Petition For *En Banc* Re-Hearing-- The Journalist's Version

Doreen Hendrickson has appealed her conviction on a single count of criminal contempt under the terms of 18 U.S.C. § 401(3). The charge alleges criminal culpability for disobedience to orders commanding her to make and sign sworn statements containing content dictated by the government. Mrs. Hendrickson challenges the conviction and sentence on multiple grounds, only two of which will be discussed here due to page-count limits. Those include the unconstitutionality of the orders and a jury instructions directing a verdict on the statutory element of "lawful".

The panel decision of March 11, 2016, leaving Mrs. Hendrickson's conviction undisturbed, rests on reasoning and conclusions in deep conflict with well-settled precedents of this Court and the Supreme Court on extremely significant issues of law. In regard to the two issues addressed in this petition, these include *Agency for Int'l Development v. Alliance for Open Society Int'l, Inc.*, 133 S. Ct. 2321 (2013); *Newsom v. Morris*, 888 F.2d 371 (6th Cir. 1989); *Hudson v. Coleman*, 347 F.3d 138 (6th Cir. 2003); *United States v. Cotton*, 535 U.S. 625 (2002); *Jordon v. Gilligan*, 500 F.2d 701 (6th CA, 1974); *Burrell v. Henderson, et al.*, 434 F.3d 826, 831 (6th CA 2006); *Maness v. Meyers*, 419 U.S. 449; *In re Smothers*, 322 F3d 438 (6th Cir. 2003) and *United States v. Hynes*, 467 F.3d 951, 957 (6th Cir. 2006). The decision also conflicts with well-settled precedents of other circuits, as will be shown below.

1. Regarding the panel's decision upholding orders to Mrs. Hendrickson dictating the content of sworn statements of belief she does not believe to be true.

1. Mrs. Hendrickson believes the income tax is an indirect excise on the conduct of gainful privileged activities, and both Constitutional and beneficial.[1] But she also believes that the tax has been systematically misapplied to non-privileged earnings since the early 1940s. This has been accomplished by misleading payers and recipients of non-privileged gains who are ignorant of the tax's true nature into declaring those payments to be from privileged activities by reporting them in contexts and manners meant for reporting privileged gains. This creates legal presumptions which are then exploited by tax agencies.

Mrs. Hendrickson believes the misapplication of the tax is deeply harmful to America's rule of law, and has led to widespread corruption in our public institutions. She believes that each time any American improperly reports non-privileged earnings to be subject to the tax, more damage is done. And she believes that her earnings as a private tutor and a movie extra, and her husband's from work at a private-sector property management firm, are not privileged.

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[1] All of these are the actual arguments in the book 'Cracking the Code- The Fascinating Truth About Taxation In America' by Peter Hendrickson. The charge that Doreen Hendrickson violated an injunction against filing returns "based on the false and frivolous claims in 'Cracking the Code' that only federal, state and local government workers are subject to the income tax" concerns an order signed by a judge who admitted in July, 2014 to never having actually read the book-- a fact that was not permitted to go to Mrs. Hendrickson's jury.

2. In fidelity to her beliefs and her responsibilities as a civic and moral actor, Mrs. Hendrickson had filed tax returns concerning 2002 and 2003 on which her and her husband's earnings are not reported as "income".

3. In 2006 the government asked a court to order Mrs. Hendrickson to replace her freely-made, sworn returns with new ones on which she would be compelled to (falsely) swear she DOES believe her and her husband's earnings are tax-relevant "income", which, as Mrs. Hendrickson sees it, would be to falsely declare that she believes those earnings to be privileged, or that the tax is not an excise of limited application.

Mrs. Hendrickson was also given an order to not file returns based on what was (falsely) said to be argued in the book 'Cracking the Code' that only federal, state and local government workers are subject to the tax-- something she had never done and never would do, both because this claim *isn't* made in the book, and because Mrs. Hendrickson doesn't believe it to be true in any event.[2] Effectively, this second order threatens Mrs. Hendrickson with punishment if she files returns failing to say what the government wished her to say.

4. These orders plainly assert government control over Mrs. Hendrickson's speech and conscience and seek to forcibly co-opt her expressions as tools of

[2] The Hendricksons, neither of whom are government workers, do report income on their freely-made returns, making obvious that this ridiculous notion is not the basis for their filings.

government political and fiscal policy.[3] The orders are plainly violations of the First Amendment of a sort very explicitly identified by the Supreme Court in decision after decision:

> "It is, however, a basic First Amendment principle that "**freedom of speech prohibits the government from telling people what they must say**." (citations omitted). "**At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.**" (citations omitted) ("**The government may not . . . compel the endorsement of ideas that it approves.**").
> ...
> "[W]e cannot improve upon what Justice Jackson wrote for the Court 70 years ago: "If there is any fixed star in our constitutional constellation, it is that **no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.**" *Barnette*, 319 U. S., at 642."
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> *Agency for Int'l Development v. Alliance for Open Society Int'l, Inc.*, 133 S. Ct. 2321 (2013) (Emphasis added.)

