



2261 Market Street PMB 86520

San Francisco, CA 94114

Email: info@sacredplantalliance.org Website: www.sacredplantalliance.org

April 14, 2025

Mr. Scott A. Brinks
Section Chief, Regulatory Drafting and Support Section
Diversion Control Division
Drug Enforcement Administration
8701 Morrisette Drive
Springfield, VA 22152
Email: scott.a.brinks@dea.gov

Re: The DEA Guidance Providing the Process for Religious-Based Exemption Petitions

Dear Mr. Brinks:

Sacred Plant Alliance (SPA) is a 501(c)(3) association of churches whose members hold ceremonies with psychotropic substances that are regulated under the Controlled Substances Act (CSA). SPA's members are churches with organized religious communities and ceremonies that are an essential part of the exercise of their sincere religious beliefs. These ceremonies necessarily involve the ingestion of regulated substances, which our members hold as sacred and create a state of spiritual consciousness that is intrinsic to their religious practice.

SPA is writing with regard to the religious-based exemption petition process set forth originally in 2009 by the Drug Enforcement Administration (DEA) in its guidance (the "Guidance").¹ SPA requests a response to this letter within sixty (60) days.

As discussed below, the Guidance and its implementation substantially burdens the religious exercise of our members. Moreover, the Guidance makes it impossible for SPA's members to both comply with petition requirements and continue to exercise their religious beliefs. SPA met with the DEA on May 15, 2024 and identified some of our concerns about the Guidance. The United States Government Accountability Office (GAO) published a report on May 30, 2024 that concluded significant problems with the Guidance. And the DEA has

¹ 2009 DEA Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act.
[https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-5\)\(EO-DEA-007\)\(Version2\)RFRA_Guidance_\(Final\)_11-20-2020.pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-5)(EO-DEA-007)(Version2)RFRA_Guidance_(Final)_11-20-2020.pdf)

previously indicated intent to revise the Guidance.² Yet, there has been no meaningful progress to date that addresses the harm caused by the Guidance.

I. About Sacred Plant Alliance

SPA membership is based on whether the organized religious community meets certain criteria, including that it (1) is organized and operated consistent with the legal definition of “church” under the Internal Revenue Code, (2) engages in procedures that promote safety, such as screening for health risks, transparency through informed consent and about operations with its congregation, and ethical community practices, (3) engages in sincere religious practices with spiritually sourced sacred substances, maintains secure records and storage of such sacred substances, and only provides such sacred substances within ceremony comprised of religiously-aligned congregants or seekers, and (4) is committed to advancement, improvement, and accountability through the collaboration and self-regulation of SPA members and SPA as an association. SPA members are committed to religious practices that align with legal, safety-oriented, and spiritual standards; therefore, they collaborate to develop best practices on operations of a community, health and safety, diversion prevention, and ethics. SPA has established accountability mechanisms—including annual peer review and an ethical reporting system—and educates members and the public about best practices and the constitutionally guaranteed right to religious freedom.

II. Legal Background

Congress enacted the Religious Freedom Restoration Act (RFRA) in 1993 to mandate strict scrutiny of governmental action that impedes the right to religious exercise. RFRA applies to even generally applicable laws like the CSA and exists “to protect the ability of the religious minorities to practice their faiths.”³

In 2006, the U.S. Supreme Court confirmed in *O Centro* that, by enacting RFRA, “Congress has determined that courts should strike sensible balances, pursuant to a compelling interest test that requires the Government to address the particular practice at issue.”⁴ The Court stressed “the very reason Congress [had] enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance.”⁵

² DEA’s draft notice of proposed rulemaking, *DEA Registration for Religious Organizations Under the Religious Freedom Restoration Act*, was published in Spring 2021 and then in Fall 2023. Unified Agenda of Regulatory and Deregulatory Actions. See, respectively,

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1117-AB66> and <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1117-AB66>.

³ S. Rep. No. 103-111, at 8 (1993); see also, e.g., H.R. Rep. No. 102-137, pt. 16, at 23375 (1991).

⁴ *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 439 (2006).

⁵ *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 436–37 (2006).

