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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,	)	
	)	Case No. 3:16-CR-0051-BR
Plaintiff,	)	
	)	
v.	)	March 11, 2016
	)	
KENNETH MEDENBACH, (16)	)	
	)	
Defendant.	)	
<hr/>		Portland, Oregon

TRANSCRIPT OF PROCEEDINGS

(Detention Hearing)

BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

CRAIG GABRIEL  
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FOR DEFENDANT  
MEDENBACH:

KENNETH MEDENBACH  
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1 (Friday, March 11, 2016; 11:00 a.m.)

2

3

P R O C E E D I N G S

4

5 THE COURT: Good morning, everyone. Please be

6 seated.

7

Mr. Gabriel.

8

MR. GABRIEL: Good morning, your Honor.

9

10 This is the matter of the United States v. Kenneth  
11 Medenbach. It's Case No. 16-CR-51.

12 This is the time set for **Faretta** hearing, as  
13 Mr. Medenbach had previously expressed to the Court his desire  
14 to represent himself.

15 He is currently appearing with his lawyer, Matt  
16 Schindler. And I think the Government's motion is that he is  
17 represented until such time as the **Faretta** motion is complete  
18 and the Court grants that motion.

19 We are also here to take up the matter of  
20 Mr. Medenbach's detention.

21 THE COURT: On that latter point, there may be some  
22 confusion. I don't know -- and I'll need Mr. Medenbach, for  
23 you to confer -- to confirm whether there really -- there was a  
24 request for review or not.

25 There was filed in the record a waiver of a detention  
hearing that Mr. Schindler filed on Mr. Medenbach's behalf in

1 late February.

2 The clerk did docket the matter as a **Faretta** hearing  
3 and a detention hearing, and the pretrial officer's here. But  
4 if Mr. Medenbach wants us to review the issue, I will. I'm  
5 just not sure it was intended. I can't tell.

6 MR. SCHINDLER: Can I speak to this?

7 THE DEFENDANT: Go ahead.

8 MR. SCHINDLER: Yes, your Honor, I contacted Pretrial  
9 Services because we did feel that it was important that an  
10 additional review of detention take place here in this court,  
11 so we had asked that some supplemental information that we had  
12 provided to Pretrial Services be reviewed.

13 THE COURT: All right.

14 MR. SCHINDLER: And so we would like to have that  
15 done today.

16 And then at the court -- the initial arraignment, if  
17 the Court will recall, Mr. Medenbach intended to make a motion  
18 to the Court regarding some jurisdictional issues. The Court  
19 asked him to defer that until this hearing today.

20 So he would like to take a few minutes, once we've  
21 gotten through the **Faretta** and detention issues, to address his  
22 jurisdictional issue to the Court, your Honor.

23 THE COURT: Yes. I had thought -- and I do note in  
24 the record -- that I had indicated that he should file a  
25 motion, if he had one to make.

1 I -- so far none has been filed. But I'll certainly  
2 hear what you have to say this morning, Mr. Medenbach, to see  
3 if we can get to the bottom of things.

4 Let's begin with this question about your right to  
5 counsel and your right to waive having an attorney represent  
6 you.

7 Are you ready to proceed on that question?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Schindler, would you please be sure  
10 Mr. Medenbach has in front of him the Superseding Indictment;  
11 the one that now charges him both in Count 1 -- and,  
12 Mr. Gabriel, help me with the count.

13 MR. GABRIEL: Count 4, your Honor.

14 THE COURT: Count 4.

15 So, Mr. Medenbach, we went through the formal  
16 arraignment the other day. These charges are now pending  
17 against you. You did not enter a plea, but I did enter a plea  
18 of not guilty for you. You are presumed innocent of all  
19 wrongdoing that's alleged. That presumption of innocence stays  
20 in effect unless and until the Government overcomes the  
21 presumption by proving you guilty in a public trial by jury.

22 You have an absolute right to that public trial by  
23 jury, where, in a process followed by law, eventually 12 people  
24 are selected to be the judges of what the evidence proves or  
25 does not prove. And in that process, the Government has an

1 opportunity to seek to convince 12 jurors of your guilt beyond  
2 any reasonable doubt.

3           In that process, you have the right to confront the  
4 evidence against you. That is to say, the witnesses who  
5 testify that the Government brings before the jury. You have  
6 the right to -- to confrontation there. You also have a right  
7 to confront any other evidence the Government presents, whether  
8 it's a video or a document, a thing, a photograph; that kind of  
9 thing. That's part of the fundamental due process rights of a  
10 person accused.

11           You have the absolute right to remain silent and not  
12 to be called as a witness against yourself or to be compelled  
13 to testify against yourself.

14           And on the mirror image of that right, you have the  
15 right personally to take the witness stand in your own defense  
16 if you wanted to do so.

17           That, of course, would expose you to  
18 cross-examination by the Government's lawyer. If you chose to  
19 give up the right to remain silent, if you chose to take the  
20 witness stand in your own defense, then you would be permitted  
21 to testify about any matter that was relevant in the case. And  
22 then the Government would be permitted to cross-examine you as  
23 to any matter you raised in your direct testimony.

24           Finally, you have the right under the Sixth Amendment  
25 to the United States Constitution to the continued and

1 effective assistance of counsel.

2 Mr. Schindler has been appointed to be your counsel.  
3 You've expressed regularly, however, that you do not wish to  
4 have an attorney and you do want to represent yourself. So the  
5 purpose of this hearing, today, is for me to review that issue;  
6 the issue of whether you're going to represent yourself or  
7 proceed with counsel, in detail.

8 I'm not permitted by law to allow a person to  
9 represent himself until I've had this very detailed discussion  
10 about the issues; specifically, the risks of proceeding without  
11 counsel, the risks of going forward to trial, and the like.

12 So, that's what I'm prepared to begin with.

13 Are you with me, so far?

14 THE DEFENDANT: I am.

15 THE COURT: All right. Thank you, sir.

16 So you have in front of you this Indictment, charging  
17 you in Counts 1 and Count 5, was it?

18 MR. GABRIEL: 4, your Honor.

19 THE COURT: 4. Sorry.

20 The maximum penalties were announced the other day.  
21 And we've -- again, we've covered all of the other rights  
22 several times.

