

To: Joseph T. Rannazzisi
Deputy Assistant Administrator
Office of Diversion Control
Drug Enforcement Administration

From: Blaine B. McGivern, Esq.
Counsel for Petitioners

Date: April 4, 2016

**AYAHUASCA HEALINGS NATIVE AMERICAN CHURCH'S
PETITION FOR A CONTROLLED SUBSTANCES ACT EXEMPTION UNDER THE
RELIGIOUS FREEDOM RESTORATION ACT**

Petitioners (b)(6) Christopher "Trinity" de Guzman, and (b)(6) ("Petitioners"), individually and on behalf of and in their capacities as members and leaders of Ayahuasca Healings Native American Church ("AHNAC"), hereby respectfully petition the Drug Enforcement Administration ("DEA") for an Exemption from the Controlled Substances Act's ("CSA") prohibitions regarding Dimethyltryptamine ("DMT" or "Ayahuasca"), as provided by the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1, *et seq.*

RFRA provides, in relevant part, that—

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except . . . [where the Government] demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.¹

In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*² (*UDV*), a case involving a church whose members engaged in the sacramental use of Ayahuasca, the Supreme Court held that federal governmental actions that are taken pursuant to the CSA and which substantially burden a person's exercise of religion are subject to the strict scrutiny test set forth in RFRA. Thus, a person who demonstrates that his or her "sincere exercise of religion [is] substantially burdened" by the CSA has thereby established a *prima facie* claim for an exemption under RFRA³, whereupon the burden of proof shifts to the government to show that enforcement of the relevant CSA prohibitions is the least restrictive means of furthering a compelling governmental interest.⁴

This petition will demonstrate: (1) that enforcement of the CSA against Petitioners would substantially burden their sincere exercise of religion; and (2) assuming the government does have a compelling interest, that there are less restrictive means to further that interest.

¹ 42 U.S.C. § 2000bb-1(a) and (b).

² 126 S.Ct. 1211 (2006).

³ *Id.* at 1219.

⁴ 42 U.S.C. § 2000bb-1(b).

I. Factual Background⁵

Ayahuasca Healings Native American Church is a 501(c)(3) organization formed by Petitioners for religious purposes. Petitioners intend very soon—within a few weeks of submitting this Petition—to change AHNAC's name to "Heart Energy Medicine Native American Church."

Petitioner (b)(6) title within the AHNAC organization is Creative Director and Spiritual Guide. Her role is to manage the creative aspects of AHNAC's activities, events, and community projects, and to coordinate the management team, volunteers, and members.

Petitioner (b)(6) roles and titles within the AHNAC organization are Chief Medicine Man and Church Director.

Petitioner (b)(6) His role and title within the AHNAC organization is Visionary Director.

Petitioners (b)(6) and Mr. de Guzman met in December of 2013. In May of 2015, they experienced a revelation "that the Creator had brought [them] together for a big and important reason," which was "to create healing communities all over the globe." In what Petitioners believe was "a series of divinely orchestrated events," Mr. (b)(6) and Mr. de Guzman felt divinely ordained to pursue the first step in fulfilling their mission to create such communities: "to partner up to bring this sacred medicine of Ayahuasca to the American public."

In pursuit of that goal, Petitioners began speaking out online about their intention of "bringing Ayahuasca to America." Petitioners also reached out to and received guidance from (b)(6) the founder of New Haven Native American Church (NHNAC—an independent branch of ONAC), who advised them that they "would have the complete and total legal protection of [a Native American Church], to be able to share Ayahuasca . . . with [AHNAC's] members" if AHNAC were a branch of NHNAC." Petitioners agreed and were inducted into NHNAC's fold.

Believing that they were now legally entitled to possess and distribute Ayahuasca to members of their church, Petitioners leased a plot of land in Elbe, Lewis County, Washington. There, with the help of volunteers, they erected a tipi for sacred ceremonial purposes and otherwise worked to prepare the land for its intended religious ceremonial purposes. Petitioners also began conducting interviews with prospective church members and began accepting contributions from members.

Petitioners scheduled and publicly announced (online) their first ceremonial retreat for January 22, 2016; following these announcements, AHNAC's social media presence "went viral." At that point, they were contacted by (b)(6) the founder of Oklevueha Native American Church (ONAC), who signaled his desire to support their mission. Petitioners saw in ONAC a church which shared "the same core beliefs [as AHNAC], as an Earth-based religion." Both churches "look at plants as teachers and spirits, and . . . turn to them for healing and guidance," and "share the same mission, to spread healing, truth, and love in the world, and together [ONAC and AHNAC] are working towards a vision where humans can live in harmony with each other and Mother Nature."

⁵ Unless otherwise noted, all content in this Petition that is placed in quotation marks is quoted from Mr. de Guzman's account, as related to Petitioner's counsel.

However, (b)(6) took issue with AHNAC's claims of legal protections, on the ground that AHNAC "did not have the full legal protections that ONAC has, and that . . . in order to have the full legal protection available, [AHNAC] would need to be" directly under the aegis of ONAC. (b)(6) provided Petitioners with guidance "on how to re-structure [their] organization and public image," and assured Petitioners that they "would receive the full legal protection that [ONAC itself has], to be able to share Ayahuasca . . . with [AHNAC's] members."

