No. 24-

IN THE

Supreme Court of the United States

ARIZONA YAGÉ ASSEMBLY, *et al.*,

Petitioners,

v.

MERRICK GARLAND, ATTORNEY GENERAL, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In view of this Court's seminal holding recognizing the right of associational privacy in *NAACP v. Alabama*, and its teachings on the application of exacting scrutiny in *Americans for Prosperity v. Bonta*, should this Court not grant a church's petition for writ of mandate to bar enforcement of a civil discovery order that does not serve an important government interest, is not narrowly tailored, and orders the church and its minister to disclose the names, email addresses, telephone numbers, emails, ceremonial attendance and donation records of the church's 5,239 members and donors to three federal law enforcement agencies?

I. PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners:

Arizona Yagé Assembly ("AYA")

Winfield Scott Stanley III ("Stanley")

Respondents:

United States District Court for the District of Arizona, Phoenix

Merrick Garland, Alejandro Majorkas, Anne Milgram, and Chris Magnus, Real Parties in Interest

Rule 29.6 Statement:

The Arizona Yagé Assembly (AYA) has no parent corporation, and no publicly held company owns 10% or more of its stock.

II. STATEMENT OF RELATED PROCEEDINGS

Arizona Yagé Assembly v. Garland, United States District Court for the District of Arizona, Case No. 2:20-cv-2373-ROS, Order from which relief is sought entered on February 22, 2024.

In re: Arizona Yagé Assembly v. District Court, United States Court of Appeals for the Ninth Circuit, Case No. 24-1405, Judgment entered on September 13, 2024.

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III. OPINIONS BELOW

The unpublished opinion of the court of appeals denying mandamus relief is reprinted in the Appendix at 1a-2a.

The unpublished District Court order compelling discovery disclosures is accessible at 2024 U.S. Dist. LEXIS 42197 and is reprinted at App.7a-35a (the "Disclosure Order"). The unpublished District Court order answering Petitioner's writ of mandamus is accessible at 2024 U.S. 9th Cir. Motions LEXIS 737 and is reprinted in the Appendix at 3a-6a. The District Court's unpublished protective order is reprinted at App.36a-55a. The District Court order regarding discovery disputes is reprinted at App.56a-59a. The District Court's order denying Respondent Agencies' motion to dismiss the Petitioners' Fifth Amendment Complaint is published at 671 F. Supp. 3d 1013, and reprinted at App.60a-74a.

IV. JURISDICTION

The judgment of the court of appeals was entered on April 24, 2024, denying mandamus. App., *infra*, 1a-2a. A petition for rehearing en banc was denied by the court of appeals on August 13, 2024. App., *infra*, 75a-76a. On September 13, 2024, the judgment of the court of appeals was entered denying Petitioners' motion to stay the mandate pending petition for writ certiorari for lack of jurisdiction. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

V. STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are set forth in the appendix to this petition. App., *infra*, 75a-79a.The pertinent text of the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, U.S. Const. amend. I.;U.S. Const. amend. IV;U.S. Const. amend. V; U.S. Const. amend. XIV, and the Religious Freedom Restoration Act, 42 U.S.C.S. § 2000bb*et seq.*, are reproduced at App., *infra*, 75a-79a.

VI. STATEMENT OF THE CASE

An Ayahuasca church and its minister seek to prevent the enforcement of a civil discovery order that compels the disclosure of its members' and donors' personal information. Petitioners AYA and Stanley are plaintiffs in *Arizona Yagé Assembly v. Garland*, United States District Court for the District of Arizona, Case No. 2:20-cv-2373-ROS. AYA and Stanley are aggrieved by the District Court's entry of a Disclosure Order that compels Petitioners to answer interrogatories and produce documents to Respondent Agencies that will disclose the identities, email addresses and telephone numbers of AYA's members and donors, as well as their emails, ceremonial attendance records, and the dates and amounts of donations to AYA. App.7a-35a.

Petitioners filed a Petition for Writ of Mandamus commencing *In re: Arizona Yagé Assembly v. District Court*, United States Court of Appeals for the Ninth

Circuit, Case No. 24-1405.[1] After initially staying the Disclosure Order,[2] the Ninth Circuit denied the petition. App.1a.

Petitioners AYA and Stanley now seek review of the Ninth Circuit's denial of their Petition for Writ of Mandamus pursuant to 28 U.S.C. § 1254(a). App.1a.

Petitioners respectfully request this Court to issue a writ pursuant to the All Writs Act, 18 U.S.C. § 1651(a), vacating the Disclosure Order and directing the District Court to apply exacting scrutiny to the Respondent Agencies' discovery demands whenever AYA and Stanley raise a colorable claim of First Amendment privilege. App.7a; App.3a.

VII. THE FACTUAL AND PROCEDURAL BASIS FOR THE PETITION

Eighteen years ago, this Court announced in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418(2006) that a Brazilian visionary church's[3]

1. See, Pet. for Writ of Mand., *In re: ARIZONA YAGE ASSEMBLY; et al.*, No. 24-1405 (9th Cir. Mar. 11, 2024), App. Dkt. #1-1. [hereinafter Pet. for Writ of Mand.]

2. See, Order, *In re: ARIZONA YAGE ASSEMBLY; et al.*, No. 24-1405 (9th Cir. Mar. 15, 2024, App. Dkt. #1-2. [hereinafter Ninth Cir. Stay Order]

3. A "visionary church" or "visionary religion" is one that utilizes a pharmacologically active plant or plant-derived substance as a communion sacrament.

use of "hoasca"[4] in ceremonies was properly protected from the substantial burdens on free exercise imposed by the seizure of the church's hoasca by the Drug Enforcement Administration ("DEA"). A New Mexico District Court had issued a preliminary injunction, upheld by the Tenth Circuit, finding that under the Religious Freedom Restoration Act ("RFRA") 42 U.S.C.S. § 2000bb, a church is a "religious person" with standing to seek an injunction restraining the DEA from substantially burdening the church's free exercise by seizing its hoasca sacrament.

The DEA sought certiorari, and tried to persuade this Court that it could not grant religious exemptions to the Controlled Substance Act ("CSA") 21 U.S.C. § 801, *et seq*., arguing that the CSA mandated a "closed system" of regulatory permissions wholly inconsistent with granting exemptions for religious purposes. This Court rejected the DEA's contention as mere bureaucratic nay saying: "The Government's argument echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions." *O Centro*, 546 U.S. at 436. The Court observed that it would be "surprising" if the CSA were not subject to RFRA-mandated free exercise exemptions, "given the longstanding exemption from the Controlled Substances Act for religious use of peyote, and the fact that the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance." *O Centro*, 546 U.S. at 436-37.

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4. Hoasca is essentially the same type of decoction as the Ayahuasca used by Petitioners AYA and Stanley in AYA ceremonies. Ayahuasca aka hoasca, is an Amazonian tea containing a controlled substance Dimethyltryptamine that have visionary effects lasting approximately 4 hours. See, Pet. for Writ of Mand., Ex. 6. Decl. of Paulo Barbosa at 5, App. Dkt. # 1-6.

The effect of the *O Centro* decision on the nascent visionary religion community was much like the opening of a new territory for exploration. The *O Centro* decision ushered in an expansion of hope in the world of visionary religion, and it drew visionaries to this new frontier in American religion.[5] In 2009, Stanley began a process of drinking Ayahuasca in religious ceremony and traveling to the jungles of Peru to study the tradition with native practitioners. See, Pet. for Writ of Mand., at ¶16, App. Dkt. #1-1. These spiritually powerful experiences inspired Stanley to share Ayahuasca in ceremony with his American peers in the United States. *Id.* In 2015, AYA's congregation was organized as an Arizona nonprofit corporation with Stanley as the director; since January 14, 2022, the church has ceremonies every other weekend in its "Maloka," a circular temple in the desert on the outskirts of Tucson, Arizona. *Id.* ¶19. During ceremony, Stanley and other AYA facilitators lead the congregation

5. The religious use of Ayahuasca has been extensively studied, and the declaration of Petitioner's expert witness Dr. Paulo Barbosa, Adjunct Professor at the University of Ilheus, Brazil, sets forth a summary of peer reviewed science regarding religious use of Ayahuasca. Dr. Barbosa's report avers that Ayahuasca does not adversely affect the cognitive function, physical or mental health of religious Ayahuasca users. See, Pet. for Writ of Mand., Ex. 6 at 5, 8-9, App. Dkt. # 1-6.). Further, Dr. Barbosa opines that Ayahuasca in the religious context does not serve as a drug of abuse or stimulate abuse of other drugs. Id. at 5.Finally, "Ayahuasca consumed in a religious context is not being used as a drug of abuse, nor does the religious use of Ayahuasca lead to the abuse of other drugs; instead, religious Ayahuasca users generally abandon abuse of alcohol after they become members of an Ayahuasca church. Id. at 6. This data is backed up by pre-clinical evidence indicating that Ayahuasca blocks many abuse-related behavioral effects of drug abuse." Id. at 10.

in the practice of visionary communion. *Id*. The heart of AYA as a religious organization is its people, who establish and maintain religious communications with AYA through electronic communications. *Id*. at ¶22. Thus, private information, including the names, email addresses and telephone numbers of church members and donors, and private religious communications are exchanged between AYA and church members. Communications among AYA members are often of a sensitive nature, including disclosure of medical and personal information to each other and to Stanley under circumstances understood to be confidential.

For Stanley and AYA, obtaining a RFRA decree from the District Court appeared to be the only way to make the AYA congregation legally secure. To them, it appeared as an entrance to the promised land of free exercise for sincere applicants. Not easy, necessarily, but possible for those of true religious intent. Thus, on May 5, 2020, AYA and Stanley filed their first complaint. Complaint, *Arizona Yage Assembly v. Garland*, EFC Dkt. # 1. Three years later, on May 4, 2023, the District Court adjudicated the Defendants' last motion to dismiss, finding that Petitioners had pled a viable claim against the DEA, CBP, and DHS for relief under RFRA. App.60a. By alleging that they adhere to the bi-weekly schedule of Ayahuasca ceremonial practice, AYA and Stanley satisfied the requirement of having "a concrete plan" to engage in activity that the Respondent Agencies contend violates the Controlled Substances Act ("CSA").[6] App.60a. However,

6. The District Court found standing to sue based upon DHS seizures of AYA's Ayahuasca in Customs and AYA's "plans to continue holding bi-monthly meetings . . . for the foreseeable future."App.60a.

AYA and Stanley maintain that they are engaged in no criminal conduct, because their free exercise practice of Ayahuasca ceremony is lawful *ab initio*. They therefore seek judicial recognition that their religious practice is presently lawful.

Having completed the pleading stage, AYA and Stanley looked forward to completing discovery and proceeding to trial. What Stanley did not know was that the Respondent Agencies would take the role of devil's advocate, casting doubt on his religious sincerity, and subjecting the AYA congregation to tests of faith. On September 1, 2023, Defendants propounded a first set of interrogatories and requests for production, attached as Exhibits 7 and 8 to the Petition, respectively. See, Pet. for Writ of Mand. at ¶26, 27, App. Dkt. # 1-1. They are reproduced here below in chart form with the Respondent Agencies' claimed basis of relevance.

Interrogatories	Claimed Basis of Relevance
4. Identify each and every person who has attended or participated in, or who has requested to attend or participate in, one of your ceremonies. For each person identified, indicate when the person attended or participated, or requested to attend or participate; whether the person was permitted to attend or participate and any explanation as to why or why not the person was permitted to attend or participate; and how many times the person has attended or participated in one of your ceremonies.	• Religious sincerity of participants (sincerity) • whether individuals join under false pretenses • safety • risk of diversion (diversion) Pet. for Writ of Mand., Ex. 9 at 22:10-24, No. 24-1405, App. Dkt. #1-1.

10. Identify the date and location of each and every instance in which you held a ceremony, including those in which Ayahuasca is brewed, distributed, consumed, destroyed/disposed of, or otherwise present. For each and every instance identified, indicate every substance consumed by any person or offered for consumption, who was present at the ceremony, who was responsible for handling any substances consumed by any person or offered for consumption, and who served in a leadership role and/or position of authority at the ceremony (e.g., Minister of the Assembly, "lead facilitator," other facilitator).	• diversion 53:19–54:5, at *id.*
11. Identify each and every instance in which you have stored, prepared, secured, distributed, dispensed, obtained, imported, exported, destroyed/disposed of, transported, transferred to another person, or otherwise handled Ayahuasca. For each instance identified, indicate when the activity occurred, any and all persons involved in the activity, including any senders and/or recipients, and any steps you required the person or persons to take to be granted permission to perform the activity (including, but not limited to, training, background check, use of key or code).	• diversion • safety 55:17-28, at *id.*

16. Identify each and every one of the "honored educators" and "peers" from which you seek, and with whom you share, "knowledge and feedback." For each individual identified, describe the "knowledge and feedback" sought or shared.	• witness identification • safety • sincerity 14:19–15:4, at *id.*
18. Identify each and every person who wrote, edited, reviewed, commented on, or otherwise received a draft of the documents attached to your original motion for a preliminary injunction in this case, Dkt. No. 33: "AYA Tenets and Precepts"17; "Ceremonial Instructions"18; "Code of Ethics"19; the questionnaire filed in this case as DKT. No. 33-6; and the confirmation letter filed in this case as Dkt. No. 33-7.	• witness identification • sincerity 64:15-28, at *id.*
21. For each document used at your ceremonies or trainings, or that you otherwise intend to rely upon to demonstrate the existence of what you allege are your "sincerely held religious beliefs and practices," identify each and every person who wrote, edited, reviewed, commented on, or otherwise received drafts of the document. Response: Stanley wrote all of the documents that he and AYA will present as evidence of sincerely held religious beliefs and practices.	• origin, motivation, and any changes to the documents • sincerity • witness identification 66:9-19, at

23. Identify each and every organization or association of which AYA or one of the named Plaintiffs is a member, or have requested to be a member. For each organization or association identified, indicate when AYA or one of the named Plaintiffs first requested to become a member, how long AYA or one of the named Plaintiffs has been a member, whether AYA or one of the named Plaintiffs pays dues or anything else of value to the organization or association, and any individuals at the organization or association with whom AYA or one of the named Plaintiffs communicates or has communicated.	• sincerity • diversion • witness identification 68:12-24, at *id.*

Documents to Produce	**Claimed Basis of Relevance**
7. Produce any and all documents that contain communications with any and all individuals who are members of AYA relating to membership in AYA, your ceremonies, and your tenets and beliefs.	• sincerity • diversion • screening practices • substantial burdened 74:8-22, at *id.*

8. Produce any and all copies of the "AYA attendee roster."	• sincerity • whether individuals join AYA under false pretenses • attendance patterns • witness identification 76:6-19, at *id.*
11. Produce any and all documents that contain communications with any and all individuals who have facilitated, participated in, requested to participate in, or attended one or more of your ceremonies.	• diversion • safety • amenability to regulatory discipline 55:17–56:3, *at id.*
12. Produce any and all documents regarding or relating to your ceremonies, including those in which Ayahuasca is brewed, distributed, consumed, destroyed/disposed of, or otherwise present.	• witness identification • safety • justifications for enforcing the CSA against Plaintiffs as the least restrictive means 41:11-24, at *id.*

13. Produce any and all documents regarding or relating to each and every instance in which you have received anything of value, including payment, donations, or in-kind contributions, from ceremony participants or those requesting to participate in one of your ceremonies.	• sincerity • whether funding is consistent with a religious organization • financial details of AYA 43:11-23, at *id.*
20. Produce any and all communications to or from any and all individuals who have been involved in the storage, preparation, security, distribution, dispensing, obtaining, importing, exporting, destroying/disposing, transporting, transferring to another person, or otherwise handling of Ayahuasca.	• diversion risk and counter-measures • site security • type of DEA registration AYA might require • sites requiring registration • nature and extent of oversight after DEA registration. 51:4-18, at *id.*

21. Produce any and all documents that identify, describe, refer to, or contain communications to or from any and all individuals from whom you seek guidance or consultation, whether or not within your organization, including, but not limited to, the "honored educators" and "peers" from which you seek, and with whom you share, "knowledge and feedback," as well as and any association of psychedelic churches.	• witness identification • safety • sincerity • character of Petitioners' beliefs 16:11-25, at *id.*

AYA and Stanley presented timely objections to the seven interrogatories and seven document demands on grounds that they were disproportionate to the needs of the litigation, violated the First and Fourth Amendment, and declined to provide answers or production to them.[7] *Id.* at ¶28.

