No. 19-8277

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ABRAHAM ASLEY AUGUSTIN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ABRAHAM ASLEY AUGUSTIN
(Your Name)

P.O. Box 1032 (Medium)
(Address)

Coleman, Florida 33521-1033
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the district court had ancillary jurisdiction over property seized during the criminal investigation of an offense prosecuted in said district court?

2. Whether the United States was in possession of properties, pursuant to Fed. R. Crim. P. 16, when the properties were seized during the criminal investigation of an offense prosecuted in federal court, included in the United States discovery to Augustin, vouched for during closing argument at trial, presented in the United States case-in-chief, and obtained from and belonged to Augustin?

3. Whether a claim for money damages can be asserted when the United States is held responsible for lost or illegally forfeited property in the United States constructive possession?

or

Whether the Fed. R. Crim. P. 41 Motion for Return of Property should have been construed as a Bivens action once the United States admitted it no longer possessed the property that was in its constructive possession?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 10, 2020.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 4, 2020, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT: No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT: No state...shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

On December 3, 2009, the Bradley County Sheriff's Office (hereafter "BCSO") arrested Augustin for a Hamilton County, Tennessee kidnapping offense, during which his 2003 BMW 745 LI vehicle and $5,790 cash in U.S. currency were seized. After posting bond on December 5, 2009 on the Hamilton County kidnapping offense, Augustin was re-arrested on December 9, 2009 by the United States, Federal Bureau of Investigation Special Agent Wayne Jackson (hereafter "SA Jackson"), and supporting BCSO on federal kidnapping--during which was seized a U-Haul rental truck with contents (Augustin's personal property) inside and $9,850 cash in U.S. currency. Documentary evidence attached as exhibit to original petition timely filed on September 15, 2015 showed SA Jackson seizing the truck as "Officer/Deputy" in his name with instructions to the BCSO to "Hold for FBI SA Jackson." See Appendix D. The cash seized during the criminal investigation was illegally forfeited and the contents of the U-Haul rental truck has **disappeared**. The vehicle was also illegally forfeited.

On page 2, second paragraph, of the January 10, 2020 denial order (see Appendix A), the appellate court stated:

> "In January 2010, at Augustin's request, the Bradley County Sheriff's Department released the contents of the U-Haul to a third party."

The above statement was quoted from a perjured affidavit by the case agent, SA Jackson, the United States submitted in its Response to the petition. On page 4 of the order, using the perjured statement in its consideration to deny relief, the appellate court stated:

> "Wayne Jackson, a retired FBI special agent with personal knowledge of Augustin's case, averred that, 'in January 2010, at the request of Abraham Augustin, the contents of the U-Haul were released to' a third party. Agent Jackson further averred that 'at no point did the Federal Bureau of Investigation, nor any other federal agency, exercise custody or control of the U-Haul or the contents of the U-Haul."

The court order (directly quoting SA Jackson's perjured affidavit) purports 2 allegations: (i) Augustin's request to release his property and (ii) the release of his property to a third party.

Augustin asserted to the appellate court during his Petition for rehearing that both allegations were false, since he never made such a request and the property was never released to a "Crystal Alford," the third party SA Jackson identified as the property recipient in his affidavit. SA Jackson fabricated the "request" and "release" to hide the fact that there's no documentary evidence that can show the disposition of the contents of the U-Haul. Augustin even requested a hearing to subpoena the identified "third party" so she could testify under oath that SA Jackson never gave her any property, but the district court has refused to grant one.

Besides the fact that Augustin submitted a sworn Declaration in his Reply (Doc. 157) in opposition to SA Jackson's perjured affidavit and identified two court officers, public defenders (including his then-attorney public defender Anthony Martinez), who witnessed SA Jackson requesting Augustin to sign over his property to SA Jackson and Augustin's refusal to such a request, newly discovered evidence attached as appendices to Augustin's Appellant Brief showed SA Jackson had fabricated Augustin's "request" and the "release" to a third party. All BCSO documentary evidence have no outcome for Augustin's property following its seizure and "towing" by SA Jackson who even personally signed the VEHICLE TOWING SLIP. It seems the property is either lost, stolen, or destroyed. All BCSO documentary evidence show the property was released to no one.

