

Chapter 6

Bubbling with Controversy: Legal Challenges for Ceremonial Ayahuasca Circles in the United States

Kevin Feeney, Beatriz Caiuby Labate, and J. Hamilton Hudson

Abstract The use of ayahuasca has been spreading rapidly worldwide; however, no current statistics are available to provide a comprehensive understanding of the scope or pace of this expansion. In the United States, the expansion has included the appearance of the Brazilian ayahuasca religions Santo Daime and União do Vegetal (UDV), underground ceremonial circles, workshops with itinerant Amazonian shamans, and spiritual retreat centers. This trend has included the recent emergence of groups and organizations that publicly advertise “legal” ayahuasca ceremonies and retreats. This chapter maps the existence of a series of organizations and actors who have controversially claimed legal protection through incorporation as “branches” of the Native American Church (NAC). The legality, religious character, and sincerity of these churches are reviewed in light of governing law, such as the First Amendment of the US Constitution, the Religious Freedom Restoration Act (RFRA), the Controlled Substances Act (CSA), and pertinent court cases involving the UDV and the Santo Daime, as well as ethnographic accounts of the historical Native American Church. Finally, it examines a petition for a religious exemption from the CSA from Ayahuasca Healings and speculates on the possibilities of the future of ayahuasca legality in the United States.

K. Feeney (✉)

Central Washington University, Ellensburg, WA, USA

e-mail: feeneyk@cwu.edu

B. C. Labate

East-West Psychology Program, California Institute of Integral Studies (CIIS), San Francisco, CA, USA

Center for Research and Post Graduate Studies in Social Anthropology (CIESAS), Guadalajara, Mexico

e-mail: blabate@bialabate.net

J. H. Hudson

Tulane University, New Orleans, USA

Interdisciplinary Group for Psychoactive Studies (NEIP), Brazil/USA, Boulder, CO, USA

e-mail: jhudson2@tulane.edu

Introduction

Public advertisements for “legal” ayahuasca ceremonies have recently begun surfacing in the United States, a development that has caused consternation among researchers, activists, and others working strategically to develop a legal framework to protect ceremonial ayahuasca use. Some of these emergent groups offer the spiritual benefits of an ayahuasca ceremony in a local environment, with “guaranteed” legal protections for their customers. However, while two of the main Brazilian ayahuasca religions have secured legal protections to use ayahuasca as a sacrament in the United States, ayahuasca contains a highly regulated Schedule I substance, the use and possession of which is prohibited outside the confines of these specific religious organizations. Advertisements for “legal” ayahuasca pose legal and financial risks for unknowing members of the public and threaten to undermine legitimate efforts to protect the religious and spiritual use of this sacramental brew.

While indigenous peoples of the Upper Amazon have used ayahuasca from time immemorial, ayahuasca has recently gained a worldwide following with different modalities of use, including religious, therapeutic (e.g., the treatment of depression, anxiety, and substance use problems, among others), and in the context of neo-shamanic circles for personal healing and spiritual development (Labate & Cavnar, 2014a, 2014b; Labate, Cavnar, & Gearin, 2017; Labate & Jungaberle, 2011). Typically prepared by boiling the spiraling liana, *Banisteriopsis caapi*, together with the leaves of either the shrub *Psychotria viridis* or the liana *Diplopterys cabrerana*, ayahuasca contains the substance N,N-dimethyltryptamine (DMT), which is partially responsible for the psychoactive effects of this brew. DMT is a Schedule I drug under the US Controlled Substances Act (CSA) and regulated internationally under the 1971 United Nations Convention on Psychotropic Substances (Labate & Feeney, 2012; Sánchez & Bouso, 2015; Tupper & Labate, 2012).

We begin with a brief discussion of ayahuasca use in the United States, followed by a description of the Brazilian ayahuasca religions, União do Vegetal (UDV) and Santo Daime, and their successful legal battles to protect their sacramental ayahuasca use. The resulting scope and structure of these individualized rights is then examined. Next, based on fieldwork and media research, we address other groups that identify as “churches” that have followed the lead of the UDV and Santo Daime in claiming their own rights to use ayahuasca as a sacrament. These include the Oklevueha Native American Churches (Ayahuasca Healings, AYA Quest, Peaceful Mountain Way, and Soul Quest) and other unaffiliated churches, like the Arizona Yagé Assembly (AYA). Next, we consider the role of the First Amendment’s free-exercise clause, the Controlled Substances Act (CSA), and the Religious Freedom Restoration Act (RFRA) in determining the rights of religious groups in relation to ayahuasca. Finally, we examine a petition for a CSA religious exemption submitted to the Drug Enforcement Agency (DEA) by Ayahuasca Healings in 2016. Throughout this chapter, we attempt to provide the reader with two things: a brief overview of new ayahuasca circles in the United States and an understanding of the legal obstacles faced by groups seeking religious exemptions for their ayahuasca practices.

Ayahuasca Use in the United States

Over the last 30 years, interest in ayahuasca in the United States has grown from an obscure curiosity, mostly known from the writings of William Burroughs and Allen Ginsburg (Burroughs & Ginsburg, 1963) or the works of ethnobotanist Richard Evans Schultes, into mainstream awareness, with references popping up on network television, in Hollywood films, and reports printed in widely read publications. Indeed, the knowledge and use of ayahuasca seem to have spread all over the United States, with weekend ceremonies being held in large- and medium-sized cities around the country. According to our fieldwork, the current underground ceremonial circles are usually small and are frequently led by itinerant indigenous shamans, nonindigenous practitioners trained (to various degrees) in Amazonian shamanism or former Santo Daime and UDV members.¹ Most of these groups have a fluctuating number of followers and frequently charge some fee for participation. Some groups have incorporated as NGOs or as religious organizations (usually not mentioning the use of ayahuasca), and others present themselves as branches of the Native American Church, a Native American peyote religion that has received an exemption from Congress to pray with their sacrament and spiritual “medicine,” peyote (*Lophophora williamsii*).

Recreational use of ayahuasca appears to be minimal, with most groups operating in ceremonial settings and adhering to certain ritual protocols. Frequently, these groups follow similar ritual patterns and share certain practices and beliefs, suggesting that, although autonomous and independent of one another, they are characteristic of larger social and cultural trends. Similarities between these groups and their ceremonies include the belief that ayahuasca is some kind of “plant teacher,” “sacrament,” or “medicine”; facilitation by a trained leader; screening and orientation for participants; limiting ayahuasca consumption to ceremonial contexts; employment of symbols in the ceremonial setting; ritual parameters for the frequency and amount of ayahuasca served; and provision of some sort of counseling or integration for participants following a ceremony. One notable trend seems to be the regular fragmentation and creation of new groups, as well as a fluid membership.

Ayahuasca-drinking groups in the United States exist on a legal spectrum ranging from the permitted to the prohibited. At one end of the spectrum is the UDV, which is the only ayahuasca religion permitted to use ayahuasca throughout the country. Next is Santo Daime, branches of which have permission to use ayahuasca in its ceremonies in Oregon, California, and Washington State. All other ayahuasca groups in the United States, as we will see, lack legal protections for the sacramental or ceremonial use of ayahuasca. While the proliferation of these groups suggests a strong degree of interest in the perceived healing and spiritual properties of this

¹ Author Beatriz C. Labate conducted fieldwork with various underground ceremonial circles in the United States between 2007 and 2017 and has also conducted fieldwork with US branches of the Santo Daime and UDV.

brew—a considerable phenomenon that should be taken seriously by policy makers—we limit ourselves here to examining these groups within the current legal framework.

The Brazilian Ayahuasca Religions: União do Vegetal and Santo Daime

Both of the major Brazilian ayahuasca religions, the União do Vegetal (UDV) and the Santo Daime, trace their origins to the twentieth-century boom and bust of the rubber-tapping industry in Brazil. The boom brought hordes of working class Brazilians into the jungles of the Amazon, where they encountered local indigenous and mestizo communities who used ayahuasca. Through the combination of Amerindian shamanism with Catholicism, African religiosity, and European esotericism, these new religious movements arose. With the collapse of rubber prices in the 1940s, many of these Brazilians returned to their home communities, some of whom brought awareness of ayahuasca and a newfound faith back with them.