Respondent Agencies initiated the District Court's discovery dispute adjudication system, a process whereby the parties are restricted to a joint statement with one half page per discovery issue,[8] pursuant to the chambers

7. AYA and Stanley did not raise Fifth amendment objections on behalf of the AYA members, because the District Court had already ruled that AYA and Stanley did not have standing under *Albertson v. Subversive Activities Control Bd.*, 382 U.S. 70 (1965) to present Fifth Amendment objections on behalf of the AYA congregation. App.56a.The basis for the ruling was never clarified, as it seems inconsistent with the holding in *Albertson*.

8. The impropriety of this procedure is discussed infra at Section III.J.

Dispute Rule. See, Pet. for Writ of Mand. at Ex. 3, App. Dkt. # 1-3. On February 12, 2024, the Respondent Agencies filed the Joint Statement on Dispute over Plaintiffs' Responses to Defendants' First Sets of Interrogatories and Requests for Production of Documents. See, Pet. for Writ of Mand., Ex. 9, App. Dkt. #1-9. Because the District Court's discovery dispute adjudication system forbade the filing of declarations or briefs in support of their position, Stanley and AYA were unable to file any affidavits to establish the extent or nature of the prejudice they would face if the Respondent Agencies' privacy-invasive demands were given the force of law via judicial order. See, Pet. for Writ of Mand., Ex. 2, Decl. of Scott Stanley at ¶4-5; Ex. 3, App. Dkt. #1-2.

On February 22, 2024, the District Court ordered AYA and Stanley to provide complete responses to all the Defendant Agencies' Demands on pain of monetary and issue sanctions. App.7a. All of AYA and Stanley's objections were shunted aside, and First Amendment and Fourth Amendment claims were specifically rejected as inapplicable. App.7a-11a. Compliance with the District Court's Disclosure Order would require AYA to fully disclose the "identities of no less than 5,239 people . . . tens of thousands of emails discussing religious matters." See, Pet. for Writ of Mand. at ¶36 and Ex. 2 at ¶3, App. Dkt. # 1-2. The church members and donors associated with AYA have entrusted that the church would keep secret "records of private, personal activity, and records of donation and ceremonial contributions." *Id*.

Compelling this broad sweeping disclosure would require AYA to destroy the trust and confidence the

church has spent nearly a decade of time building with its congregation and those individuals associated with the religious organization. *Id.* at ¶37.

On March 8, 2024, Petitioners filed a Writ of Mandamus requesting the Ninth Circuit Court of Appeals to vacate the Disclosure Order on the basis that compelling responses to Defendants' discovery requests required Petitioners to provide information that, if disclosed, cause irreparable harm to the associational privacy of AYA members and donors and have a chilling effect upon AYA members and donors, deterring their association with the church, and throttling donations. Pet. for Writ of Mand. at ¶38, 39, App. Dkt. # 1-1. Petitioners requested a stay of enforcement pending issuance of a permanent protective order and cited to *Perry*, 591 F.3d, 1147, 1165 (9th Cir. 2010), where the Court applied the exacting scrutiny standard to overturn a disclosure order injurious to the associational privacy of a political organization.

On March 15, 2024, a first panel found that the petition "raises issues that warrant an answer," invited the District Court to answer, and stayed the Disclosure Order. See, Ninth Cir. Stay Order at 1, No. 24-1405, App. Dkt. #1-2. Real Parties in Interest and the District Court filed answers. App.3a.

On April 25, 2024, a second panel denied the writ, stating that "Petitioners have not demonstrated a clear and indisputable right to the extraordinary remedy of mandamus," providing no analysis to justify the denial. App.1a.

On June 7, 2024, pursuant to Fed. R. App. 35(b), Petitioners submitted a Petition for Panel and en banc Rehearing.[9]

On August 13, 2024, the second panel denied Petitioners' motion for reconsideration and denied Petitioners' motion for reconsideration en banc on behalf of the court. App.75a.

Petitioners now respectfully submit their Petition for Writ of Certiorari in aid of this Court's appellate jurisdiction, pursuant to the All Writs Act, 28 U.S.C.S. § 1651(a) and Supreme Court Rule 20, requesting that this Court issue a writ of mandamus vacating the Disclosure Order and directing the District Court to apply exacting scrutiny to the Respondent Agencies' future discovery demand when Petitioners raise colorable First Amendment objections.

VIII. SUMMARY OF ARGUMENT

The Disclosure Order compels AYA and Stanley to disclose the identities, email addresses and telephone numbers of AYA's 5,239 members and donors, and to produce their emails, ceremonial attendance and donation records to the Respondent Agencies. App.7a. Although the District Court's joint statement procedure[10] fell far short of providing sufficient scope to lay a factual foundation for conducting exacting scrutiny, AYA and Stanley

9. See, Pet's Pet. for Reh'g, *In re: ARIZONA YAGE ASSEMBLY; et al.*, No. 24-1405 (9th Cir. June 7, 2024), App. Dkt. 20.1. [hereinafter Pet's Pet. for Reh'g].

10. See, Pet. for Writ of Mand., Ex. 3, App. Dkt. #1-3.

timely objected to the provisions of the Disclosure Order on First Amendment grounds;[11] however, the District Court concluded that First Amendment privilege had no application, and reproached AYA and Stanley for attempting to raise the objection. App.7a-35a.

Because the Disclosure Order was rendered on a factually and legally inadequate record, it bears no impress of the application of exacting scrutiny. App.3a. Thus, the Disclosure Order itself fails exacting scrutiny on all counts. The Disclosure Order fails to identify any sufficiently important governmental interest of the Respondent Agencies to be advanced by the disclosures. App.7a. It fails to identify a substantial relationship between a governmental interest and the matters to be disclosed. App.7a.Finally, the Disclosure Order fails to narrowly tailor the required disclosures. App.3a; App.7a. The failures in the Disclosure Order have caused and are causing harm to AYA's right to associational privacy. The Disclosure Order's chilling effect on the associational liberty of AYA, Stanley, and the AYA congregation were apparent when the first Ninth Circuit panel stayed its effects. Stanley's declaration established that irreparable harm to AYA, himself, and the AYA congregation would result from enforcement of the Disclosure Order.

By allowing the Disclosure Order to stand, the Ninth Circuit has aided the Respondent Agencies to turn RFRA from a shield that protects religious persons from Government burdens on their free exercise, into a sword the Government can use to lay bare the private religious

11. See, Pet. for Writ of Mand., Ex. 9 at 6:9-11; 40:7-17; 43:25-44:7; 62:1-5; 75:4-10; 83:20-84:7, App. Dkt. #1-9.

communications of AYA members and donors to the world's three largest law enforcement agencies.

This was not what Congress intended RFRA to accomplish. The Disclosure Order, if upheld, heralds a grim future for genuine visionary religion in RFRA litigation with the Respondent Agencies, turning a portal to the promised land of free exercise to a passageway to an interrogation facility where those who enter must reveal all, or suffer harsh punishment in the form of financial penalties and evidentiary sanctions, as specifically threatened by the Disclosure Order. App.7a.

This Court can correct the clear error of the District Court, ignored by the Ninth Circuit for reasons it did not trouble to recite, that places the associational privacy of 5,239 people in peril, and would coerce Stanley to breach his commitment of religious privacy to the AYA congregation. App.75a; App.7a. For one who came to the United States District Court filled with goodwill and optimism, seeking to redeem the promise of free exercise for visionary religion that this Court made in *O Centro*, it must be bitter indeed for Stanley, after all his troubles seeking judicial approval for his church, to receive from the District Court—a cup of hemlock.

This cannot be the end of this story. Ending it thus would turn the clock back on Justice Harlan's stirring pronouncements in 1958, declaring the right of associational privacy in *NAACP v. Alabama*, and undermine Justice Alito's assurance in *Americans for Prosperity v. Bonta* that exacting scrutiny "has teeth."

This Court can and must write a new ending to this story. It must correct the District Court's clear error, and

replace it with a teaching, much needed at this time, on how to apply exacting scrutiny to law enforcement agency discovery demands in RFRA lawsuits by religious persons seeking free exercise exemptions from the CSA.

IX. ARGUMENT

A. Issuance of the Writ Will be in Aid of this Court's Appellate Jurisdiction

"[C]ircuit courts do not retain unfettered discretion to decide whether to issue the writ. The Supreme Court can review an issuance or refusal to issue for abuse of discretion and has overturned circuit court decisions in both circumstances." *Discontent and Indiscretion: Discretionary Review of Interlocutory Orders*, 77 Notre Dame L. Rev. 175, 200-01 (2001); *Will v. United States*, 389 U.S. 90, 95 (1967).

The issuance of the writ of certiorari in this case will aid this Court's appellate jurisdiction by addressing significant First Amendment concerns related to associational privacy. This Ayahuasca church seeks to prevent the enforcement of a civil discovery order that compels the disclosure of its members' and donors' personal information. This Court has consistently recognized that compelled disclosure of membership lists can infringe on the privacy of association and belief guaranteed by the First Amendment. In *NAACP v. Alabama*, the Court held that privacy in group association is indispensable to the preservation of freedom of association, particularly for groups espousing dissident beliefs. *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449(1958). This Court's rulings have taught us to protect private association as a fundamental

liberty that religious organizations may assert to protect their congregations from the existential threat of exposure to law enforcement agencies. The compelled disclosure in this case is particularly injurious to First Amendment rights for groups like AYA that espouse dissident beliefs, because for such groups, associational privacy is an existential requirement.

B. Issuance of the Writ is Warranted by Exceptional Circumstances

Exceptional circumstances warrant the issuance of the writ in this case due to the significant First Amendment implications and the potential harm to the Ayahuasca church's members and donors. The Court has previously acknowledged that disclosure requirements must be narrowly tailored to serve a compelling governmental interest and must survive exacting scrutiny. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021). In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Court emphasized that significant encroachments on First Amendment rights cannot be justified by a mere showing of some legitimate governmental interest; there must be a substantial relation between the governmental interest and the information required to be disclosed. *Id.*

As averred in the Stanley Declaration, the Disclosure Order would compel Petitioners to reveal: the identities of AYA's members, donors, and correspondents; their email addresses and telephone numbers; their email correspondence with AYA and Stanley; which ceremonies they attended, how often they attended; whether they donated to AYA; and, if they did, in what amount. App.7a; Pet. for Writ of Mand., Ex. 2 at ¶2, App. Dkt. # 1-2. Stanley

averred that "producing all this information, with no time period limitation, would compel" Petitioners "to disclose (a) the identities of no less than 5,239 people, (b) tens of thousands of emails discussing religious matters, (c) thousands of pieces of private information, (d) records of private activity, and (e) records of donations made with the understanding that they would be kept secret." Pet. for Writ of Mand., Ex. 2 at ¶3, App. Dkt. # 1-2.

Petitioners would suffer multiple associational injuries from compliance with the Disclosure Order: (a) severe reputational damage to AYA and Stanley, (b) membership withdrawal, (c) discouragement of new members from joining, (d) discontinuance of donations, and (e) decline in attendance at ceremonies. *Id*. at ¶4. These constitute exceptional circumstances justifying the issuance of the writ.

C. Adequate Relief Cannot be Obtained in Any Other Form or from Any Other Court

Adequate relief cannot be obtained in any other form or from any other court because the compelled disclosure order directly implicates the First Amendment rights of the Ayahuasca church's members and donors. The situation facing Stanley and AYA is analogous to that in *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975), where judicial review was necessary to prevent the violation of First Amendment rights through compelled disclosure.

Given the substantial risk of harm and the lack of alternative remedies, the issuance of the writ is essential to protect the constitutional rights of AYA, Stanley, and the AYA congregation.

D. *NAACP v. Alabama* Recognized the Existence of a First Amendment Right of Associational Privacy that Protects Religious and Political Organizations from Government Intrusion by Compulsory Process.

In *Ams. for Prosperity Found.*, this Court summarized the history of *NAACP v. Alabama*, 357 U.S. 449: "As part of an effort to oust the [NAACP] from the State, the Alabama Attorney General sought the group's membership lists. We held that the First Amendment prohibited such compelled disclosure. We explained that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," and we noted "the vital relationship between freedom to associate and privacy in one's associations." Because NAACP members faced a risk of reprisals if their affiliation with the organization became known—and because Alabama had demonstrated no offsetting interest "sufficient to justify the deterrent effect" of disclosure, we concluded that the State's demand violated the First Amendment." *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (citations omitted).

In *Buckley*, 424 U.S. 1, the Court declared: "The right of associational privacy developed in *NAACP vs. Alabama* derives from the rights of the organization's members to advocate their personal points of view in the most effective way." *Id.* at 75. "In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion." *Griswold v. Connecticut*, 381 U.S. 479, 483, 85(1965) (citing *NAACP v. Button*, 371 U.S. 415, 430-31 (1963)) (state may not prohibit NAACP

recruitment and litigation activities protected by the First and Fourteenth Amendments as modes of expression and association).

Ams. for Prosperity Found., sets forth the elements of exacting scrutiny as follows: "Regardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny. *** While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest. ***" *Id.* at 2382. "[Further,] a substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored. This requirement makes sense. Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly—"[b]ecause First Amendment freedoms need breathing space to survive." *Id.* at 2384 (quoting *NAACP v. Button*, 371 U.S. 415, 433(1963).

Here, exacting scrutiny was not applied to the Respondent Agencies' discovery demands, that are of such unlimited scope in time and subject matter that they would have failed ordinary proportionality review, if such had been applied.[12] If exacting scrutiny had been applied,

12. Faced with similar demands for donor information, that was the view expressed by the Fifth Circuit in *X Corp. v. Media Matters for Am.*, No. 24-10900, 2024 U.S. App. LEXIS 26443 (5th Cir. Oct. 20, 2024), where the plaintiff, social media platform "X," demanded that nonprofit defendant Media Matters produce documents sufficient to identify "all Your donors or any others who provide financial support of any kind, their residence, the time and place of their donation or provision of financial support, and the amount of their donations," and "all Your attempts to

the Respondent Agencies would have been asked how they would use the information they would gather in this vast hoovering up of religious person's identities, digital contact information, and religious communications. The general invocations provided—"to avoid diversion," "to test sincerity," "to probe for false professions of religion," cannot reasonably be connected to the unlimited scope of these inquiries. The problem is of course, merely compounded when we ask if the Disclosure Order is narrowly tailored. When the proportionality check has never been performed, no focus of inquiry has been articulated, so the inquiry cannot be narrowly tailored.

Given the complete lack of scrutiny of the Respondent Agencies' demands, what resulted was a Disclosure Order that turns the intent of RFRA on its head—making religious persons seeking relief from government burdens on free exercise into the objects of the Respondent Agencies' own "strict scrutiny." Such a result is clearly the result of a deviation from proper judicial procedure that can only be remedied by the exercise of this Court's supervisory authority.

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solicit donations or financial support of any kind, including but not limited to any discussions with any donors." *X Corp. v. Media Matters for Am.*, No. 24-10900, 2024 U.S. App. LEXIS 26443, at *2 (5th Cir. Oct. 20, 2024). The Fifth Circuit found the demands facially defective. "We doubt that X Corp. needs the identity of Media Matters's every donor, big or small, to advance its theories. Nor does it need the full residential addresses for any of those stated purposes. *** Because X Corp.'s discovery requests are disproportional to the needs of the case, Media Matters is likely to succeed on the merits of its appeal." *X Corp. v. Media Matters for Am.*, No. 24-10900, 2024 U.S. App. LEXIS 26443, at *14-16 (5th Cir. Oct. 20, 2024).

E. The Denial of the Writ Conflicted with the Ninth Circuit's Own Precedent in *Perry v. Schwarzenegger* by Leaving Petitioners to Suffer the Destructive Effects of the Disclosure Order on AYA's Congregation and Donors

This Court has steadfastly protected the right of private citizens to keep their identities and associational activities away from the prying eyes of government officials that demand sensitive information about their private associations. This Court's rulings, beginning with *NAACP v. Alabama*, and most recently culminating in *Americans for Prosperity v. Bonta*, leave no doubt that private association is a zealously guarded fundamental liberty, the invasion of which can be lethal to groups espousing unpopular views, and is therefore permitted only where the government carries its burden and specifically justifies the intrusion. Moreover, the Ninth Circuit officially declared that the right way to present an associational privacy challenge to a civil disclosure order is via petition for writ of mandamus. *Perry v. Schwarzenegger*, 591 F.3d 1147, 1159 (9th Cir. 2010). In *Perry*, the Ninth Circuit emphasized that, in order to not run afoul of this Court's holding in *Mohawk Indus. v. Carpenter*, 558 U.S. 100, 130 S. Ct. 599 (2009), it would not allow interlocutory appeals from civil discovery under the collateral order doctrine; therefore, mandamus provides the only avenue of relief. *Perry*, 591 F.3d 1154, 1156.