STATEMENT OF THE CASE

On October 20, 2011, Augustin was convicted by a jury for kidnapping

and other non-forfeiture offenses. On Sepetember 15, 2015, Augustin filed his Fed. R. Crim. P. 41(g) motion for return of property. On November 12, 2015, the united States responded and submitted a perjured affidavit by SA Jackson brazenly accusing Augustin of having requested the release of his own property to a third party. Augustin replied by opposing the perjured affidavit with a Declaration and requested the documentary evidence of this "request" along with other material. The district court refused to make a ruling, investigate, or grant discovery even after Augustin motioned the court to compel evidence. On October 24, 2018, Augustin filed for Summary Judgment, which was also ignored by the district court. On December 11, 2018, Augustin filed a writ of mandamus. On April 5, 2019, the appellate court invited the district court to respond within 30 days. The same day, April 5, the district court ordered the government to respond to the writ within 10 days. On April 15, 2019, the government responded and re-submitted the November 12, 2015 perjured affidavit and, based on the perjured affidavit, argued the United States never had possession of the properties. On April 19, 2019, the district court denied the Rule 41 petition through its finding that the United States was not in possession of the properties and therefore the district court had no jurisdiction over the seized properties.

REASON FOR GRANTING THE PETITION

I. WHETHER THE DISTRICT COURT HAD ANCILLARY JURISDICTION OVER THE PROPERTY SEIZED DURING THE CRIMINAL INVESTIGATION OF AN OFFENSE PROSECUTED IN THE DISTRICT COURT?

In his Appellant Brief, Augustin pointed to **United States v. Fabela-Garcia**, 753 F. Supp. 326 (D. Utah 1989) and its finding of constructive possession by the United States even though the state retained control/possession of the property.

The Fabela-Garcia court determined it possessed ancillary jurisdiction over the property due to the fact that the property at question was seized during the criminal investigation of the offense the district court prosecuted. The Tenth Circuit (along with several others) defined ancillary jurisdiction and its application:

> "District courts have jurisdiction to enter orders ancillary to a criminal proceeding concerning disposition of materials seized in connection with the criminal investigation of a case. United States v. Wingfield, 822 F.2d 1466, 1470 (10th Cir. 1987). Ancillary Jurisdiction derives from the notion that a federal court acquires jurisdiction of a case or controversy in its entirety. Jenkins v. Weinshienk, 670 F.2d 915, 918 (10th Cir. 1982). The U.S. government acknowledges that this case began as a federal prosecution and that the defendant's motion concerns property seized in connection with the criminal proceeding. The Tenth Circuit has ruled that in such circumstances 'the district court does have jurisdiction to enter an order concerning the disposition of seized property in its control.' Wingfield, 822 F.2d at 1470." Fabela-Garcia, 753 F. Supp. at 327-28.

> "Other courts have held that in such circumstances a district court 'has both the jurisdiction and the duty to ensure the return of such property.' United States v. Wright, 197 U.S. App. D.C. 411, 610 F.2d 930 (D.C. Cir. 1979), citing United States v. Wilson, 176 U.S. App. D.C. 321, 540 F.2d 1100 (D.C. 1976); United States v. Premises Known as 608 Taylor Avenue, 584 F.2d 81, 83 (6th Cir. 1977), cert denied, 435 U.S. 971, 98 S. Ct. 1611, 56 L. Ed. 2d 62 (1978)." Id. at n. 7.

