

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Judge Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re Grand Jury Subpoena,

Matthew Duran,

 Subpoenaed Party.

No. GJ12-149

MATTHEW DURAN’S MOTION
FOR TERMINATION OF ORDER
OF CONFINEMENT

[ORAL ARGUMENT REQUESTED]

FILED UNDER SEAL

MOTION

COMES NOW Subpoenaed Party Matthew Duran, by and through his attorney, Kimberly N. Gordon of GORDON & SAUNDERS, PLLC., to move for termination of the confinement ordered as a result of the finding of civil contempt. This Motion is based on the facts and authorities presented herein, and at any hearing on the Motion.

FACTUAL AND PROCEDURAL HISTORY

On August 8, 2012, Mr. Duran was served with a subpoena requiring him to appear before a federal grand jury on September 13, 2012. The subpoena required him to provide testimony at that time. According to Assistant United States Attorney Michael Dion, this grand jury is investigating the damage to the William Kenzo Nakamura Courthouse, used primarily by the Ninth Circuit Court of Appeals, during a May Day protest that occurred on

1 May 1, 2012. A small subgroup of the protesters, most of whom were dressed in black and
2 some of whom had covered their faces, used flagpole sticks and paint to damage the exterior
3 of the building.

4 Mr. Duran is not alleged to be a suspect or a target of the investigation. Rather, the
5 Government has insisted that he is only a witness.

6
7 On September 13, 2012, this Court heard Mr. Duran's Motion to Quash the grand jury
8 subpoena. Mr. Duran's Motion to Quash included a Declaration indicating that he did not
9 damage the courthouse, was not in Seattle on the day in question, did not know of a plan to
10 damage the Courthouse, and did not thereafter hear anyone confess to damaging the
11 Courthouse. The Motion to Quash was denied.

12 That same day, Mr. Duran appeared before the grand jury, as the subpoena demanded.
13 While Mr. Duran identified himself for the grand jury, he declined to answer any of the grand
14 jury's other questions. Instead, he responded to the questions by indicating: "I respectfully
15 decline to answer this question because it violates my First Amendment rights."¹

16
17 The parties again appeared before this Court for a hearing on the question of whether Mr.
18 Duran should be held in civil contempt. The Court did find Mr. Duran in contempt, and he
19 was immediately taken into custody by United States Marshals. He has remained confined at
20 the Federal Detention Center ever since. For the first fourteen days, Mr. Duran was held in
21 the Special Housing Unit ("SHU"). He was then moved to general population where he
22 remained for precisely three months – from September 27, 2012 to December 27, 2012. At
23 that time, Mr. Duran was transferred back to the SHU. He has been held there since.
24
25
26

¹ The transcript of Mr. Duran's Grand Jury testimony is attached as Appendix A.

1 As of the date this Motion was filed, Mr. Duran will have been in custody for 161 days,
2 70 of them in the SHU. He missed family birthdays, Thanksgiving, Christmas and the New
3 Year's holiday. He has not seen his partner in almost half a year. He has not been outside in
4 almost as long (he was outside briefly when brought to Court, two weeks after his
5 incarceration). His father stopped talking to him. He lost weight, suffered medical
6 problems, lost a house, suffered repeated strip-searches, potentially lost employment, and has
7 been housed in the SHU for almost two months. This is a difficult living situation, at best,
8 and Mr. Duran has without clear indication as to why he is there or what he will need to do to
9 get back to general population. Objectively, he has suffered many of the worst conditions
10 and consequences that federal civil confinement can lawfully present, and he has suffered
11 them for a meaningful period of time. While he found placement in general population
12 preferable, he fully expects to serve the remainder of his time in the SHU.² Yet none of this
13 has coerced him into changing his mind about testifying.