The UDV was founded in 1961 by Brazilian rubber tapper José Gabriel da Costa in the state of Rondônia, Brazil, and the Santo Daime was founded by a Brazilian rubber tapper named Raimundo Irineu Serra and was formally established in 1945 in the State of Acre. Both the Santo Daime and the UDV have Christian doctrines, religious hierarchies, and special ritual clothing and calendars. Both rely on oral traditions, and neither have a central religious text. The UDV's services are characterized by preaching and the sharing of stories containing spiritual teachings, whereas Santo Daime worship is characterized by the singing of religious hymns that are spiritually received and sung collectively. Of the two, the UDV is more structured and hierarchical, with a strong conservative ethos. In both contexts, ayahuasca is syncretized with the figure of the religion's founder (Mestre Irineu for Santo Daime and Mestre Gabriel for UDV) and Christian symbols and is considered a central sacrament, the *sine qua non* condition of communion with the divine.

União do Vegetal in the United States

The UDV arrived in the United States in 1988, when its first sessions were held in Norwood, Colorado. In 1999, US custom agents seized a batch of *hoasca* (ayahuasca) arriving from Brazil and threatened members of the UDV with prosecution under the CSA (Bronfman 2007, 2011). In response, the UDV sought an injunction preventing the federal government from enforcing the CSA against them.

In 2006, the Supreme Court granted the UDV an injunction temporarily preventing the DEA from enforcing the CSA against their sacramental ayahuasca

use. The court's ruling, while momentous, did not end the dispute. The DEA was left with the option to continue to gather evidence and build a case against the UDV, and risk a more serious precedent-setting loss, or to exert its power in shaping a limited exception specific to the UDV. Ultimately, the DEA and UDV entered into an agreement allowing the UDV to import and distribute hoasca for UDV religious ceremonies under the watchful eye of the DEA (Labate, 2012; UDV v. Holder, 2010). Under the terms of the agreement, every UDV congregation that directly imports hoasca must apply for DEA registration and must give 2 weeks advanced notice of shipments entering the United States (UDV v. Holder, 2010). Records must be maintained and submitted for DEA inspection, and any congregation wishing to cultivate plants for the production of hoasca must register with the DEA as a manufacturer of controlled substances. While the UDV won a significant victory, the freedoms enjoyed by the UDV were achieved through collaboration with law enforcement and are subject to a number of regulations and controls.

Santo Daime in the United States

Santo Daime's first US branch was founded in Boston, Massachusetts, in 1988. Like the UDV, Santo Daime's legal troubles also began in 1999, following the apprehension of a shipment of *daime* (ayahuasca) from Brazil. Santo Daime's court controversies came later than the UDV's, and they were able to benefit from the precedent set by the UDV. Santo Daime's legal controversies, however, have been lower profile and more localized than the UDV's.

In 2008, two Oregon Santo Daime branches, Church of the Holy Light of the Queen and Church of the Divine Rose, filed jointly in the Federal District Court of Oregon for injunctive relief from enforcement of the CSA against their religious use of daime. The following year the Court granted relief under RFRA, ordering a permanent injunction prohibiting the DEA from threatening the church with prosecution (Church of the Holy Light of the Queen v. Mukasey, 2009). The DEA appealed, and 2 years later the Ninth Circuit affirmed the injunction (Church of the Holy Light of the Queen v. Holder, 2011).

In 2014, driving the point home, the Ninth Circuit ordered the government to pay Santo Daime's attorney fees (Church of the Holy Light of the Queen v. Holder, 2014). The scope of these legal successes, however, is limited to the involved congregations and their activities in the state of Oregon and does not apply to congregations in other states. Consequently, new congregations must apply separately for permits. This type of localized effort was part of the Santo Daime's original legal strategy, and other chapters have since followed suit with successful petitions for exemptions in both California and Washington.

Roy Haber (2011), one of Santo Daime's attorneys for the case, later shared that the federal government had encouraged Santo Daime to submit a petition for an exemption from the CSA rather than file a lawsuit (just as the DEA would later encourage Ayahuasca Healings, Soul Quest, and others to submit their own

petitions, as we detail in this chapter). According to Haber, filing such a petition would have been unfavorable to Santo Daime, since the reviewing agency, the DEA, has as its primary purpose the enforcement of federal drug laws, a reality that should raise questions about the impartiality and fairness of the petition process. Haber encouraged Santo Daime to file a lawsuit, not a petition, because a lawsuit would be heard in a neutral court of law by an impartial judge, rather than by the agency designated with enforcement of the nation's drug laws. While the Oregon chapters of Santo Daime found victory in court, chapters in California and Washington have subsequently found success through the petition process.

The New Ayahuasca “Native American Churches” in the United States

Currently, a variety of ayahuasca circles are proliferating in the United States. We will focus here on one aspect of this phenomenon: the emergence of ayahuasca circles that identify themselves as branches of the Native American Church. Like the Santo Daime and the UDV, these organizations are also driven by a group of people united around the ceremonial use of ayahuasca; however, these groups typically have significantly looser organizational structures and membership and tend to lack a concrete religious doctrine. Significantly, these groups appear to lack cultural, historical, and political ties to the Native American Church, an indigenous institution that developed among tribal peoples of the continental United States during the late nineteenth century. The practice of incorporating as a “Native American Church” has been promoted among non-Natives by James “Flaming Eagle” Mooney, founder of the Oklevueha NAC (ONAC), as a means for these groups to acquire “legal” protection for their ayahuasca use. However, this promotion has relied upon a misrepresentation of the law, the history, and the nature of the NAC, as well as ONAC's legitimacy as part of this unique pan-Indian institution.

A little background on the NAC and its religious exemption for ceremonial peyote use is required to understand the source of ONAC's legal claims and why they are unfounded. The Native American Church, first formally incorporated in 1918, has its roots in the nineteenth century removal of Native peoples from their traditional territories and onto reservations in the United States. This forced relocation was the coup de grâce for Native American peoples and their cultures, ultimately leading to a collapse in the social, economic, and political structures that held these communities together. The peyote religion emerged during the Reservation Era as a mechanism for rebuilding Native communities, creating new social structures and solidarity between disparate tribes and providing a sense of hope and meaning, as well as a mechanism for building and maintaining a distinctive Native identity (Feeney, 2007; Slotkin, 1956). The peyote religion has continued to be an important Native institution, offering healing, spiritual guidance, social support, and other benefits for its adherents. The importance of this religious institution was recognized

by the federal government when, in 1965, an exemption for the religious use of peyote was provided to “members of the Native American Church” and, again in 1994, when federal protections for Native peyote religions were adopted by Congress (Code of Federal Regulations [CFR], 1971; Feeney, 2007).

The NAC is not hierarchical like some religious institutions but rather is a confederation of loosely associated churches with localized leadership. While there is some variation in the ritual, protocol, and cosmology between different chapters, the core structure of the rituals and belief systems are consistent, including the manner in which one becomes a Roadman or ceremonial leader of the Church. The other commonality is that, while some chapters are multiracial, NAC chapters arise out of Native communities and are predominantly peopled by members of these communities (Feeney, 2014).

Within this context, ayahuasca churches in the United States identifying as branches of the “Native American Church” can be seen as both appropriating the NAC name as well as attempting to exploit the special protections provided to members of the NAC. The basis for claiming the NAC title appears to be grounded upon two key, but misguided, beliefs: (1) that the specific exemption for NAC ceremonial peyote use extends to other sacraments designated as controlled substances in the United States and (2) that anyone can start, lead, or be a member of a NAC branch. Another apparent justification for the creation of simulated Native American Church branches is the questionable belief that individuals are justified in appropriating the NAC title due to the perceived unfairness of Native Americans being granted certain rights that are denied to non-Natives. And a variation on this belief, equally disputable, is that many people feel justified in using any and all mechanisms to legitimize their practices due to a perception that US drug laws themselves are either unfair or unjust.

The proliferation of non-Native NACs (non-NACs) and ayahuasca-NACs has been promoted by James “Flaming Eagle” Mooney, an individual with disputed claims to Native American ancestry, who started his own branch of the NAC, Oklevueha Native American Church (ONAC), in the late 1990s, and has since turned its expansion into a business model. Part of Mooney’s success has to do with a victory in the Utah Supreme Court that found ONAC’s use of peyote to be protected (*State of Utah v. Mooney*, 2004). The court determined that state law deferred to a federal regulation exempting “members of the Native American Church” from criminal prosecution (see CFR, 1971) and found that the plain language of the regulation protected members of any organization carrying the name “Native American Church,” regardless of the structure, history, or nature of the organization. However, the laws of Utah were revised in 2006 to apply specifically to “members of federally recognized tribes” and to exclude organizations like Mooney’s ONAC (Utah Controlled Substances Act, 2017). Despite this fundamental legal change, Mooney turned his defunct court victory into an advertising campaign for the commercialization of ONAC, as well as the right to use and possess controlled substances that, he claims, ONAC membership confers (Feeney, 2014).

