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Plaintiff, Appearing Pro Se

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

BARRY ADAMS, Plaintiff, Pro Se, vs. UNITED STATES OF AMERICA et.al., Defendants	Cause No. 4:01-cv-295 (BLW) PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFENDANTS' MOTION TO DISMISS OR, FOR SUMMARY JUDGMENT

COMES NOW the Plaintiff, pro Se, with this Supplemental Response to Defendant's 'Motion for to Dismiss or, in the Alternative, for Summary Judgement".

Plaintiff respectfully submits for convenience of this Court, and for defendants (and to save paper), Plaintiff herein incorporates the arguments presented in his Response to defendant's Motion for a Protective Order, concerning I. A. **Mootness**, B. **Jurisdiction**, C. **Plaintiff disputes that Forest Service followed its regulation**. Plaintiff also incorporates arguments found in II. A. **"Evidence" "exists"**, 1. **Timeline exists**. B. **Discovery is "Essential" and "Relevant"** and C. "**Undue burden and expense**".1. **This Request for Discovery and Admissions will reveal the Forest Service could have legally followed its**

Regulation through offering an 'alternative" or 'accommodation". See Plaintiff's Response to Defendants' Motion and Memorandum for a Protective Order, dated November 30, 2001.

In addition plaintiff submits, **Table of Case Citations, Codes and Regulations**, and **Attachments**, as part of this "Supplemental Response'. See Plaintiff's Response to Defendants' Motion and Memorandum for a Protective Order.

Plaintiff submits the entire videotape, produced by Cold Mountain, Cold Rivers, i.e. Attachment H, is a videotape of a Council circle held June 27, 2001. It may take some time of this Court, but, "This videotape is an amazing view into the way three different cultures - Forest Service, Indigenous Tribal People, and Rainbow Tribal People peaceably assemble in Circle and Council, Rainbow-style; i.e. in Respect - listening and speaking."
See Attachment H, Plaintiff's Response to Defendants' Motion and Memorandum for a Protective Order:

> "Plaintiff respectfully submits the entire Videotape, of the Council and Circle, taped at the Idaho Gathering 2001, by Cold Mountain, Cold Rivers, for this Court to view. This videotape **ATTACHMENT H - Cold Mountain, Cold Rivers videotape:**
> **Shoshone-Bannock Mediation (June 27, 2001).**
>
> This tape documents a Circle and Council, held at "Idaho Annual Rainbow Gathering", June 27, 2001.
>
> "On the video are Indigenous American Tribal Elders of the Shoshone-Bannock, Shoshone-Paiute Elders, Federal Mediator Doug McConnaughy, a couple of hundred Rainbow Gathering individual attendees, plus plaintiff Barry Adams (representing himself), and Forest Service District Ranger Walt Rogers, other forest service, and forest service Law Enforcement Officers, mounted and armed with weapons. There were approx. 2,000 or more other attendees at this Gathering at this time, not present at this Circle.
>
> This videotape is an amazing view into the way three different cultures - Forest Service, Indigenous Tribal People, and Rainbow Tribal People peaceably assemble in Circle and Council, Rainbow-style; i.e. in Respect - listening and speaking."

Plaintiff would assert that he has foregone some of the most fundamental tenets of his faith, even by "applying" for the right to attend a 'Rainbow-style" Gathering on national forest.

Asking permission of any secular entity, for the right to pray with others, according to his Creed, is extremely difficult for Adams to accept. However, for the sake of the "common good" Adams has in fact, filed applications, which he considers as "Notification", as a 'self-designated contact person'.

It is extremely difficult for Adams to reconcile what he believes is the 'custom of this land" i.e. Constitutional guaranteed "inalienable rights" as examplitized in the First Amendment. By applying, even as an individual, Adams has been ridiculed and derided by other adherents to the "Rainbow Gathering Creed"; though he has received some support for his position. It is difficult for Adams to even give the appearance of applying for a permit to worship, but for the sake of Peace and an effort to work things out with the Forest Service and the public, Adams has in "good faith' made applications, in writing. In return Adams has received not 'accommodation" but denial and citation.