23 The function of a lawyer in the context of this kind  
24 of proceeding is to use his skill and experience to facilitate  
25 the defendant's case. To help the defendant understand the

1 risks he's facing, the -- the weight of the evidence the  
2 Government says it has against him. To help a defendant  
3 understand the legal ways to want that risk. To challenge the  
4 admissibility of evidence. To challenge the viability of the  
5 legal theories the Government is proceeding. To work for the  
6 defendant's benefit in discussions and negotiations with the  
7 prosecutor, and so forth.

8           There are so many things a lawyer does for a person  
9 in your shoes, it's hard for me to enumerate them all. But, in  
10 the end, a person like Mr. Schindler, who has considerable  
11 experience in representing people accused of crimes, can -- as  
12 your advocate -- represent you to the prosecutors; would speak  
13 for you here in court on matters related to both substance and  
14 procedure. He would also know, from his training and  
15 experience, what issues were appropriate to raise at a  
16 particular time and which issues were not appropriate to raise.

17           He would know, from his training and experience, how  
18 best to consider all of the factors that bear on the exposure  
19 you face in this case, and to assist you to try to get the best  
20 result possible.

21           So I -- I start from the premise that a lawyer is  
22 guaranteed to a person through the Sixth Amendment for a very  
23 good reason. The founding fathers realized what a risk it was  
24 when -- when the United States Government or even a state  
25 Government accused a person of a crime, the accusation of which

1 put the person in custody while awaiting trial.

2           There are many procedural and substantive rules of  
3 law that I am required to enforce in a proceeding, and a person  
4 trained as Mr. Schindler is, both in -- academically and by  
5 experience -- knows the manner in which those issues are raised  
6 and the likely outcome of various requests to the Court. He  
7 then knows where the most likely path is for resolution that  
8 would minimize risk to a person in your situation.

9           I'm going to speak a little bit more. I just  
10 appreciate your listening right now, as you are.

11           Last week I presided at a jury trial in which a  
12 person accused of a crime did choose to represent himself. And  
13 he had with him another lawyer, like Mr. Schindler, well  
14 qualified, but he insisted that he would represent himself. He  
15 was a bright man. He tried very hard, I think, to follow the  
16 rulings I made, and yet he made a number of very obvious errors  
17 that would not have happened if a lawyer was handling the  
18 matter.

19           For example, he had tried very hard before trial to  
20 get from the Court a ruling that no one should tell the jury he  
21 was in the marshal's custody for that trial because he thought  
22 it would be prejudicial if the jury knew that the marshal had  
23 detained him, given the nature of that charge. And I so ruled.

24           Yet he asked a witness a question repeatedly, which  
25 caused the witness to answer truthfully that he was in the

1 marshal's custody. These are just small examples of how a  
2 person not trained in the process can innocently make mistakes  
3 because he's not trained as a lawyer.

4           The process is -- I happened to be able to speak with  
5 the jury after that trial, and they were concerned that the  
6 person's case was impaired because he represented himself;  
7 because he wasn't able to facilitate the presentation of  
8 evidence in the same way; that he wasn't able to make the legal  
9 arguments that were relevant. And they questioned: Why would  
10 a person do that?

11           And I simply said, Well, that was his choice, and so  
12 it was honored and respected.

13           So I just relate that experience to you because it's  
14 one fresh in my mind.

15           In that case, I -- when I did allow that man to  
16 represent himself, I required, as I would in your case, the  
17 role of standby counsel. Because as long as the person --  
18 especially, I should say, if a person representing himself is  
19 in custody, the manner in which information he receives is  
20 restricted and limited just by the confines of being in  
21 custody, you would have to have a Mr. Schindler to receive  
22 communications, to act on them quickly, to keep you in the loop  
23 so that you could actively participate.

24           So I want you to know that if I'm persuaded in the  
25 end that you're making a knowing, intelligent, and voluntary

1 waiver of your right to counsel, I will require there to be a  
2 standby lawyer for that reason.

3 I can't let the case proceed with a risk that a  
4 person in custody, representing himself -- even out of custody,  
5 representing himself -- somehow misses a communication. You  
6 can see from your attendance at the other proceedings the sheer  
7 number of people communicating and the legal issues that have  
8 to be considered by both sides and on behalf of people  
9 individually is voluminous. And there isn't any way I would  
10 permit you to go forward, representing yourself, without a  
11 standby lawyer as a conduit, an insurance policy, so to speak,  
12 that information wasn't lost or missed or -- or not getting to  
13 you.

14 So on that point, Mr. Schindler, may I ask --  
15 assuming I allow the defendant to represent himself, I'm  
16 assuming you're willing to continue in the role that you've de  
17 facto been serving but I haven't yet acknowledged.

18 MR. SCHINDLER: Absolutely, your Honor. I think  
19 Mr. Medenbach and I have had -- formed a relationship. We've  
20 worked well over the course of the last few weeks, and I don't  
21 think he has any objection to me remaining in that role going  
22 forward, assuming the Court allows him to represent himself.

23 THE COURT: All right. So let's get to some of the  
24 parts of this analysis, so I can get all of those things  
25 accomplished. And then when we're finished with the

1 question-and-answer part, Mr. Medenbach, if there's anything  
2 else you need to add to the record, you'll have a chance to do  
3 that. All right?

4 THE DEFENDANT: Okay.

5 THE COURT: So the first point is I need to ask you  
6 whether you are actually aware of the nature of the charges  
7 against you in Count 1 and in Count 4 of the Superseding  
8 Indictment.

9 THE DEFENDANT: I've read both of them.

10 THE COURT: All right. Mr. Gabriel, will you repeat,  
11 again, please, the maximum penalties upon conviction on each of  
12 those two counts?

13 MR. GABRIEL: Yes, your Honor.

14 The maximum for Count 1, the maximum sentence is six  
15 years in prison, a fine of up to 250,000 dollars, three years  
16 of supervised release, and a 100 dollar fee assessment.

17 The maximum for Count 4, theft of Government  
18 property, is ten years in prison, a 250,000 dollar fine, three  
19 years of supervised release, and a 100 dollar fee assessment.