Furthermore, Augustin expounded on **United States v. Lee**, 1995 U.S. App. LEXIS 22542 (6th Cir. 1995), a case that interpreted the Fabela-Garcia decision for the Sixth Circuit. Augustin showed that he met the 3 prongs instituted by the circuit. In its order Augustin's panel ignored Lee and its requirement, stating:

> But even if Fabela-Garcia remains good law...and had precedential effect on this court, that case is readily distinguishable from the present case. And even if the federal government did possess the property at issue at some point, Augustin is not entitled to relief under Rule 41(g) because it is undisputed that the federal government does not currently possess it. See Stevens, 500 F.3d at 628. (See Appendix **A**-P. 5)

Lee's panel interpreted Fabela-Garcia and how it would apply to future cases dealing with a state's possession of property seized during the criminal investigation of a case prosecuted in federal court. Even though the panel denied Lee relief, it instituted 3 prongs to be used to determine possession, stating:

> "The difference between the type and degree of state involvement in this case and Fabela-Garcia counsel against a finding of constructive possession, even if Fabela-Garcia is good law. Here, Ohio did not acquiesce to federal government jurisdiction, as did the state authorities in Fabela-Garcia, thus relinquishing to the United States full control of the case. Ohio not only initiated criminal and civil proceedings against Lee before the United States, but it never abandoned them, convicting Lee and forfeiting his property two weeks before the start of his trial on federal charges.
>
> "Additionally, the seized property in Fabela-Garcia could be used in but one criminal prosecution, so that once a federal indictment was issued, the state had no reason to keep the property--it then became a mere custodian for the United States." Lee, 1995 U.S. App. LEXIS 22542 at * 9.

Here in instant case, all 3 prongs are met: First, Tennessee did acquiesce to federal authorities jurisdiction of the criminal case, thus relinquishing to the United States full control of the case and its evidence. Second, Tennessee dismissed all criminal charges against Augustin on December 11, 2009 (exactly 8 days after it arrested Augustin and 2 days after the United States arrested Augustin), thus never having convicted him of any drug or other offense. And third, since the properties could be used in but one criminal prosecution, once a federal indictment was issued on December 22, 2009 (11 days after Tennessee dismissed all charges), Tennessee had no reason to keep the properties and became a mere custodian for the United States.

When Augustin met all 3 prongs, the Sixth Circuit refused to find the United States in possession of the properties. As a result, the Sixth Circuit has entered a decision in conflict with the decisions of other United States Court of appeals on the same important matter as to call for an exercise of this Court's supervisory power.

STATEMENT OF THE CASE

The December 3, 2009 seizures (by the BCSO of the cash and

vehicle) and December 9, 2009 seizures of more cash and rental truck (at SA Jackson's behest) were in relation to the sole kidnapping investigation prosecuted in federal court. Tennessee never prosecuted Augustin for any offenses at all. Tennessee acquiesced jurisdiction and the United States prosecuted all offenses in connection to the kidnapping offense. A search warrant was even obtained for the BMW vehicle due to its connection to the kidnapping offense. (See Trial-P. 399 L. 17-20)

And AUSA Christopher Poole referred to the cash in his closing argument at trial:

> "Does a simple drug user spend $4,000 on drugs; get caught and arrested by the police the next day with another, combined between the two of them, almost $20,000; then make bond of $140,000, and get caught with $18,000 two days later?" (See Trial-P. 548 L. 4-8)

Following the seizure of all said properties, the United States submitted to Augustin his discovery sometime in January 2010. In said discovery were included a photograph of the BMW vehicle (see Appendix F) and its search warrant. The BMW vehicle was central to the kidnapping due to the allegations that it was the vehicle used to kidnap the victim, therefore a DNA search of the vehicle was conducted. Furthermore, all cash seized, even though no drugs were found on Augustin's persons nor in his vehicle during both arrests, were seized in connection to the arrest for the kidnapping. Seizure notices completed by the BCSO for the cash were also included in the discovery. See Appendix E showing BCSO Detective Jimmy Smith seizing cash from Augustin during his arrest on December 9, 2009 by SA Jackson for federal kidnapping--the only kidnapping prosecuted in federal court. See Appenidx D showing SA Jackson's name as the "Officer" seizing the U-Haul rental truck with contents inside on December

9, 2009 during Augustin's arrest for the federal kidnapping.