Based on Mr. (b)(6) advice, Petitioners took down their website and completely rewrote and restructured its content in order to comply with ONAC's Code of Ethics and Code of Conduct. Petitioners "followed all of [Mr. (b)(6)] instructions, and [on December 22, 2015,] after a week of being offline," received "the full blessing from (b)(6) and ONAC, thus creating an official independent branch of ONAC."⁶

Believing once again that that they were now legally entitled to possess and distribute Ayahuasca to members of their church, Petitioners brought their new website online and continued receiving applications from prospective church members, conducting interviews, and receiving contributions to fund the building of their church.

Prior to hosting their first Ayahuasca retreat on January 22, 2016, Petitioners sent letters to (1) the Lewis County office and (2) the Lewis County District Attorney's office, informing the local government of their intent to host religious ceremonies involving scheduled substances. The County replied with approval to proceed, and a business number.

Between January 22, 2016 and February 29, 2016, Petitioners led a total of six retreats involving the sacramental use of Mother Ayahuasca and Father San Pedro.

In late January or early February of 2016, Petitioners received notice from the IRS that AHNAC had obtained status as a 501(c)(3) charitable organization.⁷

In mid-February of 2016, Petitioners received DEA's letter advising them of the necessity of obtaining an exemption from CSA prohibitions under RFRA. On February 29, 2016, Petitioners retained *pro bono* counsel, Blaine B. McGivern, for the purposes of assisting them in preparing this Petition. On advice of said counsel, Petitioners ceased all CSA-prohibited activities pending DEA's final decision on this Petition.

II. Enforcement of the CSA against Petitioners would substantially burden their sincere exercise of religion.

A. Petitioners' belief system constitutes a religion.

Petitioners derive their religious beliefs directly from the shamanic, animist religions of the Amazon in South America, which also incorporate elements of other belief systems, most prominently that of Christianity. Many of the indigenous South American cultures have *curanderos*, medicine men and women, or shamans, who act as their tribes' priests and healers. These cultures believe, as do Petitioners,

⁶ See Exhibit A, Declaration of (b)(6). Also, a video of (b)(6) ceremonial induction of AHNAC into the fold of ONAC is available at: <https://www.youtube.com/watch?v=poUuORM3P1Q> (last viewed 3/28/2016).

⁷ See Exhibit B, attached.

that all diseases and illnesses have spiritual root causes; the role of the *curanderos* or shamans is to enter the spirit world through the highly ritualized use of entheogenic substances—in Petitioners' case, Ayahuasca—in order to perform the tasks necessary to effectuate spiritual healing. Such tasks may include cleansing a diseased person's soul, or chasing away the evil spirits who are believed to be the cause of the disease.

The role of "Mother Ayahuasca" in Petitioners' belief system cannot be overstated. Petitioners believe, as do their spiritual forebears, that Ayahuasca is both a manifestation of the divine will and a divine, conscious entity in her own right. They consider Ayahuasca a "teacher plant," and the most powerful of all such plants. Petitioners believe that the ritualistic use of Ayahuasca as a sacrament—in combination with millennia-old prescribed rituals for cleansing and fasting, music, chanting, and shamanic guidance—allows those who partake in the Ayahuasca ceremonies not only a glimpse of the spirit world, but of the Great Spirit⁸ that permeates and unites all of creation. This journey into the spirit world inevitably entails a journey into one's own soul. This journey of self-discovery is, to the voyager, indistinguishable from his or her "exterior" journey into the spirit world; indeed, the two journeys are in fact the same, and are inseparable. The effect is a simultaneous awakening of the sacramental Ayahuasca user to the Great Spirit, his or her own place in the Great Spirit, and the Great Spirit's place within him or her. The end result is almost always an indescribably profound religious experience.

The following is excerpted from an as-yet unpublished writing by Mr. de Guzman:

(b)(6)

As illustrated by the above excerpt, Petitioners' beliefs are indisputably religious in nature. As such, and for the following reasons, Petitioners ask that the government recognize their religion as one that is entitled to the protections afforded by RFRA and the Free Exercise Clause of the First Amendment to the U.S. Constitution.

⁸ Petitioners have a number of different names for their deity, including: the Universe, the Creator, the Great Spirit, or simply Spirit. For the purpose of clarity, this Petition will refer to Petitioners' deity as "Great Spirit" or "Spirit."

1. Petitioners' religion is not merely a "philosophy" or "way of life."

Petitioners' beliefs are primarily metaphysical in nature, as their belief system revolves around psychic entry into the spirit world. Naturally, there is some degree of overlap between Petitioners' non-secular belief system and secular concerns; however, such overlap is inevitable and common to virtually all religions. For example, Petitioners believe that the propagation of their religion will result in the medical and social betterment of people around the world—a belief which is analogous to the belief of Christians that Jesus Christ was (and is) able to cure the medical and social ills of the First Century (and today).

The critical point is that although Petitioners' goal is to catalyze a "Global Awakening," they believe that such an awakening hinges entirely on working with Mother Ayahuasca to enter the spirit world and heal the world's ills. This is not a philosophy or way of life; it is a belief in the metaphysical power of a corporeal manifestation of a divine, spiritual being (i.e., Ayahuasca).

