

No. \_\_\_\_\_

---

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 2023

---

BRIAN WRIGHT, *Petitioner*,

v.

UNITED STATES OF AMERICA, et al., *Respondents*.

---

On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

---

**PETITION FOR WRIT OF CERTIORARI**

---

ANGELA H. DOWS  
Cory Reade Dows & Shafer  
1333 North Buffalo Drive, Suite 210  
Las Vegas, NV 89128  
Phone: (702) 794-4411  
Facsimile: (702) 794-4421

*Counsel of record for Petitioner*  
BRIAN WRIGHT

## THE QUESTIONS PRESENTED

1. Did Federal Insurance Company have standing to file a motion under Fed. R. Crim. P. 41(g) when Federal Insurance Company is not a “person” for Fed. R. Crim. P. 41(g) purposes?
2. Did the district court abuse its discretion in exercising equitable jurisdiction over motion under Fed. R. Crim. P. 41(g), when equitable jurisdiction is limited to “exceptional” or “anomalous” circumstances?
3. Did the district court err in granting a motion under Fed. R. Crim. P. 41(g) when the *Ramsden* factors demonstrated Federal Insurance Company was not entitled to relief?

## TABLE OF CONTENTS

THE QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES.....	iii
I. PRAYER FOR RELIEF .....	1
II. OPINION BELOW.....	1
III. BASIS FOR JURISDICTION.....	2
IV. CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE.....	3
V. STATEMENT OF THE CASE.....	3
A. JURISDICTION OF THE COURTS OF FIRST INSTANCE.....	3
B. FACTS MATERIAL TO THE QUESTION PRESENTED .....	3
VI. REASONS SUPPORTING ALLOWANCE OF THE WRIT .....	2
VII. CONCLUSION .....	22
APPENDIX A-Memorandum of the Ninth Circuit Court of Appeals, April 22, 2024.....	A-1
APPENDIX B-Order Granting Federal Insurance Company's Motion for Return of Property in a Criminal Case of the United States District Court for the District of Nevada, March 7, 2023.....	B-1

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Caminetti v. United States</i> , 242 U.S. 470, 37 S.Ct. 192 (1917).....	9
<i>Carson Harbor Vill., Ltd. v. Unocal Corp.</i> , 270 F.3d 863 (9th Cir. 2001) .....	9
<i>E.I. Du Pont De Nemours &amp; Co. v. Davis</i> , 264 U.S. 456, 44 S.Ct. 364 (1924) ....	21
<i>Gabelli v. SEC</i> , 568 U.S. 442, 133 S.Ct. 1216 (2013) .....	21
<i>Horton v. California</i> , 496 U.S. 128 (1990) .....	18
<i>Hunsucker v. Phinney</i> , 497 F.2d 29 (5th Cir. 1974) .....	13, 14
<i>In re Certain Pharms. &amp; Proceedings of Northland Providers, Inc.</i> , 78 F. Supp. 2d 954, 40 U.C.C. Rep. Serv. 2d (CBC) 1161, 1999 U.S. Dist. LEXIS 19263 (D. Minn. 1999).....	9, 12
<i>In re Seizure of Four (4) DC-3 Aircraft</i> , 134 F.R.D. 251 (E.D. Wisc. 1991) .....	20
<i>In re Sixty Seven Thousand Four Hundred Seventy Dollars (\$67,470)</i> , 901 F.2d 1540 (11th Cir. 1990).....	13, 14
<i>Kokkonen v. Guardian Life Ins. Co. of Am.</i> , 511 U.S. 375, 114 S.Ct. 1673 (1994) ..	13
<i>Ramsden v. United States</i> , 2 F.3d 322 (9th Cir. 1993) .....	2, 8, 15, 16, 19
<i>Thompson v. United States</i> , 268 F.R.D. 319, 2010 U.S. Dist. LEXIS 63242 (N.D. Ill. 2010) .....	18, 19
<i>Trump v. United States</i> , 54 F.4th 689 (11th Cir. 2022).....	14
<i>United States v. Comprehensive Drug Testing, Inc.</i> , 621 F.3d 1162 (9th Cir. 2010) .....	9, 10, 11, 12, 13, 15
<i>United States v. Elias</i> , 921 F.2d 870 (9th Cir. 1990) .....	19
<i>United States v. Estep</i> , 760 F.2d 1060 (10th Cir. 1985) .....	11
<i>United States v. Fed. Ins. Co.</i> , 2024 U.S. App. LEXIS 9878, 2024 WL 1714273 (9th Cir. 2024).....	1

<i>United States v. Kama</i> , 394 F.3d 1236, 2005 U.S. App. LEXIS 592 (9th Cir. 2005) .....	13
<i>United States v. Marolf</i> , 173 F.3d 1213 (9th Cir. 1999) .....	20
<i>United States v. Martinson</i> , 809 F.2d 1364 (9th Cir. 1987) .....	16, 17
<i>United States v. Palmer</i> , 565 F.2d 1063 (9th Cir. 1977).....	17, 21
<i>United States v. Rowzer</i> , 201 F.R.D. 516, 2001 U.S. Dist. LEXIS 9939 (D. Kan.), aff'd, 18 Fed. Appx. 702, 2001 Colo. J. C.A.R. 4386, 2001 U.S. App. LEXIS 19387 (10th Cir. 2001).....	13
<i>United States v. U.S. Currency, \$83,310.78</i> , 851 F.2d 1231 (9th Cir. 1988) .	19, 20
<i>United States v. Van Cauwenberghe</i> , 934 F.2d 1048 (9th Cir. 1991).....	17
<i>United States v. Wright</i> , 49 F.4th 1221 (9th Cir. 2022) .....	6, 19, 20

#### Statutes

18 U.S.C. § 1254 .....	3
18 U.S.C. § 1291 .....	3

#### Other Authorities

Fed. R. Civ. P. 24 .....	19
Fed. R. Crim. P. 32 .....	11
Fed. R. Crim. P. 41 .....	1, 2, 3, 4, 8, 9, 11, 12, 20

## I.

### PRAYER FOR RELIEF

Brian Wright petitions for a writ of certiorari to review the decision of United States Court of Appeals for the Ninth Circuit that affirmed the district court granting Federal Insurance Company’s motion for return of property for \$40,000.00 in cash seized from a residence. A petition for writ of certiorari should be granted when Federal Insurance Company is not a “person” under the plain language of Fed. R. Crim. P. 41(g). The district court should not have exercised equitable jurisdiction to decide, and then grant, Federal Insurance Company’s motion under Fed. R. Crim. P. 41(g). For the reasons stated herein, Brian Wright’s petition should be granted.

## II.

### OPINION BELOW

The United States Court of Appeals for the Ninth Circuit affirmed the decision of the district court granting Federal Insurance Company’s motion for return of property to obtain \$40,000.00 in cash seized from a residence. *United States v. Fed. Ins. Co.*, 2024 U.S. App. LEXIS 9878, 2024 WL 1714273 (9th Cir. 2024). *Appendix A*. The Ninth Circuit held that Federal Insurance Company properly filed a motion for return of property as a “person aggrieved” under Fed. R. Crim. P. 41(g). *Appendix A*. The Ninth Circuit rejected the argument by Petitioner that the “plain meaning” of a “person” encompasses only natural persons. *Appendix A*. The Ninth Circuit found that Federal Insurance Company was entitled to bring a Fed. R. Crim. P. 41(g) motion for return of property when, like property-owning individuals, property-owning entities

can be injured by government seizure. *Appendix A.*

Under the factors outlined in *Ramsden v. United States*, 2 F.3d 322, 324-25 (9th Cir. 1993), the Ninth Circuit found that the district court did not abuse its discretion when it exercised equitable jurisdiction over the motion for return of property by Federal Insurance Company. *Appendix A.* The Ninth Circuit found that Federal Insurance Company had no other adequate remedy at law for return of its property when the government indicated it would not, and believed it could not, initiate a forfeiture proceeding as to the property at issue. *Appendix A.*

### III.

#### **BASIS FOR JURISDICTION**

On April 22, 2024, the United States Court of Appeals for the Ninth Circuit issued a decision that affirmed the decision of the district court in granting Federal Insurance Company's motion under Rule 41(g) of the Federal Rules of Criminal Procedure. *Appendix A.* This is the final judgment for which a writ of certiorari is sought. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## IV.

### CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

Pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure:

(g) MOTION TO RETURN PROPERTY. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

## V.

### STATEMENT OF THE CASE

#### A. Jurisdiction of the Courts of First Instance.

The district court had jurisdiction under Rule 41(g) of the Federal Rules of Criminal Procedure. The Ninth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

#### B. Facts Material to the Questions Presented.

On February 10, 2017, Brian Wright was arrested related to a supervised release violation case at a residence on West Arby Avenue in Las Vegas, Nevada. The petition in relevant part alleged that Brian Wright was engaging in sex trafficking. After arresting Brian Wright, state and federal agents seized several items from the residence. This included \$40,000.00 from the box spring of a mattress. The supervised release violation case resulted in a total of twenty-one months in custody.

On May 3, 2019, Brian Wright filed a motion under Rule 41(g) of the Federal Rules of Criminal Procedure for return of property from the West Arby Avenue seizure.

Brian Wright alleged that he had the following items of property improperly seized:

- a. \$2,152.00 from his front pants pocket;
- b. \$40,000.00 from a mattress box spring in a bedroom;
- c. Rings from his fingers with an asserted value of \$30,000.00;
- d. One or more cell phones; and
- e. A silver ring found inside a kitchen drawer.

The government argued at a status hearing on the motion that there was a “factual dispute” as to whether the government intended to offer the \$40,000.00 in the trial of Matthew John Cannon in *United States v. Cannon*, United States District Court (Nevada) Case No. 2:19-cr-00025-RFB-VCF. As argued, the government alleged that the \$40,000.00 was “likely” stolen from a Las Vegas casino, and that the cash was to be introduced in Mr. Cannon’s then-upcoming trial.

On November 20, 2020, the federal magistrate judge held an evidentiary hearing as to Brian Wright’s West Arby Avenue motion under Fed. R. Crim. P. 41(g). Brian Wright testified in part that: (1) he obtained a financial settlement related to a car accident and told law enforcement the same, (2) the items seized, including the \$40,000.00, were his and no one else to his knowledge would claim possession, and (3) he was never prosecuted for sex trafficking, or any crime, related to the items taken.

On December 18, 2020, the federal magistrate judge entered a report and recommendations along with an order that granted in part and denied in part Brian Wright’s motion under Fed. R. Crim. P. 41(g). The \$2,152.00 taken from Mr. Wright’s

front pocket was recommended to be returned to Brian Wright, however the \$40,000.00 seized from the mattress box spring was recommended not to be returned. Specific findings included:

- a. Brian Wright was incarcerated and there were no pending charges against him.
- b. The government proved that the \$40,000.00 found in the mattress box spring was contraband because: (1) law enforcement seized the cash less than a month after an armed robbery at a sportsbook, (2) the cash was wrapped in gold bands from the sportsbook, (3) the sportsbook or related casino had no record of Brian Wright receiving large winnings, and (4) Brian Wright's alleged co-conspirator pleaded guilty to conspiracy, had access to the subject residence, and lived in the subject residence.
- c. The \$40,000.00 was proceeds of an illegal activity, and therefore Brian Wright did not have a right to the property.
- d. The government overcame the presumption and proved by a preponderance of the evidence that the \$40,000.00 belonged to the sportsbook and not Brian Wright.
- e. The testimony by the government's agent was "credible" that the rings taken from Brian Wright's fingers were left at the residence.

On January 22, 2021, the district court entered an order that adopted the magistrate judge's recommendations. The district court ordered that the \$2,152.00 taken from Brian Wright's pants pocket and a cell phone be returned to Brian Wright, however the \$40,000.00 in cash was not to be returned to Brian Wright.

At a November 2020 sentencing of Mr. Cannon, the parties and district court discussed the subject \$40,000.00 in cash. A law enforcement agent testified at the sentencing hearing that after arresting Brian Wright, law enforcement believed that robberies of the sportsbook would cease. The law enforcement agent testified that robberies continued after the February of 2017 arrest of Brian Wright, with another

robbery taking place in March of 2017. The district court found that the government had not established that Mr. Cannon was involved in the January of 2017 sportsbook robbery.

Brian Wright appealed the denial of the return of \$40,000.00 in cash to the United States Court of Appeals for the Ninth Circuit. Following briefing and oral argument, the Ninth Circuit issued an Opinion in September of 2022 that found in part that neither Brian Wright nor the government established a right to the seized cash. *United States v. Wright*, 49 F.4th 1221 (9th Cir. 2022). The Ninth Circuit held that the government had “not perfected title in the seized property and could not have done so through these Rule 41(g) proceedings.” *Wright*, 49 F.4th at 1228. The Ninth Circuit offered no view on the “government’s options downstream” and rejected the government’s claim that it “may dispose of the money as it pleases.” *Id.*

On January 20, 2023, Federal Insurance Company as a subrogee filed a motion in the district court for the \$40,000.00 in cash from the West Arby Avenue residence. Federal Insurance Company asserted that the district court had equitable authority to order the return of the seized property to it as the rightful owner or designee. Federal Insurance Company also asserted that it had standing to move for and was entitled to the seized property. On January 23, 2023, the government filed a non-opposition. On February 3, 2023, Brian Wright, through counsel, filed a response in opposition.

On March 7, 2023, the district court issued an order granting the motion for return of property by Federal Insurance Company. The district court found that:

- a. Federal Insurance Company had an interest in and need for the stolen money;
- b. The government did not disregard Federal Insurance Company's constitutional rights, did not intend to conduct, and believes it cannot conduct, a forfeiture proceeding to resolve who receives the \$40,000.00 in cash;
- c. Federal Insurance Company has:  
no effective, efficient, or adequate remedy at law to recover the stolen funds other than to move under Rule 41(g). And if it is not able to recover the funds in this fashion it will be irreparably injured. Thus, the *Ramsden* factors favor returning the funds to Federal [Insurance Company].

*United States v. Brian Wright*, Case No. 2:14-cr-00357-APG-VCF (U.S. Dist. Ct. Nev., March 7, 2023). *Appendix B*. The district court ordered that the government transfer to Federal Insurance Company the \$40,000.00 in cash that was “seized in connection with the arrest of Brian Wright on February 10, 2017.” *Appendix B*.

On March 17, 2023, Mr. Wright filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit. On April 22, 2024, the Ninth Circuit issued a memorandum decision that affirmed the decision of the district court granting Federal Insurance Company’s motion. *Appendix A*.

This petition follows.

## VI.

### REASONS SUPPORTING ALLOWANCE OF THE WRIT

This writ should be granted to allow this Court to correct the erroneous decision by the Ninth Circuit Court of Appeals that affirmed the decision of the federal district court in denying his appeal. The issues raised in this petition state a valid claim of the denial of a constitutional right when Federal Insurance Company did not have standing to file a motion under Fed. R. Crim. P. 41(g) because Federal Insurance Company is an entity and not an individual aggrieved by the deprivation of property. The district court abused its discretion in exercising equitable jurisdiction over Federal Insurance Company's motion. It is thus respectfully requested that Brian Wright's petition for writ of certiorari be granted.

**A. Federal Insurance Company Did Not Have Standing to File a Motion Under Fed. R. Crim. P. 41(g).**

Federal Insurance Company is not a proper party to raise a motion under Fed. R. Crim. P. 41(g). Federal Rule of Criminal Procedure 41(g) has been "long held" to be an "appropriate means of obtaining the return of property improperly seized by the government." *Ramsden*, 2 F.3d 322 (9th Cir. 1993). An action brought pursuant to Fed. R. Crim. P. 41(g) is properly considered suit in equity rather than action under Federal Rules of Criminal Procedure, where movants were not subject to criminal charges, indictment had not issued, and none of parties requesting return of property appeared to be involved in criminal investigation that precipitated warranted seizure

of pharmaceuticals, because these proceedings were, in practical effect, a civil action to recover personal property. *In re Certain Pharms. & Proceedings of Northland Providers, Inc.*, 78 F. Supp. 2d 954, 40 U.C.C. Rep. Serv. 2d (CBC) 1161, 1999 U.S. Dist. LEXIS 19263 (D. Minn. 1999).

Under the “plain meaning rule,” where the language is plain and admits of “no more than one meaning the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.” *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 878 (9th Cir. 2001) (en banc) (quoting *Caminetti v. United States*, 242 U.S. 470, 485, 37 S.Ct. 192 (1917)). Here, the plain language of Fed. R. Crim. P. 41(g) demonstrates that the grievant is a “person” and not an entity or company:

(g) MOTION TO RETURN PROPERTY. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Fed. R. Crim. P. 41(g) (emphasis added).

The Ninth Circuit has not clarified the definition of “person” to be able to address constitutional limits on those that can file a motion under Fed. R. Crim. P. 41(g). *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162 (9th Cir. 2010). The *Comprehensive Drug Testing, Inc.* (2010) case demonstrates that individual and not corporate interests were of primary and overarching concern in relation to a

motion for return of property. In *Comprehensive Drug Testing, Inc.* (2010), the defendant and the Major League Baseball Players Association (“Players Association”) moved for the return of urine samples seized by warrants issued in the U.S. District Court in Nevada. 621 F.3d at 1166. The district court granted the motion and ordered the government to return property it had seized, save for materials pertaining to ten identified baseball players at issue in the investigation. *Id.*, at 1167.

Although the Players Association could be considered a “business” or an “entity,” it was the individual baseball player privacy and confidentiality interests at issue in *Comprehensive Drug Testing, Inc.* (2010). The Ninth Circuit held in *Comprehensive Drug Testing, Inc.* (2010) that the Players Association was “aggrieved by the seizure as the removal of the specimens and documents breaches its negotiated agreement for confidentiality, violates its members’ privacy interests...” *Id.*, at 1173-74. By forcing the government to return property that was not properly seized, the defendant preserved the integrity of its drug testing business and the “Players Association is protecting the privacy and economic well-being of its members, which could easily be impaired if the government were to release the test results swept up in the dragnet.” *Id.*, at 1172.

The baseball players in *Comprehensive Drug Testing, Inc.* (2010) retained their individual interests in preventing further disclosures. *Id.*, at 1174. The Ninth Circuit found that the district court did not abuse its discretion in concluding that “equitable considerations” required sequestration and return of copies of illegally seized evidence,

even though some baseball players' positive drug tests had already been publicly reported. *Id.*

The Tenth Circuit in *United States v. Estep*, 760 F.2d 1060 (10th Cir. 1985) demonstrates the importance of requiring, at minimum, individual property interests as well as additional facts to demonstrate ownership under Fed. R. Crim. P. 41(g). The insurance company in *Estep* was included in a motion for return of property filed by two individuals claiming a right to the cash. *Id.*, at 1062. The cash at issue was positively identified through two separate witnesses as being connected with the bank deposit theft. *Id.*, at 1064-65. Additionally, the person that the cash was seized from provided "no explanation...as to how he obtained the money." *Id.*, at 1065.

Limiting the definition of a "person" under Fed. R. Crim. P. 41(g) would not unduly restrict the class of parties potentially aggrieved by deprivation of property that could legally seek its return. The constitutional concern is the opposite, in that expanding the definition of "person" under Fed. R. Crim. P. 41(g) would lead to an improper expansion of the classes of claimants before the district court. Constitutional issues abound when a motion for return of property, unlike a forfeiture proceeding, for example lacks an appropriate process by which: (1) there is a hearing to determine the nexus between the property and the offense, (2) there is notice provided to all potential claimants, and (3) the parties may engage in discovery in order to reduce the likelihood of the property being returned to improper claimant. *See* Fed. R. Crim. P. 32.2.

The *Comprehensive Drug Testing, Inc.* (2010) case and others similarly situated

demonstrate that this Court is concerned about the return of property when it is actually determined that the property is “rightfully theirs.” In *Comprehensive Drug Testing, Inc.* (2010), it was demonstrated that the drug tests belonged to the players, and could be identified as belonging to the baseball players. *Id.* Cash cannot be as easily identified, especially under the facts of this case when there was not a witness to positively identify the cash at issue as belonging to the sportsbook in general, or specific to the subject robbery.

Federal Insurance Company lacked standing to pursue the instant motion when Federal Insurance Company is an entity and not a “person” under the plain language of Fed. R. Crim. P. 41(g). Under the guidance of *In re Certain Pharms. & Proceedings of Northland Providers, Inc.*, Federal Insurance Company is not a person that is recovering “personal property.” Federal Insurance Company did not raise or have applicable individual interests at issue, and instead Federal Insurance Company’s interests were solely that of a business entity. Unlike *Comprehensive Drug Testing, Inc.* (2010), individual privacy and confidentiality interests did not apply to Federal Insurance Company. Pursuant to the “plain meaning rule” and principles of equity, the word “person” under Rule 41(g) should not be expanded into all categories of potential claimants to property with or without an underlying criminal case. Brian Wright requests that the petition for writ of certiorari be granted on this basis.

B. The District Court Abused its Discretion in Exercising Equitable Jurisdiction as to Federal Insurance Company's Motion for Return of Property.

