The Legal Case of the União do Vegetal vs. the Government of the United States

Jeffrey Bronfman

The Centro Espirita Beneficiente União do Vegetal (UDV) is the most highly organized and populous of the modern "ayahuasca" churches in Brazil. It was established by Jose Gabriel da Costa (Mestre Gabriel) among a small group of rubber tappers in the Amazon Forest on the border of Brazil and Bolivia in 1961. The decoction of *Banisteriopsis caapi* and *Psychotria viridis* is known as "Hoasca" when prepared as a sacrament within the religious context and ritual of the UDV. The first ritual distribution of the sacrament of Hoasca in the United States, authorized by the General Representation of UDV, occurred in June of 1987. The UDV was formally organized as a religious society under the Laws of the United States in May of 1994.

The government of the United States is founded upon certain core philosophical principles defining a government "of the people, by the people and for the people." Among these is the bedrock ideal of religious liberty. As articulated in the 1st Amendment to the United States Constitution; "Congress shall make no law respecting the establishment of religion or the free exercise thereof." The former President of the United States, George W Bush, speaking about religious liberty said "It is not an accident that freedom of religion is one of the central freedoms in our Bill of Rights. It is the first freedom of the human soul" (Bush, 2001)

The sacramental religious use of the Hoasca tea however (because of its psychotropic properties) was not definitively protected under the law. On May 21st 1999, after the UDV had been operating and progressing in the United States for more than a decade, representatives of the U.S. Customs Service seized a shipment of the sacramental tea that had been sent to the United States from Manaus (a city in the Amazon region of Brazil, where the confiscated tea had been recently prepared). The basis for this police action was their claim that the tea was found to contain trace amounts of Dimethyltryptamine (a substance prohibited for human consumption under that nation's laws). For this reason, the U.S. Customs service and Drug Enforcement Agency were taking the position that the UDV's religious sacrament needed to be treated as contraband as well.

Significantly, this was not the first time that the religious use of a psychoactive plant, or plant material, had created a controversy within the Federal Judicial system in the United States. In fact, a case involving the religious use of *peyote* substantially contributed to the evolution of the laws in the United States as they relate to religious freedom.

The Religious Use of Peyote and the Evolution of the Laws that Preserve Religious Liberty

"Peyote (botanical name *Lophophora williamsii*) is a small cactus plant, which can be found in the United States in a small area in the south of the state of Texas and a larger area of North Central Mexico. Having a history of use for hundreds of years among certain tribes including the Huichol, Tarahumara and Teppehuano Indians of Mexico, peyote became incorporated into religious ceremonies among North American Indians towards the end of the 1800s."(Steward, 1987).

A modern syncretic religious movement called The Native American Church, incorporated in the state of Oklahoma in 1918, fusing elements of pre-Columbian peyote rituals from the tribes of northern Mexico with Christianity. The Church grew over decades of societal tolerance in different states, mainly in the south-central and western United States. Today, studies indicate the church as having more than 250,000 practitioners.

In 1989 a case involving religious peyote use was brought before the Supreme Court of the United States on appeal. It was a case that would significantly influence the formation of laws related to religious exercise in the United States, and eventually the treatment of the ceremonial use of Hoasca within the UDV. The religious use of peyote at that time was not recognized under the laws of the state of Oregon, and a Native American Church member brought a legal action against that state based on the right to religious free-exercise, which he asserted was guaranteed under the U.S. Constitution.

The Supreme Court of the United States ultimately disagreed, however, and in a very divided legal opinion determined that individuals could not claim to be exempt from otherwise valid laws based on their personal religious practice or belief. To do so the court reasoned that this "would be courting anarchy":

> Precisely because 'we are a cosmopolitan nation made up of every conceivable religious preference' and precisely because we value and protect that religious divergence we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. (Justice Scalia writing for the Supreme Court's Majority in the case of Employment Division v. Smith, 1990)

The decision divided the nine Justices on the court 6-3. In an unusually strongly worded rebuke of the Majority's decision the dissenting minority wrote:

> I do not believe the Founders thought their dearly bought freedom from religious persecution a 'luxury', but an essential element of Liberty. A State that makes criminal an individual's religiously motivated conduct, burdens that individual's free exercise of religion in the severest manner possible, for it 'results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution'. (Justice Blackmun writing for the U.S. Supreme Court dissenting Majority in the case of Employment Division v. Smith, 1990)

Deeply concerned over the potential implications of this decision, the religious community responded by organizing a broad coalition of churches and civil liberties organizations to get the United States Congress to pass a new law. This new law

would legislate, by Congressional authority, a level of protection for Religious Free Exercise that the Supreme Court had determined the Constitution in and of itself, did not provide.