REASON FOR GRANTING THE PETITION

II. WHETHER THE UNITED STATES WAS IN POSSESSION OF PROPERTIES PURSUANT TO FED. R. CRIM. P. 16 WHEN THE PROPERTIES WERE SEIZED DURING THE CRIMINAL INVESTIGATION OF THE OFFENSE PROSECUTED IN FEDERAL COURT, INCLUDED IN THE UNITED STATES DISCOVERY TO AUGUSTIN, VOUCHED FOR DURING CLOSING ARGUMENT AT TRIAL, PRESENTED IN THE UNITED STATES CASE-IN-CHIEF, AND OBTAINED FROM AND BELONGED TO AUGUSTIN?

Fed. R. Crim. P. 16 requires the disclosure by the government, on defendant's request, of certain documents and objects if those items are "within the goverment's possession, custody, or control," material to a defendant's defense, intended for presentation during the government's case-in-chief, or obtained from or belonging to defendant. Augustin's panel refused to find the government in possession of objects (i.e., cash, vehicle, and truck's contents) included in the federal kidnapping discovery, used in the United States' closing argument, and obtained from (Augustin's arrest) and belonging to Augustin.

Augustin asserts the United States included in his discovery a photograph of the BMW vehicle because it was "obtained from" and belonged to him, and was used in the United States' case-in-chief, i.e., the kidnapping offense, to show the jury the vehicle used to transport the alleged victim. Augustin also asserts the $15,640 cash seizure notices were included in the discovery because they were "obtained from" and belonged to him, and were used in the United States' case-in-chief, i.e., the drug conpiracy offense, and used during its closing argument.

The Sixth Circuit's denial of the United States' possession of the properties is in direct conflict with other circuits inter-pretation of Fed. R. Crim. P. 16 and its commentaries, and presents

one or more questions of exceptional importance: Can the United States deny possession of properties that were:

(1) Seized during the criminal investigation of an offense prosecuted in federal court,

(2) included in the United States' discovery to Augustin,

(3) vouched for in the United States closing argument,

(4) presented in the United States case-in-chief, and

(5) obtained from and belonging to Augustin?

As a result of the Sixth Circuit's decision, an intercircuit split has occurred. A United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

STATEMENT OF THE CASE

Having ordered the BCSO supporting the execution of his federal kidnapping arrest warrant to seize the $9,850 cash from Augustin, SA Jackson next personally seized the U-Haul truck, signed his name as the "Officer/Deputy" seizing the truck, completed and signed the vehicle tow slip with directions to store the truck in the "BCSO impound," and instructed the BCSO to "Hold for FBI SA Jackson." The Sixth Circuit refused to consider the newly discovered evidence showing SA Jackson's handwriting and signature on the vehicle tow slip. Additional newly discovered evidence shows the BCSO documenting their reason for storing the rental truck with contents inside:

> "U-Haul trailer will be returned upon approval of W. Jackson, FBI, 423-265-3601." (See attachments to Appellant's Brief)-See Appendix K

In the same document above, below these instructions, there is

no name documented for the property recipient. Simply put, the U-Haul rental truck was never released to anyone. SA Jackson fabricated the "request" and "release" of Augustin's property. SA Jackson either destroyed or stole the property for himself.

On November 12, 2015, the United States submitted SA Jackson's affidavit that brazenly accused Augustin of having requested the release of his own property. The government knew this was perjury and provided no evidence to support its claims. And even when Augustin replied with a request seeking any evidence of having made this request or that the property was ever truly released, the government and district court ignored the request. Three months later when Augustin compelled the district court to compel discovery (Doc. 169), the district court and government ignored the motion. Following years of silence, Augustin filed his writ of mandamus when the district court refused to grant him summary judgment. In response the district court denied and dismissed the Rule 41(g).