The petition AYA and Stanley submitted satisfied all of the requirements of the *Perry* decision, that incorporates the mandamus factors set forth in *Bauman v. United States Dist. Court*, 557 F.2d 650, 654 (9th Cir. 1977).[13]

13. "In *Bauman* . . . we established five guidelines to determine whether mandamus is appropriate in a given case:

Mandamus provided AYA and Stanley with their only avenue of relief; they faced a danger of harm not correctable on appeal; the Disclosure Order is clearly erroneous as a matter of law; and the Disclosure Order was the product of a flawed procedure repeatedly applied by the District Court. Finally, as argued hereinbelow, the case presented an issue of first impression—how exacting scrutiny should be applied in a RFRA case filed by a visionary church seeking a CSA exemption to engage in free exercise use of a visionary sacrament.

However, after the initial stay entered by the first panel,[14] the merits panel showed no interest in the petition, denying it summarily without explanatory comment. App.1a. The petition for rehearing met the same fate. App.75a. Accordingly, AYA and Stanley present their petition for a writ of mandamus to this Court.

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(1) whether the petitioner has no other means, such as a direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in any way not correctable on appeal; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order is an oft repeated error or manifests a persistent disregard of the federal rules; and (5) whether the district court's order raises new and important problems or issues of first impression. *Perry v. Schwarzenegger*, 591 F.3d 1147, 1156 (9th Cir. 2010).

14. Ninth Cir. Stay Order at 1, No. 24-1405, App. Dkt. #1-2.

F. Associational Privacy Protects Organizations that Espouse Dissident Views from the Existential Threat Posed by Disclosure Orders for Donor Identities, Communications, Attendance and Donation Records

"Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order" as "a requirement that adherents of particular religious faiths or political parties wear identifying arm-bands. . . . " *NAACP v. Ala.*, 357 U.S. at 462 (quoting *Am. Commc'ns Ass'n v. Douds*, 339 U.S. 382, 402 (1950). "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Id.* (emphasis added).

Petitioners believe Ayahuasca is a sacred medicine, and conduct Ayahuasca ceremonies as an act of free exercise in the teeth of the DOJ and DEA's insistence that such conduct is unlawful. AYA thus espouses dissident views; accordingly, "privacy in group association" is "indispensable to preservation of freedom of association" for AYA's members and donors.

As Stanley's declaration establishes, the mere disclosure to members and donors that their identities, emails, attendance and donation records had been forwarded to the DOJ for sharing with the DEA, DHS, and CBP, would result in wholesale losses of members, and an immediate fall-off in donations. See, Pet. for Writ of Mand., Ex. 2 at ¶2, App. Dkt. # 1-2.

It does not diminish the harm to Petitioners that these law enforcement agencies would not be allowed to disseminate this information publicly due to the Protective Order. App.36a.

This Court's associational privacy jurisprudence establishes that disclosure requirements can chill association "[e]ven if there [is] no disclosure to the general public." *Ams. for Prosperity Found.*, 594 U.S. at 616. In *Shelton*, for example, this Court noted the "constant and heavy" pressure teachers would experience simply by disclosing their associational ties to their schools. *Id.* Exacting scrutiny is triggered by "state action which may have the effect of curtailing the freedom to associate," and by the "possible deterrent effect" of disclosure. *Ams. for Prosperity Found.*, 594 U.S. at 616(quoting *Shelton v. Tucker*, 364 U.S. 479, 486 (1960)(emphasis added).

G. AYA Would Suffer a Loss in Member Recruitment, Participation, and Donations

NAACP v. Alabama created an "effects test" for standing to sue for infringement of the First Amendment right of associational privacy. Although Alabama officials likely intended to impede NAACP's political organizing by compelling disclosure of its member list, Justice Harlan held that, regardless of official intent, the destructive effect on the exercise of associational freedom rendered the order unconstitutional. That effect, in and of itself, "inevitably" abridges associational rights.

"[T]hat Alabama . . . has taken no direct action . . . to restrict the right of petitioner's members to associate freely, does not end inquiry into the effect of the production

order. In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action." *NAACP v. Ala.*, 357 U.S. at 461 (citations omitted and emphasis added).

"It is clear from our decisions that NAACP has standing to assert the constitutional rights of its members." *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296 (1961), quoting *NAACP v. Ala.*, 357 U.S. 449, 459 (1958). Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters. . . . " *NAACP v. Ala.*, 357 U.S. at 460-61(emphasis added).

The chilling effects of the Disclosure Order that Petitioners' members and donors would experience if the Disclosure Order were enforced would inevitably abridge the rights of associational privacy of Petitioners, their members, and their donors, chilling their willingness to participate in AYA activities. App.7a. Accordingly, Petitioners clearly have met Justice Harlan's effects test, because the Disclosure Order causes associational injury.

H. The Constitutional Protection of Religious Observance Encompasses First and Fourth Amendment Protections for Information and Communications Entrusted by Members and Donors to their Religious Organizations.

"Our constitutional protection of religious observance supports finding a reasonable expectation of privacy in sacred spaces and communications, where privacy

concerns are acknowledged and protected, especially during worship and other religious observance." *Fazaga v. FBI*, 965 F.3d 1015, 1037 (9th Cir. 2020);[15] *cf. Mockaitis v. Harcleroad*, 104 F.3d 1522, 1533 (9th Cir. 1997).[16] "[W]here the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth Amendment must be applied with 'scrupulous exactitude.'" *Fazaga*, 965 F.3d at 1037. Essential to the free exercise of religion is the evidentiary priest-penitent privilege which has been broadly recognized in the United States, especially when Fourth Amendment values are implied. *Mockaitis*, 104 F.3d at 1532.[17] In *Grand Jury Subpoena v. Kitzhaber*, 828 F.3d 1083 (9th Cir. 2016), the Court emphasized that emails contain intimate details of our lives and are expected to be kept private, a standard that society recognizes as reasonable. *Id.* at 1086.

The Ninth Circuit's application of RFRA is particularly instructive in *Mockaitis v. Harcleroad*, and provides significant support for assertions of First, Fourth, Fifth, and Fourteenth Amendment rights regarding the

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15. Overruled on other grounds, (not relevant in the case at bar), specifically the Ninth Circuit's reasoning that 28 U.S.C. § 1806(f) displaced the state secret privilege. See, *FBI v. Fazaga*, 595 U.S. 344 (2022).

16. Overruled on other grounds by this Court's decision in *City of Boerne*, where the Court found RFRA unconstitutional as applied to the States and their subdivisions. *See City of Boerne v. Flores*, 521 U.S. 507, 532, 536 (1997).

17. All fifty states have enacted statutes "granting some form of testimonial privilege to clergy-communicant communications. Neither scholars nor courts question the legitimacy of the privilege, and attorneys rarely litigate the issue." *Id.*

privileged nature of religious emails sent to AYA and Stanley. App.77a. When the church is the custodian of those records, the church should be allowed to assert the interests of its members and donors to protect the federally recognized privilege for religious communications. In *Mockaitis*, the Ninth Circuit found that government officials substantially burdened a priest's free exercise when a prison confession was taped and seized by the prosecutor's office for use at trial. *Mockaitis*, 104 F.3d at 1533. The priest was reasonable in relying on the nation's history of respect for religion and the sanctity of the secrets of confession in particular and therefore, had a reasonable expectation of privacy. *Id.* at 1533. Regardless of the government's compelling interest to secure relevant evidence, the district attorney substantially burdened the free exercise of religion, making it impossible for the priests to administer the sacrament in prison in violation of RFRA. *Id.*

In *Fazaga v. FBI*, the Court held that Muslims' expectation that their conversations within the mosque prayer hall would be confidential with other co-religionists (unless shared by one of them with others), and so would not be intercepted by government agents, was objectively reasonable. *Fazaga*, 965 F.3d at1037.

I. Constitutional Protections are Extended to Digital Communications Entrusted to Third Parties Subject to a Reasonable Expectation of Privacy

In *Carpenter v. United States*, 585 U.S. 296 (2018), this Court held that accessing historical cell phone location records constitutes a search under the Fourth

Amendment, requiring a warrant supported by probable cause. The Court emphasized that individuals have a reasonable expectation of privacy in their physical movements as captured through cell phone location data even if that information is obtained from a third party. *Id.* at 313. Emails are property and digital papers. Emails are treated like physical mail when determining whether an individual has a reasonable expectation of privacy in its content. *Grand Jury Subpoena*, 828 F.3d at 1090.

This Court has also emphasized the corresponding need for our jurisprudence to reflect the changing technological landscape and the ability of digital troves to contain "the sum of an individual's private life," "a digital record of nearly every aspect of their lives, information that "could reveal an individual's private interests or concerns" and "location information . . . that can reconstruct someone's specific movements down to the minute." *Riley v. California*, 573 U.S. 373, 393-95 (2014). It follows that personal email can, and often does, contain all the information once found in the "papers and effects" the Framers mentioned explicitly in the Fourth Amendment. *Kitzhaber*, at 1090. The content of email is presumed to be read only by the intended recipient and though the form is digital, there is a reasonable expectation of privacy in one's email. *Id.*

The Second Circuit recently reaffirmed this view. "[A] United States person ordinarily has a reasonable expectation in the privacy of his e-mails sufficient to trigger a Fourth Amendment reasonableness inquiry." *United States v. Maher*, No. 23-6181-cr, 2024 U.S. App. LEXIS 27542, at *18 (2d Cir. Oct. 30, 2024), *quoting United States v. Hasbajrami*, 945 F.3d 641, 666 (2d Cir.

2019) and *citing United States v. Warshak*, 631 F.3d 266, 285-86 (6th Cir. 2010) (would defy common sense to afford emails lesser Fourth Amendment protection than traditional forms of communication).

Similarly, the property and personal information of AYA's members and donors, which include names, emails, mobile phone numbers, ceremonial attendance, and donation records, are digital records that disclose personal details and are thus protected under the Fourth Amendment. App.77a. Moreover, the Members and Donors have demonstrated a subjective expectation of privacy in their property and personal information by using password protection to keep their emails private. See, Decl. of Taylor Cox at ¶26, 27, *AYA v. Garland*, No. 20-CV-02373-ROS (Az. Dist. Ct. Oct. 7, 2024), Tr. Dkt. # 250-2. The rationale underlying the privilege for confidential communications to religious officials, as recognized under federal common law, supports the argument that such information should remain confidential and not be disclosed without the consent of the individuals involved. *Mockaitis*, 104 F.3d at 1532.

The Ninth Circuit's decision in *Kitzhaber* follows the correct trend of precedent, quashing a grand jury subpoena for the former Oregon governor's personal emails, recognizing the significant privacy interests at stake. There, the Ninth Circuit held that the subpoena was overly broad and infringed upon the governor's reasonable expectation of privacy. *Kitzhaber*, 828 F.3d at 1088. This decision underscores the principle that digital communications, such as emails, are protected under the Fourth Amendment and cannot be disclosed without a warrant supported by probable cause. App.77a.

In *Buckley*, 424 U.S. 1, the Court declared: "The right of associational privacy developed in *NAACP vs. Alabama* derives from the rights of the organization's members to advocate their personal points of view in the most effective way." *Id.* at 75. "In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion." *Griswold*, 381 U.S. at 483, citing *NAACP v. Button*, 371 U.S. 415, 430-31 (1963)(state may not prohibit NAACP recruitment and litigation activities protected by the First and Fourteenth Amendments as modes of expression and association).

J. Chambers Rules that Vitiate the Federal Rules of Procedure, Exceed the District Court's Authority Under F.R.Civ.P. 83, and Violate Constitutional Protections, are Invalid.

The District Court exceeded its authority under F.R.Civ.P. 83 by eliminating a right granted by the drafters of the Federal Rules of Civil Procedure. Pet. for Writ of Mand., Ex. 3, App. Dkt. # 1-3. The disregard of the Federal Rules has been more than persistent—it has been institutionalized by the adoption of the Dispute Rule which has been enforced in subsequent rulings. *Steigleman v. Symetra Life Ins. Co.*, No. CV-19-08060-PCT-ROS, 2023 U.S. Dist. LEXIS 10264 (D. Ariz. Jan. 20, 2023)(motion for protective order "was procedurally improper and could be denied on that basis alone") and *Dishon v. Gorham*, No. CV-16-04069-PHX-ROS, 2018 U.S. Dist. LEXIS 180502 (D. Ariz. Oct. 19, 2018).See, Pet. for Writ of Mand., Ex. 3, App. Dkt. # 1-3. By depriving the parties of the right to file and defend discovery motions under Fed. R. Civ. P. 37., the District Court exceeded its authority in a way that infringed the constitutionally protected right of due

process under the Fourteenth Amendment. App.3a. And this Court has held that when a District Court evades its adjudicative duties it may amount to "little less than an abdication of the judicial function depriving the parties of a trial before the court on the basic issues involved in the litigation," for which a writ may issue to require the District Court to assume its duties under the Federal Rules, and to refrain from simplifying them for purposes of convenience. *La. BUY v. HOWES*, 352 U.S. 249, 256 (1957).

"Where the subject concerns the enforcement of the . . . rules which by law it is the duty of this Court to formulate and put in force," mandamus should issue to prevent such action thereunder so palpably improper as to place it beyond the scope of the rule invoked. As was said there at page 707, were the Court " . . . to find that the rules have been practically nullified by a district judge . . . it would not hesitate to restrain [him]. . . ." *La. BUY*, 352 U.S. at 249; See also, *Valenzuela-Gonzalez v. U.S. Dist. Court*, 915 F.2d 1276 (9th Cir. 1990) (writ issued to prevent video-arraignment of federal defendant pursuant to General Order that violated Rules of Criminal Procedure 10 and 43, requiring in-person appearance).

K. The Court Has the Power to Protect AYA, Stanley, and the AYA Congregation from Associational Harm and to Give Substance to the Promise of RFRA for Visionary Churches

The petitioners request that this Court find that the Disclosure Order fails exacting scrutiny by compelling disclosure of sensitive member and donor information,

and vast volumes of religious communications, without being sufficiently justified by and narrowly tailored to the government's interests. The petitioners seek relief under the jurisdiction of the United States Supreme Court, and request that the Court issue a writ of mandate, vacating the Disclosure Order, and instructing the District Court to apply exacting scrutiny to all discovery demands propounded by the Respondent Agencies, when AYA and Stanley raise colorable First Amendment objections.

L. AYA and Stanley's Petition Presents an Issue of First Impression—Application of Exacting Scrutiny to DEA Discovery Demands in a RFRA Case

This case was properly decidable based on this Court's established jurisprudence in the field, *eg.*, the holdings in *NAACP v. Alabama*, and *Buckley v. Valeo*, and *Citizens for Prosperity v. Bonta, cited supra*. However, Petitioners have raised an issue of first impression by being the first visionary church engaged in RFRA litigation with the DEA, to assert that the DEA's discovery demands must be subjected to exacting scrutiny.

While it is well-established that exacting scrutiny may be invoked to protect the right of associational privacy of churches as well as political organizations, this case presents the first time that a DEA discovery demand has been contested by a visionary church. Because the District Court declined to consider First Amendment objections to the demand, exacting scrutiny was never applied, and the infringements of associational privacy inflicted by the Disclosure Order render it unconstitutional. App.3a; App.7a. Neither the purpose for the DEA's demands,

nor the narrow tailoring that is required to make such demands acceptable, was ever established in the discovery dispute resolution proceeding. App.3a. As a result, the Disclosure Order so departs from the proper conduct of judicial proceedings that it calls for an application of this Court's rarely exercised power to issue a writ of mandate, vacating the Disclosure Order to protect the Petitioners from the certainty of irreparable harm to their associational privacy.

X. CONCLUSION

For the foregoing reasons, the petitioners respectfully request that this Court grant this petition for a writ of certiorari, review the decision of the Ninth Circuit, vacate the Disclosure Order, and direct the District Court to apply exacting scrutiny to all future discovery demands as to which the Petitioners raise colorable First Amendment objections.

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APPENDIX

TABLE OF APPENDICES

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APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED APRIL 25, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-1405
D.C. No. 2:20-cv-02373-ROS
District of Arizona, Phoenix

IN RE: ARIZONA YAGE ASSEMBLY; *et al.*,

ARIZONA YAGE ASSEMBLY; *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA, PHOENIX,

Respondent,

MERRICK B. GARLAND,
ATTORNEY GENERAL; *et al.*,

Real Parties in Interest.

Filed April 25, 2024

ORDER

Before: BENNETT, R. NELSON, and MILLER, Circuit Judges.

Appendix A

Petitioners' motion for leave to file a second reply (Docket Entry No. 14) is granted. The Clerk will file the reply attached to Docket Entry No. 14.

