No. 04-1084

IN THE SUPREME COURT OF THE UNITED STATES

ALBERTO GONZALES, ATTORNEY GENERAL, ET AL.,
Petitioners,

v.

O CENTRO ESPIRITA BENEFICIENTE UNIAO DO VEGETAL, ET AL.,
Respondents.

On a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

---

REPLY IN SUPPORT OF RESPONDENTS' MOTION TO STRIKE IMPROPER PORTIONS OF BRIEF FOR PETITIONERS

Nancy Hollander
Counsel of Record
John W. Boyd
Zachary A. Ives
Freedman Boyd Daniels
Hollander & Goldberg P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
(505) 842-9960

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

Page

MISCELLANEOUS

INTRODUCTION

Having failed to convince the district court and court of appeals that it has any compelling interest in prohibiting Respondents (UDV) from practicing their religion, which involves the sacramental use of *hoasca* tea, the government now seeks to prove its purported compelling interests to this Court by making new factual assertions based on non-record hearsay evidence, some of which contradicts the record it made below. In addition to violating the fundamental maxim that parties to an appeal are limited to facts contained in the record, the government's approach highlights the need for further proceedings in the district court, including discovery and a trial on the merits.

After a two-week evidentiary hearing on UDV's motion for a preliminary injunction, the district court found that the government did not "carr[y] its onerous burden on the issue of health risks to UDV members," (Pet. App. 227a); that the government "failed to meet its difficult burden of showing a compelling interest in preventing the diversion of hoasca to illicit use," (Pet. App. 236a); and that the government's "interest in adhering to the Convention does not, in this case, represent a compelling" interest because the Convention "does not apply to the hoasca tea used by the UDV," (Pet. App. 242a–43a). On remand to the district court after the court of appeals twice affirmed, the government successfully opposed UDV's request for additional discovery and a prompt trial on the merits, during which both the government *and UDV* would have had the opportunity to marshal and present additional evidence (including the non-record evidence the government seeks to introduce for the first time here), to challenge the admissibility of that evidence, and to test its reliability via thorough discovery, investigation, and cross-examination. (Opp. Cert. App. 40–46.)

In its certiorari briefing, the government successfully argued that this case's interlocutory posture should not bar review because "[t]he admission of more evidence on remand will not assist in resolving the critical and dispositive *legal* questions that are before the Court." (Pet. at 25; *see*

also Reply in Support of Pet. at 9 n.8 ("[T]he record compiled over nine days of hearings provides an ample backdrop . . . .")).

After this Court granted certiorari, the government abruptly changed its tune, apparently because it now deems the appellate record insufficient. By adding non-record evidence to its brief, the government has chosen to disregard Sup. Ct. R. 32.3, which permits a party to submit "non-record material" for lodging with the Clerk *only* after (1) describing to the Court and "all parties" "the material proposed for lodging and the reasons why the non-record material may properly be considered by the Court" and (2) receiving a request for the non-record evidence from the Clerk. Instead of complying with the rule, the government filed an opening merits brief containing thirty-eight citations to non-record evidence, including two letters from a Brazilian law enforcement officer that the government appended to its brief.[1] The government uses these non-record citations, all of which are hearsay, to establish the truth of a number of factual assertions it has never before made during this five-year-old litigation.

In opposition to UDV's motion to strike, the government offers only flawed reasoning, misrepresentations, and inapposite authority to justify its heavy reliance on non-record evidence. The Court should not allow the government to use this interlocutory appeal to shore up its

---

[1] The government states that UDV has made only "a general objection to the citation of . . . websites and newspaper articles" and has "actually cite[d] (Mot. 3) . . . only one article as objectionable." (Opp. to Mtn. at 6–7.) That is incorrect. On the very page of UDV's motion the government refers to in its opposition, UDV lists citations to two Web sites and three articles that are not part of the record. (Mtn. at 3.) Operating under the assumption that the government would frankly acknowledge the breadth of its reliance on non-record evidence, UDV did not list all thirty-eight of the government's citations to such evidence. The government's response requires UDV to do so here. (Pet. Br. at 21 n.9 (one Web site); 22 n.10 (four Web sites); 23 n.11 (one article); 35 n.20 (two Web sites); 36 n.22 (one Web site); 37 n.24 (fifteen Web sites); 38 n.25 (one newspaper article); 40 n.27 (three articles); 40 n.28 (one Web site, one book, one newspaper article); 40 n.29 (two Web sites); 43–44 (one letter); 44 n.32 (one letter); 48–49 n.36 (one newspaper article, two Web sites)).

unfavorable record.