20 THE COURT: Thank you.

21 Mr. Medenbach, do you understand?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: All right. Let's talk about the dangers  
24 and the disadvantages of self-representation. I've spoken to  
25 them generally. Primarily those dangers involve a person who

1 is not trained in the law, who is not experienced in the  
2 criminal law making missteps that ultimately prejudice him  
3 through no fault of his own but, nevertheless, do; making  
4 decisions that do not facilitate his own representation, and  
5 the like.

6 I've given you a short example from a case last week  
7 where a person trying his very best made a very fundamental  
8 error that no lawyer would have made and that there was nothing  
9 I could do to cure because he's the one who did it. He's the  
10 one who introduced that piece of evidence.

11 Have you thought about how you would be able to  
12 proceed representing yourself, knowing that the prosecutors are  
13 legally trained, the other defendants have legal counsel also  
14 experienced and legally trained, and yet I'm assuming -- I  
15 should have asked you, you're not -- you do not have a license  
16 to practice law. Is that right?

17 THE DEFENDANT: No.

18 THE COURT: And you've not been to law school?

19 THE DEFENDANT: No.

20 THE COURT: All right. So have you considered how  
21 you would address the question of those risks of trying to  
22 represent yourself when you don't have the legal training or  
23 experience to do so?

24 THE DEFENDANT: Well, I understand.

25 I -- as a pro se litigant, I have more lateral -- I'm

1 not held in strict standards of -- an attorney would.

2 THE COURT: Well, let me correct you there. That's  
3 not correct. You are subject to the same rules of procedure,  
4 the same rules of law, the same rulings of the Court as  
5 anybody. You're not allowed to introduce evidence a lawyer  
6 wouldn't allow -- be allowed to introduce. You're not allowed  
7 to make arguments in front of the jury that a lawyer wouldn't  
8 be allowed to make.

9 You are subject to exactly the same gatekeeping  
10 standards that I would hold and will hold all the lawyers to.

11 THE DEFENDANT: Is that the same of criminal as it is  
12 with civil?

13 THE COURT: No. A -- in a civil case, where a person  
14 brings a civil rights action -- this is particularly what I  
15 think you may be getting at. When a person brings a claim for  
16 civil -- a civil case against a state actor, alleging that his  
17 civil rights have been violated, an unlawful arrest, let's say  
18 for example, and the person sues that person in a civil  
19 proceeding, by himself, the courts of appeal throughout the  
20 federal system have made clear that a court -- a trial court,  
21 like me, must read liberally the allegations of a civil rights  
22 complaint to ensure that a real claim isn't lost for lack of  
23 experience. That's not the standard that applies in a criminal  
24 proceeding.

25 You would be required to follow the same legal

1 rulings that I make for all of the defendants, all of the  
2 prosecutors. You would be required to file your motions. So  
3 when I say, if you want to make a motion to dismiss, file it;  
4 you would be required to do that in the same way a lawyer  
5 would. Of course I would overlook lay language explaining the  
6 same legal concept, lawyers have learned how to speak in a  
7 certain jargon, as long as your arguments convey in principle  
8 the legally cognizable theory or defense. That's not the  
9 issue. But you are held to the same standard. You must follow  
10 the same rules. You must obey the Court's rulings, whether you  
11 agree with them or not.

12 Any time a ruling is made that you don't agree with,  
13 you may except to it. Then it's on the record, and it can be  
14 reviewed later. But you have to accept the rulings, just as  
15 Mr. Schindler does when he makes an argument on behalf of a  
16 client and the ruling goes against him. He still has to follow  
17 it, and he saves the argument for later on appeal.

18 Have I -- have I made that clear.

19 THE DEFENDANT: Well, I have a similar charge down in  
20 Medford, on --

21 THE COURT: The trespass case or the camping case?

22 THE DEFENDANT: Right. Right.

23 And I asked the same question of the Judge Clark down  
24 there, and he gave me a different answer.

25 THE COURT: We may have a difference of opinion.

1           A criminal case is different than a civil case. In a  
2 civil case, there is law that requires me to construe liberally  
3 civil rights pleadings. And -- and that rule is only limited  
4 to civil rights cases.

5           THE DEFENDANT: Well, this is a criminal case down  
6 there, also.

7           THE COURT: I'm simply saying we may have a  
8 difference of opinion. And I am expressing to you my  
9 understanding and view of the law. You can't expect to get a  
10 pass, so to speak, on matters that the other lawyers wouldn't  
11 get a pass on. You'll be treated, as best I can, fairly with  
12 everyone. But if you miss an argument, if you misstate an  
13 argument, it's -- you know --

14           THE DEFENDANT: I mean, if worse comes to worse here,  
15 if Mr. Schindler -- he's got a good living here. So he has to  
16 stay within some -- you know, he doesn't want to get you upset.

17           THE COURT: I'm sorry. Say it again?

18           THE DEFENDANT: He has to make a living here, so he  
19 has to abide by these rules. I understand I have to abide by  
20 the rules, too. But the worst that can happen to me is I can  
21 get more jail time, contempt of court.

22           THE COURT: Well, the worst that can happen to you is  
23 if you didn't follow the ruling, you could be taken out of the  
24 room. You wouldn't even be able to be present at your trial.  
25 People who don't follow rulings don't get to be present.

1           There are some very fundamental misunderstandings I  
2 think you have about the disadvantage of trying to do this on  
3 your own. And let me just make one point on that.

4           There isn't any rush here for you to give up your  
5 right to a lawyer. Right now, we are in pretrial proceedings.  
6 And as you heard at the last group scheduling hearing, the --  
7 the next hearing is going to be focused on scheduling. Setting  
8 a date for a trial. Setting a schedule for the filing of  
9 motions. Setting a schedule to get this discovery issue  
10 moving, getting information to people. For the life of me, I  
11 would -- I cannot understand why you would want to put yourself  
12 in the lead of representing yourself in this very complicated  
13 case, especially at this stage.

14           It might -- if you wanted to be the person speaking  
15 at trial, if you wanted to be the person asking questions of  
16 the Government's witnesses in cross-examination, if you wanted  
17 to be the one to make your own opening statement and closing  
18 argument, that might be a different time to think about this.  
19 But to me, strategically, it would be -- it's unwise not to  
20 take advantage of Mr. Schindler's role.