Though ONAC has been publicly denounced as illegitimate by most Native American Churches (National Council of Native American Churches, 2016), Mooney runs a website where one can purchase an ONAC membership card for a “contribution” of \$200, pronouncing, “Being a member of ONAC qualifies this cardholder to carry and/or possess bird of prey feathers and Native American Church sacraments (Peyote, Ayahuasca, Cannabis, etc.)” (ONAC, 2017). Despite the fact that ayahuasca and cannabis are not NAC sacraments and that several ONAC members have been arrested and prosecuted for possession, cultivation, and distribution of cannabis (Carpenter, 2014), the use of ONAC cards for “legal protection” appears to be relatively widespread.

In addition to selling membership cards, ONAC had a long-standing practice of selling church chapters, which included Articles of Incorporation, among other things. For the price of \$2495, individuals could start their own chapter of ONAC and, according to the ONAC website, establish legal “protection to worship with any and all earth-based Sacraments” (ONAC, 2000–2012). For many, \$2495 appeared a small price to pay for an exemption from the CSA, and an opportunity to set up their own ayahuasca-based churches. While ONAC appears to have discontinued publicly advertising the sale of church branches, the proliferation of ONAC churches continues to gain momentum.

Over 200 branches of ONAC-affiliated churches have been incorporated since the Mooneys’ first established their church in 1997, with no fewer than 35 chapters established since 2013 (Callicott, 2017).² The exact number of ONAC branches is hard to estimate, as many of these groups fluctuate in size and duration and frequently multiple chapters are associated with a single individual or group of individuals. More research is needed in this area to determine the actual scope and influence of ONAC and its affiliates. Similarly, it is unclear how many of these churches are ayahuasca-based, rather than cannabis or peyote oriented, but our preliminary research findings demonstrate that at least four ONAC-affiliated churches use ayahuasca as their primary “sacrament.”

While some ONAC branches and affiliates are overtly commercial, advertising their services online for a fee, others fly under the radar. These churches generally claim a mixed Native American and Christian spiritual heritage, with ayahuasca-oriented branches additionally claiming links to one of the Brazilian ayahuasca religions or to indigenous shamans from Peru, Colombia, Brazil, or Ecuador. Some use multiple substances, and some incorporate North American indigenous rituals, such as the sweat lodge or vision quest, as well. Notably, four of the five organizations discussed below have specifically identified as an ONAC chapter at some point in its timeline.

²While we have been able to identify over 200 ONAC-affiliated churches, Mooney himself estimates the total number to be nearer to 300 (Brown 2016).

Ayahuasca Healings

A British man named Marc “Kumbooja Banyan Tree” Shackman formed Ayahuasca Healings in 2015 with a former Internet marketer from Toronto, Canada, named Christopher “Trinity” de Guzman. Their goal was to “bring this sacred medicine of Ayahuasca to the American public” by establishing “more than 200” ayahuasca churches throughout the United States (McGivern, 2016, p. 2). Initially a branch of a now-defunct ONAC chapter, the New Haven Native American Church (NHNAC), Ayahuasca Healings developed its church premises in Elbe, Washington, and professed, on its website and in various advertisements and press releases, to be “the first public legal ayahuasca church in the United States” (Callicott, 2017). A 2015 promotion for Ayahuasca Healings garnered tens of thousands of “likes” and “shares” on the social media website Facebook.

Ayahuasca Healings’ radical claims about their legal status caused both excitement and suspicion among those with an interest in ayahuasca. Online investigations into the backgrounds of de Guzman and Shackman, as well as the history of Mooney and ONAC, began to emerge (Callicott, 2017; Highpine, 2015a, 2015b; Hudson, 2015), and the high-profile rollout of Ayahuasca Healings began to unravel. An anonymous Facebook group called “Ayahuasca Healings is NOT legal” was started to warn interested parties about the dubious claims of Ayahuasca Healings. As the controversy reached a boiling point, ONAC founder James “Flaming Eagle” Mooney contacted Ayahuasca Healings and convinced them that ONAC’s legal protections were stronger than NHNAC. Ayahuasca Healings dumped NHNAC and adopted a direct affiliation to ONAC, changing its name to ONAC-Ayahuasca Healings. Despite this change, Ayahuasca Healings legitimacy issues remained unresolved and its troubles continued (for a history of this controversy, see Callicott, 2017).

On February 29, 2016, 5 weeks after Ayahuasca Healings officially began operations, it held its final retreat. On March 8, a public letter was released announcing that Ayahuasca Healings was temporarily suspending its operations (Callicott, 2017). What the statement did not disclose was that Ayahuasca Healings had received a forceful letter from the DEA, warning that possession and distribution of ayahuasca are criminal offenses in the United States and informing it that if it wished to continue operations, it should first submit—and have approved—a petition for a religious exemption from prosecution under the CSA.³

After ceasing operations, Ayahuasca Healings began consultation with a local attorney to develop a legal strategy for acquiring an exemption to serve ayahuasca at their ceremonial retreats. On April 4, 2016, Ayahuasca Healings filed a petition for a religious exemption from the CSA (McGivern, 2016). At the time of this writing, no response from the DEA had been received; nevertheless, an analysis of the legal

³This document was briefly posted on the Internet. Unfortunately, it was removed before the authors were able to catalogue it, and it is no longer publicly available.

merits of this petition may prove instructive to others. We will examine this petition at greater length below.

Soul Quest

Chris Young and his wife Verena Young founded Soul Quest Church of Mother Earth (“Soul Quest”), based in Orlando, Florida, in 2014 (Soul Quest, 2016). It was initially a branch of ONAC but cuts ties with ONAC in 2016. Chris Young is an active public leader for the young organization, attending psychedelic conferences, engaging in debates on social media, giving media interviews, and participating in a documentary film (“From Shock to Awe”) detailing the experiences of American war veterans in Soul Quest ayahuasca retreats. Similar to Ayahuasca Healings, Soul Quest advertises widely and charges a fee for participation in its ayahuasca ceremonies. Perhaps unsurprisingly then, Soul Quest received a letter from the DEA in August 2016, advising it to cease and desist the use of ayahuasca (Milione, 2016a). In its letter, the DEA advised Soul Quest to cease its use of several other sacraments as well, including *sananga*, which the DEA stated contains the Schedule I substance ibogaine, and *San Pedro*, which contains the Schedule I substance mescaline. Soul Quest responded, claiming to be a “hybrid of Native American spirituality and Christianity” and “very much akin” to the UDV, and therefore justified in its “religious” practices (Brett, 2016, p. 1). Unlike the UDV, however, Soul Quest advertised fee-based ceremonies online; ceremonies involving multiple plant and animal-derived substances, including *kambô* (venom from the bicolor tree frog [*Phyllomedusa bicolor*]), *rapé* (a tobacco-based snuff with varying admixtures), and *sananga* (probably *Tabernaemontana undulata*).⁴ Despite Soul Quest’s claims to have “Native American” and Brazilian roots, there is little to no known documentation of their religious practices or beliefs. On a webpage titled “Church Doctrine,” Soul Quest refers interested parties to a document titled “Ayahuasca Manifesto,” an anonymous document circulated online since 2011 that outlines “the moral standard and spiritual guidance” for ayahuasca use (Anonymous, 2011, p. 46).

Soul Quest initially responded to the DEA by challenging the exemption process itself. Its criticism of the exemption process was two-fold: first, the process gives the DEA too much discretion with too little oversight; and second, the process has no clear timetable for completion (Brett, 2016). The DEA replied on December 21, 2016, stating that its exemption process fully complies with the law (Milione, 2016b).

⁴The DEA claims *Tabernaemontana undulata*, like *Tabernanthe iboga*, contains the Schedule I drug, ibogaine, but this is disputed.