Plaintiff appeared at the Council and Circle on June 27, 2001, under active threat of arrest - Garrick Beck had informed Adams that Incident Commander Jowers had threatened Adams and others, including Beck, with citation and probable arrest, if he attended the Idaho Gathering, unless someone signed a permit.

This process of the Forest Service citing persons who have communicated or communicate with them concerning Gathering issues, is a direct "prior restraint". And now, Forest Service has exhibited a 'sea change" in its application of this regulation to these Gatherings, i.e. accepting an 'alternative' way of application, as proposed by Incident Commander Jowers, on the telephone conference call (See plaintiff's Response to defendant's motion for protective order).

However, Adams, who has consistently communicated with Forest Service since 1971, prior to any such Gatherings held on national forest land, has continually communicated and petitioned the Forest Service concerning Gathering issues, and has carried out the "work of the people" by voluntarily setting up and cleaning up and restoring many Gathering Sites, once a Gathering has taken place.

No matter what Adams is willing to do, within the tenets of his faith Creed, the Forest Service continues in its prosecution of these Gatherings, and Adams, and continues to impose a "Police State" on the threshold of this peaceable assembly i.e. church picnic. This is obvious when one watches this videotape, See Attachment H. Forest service L.E.O's, heavily armed, surround the Circle and Council.

This situation of "Guns in the Church", of "6 ups" i.e. L.E.O's etc., oppressing, as far as most attendees are concerned, the Gathered People in peaceable assembly for worship and petition, is an intolerable situation, and has led to many, many confrontations and vexations of the spirit, through the years. It is hard for folks to reconcile being Home, in Peace, with their children, and having heavily armed persons riding horses, spying upon the peoples' worship, and threatening people with their presence.

The Forest Service is well aware the pathway to cooperation is along the track of removing the "Guns from the Church", unless called upon for by complaint from a "victim" The Rainbow Gathering, "as is", may not be your "cup of worship or petition", but thousands here in the United States of North America and thousands of people around the World enjoy and worship at such assemblies. Only in these United States of North America and in some provinces of Russia is there government oppression of these Gatherings.

And these Gatherings can easily be 'accommodated" by a simple bureaucratic change in the application procedures. The Ninth Circuit, in hearing oral arguments in appeal, re Black v. Arthur, expressed their opinion that "no other governmental regulation requires a person both to apply and sign a second paper i.e. a permit. The government, agreed this situation is unique.

> "Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." See Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 714 (1981).

> ("So-called 'substantive due process' prevents the government from engaging in conduct that 'shocks the conscience,' . . . or interferes with rights 'implicit in the concept of ordered liberty' ") (quoting Rochin v. California , supra , at 172, and Palko v. Connecticut ,

302 U.S. 319, 325 -326 (1937)). Most recently, in Collins v. Harker Heights, supra , at 128, we said again that the substantive component of the Due Process Clause is violated by executive action only when it "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense."

See County of Sacramento et al. v. Lewis et al. (1998) U.S.S.C. No. 96-1337

See also:

[Footnote 14] Concurring in McGowan v. Maryland, 366 U.S. 420, 521 (1961), Justice Frankfurter viewed it as important that the challenged statutes "do not make criminal, do not place under the onus of civil or criminal disability, any act which is itself prescribed by the duties of the Jewish or other religions." In Braunfeld v. Brown, 366 U.S. 599, 605 -606 (1961), the plurality opinion emphasized: "Fully recognizing that the alternatives open to appellants and others similarly situated . . . may result in some financial sacrifice in order to observe their religious beliefs, still the option is wholly different than when the legislation attempts to make a religious practice itself unlawful."

[Footnote 15] In Wisconsin v. Yoder, supra, at 218, we similarly relied on the fact that "[t]he impact of the compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." See Bowen v. Roy, 476 U.S. 693 (1986), at Footnote 14,15.

CONCLUSION

Plaintiff respectfully requests this Court accept this Supplemental Response, with the affidavits, citations, and arguments as incorporated from plaintiff's Response to defendant's Motion for a Protective Order.

Respectfully submitted,

DATED THIS November 30, 2001.

Barry Adams, pro Se