Case No. 15-1446

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Government-Appellee

v.

DOREEN HENDRICKSON,
Defendant-Appellant

On Appeal from the Judgment of Conviction and Sentence Entered in
The United States District Court for the Eastern District of Michigan

District Court No. 13-20371

PRINCIPAL BRIEF OF APPELLANT DOREEN HENDRICKSON

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STATEMENT REGARDING ORAL ARGUMENT

Appellant believes that the law and facts involved in this appeal are sufficiently complex that the case merits oral argument.

STATEMENT OF JURISDICTION

The United States district court for the Eastern District of Michigan had subject matter jurisdiction over this case pursuant to 18 U.S.C. § 3231, because the Indictment alleged a federal offense allegedly committed in that District.

This Court has jurisdiction to review the Judgment imposed by the district court pursuant to 28 U.S.C. § 1291. The district court's final order imposing Judgment was entered on April 15, 2015. (Judgment in a Criminal Case, Crim. RE 126).[1] Mrs. Hendrickson timely filed Notice of Appeal under Fed. R. App. 4(a). (Notice of Appeal, Crim. RE 127).

[1] Through this appeal, Mrs. Hendrickson challenges her conviction and sentence for contemptuously violating an Order issued in an underlying civil case. Therefore, both cases are referenced extensively in her Brief. For clarity, Mrs. Hendrickson will designate whether the cited source derives from her criminal case (Case No. 2:13-cr-20371) ("Crim.") or the underlying civil matter (Case No. 2:06-cv-11753) ("Civ.").

ISSUES PRESENTED

I.

Whether the Order/injunctions Mrs. Hendrickson was convicted of criminally-resisting are unconstitutional on their face, imposing no legal duty upon her which could be criminally violated; and whether, in instructing Mrs. Hendrickson's Jury that the unlawfulness or unconstitutionality of the orders was not a defense to the charge of criminal contempt the district court erred by relieving the government of its proper burdens, improperly undermining Mrs. Hendrickson's good-faith defense and her ability to present her theory of defense to her Jury, and directing a verdict on "lawfulness" and "willfulness".

II.

Whether the district court erred in instructing the jury that unanimity was not required with respect to finding Mrs. Hendrickson guilty of violating the order.

III.

Whether Doreen Hendrickson's Sixth Amendment right to conduct her own defense was violated when her standby counsel refused to ask questions as instructed by Mrs. Hendrickson as she was testifying at her trial.

IV.

Whether the district court committed clear error at sentencing by incorrectly calculating the applicable advisory guideline range and sentencing Mrs. Hendrickson according to this calculation.

STATEMENT OF THE CASE

On May 14, 2013, a grand jury sitting in the United States District Court for the Eastern District of Michigan returned a one count Indictment charging Doreen Hendrickson with one Count of criminal contempt, in violation of 18 U.S.C. § 401(c). (Indictment, Crim. RE 3). This charge derives from Mrs. Hendricksons' alleged contemptuous violation of an Order entered in a civil case filed by the United States also filed before the District Court for the Eastern District of Michigan naming her and her husband as defendants.[2]

Mrs. Hendrickson's first trial held in her criminal case spanned from October 31, 2013 to November 4, 2013. A mistrial was declared at the conclusion of this trial because the jury was unable to reach a verdict.

Mrs. Hendrickson's second criminal trial commenced on July 22, 2014 and concluded on July 25, 2014. At the conclusion of this trial, Mrs. Hendrickson was found guilty of the single count laid in the Indictment. (Transcript, Crim. RE 108, Page ID # 1779).

On April 9, 2015 the district court sentenced Mrs. Hendrickson to eighteen months imprisonment to be followed by one year of supervised release. (Transcript, Crim. RE 133, p. 52[3]).

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[2] That case is docketed at *United States v. Peter and Doreen Hendrickson,* Docket No. 2:06-cv-11753 (U.S.D.C. E.D.MI.).

[3] The sentencing transcript for April 9, 2015 is sealed on-line. As such, Mrs.

On April 17, 2015, Mrs. Hendrickson filed a Notice of Appeal in the district court challenging her conviction and sentence. (Notice of Appeal, Crim. RE 127).[4] Upon her request, this Court granted an extension of time within which to file her brief as appellant. (Ruling Letter, 6th Cir. RE 16). This appeal follows.

Hendrickson does not have access to the version of this document specifying the "Page ID" number. So, references to the transcript for this day will reference the page number rather than "Page ID" number.

[4] Mrs. Hendrickson has filed two motions with this Court in relation to her case, a motion requesting that this Court reverse the district court's denial of her motion to modify conditions of release, which the Court denied on May 8, 2015 (*see* 6th Cir. RE 9-12) and a motion for release pending appeal, which the Court has not yet ruled upon. (*See* 6th Cir. RE 17-21).

STATEMENT OF FACTS

The prosecution alleged that Mrs. Hendrickson contemptuously violated an Order entered in a lawsuit naming her and her husband, Peter Hendrickson, as defendants. (Transcript, Crim. RE 105, Page ID, pp. 88-89[5]). The matter was assigned to the Honorable Nancy G. Edmunds.

The proffered purpose of the civil suit brought against the Hendricksons was to recover allegedly erroneous refunds of amounts withheld from them during 2002 and 2003, and require them to file amended returns for these same years containing certain content dictated by the government. (Transcript, Crim. RE 105, Page ID, p. 90). After some initial proceedings, the district court in the civil case, without any hearing, granted summary judgment in favor of the government. (Order, Civ. RE 21). The Order granting summary judgment, drafted in its entirety by the government and signed, unaltered, by the Court, ultimately formed the basis of the government's criminal case against Mrs. Hendrickson. (Transcript, Crim. RE 105, Page ID, p. 102; Transcript, Crim. RE 106, Page ID # 1497-1501).

The order entered in the civil case articulates two very distinct injunctions as follows:

[5] As with her transcript related to Mrs. Hendrickson's sentencing, the trial transcript for July 22, 2014 is sealed on-line. References to the transcript for this day will reference the page number rather than "Page ID" number.

27. Accordingly, it is hereby

> ORDERED, that Defendants are prohibited from filing any tax return, amended return, form (including, but not limited to Form 4852 ("Substitute for Form W-2 Wage and Tax Statements, etc.")) or other writing with the IRS that is based on the false and frivolous claims set forth in Cracking the Code that only federal, state or local government workers are liable for the payment of federal income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws (26 U.S.C.); and it is further
>
> ORDERED, that within 30 days of the entry of this Amended Judgment and Order of Permanent Injunction, Defendants will file amended U.S. Individual Income Tax Returns for the taxable years ending on December 31, 2002 and December 31, 2003 with the Internal Revenue Service. The amended tax returns to be filed by the Defendants shall include, in Defendants' gross income for the 2002 and 2003 taxable years, the amounts that Defendant Peter Hendrickson received from his former employer, Personnel Management, Inc., during 2002 and 2003, as well the amount that Defendant Doreen Hendrickson received from Una E. Dworkin during 2002 and 2003.
>
> SO ORDERED

(Amended Judgment and Order of Permanent Injunction, Civ. RE 34, ¶ 27, Page ID # 2811-2812).

Clearly, the Order entered two separate and distinct injunctions. One commands the creation of sworn, testimonial documents containing government-dictated content. The other imposes a prior restraint against certain disapproved expressions in the future.

As acknowledged by the government, Judge Edmunds' Order did not direct Mrs. Hendrickson to, in a general sense, refrain from filing false or fraudulent tax returns in the future. Instead, the Order specifically directed the Hendricksons to not file returns based on the purported tenants of Cracking the Code. (Transcript, Crim. RE 106, Page ID # 1484-1485). Cracking the Code is a 256-page book authored by Peter Hendrickson that discusses the complexities of the United States Tax Code, a portion of which was cited in the Government's Motion for Summary Judgment. Under the government's view, Cracking the Code states that "withholding only applies to the pay of Federal Government workers exactly as it always has plus State Government workers since 1939 and those of the District of Columbia since 1921." (Transcript, Crim. RE 105, pp. 99-101). It is this misinterpretation of Cracking the Code that formed the basis of separate injunctions (and, specifically, the prior restraint injunction) articulated in the Order Mrs. Hendrickson ostensibly violated in a contemptuous manner.

In November of 2009, the government sought to enforce one of Judge Edmunds' injunctions against the Hendricksons. (Transcript, Crim. RE 106, Page ID

1503). In response to the government's legal action, in June of 2010, Judge Edmunds entered an order holding the Hendricksons in contempt. (Transcript, Crim. RE 106, Page ID # 1509; Order, Civ. RE 21). During the hearing held on June 10, 2010 to address this matter, the first time the Hendricksons actually appeared before Judge Edmunds, the court again ordered the Hendricksons to file amended returns. This time, however, Judge Edmunds told the Hendricksons they could "affix" something to the returns indicating they were being "filed under protest, or anything you want that says that, you know, I disagree with the statement that this is taxable income." (Transcript, Civ. RE 73, pp. 678-679).[6]

On or around June 25, 2010, in in an effort to comply with Judge Edmunds' Order, but without surrendering her belief that the information required by the Order was untruthful, Mrs. Hendrickson submitted amended tax documents for 2002 and 2003. (Transcript, Crim. RE 106, Page ID # 1512-1516). Although the figures reported on those documents were accurate, the government did not accept the documents because the jurat - the portion on the return indicating that the signor believes the contents of the return are true, correct and complete under penalty of perjury - was marked as being signed "under protest." (Transcript, Crim. RE 106, Page ID # 1516). Also, the documents contain an asterisk referencing an attachment

[6] One might interpret Judge Edmunds' suggestion in this regard as a tacit acknowledgment of potential First Amendment problems discussed below.

affixed to the returns - as Judge Edmunds suggested - indicating they were: being filed under duress and protest; not believed by Mrs. Hendrickson; and, being submitted under threat of imprisonment. (Transcript, Crim. RE 106, Page ID # 1516).