16 To the contrary, the attached Declarations demonstrate that incarceration has only
17 strengthened Mr. Duran's resolve.³ Furthermore, they provide insight into Mr. Duran's
18 character. His mother writes that he is "fiercely loyal" and "believes in helping those in need
19 regardless of his own needs." Appx. C at 1. She describes a young man who learned
20 integrity and perseverance through ROTC and has since lived those values through his
21 volunteer work, service to the needy, resolve to be undeterred by racial discrimination, and
22 selflessness. Appx. C at 1-3.

24 _____
25 ² Mr. Duran is not trying to suggest that his placement in the SHU is appropriate, lawful or
desired. Rather, unless this Court releases him from confinement, it seems inevitable.

26 ³ The Declaration of Matthew Duran is attached as Appendix B. The Declaration of Martha
Perdomo is attached as Appendix C. The Declaration of Maximia Codella is attached as
Appendix D.

1 His partner writes that he remains “passionate” and “unwavering” despite experiencing
2 the worst of the Federal Detention Center -- the SHU -- for approximately two months, and
3 incarceration in general population for even longer. Appx. D at 1. She watched him
4 “growing stronger and more resilient” and “clearly” “optimistic and mak[ing] the best of
5 [the] situation.”⁴ Appx. D at 2. From her position as someone intimately familiar with Mr.
6 Duran, she concludes: “When Matt is committed to doing something he sees it through, no
7 matter what it is, with a smile on his face.” Appx. D at 2.

9 Finally, his close friend, Amber Fritsch, explains:

10 Matt Duran is, hands down, the most kind and selfless person I have ever met – and I
11 don’t consider this an exaggeration. Soft-spoken and beyond considerate, Matt is always
12 trying to make sure that the people he cares about come first. When I offer to help him
13 with anything, he is always resistant and stubborn – citing my needs as “more important”
14 than his own.⁵

15 Ms. Fritsch has been in regular contact with Mr. Duran, emphasizes that he can replace the
16 things that he has lost while incarcerated, and notes “We may not be able to see him every
17 day right now, but he *knows* that he is loved and supported, and that support makes him
18 stronger.” Appx. F at 2. She further explains:

19 Matt is still the same old Matt; still has [sic] humble, stubborn, and selfless as ever.
20 When it takes me a while to get a letter back, and I try to apologize for it – he is very
21 consistent in assuring me that he is understanding of *my* life’s hardship and even tries to
22 apologize for *my* life being stressful. Which, coming from the person sitting in a federal
23 detention center, is absurd. He is, as always, in strong spirits ... Matt is so strong. ... I
24 firmly stand that his spirit and resolve have not, and will not be broken by any further
25 incarceration.⁶

24 ⁴ Mr. Duran’s sister concurs, observing that even though Matt is suffering, he is “trying to
25 stay positive and focused on his future plans.” Her Declaration is attached as Appendix E.

26 ⁵ A copy of Amber Fritsch’s Declaration is attached as Appendix F.

⁶ Appendix F at 1.

1 Mr. Duran's Declaration cites four reasons for his continued and strengthened resolve.
2 First, his decision not to testify was highly personal, one of conscience, and one that he feels
3 very strongly about. Appx. B at 3. Second, he does not believe that he could live with
4 himself if he played a role in sending someone else to live as he has, at the FDC. Appx. B. at
5 3. Third, Mr. Duran's feelings about testifying are similar to his feelings about going on the
6 run and becoming a fugitive – he feels that both would result in him being ostracized and
7 unable to participate in the causes and communities that are important to him. Appx. B at 3.
8 His perception about how another subpoenaed party, Leah Plante, was treated after rumors of
9 her cooperation circulated, only strengthened his belief that testifying would be devastating.
10 Finally, his resolve not to testify is strengthened by the tremendous sacrifices he has already
11 made. He does not wish for them to be in vain. Appx. B at 2, 13.