The Law that the Congress of the United States passed by near unanimous vote was titled the Religious Freedom Restoration Act (RFRA). Its intent was to provide access to the courts for individuals whose religious practice had been interfered with by the government and established that it would be the government's burden to justify any such act in court once a legitimate claim establishing harm had been made. Under this new law, the government had the congressionally mandated responsibility to demonstrate "a compelling state interest" in defense of its conduct, as well as demonstrating how its conduct was the "least restrictive means" of meeting this interest as applied to the religious practitioner.

The Initial Legal Actions taken by the União do Vegetal

Following the seizure of its sacrament by the U.S. authorities, the UDV's initial response was not to enter into litigation but to seek accommodation from the Government's representatives through an open dialogue. Towards this objective, I wrote a letter as the União do Vegetal's representative to Mr. Jonathan Gerson and Mr. Charles Barth, the U.S. Government's Justice Department officials in the state of New Mexico responsible for the administration of Criminal Law and prosecuting the violators of the nation's drug laws, respectively. These same individuals, as well as other representatives of the U.S. Government's interests, were also invited to attend a seminar specifically designed by the UDV to properly introduce itself and its religious objectives to the American authorities.

Speaking to the American officials on behalf of the UDV were Raimundo Monteiro de Souza (one of the founding members of our religious society in Brazil and a Mestre trained and designated by the religion's founder Mestre Gabriel), myself (as the Representative Mestre of the UDV in the United States at that time), and Dr. David Lenderts (an emergency medicine physician and the individual originally responsible for the invitation that first brought Mestres of the União do Vegetal to conduct religious services in the United States). Also in attendance were some of the leading authorities in the area of religious studies, anthropology, and the medical research conducted to date on the religious use of the Hoasca tea within the UDV. Additionally, Dr. Huston Smith (a professor of Comparative Religion whose textbook "The World Religions" has been used in High Schools and Universities all over North America selling more than 1.5 million copies), was invited to offer a perspective on the place of the UDV in the History of World Religions. Dr. Marlene Dobkin de Rios was invited to inform the Government officials about the historic and cultural uses of the sacramental tea "Hoasca." Dr. Dobkin de Rios is a professor of Medical Anthropology at the University of California at Irvine who has published a series of definitive works on the uses of "ayahuasca" for more than 40 years.

With respect to the medical and psychiatric research conducted on the use of the Hoasca sacrament to that date were Dr. Charles Grob and Dr. Glacus de Souza Brito. Charles S. Grob, M.D., is Professor of Psychiatry and Pediatrics at the UCLA School

of Medicine and Director of the Division of Child and Adolescent Psychiatry at Harbor-UCLA Medical Center. Dr. Brito is a senior physician, public health specialist for the State of Sao Paulo, and a member of the technical advisory committee to the Brazilian Minister of Health. He additionally served as an advisor to the World Health Organization and was the director of the UDV's internal department of Medical and Scientific Studies during the time of these legal proceedings. Both collaborated together on a multidisciplinary study on the religious use of Hoasca as a sacrament within the UDV, entitled *The Human Pharmacology of Hoasca* (which was published in numerous medical journals). Grob et al. (1996)

Unfortunately, the well intentioned efforts on the UDV's part did not have the result hoped for, and the Justice Department officials subsequently initiated a Grand Jury investigation to determine whether or not it wished to bring criminal charges against the UDV's members. Government agents were dispatched to conduct interviews with selected former UDV members in several states, looking to gather information that it believed could be helpful in possible future prosecutions. Additionally, a group of UDV members were subpoenaed to testify regarding their affiliation with the UDV, including Brazilian members living in the United States who had followed the UDV's teachings for more than 20 years.

The Grand Jury investigation occurred over a period of six months, and afterwards the União do Vegetal's legal counsel made biweekly contacts with the U.S. Government authorities hoping to negotiate some form of agreement to accommodate the UDV's religious practice and faith. After 18 months of investigation, the providing of documents and sworn testimony, and the unsuccessful attempts to reach an understanding with the Justice Department's representatives, the UDV filed its legal complaint against the United States Department of Justice, Drug Enforcement Agency and Customs Service on November 21st, 2000. The complaint, alleging multiple violations of United States law on the part of the Federal Government defendants asked the court for an order enjoining the authorities from prohibiting (thus interfering with) the UDV's importation, distribution, and ritual use of its sacramental Hoasca tea. As part of the legal action the UDV asked for a Preliminary Injunction, affirming the UDV's right to its religious practice (absent any proven "compelling state interest" on the part of the U.S. Government) until the final disposition and resolution of the case.