Moreover, the Free Exercise case law is clear that a belief system need not be theistic—i.e., adhere to a belief in a Supreme Being—to qualify as a religion. It is enough for it to be "based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent."⁹ Here, Petitioners' belief system inarguably includes a "transcendental or all-controlling force" in the forms both of Mother Ayahuasca and the omnipresent Great Spirit; thus, even a theistic definition of religion would have to encompass Petitioners' belief system. Nevertheless, application of a non-theistic definition would also necessarily encompass Petitioners' belief system, since everything in Petitioners' worldview is "ultimately dependent" upon working with Mother Ayahuasca.

Lastly, AHNAC has an express policy of taking "no position on any public or private controversy."¹⁰ This stated policy should counsel against characterizing Petitioners' religion as a "philosophy" or "way of life," since it clearly eschews secular concerns in favor of spiritual matters.

2. Petitioners' religion satisfies the "indicia/guidelines for religion."

a. Fundamental and ultimate ideas that address reality beyond the physical world.

As noted by the Third Circuit in *Africa*, 662 F.2d at 1033, "above all else, religions are characterized by their adherence to and promotion of certain 'underlying theories of man's nature or his place in the Universe.'"¹¹

Petitioners' belief system does address such "fundamental and ultimate ideas." Their belief in the existence of a metaphysical spirit world wherein human souls exist and interact with other spiritual beings and thereby incur benefit or harm to themselves or to others, combined with their belief in an omnipresent Great Spirit and the manifestations of its many facets—most prominently Mother Ayahuasca—provides a fundamental structure for answering such basic questions. For example, the perennial question of *purpose* is answered thusly:

I've walked this path for countless years, or really, countless lifetimes, and this is all about one thing...

⁹ *United States v. Seeger*, 380 U.S. 163, 176 (1965); see also *Africa v. Commonwealth*, 662 F.2d at 1031 (3d Cir. 1981).

¹⁰ Available at <https://ayahuascahealings.com/ayahuasca-usa-church-vision/> (last viewed March 21, 2016).

¹¹ Quoting *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1160 (D.C. Cir. 1969).

Our Global Awakening.

You, me, the people around us, the communities we build, we are all serving something so much greater than us. We are serving the Whole, Mother Earth, our Collective Humanity, to achieve the peace that is destined for us.

Mother Ayahuasca, . . . our conscious communities, the infinite love that flows from all we live and exist as, this is all just in service for the Divine Plan to flow through.

. . . [AHNAC is] here to support you in this Divine Remembering.

Finding your purpose. Your reason for why you're really here. And helping you live that, unquestionably, unshakably, and without a doubt about any single aspect of it.¹²

In other words, Petitioners believe that humanity's purpose is to serve "something greater," namely "the Whole" (or the "Divine Plan," Great Spirit, etc.), Mother Earth, and Collective Humanity. Moreover, the following excerpt from AHNAC's website provides an informative description of Petitioners' mission:

To enhance our awareness, feeling and sensitivity to life, the spirit and the energy in the universe, through the interaction with others from around the globe and our living breathing planet.

To explore the mystery of life, question consciousness, reality, and the power of the mind.

. . .
To restore our deep inner connection with the natural world, and in doing so help guide people to guide themselves in re-discovering the path to spiritual enlightenment and the power of living in the now.

. . .
To be responsible volunteers, guardians, caretakers and protectors of these lands and the sacred sites of our ancestors.¹³

Themes of environmentalism, and even of filial piety through environmental stewardship, are ubiquitous throughout Petitioners' teachings. These themes may be analogized to, and in some cases rightly conflated with, those present in religions (or religious genera) such as Gaianism, Animism, and Shamanism.

Petitioners' religion, like the religions from which it derives, places great emphasis on environmental stewardship, recognizing that there are no actual (as opposed to invented) boundaries between humanity and nature, nor between matter and spirit, nor the self and the Whole. Having thus rejected Cartesian dualism and accepted this metaphysical understanding of universal interconnectedness, Petitioners' religion obligates its practitioners to alter their behaviors such that they are in alignment with the ecological and supernatural needs of the environment.

To put it another way (insofar as it is susceptible to verbal distillation), Petitioners' teleological reasoning is as follows: (1) we are part of the whole of existence, and the whole of existence is us—there is no distinction other than that which humanity has imagined; (2) the whole of existence is the Great Spirit; therefore, (3) any action taken by an individual affects not only that individual and his or her immediate

¹² Available at <https://ayahuascahealings.com/trinitys-welcome-message/> (last viewed March 21, 2016).

¹³ <https://ayahuascahealings.com/ayahuasca-usa-church-vision/> (last viewed March 21, 2016).

surroundings, but the entirety of existence and the Great Spirit; (4) actions not in alignment with the ecological and supernatural needs of the environment are contrary to the needs of ourselves and the plans of the Divine Consciousness; therefore, (5) our purpose and our moral duty is to conduct ourselves such that we act in harmony with the environment.

To be clear, the foregoing is only one facet of Petitioners' belief system. Petitioners have other non-secular reasons for their enviocentric morality, including their animistic beliefs (e.g., it is morally wrong to destroy a mountain to mine its minerals, in part because the mountain has a soul and is a conscious entity).

As for the question of life after death, Petitioners' belief in souls, a spirit world, and a fundamentally interconnected spiritual-physical ecology necessitates a belief in reincarnation. As Mr. de Guzman has publicly stated: "I've walked this path for countless years, or really, countless lifetimes . . ." *See supra*.

Clearly, Petitioners' religion provides metaphysical answers to those questions that have haunted mankind from its first moments of self-awareness: our purpose in life; the meaning of self; and what happens after we die.

b. A comprehensive moral or ethical belief system.