Petitioners have not demonstrated a clear and indisputable right to the extraordinary remedy of mandamus. *See In re Mersho*, 6 F.4th 891, 897 (9th Cir. 2021) ("To determine whether a writ of mandamus should be granted, we weigh the five factors outlined in *Bauman v. United States District Court*."), *Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition for a writ of mandamus is denied.

DENIED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED APRIL 10, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-20-02373-PHX-ROS

ARIZONA YAGE ASSEMBLY, *et al.*,

Plaintiffs,

v.

WILLIAM BARR, *et al.*,

Defendants,

Filed April 10, 2024

ORDER

Having been invited to file an answer to the petition for a writ of mandamus, the District Court offers what follows.

* * *

The fundamental element for the issuance of a writ of mandamus is the district court must have failed to fulfill a duty the court was obligated to do by law. That element is missing here.

Appendix B

This Court never, by order or otherwise, precluded A First Amendment associational argument by Plaintiffs. At no time before Plaintiffs filed the petition for a writ of mandamus was such an argument made. In particular, in the Joint Statement (Doc. 219) that preceded the Discovery Order (Doc. 220) from which Plaintiffs seek relief, Plaintiffs never raised the specific issue raised in their petition for a writ of mandamus. Plaintiffs' discovery dispute statement simply asserted that "Defendants' inquiries and demands are also constrained by the First Amendment," (Doc. 219 at 6), citing *Surinach v. Pesquera De Busquets*—a First Circuit case concerning an investigatory subpoena seeking information on a church's financial practices where there was a possibility the church's financial decision-making would be "supplanted by governmental control," 604 F.2d 73, 78 (1st Cir. 1979). And in the discovery dispute statement, Plaintiffs' position specifically addressed the application of the First Amendment Religion Clauses, again citing only to *Surinach* asserting "government agencies" using "compulsory process to discover the finances of churches violates the Establishment Clause." (Doc. 219 at 83–84).

Significantly, Plaintiffs made no reference to *Perry v. Schwarzenegger*, which is the bedrock for the petition for a writ of mandamus, nor did Plaintiffs raise a specific constitutional right to association in the civil discovery context. Further, aside from their general objection under *Surinach*, Plaintiffs did not make any First Amendment objection or argument in their responses to any of the

identified interrogatories[1] or on two of their identified requests for production[2]. In other words, Plaintiffs did not invoke *Perry v. Schwarzenegger* in responding to discovery requests. Not did Plaintiffs invoke *Perry* in the joint discovery dispute statement. Discovery cannot operate efficiently if one party holds arguments, waiting for the time it believes appropriate to make them.

And neither party ever identified *Perry v. Schwarzenegger* as controlling or even applicable in the Joint Statement. This failure by Plaintiffs could be viewed as an admission Plaintiffs believed *Perry* was not relevant to the discovery dispute then before the District Court. Of importance, had Plaintiffs cited this case, Defendants would have provided argument and, if merited, the Court would have applied the balancing test required by *Perry* to evaluate the disputed discovery requests. And the Court would have entertained reasonable narrowing of these requests had Plaintiffs proposed any. But they did not. Plaintiffs were adamant they were not willing to produce any additional information.[3] Thus, this petition

---

1. *See* Doc. 219 at 15 (Interrogatory 16); 22–23 (Interrogatory 4); 54 (Interrogatory 10); 56 (Interrogatory 11); 65 (Interrogatory 18); 66–67 (Interrogatory 21); 68–69 (Interrogatory 23).

2. *See* Doc. 219 at 17 (RFP 21); 41–42 (RFP 12).

3. Counsel for Plaintiffs, after filing the writ of mandamus and obtaining a stay, filed a motion to intervene (Doc. 232) on behalf of the very members and congregants whose First Amendment association rights Plaintiffs now seek to assert. There is no explanation why intervention was necessary or would be helpful to their First Amendment association right.

is rather the latest effort by Plaintiffs to resist discovery obligations.

Finally, Plaintiffs' first attempt to raise associational rights of its members was in a motion to stay (Doc. 222) filed with the Court before Plaintiffs filed their petition for a writ of mandamus. Recognizing the motion may present a legitimate legal issue requiring timely resolution, the Court ordered expedited briefing on Plaintiff's motion to stay (Doc. 224). Instead of waiting for the motion to stay to be fully briefed and resolved by this Court, Plaintiffs elected to seek a writ of mandamus in the Ninth Circuit (Doc. 230).

Accordingly,

IT IS ORDERED the Clerk of Court shall forward a copy of this order to the Court of Appeals for the Ninth Circuit, referencing Case Number 24-1405.

Dated this 10th day of April, 2024.

/s/
Honorable Roslyn O. Silver
Senior United States District Judge

APPENDIX C — EXHIBIT 1: ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED FEBRUARY 22, 2024

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-20-02373-PHX-ROS

ARIZONA YAGE ASSEMBLY, *et al.*,

Plaintiffs,

v.

WILLIAM BARR, *et al.*,

Defendants.

Filed February 22, 2024

ORDER

Parties have filed a Joint Statement on a dispute over Plaintiffs' responses to Defendants' First Sets of Interrogatories and Requests for Production (Doc. 219) ("Joint Statement").

Plaintiffs have the initial burden to establish a prima facie case under the RFRA. 42 U.S.C. § 2000bb-1(b).

Defendants must then make an individualized showing that application of the Controlled Substances Act and its implementing regulations to Plaintiffs' organization is the least restrictive means of furthering a compelling government interest. *Id.* The discovery Defendants seek in these disputed requests is critical to this inquiry.

It is clear both from this dispute and those already adjudicated by the Court, *see*, *e.g.*, (Docs. 210, 216, and 218), Plaintiffs have not taken their discovery obligations seriously. In the present dispute, Plaintiffs have failed to adequately respond to nearly 40 of Defendants' discovery requests. Plaintiffs have provided incomplete, insufficient, or unresponsive answers to many of the requests and in some instances have refused to respond at all. Defendants state they "still know very little about Plaintiffs' organization, the safety of its practices, those who lead or attend its ceremonies, and, how it imports, handles, stores, or transports ayahuasca." Joint Statement at 5. The Court is in the same boat. Plaintiffs' responses and productions are totally insufficient and Plaintiffs' refusal to sufficiently respond to Defendants' discovery requests based on inapplicable privileges and objections is wrong and in some cases ridiculous.

Plaintiffs shall provide full and complete responses and productions to Defendants' requests. Where Plaintiffs claim they have already produced documents or that no responsive documents exist, Plaintiffs must verify their answers under penalty of perjury.

Appendix C

PLAINTIFFS' ASSERTED PRIVILEGES AND OBJECTIONS

As Defendants point out, federal law governs the applicable privileges in this Religious Freedom Restoration Act case. *See, e.g.*, Joint Statement at 32; Fed. R. Evid. 501; *Lewis v. United States*, 517 F.2d 236, 237 (9th Cir. 1975) ("In determining the federal law of privilege in a federal question case, absent a controlling statute, a federal court may consider state privilege law. But the rule ultimately adopted, whatever its substance, is not state law but federal common law." (internal citation omitted)). Even if the Court were to consider Plaintiffs' asserted privileges, they are either unrecognized or inapplicable.

First, confidentiality promises made to third parties are not grounds for objection, particularly where, as here, a protective order is in place. *See Walt Disney Co. v. DeFabiis*, 168 F.R.D. 281, 283 (C.D. Cal. 1996) ("[O]nly privilege, not confidentiality, is a valid objection under Fed. R. Civ. P. 26(b)); *In re Application of O'keeffe*, 2016 WL 2771697, at *4 (D. Nev. Apr. 4, 2016) ("Confidentiality agreements do not bar discovery."); *Nat'l Acad. of Recording Arts & Scis., Inc. v. On Point Events, LP*, 256 F.R.D. 678, 681 (C.D. Cal. 2009) ("Although there is no absolute privilege for highly confidential information, such information, even if not privileged, may be protected under Rule 26(c)(1)(G)." (internal citations omitted)).

Second, the Arizona statute protecting disclosure of medical records is inapplicable in this federal question case. Even if state privilege law governed, this statute would not apply since Plaintiffs are not licensed health

care providers as defined by the statute, *see* A.R.S. § 12-2291(5), and Defendants' requests do not seek medical records "maintained for purposes of patient diagnosis or treatment," *id. §* 12-2291(6).

Third, the First Amendment Free Exercise and Establishment Clauses do not establish any privilege applicable to the civil discovery sought by Defendants. *See Byzantine Cath. Eparchy of Phoenix v. Burri L. PA*, 2022 WL 3597106, at *3 (D. Ariz. June 17, 2022) (explaining the "First Amendment's Free Exercise Clause and Establishment Clause offer religious organizations wide latitude to structure and govern their organizations in accordance with their own sincerely held beliefs, but the religion clauses do not offer an immunity against civil discovery."); *see also Cason v. Federated Life Ins. Co.*, 510 F. App'x. 663, 665 (9th Cir. 2013).

Fourth, Arizona's priest-penitent privilege does not apply here. As discussed above, federal privilege law governs. *See* Fed. R. Evid. 501; *Lewis*, 517 F.2d at 237. Even if the Arizona statute did govern here, Plaintiffs have not shown it would apply. Plaintiffs assert the privilege as a blanket exclusion and do not identify any "confession" or allege any such confession was confidential and not made in the presence of third parties. *See State v. Archibeque*, 221 P.3d 1045, 1048, 1050 (Ariz. Ct. App. 2009). Plaintiffs may not rely on Arizona's priest-penitent privilege to avoid responding to Defendants' discovery requests.

Finally, Plaintiffs object to discovery under the Fourth Amendment warrant requirement throughout the Joint

Statement. This is a frivolous objection and Plaintiffs cite no authority to support it. The Fourth Amendment has no bearing on this case, where Plaintiffs object to discovery in a civil lawsuit Plaintiffs initiated against Defendants. *See*, *e.g.*, *United States v. Int'l Bus. Machines Corp.*, 83 F.R.D. 97, 102 (S.D.N.Y. 1979) ("It strains common sense and constitutional analysis to conclude that the fourth amendment was meant to protect against unreasonable discovery demands made by [the government acting as] a private litigant in the course of civil litigation."); *Bey v. Antoine*, No. 19-CV- 1877, 2023 WL 3204576, at *1 (E.D.N.Y. May 2, 2023) ("Where a plaintiff brings claims [against the government,] the protections of the Fourth Amendment do not provide a shield against civil discovery going to those issues."); *O'keeffe*, 2016 WL 2771697, at *5 (finding a party may not invoke privacy "to prevent discovery regarding matters that a party places in controversy").

In short, none of Plaintiffs' proffered objections justify their refusal to respond to Defendants' discovery requests. The Court will address each disputed request in the order presented in the Joint Statement.

DISPUTED REQUESTS

Interrogatory No. 2:

This interrogatory seeks the identity of persons asked to serve or have requested to serve in leadership roles or positions of authority in AYA or its ceremonies, which roles they served in or requested to serve in, and when. This information is crucial, and Plaintiffs' response is clearly

incomplete. The names Plaintiff provided without further information are insufficient, and withholding additional responsive information on the basis of deposition limits is wrong. Plaintiffs shall provide a complete response to this interrogatory.

Interrogatory No. 3:[1]

This interrogatory seeks information about the *training* of persons in positions of leadership or authority. As Defendants argue, AYA's training procedures are relevant to the analysis of potential health, safety, or diversion risks. *See* Joint Statement at 10, 21. Plaintiffs' response is unresponsive by failing to identify any individuals who provided training and do not deny training has been provided. Plaintiffs may not amend or supplement their responses in the Joint Statement. Plaintiffs shall provide a complete and responsive response to this interrogatory.

Interrogatory No. 5:[2]

This interrogatory asks for information about individuals being denied participation in Plaintiffs'

1. This interrogatory appears twice in the Joint Statement under two different categories of issues presented by the Parties. *See* Joint Statement at 10, 21. The Court will address all arguments related to this interrogatory here.

2. This interrogatory appears twice in the Joint Statement under two different categories of issues presented by the Parties. *See* Joint Statement at 12, 24. The Court will address all arguments related to this interrogatory here.

ceremonies, why they were not approved to participate in one of AYA's ceremonies, who made the decisions, and how the decisions were communicated to the individuals. Instead of responding to the request, Plaintiffs offer to "provide a selection of anonymized documents showing one or more instances of the sort sought by this interrogatory, with personal and location identifiers of non-parties redacted." Joint Statement at 24. As Defendants argue, this is clearly insufficient. Plaintiffs do not identify a single incident resulting in denial of participation in future ceremonies. Plaintiffs acknowledge a "list of people who will not be allowed to participate in ceremonies" exists but refuse to produce it. *Id.* If this information was conveyed in writing, Defendants are entitled to production of all documents. Defendants' request for this information is not an "improper effort by the Defendants to judge the religious beliefs of the Plaintiffs," and the information sought is relevant to Defendants' defenses. Since there is a protective order in place, the information provided pursuant to this request must be unredacted and nonanonymized. The priest-penitent privilege does not apply. Plaintiffs shall provide a complete response to this interrogatory.

Interrogatory No. 16:

This interrogatory seeks the identity of all "honored educators" and "peers" from which Plaintiffs seek and with whom Plaintiffs share "knowledge and feedback," including the "knowledge and feedback" sought from or shared by them. In the Joint Statement, Plaintiffs assert "[f]urther information is not available" and Defendants

"project[ing] the existence of other inspiratory for the Plaintiffs does not create discoverable information." While it is true Defendants' projections would not "create discovery information," Defendants' objections to Plaintiffs' response are based on Plaintiffs' acknowledging "significant peer support within the anonymity of our church membership" but asserting it would be a "betrayal of trust to see the release of these names and the tenor of these conversations to public agencies." Joint Statement at 14. Further, Defendants argue this response is inconsistent with a prior declaration identifying at least one other individual responsive to this request. This information is relevant to for identifying potential witnesses and evaluating the safety and sincerity of Plaintiff 's practices. While Plaintiffs need not "create discoverable information," they shall provide all existing information as part of a full, detailed, and complete response to this interrogatory.

RFP No. 21:

This request seeks documents related to "knowledge and feedback" sought or shared by Plaintiffs with anyone from whom they "seek guidance or consultation." Joint Statement at 16. Defendants argue Plaintiffs have produced only one (altered) email. Plaintiffs offer to produce additional documents with redactions in response but cite *Hobby Lobby* to assert Defendants "have no license to scrutinize the rationality of AYA's beliefs." *Id.* While the *rationality* of Plaintiffs' beliefs may not be relevant, Defendants are correct that *Hobby Lobby* is inapplicable since "both the genuineness of the Plaintiffs'

beliefs and the nature and character of those beliefs is at issue." *Id.* Plaintiffs shall produce all additional responsive documents referred to in their response, and redactions are not allowed because a protective order is in place.

RFP No. 22:

Plaintiff have apparently misconceived this request, which seeks documents related to training of individuals holding leadership or authoritative roles in Plaintiffs' organization. As Defendants argue, these documents are related to whether AYA's practices pose health, safety, or diversion risks to participants or the broader public. Joint Statement at 18. Plaintiffs indicate they plan to produce a large set of relevant material in the form of the AYA Newsletter for the past two years of publication. This may be helpful, but as Defendants point out, they cannot know whether it will constitute a sufficient response to the request until the materials are promptly produced. If Plaintiffs have further responsive materials, they shall produce them.

Interrogatory No. 4:

This interrogatory seeks information related to who and how many people have attended Plaintiffs' ceremonies and consume or request to consume ayahuasca. Plaintiffs refused to respond to this request in its entirety. This information is particularly relevant to the sincerity of participants and whether individuals can joint under false pretenses. As discussed above, Plaintiffs' objections in the Joint Statement to producing communications on

confidentiality grounds are inapplicable. Confidentiality promises made to third parties are not grounds to object to civil discovery, particularly where, as here, a protective order is in place. *See*, *e.g.*, *Walt Disney Co. v. DeFabiis*, 168 F.R.D. 281, 283 (C.D. Cal. 1996) ("[O]nly privilege, not confidentiality, is a valid objection under Fed. R. Civ. P. 26(b)). The information Defendants seek is relevant to determining health, safety, and diversion risks and the genuineness of Plaintiffs' beliefs. Plaintiffs shall provide a complete response to this interrogatory.

Interrogatory No. 7:

This interrogatory seeks information about individuals being denied "an additional serving" of ayahuasca during Plaintiffs' ceremonies. This information is relevant to potential health or safety risks posed by Plaintiffs' practices. Plaintiffs may not amend or supplement their responses in the Joint Statement. Plaintiffs do not identify a single incident where an individual was denied "an additional serving" of ayahuasca. Although, as Plaintiffs argue, Defendants' objections to Plaintiffs' response "doesn't create discoverable facts," to the extent such facts exist, they shall be included in a full and complete response to this interrogatory.