On December 15, 2010, Judge Edmunds held a hearing to address Mrs. Hendrickson's June 25, 2010 filings. During this hearing, the government proposed that the Court permit the Hendricksons to again attempt to comply with Judge Edmunds' Order, this time with a statement as the Court has previously permitted, but that the statement be separate from the document itself and the document be without caveat or markings so as to render it processable. (Transcript, RE Civ. 84, Page ID # 753). The Court gave Mrs. Hendrickson until January 7, 2011 to file such a document. (Transcript, RE Civ. 84, Page ID # 756).

On January 7, 2011, Mrs. Hendrickson again submitted what she believed were the required documents. Again, the government, however, was not satisfied and, on May 14, 2013, sought and secured the Indictment at issue in this appeal.

This sequence of events involving Mrs. Hendrickson's attempts to comply with Judge Edmunds' Order provided the evidentiary basis for the government's theory that she contemptuously violated one of two injunctions detailed in Judge Edmunds' Order by not filing amended 2002 and 2003 tax returns.

In addition to this allegedly contemptuous conduct, in March, 2009 Mrs. Hendrickson filed a 2008 tax return in which she declared that she had received nothing qualifying as "wages" under the relevant statutory definitions and requested a refund of $5.00 that had been withheld from her earnings of $59.20 received for working as a film extra during 2008. (Transcript, Crim. RE 105, pp. 72-84). The IRS issued Mrs. Hendrickson a $5.00 refund based on this return. (Transcript, Crim. RE 105, pp. 82). This episode provided the evidentiary basis for the assertion that Mrs. Hendrickson contemptuously violated the Judge Edmunds' Order enjoining her from filing tax returns in the future based on Cracking the Code.

The Indictment in this matter alleged that the two distinct factual episodes described above each correlated to one of the two injunctions set forth in Judge Edmunds' Order. Specifically, the Indictment alleged that on "March 23, 2009," Mrs. Hendrickson violated Judge Edmunds' Order by "filing a 2008 U.S. Income Tax Return for Single and Joint Filers With No Dependents, Form 1040 EZ which falsely reported that she earned zero wages in 2008." (Indictment, Crim. RE 3, Page ID #9). The Indictment also alleged that on "June 1, 2007--Present," the order was violated by Mrs. Hendrickson "failing to file with the IRS Amended U.S. Individual Income Tax Returns for 2002 and 2003." (Indictment, Crim. RE 3, Page ID #9).

SUMMARY OF ARGUMENT

I.

The Order Doreen Hendrickson was convicted of contemptuously violating was *unlawful*. Meanwhile, for a defendant to be convicted of contempt, the underlying Order they are accused of violating must be *lawful*.

The district court erred by instructing Mrs. Hendrickson's jury, over her objection, that it was not a defense to criminal contempt that the order in question was unconstitutional or unlawful. The court error: (1) relieved the government of its obligation to prove each of the elements of the charged offense beyond a reasonable doubt, (2) foreclosed a valid defense that would have otherwise been available to Mrs. Hendrickson, (3) irreparably undermined her good faith defense, and (4) directed a verdict with the respect to the unlawfulness and willfulness elements of the charged crime. This Court should vacate Mrs. Hendrickson's conviction and sentence because the Order underlying her conviction was unlawful or, in the alternative, grant a new trial given the erroneous legal instructions given by the district court.

II.

The district court erred by refusing to instruct Mrs. Hendrickson's jury that to convict her of criminal contempt, it had to unanimously agree she committed one or both of the two predicate acts offered by the government in support of their case. As

specified in the Indictment, the government alleged Mrs. Hendrickson committed contempt by *failing to file* tax returns in a manner dictated in the underlying Order and by *actively filing* returns in violation of this same Order. Each of these acts separately correlated to one of the two injunctions detailed in the Order. Thus, Mrs. Hendrickson was accused of violating two separate and distinct injunctions by separate and distinct means, each of which involved disparate conduct (filing as opposed to failing to file returns) and occurred at significantly different periods in time.

When the means by which an order is contemptuously violated are only marginally related to one another - such as in Mrs. Hendrickson's case - a jury must unanimously agree the defendant committed one or both predicate acts in order to convict. Because the means by which Mrs. Hendrickson allegedly committed criminal contempt were only marginally related to one another, the district court erred by instructing the jury that it need not unanimously agree that Mrs. Hendrickson committed one or both of the acts offered by the government in support of its case and this Court should order a new trial to remedy this error.

III.

Mrs. Hendrickson's Sixth Amendment right to conduct her own defense was violated when her standby counsel failed to ask her questions and introduce exhibits as directed at trial. A defendant who exercises her right of self-representation has a

right not to have standby counsel impermissibly interfere with her case. When such interference occurs, the error in question is not subject to harmless error analysis and the defendant is entitled to a new trial. This is precisely what occurred during Mrs. Hendrickson's trial.

At the conclusion of Mrs. Hendrickson's direct testimony, standby counsel failed to ask a critical series of questions pertaining to her understanding of the law and the basis of her belief that she acted lawfully with respect to the conduct offered by the government in support of their case. Through the anticipated answers to these questions, along with the various exhibits counsel was instructed to introduce in support of them, Mrs. Hendrickson intended to explain to the jury the legal basis for her actions and substantiate her good faith defense. This breach of Mrs. Hendrickson's Sixth Amendment right to conduct her own defense entitles her to a new trial.

IV.

The District Court erred in calculating Mrs. Hendrickson's recommended sentencing guideline range. While the Court may have properly opted to sentence Mrs. Hendrickson as if hers was a failure to file tax returns case, the Court erred by thereafter imposing sentence not according to the analytical model governing such cases, but based on considerations unrelated to the offense with which she was charged and of which she was convicted.

Rather than apply the analytical model governing "failure to file" offenses to Mrs. Hendrickson's case, the district court sentenced her based on a $20,380.96 refund received by Mrs. Hendrickson and her husband for 2002 and 2003. The receipt of this refund and/or its repayment were/was in no way part of the contempt charge levied in this case, nor was this factual matter offered as a basis of Mrs. Hendrickson's conviction.

As a consequence of the district court's erroneous consideration of this over $20,000 figure, the district court determined Mrs. Hendrickson's recommended guideline range to be 12 to 18 months imprisonment, which prompted the Court to impose a within-guidelines range sentence of 18 months incarceration. Had the Court correctly calculated Mrs. Hendrickson's sentence, the recommended range would have been either 0-6 or 1-7 months incarceration and Mrs. Hendrickson would have been probation eligible. The Court erred in calculating Mrs. Hendrickson's recommended sentencing guideline range and, if the Court does not grant her relief under the alternative grounds set forth in her Brief, should order her case remanded for resentencing.

ARGUMENT

I. THE TWO INJUNCTIONS SET FORTH IN JUDGE EDMUNDS' ORDER DATED MAY 2, 2007 WERE UNLAWFUL AND, AS SUCH, MRS. HENDRICKSON'S CONVICTION SHOULD BE VACATED. ALTERNATIVELY, THE UNLAWFULNESS OF THE ORDERS REPRESENTS AN ELEMENT OF THE OFFENSE WHICH THE DISTRICT COURT ERRONEOUSLY WITHHELD FROM THE JURY.

Standard of Review

Whether a court order violates an individual's First Amendment speech rights is a question of law that is subject to de novo review on appeal. *Bays v. City of Fairborn*, 668 F.3d 814, 819 (6th Cir. 2012).

In reviewing a properly preserved challenge to a jury instruction, an appellate court must determine "'whether the charge, taken as a whole, fairly and adequately submits the issues and applicable law to the jury.'" *United States v. Middleton*, 246 F.3d 825, 840 (6th Cir. 2001) (quoting *United States v. Martin*, 740 F.2d 1352, 1361 (6th Cir. 1984). For this Court to reverse a district court for failing to deliver a requested instruction, the instruction must (1) have been a correct statement of the law; (2) have not been substantially covered by the charge actually delivered to the jury, and (3) concern a point so important in the trial that the failure to give it substantially impairs the defendant's defense." *Id.* (quoting *United States v. Williams*, 952 F.2d 1504, 1512 (6th Cir. 1991).

Argument

A. The Injunctions Mrs. Hendrickson Ostensibly Violated are Unconstitutional.

The injunctions set forth in Judge Edmunds' May 2, 2007 Order (1) compel Mrs. Hendrickson to file tax returns in a manner that she believes to be false and (2) permanently forbid her from filing tax returns in the future in a manner she believes to be true. (Order, Civ. RE 132-3, Page ID # 2811-2812; Transcript, Crim. RE 107, Page ID # 1599-1603; Transcript, Crim. RE 108, Page ID # 1711-1713 (wherein Mrs. Hendrickson attested to her belief that the manner in which she filed her 2002, 2003, and 2008 tax returns was true and accurate, and consistent with the understanding of the tax code actually set forth in Cracking the Code). To properly sign a jurat on a tax return, Mrs. Hendrickson, like any other person, is required to state her subjective belief, under penalty of perjury, concerning the accuracy and truth of everything said by way of the return. The jurat reads as follows:

> *Under penalties of perjury*, I declare that I have examined this return and accompanying schedules and statements, *and* ***to the best of my knowledge and belief****, they are true, correct, and complete.*

IRS Form 1040 (2014) (emphasis added).

