

1 GARY M. RESTAINO
United States Attorney
2 District of Arizona

3 KEVIN M. RAPP (Ariz. Bar No. 014249, kevin.rapp@usdoj.gov)
MARGARET PERLMETER (Ariz. Bar No. 024805, margaret.perlmeter@usdoj.gov)
4 PETER S. KOZINETS (Ariz. Bar No. 019856, peter.kozinets@usdoj.gov)
ANDREW C. STONE (Ariz. Bar No. 026543, andrew.stone@usdoj.gov)
5 Assistant U.S. Attorneys
40 N. Central Avenue, Suite 1800
6 Phoenix, Arizona 85004-4408
Telephone (602) 514-7500
7

8 DAN G. BOYLE (N.Y. Bar No. 5216825, daniel.boyle2@usdoj.gov)
Special Assistant U.S. Attorney
312 N. Spring Street, Suite 1400
9 Los Angeles, CA 90012
Telephone (213) 894-2426
10

11 KENNETH POLITE
Assistant Attorney General
Criminal Division, U.S. Department of Justice
12

AUSTIN M. BERRY (Texas Bar No. 24062615, austin.berry2@usdoj.gov)
13 U.S. Department of Justice
Child Exploitation and Obscenity Section
14 1301 New York Avenue, NW, 11th Floor
Washington, D.C. 20005
15 Telephone (202) 412-4136
Attorneys for Plaintiff
16

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**

19 United States of America,
20
21 Plaintiff,

22 v.

23 Michael Lacey, et al.,
24 Defendants.
25

CR-18-422-PHX-DJH

**UNITED STATES' MOTION
IN LIMINE TO PRECLUDE
DEFENSE FROM COMMENTING
ON LEGITIMACY OF
PROSECUTION**

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1 The United States moves *in limine* to preclude the defense from commenting, in the
2 presence of the jury, on the legitimacy of this prosecution and lawful tactics employed in
3 the course of the prosecution.¹ Specifically, in opening statements on September 8, 2021,
4 defense counsel declared to the jury, “When you have the law and the facts on your side,
5 you go to civil court, when you don’t, you take people’s money so that they can’t defend
6 themselves and you bring a criminal charge.” (Doc. 1342 at 94:17-20.)

7 This was clearly a comment on the fact that the United States has lawfully seized
8 some of Defendants’ assets to preserve them for restitution and forfeiture should this Court
9 decide to order such. Likewise, it was an attempt to comment on the legitimacy of the
10 prosecution by suggesting that civil litigation is somehow fairer, and, further, that this
11 prosecution is inherently unfair simply by virtue of the fact that it is a criminal action. Such
12 statements are highly inflammatory and unfairly prejudicial, and should be precluded under
13 Rule 403.

14 If Defendants are able to make such comments, then they would essentially be
15 arguing for nullification, which is not allowed. Jury nullification arguments ask the jury to
16 violate its oath to return a verdict based solely on the evidence and the court’s instructions,
17 and instead acquit the defendants for improper reasons such as sympathy, bias, prejudice,
18 or disagreement with the law. “Nullification . . . is ‘a violation of a juror’s sworn duty to
19 follow the law as instructed by the court,’ and ‘trial courts have the duty to forestall or
20 prevent’ it, including ‘by firm instruction or admonition.’” *United States v. Lewis*, No. 21-
21 50229, 2023 WL 1990544, at *2 (9th Cir. Feb. 14, 2023) (quoting *Merced v. McGrath*, 426
22 F.3d 1076, 1079-80 (9th Cir. 2005).

23 While a jury has the right to nullify, a defendant does not have the right to argue for
24 nullification. If defense counsel were to make the same arguments in the upcoming trial as
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27 ¹ **Certification:** On June 5, 2023, counsel for the United States met and conferred
28 in good faith with Defendants’ counsel regarding the relief requested in this motion, and
the parties could not reach agreement. The Court has not previously considered or ruled on
the motion.

1 they did in the first one, this Court should intervene and admonish the jury that such
2 arguments are improper. But now that we know that defense counsel has made such
3 arguments in the past and will likely make them again, this Court should affirmatively
4 preclude them from doing so at the outset. *See United States v. Blixt*, 548 F.3d 882, 890
5 (9th Cir. 2008); *United States v. Sturgis*, 578 F.2d 1296, 1300 (9th Cir.1978) (“Not only
6 should a judge interfere with an attorney’s closing argument when it is ‘legally wrong,’ but
7 he should also limit, for example, attorneys’ remarks outside the record or unduly
8 inflammatory.”); *United States v. Sepulveda*, 15 F.3d 1161, 1190 (1st Cir. 1993) (“A trial
9 judge, therefore, may block defense attorneys’ attempts to serenade a jury with the siren
10 song of nullification, and, indeed, may instruct the jury on the dimensions of their duty to
11 the exclusion of jury nullification.”).

12 **Conclusion**

13 The defense should be precluded from:

- 14 1. commenting on the legitimacy of a criminal action versus a civil action; and
15 2. commenting on the seizure of assets that was legally authorized in this matter.

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17 Respectfully submitted this 8th day of June, 2023.

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19 GARY M. RESTAINO
20 United States Attorney
21 District of Arizona

22 KENNETH POLITE
23 Assistant Attorney General
24 Criminal Division, U.S. Department of Justice

25 s/Kevin M. Rapp
26 KEVIN M. RAPP
27 MARGARET PERLMETER
28 PETER KOZINETS
ANDREW STONE
DANIEL BOYLE
Assistant U.S. Attorneys

AUSTIN M. BERRY
Trial Attorney

CERTIFICATE OF SERVICE

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I hereby certify that on June 8, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance as counsel of record.

s/ Daniel Parke
Daniel Parke
U.S. Attorney’s Office