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The Supreme Court's Decision in *Gonzales v. O Centro Espirita*:

Unanimous Court Upholds Group's Right to Use Illegal Drug in Worship Services

On Feb. 29, 2006, the Supreme Court ruled that the adherents of a small religious group can continue, for now at least, to import and use an illegal drug in their worship services. The court, in a unanimous decision written by new Chief Justice John Roberts, held that the federal government had not adequately demonstrated that it had a compelling interest in banning what even federal prosecutors admit is a “sincere religious practice.”

Roberts was joined in his opinion by seven other members of the court. The ninth and newest justice, Samuel Alito, did not participate in the case because he was not on the bench when the case was argued in November 2005.

The case, *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*, involves a church, known as Uniao Do Vegetal (UDV) or the Union of the Plants, that preaches a brand of Christian spiritualism that combines indigenous Brazilian beliefs with traditional Christian teachings. A central tenet of the UDV faith is a belief that hoasca, a tea containing the illegal hallucinogenic drug dimethyltryptamine (DMT), is sacred and that its use connects members to God.

In 1999, federal agents in Santa Fe, N.M., seized a shipment of hoasca imported from Brazil for use in UDV religious ceremonies. An additional 30 gallons were confiscated when agents searched the house of U.S. church leader Jeffrey Bronfman. No criminal charges were brought against Bronfman, the UDV or individual church members, but 18 months later, the church sued the federal government in the U.S. District Court for the District of New Mexico. The court granted UDV a preliminary injunction preventing the confiscation of imported hoasca or the arrest of any UDV members using the drug while the court trial was pending.

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LEGAL BACKGROUND

The UDV claimed that the 1993 Religious Freedom Restoration Act (RFRA) exempts it from any laws prohibiting the importation and use of hoasca. RFRA states that no federal law shall “substantially burden a person’s exercise of religion” unless the government proves the law furthers a “compelling governmental interest” and that it has been implemented in a way that is “least restrictive” to religious practices. The federal government countered that the courts cannot grant the church an exception to the nation’s drug laws – in this case the 1970 Controlled Substances Act (CSA), which prohibits the use of DMT for any purpose.

At the district court hearing, the government conceded that the criminalization of hoasca “substantially burdened” the church’s religious practice. However, the government argued that it had a compelling interest in protecting the health of UDV members and in preventing the recreational, non-religious or improper use and distribution of DMT. But the district court found that the government’s interests in protecting health and preventing drug abuse did not trump the UDV’s religious freedom to use hoasca. The court therefore granted the preliminary injunction to protect UDV members and leaders from prosecution, a ruling later upheld by the United States Court of Appeals for the 10th Circuit.

The Supreme Court’s decision is in line with these earlier rulings. It found that the federal government failed to meet RFRA’s basic

requirement that it demonstrate a compelling interest that outweighs UDV’s right to conduct worship services without outside interference.

“We conclude that the government has not carried the burden expressly placed on it by Congress in the Religious Freedom Restoration Act,” Roberts wrote.

In his opinion upholding the injunction, the chief justice compared the use of hoasca with peyote, which also contains a substance, mescaline, that is banned by the Controlled Substances Act but which

has been legally used for decades by Native American tribes as part of their religious rituals. If hundreds of thousands of Native Americans are allowed to use peyote for their religious ceremonies, Roberts wrote, “it is difficult to see how those same findings alone can preclude any consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs.”

The high court also rejected a number of the government’s arguments, including its assertion that the district court failed to apply the appropriate evidentiary standard in determining whether to issue its preliminary injunction. Specifically, the government challenged the lower court’s decision to grant an injunction to the UDV under RFRA’s compelling-interest test, even though the evidence presented by the religious sect was only of roughly equal weight to that submitted by the government. The party seeking a pre-trial injunction must meet a higher standard, the government argued, essentially demonstrating that they are likely to win at trial.

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But Roberts countered that even at the preliminary injunction hearing, the government still bore the burden of proving that it has a compelling interest in regulating hoasca. Indeed, he said, Congress' express decision to write the compelling-interest test into RFRA indicates that the same applications of the test should be applied at all stages of a case, even at an early pre-trial hearing.

The court also rejected the government's argument that allowing UDV to use hoasca was in conflict with its obligations under the United Nations Convention on Psychotropic Substances, which requires signatories like the U.S.

to combat the abuse and trade of illegal psychotropic drugs. The court said that while it did not doubt the validity of the government's interest in complying with the treaty, this alone was not enough of a compelling interest to justify the burden on the UDV's right to free religious exercise.

It is important to note that the decision only concerns the preliminary injunction issued by the district court. The federal government still has the option to pursue the case by returning to a lower court and attempting to demonstrate that it has a compelling interest in banning hoasca.

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For a more detailed overview of the legal and historical issues in the case, see the Pew Forum backgrounder, "The Supreme Court Considers the Use of an Illegal Substance in Religious Worship in Gonzales v. O Centro Espirita." The backgrounder can be found at <http://pewforum.org/docs/index.php?DocID=124>.

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