12
13
14 Clearly, the government wanted Mr. Duran to testify as a part of its investigation into the
15 May Day protests. Due to the release of a redacted search warrant Affidavit pertaining to
16 this investigation, it is now clear that the government has alternative means of investigating
17 those events.⁷ The Affidavit also suggests that the investigation has progressed substantially
18 and meaningfully through other means, and without Mr. Duran's testimony. The Affidavit
19 verifies that six of the approximately ten suspects⁸ have been identified by name, physical
20 description, and other corroborating evidence. Appendix G at 7-8. Two more were
21 previously identified.⁹ The group of suspects was also followed from Portland, Oregon to
22

23 _____
24 ⁷ A copy of the Affidavit is attached as Appendix G.

25 ⁸ The Government indicated in its Opposition to Motion to Quash, filed in this case, that
26 "roughly ten people in black bloc vandalized the 6th Avenue doors" of the Nakamura
Courthouse. Opposition at 3.

⁹ The Government indicated in its Opposition to Motion to Quash that "two other people,
'C.W.' and 'C.I.'" also vandalized the Courthouse. Opposition at 3. One of these

1 Olympia, Washington on April 30, 2012. Appx. G at 7-8. The affiant was then able to
2 connect clothing worn by the vandals, to clothing worn by the suspects and found in their
3 homes. Appx. G at 9-16. He confirmed that the government seized a cell phone during a
4 search executed in Portland and pursuant to a warrant issued in an unrelated investigation.
5 Appx. G at 8-9. The phone contained text messages related to the government's
6 investigation into the damage to the Nakamura Courthouse. *Id.* Indeed, the affidavit makes
7 clear that the government developed sufficient probable cause for the suspects, such that they
8 were able to obtain a search warrant for two residences and a storage unit. Appx. G at 17-19.
9 The resulting searches produced at least fourteen devices, including cell phones, iPods, and
10 electronic storage devices.¹⁰ The government also satisfied probable cause in order to obtain
11 a warrant permitting these devices to be searched for call logs, text messages, contact lists,
12 and photographs. Appx. G at 24-25.
13
14

15 Documents relating to King County prosecutions further suggest that much has been
16 learned about the May Day protests without Mr. Duran's testimony and without incarcerating
17 anyone on orders of civil contempt. In fact, since Mr. Duran's incarceration, King County
18 learned enough about the May Day protests and potential vandals in order to bring charges
19 against five suspects. Media reports that this group also had the Portland connection:
20

21 Detective Wes Friesen, who authorized the lengthy report, said many protesters that day
22 were part of a "black bloc" – a protest tactic that includes concealing faces, engaging in
23 violence and vandalizing corporations, banks and institutional buildings. Some within
24 the bloc were "known anarchist extremists" from Seattle and Portland.¹¹

25 individuals is obviously Cody Ingram, who was previously arrested and prosecuted in this
26 Court. A copy of the Complaint from Cody Ingram's case is attached as Appendix H.

¹⁰ A copy of the inventories from the searches is attached as Appendix I.

¹¹ A copy of the Seattle Times article titled "*Five More Facing Charges in May Day Destruction*" is attached as Appendix J.

1 These five individuals were in addition to four others previously arrested and charged in
2 King County Court. Appx. J at 2. Of the four originally charged, three were convicted. (It is
3 believed that the fourth was an emergency medical technician who lost her job and home
4 before she demonstrated her innocence.)¹²

6 Despite all of these developments, the evidence still suggests that Mr. Duran's
7 relationship to the May Day events is attenuated and tangential, at best. Mr. Duran
8 previously presented this court with Declarations of two individuals, who were with Mr.
9 Duran on May Day. They provided evidence that Mr. Duran did not participate in the May
10 Day events.¹³ Indeed, he was not in Seattle on May Day. *Id.* Mr. Duran further declared
11 that he is not aware of receiving information on or prior to May 1, 2012, that he interpreted
12 as a plan to vandalize the Nakamura courthouse. Appx. M. at 2. He did not receive
13 information on or after that day that he understood to be evidence identifying any particular
14 person as someone responsible for the damage that occurred. *Id.* No one confessed to him.
15 *Id.* He does not believe he had information about where any specific person was during that
16 day. *Id.* He had no information about the May Day vandalism that was not publicly
17 available. *Id.*

20 The Government has repeatedly intimated that Mr. Duran may know something about
21 these events because he once lived, together with numerous other people, at a group house
22 where some of the suspects are believed to have stayed on their April 30, 2012, journey from
23

24 _____
25 ¹² The article discussing this case is attached as Appendix K.