5. Both the Supreme Court and this Court squarely hold that infringements on First Amendment rights are, by their very nature, irreparably injurious:

> "[E]ven minimal infringement upon First Amendment values constitutes **irreparable injury**..."
>
> *Newsom v. Morris*, 888 F.2d 371 (6th Cir. 1989) (citing to *Elrod v. Burns*, 427 U.S. 347 (1976)) (emphasis added)

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[3] These orders have nothing whatever to do with any alleged tax liabilities. If taxes are actually owed, the government axiomatically needs no tax-return agreement to that effect by Mrs. Hendrickson; further, the government is mandated to create its own sworn returns asserting that the Hendrickson's earnings are of a taxable variety if it believes this to be true (26 U.S.C. § 6020(b)) and such forms are then prima facie good for all legal purposes. It has made no such returns. Further, Treasury Dept. Certificates of Assessment and IRS Master File transcripts indicate that the Hendrickson's have never had any tax liability for the years in regard to which they were ordered to say otherwise. See Appellant's Reply Exhibit 1.

6. In addition to being First Amendment violations and irreparably injurious, these orders command Mrs. Hendrickson to commit perjury, a crime under state, federal and moral law.[4] Such orders are transparently invalid and lack even a pretense of validity.

7. Further, as has been held by this Court, there can be no judicial jurisdiction over matters not authorized by the Constitution or by statute:

> "[I]t is well established that federal courts are courts of limited jurisdiction, possessing only that power authorized by the Constitution and statute."
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> *Hudson v. Coleman*, 347 F.3d 138, 141 (6th Cir. 2003)

Plainly, the Constitution does not authorize First Amendment violations-- on the contrary, it prohibits them; and any Constitutional challenge is an inherent subject-matter jurisdiction challenge. Nor does any statute authorize such violations. On the contrary, such violations, as well as perjury and the subornation of perjury, are proscribed by statute.

The Supreme Court squarely holds that subject-matter jurisdictional infirmities are never waived, and require correction perpetually:

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[4] I.e.: 18 U.S.C. § 1621 Perjury generally

Whoever-

...

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury...

> "[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court."

United States v. Cotton, 535 U.S. 625, 630 (2002)

This Court agrees that it is duty-bound to vacate judgments entered in excess of a court's jurisdiction.

> "[A] court must vacate any judgment entered in excess of its jurisdiction."

Jordon v. Gilligan, 500 F.2d 701 (6th CA, 1974)

> "[D]enying a motion to vacate a void judgment is a per se abuse of discretion."

Burrell v. Henderson, et al., 434 F.3d 826, 831 (6th CA 2006)

8. Mrs. Hendrickson stands convicted of resisting transparently invalid orders which trample on her Constitutionally-guaranteed rights and command her to commit crimes, and which were issued by a court lacking subject-matter jurisdiction, and do her irreparable injury. Yet the panel hearing her appeal has refused to overturn her conviction.

The panel does this by yet another defiance of well-settled law-- that concerning the application of "collateral bar". The panel itself acknowledges three of the limitations on collateral bar relevant to this appeal:

> "[W]e have found that a defendant in a criminal contempt proceeding may [] contest the validity of the underlying court order, [] on the grounds that the issuing court lacked jurisdiction or its order was "transparently invalid or had only a frivolous pretense to validity." (*Dever v. Kelly*, 348 F. App'x 107, 112 (6th Cir. 2009) (quoting *Walker*, 388 U.S. at 315)." Slip Op. at 5

and, discussing the exception for orders inflicting irreparable injury:

> "The foundational case for this exception, *Maness v. Meyers*, 419 U.S. 449, 458–61 (1975), described instances when a trial court orders a witness to give testimony under circumstances that, in the witness's estimation, violate her Fifth Amendment right against self-incrimination. Because an appellate court would not be able to "unring the bell" and completely cure the error, the Court held that the witness may refuse to comply with the trial court's order and seek appellate review. Id. at 460." Slip Op. at 6

But despite clearly knowing the rules, the panel resorts to "collateral bar" doctrine to avoid any Constitutional analysis of the orders involved in this case from the very beginning of its response to this appeal issue ("As a threshold matter, the collateral bar rule prevents Hendrickson from challenging the constitutionality of the underlying order in the course of her criminal contempt proceeding.") to the very end ("Under these circumstances, the collateral bar rule applies, and the constitutionality of the underlying order is not at issue in this case."). In so doing the panel defies the precedents of this Court and the Supreme Court and elevates "collateral bar" to a position above the Constitution itself-- clearly a dangerous conflict with well-settled law and a matter of overwhelming significance.

