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.	:	

DOREEN HENDRICKSON'S MOTION FOR A CONTINUANCE

Doreen Hendrickson hereby moves this Honorable Court for a continuance of the trial date and adjustment of related pre-trial dates currently established by this Honorable Court in regard to this case, for the reasons more fully stated in the attached Brief in Support. Further, Mrs. Hendrickson respectfully requests permission to move the Court to issue a plain and complete declaration of its findings of fact on the basis of which it has deemed Mrs. Hendrickson to not be entitled to the protections of the First Amendment of the United States Constitution or has concluded that subjecting her to trial for resisting efforts to control her speech does not violate her rights secured under that Amendment. Concurrence in this Motion was sought from AUSA Jeffrey Bender, but was refused.

Respectfully submitted this 10th day of October, 2013,

_____
Doreen Hendrickson, in propria personam

BRIEF IN SUPPORT OF DOREEN HENDRICKSON'S MOTION FOR A CONTINUANCE

I. Introduction

Doreen Hendrickson is charged under a one-count indictment for refusing to testify with words dictated to her by a court at the government's request and to declare those dictated words to be her own freely-made testimony (in direct contradiction of her *actual* freely-made testimony), in alleged violation of 18 U.S.C. § 401(3)- Disobedience or resistance to [a court's] lawful writ, process, order, rule, decree, or command.

On July 29, 2013, after a *Farretta* hearing in which the Court granted Mrs. Hendrickson's motion to proceed in this matter on her own behalf with the assistance of Federal Defender Andrew Wise, a trial date of October 29 was proposed by the court clerk. Mrs. Hendrickson did not receive any actual schedule of that or any other dates related to the case until October 8, 2013.

Mrs. Hendrickson seeks a continuance of the trial date and any related dates/deadlines for the reasons more fully stated herein.

II. Authority Regarding Continuances

E.D. Mich. LR 40.2 provides as follows:

> Counsel or any party without counsel shall be prepared and present themselves as ready in all cases set for trial or for pretrial on the date set unless, on timely application and good cause shown, the cases are continued. Where application is made for the continuance of the trial of a case, such application shall be made to the Court as soon as the need arises.

Whether to grant a motion to continue is within the broad discretion of the district court. See, e.g., Morris v. Slappy, 461 U.S. 1, 11-12 (1983); United States v. Frost, 914 F.2d 756, 764-65 (6th Cir.

1990); United States v. Gallo, 763 F.2d 1504, 1523 (6th Cir. 1985), cert, denied, 474 U.S. 1068 (1986); Wilson v. Mintzes, 761 F.2d 275, 281 (6th Cir. 1985); and United States v. Wirsing, 719 F.2d 859, 865 (6th Cir. 1983). Denial of a motion to continue will only be found to be an abuse of discretion when the court exhibits "an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for a delay." Slappy, 461 U.S. at 11-12.

Simply stated, there is no way that Mrs. Hendrickson can adequately prepare for this trial under the current schedule. The following section sets forth a justifiable request for a delay of the currently scheduled trial date of October 29, 2013 and associated pre-trial dates.

III. The Reasons for the Request for a Continuance

A. This case is unusual and complex, due to the nature of the prosecution and novel questions of fact and law.

18 U.S.C. § 3161(7)(B) provides a non-exclusive list of factors this Honorable Court shall consider in regard to a request for a continuance. In this case, subparagraph (ii) is of particular relevance:

> Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of facts or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

This is unquestionably a case that is both unusual and complex, due to the nature of the prosecution and the existence of profoundly novel questions of fact or law. Although facially presented as a "contempt of court" charge, this prosecution is really an unprecedented punishment of an American citizen for resisting a government effort to control her speech-- an effort which has simply relied on a court order to accomplish its unlawful purpose.

Plainly, there IS no "We get to force words into your mouth as long as it's for *this* purpose, or in connection with *this* process, or if a court can be persuaded to help" exception to the First Amendment. Certainly none has been argued or even merely named by the government or any court that ever considered anything related to this case. Therefore, this case can only be being allowed to go forward based on one or both of the unprecedented, and thus far impenetrable propositions that 1.) Mrs. Hendrickson is somehow not entitled to the protections of the First Amendment, or that 2.) somehow forcing words into Mrs. Hendrickson's mouth, and/or threatening her with punishment for testifying freely, don't constitute infringements on her speech rights.

Mrs. Hendrickson has been at a complete loss in attempting to understand why she is not entitled to this Court's protections of her rights, or how the orders she is accused of "willfully" and criminally violating can possibly not be unlawful infringements of those rights. No court has ever explained these things.

Indeed, despite the unprecedented nature of the orders made to Mrs. Hendrickson, and the bright-line implication of the First Amendment that is obvious to every single person with whom Mrs. Hendrickson has ever discussed this case-- both legal professionals and lay-people-- no court has ever seen fit to discuss the amendment in any ruling in the underlying matter or the instant matter. Nor has any court articulated any findings of fact on the basis of which Mrs. Hendrickson is deemed to be not entitled to the protections of the amendment or by which controlling her speech is deemed to be not a violation of those protections, even though such

articulation is required under FRCrP 12(d) ("When factual issues are involved in deciding a motion, the court must state its essential findings on the record.").

