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

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
v.	:	Case No. 13-cr-20371
	:	Judge Victoria A. Roberts
DOREEN HENDRICKSON,	:	
Defendant.	:	

DEFENDANT'S MOTION TO VACATE OR FOR NEW TRIAL ON MULTIPLE GROUNDS

Pursuant to Rules 29(c) and 33(a) of the Federal Rules of Criminal Procedure, Doreen Hendrickson MOVES the Court to VACATE the judgment in the above-captioned case and ENTER A JUDGMENT OF ACQUITTAL or ORDER A NEW TRIAL. Grounds for this motion and relief include:

1. The perpetration of a fraud on the Court by government attorneys;

2. Gross misbehavior by Mrs. Hendrickson's Court-designated questioner during her direct examination, coupled with the subsequent suppression of critical aspects of her good-faith defense by the Court;

3. A complete lack of evidence contradicting Mrs. Hendrickson's presumption and assertions of good-faith/lack of willfulness;

4. A complete lack of evidence that Mrs. Hendrickson violated a lawful, comprehensible order to not file documents with the IRS based on certain proscribed views or failed to comply with a lawful, comprehensible order to file amended tax returns when it was possible to so comply; and

5. The fact that the conviction is tainted because the orders Mrs. Hendrickson was charged with criminally resisting or disobeying are unlawful;

all as are more fully presented in the accompanying brief in support of this motion.

Additional grounds for relief are reserved for appeal.[1] The specification of certain grounds for relief in this motion is not a waiver of any others, and Mrs. Hendrickson reserves her right to raise the issues specified in this motion, and others, on appeal if necessary.

In light of the insufficiencies, improprieties and fraud tainting the verdict reached after trial in the above-captioned matter, that verdict should be VACATED and a JUDGMENT OF ACQUITTAL ENTERED, or, at the least, a NEW TRIAL should be ordered, and Mrs. Hendrickson so moves the Court.

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[1] These include, but are not limited to, improper jury instructions such as not requiring unanimity of verdict on any alleged violative act and barring the jury from considering the "lawfulness" element of the charged offense; issues raised in pre-trial motions such as those concerning flaws in the indictment, the introduction of hearsay, and the jurisdiction of the trial court to punish an American woman for exercising her rights of speech and conscience; rulings on objections during trial; sustained hostility from the bench; disallowing Mrs. Hendrickson from completing even a fraction of her Opening Statement or all of her Closing Argument; and prosecutorial misconduct not addressed in this motion.

Concurrence was sought from the United States' attorneys and was refused.

Respectfully Submitted,

____

Doreen Hendrickson, *in propria persona*
August 6, 2014

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UNITED STATES OF AMERICA, :
:
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: Honorable Victoria A. Roberts
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BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO VACATE OR FOR NEW TRIAL ON MULTIPLE GROUNDS

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STATEMENT OF ISSUES

On July 25, 2014, during re-trial in the above-captioned case, government prosecutor Melissa Siskind committed a fraud upon the Court. Ms. Siskind made what she knew or had reason to know were false representations concerning material with which she confronted defendant Doreen Hendrickson during cross-examination and which she introduced as evidence impeaching Mrs. Hendrickson's testimony. Ms. Siskind falsely declared to the jury and all others present that prior actions by the Department of Justice attested-to by Mrs. Hendrickson as being part of an ultimately-abandoned effort to enjoin her husband's distribution of his research were really just concerned with an audit of Mr. Hendrickson. This declaration was untrue, and is plainly said to be untrue even within the very 41 pages of documents Ms. Siskind misrepresented as being evidence supporting her false statements.

Additionally, Mrs. Hendrickson's defense was improperly compromised by behavior of her Court-designated direct examiner; and throughout trial, the government failed to produce sufficient evidence by which a reasonable jury could find guilt as to each and every element of the charged offense.