The Response of the United States Government and the 2001 Court Hearings

The United States Government (personified by Justice Department representatives assigned to the case from the nation's capital in Washington DC) presented an aggressive defense of their position in response to the UDV's legal complaint. Recognizing the burden that the Religious Freedom Restoration Act placed upon them, the Government claimed three distinct "Compelling State Interests" to justify its unwillingness to tolerate the UDV's central religious practice. By the time the case would be evaluated and reconsidered by the Supreme Court of the United States on appeal,

the Justice Department officials would have added a fourth alleged "Compelling Interest" in its defense.

The first alleged "compelling interest" the U.S. Government claimed in its defense was its interest in the health and safety of the general public:

> It is known that substances chemically related to ayahuasca's components can have serious adverse effects on mental health, and that ayahuasca contains substances that can have fatal interactions with several common foods and medicines. The available evidence thus demonstrates a compelling health and safety interest in prohibiting the use of the UDV's sacrament. (Defendants' Memorandum In Opposition to Plaintiffs Motion For a Preliminary Injunction)

Secondly, the U.S. Government claimed that should the UDV's sacramental use of Hoasca be authorized, the risk that it could subsequently be diverted from religious use to recreational, or commercial channels (where it would be considered "drug abuse") was the basis of its next "compelling interest":

> Allowing importation of the tea, thereby introducing into the United States a substance that would otherwise be unavailable, would obviously increase the probability that the substance's "potential for abuse" would be realized. Surely neither the Controlled Substances Act nor the Religious Freedom Restoration Act requires the government to wait until it has a full blown drug epidemic on its hands before it may belatedly attempt to stem the tide of usage. (Defendants' Memorandum In Opposition to Plaintiffs Motion For a Preliminary Injunction)

Lastly the United States Government claimed that an international treaty (the 1971 International Convention on Psychotropic Substances) prohibited the UDV's religious practice because Dimethyltryptamine, which the Government claimed was an "ingredient" in the UDV's sacramental tea, was a substance prohibited by international accord:

> A failure by the United States to comply faithfully with the treaty would necessarily detract from its ability to influence other countries to comply. It would also entail serious diplomatic repercussions and conceivably lead to other countries becoming less willing to enter into international agreements with the United States. (Defendants' Memorandum In Opposition to Plaintiffs Motion For a Preliminary Injunction)

As a likely result of the Grand Jury investigation and the presentations and materials provided to the Government's representatives over the previous 21 months, the Justice Department's response to the UDV's complaint significantly conceded that the UDV was a genuine religion, and that its members' sacramental use of Hoasca was sincere. Nonetheless, the Government argued, its alleged interests were so "compelling" that they presumably outweighed the basic civil liberty that both the U.S. Constitution as well as domestic law afforded any sincerely religious person. To each of these alleged "compelling interests" the UDV offered evidence and expert testimony to refute the U.S. Government's arguments. In May of 2001, Judge James Parker determined that there should be a two-week trial for each side to present its evidence, and for him to judge the merits of the UDV's preliminary injunction request.

Testifying for the UDV at the trial was a panel of distinguished experts hired to rebut each of the United States Government's assertions. On the issues of public health, and the safety of the use of the Hoasca tea within the religious context of the

UDV, testimony was given by Dr. Charles Grob, Dr. Glacus Brito and Dr. Dave Nichols. On the topic of the risk of diversion the UDV presented the testimony of Dr. Mark Kleiman. Dr. Grob and Dr. Brito's credentials are previously cited. Dr. Nichols is a professor of Medical Chemistry and Molecular Pharmacology in the School of Pharmacy and Pharmaceutical Studies at Purdue University. Dr. Kleiman holds a Masters and Ph.D. degree in Public Policy from Harvard University and was the former associate director for drug control policy in the criminal division of the United States Department of Justice.