Remarkably, despite the plain language set forth in the jurat, the government at trial bizarrely disputed the fact that signing a jurat involved an expression of the signor's belief about the accuracy of what appears in a tax return: "Again, I can only

say that the Jurat on the tax return means is that what appears on the return is true and correct, regardless of what you might think about the Internal Revenue laws or any theories or things like that you may have in your head." (Transcript, Crim. RE 106, Page ID # 53). This representation was patently false and not only misled the jury, but unjustly undermined Mrs. Hendrickson's defense that she could not file a tax return in a manner consistent with Judge Edmunds' order without committing perjury because she could not swear she believed its contents were true and correct. (Transcript, Crim. RE 107, Page ID # 1581-1583, 1587, 1591-1592 (wherein various defense witness recount Mrs. Hendrickson's distress upon being confronted with the dilemma either being punished for not complying with Judge Edmunds' Order or committing perjury).[7]

Judge Edmunds' Order compelled Mrs. Hendrickson to either renounce her beliefs and perjuriously swear she believed something she does not believe or face punishment, prosecution, and/or imprisonment.[8] Given that this order demanded

[7] It should be noted that at no time during the course of two trials did the government argue or remotely suggest that Mrs. Hendrickson believed that what she was ordered to say on the so-called "amended returns" was true.

[8] While Mrs. Hendrickson may have faced exposure to criminal sanctions as a consequence of her purported failure to comply with the United States Tax Code - such as 26 U.S.C. § 7203 (willful failure to file tax return) or 26 U.S.C. § 7206 (filing false tax returns) - that is not equivalent to being judicially compelled to express certain government-dictated beliefs under threat of criminal punishment.

Mrs. Hendrickson express certain government-dictated beliefs, it had - and still has[9] - profound First Amendment implications.

Orders dictating and seizing control of the content of speech - such as the injunctions set forth in the Order Mrs. Hendrickson was convicted of contemptuously violating - are barred by the First Amendment:

> It is, however, a basic First Amendment principle that "freedom of speech prohibits the government from telling people what they must say." *Rumsfeld v. Forum for Academic and Institutional Rights, Inc*., 547 U. S. 47, 61 (2006) (citing *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 642 (1943) and *Wooley v. Maynard*, 430 U. S. 705, 717 (1977)). "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." *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 641 (1994); *see Knox v. Service Employees*, 132 S.Ct. 2277, 2282 (2012) ("The government may not . . . compel the endorsement of ideas that it approves").

[9] Judge Edmunds' order is still in force and was incorporated into the conditions of Mrs. Hendrickson's pretrial release in her criminal case. (*See* Judgment, Crim. RE 126, Page ID # 2696). Thus, the permanent injunction levied against Mrs. Hendrickson in her underlying civil case exposes her to indefinite punishment and she also is at risk of violating the conditions of her supervised release if she does not conform her beliefs to those dictated by the government.

Agency for Int'l Development v. Alliance for Open Society Int'l, Inc., 133 S. Ct. 2321, 2327 (2013). The Court in *Agency for International Development* went on to emphasize this basic truth by stating the following:

> [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.

Id. at 2335.

Punishment for the exercise of speech rights - whether exercised in defiance of illegal orders or otherwise - is proscribed under the First Amendment, as has been squarely embraced by this Court:

> One reason for such stringent protection of First Amendment rights certainly is the intangible nature or the benefits flowing from the exercise of those rights; and the fear that, if these rights are not jealously safeguarded, persons will be deterred, even if imperceptibly, from exercising those rights in the future . . . . This does not mean, however, that only if a plaintiff can prove actual, current chill can he prove irreparable injury. On the contrary, *direct retaliation by the state for having exercised First Amendment freedoms in the past is particularly proscribed by the First Amendment.*

Newsom v. Morris, 888 F.2d 371, 378-79 (6th Cir. 1989) (emphasis added) (citing *Mt. Healthy City School Dist. v. Doyle*, 429 U.S. 274, 283-87 (1977); *Elrod v. Burns*, 427 U.S. 347 (1976); *Cohen v. California*, 403 U.S. 15 (1971); and numerous cases in accord with this holding from the First, Second, Fourth, Fifth, Sixth, Ninth, Eleventh, and D.C. Circuit Courts).

B. By Instructing the Jury That the Unlawfulness or Unconstitutionality of the Injunctions Set Forth in Judge Edmunds Order Was Not a Defense to the Charge of Contempt of Court, the Trial Court Erroneously (1) Relieved the Government of their Duty to Prove Each Element of the Charged Offense Beyond a Reasonable Doubt, (2) Stripped Mrs. Hendrickson of an Otherwise-Valid Defense focused on Refuting the Legality of the Order she was Accused of Violating, (3) Irreparably Undermined her Good Faith Defense by Eliminating the Legality of the Order as an Issue in the Case, and (4) Essentially Directed a Verdict on the "Lawfulness" and "Willfulness" Elements of the Offense.

At the government's request and over Mrs. Hendrickson's objection, the district court instructed 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." (Transcript, Crim. RE 108, Page ID # 96).[10] In so doing, the trial

[10] The government and District Court invoked *United States v. United Mine Workers of America*, 330 U.S. 258, 294 (1947) in support of this erroneous instruction. Admittedly, *United Mine Workers* does support the proposition that contempt proceedings are permissible even in settings where the underlying order is later set aside. However, *United Mine Workers* did not involve an order infringing upon an individual's First Amendment rights of speech, as does Judge Edmonds' Order/Injunctions. Counsel can find no case supporting the proposition that one can be held in criminal contempt for refusing to say that which he or she otherwise believes to be untrue.

court deprived Mrs. Hendrickson of a fair trial in four (4) discrete ways, each of which will be discussed more fully below:

First, by instructing the jury that Mrs. Hendrickson could be convicted of contempt even though the order in question may be unlawful or unconstitutional, the district court relieved the government of its burden of having to prove an element set forth in the charging statute. 18 U.S.C. 401(3) only criminalizes disobedience of *lawful* court orders:[11]

> A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
>
> (3) Disobedience or resistance to its ***lawful*** writ, process, order, rule, decree, or command.

Given that Title 18 of the United States Code only criminalizes contemptuous disobedience of *lawful* orders, the disobedience of *unlawful* orders cannot be a crime.

Second, the instruction improperly terminated Mrs. Hendrickson's defense theory that she could not be held in contempt of Judge Edmunds' injunctions because

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[11] *See also United States v. Koblitz*, 803 F.2d 1523, 1527 (11th Cir. 1986) ("A civil 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. Turner*, 812 F.2d 1552, 1563 (11th Cir. 1986) ("The essential elements of [] criminal contempt . . . are that the court entered a *lawful order* of reasonable specificity . . . and the violation was willful"); *In re Smothers*, 322 F.3d 438 (6th Cir. 2003) (repeatedly citing to the requirement that the order in a criminal contempt case must be "lawful").

the Order was unlawful. By doing so, the district court essentially turned the case into one in which the sole question presented to the jury was whether Mrs. Hendrickson complied with the Order.

Third, the erroneous instruction gutted Mrs. Hendrickson's good faith defense, which relied on her claim that she believed she was acting lawfully in committing the acts offered by the government in support their case. Immediately after instructing the jury that good faith was a complete defense-- which would include Mrs. Hendrickson's sincere belief that the injunctions/Order she faced were unlawful, and therefore imposed no actual legal duty upon her-- and that such was the case regardless of whether the defendant's belief was right or wrong, the jury was told - incorrectly - that it was not a defense that the orders in question were unlawful. (Transcript, Crim. RE 103, Page ID # 1770-1771). Thus, the court's instruction that the lawfulness of the orders was irrelevant to Mrs. Hendrickson's guilt or innocence irreparably undermined her argument that she believed she was acting lawfully vis-á-vi Judge Edmunds' Order.

Finally, the instruction given amounted to a directed verdict of guilt on the elements of the "lawfulness" of the order in question and "willfulness" of Mrs. Hendrickson’s alleged violation of that order.

(1) The District Court Erred in Instructing the Jury that it was not a Defense to the Crime of Contempt that the Order Mrs. Hendrickson was Accused of Violating was Unlawful or Unconstitutional.

Every element of a charged offense must be proven to a jury beyond a reasonable doubt. "[N]o fact, not even an undisputed fact, may be determined by the judge. The plea of not guilty puts all in issue, even the most patent truths. In our federal system, the Trial Court may never instruct a verdict either in whole or in part." *Roe v. United States*, 287 F.2d 435, 440 (5th Cir. 1961) (citations omitted); *see also United States v. Kratt*, 579 F.3d 558, 564 (6th Cir. 2009) ("We cannot relieve the Government of its burden of proof on an essential element of a crime whenever we believe it might satisfy it."); *United States v. Gaudin*, 515 U.S. 506, 517 (1995) ("The prosecution's failure to provide minimal evidence of materiality, like its failure to provide minimal evidence of any other element, of course raises a question of "law" that warrants dismissal").

The element of "lawfulness" is no exception to this rule. This principle is illustrated by two state appellate courts opinions dealing with a remarkably similar issue. In *Evans v. State of Florida*, 13 So.3d 100, 101 (Fla. Dist. Cr. App. 2009), a defendant was convicted of resisting arrest and assault on a police officer engaged in a lawful investigation. On appeal, the defendant argued that the trial court erred by keeping the statutory element of "lawfulness" from the jury's consideration. *Id.* at 101. The *Evans* court agreed with the defense that the lawfulness of the arrest was an element that had to be submitted to the jury and proven as an element of the charged offense:

> "[I]n those cases where the defendant maintains that the arrest was unlawful and requests that the jury be instructed on that defense, an instruction should be given to insure that the jury understands that it must decide the issue."

