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13 IN THE UNITED STATES DISTRICT COURT
14 DISTRICT OF ARIZONA

15 United States of America,
16 Plaintiff,
17 vs.
18 Thomas Mario Costanzo,
19 Defendant.

No. CR-17-585-PHX-GMS

**TRIAL MEMORANDUM RE:
MENS REA REQUIREMENT
UNDER 18 U.S.C. § 1956(a)(3)**

20 Thomas Mario Costanzo, through undersigned counsel, submits that
21 attached Trial Memorandum regarding the mens rea that the government must
22 prove to obtain a conviction under 18 U.S.C. § 1956(a)(3)

23 Respectfully submitted: March 12, 2018.

24 JON M. SANDS
25 Federal Public Defender

26 *s/Maria Teresa Weidner*
27 _____
28 MARIA TERESA WEIDNER
Asst. Federal Public Defender

**TRIAL MEMORANDUM RE:
Mens rea requirement under 18 U.S.C. § 1956(a)(3).**

The legislative history underlying the 1988 amendments to 18 U.S.C. § 1956 expressly provide that the mens rea for culpability under the sting provision of the money laundering statute is specific intent: “The defendant would have to have specific intent to promote specified unlawful activity, conceal what he believes to be the proceeds of such activity, or to avoid reporting requirements. It would not be sufficient, as it is under (a)(1), that the defendant merely know that the transaction was being conducted with the second or third of those purposes in mind.” 134 Cong. Rec. s17360-02, 1988 WL 18259/

Ninth Circuit precedent suggests that specific intent is not defined as an objective “reasonable person” standard, but rather requires an evaluation of the defendant’s subjective intent. *See, e.g., United States v. Sutcliffe*, 505 F.3d 944, 961-62 (9th Cir. 2007) (suggesting a specific intent to threaten involves the determination of the defendant's subjective intent and not the determination of intent applying an objective standard); *United States v. Twine*, 853 F.2d 676, 680-81 (9th Cir. 1988)(another threats case); *United States v. Gracidas-Ulibarry*, 231 F.3d 1188, 1196-97 (9th Cir. 2000) (discussing subjective test for specific intent to commit the crime of attempted illegal reentry).

Other circuits have flatly rejected the applicability of a reasonable person standard where the mens rea of a charged offense is specific intent:

- *United States v. George*, 266 F.3d 52, 60 (2d Cir. 2001), vacated in part on reh'g, 386 F.3d 383 (2d Cir. 2004)(“Consideration of the ‘reasonableness’ of George's actions has no place in a jury instruction on specific intent. In imposing the more onerous burden of showing specific intent, Congress set

1 aside concern for what a ‘reasonable’ person would have done under the
2 circumstances to ask instead what this defendant intended by his actions.”)

- 3 • *United States v. Hsu*, 364 F.3d 192, 204 (4th Cir. 2004)(“Generally, the
4 ‘reasonable person’ standard has no place in instructions pertaining to a
5 specific intent crime.”)
- 6 • *United States v. Bradstreet*, 135 F.3d 46, 51 (1st Cir. 1998) (“Good faith is
7 a defense to a crime containing an element of specific intent even if a
8 defendant's belief in the [truth] of his statements was one that a reasonable
9 person would not have embraced.”)
- 10 • *United States v. Walsh*, 627 F.2d 88, 93 (7th Cir. 1980)(“It is obvious that
11 reference to the conduct of a ‘reasonable person’ is totally misplaced in the
12 context of a criminal trial in which the crime charged requires specific
13 intent.”)
- 14 • *United States v. Jefferson*, 149 F.3d 444, 447 (6th Cir. 1998)(“‘Specific
15 intent’ denotes not an objective standard (i.e., whether a reasonable person
16 intended to prevent communication with law enforcement officers), but a
17 subjective determination (i.e., whether this particular defendant intended to
18 prevent communication between the crime victim and a federal law
19 enforcement official).”)

20
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24 *s/Maria Teresa Weidner*
25 MARIA TERESA WEIDNER
26 Asst. Federal Public Defender
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1 Copy of the foregoing transmitted
2 by ECF for filing March 12, 2018, to:

3 CLERK'S OFFICE
4 United States District Court
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