26 ¹³ The August 27, 2012, Declarations of Maxamia Octavia Codella and Bradley Collins are
attached as Appendix L. The September 4, 2012, Declaration of Matthew Duran is attached
as Appendix M.

1 Portland to Seattle.¹⁴ It is also clear that the government believes that Matthew Pfeiffer, one
2 of Mr. Duran’s former roommates, is a target in the investigation.

3 Throughout Mr. Duran’s incarceration, Mr. Duran and counsel have received hundreds of
4 letters, from around the world. In their letters, people declare their support, concern, and
5 dismay at the reason for his incarceration. A sample of these letters is attached as Appendix
6 N. The Appendix includes letters from the Seattle Human Rights Commission, Germany,
7 New York, and a middle-school student in North Carolina.
8

9 **LEGAL ANALYSIS**

10 The question at this stage of the proceeding is not whether the Mr. Duran had lawful
11 grounds upon which to refuse to testify but, rather, because the Court has already found that
12 the he did not have “just cause” to refuse to testify, whether continued incarceration is
13 improper. At the outset, this requires consideration of the nature of civil contempt and how it
14 is different from criminal contempt. The two types of contempt are distinct, and give rise to
15 separate due process considerations:
16

17 The question of how a court determines whether to classify the relief imposed in a given
18 proceeding as civil or criminal in nature, for the purposes of applying the Due Process
19 Clause and other provisions of the Constitution, is one of long standing, and its principles
20 have been settled at least in their broad outlines for many decades. ... The critical
21 features are the substance of the proceeding and the character of the relief that the
22 proceeding will afford.

23 ¹⁴ In its Opposition to Motion to Quash, the Government suggested that Mr. Duran and Ms.
24 Olejnik were “subpoenaed because they have close connections to one or more suspects, and
25 are in a position to know critical information about the suspect[s]’ movement, activities, and
26 statements in connection with the rioting and the vandalism of the Courthouse.” Opposition
at 2. The Government also suggested that Mr. Duran and Ms. Olejnik were identified as
“associates of one or more of the suspects, and as people who may have lived with one or
more of the suspects.” Opposition at 3, 4. In the search warrant Affidavit attached in
Appendix G, Mr. Duran’s former house is identified as the location where some of the
suspects alleged stayed on April 30, 2012.

1 *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 631, 108 S. Ct. 1423, 1429-30, 99 L. Ed.
2 2d 721 (1988). However, where a judgment of contempt contains a mixture of criminal and
3 civil elements, “the criminal aspect of the order fixes its character for purposes of procedure
4 on review.” *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 778 (9th Cir. 1983)
5 (quoting *Penfield Co. of California v. Securities & Exchange Commission*, 330 U.S. 585,
6 591, 67 S.Ct. 918, 921, 91 L.Ed.1117 (1947)).
7

8 These distinctions lead up to the fundamental proposition that criminal penalties may
9 not be imposed on someone who has not been afforded the protections that the
10 Constitution requires of such criminal proceedings, including the requirement that the
11 offense be proved beyond a reasonable doubt.

12 *Hicks*, 485 U.S. 624, 632 (citing *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444,
13 31 S.Ct. 492, 498, 55 L.Ed. 797 (1911); *Michaelson v. United States ex rel. Chicago, St. P.,
14 M. & O.R. Co.*, 266 U.S. 42, 66, 45 S.Ct. 18, 20, 69 L.Ed. 162 (1924)).