REASON FOR GRANTING THE PETITION

III. WHETHER A CLAIM FOR MONEY DAMAGES CAN BE ASSERTED WHEN THE UNITED STATES IS HELD RESPONSIBLE FOR LOST OR ILLEGAL FORFEITURE OF PROPERTY IN ITS CONSTRUCTIVE POSSESSION?

The Sixth Circuit ruled in Augustin's case:

(1) The district court did not abuse its discretion in denying Augustin's Rule 41(g) motion. Augustin presented no evidence showing that the property at issue was ever in the federal government's possession, let alone at the time that he filed his Rule 41(g) motion. See Stevens, 500 F.3d at 628.

(2) And even if the federal government did possess the property at issue at some point, Augustin is not entitled to relief under Rule 41(g) because it is undisputed that the federal government does not currently possess it. See Stevens, 500 F.3d at 628.

Augustin highlights the fact that United States v. Stevens, 500 F.3d 625 (7th Cir. 2007) is being misconstrued here.

The facts of Stevens and Augustin are dissimilar. The Sixth Circuit distorted authorities to support its position as to why it should not grant relief. All cited cases' facts show that the United States split charges with the state, i.e., the United States prosecuted certain offenses while the state prosecuted the remainders. So although during the joint-investigation of (state and federal) prosecuted offenses, properties were seized, the issue becomes in what prosecution (and jurisdiction), or according to Rule 16 "case-in-chief," was the seized property used as evidence. And in these cases, since the state began the investigations, served search warrants, made seizures, and was the primary custodian of these seized properties, as long as the state never acquiesced the criminal investigation and offenses the seizures were evidence to, the district courts could not later unravel and assign the seized properties to the United States in a Rule 41(g) proceeding. As a result, the states, rightfully, retained jurisdiction of the respective offense they prosecuted in their state courts and the seized properties used as evidence.

This was explicitly stated in Lee when it was asked:

(1) whether the state acquiesced to federal government jurisdiction, thus relinquishing to the United States full control of the case,

(2) whether the state initiated criminal proceedings and convicted the defendant,

and being of the utmost importance,

(3) since the seized property could be used in but one criminal prosecution, once a federal indictment was issued, the state became a mere custodian for the United States.

Therefore, whether the state physically kept the property in its custody throughout the entire time becomes irrelevant.

The facts of this case are contradictory to cases the Sixth Circuit

used as authorities. First, the United States and Tennessee never split any charges. The one and only offense Augustin was investigated and arrested for on December 3, 2009 (during which the BMW vehicle and $5,790 in cash were seized) was state kidnapping. And the December 9, 2009 arrest (during which $9,850 in cash and the U-Haul truck with contents inside were seized under SA Jackson's instructions) was for the same state-originated kidnapping that had now become federal kidnapping due to SA Jackson's efforts.

Not only was Augustin arrested for one offense, (i) the only offense the state acquiesced to the United States, but (ii) the state dismissed all charges against Augustin on December 11, 2009 (just 2 days after the United States arrested Augustin), and although his December 9, 2009 arrest stemmed from another SA Jackson's perjured complaint, (iii) Augustin would be formally indicted on December 22, 2009 for kidnapping. Starting on that date, December 22, 2009, the BCSO/ Tennessee then became a mere custodian for the United States.

And let's no ignore explicit documentary evidence of SA Jackson instructing the BCSO to seize and "Hold" the property, plus newly discovered evidence of the BCSO acknowledging that it seized the U-Haul truck and would return it only upon SA Jackson's "approval." The Sixth Circuit ignored all these evidence and considered merely a perjured affidavit from SA Jackson as its only authority to deny relief.

