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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-17-0585-PHX-GMS

**MOTION FOR JUDICIAL NOTICE
OF MARCH 2017 REPORTS OF THE
DEPARTMENT OF JUSTICE (DOJ)
AND INTERNAL REVENUE
SERVICE (IRS) RE: CIVIL ASSET
FORFEITURE ABUSES BY THE
GOVERNMENT**

(First Request)

18 Pursuant to Rule 201 of the Federal Rules of Evidence, undersigned
19 counsel, on behalf of Mr. Costanzo, moves this Court to take judicial notice of the
20 following relevant documents produced by agencies within the Executive Branch of
21 the United States Government:

- 22 1) Dept. of Justice, Office of the Inspector General, *Review of the*
23 *Department's Oversight of Cash Seizure and Forfeiture Activities,*
24 Evaluation and Inspections Division Report 17-02 (March 2017);
 - 25 2) Dept. of the Treasury, Inspector General for Tax Administration, *Criminal*
26 *Investigation Enforced Structuring Laws Primarily Against Legal Source*
- 27
28

1 *Funds and Compromised the Rights of Some Individuals and Businesses,*
2 2017-30-025 (Mar. 30, 2017).¹

3 A Court may take judicial notice of adjudicative facts that are not
4 subject to reasonable dispute because they can be “accurately and readily determined
5 from sources whose accuracy cannot reasonably be questioned.” FRE 201(b)(2). A
6 Court may take judicial notice “at any stage of the proceeding[s],” including on
7 appeal. FRE 201(d). *Papai v. Harbor Tug and Barge Co.*, 67 F.3d 203, 207 n.5 (9th
8 Cir 1995), rev’d on other grounds, 520 U.S. 548 (1997). The Court “must take
9 judicial notice if requested by a party and the court is supplied with the necessary
10 information.” FRE 201(c)(2).

11 Judicial notice of the aforementioned reports issued by the Inspectors
12 General of the Department of Justice and the Department of the Treasury is
13 appropriate in this case, based on the following:

14 **BACKGROUND**

- 15 1. The Department of Justice (DOJ) is within the Executive Branch of the United
16 States Government.
- 17 2. The Drug Enforcement Administration (DEA) is an organization within the
18 Department of Justice.
- 19 3. The Office of the Inspector General (OIG) for the DOJ has jurisdiction to
20 review the programs and personnel of the Federal Bureau of Investigation, the
21 Drug Enforcement Administration, the Federal Bureau of Prisons, the U.S.
22 Marshals Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives,
23 the United States Attorneys, and all other organizations in the Department
24
25
26
27

28 _____
¹ Copies of these reports are attached FSM hereto as Exhibits A and B.

- 1 4. In March 2017, the DOJ OIG released a report, attached here as Exhibit A,
2 “identifying specific weaknesses in the Department’s oversight of asset
3 seizure and forfeiture activities.” *See* Exhibit A, at ii.
- 4 5. For instance, the DOJ OIG found that the DEA could verify that only 44 of
5 100 seizures, and only 29 of the 85 interdiction seizures, had (1) advanced or
6 been related to ongoing investigations, (2) resulted in the initiation of new
7 investigations, (3) led to arrests, or (4) led to prosecutions.” *Id.* at iii.
- 8 6. This report is publicly available and may be accessed via the DOJ website.²
- 9 7. The Department of the Treasury (DOT) is within the Executive Branch of the
10 United States Government.
- 11 8. The Internal Revenue Service (IRS) is an organization within the Department
12 of the Treasury.
- 13 9. The Treasury Inspector General for Tax Administration (TIGTA) was
14 established under the IRS Restructuring and Reform Act of 1998 to provide
15 independent oversight of IRS activities. TIGTA promotes the economy,
16 efficiency, and effectiveness in the administration of the internal revenue
17 laws. It is also committed to the prevention and detection of fraud, waste, and
18 abuse within the IRS and related entities.
- 19 10. In March 2017, the TIGTA released a report, attached here as Exhibit B,
20 finding that millions of dollars had been seized from individuals and
21 businesses and forfeited by the United States in the absence of evidence of
22 criminal activity and that such actions violated agency policy instituted in
23 October 2014.

28 ² *See* <https://oig.justice.gov/reports/all.htm>

1 11. This report is publicly available and may be accessed via the Department of
2 the Treasury website.³

3 **RELEVANCE TO THE CASE AT BAR**

4 12. The United States has elicited testimony from two government witnesses—
5 SA Klepper and TFO Martin—regarding the subject of asset forfeiture by law
6 enforcement.

7 13. SA Klepper is a long-time agent of the IRS. He assisted in the investigation of
8 Mr. Costanzo under the direction of case agents SA Flesichmann and SA
9 Ellsworth.

10 14. TFO Martin is a deputized officer of the DEA. He also assisted in the
11 investigation of Mr. Costanzo.

12 15. Both SA Klepper and TFO Martin testified, in response to questions posed on
13 direct examination, that arbitrary seizures of money and property by the
14 government do not occur.

15 16. This testimony was clearly meant to impugn recorded statements of Mr.
16 Costanzo—played for the jury— regarding the occurrence of such arbitrary
17 seizures, also known as civil asset forfeiture.

18 17. Contrary to the testimony of SA Klepper and TFO Martin, there are
19 documented abuses of asset forfeiture powers by the government. These are
20 reflected in the reports submitted for judicial notice document.

21 **ADDITIONAL NOTICE TO THE GOVERNMENT**

22 18. It is the position of the defense that even the request for judicial notice of the
23 appended government documents is not granted, such documents are
24 admissible at trial as:

25 a. Statements of a Party-Opponent. FRE 801(d)(2)
26
27
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³ See https://www.treasury.gov/tigta/oa_auditreports_fy17.shtml.

1 b. Residual Exception to the Rule Against Hearsay. FRE 807. Further this
2 filing and its attachments fulfill FRE 807(b)'s notice requirement.

3 For the reasons set forth above, it is respectfully requested that this
4 court judicially notice the attached reports of Inspectors General for DOJ and the
5 IRS.

6 Excludable delay under 18 U.S.C. § 3161(h)(1)(D) may result from this
7 motion or from an order based thereon.

8 Respectfully submitted: March 23, 2018.

9 JON M. SANDS
10 Federal Public Defender

11 s/Maria Teresa Weidner
12 MARIA TERESA WEIDNER
13 Asst. Federal Public Defender

14 Copy of the foregoing transmitted by ECF for filing March 23, 2018, to:

15 CLERK'S OFFICE
16 United States District Court
17 Sandra Day O'Connor Courthouse
18 401 W. Washington
19 Phoenix, Arizona 85003

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25 Phoenix, Arizona 85004-4408

26 Copy mailed to:

27 THOMAS MARIO COSTANZO
28 Defendant

s/pm