21           You've already heard he's going to be here one way or  
22 the other --

23           THE DEFENDANT: Yeah.

24           THE COURT: -- because I'm -- I'm not going to put  
25 you in a situation where you don't have a -- a channel of

1 official communication with all of these parties talking to  
2 each other and the prosecutors needing to speak to defendants,  
3 and my needing to get information out.

4           So my point is, back to the disadvantages of  
5 representing yourself, you are at a disadvantage if you give up  
6 the right to counsel. If you choose to be the one responsible  
7 for making the legal arguments, for filing the papers, for  
8 arguing against a Government's position and the like, you do it  
9 at a significant disadvantage. That's just --

10           THE DEFENDANT: Okay. I've been through quite a few  
11 trials on the state level. And -- and I didn't win any of them  
12 but I felt justified in everything that I had to say. And I  
13 was able to speak my mind of what I thought the law was.

14           And -- and I am not disappointed with any of my  
15 previous actions, and I -- the relationship I have with  
16 Mr. Schindler now is -- seems to work just fine with me.

17           THE COURT: So you're aware that by representing  
18 yourself, you take on the risks of making mistakes that could  
19 end up affecting your case adversely?

20           THE DEFENDANT: I understand all of that.

21           THE COURT: And you're aware there are dangers, then,  
22 in taking this course of action that would not exist if  
23 you're -- had a lawyer representing you?

24           THE DEFENDANT: I'm aware of that.

25           THE COURT: I'll make one other final point. You

1 know, sometimes after a person -- if a person is convicted, if  
2 a person is then sentenced to prison, if a person loses all his  
3 appeals while sitting in custody after having exhausted all  
4 appeals, there is the right to seek post-conviction relief,  
5 sometimes called habeas corpus relief, on the ground of  
6 ineffective assistance of counsel, that the Sixth Amendment  
7 right to counsel was violated because the lawyer made a serious  
8 mistake that amounted to depriving that person of that right to  
9 counsel. No one can do that in the track you're asking me to  
10 allow you to follow.

11           If you end up representing yourself, getting  
12 convicted, getting sent to prison, exhausting your appeals on  
13 any review of the legal decisions I make in the case, you won't  
14 have a claim for post-conviction relief. Because you don't  
15 have a lawyer, you couldn't say you made a fundamental error.

16           Do you understand that?

17           THE DEFENDANT: Yeah, I understand.

18           THE COURT: Okay. Has anyone put any pressure on you  
19 to make this decision?

20           THE DEFENDANT: Not at all.

21           THE COURT: Can you tell me why you want to do this?

22           THE DEFENDANT: I have deep religious beliefs. I've  
23 got a holy spirit who lives in me, and he'll guide me through  
24 this. He's the creator of heaven and earth. This is a small  
25 thing for him.

1 THE COURT: I respect that, sir. I do.

2 I know from experience, however, having had the  
3 responsibilities of a judge in criminal proceedings for 24  
4 years now, I've never once seen a person make the decision  
5 you're proposing to make benefit from it in the long run.  
6 There is so much to lose by giving up the right to experienced  
7 representation here and I --

8 THE DEFENDANT: This life is immaterial to a future  
9 life in heaven. This is small stuff.

10 THE COURT: All right. All right.

11 So do you understand that if you represent yourself,  
12 you are bound by the rulings that I make, whether you agree  
13 with them or not?

14 THE DEFENDANT: Yes.

15 THE COURT: And if I direct that you're not allowed  
16 to raise a certain subject, you may not raise it.

17 THE DEFENDANT: I understand.

18 THE COURT: And if you defy a ruling like that, you  
19 would run the risk of being removed from the courtroom, so that  
20 the trial eventually could proceed in an orderly way.

21 Do you understand that?

22 THE DEFENDANT: I understand.

23 THE COURT: I need -- for this purpose, I'm required  
24 to inquire of your mental status. I'm required to ask, to be  
25 sure that you're competent to make this kind of decision.

1           Are you presently suffering from any kind of mental  
2 health issue?

3           THE DEFENDANT: No.

4           THE COURT: Have you in the past ever been diagnosed  
5 with any kind of mental health issue?

6           THE DEFENDANT: No.

7           THE COURT: Are you on medication of any kind that  
8 could be affecting your ability to think clearly?

9           THE DEFENDANT: No.

10          THE COURT: Do you believe personally this decision  
11 is in your own best interest?

12          THE DEFENDANT: Yes.

13          THE COURT: I am going to address this question of  
14 release, separate from this representation issue. If I do end  
15 up concluding that you must remain in custody, of necessity,  
16 that again restricts your access to meetings that are going on  
17 outside of the -- by lawyers meeting one another, planning  
18 strategies, planning the case.

19          Mr. Schindler, as standby counsel, will facilitate at  
20 your direction, but he's not the -- that's not the same as  
21 having Mr. Schindler be your lawyer. You know that?

22          THE DEFENDANT: I understand.

23          THE COURT: All right. Mr. Gabriel, is there any  
24 other inquiry you think I should make before I complete this  
25 process?

1 MR. GABRIEL: Just one, your Honor. On the matter of  
2 supervised release, if Mr. Medenbach were to be convicted and  
3 if the Court were to sentence him to a term of supervised  
4 release, if he were to violate the terms of that supervised  
5 release, because these are Class C and D felonies he could be  
6 subject to up to two years in prison for each violation of  
7 supervised release.

8 THE COURT: Mr. Medenbach, Mr. Gabriel's right.  
9 That's the logical extension of the worst-case scenario on  
10 conviction.

11 Right now, again, you're presumed innocent. We go  
12 forward between now -- from now, forward to a trial, to  
13 determine whether the Government can overcome your presumption  
14 of innocence by proving you guilty in a public trial by jury.

15 But if you are found guilty, then you're subject to  
16 sentencing under the federal sentencing guidelines that are  
17 capped by the maximum penalties he's described. And you told  
18 me you understood.

19 And then if you were sentenced to prison, once you  
20 completed your prison term, you would be back in the community  
21 on supervision.

22 You sort of know that, I think, in theory, because of  
23 the case from Medford. As I understand it, you were on  
24 supervision in that case --

25 THE DEFENDANT: (Nods head.)

1 THE COURT: -- when a warrant issued, alleging that  
2 you had violated a condition of release by -- about where you  
3 were living, or something like that. Isn't that right?