At the same time, the courts are monolithic in their position that no degree of infringement of anyone's First Amendment rights is tolerable, and especially intolerable is penalizing anyone for exercise of her First-Amendment-secured rights. As the Sixth Circuit puts it in *Newsom v. Morris*, 888 F.2d 371 (6th Cir. 1989) (with emphasis added):

> "The Supreme Court has unequivocally admonished that **even minimal infringement upon First Amendment values constitutes irreparable injury** sufficient to justify injunctive relief.
>
> > It is clear therefore that First Amendment interests were either threatened or in fact being impaired at the time relief was sought. **The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.**
>
> *Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976) (plurality opinion of Brennan, J.); *id.* at 374-75, 96 S.Ct. at 2690 (Stewart, J., concurring in judgment) (termination from employment for political reasons violated First Amendment rights; injunctive relief properly accorded under such circumstances).
> ...
>
> > "**It is well settled that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury** justifying the grant of a preliminary injunction." *Deerfield Medical Center v. City of Deerfield Beach,* 661 F.2d 328, 338 (5th Cir. Unit B 1981).... **So too, direct penalization, as opposed to incidental inhibition, of First Amendment rights constitutes irreparable injury.** *Johnson v. Bergland,* 586 F.2d 993, 995 (4th Cir.1978) (transfer of employee allegedly for exercise of First Amendment rights; "[v]iolations of first amendment rights constitute per se irreparable injury"); *Citizens for a Better Environment v. City of Park Ridge,* 567 F.2d 689 (7th Cir.1975)....
> >
> > **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.** *Mt. Healthy City School Dist. v. Doyle,* 429 U.S. at 283-87, 97 S.Ct. at 574-76; *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); *Cohen v. California,* 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971).
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> *Cate v. Oldham,* 707 F.2d 1176, 1188-89 (11th Cir.1983); *accord Romero Feliciano v. Torres Gaztambide,* 836 F.2d 1, 4 (1st Cir.1987); *Mariani Giron v. Acevedo Ruiz,* 834 F.2d 238, 239 (1st Cir.1987); *Branch v. Federal Communications Comm'n,* 824 F.2d 37, 40 (D.C.Cir.1987), *cert. denied,* 485 U.S. 959, 108 S.Ct. 1220, 99 L.Ed.2d 421 (1988); *Jimenez-Fuentes v. Torres Gaztambide,* 807 F.2d 230, 234 (1st Cir.1986), *cert. denied,* 481 U.S. 1014, 107 S.Ct. 1888, 95 L.Ed.2d 496 (1987); *Shondel v. McDermott,* 775 F.2d 859, 866-67 (7th Cir.1985); *Stegmaier v. Trammell,* 597 F.2d 1027, 1032 n. 4 (5th Cir.1979); *Johnson v. Bergland,* 586 F.2d 993, 995 (4th Cir.1978); *compare In re School Asbestos Litigation (School Dist. of Lancaster Manheim Township School Dist. v. Lake Asbestos of Quebec, Ltd.),* 842 F.2d 671, 679 (3rd Cir.1988); *In re Providence Journal Co.,* 820 F.2d 1342, 1352 (1st Cir.1986), *modified en banc on other grounds,* 820 F.2d 1354 (1st Cir.1987), *cert. dismissed for lack of jurisdiction,* 485 U.S. 693, 108 S.Ct. 1502, 99 L.Ed.2d 785 (1988); *Taylor v. City of Fort Lauderdale,* 810 F.2d 1551, 1554 (11th Cir.1987); *Parents Ass'n of Public School 16 v. Quinones,* 803 F.2d 1235, 1242 (2nd Cir.1986); *American Civil Liberties Union of Illinois v. City of St. Charles,* 794 F.2d 265, 274 (7th Cir.), *cert. denied,* 479 U.S. 961, 107 S.Ct. 458, 93 L.Ed.2d 403 (1986); *San Diego Committee Against Registration & the Draft (CARD) v. Governing Bd. of Grossmont Union High School Dist.,* 790 F.2d 1471, 1473 n. 3 (9th Cir.1986); *Lydo Enter., Inc. v. City of Las Vegas,* 745 F.2d 1211, 1214 (9th Cir.1984); *Libertarian Party of Indiana v. Packard,* 741 F.2d 981, 985 (7th Cir.1984); *Ebel v. City of Corona,* 698 F.2d 390, 393 (9th Cir.1983); *Deerfield Medical Center v. City of Deerfield Beach,* 661 F.2d 328, 338 (5th Cir. Unit B Nov. 1981); *Community Communications Co., Inc. v. City of Boulder,* 660 F.2d 1370, 1376 (10th Cir.1981), *cert. dismissed by agreement of parties,* 456 U.S. 1001, 102 S.Ct. 2287, 73 L.Ed.2d 1296 (1982); *Florida Businessmen for Free Enter. v. City of Hollywood,* 648 F.2d 956, 958 (5th Cir. Unit B June 1981); *cf. Lowary v. Lexington Local Bd. of Educ.,* 854 F.2d 131 (6th Cir.1988); *Damiano v. Matish,* 830 F.2d 1363 (6th Cir.1987); *Tierney v. City of Toledo,* 824 F.2d 1497, 1507 (6th Cir.1987).

