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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GONZALES, ATTORNEY GENERAL, ET AL. *v.* O CENTRO ESPIRITA BENEFICENTE UNIAO DO VEGETAL ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 04–1084. Argued November 1, 2005—Decided February 21, 2006

Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA) in response to *Employment Div., Dept. of Human Resources of Ore.* v. *Smith,* 494 U. S. 872, where, in upholding a generally applicable law that burdened the sacramental use of peyote, this Court held that the First Amendment's Free Exercise Clause does not require judges to engage in a case-by-case assessment of the religious burdens imposed by facially constitutional laws, *id.,* at 883–890. Among other things, RFRA prohibits the Federal Government from substantially burdening a person's exercise of religion, "even if the burden results from a rule of general applicability," 42 U. S. C. §2000bb–1(a), except when the Government can "demonstrat[e] that application of the burden to the person (1) [furthers] a compelling government interest; and (2) is the least restrictive means of furthering that . . . interest," §2000bb–1(b).

Members of respondent church (UDV) receive communion by drinking *hoasca,* a tea brewed from plants unique to the Amazon Rainforest that contains DMT, a hallucinogen regulated under Schedule I of the Controlled Substances Act, see 21 U. S. C. §812(c), Schedule I(c). After U. S. Customs inspectors seized a *hoasca* shipment to the American UDV and threatened prosecution, the UDV filed this suit for declaratory and injunctive relief, alleging, *inter alia,* that applying the Controlled Substances Act to the UDV's sacramental *hoasca* use violates RFRA. At a hearing on the UDV's preliminary injunction motion, the Government conceded that the challenged application would substantially burden a sincere exercise of religion, but argued that this burden did not violate RFRA because applying the

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Controlled Substances Act was the least restrictive means of advancing three compelling governmental interests: protecting UDV members' health and safety, preventing the diversion of *hoasca* from the church to recreational users, and complying with the 1971 United Nations Convention on Psychotropic Substances. The District Court granted relief, concluding that, because the parties' evidence on health risks and diversion was equally balanced, the Government had failed to demonstrate a compelling interest justifying the substantial burden on the UDV. The court also held that the 1971 Convention does not apply to *hoasca*. The Tenth Circuit affirmed.

Held: 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 UDV's sacramental use of *hoasca*. Pp. 6–19.

1. This Court rejects the Government's argument that evidentiary equipoise as to potential harm and diversion is an insufficient basis for a preliminary injunction against enforcement of the Controlled Substances Act. Given that the Government conceded the UDV's prima facie RFRA case in the District Court and that the evidence found to be in equipoise related to an affirmative defense as to which the Government bore the burden of proof, the UDV effectively demonstrated a likelihood of success on the merits. The Government's argument that, although it would bear the burden of demonstrating a compelling interest at trial on the merits, the UDV should have borne the burden of disproving such interests at the preliminary injunction hearing is foreclosed by *Ashcroft* v. *American Civil Liberties Union,* 542 U. S. 656, 666. There, in affirming the grant of a preliminary injunction against the Government, this Court reasoned that the burdens with respect to the compelling interest test at the preliminary injunction stage track the burdens at trial. The Government's attempt to limit the *Ashcroft* rule to content-based restrictions on speech is unavailing. The fact that *Ashcroft* involved such a restriction in no way affected the Court's assessment of the consequences of having the burden at trial for preliminary injunction purposes. 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, including at the preliminary injunction stage. Pp. 6–8.

2. Also rejected is the Government's central submission that, because it has a compelling interest in the *uniform* application of the Controlled Substances Act, no exception to the DMT ban can be made to accommodate the UDV. The Government argues, *inter alia,* that the Act's description of Schedule I substances as having "a high potential for abuse," "no currently accepted medical use," and "a lack of

accepted safety for use . . . under medical supervision," 21 U. S. C. §812(b)(1), by itself precludes any consideration of individualized exceptions, and that the Act's "closed" regulatory system, which prohibits all use of controlled substances except as the Act itself authorizes, see *Gonzales* v. *Raich,* 545 U. S. ___, ___, cannot function properly if subjected to judicial exemptions. Pp. 8–16.