CONTROLLING AUTHORITY

The issues addressed here are most closely controlled by Rules 29(c) and 33(a) of the Federal Rules of Criminal Procedure; *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010); *Burrell v. Henderson, et al.*, 434 F.3d 826, 831 (6th Cir., 2006); *Brown v. Davis,* 752 F.2d 1142, 1145 (6th Cir. 1985)

ARGUMENT

Pursuant to Rules 29(c) and 33(a) of the Federal Rules of Criminal Procedure, Doreen Hendrickson moves the Court to VACATE the judgment in the above-captioned case and ENTER A JUDGMENT OF ACQUITTAL or ORDER A NEW TRIAL. The motion is based on the following facts and law:

1. Government attorneys committed a fraud upon the Court during trial, misrepresenting evidence in a fashion calculatedly and enormously prejudicial to Mrs. Hendrickson.

At trial on July 24, 2014, Defendant Doreen Hendrickson testified on direct examination that the government had engaged in efforts to enjoin her husband from publishing his first book (and various research and blog posts on his Web site) on the allegation that his writings promoted an illegal tax shelter. She also testified that each of those efforts had been dismissed upon the government's own motions, presenting those dismissals and withdrawals as Defense Exhibit 562. On the following day, during cross-examination of Mrs. Hendrickson, United States attorney Melissa Siskind falsely declared to the jury that documents she held were evidence that these several actions were really concerned with a mere tax audit. This declaration of Ms. Siskind was false and misleading. Further, Ms. Siskind knew or should have known that the declaration was false and misleading. The devastating effect of this misrepresentation to the jury is that it reasonably, but wrongly, assumed Mrs. Hendrickson to be a liar, and voted to convict.

The actions to which Mrs. Hendrickson testified were brought by the government in the first months after her husband's book became available to the public. Mrs. Hendrickson discussed the government injunction actions, and their subsequent dismissals, as well as the government summonses, and their subsequent withdrawals, as evidence of the government's contradictory behavior over the years. Such evidence is plainly relevant to her state of mind with respect to the orders at issue in this case, as well as to the objective truth of the actual government view of the content of her husband's book (or to the government's inability to characterize that content as promoting an illegal tax shelter).

In February of 2004, the government initiated these actions by issuing to Mr. Hendrickson a summons for documents, books and records; the cover letter to this summons explicitly states the government's goal of "possible action under sections 6700 and 7408 of the Internal Revenue Code relating to penalties and an injunctive action for promoting abusive tax shelters." A true and correct copy of that cover letter dated February 18, 2004 from Revenue Agent Heidi Beukema to Peter Hendrickson is attached hereto as EXHIBIT 1.

Ms. Siskind attempted to impeach Mrs. Hendrickson's direct testimony by confronting her with 41 pages of government filings in these actions, while omitting the cover letter which declares the purpose of these actions. After the Court made cursory examination of the documents, Ms. Siskind asserted loudly to

the jury that the documents were evidence that the dismissals presented by Mrs. Hendrickson were dismissals of actions concerned merely with an *audit* of Mr. Hendrickson.

It is not possible that Ms. Siskind could have been unaware of the truth. The cover letter presented here as EXHIBIT 1 is the first page of the materials from which Ms. Siskind extracted the documents she misrepresented. Ms. Siskind had been in possession of Defense Exhibit 562 for more than eight months.

Further, even the documents presented by Ms. Siskind plainly refer to the true purpose of the actions she falsely declared to have been a mere audit. See, *e.g.*, the government's Memorandum of Law in Opposition to Petition to Quash Summons, Case no. 5:04-MC-07023-MMC-JCS, included as part of the 41 pages with which Mrs. Hendrickson was confronted, a true and correct copy of which is attached hereto as EXHIBIT 2. On page 6 of this memorandum, in the third paragraph, the Department of Justice states: "[T]he IRS in this case issued the summons as part of a legitimate investigation to determine whether petitioner is liable for civil penalties under I.R.C. § 6700 **and whether petitioner can be enjoined under I.R.C. § 7408 for such violations.**" (emphasis added). This memorandum was filed in one of the actions subsequently dismissed or withdrawn as shown by Mrs. Hendrickson in her Defense Exhibit 562 (see EXHIBIT 3).

Plainly, Mrs. Hendrickson's testimony on direct had been completely correct, and Ms. Siskind's assertion completely false, as she knew or should have known.

On the decision of the Court these documents, which were falsely represented by Ms. Siskind as impeaching of Mrs. Hendrickson, were kept from the jury. Thus, the jury was prevented from discovering the truth (see EXHIBIT 4 Trial Transcript, Volume 5, page 17, lines 16, 17) .