9. Perhaps in recognition of the problems with its decision as discussed above, the panel eventually attempts an alternative rationale for its failure to strike down this manifestly invalid conviction and these manifestly illegal orders-- the contention that Mrs. Hendrickson had had the orders reviewed and upheld by this Court previously. But this is simply untrue. The ruling referenced by the panel, *United*

States v. Hendrickson, No. 07-1510 (6th Cir. 2008), doesn't even contain the words "Constitution" or "First Amendment".

In fact, the only words concerning Judge Edmunds' orders in the entire ruling is a recitation of the generic statutory authorization for making judicial orders in a tax case, and not even a recitation by the appellate panel itself: "[] 26 U.S.C. § 7402(a) gives district courts the authority to grant injunctions "necessary or appropriate for the enforcement of the internal revenue laws." *United States v. First Nat'l City Bank*, 379 U.S. 378, 380 (1965)." Nothing whatever is said about the "necessity" or "propriety" of these particular orders, despite both being squarely challenged by the Hendrickson's appeal.

This earlier appellate outcome was hardly a prior review of the validity of these orders, as the panel suggests.[5] Instead, it was a *prior evasion* of the issue, just like the current one in service of which it is misrepresented. Both decisions deeply conflict with well-settled precedents of this Court and the Supreme Court on critically-important issues of law, while leaving undisturbed an illegal trampling on the rights of an American citizen. The Court should RE-HEAR this appeal *EN BANC* and correct these errors.

[5] Nor, of course, was the subsequent denial of the Hendrickson's petition for certiorari by the Supreme Court, to which the panel also refers: "[I]t is elementary, of course, that a denial of a petition for certiorari decides nothing." *Hughes Tool Co. v. Trans World Airlines, Inc.* 409 U.S. 363, (1973); see also *United States et al. v. Carver et al.*, 260 U.S. 482, (1923) (""The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times.").

2. Regarding the panel's decision upholding the jury instruction removing an element of the charged offense from the jury's consideration.

Beyond its conflicts with well-settled precedents and the plain words of the Constitution concerning the illegality of the orders involved in Mrs. Hendrickson's case, the panel's decision does violence to another critically-important area of law. The panel holds that an element of a criminal charge can be withheld from a jury's consideration and the government's burden of proof.

In both of Mrs. Hendrickson's trials[6] the government requested and received an instruction to the jury that, "[I]t is not a defense to the crime of contempt that the court order that the defendant is accused of violating was unlawful or unconstitutional." Mrs. Hendrickson strenuously objected to this instruction.

The panel excuses this unprecedented removal of the "lawful" element from trial by arguing that to let the jury consider the lawfulness of the orders would compromise the "collateral bar" doctrine:

> "Hendrickson's position [that "lawful" is an element and must be proven to the jury] is at odds with the prevailing interpretation of § 401(3) and the longstanding collateral bar rule." (Slip Op. at 8)

That doctrine, the panel effectively argues, should shield all judicial orders from all challenges, and at any cost-- even the sacrifice of a defendant's right to have

[6] Mrs. Hendrickson's first trial, in which she was able to read to the jury Sixth Circuit and Supreme Court rulings on First Amendment rights, ended with a hung jury. The second, where her stand-by counsel usurped control of the questions she had prepared and prevented her from reading those rulings, resulted in conviction.

her jury determine whether the government has successfully proven that she has actually committed a crime.

"Lawful" is an *express* statutory element of the offense of criminal contempt:

> "...Disobedience or resistance to its **lawful** writ, process, order, rule, decree, or command."
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> 18 U.S.C. 401(3) (emphasis added)

"Lawfulness" is thus an element of a contempt charge *by definition*, in the most classic and concrete sense of that expression.

Plainly, if Congress had meant for a judge's orders to be spared any challenge, and their lawfulness to not be a matter for the determination of a jury, it would not have put "lawful" in the contempt statute. But it DID put it in the statute, and for obviously good reasons.

The first of those good reasons is this: No one is under a legal duty to obey unlawful orders. Axiomatically, unlawful orders *have no force of law*, and it is not a crime to disobey them.

Thus, the lawfulness of the orders is the most basic element of a charge of criminal contempt, and that leads to the second very good reason Congress expressly includes "lawful" as an element of criminal contempt: We have a jury requirement in the Constitution because courts have often been used as tools by corrupt governments, issuing unlawful orders in furtherance of illegal government purposes. The jury is there to oversee the courts in this regard, among others.