(a) RFRA and its strict scrutiny test 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. 42 U. S. C. §2000bb–1(b). Section 2000bb(b)(1) expressly adopted the compelling interest test of *Sherbert* v. *Verner*, 374 U. S. 398, and *Wisconsin* v. *Yoder,* 406 U. S. 205. There, the Court looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants. *Id.,* at 213, 221, 236; *Sherbert, supra,* at 410. Outside the Free Exercise area as well, the Court has noted that "[c]ontext matters" in applying the compelling interest test, *Grutter* v. *Bollinger,* 539 U. S. 306, 327, and has emphasized that strict scrutiny's fundamental purpose is to take "relevant differences" into account, *Adarand Constructors, Inc.* v. *Peña,* 515 U. S. 200, 228. Pp. 9–10.

(b) Under RFRA's more focused inquiry, the Government's mere invocation of the general characteristics of Schedule I substances cannot carry the day. Although Schedule I substances such as DMT are exceptionally dangerous, see, *e.g., Touby* v. *United States,* 500 U. S. 160, 162, there is no indication that Congress, in classifying DMT, considered the harms posed by the particular use at issue. That question *was* litigated below. Before the District Court found that the Government had not carried its burden of showing a compelling interest in preventing such harm, the court noted that it could not ignore the congressional classification and findings. But Congress' determination that DMT should be listed under Schedule I simply does not provide a categorical answer that relieves the Government of the obligation to shoulder its RFRA burden. The Controlled Substances Act's authorization to the Attorney General to "waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety," 21 U. S. C. §822(d), reinforces that Congress' findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them. Indeed, despite the fact that everything the Government says about the DMT in *hoasca* applies in equal measure to the

mescaline in peyote, another Schedule I substance, both the Executive and Congress have decreed an exception from the Controlled Substances Act for Native American religious use of peyote, see 21 CFR §1307.31; 42 U. S. C. §1996a(b)(1). If such use is permitted in the face of the general congressional findings for hundreds of thousands of Native Americans practicing their faith, those same findings alone cannot preclude consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs. See *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U. S. 520, 547. The Government's argument that the existence of a *congressional* exemption for peyote does not indicate that the Controlled Substances Act is amenable to *judicially crafted* exceptions fails because RFRA plainly contemplates court-recognized exceptions, see §2000bb–1(c). Pp. 11–13.

(c) The peyote exception also fatally undermines the Government's broader contention that the Controlled Substances Act establishes a closed regulatory system that admits of no exceptions under RFRA. The peyote exception has been in place since the Controlled Substances Act's outset, and there is no evidence that it has undercut the Government's ability to enforce the ban on peyote use by non-Indians. The Government's reliance on pre-*Smith* cases asserting a need for uniformity in rejecting claims for religious exemptions under the Free Exercise Clause is unavailing. Those cases did not embrace the notion that a general interest in uniformity justified a substantial burden on religious exercise, but instead scrutinized the asserted need and explained why the denied exemptions could not be accommodated. See, *e.g., United States* v. *Lee,* 455 U. S. 252, 258, 260. They show that the Government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program. Here the Government's uniformity argument rests not so much on the particular statutory program at issue as on slippery slope concerns that could be invoked in response to any RFRA claim for an exception to a generally applicable law, *i.e.*, "if I make an exception for you, I'll have to make one for everybody, so no exceptions." But RFRA operates by mandating consideration, under the compelling interest test, of exceptions to "rule[s] of general applicability." §2000bb–1(a). Congress' determination that the legislated test is "workable . . . for striking sensible balances between religious liberty and competing prior governmental interests," §200bb(a)(5), finds support in *Sherbert, supra,* at 407, and *Cutter* v. *Wilkinson,* 544 U. S. ___, ___. While there may be instances where a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA, it would be surprising to find that this was such a case, given the longstanding pe-

yote exemption and the fact that the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance. The Government has not shown that granting the UDV an exemption would cause the kind of administrative harm recognized as a compelling interest in, *e.g., Lee*. It cannot now compensate for its failure to convince the District Court as to its health or diversion concerns with the bold argument that there can be no RFRA exceptions at all to the Controlled Substances Act. Pp. 13–16.

3. The Government argues unpersuasively that it has a compelling interest in complying with the 1971 U. N. Convention. While this Court does not agree with the District Court that the Convention does not cover *hoasca,* that does not automatically mean that the Government has demonstrated a compelling interest in applying the Controlled Substances Act, which implements the Convention, to the UDV's sacramental use. At this stage, it suffices that the Government did not submit any evidence addressing the international consequences of granting the UDV an exemption, but simply relied on two affidavits by State Department officials attesting to the general (and undoubted) importance of honoring international obligations and maintaining the United States' leadership in the international war on drugs. Under RFRA, invocation of such general interests, standing alone, is not enough. Pp. 16–18.

389 F. 3d 973, affirmed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case.