ARGUMENT

The government does not dispute that this Court generally considers only record evidence. *See Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 518 (1981) ("Because these additional facts are not part of the record before us, we have not considered them."); *McClelland v. Carland*, 217 U.S. 268, 283 (1910) ("We shall not enter upon a consideration of these papers, because they are not in the record, as the same has been certified to us from the Circuit Court of Appeals as the one upon which it acted . . . ."); *Schley v. Pullman Car Co.*, 120 U.S. 575, 578 (1887) ("[T]he facts, dehors the record, . . . have been improperly introduced into the brief[.]"); *Pac. R.R. v. Ketchum,* 101 U.S. 289, 296 (1880) ("We take a case on appeal as it comes to us in the record, and receive no new evidence."). Nor does the government dispute that its brief contains a large number of references to non-record evidence, or that it has only alerted the Court to one such reference. However, the government argues that it is entitled to rely on non-record evidence under heretofore unrecognized exceptions to the record evidence rule.

I. THE GOVERNMENT'S INCLUSION OF AND RELIANCE ON A POLICE OFFICER'S NON-RECORD LETTERS IS IMPROPER AND PREJUDICIAL.

UDV is not aware of an exception to the record evidence rule that would permit the government to prove the law of a foreign nation on appeal by citing a foreign law enforcement officer's opinion letter that the government requested specifically for use in this litigation. The rule bars all parties, including the government, from relying on such non-record evidence, regardless of whether that evidence reflects a "more nuanced" (Opp. to Mtn. at 4) view of foreign law than official government resolutions on the subject. Rather than citing legal authority that would support its

reliance on the Urbano opinion letters, the government advances three fatally flawed arguments.

First, the government argues that letters from a Brazilian law enforcement officer are no different than the foreign court decisions and public laws the parties have cited on appeal in support of their interpretations of the Convention on Psychotropic Substances, Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S 175 (1971 Convention). (Opp. to Mtn. at 3.) But letters written by a foreign law enforcement officer at the request of a party bear no resemblance to foreign legal authority. The French appellate court decision and the public laws of France, which the parties have cited to support their positions with respect to the 1971 Convention, are not only unobjectionable "public records" (Opp. to Mtn. at 3), but actual foreign legal authority. The Urbano letters, by contrast, are not public records and lack the force of law. They are simply the opinions of a single law enforcement officer, who appears to lack the authority to issue official expositions on behalf of the Brazilian government. (Ex. 1 to Mtn.)

The government claims that UDV's questions about Urbano's authority to give official legal opinions on behalf of the government of Brazil and about Urbano's biases are "unfounded," but the government does not contest the information impeaching Urbano's credibility contained in the exhibit the UDV attached to its motion. (Opp. to Mtn. at 5 n.1.) In addition, the government argues that even if Urbano lacks the authority to issue such opinions and is beholden to the United States government, as the fruits of UDV's preliminary investigation suggest, it would still be proper for the government to cite and for the Court to credit his opinions regarding the law of Brazil—opinions that happen to support the government's litigation position. (*Id.*) The government's argument is wrong, of course, but it also misses the point. Before the government can rely on Urbano's opinions in *any* court, the *district court* must determine whether it is appropriate to consider those opinions and what

weight, if any, they should receive. That determination can only be made after UDV has the opportunity to conduct thorough discovery and cross-examination regarding (1) Urbano's authority under Brazilian law to represent his opinion as the law of Brazil to a foreign government, (2) Urbano's biases, and (3) the legality of the method the government used to obtain this purported opinion about Brazilian law outside the established diplomatic channels, from a single Brazilian law enforcement officer. After all, the record evidence rule is designed to prevent parties from relying on evidence that has not been subjected to our rigorous adversarial process, especially where, as here, that evidence is of dubious reliability.