4 THE DEFENDANT: (Nods head.) Yes.

5 THE COURT: So do you understand that if convicted  
6 here, the potential includes a prison sentence with supervision  
7 under conditions, and then violation of those conditions could  
8 result in a return to prison?

9 THE DEFENDANT: I understand.

10 THE COURT: Mr. Medenbach, I'm going to give to  
11 you -- first, I'm going to ask the clerk to give it to  
12 Mr. Gabriel. It's a waiver of right to counsel. These need to  
13 be in writing.

14 So I want Mr. Gabriel to review it, I want  
15 Mr. Schindler to look at it with you, and I want you to look at  
16 it. And if you're still wanting to give up your right to  
17 counsel, then once you've read it, please sign it, and then  
18 we'll move to the next step. All right?

19 THE DEFENDANT: Okay.

20 THE COURT: Was there anything else you wanted to say  
21 about the issue beyond what we've already covered? About  
22 waiving your right to counsel?

23 THE DEFENDANT: No, I'm satisfied with what we talked  
24 about.

25 THE COURT: Thank you, sir.

1 (Pause, referring.)

2 (Document handed to judge.)

3 THE COURT: All right. Mr. Medenbach, I see your  
4 signature on the waiver. I'm going to read it out loud for the  
5 record.

6 I, Kenneth Medenbach, the above-named defendant,  
7 being accused of conspiracy to impede federal officers in  
8 violation of Title 18 United States Code Section 372 and theft  
9 of Government property in violation of Title 18 United States  
10 Code Section 641 and being advised of the nature of the  
11 charges, my constitutional right to be represented by counsel,  
12 my constitutional right to self-representation, and the dangers  
13 and disadvantages of self-representation, knowingly and  
14 voluntarily waive my right to counsel and elect to proceed by  
15 representing myself with standby counsel.

16 It looks like you signed that statement. Is that  
17 your signature, sir?

18 THE DEFENDANT: Yes, it is.

19 THE COURT: Has anyone put any pressure on you? I  
20 think I asked you this, but I want to be sure about the record.

21 Has anyone put any pressure on you to make this  
22 decision --

23 THE DEFENDANT: No.

24 THE COURT: -- when you don't want to?

25 It's your own personal and voluntary decision?

1 THE DEFENDANT: Yes, it is.

2 THE COURT: All right. I'm satisfied Mr. Medenbach  
3 is fully competent to make this decision. He is making a  
4 knowing, intelligent, and voluntary waiver of his right to  
5 counsel.

6 I am now converting Mr. Schindler's appointment  
7 formally to that of standby counsel, and Mr. Medenbach is the  
8 primary person who will speak on his own behalf.

9 And then we'll work out, Mr. Schindler, the extent to  
10 which you'll be participating as we go forward.

11 MR. SCHINDLER: (Nods head.)

12 THE COURT: So you said -- or Mr. Schindler said,  
13 Mr. Medenbach, you wanted to speak about a motion to dismiss.  
14 Perhaps you would like to address that before we go to the  
15 issue of release.

16 THE DEFENDANT: Yes.

17 THE COURT: All right. I'm going to have you remain  
18 seated, so you are near a microphone. You should just know  
19 that ordinarily, when addressing the Court, you should be on  
20 your feet.

21 THE DEFENDANT: Okay.

22 THE COURT: Go ahead.

23 THE DEFENDANT: Motion to dismiss for lack of  
24 jurisdiction.

25 First, why would we, the people of the United States,

1 in order to form a more perfect union, establish justice,  
2 ensure domestic tranquility, provide for the common defense and  
3 both the general welfare and secure the blessings of liberty to  
4 ourselves and our posterity, ordain and establish this  
5 Constitution for the United States of America, then give the  
6 judicial department of the United States of America the power  
7 to tell, we the people, what the Constitution means? We  
8 didn't.

9 In 1997, in an appeal from the United States District  
10 Court in Washington state, **United States versus Medenbach**, I  
11 argued against the constitutionality of federal ownership of  
12 public lands in Washington state. I also argued that the  
13 Constitution does not confer upon the federal courts the power  
14 of judicial review, the power to interpret the Constitution.

15 I stated in -- I stated why **Marbury v. Madison** was  
16 wrongly decided. The United States Court of Appeals, the Ninth  
17 Circuit concluded my argument against the constitutionality of  
18 judicial review was meritless because I offered no reasoning or  
19 case law to support my contention, and **Marbury versus Madison**  
20 should be overruled.

21 I now, as defendant in this case at Bar, offer  
22 reasoning and proof to support my contention that **Marbury**  
23 **versus Madison** was wrongly decided.

24 Article VI, Section 3 of the United States  
25 Constitution states judicial officers both of the United States

1 and of the several states shall be bound by oath to support  
2 this Constitution.

3           The Constitution allows and requires no more than  
4 this one oath of office to support this Constitution. Article  
5 VI, Section 2 states, This Constitution and laws of the United  
6 States, which shall be made in pursuance thereof, shall be the  
7 supreme law of the land.

8           In 1789, the Judiciary Act, Congress imposed an  
9 unconstitutional second oath of office of understanding  
10 agreeably to the Constitution for judicial officers of the  
11 United States only. Violation of Article VI, Section 3 and  
12 Article VI, Section 2.

13           In 1803, Supreme Court case of **Marbury versus Madison**  
14 is unconstitutional, second oath of office of understanding  
15 agreeably to the Constitution was defined in and applied in  
16 **Marbury versus Madison** as the justification for the power of  
17 judicial review.

18           This begs the question which oath of office do  
19 judicial officers of the United States obey? Since judicial  
20 officers of the United States are practicing the power of  
21 judicial review, they are obeying their unconstitutional second  
22 oath of office of understanding agreeably to the Constitution  
23 in violation of Article VI, Section 2; Article VI, Section 3;  
24 and the Tenth Amendment, which states the powers are not  
25 delegated to the United States via the Constitution nor

1 prohibited back to the states or reserved to the states  
2 respectively or to the people.

3 In the 1990 judicial improvement act, Congress  
4 replaced this phrase of understanding agreeably to the  
5 Constitution to under the Constitution.

