CASE NO. 16-259

In the Supreme Court of the United States

Doreen M. Hendrickson, Petitioner

v.

United States, Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner Doreen M. Hendrickson
Proceeding *Pro Se*
232 Oriole Rd.
Commerce Twp. Michigan 48382

QUESTIONS FOR REVIEW

1. Can orders of a court commanding false speech—and particularly false testimonial speech—resistance to which has prompted a prosecution for alleged criminal contempt of court, be shielded from appellate Constitutional analysis and determination by application of the "collateral bar" doctrine?

2. Can a jury instruction removing from the jurors' consideration and determination the statutory element of "lawful," and explicitly instructing the jury that the unlawfulness or unconstitutionality of a court order is not a defense to a charge of criminal contempt, be properly shielded from appellate review by application of the "collateral bar" doctrine?

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OPINIONS BELOW

The opinion of the Sixth Circuit Court of Appeals is designated as Case No. 15-1446 (CA6) (hereinafter, "Decision"). The Decision issued, and the order of the court denying the petition made for *en banc* re-hearing, are reproduced in full in the Appendix to this Petition.

STATEMENT OF JURISDICTION

This Court has jurisdiction under Article III of the Constitution of the United States of America as the Court of appellate jurisdiction of all controversies to which the United States is a party. Judgment for review was entered by a panel for the Sixth Circuit Court of Appeals on March 11, 2016. Petition for *en banc* re-hearing was denied on May 23, 2016.

PROVISIONS OF LAW INVOLVED IN THIS CASE

The First, Fifth and Sixth Amendments to the United States Constitution; and 18 U.S.C. § 401(3).

STATEMENT OF THE CASE

This case presents a unique set of facts underlying a widely-observed unprecedented assault on the rule of law in America. The circuit court ruling of which review is sought is in sharp conflict with this Court's well-settled jurisprudence, and is bringing the federal judiciary into disrepute across the country.

A federal district court judge has ordered an American woman to violate her conscience and waive her right to control the content of her own speech. An appellate court has ruled that these orders can be shielded from Constitutional challenge or analysis.

The orders underlying this case do not simply command Doreen Hendrickson to declare what she believes to be true. Rather, the orders in this case *dictate* to Doreen Hendrickson *what* she must say she believes, over her own sworn signatures, and with no disclaimer permitted.

It is unlikely that any such orders have ever been made by any federal court in American history. Certainly no such orders have ever been upheld by a federal appellate court. On the contrary, all United States courts throughout the history of this great country are uniform and unswerving in their recognition that any such infringement of speech rights is unconstitutional.

Until now, that is. In 2007, at the request of an executive department agency suing Doreen Hendrickson, a district court ordered her to execute sworn statements of agreement with her government adversary's allegations of fact, even though she does not believe them to be true, and had already testified to that effect. In the Spring of 2016, the Sixth Circuit allowed these unconstitutional orders to stand undisturbed, and also allowed to stand undisturbed the punishment of Doreen Hendrickson for exercising her rights and resisting these illegal orders.

The Court of Appeals did not uphold these unprecedented orders and the punishment of Mrs. Hendrickson by finding the orders Constitutional, an obviously impossible proposition. Instead, the Court of Appeals avoided that problem by asserting that "collateral bar" doctrine allowed it to ignore the Constitutional issues with these speech and due process violating orders.

The Court of Appeals went further, affirming the validity of a government-requested jury instruction that the unlawfulness or unconstitutionality of these orders is not a defense to the charge of criminal contempt for resistance, on the proposition that to allow the jury to make a determination on the question of the lawfulness of these manifestly unlawful orders would conflict with its application of "collateral bar" doctrine to shield the orders themselves from review.

In all, the Decision of the court below is an unprecedented assault on the rule of law. Its holdings are in 180º conflict with the well-settled jurisprudence on the construction of the First, Fifth and Sixth Amendments, and on the doctrine of "collateral bar," by this Court and all the circuit courts of appeal. Allowing this decision to stand would not only create a dangerous and dissonant precedent within the Sixth Circuit, but would undermine the security of all Americans standing on their Constitutionally-secured rights in any court.

Further, Doreen Hendrickson's case is being widely observed across America. See, for instance,

http://wnd.com/2016/02/woman-jailed-for-refusing-federal-order-to-commit-perjury/ and http://wnd.com/2016/05/rule-of-law-takes-hit-in-courts-order-to-commit-perjury/.

The assaults on the rule of law committed by the federal courts which have been involved in this case so far are significantly and adversely impacting the view of many Americans of the integrity and legitimacy of the judiciary. The manifest injustice and Constitutional violations involved in this case translate into much greater and more widespread harm than just what is being suffered by one innocent and extraordinarily brave and virtuous woman.

FACTS AND PROCEDURAL HISTORY

In 2007, a federal district court, without ever conducting so much as a single hearing or ever having laid eyes on anyone involved in the case (A-56),[1] summarily commanded Doreen Hendrickson to falsely declare under oath that she believes, and adopts as her own testimony, statements dictated to her by the court (A-1). The District Court, at the request of executive branch officials who were then suing Mrs. Hendrickson, commanded Mrs. Hendrickson to declare agreement with fact allegations of unexamined third parties that the government relied upon as the basis for its financial claims against her.

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[1] All references to the Appendix are designated "A-__."

The content Mrs. Hendrickson was commanded to produce and falsely swear to be her own words is directly contradictory of her own freely- and repeatedly-made sworn testimony concerning the same matters on affidavits executed long before the government brought its suit, and on affidavits and under oath in live testimony in court since the issuing of these orders (*e.g.* A-44). At no time has any evidence or testimony ever been produced which even simply asserts that Mrs. Hendrickson believes what she has been ordered to say, or that she does not believe her freely-made, contrary testimony.

Mrs. Hendrickson was also ordered to never make future testimonial declarations contrary to what the executive branch would want her to say in circumstances similar to those involved in the ongoing suit (A-1).[2] That is, Mrs. Hendrickson was ordered in perpetuity to adopt as her own testimony, to never dispute, and to always declare under oath that she believes to be true, future unproven

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[2] This second order was constructed as an injunction against filing tax returns based on the notion falsely ascribed to the book *Cracking the Code – The Fascinating Truth About Taxation In America* by Peter Hendrickson that only government workers are subject to the income tax by a judge who had never read the book (A-43). However, as demonstrated in the indictment of Mrs. Hendrickson which included an allegation of violation of this injunction for filing a return which simply disagreed with a W-2, the second order amounts to an injunction against any filing the government dislikes.

allegations by unknown third parties which, if left unrebutted, would result in a financial benefit to the government at Mrs. Hendrickson's expense, even if she believes those allegations to be erroneous.

Standing on her rights, secured by the First and Fifth Amendments to the United States Constitution, to freedom of speech and conscience and to due process of law before government takings, Mrs. Hendrickson refused to produce and sign the false statements, other than with a disclaimer enunciating their coerced nature and that the words over her forced signatures were not her words, nor believed by her to be true.

In June of 2013, Mrs. Hendrickson was arrested and charged with a single count of criminal contempt of court by the same executive branch agency that had asked for her compulsory agreement with its fact allegations against her in its suit. The count alleged Mrs. Hendrickson to have committed a crime by refusing to produce and sign the false statements without disclaimers, and for having signed a sworn statement subsequent to the issuing of the district court orders on which she declares beliefs the government does not wish her to declare.

Mrs. Hendrickson faced trial twice, in October of 2013 and again in July of 2014. The first trial ended in a hung jury. At the end of the second, with the jury instructed—at the government's request and over Mrs. Hendrickson's objection—that the unlawfulness or unconstitutionality of the orders she was accused of criminally disobeying was not a

defense to the charge, Mrs. Hendrickson was found guilty.

Mrs. Hendrickson timely appealed her conviction. The first two issues raised on appeal were challenges to the Constitutionality of the orders seizing control of Mrs. Hendrickson's speech and to the jury instruction which removed the statutorily-specified element of "lawful" from the jurors' consideration, effectively directing a verdict on that element while simultaneously prejudicing the jury against Mrs. Hendrickson's defense argument that her own view of the orders as unlawful negated the allegation in the charge that she acted with criminal "willfulness" in refusing to let her speech be controlled.

On March 11, 2016, the three-judge panel of the Sixth Circuit Court of Appeals denied Mrs. Hendrickson's appeal on all issues. (A-2). The Decision failed to address either of the issues Mrs. Hendrickson had raised regarding the "lawfulness" element of the charged offense: (1) the challenge to the lawfulness of the underlying orders, and (2) the challenge to the court's instruction removing from the jury any consideration of lawfulness. The panel invoked the doctrine of "collateral bar" as its rationale for refusal as to both issues.

On May 23, 2016, the Court of Appeals denied Mrs. Hendrickson's Petition for Re-Hearing *En Banc* without comment.

This Petition follows.

REASONS WHY THIS PETITION SHOULD BE GRANTED

I. THE APPELLATE DECISION CONFLICTS WITH THIS COURT'S WELL-SETTLED DOCTRINES ON SPEECH RIGHTS AND COLLATERAL BAR

A. The orders Doreen Hendrickson has been charged with criminally resisting are transparently invalid speech rights infringements

Doreen Hendrickson believes the income tax is an indirect excise on the conduct of gainful privileged activities, and both Constitutional and beneficial. See Affidavit of Doreen Hendrickson, filed in District Court with her first Motion to Dismiss the charge against her in June, 2013 (A-44). But Mrs. Hendrickson also believes that the tax has been systematically misapplied to non-privileged earnings since the early 1940s due to payers and recipients of non-privileged gains having adopted, for whatever reason, a practice of incorrectly declaring those payments to be from privileged activities, by reporting them in contexts and manners meant for reporting privileged gains.

Mrs. Hendrickson believes the misapplication of the tax is deeply harmful to America's rule of law, and has led to widespread corruption in our public institutions. She believes that each time any American improperly reports non-privileged earnings to be subject to the tax, more damage is done. And she believes that her earnings as a private tutor and

a movie extra, and her husband's from work at a private-sector property management firm, are not privileged and do not constitute the "wages" or "self-employment income" defined and specified by statute as required to be reported as such on tax returns.

Mrs. Hendrickson has testified to her adherence to these beliefs many times, both on sworn statements and in live testimony in court. She has demonstrated the complete and unwavering sincerity of her beliefs in many ways, in the face of what has now been years of daunting intimidation for her refusal to express contrary beliefs, as the government has demanded of her with the promise that upon her surrender to the government's will, and her declaration of its demanded words, the persecution would stop.

In fidelity to her beliefs and her responsibilities as a civic and moral actor, Mrs. Hendrickson had filed tax returns concerning 2002 and 2003 on which she and her husband reported only those earnings that they believe qualified as "income."

In 2006 the government asked a court to order Mrs. Hendrickson to replace her freely-made, sworn returns with new ones on which she would be compelled to (falsely) swear that she DOES believe her family's earnings are tax-relevant "income." That is, Mrs. Hendrickson was ordered to falsely declare that she believes those earnings to be privileged, or believes that the tax is not an excise of limited application. The order also commands Mrs. Hendrickson to effectively declare that her original

and freely-made returns were materially false. (A-1).

