

1 JON M. SANDS
Federal Public Defender
2 **MARIA TERESA WEIDNER**
Assistant Federal Public Defender
3 State Bar No. 027912
850 W. Adams Street, # 201
4 Phoenix, AZ 85007
Telephone: (602) 382-2700
5 Maria.Weidner@fd.org
Attorney for Defendant

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9 United States of America,
10 Plaintiff,
11 vs.
12 Thomas Mario Costanzo,
13 Defendant.
14

CR-17-585-PHX-GMS

**OBJECTIONS TO INFORMATION
PRESENTED IN THE DRAFT
PRESENTENCE INVESTIGATION
REPORT**

15 Defendant, Thomas Mario Costanzo, through undersigned counsel, hereby submits
16 his objections to the other information presented in the Draft Presentence Investigation
17 Report (PSR). Mr. Costanzo respectfully requests that this Court sustain his objections;
18 numbering is continued from Dkt. #208, which consists of OBJECTIONS ##1-4:

19 **OBJECTION #5: Objection to mischaracterization of the verdict at PSR ¶ 3.**

20 The Draft PSR incorrectly states that the jury found Mr. Costanzo guilty of violating
21 both 18 U.S.C. § 1956(a)(3)(B) (acting with intent to conceal or disguise property believed
22 to be proceeds of specified unlawful activity (SUA)) and 18 U.S.C. § 1956(a)(3)(C) (acting
23 with intent to avoid a currency transaction reporting requirement) (PSR ¶ 3).

24 The jury verdict provides that Mr. Costanzo was found guilty of violating
25 § 1956(a)(3)(B) only with regard to Counts 3-7 of the Superseding Indictment (Counts 1-
26 5 of the verdict form). *See* Dkt. #188 Redacted Jury Verdict. Mr. Costanzo was not found
27 guilty of any violation of § 1956(a)(3)(C). *Id.*

1 Specifically, the § 1956(a)(3)(C) allegation contained in Count 3 (Count 1 of the
2 verdict form) was dismissed during trial, prior to closing arguments and jury deliberations.
3 *See* Dkt. # 180, Minute Entry, Mar. 28, 2018. The remaining allegations went to the jury,
4 which did not find Mr. Costanzo guilty of any of the remaining § 1956(a)(3)(C) allegations.
5 *See* Dkt. #188.

6 **OBJECTION #6: Objection to mischaracterization of proceedings at PSR ¶ 4.**

7 The Draft PSR incorrectly states that Counts 1, 2, and 8 of the Superseding
8 Indictment were “subsequently dismissed.”

9 All three counts were dismissed prior to trial (i.e., previously). Specifically:

- 10 • Counts 1 and 2 were dismissed on the government’s motion on November 21, 2017.
11 *See* Dkt. #74, Order, Nov. 21, 2017.
- 12 • Count 8 was dismissed by this Court on January 4, 2018. *See* Dkt. #109, Minute
13 Order, Jan. 4, 2018.

14 **OBJECTION #7: Objection to inclusion of the offense conduct narrative authored by**
15 **the government, which currently appears in the Draft PSR without attribution, in**
16 **PSR ¶¶ 5-26.** Undersigned counsel learned of this circumstance on May 30, 2018; a motion
17 requesting relief on regulatory, statutory, and procedural grounds was filed by the defense.
18 *See* Dkt. # 205. The facts, law and argument presented in that motion are incorporated here
19 by reference.

20 Moreover, the defense reasserts and does not waive objections and argument raised
21 and resolved throughout the proceedings in this case the subject matter of which are
22 reasserted as relevant facts by the government in its account of the offense conduct and
23 replicated in the draft PSR. This includes but is not limited to the following:

- 24 • All references to and descriptions of “the dark net” (PSR ¶¶ 5, 17).
25 • All references to and descriptions of alleged predisposition evidence the
26 government admitted or attempted to admit at trial (PSR ¶¶ 8, 12, 16, 21, 22).

- 1 • All information regarding acquitted or dismissed counts (PSR ¶ 10) (i.e.,
2 assertion that Mr. Costanzo had “knowledge of federal reporting
3 requirements.”).
- 4 • All implications that the following are illegal:
 - 5 ○ Peer-to-peer exchanges (PSR ¶¶ 5, 7);
 - 6 ○ Owning/selling/buying bitcoin (PSR ¶¶ 5, 7, 25);
 - 7 ○ Choosing not to patronize banks (PSR ¶ 10);
 - 8 ○ Use of publicly available encrypted applications (PSR ¶¶ 12, 13, 20).
- 9 • Information regarding a government informant’s unverified estimate that
10 s/he purchased \$30,000-worth of bitcoin from Mr. Costanzo over the course
11 of a 14-month period (PSR ¶ 16).

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

14 Respectfully submitted: July 5, 2018.

15 JON M. SANDS
16 Federal Public Defender

17 s/Maria Teresa Weidner
18 MARIA TERESA WEIDNER
19 Asst. Federal Public Defender

20 Copy of the foregoing transmitted by ECF for filing July 5, 2018 to:

21 CLERK’S OFFICE
22 United States District Court

23 MATTHEW H. BINFORD
24 FERNANDA CAROLINA ESCALANTE KONTI
25 GARY RESTAINO
26 Assistant U.S. Attorneys
27 United States Attorney’s Office
28 Phoenix, Arizona

1 DANIEL JOHNSON
2 United States Probation Officer
3 Phoenix, Arizona

4 Copy mailed to:

5 THOMAS MARIO COSTANZO
6 Defendant

7 s/yc

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28