

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
CLERK OF DISTRICT COURT
SA

O CENTRO ESPIRITA BENEFICIENTE)
UNIAO DO VEGETAL, et al.)
)
Plaintiffs,)
)
v.)
)
ERIC HOLDER, et al.)
)
Defendants.)
_____)

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Paul H. O'Neill
No. CV 00-1647 JP/RLP/ROUE

ANSWER TO PLAINTIFFS' ORIGINAL COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendants Eric Holder, Donnie R. Marshall, Paul H. O'Neill, Norman Bay, and John O'Toole hereby answer Plaintiffs' Original Complaint for Declaratory and Injunctive Relief (hereinafter "Complaint") as follows.¹

First Defense

Plaintiffs' Complaint fails to state a claim for which relief can be granted.

Second Defense

Defendants answer the numbered paragraphs of Plaintiffs' Complaint as follows:

1. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.
2. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.
3. Defendants lack information sufficient to admit or deny the allegations contained in

_____ ¹ Substitution of Eric Holder as Acting Attorney General and Paul H. O'Neill as Secretary of the Treasury is automatic under Fed. R. Civ. Proc. 25(d)(1).

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this paragraph.

4. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

5. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

6. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

7. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

8. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

9. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

10. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

11. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

12. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

13. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

14. Defendants lack information sufficient to admit or deny the allegations contained in

this paragraph.

15. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

16. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

17. Deny that Janet Reno is the Attorney General of the United States; aver substitution of Eric Holder as Acting Attorney General, pursuant to Fed. R. Civ. P. 25(d)(1). Admit the remainder of the paragraph as applied to the Acting Attorney General.

18. Admit.

19. Deny that Lawrence H. Summers is the Secretary of the Department of Treasury of the United States; aver substitution of Paul H. O'Neill pursuant to Fed. R. Civ. P. 25(d)(1). Admit the remainder of the paragraph as applied to Secretary O'Neill.

20. Admit.

21. Admit.

22. The first, third, and fourth sentences present legal conclusions to which no response is required. The second sentence presents a characterization of this action to which no response is required.

23. Admit.

24. Defendants lack information sufficient to admit or deny whether "the UDV is the religion of the UDV-USA." The allegation that the UDV "is protected by both the First Amendment and the United States Constitution and by RFRA, 20 U.S.C. §§ 2000bb-2000bb(4)" is a legal conclusion to which no response is required.

25. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

26. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

27. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

28. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

29. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

30. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

31. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

32. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

33. Deny the first sentence, except to admit that the Hoasca tea contains N,N dimethyltryptamine (“DMT”). Deny the second sentence, except to admit that one of the plants allegedly used to make Hoasca tea and the tea itself contain DMT and are therefore covered under Schedule I of the Controlled Substances Act. Admit the third sentence.

34. Deny the first sentence to the extent it alleges that scientific research has established that the tea is non-addictive, is not harmful to human health, and poses none of the risks

commonly found with the use of certain controlled substances. Deny the second sentence, inasmuch as it alleges that anthropological research has established that the tea has been used safely in religious contexts for more than 1,500 years.

35. Deny the first sentence, except to admit that the CSA prohibits the importation, possession, and distribution of materials containing DMT, such as Hoasca, for purposes other than those specified in the Act. Deny the second sentence, except to admit that on or around May 21, 1999, U.S. Customs officials intercepted a shipment of Hoasca from a foreign shipper listed as “Centro Espirita Beneficiente Uniao do Vegetal, Brazil” to a consignee listed as “Centro Espirita Beneficiente Uniao do Vegetal,” 176 Valley Drive, Santa Fe, New Mexico.

36. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

37. Deny, except to admit that after the U.S. Customs officials intercepted the shipment of Hoasca, Customs Special Agent DeFago obtained a warrant to search the premises at 176 Valley Drive, Santa Fe, New Mexico and to seize designated items if found at those premises.

38. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

39. Admit.

40. Deny, except to admit that U.S. Customs officials searched the premises designated in the warrant and seized a quantity of the Hoasca tea and certain records, documents, and papers.

41. Admit.

42. Deny, except to admit that the U.S. Attorney’s Office has refused to provide the

assurances requested by Plaintiffs' counsel that it will not prosecute past, present, or future violations of the CSA by UDV members based on their importation, possession, or distribution of Hoasca.

43. Deny that Defendants have informed Plaintiffs that Defendants are considering destroying the seized Hoasca tea; admit that Defendants have not provided any assurance to Plaintiffs that Defendants "will protect their sacrament."

44. Defendants lack information sufficient to admit or deny the allegations contained in the first and second sentences. Admit the third sentence to the extent that it alleges that Plaintiffs' counsel has sought to obtain the agreement of the United States Attorneys Office for the District of New Mexico that it will not initiate prosecution against Plaintiffs. Deny the fourth sentence, except to admit that the United States Attorneys Office for the District of New Mexico has had several discussions and meetings with Plaintiffs' counsel. Deny the fifth sentence, except to admit that Plaintiffs have not heretofore taken legal action against Defendants. Deny the sixth, seventh, and eighth sentences.

