



United States Department of Justice
Civil Rights Division

RELIGIOUS FREEDOM IN FOCUS

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Religious Freedom in Focus is a periodic email update about the Civil Rights Division's religious liberty and religious discrimination cases. Through vigorous enforcement of:

- Federal statutes prohibiting religion-based discrimination in education, employment, housing, public facilities, and public accommodations;
- Federal laws against arson and vandalism of houses of worship and bias crimes against people because of their faith; and
- The Religious Land Use and Institutionalized Persons Act (RLUIPA);

the Civil Rights Division is working to protect the right of all people to practice their faiths freely and without discrimination.

Back issues of this newsletter may be found at http://www.justice.gov/crt/spec_topics/religiousdiscrimination. You may also contact the Special Counsel for Religious Discrimination, Eric W. Treene, at (202) 353-8622.

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Assistant Attorney General Describes American Experience with Freedom of Religion and Expression in Malaysia

On January 16, Assistant Attorney General Thomas E. Perez [gave a speech](#) at a conference in Kuala Lumpur, Malaysia on religious freedom and religious expression in the United States. The conference, sponsored by the Attorney General of Malaysia, focused on that country's efforts to update its security and fundamental rights legislation. Assistant Attorney General Perez was invited to offer insights to Malaysian government officials, nongovernmental organizations, attorneys and academics based on the American experience with protecting religious freedom and religious expression while at the same time maintaining harmony and security in a religiously and ethnically diverse society.

Mr. Perez emphasized that freedom of speech and freedom of religion are fundamental and universal rights, citing George Washington's letter to the Hebrew Congregation in Newport, Rhode Island, where Washington stressed that religious freedom is a fundamental right belonging to all people, and not a privilege bestowed by the state. Mr. Perez highlighted how our First Amendment protects the religious freedom of all by protecting conscience and the free exercise of religion, and forbidding government interference in religious matters. "Similarly, recognizing that a critical aspect of freedom of conscience is the ability to share one's views, both religious and nonreligious, with others, the First Amendment also contains protections for speech, press, and assembly, as well as the right to petition the government."

Mr. Perez stressed that it is important to resist the false dichotomy that poses freedom of conscience and expression on one side that must be balanced against the goals of equality and stability on the other. Such impulses, which lead to attempts to ban certain types of speech in order to try to further the goal of a just, equal, and peaceful society, are misguided. He pointed to the example of the U.S. civil rights movement, where there were those who wanted to restrict the speech and marches of Martin Luther King, Jr. and others as disruptive to society. But the success of the civil rights movement was not merely in the laws that were passed, but also the message that resonated with ordinary Americans that "separate but equal" was a profound moral wrong. Mr. Perez explained that "Our First Amendment permitted civil rights advocates to speak out, preach freely from church pulpits, and march in the streets. Going back further in history, the abolition of slavery was accelerated by the exhortations of preachers from pulpits and the writing of abolitionist pamphleteers." He noted the United Nations Human Rights Council resolution 16/18 has acknowledged that the right to freedom of opinion and expression plays an important role "in strengthening democracy and combating religious intolerance."

Mr. Perez also noted that it is not only speech intended to further the cause of equality and harmony that can have beneficial effects, but often speech intended to have the exact opposite effect. He noted the phenomenon in the United States where we permit neo-Nazis to march, which often results in a small number of marchers being overshadowed by a much larger, peaceful interfaith counterdemonstration.

Mr. Perez noted that while we have strong protection for expression, we also have many tools for combating intolerant actions-prosecution of attacks and threats based on race, religion, and similar characteristics, enforcement of laws against discrimination in employment, education, housing, and other areas, and federal protections for religious communities to build places of worship. He stressed that "our enforcement of equality through the civil rights laws is interwoven with our protections for freedom of conscience, religion, and expression. . . . National harmony cannot exist if people are not protected and ensured equal opportunity. But authentic harmony requires discussion, learning, and the exchange of ideas. Our civil rights laws alone, without the moral message of Martin Luther King and other leaders becoming part of the public debate and then part of the public consciousness, could not have so dramatically transformed our society over the past forty years. Free speech can be messy, it can interject uncertainty, but ultimately it has been our experience that it is an absolute necessity to achieving real national harmony."