> Rule 41(g) can be used to force the federal government to return items seized by state officials when the United States actually possesses the property or constructively possesses the property by: (1) Using the property as evidence in the federal prosecution; or (2) where the government directed state officials to seize the property in the first place. Clymore v. United States, 164 F.3d 569, 571 (10th Cir. 1999).

Here in instant case, the Sixth Circuit refused to grant relief.

That is injustice and gives the United States a license to steal and/or destroy anyone's property with impunity, knowing that in its defense as long as it can claim it does not possess the property "at the time he [the defendant] filed his Rule 41(g) motion" (See Appendix A-P. 4), the Sixth Circuit (or any other circuits supporting this position) will always rule that defendant "is not entitled to relief under Rule 41(g) because it is undisputed that the federal government does not currently possess it." (See Appendix A-P. 5)

Such a precedent will cause more harm than good, as district courts around the nation will be powerless in granting a defendant any relief, especially when the facts show that the property was seized at the United States' behest.

Several circuits faced with similar circumstances (i.e., stolen or destroyed property the government constructively possessed) have made rulings that this Court is urged to consider:

> The First Circuit noted that if the district court decides that appellant is entitled to the return of the $3,000, "the government's argument that sovereign immunity bars relief in this case is misplaced." That is, appellant is not asking for money damages here. Rather, he is seeking equitable relief "notwithstanding the fact that the property at issue is currency." Polano v. United States Drug Enforcement Admin., 158 F.3d 647, 652 (2d Cir. 1998). That is, "in suing for return of currency, appellant seeks restitution of the very thing to which he claims an entitlement, not damages in substitution for a loss." United States v. Minor, 228 F.3d 352, 355 (4th Cir. 2000). Further, "the fact that the government obviously cannot restore to appellant the specific currency that was seized does not transform the motion into an action at law." Id. Perez-Colon v. Camacho, 206 Fed. Appx. 1, 4 (1st Cir. 2006).
>
> "If the district court determines that the government lost or improperly disposed of property, it shall determine what remedies, if any, are available." Mora v. United States, 955 F.2d 156, 159-60 (2nd Cir. 1992)(damages available); United States v. Martinson, 809 F.2d 1364, 1368 (9th Cir. 1987)(same).
>
> A defendant's "claim - that the government wrognfully deprived him of his property and destroyed it - alleges facts that could support a Bivens claim, see Bivens v. Six Unknown Named Agents, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971)." Pena v. United States, 157 F.3d 984, 987 (5th Cir. 1998).

In another case, using Pena as guidance, the Fifth Circuit decided

because plaintiff had not had an opportunity to amend his pleadings under Fed. R. Civ. P. 15(a) and because the Bivens action would otherwise be time barred, it remanded the case to give the plaintiff an opportunity to assert a Bivens action:

