

1 TO THE INDIVIDUAL JUSTICES OF THE
2 SUPREME COURT OF THE UNITED STATES

3
4 O CENTRO ESPIRITA UNIAO DO VEGETAL
5 DOCKET #04-1084

6 **Affidavit**

7 I, Carl Eric Olsen, am a resident of the State of Iowa. My mailing address is Post Office Box
8 4091, Des Moines, IA 50333. Any other contact information is listed on the signature line below.

9 I affirm under penalty of perjury as defined in the laws of the United States and the State of
10 Iowa that the following Affidavit is true and complete to the best of my ability.

11 I am making this statement for the purpose of notifying the Supreme Court of the United States
12 of Plain Errors of fact and law contained in the decisions under review by this Court in Gonzalez
13 vs. O Centro Espirita Uniao Do Vegetal, docket Number 04-1084 as set forth in the Amicus
14 Curie Brief to which this Affidavit is attached.

15 I am making this statement for the purpose of supporting the O Centro Espirita Uniao Do
16 Vegetal Church in the decisions of the lower courts that interpret the Religious Freedom
17 Restoration Act of 1993 - 42 U.S.C. sec. 2000bb et al - to mean that a sincere act of religious
18 exercise that is substantially burdened by a federal law must be justified at trial by government
19 proofs of the facts of a threat to public health and safety of such magnitude as to support a
20 compelling interest on the part of government to regulate the act of religious exercise. Further, I
21 support the interpretation of RFRA that is applied to the O Centro Espirita Uniao Do Vegetal
22 Church to mean that the government must make the fact proofs that the least restrictive means
23 of regulation has been used to regulate the sincere act of religious exercise that is found to
24 cause a compelling interest on the part of government to regulate it. I support the interpretation
25 of RFRA to mean that RFRA applies to the drug laws, provides a means of exemption from the
26 drug laws for sincere religious exercise, and provides exemptions from international treaties
27 affirmed by the United States Senate and otherwise effective upon my actions as a citizen of the
28 State of Iowa, member of the United States of America.

29 I now state for the record under penalty of perjury that:

30 I sincerely use Cannabis in my religious exercise.

31 I am substantially burdened by the federal drug laws that restrict my growing, possession, use,
32 transfer and acquisition of cannabis, commonly known as marijuana, for my sincere religious
33 exercise.

34 I have found that my use of Cannabis enables me to come to a greater understanding of my
35 status as a human being faced with decisions about the morality of my acts and the acts of
36 others.

37 I have found that my use of Cannabis enables me to exert greater control over my human
38 nature in body, spirit, psychology, family interaction, social interaction, economic interaction,
39 political interaction, community interaction, and my fundamental interaction with the Creator of
40 All.

41 Further I wish to inform this Court that I am the petitioner in Olsen v. Drug Enforcement
42 Administration, 878 F.2d 1458 (D.C. Cir, 1989), cert. denied, 495 U.S. 906 (1990), as well as a
43 petitioner In The Matter of Marijuana Rescheduling Petition, DEA Docket No. 86-22, September
44 6, 1988 (Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision
45 of Administrative Law Judge).

46 On page 20 of the 10th Circuit U.S. Court of Appeals decision in O CENTRO ESPIRITA
47 BENEFICIENTE UNIAO DO VEGETAL vs. JOHN ASHCROFT, No. 02-2323, the 10th Circuit
48 U.S. Court of Appeals states:

49
50 "Employing [the pre-Smith compelling interest test], courts routinely rejected
51 religious exemptions from laws regulating controlled substances. See United
52 States v. Greene, 892 F.2d 453, 456-57 (6th Cir. 1989); Olsen v. DEA, 878 F.2d
53 1458, 1462-63 (D.C. Cir. 1989); Olsen v. Iowa, 808 F.2d 652, 653 (8th Cir. 1986);
54 United States v. Rush, 738 F.2d 497, 512-13 (1st Cir. 1984); United States v.
55 Middleton, 690 F.2d 820, 824 (11th Cir. 1982)."