Interrogatory No. 8:

This interrogatory seeks information about when responses to an AYA questionnaire would result in ineligibility to participate in Plaintiffs' ceremonies. This information is relevant to potential health or safety risks

posed by Plaintiffs' practices. Plaintiffs do not identify any specific response that would result in denying participation and apparently contradict both prior statements and their explanation in the Joint Statement by responding a "yes" response to the medical intake questionnaire would "prompt further inquiry" rather than an automatic denial of participation. *See* Joint Statement at 28-29. If Plaintiffs have denied participation or made "further inquiry" in deciding whether to deny participation, a complete response to the interrogatory must identify the questionnaire response that prompted this action. Further, Plaintiffs' response must clarify whether a "yes" response to the medical questionnaire renders an individual ineligible for participation or simply prompts further inquiry. Plaintiffs may not amend or supplement their responses in the Joint Statement.

Interrogatory No. 9:

This interrogatory seeks information related to medical or other trained professionals involved in the drafting of a document regarding proper preparation of ayahuasca and the medical or other basis for including statements in the document. This information is relevant to evaluating potential health or safety risks posed by Plaintiffs' practices and identifying potential witnesses. Defendants are correct that "Plaintiffs neither confirm or deny whether any medical or trained professionals were involved in drafting the referenced document" and fail to identify which "scientific and medical protocols have been incorporated" despite asserting they have incorporated such information. Plaintiffs' response is incomplete. If no

medical or other professionals were involved in drafting this document, Plaintiffs must clearly identify this. Further, Plaintiffs must provide a complete response identifying the "medical or other basis for including each of the statements" in the document. Simply stating the protocols "derive from ancient unwritten practices" is insufficient, particularly where Plaintiffs acknowledge "[s]cientific and medical protocols have been incorporated." Plaintiffs list two such protocols in their response, but if any further responsive information exists, Plaintiffs shall provide it in a complete response to this interrogatory.

Interrogatory No. 14:

This interrogatory seeks information related to aid and support offered or provided to participants before, during, or after a ceremony. Plaintiffs' response asserts "the particulars of any individual non-party's ceremonial experience are not relevant." This is incorrect. The information sought by this interrogatory is relevant to evaluating potential health or safety risks posed by Plaintiffs' practices and identifying potential witnesses. Plaintiffs further offer a "medical records" objection, but (as discussed at length above), this does not apply here. Finally, Plaintiffs attempt to supplement their response to argue its response to a separate interrogatory satisfies its burden for this interrogatory. Plaintiffs may not amend or supplement their responses in the Joint Statement and, as Defendants point out, the other interrogatory Plaintiffs reference only asks about assistance or care provided *after* a ceremony and is insufficient anyway. Plaintiffs shall provide a full and complete response to this interrogatory,

identifying all instances of aid or assistance provided before, during, or after a ceremony including when and where the instance occurred.

Interrogatory No. 17:

This interrogatory seeks information related to the setting of Plaintiffs' ayahuasca ceremonies. Defendants assert Plaintiffs' lengthy response is incomplete since it does not identify the number and title of healthcare professionals or the titles of the three to eight facilitators present at the ceremonies. Joint Statement at 35-36. This information is relevant to evaluating potential health, safety, or diversion risks posed by Plaintiffs' practices and identifying potential witnesses. Plaintiffs' position in the Joint Statement does not address these issues, instead focusing on adding context to Defendants' citation to *O Centro* regarding DMT's status as an "exceptionally dangerous" substance. This is not responsive to Defendants' position in the Joint Statement. Plaintiffs shall provide a full and complete response to this interrogatory.

RFP No. 3:

This request seeks "any and all communications regarding ayahuasca use with any person identified" in Plaintiff's initial disclosures. This information is relevant to evaluating health, safety, and diversion risks and the sincerity of Plaintiff's beliefs. Defendants argue Plaintiffs have not produced *any* communications pursuant to this request and instead simply indicated responsive documents have been produced pursuant to

other requests and reasserted its general objections. *See* Joint Statement at 37. In the Joint Statement, Plaintiffs ambiguously and wrongly assert that they have "responded proportionately" but do not indicate anything about their response or identify any documents produced. *Id.* And as discussed above, Plaintiffs' proffered objections do not apply. Plaintiffs must produce all documents and communications responsive to this request, including not only communications between Plaintiffs and the individuals identified in their initial disclosures, but all communications those individuals have had related to ayahuasca, including with participants.

RFP No. 11:

This request seeks documents containing communications with individuals who have participated in or facilitated one of Plaintiffs' ceremonies. Plaintiffs' response shows responsive documents exist but are being withheld based on Plaintiffs' general objections. As discussed at length above, Plaintiffs' asserted objections and privileges do not apply and will not serve as a basis for objecting to civil discovery. Specifically, the Fourth Amendment warrant requirement no bearing on this case, where Plaintiffs object to discovery in a civil lawsuit Plaintiffs initiated against Defendants. *See*, *e.g.*, *United States v. Intl Bus. Machines Corp.*, 83 F.R.D. 97, 102 (S.D.N.Y. 1979) ("It strains common sense and constitutional analysis to conclude that the fourth amendment was meant to protect against unreasonable discovery demands made by a private litigant in the course of civil litigation."). The First Amendment Free Exercise and Establishment Clauses do not establish any privilege

applicable to the civil discovery sought by Defendants. *See Byzantine Cath. Eparchy of Phoenix v. Burri L. PA*, 2022 WL 3597106, at *3 (D. Ariz. June 17, 2022) (explaining the "First Amendment's Free Exercise Clause and Establishment Clause offer religious organizations wide latitude to structure and govern their organizations in accordance with their own sincerely held beliefs, but the religion clauses do not offer an immunity against civil discovery."). And further, the priest-penitent privilege does not apply. Plaintiffs have not demonstrated a justification for refusing to produce responsive documents. Plaintiffs shall make a full and complete production of all responsive documents pursuant to this request.

RFP No. 12:

This request seeks documents related to Plaintiffs' ceremonies involving ayahuasca, such as when it is brewed, distributed, consumed, destroyed or disposed of, or otherwise present. This information is relevant to evaluating health, safety, and diversion risks potentially posed by Plaintiffs' practices. Plaintiffs' response indicates responsive documents exist but are being withheld based on Plaintiffs' general objections. *See* Joint Statement at 41. This is contradicted by Plaintiffs' position in the Joint Statement, in which Plaintiffs assert they "have responded abundantly to this response." *Id.* This contradiction is later clarified as Plaintiffs acknowledge their response should have referred to "additional" responsive documents. *Id.* at 42. But Plaintiffs asserted objections do not apply here. Plaintiffs shall make a full and complete production of all responsive documents pursuant to this request.

Appendix C

RFP No. 13:

This request seeks documents related to receipt of anything of value, e.g. payment or donations, from ceremony participants. This information is relevant to evaluating Plaintiffs' true purpose and sincerity, and finances "consistent with a religious organization as opposed to a commercial enterprise that engages in the purchase and sale of ayahuasca for profit." Joint Statement at 43. Plaintiffs refuse to produce any documents pursuant to this request, despite acknowledging responsive documents exist. As detailed above, Plaintiffs' proffered objections and privileges do not apply here and will not serve as justification for Plaintiffs' refusal to produce responsive documents. Plaintiffs shall make a full and complete production of all responsive documents pursuant to this request.

RFP No. 14:

This request seeks documents related to ethical and safety protocols used in connection with Plaintiffs' ceremonies. Plaintiffs' response asserts they have "produced all responsive documents, to the extent of their ability to identify them, given the overbroad formulation of this request." Joint Statement at 45. Plaintiffs' position in the Joint Statement explains Plaintiffs have not withheld any "documents known to be responsive" based on the overbreadth exception. *Id.* But Plaintiffs do not state the construction they applied in answering this request to allow Plaintiff to determine whether the response was adequate, and Plaintiffs do not explain what search they

undertook to identify responsive documents. Plaintiffs shall clarify these points in a full and complete response and shall produce all additional responsive documents should any exist.

RFP No. 15:

This request seeks documents shared with participants before, during, and after Plaintiffs' ceremonies. Plaintiffs' response states "[i]nterpreting this request as non-redundant of other requests, Plaintiffs have produced all responsive documents." Joint Statement at 46. Plaintiffs do not state the limiting construction they applied to this request as required by RFP Instruction No. 7. *Id.* Plaintiffs shall state with particularity their interpretation of the request "as non-redundant of other requests" to allow Defendants to determine whether Plaintiffs' response is adequate.

RFP No. 16:

This request seeks documents related to instances where "aid, support, or assistance" was offered or administered to any person before, during, or after Plaintiffs' ceremonies. Joint Statement at 47. This information is relevant to evaluating potential health and safety risks posed by Plaintiffs' practices. Plaintiffs' response indicates "[r] esponsive documents exist, and a reasonably proportionate sample of such, with personally identifying information redacted, will be produced." *Id.* This is an inadequate response. Plaintiffs do not offer any specific objections to the construction of this

request and are not entitled to pick and choose a sample of documents as they see fit. Further, the information provided pursuant to this request must be unredacted and non-anonymized since a protective order is in place. Plaintiffs shall promptly produce all responsive documents without redactions.

RFP No. 17:

This request seeks documents related to every specific instance or allegation of misconduct in connection with Plaintiffs' ceremonies. This information is relevant to evaluating Plaintiffs' sincerity and potential risks to health and safety posed by Plaintiffs' practices. Since there is a protective order in place, information provided pursuant to this request must be unredacted and non-anonymized. The Fourth Amendment warrant requirement no bearing on this case, where Plaintiffs object to discovery in a civil lawsuit Plaintiffs initiated against Defendants. *See*, *e.g.*, *United States v. Intl Bus. Machines Corp.*, 83 F.R.D. 97, 102 (S.D.N.Y. 1979) ("It strains common sense and constitutional analysis to conclude that the fourth amendment was meant to protect against unreasonable discovery demands made by a private litigant in the course of civil litigation."). Plaintiffs shall promptly produce the list of individuals who are disqualified from membership in Plaintiffs' organization without redactions and shall produce any additional documents responsive to this request.

Appendix C

RFP No. 23:

This straightforward request seeks documents "that identify, describe, refer to, or contain materials used in the training of ceremony participants." Joint Statement at 50. Plaintiffs' response states "[r] esponsive documents exist, and have been produced previously." *Id.* Plaintiffs' position in the Joint Statements asserts this request is redundant of RFP 15. *Id.* But Plaintiffs have misconstrued this request, which asks for materials used in the training of participants, as redundant of RFP 15, which asks for documents shown to participants before, during, or after ceremonies. There may be substantial overlap between the categories of documents sought by these requests, and it may be true that no additional documents exist. If that is the case, Plaintiffs shall particularly clarify this fact. If additional documents do exist, Plaintiffs shall promptly produce them.

Interrogatory No. 10:

This interrogatory seeks the date and location of every ceremony Plaintiffs have held, what substances were involved, who was present, and who handled substances or served in a leadership role during each ceremony. This information is relevant to potential diversion risks posed by Plaintiffs' practices. Plaintiffs' response asserts prior-filed documents "have provided sufficient information concerning this topic that any additional information would be duplicative, redundant and unnecessarily burdensome." Joint Statement at 53. Plaintiffs do not provide specific information for even a single ceremony as

the interrogatory requires. Plaintiffs shall provide a full and complete response to this interrogatory.

Interrogatory No. 11:

This interrogatory seeks information related to Plaintiffs' handling of ayahuasca including when any handling activity occurred, all persons involved, and required steps for persons to be granted permission to handle ayahuasca. Information about sourcing, storage, transportation, and security of ayahuasca is relevant to potential diversion and safety risks posed by Plaintiffs' practices. Plaintiffs' response again asserts prior-filed documents "have provided sufficient information concerning this topic that any additional information would be duplicative, redundant and unnecessarily burdensome" and provides a short explanation that Plaintiffs "adhere to a protocol of sourcing Ayahuasca from ethical providers," which is "acquired by Stanley, stored on the premises under his exclusive control, and utilized exclusively in AYA ceremonies." Joint Statement at 55. Plaintiffs' position in the Joint Statement asserts this information is not "relevant to the issue of religious intent" but ignores the diversion and safety risk analysis. *Id.* This information is plainly relevant, and Plaintiffs shall provide it in a full and complete response to this interrogatory.

Interrogatory No. 12:

This interrogatory seeks information about security measures related to Plaintiffs' handling of ayahuasca, including specific information about any physical devices

or other security measures identified. This information is relevant to potential diversion and safety risks posed by Plaintiffs' practices. Plaintiffs' response states Plaintiff Stanley is the sole person having custody of ayahuasca and it is secured either "locked in a vehicle, locked in a temporary storage facility, or inside premises under his control." Joint Statement at 57. This response is insufficient. The response does not identify when these security measures were implemented, what devices are used to "lock" the ayahuasca, or how these measures ensure safe handling of ayahuasca. Plaintiffs shall provide this specific information as part of a full and complete response to this interrogatory.

RFP No. 18:

This request seeks documents related to the storage, security, preparation, distribution, procurement, and other handling of ayahuasca. This information is clearly relevant to potential diversion and safety risks posed by Plaintiffs' practices. But Plaintiffs' response simply states "[n]o responsive documents exist," and does not give any indication of the extent of Plaintiffs' search for responsive documents or whether any search was even conducted. Joint Statement at 59. The Court agrees with Defendants' argument that "it is highly improbable that no other responsive documents—whether in the form of emails, text messages, Facebook messages, or invoices, etc.—exist," particularly where Plaintiffs indicated responsive documents exist in response to a similar request (RFP No. 20) and would be required to keep detailed records of this sort if they obtain a DEA registration they seek as relief in

this case. *Id.* Plaintiffs' response is wholly unsatisfactory. Plaintiffs shall conduct a reasonable search and promptly produce all responsive documents.

RFP No. 20:

This request seeks communications to or from any individuals who have been involved in handling ayahuasca. Plaintiffs' response indicates responsive documents exist but are withheld based on Plaintiffs' previous objections. As discussed at length above, Plaintiffs' asserted privileges and objections are inapplicable here. Neither the First nor Fourth Amendments establish any privilege applicable to the civil discovery sought by Defendants. *See Byzantine Cath. Eparchy of Phoenix v. Burri L. PA*, 2022 WL 3597106, at *3 (D. Ariz. June 17, 2022) (explaining the "First Amendment's Free Exercise Clause and Establishment Clause offer religious organizations wide latitude to structure and govern their organizations in accordance with their own sincerely held beliefs, but the religion clauses do not offer an immunity against civil discovery."); *United States v. Int'l Bus. Machines Corp.*, 83 F.R.D. 97, 102 (S.D.N.Y. 1979) ("It strains common sense and constitutional analysis to conclude that the fourth amendment was meant to protect against unreasonable discovery demands made by a private litigant in the course of civil litigation."). Further, this request does not create a substantial burden to Plaintiffs under the RFRA because the documents sought are plainly relevant to potential diversion and safety risks posed by Plaintiffs' practices and Defendants' compelling interest inquiry. Since there is a protective order in place, the information

provided pursuant to this request must be unredacted and non-anonymized. Plaintiffs shall promptly produce all documents responsive to this request.

Interrogatory No. 18:

This interrogatory seeks the identity of every person involved in drafting five documents attached to Plaintiffs' preliminary injunction motion. Plaintiffs' response states Plaintiff Stanley is the author and "lead editor" for two of the five documents but does not identify anyone else involved in the drafting process for any of the documents. Joint Statement at 64. Since Plaintiffs rely on these documents to establish their prima facie case, they are relevant to Defendants' defenses, the sincerity of Plaintiffs' religious beliefs, and identifying potential witnesses. Plaintiffs' response is insufficient. Plaintiffs shall provide a full and complete response to this interrogatory.

Interrogatory No. 21:

This interrogatory seeks the identify of every person involved in the drafting process of any document used at Plaintiffs' ceremonies or trainings or that Plaintiffs "otherwise intend to rely upon to demonstrate" their sincerely held religious beliefs and practices. Joint Statement at 66. This information is relevant to Defendants' defenses, identifying witnesses, and the sincerity of Plaintiffs' beliefs. Plaintiffs' response simply states Plaintiff "Stanley wrote all of the documents that he and AYA will present as evidence of sincerely held

religious beliefs and practices." *Id.* This response is incomplete and insufficient. Plaintiffs do not identify any other person who (or claim that no other person) "edited, reviewed, commented on, or otherwise received" these documents as the request calls for. Further, the response addresses only documents Plaintiffs intend to rely on to demonstrate sincerity and ignores that the request seeks this information about documents used at Plaintiffs ceremonies as well. Plaintiffs shall provide a full and complete response to this interrogatory.