Id. (quoting *State v. Andersen*, 639 So.2d 609, 610 (Fla. 1994)).

Similarly, in *People v. Reed*, a case also involving assault on a police officer, the Michigan Court of Appeals held that because the lawfulness of an officer's conduct is an element of the charged offense, it must be submitted to a jury for determination:

> On appeal, the prosecution argues that the trial court erred by usurping the fact-finding function of the jury and deciding an element of the charged offense. We agree. In *People v. Moreno*, 814 NW2d 624 (2012), our Supreme Court held that, in order to convict a defendant of the offense of assaulting, resisting, or obstructing a police officer, the prosecution must prove that the conduct of the officers from which the defendant's resistance arose was lawful. Accordingly, by determining that [the defendant] illegally seized and arrested defendant, the trial court decided an essential element of the charged offense.
>
> This Court has previously held that, when lawfulness of an arrest is an element of the charged offense, it becomes a question of fact to be decided by the jury (*People v. Dalton*, 400 NW2d 689 (Mich. Cr. App. 1986)) and it is well established that it is an error requiring

> reversal for the trial court to undermine the essential fact-finding function of the jury. *People v. Tice*, 588 NW2d 245 (Mich. App. Ct. 1996). By determining that [the defendant] did not act lawfully, the trial court removed consideration of an essential element of the offense from the jury and usurped its fact-finding function. Therefore, the trial court abused its discretion by dismissing the criminal charge. *People v. Stone*, 712 NW2d 165 (Mich. App. Ct. 2005)

People v. Reed, 2013 WL 6134082, *1 (Mich. Ct. App. Nov. 21, 2013).

Mrs. Hendrickson explicitly objected to the jury instruction that "It is not a defense to the crime of contempt that the court order that the defendant is accused of violating was unlawful or unconstitutional" and to the government-requested and Court-delivered instruction as to the elements of the offense, in which the element of "lawfulness" was omitted. (Transcript, Crim. RE 107, Page ID # 1663-1666). Meanwhile, Mrs. Hendrickson requested a specific alternative instruction including the element of "lawfulness." (Proposed Jury Instructions by Doreen Hendrickson, Crim. RE 53, Page ID # 386-395; Transcript, Crim. RE 107, Page ID # 1663-1666).

With respect to the legal standard governing a court's refusal to deliver an otherwise-warranted jury instruction, as discussed in more detail below:

> A refusal to give requested instructions is reversible error [if] (1) the instructions are correct statements of the law; (2) the instructions are not substantially covered by other delivered charges; and (3) the failure to

> give the instruction impairs the defendant's theory of the case.

United States v. Williams, supra. (*See also Bird v. United States*, 180 U.S. 356, 391 (1901).

In Mrs. Hendrickson's case, the district court erred in concluding that requiring the government to prove "lawfulness" was unnecessary, having decided on its own that this fact was already resolved and beyond reproach. (Transcript, Crim. RE 106, Page ID # 1544) (wherein the District Court stated "Mrs. Hendrickson, Judge Edmunds' Order is final. It's been appealed. It hasn't been overturned and it's not at issue here. The only is whether you complied with it"); Crim. RE 107, Page ID # 1666) (wherein the Court ruled that Mrs. Hendrickson was not entitled to an instruction that the government was obligated to prove the lawfulness of the underlying Order). As discussed herein, in so ruling the Court committed reversible error. As this Court stated in *United States v. Kratt*, "[w]e cannot relieve the Government of its burden of proof on an essential element of a crime whenever we believe it might satisfy it." 579 F.3d at 564 (citing *Gaudin*, 515 U.S at 514-15). The Court's error entitles Mrs. Hendrickson to a new trial.

(2) In Relieving the Government of their Obligation to Prove the Lawfulness of the Order Mrs. Hendrickson was Accused of Violating, the District Court Erred by Eliminating as a Defense Mrs. Hendrickson's Ability to Refute this Element of the Charged Crime.

While the lawfulness of Judge Edmunds' order may have been dispositively established in the district court's view, an essential aspect of Mrs. Hendrickson's defense was that the manner in which the lawfulness of the order was established was flawed to the point of invalidity and that the injunctions set forth in the Order were unlawful on their faces. By eliminating lawfulness as an element of the offense that had to be proven beyond a reasonable doubt, the district court foreclosed the availability of these defenses to Mrs. Hendrickson, and doing so, committed reversible error.

(3) The District Court's Erroneous Conclusion That the Lawfulness of the Order Was Not a Defense to Criminal Contempt Irreparably Undermined Mrs. Hendrickson's Defense that she Did not Act "Willfully" in this Case.

As previously noted, the instruction 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" not only improperly removed the element of "lawfulness" from the jury's consideration and gutted Mrs. Hendrickson's ability to present a major defense theory, it also did the same to the "willfulness" element of the offense -- effectively eliminating Mrs. Hendrickson's "good-faith" defense and directing a conviction on willfulness. Since the unlawfulness or unconstitutionality of the injunctions Mrs. Hendrickson was accused of criminally violating was not permitted as a defense to the charged offense, Mrs. Hendrickson could not meaningfully persuade her jury to conclude she believed, in good faith, that the unlawfulness of

the orders relieved her of any legal duty to obey them, or that if she did, it was relevant to the case. Thus, the erroneous instruction in question so undermined Mrs. Hendrickson's good faith defense that it effectively precluded its availability, and by so doing, diluted Mrs. Hendrickson's claims that she lacked the "willfulness" necessary for conviction. This is another prejudicial manifestation of the Court's erroneous jury instruction.

(4) Eliminating the Unlawfulness of Judge Edmunds' Order as a Defense at Trial Resulted in a Directed Verdict Concerning the Lawfulness and Willfulness Elements of the Charged Offense.

Finally, the district court's erroneous instruction that "It is not a defense to the crime of contempt that the court order that the defendant is accused of violating was unlawful or unconstitutional" directed a conviction on the elements of "lawfulness" and "willfulness." It was not for the district court to resolve these essential factual issues on the jury's behalf and the court erred by impermissibly encroaching into the jury's exclusive fact-finding role.

Because the injunctions set forth in Judge Edmunds' Order were unlawful, this Court should enter judgment of acquittal. In the alternative, even if the injunctions are not deemed unlawful, the district court erred by relieving the government of its obligation to prove this essential element of the crime of contempt and, in turn, the element of willfulness, thus profoundly damaging Mrs.

Hendrickson's defense at trial. This alternative error entitles Mrs. Hendrickson to a new trial.

II. THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY THAT UNANIMITY WAS NOT REQUIRED WITH RESPECT TO FINDING MRS. HENDRICKSON GUILTY OF VIOLATING THE ORDER.

Standard of Review

In reviewing a properly preserved challenge to a jury instruction, an appellate court must determine "'whether the charge, taken as a whole, fairly and adequately submits the issues and applicable law to the jury.'" *United States v. Middleton*, 246 F.3d 825, 840 (6th Cir. 2001) (quoting *United States v. Martin*, 740 F.2d 1352, 1361 (6th Cir. 1984). For this Court to reverse a district court for failing to deliver a requested instruction, the instruction must (1) have been a correct statement of the law; (2) have not been substantially covered by the charge actually delivered to the jury, and (3) concern a point so important in the trial that the failure to give it substantially impairs the defendant's defense." *Id.* (quoting *United States v. Williams*, 952 F.2d 1504, 1512 (6th Cir. 1991).

Argument

The Order in regard to which Mrs. Hendrickson was convicted, while one document, contained two separate and distinct injunctions. One prohibited conduct, and one directed conduct. Specifically, Judge Edmunds prohibited the Hendricksons from submitting future filings based on the tenets set forth in Cracking the Code.

Judge Edmunds also directed the Hendricksons to *actively file* amended 2002 and 2003 returns in a manner specified in the Order. The Indictment alleged Mrs. Hendrickson violated the injunction that she *not submit any filings* based on Cracking the Code by "filing a 2008 U.S. Income Tax Return which falsely reported she earned zero wages in 2008" on March 23, 2009. (Indictment, Crim. RE 3). Separately, the Indictment alleged Mrs. Hendrickson violated the separate injunction obligating her to *actively file* amended 2002 and 2003 returns by "failing to file with the IRS Amended U.S. Individual Income Tax Returns for 2002 and 2003" from the date this directive was ripe on "June 1, 2007" through the "Present." *Id.* Thus, the Indictment clearly alleged that Mrs. Hendrickson violated Judge Edmunds' Order by separately identifying the two injunctions contained in that order and alleging she violated the respective injunctions through two distinct and dissimilar forms of conduct.

At trial, the parties disagreed over whether to convict Mrs. Hendrickson, the jury had to unanimously conclude she committed one or either of the predicate acts set forth in the Indictment beyond a reasonable doubt. (Transcript, Crime RE 107, Page ID # 1670-1673). Accordingly, the parties offered alternative jury instructions regarding the need for jury unanimity on this issue. (Transcript, Crim. RE 107, Page ID # 1670-1673).

Whether specific unanimity is required generally depends on whether the facts in question are elements of the charged offense or, instead, means by which the elements can be violated. *See Richardson v. United States*, 526 U.S. 813, 817 (1999) (citing *Schad v. United States*, 501 U.S. 624, 631-32 (1991) (plurality opinion). Ultimately, the Court agreed with the instruction with this conclusion:

> One more point about the requirement that your verdict be unanimous. The Indictment accuses the Defendant of committing the crime of Contempt in more than one possible way. The first is that she filed a 2008 U.S. Individual Income Tax Return for single and joint filers with no dependents, Form 1040-EZ which falsely reported that she earned zero wages in 2008.
>
> The second is that she failed to file with the IRS amended U.S. Individual Tax Returns for 2002 and 2003.
>
> The Government does not have to prove both of these for you to return a guilty verdict on this charge. Proof beyond a reasonable doubt of any one of these ways is enough. In order to return a guilty verdict, all 12 of you must agree that at least one of these has been proved. However, all of you need not agree that the same one has been proved.

(Transcript, Crim. RE 108, Page ID # 1774). The above-cited instruction was proposed by the government and tracked Sixth Circuit Model Jury Instruction 8.03B. (6th Circuit Pattern Criminal Jury Instruction 8.03B, Appx #1).[12]

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[12] The instruction proposed by Mrs. Hendrickson read as follows:

> UNANIMITY IS REQUIRED AS TO BOTH ALLEGED ACTS OF VIOLATION
>
> (1) The indictment's single count charges Mrs. Hendrickson with committing two acts, and joins them into one alleged crime by titling them as "violation" in the singular-- rather than "violations" in the plural-- and by the use of the conjunctive "and" between them, rather than the disjunctive "or".
>
> (2) Therefore, it is not sufficient for some of you to believe that Mrs. Hendrickson violated one order and the rest believe she violated the other, or for all of you to believe that Mrs. Hendrickson violated only one order. If you do not unanimously agree that the government has proven the violation of both orders beyond a reasonable doubt, you cannot find Mrs. Hendrickson guilty.
>
> OR (If the Court deems each violation to be separately alleged)
>
> UNANIMITY IS REQUIRED AS TO AT LEAST ONE ALLEGED VIOLATION
>
> (1) Each act or omission alleged in the indictment is, if an offense at all, a complete offense. There is no crime of "bad attitude"-- criminal contempt as is charged in this case consists only of the willful violation of a lawful order.
>
> (2) It is not sufficient for some of you to believe that Mrs. Hendrickson violated one order and the rest believe she violated the other. If you do not unanimously agree that

The alternative acts of omission and commission by which Mrs. Hendrickson allegedly "violated" Judge Edmunds' Order are completely unrelated to one another. Therefore, the district court erred in delivering a general unanimity instruction and this Court should, accordingly, reverse Mrs. Hendrickson's conviction and order a new trial.

In *United States v. Miller*, the Sixth Circuit explained when a specific unanimity instruction - such as that suggested by Mrs. Hendrickson is required:

> Only a general unanimity instruction [as opposed to a specific unanimity instruction] is required even where an indictment count provides multiple factual bases under which a conviction could rest, unless: "(1) the nature of the evidence is exceptionally complex or the alternative specifications are contradictory or only marginally related to each other; or (2) there is a variance between the indictment and proof at trial; or (3) there is tangible indication of jury confusion, as when the jury has asked questions or the court has given regular or supplementary instructions that create a significant risk of nonunanimity."

734 F.3d 530, 538-39 (6th Cir. 2013) (quoting *United States v. Damra*, 621 F.3d 474, 504-05 (6th Cir. 2010) *quoting United States v. Duncan*, 850 F.2d 1104, 1113-

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> the government has proven the violation of the same order or orders beyond a reasonable doubt, you cannot find Mrs. Hendrickson guilty.

(Appx #2).

14 (6th Cir. 1988)). At best, the acts issue in Mrs. Hendrickson's case are only "marginally related to each other." Therefore, specific unanimity was required and the court erred in delivering the unanimity instruction in question.

Review of the facts in *Miller* demonstrates the need for a unanimity instruction in Mrs. Hendrickson's case. In *Miller*, the defendant was charged with making a false statement to a bank. *Id.* at 534. This false statement - wherein he indicated in documents that he had the authority to pledge a business's property - was made six different times on four different dates. *Id.* at 536. Nevertheless, it was the *same* false statement and "[t]hese documents [were] not contradictory or marginally related to each other: they were all presented in connection with the loan closing." *Id.* 539. Thus, although the means by which the defendant in *Miller* committed the charged offense consisted of multiple acts, these acts were all the same and all made as part of a single commercial transaction.

United States v. Schmeltz, 667 F.3d 685 (6th Cir. 2011) likewise supports the requirement of a unanimity instruction in this case. In *Schmeltz*, the defendant was charged in two counts of submitting two, separate, false documents. *Id.* at 686-87. Each of the counts respectively relied on one of the two documents submitted, despite the fact that both documents pertained to a single incident in which the defendant was involved in the abusive treatment of an inmate, who ultimately died from his injuries. *Id.* at 685-86. The government's evidence alleged that each

individual document contained multiple falsehoods. *Id.* The *Schmeltz* Court ruled that a specific unanimity instruction was not required with respect to the multiple alleged misrepresentations in each document. Unanimity was not required because each false statement was simply a means of committing the charged *act*, and as long as each juror agreed that one or another of the statements on the document were false, all agreed that *the charged act* had been committed *Id.* at 687-88.

In Mrs. Hendrickson's case, neither act of offense charged was determined to have been committed by the whole jury. In fact, under the instruction given, fully half of Mrs. Hendrickson's jurors may have been convinced that she *did not* criminally commit the act of filing a tax return based on the purported tenets of Cracking the Code, and fully half of her jurors may have been convinced that she *did not* criminally fail to file "amended returns" as ordered by Judge Edmunds. And yet, Mrs. Hendrickson was declared guilty of a crime anyway. The invalidity of this instruction is glaringly obvious.

As in *Miller*, the multiple factual bases pled in the *Schmeltz* indictment were not "only marginally related to each other," but, instead, constituted several false averments set forth in a single document. Further, in *Schmeltz*, the government notably charged the defendant with separate Counts that correlated to each document submitted. Thus, because the multiple means of committing the charged crime were

contained within a single document *and separately charged*, a specific unanimity instruction was not required.

In contrast, the purported means by which Mrs. Hendrickson ostensibly committed criminal contempt consisted of two dissimilar acts associated with two distinct injunctive orders that took place at two distinct times. The Indictment in Mrs. Hendrickson's case, without question, demonstrates that the acts in question are not related and, if so, are "only marginally related." *Miller*, 734 F.3d at 538-39. One involved the March, 2009 affirmative act of filing a 2008 tax return, while the other concerned Mrs. Hendrickson's failure to amend 2002 and 2003 returns from 2007 onward. Not only are the acts in Mrs. Hendrickson's case different in kind (one active, the other passive), but - unlike in *Miller and Schmeltz* - there exists a vast temporal disparity between them. *See Miller*, 734 F.3d at 536 (all six false statements were identical and made during approximately four month period during the course of single transaction); *Schmeltz*, 667 F.3d at 697-88 (all misstatements made contemporaneously during the creation of a single document).

Additionally, neither of the alleged contemptuous acts were claimed to have violated both of the injunctions set forth in Judge Edmunds' Order. Rather, each act correlates to one or the other injunction. Mrs. Hendrickson's conduct does not reflect two interrelated events associated with a single transaction, such as in *Miller*, but two unrelated or only "marginally related" events. Nor was the allegedly

contemptuous violation of each injunction set forth in Judge Edmunds' Order separately charged with respect to its underlying violative act, as in *Schmeltz*. As such, even if the district court correctly concluded that the acts in questions were not independent alleged offenses[13] or elements of the offense, but rather means to commit a hybrid single count, the court remained obligated to deliver a specific unanimity instruction because the acts in question were unrelated or, at best, only "marginally related" to one another.

Hence, Mrs. Hendrickson is entitled to a new trial.

III. DOREEN HENDRICKSON'S SIXTH AMENDMENT RIGHT TO CONDUCT HER OWN DEFENSE WAS VIOLATED WHEN HER STANDBY COUNSEL FAILED TO ASK QUESTIONS AS INSTRUCTED BY MRS. HENDRICKSON AS SHE WAS TESTIFYING DURING HER TRIAL.

Standard of Review

A *pro se* defendant's Sixth Amendment rights are violated when standby counsel undermines and interferes with the right to control the fundamental aspects of their trial. *McKaskle v. Wiggins* 465 U.S. 168, 177 (1984). If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, or to control the

[13] Prior to trial, Mrs. Hendrickson unsuccessfully moved the district court to order dismissal or revision of the Indictment to correct its confusing formulation of a single count containing two disparate acts related to two obviously distinct Orders. (Crim. RE 63).

questioning of witnesses, or to speak instead of the defendant on any matter of importance, the defendant's Sixth Amendment right is eroded. *Id.* at 174. Whether a *pro se* defendant's rights are violated due to the interference of their standby counsel is subject to plenary review and this results in a categorical constitutional violation not subject to harmless error analysis *Id.* at 177, n.8; *Washington v. Renico*, 455 F.3d 722, 734 (6th Cir. 2006).

Argument

While Mrs. Hendrickson, who testified at trial, directed her standby counsel to ask certain questions during his court-imposed performance as her direct-examination questioner, counsel unilaterally chose to not ask the specified questions, or introduce Mrs. Hendrickson's related exhibits. In so doing, counsel interfered with Mrs. Hendrickson's Sixth Amendment right to present her own defense and, consequently, Mrs. Hendrickson is entitled to a new trial.

Standby counsel's interference with Mrs. Hendrickson's defense resulted from the district court's direction that Mrs. Hendrickson not testify directly to the jury, but that her standby counsel would read questions which Mrs. Hendrickson had provided for him, and introduce exhibits as she directed. The Court designated that this question-answer format would be followed at both of Mrs. Hendrickson's

criminal trials. (Transcript, RE 57, pp. 155-156[14]**;** RE 59, Page ID # 750-752; RE 106, Page ID # 1549; RE 107, Page ID # 1597-1599).