To make matters worse, the government has refused to produce the documents it generated to request the Urbano letters, thereby exacerbating their prejudicial effect. Counsel for UDV has requested the government's documents three times in the three weeks that have passed since the government filed its opening merits brief, but the government has stonewalled, offering implausible explanations for its failure to produce its documents. Although the government was able to append to its brief letters drafted by a Brazilian police officer, including one written the day the government filed its brief, the government claims that it is unable to produce *its own requests* for those letters.[2] On July 12, in response to counsel's initial request for the government's documents, Patricia Millet, Assistant to the Solicitor General, wrote, "I am doing the best I can. Since those are not our documents, I have to get them and consent to release them from the State Department, which (if I have the chain right) has to get them from the Brazilian embassy and consent from the Brazilian government." (Ex. 1.) Counsel requested the documents again on July 21 and Ms. Millet again

---

[2] In addition, although the July 7 Urbano letter refers to a letter Urbano sent to the government on July 6 (Addendum to Pet. Br. 8a), the government did not translate and reproduce that letter for the Court or UDV. Since the July 8 letter contains statements that contradict statements in the July 7 letter, the government's omission of the July 6 letter raises additional questions that need to be explored through investigation, discovery, and cross-examination in the district court.

responded that the documents

> are not Justice Department letters or communications. We have requested copies of the embassy's letters and clearance to release them from the State Department (which must clear release through its embassy and with the Brazilian government). That process has been underway since Ms. Hollander made the request, and I am checking in with State on it regularly.

(Ex. 2.) It is inconceivable that the government was able to translate and provide the letters it received from Brazil within a day of receiving them, but has been unable to provide counsel with its own letters. Even if the government must get permission before producing its own documents, the government could have and should have obtained permission and produced the documents by now. A legal advisor for the Department of State, Mr. John B. Bellinger, III, is among the lawyers representing the government in this Court. Surely he could facilitate the production of the letters the Executive Branch wrote and sent to Urbano.

The government's steadfast refusal to provide the UDV with the documents it needs to contest the government's last-minute additions of non-record evidence merely highlights the need for the Court to (1) strike the Urbano letters and all references to them since no opportunity exists to compel investigation and discovery and (2) allow this case to proceed in the district court to a trial on the merits, during which *both* parties will have the opportunity to adduce evidence relevant to the unresolved factual issues pertaining to the 1971 Convention.

Second, the government argues that it needs the Urbano letters to support and accurately describe its "nuanced view" of Brazilian law with respect to DMT and *hoasca*. (Opp. to Mtn. at 5.) The government cites the Urbano letters, which are not authoritative statements of Brazilian law, to support its argument that although Brazil does not specifically prohibit the export of *hoasca*, it prohibits the export of *all* substances that contain DMT. (*Id.* at 4.) However, although the government claims that the inclusion of the Urbano letters was motivated by its concern for accuracy

and nuance, the government ignores three critical facts that do not support its "nuanced view" of Brazilian law: (1) the testimony of the government's own expert, which *is* part of the record; (2) the conduct of Brazilian and United States officials in this case; and (3) a more recent and controlling resolution from CONAD, the Brazilian drug control authority.

During the preliminary injunction hearing, the government's expert, Mr. Terrence Woodworth, Deputy Director of DEA Office of Diversion Control, testified unequivocally that "[h]oasca is *not* controlled by Brazil." (J.A. 903) (emphasis added). Mr. Woodworth also testified that the government had not made any effort to coordinate a program for exporting *hoasca* from Brazil for UDV's ceremonial use, but that he had "no reason to believe that [Brazilian authorities] wouldn't cooperate." (J.A. 904.) Indeed, since the preliminary injunction took effect in December 2004, after this Court denied the government's motion to stay the injunction, the UDV has been lawfully receiving shipments of *hoasca* from Brazil through the coordinated efforts of the DEA and Brazilian officials, both of which are well aware of the fact that the *hoasca* being exported from Brazil and imported into the United States contains a small amount of DMT.[3] Both the government's own expert testimony and the conduct of Brazilian officials in this very case are directly contrary to the government's "nuanced view" of Brazilian law.

