

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 2:08-cr-20585-GER-DAS-1

PETER HENDRICKSON

**SUPPLEMENTAL REPLY TO THE UNITED STATES RESPONSE TO DEFENDANT'S  
MOTION FOR JUDGMENT OF ACQUITTAL AND/OR NEW TRIAL**

**Introduction**

On November 3, 2009, Defendant Peter Hendrickson filed a Motion for Judgment of Acquittal or New Trial under Fed.R.Crim.P. 29(c) and 33(a), and supplemented this Motion on February 26, 2010. On March 19, 2010, the United States filed a Response, and on March 26, 2010, Mr. Hendrickson filed a Reply. Mr. Hendrickson respectfully submits the following supplement to his Reply, concerning an important matter unfortunately overlooked previously.

**Reason for This Supplement**

It has belatedly come to Mr. Hendrickson's attention that the DoJ misrepresents the instructions given to the jury as to the definition of "employee" (and thus, that of "wages") in its Response to Mr. Hendrickson's Motion for Judgment of Acquittal or New Trial under Fed.R.Crim.P. 29(c) and 33(a). On pages 7 and 8 of its Response, the DoJ says that,

*"The Court gave the following instruction to the jury:*

*As it relates to the charges in this case, I instruct you that the term "wages" means all payments for services performed by an employee for his employer. The term "wages" applies to all employees and is not restricted to persons working for the government.*

*As it relates to the charges in this case, I instruct you that the term “employer” means the person for whom an individual performs or performed any service of whatever nature, as the employee of such person.*

*This definition applies to all employers, whether private or government. As it relates to the charges in this case, I instruct you that the term "employee" means any individual who performs these services.*

*Tr. 788-789”*

However, the actual instruction concerning "employee" given by the Court to the jury was:

*"As it relates to the charges in this case, I instruct you that the term “employee” means any individual who performs services and who has a legal employer-employee relationship with the person for whom he performs these services. 26 U.S.C. § 3121(d)(2); 26 U.S.C. § 3401(c)." (The section references were omitted when this instruction was read to the jury by the Court, but were in the written version.)*

This DoJ misrepresentation of the "employee" instruction, in which the phrase "legal employer-employee relationship" has been left out, has the effect of obscuring the principal issues concerning the meaning of this phrase, and the fact that it went undefined and unexplained to the jury. Both are highly significant issues in the consideration of Mr. Hendrickson’s Motion and the validity of the verdict. Those issues are discussed in Mr. Hendrickson’s Supplement to the Motion filed on February 26, 2010, on pp. 7- 8 and 13-18.

Respectfully submitted,

Dated: March 30, 2010