Despite Soul Quest's initial rejection of the exemption process, the submission of a formal DEA petition was announced to their membership in August 2017.⁵

Other New Ayahuasca Native American Churches

Besides Ayahuasca Healing and Soul Quest, we have identified two other, relatively conspicuous, ayahuasca-oriented ONAC affiliates. One of these organizations, Aya Quest Native American Church in Kentucky, advertises itself as “a place to take the journey to source and to meet who you really are for the very first time” (Aya Quest, 2015). Steven Hupp, founder of Aya Quest, claims to have been trained by a “South American shaman” on how to brew ayahuasca and acts as the group's “chief medicine man.” Aya Quest offers ayahuasca retreats from between \$395 and \$995 and also offers kambô workshops for \$260 (Aya Quest, 2015). The second church, known as ONAC of the Peaceful Mountain Way, was established in 2015 and is also based in Kentucky. The Peaceful Mountain Way offers both group and private ceremonies, ranging in price from \$375 to \$1050 (Peaceful Mountain Way, 2015–2017). Peaceful Mountain Way, as well as Mooney's parent ONAC Church, is currently the subject of a wrongful death lawsuit following the death of a young woman tied to an ayahuasca ceremony held by the church in the fall of 2016 (Kocher, 2017).

Another organization, Arizona Yagé Assembly (AYA), while not under the ONAC umbrella, appears to be inspired by their model. AYA, based in Tucson, espouses a mission “to bring people in communion with divine love through the sacrament of ayahuasca” (AYA, 2017). AYA advertises extensively and currently holds ceremonies around the United States, from St. Louis, Missouri, to Tucson, Arizona, and San Francisco, California, with participation fees ranging from \$150 to \$250 (Aya Guide, 2015). According to our fieldwork, this group has also expressed intentions to petition for an exemption from the DEA.

Ayahuasca Law in the United States

One of the two ingredients of ayahuasca, *P. viridis*, known by its Quechua name *chacrana*, contains the substance N,N-dimethyltryptamine (DMT). DMT is classified as a Schedule I substance under the CSA, meaning that DMT has no currently

⁵We have not had a chance to access this document; however, we have continued to observe the unfolding of the controversy, which included Soul Quest announcing that instead of using ayahuasca, it was using “vine only” (only *Banisteriopsis caapi*) in their ceremonies (see <https://ayahuascachurches.org/schedule/>). This would probably be seen by the DEA as evidence that “feasible alternatives” are available, and DMT-containing ayahuasca is not sufficiently “important” to Soul Quest's practices to warrant an exemption (see Table 6.1).

accepted medical use and has a high potential for abuse (CSA, 1970). Because the ayahuasca preparation contains DMT, a Schedule I substance, ayahuasca is also considered a Schedule I substance under US law (DEA, 2016; *González v. UDV*, 2016).

The UDV's legal right to use ayahuasca in religious ceremonies is based on, and supported by, the Religious Freedom Restoration Act (RFRA). Congress passed RFRA in 1993 in response to the notorious 1990 Supreme Court decision in *Employment Division v. Smith* that overturned decades of First Amendment jurisprudence and left the free-exercise clause a shell of its former self. The opinion, written by the late Justice Antonin Scalia, claimed that the First Amendment only protects religious freedoms if a religious practice is intentionally targeted for discriminatory treatment. Laws that "incidentally" burden religious practices, according to this ruling, are valid Constitutional restrictions on religious practices. Under this interpretation, so-called "neutral" laws, laws that burden religious practices without necessarily intending to do so, constitute valid restrictions on religious practices.

In the *Smith* controversy, two NAC members were fired and denied unemployment compensation based on their religious use of the peyote cactus. They challenged the denial of unemployment benefits as a violation of their free-exercise rights under the First Amendment. The Supreme Court, finding no evidence that Congress intended to burden Native American religious practices when scheduling peyote, determined that the Controlled Substances Act was "neutral" toward all religions and therefore did not violate the free-exercise clause.

Religious groups around the country recognized the implications of the *Smith* decision, and a diverse political coalition was quickly assembled, with members as disparate as Pat Robertson's American Center for Law and Justice and the American Civil Liberties Union, in order to pressure Congress for reform (Epps, 2001). In response, Congress passed RFRA, which restored the Compelling Interest test, a balancing test used for decades by courts, prior to *Smith*, in order to weigh the religious interests of practitioners against the regulatory interests of government. Under this test, a religious practitioner wishing to challenge a government regulation must demonstrate that the regulation in question substantially burdens a religious practice that is based on sincere belief. In response, the government carries the burden to prove two things: first, that there is a compelling governmental interest behind the challenged regulation, and second, that the regulation in question is the least restrictive means of furthering that compelling governmental interest (RFRA, 1993).

In *Gonzales v. O Centro Beneficente União do Vegetal* (2006), the Supreme Court found that the sacramental use of hoasca by the UDV was substantially burdened by the CSA, a finding that required the government to demonstrate a compelling interest in prohibiting ayahuasca use and showing that the CSA is *narrowly tailored* to achieve that goal. The federal government put forward three goals it argued constituted compelling government interests: (1) protecting the health and safety of UDV members, (2) preventing diversion of hoasca to the black market, and (3) remaining compliant with US obligations under the Convention on Psychotropic Substances (CPS). The government failed on all three counts. First, the court

found scientific evidence of harm to be inconclusive, particularly in light of evidence offered by the UDV demonstrating the safety of hoasca when used in a controlled ritual setting. Second, the government failed to provide sufficient evidence of either a black-market demand or instances of diversion. Finally, the court determined that being a signatory of CPS, by itself, was not sufficient to constitute a compelling government interest. It was the outcome of this decision that ultimately led to the arrangements between the UDV and DEA to permit the sacramental use of hoasca with DEA regulatory oversight.

Since the UDV's RFRA victory in 2006, a number of groups proclaiming religious use of various substances have attempted to establish their own legal rights. The first of these to receive a DEA response was the Church of Reality, a cannabis-based church in California. The Church of Reality's RFRA petition merits discussion, particularly since the DEA laid out a lengthy 33-page roadmap for RFRA petitions in its denial of the Church's petition.

The Church of Reality's Petition

In 2007, shortly after the victory of the UDV at the Supreme Court, the Church of Reality contacted the DEA to proclaim its sacramental use of marijuana and acquire an exemption from the CSA. A lengthy back and forth ensued, while the DEA tried to establish what information they needed to determine whether a group had a meritorious legal claim under RFRA. In 2008, the DEA issued its denial (Rannazzisi, 2008) and outlined the elements required for a successful RFRA petition (Table 6.1).

First, in order to invoke RFRA, a religious organization must demonstrate that the challenged law or regulation substantially burdens a religious practice based in sincere belief. This means that the organization must demonstrate that the practice in question is (1) religious in nature, (2) based in sincere belief, and (3) substantially burdened by a specific government regulation. An organization that satisfies these three criteria is considered to have established what is known as a *prima facie* case, which means the group has presented a meritorious claim that is likely to be successful. Once this is done, the government carries the burden of refuting the organization's claim.

In its rejection of the Church of Reality's petition, the DEA found that the Church of Reality did not qualify as a *true* religion, that its beliefs were *insincere*, and that its purported religious practices were not substantially burdened by the CSA. Problematically, RFRA provides no definition for "religion"; thus, courts have been left to develop their own criteria. The DEA outlined five guidelines for determining whether a particular group's practices and beliefs qualify as religious, three of which it applied to the Church of Reality's petition. The first guideline addressed whether a group's beliefs involve "fundamental and ultimate ideas that address reality beyond the physical world" (Rannazzisi, 2008, p. 7); the second, whether a group's beliefs represent a comprehensive moral and ethical system; and

Table 6.1 Elements of a prima facie case under RFRA, specifically for challenges to the Controlled Substances Act (*Gonzales v. UDV*, 2006; *Rannazzisi*, 2008; *United States v. Meyers*, 1995; *United States v. Quaintance*, 2006)

1. Exercise of religion (criteria for evaluating religion):
(a) Fundamental & ultimate ideas
(b) Metaphysical beliefs
(c) Moral or ethical system
(d) Comprehensive belief system
(e) Accoutrements (structural characteristics) of religion
2. Religious beliefs sincerely held (criteria for evaluating sincerity):
(a) Ad hoc beliefs
(b) Quantity of controlled substance
(c) Evidence of commerce
(d) Lack of ceremony or rituals
(e) Use of other controlled substances
3. Religious exercise substantially burdened by government regulation (Inquiries for evaluating the degree of burden):
(a) Is burdened practice “important”?
(b) Are “feasible alternatives” to the practice available?
When the above elements are met, the burden shifts to the government to prove a “Compelling Interest” in the challenged regulation, and to show that the regulation is “Narrowly Tailored” to meet that goal.

the third, whether a group has structural characteristics “that may be analogized to accepted religions” (2008, p. 10, citing *Africa v. Commonwealth* 1981, p. 1035). This analysis comes before the question of “sincerity” and whether government regulations pose a substantial burden on a religion’s practices.

