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IN THE SUPREME COURT OF THE STATE OF IDAHO

LAWRENCE D. LEWIS)
)
 Plaintiff/Appellant,)
 vs.)
)
 STATE OF IDAHO,)
 DEPARTMENT OF TRANSPORTATION)
)
 Defendant/Respondent.)
 _____)

Supreme Court No. 31833
RESPONDENT'S MOTION TO
REMAND FOR FURTHER
ADMINISTRATIVE ACTION

Pursuant to Rule 13.3 of the Idaho Appellate Rules, Respondent State of Idaho Department of Transportation ("Department"), by and through their attorney of record in this matter, hereby moves this Court to vacate the district court's judgment in the above-entitled matter and to remand this matter back to the Department for further administrative action to grant the driver's license renewal application submitted by Appellant.

COPY

This motion is based upon the file herein and Respondent Idaho Transportation Department's Memorandum in Support of Respondent's Motion to Remand for Further Administrative Action.

DATED this 18th day of April, 2006.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

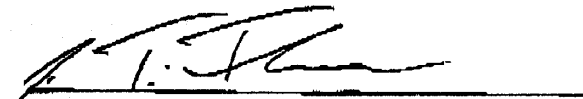

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2006, I served two (2) true and correct copies of the foregoing RESPONDENT'S MOTION TO REMAND FOR FURTHER ADMINISTRATIVE ACTION by placing same in the United States Mail, postage prepaid, by facsimile, or by causing the same to be hand delivered, as follows:

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IN THE SUPREME COURT OF THE STATE OF IDAHO

LAWRENCE D. LEWIS)	
)	Supreme Court No. 31833
Plaintiff/Appellant,)	
vs.)	RESPONDENT'S MOTION
)	BRIEF IN SUPPORT OF
STATE OF IDAHO,)	MOTION TO REMAND FOR
DEPARTMENT OF TRANSPORTATION)	FURTHER ADMINISTRATIVE
)	ACTION
Defendant/Respondent.)	

Respondent State of Idaho, Department of Transportation ("Department"), hereby respectfully requests that the district court's judgment be vacated and that this matter be remanded for further administrative action to grant the driver's license renewal application submitted by Appellant.

INTRODUCTION

This appeal arises from the denial of Appellant's application for renewal of a driver's license. The denial was based on his refusal to include his social security number



on the application form. See Idaho Code § 49-306(2)(a). Appellant declined to supply the requested information on the basis of a religious belief that such identifier constitutes, as the Department understands his position, the "Mark of the Beast" or a "precursor" of such mark. R. Ex. A, p.18. The Department elected not to contest the sincerity of this belief. Appellant sought judicial review of the application's denial and was ultimately unsuccessful before the district court.

Although Appellant's *pro se* opening brief identified seven issues, the controlling question is whether the Department's action violated the Idaho Free Exercise of Religion Act ("FERA"), Idaho Code §§ 73-401 to -404. That statute, enacted in 2000 (2000 Idaho Sess. Laws ch. 134), parallels in most respects the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb-2000bb-4, adopted by Congress almost seven years earlier (Pub. L. No. 103-141, 107 Stat. 1488 (1993)). Appellant, who is now represented by counsel, recently lodged with the Court a supplemental brief discussing the United States Supreme Court's February 21, 2006 decision in *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 126 S. Ct. 1211 (2006) ("UDV").

The Department disagrees with Appellant's contention that UDV is controlling here, but the parties' divergent views on UDV's significance underscore that the core issue before this Court involves reconciling specific demands placed on the Department agency by federal law with requirements imposed under FERA. That is an issue of first impression whose resolution has ramifications likely outside the narrow confines of driver's license renewals.

In light of the issue's general importance and the fact that in May 2005, Congress modified the federal statutory framework applicable to issuance of driver's licenses by States, the Department has re-examined the relevant federal and state statutes and concluded that it has the authority to complete Appellant's license renewal application by its own entry of his social security number—which he disclosed in briefing before the hearing officer—and to issue the license. The Department therefore requests that the district court's judgment be vacated and that this matter be remanded for further administrative action pursuant to which Appellant's application will be granted and a driver's license issued.

Counsel for Respondent has discussed this motion with Appellant's counsel.

GROUNDS FOR REMAND

I. THE SUPREME COURT'S DECISION IN *UDV* IS NOT DISPOSITIVE OF APPELLANT'S FERA CLAIM. RESOLUTION OF THAT CLAIM NONETHELESS WILL REQUIRE THIS COURT TO RESOLVE LEGAL ISSUES OF FIRST IMPRESSION

A.

UDV arose from a suit by a religious sect to enjoin enforcement of the Controlled Substances Act ("CSA"), 21 U.S.C. §§ 801-904, with respect to the use of a sacramental tea brewed with proscribed hallucinogenic plants. The sect contended that such use was protected under RFRA. The district court entered a preliminary injunction against enforcement, concluding with respect to the probability-of-success factor that the federal defendants had failed to establish a compelling governmental interest, and was affirmed

by both the court of appeals and the Supreme Court.¹ The Government did not challenge the district court's general determination that the evidence on the health risks associated with the tea's use was in "equipoise" but instead argued, in relevant part, that the mere inclusion of the plants' hallucinogenic element on a CSA schedule of prohibited drugs satisfied the compelling interest showing required under RFRA.

The Supreme Court was unpersuaded. In its view, "RFRA, and the strict scrutiny test it adopted, contemplates an inquiry more focused than the Government's categorical approach." 126 S. Ct. at 1220. The federal statute instead demands that the compelling interest "affirmative defense" (*id.* at 1219) be established with reference to the "application of the challenged law 'to the person'—the particular claimant whose religion is being substantially burdened" (*id.* at 1220). In this regard, the Court noted that RFRA "expressly adopted" the compelling governmental interest test as applied in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and that in those cases "this Court looked beyond broadly formulated interests justifying the general applicability of governmental mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants." *UDV*, 126 S. Ct. at 1220. "[T]he Government's mere invocation of the general characteristics of Schedule I substances, as set forth in the [CSA]," therefore, "cannot carry the day." *Id.* at 1221. The Court, however, did not end its analysis with a simple rejection of the Government's

¹ The preliminary injunction was conditional insofar as it limited the plants' importation only pursuant to a federal permit, restricted control of the tea brewed from the plants, and required notice to church members of the dangers from the hallucinogenic substances. *UDV*, 126 S. Ct. at 1218. It also provided for expedited reconsideration of the injunction in the event that the Government acquires evidence that the tea's use is negatively affecting sect members' health or that specific shipments of the plants contain particularly high levels of hallucinogens. *Id.*