Confronted with a decade-old document related to (and handled by) her husband, and with which she was obviously unfamiliar, Mrs. Hendrickson was disoriented and non-plussed. Lacking immediately-available superior knowledge of the facts-- and having had the documents misrepresented to her by her stand-by counsel Andrew Wise, as well, who apparently imprudently took Ms. Siskind's misrepresentations as true, Mrs. Hendrickson took the government attorney at her word. (See EXHIBIT 4, Trial Transcript Volume 5, pp. 15, 16, 17 and 18.) Her jury did the same. Mrs. Hendrickson thus appeared to contradict and be impeached in her previous testimony, and the jury convicted her after a mere 40 minutes of sequestration which began with the serving of lunch and election of a foreperson.

This action by Ms. Siskind constitutes a fraud on the court. A United States Attorney, Ms. Siskind is an officer of the court. Her misrepresentation to the jury confounded the judicial process by introducing a known falsehood in order to trick the jury into believing Mrs. Hendrickson to be a liar and her testimony to be

untrustworthy and/or false, and thus obtaining a conviction by innuendo and sharp practice rather than on consideration of the evidence. The evidence and public record reveal that her representation to the jury and to the court was either intentionally false, willfully blind to the truth, or in reckless disregard of the truth. Her misrepresentation to the jury and to the Court constituted both a positive averment of false facts, and a concealment of the actual facts.

Under the ABA Model Rules of Professional Conduct, Rule 3.3, Ms. Siskind was under a duty of candor to the Court.

> Rule 3.3 Candor Toward The Tribunal
>
> (a) A lawyer shall not knowingly:
>
> > (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
> >
> > *** or
> >
> > (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. ***
>
> (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
>
> (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Ms. Siskind was under a duty to disclose to the Court the true nature of the events and documents being used as rebuttal evidence that would be seen or heard by the jury. She did not "inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision," and thus the Court was deceived in allowing this line of questioning. The public record[2], as well as the very documents Ms. Siskind misrepresented, show that her false representation of the actions involved as being a mere "audit of Mr. Hendrickson" was knowing and willful, and therefore done with scienter and intention to deceive.

Further, Ms. Siskind was under a duty imposed by ABA Rule 3.1 (Meritorious Claims And Contentions), which states, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous…"

The effect on the trial was to frustrate justice. Ms. Siskind allowed her misrepresentations and the effects thereof to be the lasting impression on the jury. Without the knowledge, withheld by Ms. Siskind, of the actual connection between the dismissals and the government's efforts to enjoin the publication of Mr. Hendrickson's book the jury could not detect the misrepresentation, or weigh Mrs. Hendrickson's reaction against the truth of her prior testimony.

[2] Civil No. 04-X-72323, No. 3:04-MC-00177-MMC (JCS), No. 2:04-x-73591-NGE, No. 5:04-MC-07023-MMC (JCS)

Ms. Siskind's actions, compared with the public record, and even the very documents she used as part of her false representations, present clear and convincing evidence of fraud on the court, according to elements of proof adopted by this Circuit.

> "Accordingly, cases require a party seeking to show fraud on the court to present clear and convincing evidence of the following elements: "1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court."

Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010); (quoting *Carter v. Anderson*, 585 F.3d 1007, 1011–12 (6th Cir. 2009)).

A judgment induced by fraud is void. Mrs. Hendrickson's conviction should be vacated. *Burrell v. Henderson, et al.*, 434 F.3d 826, 831 (6th Cir., 2006) ("[D]enying a motion to vacate a void judgment is a per se abuse of discretion"); *Kenner v. C.I.R.*, 387 F.2d 689, (7th Cir., 1968) ("We think, however, that it can be reasoned that a decision produced by fraud on the court is not in essence a decision at all, and never becomes final").

The damage done by the misrepresentation of these documents irrevocably and fatally taints the outcome of this trial. Justice, and the dignity of the Court, demand that this tainted verdict be undone. The Court should VACATE MRS. HENDRICKSON'S CONVICTION and ENTER A JUDGMENT OF ACQUITTAL, or, at the least, ORDER A NEW TRIAL.