Expounding on the “fundamental and ultimate ideas” criterion, the DEA quoted from the decision in *Meyers* involving another cannabis church, explaining that religious beliefs generally “address a reality which transcends the physical and immediately apparent world” (Rannazzisi, 2008, p. 7, citing *Meyers*, p. 1502). Deeper, such beliefs “address a fear of the unknown, the pain of loss, a sense of alienation, feelings of purposelessness, the inexplicability of the world, and the prospects of eternity” (2008, p. 7, citing *Meyers*, p. 1505). The DEA found the Church of Reality’s proclamation that its beliefs are “based on the acceptance of the axiom that our existence is important and that expanding our understanding of reality has value,” and that its explanation that “the Church of Reality is a new breed of religion that is based on reality rather than mythology,” “does not appear to differentiate the Church’s pursuits from that of science or philosophy” (2008, pp. 7–8). Lacking any metaphysical belief system, or any beliefs addressing life’s great questions, the Church of Reality’s belief system did not address fundamental or ultimate ideas about life and reality.

Next, the DEA assessed whether the Church of Reality’s beliefs included a comprehensive moral and ethical system. The DEA focused on whether the Church of Reality prescribed a certain way of life, categorizing certain behavior as good or

evil, right or wrong, and just or unjust, and provided answers to many of the human problems and concerns. Citing the District Court in *United States v. Quaintance* (2006), the DEA explained that a comprehensive moral or ethical system “should create duties imposed by some higher power, force or spirit, and should have religious consequences if the principles are not followed” (Rannazzisi, 2008, p. 9). Finding no evidence of spiritual or religious inspiration for the Church of Reality’s “Sacred Principles,” and based on the Church’s own admission that the “Sacred Principles were generated in order to obtain 501(c)(3) tax exempt status,” the DEA determined that the Church’s “Sacred Principles” could not be characterized as “religious” (2008, p. 9).

Weighing the third criterion, structural and external characteristics of religions, the DEA considered whether the Church of Reality exhibited structural and external signs characteristic of accepted religions. These signs may include:

formal ceremonies or rituals, gathering places, clergy and/or prophets, structure and organization, important writings, observance of holidays, efforts at propagation, diet or fasting, prescribed clothing and appearance, and other similar manifestations associated with traditional religions. (Rannazzisi, 2008, p. 10)

The DEA found that this “internet-based” religion lacked structure and organization, did not have clergy or prophets in any traditional sense, and specifically disavowed rituals on its website. Based on these deficits, the DEA determined that the Church of Reality did not have sufficient “accoutrements” of religion.

While the Church of Reality failed to demonstrate its religiousness, the DEA proceeded to evaluate the remaining elements of a *prima facie* RFRA case: (1) sincerity of belief and (2) a substantial government burden on “religious” practices. Addressing the issue of sincerity, the DEA outlined five separate bases for evaluating the sincerity of religious beliefs involving use of controlled substances: *ad hoc* beliefs, lack of ceremony or ritual, use of other illegal substances, evidence of commerce, and quantity of the substance involved (*United States v. Quaintance*, 2006). The DEA addressed the first three bases of sincerity in its response to the Church of Reality’s petition.

The first of these bases, *ad hoc* beliefs, refer to beliefs that appear to be “manufactured on an *ad hoc* basis to justify [a] lifestyle” (Rannazzisi, 2008, p. 11). Several issues worked against the Church on this criterion, but perhaps the most significant was a long-standing practice of secular marijuana use, predating the founding of the Church, and an admission in its petition of using RFRA to “trump” federal law on issues with which the Church disagrees. The DEA determined that the Church failed the *ad hoc* test of sincerity, stating that the Church of Reality’s “newfound religious beliefs appear to be rationalizations designed to justify [its] long-held political and medical views about the alleged benefits of marijuana use” (2008, p. 12).

The second basis for insincerity, lack of ceremony or ritual, also worked against the Church of Reality, which offered no mention of ritual—a religious practice that the Church publicly disavows on its website. Thirdly, the DEA addressed the Church’s use of other controlled substances in evaluating the sincerity of the

Church's religious beliefs. The DEA noted that in its petition, the Church described how members used other drugs, including "LSD, Mushrooms, Peyote and Hoasca," and also proclaimed that "Although our request at this time is for the use of marijuana, we are not limiting ourselves to just that one drug" (Rannazzisi, 2008, p. 13). Based on these statements, the DEA determined that the Church's "request is driven by a desire to use illegal substances, rather than a sincere religious belief" (2008, p. 13).

Finally, the DEA asked whether its prohibition on the Church of Reality's use of cannabis was a substantial burden on its religion. The DEA's question boiled down to whether the use of cannabis was "important" to the church's religious practice and whether feasible alternatives were available in the practice of the Church's professed religion. When the Church of Reality admitted that there were alternative ways for achieving its stated religious goal of "fostering creative thinking," and explained that Church of Reality members were permitted to use those alternatives, it failed to prove that marijuana prohibition posed a substantial burden on its "religious" practice (Rannazzisi, 2008, p. 13).

The DEA letter denying the Church of Reality's RFRA petition stands as an important document, as it clearly and substantively outlines the position and thinking of the DEA when it comes to sacramental drug use. In 2009, the DEA developed and published specific guidelines for individuals and organizations seeking a CSA exemption for religious use of a controlled substance. The document seeks to streamline the exemption process and presumably to prevent litigation of spurious claims. The process allows self-identified religious groups to make their case under RFRA by submitting a petition to the DEA demonstrating that its controlled substance use is based on a (1) sincere (2) religious practice that is (3) substantially burdened by the CSA (DEA, 2009). To aid in the evaluation of a group's request, the DEA requires petitions to include detailed information about:

- (1) the nature of the religion (*e.g.* its history, belief system, structure, practice, membership policies, rituals, holidays, organization, leadership, *etc.*);
- (2) each specific religious practice that involves the manufacture, distribution, dispensing, importation, exportation, use or possession of a controlled substance;
- (3) the specific controlled substance that the party wishes to use; and
- (4) the amounts, conditions, and locations of its anticipated manufacture, distribution, dispensing, importation, exportation, use or possession. (2009, p. 1)

The combination of the Church of Reality denial letter and the DEA-issued guidelines should provide religious ayahuasca groups a foundation for determining whether their beliefs and practices might qualify for a CSA exemption. Below, we consider how these required elements of the petition might benefit or disqualify different ayahuasca-using groups in the United States.

Ayahuasca Healings' Petition

Ayahuasca Healings filed a petition for an exemption from prosecution under the CSA pursuant to RFRA on April 4, 2016 (McGivern, 2016). Beginning its proof in earnest, Ayahuasca Healings looked to establish a *prima facie* case under RFRA (Table 6.1), by demonstrating the authenticity of its religion, the sincerity of its beliefs, and that its religious practices are substantially burdened by the CSA. To substantiate its religious authenticity, Ayahuasca Healings sought to demonstrate the presence of (1) fundamental and ultimate questions that address a reality beyond the physical world, (2) a comprehensive moral and ethical system, and (3) structural characteristics of religions in general, three criteria, as we have seen, that were used by the DEA in its evaluation of the Church of Reality.

For the first criterion, fundamental and ultimate questions, Ayahuasca Healings described its beliefs in a reality that transcends the physical world—the metaphysical spirit world into which Mother Ayahuasca enables entry; its belief in a transcendent Great Spirit, similar to a theistic Supreme Being, like God, Hashem, or Allah; and its understanding of the purpose of human life as serving something greater—the Great Spirit, Mother Earth, and Collective Humanity, its belief in reincarnation, and its philosophy of “filial piety through environmental stewardship” (McGivern, 2016, p. 6).

Ayahuasca Healings quoted extensively from its website, where de Guzman wrote “I have walked this path for countless years, or really, countless lifetimes, and this is all about one thing. . . Our Global Awakening” (McGivern, 2016, p. 6). At the heart of that awakening, for Ayahuasca Healings, appears to be the understanding that “we are all serving something so much greater than [ourselves]” (2016, p. 6).