Petitioners believe that the question of their moral or ethical belief system has been adequately addressed in the foregoing subsection; nevertheless, they reiterate here that their religion imposes upon them a moral duty to act in accordance with the spiritual and ecological needs of the environment. The consequences of breaching that duty are analogous to those imposed by the Hindu principle of karma: whatever action one takes against anyone or anything else is simultaneously an action taken against oneself, and the effects of such actions will manifest either in this life or in the next.

By extension—by the transitive properties of animistic belief—Petitioners' religion also imposes upon them a moral duty to act in accordance with the spiritual and physical needs of other persons. This is analogous to the "Golden Rule," the most famous permutations of which are attributed to Jesus Christ: "Do unto others as you would have them do unto you."¹⁴

Lest there be any confusion about how Petitioners' religion characterizes particular conduct as "right" or "wrong," AHNAC has published on its website a comprehensive set of moral imperatives, which it refers to as "Philosophies" (which is, admittedly, something of a misnomer). These guidelines have been wholly adopted from AHNAC's parent church, the Oklevueha Native American Church, and Petitioners expect all members of AHNAC to adhere to them. As an example, consider the following:

Fifth Philosophy – TO THE EARTH

Our Mother Earth is the source of all life, whether it be plants, the two-legged, four-legged, winged ones or human beings. The Mother Earth is the greatest teacher, if we listen, observe and respect her. When we live in harmony with the Mother Earth, she will recycle the things we consume and make them available to our children. As an Indian man, I must teach my children how to care for the Earth so it is there for the future generations.

So from now on, I realize the Earth is our Mother. I will treat her with honor and respect.

I will honor the interconnectedness of all things and all forms of life.

¹⁴ Matthew 7:12.

I will realize the Earth does not belong to us, but that we belong to the Earth.

The natural law is the ultimate authority upon the lands and water. I will learn the knowledge and wisdom of the natural laws. I will pass this knowledge on to my children.

The Mother Earth is a living entity that maintains life. I will speak out in a good way whenever I see someone abusing the Earth. Just as I would protect my own mother, so I will protect the Earth. I will ensure that the land, water, and air will be intact for my children and for my children's children-the unborn.¹⁵

AHNAC's/ONAC's other "Philosophies" include extensive moral guidelines specifically regarding the treatment of women (e.g., ". . . I will look upon women in a sacred manner. . . . I will refrain from any form of emotional or physical abuse"); the treatment of children ("We are the caretakers of the children for the Creator. They are his children, not ours"); the treatment of one's family ("I will nurture our family's spiritual, cultural and social health"); the relationship to community (specifically Native American communities); and the Creator ("I will look with new eyes on the powers of our ceremonies and religious ways, for they are important to the very survival of our people").¹⁶

In addition, AHNAC has adopted in whole ONAC's Code of Ethics¹⁷, and ONAC's Code of Conduct¹⁸. The Code of Ethics is generally applicable to ONAC/AHNAC clergy/leaders, which the Code of Conduct is applicable to church members. The Code of Conduct requires members to make such pledges as:

I commit to making effort to spend time each day in meditation and prayer, drawing closer to the Great Spirit and all of creation, the two-leggeds and the four-leggeds. . . .

I will never share sacraments or sell medicines to those who are not members of ONAC. I understand that doing so removes my legal protection and exposes me to prosecution.

c. Structural characteristics.

i. Formal ceremonies or rituals.

Sacred ceremony is critical to Petitioners' exercise of religion, and is inextricably intertwined with their sacramental use of Ayahuasca. Petitioners believe that the rituals which comprise their ceremonies have been handed down from shaman to shaman over millennia, and that they were originally given to mankind by Mother Ayahuasca herself.

Petitioners employ a prescribed series of distinct ceremonies leading up to each sacramental use of Ayahuasca. The first ceremony is the Sweat Lodge, a traditional Native American cleansing and purification ceremony intended to allow the ceremonial congregants to "sweat out toxins" inside a steam-filled tipi. The Sweat Lodge ceremony is led by ^{(b)(6)} a septuagenarian Native American Elder whom Petitioners describe as "a powerful and important part" of their church.

¹⁵ <https://ayahuascahealings.com/ayahuasca-usa-church-vision/> (last viewed 3/21/2016).

¹⁶ *Id.*

¹⁷ Available at <https://ayahuascahealings.com/about-oklevueha/onac-code-of-ethics/> (last viewed 3/21/2016).

¹⁸ Available at <https://ayahuascahealings.com/about-oklevueha/onac-code-of-conduct/> (last viewed 3/21/2016).

Following the Sweat Lodge is another cleansing or purgative ceremony. Petitioners believe that both body and soul must be cleansed prior to consuming Ayahuasca, so that Mother Ayahuasca's magic can penetrate deeper to find the roots of the individual's problems. The cleansing ceremony comprises a series of rituals, performed over the course of at least a full day; these rituals include fasting, incantations/prayers, meditation, and consumption of plant-based emetics and purgatives. Following the cleansing ceremony is a ceremony intended to express gratitude for the sacrament the participants are about to receive, and to prepare the congregants' bodies and spirits for their rigorous journey into the spirit world and into their own souls. This ceremony comprises a series of prescribed rituals including prayers, incantations, drumming and singing.