Newsom v. Morris, 888 F.2d 371 (6th Cir. 1989).

Here, Mrs. Hendrickson faces a prosecution that seeks to punish her for refusing to let her speech be controlled. Unless Mrs. Hendrickson is somehow not entitled to the protections

secured by the First Amendment, or controlling her speech is somehow not a violation of those protections, this prosecution is illegal on its face. And yet it is being allowed to go forward.

Consequently, Mrs. Hendrickson has been struggling to imagine what proofs the Court will require of the prosecution, and what it is she will be obliged to defend against. More time is needed for this effort, and without it Mrs. Hendrickson is incapable of preparing for trial.

Perhaps it is being imagined that because Nancy Edmunds declared her own conclusions that Mrs. Hendrickson's earnings are of the taxable variety (albeit without the benefit of evidence or even so much as a single hearing), Mrs. Hendrickson must be presumed to believe this, too--or is compelled to believe it. This is insane, of course, and would be a complete evisceration of the rights to freedom of speech and conscience. Under this reasoning, all America was obliged (or should be taken) to believe that African-Americans were inferior people not entitled to full citizenship and respect as human beings due to the rulings in Dred Scott v. Sanford and other official pronouncements, for example, and any American could be punished for refusing to declare personal embrace of such a belief. This would be the logical extension of the proposition that anyone's beliefs or speech should be influenced or controlled by "official opinions," or that the sincerity of anyone's expressions should be tested against "official opinions" or deemed suspect due to knowledge of contrary "official opinions." It is plainly a violence against the principles and purposes underlying the First Amendment.

But perhaps this is the reasoning on which this trial is being allowed to go forward. The Court doesn't say, and so Mrs. Hendrickson must struggle, imagining this possibility and a thousand more. Plainly, Mrs. Hendrickson's ability to prepare a defense rests on her success in

figuring out what pretexts and presumptions are being deployed against her, and more time and research are necessary for that effort.

In light of the foregoing, this Honorable Court should find that the instant case falls under 18 U.S.C. § 3161(7)(B)(ii), and grant a continuance in this matter. Even if this Honorable Court does not find that this case falls within subsection (ii), it should still grant a continuance under subsection (iv), which allows for continuances in situations where "the failure to grant a continuance . . . would deny the defendant . . . reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. § 3161(7)(B)(iv).

B. The volume of material presented as evidence by the government is massive, and its relevance is inscrutable.

The government has presented Mrs. Hendrickson with more than 1,200 pages of documents purporting to represent the evidence it intends to use in trial. Not a single page of this material contains a declaration by Mrs. Hendrickson that she waives her First Amendment-secured rights or even simply that she believes what the government asked Judge Edmunds to order her to say she does or that the orders are somehow lawful despite commanding her to lie over her signature and oath (and the government has never alleged anything to the contrary in the seven years during which proceedings related to this matter have dragged on-- allegations which would clearly have been in its interests had they been valid or even marginally plausible). Consequently, every page of this massive volume of material must be struggled through in a grueling and thus far fruitless effort to discern some purpose behind its inclusion. More time is

needed for this demanding process, so that Mrs. Hendrickson can have a fair chance at properly responding to this material both by a knowledgeably-prepared Motion *in Limine* and in trial.

C. Mrs. Hendrickson did not receive a formal schedule declaring a trial date and pre-trial cut-off dates until October 8, 2013, just 21 days before the scheduled date of trial.

Although Mrs. Hendrickson has presumed the trial date proposed by the Court's clerk on July 29, 2013, to be valid, no schedule was ordered or issued formally declaring this to be the true, and in the interim dispositive motions were pending before the Court. In light of the pendency of those motions and no appearance of a schedule indicating otherwise Mrs. Hendrickson reasonably presumed that should the case not be dismissed on the basis of those motions the time of trial and all pre-trial events would be adjusted forward accordingly. Mrs. Hendrickson is the innocent defendant in this matter, and could not imagine herself to be expected to expend her limited resources and time on unscheduled pre-trial activities while reasonably expecting dismissal of this deeply-flawed government effort to punish her for standing up for her rights and resisting lawless government efforts to control her speech.

IV. Relief Requested

For the reasons stated herein, Mrs. Hendrickson respectfully requests that this Honorable Court grant this Motion and order a continuance of the trial to February 2014. Moreover, this request for additional and adequate time should be determined to be excludable delay pursuant to the Speedy Trial Act, 18 U.S.C. § 3161. Further, Mrs. Hendrickson respectfully requests permission to move the Court to issue a plain and complete declaration of its findings of fact on the basis of which it has deemed Mrs. Hendrickson to not be entitled to the protections of the First Amendment of the

United States Constitution or has concluded that subjecting her to trial for resisting efforts to control her speech does not violate her rights secured under that Amendment.

Respectfully submitted,

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Doreen Hendrickson, in propria personam
Dated: October 10, 2013

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Cases:

Statutes and Rules