In addition, testimony was presented by church officials within the UDV including myself, as the President and Representative Mestre of the União do Vegetal in the United States, and from the General Representative Mestre (the highest spiritual authority and elected official within the UDV) José Luis de Oliveira. Mestre Zeluis (as he is known within the UDV) was one of the founding members of the spiritist center, and received the degree and title of Mestre from the religion's founder Mestre Gabriel.

The Preliminary Injunction Order

Nine months and 11 days following the conclusion of the trial, Judge Parker published a carefully reasoned 61 page legal decision granting a preliminary injunction in favor of the União do Vegetal:

> This court concludes that the government has fallen short of meeting its difficult burden as Congress requires. The government has not shown that applying the CSA's prohibition on DMT to the UDV's use of hoasca furthers a compelling interest. This court cannot find, based on the evidence presented by the parties that the Government has proven that hoasca poses a serious health risk to the members of the UDV who drink the tea in a ceremonial setting. Further the Government has not shown that permitting members of the UDV to consume hoasca would lead to significant diversion of the substance to non-religious use."
>
> Based on the analysis offered by the Plaintiffs (UDV) this court finds that the 1971 Convention on Psychotropic Substances does not apply to the Hoasca Tea used by the UDV therefore the United States' interest in adhering to the convention does not, in this case, represent a *compelling interest*. (Parker, 2002)

Wanting the United States Government to work with the UDV to cooperatively develop the methodology through which the order would be implemented, the court ordered the first of the series of hearings on September 3rd, 2002 to define the scope and terms of the injunction. At this hearing, and in the subsequent negotiations, the United States Government took a very rigid position with respect to the regulations they wished to impose regarding the licensing, importation, distribution, storage, and religious use of the UDV's sacrament. Discussions continued under the Judge's direct supervision for another 2 months until Judge Parker issued his Preliminary Injunction Order on November 13, 2002.

Despite having promised the court that it would accept whatever decision or judgment Judge Parker reached, the U.S. government representatives immediately appealed the granted injunction to the 10th Circuit Court of Appeals. This is the Fed-

eral Appeals Court responsible for reviewing all of the rulings for the States of New Mexico, Colorado, Utah, Montana, Oklahoma and Kansas within the Federal Judiciary of the United States. Along with their initial filing, the U.S. Justice Department's appeals division pleaded with the appeals court to grant an emergency stay blocking the hard won injunction from going into effect until the appeals court had a chance to review all of the evidence and testimony previously presented in the case:

> In opposing Plaintiffs' motion for a preliminary injunction, the government observed that it would be gravely and irreparably injured by being required to violate a critical international treaty. The Court did not factor this harm into the balance because it held that the Convention does not prohibit Plaintiffs' importation and use of hoasca. However, this ruling was erroneous because it conflicts with the plain and unambiguous language of the treaty.
>
> When a court orders the government to act in a way that violates an international treaty, it has a devastating effect on the ability of the United States "to gain the benefits of international accords and have a role as a trusted partner in multilateral endeavors." Moreover, the government's ability to insist on other nations' compliance with treaty … is largely dependent on its own compliance. Even a "temporary" breach of the Convention undermines the government's ability to enforce respect for the Convention among other nations. (US Government Defendant's Motion and Supporting Memorandum to Stay Preliminary Injunction Pending Appeal. November 2002)

Their request was granted on December 12th, 2002, hours before the District Court order was scheduled to go into effect. The stay, in effect, was maintained for another two years constituting a total of more than five years and 6 months that the UDV was unable to exercise its basic civil liberties and religious practice in the United States.

The U.S. Government's Series of Appeals

On appeal, the United States Government argued that the District Court had erred in its judgment and that the decision granting the right for the UDV to exercise its religious liberty needed to be overturned:

> The district court in this case has taken the remarkable and unprecedented action of enjoining the Government from prohibiting the religious use of a Schedule I controlled substance on the ground that the Government cannot show that enforcing compliance with this drug prohibition furthers compelling governmental interests. This decision is fundamentally incorrect in view of the importance of complying with our Nation's treaty obligations, protecting the public health and safety, and preventing the diversion of controlled substances. (Brief for U.S Government Appellants, 2003)

The UDV countered with extensive legal arguments including the submission of two items of significant weight for the court's consideration.