Following the preparatory ceremonies is another ceremony—analogue in some ways to Communion for Catholics—for the ritualized ingestion of the Ayahuasca brew. Following ingestion, a prescribed series of songs and chants are performed while the congregants wait for their journey to begin. Once the journey is underway, the shaman overseeing the ceremony observes the congregants and helps them find their way through difficult passageways through the use of prescribed prayers and incantations, among other tools in the shaman's kit. Lastly, once the congregants have returned from their journeys, a ceremony is held to give thanks to Mother Ayahuasca and to mentally and emotionally process the profound knowledge that was gleaned from the experience.

ii. Gathering places.

AHNAC's congregants gather in their sacred tipi, which they constructed themselves. This tipi is for ceremonial and sacramental use only, and it is where all spiritually significant activities undertaken by AHNAC take place.

iii. Clergy and/or prophets.

AHNAC's clergy consists of shamans (or, in AHNAC's parlance, Medicine Men/Women) who have undergone long and extensive training with *curanderos* in the Amazonian jungles. They have experienced the medicine of Mother Ayahuasca and learned, over the course of many years, how to administer that medicine to others safely and in alignment with the ancient, sacred rituals prescribed by the *curanderos'* ancestors and, legend has it, by Mother Ayahuasca herself.

iv. Structure and organization.

AHNAC's organizational structure is not intended to be hierarchical; in the eyes of Great Spirit and Mother Ayahuasca, all humans are equal in dignity. However, the church requires an executive body, and that consists, in part, of Petitioners Mr. (b)(6), Mr. de Guzman, and Ms. (b)(6). (b)(6) is the Chief Medicine Man and Church Director. He is charged with leading, supervising and/or coordinating with other medicine men and women to run the ceremonies each week, and in general is responsible for the oversight of all church activities, from inception to on-the-ground management. Mr. de Guzman is the Visionary Director of the church, whose role is to act as a spiritual teacher to church members, often in the form of sermon-like videos published online, and often in one-on-one consultation with church members. Ms. (b)(6) is Creative Director and Spiritual Guide; her role is partly administrative, functioning as a creative/operational coordinator, and partly ecclesiastical, giving spiritual guidance to persons seeking the church's help in spiritual matters.

In addition, there is the aforementioned clergy consisting of trained shamans, and the church's Code of Ethics provides that "Controlled substances must be used under the direction of medicine people [i.e., shamans] . . ." <https://ayahuascahealings.com/about-oklevueha/onac-code-of-ethics/>.

Therefore, all Ayahuasca ceremonies conducted under the auspices of AHNAC are required to be done only at Petitioners' direction and under the guidance of a shaman.

v. Efforts at propagation.

The teleological sense of purpose held by Petitioners (*see* section (A)(2)(a), *supra*), in conjunction with their belief that Mother Ayahuasca's guidance is essential to fulfilling that purpose, means that Petitioners' faith requires them to grow their church and to spread the gospel of Mother Ayahuasca and Great Spirit.

However, Petitioners also recognize that propagation is a double-edged sword, as they have a strong countervailing interest in being in the good graces of the law, such as it is, and with those who are charged with enforcing the law. Petitioners are determined not to let their belief in the necessity of propagation derail any hope they have of fulfilling their divine purpose.

Moreover, ONAC/AHNAC's own Code of Ethics provides that growth may be attained not by "proselytizing for membership," but "through attraction through service."¹⁹

Petitioners humbly acknowledge that some of the materials that have been published by AHNAC may be interpreted as "marketing" efforts. In their religious zeal for spreading knowledge of Mother Ayahuasca, and armed with a misguided understanding of the state of the law, Petitioners admit that they went overboard in their efforts at propagation. To cure this and to improve the optics of their online presence, they have been working in earnest with counsel to amend their published materials as necessary. In addition, they would be happy to cede to DEA the right of pre-publication review and authorization for any written or audio/visual materials prepared for publication on AHNAC's website (provided that DEA's exercise of said oversight does not infringe upon Petitioners' statutory or constitutional rights). Petitioners reiterate that they are committed to working within the confines of the law, and look forward to cooperating with DEA to make sure of it.

Additionally, Petitioners have had a change of heart with respect to their publicly stated plans for the growth of their church. After much fasting and prayer, they have determined that they would better serve the Divine Plan for now by focusing their efforts in the U.S. on their church center in Elbe, Washington only. Petitioners still wish to grow their church at some point in the future; therefore, they do not want to foreclose on the possibility of opening additional ceremonial facilities elsewhere in the U.S. Petitioners still believe in the spiritual necessity of spreading the gospel of Mother Ayahuasca; they have simply readjusted their spiritual ambitions to a fuller understanding of the societal parameters and cultural and legal barriers confronting them.

vi. Diet or fasting.

Diet and fasting are of enormous importance to the exercise of Petitioners' religion, for both spiritual and practical reasons. Fasting prior to taking part in an Ayahuasca ceremony is an essential part of the physical and spiritual cleansing ceremony, as Petitioners believe that a pre-ingestion period of fasting, emesis, and purgation will allow Mother Ayahuasca's magic to work its way deeper into the sojourner.