15 To distinguish civil from criminal contempt, the focus of the inquiry is “not [upon] the
16 fact of punishment but rather its character and purpose.” *Shillitani v. United States*, 384 U.S.
17 364, 369, 86 S.Ct. 1531, 1534, 16 L.Ed.2d 622 (1966) (quoting *Gompers*, 221 U.S. at 441).
18 In *Gompers*, the Court considered the characteristics that distinguish these two types of
19 contempt. “If it is for civil contempt the punishment is remedial, and for the benefit of the
20 complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the
21 authority of the court.” 221 U.S. at 441. Put another way, contempt is civil in nature if “the
22 defendant stands committed unless and until he performs the affirmative act required by the
23 court's order[.]” *Gompers*, 221 U.S. at 442.

24 Contempt is criminal – or punitive – in nature if “the sentence is limited to
25 imprisonment for a definite period.” *Id.*, at 442. In *Gompers*, the Court found contempt to be
26 criminal in nature when the sentence is determinate and not conditioned on what the

1 contemnor may or may not do. *Id.* at 443. In *Hicks*, the Supreme Court also explained that a
2 criminal contempt proceeding would be characterized by the imposition of a sentence for the
3 purpose of punishment or deterrence. *Hicks*, 485 U.S. 634-35. Relying on United States
4 Supreme Court precedent, the Ninth Circuit added that contempt becomes criminal when the
5 “duration of an individual's confinement no longer bears a reasonable relationship to the
6 purpose for which he is committed. *Lambert v. State of Mont.*, 545 F.2d 87, 89 (9th Cir.
7 1976), (citing *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972);
8 *McNeil v. Director, Patuxent Institution*, 407 U.S. 245, 92 S.Ct. 2083, 32 L.Ed.2d 719
9 (1972)). Accordingly, in *Lambert*, the Court remanded the cases for a hearing on the issue of
10 “whether the commitment has lost its coercive power and whether there is substantial
11 likelihood that continued confinement will accomplish the purpose of the order on which the
12 commitment was based.” 545 F.2d at 91. The Subpoenaed Party bears the burden of proving
13 that confinement has lost its coercive power and has instead become punitive. *Lambert*, 545
14 F.2d at 91.

17 In *Catena v. Seidl*¹⁵ the Court engaged in an analysis that was also used by the Ninth
18 Circuit in *Lambert*:

19 (W)e want to make it perfectly clear that in similar circumstances a person's
20 insistence that he will never talk, or confinement for a particular length of time does
21 not automatically satisfy the requirement of showing “no substantial likelihood.”
22 Each case must be decided on an independent evaluation of all of the particular facts.
23 Age, state of health and length of confinement are all factors to be weighed, but the
24 critical question is whether or not further confinement will serve any coercive
25 purpose.

24 We are not condoning Catena's defiance of the S.C.I. investigation, nor are we
25 subscribing to his reasons for remaining silent, whatever they may be. We hold only

26 _____
¹⁵ 68 N.J. 224, 343 A.2d 744 (1975).

1 that it now appears that there is no substantial likelihood that further confinement will
2 serve any coercive purpose and cause him to testify.

3 343 A.2d at 747 (quoted in *Lambert*, 545 F.2d at 90). The *Lambert* Court also looked to a
4 California case and noted:

5 A coercive incarceration to compel compliance with an order of court presents a
6 special problem where disobedience of the order is based upon an established
7 articulated moral principle. In such a situation, it is necessary to determine the point
8 at which the commitment ceases to serve its coercive purpose and become punitive in
9 character.

10 *Lambert*, 545 F.2d at 91 (9th Cir. 1976) (quoting *In re Farr*, 36 Cal.App.3d 577, 111
11 Cal.Rptr. 649 (1974)).