For the second criterion, a comprehensive moral and ethical system, Ayahuasca Healings cited its philosophy of environmental stewardship, “a moral duty to act in accordance with the spiritual and ecological needs of the environment” as well as “a moral duty to act in accordance with the spiritual and physical needs of other persons” (McGivern, 2016, p. 7). Ayahuasca Healings described its understanding of the consequences of breaching those moral duties as akin to the Hindu principle of karma: any action one takes against another is simultaneously an action against oneself. Translating karma into Christian terms, Ayahuasca Healings cited Matthew 7:12, “Do unto others as you would have them do unto you” (2016, p. 7). But, in case karma and Matthew 7:12 were not sufficient to constitute a comprehensive moral and ethical system, Ayahuasca Healings added that it had adopted the ONAC Code of Ethics and Code of Conduct, which includes proscriptions for behavior toward women, children, family, and community, and required pledges such as “I commit to making effort to spend time each day in meditation and prayer, drawing closer to the Great Spirit. . .” and “I will never share sacraments or sell medicines to those who are not members of ONAC” (2016, p. 8).

Addressing the third criterion of religion, structural characteristics, Ayahuasca Healings submitted evidence of formal ceremonies and rituals, gathering places, clergy and prophets, organizational structure, efforts at propagation, diet and fasting,

and belief in supernatural entities. Its gathering place is a “sacred tipi” erected on its land in Elbe, Washington. Its organizational structure consisted of an executive body with three members: de Guzman, Shackman, and another administrator. De Guzman was the “Visionary Director of the church” serving as spiritual teacher through “sermon-like videos published online” (McGivern, 2016, p. 9). Shackman was the “chief medicine man and church director,” coordinating and overseeing on the ground church activities (2016, p. 9). Formal ceremonies and rituals include a “Sweat Lodge,” purging or cleansing through the use of emetic and purgative plants, and the ritualized consumption of ayahuasca—which Ayahuasca Healings likened to Catholic Communion. Notably, these rituals have parallels among some indigenous groups of North and South America. Recognized clergy were described as “Medicine Men/Women... who have undergone long and extensive training with *curanderos* in the Amazonian jungles” (2016, p. 9). Dietary proscriptions, described in detail, included the “traditional Peruvian ayahuasca diet” (2016, p. 9). Ayahuasca Healings claimed to believe in supernatural entities like “Mother Ayahuasca, Father San Pedro, Great Spirit,” as well as thousands of angels, the “Ascended Masters Buddha and Jesus,” and countless animistic plant, animal, and mountain spirits (2016, p. 12).

Having addressed these three criteria of religious authenticity, Ayahuasca Healings set out to demonstrate that its beliefs are “sincerely held.” To do so, Ayahuasca Healings addressed each of the five indicators of sincerity: ad hoc beliefs, lack of ceremony or ritual, quantity of controlled substance used, use of other controlled substances, and evidence of commerce. For the first and second indicators, Ayahuasca Healings stated simply that its beliefs were not ad hoc but derived “directly from shamanic, animist religions of the Amazon Rainforest and elements of other belief systems, most prominently that of Christianity” (McGivern, 2016, p. 3) and that Ayahuasca Healings holds frequent ceremonies. More challenging for Ayahuasca Healings was addressing the fourth and fifth indicators of sincerity/insincerity: the use of other controlled substances and evidence of commerce.

Ayahuasca Healings admittedly used another illegal substance, San Pedro, a *Trichocereus* cactus variety that contains the Schedule I controlled substance mescaline (McGivern, 2016, p. 13). To assuage the DEA’s potential concerns, Ayahuasca Healings stated that it was not currently seeking an exemption for San Pedro—though it planned on doing so at a later date—and that San Pedro, while important, was not absolutely essential to the practice of their religion, as is ayahuasca. Addressing concerns about commerce arising from their use of advertisements and apparent “pay to pray” business model, Ayahuasca Healings explained, “the contributions the Church has received have gone almost entirely into overhead costs” (2016, p. 13). Addressing its notorious efforts at propagation, Ayahuasca Healings admitted it “went overboard” with marketing. As a concession, it offered the DEA “the right of pre-publication review and authorization for any written or audio/visual materials prepared for publication on AHNAC’s [Ayahuasca Healings Native American Church] website” (2016, p. 10). Moreover, Ayahuasca Healings dropped its goal of opening 200 churches, stating that it would focus on developing its Church in Elbe, Washington.

Having submitted its petition, it is now up to the DEA to determine whether Ayahuasca Healings is a legitimate religion, rather than a spiritual retreat center or something else, whether it is sincere in its beliefs and practices, and whether its religious practices are substantially burdened by the CSA. While fulfilling many of the DEA's requirements, the Ayahuasca Healings petition has several significant flaws. Some of these are minor, but others may be insurmountable. A brief analysis follows.

Has Ayahuasca Healings Established a Prima Facie Case?

The first issue concerns whether Ayahuasca Healings can be considered a religion. While there are issues with untangling beliefs that are philosophical versus religious, and questions about the outlined moral system of Ayahuasca Healings, Ayahuasca Healings' structural characteristics present a bigger challenge to its potential identification as a religion. The DEA has provided a number of characteristics that satisfy this criterion, including "formal ceremonies or rituals, gathering places, clergy and/or prophets, structure and organization, important writings," etc., but has indicated that "the absence of one or more" structural characteristics common to known religions "is not determinative" of an organization's religious legitimacy (Rannazzisi, 2008, p. 10). Ayahuasca Healings provides a number of characteristics in its petition to satisfy this criterion, but DEA questions about structure and organization could prove problematic.

Ayahuasca Healings is a small group with no formal membership process. Healing retreats are offered for a fee to those "who come in a good way" and to ONAC members. There is no indication that individuals must accept the tenets of the Church, particularly since "Ayahuasca Healings Native American Church is committed to Honoring all of the spiritual traditions of our ancestors" (Ayahuasca Healings, 2016). And, notably, attendees do not have any clear responsibilities, obligations, or long-term commitments to the Church. All of this suggests that the fee-based retreats are simply transactional, without conferring membership or commitment to the moral and ethical code of the Church, which appears to be optional. The lack of formal membership may not in and of itself be fatal to Ayahuasca Healings but will likely be problematic in combination with other shortcomings in its petition.

Next is the issue of sincerity: Ayahuasca Healings addresses three of the five criteria laid out by the court in *Quaintance*, including (1) ad hoc beliefs, (2) evidence of commerce, and (3) use of other illegal substances. Regarding ad hoc beliefs, a critical point will likely be the incorporation of Ayahuasca Healings as part of NHNAC and later ONAC. The relationship between these organizations seems to have been established for the sole purpose of acquiring "legal protection" to possess and distribute ayahuasca. Ayahuasca Healings' claim to the NAC mantle stands in contrast with the fact that the CSA exemption provided to the Native American Church is based on a special relationship between federally recognized tribes and the

federal government and was provided for the benefit of a specific Native American religious tradition. While Ayahuasca Healings claims to use a *tipi* for its ceremonies, and to perform sweat lodges, there appears to be no significant parallels between Ayahuasca Healings' historical roots and religious doctrine and the traditions of the Native American Church. The appropriation of the NAC moniker appears to be nothing more than a legal strategy to protect otherwise illegal behaviors. Similarly, the adoption of the ONAC Code of Ethics appears to have been for the sole purpose of satisfying DEA criteria for a CSA exemption, "as opposed to being derived from a cohesive moral or ethical imperative"; another reason the DEA dinged the Church of Reality's petition (Rannazzisi, 2008, pp. 9–10).

Evidence of commerce, however, will likely be Ayahuasca Healings' Achilles heel. Whereas the UDV and Santo Daime have a community of members that attend regularly scheduled religious services, Ayahuasca Healings appears to have no such community, other than a small group of organizers, and instead offers one-off retreats to those who "come in a good way" and come with money. Its initial goal of opening 200 churches across the United States, without any formal membership, sounds more like a business plan than spreading church gospel. Ayahuasca Healings insistence in its petition that it has dropped this goal does little to change the apparent commercial structure of its existing organization. While all religious groups have financial considerations, Ayahuasca Healings appears to be organized around a fee-for-service model that aims to build revenue quickly, rather than being invested in building a community of parishioners that will grow organically to financially support the Church.

Finally, the use of another illegal substance, the mescaline-containing San Pedro cactus, is suggestive of a simple interest in averting US drug laws. While Ayahuasca Healings does not ask for an exemption for San Pedro in its petition, stating that it is secondary in importance to ayahuasca, and while the use of San Pedro is traditional in other areas of Peru beyond the Amazon (where ayahuasca comes from), the presence of this second substance in its "religion" likely does not help its case. Rather, it may cause the DEA to draw parallels to the Church of Reality's insistence that, "Although our request at this time is for the use of marijuana, we are not limiting ourselves to just that one drug" (Rannazzisi, 2008, p. 13).

While Ayahuasca Healings has submitted a petition that is substantively stronger than the one submitted by the Church of Reality, the outline of its cosmology and moral code is undermined by the absence of a stable and formal membership, and the ability of anyone to attend ceremonies simply by paying a fee, regardless of any personal investment in Ayahuasca Healings' beliefs, mission, or moral code. The deciding factor for emerging ayahuasca-using groups in the United States may boil down to the following questions: does the religion have a regular congregation? And, if not, is it simply seeking to provide anyone who has money a legal psychedelic experience that "is almost always an indescribably profound religious experience" (2016, p. 4)?

Conclusions

The rapid proliferation of underground ayahuasca circles and churches in the United States over the last two decades demonstrates an immense level of social interest in this Amazonian brew. While there are a multitude of reasons people are drawn to ayahuasca, whether it be for healing, spiritual exploration, or for an exotic experience, the proliferation of these circles and churches reflects much broader cultural and social trends that are beyond our present scope.

Our aim in this chapter has not been to malign or discount the current phenomenon of ayahuasca in the United States but to objectively explore some of the approaches used by different groups to acquire legal protection for their practices, to provide a framework for understanding the legal steps and considerations involved in petitioning the DEA for a CSA exemption, and to explore some of the ethical considerations posed by the emerging trend of appropriating the “Native American Church” title among some nonindigenous new ayahuasca-using groups. Currently, in the United States, the ability to use ayahuasca legally depends on the ability of a group to demonstrate a sincere religious practice that is burdened by US drug laws. While there are other legitimate uses and applications of ayahuasca beyond a religious context, there is no legal pathway at present for these uses to become protected.

The US Constitution (and subsequent statutes like RFRA) was designed to protect a diversity of religions and religious practices, but not spirituality and individual spiritual practices, which potentially includes traditional shamanic and neo-shamanic practices. Currently, RFRA provides the one legal avenue for an organized religion to acquire an exemption from the CSA; however, as we have seen, the statute never defines the term “religion.” Instead, courts must look to case law for guidance in evaluating whether a particular group qualifies as religious for purposes of RFRA. The DEA’s own guidelines rely on the 10th Circuit Court’s decision in *United States v. Meyers* (1996) for determining the religious nature of groups petitioning for a CSA exemption. The criteria are comprehensive and flexible but retain a Western bias and require groups to be structured around very clear principles and belief systems. Groups that come together to share a spiritual experience, but who don’t share a common set of a beliefs or moral codes, are likely to have trouble satisfying the *Meyers* Test. Underground circles and groups whose rituals are adapted from indigenous shamanic traditions will likely need to structure and formalize their practices, membership, ethical codes, and belief systems if they wish to satisfy the *Meyers* Test and acquire a legal exemption.

The second obstacle for underground ayahuasca groups is to demonstrate the sincerity of their beliefs and practices. Here, the DEA has adopted the standards set out by the District Court of New Mexico in *United States v. Quaintance* (2006). The primary challenges posed to ayahuasca groups by *Quaintance* are ad hoc beliefs and evidence of commerce. Many groups representing themselves as branches of the NAC appear to be adopting the NAC title for perceived legal benefits and generally lack a comprehensive system of beliefs or a moral code. Here, the act of cultural

appropriation and lack of sensitivity towards the protection of Native American rights bodes poorly for “sincerity.” It also appears likely that groups that charge for ceremonies and retreats will fail the *Quaintance* test for engaging in economic activity. Calling a fee a “donation” is unlikely to alter this outcome. Groups who can demonstrate ongoing and consistent membership that also request financial support from their members may fair differently, but this would likely be limited to smaller private groups that do not advertise aggressively. While proselytizing is a component of many religions, it is unclear where the line between proselytizing and advertising will be drawn. However, outreach efforts that emphasize fees and services rather than a religious message will likely fail under *Quaintance*.

With the above considerations in mind, Ayahuasca Healings’ petition will most likely be denied. The DEA will be narrow and very strict in applying the guidelines they have set out and are unlikely to set a precedent that could potentially open the floodgates for a proliferation of ayahuasca retreat centers around the country.

We have seen in this chapter how new religious movements and spiritual practices seeking legal accommodations in the United States are typically evaluated against commonly “accepted” or “recognized” religions. This means practices that are less structured, less doctrinal, and less group oriented are less likely to be recognized as religions. This is a significant obstacle for many using ayahuasca, who see it as part of their personal spiritual path and who also reject organized religion. It also potentially leads to some absurdities, with Christian-based Brazilian ayahuasca churches, with roots in the twentieth century, achieving legally exempt status, while age-old indigenous shamanic practices are likely to remain prohibited.

While the criteria for religious exemptions in the United States are strict, they are not insurmountable. Both the UDV and Santo Daime have CSA exemptions, and other groups who pray with this sacrament in a sincere way may also be able to acquire their own exemption. As demonstrated by the Brazilian ayahuasca religions, the road to legitimacy in the United States is long but can end in security and legitimacy. For those individuals and circles that prefer a looser structure and independence on their spiritual path and are less concerned with legitimacy in the eyes of the government, we will likely see underground ayahuasca circles continue to flourish.

References

- Africa v. Commonwealth of Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981).
Alvarado v. City of San Jose, 94 F.3d 1223, 1229 (9th Cir. 1996).
 Anonymous (2011). *Ayahuasca manifesto: The spirit of ayahuasca and its planetary mission*. Retrieved from https://soulquest-6xltrbaxi24mjo1rc8a.netdna-ssl.com/wp-content/uploads/2016/09/ayahuasca-manifesto_anonymous-4.pdf
 Arizona Yagé Assembly [AYA]. (2017). *Arizona Yagé Assembly: About*. Facebook.com. Retrieved from <https://www.facebook.com/pg/ayachurchaz/about/>
 Aya Guide. (2015). *Bringing you into the ayahuasca ceremony*. Retrieved from <https://www.aya.guide/>

- Aya Quest. (2015). Aya quest native American church (A.N.A.C.): Ayahuasca in America. Retrieved from www.ayaquest.com
- Ayahuasca Healings. (2016). *ONAC of Ayahuasca Healings: Vision, mission & philosophy*. Retrieved from <https://ayahuascahealings.com/ayahuasca-usa-church-vision/>
- Brett, D. B. (2016, December 6). *Letter from Derek B. Brett, Counsel for Soul Quest, to Joseph T. Rannazzisi, Deputy Assistant Administrator for the Office of Diversion Control, DEA*. Retrieved from http://www.bialabate.net/wp-content/uploads/2008/08/Soul_Quest%E2%80%99s_response_DEA_2017.pdf
- Bronfman, J. (2007). The extraordinary case of the United States versus the União do Vegetal church. In J. P. Jarpignies (Ed.), *Visionary plant consciousness: The shamanic teaching of the plant world* (pp. 170–187). Rochester, VT: Park Street Press.
- Bronfman, J. (2011). The legal case of the União do Vegetal vs. the Government of the United States. In B. C. Labate & H. Jungaberle (Eds.), *The internationalization of ayahuasca* (pp. 287–300). Zürich: Lit Verlag.
- Brown, Karina (2016, April 15). Ruling doesn't settle future of Native American Church. *Courthouse News Service*. Retrieved from <http://www.courthousenews.com/2016/04/15/ruling-doesnt-settle-future-of-native-american-church.htm>
- Burroughs, W. S., & Ginsburg, A. (1963). *The yage letters*. San Francisco, CA: City Lights Books.
- Callicott, C. (2017, April 17). *Pandora's brew: The new ayahuasca (Part 1–7)*. Savage minds: Notes and queries in anthropology. Retrieved from http://www.bialabate.net/wp-content/uploads/2017/03/Callicot_Pandoras_New_Ayahuasca_Savage_Minds_2017.pdf
- Carpenter, K. (2014, July 25). Motion for leave to file brief and brief of amici curiae the National Council of native American churches, the native American Church of North America, the Azeé' bee Nahagha of Diné nation, the native American church, state of Oklahoma, and the native American church, state of South Dakota, in support of appellees. Oklevueha native American Church of Hawaii, Inc. v. Holder, et al., ninth circuit court of appeals. No. 14-15143. Retrieved from http://www.bialabate.net/wpcontent/uploads/2008/08/NACNA_Brief_Opposing_Oklevueha.pdf
- Church of the Holy Light of the Queen v. Mukasey*, 615 F.Supp.2d 1210 (D. Or. 2009), *aff'd* (9th Cir. 2011) *aff'd* (9th Cir. 2014) (awarding Santo Daime attorney's fees). Retrieved from <http://www.bialabate.net/wp-content/uploads/2009/04/Decision-9th-Court-Appeal-Santo-Daime-USA-2014.pdf>
- Church of the Holy Light of the Queen v. Mukasey*, 615 F.Supp.2d 1210 (D. Or. 2009), *aff'd* (9th Cir. 2011). Retrieved from <http://www.bialabate.net/wp-content/uploads/2009/04/164-32709-amended-judgment.pdf>
- Code of Federal Regulations [CFR]. (1971). Special exempt persons: Native American Church. Title 21, §1307.31.
- Controlled Substances Act [CSA]. (1970). 21 United States Code § 801.
- Drug Enforcement Administration [DEA]. (2009). Guidance regarding petitions for religious exemptions from the Controlled Substances Act pursuant to the Religious Freedom Restoration Act. Retrieved from http://www.bialabate.net/wp-content/uploads/2008/08/DEA_Guidelines_for_Petition_for_Religious_Exemptions_to_CSA.pdf
- Employment Division v. Smith*, 494 U.S. 872 (1990).
- Epps, G. (2001). *To an unknown god*. New York, NY: St. Martin's Press.
- Feeney, K. (2007). The legal bases for religious peyote use. In M. J. Winkelman & T. B. Roberts (Eds.), *Psychedelic medicine: New evidence for hallucinogenic substances as treatments* (pp. 233–250). Westport, CT: Praeger.
- Feeney, K. (2014). Peyote, race, and equal protection in the United States. In B. C. Labate & C. Cavnar (Eds.), *Prohibition, religious freedom, and human rights: Regulating traditional drug use* (pp. 65–88). New York, NY: Springer.
- Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418. (2006).

