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United States of America

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 10-00384 LEK-01,-02
)	
Plaintiff,)	EX PARTE MOTION FOR LEAVE OF
)	COURT TO FILE AN OPPOSITION
vs.)	MEMORANDUM OF MORE THAN
)	THIRTY (30) PAGES;
)	DECLARATION OF COUNSEL
ROGER CUSICK CHRISTIE,	(01))	
SHERRYANNE L. CHRISTIE,	(02))	
formerly known as)	
"Sherryanne L. St. Cyr,)	
SUSANNE LENORE FRIEND,	(03))	
TIMOTHY M. MANN,	(04))	
RICHARD BRUCE TURPEN,	(05))	
WESLEY MARK SUDBURY,	(06))	
DONALD JAMES GIBSON,	(07))	
ROLAND GREGORY IGNACIO,	(08))	
PERRY EMILIO POLICICCHIO,	(09))	
JOHN DEBAPTIST BOUEY, III,	(10))	
MICHAEL B. SHAPIRO,	(11))	
also known as "Dewey",)	
AARON GEORGE ZEEMAN,	(12))	
VICTORIA C. FIORE,	(13))	
JESSICA R. WALSH, also	(14))	
known as "Jessica Hackman",)	
)	
Defendants.)	
_____)	

**EX PARTE MOTION FOR LEAVE OF COURT TO FILE AN
OPPOSITION MEMORANDUM OF MORE THAN THIRTY (30) PAGES**

The United States of America, by and through its undersigned counsel, hereby moves this Honorable Court to grant leave to file an opposition memorandum in excess of thirty (30) pages, which is responsive to defendants Roger Cusick Christie and Sherryanne L. Christie's "Motion in Limine to Present Religious Freedom Restoration Act Defense", filed April 1, 2013.

This motion is made pursuant to this Court's Local Rule LR7.5(a) and is based upon the appended Declaration of Counsel and the record and files herein.

DATED: Honolulu, Hawaii, May 20, 2013.

FLORENCE T. NAKAKUNI
United States Attorney

/s/ Michael K. Kawahara
By _____
MICHAEL K. KAWAHARA
Assistant U.S. Attorney

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UNITED STATES OF AMERICA,)	CR. NO. 10-00384 LEK-01,-02
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Plaintiff,)	DECLARATION OF COUNSEL
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vs.)	
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known as "Jessica Hackman",)	
)	
Defendants.)	
)	

DECLARATION OF COUNSEL

MICHAEL K. KAWAHARA, upon penalty of perjury, declares and states as follows:

1. I am the primary counsel of record for the United States of America in the above-captioned criminal case and have been involved in said case from its inception. I make this Declaration of my own personal knowledge.

2. On April 1, 2013, defendants Roger Cusick Christie and Sherryanne L. Christie filed their "Motion in Limine to

Present Religious Freedom Restoration Act Defense" in the instant case ("motion in limine"), which seeks this Court's approval to present a "religious exercise" affirmative defense at trial pursuant to the Religious Freedom Restoration Act ("RFRA", 42 U.S.C. 2000bb-1. The hearing thereon is currently set for June 13, 2013. In connection therewith, defendants have proffered a number of Declarations and exhibits (appended to the motion in limine). It is also likely both sides will also be calling a limited number of live witnesses.

3. The prosecution's opposition memorandum is due today (May 20, 2013). It has been finalized and is ready to be filed with this Court. However, it is 119 pages in length, and in the instant motion, I explain why I believe this length, well in excess of this Court's thirty-page limit, is necessary and therefore seek this Court's leave to have it filed.

3. Herein, the defendants are charged with various marijuana trafficking offenses, which they conducted through the "THC Ministry" in Hilo, Hawaii. As this Court is aware from prior filings, the prosecution's case-in-chief will primarily consist of recorded face-to-face and telephone conversations with the defendants, some of which took place during an undercover operation and a substantial number of other calls which were intercepted through a Court-authorized wiretap. A substantial number of relevant calls were intercepted and will be submitted

into evidence at trial.

4. Under RFRA, both the defendants and the prosecution bear different burdens of persuasion/proffering evidence in support thereof. The defendant must first establish that the government has "substantially burdened a person's exercise of religion". 42 U.S.C. 2000bb-1(a).¹ If that occurs, then the prosecution's burden would be to "demonstrate that the application of the [substantial] burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of compelling that governmental interest". 42 U.S.C. 2000bb-1(b).

5. In construing the prosecution's burden under 42 U.S.C. 2000bb-1(b), the Supreme Court in Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal, 546 U.S. 418 (2006), has instructed:

RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'- the particular claimant, whose sincere exercise of religion is being substantially burdened. 42 U.S.C. 2000(bb-1(b)). RFRA expressly adopted the compelling interest test 'as set forth in Sherbert v. Verner, 374 U.S. 398 (1963), and Wisconsin v. Yoder, 406 U.S. 205 (1972). In each of those cases, this Court looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular

¹ In their motion in limine, the defendants have contended that the application of the Controlled Substances Act to them-- which prohibits the manufacture, distribution, and possession with intent to distribute marijuana-- has substantially burdened their exercise of religion.

religious claimants.

546 U.S. at 430-1 [emphasis added].

The Supreme Court also pointed out in O Centro that in granting religious exemptions under RFRA to generally applicable laws, "strict scrutiny 'at least requires a case-by-case determination of the question, sensitive to the facts of each particular claim'". 546 U.S. at 431.

6. Given the fact-specific nature of the analysis mandated by the Supreme Court in O Centro, the prosecution's opposition memorandum necessarily must contain a substantial factual proffer for the Court to have the opportunity to evaluate and consider in making its ruling under RFRA. This factual proffer is contained in the opposition memorandum at pages 15 - 94 (approximately 80 pages), and consists in the main of quoted excerpts from numerous recorded conversations, as well as quotations from the defendants' internet website for the THC Ministry.

7. Based upon the foregoing, I believe that good cause exists for the granting of the instant ex parte motion.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED: Honolulu, Hawaii, May 20, 2013.

/s/ Michael K. Kawahara

MICHAEL K. KAWAHARA