56
57 Although I was a pro se plaintiff in Olsen v. DEA, 878 F.2d 1458, the court appointed a law firm
58 to represent me as Amicus Curiae. In its Brief of Court-Appointed Amicus Curiae filed on March
59 24, 1988, Amicus Curiae stated:

60
61 "Olsen does not dispute the government's compelling interest in controlling the
62 distribution and drug-related use of marijuana. Presumably the government's
63 interest in that regard is both to protect the health and well-being of the ultimate
64 consumers of marijuana and to safeguard society from the hazards and
65 debilitating effects of marijuana intoxication. See 21 U.S.C. § 801." BRIEF OF
66 COURT-APPOINTED AMICUS CURIAE, 24 March 1988, page 18.

67
68 The government did not prove it had a compelling interest in prohibiting my religious use of
69 marijuana. If the compelling interest test had been applied in my case, the decision would have
70 permitted me to use marijuana. At the same time this was going on, DEA Administrative Law
71 Judge Francis L. Young ruled that marijuana is safer than aspirin or eating ten raw potatoes. In
72 the Matter of Marijuana Rescheduling Petition, DEA Docket No. 86-22, Sept. 6, 1988, at pages
73 56-59. I was one of the petitioners in DEA Docket No. 86-22. It would have been impossible for
74 the government to prove a compelling interest in prohibiting my use of marijuana if Amicus
75 Curiae had introduced this ruling as evidence challenging the DEA interest in preventing me
76 from using marijuana. Olsen v. DEA, 878 F.2d 1548 was not decided until June 20, 1989.

77 The U.S. Court of Appeals in Olsen v. DEA never required the Drug Enforcement Administration
78 to prove it had a compelling interest in prohibiting my religious use of marijuana. The U.S. Court
79 of Appeals in Olsen v. DEA simply took the language of a general statute (the Controlled
80 Substances Act) as evidence that the government had a compelling interest in overriding my
81 religious freedom. This is completely contrary to Sherbert v. Verner, 374 U.S. 398 (1963) and
82 Wisconsin v. Yoder, 406 U.S. 205 (1972). The compelling interest test has since been enacted
83 into statutory law as the Religious Freedom Restoration Act of 1993, 107 Stat. 1488 Public Law

84 103-141 -- November 16, 1993, and it is retroactive (which means it applies retroactively to
85 Olsen v. DEA, 878 F.2d 1458).

86 In U.S. v. Bauer, 84 F.3d 1549 (9th Cir. 1996), the U.S. Court of Appeals for the Ninth Circuit
87 stated:

88 "The district court treated the existence of the marijuana laws as dispositive of
89 the question whether the government had chosen the least restrictive means of
90 preventing the sale and distribution of marijuana. . . The district court relied on a
91 drug case decided before the enactment of RFRA (Leary). . .We do not exclude
92 the possibility that the government may show that the least restrictive means of
93 preventing the sale and distribution of marijuana is universal enforcement of the
94 marijuana laws. "Under RFRA, however, the government had the obligation,
95 "first to show that the application of these laws to the defendants was in
96 furtherance of a compelling governmental interest and, "second to show that the
97 application of these laws to these defendants was the least restrictive means of
98 furthering that compelling governmental interest." U.S. v. Bauer, 84 F.3d at page
99 1375.

100
101 In O Centro vs. Ashcroft, 282 F.Supp. 1236, the U.S. District Court stated:

102
103 "Under RFRA, Congress mandated that a court may not limit its inquiry to general
104 observations about the operation of a statute. Rather, 'a court is to consider whether the
105 'application of the burden' to the claimant 'is in furtherance of a compelling interest' and
106 'is the least restrictive means of furthering that compelling governmental interest.'" At
107 page 1254.

108 I respectfully request that the Supreme Court of the United States reject the dicta of the U.S.
109 Court of Appeals for the 10th Circuit in Olsen v. DEA, 878 F.2d 1458 (D.C. Cir. 1989) stating that
110 the compelling interest test was correctly applied to me, since the U.S. Court of Appeals for the
111 District of Columbia did not require the Drug Enforcement Administration to prove it had a
112 compelling interest in prohibiting my sacramental use of marijuana and simply relied on general
113 observations about the operation of a statute in making its ruling..

114 I respectfully request that the Supreme Court of the United States affirm the interpretation of
115 RFRA made in the Bauer and O Centro cases.

116 I affirm under penalty of perjury that afore made statement is true and complete to the best of
117 my ability as indicated by my signature below on the date indicated.

118 Signed_____

119 Carl Eric Olsen
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123 Date: September 7, 2005