

furtherance of a compelling governmental interest and, "**second** to show that the application of these laws to these defendants was the least restrictive means of furthering that compelling governmental interest."

United States v. Bauer, 84 F.3d 1549 (9th Cir 1996). On page 1559

"The court may conduct a **preliminary hearing** in which the defendants will have the obligation of showing that they are Rastafarians and that the use of marijuana is a part of the religious practice of Rastafarians."

Since **Bauer** and **O Centro** interpret RFRA to require the **Sherbert** and **Yoder** tests be applied to religious use of Schedule I drugs, since **Bauer** rules that the **Leary** case is not binding under RFRA because **Leary** excludes the **Sherbert** tests, this Court should find that **Leary** and cases derived from **Leary** are invalid under RFRA.

9. Even before enactment of RFRA the federal courts have recognized that religious use of Schedule I drugs can be exempt from prohibition under the federal drug laws.

In **Toledo v. Nobel-Sysco**, 651 F.Supp. 483 (D.N.M. 1986), and **Toledo v. Nobel-Sysco**, 892 F.2d 1481, 1490 (10th Cir. 1989) the federal courts found that a federal regulation, written by DEA under authority of the federal drug laws, provided a religious exemption for use of Schedule I drug peyote.

Since the federal DEA acting under the federal drug laws can promulgate regulations that authorize manufacture, harvest, sales and consumption of Schedule I drug peyote, can there be any doubt that Congress itself can and did enact RFRA to provide for case by case use exemptions for religious use of Schedule I drugs?

10. Since RFRA was written specifically to provide an exemption to the drug laws for Alfred Smith and Galen Black's religious use of peyote, it should go without saying that RFRA both applies to the drug laws and can provide an exemption to them. In addition, this Court has ruled twice on the fundamental issues of whether RFRA applies to the drug