6 This unconstitutional third oath of office, I  
7 believe, was imposed to obscure the complicated, undercut --  
8 understanding agreeably to the second oath of office of  
9 understanding agreeably to the Constitution. This did not  
10 change the unconstitutional oath of office but understanding it  
11 agreeably to the Constitution and the Constitution of Mar -- to  
12 the Constitution of **Marbury versus Madison**.

13 With **Marbury versus Madison** being wrongly decided  
14 because of the unconstitutional second oath of office of  
15 understanding agreeably to the Constitution applied and nothing  
16 in the Constitution delegating the power to interpret the  
17 Constitution to the United States and the states being  
18 prohibited by the Constitution to interpreting the Constitution  
19 because the state legislative officers, executive officers, and  
20 judicial officers are bound by oath to support the  
21 Constitution, the power to interpret the Constitution is  
22 reserved to we, the people, pursuant to the Tenth Amendment.

23 With this power, we, the people, have -- can have  
24 direct control of Congress, the president, and the Judicial  
25 Department of the United States. This will truly be a

1 Government, governed by the will of the governed, the way it  
2 should have been from the beginning.

3           The ultimate arbiter of the Constitution, Thomas  
4 Jefferson explained, It is the people of the union, assembled  
5 by their deputies in convention at the call of Congress with  
6 two-thirds of the states.

7           Second, in the 1976 Federal Land Policy and  
8 Management Act, 43 USC 1701(a), it states: The Congress  
9 declares that it is the policy of the United States that the  
10 public lands of the retained -- be retained in federal  
11 ownership. This is in violation of the Tenth Amendment to the  
12 Constitution, which states the powers not delegated to the  
13 United States via the Constitution are prohibited back to the  
14 states or reserved to the states respectively or to the people.  
15 The power to own public lands in the states is not delegated to  
16 the United States via the Constitution; nor is this power to  
17 own public lands in the states prohibited by the Constitution  
18 to the states. Thus, the power to own public lands in the  
19 states is reserved to the states respectively. In this case,  
20 the state of Oregon.

21           In light of these previous motions of judicial  
22 officers of the United States' unconstitutional second oath of  
23 office, the unconstitutional **Marbury versus Madison** decision,  
24 both in violation of Article VI, Section 3, Article VI, Section  
25 2, and the Tenth Amendment; and the 1976 Federal Land Policy

1 and Management Act in violation of the Tenth Amendment and my  
2 continued attempts to deal with these matters civilly through  
3 the courts -- who continue to pervert the Constitution -- I, as  
4 do all citizens, have -- of the United States have a moral  
5 obligation and a constitutional right to join well-regulated  
6 militia be it necessary to the security of a free state, and  
7 the right of the people to keep and bear arms shall not be  
8 infringed. Pursuant to the Second Amendment in Harney County,  
9 Oregon, or in any county in the United States. And all  
10 Superseding Indictment counts are in violation of the Second  
11 Amendment and the Tenth Amendments.

12 Malheur National Wildlife Refuge is not federal land,  
13 and this Court cannot try me on any one of these -- anyone else  
14 for violation of a Government's nonexistent right to occupy the  
15 land.

16 In Genesis Chapter 1, God created man in his own  
17 image, male and female. God blessed them and commanded them to  
18 be fruitful and multiply, fill the earth, and subdue the earth.  
19 The earth is created for the people to farm, grant, mine, log,  
20 build homes, businesses, roads, and to tax to fund law  
21 enforcement, fire departments, schools, and other miscellaneous  
22 public works. We need the earth's resources to survive on this  
23 planet.

24 In ancient Israel, God destroyed the temples twice  
25 because the Israelites would not obey God's commands. If we,

1 the people of the United States, don't step up and subdue the  
2 earth, stop abortion, stop same-sex marriage (pause), God's  
3 going to destroy the United States of America. (Defendant  
4 crying.) Because this Government is not obeying the  
5 Constitution and the inspired document the United States has.  
6 We, the people, are going to do it.

7 THE COURT: Thank you, Mr. Medenbach.

8 Mr. Gabriel, do you have any response?

9 MR. GABRIEL: Yes, your Honor.

10 Mr. Medenbach referenced the case from the 1990s,  
11 where he brought this similar claim. He brought a claim  
12 against the United States two years ago, and the same issue was  
13 raised before Judge Panner. Specifically that federal judges  
14 and justices take an oath or affirmation to faithfully and  
15 impartially discharge and perform all duties incumbent upon  
16 them under the Constitution. But he went on to say that that  
17 oath was insufficient, and therefore, courts did not have  
18 jurisdiction.

19 Judge Panner dismissed that suit, stating that his  
20 claims were wholly insubstantial and frivolous, with no basis  
21 in law or fact.

22 Then, earlier this year, Mr. Medenbach made the same  
23 claim before Judge McShane, related to the judge's oath and the  
24 lack of subject matter jurisdiction by federal courts, and  
25 Judge McShane summarily denied that motion.

1 I -- I believe the reasoning is the same, and that  
2 the motion should be denied. This court does have  
3 jurisdiction.

4 THE COURT: Mr. Medenbach, do you have any additional  
5 response? Anything in reply to what Mr. Gabriel has argued?

6 THE DEFENDANT: No.

7 THE COURT: Well, Mr. Medenbach, if it's any comfort  
8 to you, I take exceedingly seriously the oath of office I took.

9 THE DEFENDANT: You take two oaths.

10 THE COURT: Sir, I took the oath, a single oath  
11 that's on record. But I would like to finish. I let you  
12 speak. I want you to listen.

13 It's not necessary for me to make this point, but I  
14 feel I want to communicate to you as an individual.

15 I have in fact, throughout my judicial career, tried  
16 every time I had to make a ruling to follow the oath I took --  
17 both as a judge of the circuit court of the state of Oregon and  
18 then beginning in 1999, for this court -- to support and defend  
19 the Constitution of the United States.

20 I am bound by the holdings of the courts of the  
21 United States, and as a trial judge, I do not have the  
22 authority to disregard **Marbury versus Madison** or to disregard  
23 the various holdings you've already challenged.

24 Judge Panner is absolutely correct in the rulings he  
25 made in your case, and I affirm it here. There is not any

1 basis for me to dismiss the Indictment against you for lack of  
2 subject matter jurisdiction.

3 THE DEFENDANT: Can you give me just a minute?

4 THE COURT: Yes.

5 (Pause, the defendant conferring with Mr. Schindler.)