The first was a letter from Herbert Schaepe the executive secretary of the International Narcotics Control Board (INCB) at that time who, in an official response from that body to a formal request from Holland, affirmed the UDV's stated legal position:

> No plants (natural materials) containing DMT are presently controlled under the 1971 Convention on Psychotropic Substances. Consequently, preparations (eg. decoctions)

> made from these plants, including Ayahuasca are not under international control and, therefore, not subject to any of the articles of the 1971 Convention. (Schaepe, 2001)

The second was a sworn affidavit, submitted in support of the UDV from Ambassador Herbert Okun, who for more than a decade had served as the U.S. Government's representative to the International Narcotics Control Board. In his declaration Ambassador Okun affirmed:

> The International Narcotics Control Board (INCB) is widely acknowledged as a principal authority in interpreting the Conventions when questions arise about them. The Commentary to the United Nations Convention on Psychotropic Substances, 1971, is the principal written instruction regarding its interpretation. The Commentary is an official document and provides authoritative guidance to Parties in meeting their obligations under the Conventions, consistent with national laws and policies.
>
> I have read the letter from Mr. Herbert Schaepe, Secretary of INCB, to Mr. Lousberg of the Ministry of Health, The Netherlands, dated 17 January, 2001, which is attached as exhibit B to this declaration. The substance of that letter is consistent with my understanding of the United Nations Convention on Psychotropic Substances, 1971, and the official Commentary to that Convention. (Okun, 2002)

The case was set for oral arguments before a panel of three judges on March 10th, 2003. Subsequently the appeals court panel published its decision on September 4, 2003 deciding 2 to 1 in favor of the UDV. In its 49 page published decision the Majority affirmed:

> Based on the record before us, we cannot conclude the government has demonstrated that the application of the burden to the [UDV] (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest. (Published Opinion, 2003)

Using all legal recourses available to them, the Government of the United States once again asked for the case to be reheard by an *"en banc"* panel of all of the active judges on the 10th Circuit court of Appeals. In that petition the United States Government representative declared:

> In this case, the district court entered a preliminary injunction that requires the Government to allow the plaintiffs to import, distribute, possess and use "hoasca" for ceremonial purposes, even though hoasca contains dimethyltryptamine (DMT), a Schedule I hallucinogenic controlled substance prohibited by the Controlled Substances Act (CSA).
>
> This unprecedented injunction orders the Federal Government not to enforce the criminal law banning the importation, distribution and possession of DMT, and requires the Government to violate an important international drug control treaty.
>
> The court reached this result based on nothing more than prima facie allegations of a violation of the Religious Freedom Restoration Act… and the testimony of a few hired experts that conflicts with the considered judgments of Congress and 160 other nations regarding the dangers attending the importation and use of DMT. As discussed below and in our briefs before the panel, the district court's decision must be reversed. (Supplemental En Banc Brief for U.S Government Appelants, 2004)

On January 7, 2004 the 10th Circuit Court of Appeals agreed to grant the rehearing, and after a 30-day period allowing both the UDV as well as the Government to pro-

vide supplemental legal briefs on the issues the court wished to reconsider. Oral arguments were scheduled for March 9th, 2004.

On this occasion all 13 active judges, who constitute the Appeals Court (for all of the federal cases brought for a region of the country encompassing 6 States), formed the judicial panel. After another 9 months of consideration, the *en banc* panel of the U. S. Court of Appeals for the 10th Circuit published its 137 page opinion; once again (by a majority of 8-5) deciding in favor of the UDV:

> This case is not about enjoining enforcement of the criminal laws against the use and importation of street drugs. Rather, it is about importing and using small quantities of a controlled substance in the structured atmosphere of a bona fide religious ceremony. In short, this case is about RFRA and the free exercise of religion, a right protected by the First Amendment to our Constitution.
>
> In this context, what must be assessed is not the more general harm which would arise if the government were enjoined from prosecuting the importation and sale of street drugs, but rather the harm resulting from a temporary injunction against prohibiting the controlled use of hoasca by the UDV in its religious ceremonies while the district court decides the issues at a full trial on the merits.
>
> If Congress or the executive branch had investigated the religious use of hoasca and had come to an informed conclusion that the health risks or possibility of diversion are sufficient to outweigh free exercise concerns in this case, that conclusion would be entitled to great weight. But neither branch has done that. The two findings on which the dissent relies address the broad question of the dangers of all controlled substances, or all Schedule I substances, in the general run of cases. Such generalized statements are of very limited utility in evaluating the specific dangers of this substance under these circumstances, because the dangers associated with a substance may vary considerably from context to context.
>
> RFRA places the burden on the government to demonstrate that application of the law to the particular religious exercise is the least restrictive means of furthering its interest. As far as the government's argument and the record reveal, the government has undertaken no steps to inquire regarding the status of hoasca or to work with the Economic and Social Council or the International Narcotics Control Board to find an acceptable accommodation. Rather, it has posited an unrealistically rigid interpretation of the Convention, attributed that interpretation to the United Nations, and then pointed to the United Nations as its excuse for not even making an effort to find a less restrictive approach. (Published Opinion, 2004)

