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April 14, 2008

Mr. Michael E. Gans  
Clerk, United States Court of Appeals  
for the Eighth Circuit  
Thomas F. Eagleton Court House  
Room 24.329  
111 S. 10th Street  
St. Louis, MO 63102

Re: Olsen v. Mukasey, No. 07-3062, to be argued on April 18, 2008 before Judges Gruender, Bright and Benton

Dear Mr. Gans:


Pursuant to Fed. R. App. P. 28(j), the government respectfully submits this letter to call the Court's attention to pertinent new authority.

The government draws to the Court's attention the Ninth Circuit's recent decision in United States v. Vasquez-Ramos, 2008 WL 962092 (April 10, 2008). In that case, the Ninth Circuit rejected the argument that the Supreme Court's decision in Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006), "constitutes a significant shift in the legal terrain surrounding the appropriate application of . . . RFRA [Religious Freedom Restoration Act]" that undermined a previous Ninth Circuit RFRA decision. Vasquez-Ramos, 2008 WL 962092 at \*4. Instead, the court concluded that its decision in United States v. Antoine, 318 F.3d 919 (9th Cir. 2003), was still binding circuit precedent – notwithstanding the Supreme Court's intervening O Centro decision – because in Antoine, the court had considered whether the application of a generally applicable law "to the particular defendant . . . violated RFRA and thus engaged in the type of 'focused inquiry' required by O Centro Espirita." Vasquez-Ramos, 2008 WL 962092 at \*4.

The Ninth Circuit's decision in Vasquez-Ramos supports the government's argument that the crux of a claim under RFRA, as explained by the Supreme Court in O Centro, is a particularized determination whether the government can accommodate a specific claimant's proposed exemption from a generally applicable law without undermining the government's compelling interest in enforcing that law. The plaintiff's proposed exemption here has already received that sort of individualized attention under that legal standard, and the Supreme Court's interpretation of RFRA in O Centro requires nothing more.

Thank you for transmitting this letter to the Court.

Respectfully submitted,

A handwritten signature in cursive script that reads "Melissa Patterson".

Melissa Patterson  
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cc:

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