Mrs. Hendrickson was also ordered not to file returns based on what was (falsely) said to be argued in the book *Cracking the Code- The Fascinating Truth About Taxation In America* that only federal, state and local government workers are subject to the tax-- something she had never done and never would do, both because this claim isn't made in the book,[3] and because Mrs. Hendrickson doesn't believe it to be true in any event. See Affidavit of Doreen Hendrickson. (A-44). Effectively, this second order threatens Mrs. Hendrickson with punishment if she files returns failing to say what the government wished her to say.

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

[3] The Hendricksons, neither of whom are government workers, do report income on their freely-made returns, making obvious that this ridiculous notion is not the basis for their filings. Further, when subpoenaed to testify in Mrs. Hendrickson's second trial, the order-issuing judge admitted never having read the book about the contents of which she nonetheless, and without ever so much as a single hearing, made "findings". See the statement of stand-by counsel Andrew Wise regarding this admission at A-43. The trial court judge did not allow this issue to be presented to the jury.

government political and fiscal policy.[4] The orders are plainly violations of the First Amendment of a sort very explicitly identified as such by this Court in decision after decision, and resoundingly summarized by the Court in a decision rendered the very same month in which Doreen Hendrickson was arrested and charged with a crime for standing on her First Amendment-secured rights in 2013:

> 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, 63 S. Ct. 1178, 87

[4] These orders have nothing whatever to do with any alleged tax liabilities. If taxes are actually owed, the government axiomatically needs no tax-return agreement to that effect by Mrs. Hendrickson. Further, if the government wishes to assert that the Hendricksons' returns were false and their unreported earnings are taxable, then it is mandated to create its own sworn returns to that effect, and such returns are then *prima facie* good for all legal purposes. 26 U.S.C. § 6020(b). The record is clear that the government has made no such returns. Further still, Treasury Department Certificates of Assessment and IRS Master File transcripts indicate that the Hendricksons have never had any tax liability for the years in regard to which they were ordered to say otherwise. See Appeal Reply Brief, Doc. 34-1.

> L. Ed. 1628 (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.**"). . . .
>
> [W]e cannot improve upon what Justice Jackson wrote for the Court 70 years ago: "If there is any fixed star in our constitutional constellation, it is that **no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.**" *Barnette*, 319 U. S., at 642."
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> *Agency for Int'l Development v. Alliance for Open Society Int'l, Inc.*, 133 S. Ct. 2321, 2327 and 2332 (2013) (emphasis added.)

Plainly, the orders Mrs. Hendrickson has been charged with criminally resisting are held by this Court to be unconstitutional. As such, they are transparently invalid.

B. The orders Doreen Hendrickson has been charged with criminally resisting are irreparably injurious

Both this Court and the Sixth Circuit Court of Appeals have consistently held that infringements on First Amendment rights are, by their very nature, irreparably injurious. As the Sixth Circuit has put it, in an exhaustively-supported decision 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 of Appeals:

> [E]ven minimal infringement upon First Amendment values constitutes **irreparable injury**. . . .

Newsom v. Norris, 888 F.2d 371, 378-79 (6th Cir. 1989) (emphasis added)

The *Newsom* court goes on, pointing out that not only are speech rights infringements such as those Mrs. Hendrickson resisted irreparably injurious, but punishing Mrs. Hendrickson for exercising her rights and resisting the infringing orders is particularly proscribed by the First Amendment:

> "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."*

Ibid. (emphasis added)

The First Amendment offers no exception to this straightforward, manifestly-correct position, even through the work-around of infringement by way of a court order, and then retaliation by way of ostensible punishment for "contempt".

C. The District Court lacked jurisdiction to issue orders taking control of Mrs. Hendrickson's speech

As is observed by the Sixth Circuit in *Hudson v. Coleman* (6th Cir. 2003) citing to multiple rulings of this Court, there can be no judicial jurisdiction over matters not authorized by the Constitution (or by statutes in harmony with the Constitution):

> [I]t is well established that federal courts are courts of limited jurisdiction, possessing only that power authorized by the Constitution and statute, see *Willy v. Coastal Corp.*, 503 U.S. 131, 112 S.Ct. 1076, 117 L.Ed.2d 280 (1992); *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Ed.2d 501

> (1986), which is not to be expanded by judicial decree, *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 71 S.Ct. 534, 95 L.Ed. 702 (1951).

Hudson v. Coleman, 347 F.3d 138, 141 (6th Cir. 2003)

Plainly, the Constitution not only does not authorize infringements on First Amendment rights, it prohibits them. Put another way, the First Amendment expressly withholds jurisdiction over the content of anyone's speech from "[any] official, high or petty" as this Court put it so well in *West Virginia Bd. of Ed. v. Barnette*.

Further, the orders Mrs. Hendrickson was charged with criminally resisting command her to commit perjury, under the terms of both federal law at 18 U.S.C. § 1621,[5] and the laws of Michigan, where Mrs. Hendrickson resides, at MCL 750.423.[6]

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[5] 18 U.S. Code § 1621 - Perjury generally

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

[6] Michigan Compiled Laws ("MCL"), Section 750.423 Perjury; penalty; "record" and "signed" defined.

> (1) Any person authorized by a statute of this state to take an oath, or any person of whom an

Both criminal statutes are implicated by the orders made to Mrs. Hendrickson.[7]

Just as no court can have jurisdiction over the content of anyone's speech, no court can have jurisdiction to command the commission of a crime, as there can be no lawful statute by which such jurisdiction can be found.

Plainly, then, the orders Mrs. Hendrickson was charged with criminally resisting were issued without jurisdiction.

D. Under this Court's precedents, the transparently invalid, irreparably injurious and jurisdictionally infirm orders underlying the conviction cannot be shielded from challenge and review by "collateral bar" doctrine

Mrs. Hendrickson stands convicted of resisting

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oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury, a felony punishable by imprisonment for not more than 15 years.

[7] Compelling Mrs. Hendrickson to amend her federal returns also effectively compels her to amend her Michigan returns; and "willfulness," though nuanced under the circumstances, will be found in the fact that her decision to commit the perjury rather than face the risks of a prosecution for contempt would be a deliberate, and thus, willful act.

transparently invalid orders which trample on her Constitutionally-guaranteed rights, do her irreparable injury, were issued by a court lacking subject-matter jurisdiction, and command her to perjure herself. Nonetheless, the Sixth Circuit affirmed her conviction for the supposed crime of resisting these orders.

In affirming Mrs. Hendrickson's conviction, the Court of Appeals incorrectly invokes the "collateral bar" doctrine. This is done even though the Decision itself acknowledges the limitations on collateral bar relevant to this appeal. The Decision first acknowledges the "transparent invalidity" exception and the jurisdictional exception:

> [W]e have found that a defendant in a criminal contempt proceeding may [] contest the validity of the underlying court order, [] on the grounds that the issuing court lacked jurisdiction or its order was "transparently invalid or had only a frivolous pretense to validity." (*Dever v. Kelly*, 348 F. App'x 107, 112 (6th Cir. 2009) (quoting *Walker [v. City of Birmingham*, 388 U.S. 307, 314 (1967)] at 315).

Decision, A-8, A-9.

The Decision also acknowledges the exception for orders inflicting irreparable injury:

> The foundational case for this exception, *Maness v. Meyers*, 419 U.S. 449, 458–61 (1975), described instances when a trial court

> orders a witness to give testimony under circumstances that, in the witness's estimation, violate her Fifth Amendment right against self-incrimination. Because an appellate court would not be able to "unring the bell" and completely cure the error, the Court held that the witness may refuse to comply with the trial court's order and seek appellate review. Id. at 460."

Decision, A-10.

Despite its recognition of these exceptions to the "collateral bar" doctrine, and arguably to avoid the discussion of the Constitutional infirmities of the orders at issue in this case, from the very beginning of the Decision ("As a threshold matter, the collateral bar rule prevents Hendrickson from challenging the constitutionality of the underlying order in the course of her criminal contempt proceeding." A-8) to the very end ("Under these circumstances, the collateral bar rule applies, and the constitutionality of the underlying order is not at issue in this case." A-11), the Decision invokes "collateral bar." With due respect to the Court of Appeals, in so doing, it misinterprets, or fails to address, its own precedents, as well as those of this Court.

Perhaps in recognition of the shortcomings of its analysis as discussed above, the Decision eventually invokes an alternative rationale for its failure to reverse Mrs. Hendrickson's conviction thereby essentially affirming the underlying orders. Specifically, the Decision suggests that the Sixth

Circuit had previously reviewed and upheld these orders. (A-9, A-10). But this is not supported by the record. The earlier ruling referenced in the Decision, *United States v. Hendrickson*, No. 07-1510 (6th Cir. 2008), does not even contain the words "Constitution" or "First Amendment".

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

This earlier appellate outcome was hardly a binding review of the validity of these orders, as the Decision suggests.[8] The earlier ruling simply

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[8] Similarly, the subsequent denial of the Hendricksons' petition for certiorari by this Court, to which the Decision also refers, was not binding: "[I]t is elementary, of course, that a denial of a petition for certiorari decides nothing." *Hughes Tool Co. v. Trans World Airlines, Inc.* 409 U.S. 363, 411 (1973); see *United States et al. v. Carver et al.*, 260 U.S. 482, 490 (1923) ("The denial of a writ of certiorari imports

affirmed the District Court's grant of summary judgment and did not address the Constitutional infirmities of prosecuting Mrs. Hendrickson for contempt because she refused to misstate under oath that which she sincerely believes. Through invocation of the "collateral bar" doctrine, the 2016 Decision has effectively avoided the same Constitutional infirmities not addressed in the earlier decision, and has elevated "collateral bar" to a position above the Constitution itself—clearly a dangerous conflict with well-settled law and a matter of overwhelming significance.

II. THE APPELLATE DECISION ON THE "LAWFULNESS" JURY INSTRUCTION CONFLICTS WITH THIS COURT'S WELL-SETTLED DOCTRINES ON DIRECTED VERDICTS, PROSECUTORIAL BURDENS, AND "COLLATERAL BAR"

A. The government was required to prove that the orders Mrs. Hendrickson was charged with criminally resisting are lawful

In addition to incorrectly deciding the Constitutional issues discussed above, the Decision incorrectly decides a second important issue. Specifically, it sanctioned the District Court's decision to withhold an essential element of the crime from the jury's consideration and thereby lessened the government's burden of proof.

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no expression of opinion upon the merits of the case, as the bar has been told many times.").

At both of Mrs. Hendrickson's trials[9] 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." (A-62). Mrs. Hendrickson strenuously objected to this instruction.

The Decision excuses the unprecedented removal of the "lawful" element from trial by suggesting that letting the jury consider the lawfulness of the orders would compromise the "collateral bar" doctrine:

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

Decision, A-13.

In essence, the Decision holds that "collateral bar" should shield all judicial orders from all challenges, and at any cost—even the sacrifice of a defendant's right to have her jury determine whether

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[9] Mrs. Hendrickson was tried twice. The first trial, at which she read to the jury Sixth Circuit and Supreme Court rulings on First Amendment rights, ended with a hung jury. The second, where her stand-by counsel intentionally, and admittedly, usurped control of the questions she had prepared for herself and prevented her from reading those cases, resulted in conviction.

the government has successfully proven that she has actually committed the crime charged.

The statute under which Mrs. Hendrickson was charged expressly states, "…disobedience or resistance to its **lawful** writ, process, order, rule, decree, or command," 18 U.S.C. § 401(3) (emphasis added). By definition, the lawfulness of the orders in question is an element of a contempt charge, in the most classic and concrete sense of that expression.