In compliance with this protocol, Mrs. Hendrickson scripted questions for her standby counsel to ask and prepared exhibits for him to introduce. At her first trial, counsel asked all the questions scripted and introduced all exhibits prepared, without objection by the government or interference by the court. (Transcript, RE 59, Page ID # 780-783). At her second trial, Mrs. Hendrickson again testified. This time, however, her standby counsel unilaterally decided not to ask a series of questions and introduce a series of exhibits related to Mrs. Hendrickson's understanding of the First Amendment and what she considered as support for that understanding in governing case law:

> Q: Mrs. Hendrickson, do you believe the Government has authority to control or dictate your speech even through an Order by the Court?
>
> A. No, I do not.
>
> Q. Why do you believe that?
>
> A. Because we have a First Amendment in this county.
>
> Q. And do you believe that that position is supported by cases from the Supreme

[14] As with other transcripts cited herein, the transcript for this hearing date is sealed, so Mrs. Hendrickson is citing to the page number rather than "Page ID #."

> Court and other Courts of the United States?
>
> A. I know that it is.
>
> Q. One moment, Your Honor. I think that concludes my Direct Examination.

(Transcript, Crim. RE 107, Page ID # 103-104). By doing so, standby counsel blatantly violated Mrs. Hendrickson's Sixth Amendment right to conduct her own defense.

In her Motion to Vacate or for New Trial on Multiple Grounds (Crim. RE 103) and related Motion for Reconsideration (Crim. RE 116), Mrs. Hendrickson raised the instant Sixth Amendment argument before the district court. In support of this argument, she provided a "Declaration of Doreen Hendrickson," wherein she certified under penalty of perjury that during standby counsel's direct examination of her, he simply failed to ask questions that had provided to him. (Motion for Release Pending Appeal, RE 132, Exhibit #9, p. 1). After he failed to ask these question, Mrs. Hendrickson quietly turned to the Court and asked to speak with standby counsel, but the Court refused this request.[15] (*Id.*).

Standby counsel thereafter explained to Mrs. Hendrickson during a recess that he did not ask the questions she had prepared because he thought the Court would

[15] This exchange between Mrs. Hendrickson and the Court does not appear in the notes of testimony from the trial. (*See* Transcript, RE # 108, Page ID # 1778-79).

not permit him to do so and that she could still present these points during her closing argument and reference the exhibits that supported them. (*Id.*, pp. 1-2). A hard copy of the questions that were not asked was attached to the Reconsideration Motion filed by Mrs. Hendrickson. (Motion for Release Pending Appeal, RE 132, Exhibit #11).

Standby counsel provided a written "Statement" wherein he confirmed Mrs. Hendrickson's account of the incident in question and acknowledge his decision to forego asking certain questions as follows:

> The final set of questions proposed by Mrs. Hendrickson concerned her reliance on cases dealing with the First Amendment and the government's ability to compel speech. In light of the previous difficulties during her direct examination, I elected not to ask these questions. I did not consult with Mrs. Hendrickson or seek her permission before I elected not to ask those questions.

(Statement of Andrew Wise, Crim. RE 137, Exhibit #3, pp. 1-2). Counsel also confirmed that he told Mrs. Hendrickson that to cure his failure to ask certain questions, she could simply raise this subject matter in her closing:

> Following her direct examination and in response to Mrs. Hendrickson expressing concern that the questions were not asked, I suggested that she attempt to incorporate some of the points regarding her reliance on authorities interpreting the First Amendment into her closing argument.

(*Id.* at 2). Thus, the record established, without rebuttal, that standby counsel did not ask questions as designated by Mrs. Hendrickson, that he failed to do so without her consent or approval, and that in order to address his error, he told Mrs. Hendrickson she could simply discuss the omitted matter during her closing argument.

Despite standby counsel's reassurances, however, because the questions were not asked and the anticipated responses Mrs. Hendrickson would have given were not in evidence, Mrs. Hendrickson was not permitted to discuss the subject matter of these questions during her closing argument. (Transcript, Crim. RE 108, Page ID # 1755-1756). This is in contrast to her first trial (which ended without a conviction), where the same attorney also served as Mrs. Hendrickson standby counsel did ask the very questions he failed to ask at her second trial. (Transcript, Crim. RE 59, Page ID # 781-783) (wherein Mrs. Hendrickson discusses and reads to her jury various appellate court opinions that provided a basis for her understanding of her legal duty under the law, specifically with respect to the First Amendment). Given that her testimony on the subject was in the record in her first trial, at its conclusion she was free to address it during her closing. (Transcript, Crim. RE 59, Page ID # 841) (wherein Mrs. Hendrickson discusses her understanding of the Supreme Court's position on the First Amendment).

In *Faretta v. California*, the Supreme Court recognized that a defendant in a criminal case has a Sixth Amendment right to conduct her own defense. 422 U.S.

806, 819 (1975). The court in *McKaskle v. Wiggins* identified certain fundamental aspects of the trial process that must be left to the control of a *pro se* defendant as follows:

> A defendant's right to self-representation plainly encompasses certain specific rights to have [her] voice heard. The *pro se* defendant ***must be allowed to control the organization and content of [her] own defense***, to make motions, to argue points of law, to participate in voir dire, ***to question witnesses***, and to address the court and the jury at appropriate points in the trial.

465 U.S. 168, 174 (1984) (emphasis added).

A *pro se* defendant's Sixth Amendment rights are violated when standby counsel undermines and/or interferes with the right to control these fundamental aspects of the trial. *Id.* at 177 ("the objectives underlying the right to proceed *pro se* may be undermined by unsolicited and excessively intrusive participation by standby counsel"). As the *McKaskle* Court stated, "the primary focus must be on whether the defendant had a fair chance to present his case in his own way." *Id.* at 176.

There are two independent aspects of a *pro se* defendant's right to not have the case unconstitutionally compromised by standby counsel. These include the right to "preserve actual control of the case [she] chooses to present to the jury" and to not have counsel's behavior "destroy the jury's perception that the defendant is representing himself." *Id.* at 178. The former right is considered "the core of the

Faretta right," and directly applies to the violation of Mrs. Hendrickson's Sixth Amendment rights at trial. *Id.*

The Court in *McKaskle* described precisely the sort of circumstance that occurred in Mrs. Hendrickson's case when it summarized the quintessential Sixth Amendment violation that occurs when standby counsel impermissible intrudes on a *pro se* defendant's case:

> If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, ***or to control the questioning of witnesses,*** or to speak instead of the defendant on any matter of importance, the *Faretta* right is eroded.

Id.

Critically with respect to this Court's resolution of the instant argument, when standby counsel interferes in a *pro se* defendant's right to self-representation, the results is a categorical constitutional violation that is not subject to harmless error analysis. *Id.* at 177, n.8 ("Since the right of self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to 'harmless error' analysis. The right is either respected or denied; its deprivation cannot be harmless"); *Washington v. Renico*, 455 F.3d 722, 734 (6th Cir. 2006). Thus, to the extent Appellee might suggest that the subject matter of the questions not asked could be characterized as cumulative or not sufficiently critical to Mrs. Hendrickson's case to warrant reversal of her conviction

- a notion Mrs. Hendrickson would vehemently contest - such harmless error analysis has no bearing on the type of Sixth Amendment violation in question. *Id.*; (*see also Gonzalez-Lopez v. United States*, 548 U.S. 140, 145-46 (2006) (where defendant's Sixth Amendment right to counsel of his choice was violated because the disqualification of his chosen counsel was erroneous, no additional showing of prejudice was required to make the violation complete)).

While Mrs. Hendrickson is not required to demonstrate prejudice due to standby counsel's dereliction, the importance of the omitted evidence to her defense establishes that she was prejudiced. Willfulness is an element of contempt. Whether, why, and to what extent Mrs. Hendrickson believed she was not violating the law based on her understanding of governing case law represented an absolutely central issue to her case. Her standby counsel deprived her of the opportunity to substantiate that her positions were supported by governing legal precedent.

The blatant violation of Mrs. Hendrickson's Sixth Amendment right to conduct her own defense due to standby counsel failing to ask her questions as directed requires that Mrs. Hendrickson receive a new trial.

IV. THE DISTRICT COURT COMMITTED CLEAR ERROR AT SENTENCING BY INCORRECTLY CALCULATING MRS. HENDRICKSON'S ADVISORY GUIDELINE RANGE AND SENTENCING HER ACCORDING TO THIS CALCULATION.

Standard of Review

An appellate court reviews a district court's sentencing determination under an abuse of discretion standard. The first step an appellate court takes in reviewing whether a district court committed and abuse of discretion at sentencing is to determine whether the sentence imposed is procedurally reasonable. *United States v. Peebles*, 624 F.3d 344, 347 (6th Cir. 2010) (citing *United States v. Bolds*, 511 F.3d 568, 578-79 (6th Cir. 2007). A sentence is procedurally unreasonable if the district court fails to calculate or improperly calculates the Guidelines range, treats the Guidelines as mandatory, fails to consider the section 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails to adequately explain the chosen sentence. *Id.* (citing *Bolds*, *supra*; *Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007).

Argument

The district court abused its discretion in sentencing Mrs. Hendrickson by improperly applying the Sentencing Guidelines provision governing convictions for failing to file a tax return, but then abandoning this analytical model and sentencing her as if her case involved her improperly claiming a refund to which she was not entitled. While the order Mrs. Hendrickson was accused of contemptuously violating

made reference to the fact that she and her husband were previously found to have improperly received tax refunds for years 2002 and 2003, the injunctions she was convicted of contemptuously violating did not involve her receipt of these refunds, nor did the Indictment allege that she committed criminal contempt by engaging in any such conduct. Nevertheless, the district court invoked this unrelated event and the dollar figure associated with it - $20,380.96 - and used this figure as a basis for calculating Mrs. Hendrickson's recommended sentencing range. The court erred in doing so and should this Court not vacate Mrs. Hendrickson's conviction or order that she receive a new trial based on the alternative grounds for relief set forth herein, the Court should order her case remanded for resentencing.