2. Mrs. Hendrickson's presentation of her defense was improperly undermined by her Court-designated direct examiner and the Court's suppression of her good-faith basis during her Closing Argument.

As a defendant proceeding *in propria persona*, Mrs. Hendrickson was, by right, her own examiner when giving testimony. However, at the government's insistence, and the decision of the Court, Mrs. Hendrickson was obliged to conduct her self-examination through the contrivance of a Court-designated questioner. Andrew Wise, Mrs. Hendrickson's Court-appointed "stand-by counsel", was the person designated for this role, which was to be entirely mechanical. His part was simply to present to Mrs. Hendrickson the questions she had prepared for this purpose, and introduce exhibits as instructed, and nothing else.

In the event, however, Mr. Wise unilaterally disregarded Mrs. Hendrickson's instructions and failed to ask her a number of key questions, particularly those going to her good-faith defense. Picking and choosing which questions suited HIS interests or views of the case, or for whatever reason, Mr. Wise skipped many and ultimately declared direct examination at an end with the entirety of Mrs. Hendrickson's final two pages of questions unasked, and several exhibits un-introduced. Chief among these were rulings of the United States Supreme Court and the Sixth Circuit Court of Appeals which directly contradict the government's assertions that these courts stand against Mrs. Hendrickson's view of her legal obligations, and that she should have been (or should be presumed by the jury to

have been) persuaded to the views the government would like her to adopt or profess by certain rulings of certain courts.

Mrs. Hendrickson had attempted to exercise control over her defense while in the awkward position of being her own witness but examined by a surrogate during the course of the direct examination. She had been prevented from doing so by the Court (see EXHIBIT 5, Trial Transcript Volume 4, p. 65, lines 6, 7 and Declaration of Doreen Hendrickson). Thus, Mrs. Hendrickson was made the helpless victim of this disobedience.

Prevented from seamlessly exercising control over her examiner, and unable to demand a resumption of her direct testimony after a recess without prejudicing herself in the eyes of her jury by evincing a disharmony or incoherence in her defense presentation, Mrs. Hendrickson was forced to simply abide Mr. Wise's improper hobbling of her defense. As explanation for his actions, Mr. Wise declared his belief that the questions left unasked at the end of the prepared set "would not get in" (see Declaration of Doreen Hendrickson).

In an effort to assuage Mrs. Hendrickson's deep concern at his disregard of her instructions and the harm it represented to her defense, Mr. Wise gave what had to be taken as his professional opinion that the subject matter of the omitted questions and exhibits-- which he agreed was critical to Mrs. Hendrickson's defense-- could be presented as part of her Closing Argument. This view of the

importance of this material for Mrs. Hendrickson's defense and that it could and should be presented during Closing Argument was echoed by Mr. Wise's colleague in the Federal Defender's Office, James Gerometta, who was in the courtroom during Mrs. Hendrickson's examination and is familiar with her case (see Declaration of Doreen Hendrickson).

When the time came in her Closing Argument that Mrs. Hendrickson attempted to quote language from Supreme Court rulings issued in 1943, 1977, 1994, 2006 and 2012, all as quoted by the high court in its 2013 ruling in *Agency for Int'l Development v. Alliance for Open Society Int'l, Inc.*, 133 S. Ct. 2321, the Court sustained objections by the government. The government objected that Mrs. Hendrickson's presentation of this language would violate the Court's province of instructing the jury as to the law of the case. In fact, this verbatim language by the nation's highest court would simply have counteracted the government's efforts to instruct the jury on the law by its presentation of the rulings of Judge Edmunds and the unpublished rulings of the Sixth Circuit in the underlying case.

Further, Mrs. Hendrickson was not presenting this material as "the law of the case", and her recital of it could neither overcome nor interfere in the instructions the Court would proceed to give. Rather, her recital was for the purpose of sharing with the jury something of what informed HER understanding of her duties and obligations relevant to the orders she is accused of willfully violating. The

government also objected that the Supreme Court ruling was "not in evidence", but this was a direct result of Mr. Wise usurping the role of defense counsel, with the support of the judge.