Interrogatory No. 23:

This interrogatory seeks the identity of every organization of which any of the Plaintiffs is a member or has requested to be a member, including when the membership request was made, the duration of membership, any dues or other value paid to the organization, and individuals at these organizations Plaintiffs have communicated with. This information is relevant to the sincerity of Plaintiffs' beliefs, potential risk of diversion, and identifying potential witnesses. Plaintiffs' response simply indicates "AYA has been a member of the North American Association of Visionary Churches since it was formed in June of 2019, and pays yearly organizational dues of $200." Joint Statement at 68. This response is incomplete. Plaintiffs do not provide any information about Plaintiff Stanley's membership in any organization, any organizations any Plaintiff requested to be in but did not join, or any individuals Plaintiffs have communicated with in connection with any actual or requested membership. Plaintiffs shall provide this

information as part of a full and complete response to this interrogatory.

RFP No. 4:

This request seeks all documents Plaintiffs "have written, revised, used at [their] ceremonies, or otherwise intended to rely upon to demonstrate" Plaintiffs' sincere religious beliefs. Joint Statement at 70. Plaintiffs' response states they have "produced responsive documents" and "have supplemented that production." *Id.* Defendants argue Plaintiffs have "not produced any documents in a 'revised' format, only final-form documents" and "do not indicate whether they have or intend to produce documents 'used' at ceremonies." *Id.* Plaintiffs' position in the Joint Statement asserts "Plaintiffs have produced many documents they intend to rely upon . . . and will produce more in a timely fashion, supplementing production if and when new documents are discovered." *Id.* Plaintiffs shall promptly produce any additional responsive documents, including draft or revised versions and documents used at ceremonies.

RFP No. 5:

This request seeks all documents related to "the process by which" Plaintiffs "ensure that [they] 'offer Visionary communication only to sincere religious persons with a reverent mindset.'" Joint Statement at 71. This information is relevant to evaluating the sincerity of Plaintiffs' beliefs and potential diversion risks. Plaintiffs' response states "[r]easonably construed, the interrogatory

seeks information found in responsive documents that have been produced." *Id.* Plaintiffs do not explain how they "reasonably construed" the request as required. Plaintiffs may not amend or supplement their responses in the Joint Statement. Plaintiffs shall provide a complete and sufficient response and shall promptly produce all responsive documents pursuant to this request.

RFP No. 6:

This request seeks all documents, whether draft or final, related to the documents attached to Plaintiffs' motion for preliminary injunction. This information is relevant to evaluating the sincerity of Plaintiffs' beliefs, practices, and core documents. Plaintiffs' response states they "decline to produce responsive documents based on the stated objections." Joint Statement at 73. Plaintiffs' position in the Joint Statement misconstrues the request by stating Plaintiffs have provided "the responsive documents identified." *Id.* But this request not only asks for draft versions of responsive documents, but also all drafts and documents "relating to or referred to" in the referenced documents. Plaintiffs' response is incomplete and insufficient. Plaintiff shall promptly produce all additional responsive documents.

RFP No. 7:

This request seeks all documents containing communications with any members of Plaintiffs' organization related to membership, ceremonies, and their tenets and beliefs. This information is relevant to

evaluating the sincerity of Plaintiffs' beliefs and potential diversion risks. Plaintiffs' response states some "[r]esponsive documents have been produced" and "[s]ome responsive documents are withheld," but "Plaintiffs may produce additional documents pursuant to an appropriate confidentiality stipulation." Joint Statement at 74. As discussed at length above, Plaintiffs' proffered objections are inapplicable here and will not serve as justification for refusing to produce or respond to discovery requests. Plaintiffs wrongly argue Defendants must articulate an occasion when Plaintiffs have encouraged illicit, recreational use of ayahuasca or diversion to have their discovery requests adequately responded to. Instead, Defendants are entitled to this discovery to determine whether Plaintiffs' practice pose a diversion risk. This information is relevant and not "grossly disproportionate to the needs of the case." *Id.* Plaintiffs shall promptly produce all documents responsive to this request.

RFP No. 8:

This request seeks "all copies of the 'AYA attendee roster.'" Joint Statement at 76. Plaintiffs' response acknowledges a "responsive document exists," but "Plaintiffs decline to produce the same, based on the above objections." *Id.* This information is relevant to identifying potential witnesses and evaluating Plaintiffs' sincerity and whether individuals are joining Plaintiffs' organization under false pretenses. Again, Plaintiffs' proffered objections are inapplicable here. Confidentiality promises made to third parties are not grounds to object to civil discovery, particularly where, as here, a protective

order is in place. *See*, *e.g.*, *Walt Disney Co. v. DeFabiis*, 168 F.R.D. 281, 283 (C.D. Cal. 1996) ("[O]nly privilege, not confidentiality, is a valid objection under Fed. R. Civ. P. 26(b)). Neither the First nor Fourth Amendments establish any privilege applicable to the civil discovery sought by Defendants. *See Byzantine Cath. Eparchy of Phoenix v. Burri L. PA*, 2022 WL 3597106, at *3 (D. Ariz. June 17, 2022) (explaining the "First Amendment's Free Exercise Clause and Establishment Clause offer religious organizations wide latitude to structure and govern their organizations in accordance with their own sincerely held beliefs, but the religion clauses do not offer an immunity against civil discovery."); *United States v. Int I Bus. Machines Corp.*, 83 F.R.D. 97, 102 (S.D.N.Y. 1979) ("It strains common sense and constitutional analysis to conclude that the fourth amendment was meant to protect against unreasonable discovery demands made by a private litigant in the course of civil litigation."). And the priest-penitent privilege does not apply to protect disclosure of the attendee roster. Plaintiffs shall promptly produce all documents responsive to this request.

RFP No. 10:

This request seeks all "drafts of the survey that was delivered via email" and the email that "delivered the survey to the AYA roster to generate the 'Summary—AYA June 2018 Survey of Congregants' document." Joint Statement at 78. This information is relevant to evaluating the sincerity of Plaintiffs' beliefs and identifying potential witnesses. Plaintiffs' response states "[d]rafts of the survey do not exist," but notes "the email, with the email addresses of recipients redacted, will be produced." *Id.*

Plaintiffs have not yet produced that email but claim they will do so "immediately upon discovery." *Id.* Since there is a protective order in place, the information provided pursuant to this request must be unredacted and non-anonymized. Plaintiffs shall search for and promptly produce the referenced email by the deadline set forth at the end of this Order.

* * *

This dispute is another of Plaintiffs' attempts to delay or disrupt discovery. Plaintiffs are on notice that the Court will impose sanctions—including liability for excessive costs and fees, prohibiting Plaintiffs from supporting or opposing designated, claims or defenses, and dismissal of the action—for any further obstruction or failure to meet discovery obligations. *See* Fed. R. Civ. P. 11, 26, 37; 28 U.S.C. § 1927.

Accordingly,

IT IS ORDERED Plaintiffs shall provide full and complete responses to Defendants' First Sets of Interrogatories and Requests for Production as outlined in this Order no later than **March 8, 2024**.

Dated this 22nd day of February, 2024.

/s/
Honorable Roslyn O. Siver
Senior United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED JANUARY 31, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. 20-cv-2373-ROS

ARIZONA YAGÉ ASSEMBLY; WINFIELD SCOTT STANLEY III, IN HIS CAPACITY AS FOUNDER AND DIRECTOR OF ARIZONA YAGÉ ASSEMBLY,

Plaintiffs,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL OF THE UNITED STATES, *et al.*,

Defendants,

Filed January 31, 2024

STIPULATED PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION

With the agreement of the parties, the Court has determined that there is good cause to issue a protective order pursuant to Federal Rule of Civil Procedure 26(c) to govern the disclosure, use, and handling by the parties and their respective agents, successors, personal representatives, and assignees of certain information and items produced and received in discovery in the above-captioned action.

Appendix D

IT IS ORDERED the Parties' Joint Motion for Protective Order (Doc. 215) is **GRANTED**. The Court orders as follows:

1. Plaintiffs and Defendants in the above-captioned action are permitted to produce non-privileged information contained in law enforcement records and communications or produced at a deposition or hearing that is law enforcement sensitive and for official use only or that is otherwise prohibited from disclosure by the Privacy Act, 5 U.S.C. § 552a, *et seq.* (hereinafter referred to as "Protected Information"). The following terms govern with respect to all such documents and information exchanged or disclosed by the parties in this action, whether before or after the entry of this Protective Order ("Order").

2. **Good Cause Statement.** Defendants believe this action is likely to involve the production of non-privileged information contained in law enforcement records and communications or produced at a deposition or hearing. This non-privileged information is likely law enforcement sensitive and for official use only, in that it may regard such things as law enforcement activities and operations, internal policies, processes and procedures, and training materials, all of which may be protected from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(7), or protected from disclosure under other federal law, or which is generally unavailable to the public because its disclosure could adversely impact such things as a person's privacy or welfare or the conduct of programs or operations essential to the national interest, but

which a court may order to be produced. Some of this non-privileged information may also be information prohibited from disclosure by the Privacy Act, 5 U.S.C. § 552a, et seq. (the "Privacy Act"), as it may be personal information located in a Federal government "record" contained within a "system of records" and therefore require the consent of that individual prior to disclosure unless made "pursuant to the order of a court of competent jurisdiction." *Id.* § 552a(b)(11). Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information Plaintiff and Defendants are entitled to keep confidential, to ensure that the Plaintiff and Defendants are permitted reasonable necessary uses of such material in preparation for trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter.

3. **Definitions.**

a. "Named Party" shall mean any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel of record (and their support staffs).

b. "Non-Party" shall mean any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

c. "Designating Party" shall mean the person, Party, or Non-Party who designates information or documents as "Protected Information."

d. "Producing Party" shall mean the person, Party, or Non-Party producing discovery in this action.

e. "Receiving Party" shall mean any party who receives or is shown discovery in this action.

f. "Document" shall mean all items listed in Fed. R. Civ. P. 34(a)(1)(A) and (B).

4. **Protected Information.** The categories of Protected Information include:

a. Information, documents or tangible things protected by the Privacy Act, 5 U.S.C. § 552a, *et seq.*, without obtaining the prior written consent of the individuals to whom such records or information pertain.

b. Personally Identifying Information (PII), which is information that permits the identity of an individual to be directly or indirectly inferred, or otherwise confidential information regarding any plaintiff, defendant, employee or former employee of any defendant, or Non-Party, including but not limited to date of birth,

social security number, email addresses, phone numbers, mailing addresses, or compensation information, that would be protected or restricted from disclosure by statute, regulation, internal agency policy or guidance, but disclosure of which may be authorized by an order of this Court.

c. Non-public information that is designated or treated as (i) Law Enforcement Sensitive (LES), as well as (ii) information that is protected or restricted from disclosure under the terms of any other statute or regulation, but which the Court may order be produced.

d. All other protected documents, information, or tangible things not identified above that the parties agree in writing or the Court orders qualify for protection under Federal Rule of Civil Procedure 26(c).

5. **Designations.** It shall be the duty of the party producing the Protected Information ("Producing Party") to give notice of information it believes in good faith is covered by this Order. A Party may designate information that it obtained from a Non-Party pursuant to this Order, if it believes in good faith that it qualifies as Protected Information under this Order. Protected Information shall be designated as such by stamping the phrase "CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER," or a similar marking, on each page of any

document or record containing Protected Information prior to the production of such document or record. For Protected Information whose medium makes such marking impracticable, such as native electronic files, a Producing Party shall mark any CD-ROM or other storage medium, and/or any accompanying paper or email cover letter with "Confidential—Subject to Protective Order," or a similar marking. Categories of documents may be marked generally if the identification of individual documents is impracticable.

6. **Attorneys' Eyes Only.** If a producing party intends to designate something as "Attorneys' Eyes Only," the parties will confer about that designation and if there is a disagreement, will resolve it pursuant to the Court's procedures on a discovery disagreement.

7. **Designations—Testimony.** For any deposition or examination testimony, when the deponent, their counsel, or any Party notes that a question, answer, or line of questioning is likely to involve information subject to this Order or likely to result in the disclosure of Protected Information, that person should so state on the record or by the conclusion of the deposition should state on the record that they believe certain questions, answers, or lines of questioning are Protected Information. Any Party shall have twenty-one (21) days after receipt of the transcript to designate the deposition transcript, or portions thereof, as Protected Information by providing written notice to all counsel of record. During that twenty-one (21) day period, any questions, answers, or lines of questioning believed to be Protected Information

as so stated on the record shall be treated as Protected Information until that twenty-one (21) day period elapses. At the end of the twenty-one (21) days, only those portions of the transcript so designated as Protected Information by a Party through written notice to all counsel of record shall be considered Protected Information. Also at the end of the twenty-one (21) day period, the non-designating Party may challenge the designation of any such question, answer, or line of questioning pursuant to the procedures set forth Paragraph 16. Upon being informed that certain portions of a transcript are designated as Protected Information, each Party must have each copy in their custody, possession or control immediately marked with the appropriate designation at the appropriate pages.

8. **Access to Protected Information.** Except as provided in this Order, all Protected Information produced or exchanged subject to this Order shall be used solely for the purposes of this action and for no other purpose whatsoever, and shall not be published to the general public in any form, or otherwise disclosed, disseminated, or transmitted to any person, entity, or organization, except in accordance with the terms of this Order.

9. Notwithstanding Paragraph 6 of this Order, Documents designated "Confidential—Subject to Protective Order" or a similar marking may be disclosed to the following:

a. The Court and its official personnel;

b. Counsel of record for the parties;

c. Associates and staff of the counsel of record for the parties, including agency counsel, paralegals, office clerks, and other support staff whose assistance is required by the counsel working on the case;

d. Employees of the Federal Government with a need to have access to such documents in connection with this litigation, including supervisory officials of one of the Defendants or the Department of Justice, provided however that this Order shall not prevent any federal employee from having access to records to which such employee would normally have access in the regular course of his or her employment;

e. Outside experts, witnesses, consultants, or others retained in connection with this action and their staff, to the extent such disclosure is necessary for preparation for trial, at trial, or at other proceedings in this case;

f. Trial witnesses and deponents in discovery, court reporting personnel, translators, and videographers during depositions;

g. Outside litigation support personnel retained by counsel of record to assist in the preparation and/or litigation of the action, including contract attorneys, outside

copying service vendors, or electronic document management vendors; and

h. Other persons by written agreement of counsel of record for the parties or further order of the Court.

10. All persons, including the Parties and their respective counsel, to whom Protected Information is disclosed, are hereby prohibited from disclosing information designated as Protected Information to any unauthorized person, except as provided in this Order.

11. Prior to disclosing any document designated as Protected Information to any person listed in Paragraphs 9(d), (e), (f), (g), and (h), counsel shall provide such person with a copy of this Order and obtain from such person the completed acknowledgment attached as Attachment A stating that he or she has read this Order and agrees to be bound by its provisions and subject to this Court's jurisdiction. All such acknowledgments shall be retained by counsel for each respective party and shall be subject to in camera review by the Court if good cause is demonstrated by the opposing party.

12. **Copies, Summarizations, Extracts Protected.** Protected Information designated under this Order may include, without limitation: (a) all copies, extracts, and complete or partial summaries prepared from such documents, things, or information so designated; (b) portions of deposition transcripts and exhibits to deposition transcripts that contain, summarize, or reflect

the content of any such documents, things, or information; and (c) portions of briefs, memoranda, or any other writings filed with the Court and exhibits thereto that contain, summarize, or reflect the content of any such documents, things, or information, provided that any publicly filed document containing Protected Information as defined above and in this paragraph meets the applicable standard required to limit its public disclosure. A Party may make a request to the Producing Party that certain material contained in the materials specified in subsections (a)-(c) not be treated as Protected Information, or be redacted. Before any material described in subsections (a)-(c) is shared with anyone not authorized by this Protective Order to receive Protected Information or filed on the public docket, the Receiving Party must first notify the Producing Party of what Protected Information may be implicated in the materials it intends to share or file, and the Parties shall meet and confer in good faith within seven (7) days of any such request or notice. If, after the meet and confer process, the Parties are not in agreement as to whether the material in question is Protected Information, the Receiving Party may initiate the joint statement process to present the issue for resolution to the Court.

13. **Briefs or Filings Containing Protected Information.** If the Receiving Party seeks to file anything on the public docket containing or disclosing Protected Information, it must either (1) seek and obtain Court approval to file the Protected Information under seal; or (2) meet and confer with the Producing Party at least seven (7) business days before filing regarding whether

the Parties can agree that some or all of the Protected Information can be filed on the public docket. If the Receiving Party files Protected Information under seal, then the Receiving Party must meet and confer with the Producing Party within seven (7) business days after the sealed filing to attempt to agree on proposed redactions for a public version of the sealed filing. If the parties cannot agree on a public filing with some or all of the Protected Information redacted, the Receiving Party may move the Court for a ruling on the dispute pursuant to the procedures in Paragraph 16.

14. **Court Hearings And Other Pre-Trial Proceedings.** Before a Party seeks to use Protected Information in open court in pre-trial proceedings, the Party intending to use Protected Information shall provide reasonable notice of the potential disclosure of Protected Information to the Court and the opposing party, so that the opposing Party or any Non-Party may apply to the Court for appropriate protection in advance of its use in open court, such as a request to clear the courtroom of persons not entitled to receive Protected Information pursuant to Paragraph 7 or to close the proceedings. The Parties may agree in writing to exempt categories of Protected Information and/or particular documents or information from the restrictions of this Order. If the parties so agree in writing, such exempted information may be disseminated without restriction and used in this proceeding on the public record, pursuant to 5 U.S.C. § 552a(b)(11).

15. **Testimony At Pretrial Court Hearings And Other Proceedings.** All testimony elicited during hearings and

other proceedings that counsel for a Party or Non-Party indicated on the record may be subject to the protections of this Order shall be deemed Protected Information until the expiration of ten (10) days after delivery of a copy of the transcript of the testimony by the court reporter to counsel who requested a copy of the transcript. Within the ten (10) day period following such mailing of the transcript, any Party may move to designate all or any portion of the testimony as Protected Information. Upon being informed that certain portions of a transcript are designated as Protected Information, each Party must have each copy in their custody, possession, or control immediately marked with the appropriate designation at the appropriate pages.

16. **Challenge To Designations.** At any time prior to the filing of trial Exhibit lists, a Party may object to the designation of a document or information as Protected Information by giving written notice via email to all counsel for the other Party and the grounds for the objection. The objecting Party shall request to meet and confer with the other Party prior to submitting the dispute to the Court for a ruling. If the dispute is not resolved consensually between the parties within seven (7) business days of receipt of such a notice of objections, the objecting party may move the Court for a ruling on the objection, in accordance with the Court's Case Management Order, ECF No. 34, at 3. The documents or information at issue must be treated as Protected Information until the Court has ruled on the objection or the matter has been otherwise resolved.

17. **Inadvertent Disclosure Of Protected Material.** The failure by a Producing Party to designate specific documents or information as Protected Information shall not, by itself, be deemed a waiver in whole or in part of a claim of confidentiality as to such documents or information. Upon written notice to the Receiving Party of such failure to designate, or of incorrect designation, the Receiving Party shall cooperate to retrieve disseminated copies, and restore the confidentiality of the inadvertently disclosed information beyond those persons authorized to review such information pursuant to Paragraph 8, and shall thereafter take reasonable steps to ensure that the Protected Information is treated in accordance with the designation. No person or Party shall incur any liability under this Order with respect to disclosure that occurred prior to the receipt of written notice of the mistaken designation.

18. **Disclosure To Unauthorized Persons.** If information subject to this Order is disclosed to any unauthorized person either through inadvertence, mistake, or otherwise without authorization by the Producing Party, or other than in the manner authorized by this Order, the person responsible for the disclosure shall immediately (a) inform the Producing Party of all pertinent facts relating to such disclosure, including without limitation, the name, address, and telephone number of the recipient and his or her employer; (b) use his or her best efforts to retrieve the disclosed information and all copies thereof; (c) advise the recipient of the improperly disclosed information, in writing, of the terms of this Order; (d) make his or her best efforts to require

the recipient to execute an agreement to be bound by the terms of this Order in the form of the declaration attached to this Order as Exhibit A; and (e) take all other reasonable steps to prevent further disclosure by or to the unauthorized person who received the Protected Information.

19. **Good Faith Designations.** Each Party agrees that designation of Protected Information and responses to requests to permit further disclosure of Protected Information shall be made in good faith and not: (a) to impose burden or delay on an opposing Party, or (b) for tactical or other advantage in litigation. Further, each Party agrees to make best efforts to avoid as much as possible inclusion of Protected Information in briefs and other captioned documents filed in court, in order to minimize sealing and designating such documents as Protected Information.

20. **Use Of Information Subject To Order.** The Receiving Party's use of any information or documents obtained from the Producing Party designated as Protected Information pursuant to this Order shall be restricted to use in this litigation (subject to the applicable rules of evidence and subject to the confidentiality of such materials being maintained) and shall not be used by anyone subject to the terms of this agreement, for any purpose outside of this litigation or any other proceeding between the Parties, except as otherwise provided in this Order.

21. **Meet And Confer.** Prior to filing any motion or application before the Court to enforce this Order, the

moving party shall notify the other Parties in writing and meet and confer in good faith in an attempt to resolve their dispute in accordance with the Court's Case Management Order, ECF No. 34, at 3. If the non-moving Party fails to meet and confer within seven (7) business days of receiving notice under this Paragraph of the moving Party's intent to file a motion or application to enforce this Order, the moving Party may file the motion or application without such a conference.

22. **Other Actions.** If any Party or Non-Party who has received Protected Information is (a) subpoenaed in another action, (b) served with a demand in another action to which it is a Party, or (c) served with any legal process by one not a party to this action, seeking information or material which was produced or designated as Protected Information by any Party, that Party or Non-Party shall give prompt actual written notice by e-mail within ten (10) business days of receipt of such subpoena, demand, or legal process, to counsel for those who created the Protected Information prior to compliance with the subpoena so as to allow those creators to seek protection from the relevant court(s).

23. **Duration And Return.** Even after final disposition of this action, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. This does not apply to any Protected Information introduced as an exhibit for trial. For records the Parties intend to disclose at trial, the obligations under this Order are inapplicable, and the Parties agree

to negotiate the terms of any renewed Protective Order for trial exhibits prior to the commencement of trial. For Protected Information not disclosed at trial, the Parties and any other person(s) or entity subject to the terms of this Order agree that the Court shall retain jurisdiction over it and them for the purpose of enforcing this Order. Final termination of the litigation, including exhaustion of appellate remedies, shall not terminate the limitations on use and disclosure imposed by this Order.

24. Unless otherwise instructed by the Court, within sixty (60) days after final conclusion of all aspects of this litigation, including any appeals, any party or person who received Protected Information not disclosed at trial shall certify to the opposing parties that those documents containing such Protected Information and that were not made public at trial (i) have been returned to counsel of record for the Producing Party, or (ii) have been destroyed. However, counsel of record for the Parties shall be entitled to retain all litigation documents filed with the Court, including exhibits filed under seal, copies of depositions, hearings, trial transcripts, and attorney work product containing Protected Information. Such litigation documents and memoranda shall be used only for the purpose of preserving files on this action, and shall not, without the written permission of the Designating Party or an order of this Court, be disclosed to anyone other than those to whom such information was actually disclosed, in accordance with this Order, during the course of this litigation.

25. **Amendment Or Termination.** This Order is without prejudice to the right of any Party to apply at any time for

additional protection, or to amend, modify, or rescind the restrictions of this Order. The Party must provide written notice to counsel of record for all parties in this action specifying the portion(s) of this Order it seeks to amend, modify, or rescind and any additional provisions it may seek to add to the Order at least seven (7) business days in advance of filing any such motion. The parties expressly reserve the right to seek modification, amendment, or rescission of this Order by mutual agreement in writing.

26. **Enforcement.** All persons to whom Protected Information is disclosed shall be subject to the jurisdiction of this Court, for the purpose of enforcing this Order. This Order shall continue in full force and effect, and shall be binding upon the parties and all persons to whom Protected Material has been disclosed, both during and after the pendency of this case. Restrictions on the use of Protected Information disclosed and designated by Plaintiffs or Defendants shall be judicially enforceable to prevent any forbidden use.

27. **Limitations.** Nothing in this Order shall be deemed to restrict in any manner the use by any Party of its own documents or materials. Nothing in this Order should be construed as prohibiting a Non-Party from seeking additional protections of records or information that it owns or controls.

28. **All Objections, Redactions, Withholdings, Rights Preserved.** This Order is intended to provide a mechanism for handling the disclosure or production of Protected Information to which there is no objection

other than confidentiality. The protection afforded by this Order shall in no way affect a Party's right to withhold, redact documents or seek to designate information as: (a) privileged under the Attorney-Client or other privilege, (b) protected by the Attorney Work Product Doctrine, (c) protected by the Law Enforcement Privilege, Deliberative Process Privilege, or other similar privilege; or (d) otherwise exempted from discovery under Rule 26 of the Federal Rules of Civil Procedure or under any law. Additionally, this Order shall not prejudice the right of a Party to: (a) seek additional protective treatment for any information it considers to be very highly sensitive, or otherwise exempt from disclosure, such that the protections in this Order would be insufficient, (b) object to the designation of any document or information as Protected Information, or (c) seek any modification of or relief from any provision of this Order, either generally or as to any particular Protected Information, by properly noticed motion with notice to all Parties and their respective counsel.

29. This Order does not constitute any ruling on the question of whether any particular document or category of information is subject to the Privacy Act or is otherwise properly discoverable, and does not constitute any ruling on any potential objection to the discoverability, relevance, or admissibility of any document or information.

30. Nothing in this Order waives Defendants' right to use, disclose, or disseminate the Protected Information in accordance with the Privacy Act or other statutes, regulations, or policies.

31. Nothing in this Order shall be construed as a waiver of any defense, right, objection, or claim by any party, including any objection to the production of documents and any claim of privilege or other protection from disclosure, and this Order shall not be precedent for adopting any procedure with respect to the disclosure of any such other information.

32. Nothing in this Order shall require production of information that is prohibited from disclosure (even with the entry of this Order) by other applicable privileges, statutes, regulations, or authorities.

33. Pursuant to 5 U.S.C. § 552a(b)(11), Defendants are authorized to disclose to Plaintiff's counsel, the Court, and those persons defined in Paragraph 9 of this Order, records or information containing Privacy Act-protected material, without redacting such material, without obtaining prior written consent of the individuals whose names, addresses, and other identifying information may be present in such documents. Such disclosure is subject to the conditions set forth in this Order. So long as counsel for Defendants exercise reasonable efforts to prevent the disclosure of information protected from disclosure by the Privacy Act, 5 U.S.C. § 552a, other than as permitted under the terms of this Order, disclosures under this Order, including inadvertent disclosures of such information, shall not be construed as a violation of the Privacy Act.

34. No deadlines set forth herein shall conflict with either the U.S. District Court for the District of Arizona

Local Rules or any order by the Court. In the instance of a conflict, the deadlines set forth by the Local Rules or any order by the Court shall be the deadlines herein.

Dated this 31st day of January, 2024.

/s/_____
Honorable Roslyn O. Silver
Senior United States District Judge

APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED JANUARY 22, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-20-02373-PHX-ROS

ARIZONA YAGE ASSEMBLY, ET AL.,

Plaintiffs,

v.

MERRICK B. GARLAND, ET AL.,

Defendants,

Filed January 22, 2024

ORDER

Parties have filed a Joint Statement on Dispute Over Protective Order Provisions (Doc. 205). The dispute concerns two issues and the Court will address each in turn.

A. Whether AYA May Assert the Fifth Amendment on Behalf of Its Members

Plaintiffs seek to assert the Fifth Amendment on behalf of its members to prevent disclosure of potentially incriminating information related to membership in Plaintiffs' organization and participation in ceremonies.

(Doc. 205 at 5). Plaintiffs rely on *Albertson v. Subversive Activities Control Bd.*, where the Supreme Court held orders requiring individuals to register and admit to membership in the Community Party violated the Fifth Amendment's self-incrimination clause. 382 U.S. 70 (1965). But as Defendants point out, *Albertson* did not involve an organization asserting the Fifth Amendment on behalf of its members but was brought by individuals challenging orders compelling individual people to take individually incriminating action by registering as members of a Communist action organization. *See id.* at 74-76, 82-83. Here, Defendants' discovery requests do not seek incriminating admissions or documents from any individual members of Plaintiffs' organization, but instead seek organizational records and communications held by the organization itself. (Doc. 205 at 5). It is well established that "the official records and documents" of an organization "cannot be the subject of the personal privilege against self-incrimination." *United States v. White*, 322 U.S. 694, 699 (1944); *see also Shelton v. United States*, 404 F.2d 1292, 1301-02 (D.C. Cir. 1968) (affirming contempt conviction where the defendant refused to produce records and correspondence of Ku Klux Clan organizations); *Oklevueha Native Am. Church of Hawaii, Inc. v. Holder*, 2013 WL 3243371, at *4 (D. Haw. June 26, 2013) (finding the defendant church—with marijuana use as a central part of its religion—could not assert a Fifth Amendment privilege to avoid answering interrogatories related to membership and other records).

Thus, the Court finds Plaintiff AYA may not assert the Fifth Amendment on behalf of its members in responding to Defendants' discovery requests.

B. Restricting the Government's Access and Use of Discovered Information

Plaintiffs seek to include a provision in the protective order restricting the government's access and use of discovered information by prohibiting Defendants from transmitting any protected information to "enforcement prosecuting attorneys or criminal investigators employed by the Defendant agencies, or to state, county or municipal law enforcement agencies." (Doc. 205 at 3). Plaintiffs argue this provision is necessary to prevent compelled self-disclosure of testimonial evidence by its members under the Fifth Amendment, offering only *Albertson* as caselaw supporting its position. (Doc. 205 at 4). Defendants argue Plaintiffs seek to improperly weaponize the protective order "to restrict the government from using any information Plaintiffs deem to be 'protected information,' even if such information is suggestive of criminal activity." (Doc. 205 at 3-4). Defendants cite numerous cases holding grand jury subpoenas per se take precedence over civil protective orders, *see, e.g., In re Grand Jury Subpoena Served on Meserve, Mumper & Hughes*, 62 F.3d 1222, 1224-27 (9th Cir. 1995); *In re Grand Jury Subpoena*, 836 F.2d 1468 (4th Cir. 1988); *In re Grand Jury Proceedings (Williams)*, 995 F.2d 1013 (11th Cir. 1993), and holding courts cannot grant immunity against use of incriminating testimony in subsequent criminal prosecutions, *see Pillsbury Co. v. Conboy*, 459 U.S. 248, 261 (1983). Defendants' argument is persuasive, particularly where Plaintiff AYA cannot assert the Fifth Amendment privilege on behalf of its members. The Court finds the protective order shall not restrict Defendants'

access and use of discovered information as sought by Plaintiffs in this dispute.

IT IS ORDERED parties shall file a proposed protective order consistent with this order by **February 2, 2024**.

Dated this 22nd day of January, 2024.

/s/
Honorable Roslyn O. Silver
Senior United States District Judge

APPENDIX F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED MAY 4, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-20-02373-PHX-ROS

ARIZONA YAGE ASSEMBLY, *et al.*,

Plaintiffs,

v.

MERRICK B. GARLAND, *et al.*,

Defendants,

Filed May 4, 2023

ORDER

Plaintiffs Arizona Yage Assembly ("AYA") and Winfield Scott Stanley III ("Stanley"), AYA's Founder and Director, have filed a Fifth Amended Complaint alleging claims against Merrick Garland, the United States Attorney General, Anne Milgram, the Administrator of the Drug Enforcement Agency ("DEA"), Alejandro Mayorkas, the Secretary of the Department of Homeland Security ("DHS"), and Chris Magnus, the Commissioner for U.S. Customs and Border Protection ("CBP") (collectively, "the Agency Defendants") in their official capacities. That

complaint alleges sufficient facts to establish standing as well as sufficient facts establishing a burden on Plaintiffs' religious practices. Therefore, the motion to dismiss will denied.

FACTUAL BACKGROUND

AYA describes itself as a "Visionary Church"; church members allegedly use and share ayahuasca as part of their religious ceremonies. (Doc. 159 at ¶ 8). Ayahuasca is a tea brewed from plants containing a hallucinogenic compound, dimethyltryptamine ("DMT"). (*Id.*) DMT is listed as a Schedule I controlled substance under the Controlled Substances Act ("CSA").

Plaintiffs allege four shipments of ayahuasca from Peru to AYA have been seized by the federal government between April and December 2020. (Doc. 159 at ¶¶ 41, 42, 45, and 46). Plaintiffs additionally that AYA currently holds bi-monthly ayahuasca ceremonies within the District of Arizona, that it plans to continue to hold bi-monthly meetings for the foreseeable future, and that it will continue importing ayahuasca for that purpose. (Doc. 159 at ¶¶ 70-73).

