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

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

REPLY TO THE UNITED STATES RESPONSE TO DEFENDANT'S MOTION TO DISMISS

On June 28, 2013, Doreen Hendrickson filed a Motion to Dismiss the charge against her of criminal contempt of court, with prejudice.[1] On July 12, 2013, the United States filed a Response urging the Court to deny the Motion,.

The United States argues that Mrs. Hendrickson is unable (or should be denied the right) to "challenge the underlying order" (Response, p. 5). But 18 U.S.C. 401(3) only criminalizes *"Disobedience or resistance to its* ***lawful*** *writ, process, order, rule, decree, or command,"* (emphasis added). Indeed, even the government's own "U.S. Attorney's Manual" (at § 774-Violation of an Invalid Decree) acknowledges that, "A possible exception [to the "failure to obey

[1] Mrs. Hendrickson notes the government's complaint about her failure to seek concurrence and apologizes to the Court for this oversight. In 7 years of government motions being filed in cases in which she was a named party, Mrs. Hendrickson cannot recall a single instance of her concurrence being sought, and took what may have been an inappropriate lesson thereby. She assures the Court that she will be more careful about this in the future.

is a crime, no matter what" argument] exists where the order is "transparently" unlawful. *Walker v. City of Birmingham,* 388 U.S. 307, 315 (1967)."

Here, a woman has been ordered to lie over her own signature, and even to conceal that the lie was forced from her-- two irrevocable acts, and two acts for the coercion of which no statutory or equity authority exists. In fact, this coercion violates specific statutory prescriptions, well-settled doctrines precluding equity remedies and specific Constitutional proscriptions, as detailed in Mrs. Hendrickson's Motion. These orders are no different in substance from Mrs. Hendrickson being ordered to sleep with the prosecutor. Would the government argue that she cannot refuse and challenge the validity of the order if then charged with contempt?

The United States suggests that Mrs. Hendrickson had her chance to challenge the lawfulness of the orders-- and, in fact, she did so. However, just as one court is capable of issuing unlawful orders, others are capable of upholding them. Neither makes lawful what really is not. Further, all that is established by the outcome of those prior challenges is that either Mrs. Hendrickson's arguments were not as clearly articulated as they needed to be, or that the courts reading them failed to grasp or acknowledge the issues involved.

In fact, the appellate court upholding the district court's denial of Mrs. Hendrickson's Motion to Vacate makes clear that it failed to understand or address the real issues in the case. In its ruling, the court says, "The Hendricksons also contend that their Constitutional rights would be violated by compliance with the order, because they would be forced to swear to a fact they did not believe was true... ... ...we have rejected similar tax protestor arguments..." (*United States v. Hendrickson*, No. 10-1824, (6th CA 2011), "Not for full text publication.") The court then

cites to *United States v. Conces*, 507 F.3d 1028 (6th CA 2007) as its representative occasion of having previously "rejected similar tax protestor arguments".

However, *Conces* concerned only a "discovery" order (which Conces saw as somehow violating his First Amendment rights):

> "Conces seeks to raise the following issues in his brief on appeal:
> ...
> (3) Whether the district court violated his First Amendment right not to speak and his Fifth Amendment protection against self-incrimination by ordering him to respond to the Government's post-judgment discovery requests;"

United States v. Conces, 507 F.3d 1028 (6th CA 2007)

Plainly, *Conces* is entirely inapposite, and in no way supports orders for the creation of false documents and the false swearing of those documents to be the sincere testimony of the coerced victim. Plainly, the appellate court completely misunderstood the issue upon which it was ruling, and therefore did NOT actually uphold the district court's orders in any substantive sense. The same can be said of every prior ruling the government cites in its response.

The government acknowledges that jurisdictional infirmities are a valid basis for challenging the lawfulness of an order involved in a contempt charge (Response, p. 6), but again seeks to resort to the rulings just discussed as having disposed of all opportunities for such challenge. This argument fails for the same reasons just presented. No prior ruling in this case actually and forthrightly addressed the real issues in this case (and the only contest in which several jurisdictional issues raised in this Motion have previously appeared has since gone more than two-and-a-half years without a ruling).