Plainly, Mrs. Hendrickson should not have been prevented from presenting to her jury legal rulings by the highest court in the land, and by the Sixth Circuit, concerning her speech rights. The prosecution would have been free to challenge the accuracy of Mrs. Hendrickson's citation and excerpting of course, and the Court would give its instructions, including the instruction that in deliberations, the jury was to be controlled exclusively by the Court's instructions in considering the objective lawfulness of the orders involved, and Mrs. Hendrickson's duties thereto.

The jury would then have been free to measure what Mrs. Hendrickson says she relied upon, and her expressions of good faith, in harmony with the instructions of the Court in arriving at its conclusion as to the reasonableness of Mrs. Hendrickson's conclusions, or the sincerity of her reliance.

The doctrine laid down by the Supreme Court in *United States v. Bishop*, 412 U.S. 346 (1973) plainly supports Mrs. Hendrickson's right to express to her jury the decisions of (especially) the Supreme Court upon which she has relied in her conclusions regarding her legal duties to declare her belief in the truth of assertions dictated to her by anyone else, and thus, the good-faith in which she did all that is involved in this case. As the *Bishop* court says:

> "The requirement of an offense committed "willfully" is not met, therefore, if a [defendant] has relied in good faith on a prior decision of this Court. *James v. United States,* 366 U.S. at 366 U. S. 221-222. *Cf. Lambert v. California,* 355 U. S. 225 (1957)."

United States v. Bishop, 412 U.S. 346 (1973)

In all, Mrs. Hendrickson's defense was irremediably and improperly harmed by each of these acts of others, and in the aggregate, immeasurably harmed. Her ability to defend on an entire critical element was taken from her, leaving the government's substantively empty but, unrebutted, impressive-sounding "appeal-to-authority" fallacies the only thing heard by her jury relevant to this element.

By virtue of this contrivance, Mrs. Hendrickson's jury was left with the impression that no court has ever said anything on the basis of which Mrs. Hendrickson could have concluded, in good-faith, that orders which she perceives as dictating or controlling the contents of her declarations of belief are unlawful and impose no valid legal obligation upon her. By virtue of this contrivance, with which the prosecution was able to present rulings it argued were favorable to its case, and Mrs. Hendrickson was unable to present those which contradict that argument, Mrs. Hendrickson's defense was massively and improperly harmed.

In light of this improper behavior of Mrs. Hendrickson's examiner, and of the Court in thwarting her effort to remediate that bad behavior, the Court should VACATE HER CONVICTION and ENTER A JUDGMENT OF ACQUITTAL, or, at the least, ORDER A NEW TRIAL.

3. No evidence was presented in trial validly impeaching Mrs. Hendrickson's good-faith, which is a complete defense to the charges in this case.

Throughout the entire trial, the prosecution offered nothing whatever to show a hint of inconsistency by Mrs. Hendrickson, in either word or deed, which could impeach her claim of good faith in all her actions. The government offered nothing but the fallacy of "appeal to authority". It tried to suggest to the jury that Mrs. Hendrickson must be acting in bad faith *simply because she has seen certain purportedly contrary expressions by various government officials to which she should be presumed to have deferred in the secret recesses of her own conscience*.

However, no one is obliged to be influenced by official pronouncements, or should be presumed to have been so influenced in the absence of concrete evidence of words or deeds contradicting her assertions to the contrary. Further, here the "official pronouncements" are all demonstrated by the evidence to be mere pretenses, and in any event incapable of influencing any reasonable person.

As shown by the evidence presented during trial, the rulings and orders of Judge Edmunds were based on "findings of facts" of which she had no personal knowledge whatever. Not a single hearing, evidentiary or otherwise, was held prior to the issuance of those rulings and orders, and an unsigned, declaredly informal, untested "examination" was actually adopted by Edmunds as a basis for those findings. Likewise, the appellate court opinions vigorously cited by the government during the proceedings were themselves based on no hearings, and

were simply opinions based on the false presumption that Judge Edmunds' "findings" were soundly-based.

The evidence further shows that no agency or executive department official ever took a formal position contrary to Mrs. Hendrickson's. On the contrary, the evidence plainly shows that the IRS and other executive departments have paid deep attention to Mrs. Hendrickson's filings and accepted them as valid. The ONLY behavior by any government actor in regard to Mrs. Hendrickson's filings and the views behind them other than acceptance and agreement was the lawsuit brought before Judge Edmunds, for which Robert Metcalfe could manage nothing better than an unsigned, "informal examination", and in which, as the evidence shows, he lied repeatedly about the content of the book 'Cracking the Code' and the alleged beliefs underlying Mrs. Hendrickson's filings.