Although a DEA guidance document ("the Guidance") first promulgated in 2009 established a procedure for seeking religious exemptions from the CSA, *see* U.S. Dep't of Just., Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act, Plaintiffs have

not sought an exemption. (*See* Doc. 159 at ¶ 68). Plaintiffs allege they declined to seek an exemption because the "Guidance imposes substantial burdens on Plaintiffs, such as requiring applicants to disclose inculpatory information and incur significant financial costs before filing a petition." (*Id.*) Plaintiffs additionally allege the Guidance is a "sham" because the "DEA has never granted an exemption under the Guidance." (*Id.*)

PROCEDURAL BACKGROUND

This case has shifted form over the course of five amended complaints, and the parties are familiar with the case history. (*See* Doc. 153 at 1-3). Initially, Plaintiffs Clay Villanueva,[1] Arizona Yage Assembly, North American Association of Visionary Churches, and the Vine of Light Church brought this action against a variety of state and federal government officials and entities seeking monetary, injunctive, and declaratory relief. (Doc. 109 at 87-94). Plaintiffs brought claims against the Agency Defendants (the Attorney General, DEA, DHS, and CBP) in their official capacities under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, et seq.; claims against the United States and DEA under the Administrative Procedure Act ("APA"), 5 U.S.C. § 500, et seq.; claims against a DEA agent under 42 U.S.C. § 1983; and claims against state entities and personnel under § 1983 and state laws. (Doc. 109 at 43-87).

1. Plaintiff Clay Villanueva was voluntarily dismissed on June 2, 2022. (Doc. 161). Plaintiff Wilfred Scott Stanley III joined the Fifth Amended Complaint. (Doc. 159).

Appendix F

On March 30, 2022, the Court dismissed Plaintiffs' Fourth Amended Complaint. (Doc. 153). The Court granted Plaintiffs leave to amend only their RFRA and § 1983 claims against the Agency Defendants. (Doc. 153 at 23). A Fifth Amended Complaint, brought only by AYA and Winfield Scott Stanley III, was filed on May 15, 2022, asserting a RFRA claim and a claim for declaratory judgment against the Agency Defendants. (Doc. 159). Plaintiffs seek a declaration and injunction providing that their "importation[,] use, possession, or transportation of Ayahuasca for bona fide religious use in Visionary Communion is lawful ab initio, and not a violation of the CSA," that the Agency Defendants' interpretation of the law as a complete ban against AYA's importation and sharing of Ayahuasca in Visionary Communion violates RFRA," compelling the Agency Defendants to grant AYA a religious exemption from the absolute prohibitions on importing, sharing, and using Ayahuasca, and barring them from initiating any criminal investigation. (Doc. 159 at p. 30-31).

The Agency Defendants filed a Motion to Dismiss the Fifth Amended Complaint (Doc 175), arguing Plaintiffs do not have standing to bring their RFRA claim, and that they have failed to state a RFRA claim. See Fed. R. Civ. P. 12(b)(6).

ANALYSIS

I. Motions to Dismiss

A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief."

Fed. R. Civ. P. 8(a)(2). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (internal citations omitted)). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint" has not adequately shown the pleader is entitled to relief. *Id.* at 679. Although federal courts ruling on a motion to dismiss "must take all of the factual allegations in the complaint as true, [they] 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555).

II. Standing

The Agency Defendants first argue Plaintiffs' RFRA claim should be dismissed for lack of standing. (Doc. 175 at 12). For the reasons below, Defendants' motion to dismiss for lack of standing is denied.

Under Article III of the Constitution, a plaintiff only has standing if he can show (1) an "injury in fact" that is "concrete and particularized" and "actual or imminent;" (2) that the injury is "fairly traceable to the challenged action of the defendant;" and (3) that it is "likely, as opposed to merely speculative, that the injury will be redressable by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (internal quotations and citations omitted). In cases

seeking prospective injunctive relief, "past wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy." *City of Los Angeles v. Lyons*, 461 U.S. 95, 103, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983). Rather, a plaintiff's "standing to seek the injunction requested depend[s] on whether he [is] likely to suffer future injury." *Id.* at 105.

To have standing to bring a pre-enforcement RFRA claim like Plaintiffs have alleged here, the Ninth Circuit requires plaintiffs to allege a "genuine threat of imminent prosecution." *Oklevueha Native Am. Church of Haw., Inc. v. Holder*, 676 F.3d 829, 835 (9th Cir. 2012) (*Oklevueha I*) (quoting *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc)). This requires considering: "(1) whether the plaintiffs have articulated a 'concrete plan' to violate the law in question; (2) whether the government has communicated a specific warning or threat to initiate proceedings; and (3) the history of past prosecution or enforcement under the statute." *Id.*

The Agency Defendants argue Plaintiffs have failed to allege any genuine threat of imminent prosecution, because they rely on claims of past harm, they have failed to allege a particular or specific threat by Defendants to initiate proceedings, and they have failed to allege any past federal prosecutions for ayahuasca use. Plaintiffs oppose each of those arguments.

A. Concrete Plan

Defendants argue "neither the mere existence of a proscriptive statute nor a generalized threat of

prosecution" is sufficient to establish standing. *Thomas*, 220 F.3d at 1139. However, Plaintiffs may satisfy the "concrete plan" requirement where the plaintiff "actually did violate [the law at issue] on a number of occasions," and where they plan to continue doing so. *Oklevueha I*, 676 F.3d at 836 (quoting *Sacks v. Off. of Foreign Assets Control*, 466 F.3d 764, 773 (9th Cir. 2006)) (finding concrete plan existed where "[p]laintiffs are currently violating and plan to continue to violate the CSA by purchasing and consuming marijuana"). While the Court previously dismissed Plaintiffs' RFRA claims because of a failure to allege a concrete plan, the Fifth Amended Complaint specifically alleges AYA "currently holds bi-monthly Ayahuasca ceremonies" and that it "plans to continue to hold bi-monthly meetings . . . for the foreseeable future." (Doc. 159 at ¶¶ 70-73) That is sufficient, taken as true, to allege a concrete plan to violate the CSA.

B. Future and Past Prosecutions

Defendants next argue that Plaintiffs have not alleged any specific warning or threat by Defendants to initiate proceedings against Plaintiffs, nor have they alleged any past federal prosecutions for violations of the CSA based on ayahuasca use. However, in *Oklevueha I*, the Ninth Circuit held a plaintiff "need not allege a threat of future prosecution because the statute has already been enforced against them." 676 F.3d at 836. For the same reasons, in that case there was no need to inquire into "the history of enforcement of the statute," under the third prong, because "the CSA has already been enforced

against Plaintiffs through the seizure of their [controlled substance]." *Id.* at 837.

Defendants argue the facts here differ from those in *Oklevueha I*. Defendants mainly argue there was, in fact, no past enforcement of the CSA against Plaintiffs. Defendants argue "CBP's alleged border seizures cannot form the basis for a broad pre-enforcement injunction against DEA and the CSA *in toto* because DEA has not 'enforced' these provisions against Plaintiffs." (Doc. 179 at 5). However, the CSA operates through multiple agencies; as the Agency Defendants have argued, the DEA may grant permits for importation of controlled substances, without which the CBP and/or DHS will seize packages as a matter of course. (*See* Doc. 149 at 4). The Agency Defendants' actions and responsibilities are thus intertwined; the Defendant agencies cannot avoid accountability for enforcing the CSA by claiming they enforce only one piece of it.

Moreover, just because DEA has not commenced a federal criminal prosecution does not mean the CSA has not been enforced against Plaintiffs. Just as in *Oklevueha I*, "[w]hen the government seized Plaintiffs' [drugs] pursuant to the CSA, a definite and concrete dispute regarding the lawfulness of that seizure came into existence." 676 F.3d at 836. And here, Plaintiffs allege four separate seizures of ayahuasca shipments by DHS between April and December 2020. (Doc. 159 at ¶¶ 41, 42, 45, and 46). Plaintiffs also allege AUSA Kevin Hancock sent a letter in November 2020, in response to AYA's demand for release of their packages containing ayahuasca, stating that any

future imports of Schedule I controlled substances like ayahuasca will be seized and forfeited unless an applicable permit for lawful importation has been issued.[2] (*See* Doc. 177 at 12; Doc. 179 at 2). Those allegations are enough to establish that the CSA has already been enforced against him and will continue to be enforced.[3]

Accordingly, Plaintiffs have alleged facts sufficient to demonstrate standing for their RFRA claim.

C. DEA Exemption Process

The bulk of Defendants' arguments stem from the fact that Plaintiffs have not sought an exemption from

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2. While Defendants argue this case is more like the facts in Thomas, 220 F.3d 1134, the Court disagrees. In *Thomas*, the plaintiffs were landlords and devout Christians who believed an unmarried man should not cohabitate with an unmarried woman; they brought a pre-enforcement action to block applicability of a statute that made it unlawful to refuse to rent a property to a person because of marital status. The Ninth Circuit held the plaintiffs did not have standing, because "[t]he asserted threat [of prosecution] is wholly contingent upon the occurrence of unforeseeable events," like an unmarried couple seeking to rent their property in the first place, so there was no realistic danger of injury as a result of the statute. *Id.* at 1141. Here, by contrast, Plaintiffs have already had multiple shipments of ayahuasca seized pursuant to the CSA. The harm is nowhere near as speculative as it was in *Thomas*.

3. The allegations made about Agent Smyrnos threatening a member of AYA with felony drug prosecution after seizing packages containing mescaline, another controlled substance, do not necessarily impact this analysis.

the applicability of the CSA. The DEA promulgated the "Guidance" in 2009 in response to the Supreme Court's ruling in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006). However, in 2012 the Ninth Circuit addressed a similar argument as Defendants make here, and the court refused "to read an exhaustion requirement into RFRA where the statute contains no such condition." *Oklevueha I*, 676 F.3d at 838 (stating that "the Supreme Court has reviewed a RFRA-based challenge to the CSA without requiring that the plaintiffs first seek a religious use exemption from the DEA") (citing *O Centro*, 546 U.S. 418). Both the Supreme Court and the Ninth Circuit have recognized that RFRA "plainly contemplates that courts would recognize exceptions [to the CSA]—that is how the law works." *Id.* (quoting *O Centro*, 546 U.S. at 434).

The Court will not depart from that clear precedent. Accordingly, the Defendants' alternative request that the Court stay the case to allow Plaintiffs to apply for an exemption is denied.

D. Associational Standing

Lastly, Defendants argue AYA has no associational standing to bring claims on behalf of AYA's members.

A plaintiff organization may bring suit on its members' behalf when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks

to protect are germane to the organization's purpose;[4] and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977).

Defendants first argue Plaintiffs have failed to allege any AYA member has suffered an injury sufficient to establish they would have standing to sue in their own right. However, Plaintiffs have alleged ayahuasca is a central component of AYA members' religion (*see* Doc. 159 at ¶¶ 34-36), and that if ayahuasca shipments continue to be seized, their members will be unable to practice their religion (*see* Doc. 159 at ¶ 47). Defendants also argue that individual members must participate in the litigation, destroying AYA's associational standing. However, the Ninth Circuit in *Oklevueha* answered this question on closely related facts, and held that "it can reasonably be supposed that the [AYA's prospective relief], if granted, will inure to the benefit of those members of the association actually injured." 676 F.3d at 839 (quoting *Warth v. Seldin*, 422 U.S. 490, 515, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). There is no need for the kind of individualized inquiry Defendants suggest.

4. Defendants do not dispute this prong, so the Court will assume AYA has met the requirement.

Accordingly, Plaintiffs have alleged facts sufficient to support standing. Defendants' motion to dismiss for lack of standing is denied.[5]

III. Failure to State a Claim (FRCP 12(b)(6))

RFRA provides that the government "shall not substantially burden a person's exercise of religion" unless the government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb-1(a)-(b). To state a claim under RFRA, a plaintiff must allege facts sufficient to show that "application of the [CSA] would (1) substantially burden (2) a sincere (3) religious exercise." *O Centro*, 546 U.S. at 428.

Defendants only obliquely challenge Plaintiffs' assertion that ayahuasca use is a sincere religious exercise for its members. (Reply at 8-9). Defendants claim Plaintiffs are trying to rely on a categorial allegation that ayahuasca is always religious, instead of individualized allegations about personal religious beliefs. (*Id.*) But Plaintiffs have alleged "[d]rinking sacramental Ayahuasca is the central communion ceremony of AYA where congregants receive the transmission of wisdom and Divine Love that comes through sacramental use

5. Defendants' footnoted argument that Plaintiffs similarly lack standing for their declaratory relief claim is denied for the same reasons. (*See* Doc. 175 at 12, n.7).

of Ayahuasca. Without Ayahuasca, AYA does not have a religious practice to share, and AYA congregants are unable to practice their religion." (Doc. 159 at ¶ 9). Plaintiffs have alleged particular facts about the ayahuasca religious ceremonies AYA's members attend. (Doc. 159 at ¶¶ 31-36). And Plaintiffs have also alleged that it plans to serve ayahuasca to its members in religious ceremonies despite the possibility that Defendants may enforce the CSA against them. (Doc. 159 at ¶¶ 70-73). Construed most favorably to Plaintiffs, the Fifth Amended Complaint sufficiently alleges the sincerity of Plaintiffs' religious beliefs.

Plaintiffs have also alleged that they are "substantially burdened by the prohibitions on manufacturing, distributing, or dispensing a controlled substance in [the CSA], and by the prohibition on importation in [the CSA], that impose criminal penalties for violations." (Doc. 159 at ¶ 80). "A statute burdens the free exercise of religion if it puts substantial pressure on an adherent to modify his behavior and to violate his beliefs, including when, if enforced, it results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution." *Guam v. Guerrero*, 290 F.3d 1210, 1222 (9th Cir. 2002). Plaintiffs allege they are forced to choose between "either abandoning religious principle or risking criminal prosecution." (Doc. 159 at ¶¶ 81, 86). That is sufficient to state a RFRA claim. *See Oklevueha Native Am. Church of Haw., Inc. v. Lynch*, 828 F.3d 1012, 1016 (9th Cir. 2016) (*Oklevueha II*) (reiterating "a substantial burden under RFRA exists . . . only when individuals are . . . coerced to act contrary to their religious beliefs by the

threat of civil or criminal sanctions") (citation omitted); *Church of the Holy Light of the Queen v. Mukasey*, 615 F. Supp. 2d 1210, 1219 (D. Or. 2009), vacated on other grounds, *Church of Holy Light of Queen v. Holder*, 443 F. App'x 302 (9th Cir. 2011) (finding that prohibiting plaintiffs' use of ayahuasca would substantially burden their exercise of religion where the tea was the "sole means by which [they] are able to experience their religion") (citation omitted).

While Defendants try to re-cast Plaintiffs' alleged "burden" as one imposed by the DEA's exemption process, that was not how Plaintiffs made their allegations in the Fifth Amended Complaint.[6] (*See* Doc. 175 at 19). Plaintiffs argue they are burdened by the CSA's complete ban on ayahuasca use and importation (Doc. 159 at ¶¶ 82-87), not by the exemption process outlined by DEA's Guidance. They have alleged multiple seizures of ayahuasca shipments, which interrupts their free exercise of religion because they cannot use the ayahuasca that has been seized. (Doc. 159 at ¶¶ 41-46, 51, 83). That is sufficient to state a claim under RFRA.

Accordingly, Defendants' Motion to Dismiss the RFRA claim for failure to state a claim is denied.

IT IS ORDERED Defendants' Motion to Dismiss (Doc. 175) is DENIED.

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6. Indeed, the Court previously dismissed Plaintiffs' claim under the Administrative Procedures Act that sought to challenge the DEA's guidance for lack of standing. (Doc. 153 at 9).

Dated this 4th day of May, 2023.

/s/_____
Honorable Roslyn O. Silver
Senior United States District Judge

APPENDIX G — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 13, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-1405

D.C. No. 2:20-cv-02373-ROS
District of Arizona, Phoenix

In re: ARIZONA YAGE ASSEMBLY; *et al.*

ARIZONA YAGE ASSEMBLY; *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, PHOENIX,

Respondent,

MERRICK B. GARLAND, Attorney General, *et al.*,

Real Parties in Interest.

ORDER

Before: BENNETT, R. NELSON, and MILLER, Circuit Judges.

Appendix G

Petitioners' motion for reconsideration (Docket Entry No. 20) is denied.

Petitioners' motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

APPENDIX H — CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const.:

Amend. I (Free Exercise Clause)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

process of law; nor shall private property be taken for public use, without just compensation.

Amend. XIV

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix H

Religious Freedom Restoration Act of 1993,

42 U.S.C. 2000bb *et seq.*

42 U.S.C. 2000bb-1(a)

In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

42 U.S.C. 2000bb-1(b)

Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. 2000bb-1(c)

Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.