> "Like Pena, Bacon, a pro se litigant, did not have the opportunity to amend his pleadings under Rule 15(a). In such a situation, it is appropriate to treat pro se petition as one seeking the appropriate remedy. Clymore v. United States, 217 F.3d 370, 373 (5th Cir. 2000). Therefore, we treat Bacon's claim as one seeking damages under a Bivens claim for the alleged due process violation with regard to his destroyed property." United States v. Bacon, 546 Fed. App. 496, 499-500 (5th Cir. 2013).
>
> When district court conducting Fed. R. Crim. P. 41(g) proceeding learns that government no longer possesses property that is subject of motion to return, court should grant movant (particularly movant proceeding pro se) opportunity to assert alternative claim for money damages; pro se Rule 41(g) motion should be liberally construed to allow assertion of alternative claims. United States v. Norwood, 602 F.3d 830 (7th Cir. 2010).
>
> Defendant should have been allowed to convert Fed. R. Crim. P. 41 motion for return of property into action for damages against United States after it was determined that federal government no longer possessed property; district court erred by requiring defendant to file separate damages action, which might have been time-barred. United States v. Bailey, 700 F.3d 1149 (8th Cir. 2012). Rule contained no explicit waiver of sovereign immunity required to authorize monetary relief against government when property could not be returned , although court could give movant opportunity to assert alternative claim for money damages under 28 U.S.C. Sections 1941, 1346, or 2671-2680 if it determined that such a claim had accrued when government disclosed that it had lost, destroyed or transferred property that would otherwise have been subject to order to return under former Rule 41(e). United States v. Hall, 269 F.3d 940 (8th Cir. 2001), cert. denied, 536 U.S. 942, 122 S. Ct. 2626, 153 L. Ed. 2d 808 (2002).
>
> See, e.g., United States v. Kanasco Ltd., 123 F.3d 209, 210 n.1 (4th Cir. 1997) ("Simply because the government destroys or otherwise disposes of property sought by the movant, the motion is not thereby rendered moot."); United States v. Solis, 108 F.3d 722, 722-23 (7th Cir. 1997)(citing Mora with approval); Mora, 955 F.2d at 159 ("The government suggests...that since it is without possession of appellant's property his claim is moot. Quite the contrary."); Martinson, 809 F.2d at 1368 (explicitly declining to follow district court cases that hold that damages are unavailable in a proceeding based on a motion for return of property.).
>
> Although government has sovereign immunity preventing Fed. R. Crim. P. 41(g) movant's claim for money damages, district court has ability to fashion equitable relief in instances where property had been destroyed. United States v. Gonzalez, 373 Fed. Appx. 996 (11th Cir. 2010).

If the United States and its agents destroy or improperly dispose of property, they should be held liable. And since a Rule 41 filed

after the conclusion of a criminal proceeding is treated as a civil action in equity, the Sixth Circuit failed to grant relief.

Statute of Limitations

In its conlusion. the denial order denied that Augustin should have been allowed to amend his pleading for a Bivens action by concluding the claim would have been untimely:

> "Tennessee's one-year statute of limitations for Bivens claims would apply here... Augustin's Bivens claim would have accrued no later than April 15, 2011, when Tennessee's Department of Safety ordered that the seized BMW be forfeited... However, Augustin did not file his Rule 41(g) motion until September 2015, more than four years after the expiration of the one-year limitations period." See Appendix A-P. 6.

Augustin asserts that the statement above is erroneous. The "one-year" statute of limitations, according to controlling federal law, can only accrue when the plaintiff knows or has reason to know of the injury that forms the basis of his action. Kuhnle Bros., Inc. v. County of Geauga, 103 F.3d 516, 520 (6th Cir. 1997). The accrual time begins on the date that the United States gave documentary evidence of the property's disappearance and illegal forfeiture of the cash and vehicle. Augustin had been trying to obtain this evidence for years (See Doc. 41 filed on January 17, 2012 when Augustin asked the district court to "help him get answers to what happened to all of his property"), which were being wrongfully and fraudulently concealed by the seizing agencies. Wrongful or fraudulent concealment tolls the statute of limitations in cases (such as instant case) where the entity concealing the evidence has a fudiciary duty to provide defendant with the evidence.

Therefore, a Bivens claim would have been timely.

The Sixth Circuit's decision in Augustin's case not only conflicts with those of other United States court of appeals (namely, the First,

Second, Fourth, Fifth, Seventh, Eighth, and Eleventh circuit courts of appeals), but it also conflicts with common sense and common law and equity. Therefore, this important matter calls for an exercise of this Court's supervisory power.

CONCLUSION

The final outcome of Augustin's property (cash, vehicle, and U-Haul contents) deserves to be explained. Following his arrest on December 9, 2009 by SA Jackson, Augustin was turned over to the custody of the BCSO officers on the scene supporting the United States. The BCSO then transferred Augustin to their jail, the Bradley County Justice Center (hereafter "BCJC"). While at the BCJC, the BCSO decided to pursue forfeiture of the cash and vehicle even though it never filed any criminal charges against Augustin. The only entity to have charged Augustin with the state kidnapping offense, Hamilton County, **never made** any seizures and had acquiesced to the United States full control of the case.