Thus, nothing was presented in trial by which a reasonable juror could conclude that anyone might or should have been influenced away from her own views. Instead, the evidence shows the opposite. Mrs. Hendrickson was awash in confirmations that the government itself has no good-faith dispute with her views.

In order to carry its burdens,

> "The prosecution . . . must present *substantial evidence* as to each element of the offense from which a jury could find the accused guilty beyond a reasonable doubt."

Brown v. Davis, 752 F.2d 1142, 1145 (6th Cir. 1985) (internal citation omitted) (emphasis added).

> "Substantial evidence is more than a scintilla. It means such relevant evidence as a reasonable mind might accept to support a conclusion. It is evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred."

United States v. Martin, 375 F.2d 956, 957 (6th Cir. 1967).

Here, there is not even a scintilla of evidence that Mrs. Hendrickson ever contradicted her professed views by word or deed. No reasonable juror could arrive at any doubt whatever concerning Mrs. Hendrickson's good-faith in all that she did. No reasonable juror could conclude that the government had carried its burden of impeaching that good-faith and had proven that any act of Mrs. Hendrickson's was other than a sincere assertion of her rights of speech and conscience consistent with her reasonable perception of all lawful obligations to which she was subject.

A reasonable juror must presume Mrs. Hendrickson's good-faith, with no proof required. Alleged "bad-faith" must be proven by the government in order for Mrs. Hendrickson to validly be found guilty of the charges in this case.

Here, no evidence of bad-faith was presented at all. There was only forceful rhetoric and fallacious "arguments" any reasonable person would recognize as such, especially had the Court not visibly, in the presence of the jury, prevented Mrs. Hendrickson from offering rebuttals, on the basis that they would be contrary to the Court's instructions on the law. This implied that Mrs. Hendrickson's offerings would be incorrect in some fashion, even only insofar as they related to Mrs. Hendrickson's state of mind.

The effort by the government to overcome its complete lack of evidence of bad-faith with forceful rhetoric and fallacies was grossly and improperly enhanced by Mrs. Hendrickson being prevented from presenting to her jury official expressions supporting her view of her actual legal duties relevant to the orders at issue in this case, as detailed in the second section of this Motion and Brief, above. That effort by the government to overcome its complete lack of evidence of bad-faith with forceful rhetoric and fallacies was also grossly and improperly enhanced by the fraud detailed in the first section of this Motion and Brief, which caused Mrs. Hendrickson to appear unreliable and insincere in her testimony, when in fact her testimony was completely true and accurate. That effort by the government to overcome its complete lack of evidence of bad-faith with forceful rhetoric and fallacies was also grossly and improperly enhanced by the constant interruptions of Mrs. Hendrickson's Opening Statement and Closing Argument by prosecutors and the Court itself; the Court's silencing of Mrs. Hendrickson's Opening Statement after only the first couple of minutes; and its refusal of her request to complete that Opening Statement at the beginning of the Defense presentation in trial.

No actual evidence having been offered by the government to support its allegations of bad faith, the government has entirely failed to prove a case against Mrs. Hendrickson. This Court should VACATE HER CONVICTION and ENTER A JUDGMENT OF ACQUITTAL, or, at the least, ORDER A NEW TRIAL.

4. Insufficient evidence was offered in trial upon which a reasonable jury could find Mrs. Hendrickson guilty of violating any comprehensible order with which it is possible to comply.

A. Insufficient evidence was offered in trial upon which a reasonable jury could find Mrs. Hendrickson guilty of violating any order to not file documents based on the claims that only federal, state and local government workers are subject to the income tax or withholding, and that such an order was comprehensible in any event.

The evidence in trial made clear that Mrs. Hendrickson did not violate an order to not file documents with the IRS "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". Mrs. Hendrickson testified that she does not hold such a view, and extensive readings from the book itself established that it says no such thing-- in fact, those readings established that the book debunks such notions. No contrary evidence whatever was offered by the government.

