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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-17-0585-PHX-GMS

**MOTION IN LIMINE TO PRECLUDE
EVIDENCE AND ARGUMENT
REGARDING DEFENDANT'S
ALLEGED POLITICAL BELIEFS**

20 Thomas Mario Costanzo, by and through undersigned counsel, respectfully
21 moves this Court moves for an order prohibiting the government from introducing
22 evidence and/or making arguments regarding Mr. Costanzo's alleged political beliefs.
23 This motion is made pursuant to Federal Rules of Evidence 401, 402 and 403 and is
24 supported by the attached memorandum.

25 Respectfully submitted: March 1, 2018.

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28 s/Maria Weidner
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1 Costanzo committed the alleged money laundering offenses. *See United States v.*
2 *Edwards*, 101 F.3d 17, 19-20 (2d Cir. 1996) (motive defendant had or claimed to have
3 had for committing crime, whether to further a political goal or other reason, was
4 irrelevant to his guilt or non-guilt).

5 6. Second, Mr. Costanzo does not concede that evidence of his political beliefs is
6 probative at all. Such evidence, even if probative, must be excluded as unfairly
7 prejudicial. The major function of Rule 403 is to exclude matters of “scant or
8 cumulative probative force, dragged in by the heels for the sake of [their] prejudicial
9 effect[s].” *United States v. Veltmann*, 6 F.3d 1483, 1500 (11th Cir. 1993) (quoting
10 *United States v. McRae*, 593 F.2d 700, 707 (5th Cir. 1979)). Evidence is unfairly
11 prejudicial if it makes conviction more likely because it provokes an emotional
12 response or otherwise tends to affect adversely the jury’s attitude toward the defendant
13 apart from its judgment as to the defendant’s guilt of the crime charged. *United States*
14 *v. Roberts*, 88 F.3d 872, 880 (10th Cir. 1996).

15 7. Third, the terms often associated with Mr. Costanzo’s alleged political beliefs—
16 including, but not limited to “anti-government,” “sovereign,” or “constitutionalist”—
17 are commonly associated with a particular extreme political view. As one judge
18 observed:

19 Whether described as Freeman, Militia, Constitutionalists,
20 Patriots, or the like, these individuals hope to do all they can to
21 disrupt our justice system in the hopes its collapse will presage
22 a utopia.

23 *State v. Sullivan*, 19 P.3d 1012, 1026 (Wash. 2001) (Talmadge, J., concurring)
24 (citation omitted). Such references can be considered derogatory. *See Heuser v.*
25 *Johnson*, 189 F.Supp.2d 1250, 1270 (D. New Mexico 2001) (noting that the plaintiffs
26 had been “derogatorily referred to as ‘constitutionalists’ by various county and city
27 officials” and defendants had “repeatedly asserted” that one plaintiff “has ‘extremist
28 views’ regarding his Fourth Amendment rights and that he is ‘anti-government’”).
Admission of evidence that a defendant has or may have considered extreme political
views is highly prejudicial and has been found to constitute reversible error. *See*

1 *United States v. Waters*, 627 F.3d 345, 354-56 (9th Cir. 2010) (in prosecution for
2 arson, in which defendant was accused of joining members of a radical environmental
3 group in setting fire to a professor's office, admission of folder containing anarchist
4 articles, some of which espoused violence, that co-conspirator claimed to have
5 received from defendant was highly prejudicial and an abuse of discretion). *See also*
6 *United States v. Giese*, 597 F.2d 1170, 1185 (9th Cir. 1979) (stating that “we wish to
7 emphasize that we are not establishing a general rule that the government may use a
8 person’s reading habits, literary tastes, or political views as evidence against him in a
9 criminal prosecution.”).

- 10 8. Evidence and argument that Mr. Costanzo is “anti-government” or holds views
11 popularly associated with the term would be prejudicial and likely to provoke an
12 emotional response from the jury because of the possibility the jury will associate Mr.
13 Costanzo with other allegedly anti-government defendants, such as Cliven Bundy,
14 Timothy McVeigh, or Ted Kaczynski. Moreover, such evidence and testimony would
15 confuse, mislead and distract the jury from determination of the factual matters
16 actually at issue, further warranting exclusion under Federal Rule of Evidence 403.
- 17 9. Finally, presentation to the jury by the prosecution of evidence and argument that Mr.
18 Costanzo allegedly holds “anti-government” views results in improper burden shifting
19 for two reasons:
- 20 a. The government would rely on bias and emotion rather than proof of the
21 essential elements of the charged crimes in its efforts to obtain guilty verdicts.
22 *See In re Winship*, 397 U.S. 358, 363 (1970) (“Lest there remain any doubt
23 about the constitutional stature of the reasonable-doubt standard, we explicitly
24 hold that the Due Process Clause protects the accused against conviction *except*
25 *upon proof beyond a reasonable doubt of every fact necessary to constitute the*
26 *crime with which he is charged.*”).
 - 27 b. Such argument and evidence would also constitutes an implicit and
28 impermissible comment on the defendant’s exercise of his Fifth Amendment
privilege not to testify, should he so elect. *Griffin v. California*, 380 U.S. 609,

1 614-15 (1965); *see also*, 18 U.S.C. § 3481 (defendant’s failure to testify “shall
2 not create any presumption against him”); *Bruno v. United States*, 308 U.S.
3 287, 292-93 (1939) (court’s refusal to give no adverse-inference charge
4 required reversal under Section 3481); *Gomes v. Brady*, 564 F.3d.532, 538 (1st
5 Cir. 2009) (misconduct to argue that only defense counsel had “take[n] the
6 stand” to urge that defendant did not shoot victim); *United States v. Rodriguez*,
7 627 F.2d 110, 111-12 (7th Cir. 1980) (improper for government to argue that
8 defendant “has been very quiet” during the trial); *United States v. Cotnam*, 88
9 F.3d 487, 497 (7th Cir. 1996) (government committed misconduct when it
10 repeatedly referred to its evidence as “uncontroverted,” when it was apparent
11 only the defendant could have refuted the evidence); *United States v. Skandier*,
12 758 F.2d 43, 45 (1st Cir. 1985) (prosecutor’s question in closing as to how
13 defense counsel would explain certain events was improper where defendant
14 had not taken stand).

15 For the foregoing reasons, Thomas Mario Costanzo asks this Court to
16 specifically prohibit the government from eliciting any testimony or proffering any
17 evidence that Mr. Costanzo allegedly holds or is sympathetic to any extremist political
18 views, and prohibiting any opening or closing argument based on such allegations.

19 Respectfully submitted: March 1, 2018.

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21 Federal Public Defender

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1 Copy of the foregoing transmitted by ECF for filing March 1, 2018, to:

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