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

The first of those good reasons is this: no one can be duty-bound to obey unlawful orders. Axiomatically, unlawful orders have no force of law, and it cannot be a crime to disobey them. Thus, the lawfulness of the orders is the most basic element of a charge of criminal contempt.

That first reason leads to the second of the good reasons Congress expressly includes "lawful" as an element of criminal contempt. The Constitution requires trial by jury because courts can, at times, be used as tools of the government to issue unlawful orders in furtherance of government purposes. The jury system oversees and polices this process.

Mrs. Hendrickson's is a perfect case study of why the Framers provided for juries, and why Congress

expressly specifies "lawful" in the criminal contempt statute. The District Court orders alleged to have been violated in this case and which were requested by the executive department are illegal. Every court dealing with these orders has struggled to shield them from review. One could argue that the jury is there, and "lawful" is specified, to protect Mrs. Hendrickson and any other defendant from this sort of institutional abuse.

And after all, nothing would be simpler than proving that the orders of the District Court dictating the content of Mrs. Hendrickson's speech are lawful, if they were. All that would be needed is a statute—or even a single ruling of a court of competent jurisdiction—declaring that a court of the United States has this authority. But there is no such authority. Instead, all authority stands squarely against these orders.

B. The appellate panel's refusal to disturb the conviction on the issue of the verdict-directing instruction by resort to "collateral bar" stands the rule of law on its head

The appellate Decision invokes "collateral bar" as its justification for leaving Mrs. Hendrickson's conviction undisturbed despite the unprecedented instruction removing the statutory element of "lawful" from the jury's consideration and determination. This rationale is an elevation of "collateral bar" above Congress, above the jury and above even the Constitution. This is a logical and legal fallacy and embraced for no good purpose, since

removing "lawfulness" from a jury's consideration essentially shields orders which cannot be proven lawful to the satisfaction of twelve (12) citizens.

Struggling to shore up its "collateral bar trumps the Sixth Amendment" argument, the Decision states that "lawful" isn't even really an element of 18 U.S.C. § 401(3) anyway:

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

Decision, A-13.

The Decision then cites to a handful of cases supposedly supporting this one-element-short description of criminal contempt. But in fact, none of these cases actually make *holdings* saying what the Decision suggests that they do. Instead, each simply "states," as the Decision puts it, truncated lists of the elements of contempt, suited to the particular context of each case in which they are made.

None of the cited cases say "lawfulness is not an element", or "lawfulness need not be proven to a jury in a trial for contempt" or anything of the sort. Instead, the Decision simply gathers a few cases in which the issue of lawfulness never arose (or was taken as so fundamental and obvious as to need no mention) and so went unstated.

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

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

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

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

In re Smothers, 322 F3d 438, 442 (6th Cir. 2003);

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

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

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

> (4) The government must prove every element of the crime charged beyond a reasonable doubt.

Sixth Circuit Pattern Instruction 1.03.

> The Sixth Circuit has approved the entire 1.03 instruction as correct.

United States v. Hynes, 467 F.3d 951, 957 (6th Cir. 2006).

Saying otherwise, as the Decision in Mrs. Hendrickson's appeal does, is in direct conflict with this Court's well-settled precedents, those of the Sixth Circuit, Congress, and the Sixth Amendment itself.

CONCLUSION

The appellate decision in Doreen's Hendrickson's case, originally issued as "unpublished," has since been "published" on the government's motion. The decision enshrines as judicial precedent the supposed propriety of a court issuing and enforcing government-requested orders that accomplish government purposes which are expressly forbidden by the Constitution.

The Decision holds that any American can be made to say whatever the government wishes her to say, and kept from saying whatever the government would rather she not. Should he or she fail to lie as directed, or speak a truth the government finds inconvenient, he or she will be punished, and will be unable to resort to the courts for protection from that injustice or for vindication of the rights—even enumerated rights—trampled thereby.

This Decision says to the government (and to the American people): "The First Amendment is a dead letter. Indeed, any part of the Constitution is a dead letter. Find one corrupt judge—or even just a lazy, distracted, confusable or timid judge—who will issue the unlawful orders you want, and the rest of the judiciary will fall in line and back your play."

How will Americans maintain any respect whatever for the outcome of any judicial process if this decision is allowed to stand? Judicial proceedings are opaque to those not involved in any given case. Under the precedent set by the appellate Decision in Doreen Hendrickson's case, all rational observers will be forced to suspect that any judicial outcome favoring the government has been achieved through crimes like those committed against Mrs. Hendrickson. The erosion of public confidence in the judiciary will be as unprecedented as the Decision itself.

Will gag orders to shield illegal injunctions from public knowledge be next? The treatment of Mrs. Hendrickson invites disturbing speculation. Mrs.

Hendrickson struggled to comply with the illegal orders, creating the false returns demanded of her but with disclaimers expressing the truth that they were coerced and not composed of her own words or reflective of her true beliefs. The response of the issuing court was to tell her she could do no such thing, and must instead facilitate the corrupt pretense that the false statements were her own.

William O. Douglas, Justice of this Honorable Court, warned America in a 1976 letter to the Young Lawyers of the Washington State Bar Association: "As nightfall does not come at once, neither does oppression. In both instances, there is a twilight where everything remains seemingly unchanged, and it is in such twilight that we must be aware of change in the air—however slight—lest we become unwitting victims of darkness."[10]

The appellate decision in Doreen Hendrickson's case is a "twilight" decision. This Court should reset the clock.

/s/ Doreen M. Hendrickson
Doreen M. Hendrickson, Petitioner *pro se*

[10] M. Vrofsky, ed., *The Douglas Letters: Selections from the Private Papers of Justice William O. Douglas* (Bethesda, Md.: Adler and Adler, (1987).

APPENDIX

ORDERS MADE TO DOREEN HENDRICKSON

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, Personnnel 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

Ruling of the 6th Circuit Court of Appeals

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 16a0103p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
v.	)	No. 15-1446
DOREEN HENDRICKSON,	)	
Defendant-Appellant.	)	

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 2:13-cr-20371--Victoria A. Roberts, District Judge.

Argued: January 14, 2016

Decided and Filed: March 11, 2016*

Before: SILER, COOK, and KETHLEDGE, Circuit Judges.

COUNSEL

ARGUED: Mark E. Cedrone, CEDRONE & MANCANO, LLC, Philadelphia, Pennsylvania, for Appellant. Mark S. Determan, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. **ON BRIEF:** Mark E. Cedrone, CEDRONE & MANCANO, LLC, Philadelphia, Pennsylvania, for Appellant. Mark S. Determan, Frank P. Cihlar, Gregory Victor Davis, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

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*This decision was originally issued as an "unpublished decision" filed on March 11, 2016. The court has now designated the opinion as one recommended for full-text publication.

OPINION

SILER, Circuit Judge. Following a guilty verdict and the imposition of eighteen months of confinement and one year of supervised release, Doreen Hendrickson ("Hendrickson") appeals her conviction for criminal contempt under 18 U.S.C. § 401(3) and the terms of her sentence. For the reasons stated below, we **AFFIRM**.

FACTUAL AND PROCEDURAL BACKGROUND

In 2006, the United States brought a civil suit against Hendrickson and her husband, Peter Hendrickson, to collect tax refunds distributed in error as a result of false statements the Hendricksons made in their 2002 and 2003 federal tax returns and to enjoin the Hendricksons from filing further false materials with the Internal Revenue Service ("IRS"). In 2007, the district court granted the Government's summary judgment motion and entered an order that "prohibited [the Hendricksons] from filing any tax return, amended return, form ... or other writing or paper with the IRS that is based on the false and frivolous claims set forth in Cracking the Code"—a book authored by Hendrickson's husband—"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." The court's order also required the Hendricksons to file, within 30 days, "amended U.S. Individual Income Tax Returns for the taxable years ending on December 31, 2002[,] and December 31, 2003," including as gross income "the amounts that ... Peter Hendrickson received from his former employer, Personnel Management, Inc., during 2002 and 2003, as well [as] the amounts that .. . Doreen Hendrickson received from Una E. Dworkin during 2002 and 2003."

In 2009, Hendrickson filed a return for the 2008 tax year stating that she did not earn any income, that five dollars had been withheld from her under a Form W-2, and that she was therefore entitled to a five dollar refund. Records from Monarch Consulting indicated that the

company paid Hendrickson $59.20 during 2008, but she attached to her return a Form 4852 claiming that she received no wages, tips, or other compensation from the company.

In 2010, the Government moved the district court to hold the Hendricksons in contempt for failing to file their amended 2002 and 2003 returns. After a hearing, the court held the Hendricksons in contempt and imposed a $100 per day conditional fine on each of them until they filed the amended returns. The Hendricksons subsequently filed returns for the tax years at issue, but the forms included the words "UNDER DURESS" written over their signatures. The court again ordered the Hendricksons to comply, clarifying that it now "ORDER[ED] Defendants to file valid tax returns, in usable form, that in no way undermine the verity of the returns, by January 7, 2011."

In January 2011, Hendrickson filed individual tax returns for 2002 and 2003. These forms referenced an affidavit Hendrickson filed in the District Court stating that she believed the original returns to be "true, correct and complete," that the amended returns "ha[d] no verity," and that she

submitted the amended returns "under extreme protest." She also stated that she "disclaimed] these coerced amended returns because they [were] wholly false and fraudulent." The IRS rejected the amended returns because of the contents of Hendrickson's affidavit and because she changed her filing status from "married filing jointly" to "married filing separately" after the returns' due dates.

Hendrickson was then indicted on one count of felony criminal contempt in violation of 18 U.S.C. § 401(3). The indictment contained two specifications: that Hendrickson violated the order in the civil case by (1) filing a 2008 tax return that "falsely reported that she earned zero wages" that year and (2) failing to file amended returns for 2002 and 2003. The district court granted Hendrickson's motion to represent herself with the assistance of standby counsel. After pretrial proceedings and a mistrial due to the jury's failure to reach a unanimous verdict, a second trial was held, and the jury found Hendrickson guilty of criminal contempt.

Hendrickson obtained counsel for the sentencing phase of the proceedings. At the hearing, the district court sentenced her to eighteen months' imprisonment and one year of supervised release.

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DISCUSSION

I. Constitutionality of the Underlying Order

Hendrickson argues that the court order she was found to have contemptuously disobeyed violated her First Amendment rights, and her conviction should therefore be vacated. Alternatively, she claims that because the lawfulness of the underlying order is an element of the crime of contempt, the district court erred by instructing the jury that the unlawfulness or unconstitutionality of the order was not a defense to the contempt charge. Both of these arguments fail.