Consequently, no reasonable juror could have found that Mrs. Hendrickson violated any order in this regard.

B. Insufficient evidence was offered in trial upon which a reasonable jury could find Mrs. Hendrickson guilty of violating any order to file amended returns when doing so was not precluded by impossibility, or that an order to do what is legally and morally impossible is comprehensible.

The evidence in trial made clear that as soon as it was legally possible for Mrs. Hendrickson to submit dictated amended returns due to the modifying of that

order by Judge Edmunds in the first hearing ever held before her in the case in June of 2010 so as to permit truthful disclaimers to be made part of the ordered returns, Mrs. Hendrickson did so.

Prior to that modification, the order sought to command perjury from Mrs. Hendrickson and the impossible task of creating valid tax returns which were not sincere. No evidence offered by the government disputed or contradicted these facts. Thus, no reasonable juror could have found that Mrs. Hendrickson criminally violated the order to submit amended returns.

In light of the foregoing, the Court should VACATE MRS. HENDRICKSON'S CONVICTION and ENTER A JUDGMENT OF ACQUITTAL, or, at the least, ORDER A NEW TRIAL

5. No evidence was offered in trial supporting the required "lawfulness" of the orders Mrs. Hendrickson was accused of criminally violating.

Evidence in trial established that no court has ever examined the orders issued by Judge Nancy Edmunds and considered or ruled on their lawfulness. Government prosecutors made one single attempt to suggest the contrary, alluding in cross-examination of Mrs. Hendrickson to a reference to the First Amendment in a Sixth Circuit ruling on a Motion to Vacate Judge Edmunds judgment filed by Mr. and Mrs. Hendrickson in 2010. Mrs. Hendrickson correctly replied that the reference by the circuit panel was not apposite to Judge Edmunds orders, in that it mistakenly presumed that the orders were "discovery" orders (described as

"interrogatories" by Mrs. Hendrickson in testimony) as in the case cited by the panel in connection with its pronouncement: *United States v. Conces*, 507 F.3d 1028 (6th CA 2007). As Mrs. Hendrickson testified, Conces had merely been ordered to produce his mailing lists, and his case bears no relation to orders in which someone is told what to say (or not say) while also being ordered to claim to believe what one is told to say, as is the case with Judge Edmunds' orders (see EXHIBIT 4, Trial Transcript Volume 5, pp. 40 lines 19-25, page 41, lines 1-4, 14-24). The government made no effort to rebut Mrs. Hendrickson's testimony, thus conceding that no court has ever actually considered the lawfulness of Judge Edmunds' orders. No reasonable juror could have concluded that the "lawfulness" of the orders involved in the charge in this case had been proven.

Thus, although Mrs. Hendrickson's jury was instructed, at the government's request, to render no verdict on the lawfulness element of the orders involved in the charge, those orders are undefended by the government as to this element, the element thus stands unproven, and the verdict is inherently unreliable and invalid. Further, the orders involved in the charge are transparently unlawful-- a fact actually acknowledged and reinforced by the government's wish to keep that issue from the jury's consideration. In the event, then, Mrs. Hendrickson's conviction is tainted by the fact that she was convicted of acting in contempt of *unlawful* orders. This fact provides a separate and distinct ground for vacating the judgment.

> "[I]t is obvious that if the order requires an irrevocable and permanent surrender of a constitutional right, it cannot be enforced by the contempt power. For example, a witness cannot be punished for contempt of court for refusing a court order to testify if the underlying order violates Fifth, Fourth or perhaps First Amendment rights. Malloy v. Hogan, 1964, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653; Silverthorne Lumber Co. v. United States, 1920, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319; Gelbard v. United States, 1972, 408 U.S. 41, 92 S.Ct. 2357, 33 L.Ed.2d 179. In each of these cases the unconstitutionality of the court's order served as a valid defense to a charge of contempt. The rationale of these cases is that once the witness has complied with an order to testify he cannot thereafter retrieve the information involuntarily revealed, even if it subsequently develops that compelling the testimony violated constitutional rights. In such a predicament, the damage is irreparable.17 No remedies are available which can effectively cure the constitutional deprivation after the order has been unwillingly obeyed."