45. Deny that Defendants are threatening to destroy the tea. Defendants lack information sufficient to admit or deny the remaining allegations contained in this paragraph.

46. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

47. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

48. Admit the first sentence inasmuch as it alleges that 21 C.F.R. § 1307.31 provides that the listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of

peyote in bona fide religious ceremonies of the Native American Church. Admit the second sentence.

49. Deny, except to admit that the CSA permits the use of controlled substances for delineated purposes, including certain scientific research and medical uses.

50. Admit that the Religious Freedom Restoration Act, which Congress passed in 1993, provides that the government shall not substantially burden a person's exercise of religion unless it does so in furtherance of a compelling government interest and by the least restrictive means. The remainder of the paragraph presents a characterization of Congressional intent to which no response is required.

51. Deny, except to admit that the CSA and its implementing regulations prohibit the importation, possession, and distribution of materials containing DMT, such as Hoasca, for uses other than those specified in the Act.

52. Defendants lack information sufficient to admit or deny the allegation contained in this paragraph.

53. Deny.

54. Deny.

55. Deny.

56. The first sentence presents a characterization of the intent of the framers of the Constitution to which no response is required. Admit the second sentence.

57. This paragraph contains a characterization of Employment Division, Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990), to which no response is required.

58. Deny.

59. Deny.

60. Deny, except to admit that the CSA permits the use of controlled substances for delineated purposes, including certain scientific research and medical uses. Deny the second sentence.

61. Deny.

62. Deny.

63. Deny.

64. Deny.

65. Deny.

66. Deny, except to admit that the CSA and its implementing regulations prohibit the importation, possession, and distribution of materials containing DMT, such as Hoasca, for uses other than those specified in the Act.

67. Admit that Schedule I does not list hoasca or the plants from which it is derived by name; deny that hoasca and the plants from which it is derived are not covered under Schedule I.

68. Deny, except to admit that one of the plants allegedly used to prepare the tea and the tea itself are covered under Schedule I as materials that contain DMT.

69. Deny, except to admit that Congress scheduled certain plants. Admit the second sentence, except for the allegation that it is an “example” of the allegation contained in the first sentence. Admit the third sentence.

70. Deny.

71. Deny the first sentence to the extent it alleges that the plants used to make Hoasca are not covered under the CSA. Deny the second sentence to the extent it alleges that the plant

concoction in question is not covered under the CSA.

72. Deny.

73. Deny, except to admit that the United States Attorneys Office for the District of New Mexico has refused to provide the assurances requested by Plaintiffs' counsel that it will not prosecute past, present, or future violations of the CSA by UDV members who import, possess, and/or distribute Hoasca; and that United States Customs officials intercepted the shipment of Hoasca to Mr. Bronfman on or about May 21, 1999, searched the premises at 176 Valley Dr., Santa Fe, New Mexico, and seized additional Hoasca and other items from those premises on that same day.

74. Deny.

75. Deny.

76. Deny.

77. Deny.

78. Deny, except to admit that U.S. Customs officials seized the Hoasca and other items to assert custody and control over them.

79. Admit.

80. Deny.

81. Deny.

82. Deny.

83. Defendants lack information sufficient to admit or deny the allegations contained in this paragraph.

84. This paragraph presents a characterization of a legal doctrine to which no response is

required.

85. Deny, except to admit that, where appropriate, federal agencies invoke the doctrine of comity as a guide for decisions that touch on foreign interests.

86. This paragraph presents a legal conclusion to which no response is required.

87. Deny, except to admit that the United States is a signatory to the United Nations Covenant on Civil and Political Rights (“ICCPR”), which requires signatories to undertake to ensure that “[e]veryone shall have the right to . . . have or adopt a religion or belief of his choice, and freedom, either individually or in the community of others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching,” subject to “such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” ICCPR 138 Cong. Rec. S4781-84.

88. Deny, except to admit that the United States has endorsed the Universal Declaration of Human Rights, which asserts that individuals should be able to manifest their religious belief through practice, subject to “such limitations as are determined by law” for the purpose of “securing recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” UDHR art. 29 ¶ 2.

89. Admit the first sentence. The second sentence presents a characterization of a statute to which no response is required.

90. Deny.

91. Deny.

92. This paragraph presents a legal conclusion to which no response is required.

93. Deny.

Defendants deny that Plaintiffs are entitled to the requested relief or to any relief whatsoever. Wherefore, having answered Plaintiffs' complaint, Defendants request that the complaint be dismissed with prejudice, and that Defendants be granted their costs and such other relief as the Court deems proper.

Dated: January 30, 2001

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

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United States Attorney
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VINCENT M. GARVEY
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer to Plaintiffs' Original Complaint was served this 30th day of January, 2001, by first-class mail, upon counsel for the plaintiffs as follows:

Nancy Hollander, John W. Boyd, and Yolanda Gallegos, Esq.
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