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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,
12 v.
13 Janice Sue Taylor,
14 Defendant.

No. CR-10-0400-PHX-MHM
**GOVERNMENT’S MEMORANDUM
REGARDING APPOINTMENT OF
COUNSEL FOR DESIREE
SAUNDERS AND RONALD
MCBRIDE**

15 The United States, through undersigned counsel, submits this Memorandum in response
16 to the Court’s inquiry at the September 23, 2010, show cause hearing regarding the right to
17 appointed counsel in a civil contempt proceeding.

18 In *United States v. Rylander*, the Ninth Circuit stated that “criminal contempt
19 proceedings, *unlike civil contempt proceedings*, require such protections as the sixth amendment
20 right to counsel.” *Rylander*, 714 F.2d 996, 998 (9th Cir. 1983) (emphasis added). The Ninth
21 Circuit has subsequently cited *Rylander* in unpublished cases for the proposition that there is no
22 Sixth Amendment right to counsel in a civil contempt proceeding. *See United States v. Forgac*,
23 188 F.3d 915, *1 (9th Cir. 1999) (table); *Salman v. Adams*, 933 F.2d 1015, *2 n.4 (9th Cir. 1991)
24 (table).

25 Nevertheless, ten years earlier, in *United States v. Sun Kung Kang*, the Ninth Circuit held
26 the opposite: “We have concluded that an indigent witness is entitled to appointed counsel in [a
27 civil contempt] proceeding.” 468 F.2d 1368, 1369 (9th Cir. 1972). Other jurisdictions have cited
28

1 *Sun Kung Kang* in holding that an indigent witness is entitled to counsel in civil contempt
2 proceedings that might result in incarceration. *See, e.g., United States v. Di Bella*, 518 F.2d 955,
3 959 (2d Cir. 1975); *United States v. Anderson*, 553 F.2d 1154, 1155-56 (8th Cir. 1977); *see also*
4 17 Am Jur. 2d 177 (“The fact that a contemnor may be punished by incarceration is often cited
5 as a reason why the accused must be given the right to the assistance of counsel. Accordingly,
6 it has been held that the right to counsel must be extended to all contempt proceedings, whether
7 labeled civil or criminal, or whether characterized as petty or serious, as long as the proceedings
8 carry a risk of imprisonment as a possible penalty.”) (footnotes omitted). *But see United Mine*
9 *Workers v. Bagwell*, 512 U.S. 821, 833-34 (1994) (suggesting that notice and a hearing are
10 generally sufficient for civil contempt, and that “criminal procedural protections such as the
11 rights to counsel and proof beyond a reasonable doubt” are reserved for “a discrete category,”
12 such as those that require complicated factfinding).

13 In light of the potential incarceration that Ms. Saunders and Mr. McBride face should
14 they fail to comply with the Court’s orders, the United States has no objection to the Court
15 appointing counsel for either witness upon a showing of indigence.

16 Respectfully submitted this 23rd day of September, 2010.

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20 *s/ James Knapp*

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1 Certificate of Service

2 I hereby certify that on 9/23/2010, I electronically transmitted the attached document to the
3 Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic
Filing to the following CM/ECF registrants:

4 Susan Anderson

5 In addition, I mailed copies of the attached document to the following:

6 Sue Taylor
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