6 MR. SCHINDLER: Sorry, your Honor. Mr. Medenbach is  
7 looking for an additional bit of briefing that he had prepared.

8 THE COURT: That's fine.

9 MR. SCHINDLER: Thank you.

10 THE COURT: We'll wait until he finds it.

11 MR. SCHINDLER: Thank you.

12 THE COURT: We do have a 12 o'clock matter with a  
13 person in custody, so hopefully it won't take too long.

14 (Pause, Defendant Medenbach and Mr. Schindler  
15 conferring.)

16 THE DEFENDANT: Okay.

17 THE COURT: Go ahead, sir.

18 THE DEFENDANT: Did you want to finish what you were  
19 talking about?

20 THE COURT: I've just ruled on your motion.

21 You said you had something additional, argument you  
22 wanted to make. If you do, please make it. I need to take up  
23 your release issue.

24 THE DEFENDANT: Under USC -- or 28 USC 453 is the  
25 oath of office, to -- under the Constitution, which all federal

1 judges are required to take. (Pause, referring.)

2 Oh, and 5 USC 3331 is the other oath of office you're  
3 required to take.

4 THE COURT: All right. Thank you, sir. You've made  
5 those points previously. You've made them again now.

6 The motion to dismiss -- I'll ask the clerk to note  
7 on the minutes for today's proceeding, Mr. Medenbach made an  
8 oral motion to dismiss for lack of subject matter jurisdiction,  
9 for the reasons he stated on the record, and that motion was  
10 denied by the Court.

11 Now let's move to the release issue.

12 Mr. Medenbach, what would you like to tell me there.

13 THE DEFENDANT: I've got an address I can stay at in  
14 La Pine, Oregon. I don't have electricity at my house, in  
15 Crescent, if I was to be put on a monitoring system.

16 (Pause, the defendant and Mr. Schindler conferring.)

17 MR. SCHINDLER: Excuse me, Judge Brown?

18 THE COURT: Yes.

19 MR. SCHINDLER: If it would be appropriate, could I  
20 just supplement briefly what Mr. Medenbach has said?

21 THE COURT: With his permission.

22 MR. SCHINDLER: May I? With your permission?

23 THE DEFENDANT: Yes. Yes.

24 MR. SCHINDLER: Thank you.

25 THE COURT: Go ahead.

1 MR. SCHINDLER: Your Honor, I did a preliminary  
2 analyses of the guidelines in this case because I think it does  
3 merit some consideration up front when we're talking about  
4 pretrial detention of -- of a defendant, what kind of  
5 punishment they're subject to.

6 Obviously we talk about statutory maximums in the  
7 context of these cases, but we all know that those statutory  
8 maximums are very frequently applied against anyone.

9 My preliminary analysis indicates that because of the  
10 charges lodged against Mr. Medenbach, we're talking about an  
11 offense level of 10, if convicted at trial on the conspiracy to  
12 impede. And then we're talking about an offense level of 12,  
13 assuming that the truck has value of somewhere around 40,000  
14 dollars. Those are not substantial sentences, your Honor, and  
15 then he has a misdemeanor camping case.

16 So I understand, and I think that the Pretrial  
17 Services has made a very valid point about noncompliance to  
18 this point. At the same time, we're talking about essentially  
19 asking a man to serve the entire sentence that might be imposed  
20 upon him in a case like this, before he ever gets a chance to  
21 see a jury.

22 And I understand the Court has suggested that we're  
23 going to have a trial in September. I am thrilled at that  
24 prospect.

25 THE COURT: Or -- or earlier. Or earlier.

1 MR. SCHINDLER: Okay. But I -- I remain skeptical,  
2 under the circumstances, your Honor. And I think that in the  
3 context of -- you know, Mr. Medenbach has been in jail now for  
4 a period of -- what? A month at least -- two months.

5 THE COURT: Well, not on this case for two months.

6 MR. SCHINDLER: No, I understand. But, you know,  
7 ultimately, we're not talking about the most serious kind of  
8 continuum -- the most serious end of the continuum of conduct  
9 that exists in federal court.

10 And I think most importantly, in terms of the  
11 statutory factors and a risk of flight, this man desires to be  
12 in front of the Court, arguing his case. That's the point of  
13 this hearing. That's the point of his conduct. His conduct  
14 isn't about armed confrontation. It's about making legal  
15 points concerning the system and -- and our mistaken  
16 interpretations of the law. And that's what he's here to do.

17 And so I think that to some extent we've got to  
18 factor that kind of conduct into the Court's detention decision  
19 here today.

20 I think the scope of the situation is different. But  
21 Mr. Medenbach just had a hearing in front of the Court, a fair  
22 hearing, where the Court listened to what he had to say about  
23 the law. His motion was denied. But he respects that, and  
24 he'll now move on to the next step.

25 But I think we've got to ask a serious question about

1 whether it's appropriate to detain somebody on, you know, what  
2 are -- in the scope of what is prosecuted in federal court --  
3 relatively minor charges.

4 Mr. Medenbach was arrested long before all of the  
5 kind of dramatic stand-up confrontation issues developed. You  
6 know, he was not there when all of that happened. And so I  
7 think that also merits consideration in the context of the  
8 situation.

9 THE COURT: All right.

10 MR. SCHINDLER: At the same time, he acknowledges and  
11 accepts that he did not comply with the -- with the initial  
12 release conditions that were put upon him by Judge Clark.

13 Thank you.

14 THE COURT: Mr. Gabriel?

15 MR. GABRIEL: Yes, your Honor. Thank you.

16 As the Court knows, Mr. Medenbach is currently  
17 detained in the unlawful camping case.

18 He was ordered to appear in court on that case. He  
19 did, in November. He was released on conditions, your Honor.  
20 And they were minimal conditions. Conditions that included not  
21 occupying federal land. And then he went to the Malheur  
22 National Wildlife Refuge and occupied it.

23 Even more concerning, your Honor, is that after a  
24 news account, Mr. Medenbach appeared as early as January 4th,  
25 and the occupation only started on January 2nd.

1 He was contacted by Pretrial Services, and he did not  
2 tell the truth about where he was. He said he was at home, and  
3 he was at the refuge, unlawfully.