Dietary proscriptions are also strictly adhered to, due to *Banisteriopsis Caapi*'s biochemical attributes: in the human body it acts as a monoamine oxidase inhibitor (MAOI), which means that it inhibits the action

¹⁹ <https://ayahuascahealings.com/about-oklevueha/onac-code-of-ethics/> (last viewed 3/22/2016).

of the enzymes that break down certain neurotransmitters. Ingestion of certain foods within a window of time prior to or following ingestion of Ayahuasca can have deleterious effects.²⁰

Aside from the chemical necessity of adhering to a certain diet, there are also religious rationales for these dietary restrictions:

From the perspective of this shamanic tradition, each plant represents and holds a different spirit These plant spirits must be totally respected within the body. They can intensely heal and transform you, but if you disrespect their gifts by contaminating your body once they are inside you, there can be very serious consequences. Following the Ayahuasca diet can go a long way in demonstrating respect to these spirits.²¹

Petitioners provide their ceremony participants with a traditional Peruvian Ayahuasca diet, "cutting out salt, sugar, fatty foods, meat, and anything else that would counter the effects of the medicine that we are working to achieve."²² The purpose of this diet is explained thusly:

There is a current of energy flowing from the top of your head, down to the bottom of your spine. This is your connection to Father Sky, and Mother Earth; Divine Consciousness, and Unconditional Love. [An improper diet would clog] your energy flow, and your strong connection with these energies. That would slow down the movement and transmission of energy, and ultimately, your healing process, and the potential to give and receive life-changing insights and clarity.²³

vii. Belief in supernatural entities.

In addition to Mother Ayahuasca, Father San Pedro, and Great Spirit, Petitioners also believe in a number of other spiritual entities. The following is excerpted from an as-yet unpublished writing by Mr. de Guzman:

We believe there are thousands, tens of thousands, of angels around us in every moment. They are here to support us, to guide us, to show us, and to be with us, to help us on our journey, and give us direction when we need it. They are here to protect us, and to remind us of what we need to be reminded of, when we need it most.

Petitioners' belief in angels encompasses a number of Archangels, including, among others: Rafael, who "wields the green sacred fires of healing;" Gabriel, "protector of Divine Truth;" Uriel, "archangel of compassion and change;" Azrael, "archangel of death and rebirth," and Raziel, "archangel of past lives, and the remembering of what once was."

Sitting above the Archangels in Petitioners' pantheon are the Ascended Masters Buddha and Jesus. Petitioners see Buddha as "the teacher of non-attachment and the path of liberation through the releasing of suffering via the letting go of desire." Petitioners see Jesus as "the master of compassion, forgiveness and grace," who "walks the path of the heart, and shows us the path to our spiritual truth through the loving of all beings and things."

²⁰ Petitioners have published a dietary guide on AHNAC's website, available at <https://ayahuascahealings.com/ayahuasca-retreats-usa/ayahuasca-dietary-guidelines/> (last viewed 3/22/2016).

²¹ *Id.*

²² <https://ayahuascahealings.com/ayahuasca-retreats-usa/> (last viewed 3/22/2016)

²³ *Id.*

However, aside from Great Spirit, Mother Ayahuasca, and Father San Pedro, the most important supernatural entities in Petitioners' belief system are the animistic spirits:

The animal spirits, plant spirits, mountain spirits, and spirits of all that exists around us. . . . We never open up a ceremony without first asking permission from the spirits of the land, for the permission to open sacred space on this land, and invite them to join us. . . . We offer our ceremonies, our prayers, and our highest intention for the service of all beings, but first, always to the spirits immediately around us.

B. Petitioners' Belief in their Religion is Sincerely Held.

1. Petitioners' religion was not created as an *ad hoc* justification.

Petitioners did not invent their religion; they learned it from its traditional practitioners in the Amazon, and founded AHNAC in an effort to bring their religion to the United States.

Further, Ayahuasca is not a "recreational drug." Rather, it is a powerful medicine which induces an intense revelatory experience that is frequently difficult or unpleasant. For this reason, Petitioners herein aver that they would not, did not, and cannot imagine anyone adopting their religion merely for the sake of being able to ingest Ayahuasca legally. It is also Petitioners' strongly-held belief that anyone who has experienced the magic of Mother Ayahuasca would necessarily be sincere in their belief in Her power and in Great Spirit.

2. Petitioners regularly hold and participate in ceremonies and rituals.

Petitioners hold ceremonies frequently and regularly—weekly, when possible—and faithfully perform (or ensure the performance of) the many rituals attendant to each such ceremony. As noted above, these ceremonies are an integral and essential aspect of their religious practice. Just as removing Mother Ayahuasca from their religion would render their ceremonies empty, so would abandoning their ceremonies vastly diminish the spiritual power of the Ayahuasca; the two are inextricably linked.

3. Other substances.

Petitioners believe, as do their spiritual teachers and forebears, that all plant medicines have a spirit and a divine purpose. Petitioners have in the past made sacramental use of Father San Pedro (*Trichocereus pachanoi*, a mescaline-containing cactus), as was taught to them by their *curanderos*. San Pedro is believed to be a male spirit counterpart to the female spirit Ayahuasca and, as such, holds an important place in the religious and ethnobotanical pantheon of the *curanderos*.

However, Petitioners are not seeking an exemption for mescaline. Although San Pedro is an important part of their exercise of religion, Ayahuasca is *absolutely essential* to it; and given the (non-controlling) precedent established by the Tenth Circuit in *United States v. Quaintance*,²⁴ Petitioners have decided to use and seek exemption for Ayahuasca only.

²⁴ 471 F. Supp. 2d 1153, 1174 (finding the defendants' use of "other illegal substances"—i.e., cocaine—to be evidence of insincerity).

