an intuitive sense when someone is lying and it doesn't happen. It might, I think it's pretty fool proof that way." The practices Plaintiffs have described therefore, in my judgment, create an unacceptable risk to the health, not only of their members, but of the "visitors" they attract.

V. CONCLUSION

109. 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. Based on my over thirty

years' experience at all levels of DEA's Diversion Control Program, the collective experience and knowledge of the Office of Diversion Control with respect to DMT and other tryptamine hallucinogens, and the materials which I have reviewed in connection with this sworn statement, it is my opinion that the importation and use of ayahuasca containing DMT described by Plaintiffs presents very serious human health risks and a very significant risk of diversion to illicit use. Finally, I believe that Plaintiffs' submissions leave very significant questions unanswered and that these questions could and should be resolved through the administrative process established by Congress and administered by DEA.

120. I declare under penalty of perjury that the foregoing statements made by me are true and correct to the best of my knowledge and belief.

Sworn to and subscribed this 8th day of
December 2008 at Arlington, Virginia


DENISE CURRY