

1 JON M. SANDS
2 Federal Public Defender
3 District of Arizona
4 850 W. Adams, Suite 201
5 Phoenix, Arizona 85007
6 Telephone: 602-382-2700

7 MARIA WEIDNER, #027912
8 Asst. Federal Public Defender
9 maria_weidner@fd.org
10 Attorney for Defendant

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

10 United States of America,
11
12 Plaintiff,
13 vs.
14 Thomas Mario Costanzo,
15 Defendant.

No. CR-17-0585-01-PHX-GMS

**MOTION FOR RETURN OF
PROPERTY PURSUANT TO FED. R.
CRIM. P. 41(g)**

16 Thomas Mario Costanzo, by and through undersigned counsel, respectfully
17 submits this Motion for Return of Property pursuant to Fed. R. Crim. P. 41(g). He
18 specifically requests this Court order the return of property seized from him by the
19 government that is no longer implicated in the instant criminal case as a result of the
20 government's motion to dismiss Counts 1 and 2 of the First Superseding Indictment, Dkt.
21 # 73 and this Court's order granting said motion, Dkt. # 74.

22 The government's initial seizure of all of Mr. Costanzo's assets in April of
23 2017—in particular his Bitcoin, precious metals, and cash—was based on a legal theory
24 that *all* of his bitcoin-trading activities were illegal and thus subject to forfeiture because
25 he was allegedly operating / conspiring to operate an unlicensed money transmitting
26 business in violation of 18 U.S.C. § 1960. This left him completely indigent—he was
27 unable to post a bond or retain private counsel for his defense.

28 Dismissal of Counts 1 and 2 stripped the government of this rationale. This,
together with the dramatic increase in the value of Bitcoin in recent months, has caused a

1 significant change in circumstances. Now only those allegations that relate to the five
2 charged Bitcoin trades may serve as a basis for forfeiture should Mr. Costanzo be
3 convicted of any or all of those charges in the present indictment. Thus, the government
4 may retain for potential forfeiture only an assets the value of which is equal to the funds
5 the government provided Mr. Costanzo in furtherance of its money laundering sting
6 against him as alleged in Counts 3-7 of the present indictment: approximately \$159,700.
7 The government has no basis to confiscate more.

8 The value of the assets, specifically the Bitcoin, that the government
9 confiscated far exceeds the amount justified based on Counts 3-7. This is a direct result
10 of the recent boom in Bitcoin value. Today (December 15, 2017), a single Bitcoin is
11 valued at \$17,664.99 in the United States. The value of the 49.99363132 Bitcoin seized
12 from Mr. Costanzo by the government is thus now worth approximately \$883,137. This
13 far exceeds the amount that would be due the government, approximately \$160,000, even
14 if it should prevail on *all* money laundering counts at trial. A copy of the Seized Asset
15 Claim Form submitted by Mr. Costanzo in July of 2017 is attached here as Exhibit A. The
16 current total value of assets seized for forfeiture by the government is \$885,183.75. This
17 does not account for fluctuations in the value of precious metals.

18 CONCLUSION

19 The government has stated no legal basis upon which to justify withholding
20 funds in excess of approximately \$160,000. The remaining valuable assets forfeited by
21 the government must thus be returned to Mr. Costanzo, a reasonable bond set by this
22 Court, and a determination of his eligibility to continue being represented by appointed
23 counsel must be made.

24 Respectfully submitted: December 15, 2017.

25 JON M. SANDS
26 Federal Public Defender

27 s/Maria T. Weidner
28 MARIA T. WEIDNER
Asst. Federal Public Defender

1 Copy of the foregoing transmitted by ECF for filing December 15, 2017, to:

2 CLERK'S OFFICE
3 United States District Court
4 Sandra Day O'Connor Courthouse
5 401 W. Washington
6 Phoenix, Arizona 85003

7 MATTHEW BINFORD
8 FERNANDA CAROLINA ESCALANTE KONTI
9 GARY RESTAINO
10 Assistant U.S. Attorneys

11 Copy mailed to:

12 THOMAS MARIO COSTANZO
13 Defendant
14 s/yc

15
16
17
18
19
20
21
22
23
24
25
26
27
28