This contradiction appears to be the result of additional government omissions. UDV's preliminary investigation has revealed that (1) the January 1, 2003 CONAD resolution upon which Urbano and the government rely is apparently no longer in effect, having expired on or around March 31, 2003, ninety days after its publication, and (2) a subsequent CONAD resolution recognizes the

[3] Adding more non-record documents to prove this should not be necessary. The DEA is a party to this litigation and will have to admit that its own documents to effect the preliminary injunction contain reference to the DMT contained in each shipment of *hoasca*.

legitimacy of the religious use of *hoasca* and its exclusion from the 1971 Convention.[4] The government has mentioned neither fact. If the government's aim is to accurately represent the law of Brazil, it should cite and explain all of the relevant record information to this Court, and if the government feels compelled to go beyond the existing record to reflect "nuance," it should do so in the district court where the UDV will have a fair opportunity to meet the evidence.

Third, the government contends that it would be unfair to exclude the Urbano letters because (1) UDV only relied on the Official Commentary to the 1971 Convention in the district court and (2) UDV opened the door to the Urbano letters on appeal by raising the issue of the laws and practices of signatories to the treaty other than Brazil in its opposition to the government's petition for certiorari. (Opp. to Mtn. at 2–3.) Both of the government's contentions are wrong.

Contrary to the government's first contention, in 2000, two years before the preliminary injunction hearing, the UDV relied not only on the 1971 Convention and its Official Commentary, but on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 28 I.L.M. 493 (1988 Convention) and its Official Commentary, as well as other international agreements to which the United States is a signatory, including the International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, 99 U.N.T.S. 171, (ICCPR), which states, "Everyone shall have the right to freedom of . . . religion. This right shall include freedom . . . to manifest his religion or belief in worship, observance, practice and teaching." (Reply in Support of Mtn. for Prel. Inj. at 10–17.)

Although the government attempted to block all evidence about the 1971 Convention at the hearing on the grounds that this was not one of the issues on which the district court sought evidence and that the treaty raised only legal issues (J.A. 771), the UDV introduced evidence that the United

---

[4] UDV intends to gather evidence on this subject through discovery and investigation and to present that evidence to the district court at a trial on the merits.

States permits the export of peyote to Canada (J.A. 106; Pet. App. 106a, 240a–41a) and that the government permits consumption of peyote tea by members of the Native American Church, even though that tea contains mescaline, a Schedule I controlled substance also covered by the treaty (J.A. 501). This evidence showed that the United States recognized that decoctions from plants (such as peyote) that are not covered by the treaty are also not covered even if the decoction contains a substance (such as mescaline) that is covered.[5] The government successfully objected to additional evidence that the International Narcotics Control Board (INCB), which supervises the three major drug treaties, did not consider *hoasca* to be covered by the treaty. (J.A. 767–71.)

When the district court granted the preliminary injunction, it found that the 1971 Convention "does not apply" to *hoasca*. (Pet. App. 242a.) Only then, when seeking a stay of the injunction first in the district court and then in the court of appeals, did the government attempt to build its record by relying on the declarations of legal advisors to the Department of State (including one that it had never relied upon before) to support the government's claim that a violation of the Convention would undermine the United States' leadership role in the field of drug control. (COA App. 165–74.) In response, UDV provided the opinion of Ambassador Herbert Okun, the diplomat who was responsible for representing the United States' position on this treaty on the INCB and a letter from the Executive Secretary of the INCB stating that the treaty does not cover *hoasca*. (Opp. Cert. App. 47–52.) In its discussion of the Okun declaration here (Opp. to Mtn. at 3), the government fails to mention that it was attached to the UDV's opposition to the government's motion to stay *in response* to the government's declarations, including the declaration of Linda Jacobsen, which the government

[5]Article 32(4) of the 1971 Convention authorizes countries in which plants containing Schedule I psychotropic substances grow wild and in which such plants are traditionally used by certain groups in magical or religious rites, to make reservations with respect to the manufacture, possession, distribution and use of such plants in the event the plants are added to the treaty in the future. Pursuant to this Article of the Convention, the United States reserved for the religious use of peyote.

offered for the first time only *after* the preliminary injunction hearing.[6]

Contrary to the government's second assertion, it was the government, not the UDV, that first introduced the issue of laws and practices of foreign nations into the case on appeal. In its petition for certiorari, the government asserted that "the 160 signatories to the 1971 Convention" share the government's view that the Convention applies to *hoasca*. (Pet. at 16.) The UDV offered evidence in response to the government's statement, which is unfounded, as the UDV will demonstrate in its merits brief.