Mrs. Hendrickson's Motion presents the *actual* rulings relevant to the real issues here. All show the orders involved in this case to be unlawful. Just eight days before Mrs. Hendrickson's Motion was filed the United States Supreme Court again addressed those real issues. Though considering a federal grant program under which the compelled-speech issue arose only with an application to get the money, the court emphatically re-iterates its ancient, never-disturbed doctrine that under no circumstances can anyone be told what they must say:

> "It is, however, a basic First Amendment principle that "freedom of speech prohibits the government from telling people what they must say." *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 61 (2006) (citing *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943), and *Wooley* v. *Maynard*, 430 U. S. 705, 717 (1977)). "At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 641 (1994); see *Knox* v. *Service Employees*, 567 U. S. ___, ___–___ (2012) (slip op.,at 8–9) ("The government may not . . . compel the endorsement of ideas that it approves.")."

Agency for Int'l Development v. Alliance for Open Society Int'l, Inc., 570 U.S. __ (2013)

The court doesn't even buy the government's argument that the challenged program is ok because affected applicants can have "affiliates" receive the grants and suffer the compelled speech or be the means by which the applicant speaks its real mind (an effort remarkably similar to Judge Edmunds' attempt to save her order by telling Mrs. Hendrickson that while she must not reveal the coercion on the dictated "amended returns" she was ordered to produce, she could file a disavowing statement separately):

> "Neither approach is sufficient. When we have noted the importance of affiliates in this context, it has been because they allow an organization bound by a funding condition to exercise its First Amendment rights outside the scope of the federal program. See *Rust*, *supra*, at 197–198. Affiliates cannot serve that purpose when the condition is that a funding recipient espouse a specific belief as its own." *Id*, at 13

Just so in Mrs. Hendrickson's case, in which she is ordered to declare as her own a belief that she not only does not hold, but believes to be flatly wrong and actively harmful to the rule of law and the well-being of the country she loves.

The Supreme Court concludes its condemnation of any such effort in unequivocal terms:

> "But the Policy Requirement ... requires them to pledge allegiance to the Government's policy... As to that, we cannot improve upon what Justice Jackson wrote for the Court 70 years ago: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Barnette*, 319 U. S., at 642." *Id*, at 14

Even the dissent in *Agency*, by Scalia, J. (concurrence by Thomas, J.) agrees that, "The constitutional prohibition at issue here is ... the First Amendment's prohibition against the coercing of speech," (Dissent, p. 2). The dissent disagrees with the majority only because application for the grant is optional, and therefore, "the Government is not forcing *anyone* to say *anything*." (Dissent, p. 7). In Mrs. Hendrickson's case, however, this is precisely what is being done, making the *Agency* court *unanimous* in condemning the orders made to her as unlawful.

If Congress can't lawfully command people to speak as it wishes-- even merely in exchange for choosing to get money from the government, certainly no court can lawfully command speech at the government's request.

The government concludes its response by contending that Mrs. Hendrickson's arguments that she did not, in fact, violate Judge Edmunds' order with regard to her 2008 refund claim, and that the orders commanding coerced (and thus, inherently insincere and invalid) "amended returns" are impossible to comply with are "questions of fact" not suited to the

Court's consideration. (Response, p. 9). But not only does the charge concerning the 2008 claim suffer from it's own "dictated testimony" problem, but the United States has failed to even allude to any evidence contradictory to the affidavit concerning the basis for her return testimony which Mrs. Hendrickson filed with her Motion. This Court can and should dismiss when the government fails to produce even a minimal basis for its allegations:

> "The prosecution's failure to provide minimal evidence of...any...element, of course raises a question of "law" that warrants dismissal."

United States v. Gaudin, 515 U.S. 506, 517 (1995)

Impossibility of compliance is also fit for consideration by the Court, since it concerns the legal nature of a return, not who did what, or why. Mrs. Hendrickson's beliefs about that impossibility would be a matter for a jury. But that a coerced valid return is a legal impossibility is fit for the Court's consideration and the dismissal of the charge in this case, with prejudice.

Respectfully submitted this 26th day of July, 2013

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Doreen Hendrickson, in propria personam

Index of Authorities

Cases:

Statutes:

Additional Authorities: