APPENDIX "A"
Eleventh Circuit's Reconsideration Order

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANDRES FERNANDO CABEZAS, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2019 U.S. App. LEXIS 38349
No. 19-12117-HH
December 23, 2019, Decided

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}Appeal from the United States District Court for the Middle District of Florida.United States v. **Cabezas**, 2019 U.S. App. LEXIS 32521 (11th Cir. Fla., Oct. 30, 2019)

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Holly Lynn Gershow, U.S. Attorney's Office, TAMPA, FL; U.S. Attorney Service - Middle District of Florida, U.S. Attorney's Office, TAMPA, FL.

ANDRES FERNANDO **CABEZAS**, Defendant - Appellant, Pro se, COLEMAN, FL.

Judges: Before: WILSON, NEWSOM and BRANCH, Circuit Judges.

Opinion

BY THE COURT:

Andres **Cabezas**, a federal prisoner proceeding *pro se*, moves this Court to reconsider our order granting the government's motion for summary vacation of the district court's order denying his request for an evidentiary hearing following rejection of his request for return of property-*i.e.*, data contained within his forfeited cellphone-pursuant to Federal Rule of Criminal Procedure 41(g), and for reconsideration. He contends that we overlooked the fact that he was seeking return of non-forfeited property contained within his cell phone.

A party may file one motion for reconsideration, and that motion must be filed within 21 days-with no additional time for mailing-of the order from which reconsideration is sought. *See* 11th Cir. R. 27-2, 27-3; *see also* Fed. R. App. P. 40(a)(1)(A) (providing that, generally, a petition for panel rehearing must be filed within 14 days of the entry{2019 U.S. App. LEXIS 2} of judgment). The party seeking reconsideration must "state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it." Fed. R. App. P. 27(a)(2)(A); *see also* Fed. R. App. P. 40(a)(2) (stating that a petition for rehearing must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition.). However, a motion for reconsideration cannot be used to relitigate old matters. *See Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009); *see also* Fed. R. App. P. 40, 11th Cir. Internal Operating Procedure 1 (stating "A petition for rehearing is intended to bring to the attention of the panel claimed errors of fact or law in the opinion. It is not to be used for rearmament of the issues previously presented.") (underline in original).

We deny Cabeza's motion for reconsideration. First, our reasons for granting the government's motion for summary vacation were correct. Cabezas's contentions that our reasoning was flawed

because it was premised on the fact he was seeking the return of forfeited property, not non-forfeited property, is misguided, because we did not address the merits of Cabezas's forfeited versus non-forfeited property contentions. Instead, we merely ruled that the district court{**2019 U.S. App. LEXIS 3**} lacked jurisdiction over Cabezas's motion presenting these questions due to his pending direct appeal in this Court. Second, **Cabezas** attempts to reargue issues that were previously presented in his merits brief. Such rearguing of the issues is not the purpose of requesting reconsideration under Rule 27 or a panel rehearing under Rule 40, however. *See Wilchombe*, 555 F.3d at 957; *see also* Fed. R. App. P. 40, 11th Cir. Internal Operating Procedure 1.

Accordingly, Cabezas's motion for reconsideration of our order granting the government's motion for summary vacation is hereby DENIED.

APPENDIX "B"
Eleventh Circuit's Order Granting Summary Dismissal

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANDRES FERNANDO CABEZAS, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2019 U.S. App. LEXIS 32521
No. 19-12117-HH
October 30, 2019, Decided

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}Appeal from the United States District Court for the Middle District of Florida.United States v. **Cabezas**, 2017 U.S. Dist. LEXIS 208839 (M.D. Fla., Dec. 19, 2017)

Counsel For United States of America, Plaintiff - Appellee: Holly Lynn Gershow, U.S. Attorney Service - Middle District of Florida, U.S. Attorney's Office, Tampa, FL.
Andres Fernando **Cabezas**, Defendant - Appellant, Pro se, Coleman, FL.

Judges: Before: WILSON, NEWSOM and BRANCH, Circuit Judges.