- Haber, R. (2011). The Santo Daime road to seeking religious freedom in the USA. In B. C. Labate & H. Jungaberle (Eds.), *The internationalization of ayahuasca* (pp. 301–317). Zürich: Lit Verlag.
- Highpine, G. (2015a, December 22). *Is ayahuasca actually illegal in the United States?* Retrieved from <http://www.bialabate.net/news/is-ayahuasca-actually-illegal-in-the-united-states>
- Highpine, G. (2015b, December 12). *The “legality” of ayahuasca churches under the Oklevueha Native American Church.* Retrieved from <http://www.bialabate.net/news/the-legality-of-ayahuasca-churches-under-the-oklevueha-native-american-church>
- Hudson, J. H. (2015, December 7). *Don't believe the hype about the “legal ayahuasca USA church” going around Facebook—it's not legal, it's dangerous, and here's why.* Retrieved from <http://www.bialabate.net/news/dont-believe-the-hype-about-the-legal-ayahuasca-usa-church-going-around-facebook-its-not-legal-its-dangerous-and-heres-why>
- Kocher, G. (2017, June 14). Suit: Woman's collapse, death due to negligence at Berea church. *Lexington Herald Leader*. Retrieved from <http://www.kentucky.com/news/local/counties/madison-county/article156151889.html>
- Labate, B. C. (2012). Paradoxes of ayahuasca expansion: The UDV-DEA agreement and the limits of freedom of religion. *Drugs: Education, Prevention & Policy*, 19(1), 19–26.
- Labate, B. C., & Cavnar, C. (Eds.). (2014a). *Ayahuasca shamanism in the Amazon and beyond*. New York, NY: Oxford University Press.
- Labate, B. C., & Cavnar, C. (Eds.). (2014b). *The therapeutic use of ayahuasca*. Berlin: Springer.
- Labate, B. C., Cavnar, C., & Gearin, A. K. (Eds.). (2017). *The world ayahuasca diaspora: Reinventions and controversies*. Abingdon, UK: Routledge.
- Labate, B. C., & Feeney, K. (2012). Ayahuasca and the process of regulation in Brazil and internationally: Implications and challenges. *International Journal of Drug Policy*, 23(2), 154–161.
- Labate, B. C., & Jungaberle, H. (Eds.). (2011). *The Internationalization of ayahuasca*. Zurich: Lit Verlag.
- McGivern, B. B. (2016, April 4). Ayahuasca Healings Native American Church's petition for a Controlled Substances Act exemption under the Religious Freedom Restoration Act. Letter from Blaine B. McGivern, Counsel for Petitioners, to Joseph T. Rannazzisi, Deputy Assistant Administrator for the Office of Diversion Control, DEA. Retrieved from http://www.bialabate.net/wp-content/uploads/2008/08/Ayahuasca_Healing_DEA_Exemption_Request_Documents..pdf
- Milione, L. J. (2016a, August 22). Letter from Louis J. Milione, Assistant Administrator for the Office of Diversion Control, DEA, to Christopher Young. Retrieved from http://www.bialabate.net/wpcontent/uploads/2017/03/Letter_DEA_Soul_Quest_Aug_2016.pdf
- Milione, L. J. (2016b, December 21). Letter from Louis J. Milione, Assistant Administrator for the Office of Diversion Control, DEA, to Derek B. Brett, Counsel for Soul Quest. Retrieved from http://www.bialabate.net/wp-content/uploads/2008/08/DEA_Response_Soul_Quest_2016.pdf
- National Council of Native American Churches. (2016, February 18). *National Council does not condone faux Native American Churches or marijuana use.* Retrieved from <https://indiancountrymedianetwork.com/history/events/national-council-does-not-condone-faux-native-american-churches-or-marijuana-use/>
- O Centro Espirita Beneficente União do Vegetal [UDV] v. Holder. (2010, July 19). Settlement Agreement signed by Nancy Hollander, attorney for Plaintiffs, Jeffrey Bronfman, President of UDV-USA, and Eric J. Beane, Trial Attorney for the U.S. Department of Justice. No. 00-1647 JP/RLP (D. NM 2010). Retrieved from http://www.bialabate.net/wp-content/uploads/2010/07/UDV_Settlement_Agreement_DEA_20101.pdf
- Oklevueha Native American Church [ONAC]. (2000–2012). *Acquiring an “Oklevueha NAC membership card.”* Retrieved from <http://nativeamericanchurches.org/join>
- Oklevueha Native American Church [ONAC]. (2017). *Oklevueha Native American Church card offering.* Retrieved from <https://nativeamericanchurches.org/membership/>

- Perkel v. U.S. Department of Justice*. On petition for review of an order of the Drug Enforcement Administration, No. 08-74457 (9th Cir. 2010). Retrieved from http://www.bialabate.net/wp-content/uploads/2008/08/Appellate_Court_DEA_Religious_Church_of_Reality.pdf
- Rannazzisi, J. T. (2008, October 1). Letter from Joseph T. Rannazzisi, Deputy Assistant Administrator for the Office of Diversion Control, DEA, to Marc Perkel, denying The Church of Reality's petition for a CSA exemption pursuant to RFRA. Retrieved from http://www.bialabate.net/wp-content/uploads/2008/08/DEA_Rejection_Church_of_Reality.pdf
- Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (1993).
- Sánchez, A. C., & Bouso, J. C. (2015). *Ayahuasca: From the Amazon to the global village, Drug Policy Briefing, No. 43*. Barcelona: Transnational Institute/ICEERS Foundation.
- Slotkin, J. S. (1956). *The peyote religion: A study in Indian-White relations*. Glencoe, IL: The Free Press.
- Soul Quest. (2016). *Soul Quest Ayahuasca Church of Mother Earth*. Retrieved from <https://ayahuascachurches.org/>
- State of Utah v. Mooney*, 2004 UT 49 (UT 2004).
- Tupper, K., & Labate, B. C. (2012). Plants, psychoactive substances and the INCB: The control of nature and the nature of control. *Human Rights and Drugs*, 2(1), 17–28.
- United States v. Meyers*, 95 F.3d 1475, 1482-84 (10th Cir. 1996).
- United States v. Quaintance*, 471 F. Supp. 2d 1153 (D.N.M. 2006)
- Utah Controlled Substances Act (2017). Prohibited Acts: Penalties. 58-37-8(12)a,b. Amendments adopted in 2006.