Following the local court's issuance of the forfeiture warrants, the BCSO mailed said documents to Augustin for service at two addresses in Winston-Salem, North Carolina, while the BCSO was housing Augustin in its BCJC jail in Cleveland, Tennessee. After the forfeiture warrants predictably came back to the BCSO (without service), it then applied for forfeiture orders. The same ruse of mailing said documents to North Carolina (same address as the warrants) was attempted and was returned to the BCSO. The BCSO then forfeited the cash and vehicle without due process. During this entire cheme, Augustin was being housed in the same building: The BCJC, BCSO, and criminal court that issued the forfeiture documents are in one building complex--the Bradley County Judicial Complex.

Augustin presents the U.S. Supreme Court with 3 important issues. The third issue bears the most weight on Augustin's case. That is, if the United States through its case agent seize property and orders it held by the state (see Appendices H, I, J, K, & L), and this property disappears or is lost or destroyed, should the United States be held liable and made to compensate the property owner for the value of his property. Several circuits have construed the Rule 41 into a Bivens action to allow defendant to obtain money damages. The Sixth Circuit has refused to follow this path.

In 2017, Justice Thomas highlighted the many documented abuses in this country by law enforcement who can seize a defendant's property and cash with impunity:

> This system-where police can seize property with limited judicial oversight and retain it for their own use-has led to egregious and well-chronicled abuses
>
> These forfeiture operations frequently target the poor and other groups least able to defnd their interests in forfeiture proceedings. Stillman, Taken, The New Yorker, Aug. 12 & 19, 2013, pp. 53-54, Sallah, O'Harrow, & Rich, Stop and Seize, Washington Post, Sept. 7, 2014, pp. A1, A10.

See Williams v. United States, 197 L. Ed. 2d 474 (2017)(citations omitted).

This system is the same system that Frederic Bastiat, a French economist, statesman and author, wrote and defined as "Legal Plunder," during the years of the Second French Revolution of 1848. In his classic book, The Law, Bastiat wrote:

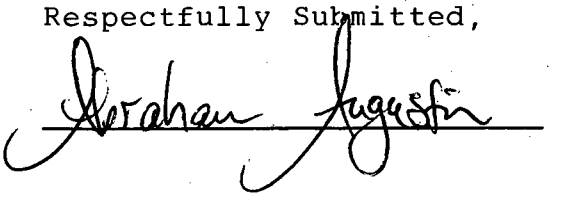
> But how is this legal plunder to be identified? Quite simply: See if the law takes from some person what belongs to them, and gives it to persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime. Then abolish the law without delay. If such a law, which is an isolated case, is not abolished immediately, it will spread, multiply, and develop into a system.

The Sixth Circuit has refused to render justice. This is wrong and a minority view that the majority of the circuits have opposed.

This Court is asked to grant certiorari, decide this case in Augustin's favor, and order the Sixth Circuit to construe his Rule 41 into a Bivens action.

Dated this 13th day of March 2020.

Respectfully Submitted,



Appendices D & H-K have all been attached to show SA Jackson's role in the theft of Augustin's property.

Appendix D-Completed by SA Jackson. Notice his instructions to the BCSO to "Hold" the U-Haul.

Appendix H-Completed by SA Jackson. Notice his handwritten instructions "to be searched by FBI-Do not release w/o calling S/A Jackson."

Appendix I-Completed by SA Jackson. Notice below SA Jackson's signature, "The Undersigned accepts responsibility for the above described vehicle & its contents."

Appendix J-BCSO confirmed the truck's seizure and its reason as: "Hold for FBI SA Jackson..."

Appendix K-BCSO confirmed the truck's seizure and that the "U-Haul trailer will be returned upon approval of W. Jackson, FBI..." Notice below, there is NO NAME of the DISP of the property nor "Date/Time" it was released.