The government is desperately trying to create a record in this Court because it realizes that if its new evidence is put to the test of investigation, discovery, and cross-examination, it will fail. This Court should strike the Urbano letters and all references to them.

II. THE GOVERNMENT'S RELIANCE ON NON-RECORD HEARSAY FOR THE TRUTH OF DISPUTED FACTUAL ASSERTIONS NOT PREVIOUSLY LITIGATED IS IMPROPER AND PREJUDICIAL.

The government appears to take the position that the general rule prohibiting citation to non-record evidence does not apply to Web sites and newspaper articles, even if they are cited to support the government's position on a disputed factual issue. (Opp. to Mtn. at 6–8.) The Court has never expressly created or recognized such a broad exception by adopting a rule or issuing an opinion on the subject, yet the government infers that such an exception exists based on citations to Web sites and newspaper articles that have appeared in this Court's opinions. The government's reliance on those opinions is misplaced for three reasons.

First, it is unclear whether the opinions the government refers to cite evidence that was *properly* before the Court, either because that evidence was part of the record on appeal or because

---

[6] The district court denied the government's motion to stay (Opp. Cert. App. 1–8), but the government failed to include this relevant opinion in its petition for certiorari or its opening merits brief.

it was lodged with the Clerk pursuant to Sup. Ct. R. 32.3. Indeed, it is reasonable to assume that neither the Court nor the parties violated the longstanding rule prohibiting reliance on non-record evidence.

Second, even assuming the opinions the government cites reflect *the Court's* limited use of non-record Web sites and articles, those opinions cannot be used to justify a party's use of hearsay to support factual issues never raised during almost five years of litigation, as the government has done here. For example, the government relies on (1) a newspaper article published over seven years ago in England in support of the allegation, which was never made during the hearing, that *ayahuasca* is "New York's latest drug of choice," (Pet. Br. at 38 n.25 (internal quotation marks omitted)); (2) two Web sites with unidentified publishers in support of its new allegation that "tea is a known delivery system for many controlled substances," (*id.* at 40 & n.29); and (3) three articles to support its new allegation that DMT is commonly used "as a short-acting alternative to LSD," (*id.* at 39–40 n.27) (internal quotation marks omitted). Given the chance, the UDV could debunk each of these new allegations.[7]

Third, even if those opinions authorize a party to rely on non-record evidence, they do not permit the government to cite such evidence in support of factual allegations that UDV disputes. On the contrary, the opinions suggest that if a party may ever properly refer to such evidence, it may only be used to support *uncontested* facts. For example, in *USPS v. Flamingo Industrial (USA) Ltd.*, 540 U.S. 736, 748 (2004), the Court cited a United States Postal Service Web site for the apparently undisputed proposition that "the great majority" of the United States Postal Service's business

---

[7] Furthermore, these assertions all rest on inadmissible, unreliable hearsay. During the preliminary injunction hearing, the government lodged successful hearsay objections to the admission of such evidence, including *its own exhibits*, for the truth of the matters asserted therein (Tr. 10/24/01, 603–06), yet the government has offered no justification for its reliance on such inadmissible evidence for the first time on appeal.