That said, Petitioners believe that RFRA and the Free Exercise Clause do protect their right to sacramental use of both Ayahuasca and San Pedro, and do not believe that the district court's reasoning in *Quaintance* is applicable to the particular facts their case. Therefore, Petitioners do intend to petition for an exemption for mescaline at some point in the future, after having established a settled and cooperative working relationship with DEA Diversion Control.

4. Evidence of Commerce.

Petitioners have little or no commercial incentive to invent or adopt an Ayahuasca-based religion. They do not sell and have never sold Ayahuasca, and the contributions the church has received have gone almost entirely into overhead costs (e.g., rent payments, improvements to the land, food, fuel, etc.)²⁵.

In addition, Petitioners have recently recalibrated their goals. Petitioners do intend eventually to expand their presence in the U.S. beyond their center in Elbe, Washington. However, they retract previous announcements regarding existing plans to open numerous other retreat centers across the U.S. Rather, Petitioners wish to proceed with caution and humility, first testing the waters with their Elbe center, and then, resources and social and legal climate permitting, test the waters further with a second retreat center. This would likely be years down the road, and of course would be done in compliance with all applicable laws and in cooperation with DEA.

C. Enforcing the CSA's Prohibition on DMT Would Substantially Burden Petitioners' Exercise of Religion.

As set forth in greater detail *supra*, Mother Ayahuasca is central to Petitioners' religious beliefs. Not only do they believe that Ayahuasca is the most important and viable "path up the mountain" to Great Spirit, but also that Mother Ayahuasca is a divine entity (a deity) in her own right. Not to receive her guidance would be a forsaking of her divinity—in other words, a sacrilege.

Moreover, Petitioners believe that the ceremonies and rituals attendant to the sacramental ingestion of Ayahuasca were given to mankind by Mother Ayahuasca herself, and passed down from generation to generation over untold millennia. Since the purpose of these religious traditions pertains directly to Ayahuasca, prohibiting Petitioners from using Ayahuasca would render their traditions useless and devoid of meaning, other than as an empty relic, like an oyster shell with no meat and no pearl.

In short, enforcement of the CSA's prohibition on DMT in Petitioners' case would substantially burden their exercise of their sincerely held religious beliefs.

III. Enforcement of the CSA's Prohibition on DMT is Not the Least Restrictive Means of Furthering Compelling Government Interests.

In determining whether enforcement of a particular CSA prohibition is the least restrictive means of furthering a compelling government interest, the government must "'scrutinize the asserted harm of granting specific exemptions to particular religious claimants' and 'to look to the marginal interest in enforcing' the challenged government action in that particular context."²⁶ In this case, RFRA requires the

²⁵ Petitioners are in the process of gathering their receipts for expenditures and compiling and identifying contributions from members. This information will be available to DEA shortly.

²⁶ *Holt v. Hobbs*, 135 S. Ct. 853, 863 (2015), citing *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2779 (2014).

government to consider how its compelling interest in protecting persons' health and safety and in preventing diversion of Ayahuasca into the illicit drug market would be harmed by Petitioners' particular use of Ayahuasca.²⁷

A. Accommodating Petitioners would not harm the Government's interest in protecting Health and Safety.

As noted by the Supreme Court in *UDV*, "[t]he fact that the [CSA] itself contemplates that exempting certain people from its requirements would be 'consistent with the public health and safety' indicates that congressional findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them."²⁸ Moreover, noting that there had long "been a regulatory exemption for use of peyote—a Schedule I substance—by the Native American Church," the Court observed that—

—[i]f such use is permitted in the face of the congressional findings in § 812(b)(1) for hundreds of thousands of Native Americans practicing their faith, it is difficult to see how those same findings alone can preclude any consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs. See *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 547 (1993) ("It is established in our strict scrutiny jurisprudence that 'a law cannot be regarded as protecting an interest 'of the highest order' ... when it leaves appreciable damage to that supposedly vital interest unprohibited'" (quoting *Florida Star v. B. J. F.*, 491 U.S. 524, 541-542 (1989) (SCALIA, J., concurring in part and concurring in judgment))).²⁹

In the case of Ayahuasca, the Government has already made exceptions under RFRA; for example, the UDV and Santo Daime churches. If the Government's interest in protecting the health and safety of UDV and Santo Daime church members is not harmed by exempting their use of Ayahuasca, the same interest in Petitioners' health and safety would likewise be unharmed by granting Petitioners the same exemption.

Furthermore, Petitioners hereby aver that their safety record is unimpeachable. They and their church's medicine men and women have received many years of training from *curanderos*, whose practice in administering Ayahuasca goes back countless generations. Moreover, Petitioners have implemented a quality assurance regime with respect to their Ayahuasca/

(b)(7)(E)

Petitioners also wish to note that they "deeply pray over the medicine to clear it of any energy that is less than the highest serving energy of love and light for our Church members, before sharing it in any Ceremony."

B. Accommodating Petitioners would not harm the Government's interest in Preventing Diversion.

DEA has a system already in place for accommodating persons whose exercise of religion would be unduly burdened by CSA enforcement, while at the same time protecting the Government's interest in preventing diversion of scheduled substances into the illicit drug market. Thus, the Government "itself

²⁷ *UDV*, 126 S. Ct. at 1220-1221.

²⁸ *UDV*, 546 U.S. at 432 – 433, citing 21 U.S.C. § 822(d).