A. Standard of Review

In most instances, whether a district court's order granting injunctive relief violates a litigant's First Amendment rights presents a question of law that we review de novo. *See O'Toole v. O'Connor*, 802 F.3d 783, 788 (6th Cir. 2015) (citing *Piatt v. Bd. of Comm'rs on Grievances & Discipline of Ohio Supreme Court*, 769 F.3d 447, 453 (6th Cir. 2014)); *Gas Nat. Inc. v. Osborne*, 624 F. App'x 944, 948 (6th Cir. 2015) (citing *Planet Aid v. City of St. Johns*, 782 F.3d 318, 323 (6th Cir. 2015)). If a party preserves an objection to a jury instruction by raising it before the jury retires to deliberate, we review the instructions "to see 'whether the charge, taken as a whole, fairly and adequately submits the issues and applicable law to the jury.'" *Fencorp, Co. v. Ohio Ky. Oil Corp.*, 675 F.3d 933, 943 (6th Cir. 2012) (quoting *Fisher v. Ford Motor Co.*, 224 F.3d 570, 575-76 (6th Cir. 2000)); *see also United States v. Dedman*, 527 F.3d 577, 600 (6th Cir. 2008). The accuracy of jury instructions is a question of law, which we review de novo, while "the refusal to give a specifically requested instruction is reviewed for abuse of

discretion." *Fencorp*, 675 F.3d at 943 (quoting *Micrel, Inc. v. TRW, Inc.*, 486 F.3d 866, 881 (6th Cir. 2007)).

B. Analysis

As a threshold matter, the collateral bar rule prevents Hendrickson from challenging the constitutionality of the underlying order in the course of her criminal contempt proceeding. When a district court has personal and subject matter jurisdiction over a case, an order issued by

the court "must be obeyed by the parties until it is reversed by orderly and proper proceedings." *United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947). Violating such an order may be punishable by criminal contempt. Id. at 294 (citing *Worden v. Searls*, 121 U.S. 14 (1887)); see also *Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967) (noting that, under federal and state law, parties must obey injunctions issued by a court of competent jurisdiction, "however erroneous the action of the court may be," and "until [the issuing court's] decision is reversed for error by orderly review, . . . disobedience ... is contempt of [the court's] lawful authority, to be punished" (quoting *Howat v. Kansas*, 258 U.S. 181, 189-90 (1922))). Accordingly, we have found that a defendant in a criminal contempt proceeding may not contest the validity of the underlying court order, except on the grounds that the issuing court lacked jurisdiction or its order was "transparently invalid or had only a frivolous pretense to validity." *Dever v. Kelly*, 348 F. App'x

107, 112 (6th Cir. 2009) (quoting *Walker*, 388 U.S. at 315); see *also Polo Fashions, Inc. v. Stock Buyers Int'l, Inc.*, 760 F.2d 698, 700 (6th Cir. 1985). Other courts have also recognized exceptions to the collateral bar rule when no "adequate and effective" opportunity for appellate review exists or the underlying order "require[s] an irretrievable surrender of constitutional guarantees"— though we have never explicitly adopted or rejected these principles. *United States v. Dickinson*, 465 F.2d 496, 511 (5th Cir. 1972); *see also United States v. Straub*, 508 F.3d 1003, 1011 (11th Cir. 2007).

This case, however, does not fall under any exception to the collateral bar rule. Hendrickson does not claim on appeal that the district court lacked jurisdiction to enter the underlying order. Also, she has not demonstrated that the order was transparently invalid or only had a frivolous pretense to validity. While she claims that the order violated her First Amendment rights, this merely "amounts to an argument that the . . . injunction was erroneously issued which .. . would not have excused compliance." *Dever*, 348 F. App'x at 112.

Further, nothing indicates that Hendrickson did not have an adequate and effective opportunity for review. After the district court entered the underlying order, Hendrickson pursued an appeal to this court, and when she did not prevail, she filed an unsuccessful petition for a writ of certiorari in the Supreme Court.

Finally, although Hendrickson maintains that the order implicates her First Amendment rights, it does not present the type of scenario that might rise to the level of an irretrievable surrender of a constitutional guarantee. The foundational case for this exception, *Maness v. Meyers*, 419 U.S. 449, 458-61 (1975), described instances when a trial court orders a witness to give testimony under circumstances that, in the witness's estimation, violate her Fifth Amendment right against self-incrimination. Because an appellate court would not be able to "unring the bell" and completely cure the error, the Court held that the witness may refuse to comply with the trial court's order and seek appellate review. *Id.* at 460. The witness may nevertheless be subject to "an adjudication of contempt if h[er] claims are rejected on appeal." *Id.* (quoting *United States v. Ryan*, 402 U.S. 530, 532-33 (1971)). Thus, regardless of whether Hendrickson's First Amendment arguments sufficiently resemble *Maness*'s Fifth Amendment concerns, the fact that she appealed the order and continued to disobey it after her arguments were unsuccessful is enough to distinguish the present case from *Maness*.

Hendrickson candidly "recognizes the authority relied on by the Government" relating to the collateral bar rule, but she nonetheless asks us to "either revisit this issue or recognize an exception to this authority in her case ... given the nature of the constitutional violation in question." Of course, we lack authority to "revisit" an issue that has been decided by the Supreme Court. See *Agostini v. Felton*, 521 U.S. 203, 237 (1997). Assuming *arguendo*

that the order violated Hendrickson's First Amendment rights, the mere fact that an order "unquestionably raise[s] substantial constitutional issues"—even First Amendment issues—is insufficient, standing alone, to justify departure from the collateral bar rule. See *Walker*, 388 U.S. at 315-18.[1] Even if we had the authority to do so, nothing in the facts of this case warrants crafting a new exception to the collateral bar rule out of whole cloth.

Under these circumstances, the collateral bar rule applies, and the constitutionality of the underlying order is not at issue in this case. "There is no right of revolution in a United States District Court." *United States v. Moncier*, 571 F.3d 593, 599 (6th Cir. 2009). "Every precaution

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[1]The court order at issue in *Walker*, which enjoined civil-rights protesters from "participating in or encouraging mass street parades or mass processions without a permit" presented significantly more consequential First Amendment issues than the underlying order in the present matter, and the Supreme Court nevertheless found that the collateral bar rule applied. *Walker*, 388 U.S. at 309, 316, 320-21.

should be taken that orders issue ... only after legal grounds are shown and only when it appears that obedience is within the power of the party being coerced by the order." *Maggio v. Zeitz*, 333 U.S. 56,

69 (1948). When an order has become final, however, "disobedience cannot be justified by re-trying the issues as to whether the order should have issued in the first place." *Id.* (citing *United Mine Workers*, 330 U.S. at 259; *Oriel v. Russell*, 278 U.S. 358 (1929)).

Likewise, the district court did not commit error by instructing 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." As discussed above, with certain exceptions not applicable here, "the validity of the injunction is not an issue in a criminal contempt prosecution." *Polo Fashions*, 760 F.2d at 700 (citing *Walker*, 388 U.S. at 315-20; *United Mine Workers*, 330 U.S. at 293-94). In the context of this case, therefore, the district court's instruction on this matter "fairly and adequately submitted] the issues and applicable law to the jury." *Fencorp*, 675 F.3d at 943 (quoting *Fisher*, 224 F.3d at 575-76). Accordingly, Hendrickson's contrary instruction that would have submitted the issue of the underlying order's lawfulness to the jury was not a "correct statement[] of the law"—a necessary condition for relief on appeal for a refusal to give requested instructions. *United States v. Callahan*, 801 F.3d 606, 624 (6th Cir. 2015) (quoting *United States v. Hargrove*, 416 F.3d 486, 489 (6th Cir. 2005)). This alone is enough to reject Hendrickson's arguments that the district court improperly instructed the jury and that it should have given her instruction on lawfulness instead.

Nonetheless, Hendrickson maintains that the "lawfulness" of the underlying order is an element of criminal contempt under 18 U.S.C. § 401(3), which provides that a court may "punish by fine or imprisonment, or both, . . . [d]isobedience or resistance to its lawful . .. order." Hendrickson argues that, because the statute "only criminalizes contemptuous disobedience of lawful orders," the court's instruction "relieved the [G]overnment of its burden of having to prove an element set forth in the charging statute" and effectively directed a verdict on lawfulness. While this argument has some intuitive appeal, it lacks merit. Simply put, Hendrickson's position is at odds with the prevailing interpretation of § 401(3) and the longstanding collateral bar rule. This court has stated that the elements for criminal contempt under §401(3) are that the defendant (1) had notice of a reasonably specific court order,

(2) disobeyed it, and (3) acted with intent or willfulness in doing so. *United States v. Bibbins*, 3 F. App'x 251, 253 (6th Cir. 2001) (per curiam) (citing *United States v. Allen*, 73 F.3d 64, 67-68 (6th Cir. 1995); *United States v. Delahanty*, 488 F.2d 396, 398 (6th Cir. 1973)). And, as discussed above, "the validity of the injunction is not an issue in a criminal contempt prosecution" under the collateral bar rule, except in limited circumstances not implicated in this case. *Polo Fashions*, 760 F.2d at 700 (citing *Walker*, 388 U.S. at 315-20; *United Mine Workers*, 330 U.S. at 293-94); *see also Dolman v. United States*, 439 U.S. 1395, 1395-96 (Rehnquist, Circuit Justice 1978)

("[A] conviction for criminal contempt may be valid quite apart from the validity of the underlying injunction which was violated, and that the invalidity of an injunction may not ordinarily be raised as a defense in contempt proceedings for its violation." (citing *Walker*, 388 U.S. at 315-20; *United Mine Workers*, 330 U.S. at 293-94)); *United Mine Workers*, 330 U.S. at 294 ("Violations of an order are punishable as criminal contempt even though the order is set aside on appeal.. ..").[2]

Hendrickson also contends that the district court's instruction on lawfulness "gutted" her ability to present a good-faith defense and directed a verdict on willfulness. This argument lacks merit because it misconstrues the good-faith defense and the willfulness requirement in the context of a criminal contempt proceeding. For purposes of criminal contempt, "willfulness" means "a deliberate or intended violation, as distinguished from an accidental, inadvertent or negligent violation" of a court order. *Vaughn v. City of Flint*, 752 F.2d 1160, 1169 (6th Cir. 1985) (quoting *TWMMfg. Co. v. Dura Corp.*, 722 F.2d 1261, 1272 (6th Cir. 1983)). Thus, a defendant may not establish a lack of willfulness by stating that she believed the underlying

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[2] *United States v. Koblitz*, 803 F.2d 1523, 1527 (11th Cir. 1986), which Hendrickson relies on, is distinguishable because it deals with a civil contempt order rather than a criminal contempt conviction. When the underlying order in a civil contempt

proceeding is invalidated, the contempt adjudication falls along with it. *See United Mine Workers*, 330 U.S. at 295. *In re Smothers*, 322 F.3d 438, 439-^0 (6th Cir. 2003), and *United States v. Turner*, 812 F.2d 1552, 1553 (11th Cir. 1987), are distinguishable because they concern instances where no opportunity existed for appellate review of the predicate order before a criminal contempt sanction was imposed. A line of precedent separate from *United Mine Workers* and *Walker* provides that the validity of the underlying order may be reviewed on appeal of a contempt conviction if that appeal presented the first opportunity to make such a challenge. *See Marrese v. Am. Acad, of Orthopaedic Surgeons*, 726 F.2d 1150, 1157-58 (7th Cir. 1984) (en banc) (Posner, J.), *rev'd on other grounds*, 470 U.S. 373 (1985); *see also Ryan*, 402 U.S. at 532 n.4; *Maness*, 419 U.S. at 460. *Smothers and Turner* fall within this line, while the present case does not.