4 To Mr. Schindler's point, Mr. Medenbach was not  
5 armed -- at least we don't have evidence that he was -- at the  
6 refuge. He stole a truck. He stole a U.S. Fish & Wildlife  
7 truck and took it to town, to Safeway. He was arrested with  
8 that truck.

9 That was a -- a -- excuse me. That was a violation  
10 of his pretrial release condition -- conditions in that Eugene  
11 case or Medford case. And so he was held by Judge Clark  
12 pending trying on April 5th.

13 So here, your Honor, the Government is recommending  
14 continued detention because Mr. Medenbach does not recognize  
15 the jurisdiction of this Court and because he has a proven  
16 history of not being willing to comply with court orders.

17 That is the basis for the Government's detention  
18 request.

19 It is not danger or even flight in the traditional  
20 sense. It's his inability or unwillingness -- I think is more  
21 accurate -- to comply with any orders of this Court.

22 THE COURT: All right. Does pretrial have anything  
23 to add?

24 PRETRIAL SERVICES OFFICER STRANIERI: We would just  
25 echo the Government's concerns, your Honor.

1 THE COURT: Okay. Mr. Medenbach or Mr. Schindler,  
2 anything else?

3 (Pause, Defendant Medenbach and Mr. Schindler  
4 conferring.)

5 THE COURT: Gentlemen, I need to move on. So,  
6 please, if you're -- if something's going to get said,  
7 please -- I've got people waiting for a 12 o'clock hearing.

8 THE DEFENDANT: The pickup truck was going to be  
9 brought right back. You know, I drove it to Bend -- or drove  
10 to Burns. We went to get groceries, and then I drove it right  
11 back.

12 THE COURT: All right. I wanted to make another  
13 point before I come back to resolve the release issue.

14 It appears from the docket that the other case  
15 with -- we've been calling the camping case, so forth, is on  
16 for trial on April 5. Is that right?

17 MR. GABRIEL: That's correct, your Honor.

18 THE COURT: In Medford, before Judge McShane?

19 MR. GABRIEL: That's my understanding. I have a call  
20 in to AUSA Doug Fong. But I believe that that trial is set for  
21 Medford before Judge McShane on April 5th.

22 THE COURT: A jury trial?

23 MR. GABRIEL: A jury trial. Yes, ma'am.

24 THE COURT: Somehow I don't think Mr. Medenbach can  
25 be here, then, on April 6th at the next status hearing if he's

1 engaged in a jury trial in Medford on April 5th.

2           You need to know of that conflict. And if you want  
3 to take steps about it, you need to do that. Right now, you're  
4 expected to be in two places almost at once. And when that  
5 happens on a calendar, usually a lawyer for the person,  
6 representing the person, gets going to try to work out the  
7 conflict.

8           So I'm just making that observation. That's  
9 something you're potentially going to want to address. The  
10 hearing on April 6 is going to go forward. If you're not here,  
11 you're not here, and we'll have to deal with the consequence of  
12 that. But I want you to know about that observation that I  
13 just made. I see it potentially not feasible for you to be in  
14 two places.

15           THE DEFENDANT: Well, that's going to be on the 4th  
16 and 5th down there.

17           THE COURT: I thought it was the 5th. I may have  
18 misread the calendar. Is it -- what date is it?

19           MR. GABRIEL: My understanding is that it is April  
20 5th, your Honor.

21           THE COURT: April 5 is the day set for trial in  
22 Medford.

23           Maybe you'll be done. Maybe you'll be back. I don't  
24 know.

25           THE DEFENDANT: On the 6th? Be back here on the 6th?

1 THE COURT: Maybe. Maybe, not.

2 THE DEFENDANT: If I'm not in custody, I can do that.

3 THE COURT: Well, you're not going to be  
4 Mr. Medenbach.

5 I -- I agree with Mr. Gabriel's analysis that  
6 fundamentally your positions thus far in the United States  
7 District Court for the District of Oregon show that you do not  
8 respect the orders of the Court. You do not comply with  
9 conditions of release. You were not honest to a pretrial  
10 officer, who is a representative of the Court, when asked about  
11 where you were.

12 And so given these circumstances, I agree there is  
13 not any condition or combination thereof that can assure your  
14 appearances for the proceedings in this matter.

15 Now, to Mr. Schindler's point about the length of  
16 detention in this case vis-a-vis any potential sentence that  
17 could be imposed in the event you're found guilty, that issue  
18 gains more ground, has more substance as time passes. So to  
19 the extent you wish to renew this motion on that ground at a  
20 later date, you are certainly free to do so.

21 So, motion for release on this matter, 1651, is  
22 denied. I do suggest, Mr. Medenbach, that you ask  
23 Mr. Schindler on your behalf to try to deal with this potential  
24 conflict in being in Medford on the 5th and being here in  
25 Portland on the 6th.

1 All right. Anything else?

2 MR. GABRIEL: Nothing from the Government.

3 THE COURT: Pretrial, anything else?

4 PRETRIAL SERVICES OFFICER STRANIERI: No, your Honor.

5 THE COURT: For the record, he is actually detained  
6 in the other matter. Is that right?

7 PRETRIAL SERVICES OFFICER STRANIERI: That's my  
8 understanding, your Honor.

9 THE COURT: Do you know?

10 MR. GABRIEL: Yes, he is detained in the other  
11 matter, your Honor. Yes.

12 THE COURT: All right.

13 MR. SCHINDLER: But the Court is going to enter an  
14 order of detention here as well.

15 THE COURT: Yes. Only in this case, not in the other  
16 case. I've only been working in this case. Judge McShane is  
17 presiding on the other matter.

18 All right. We're in recess on this matter.

19 I need to meet with counsel on the other, before we  
20 go on the record, please.

21 (Conclusion of proceedings.)

22

23 --oOo--

24

25

1 I certify, by signing below, that the foregoing is a correct  
2 stenographic transcript of the oral proceedings had in the  
3 above-entitled matter this 28th day of March, 2016. A  
4 transcript without an original signature or conformed signature  
5 is not certified. I further certify that the transcript fees  
6 and format comply with those prescribed by the Court and the  
7 Judicial Conference of the United States.

8 /S/ Amanda M. LeGore  
9 \_\_\_\_\_

10 AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE  
11 CSR No. 15-0433 EXP: 3-31-2018  
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