The Appeal to The United States Supreme Court

Ten days following the published decision of the Federal Court of Appeals, an order was to be issued allowing the UDV to finally resume its religious practice and prohibiting the United States Government from interfering with the same. Once again the United States Government aggressively moved to try to keep this event from occurring. As the case had proceeded through the Courts, each time a ruling was made against the Government the language of their subsequent appeal became even more strident and filled with hyperbole. In asking for an "emergency stay," again to keep

the Court order from going into effect, the Attorney General's office wrote to the Supreme Court of the United States declaring:

> The preliminary injunction fundamentally alters a legal status quo that has been in existence for decades. And the harm that will befall international efforts to combat drug trafficking, domestic efforts to prevent the creation of new delivery systems and markets for the most dangerous controlled substances, and the physical health and safety of individuals who use the DMT-laden hoasca with its severe and dangerous side effects will be immediate and irreparable. (Emergency application, 2004)

The Supreme Court took the unusual step of meeting in its entirety to consider the U.S. Government's motion, and on the 10th of December 2004, published a one-sentence decision denying it. The UDV was free to begin resuming its religious works for the first time in more than five and a half years.

Coincidently this was the exact same date where 56 years earlier (on December 10th, 1948) that the United Nations Universal Declaration of Human Rights was signed as well. This document, in the relevant section, states:

> Everyone has the right to freedom of thought, conscience and religion; This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (United Nations, 1948)

The Supreme Court's decision allowing the UDV to resume its religious services brought an immediate sense of hope that the United States Government would finally accept the multiple rulings that had been made against them by the federal courts, and stop the misguided, mean-spirited legal battle it had unsuccessfully waged against the UDV.

Unfortunately this hope was short lived and on February 10th, 2005 the United States Government filled yet another appeal with the Supreme Court of the United States. The date that was chosen (whether or not intentionally by the U.S. authorities) was a date of more than merely symbolic significance to the members of the UDV. It is the anniversary of Mestre Gabriel's (the founder of the UDV's) birth. In and among the more than 40,000 papers that were originally seized from the UDV's offices back in 1999, were a body of documents that are read at the beginning of each scheduled session of the UDV. In the first of these, the Internal Rule of the Centro Espirita Beneficente União do Vegetal states:

> The 10th of February, the anniversary of the birth of Mestre José Gabriel da Costa is a consecrated day in the heart of the União do Vegetal. (CEBUDV, 1994)

The United States Government had inconsiderately chosen a day affirmed as sacred to the members of the UDV to file its most aggressive and disingenuous appeal before the United States highest and most distinguished court.

In repeating many of it same arguments that had proven unpersuasive to the federal courts that had heard or reviewed the case below the Solicitor General on this occasion now declared:

> The court's decision has mandated that the federal government open the Nation's borders to the importation, circulation, and usage of a mind-altering hallucinogen and threatens to

> inflict irreparable harm on international cooperation in combating transnational narcotics trafficking...
>
> Indeed, the fact that hoasca must be imported and has not yet become a primary staple in the illicit drug market underscores the serious and irreparable harm that could attend court-ordered importation and court-sanctioned usage, with their attendant risks of diversion, increasing public familiarity with hoasca as a delivery system for DMT, and fueling the development of a new market for yet another dangerous, mind-altering hallucinogen on the Nation's streets. RFRA does not compel the government to sit on the sidelines until DMT-based hoasca becomes as widely abused as LSD and its illicit marketing system as well entrenched. (U.S. Government Petition, 2005)

For its part the UDV responded by pointing out where the Government had misrepresented the evidence, prior court decisions, as well as the law in the presentation of its appeal. In all, several thousand pages of court transcripts, legal arguments, scientific publications, expert reports and material evidence were submitted to all of the courts for review. The Supreme Court received additional submissions of a few hundred pages of legal arguments from both sides in reaching its decisions.

In April of 2005, the Supreme Court agreed to accept the U.S Government's request, and although it continued to allow the UDV to realize its religious services, announced that it would hear oral arguments in the matter of the United States Department of Justice vs. the União do Vegetal in its fall of 2005 calendar.