Additionally, the cases Hendrickson relies on that concern charges of resisting arrest and assault on a police officer are fundamentally inapposite because the collateral bar rule applies to court orders, not the actions or commands of police officers.

order was not properly issued; "[p]ersons who make private determinations of the law and refuse to obey an order generally risk criminal contempt." *Maness*, 419 U.S. at 458. To hold otherwise would substantially undermine the collateral bar rule. Likewise, the good-faith defense to criminal contempt

applies only where the defendant has made "a good faith effort to comply with [the] court order." *United States v. Simmons*, 215 F.3d 737, 741 (7th Cir. 2000) (emphasis added); *see also United States v. Maccado*, 225 F.3d 766, 772 (D.C. Cir. 2000); *United States v. Remini*, 967 F.2d 754, 757 (2d Cir. 1992); *United States v. Baker*, 641 F.2d 1311, 1317 (9th Cir. 1981).[3] While "act[ing] under an honest, although incorrect, misunderstanding of [a] court order" is a defense to criminal contempt, *United States v. Quality Formulation Labs., Inc.*, 512 F. App'x 237, 240 (3d Cir. 2013) (citing *United States v. Gross*, 961 F.2d 1097, 1103 (3d Cir. 1992)), the fact that a "person believes in good faith that the court order is unlawful" is not, *United States v. Underwood*, 880 F.2d 612, 618-19 (1st Cir. 1989). The district court's instruction on lawfulness was not, therefore, erroneous.

II. Specific Unanimity Instruction

Hendrickson also claims that the district court erred by incorrectly instructing the jury that specific unanimity—that is, a unanimous decision among jury members as to how she violated the order—was not required in this case. A specific unanimity instruction was not warranted in this case. Even if it were, however, any error the district court may have made was harmless.

A. Standard of Review

Because Hendrickson requested the inclusion of a specific unanimity instruction and objected to the instruction that specific unanimity was not required,

we review the district court's refusal to give a specific unanimity instruction for abuse of discretion. *United States v. Wilson*, 579 F. App'x 338, 347 (6th Cir. 2014) (citing *United States v. Reichert,* 747 F.3d 445, 451 (6th Cir. 2014)), *cert, denied*, 135 S. Ct. 421 (2014), and *cert, denied sub nom. Williamson v. United States,* 135 S. Ct. 1470 (2015). But to the extent that Hendrickson claims that the given

[3]To be clear, as the district court correctly instructed the jury, good faith is not a separate defense to criminal contempt, but rather a specific avenue for negating willfulness. *See Simmons*, 215 F.3d at 741; *Baker* 641 F.2d at 1317.

instructions misstated the law, de novo review applies. *Reichert*, 747 F.3d at 451. If the district court failed to a give a required specific unanimity instruction, we must still engage in harmless-error review, as such a failure does not constitute structural error. *United States v. Tragas*, 727 F.3d 610, 617 (6th Cir. 2013) (citing *Murr v. United States*, 200 F.3d 895, 906 (6th Cir. 2000)).

B. Analysis

Specific unanimity instructions are a method of curing "duplicitous" charges, which "set[] forth separate and distinct crimes in one count" and create a risk that a defendant's right to a unanimous verdict would be undermined "if individual jurors find [her] guilty of different crimes." *United States v. Eaton*, 784 F.3d 298, 308 (6th Cir. 2015) (quoting

United States v. Kakos, 483 F.3d 441, 443 (6th Cir. 2007)). Nonetheless, "a charge that permits more than one factual basis for conviction 'does not automatically require a unanimity instruction.'" Id. (quoting *United States v. Algee*, 599 F.3d 506, 514 (6th Cir. 2010)).

While a federal jury cannot convict in a criminal case unless it unanimously concludes that the Government has proven each element of the charged offense, the "jury need not always decide unanimously which of several possible sets of underlying brute facts make up a particular element." *Richardson v. United States*, 526 U.S. 813, 817 (1999) (citing *Schad v. Arizona*, 501 U.S. 624, 631-32 (1991) (plurality opinion)). Thus, the "pivotal distinction" is that the jury must unanimously decide that all facts that constitute "elements" of a crime occurred, but it does not necessarily need to be unanimous when considering the "brute facts" or "means" that make out an element. *Eaton*, 784 F.3d at 308 (citing *Richardson*, 526 U.S. at 817-19; *United States v. DeJohn*, 368 F.3d 533, 540-41 (6th Cir. 2004)). The existence of "multiple factual bases" in a charge warrants a special unanimity instruction where

> (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 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.
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United States v. Miller, 734 F.3d 530, 538-39 (6th Cir. 2013) (quoting *United States v. Damra*, 621 F.3d 474, 504-05 (6th Cir. 2010)).

Hendrickson contends that the jury should have been instructed that, to convict, they were required to unanimously decide that she filed a false tax return for 2008 based on the theories in *Cracking the Code*, that she failed to file her 2002 and 2003 tax returns, or both. She limits her arguments to a claim that the alternative specifications in the indictment were, at most, merely "marginally related." To support this proposition, Hendrickson reasons that the underlying order contained two separate and distinct injunctions—a prohibition against filing further returns based on *Cracking the Code* and a requirement to affirmatively file returns for 2002 and 2003—and that the events described in the indictment relating to these two injunctions are "different in kind" and "temporal[ly] dispar[ate]." The Government counters that the order included "a single injunction that contained two directives: (1) file amended tax returns for... 2002 and 2003; and (2) refrain from filing tax returns that contained false information similar to that in the original 2002 and 2003 returns," and "the indictment charged [Hendrickson] with violating the single injunction in two ways." According to this argument, these two directives had the single aim of compelling

compliance with the tax code, and the methods that the indictment charged Hendrickson with violating the order were related.

On one hand, the essence of Hendrickson's argument—that the conduct she was charged with represents two factually and temporally distinct events—carries some force. Juries' ability to disagree about means is limited where such disagreement "risks serious unfairness and lacks support in history or tradition." *Richardson*, 526 U.S. at 820 (citing *Schad*, 501 U.S. at 632-33 (plurality opinion); *Schad*, 501 U.S. at 651 (Scalia, J., concurring)). For example, it would be impermissible for "an indictment [to] charg[e] that the defendant assaulted either X on Tuesday or Y on Wednesday." *Schad*, 501 U.S. at 651 (Scalia, J., concurring); *see also Richardson*, 526 U.S. at 820 (citing Justice Scalia's *Schad* concurrence for this proposition). Viewed in the way Hendrickson proposes, this case may resemble Justice Scalia's hypothetical. The countervailing position is, however, much stronger because no risk of serious unfairness exists in this case. The indictment contained a single charge that Hendrickson contemptuously disobeyed a court order. Regardless of whether the underlying order is best conceptualized as two

injunctions or one injunction containing two directives, the order was handed down in its entirety all at once. Hendrickson's actions in contravention of the order also had a single unifying theme. Her filings were predicated on the faulty legal theories

the order contemplated. Thus, more than a marginal relation exists between the alternative specifications, and they are related enough to avoid a risk of serious unfairness, especially in light of the limited factual complexity of the case.[4]

Moreover, Hendrickson is not entitled to relief because any error the district court committed in charging the jury was harmless. Assuming without deciding that the most stringent standard for harmless-error review applies,[5] Hendrickson is not entitled to relief if "it appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" *Neder v. United States*, 527 U.S. 1, 15 (1999) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)); *see also United States v. Kilpatrick*, 798 F.3d 365, 378 (6th Cir. 2015), *cert, denied sub nom. Ferguson v. United States*, 136 S. Ct. 700 (2015). Hendrickson did not argue that she, in fact, filed adequate returns for 2002 and 2003 or that she did not file the 2008 return containing false information. Instead, she relied primarily on a good faith defense predicated on her belief that the underlying order violated her First Amendment rights. However, this defense was inadequate as a matter of law, so no reasonable juror could have voted to acquit her on this basis. Indeed, the Government argued in its brief that any error in the jury instructions was harmless because Hendrickson "did not even contest the underlying acts that formed the basis for the contempt charge," and Hendrickson did not dispute this assertion in

[4]Hendrickson's discussion *Miller*, 734 F.3d 530, and *United States v. Schmeltz*, 667 F.3d 685, 686 (6th Cir. 2001), is unavailing. In both *Miller* and *Schmelz*, we found that a specific unanimity instruction was not required. *See Miller*, 734 F.3d at 539; *Schmelz*, 667 F.3d at 688. Although Hendrickson attempts to work backwards from these holdings, her reasoning does not establish that the alternative specifications in her own indictment were, in fact, only marginally related.

[5]In the context of an error of constitutional magnitude, harmless- error review requires "pro[of] *beyond a reasonable doubt* that the error did not affect the verdict." *United States v. Kilpatrick*, 798 F.3d 365, 378 (6th Cir. 2015) (citing *United States v. Miner*, 774 F.3d 336, 342, 350 (6th Cir. 2014)), *cert. denied sub nom. Ferguson v. United States*, 136 S. Ct. 700 (2015). If non-constitutional errors are involved, all that is required is "*a preponderance of the evidence* that the error did not materially affect the verdict." *Id.* (citing *Kotteakos v. United States*, 328 U.S. 750, 764-65 (1964)). It is unclear whether the failure to give a necessary specific unanimity instruction is an error of constitutional magnitude, but the Supreme Court has indicated that the issue at least implicates constitutional concerns. *See Richardson*, 526 U.S. at 819. Resolving this issue is unnecessary because any error was harmless even under the more demanding standard.

her reply brief. Moreover, as the district court noted in ruling on Hendrickson's post-trial motions, the great weight of evidence presented at trial supported a guilty verdict under either specification. Therefore, regardless of whether the district court erred in its instructions, the harmless-error doctrine applies, and Hendrickson is not entitled to relief.[6]

III. Sixth Amendment Self-Representation

Hendrickson also challenges her conviction on Sixth Amendment grounds, claiming that her right of self-representation was violated when, during her testimony, her standby counsel failed to ask her certain questions that she instructed him to ask.

A. Standard of Review

Because Hendrickson did not object to her standby counsel's failure to ask her requested questions until after trial,[7] we review her Sixth Amendment claim for plain error. *United States v. Thomas*, 74 F.3d 701, 712 (6th Cir. 1996); *see also United States v. Marcus*, 560 U.S. 258, 262 (2010) (finding that issues "not raised at trial" are reviewed for plain error); *United States v. Viscome*, 144 F.3d 1365, 1370 (11th Cir. 1998) (reviewing a constitutional argument raised for the first time prior to sentencing for plain error). Under this standard, we ordinarily may only reverse if the appellant "demonstrates that (1) there is an 'error'; (2) the error is 'clear or obvious, rather than subject to reasonable dispute'; (3) the error 'affected the appellant's substantial rights, which in the ordinary

case means' it 'affected the outcome of the district court

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[6]To counter the application of the harmless-error doctrine, Hendrickson contends that the evidence at the second trial "was far from overwhelming" because her first trial resulted in a hung jury, but this argument misses the point. The proper inquiry is whether "*the error complained of*...contribute[d] to the verdict obtained." *Neder*, 527 U.S. at 15 (emphasis added). The district court's unanimity instructions at both trials were substantially similar. Moreover, the record indicates that the mistrial resulted from a single juror's refusal to convict without having seen evidence relating to extraneous issues. Under these particular circumstances, a previous hung jury in the same matter does not tend to show that the district court's unanimity instruction had any effect on the verdict.

