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2 District of Arizona
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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

9 United States of America,)
10)
11 Plaintiff,)
12 vs.)
13 James A. Springer,)
14 Defendant.)

4:18-CR-00722-N/A-BGM

GOVERNMENT’S MOTION FOR
JUDICIAL NOTICE

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18 COMES NOW, the Plaintiff, by and through its attorneys, Elizabeth A. Strange,
19 First Assistant United States Attorney for the District of Arizona, and Bradley A. Baugher,
20 Special Assistant United States Attorney, and hereby respectfully requests that this Court
21 take judicial notice of the legislative facts contained in each of the sources cited below:¹

22 (1) Revised Statutes of Arizona Civil Code (1913), p. 1499-1500 at § 4633 (ceding
23 Fort Huachuca Military Reservation to the exclusive jurisdiction of the United States).

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26 ¹ “Legislative facts do not normally concern the immediate parties but are general facts
27 which help the tribunal decide questions of law, policy, and discretion.” *Marshall v.*
28 *Sawyer*, 365 F.2d 105, 111 (9th Cir. 1966), *cert denied*, 385 U.S. 1006 (1967) (citation
omitted). Courts may take judicial notice of legislative facts. *E.g.*, *Territory of Alaska v.*
American Can Co., 358 U.S. 224, 227 (1969) (taking notice of the legislative history of a
congressional provision). While legislative facts are not governed by Fed. R. Evid. 201,
courts may turn to common law to determine the admissibility of such sources.

1 (Exhibit 1)

2 (2) Arizona Revised Statutes § 26-251 (addressing acquisition of lands by the
3 United States for military purposes). (Exhibit 2)

4 (3) Arizona Revised Statutes § 26-252 (addressing exclusive jurisdiction of the
5 United States over lands acquired for military purposes). (Exhibit 3)

6 (4) Army Regulation 405-20: Federal Legislative Jurisdiction (Feb 21. 1974), at p.
7 1, para. 3b & p.2 para. 4a (defining Exclusive Jurisdiction over military installations).
8 (Exhibit 4)

9 (5) Army Regulation 190-5: Military Police Motor Vehicle Traffic Supervision
10 (May 22, 2006), at p. 2 para. 1-4f (explaining that installation law enforcement officers
11 will “Exercise overall staff responsibility for directing, regulating, and controlling traffic,
12 and enforcing laws and regulations pertaining to traffic control”). (Exhibit 5)

13 (6) Army Regulation 190-13: The Army Physical Security Program (February 25,
14 2011), at p. 19, at Chapter 6 (identifying Army installations, facilities, and operations areas
15 of civil works and like projects as restricted areas, by Order of the Secretary of the Army).
16 (Exhibit 6)

17 (7) 32 C.F.R. § 210, Enforcement of State Traffic Laws on DoD Installations,
18 particularly §§ 210.01-210.03 (authorizing enforcement of state traffic laws on military
19 installations). (Exhibit 7)

20 (8) DoD Directive No. 5525.4, Enforcement of State Traffic Laws on DoD
21 Installations (Nov. 2, 1981) (including its enclosure) (authorizing enforcement of state
22 traffic laws on military installations). (Exhibit 8)

23 (9) Executive Order 10104, Defining certain vital military and naval installations
24 and equipment as requiring protection against the general dissemination of information
25 relative thereto (February 1, 1950) at 15 F.R. 597, 3 C.F.R., 1949-1953 Comp., p. 298 (In
26 addition to designating certain military and naval installations in accordance with 18 U.S.C.
27 § 795 and 797, the authority to further designate such installations is also delegated to the
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1 Secretary of Defense and Secretaries of each respective military branch, including
2 specifically the Secretary of the Army, by Order of the President of the United States).
3 (Exhibit 9)

4 Exhibits 1-3, of which true and correct copies have been attached to this motion, are
5 public statutes enacted by the legislature of the State of Arizona. Such documents are
6 proper for the Court to notice pursuant to *Lamar v. Micou*, 114 U.S. 218, 223 (1885) (“The
7 law of any State of the Union, whether depending upon statutes or upon judicial opinions,
8 is a matter of which the courts of the United States are bound to take judicial notice, without
9 pleading or proof.”); *see also United States v. Coffman*, 638 F.2d 192, 194 (10th Cir. 1980),
10 *cert denied*, 451 U.S. 917 (1981) (“That the courts are allowed to take judicial notice of
11 statutes is unquestionable.”). The source of the 1913 Arizona statute is a volume published
12 by the McNeil Company. The University of Arizona Law Library carries this publication,
13 as do many law libraries across the nation. Furthermore, the exact language of Sections
14 251-53, are currently available on the Lexis database. Hence, the nature of these
15 documents makes them readily capable of verification and also renders them not
16 reasonably subject to dispute.