12 Other cases have identified the following circumstances as some of the most
13 important considerations, when determining whether confinement is civil or criminal in
14 nature:

- 15 • The length of time already served by the contemnor;
- 16 • the amount of time remaining to be served under the civil contempt judgment;
- 17 • the reasons for the contemnor’s refusal to testify;
- 18 • the relationship between the contemnor and the grand jury’s investigation; and
- 19 • the availability of alternative means to secure the evidence subpoenaed.¹⁶

20 **1. Mr. Duran has been confined for more than five months.**

21 Cody Ingram, the individual sentenced for his role in the vandalism of the Nakamura
22 Courthouse, served only six-weeks in custody.¹⁷ One of the individuals sentenced for
23 vandalism in King County Superior Court, served two months in jail. Appx. J at 2. Two

24 ¹⁶ See generally *Matter of Dohrn*, 560 F. Supp. 179 (S.D.N.Y. 1983) (cited with approval in
25 *Simkin*, 715 F.2d at 37 n.1); *In re Rosahn*, 551 F. Supp. 182 (S.D.N.Y. 1982); *In re Cueto*,
26 443 F. Supp. 857, 864 (S.D.N.Y. 1978).

¹⁷ A copy of the Judgment in Cody Ingram’s case is attached as Appendix O. It shows that
Mr. Ingram received “credit for time served” at his sentencing held on June 13, 2012. *Id.* at
2. The Complaint filed in Mr. Ingram’s case indicates he was arrested on May 1, 2012.
Appx. H at 3. Accordingly, he was released after serving just less than six weeks in
confinement.

1 others only received suspended sentences. *Id.* Mr. Duran has now spent more than five
2 months in confinement. By all available indications, Mr. Duran has now spent far longer in
3 custody than he would have if he had been charged, pled guilty, and been sentenced as one
4 who committed one of these crimes. The duration of his confinement bears no reasonable
5 relationship to the purpose for which he was committed.
6

7 Additionally, the length of Mr. Duran's confinement, and the losses he has suffered while
8 incarcerated, suggest that further incarceration is not going to do anything to change his
9 mind. Mr. Duran has already experienced, for a long time, the worst that federal
10 confinement can lawfully impose. Granted, Mr. Duran could be kept in custody into 2014.
11 But there is no evidence that further confinement will succeed in coercing him into testifying.
12

13 **2. Mr. Duran is refusing to testify due to the dictates of his conscience.**

14 As the *Lambert* Court explained, disobedience of an order to testify presents a special
15 problem when it is based upon an established moral principle. 545 F.2d at 91. This is
16 precisely the situation presented by this case. The clear, consistent, and undisputed message,
17 sent by Mr. Duran, his close family, and the friends who know him best, is that the choice not
18 to testify is one of conscience. Neither is this a newly developed moral principle.

19 Long before his grand jury subpoena, Mr. Duran remained firm against governmental
20 pressure to cooperate. In Mr. Duran's Motion to Quash, he discussed the case in which he
21 was charged with Perjury and threatened with confinement if he did not plead guilty and
22 assist the government by giving a recorded interview and testifying against his co-
23 defendant.¹⁸ He repeatedly refused the government's overtures. *Id.*
24
25

26 ¹⁸ Copies of the documents in which the government made its threats and requests for assistance, are attached as Appendix P.

1 The Declarations attached to this Motion also portray a Matthew Duran that has lived by
2 his beliefs and personal philosophy for much of his life. He has done so when it has been
3 difficult. He has persevered in his positions despite opposition. As Mr. Duran explained, he
4 could not live with himself if he compromised his principles and testified. This Court has
5 now tried to break his resolve and pierce the stranglehold that his convictions have upon his
6 life. This Court has done so for five months of difficult incarceration. Further incarceration
7 is not going to change Mr. Duran's heart and conscience. Instead, it will be purely punitive.

8
9 **3. Mr. Duran has tenuous evidence to offer, at best.**

10 During the hearing on Mr. Duran's Motion to Quash, the Government made repeated
11 reference to the fact that Mr. Duran and counsel do not, and cannot, know why they suspect
12 he has information that may be of use to them in their investigation. While the Government
13 has not deliberately enlightened Mr. Duran or counsel to the reasons for their suspicions, the
14 reason for them seems clear, given the information that is now publicly available.