O Centro concludes that “Congress’ express decision to legislate the compelling interest test indicates that RFRA challenges should be adjudicated in the same way as the test’s constitutionally mandated applications... RFRA and its strict scrutiny test contemplate an inquiry more focused than the Government’s categorical approach.”⁶

Thereafter, in 2009, the DEA published “Interim” guidance specifying a petition procedure for religious exemptions to the CSA (the “Guidance”). The Guidance purports to allow the agency to engage in the individualized analysis required by RFRA.⁷ It states that petitions for CSA exemptions must “demonstrate that application of the Controlled Substances Act to the party’s activity would (1) be a substantial burden on (2) his/her sincere (3) religious exercise.”⁸ The Guidance further requires petitioners to include information about the petitioner’s religion, such as details about its history, belief system, membership, and leadership; as well as to explain the religious practices in which the controlled substance is involved; and provide information on the type of substance and “the amounts, conditions, and locations of its anticipated manufacture, distribution, dispensing, importation, exportation, use or possession.”⁹

Importantly, the Guidance does not provide clear and defined standards and procedures. Pursuant to the Guidance, the DEA has granted no exemptions—engaging in significant delays or total silence to petitions—and has denied two petitions, substantiating such denial determinations with certain analysis that is arguably discriminatory and contrary to the principles of RFRA.

The Guidance ostensibly creates an extrajudicial administrative process for “religious organizations *which use* controlled substances within the free exercise of their religion.”¹⁰ This indicates that the DEA anticipates substantial disclosures by *currently active* religious organizations to prove sincere religious exercise and that their practices diminish compelling government interests to enforce the CSA by increasing safety and minimizing the risk of diverted sacrament. However, the Guidance also mandates that petitioners not “engage in any activity prohibited under the Controlled Substances Act or its regulations unless the petition has been granted and the petitioner has applied for and received a DEA Certificate of Registration.”¹¹ Although the Guidance mandates that petitioners suspend the religious use of sacred substances, it fails to provide any timelines for the evaluation of the petition or procedures to enable petitioners to seek interim approval while a petition is under consideration.

⁶ *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 419 (2006).

⁷ Drug Enforcement Administration Diversion Control Division Guidance Document: Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act (Revised). [https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-5\)\(EO-DEA-007\)\(Version2\)RFRA_Guidance_\(Final\)_11-20-2020.pdf#search=DEA%20religious%20petition](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-5)(EO-DEA-007)(Version2)RFRA_Guidance_(Final)_11-20-2020.pdf#search=DEA%20religious%20petition). See also GAO Report, p. 29.

⁸ DEA Guidance, pg. 1.

⁹ DEA Guidance, pg. 1-2.

¹⁰ DEA Guidance, pg. 1. (Emphasis added).

¹¹ DEA Guidance, pg. 2.

The Guidance was issued as “guidance” and has not gone through notice-and-comment rulemaking.

III. Government Accountability Office May 2024 Report

GAO published a report entitled *DEA Should Improve its Religious Exemptions Petition Process for Psilocybin (Mushrooms) and Other Controlled Substances*, in May 2024 (the “GAO Report”).¹² Based on stakeholder feedback, the DEA responses, and the GAO’s analysis, the GAO Report finds that the Guidance’s petition process operates as a significant barrier to obtaining an exemption.

The GAO Report finds that the DEA has not granted any petitions for religious exemption under the Guidance, despite dozens of petitions in an 8 year period.¹³ The Report concludes the Guidance lacks clarity and procedural timeframes and highlighted that the DEA has not engaged in the rulemaking process.

GAO recommends that the Guidance should (1) “more clearly communicate the types of information” and “the standards and relevant factors to Religious Freedom Restoration Act petitioners in making a determination related to religious sincerity”, (2) “establish timeframes for DEA to make determinations”, and (3) “provide Religious Freedom Restoration Act petitioners with information for petitioners to be able to receive updates on the agency’s progress related to exemption reviews.”¹⁴ The Department of Justice agreed with these recommendations.¹⁵

IV. SPA’s Claims Related to the DEA Guidance

The Guidance Violates the Religious Freedom Restoration Act

The Guidance unlawfully discourages and intimidates experienced religious practitioners with established communities from filing petitions, effectively discriminating against the sacred and sacramental practices intended to be protected by RFRA.