"consists of postal services." And in *Gonzales v. Raich*, 125 S. Ct. 2195, 2208 & n.31 (2005), the Court explained "the submissions of the parties . . . *all seem to agree* that the national, and international, market for marijuana has dimensions that are fully comparable to those defining the class of activities regulated by the Secretary," citing an estimate published on a government Web site that was consistent with the undisputed factual statement.[8] (Emphasis added.) If these opinions can

---

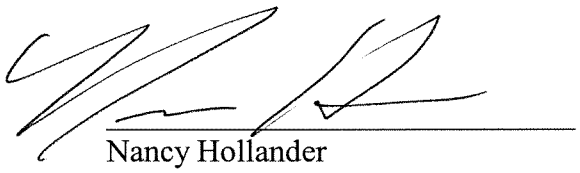
[8] *See also Metro-Goldwyn-Mayer Studios Inc. v. Grokster*, 125 S. Ct. 2764, 2788, 2793–94 (2005) (Breyer, J., concurring) (explaining that "the evidence now before us shows that Grokster passes Sony's test" and citing Web sites to illustrate that "at certain key points, information is lacking" with respect to the need to modify *Sony*); *Cutter v. Wilkinson*, 125 S. Ct. 2113, 2122 n.10 (2005) (citing Ohio Department of Rehabilitation and Correction Web site, along with sworn testimony and record evidence in published judicial decisions, for undisputed proposition that Ohio "facilitates religious services for mainstream faiths"); *Johanns v. Livestock Mktg. Ass'n*, 125 S. Ct. 2055, 2065 n.10 (2005) (citing to United States Patent and Trademark registration Web site for proposition that phrase "America's Beef Producers" was trademarked by Cattlemen's Beef Promotion and Research Board in 1999—a fact used only to suggest that respondents would lose on same set of facts even if they elected to make a different argument than they actually made); *Bates v. Dow Agrosciences, LLC*, 125 S. Ct. 1788, 1797 & n.14 (2005) (citing Environmental Protection Agency Web site for undisputed "background" proposition that "States have ample authority to review pesticide labels to ensure that they comply with both federal and state labeling requirements"); *City of Sherrill v. Oneida Indian Nation of New York*, 125 S. Ct. 1478, 1488 (2005) (citing 2000 United States census published on Web site for undisputed background data about the percentage of Indians and non-Indians in city of Sherrill and Oneida County); *Roper v. Simmons*, 125 S. Ct. 1183, 1192 (2005) (citing article available on Web site as source of information about number of juvenile executions that have occurred during particular periods of time); *Koons Buick Pontiac GMC v. Nigh*, 125 S. Ct. 460, 469 n.10 (2004) (citing a Consumer Bankers Association Web page for average amount of home equity line of credit in 2004, which was used to show that the dissent's proposed interpretation of a provision of Truth in Lending Act would produce anomalous results); *Norfolk Southern Rwy. Co. v. James N. Kirby, PTY Ltd.*, 125 S. Ct. 385, 391 n.1 (2004) (citing Web site containing daily rates for Special Drawing Right, which was used to calculate carrier's liability on three different dates, but concluding that "the precise liability . . . does not matter"); *id.* ("Respondents claim that liability computed by weight is higher. The machinery's weight is not in the record."); *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 124 S. Ct. 2783, 2794 (2004) (citing Web site for proposition that the number of internet hosts increased between July 1998 and January 2004); *Missouri v. Seibert*, 542 U.S. 600, 124 S. Ct. 2601, 2609 (2004) (citing Web site containing information consistent with witness's sworn testimony regarding prevalence of challenged interrogation technique, which was apparently uncontested); *Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S. Ct. 2633, 2642 (2004) (citing Web site for proposition that "[a]ctive combat operations against Taliban fighters apparently are ongoing in Afghanistan"); *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 124 S. Ct. 2373, 2377 (2004) (citing a Motorcycle Industry Council press release for uncontested proposition that sales of all-terrain vehicles have increased dramatically over past five years); *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 748 (2004) (citing Internal Revenue Service Web site for the proposition that the IRS had taken a legal position inconsistent with the position the government took as *amicus curiae*); *Till v. SCS Credit Corp.*, 541 U.S. 465, 476 n.14 (2004) (citing two lenders' Web sites in support of uncontested proposition that lenders advertise particular financing arrangement for Chapter 11 bankruptcy debtors—a fact not in issue because question presented involved debtor's proposed adjustment plan under Chapter 13, not Chapter 11); *Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 404 (2004) (citing a

be said to acknowledge the existence of any exception for the use of non-record evidence by parties, that exception does not permit the government to rely on inadmissible hearsay in support of factual allegations UDV has never had the opportunity to contest and vigorously disputes.