Concerned that to be successful it would need additional public support from the mainstream religious community, the UDV utilized its resources and strong relationships to ask for other distinguished scholars of Law and Religion to submit arguments to the Supreme Court on its behalf. In the end, a series of nine additional legal briefs were submitted on behalf of some of the most distinguished historians, social scientists, civil liberties organizations, churches and religious societies in the country; these included:

- The Catholic Bishops of The United States
- The American Civil Liberties Union
- The American Jewish Congress
- Christian Legal Society
- The National Association of Evangelicals
- The Baptist Joint Committee
- The Institute of Religion and Public Policy
- Americans For Religious Liberty
- The Presbyterian Church of North America

These organizations represent literally tens of millions of United States citizens concerned with issues of civil rights and religious liberty.

This strategy of unity and collaboration had been very effective and important to the UDV before. A brief submitted to the 10th Circuit Court of Appeals by the Christian Legal Services on behalf of the National Association of Evangelicals (and other prominent clients) had even been cited by the majority of judges who had ruled in favor of the UDV:

> Lending their voice as amici curiae in support of the UDV's position are a variety of other religious organizations. Among these groups are the Christian Legal Society, the National Association of Evangelicals, Clifton Kirkpatrick, as the Stated Clerk of the General Assembly of the Presbyterian Church, and the Queens Federation of Churches, Inc. The presence of these varied groups as advocates for the UDV further highlights the vital public interest in protecting a citizen's free exercise of religion. (Published Opinion, 2004)

With four of the nine judges who would be hearing the Appeal active members of the Catholic Church, the legal brief offered by the legal counsel to The United States Conference of Catholic Bishops undoubtedly held great weight. That brief in part stated:

> The UDV's posture in this matter is the archetypal situation where increased protection for religious exercise is called for. No personal, subjective claim of a right to be exempted from the general criminal laws, or to use hoasca tea other than as part of a religious sacrament, is at issue. Rather, the question is whether this religion's right to administer its sacraments during its religious services will be tested by application of the compelling interest test Congress decided would apply under the Religious Freedom Restoration Act.
>
> The interference with UDV goes to the core of its religious practices for its faithful. These intrusions must be subjected to the most rigorous scrutiny if religious autonomy is to continue to have vigor. (Brief submitted to The United States Supreme Court)

In sharp contrast to the deluge of religious and civil liberties organizations advocating for the UDV's freedom, not one brief was submitted to the Supreme Court offering legal support to the United States Government's position in this case.

The Hearing and Decision of the United States Supreme Court

The United States Supreme Court set the date to hear the case of the Attorney General of the United States vs. the União do Vegetal for November 1st, 2005. It coincidentally was on this same day 43 years before that Mestre Gabriel, the founder of the UDV, described having confirmed the União do Vegetal within the Superior Astral. It is among the holiest and most significant dates of the UDV's religious calendar. Once again, out of the 365 days in a year where the Supreme Court presumably could have scheduled its hearing of the UDV case, it scheduled the one day of perhaps greatest spiritual and religious significance to the UDV's adherents. On the morning of November 1st the more than 80 UDV members who had traveled from all over the country to observe the court in session began lining up on the Courthouse steps at 03:00, awaiting the possibility of being allowed entrance to the public viewing area when the court opened its doors at 09:00.

Oral arguments before the U.S. Supreme Court are conducted through a strict procedure that allows each party's lawyer only one half hour to present legal argument in support of its case. The presentations are very lively and interactive, with the Supreme Court justices frequently interrupting the presentation to ask questions, or to make comments to one another. In fact the Government representative during his half hour of argument was interrupted with questions and comments by the court 45 times. The UDV's counsel's presentation was interrupted by questions and comments

by the Supreme Court justices on 61 different instances during the half hour allotted to her.

The inquiries of the judges focused on many different topics including international law, the intent of the U.S. Congress in passing the Religious Freedom Restoration Act, the legal history of requests from religious adherents to be exempt from generally applicable laws, and the precedent established by the religious use of peyote within the Native American Church. After precisely 60 minutes of oral argument and extensive questioning on behalf of the judges the hearing was closed, and the court Justices retired to their chambers to begin their initial deliberation.