[7]In a motion for release pending appeal, Hendrickson claimed that, after standby counsel failed to ask the requested questions, she "quietly turned to the Court and asked to speak with standby counsel, but the Court refused this request." The district court found that Hendrickson did not make this request. The court also found that she had an opportunity to raise the issue at a sidebar immediately following the conclusion of her testimony, but she did not. Hendrickson admits that her alleged statement to the court does not appear in the record. But even assuming that it did take place,

Hendrickson's request was insufficient to avoid plain error review in light of the fact that she had a clear opportunity to raise the issue at the sidebar but did not. "To avoid plain-error review, '[a] party must object with that reasonable degree of specificity which would have adequately apprised the trial court of the true basis for h[er] objection.'" *United States v. Corp*, 668 F.3d 379, 387-88 (6th Cir. 2012) (quoting *United States v. Bostic*, 371 F.3d 865, 871 (6th Cir. 2004)). Hendrickson did not satisfy this standard.

proceedings'; and (4) 'the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" *Marcus*, 560 U.S. at 262 (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)). However, a violation of the right to represent oneself is a "structural" error, and such an error "may be cognizable despite the lack of a third-prong showing that it actually prejudiced the appellant or affected the outcome of the proceedings." *United States v. Lawrence*, 735 F.3d 385, 401 (6th Cir. 2013) (citing *Marcus*, 560 U.S. at 263; *United States v. Barnett*, 398F.3d 516, 526 (6th Cir. 2005)), *cert. denied*, 135 S. Ct. 753 (2014). Structural claims are also not subject to harmless-error analysis. *Id.; see also McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984).

B. Analysis

The Sixth Amendment provides that

> [i]n all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and

> cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const, amend. VI. In *Faretta v. California*, 422 U.S. 806, 819-20 (1975), the Supreme Court found that the structure of the Sixth Amendment "necessarily implie[s]" that criminal defendants enjoy "the right to self-representation." Under certain circumstances, the participation of standby counsel raises Sixth Amendment concerns; "the objectives underlying the right to proceed *pro se* may be undermined by unsolicited and excessively intrusive participation by standby counsel." *McKaskle*, 465 U.S. at 177. Pro se defendants are "entitled to preserve actual control over the case [they] choose[] to present to the jury"; therefore, "[i]f 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.* at 178.[8] Nonetheless, "[a] defendant's invitation to counsel to participate in the trial obliterates any claim that the participation in question deprived the defendant of control over his

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[8] *McKaskle* indicates that a defendant's *Faretta* rights may also be violated when "participation by

standby counsel without the defendant's consent...destroy[s] the jury's perception that the defendant is representing h[er]self." *McKaskle*, 465 U.S. at 178. Hendrickson does not claim that this principle applies in the present matter.

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own defense." *Id.* at 182. Accordingly, "a *pro se* defendant's solicitation of or acquiescence in certain types of participation by counsel substantially undermines later protestations that counsel interfered unacceptably." *Id.* Ultimately, in considering whether the right to self-representation was violated, the court's "primary focus [is] on whether the defendant had a fair chance to present h[er] case in h[er] own way." *Id.* at 177.

Hendrickson requested the district court to allow her to proceed with the assistance of standby counsel. At trial, she decided to testify in her own defense, and standby counsel informed the district court that he planned to question Hendrickson during her direct examination. Hendrickson did not object or otherwise correct him. Nor did she raise an objection to contest this procedure at the time she took the stand. Hendrickson provided standby counsel with scripted questions for her examination, but he did not ask her a series of questions relating to her beliefs regarding the legal validity of the order that was the subject of her contempt charge, including questions related to her understanding of and reliance on First Amendment precedent. Standby counsel explained that the Government had

repeatedly objected to similar lines of inquiry and that he did not ask the questions because Hendrickson had already "struggle[d] to provide answers to some of the questions she had provided." "[I]n response to... Hendrickson expressing concern that the questions were not asked," counsel "suggested that she attempt to incorporate some of the points regarding her reliance on authorities interpreting the First Amendment into her closing argument." Nothing in the record indicates that Hendrickson raised her concerns to the district court during trial or that she attempted to retake the stand to pursue this line of questioning.

Hendrickson claims that this series of events violated her right to self-representation such that she is entitled to a new trial. She suggests that, because the right to self-representation is structural, *any* transgression that conceivably implicates her *Faretta* rights—no matter how slight—constitutes reversible error. But it is not the case that "every deprivation in a category considered to be 'structural' constitutes a violation of the Constitution or requires reversal of the conviction, no matter how brief the deprivation or how trivial the proceedings that occurred during the period of deprivation." *Ramos v. Racette*, 726 F.3d 284, 289 (2d Cir. 2013) (quoting *Gibbons v. Savage*, 555 F.3d 112, 120 (2d Cir. 2009)); *see also United States v. Arellano-Garcia*,

503 F. App'x 300, 305 (6th Cir. 2012). As discussed above, the relevant inquiry is whether Hendrickson

had a fair chance to present her case in a manner of her own choosing.

Hendrickson's Sixth Amendment claim is fatally undercut by the fact that she acquiesced to standby counsel's participation. Hendrickson's failure to object to the participation of standby counsel is a "crucial respect" in which her case differs from *McKaskle*—a difference that "substantially undermines" her claim. *United States v. French*, 748 F.3d 922, 931-33 (9th Cir.) (quoting *McKaskle*, 465 U.S. at 182-83), *cert. denied*, 135 S. Ct. 384 (2014). "Once a *pro se* defendant invites or agrees to any substantial participation by counsel, subsequent appearances by counsel must be presumed to be with the defendant's acquiescence," until the defendant "expressly and unambiguously" objects to standby counsel's actions. *McKaskle*, 465 U.S. at 183. Here, Hendrickson explicitly requested the assistance of standby counsel, so this presumption applies.

Hendrickson maintains that she did not acquiesce in standby counsel's actions, claiming that, for Sixth Amendment self-representation purposes, a defendant only acquiesces to the actions of standby counsel "when she consistently and deliberately relinquishes control over her trial." This proposed standard lacks a basis in *McKaskle*, which recognized that "acquiescence in certain types of participation" would "substantially undermine[] later protestations that counsel interfered unacceptably." *Id.* at 182. Indeed, the defendant in *McKaskle*, unlike Hendrickson, raised numerous objections to the participation of standby counsel. *See id.* at 182-83.

While Hendrickson emphasizes that she "confronted standby counsel in considerable dismay and denunciation of his actions at the first chance to do so," this is not enough to demonstrate that she did not acquiesce. Counsel apparently suggested that she attempt to discuss the unasked questions' subject matter during her closing argument, and she did not attempt to retake the stand. Hendrickson argues that standby counsel's failure to ask the requested questions prevented her from addressing certain First Amendment precedent during her closing, but this is immaterial. She did not expressly and unambiguously raise an objection to the district court, and she chose not to seek to develop the testimony at issue on counsel's advice that she address the topic at closing. Such a "deliberate tactical decision" will not give rise to a *Faretta* claim, regardless of whether it is successful. *French*, 748 F.3d at 932.

Simply stated, Hendrickson was not denied a fair chance to present her own case in a manner of her choosing. Counsel's failure to ask certain questions of Hendrickson was not so invidious that it deprived her of the *opportunity* to develop testimony related to what she perceived as an important issue in the case. She allowed standby counsel to question her. She could have, but never did, object to counsel's conduct during trial. She could have, but never did, raise the issue at sidebar. She could have, but never did, seek to retake the stand after consulting with counsel. At bottom, she takes umbrage with the way standby

counsel executed his responsibilities. But "[a] defendant does not have a constitutional right to choreograph special appearances by counsel." *McKaskle*, 465 U.S. at 183. Hendrickson's claim, therefore, fails.

If this result seems anomalous, it may be because Hendrickson couches in self-representation terms what is essentially a claim sounding in ineffective assistance of counsel. This strategy is certainly not unheard of. *See Washington v. Renico*, 455 F.3d 722, 733-34 (6th Cir. 2006). And it is certainly understandable, as a successful *Faretta* claim would allow her to avoid the required demonstration of prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). The flip side of this tactic, however, is that she must show that standby counsel's actions prevented her from having a fair chance to present her case in a manner of her choosing. She has not done so.[9] Therefore, she is not entitled to relief on this ground.

IV. Sentencing

Apart from her arguments that her conviction should be vacated, Hendrickson also challenges her sentence as procedurally unreasonable.

A. Standard of Review

We review the district court's sentencing determination for reasonableness under the deferential abuse-of-discretion standard. *United States v. Baker*, 559 F.3d 443, 448 (6th Cir. 2009)

(citing *Gall v. United States*, 552 U.S. 38, 41 (2007); *United States v. Stephens*, 549 F.3d

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[9]Because Hendrickson did not bring an ineffective assistance claim and the parties have not briefed the issue, we do not consider whether standby counsel's performance was deficient or whether Hendrickson was prejudiced by his conduct.

459, 464 (6th Cir. 2008)). While this inquiry has both a procedural and a substantive component, *id.*, Hendrickson has only claimed procedural unreasonableness. "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 § 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails to adequately explain the chosen sentence." *Id.* (citing *Gall*, 552 U.S. at 51); *see also United States v. Hall*, 632 F.3d 331, 335 (6th Cir. 2011).

B. Analysis

Under USSG § 2J 1.1, no specific sentencing guideline applies to criminal contempt convictions. Instead, the Guidelines refer the sentencing court to §2X5.1, which directs the court to "apply the most analogous offense guideline." In the event that "there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. § 3553 shall control." USSG §

2X5.1. The district court relied on § 2T1.1, which covers, among other things, willful failure to file a tax return. Under this provision, the applicable base offense level is keyed to the amount of "tax loss" attributable to the defendant. *See* USSG § 2T 1.1(a). In calculating the relevant tax loss, the court applied § 2T1.1(c)(4), which provides that, "[i]f the offense involved improperly claiming a refund to which the claimant was not entitled, the tax loss is the amount of the claimed refund to which the claimant was not entitled." The court noted that the civil order found that the Hendricksons claimed erroneous refunds for the 2002 and 2003 tax years in a total amount of $20,380.96, an amount of loss that carried a Base Offense Level of 12. *See* USSG §2T4.1(D). Ultimately, the sentencing court determined that Hendrickson had an Adjusted Offense Level of 12 and that she fell into Criminal History Category II, resulting in an advisory range of 12 to 18 months of imprisonment, and sentenced her to 18 months of confinement. On appeal, Hendrickson argues that the court improperly applied § 2T 1.1 (c)(4) instead of § 2T 1.1 (c)(2) to calculate the applicable tax loss and that, under § 2T 1.1 (c)(2), the amount of tax

loss attributable to Hendrickson would have resulted in an Offense Level of 6 or 8, with an advisory range of 0 to 6 or 1 to 7 months' imprisonment, respectively.[10]

At the outset, the district court did not abuse its discretion in applying § 2T 1.1 (c)(4) to calculate the

tax loss attributable to Hendrickson. She argues that the court "characteriz[ed the matter] ... as a failure to file tax returns case," but relied on § 2T1.1(c)(4), "which applies in cases where 'the offense involved improperly claiming a refund to which the claimant was not entitled.'" Hendrickson maintains that the offense she was charged with did not concern the 2002 and 2003 refunds and that the factual basis of her conviction was "wholly unrelated to the existence of the fact that she and her husband may be indebted to the [Government because of an allegedly improperly received refund."