The district court should not have had the power to hear or decide the motion by Federal Insurance Company. Under the *Comprehensive Drug Testing, Inc.* standard, when the motion is made by a party against whom no charges have been brought, such a motion “is in fact a petition that the district court invoke its civil equitable jurisdiction.” 621 F.3d 1162, 1172 (9th Cir. 2010) (majority opinion); *see also United States v. Rowzer*, 201 F.R.D. 516, 2001 U.S. Dist. LEXIS 9939 (D. Kan.), aff’d, 18 Fed. Appx. 702, 2001 Colo. J. C.A.R. 4386, 2001 U.S. App. LEXIS 19387 (10th Cir. 2001); *United States v. Kama*, 394 F.3d 1236, 2005 U.S. App. LEXIS 592 (9th Cir. 2005).

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673 (1994). Exercises of equitable jurisdiction should be “exceptional” and “anomalous.” *Hunsucker v. Phinney*, 497 F.2d 29, 32 (5th Cir. 1974). Federal courts possess “only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Id.* Only the narrowest of circumstances permit a district court to invoke equitable jurisdiction. Such decisions “must be exercised with caution and restraint,” as equitable jurisdiction is appropriate only in “exceptional cases where equity demands intervention.” *In re Sixty Seven Thousand Four Hundred Seventy Dollars (\$67,470)*, 901 F.2d 1540, 1544 (11th Cir. 1990); *see also Hunsucker*, 497 F.2d at 32. Equitable jurisdiction exists “only in response to the most callous disregard of constitutional rights, and even then only if

other factors make it clear that judicial oversight is absolutely necessary.” *Trump v. United States*, 54 F.4th 689, 698 (11th Cir. 2022).

The district court should not have exercised its equitable jurisdiction as to the motion filed by Federal Insurance Company. The exercise by the district court of equitable jurisdiction was an abuse of discretion when the matter was not “exceptional” or “anomalous” in nature. *Hunsucker, id.* Under the approach of the Eleventh Circuit, the district court’s decision to exercise equitable jurisdiction as to Federal Insurance Company’s motion was not “exercised with caution and restraint.” This is true when jurisdiction is only appropriate in “exceptional cases where equity demands intervention,” and there has been no showing that equity demanded intervention as to the subject \$40,000.00 in cash. *In re Sixty Seven Thousand Four Hundred Seventy Dollars (\$67,470), id.*

The district court’s ruling on the motion by Federal Insurance Company could be more appropriately characterized as “routine” or “regular” in nature, making the exercise of equitable jurisdiction improper. There was not a “callous disregard of constitutional rights” at potential or actual issue, where judicial intervention would be “absolutely necessary.” *Trump, id.* The larger concern, and the reason why exercise of equitable jurisdiction should be limited to “exceptional” circumstances, is the creation of a rule whereby any entity or claimant may file a motion in a criminal case for return of items, akin to creating a government-backed lost and found. The petition for writ of certiorari should be granted on this basis.

C. **The *Ramsden* Factors Demonstrate that the District Court Should Not Have Exercised its Equitable Jurisdiction as to Federal Insurance Company's Motion, and the Government Should Have Instead Elected to Proceed with a Forfeiture Proceeding.**

When there is no criminal proceeding pending against the movant, as in the instant matter, then the motion for return of property is an equitable analog to a motion under Rule 41(g). *United States v. Comprehensive Drug Testing, Inc.*, at 1192 (9th Cir. 2010) (Ikuta, dissenting). A district court may exercise equitable jurisdiction to hear a Rule 41(g) motion only after analyzing four factors: 1) whether the government displayed a callous disregard for the constitutional rights of the movant; 2) whether the movant has an individual interest in and need for the property he or she wants returned; 3) whether the movant would be irreparably injured by denying return of the property; and 4) whether the movant has an adequate remedy at law for the redress of his or her grievance. *Ramsden v. United States*, 2 F.3d at 324. The district court reviews the *Ramsden* factors when the Fed. R. Crim. P. 41(g) motion is filed preindictment, and not when the case is completed. *Id.*

In this case, the *Ramsden* factors should not have allowed Federal Insurance Company the relief it sought. The *Ramsden* factors are not applicable when the Rule 41(g) motion is filed after the case is completed. *Ramsden, id.* Additionally, under an application of the *Ramsden* factors, it was an abuse of the district court's discretion to exercise equitable jurisdiction when: (1) there was no callous disregard for the constitutional rights, if any, of Federal Insurance Company, (2) there was not a

demonstrated individual interest and need by Federal Insurance Company, (3) there was not an irreparable injury to Federal Insurance Company if its request for the cash was denied, and (4) there was already an adequate remedy at law through a forfeiture proceeding, regardless of whether the government initiated the same.

- a. Under the first and second *Ramsden* factors, the government did not display a callous disregard for the constitutional rights of Federal Insurance Company as movant, and movant did not demonstrate an individual interest and need for the property.

Under the first *Ramsden* factor, the government has not displayed a callous disregard for the constitutional rights of Federal Insurance Company, if any. Additionally, constitutional rights are not at stake, finding this factor not applicable or in favor of Federal Insurance Company. Federal Insurance Company essentially had a civil claim for relief as opposed to Brian Wright, an individual that is much more likely to have had constitutional rights disregarded through the seizure of the subject cash. Whenever property in question is no longer needed for evidentiary purposes, either because trial is complete, the defendant has pleaded guilty, or the government has abandoned its investigation, the burden of proof changes such that person from whom property was seized is presumed to have right to its return. *United States v. Martinson*, 809 F.2d 1364 (9th Cir. 1987).

Under the second *Ramsden* factor, Federal Insurance Company did not establish “sufficient ownership or possessory interest” in the \$40,000.00 in cash. Whenever property in question is no longer needed for evidentiary purposes, either because trial

is complete, the defendant has pleaded guilty, or the government has abandoned its investigation, the burden of proof changes such that person from whom property was seized is presumed to have right to its return. *Martinson*, 809 F.2d 1364 (9th Cir. 1987). In the case of the government asserting an interest in the property, the government must demonstrate a “cognizable claim of ownership or right to possession” adverse to the defendant. *United States v. Van Cauwenberghe*, 934 F.2d 1048, 1061 (9th Cir. 1991) (quoting *United States v. Palmer*, 565 F.2d 1063, 1065 (9th Cir. 1977)).

It was not “clear” that the \$40,000.00 in cash belonged to Federal Insurance Company, or its related entities. Under the lens of the evidence taken in the case, there was not a finding that the cash “clear[ly]” belonged to Federal Insurance Company. The wrappings on the \$40,000.00 in cash were and are utilized by any number of businesses and banks to wrap denominations of cash. Without specific identifiers, any number of individuals or entities could enter the case via a motion for return of property and claim an interest in cash.

The government did not positively match the subject cash to a case that it thought would “clearly” demonstrate said “cognizable claim of ownership or right to possession.” Prior to Federal Insurance Company’s motion, the government argued that the \$40,000.00 in cash was “likely” stolen, and that the cash was going to be introduced in a separate trial of Mr. Cannon. However, after hearing from the witnesses and the arguments of the parties, the district court in the Cannon case found that the government had not established that Mr. Cannon was involved in the robbery.

A significant part of the historic litigation in this case focused on whether Brian Wright was entitled to return of the funds, including whether the funds were demonstrated to be “contraband.” Nothing as to the seized cash demonstrated that its “incriminating character” was “immediately apparent,” thus actually constituting contraband. *Horton v. California*, 496 U.S. 128, 136 (1990). The prior litigation on Brian Wright’s motion for return of property did not focus on whether the subject \$40,000.00 in cash belonged to the sportsbook because the claimant of the prior return of property motion was Brian Wright, and not the casino sportsbook or associated insurance company entities.

During the prior litigation, Brian Wright made several possessory claims to the \$40,000.00 in cash. Brian Wright testified under oath that the \$40,000.00 in cash belonged him to via a financial settlement related to a car accident. Brian Wright further testified that he told a law enforcement agent about the financial settlement, and that no one else to his knowledge would claim possession of subject cash. The prior motion and findings should not be relied upon in determining the status of the subject \$40,000.00 in cash as it related to Federal Insurance Company.

Pursuant to *Thompson v. United States*, the interest of Federal Insurance Company was purely economical through recovery of insurance proceeds, and should have been denied for a lack of a sufficient stake in the litigation. In *Thompson v. United States*, a creditor was not entitled to intervene under Fed. R. Civ. P. 24(a) in plaintiff’s action brought under Fed. R. Crim. P. 41(g) seeking return of seized funds

because the creditor had not shown that the creditor possessed interest sufficient to justify its intervention in litigation. 268 F.R.D. 319, 2010 U.S. Dist. LEXIS 63242 (N.D. Ill. 2010). The creditor had no stake in the underlying legal issues or subject matter of dispute between plaintiff and government. *Id.* The creditor's interest in funds was purely economical, and creditor's argument for permissive intervention under Fed. R. Civ. P. 24(b) also failed because it made no attempt to show that any of intervention factors were present. *Id.* Brian Wright respectfully requests that the petition for writ of certiorari be granted on this basis.

