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11 IN THE UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 United States of America,
14 Plaintiff,

15 vs.

16 Thomas Mario Costanzo,
17 Defendant.

No. CR-17-00585-01-PHX-GMS

**REPLY TO DKT. # 81,
GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION FOR
GRAND JURY MATERIAL
(DKT. #54 & #71)**

18 Thomas Mario Costanzo hereby submits his Reply to the
19 Government's Response to his Motion for Grand Jury Material (Dkt. # 81). While
20 the defense appreciates the provision of testimony as to the facts provided to the
21 Grand Jury, the transcripts provided do not address the specific issue raised and
22 requested in Mr. Costanzo's Notice of Joinder (Dkt. #71): that is, each of the
23 charged money laundering counts alleges defendant acted "with the intent to avoid
24 a transaction reporting requirement under federal law" but fails to specify which
25 such transaction reporting requirement was presented by the government and
26 ultimately found by the Grand Jury.

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1 Counts 3-7 currently fail to describe with particularity the specific
2 facts presented to the grand jury by the federal government in obtaining its
3 certification of those charges against Mr. Costanzo. Of particular concern here is
4 counsel's duty to insure that Mr. Costanzo is not prosecuted for allegations beyond
5 what was presented to the grand jury, given that the indictment is silent as to what
6 federal transaction reporting requirement Mr. Costanzo allegedly sought to avoid.

7 The Fifth Amendment provides that "no person shall be held to answer
8 for a capital, or other infamous crime, unless on presentment or indictment of a
9 grand jury. . . ." This right acts as a check on prosecutorial power. *United States v.*
10 *Cotton*, 535 U.S. 625, 634 (2002). The grand jury provides "an independent check
11 on the ability of the government to bring criminal charges against individuals." *In*
12 *re U.S.*, 441 F.3d 44, 57 (1st Cir. 2006). The grand jury is a defendant's "main
13 protection against the bringing of unfounded criminal charges." *United States v.*
14 *Suarez*, 263 F.3d 468, 481 (6th Cir. 2001).

15 These constitutional mandates are implemented through Fed. R.
16 Crim. P. 7(c), which requires that an indictment "shall be a plain, concise and
17 definite written statement of the essential facts constituting the offense charged."
18 Although the language of Rule 7(c) differs from the constitutional provisions, its
19 adoption was not intended, in any way, to diminish the safeguards an indictment
20 affords a defendant. *See Russell v. United States*, 369 U.S. 749, 765-66 (1962).
21 "It is an elementary principle of criminal pleading, that where the definition of an
22 offence, whether it be at common law or by statute, includes generic terms, it is
23 not sufficient that the indictment shall charge the offence in the same generic
24 terms as in the definition; but it must state the species, it must descend to
25 particulars." *Id.* at 765 (quoting *United States v. Cruikshank*, 92 U.S. 542, 558
26 (1875)).
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1 Mr. Costanzo therefore moves for production of the portion of the
2 Grand Jury transcript relevant to the requested information. To wit, the federal
3 transaction reporting requirement(s) for which the Grand Jury found probable
4 cause to certify the filing of counts against Mr. Costanzo alleging violation of 18
5 U.S.C. §1956(a)(3)(C).

6 It is expected that excludable delay under Title 18 U.S.C. Section
7 3161(h) (1) (D) may occur as a result of this motion or from an order based
8 thereon.

9 Respectfully submitted: December 15, 2017.

10 JON M. SANDS
11 Federal Public Defender

12 s/Maria T. Weidner
13 MARIA T. WEIDNER
14 Asst. Federal Public Defender

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

16 CLERK'S OFFICE
17 United States District Court
18 Sandra Day O'Connor Courthouse
19 Phoenix, Arizona 85003

20 MATTHEW BINFORD
21 CAROLINA ESCALANTE-KONTI
22 GARY RESTAINO
23 Assistant U.S. Attorneys

24 Copy mailed to:

25 THOMAS MARIO COSTANZO
26 Defendant

27 s/yc