SPA’s members and SPA itself have been harmed by the Guidance and its petition process. The Guidance purports to establish an administrative process “pursuant to the Religious Freedom Restoration Act” for the DEA to evaluate and grant individualized exemptions from the

¹² “Drug Control: DEA Should Improve Its Religious Exemptions Petition Process for Psilocybin (Mushrooms) and Other Controlled Substances” GAO-24-106630. Published: May 30, 2024. Publicly Released: May 30, 2024. <https://www.gao.gov/products/gao-24-106630>

¹³ From 2016 to 2024, two (2) petitioners were denied a religious exemption, eight (8) petitioners withdrew their petitions, and fourteen (14) of the petitions remained pending. Of these petitions, one (1) petition was denied after more than three (3) years and one (1) petition has been pending for eight (8) years. GAO Report, pp. 38-39.

¹⁴ GAO Report, pg. 45.

¹⁵ GAO Report, pg. 46.

Controlled Substances Act (CSA) to an individual or church that engages in *bona fide* religious ceremonies with controlled substances without needing to file a claim or raise a defense under RFRA. Although the Guidance appears to be a meaningful opportunity for sincere religious communities to be granted a religious-based exemption, in reality it violates RFRA's core protections—forcing religious communities to choose between compliance with the petition process and practicing their faith—and implements analysis that discriminates against the religious minority.

First, in demanding that petitioners suspend their religious practices to petition for a religious-based exemption, the Guidance creates a substantial burden by impeding and infringing the fundamental right to religious exercise. The Guidance also lacks a process to obtain an interim exemption pending full consideration of a petition, such as an abbreviated review. As a result, because the DEA's review of petitions under the Guidance spans years—not months—the DEA effectively requires petitioners to suspend *bona fide* religious practice for years as a prerequisite to obtaining a DEA exemption. That violates RFRA, because it imposes a significant burden on sincere religious exercise.

Put simply, *O Centro* prohibits the DEA from categorically barring the use of controlled substances in *bona fide* religious ceremonies. Logically, *O Centro* also prohibits the DEA from categorically barring the use of controlled substances in *bona fide* religious ceremonies while an exemption petition is pending for years—without any means for petitioners to engage with their sacred substances in ceremonies until a determination with no foreseeable timeframe.

Second, the Guidance—both by failing to provide clear timelines and in its implementation by the DEA, which constitutes a pattern and practice of failing to respond to petitions—is effectively a categorical prevention of religious practices with substances regulated by the CSA.

Third, only granting petitions to religious communities who have not begun or are willing to suspend sincere religious practices is inconsistent with the principles of RFRA and may be an equal protection violation.

Fourth, the Guidance demands detailed disclosures, under the penalty of perjury, but provides no meaningful protection for disclosing such information.

Fifth, the Guidance provides unclear legal standards for defining religious practice and sincerity and imposes discriminatory analysis. For example, in the two denials of religious-based exemption petitions, the DEA supported its decision with concerns about concepts that generally do not undermine the religiosity of a church, such as inconsistency of congregants' beliefs,

pastoral care or counseling that is therapeutic, speaking to the healing power of religion, and receiving donations for ceremonies and sacramental substances.¹⁶

The Guidance Violates the Administrative Procedure Act

The Guidance also violates the Administrative Procedure Act (APA). In federal court, the DEA has repeatedly attempted to redirect RFRA cases to its Guidance.¹⁷ The Guidance goes beyond a non-binding, advisory, interpretive document. It has been treated as a legislative rule, even though it was never subjected to the APA requirements for rulemaking. The Guidance does not interpret any law, but instead creates the sole administrative process for a religious-based exemption.

The Guidance establishes the only proactive route to a religious-based exemption; the alternative is waiting in fear of prosecution or other significant injury—until sufficient harm is inflicted to constitute substantial burden and a basis to seek relief under RFRA. Therefore, the Guidance is currently the only means for a religious community that desires legal recognition. A religious-based exemption allows a community to practice their faith in peace and without retribution, which includes equal access to tax-exempt status¹⁸ and to resources within a legal framework. Legality increases safety with respect to access to medical assessments, continuity of care within healthcare services, accountability for religious leaders, and obtaining sacred substances with sincere spiritual significance and safety protocol—without fear of prosecution or persecution.