The commentary to § 2T1.1 provides that "[i]n determining the tax loss attributable to the offense, the court should use as many methods set forth in subsection (c) and this commentary as are necessary given the circumstances of the particular case." USSG § 2T1.1 cmt. app. n.l; *see also United States v. Hoskins*, 654 F.3d 1086, 1095 n.10 (10th Cir. 2011); *United States v. Kellar*, 394 F. App'x 158, 169 (5th Cir. 2010). "In determining the total tax loss attributable to the offense . . . , all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated." USSG § 2T1.1 cmt. app. n.2. Accordingly, "[f]or sentencing purposes, the use of tax loss resulting from uncharged conduct is authorized." *United States v. Pierce*, 17 F.3d 146, 150 (6th Cir. 1994).[11]

[10]In her brief, Hendrickson hints at an argument that the sentencing court should not have looked to § 2T1.1 at all, instead relying only on the sentencing factors contained in 18 U.S.C. § 3553. Because she only "advert[s] to [this argument] in a perfunctory manner" without an "effort at developed argumentation," she has waived this issue on appeal. *United States v. Robinson*, 390 F.3d 853, 886 (6th Cir. 2004) (quoting *McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997)). A party may not raise an issue on appeal by "mention[ing it]...in the most skeletal way, leaving the court to...put flesh on its bones." *Id.* (third alteration in original) (quoting *McPherson*, 125 F.3d at 995-96).

[11]We have also held that *civil* tax liability is not attributable to a defendant under § 2T1.1. *Pierce*, 17 F.3d at 150 (citing *United States v. Daniel*, 956 F.2d 540, 544 (6th Cir. 1992)). Only *criminal* tax liability that is part of the same course of conduct may be counted. *Id.* As stated above, however, the conduct need not actually be charged for the corresponding loss to be attributable. *Id.* Loss resulting from conduct that is criminal *in nature* falls within § 2T1.1(c). *See United States v. Kennedy*, 595 F. App'x 584, 589-90 (6th Cir. 2015); *United States v. Edkins*, 421 F. App'x 511, 516 (6th Cir. 2010). And Hendrickson's conduct that led to her receipt of erroneous

With these principles in mind, Hendrickson's arguments lack merit because her actions

surrounding the 2002 and 2003 refunds are related to her offense conduct. She was charged, in part, with failing to file returns for 2002 and 2003 properly reporting her and her husband's income in contempt of a court order. Prior to the order, the Hendricksons had received improper refunds for those years based on an assertion that their wages did not constitute taxable income, and the order sought to remedy this. Accordingly, the refunds were not "clearly unrelated" to her failure to file the 2002 and 2003 returns, especially in light of the Guidelines' indication that a "continuing pattern of violations of the tax laws," the "use[of] a consistent method to evade. .. income," a set of "violations [that] involve the same or a related series of transactions," and a set of "violations that] in each instance involves a failure to report... a specific source of income" each indicate that a defendant's conduct "is part of the same course of conduct or common scheme or plan." USSG § 2T1.1 cmt. app. n.2. Hendrickson's conduct fits within each of these categories; thus, the district court did not abuse its discretion in applying § 2T 1.1 (c)(4) to calculate the loss related to the returns.

Hendrickson's remaining arguments on this point fare no better. In her reply brief, she claims that the amount of the refund contained in the order was "illegitimate" because the IRS never assessed a tax liability in this amount against her or her husband and because the "$20,380.96 figure was offered at trial in the form of an informal 'examination report' as 'evidence' of the tax liabilities purportedly due." At the outset, Hendrickson waived these arguments by failing to raise them in her

opening brief. *See Sanborn v. Parker*, 629 F.3d 554, 579 (6th Cir. 2010) ("We have consistently held, . . . that arguments made to us for the first time in a reply brief are waived." (citing *Am. Trim, L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004))). Nevertheless, they lack merit. An assessment is not a prerequisite for criminal liability, *United States v. Daniel*, 956 F.2d 540, 542 (6th Cir. 1992), and the Guidelines permitted the district judge to "make a reasonable estimate [of the tax loss attributable to Hendrickson]

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refunds was criminal for purposes of § 2T1.1(c) liability, though she was not indicted for it. *See United States v. Bove*, 155 F.3d 44, 48 (2d Cir. 1998) ("It is beyond cavil that [the defendant's] failure to declare certain W-2 income in his...tax return amounts to criminal conduct under the tax code."); *see also United States v. Hendrickson*, 460 F. App'x 516. 517-20 (6th Cir. 2012) (per curiam) (affirming conviction of Peter Hendrickson for, among other things, filing false tax documents for the 2002 and 2003 tax years).

based on the available facts," USSG § 2T1.1 cmt. app. n.l. The fact that the examination report "did not constitute a formal audit or examination" did not make reliance on it unreasonable.[12]

Accordingly, the district court did not abuse its discretion in applying § 2T1.1(c)(4) to calculate the

tax loss attributable to Hendrickson. Her sentence was therefore procedurally reasonable, and we need not address her alternative proposed calculations under § 2T1.1(c)(2).

AFFIRMED.

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[12]Moreover, the fact that Hendrickson's husband was involved in the filing of their joint 2002 and 2003 returns does not change the amount of loss attributable to Hendrickson. *See United States v. Bishop*, 291 F.3d 1100, 1115 (9th Cir. 2002) (finding that where spouses are "co-actors," "the total tax loss...is attributable to each defendant").

Order Denying Petition for Re-Hearing *En Banc*

No. 15-1446

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	ORDER
DOREEN M. HENDRICKSON,	)	
	)	
Defendant-Appellant.	)	
	)	

BEFORE: SILER, COOK, AND KETHLEDGE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/*Deborah S. Hunt*, Clerk

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to

have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATUTES

18 U.S.C. § 401- Power of Court

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.

26 U.S.C. § 6020 - Returns prepared for or executed by Secretary

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

STATEMENT OF ANDREW WISE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, Cr. No. 13-20371

v.

DOREEN HENDRICKSON, Hon. Victoria Roberts

Defendant.

_____/

SECOND STATEMENT OF ANDREW WISE

I was appointed as standby counsel in the above matter. In assisting Mrs. Hendrickson with the preparation of her defense, I spoke with U.S. District Judge Nancy Edmunds concerning events surrounding Mrs. Hendrickson's civil case, 2:06-cv-11753, over which Judge Edmunds presided. During our conversation Judge Edmunds acknowledged that she had not read Cracking the Code, a book written by Peter Hendrickson and referenced by Judge Edmunds in her Order with which Mrs. Hendrickson was alleged to be in contempt of in this matter.

Andrew N. Wise

Dated: March 22, 2016

AFFIDAVIT OF DOREEN HENDRICKSON, Doc. 17

1. I affirm these matters to be true of my personal knowledge and, if called to do so, could and would competently testify thereto.

2. I do not believe 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".*

3. I have never based the content I provided on any tax-related instrument or the conclusions reflected therein on the notion 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.*

4. The content to which I attested as being what I know and believe to be true, complete and correct on the tax-related documents I freely signed concerning 2002, 2003 and 2008, and the conclusions reflected therein, are informed by my awareness that the United States Constitution prohibits the imposition

of federal capitations and other direct taxes other than by the mechanism of apportionment at Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4.

5. That content and those conclusions are further informed by my awareness that the United States Supreme Court and other authorities have repeatedly and consistently declared that the rules laid down in Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4 are unaffected, unrevoked and un-repealed by the 16th Amendment to the US Constitution or any other, as in the following instances:

> *"We are of opinion, however, that the confusion is not inherent, but rather arises from the [erroneous assumption] that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes." [an error which is obvious, since it would cause] "...one provision of the Constitution [to] destroy another; that is, [it] would result in bringing the provisions of the Amendment [supposedly] exempting a direct tax from apportionment into irreconcilable conflict with the general*

requirement that all direct taxes be apportioned."
Brushaber v. Union Pacific RR Co. , 240 U.S. 1 (1916)

"[T]he amendment made it possible to bring investment income within the scope of the general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty..."
Treasury Department legislative draftsman F. Morse Hubbard summarizing the ruling for Congress in testimony in 1943 (House Congressional Record, March 27, 1943, p. 2580);

"The Amendment, the [Supreme] court said [in its unanimous ruling in Brushaber v. Union Pacific RR Co., 240 U.S. 1 (1916)], judged by the purpose for which it was passed, does not treat income taxes as direct taxes but simply removed the ground which led to their being considered as such in the Pollock case, namely, the source of the income. Therefore, they are again to be classified in the class of indirect taxes to which they by nature belong."
Cornell Law Quarterly, 1 Cornell L. Q. 298 (1915-16);

"The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution,

quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment…"
Legislative Attorney of the American Law Division of the Library of Congress Howard M. Zaritsky in his 1979 Report No. 80-19A, entitled 'Some Constitutional Questions Regarding the Federal Income Tax Laws'.

"The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects..."
Peck v. Lowe, 247 U.S. 165 (1918);

"[T]he settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income."
Taft v. Bowers, 278 US 470, 481 (1929).

"[T]he sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable. 45 Cong. Rec. 2245-2246 (1910); id. at 2539; see also Brushaber v. Union Pacific R. Co., 240 U. S. 1, 240 U. S. 17-18 (1916)"
So. Carolina v. Baker, 485 U.S. 505 (1988).

6. That content and those conclusions are further informed by my awareness that Constitutional "capitations", which remain imposable only by the mechanism of apportionment, have been acknowledged by the United States Supreme Court to be what Adam Smith described as such in his 1776 treatise, 'An Inquiry into the Nature and Causes of the Wealth of Nations':

> *"..[Secretary of the Treasury] Albert Gallatin, in his Sketch of the Finances of the United States, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...'*
>
> *...*
>
> *"He then quotes from Smith's Wealth of Nations, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes-- an acceptation of the word peculiar, it is believed, to Dr. Smith-- leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from the falling immediately on the revenue;...'"*
>
> Pollock v. Farmer's Loan & Trust, 157 U.S. 429 (1895).

7. That content and those conclusions are further informed by my awareness that Adam Smith's definition of capitations includes, among other things:

> *"The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,"… "Capitation taxes, if it is attempted to proportion them to the fortune or revenue of each contributor, become altogether arbitrary. The state of a man's fortune varies from day to day, and without an inquisition more intolerable than any tax, and renewed at least once every year, can only be guessed at."…"Capitation taxes, so far as they are levied upon the lower ranks of people, are direct taxes upon the wages of labour, and are attended with all the inconveniences of such taxes."…" In the capitation which has been levied in France without any interruption since the beginning of the present century, the highest orders of people are rated according to their rank by an invariable tariff; the lower orders of people, according to what is supposed to be their fortune, by an assessment which varies from year to year."*
>
> Adam Smith, 'An Inquiry into the Nature and Causes of the Wealth of Nations', Book V, Ch. II, Art. IV (1776)

8. That content and those conclusions are further informed by my awareness that Adam Smith used

the common word 'wages' in his work, not the custom-defined term of the same spelling found in the modern revenue laws, thus declaring that among other things, a tax upon common pay-for-labor is a capitation; and also that Smith includes elsewhere in his definition of "capitations" a version imposed under the label "poll taxes," described as taxes assessed as (or on) a portion of an individual's annual gains.

