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13 IN THE UNITED STATES DISTRICT COURT

14 DISTRICT OF ARIZONA

15 United States of America,
16
17 Plaintiff,
18
19 vs.
20 Thomas Mario Costanzo,
21
22 Defendant.

No. CR-17-0585-PHX-GMS
**DEFENSE SUPPLEMENT
TO DKT. #131**

23 In an abundance of caution and candor, Thomas Mario Costanzo, through
24 undersigned counsel, hereby provides notice of his intent to elicit and/or offer evidence
25 that may be interpreted as relevant to matters of inducement to commit the charged
26 offenses or a lack of predisposition to do the same.

27 He also reserves his right, pursuant to the Fifth and Sixth Amendments of
28 the United States Constitution, to assert the affirmative defense of entrapment and to have
the jury so instructed pursuant to the Ninth Circuit Model Instruction 6.2.

Therefore, Mr. Costanzo submits as a supplement to Dkt. 131 (Joint
Proposed Jury Instructions), the following proposed Model Instruction for the defense:

ENTRAPMENT (6.2)

The defendant contends that [he] [she] was entrapped by a government agent. The
government has the burden of proving beyond a reasonable doubt that the
defendant was not entrapped. The government must prove either:

1. the defendant was predisposed to commit the crime before being contacted by
government agents, or

1 2. the defendant was not induced by the government agents to commit the crime.
2 When a person, independent of and before government contact, is predisposed
3 to commit the crime, it is not entrapment if government agents merely provide
4 an opportunity to commit the crime. In determining whether the defendant was
5 predisposed to commit the crime before being approached by government
6 agents, you may consider the following:

- 7 1. whether the defendant demonstrated reluctance to commit the offense;
8 2. the defendant's character and reputation;
9 3. whether government agents initially suggested the criminal activity;
10 4. whether the defendant engaged in the criminal activity for profit; and
11 5. the nature of the government's inducement or persuasion.

12 In determining whether the defendant was induced by government agents to
13 commit the offense, you may consider any government conduct creating a
14 substantial risk that an otherwise innocent person would commit an offense,
15 including persuasion, fraudulent representations, threats, coercive tactics,
16 harassment, promises of reward, or pleas based on need, sympathy or friendship.

17 *See Model Criminal Jury Instruction 6.2.*

18 Defense counsel has attempted to contact Assistant United States Attorneys
19 Restaino, Binford, and Escalante-Konti by phone regarding this proposed supplement;
20 based on the substance of Dkt. # 127, the defense assumes that the government objects to
21 the proposed entrapment instruction.

22 Respectfully submitted: March 6, 2018.

23 JON M. SANDS
24 Federal Public Defender

25 *s/Maria Teresa Weidner*
26 MARIA TERESA WEIDNER
27 ZACHARY CAIN
28 Asst. Federal Public Defenders

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Copy of the foregoing transmitted by ECF for filing March 6, 2018, to:

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

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THOMAS MARIO COSTANZO
Defendant

s/yc