The DEA claims it will grant exemptions but only to those who follow its Guidance. The Guidance therefore has the force and effect of law. And, by failing to engage in the rulemaking process to formulate new or revised rules (with no meaningful progress beyond occasionally publishing and removing notices of proposed rulemaking), the DEA appears to implicitly concede that the existing Guidance has the force and effect of law.¹⁹ The GAO Report confirmed

¹⁶ See Hoots, Allison. “The Legal Definition of Religion in the Context of Modern Religious Exercise with Psychedelics: Protection, Double Standards, and Potential Expansion under RFRA.” *Psychedelic Intersections: 2024 Conference Anthology*, edited by Jeffrey Breau and Paul Gillis-Smith. Center for the Study of World Religions, Harvard Divinity School, 2025. <https://doi.org/10.70423/0001.15>

¹⁷ See, e.g., *Arizona Yage Assembly v. Garland*, 671 F. Supp. 3d 1013, 1020 (D. Ariz. 2023) (“The bulk of Defendants’ arguments stem from the fact that Plaintiffs have not sought an exemption from the applicability of the CSA”).

¹⁸ See *Iowaska Church of Healing v. Werfel*, 105 F.4th 402, 416 (D.C. Cir. 2024). See also Hoots, Allison & Whiting, Rebecca Lee, Chacruna Institute Files Amicus Brief in Support of Sacramental Churches’ Rights under RFRA Appeal, Chacruna Institute for Psychedelic Plant Medicines. (Oct. 20, 2023). <https://chacruna.net/chacruna-institute-files-amicus-brief-in-support-of-iowaska-church-of-healing/>.

¹⁹ The DEA’s draft notice of proposed rulemaking, *DEA Registration for Religious Organizations Under the Religious Freedom Restoration Act*, was listed in 2019, 2023, and 2024. See, e.g., Unified Agenda of Regulatory and Deregulatory Actions. <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1117-AB66>. See also GAO Report, p. 33.

the DEA's acknowledgement and intention to correct the problems with the Guidance; yet there has been no apparent action by the DEA to address the recommendations.

Further, the DEA's de facto denials through inaction—leaving petitions pending for years—does not conclude matters “within a reasonable time.”²⁰ The DEA's failure to engage in the rulemaking process (1) circumvents public input, such as through a notice-and-comment period, and (2) evades judicial review.²¹ As a result, there is no recourse to redress the real-world burdens of continuous fear of prosecution and the Guidance's imposed suspension of religious exercise.

In conclusion, the DEA continues to implement temporary guidance, persistently delays and disregards petitions, treats the Guidance as a binding rule, and fails to reasonably address the Guidance's administrative harms; this establishes the basis for multiple claims pursuant to APA. Without the proper rulemaking process, the Guidance is invalid and not binding law.

V. Conclusion

SPA requests that the DEA engage in rulemaking, which would allow the public to comment on the DEA's proposed process for handling religious-based exemption petitions. As an association representing its member churches, SPA is compelled to defend religious freedom and the right to legal religious practices. SPA members seek an objective, legal, and non-discriminatory evaluation process so that they can receive religious-based exemptions and operate within a reasonably regulated framework.

RFRA dictates that any legal petition process be provided in a manner that preserves the right to religious exercise as balanced by government interests—as intended by U.S. Congress, held by the U.S. Supreme Court, and recognized by the DEA in creating the Guidance. At minimum, a petition process must: have clear standards for a determination whether a petitioner is entitled to a religious-based CSA exemption, be implemented with nondiscriminatory analysis, not require indefinite suspension of religious practices, establish reasonable timelines for responses and determinations, and be subjected to the rulemaking process. Further, establishing a functional and reasonable petition process would not only lessen the burden and costs to the DEA but also simultaneously establish the Guidance as a law in compliance with APA and RFRA.

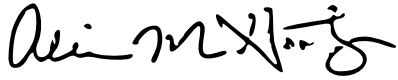
SPA requests a response from the DEA within sixty (60) days or such other action showing agency engagement to address the existing Guidance that, as it exists, places a substantial burden on the religious exercise of the members of our association. SPA remains

²⁰ APA, 5 U.S.C. § 555(b).

²¹ APA, 5 U.S.C. § 706.

committed to furthering the establishment of a legally compliant religious-based exemption petition process, both in terms of administrative procedures and standards that protect the religious minority. SPA welcomes the opportunity to share feedback about the Guidance and looks forward to hearing from the DEA.

Warmest regards,



Allison Hoots, Esq.
Executive Director
Sacred Plant Alliance

