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18  
19 IN THE UNITED STATES DISTRICT COURT  
20 FOR THE DISTRICT OF ARIZONA

21 United States of America,  
22  
23 Plaintiff,  
24  
25 v.  
26 Thomas Mario Costanzo,  
27  
28 Defendant.

CR-17-00585-PHX-GMS

**UNITED STATES' RESPONSE TO  
DEFENDANT'S MOTION IN LIMINE  
(DKT. # 132) RE: POLITICAL BELIEFS**

29 Defendant seeks to preclude evidence and argument regarding his political beliefs.  
30 These largely anti-government beliefs – as evidenced in the nine undercover recordings at  
31 issue in this case – run the gamut from broad-based suspicions of the government's role in  
32 genetic modifications to the food we eat, fluoride in the water we drink and chem trails in  
33 the air we breathe -- to more narrow suspicions of the government's role in the banking  
34 industry. The government has no objection to an order precluding the admission of the  
35 broad-based anti-government rhetoric. But the anti-bank beliefs, and the government's  
36 role in regulating the banking industry, are directly related to, and at the core of, the charged  
37 conduct in this case.  
38

1           A.     The Superseding Indictment Alleges That Defendant Acted With The Intent  
2                    To Evade Transaction Reporting Requirements.

3           The grand jury charged defendant with five violations of the money laundering sting  
4 provisions of 18 U.S.C. § 1956(a)(3), and the most direct evidence comes from the  
5 recorded undercover transactions: five instances in which agents exchanged cash  
6 represented to be drug money for anonymous bitcoins; and the other four undercover  
7 conversations in which defendant discussed the anonymity benefits of bitcoin without the  
8 overt drug chatter. Some additional evidence derives from the search warrant of  
9 defendant's residence, to include brochures and other printed matter related to bitcoins.  
10 The government has the burden to establish that defendant acted with the intent to either  
11 conceal the nature and source of the dirty money or to otherwise avoid federal transaction  
12 reporting requirements. Although the Ninth Circuit does not require a finding of  
13 willfulness on the part of defendant, *United States v. Nelson*, 66 F.3d 1036, 1041 (9th Cir.  
14 1995), the government must still establish defendant's specific intent to, *in any manner*,  
15 conceal the property or avoid the transaction reporting. *United States v. Manarite*, 44 F.3d  
16 1407, 1416 (9th Cir. 1995) (emphasis in original). Defendant's anti-bank beliefs remain  
17 relevant to the transaction reporting prong.

18           B.     There Is No Unfair Prejudice If Those Anti-Government Beliefs Related To  
19                    The Charged Crimes Are Admitted.

20           Defendant has strong views and beliefs. He included them in his routine journal  
21 entries. He added them to his recorded interviews and lectures. He spoke about them on  
22 the nine undercover recordings. Many are not relevant here. The government has no  
23 intention of introducing any of his conspiracy theories about the events of 9-11, or the other  
24 beliefs identified above. Nor does the government intend to introduce more generic  
25 railings about the "system" or the U.S. government<sup>1</sup> if not tethered to the banking industry

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26  
27           <sup>1</sup> And the government would likely object if any of the defendant's witnesses  
28 espoused any similar views.

1 and the regulations defining it.

2 But defendant's beliefs about the banking system are keenly probative of his  
3 specific intent to launder money. By way of example, the government intends to introduce  
4 excerpts from the undercover recordings that "the banking system and the whole system is  
5 stacked against us," the Federal Reserve is an "evil" organization that "controls the world,"  
6 and that he has "disconnected" himself from the banks because they are "a bunch of f\*\*\*in'  
7 criminals."<sup>2</sup> The documentary material found at defendant's residence also resonates with  
8 specific intent of his concealment and evasion activities, and the government anticipates  
9 that it will seek to introduce some of that material (in redacted form as necessary) at trial.

10 Defendant's cited cases provide no basis to preclude his banking beliefs. The  
11 challenge for the prosecution in navigating the Rule 403 waters is to narrowly articulate  
12 the admissibility of each piece of evidence. *See, e.g., United States v. Waters*, 627 F.3d  
13 345, 354-56 (9th Cir. 2010). In *Waters*, an alleged arson by an animal welfare activist, the  
14 ultimate appellate problem was not the introduction of the political rhetoric, but rather the  
15 absence of a review by the district court of the material prior to its introduction. *Id.* at 356.  
16 And the reviewing court stopped well short of precluding the introduction of a more limited  
17 subset: "We believe that an appropriately skeptical eye would have excluded the articles  
18 from Waters' trial, *or at least limited the articles that were provided to the jury.*" *Id.* at  
19 356 (emphasis added).

20 The government also distinguishes *Waters* because that case was all about printed  
21 material. Most of the rhetoric against Mr. Costanzo derives from his spoken words during

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23  
24 <sup>2</sup> The parties are currently engaged in an effort to arrive at an agreement on which  
25 excerpts from the undercover recordings to present to the jury, and we will likely have a  
26 good sense of the success of that endeavor by the date of the Final Pretrial Conference.  
27 The government anticipates that it will seek to present roughly 10% or less of each  
28 recording, to focus on the relevant portions. The excerpts related above are from the 9-14-  
16 transcript (at pp 16, 33 and 93) proposed to the defense on March 5. Those excerpts  
exclude significant material that seems overly-inflammatory (calling the government a  
"criminal psychopathic organization" on page 33, e.g.) and also exclude references to  
political candidates.

1 undercover conversations with people he felt were kindred spirits. Defendant faces a far  
2 higher burden in showing that his own words are unfairly prejudicial against him.<sup>3</sup>

3 C. Conclusion

4 For the foregoing reasons, the government opposes the full scope of the motion in  
5 limine.

6 Respectfully submitted this 6th day of March, 2018.

7  
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14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on this 6th day of March 2018, I electronically transmitted the  
16 attached document to the Clerk's Office using the CM/ECF System for filing and  
transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

17 Maria Teresa Weidner  
18 Zachary Cain,  
19 *Attorneys for Defendant*

20  
21 s/Cristina Abramo  
U.S. Attorney's Office

22  
23  
24  
25  
26 <sup>3</sup> It is also for this reason that defendant's well-stated analysis of the Fifth  
27 Amendment protection against adverse inferences and comments on silence (Def. Mot. at  
28 4-5) seems inapposite to the instant case. The government seeks to use defendant's words  
against him, not his silence.