United States v. Dickinson, 465 F.2d 496, 512 (5th Cir. 1972).

The *Dickinson* court discussed the case of *Donovan v. City of Dallas*, 1964, 377 U.S. 408, 84 S.Ct. 1579, 12 L.Ed.2d 409, a contempt case that was appealed to the U.S. Supreme Court. The Supreme Court held that the underlying order was unlawful and remanded. "On remand the Texas Court of Civil Appeals determined that the judgments of contempt were inappropriate in view of the Supreme Court pronouncement that the restraining orders were unlawful. Accordingly, the contempt convictions were vacated." *Dickinson, supra*, at 514. Likewise, the Tenth Circuit Court of Appeals vacated and remanded a contempt conviction for reconsideration in view of the fact that "the District Court acted on the assumption that its order was valid. We have held to the contrary with the result that Dunn is

subjected to punishment for disobedience of an invalid order." *Dunn v. United States*, 388 F.2d 511, 513 (10 Cir., 1968).

Discussing *Dunn,* the Fifth Circuit Court of Appeals stated:

> Undeniably, there is no absolute prohibition to such a result ensuing but where the [statutory] premise (lawful order disobeyed) is erroneous, the conclusion (conduct contemptuous) is tainted.

Dickinson, supra, at 514.

Mrs. Hendrickson urges the Court to find that, in fact, there IS an absolute prohibition to such a result in our criminal justice system, precisely because there is no statute contemplating or permitting a criminal conviction for violation of an unlawful order. (See Doreen Hendrickson's Motion to Dismiss, Dkt. #64). But even if such a thing were possible, the "taint" referred to by the Fifth Circuit appears to be sufficient to vacate a conviction in both the Fifth and Tenth Circuits and in the prudence of the U.S. Supreme Court. This Court should find likewise, and VACATE MRS. HENDRICKSON'S CONVICTION and ENTER A JUDGMENT OF ACQUITTAL, or, at the least, ORDER A NEW TRIAL in which the "lawfulness" element of the offense charged is properly put before the jury.

CONCLUSION

The outcome of trial in this case is irremediably tainted. The fraud upon the Court by the deliberate, uncorrected misrepresentations of United States attorney Melissa Siskind and the effect thereof, render that outcome unjust and inherently

invalid. The improper behavior of Mrs. Hendrickson's Court-designated questioner and its additional prejudicial effect on the jury's perception of Mrs. Hendrickson's good faith also fatally taints the outcome.

Further, the complete lack of evidence needed to carry the government's burdens as to all elements of the charged offense also render the verdict unreliable and unjust, and manifestly not the finding of a reasonable, properly-instructed jury. The orders involved in this charge were incomprehensible, being in the one case based on a fiction falsely ascribed to 'Cracking the Code' and to Mrs. Hendrickson's views of the income tax, and in the other impossible to comply with legally and morally until modified by the issuing court itself in recognition of these flaws, at which time the modified order *was* complied with. Except as the one became modified, both orders were manifestly unlawful, as well. In light of all the foregoing, this Court should VACATE MRS. HENDRICKSON'S CONVICTION and ENTER A JUDGMENT OF ACQUITTAL, or, at the least, ORDER A NEW TRIAL

Respectfully Submitted,

____

Doreen Hendrickson, *in propria persona*
August 6, 2014

Attached:

EXHIBIT 1: Cover letter of Revenue Agent Heidi Beukema initiating each of various DOJ actions the dismissals of which were presented by Doreen Hendrickson in testimony and as Defense Exhibit 562

EXHIBIT 2: Memorandum of Law in Opposition to Petition to Quash Summons in case no. 5:04-MC-07023-MMC-JCS presented by Melissa Siskind as Government Exhibit 48 in an attempt to falsely impeach Doreen Hendrickson's testimony concerning Defense Exhibit 562

EXHIBIT 3: Stipulations of Dismissal/Withdrawal requested by the DOJ in various actions, presented in trial as Defense Exhibit 562

EXHIBIT 4: Pages 15, 16, 17, 18, 40 and 41 from Trial Transcript Volume 5

EXHIBIT 5: Page 65 from Trial Transcript Volume 4

DECLARATION OF DOREEN HENDRICKSON