On February 21st, 2005 the Supreme Court of the United States published a 19 page, unanimous decision in favor of the UDV. Writing on behalf of the united court the newly appointed Chief Justice John Roberts, in the first opinion he elected to author of a historic or precedent setting case, affirmed:

> O Centro Espírita Beneficente União do Vegetal (UDV) is a Christian Spiritist sect based in Brazil, with an American branch of approximately 130 individuals. Central to the UDV's faith is receiving communion through hoasca a sacramental tea made from two plants unique to the Amazon region. One of the plants, *Psychotria viridis*, contains dimethyltryptamine (DMT), a hallucinogen whose effects are enhanced by alkaloids from the other plant, *Banisteriopsis caapi*. DMT, as well as "any material, compound, mixture, or preparation, which contains any quantity of [DMT]" is listed in Schedule I of the Controlled Substances Act.
>
> The Government contends that the Controlled Substance Act's description of Schedule I substances as having "a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision," by itself precludes any consideration of individualized exceptions such as that sought by the UDV. The Government goes on to argue that the regulatory regime established by the Act a 'closed' system that prohibits all use of controlled substances except as authorized by the Act itself. According to the Government, there would be no way to cabin religious exceptions once recognized, and 'the public will misread' such exceptions as signaling that the substance at issue is not harmful after all.
>
> RFRA, and the strict scrutiny test it adopted, contemplate an inquiry more focused than the Government's categorical approach. 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.
>
> In fact an exception has been made to the Schedule I ban for religious use. For the past 35 years, there has been a regulatory exemption for use of peyote 'a Schedule I substance' by the Native American Church. In 1994, Congress extended that exemption to all members of every recognized Indian Tribe. Everything the Government says about the DMT in hoasca ('that, as a Schedule I substance, Congress has determined that it' has a high potential for abuse, 'has no currently accepted medical use' and has 'a lack of accepted safety for use... under medical supervision') applies in equal measure to the mescaline in peyote, yet both the Executive and Congress itself have decreed an exception from the Controlled Substances Act for Native American religious use of peyote. If such use is permitted in the face of the congressional findings for hundreds of thousands of Native Americans practicing their faith, 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.
>
> 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. Applying that test, we conclude that the courts below did not err in determining that the Government failed to demonstrate, at the preliminary injunction stage, a compelling interest in barring the UDVs sacramental use of hoasca. The judgment of the United States Court of Appeals for the Tenth Circuit is affirmed, and the case is remanded for further proceedings consistent with this opinion. It is so ordered.
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> (Gonzales v. O Centro Espírita Beneficiente União do Vegetal, 2006).

International Implications of the U.S. Supreme Court Decision

In its decision and judgment the United States Supreme Court recognized and affirmed the União do Vegetal as a valid religion, where the act of receiving communion with Hoasca was central to its religious faith. The decision was based on a careful review of the transcripts from the testimony given at the New Mexico hearing, more than a thousand pages of supportive documentation (including the scientific research) submitted into evidence, and hundreds of pages of legal arguments and expert opinions submitted by both sides over more than 5 years of litigation. Because of the thoroughness of the evidence presented, as well as the weight of authority of a decision from the United States Supreme Court, it is unlikely that the UDV will ever again be called upon to prove the legitimacy of its religious character, or the fundamental necessity of its sacramental use of Hoasca within its religious works.

Because the guarantees of religious liberty are so fundamental to both the United States Constitution as well as statutes enacted through evolving domestic law, the União do Vegetal was able to overcome an aggressive campaign on the part of the federal authorities in the United States as they attempted to deny UDV members their right to exercise their religious practice and faith. Of course, the outcome of future challenges in other countries, should they occur, would depend on the unique domestic laws of each nation.

The United States Supreme Court, for example, interpreted the 1971 Convention's ban on *Dimethyltryptamine* as extending to Hoasca, despite the determination of the International Narcotics Control Board who found that as a decoction made from plant material, that the tea was not in fact controlled or prohibited by the accord. The Supreme Court reasoned however that the domestic laws of the United States that safeguard religious practices, are of superior importance to responsibilities defined by the treaty. In fact, the 1971 Convention on Psychotropic Substances itself recognizes the necessity of being interpreted with a consideration of basic human rights, and in accord with the constitutions and domestic laws of its signatories.

As the decoction known as ayahuasca continues its already established movement towards global use, the decision of the United States Supreme Court is certain to be carefully studied. The United States interestingly is recognized as a world leader in both the areas of drug control as well as religious liberty; two areas of significant importance in the study and evolution of social policy and law.