CONCLUSION

For the reasons stated in its motion and herein, UDV respectfully requests that the Court strike the non-record evidence in the addendum to the government's brief, strike the portions of the government's brief that improperly rely on non-record evidence, and order the government to file an amended brief that does not refer to or include non-record evidence.

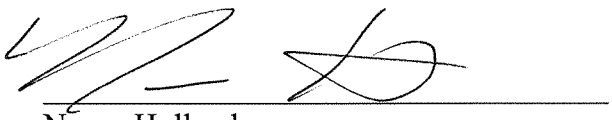
Respectfully submitted,



Nancy Hollander
Counsel of Record
John W. Boyd
Zachary A. Ives
Freedman Boyd Daniels
Hollander & Goldberg P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
(505) 842-9960

CERTIFICATE OF SERVICE

I certify that a copy of Respondents' Reply In Support of Motion to Strike Improper Portions of Brief for Petitioners was sent to Patricia A. Millett, Esq., by facsimile @ 202-514-9769 this 4th day of August, 2005.



Nancy Hollander

Web site as source of date upon which a consent decree was dissolved—a fact that was not in dispute).

Nancy Hollander

From: Patricia.A.Millett@usdoj.gov
Sent: Tuesday, July 12, 2005 2:05 PM
To: Nancy Hollander
Cc: John Boyd; Zachary Ives
Subject: RE: Re addendum

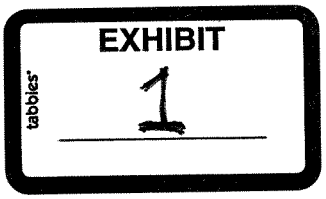
I am doing the best I can. Since those are not our documents, I have to get them and consent to release them from the State Department, which (if I have the chain right) has to get them from the Brazilian embassy and consent from the Brazilian government.

-----Original Message-----
From: nh@fbdlaw.com [mailto:nh@fbdlaw.com]
Sent: Tuesday, July 12, 2005 3:21 PM
To: Millett, Patricia A
Cc: JWB@FBDLAW.com; ZAI@FBDLAW.com
Subject: Re addendum

Patricia,

We received the fax and the web sites you sent but have not received the requests to Brazil that generated the two letters. Will you provide those requests?

Nancy
Nancy Hollander
Freedman Boyd Daniels Hollander & Goldberg P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
505 842-9960
505 244-7517 (direct)
505 975 0697 (cell)
505 842-0761 (fax)
nh@fbdlaw.com



Kaye Smolnisky

From: Patricia.A.Millett@usdoj.gov
Sent: Friday, July 22, 2005 11:32 AM
To: John Boyd
Subject: FW: 04-1084 J.A.

Attachments: 04-1084.Vol.1.pdf; 04-1084.Vol.2.pdf; 04-1084.Vol.3.pdf; 04-1084.Vol.4.pdf


04-1084.Vol.1.pdf (1 MB)


04-1084.Vol.2.pdf (585 KB)


04-1084.Vol.3.pdf (685 KB)


04-1084.Vol.4.pdf (627 KB)

Hope you are doing well. I am forwarding an electronic copy of the JA, as you requested. Our staff advises that a copy was emailed to Nancy Hollander on July 8th as well. We also federal expressed 3 hard copies of the JA to Nancy Hollander on July 8th. Our records show that the package was received on July 11th at 10:08 am, and signed for by "J. Sieger." So you should have hard copies there. I don't believe we have any extra hard copies (given the size of the JA). If you want more, I can put you in touch with the head of our paralegal unit who might be able to help you arrange for additional printing, but it would have to be at your expense.

On the letters you requested, as I explained to Nancy Hollander, they are not Justice Department letters or communications. We have requested copies of the embassy's letters and clearance to release them from the State Department (which must clear release through its embassy and with the Brazilian government). That process has been underway since Ms. Hollander made the request, and I am checking in with State on it regularly.

-----Original Message-----
From: Lubin, Candy P
Sent: Wednesday, July 20, 2005 10:56 AM
To: Millett, Patricia A
Cc: Anderson, Shirley
Subject: 04-1084 J.A.