17 Exhibits 4-6 and 8, of which true and correct copies have been attached to this
18 motion, are Army Regulations and Department of Defense Directive. Army Regulations
19 are maintained electronically by the Army Publishing Directorate, a Government agency,
20 at the following Web address, which is accessible to the public:
21 <https://armypubs.army.mil/ProductMaps/PubForm/AR.aspx>. Department of Defense
22 Directives are similarly accessible through the Washington Headquarters Services,
23 Executive Services Directorate, Directives Division at:
24 <http://www.esd.whs.mil/Directives/issuances/dodd/>. The nature of these documents makes
25 them readily capable of verification and renders them not reasonably subject to dispute.
26 *E.g., Caha v. United States*, 152 U.S. 211, 222 (1894):

27 “[W]herever, by the express language of any act of Congress, power is
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1 entrusted to either of the principal departments of government to prescribe
2 rules and regulations for the transaction of business in which the public is
3 interested, and in respect to which they have a right to participate, and by
4 which they are to be controlled, the rules and regulations prescribed in
5 pursuance of such authority become a mass of that body of public records of
6 which the courts take judicial notice.”

7 *Ex parte Reed*, 100 U.S. 13, 18-19 (1879) (“The Secretary of the Navy is authorized to
8 establish ‘Regulations of the Navy,’ with the approval of the President. 12 Stat. 565; Rev.
9 Stat., sect. 1547. Such regulations have the force of law. *Gratiot v. United States*, 4
10 How. 80.”); *Hopkins v. United States*, 167 Ct. Cl. 1, 11 (1964) (recognizing that Army
11 Regulations “have long been an accepted component of the corpus of military law, subject
12 to judicial notice”); *United States v. Holmes*, 414 F. Supp. 831, 834 n. 3 (D. Md. 1976)
13 (noticing an Army Regulation as “lawfully issued and its contents being capable of being
14 accurately determined by resort to sources whose agency cannot reasonably be questioned”
15 despite the fact that it was not published in the Federal Register).

16 Exhibit 7, of which a true and correct copy has been attached to this motion, contains
17 sections of the July 1, 2011 printing of the Code of Federal Regulations. The nature of this
18 document makes it readily capable of verification and renders it not reasonably subject to
19 dispute. *See Crimm v. Missouri Pacific Railroad Co.*, 750 F.2d 703, 710 n.3 (8th Cir. 1984)
20 (“The Code of Federal Regulations is a special or supplemental edition of the Federal
21 Register, 44 U.S.C. § 1510 (1982), and therefore may be judicially noticed under the
22 Federal Register Act, 44 U.S.C. § 1507.”); *cf. Wei v. Robinson*, 246 F.2d 739, 743 (7th
23 Cir.), *cert denied*, 355 U.S. 879 (1957) (recognizing the requirement to take judicial notice
24 of the Code of Federal Regulations).

25 Exhibit 9, of which a true and correct copy has been attached to this motion, is an
26 Executive Order by the President of the United States. The nature of this document makes
27 it readily capable of verification and renders it not reasonably subject to dispute. *See*
28 *Hamilton v. Paulson*, 542 F. Supp. 2d 37, 52 n. 15 (D.D.C. 2008), *rev’d on other grounds*,
666 F.3d 1344 (D.C. Cir. 2012) (Judicial notice may be taken of public records and
government documents available from reliable sources). Executive orders are official

1 documents, numbered consecutively, through which the President of the United States
2 manages the operations of the Federal Government. The text of Executive orders appears
3 in the daily Federal Register as each Executive order is signed by the President and received
4 by the Office of the Federal Register. The text of Executive orders also appears in the
5 sequential editions of Title 3 of the Code of Federal Regulations. *See Banner Health v.*
6 *Sebelius*, 797 F. Supp. 2d 97, 112 (D.C. Cir. 2011) (A court may generally take judicial
7 notice of materials published in the Federal Register); 44 U.S.C. § 1507 (“The contents of
8 the Federal Register shall be judicially noticed . . .”). *See also Crimm v. Missouri Pacific*
9 *Railroad Co.*, 750 F.2d 703, 710 n.3 (8th Cir. 1984) (“The Code of Federal Regulations is
10 a special or supplemental edition of the Federal Register, 44 U.S.C. § 1510 (1982), and
11 therefore may be judicially noticed under the Federal Register Act, 44 U.S.C. § 1507.”);
12 *cf. Wei v. Robinson*, 246 F.2d 739, 743 (7th Cir.), *cert denied*, 355 U.S. 879 (1957)
13 (recognizing the requirement to take judicial notice of the Code of Federal Regulations).

14 Based on the foregoing, this Court can and should take judicial notice of each of the
15 documents described above and attached as exhibits hereto.

16 RESPECTFULLY SUBMITTED this 22nd day of August 2018.

17 ELIZABETH A. STRANGE
18 First Assistant United States Attorney
19 District of Arizona

20 /s/ Bradley A. Baugher
21 BRADLEY A. BAUGHER
22 Special Assistant U.S. Attorney
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Certificate of Service

(CM/ECF Administrative Policies and Procedures Manual, §II.D.3)

The above signed does hereby certify that, on the above date, he electronically transmitted this 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(s):

Tom Higgins,
Attorney for the Defendant