Guilty Plea in Toledo Mosque Arson

On December 19, an Indiana man pleaded guilty to setting fire to the Islamic Center of Greater Toledo (Ohio) on September 30, 2012. Randolph Linn of St. Joe, Indiana pleaded guilty to violating the [Church Arson Prevention Act](#), as well as using fire to commit a felony and carrying a firearm to commit a crime of violence.

According to court documents, Linn entered the mosque with a gun and a container of gasoline. He then entered the prayer room, poured gasoline on the prayer rug, and lit it on fire. The arson caused extensive damage to the mosque. He was indicted on October 17, following an investigation by the FBI, the Bureau of Alcohol Tobacco and Firearms, and state and local law enforcement. He faces 20 years in prison when sentenced on April 16.

On the day of the plea, Assistant Attorney General Thomas E. Perez stated: "The freedom to worship in the manner of one's choosing is one of our most fundamental rights as Americans. The Department of Justice and the Civil Rights Division will continue to aggressively prosecute hate-based attacks on houses of worship. I commend the cooperative efforts of local and federal law enforcement officials to ensure justice in this case."

Steven M. Dettelbach, United States Attorney for the Northern District of Ohio, said, "Religious freedom is at the core of our country, and we will continue to aggressively prosecute such hate crimes whenever and wherever the evidence warrants. This was a true joint effort to seek justice for these victims."

Since 9/11, the Justice Department has prosecuted 56 defendants for federal bias crimes against Muslims, Arabs, Sikhs, and South Asians, with 48 convictions to date. The

Department has also assisted in many state and local prosecutions involving bias crimes against these groups. More information is available on the website of the [Civil Rights Division's Initiative to Combat Post-9/11 Discriminatory Backlash](#), and in the Civil Rights Division's report [Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later](#).

Church Land Use Case Requires Totality of the Circumstances Approach, United States Argues

On December 4, the United States argued before the United States Court of Appeals for the Fourth Circuit that a federal trial court applied the wrong standard in ruling against a church's claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The United States had earlier [filed a brief](#) in the appeal, *Bethel World Outreach v. Montgomery County Maryland*, which involves a church's efforts to construct an 800-seat church in a rural/residential section of the county, arguing that the trial court should have applied a "totality of the circumstances" test to evaluate the RLUIPA claim.

[RLUIPA](#), enacted in 2000, contains various provisions protecting places of worship from discriminatory or unreasonable governmental application of zoning and landmarking laws. It also contains a provision protecting the rights of prisoners and other persons confined to institutions. Both the land use and institutionalized persons sections prohibit laws that impose a "substantial burden" on religious exercise without a compelling governmental interest.

In oral arguments before the appeals court, the United States stated that the trial court erred in focusing solely on a standard developed in RLUIPA prisoner cases, which requires that for there to be a "substantial burden," the government must "put substantial pressure on an adherent to modify his behavior and to violate his beliefs." While suited to the prisoner context, such a standard does not offer a helpful way to evaluate the types of factors presented in land use cases, the United States argued. Noting that the Fourth Circuit has yet to apply RLUIPA in the context of land use, the United States suggested that the court look to the factors evaluated by other federal courts of appeals. These courts have looked to whether, "considering the totality of the circumstances, the regulation substantially inhibits, limits, or interferes with an organization's religious exercise rather than merely inconveniencing it."

The United States thus argued that the trial court erred in granting summary judgment for the County, and asked the appeals court to reverse and remand the case for trial. This would enable the church to present its evidence that it is unable to accommodate its members for worship in its current facilities, that it has had to cancel various children's and charitable programs due to space constraints, and that there are no reasonably available alternative properties that would meet its needs, in order to try to prove that its religious exercise has been substantially burdened.

On the tenth anniversary of RLUIPA on September 22, 2010, the Department of Justice issued a [Report on Enforcement of RLUIPA](#), along with a [policy statement on the land use provisions of RLUIPA](#) and a [policy statement on the institutionalized person provisions](#), which include common questions and answers about this important law. Further information on the Civil Rights Division's RLUIPA enforcement work is available at the [Housing and Civil Enforcement Section's RLUIPA page](#) and the [Special Litigation Section's RLUIPA page](#).