²⁹ *Id.* at 433.

has demonstrated that it has at its disposal an approach that is less restrictive" than enforcement of the CSA against Petitioners.³⁰ While bringing Petitioners into DEA's diversion control program would undoubtedly result in a marginal increase in DEA's operating expenses, the Supreme Court has held that RFRA "may in some circumstances require the Government to expend additional funds to accommodate citizens' religious beliefs."³¹

Denying Petitioners' request for a RFRA exemption on the ground that CSA enforcement is the least restrictive means of preventing diversion would require a finding that the particular circumstances of Petitioners' case renders it so. Admittedly, there are facts which distinguish Petitioners' case from those of the UDV and Santo Daime churches. However, to the extent that any such distinctions are not in Petitioners' favor, Petitioners hereby reiterate their sincere desire to be within the law and the good graces of the Government, and aver that they will modify their behavior and circumstances in whatever way DEA deems necessary for them to qualify for an exemption under RFRA (provided that any such modifications do not violate Petitioners' statutory or constitutional rights). For example, as noted *supra*, Petitioners are willing to give DEA the right of pre-publication review of any of Petitioners' written or audio/visual materials prepared for online publication.

With respect to the source of Petitioners' supply of Ayahuasca, [REDACTED]

(b)(7)(C), (b)(7)(E)

[REDACTED] Petitioners will gladly submit to any protocols DEA deems necessary for purposes of safety and diversion control.

Regarding quantities of Ayahuasca to be imported, possessed, and distributed, Petitioners aver the following facts:

(b)(7)(E)

³⁰ *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2782 (2014).

³¹ *Id.*, at 2781.

AHNAC's Petition for CSA Exemption under RFRA

(b)(7)(E)

Petitioners believe that it would be a simple matter to (b)(7)(E)
 Such a manageable amount of the substance should not be considered a threat to the government's interest in diversion prevention.

IV. CONCLUSION.

Enforcing the CSA's prohibitions on Ayahuasca as to Petitioners would substantially burden their exercise of the sincerely held religious beliefs. Furthermore, given DEA's extant accommodation programs and Petitioners' sincere assurances of cooperation, enforcement of said CSA prohibitions is not the least restrictive means of furthering the government's interests in public safety and diversion control. Therefore, Petitioners respectfully ask that DEA grant their request for an exemption under RFRA for their sacramental use of Ayahuasca.

Respectfully submitted,

Declaration:

I, (b)(6), do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 03/29/2016

(b)(6)

³² Considering the factors listed above, AHNAC's medicine men and women require higher doses than the typical congregant

AHNAC's Petition for CSA Exemption under RFRA

Declaration:

I, Christopher de Guzman, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 3-30-2016

Signed,



Declaration:

I, (b)(6), do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 03/31/16

Signed,

(b)(6)

Attached:

Exhibit A – Declaration of ONAC
Exhibit B – IRS 501(c)(3) Status Letter

(b)(6)

**OKLEVUEHA NATIVE AMERICAN CHURCH
OF AYAHUASCA HEALING
Declaration**

The undersigned, being the Chief Executive Officer of Oklevueha Earthwalks Native American Church of Utah Inc.¹ a Utah State nonprofit Corporation² and Co-Founder of the allied and communal Native American Church with the Lakota Sioux Nation Native American Church of South Dakota³. And, as an American Native indigenous 'earth' based and 'healing' religion that is known as Oklevueha Native American Church, Native American Church, ONAC and / or NAC.

(b)(6) solemnly swear and:

- A. Declare that OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING is a Branch ('Free Church') of Oklevueha Native American Church as long as the trees and grasses grow and rivers flow.
- B. Declare that OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING Chief Executive Officer is MARC SEACHMAN, President is TRINITY DE GUYMAN, and COO is KIGAN M. HENSE as long as they walk Mother Earth.
- C. Declare OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING will receive all rights and protections that the 'Free Church' of Oklevueha Earthwalks Native American Church of Utah Inc. (Federal ID Number: 841-402-815) receives.
- D. OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING is authorized to utilize Oklevueha Native American Church symbol as being exhibited and or with similar alterations:



As Chief Executive Officer of Oklevueha Earthwalks Native American Church of Utah Inc and Co-Founder of Oklevueha Native American Church, I have personal knowledge of the facts of these declarations for OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING. With my signature, I acknowledge these facts to be true and accurate.

(b)(6)

Chief Executive Officer of Oklevueha Earthwalks Native American Church of Utah Inc
Co-Founder Oklevueha Lakota Sioux Nation Native American Church of South Dakota

Subscribed (b)(6)

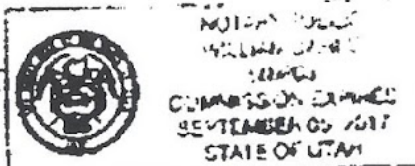
this 22 day of December, 2015

By

Notary Republic

Residing in: 251 E 1000 S

My Commission Expires:



Sept 05 2017

¹ Potentially Registered with the Federal ID number 284102813, page 3

² State of Utah Division of Corporations - Certificate of Existence Registration #1353164-0140, page 6

³ Oklevueha Lakota Sioux Nation Native American Church ARTICLES, page 11

Declaration of the organization and acceptance
of
OKLEVUEHA NATIVE AMERICAN CHURCH OF AYAHUASCA HEALING
DECEMBER 10, 2015