Opinion

BY THE COURT:

Andres **Cabezas** appeals the district court's orders denying an evidentiary hearing following rejection of his request for return of property-*i.e.*, data contained within his forfeited cellphone-pursuant to Federal Rule of Criminal Procedure 41(g), and for reconsideration. He contends that the district court erred because the data within his cellphone was separate property from his cellphone, which was ordered forfeited, and also unrelated to the alleged crime. The government has moved for either a summary affirmance of the district court's denial of Cabezas's motion or vacation of the district court's order, because the district court lacked jurisdiction to consider the motion, since, prior to **Cabezas** filing his Rule 41(g) motion, he filed a notice of appeal which initiated his direct appeal in this Court in case number 18-10258, which is still pending. The government also**{2019 U.S. App. LEXIS 2}** requests that we remand the case back to the district court with instructions to dismiss Cabezas's motion.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Whether a district court had jurisdiction is a question of law subject to *de novo* review. *United States v. Tovar-Rico*, 61 F.3d 1529, 1532 (11th Cir. 1995). Usually, the filing of a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over the aspects of the case involved in the appeal." *Id.*1 Thus, when an appeal is filed, the district court "is divested of jurisdiction to take any action with regard to the matter except in the aid of the appeal," *Shewchun v. United States*, 797 F.2d 941, 942 (11th Cir.1986) (quotation omitted), and does not regain jurisdiction

until a mandate has issued on appeal, *Zaklama v. Mount Sinai Med. Ctr.*, 906 F.2d 645, 649 (11th Cir.1990). We have explained that this rule "serves two important interests: judicial economy, for it spares the trial court from passing on questions{**2019 U.S. App. LEXIS 3**} that may well be rendered moot by the decision of the Court of Appeals; and considerations of fairness to parties who might otherwise be forced, as a matter of tactics, to fight a 'two front war' for no good reason." *Shewchun*, 797 F.2d at 943.

Here, the district court lacked jurisdiction to entertain the merits of Cabezas's Rule 41(g) motion due to Cabezas's act of filing a notice of appeal that triggered the opening of his direct appeal in this Court. *Tovar-Rico*, 61 F.3d at 1532. Thus, regardless of the merits of Cabeza's arguments in the present appeal, due to Cabeza's pending direct appeal, the district court lacked jurisdiction to determine whether property forfeited by **Cabezas** pursuant to his plea agreement should be returned to him. *Id.*; *Shewchun*, 797 F.2d at 942.

Therefore, because there is no substantial question as to the outcome of the case, and the government's position is correct as a matter of law, *see Davis*, 406 F.2d at 1162, the government's motion for summary vacation of the district court's order denying Cabezas's Rule 41(g) is GRANTED, and we remand the case with instructions for the district court to either dismiss Cabezas's Rule 41(g) motion for lack of jurisdiction or, alternatively, stay the ruling on such motion until it obtains jurisdiction. The government's motion to stay the briefing{**2019 U.S. App. LEXIS 4**} schedule is DENIED as moot.

Footnotes

1

None of the exceptions to this rule appear to be present in this case. *See United States v. Vicaria*, 963 F.2d 1412, 1415 n.2 (11th Cir. 1992) (listing exceptions).

APPENDIX "C"
District Court's Reconsideration Order

Orders on Motions

6:17-cr-00148-PGB-TBS USA v. Cabezas **CASE CLOSED on 01/17/2018**

CLOSED, SL DOC

U.S. District Court

Middle District of Florida

Notice of Electronic Filing

The following transaction was entered on 5/23/2019 at 11:20 AM EDT and filed on 5/23/2019

Case Name: USA v. Cabezas
Case Number: 6:17-cr-00148-PGB-TBS
Filer:
Document Number: 136(No document attached)

Docket Text:
ENDORSED ORDER denying [135] Motion for Reconsideration as to Andres Fernando Cabezas (1). Reconsideration is an extraordinary remedy which will only be granted upon a showing of one of the following: (1) an intervening change in law, (2) the discovery of new evidence which was not available at the time the Court rendered its decision, or (3) the need to correct clear error or manifest injustice. Fla. Coll. of Osteopathic Med., Inc. v. Dean Witter Reynolds, Inc., 12 F. Supp. 2d 1306, 1308 (M.D. Fla. 1998). "A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." Wilchombe v. TeeVee Toons, Inc., 555 F.3d 949, 957 (11th Cir. 2009). Signed by Judge Paul G. Byron on 5/23/2019. (GNB) copies e-mailed/mailed

6:17-cr-00148-PGB-TBS-1 Notice has been electronically mailed to:

Nicole M. Andrejko nicole.andrejko@usdoj.gov, CaseView.ECF@usdoj.gov, beverly.williams@usdoj.gov, orldocket.mailbox@usdoj.gov, usaflm.orl_ecf@usdoj.gov

Suzanne C. Nebesky suzanne.nebesky@usdoj.gov, CaseView.ECF@usdoj.gov, FLUDocket.mailbox@usdoj.gov, USAFLM.ARECF@usdoj.gov, beverly.williams@usdoj.gov, julie.moore@usdoj.gov

Ilianys Rivera Miranda ilianys.rivera@usdoj.gov, orldocket.mailbox@usdoj.gov, usaflm.orl_ecf@usdoj.gov

6:17-cr-00148-PGB-TBS-1 Notice has been delivered by other means to:

Andres Fernando Cabezas(Terminated)

#68854-018
Federal Correctional Complex Low
P.O. Box 1031
Coleman, FL 33521-1031

APPENDIX "D"
District Court's Adoption of Magistrate's R&R

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. **Case No: 6:17-cr-148-Orl-40TBS**

ANDRES FERNANDO CABEZAS,

Defendant.
_____/

ORDER

This cause is before the Court on Plaintiff's Motion for Evidentiary Hearing and Notice of Pending 41(g) Motion (Doc. 131) filed on March 28, 2019. The United States Magistrate Judge has submitted a report recommending that the motion be denied.

After an independent *de novo* review of the record in this matter, and after considering the arguments advanced by the defendant (Doc. 133), the Court agrees entirely with the findings of fact and conclusions of law in the Report and Recommendation. The objections raised by the defendant are overruled. The Court does not require a response by the Government.

Therefore, it is **ORDERED** as follows:

1. The Report and Recommendation filed March 26, 2019 (Doc. 132) is **ADOPTED** and **CONFIRMED** and made a part of this Order.

2. The Motion for Evidentiary Hearing and Notice of Pending 41(g) Motion (Doc. 131) is **DENIED**.

DONE AND ORDERED in Orlando, Florida on May 14, 2019.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

APPENDIX "E"
Magistrate's R&R

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v. CASE NO: 6:17-cr-148-Orl-40TBS

ANDRES FERNANDO CABEZAS

Defendant.

REPORT AND RECOMMENDATION

This case comes before the Court on *pro se* Defendant Andres Fernando Cabezas' Request for an Evidentiary Hearing and Notice of Pending 41(g) Motion (Doc. 131). The government has not filed a response to the motion.

Background

Defendant Andres Fernando Cabezas pled guilty to receiving child pornography (Doc. 73). In his plea agreement, he agreed to forfeit all his property that was subject to forfeiture, including the iPhone he used in the commission of the crime (Doc. 67, ¶ 9). The Court accepted Defendant's plea and adjudicated him guilty (Doc. 77). Later, the Court entered a Preliminary Order of Forfeiture for Defendant's iPhone 5s, serial number F2LLx4H7FF9V (Doc. 96).

The Court sentenced Defendant to a period of incarceration followed by a term of supervised release (Doc. 101). The Judgement and Sentence provide: "Defendant shall forfeit to the United States those assets previously identified in the Plea Agreement and Order of Forfeiture, that are subject to forfeiture." (Id., at 6). Defendant appealed the judgment and sentence (Doc. 103). That appeal is still pending.

Next, the government filed a motion for the entry of a final judgment of forfeiture of the iPhone (Doc. 113). The motion was granted and on May 18, 2018 the Court decreed

that "all right, title and interest in the cellular phone is CONDEMNED and FORFEITED to the United States for disposition according to law. Clear title to the cellular phone is now vested in the United States of America." (Doc. 114 at 2). Defendant did not appeal this final order.

More than four months later, Defendant filed a motion, pursuant to FED. R. CRIM. P. 41(g), for the return of the iPhone, or alternatively, that his personal photographs and data contained in the iPhone that are not related to the crime he was convicted of be returned to him (Doc. 115). The government filed a response in opposition to the motion and the matter was referred to me (Doc. 121). I denied the motion because: (1) it was not signed by Defendant's lawyer; (2) by virtue of the appeal, jurisdiction resided in the Eleventh Circuit; and (3) this Court had already adjudicated Defendant's interest in the iPhone so his remedy was to appeal to the Eleventh Circuit (Doc. 122).

Defendant sought reconsideration and that motion was also referred to me (Doc. 123). On reconsideration, I acknowledged that I had erred because when Defendant filed his Rule 41(g) motion, he was representing himself (Doc. 126). But I found that this was of no consequence because Defendant had not shown that I had misapprehended his position or the material facts when I entered my Order (Id., at 1). Defendant had also not shown any intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or manifest injustice (Id.). I noted that because this Court had entered a final order of forfeiture, Defendant could not obtain relief pursuant to Rule 41(g) (Id. at 2) (quoting United States v. Guerra, 426 F. App'x. 694, 697-98 (11th Cir. 2011) ("Rule 41(g) cannot be used to recover property that has been forfeited to the government in a civil forfeiture proceeding."). And, I informed Defendant that his remedy was to appeal the forfeiture judgment, which he had failed to do (Id.). Defendant appealed my

Order (Doc. 127), and the Eleventh Circuit dismissed the appeal for lack of jurisdiction (Doc. 130 at 2-3).

Now, Defendant is requesting an evidentiary hearing on the merits of his objections to my Order denying his initial request for the return of the contents of the iPhone that are not evidence of the commission of a crime (Doc. 131). Defendant argues that the forfeiture Order applies only to the actual phone; and not its contents (Id., at 1).

Until the Court holds a hearing on his motion, Defendant is asking that the Court, and not law enforcement, secure the iPhone (Id., at 2). As grounds, he references law enforcements' "checkered reputation," and the case investigators recent "odd and potentially dangerous (to the truth-finding function of this court) behavior." (Id.). Defendant alleges that FBI "agents went out of their way to return the iPhone to Mr. Cabezas at the prison." (Id.). He says FBI agents came to the prison and asked him to sign some forms before they would return the iPhone to him (Id.). However, the prison would not allow Defendant to take and review the forms before signing them (Id.). Feeling suspicious and cautious, Defendant did not sign the forms (Id.). He alleges that the next day, prison recreation guards tracked him down and asked if he still wanted the phone back (Id., at 3). Defendant responded that the FBI agents should talk to his lawyer[1] (Id.).

Now Defendant wonders why the government opposed his Rule 41(g) motion (Id.). He asserts that "the iPhone and its contents are evidence in a continuing criminal case" and "the government has a duty to preserve that evidence." (Id.) (footnote omitted). Defendant also discusses the cloning of the phone, possible mishandling of the evidence by law enforcement, and Defendant's belief "that the government agents were attempting

[1] I am unaware of who that is.

to sever the chain of custody, thereby generating a plausible claim in some future proceeding that Mr. Cabezas tampered with the evidence." (Id.).

Next, in contradiction of his guilty plea, Defendant states under penalties of perjury that to the best of his knowledge:

> The government agents know the truth, there is not now nor was there any child pornography on the iPhone. It was a lie, and a lie to this court. The only real question is who was in on the lie, and why did this court's officers (the AUSA and defense attorneys) either permit it, or worse, propagate it?

(Id., at 4). As a remedy, Defendant is asking the Court to order that he be supplied with a copy of the contents of the iPhone and that the phone itself be given to his expert for examination to see if the FBI or the United States Attorney's Office tampered with evidence (Id.). Alternatively, Defendant is asking the Court to review the iPhone to see if it contains child pornography (Id.).

Defendant follows these claims and requests with the following statement, again made under penalties of perjury:

> Mr. Cabezas lied to this court when he pleaded guilty to possessing, receiving, and viewing this child pornography on his i-Phone (or at all). The government agents lied to Todd Foster, James Wesley Smith, AUSA Rivera, the probation officer, et al. when the agents claimed to have the child pornography video and the i-Phone upon which the video was reviewed.

(Id.) (footnote omitted). Defendant fails to explain why he lied.

Objections to Magistrate Judge's Order

When a magistrate judge rules on a non-dispositive matter he must, when appropriate, issue a written order stating his decision. FED. R. CIV. P. 72(a). "A party may serve and file objections to the order within 14 days after being served with a copy." Id. The district judge will only reverse an order of the magistrate judge where it is shown that the decision is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); see also

FED. R. CIV. P. 72(a). "A finding of fact is clearly erroneous only if the reviewing court is left with a definite and firm conviction that a mistake has been made." Endurance American Specialty Ins. Co. v. Liberty Mutual Ins. Co., No. 8:17-cv-2832-T-33CPT, 2019 WL 1773288, at *4 (M.D. Fla. April 23, 2019). "A finding is contrary to law if it fails to apply of misapplies relevant statutes, case law, or rule of procedure." Id.

FED. R. CRIM. P. 41

Rule 41 establishes the procedure the Government must follow before, during, and after the search and seizure of a person or property. The rule allows an individual "aggrieved by an unlawful search and seizure of property or by the deprivation of property [to] move for the property's return." FED. R. CRIM. P. 41(g). If the Court grants the motion it "must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings."

The Court "must receive evidence on any factual issue necessary to decide the motion." Id. "The movant is presumed to have a right to an item's return, so the Government must demonstrate it has a legitimate reason to retain the property." United States v. Cobb, 703 F. App'x 879, 883 (11th Cir. 2017) (citing United States v. Potes Ramirez, 260 F.3d 1310, 1314 (11th Cir. 2001)). The government can overcome the presumption by showing that the plaintiff has unclean hands with respect to the property. United States v. Bryant, 685 F. App'x. 855, 857 (11th Cir. 2017) ("The district court did not err in denying Bryant's motion for return of property ... the district court was correct to decline equitable jurisdiction based on its finding that Bryant had 'unclean hands' with respect to the property"); United States v. Biggins, Case No. CR 613-012, 2015 WL 12868224, at *1 n. 1 (S.D. Ga. 2015) ("[e]ven assuming arguendo that the ... seizure was unlawful ... [Biggins] nonetheless is barred from Rule 41(g) relief by his undisputed

unclean hands."); see also United States v. Cobb, Case No. 8:14-cr-123-T-36MAP, 2017 WL 5989447, at *2 (M.D. Fla. April 18, 2017) ("courts can deny Rule 41(g) motions if "the defendant is not entitled to lawful possession of the seized property, the property is contraband or subject to forfeiture, or the government's need for the property as evidence continues.") (quoting United States v. Garcon, 406 F. App'x 366, 369 (11th Cir. 2010)).

Whether the Court conducts its review by way of an evidentiary hearing is within its discretion and the decision is reviewable only for abuse of discretion. Cobb, 703 F. App'x at 882. An evidentiary hearing is not necessary where there is no factual dispute as to the defendant's unclean hands with regards to the property. See Biggins, 2015 WL 12868224, at *1 n. 5; Cobb, 2017 WL 5989447, at *2 n.3

Discussion

Defendant's objections to my September 17, 2018 Order denying his motion for the return of the iPhone or its contents should be overruled because that decision was not "clearly erroneous or contrary to law." If Defendant disagreed with the Court's final order of forfeiture, he should have appealed that decision to the Eleventh Circuit. His failure to do so bars his current claim.

In the Preliminary Order of Forfeiture, the Court found that the government had "established the requisite nexus between [Defendant's] cellphone and [his] offense of receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2), as charged in Count One of the Superseding Information." (Doc. 96 at 1). The Court made this determination after Defendant, in his plea agreement, had already consented to forfeiture of the iPhone, which he acknowledged "was used during the commission of the offense." (Doc. 67 at 5). Defendant's admission suffices to establish his unclean hands which bars any recovery by him pursuant to Rule 41(g).

Defendant's assertion that the final judgment of forfeiture did not include the contents of the iPhone is frivolous. The Court entered a final judgment of forfeiture which vested clear title to the iPhone in the United States. Once the judgment was entered, Defendant could not obtain relief under 41(g). Guerra, 426 F. App'x. at 697-98. His remedy, which he failed to take advantage of, was to appeal the Court's final judgment of forfeiture to the Eleventh Circuit.

Defendant now claims that "the iPhone and its contents are evidence in a continuing criminal case" and "the government has a duty to preserve that evidence." (Doc. 131 at 3). If true, then the phone should not be returned to Defendant.

In sum, Defendant has failed to satisfy his burden with respect to his objections, and he has otherwise failed to show why he is entitled to the return of the iPhone or its contents, let alone an evidentiary hearing on this matter.

Recommendation

For these reasons I **RESPECTFULLY RECOMMEND** that the district court **DENY** Defendant's motion.

Notice to Parties

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1.

RECOMMENDED in Orlando, Florida on April 26, 2019.

THOMAS B. SMITH
United States Magistrate Judge

APPENDIX "F"
Eleventh Circuit's Order Dismissing for Lack of Jurisdiction

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14660-HH

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRES FERNANDO CABEZAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

Before: MARTIN, JORDAN and ROSENBAUM, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Andres Fernando Cabezas appeals from a magistrate judge's September 17, 2018 order denying his motion for return of property, pursuant to Federal Rule of Criminal Procedure 41(g), and the magistrate judge's October 18, 2018 order denying reconsideration of the same. Because the orders were entered by a magistrate judge, and never rendered final by the district court, we lack jurisdiction to review them. *See United States v. Schultz*, 565 F.3d 1353, 1359-62 (11th Cir. 2009); *Donovan v. Sarasota Concrete Co.*, 693 F.2d 1061, 1066-67 (11th Cir. 1982); *United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980). We note that nothing in this order shall preclude Mr. Cabezas from requesting that the district court review the magistrate judge's orders. In addition, nothing

in this order affects the validity of Appeal No. 18-10258, with which the instant appeal was clerically consolidated.

All pending motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

APPENDIX "G"
Magistrate's Order Denying 41(g) Relief

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v. CASE NO: 6:17-cr-148-Orl-40TBS

ANDRES FERNANDO CABEZAS

Defendant.

ORDER

Pending before the Court is Defendant Andres Fernando Cabezas' Motion to Return Property Under 41(g) (Doc. 115). Specifically, Defendant seeks the return of the photographs stored on his cell phone that were not evidence in this case (Id.). The government has filed a response in opposition to the motion (Doc. 121).

Defendant pled guilty to receiving child pornography (Doc.73). In his plea agreement he agreed to forfeit all of his property that was subject to forfeiture, including an iPhone used in the commission of the crime (Doc. 67, ¶ 9). The Court accepted Defendant's plea, adjudicated him guilty, and sentenced him to, among other things, 151 months in prison (Docs. 77, 101). Defendant is currently appealing his judgment and sentence (Doc. 103). The Court entered a separate Final Judgment of Forfeiture vesting title to the iPhone in the government (Doc. 114).

Defendant's motion for the return of photographs on his iPhone is **DENIED** for the following reasons. First, Defendant is represented by a lawyer who has not signed or otherwise joined in the motion. Second, this case is on appeal to the Eleventh Circuit Court of Appeal which currently has jurisdiction over this matter. Third, the Court has

already decreed that the iPhone belongs to the government. Defendant has not sought reconsideration of this decision and his remedy now is in the Eleventh Circuit.

DONE and **ORDERED** in Orlando, Florida on September 17, 2018.

THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Andres Fernando Cabezas

APPENDIX "H"
Supreme Court's Order Extending Time

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 31, 2020

Andres F. Cabezas
#68854-018
FCI Low
P.O. Box 1031
Coleman, FL 33521-1031

RE: Cabezas v. United States
USCA11 No.19-12117

Dear Mr. Cabezas:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked March 9, 2020 and received March 17, 2020. The application is returned for the following reason(s):

The application is herewith returned in light of the Court's order of March 19, 2020. A copy of the order is enclosed.

Sincerely,
Scott S. Harris, Clerk
By:

Clara Houghteling
(202) 479-5955

Enclosures

(ORDER LIST: 589 U.S.)

THURSDAY, MARCH 19, 2020

ORDER

In light of the ongoing public health concerns relating to COVID-19, the following shall apply to cases prior to a ruling on a petition for a writ of certiorari:

IT IS ORDERED that the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3.

IT IS FURTHER ORDERED that motions for extensions of time pursuant to Rule 30.4 will ordinarily be granted by the Clerk as a matter of course if the grounds for the application are difficulties relating to COVID-19 and if the length of the extension requested is reasonable under the circumstances. Such motions should indicate whether the opposing party has an objection.

IT IS FURTHER ORDERED that, notwithstanding Rules 15.5 and 15.6, the Clerk will entertain motions to delay distribution of a petition for writ of certiorari where the grounds for the motion are that the petitioner needs additional time to file a reply due to difficulties relating to COVID-19. Such motions will ordinarily be granted by the Clerk as a matter of course if the length of the extension requested is reasonable under the circumstances and if the motion is actually received by the Clerk at least two days prior to the relevant distribution date. Such motions should indicate whether the opposing party has an objection.