United States' Suit Alleging Religious Discrimination in Policing and Housing Can Move Forward, Court Rules

On November 29, a federal court in Arizona ruled that the United States' lawsuit against [Colorado City, Arizona](#) and [Hildale, Utah](#), should move forward. As described in greater detail in [Volume 52](#) and [Volume 54](#), the suit alleges that the governments and joint police force of these two municipalities, whose residents are predominantly members of the Fundamentalist Church of Jesus Christ of Latter Day Saints (FLDS), have engaged in longstanding and pervasive discrimination against residents who are not FLDS members.

The suit alleges that the municipalities' police force has violated [42 U.S.C. § 14141](#) by failing to provide police protection for non-FLDS members, selectively enforcing laws against them, enforcing religious edicts of the FLDS church, and engaging in other

actions in violation of rights guaranteed by the First Amendment, the Fourth Amendment, and the Fourteenth Amendment of the U.S. Constitution. The suit also alleges violation of the [Fair Housing Act](#) by the municipalities and their utility companies through actions designed to deny equal housing opportunities to non-FLDS members.

In response to the [United States' suit](#), filed on June 21, 2012 in the U.S. District Court for the District of Arizona, the defendants moved to dismiss the complaint on the grounds that the allegations were insufficiently specific, or in the alternative, for an order requiring a more definite statement of the claims. The court denied these motions, finding that the United States' 42 U.S.C. §14141 and FHA claims provided the necessary specificity. The United States' complaint, for example, included various detailed allegations such as that the police failed to prevent FLDS members from destroying crops on a non-FLDS operated farm, returned an underage bride at the direction of FLDS leaders to the home she had fled, rounded up dogs and shot them to enforce a religious edict of FLDS leader Warren Jeffs, and denied water connections to non-FLDS homes, falsely claiming that there was a water shortage while continuing to provide new water connections to FLDS members' homes.

The court, however, determined that an additional claim that the municipalities had violated Title III of the Civil Rights Act of 1964 for excluding non-FLDS residents from a local park and zoo did not specify sufficient facts showing that the municipalities owned, operated or controlled the park and zoo, and thus dismissed that portion of the complaint with leave to amend. The case is being jointly litigated by attorneys from the [Housing and Civil Enforcement Section](#) and the [Special Litigation Section](#) of the Department of Justice's Civil Rights Division.

County Agrees to Let Church Building Project Move Forward, Resolving RLUIPA Claims

On November 27, 2012, the Board of County Commissioners of Santa Fe County voted to approve an application by O Centro Espirita Beneficente Uniao do Vegetal (UDV) to build a temple on a site where it had previously worshipped for 14 years. The County's approval of UDV's application resolves the New Mexico church's claims against the County under the [Religious Land Use and Institutionalized Persons Act \(RLUIPA\)](#), which were included in the lawsuit UDV filed in the United States District Court for the District of New Mexico on February 2, 2012.

The County's November 27 Order reverses the County's previous denial of UDV's application in October 2011. That denial followed two lengthy public hearings at which opponents voiced complaints about UDV and its use of *hoasca* tea, which contains a small amount of naturally occurring dimethyltryptamine (DMT), a Schedule I controlled substance. In 2006, the United States Supreme Court unanimously upheld the church's right to sacramental use of *hoasca* tea as part of its religious practice in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*. UDV's application was the only application by a church that had been denied since 1981; 54 other church applications had been approved by the County.

The revised order states that the County's previous denial of UDV's application was "not supported by competent evidence" and recognizes that "there was a substantial risk that the Order was not generally consistent with [RLUIPA]." As part of the settlement agreement between UDV and the County, the County will bring a County water line to the neighborhood for use by UDV and other property owners in the area, and will install a sewage treatment plant on site.

The Civil Rights Division [filed an amicus brief](#) in UDV's lawsuit on May 25, 2012, in opposition to the County's motion to dismiss UDV's complaint. The brief argued that the church had alleged sufficient facts to support a claim under RLUIPA, and that the church's RLUIPA claims should be permitted to move forward. The Court did not rule on the County's motion to dismiss, since the parties reached an agreement on the church's RLUIPA claims through mediation before an opinion was issued.

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