15
16 Ultimately, this Court, with far greater access to the facts, must be the arbiter of the
17 importance of the evidence that Mr. Duran may have to offer. But as explained above, King
18 County has already completed their investigation and prosecutions of individuals responsible
19 for some of the damage caused on May Day, and they did so without Mr. Duran's testimony
20 or information. Neither did they need to incarcerate witnesses in order to successfully
21 conclude the cases.

22
23 In addition, federal law enforcement has developed substantial information about most of
24 the people believed to be involved in damaging the Nakamura Courthouse. It therefore
25 strains credulity to believe that Mr. Duran, who by all accounts was not even in Seattle on
26

1 May Day, has information that is still so crucial to the success of this investigation, that his
2 continued incarceration is justified. This is especially true if the nature of the evidence that
3 he might have to offer is weighed against the sacrifices he has already made, the reasons for
4 his refusal testify, and the strength of his resolve.

5 **4. Alternative means to secure evidence have been used in King County, and by the**
6 **federal government.** Not only does it appear that multiple jurisdictions have found and used
7 alternative means to secure evidence, but they have been used with a fair amount of success –
8 enabling King County to close a number of the cases. In addition, the facts available to this
9 Court suggest that the government has, thus far, chosen to ignore other means of
10 investigation. As identified above, the government has already identified, through alternative
11 means, a number of suspects in the Courthouse vandalism. Yet in the last five months, the
12 government has brought only one of them, Matthew Pfeiffer, before the grand jury.
13
14

15 The government insists that Mr. Duran must be interviewed by the grand jury because he
16 was a roommate of an individual suspected in the vandalism, and because he lived in a group
17 home where other suspects spent part of a night. But it also strains credulity to believe that
18 other roommates at the group home where he once resided, or other acquaintances of the
19 suspects, would not be equally as likely to have information. Yet they have not received
20 subpoenas. Instead the government has continued Mr. Duran’s incarceration in the fruitless
21 hope that he will abandon his strongly held moral objection to testifying, and thereafter offer
22 them a kernel of useful information.
23

24 Mr. Duran certainly does not wish to be the cause of anyone suffering his same fate. But
25 when the Court considers whether the government has other alternatives to investigate, the
26 answer should be “yes”.

1 **V. CONCLUSION**

2 There is no likelihood that confinement will accomplish the purpose of the order on
3 which commitment was based. Indeed, it becomes less likely that Mr. Duran will testify with
4 each passing day. Mr. Duran very much hopes that the government will decline to exercise
5 its discretion to charge him criminally. But since further confinement has no potential to
6 coerce him to testify, his incarceration has become is purely punitive. Accordingly, this
7 Court should enter an order ending his confinement for civil contempt.
8

9 Dated February 21st, 2013.

10 Respectfully submitted,

11 /s/ Kimberly N. Gordon

12 Kimberly N. Gordon, W.S.B.A. #20541
13 Counsel for Matthew Duran
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2013, I filed the foregoing with the Clerk of the Court in person at the Clerk’s Office for the United States District Court for the Western District of Washington located at the U.S. Courthouse, 700 Stewart Street, Lobby Level, Seattle, WA 98101. I further certify that I served the below-named individuals in the manner so described:

Michael Dion
Assistant United States Attorney
United States Attorneys’ Office
for the Western District of Washington
700 Stewart St., Ste 5220
Seattle, WA 98101
Email: michael.dion@usdoj.gov

- via facsimile
- via first class U.S. mail, postage prepaid
- via certified mail, return receipt requested
- via hand delivery
- via e-mail

John T. McNeil
Assistant U.S. Attorney
Office of the U.S. Attorney
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, WA 98101
Email: john.mcneil@usdoj.gov

- via facsimile
- via first class U.S. mail, postage prepaid
- via certified mail, return receipt requested
- via hand delivery
- via e-mail

s/Ian D. Saling
IAN D. SALING
Senior Paralegal
GORDON & SAUNDERS
1111 Third Avenue, Suite 2220
Seattle, WA 98101
Phone: (206) 682-3222
Fax: (206) 682-3756
Email: ian@gordonsaunderslaw.com