A. Assuming it Was Procedurally Reasonable to Sentence Mrs. Hendrickson by Reference to U.S.S.G. § 2T1.1, the Sentencing Guidelines Applicable in Failure to File Cases, the Proper Calculation of Mrs. Hendrickson's Recommended Guideline Sentencing Range Under that Section Results in an Advisory Range of Either 0-6 Months or 1-7 Months' Probation or Imprisonment.

The crime for which Mrs. Hendrickson was sentenced - criminal contempt, as codified at 18 U.S.C. § 401(3) - has no calculable sentencing guideline directly relating to it. Instead, the applicable governing guideline, U.S.S.G. § 2J1.1, directs to U.S.S.G. § 2X5.1, which instructs the Court to apply "the most analogous offense guideline [and if] there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. § 3553 shall govern."

Mrs. Hendrickson argued prior to sentencing that no particular advisory guideline section applied to her case and, as such, sentencing was exclusively guided by the sentencing considerations set forth at 18 U.S.C. § 3553. (Hendrickson Sentencing Memorandum, Crim. RE 122, pp. 7-10). Meanwhile, the government and probation department proposed that the fraud guidelines should apply. (Government Sentencing Memorandum, Crim. RE 123, pp. 11-14). On the eve of sentencing, via email, the court requested the parties file supplemental briefs setting forth their positions concerning the application of U.S.S.G. § 2T1.1 to Mrs. Hendrickson's, case. U.S.S.G. § 2T1.1 governs criminal tax offenses.

Ultimately, the court decided to sentence Mrs. Hendrickson based on her purported failure to file amended 2002 and 2003 tax returns. (Transcript, Crim. RE 133, pp. 20-22. The court concluded this conduct was most-equivalent to the criminal offense of failure to file a tax return, as codified at 26 U.S.C. § 7203, and accordingly invoked guideline section 2T1.1, which governs violations of Section 7203. (*Id.*). Thus, the court sought to sentence Mrs. Hendrickson as if her contempt conviction constituted a "failure to file tax returns" case and based its sentencing analysis on her perceived failure to file amended 2002 and 2003 returns.

U.S.S.G. § 2T1.1 dictates that the base offense level for a tax offense is established by determining the tax loss for the offense in question and then

identifying its corresponding offense level as designated at U.S.S.G. § 2T4.1. In determining the tax loss for a failure to file case, Section 2T1.1 states the following:

> (2) If the offense involved failure to file a tax return, the tax loss is the amount of tax that the taxpayer owed and did not pay.
>
> (A) If the offense involved failure to file a tax return, the tax loss shall be treated as equal to 20% of the gross income (25% if the taxpayer is a corporation) less any tax withheld or otherwise paid, unless a more accurate determination of the tax loss can be made.

U.S.S.G. § 2T1.1(c)(2)(A). Thus, the guidelines articulate a specific approach to be applied in failure to file cases.

Because there was no uncertainty with respect to the Hendrickson's earnings, the district court simply had to calculate what it believed to be Mrs. Hendrickson's tax obligation for 2002 and 2003 and sentence her based on this figure. This is precisely what Mrs. Hendrickson did in her Supplemental Sentencing Memorandum (treating her earnings as taxable for purposes of the exercise) and depending on which approach to calculating her tax obligation the Court would opt to take, the resulting total offense level was either "6" or "8." (Supplemental Sentencing Memorandum, Crim. RE 125. Page ID # 2676-2680).

Mrs. Hendrickson's "tax loss" calculations are based on earnings attributable to her only, as opposed to both her and her husband, given that it was only Mrs.

Hendrickson whose sentencing range was being calculated and she could not conceivably be held responsible for her husband's failure to file a return. Exhibit "1" attached to Mrs. Hendrickson's Supplemental Sentencing Memorandum accurately outlined for the district court the earnings attributed to both Mr. and Mrs. Hendrickson. (Hendrickson Supplemental Brief, Crim. RE 125-1, Page ID # 2682-2684)). Specifically, the "Other Income" shown on line 1.a. reflects earnings attributed to Mrs. Hendrickson, while the "Wages, Salaries, and Tips" reflects earnings attributed to Peter Hendrickson. (*Id.*, Page ID # 2683). Therefore, under U.S.S.G. § 2T1.1, the theoretical gross income for purposes of calculating tax loss in a failure to file case involving Mrs. Hendrickson would be calculated by reference to the $3,773 for 2002 and the $3,118 for 2003.[16]

Under this analysis, Mrs. Hendrickson's earnings are separated from her husband's and, consequently, the reporting of such earnings would be made under the filing status of "married filing separate" returns. Under such status, Mrs. Hendrickson's entitlement to itemized deductions and exemptions would be limited. Therefore, in calculating "tax loss" under this scenario, Mrs. Hendrickson assumes entitlement to only her personal exemptions. When the hypothesized tax is

[16] As corroboration that Mrs. Hendrickson's earnings are reflected on the "Other Income" line of Page ID # 2683, see the unsigned Statement of Examination Changes filed as an exhibit in support of the government's Motion for Summary Judgment in the civil suit in which the orders involved in this case were issued. (Motion for Summary Judgement, Civ. RE 9, Attachment # 1-15).

calculated on her gross earnings, the calculation is as follows and totals less than $2,000.

	2002	**2003**
Gross Earnings	$3,773.00[17]	$3,118.00[18]
Personal Exemption	$3,000	$3,050.00
Hypothetical Taxable Income	$773.00	$68.00
Tax Per Guideline	$76.00[19]	$6.00[20]
+ Self Employment Tax[21]	$533.00	$440.55
	$906.00	$753.55

Therefore, under U.S.S.G. § 2T4.1, the Base Offense Level would be "6."

Assuming, in the alternative, the Court believed the tax loss should be calculated by considering income attributed to Mr. Hendrickson as well, it nonetheless remains below $2,000. The above-referenced Exhibit "1" attached to Mrs. Hendrickson's Supplemental Sentencing Memorandum was a marked-up version of what was previously submitted to the district court as Exhibit "7." (Supplemental Sentencing Memorandum, Crim. RE 125-7, Page ID # 2561). Exhibit "7" reflects the Internal Revenue Service's tax loss calculations put into

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[17] *See* Hendrickson Supplemental Sentencing Memorandum, Crim. RE 125-1, Exhibit "1," p. 1.0.

[18] *See id.*, Exhibit "1," p. 1.0.

[19] *See id.*, Exhibit "1," p. 1.2.

[20] *See id.*, Exhibit "1," p. 1.3.

[21] *See id.*, Exhibit "1," p. 1.0, line 10.a.

issue and acknowledged by the government in an earlier case involving Mrs. Hendrickson's husband, Peter Hendrickson.[22] (Case No. 2:08-cr-20585-GER-DAS, Order, RE 96-1, Page ID #1805-1806). Without regard to any exemption for children to which the Hendricksons may have been entitled, the tax loss with consideration of withholding credits is detailed on line 16 of Exhibit "1." Specifically, without regard to exemptions for children, the total tax loss equals $1,816 for 2002 and $1,346.80 for 2003. Consequently, pursuant to U.S.S.G. § 2T4.1(b), the Base Offense Level would be "8." (Hendrickson Supplemental Sentencing Memorandum, Crim. RE 125, Pg. I.D. #2681-2681).

However, U.S.S.G. § 2T1.1(c)(2) makes it clear that the Court should employ the most accurate tax calculation that "can be made." Hence, if the proper tax loss calculation were employed to the earnings received by both Hendricksons, and combined on one tax return, the Hendricksons would be entitled to an exemption of $3,000 apiece in 2002 and $3,050 in 2003 for each of their dependent children.[23] When consideration is given to these additional exemptions, the theoretical taxable

[22] This form certainly constitutes an evidentiary admission under Fed. R. Evid. 801(d)(2).

[23] Exhibit "7", as revised in Exhibit "1" shows, on line 3, income per return, or as previously adjusted, of $13,830.00 for 2002 and $15,313.86 for 2003. These numbers represent the combined itemized or standard deduction shown on the Hendricksons' returns, and exemptions for only Doreen and Peter Hendrickson. The Hendricksons did not claim exemptions to which they were entitled for their children.

income for 2002 as reflected on Exhibit "1" is $42,641 and $42,091.86 for 2003. Based upon the tax rates applicable at that time for joint tax payers, the total tax due, including self-employment tax, would be $6,327 for 2002 ($5,794[24] in income tax + $533 of self-employment tax) and $6,079.89 ($5,611[25] in income tax + $440.55 in self-employment tax) for 2003. U.S.S.G. § 2T1.1(c)(2)(A) makes clear, however, that the tax loss should be reduced by any tax withheld. Exhibit "1" properly reflects that $5,642 and $5,620 was withheld from the 2002 and 2003 earnings, respectively. After consideration of these withholdings, the balance due is $685 and $431.55 for 2002 and 2003, respectively. Consequently, even on jointly filed returns, the tax loss, when properly calculated under U.S.S.G. § 2T1.1, is less than $2,000 and yields a Base Offense Level "6."