- b. Under the third and fourth *Ramsden* factors, Federal Insurance Company would not be irreparably injured if denied its request for \$40,000.00, and there is an adequate remedy at law through a forfeiture proceeding.

Under the third *Ramsden* factor, Federal Insurance Company does not have a “greater claim” to the cash. *Estep*, 760 F.2d at 1060. It is unreasonable to think that a private insurance company would be irreparably injured if its request for the \$40,000.00 in cash was denied by the district court. Federal Insurance Company was very likely compensated for at least part of its losses, if not all losses over time, through the payment of insurance premiums or deductibles to its insurer.

Under the fourth *Ramsden* factor, there is an adequate remedy at law, and the motion by Federal Insurance Company under Fed. R. Crim. P. 41(g) should have been denied on this basis. The adequate remedy at law, as this Court has “repeatedly held,” is a forfeiture proceeding. *United States v. Wright*, 49 F.4th at 1228 (9th Cir. 2022) (citing *United States v. Elias*, 921 F.2d 870, 872-73 (9th Cir. 1990) and *United States v.*

*U.S. Currency*, §83,310.78, 851 F.2d 1231, 1233-35 (9th Cir. 1988)).

Just as the government cannot circumvent the forfeiture statutes by proceeding through a Fed. R. Crim. P. 41(g) motion, *Wright*, 49 F.4th at 1228, Federal Insurance Company should not be able to circumvent the forfeiture statutes via its own Fed. R. Crim. P. 41(g) motion. This is true because “Congress’s statutory framework, as relevant here, offers safeguards not available in Rule 41(g) proceedings.” *Id.*; *see also United States v. Marolf*, 173 F.3d 1213, 1216-17 (9th Cir. 1999). Forfeiture requires the government to provide notice to potential claimants, offers “procedural and substantive protections for those who might dispute the government’s claim,” including: (1) statutes of limitation, (2) an innocent owner defense, (3) fee-shifting provisions, and (4) the right to a jury. *Id.*

In this case, the government never initiated a forfeiture action for the money seized, which was the appropriate and adequate remedy at law. Allowing a circumvention of forfeiture proceedings not only eliminated important procedural safeguards, but also allowed a single entity to claim an ownership interest in the seized cash, without noticing all potential claimants. See *In re Seizure of Four (4) DC-3 Aircraft*, 134 F.R.D. 251, 255 (E.D. Wisc. 1991) (denial of motion when entities had an adequate remedy at law through a civil forfeiture action that was already in progress via the government’s initiation.)

While it is true that victims of crime should be compensated, said compensation should be through traditional judicial procedures rather than leaving it to the

government for nonjudicial was to secure compensation without court process. *United States v. Palmer*, 565 F.2d at 1063. Without the government initiating a forfeiture or other court proceeding within the time allotted in the forfeiture statute, the cash seized should have been returned to Brian Wright. Federal law has long recognized that the statutes of limitation that bars the rights of the government must receive strict construction. *See E.I. Du Pont De Nemours & Co. v. Davis*, 264 U.S. 456, 462, 44 S.Ct. 364, 366 (1924), and a five-year statute of limitations applies to actions for penalties, fines, and forfeitures. *Gabelli v. SEC*, 568 U.S. 442, 133 S.Ct. 1216 (2013).

The creation of a rule whereby a single party is notified via non-judicial means, and the same single party later claims and is granted seized property, creates an unfair method to dispose of seized property. Under a standard where a Fed. R. Crim. P. 41(g) motion is filed by an insurance company or any private business entity and adjudicated in lieu of a forfeiture proceeding, one can imagine a scenario whereby important property rights and protections are lost by the accused or other claimants to said property. It is respectfully requested that Brian Wright's petition be granted on this basis.

VII.

CONCLUSION

For the foregoing reasons, Brian Wright respectfully asks this Court to grant this petition for writ of certiorari.

Dated: July 18, 2024.

Respectfully submitted,

s/ Angela H. Dows  
ANGELA H. DOWS, ESQ.  
*Counsel of Record for Petitioner*  
Cory Reade Dows & Shafer  
1333 North Buffalo Drive, Suite 210  
Las Vegas, Nevada 89128  
(702) 794-4411  
adows@crdslaw.com