9. That content and those conclusions are further informed by my awareness that Bouvier's Law Dictionary, 6th Ed. (1856), the official law dictionary of Congress in the middle of the 19th century when the income tax was first enacted, and which, in harmony and concert with Adam Smith's definitions, illuminates Congressional intentions as to what their newly-enacted unapportioned "income tax" of 1862 is, and can be, and isn't, and cannot be, contains the following definition:

> *"CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability."*

10. The content to which I attested as being what I know and believe to be true, complete and correct on

the tax-related documents I freely signed concerning 2002, 2003 and 2008, and the conclusions reflected therein, are informed by my belief that in light of the foregoing, however much it may have been carefully crafted to appear otherwise, the unapportioned income tax cannot and does not fall on:

- "all that comes in";
- "every different species of revenue";
- "the fortune or revenue of each contributor";
- "the [common-meaning] wages of labour";
- "what is supposed to be one's fortune [per] an assessment which varies from year to year"; or
- "[an assessed percentage] of [one's] annual gains;

and it is therefore axiomatic that what qualifies as "income" subject to the tax must be only a specialized and distinguished subclass of gains.

11. That content and those conclusions are further informed by my awareness that the United States Supreme Court and other authorities, including Congress and the United States Department of Treasury, have repeatedly and consistently declared the "income tax" to be an excise tax, as in the following:

"I hereby certify that the following is a true and faithful statement of the gains, profits, or income of _____ _____, of the _____ of _____, in the county of _____, and State of _____, whether derived from any kind of property, rents, interest, dividends, salary, or from any profession, trade, employment, or vocation, or from any other source whatever, from the 1st day of January to the 31st day of December, 1862, both days inclusive, ***and subject to an income tax under the excise laws of the United States:"***
(from the first income tax return form) (emphasis added);

"The income tax is, therefore, not a tax on income [earnings] *as such.* ***It is an excise tax with respect to certain activities and privileges*** *which is measured by reference to the income which they produce. "*
F. Morse Hubbard, Treasury Department legislative draftsman. House Congressional Record, March 27, 1943, page 2580 (emphasis added);

"...in Springer v. U. S., 102 U.S. 586 , it was held that ***a tax upon gains, profits, and income was an excise or duty****, and not a direct tax, within the meaning of the constitution, and that its imposition was not, therefore, unconstitutional."*
Pollock v. Farmer's Loan & Trust, 158 U.S. 601, 1895 (emphasis added);

> *"…**taxation on income was in its nature an excise** entitled to be enforced as such,"*
> Brushaber v. Union Pacific RR. Co., 240 U.S. 1 (1916), quoting and reiterating language used in its ruling in Pollock v. Farmer's Loan and Trust (emphasis added).
>
> *"So the* [16th] *amendment made it possible to bring investment income within the scope of the general income-tax law, but did not change the character of the tax. **It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income.**"*
> F. Morse Hubbard, Treasury Department legislative draftsman. House Congressional Record, March 27, 1943, page 2580 (emphasis added).

12. That content and those conclusions are further informed by my awareness that the United States Supreme Court and other authorities have consistently and repeatedly declared "excise taxes" to be taxes on the exercise of privileges, as in the following:

> *"…the requirement to pay [excise] taxes involves the exercise of privilege."*
> Flint v. Stone Tracy Co., 220 U.S. 107 (1911);

"The terms 'excise tax' and 'privilege tax' are synonymous. The two are often used interchangeably."
American Airways v. Wallace, 57 F.2d 877, 880 (Dist. Ct., M.D. Tenn., 1932);

"The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed..."
United States v. County of Allegheny, 322 US 174 (1944).

"The income tax... ...is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of tax."
Former Treasury Department legislative draftsman F. Morse Hubbard in testimony before Congress in 1943

"The obligation to pay an excise is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege or engaging in the occupation which is the subject of the excise, and the element of

> *absolute and unavoidable demand is lacking. * * * The term "excise tax" is synonymous with "privilege tax" and the two are used interchangeably. Whether a tax is characterized in the statute imposing it as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax."*
> 71 Am. Jur.2d Sec. 24, pp. 319-320

13. That content and those conclusions are further informed by my awareness that "privilege" is defined as:

> *"PRIVILEGE: A particular benefit or advantage enjoyed by a person, company, or class beyond the common advantages of others citizens. An exceptional or extraordinary power of exemption. A particular right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others."*
> Black's Law Dictionary, 6th edition;
>
> *PRIVILEGE. A right peculiar to an individual or body. Ripley v Knight, 123 Mass 519. An advantage held by way of license, franchise, grant, or permission, not possessed by others. Special enjoyment of a good, or exemption from an evil or burden. Wisener v Burrell, 28 Okla 546, 118 P 999. An immunity existing under the law. For tax purposes, any occupation or business which the legislature may declare to be a privilege and tax as such.*

> *Seven Springs Water Co. v Kennedy, 156 Tenn 1, 299 SW 792 56 ALR 496. (Civil law.) A tacit hypothecation of a thing without any transfer of the possession of it or of the right to possession. The Glide, 167 US 606, 42 L Ed 296, 17 S Ct 930.*
> Ballentine's Law Dictionary, 3rd Edition
>
> *PRIVILEGE, rights. This word, taken its active sense, is a particular law, or a particular disposition of the law, which grants certain special prerogatives to some persons, contrary to common right. In its passive sense, it is the same prerogative granted by the same particular law.*
> Bouvier's Law Dictionary, 6th Ed. (1856).

13. The content to which I attested as being what I know and believe to be true, complete and correct on the tax-related documents I freely signed concerning 2002, 2003 and 2008, and the conclusions reflected therein, are informed by my belief that my economic activities are not extraordinary, not of any special character, and not distinguished or distinguishable in any way as being within the power of the state to make subject to a charge for the enjoyment thereof, and that in light of the foregoing evidence and authorities nothing I have earned and nothing I have done can properly and honestly be reported on forms

intended for the reporting of taxable things other than as I have so reported.

I swear that the foregoing is true and correct to the best of my knowledge.

Executed on June 27, 2013.

Doreen M. Hendrickson

Subscribed and sworn to or

affirmed before me this date: 6/27/2013

[seal] My Commission Expires: 07/23/2017

ANNETTE M RHODES
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF OAKLAND
My Commission Expires: July 23, 2017
Acting in the County of OAKLAND

EXCERPT FROM JULY, 2014 TRIAL TRANSCRIPT VOL. III, PP. 40, 41

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

UNITED STATES OF AMERICA,

Case No. 13-20371

-vs-

DOREEN HENDRICKSON, Detroit, Michigan

Defendant. July 23, 2014

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TRANSCRIPT OF TRIAL - VOLUME THREE
BEFORE THE HONORABLE VICTORIA A. ROBERTS
UNITED STATES DISTRICT COURT JUDGE, and a Jury.

APPEARANCES:

For the Government: Melissa Siskind, Esq.
Jeffrey McLellan, Esq.

For the Defendant: Doreen Hendrickson, Pro Per
Standby Counsel: Andrew Wise, Esq.

Proceedings taken by mechanical stenography, transcript produced by computer-aided transcription

JANICE COLEMAN, CSR 1095, RPR
OFFICIAL FEDERAL COURT REPORTER
(313) 964-5066

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sworn to a belief in what you asked Judge Edmunds to order me to swear that I believe?

MS. SISKIND: Objection, Your Honor, vague and --

THE COURT: Sustained.

Q. (By Ms. Hendrickson continuing) I'll try to clarify it a little bit. You had requested that I file what you would term corrected returns or correct according to your belief, but has anyone in the Government ever sworn to that same belief over their signature regarding my earnings?

MS. SISKIND: Objection, Your Honor. Same objection.

THE COURT: I don't get your question. You want him to ask about whether anyone ever in history in Government has ever done -- he can't answer that question. Ask another question.

MRS. HENDRICKSON: I just said to your knowledge. Okay.

Q. I think you admitted yesterday that there was no trial before these Orders were issued, is that correct?

A. Yes.

Q. Was there a hearing before these Orders were issued?

A. You mean like --

Q. Just --

A. Like here?

Q. Yes, in court.

A. No.

Q. Do you recall that my husband and I requested a hearing?

A. I don't remember.

Q. Was there ever a single appearance in person by anyone before Judge

Edmunds prior to these Orders being issued?

A. No.

Q. Is there a reason that you didn't mention in your Complaint when you asked for summary judgment that you didn't have a formal IRS examination report supporting your allegations? Is there a reason that you didn't mention that to Judge Edmunds; that Terry Grant's was not a formal examination, but it was something that she came up with, just kind of came up with? It's just a yes or no. Is there a reason why you didn't mention in your Complaint that there was no formal examination?

A. We did mention in her Declaration that there had not been a -- or at least what she had done did not constitute a formal examination.

Q. Thank you. And is there a reason why you didn't mention to Judge Edmunds that that wasn't a formal examination?

A. We did.

Q. You told Judge Edmunds that it wasn't a formal examination? Just curious. I mean somewhere?

A. The Declaration of Terry Grant -- let me find it. In order to answer your question I have to refer to the --

Q. I have it here.

A. -- Declaration of Terry.

Q. Do you want to see it? I have my copy. It might be easier for you to look at this.

A. I have it here. What we said in paragraph six of the Declaration of Terry Grant who was a Tax Examining Technician for the Frivolous Return Program at the IRS's Ogden Compliance Services Campus in Ogden, Utah. In paragraph six of her Declaration, she stated that attached to her Declaration was an IRS Form 4549

EXCERPT FROM JULY, 2014 TRIAL TRANSCRIPT VOL. V, P. 96

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

UNITED STATES OF AMERICA,

Case No. 13-20371

-vs-

DOREEN HENDRICKSON, Detroit, Michigan

Defendant. July 25, 2014

----------/

TRANSCRIPT OF TRIAL - VOLUME FIVE
BEFORE THE HONORABLE VICTORIA A. ROBERTS
UNITED STATES DISTRICT COURT JUDGE, and a Jury.

APPEARANCES:

For the Government: Melissa Siskind, Esq.
Jeffrey McLellan, Esq.

For the Defendant: Doreen Hendrickson, Pro Per
Standby Counsel: Andrew Wise, Esq.

Proceedings taken by mechanical stenography, transcript produced by computer-aided transcription

JANICE COLEMAN, CSR 1095, RPR
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Defendant.

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.

An inability to comply with an Order of the Court is a complete defense to the charge, a charge of Contempt.

Now I want to say a word about the dates mentioned in the Indictment. The Indictment charges that the crime happened on or about certain dates. The Government does not have to prove that the crime happened on that exact date, but the Government must prove that the crime happened reasonably close to that date.

Now this is an instruction about mental state. I want to explain something about proving a Defendant's state of mind. Ordinarily there's no way that a Defendant's state of mind can be proved directly because no one can read another person's mind and tell what that person is thinking. But a Defendant's state of mind can be proven directly from the surrounding circumstances. This includes things like what the Defendant said, what the Defendant did, how the Defendant acted and any other facts or circumstances in evidence that show what was the Defendant's state of mind.

You may also consider the natural and probable results of any acts that the Defendant knowingly did or did not do and whether it is reasonable to conclude that the Defendant intended those results. This, of course, is all for you to decide.

Now that concludes the part of the instructions explaining the elements of the crime. Next I want to explain some rules that you must use in considering some of the testimony and evidence.

Now you've heard the Defendant testify. Earlier I talked to you about the credibility or the believability of the witnesses, and I suggested some things for you to