Mrs. Hendrickson's is a perfect case study of why the Framers provided for juries, and why Congress expressly invokes their oversight in criminal contempt cases. Judge Nancy Edmunds issued illegal orders as requested by a corrupt executive department. Every court dealing with these orders has struggled to shield them from review. The jury is there, and "lawful" is specified, to protect Mrs. Hendrickson and any other defendant from this institutional abuse.

But the panel that heard Mrs. Hendrickson's appeal has elevated "collateral bar" above Congress, above the jury and above even the Constitution from which the federal courts derive all their authority. This is a logical and legal fallacy and embraced for no good purpose, since the only utility of removing "lawfulness" from a jury's consideration is to shield orders which cannot be proven lawful to the satisfaction of 12 American citizens. The panel's decision on this issue is obviously wrong.

Struggling to shore up its "collateral bar"-trumps-the-Sixth-Amendment argument, the panel continues on page 8 of its decision with the contention that "lawful" isn't even really an element of 18 U.S.C. § 401(3) anyway:

> "This court has stated that the elements for criminal contempt under § 401(3) are that the defendant (1) had notice of a reasonably specific court order, (2) disobeyed it, and (3) acted with intent or willfulness in doing so."

The panel then cites to a handful of cases supposedly supporting this one-element-short description of criminal contempt. But of course, none of these cases

actually say what the panel suggests, and which it very carefully and very significantly puts as "stated", rather than "defined" or "held".

None of the cited cases say "lawfulness is not an element", or "lawfulness need not be proven to a jury in a trial for contempt" or anything like either of those things. Instead, the panel has simply found a few cases in which the issue of lawfulness never arose (or was taken as so fundamental and obvious as to need no mention), and so went unstated. The very fact that the panel attempts this absurd and mendacious deception reveals that it is at cross-purposes with the law.

When courts DO speak authoritatively of the elements of contempt "lawfulness" is invariably among them (all emphasis added):

> "The essential elements of [] criminal contempt...are that the court entered a *lawful order* of reasonable specificity, [it was] violated [], and the violation was willful. Guilt may be determined and punishment imposed *only if each of these elements has been proved beyond a reasonable doubt.* (citations omitted)"

United States v. Turner, 812 F.2d 1552, 1563 (11th Cir. 1987);

> "...18 U.S.C. § 401(3). This section grants federal courts the power to punish when there is "disobedience or resistance to its *lawful* writ, process, order, rule, decree or command. ... "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose... submission to their *lawful* mandates. (citations omitted)."

In re Smothers, 322 F3d 438 (6th Cir. 2003);

> "A [] contempt order can only be upheld if it is supported by clear and convincing evidence that *(1) the underlying order allegedly violated was valid and lawful.* (citations omitted)*"*

United States v. Koblitz, 803 F.2d 1523, 1527 (11th Cir. 1986);

"Lawful" IS an element of criminal contempt. The question of the lawfulness of the orders in this case was required to go to the jury to determine whether the government had carried its burden of proof on this element:

> (4) The government must prove every element of the crime charged beyond a reasonable doubt.
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> Sixth Circuit Pattern Instruction 1.03

> "The Sixth Circuit has approved the entire 1.03 instruction as correct."
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> *United States v. Hynes*, 467 F.3d 951, 957 (6th Cir. 2006).

Saying otherwise, as the panel does, is in direct conflict with this Court's well-settled precedents, those of the Supreme Court, Congress, and the Sixth Amendment itself. But none of these have any standing in this decision; as the panel sees it, everything must be sacrificed on the voracious altar of collateral bar, which will have no other gods before it.

Conclusion

All told, the decision of Doreen Hendrickson's panel, now published on the government's motion, enshrines as proper, and in any event unassailable and irremediable, a court's issuance and enforcement of unlawful orders-- even unto the coercion of sworn testimony dictated by the government for its own political, financial and propaganda purposes, as in the case prompting this dangerous and disgraceful decision. Per this decision, any such order, however defiant of the Constitution, however venal in its purposes or nature, however dramatic and unjust

its harm, can be shielded from the corrective hand of a jury, as well as doctrinally ignored by supposedly supervisory higher courts.

This decision is the death of the rule of law in the Sixth Circuit. Per this decision, the interest of shielding even illegal judicial orders from review at all levels trumps even the First and Sixth Amendments of the Constitution. Per this decision, despotism, judicially-administered, is here.

This decision is wrong on the law, rests on fallacies and fictions, flies in the face of a multitude of precedents of this Court as well as the Supreme Court, and works a grave injustice on Doreen Hendrickson. It must not be allowed to stand

In light of all the foregoing, Doreen Hendrickson respectfully petitions the Court to RE-HEAR her appeal *EN BANC*.