Since no § 2T1.1 specific offense characteristics otherwise applied and since no Chapter 3 enhancements applied, the Total Offense Level would have been either "6" (based on the most accurate calculation) or "8" (assuming no additional exemptions). The Court ruled that Mrs. Hendrickson had a Criminal History Category of II. (Transcript, Crim. RE 33, p. 23).[26] Thus, were the district court to

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[24] *See* Hendrickson Supplemental Sentencing Memorandum, Crim. RE 125, Exhibit "1," p. 1.4.

[25] *See id*., Exhibit "1," p. 1.5.

[26] Mr. Hendrickson objected to the district court's criminal history calculation. (*See* Doreen Hendrickson's Sentencing Memorandum, Crim. RE 122, pp. 18-19). The criminal history calculation was driven by the conclusion that Mrs. Hendrickson was

have properly sentenced Mrs. Hendrickson as if hers was a failure to file tax returns case, the Guidelines would have advised either 0–6 months imprisonment or 1–7 months imprisonment and be probation eligible.

B. The District Court Erred by Sentencing Mrs. Hendrickson Based on the $20,380.96 Refund She and Her Husband Received for 2002 and 2003.

As discussed above, U.S.S.G. § 2T1.1(c)(2) governs cases where "the offense involved failure to file a tax return." Despite characterizing this as a failure to file tax returns case, rather than apply Section 2T1.1(c)(2) - which the guidelines specify governs such cases - the district court opted to apply Section 2T1.1(c)(4), which applies in cases where "the offense involved improperly claiming a refund to which the claimant was not entitled." (Transcript, Crim. RE 133, p. 21-22). The district court employed § 2T1.1(c)(2) because Judge Edmunds "Amended Judgment and Order of Permanent Injunction" referred to the fact that Mrs. Hendrickson and her husband were jointly indebted to the government due to erroneous refunds had been made concerning 2002 and 2003, to the tune of $20,380.96. (*Id.* at 22; Amended Judgment and Order of Permanent Injunction, Civ. RE 34, Page ID # 2805-2806).

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on probation from a local drunk driving offense when she committed the instant offense. The accuracy of this determination turns on whether Mrs. Hendrickson was convicted for failing to file amended returns by a certain date. Because of the absence of an unanimity instruction, it is impossible to determine which of the two separate injunctions the jury found Mrs. Hendrickson to have violated.

As a result of applying this erroneous $20,000 figure, the district court determined the base offense level to be 12, which ultimately resulted in an advisory guideline range of 12 to 18 months imprisonment. (*Id.*). Thus, the court's ruling resulted in an advisory sentencing range that tripled Mrs. Hendrickson's exposure at the high end of the guideline range and eliminated what would have been a probationary sentence advised by the guidelines.

In sentencing Mrs. Hendrickson, the district court plainly applied the incorrect sentencing guidelines. Mrs. Hendrickson's offense did not "involve[] improperly claiming a refund to which the claimant was not entitled," as the court ruled. Rather, the Order Mrs. Hendrickson was convicted of contemptuously violating ostensibly required her to (1) file amended 2002 and 2003 returns in a certain manner and (2) not file any returns in the future based on what Judge Edmunds "found" to be the tenets of Cracking the Code. The Order did not direct Mrs. Hendrickson to repay the $20,380.96 refund purportedly received by her and her husband and, accordingly, the government's prosecution of Mrs. Hendrickson did not include any allegation that she violated the Order by failing to repay this figure. The $20,380.96 refund was in no way an element or aspect of the Count charged in the Indictment, nor the subject of evidence offered by the government or defended by Mrs. Hendrickson at trial.

The actions by which the government claimed Mrs. Hendrickson violated the injunctions were wholly unrelated to the existence of the fact that she and her husband may be indebted to the government because of an alleged improperly received refund. Indeed, it is impossible for the failure to file a tax return to involve an improper claim for refund, given that a refund can only be claimed - whether properly or improperly - by *filing* a tax return. Thus, the Court could not credibly conclude that "the offense involved improperly claiming a refund to which the claimant was not entitled." U.S.S.G. § 2T1.1(c)(4).

Doreen Hendrickson was neither charged with nor convicted of committing a criminal tax offense. Her conviction was confined to the elements of the offense charged as they related to the injunctions she was accused of contemptuously violating and the acts that allegedly violated those injunctions. This was not an all-purpose, unrestricted prosecution of Mrs. Hendrickson for any and all tax misconduct she was perceived to have been involved in over the previous decade and the district court did not have free rein to sentence her for any and all events associated with the underlying civil matters that formed the backdrop of her criminal case. The district court was obliged to sentence Mrs. Hendrickson based on the charge of which she was convicted and the district court erred by basing her sentence on facts unrelated to her offense conduct.

The district court applied the wrong sentencing guidelines provision in sentencing Mrs. Hendrickson. Thus, the Court abused its discretion by committing procedural error and imposing an unreasonable sentence in Mrs. Hendrickson's case. *See United States v. Bolds*, 511 F.3d 568, 579 (6th Cir. 2007) ("a sentence is procedurally unreasonable if it fails to calculate *or improperly calculates* the sentencing guidelines range") (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)) (emphasis added). Accordingly, this Court, should it not grant relief based on the other bases set forth herein, should remand Mrs. Hendrickson's case for resentencing in a manner consistent the arguments set forth in her Brief.

CONCLUSION

In conclusion, for the reasons set forth herein, this Court must either vacate Doreen Hendrickson's conviction and sentence or, alternatively, order that she receive a new trial and/or be resentenced.

Respectfully submitted:

CEDRONE & MANCANO, LLC

Dated: July 20, 2015

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that this brief complies with the type-volume limitations of Rule 32(a)(7)(B), in that it contains 14,804 words, which includes Tables, Certifications, and the Addendum. In certifying the number of words in the brief, I have relied on the word count feature of Word 2013 for Windows, the word processing system used to prepare the brief.

Dated: July 20, 2014

/s/ Mark E. Cedrone
MARK E. CEDRONE

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2015, the foregoing Principal Brief was electronically filed with the Clerk of this Court via the Court's Electronic Case Filing System ("ECF"), which will send Notice of Electronic Filing to the following:

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ADDENDUM TO PRINCIPAL BRIEF OF APPELLANT:
Designation of Relevant Documents Pursuant to 6 Cir. R. 30(g)(1)

***United States v. Doreen Hendrickson,* No. 13-cr-20371**

Description	District Court Docket Entry No	Page ID#
Notice of Appeal	127	2699-2700
Judgment in a Criminal Case	126	2693-2698
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Judgment	126	2696
Proposed Jury Instructions by Doreen Hendrickson	53	386-395
Motion for Dismissed or Corrected Indictment	63	895-914
Motion for Reconsideration	116	2409-2469
Motion for Release Pending Appeal	132-9	2834
Statement of Andrew Wise	137-3	2990-2991
Hendrickson Sentencing Memorandum	122	2505-2508
Government Sentencing Memorandum	123	2605-2608
Supplemental Sentencing Memorandum	125-7	2561
Supplemental Sentencing Memorandum	125	2678
Supplemental Sentencing Memorandum	125	2680-2681
Transcript	108	1779
Transcript	133	p. 52[27]

[27] The sentencing transcript for April 9, 2015 is sealed on-line. As such, Mrs. Hendrickson does not have access to the version of this document specifying the "Page ID" number. So, references to the transcript for this day will reference the

Transcript	105	pp. 88-89[28]
Transcript	105	p. 90[29]
Transcript	105	p. 102[30]
Transcript	106	1497-1501
Transcript	106	1484-1485
Transcript	105	pp. 99-101[31]
Transcript	106	1503
Transcript	106	1509
Transcript	106	1512-1516
Transcript	106	1516
Transcript	105	pp. 72-84[32]
Transcript	105	82[33]
Transcript	107	1599-1603
Transcript	108	1711-1713
Transcript	106	53
Transcript	107	1581-1583, 1587, 1591-1592
Transcript	108	96
Transcript	103	1770-1771
Transcript	107	1663-1666
Transcript	106	1544
Transcript	107	1666
Transcript	107	1670-1673
Transcript	107	1670-1673
Transcript	108	1774
Transcript	59	750-752
Transcript	106	1549

page number rather than "Page ID" number.

[28] As with her transcript related to Mrs. Hendrickson's sentencing, the trial transcript for July 22, 2014 is sealed on-line. References to the transcript for this day will reference the page number rather than "Page ID" number.

[29] *See* note 28, *supra*.

[30] *See* note 28, *supra*.

[31] *See* note 28, *supra*.

[32] *See* note 28, *supra*.

[33] *See* note 28, *supra*.

Transcript	107	1597-1599
Transcript	107	103-105
Transcript	108	1778-1779
Transcript	108	1755-1756
Transcript	59	781-783
Transcript	59	841
Transcript	133	pp. 20-22[34]
Transcript	133	p. 23[35]
Transcript	133	p. 21-22[36]

ADDENDUM TO PRINCIPAL BRIEF OF APPELLANT:
Designation of Relevant Documents Pursuant to 6 Cir. R. 30(g)(1)

***United States v. Doreen Hendrickson, et al.*, 06-cv-11753**

Description	**District Court Docket Entry No**	**Page ID#**
Amended Judgment and Order of Permanent Injunction	34	2811-2812
Order	21	
Amended Judgment and Order of Permanent	34	2805-2806
Transcript	73	678-679
Transcript	84	753
Transcript	84	756

[34] *See* note 27, *supra.*

[35] *See* note 27, *supra.*

[36] *See* note 27, *supra.*

ADDENDUM TO PRINCIPAL BRIEF OF APPELLANT:
Designation of Relevant Documents Pursuant to 6 Cir. R. 30(g)(1)

***United States v. Peter Hendrickson,* 08-cr-20585**

Description	District Court Docket Entry No	Page ID#
Order	96-1	1805-1806