

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

APPENDIX

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APPENDIX A

MEMORANDUM OF THE
NINTH CIRCUIT COURT OF APPEALS

APRIL 22, 2024

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 22 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FEDERAL INSURANCE COMPANY, c/o
ASO CG Technology Holdings
LLC; BRIAN WRIGHT,

Interested Parties - Appellees.

No. 23-438

D.C. No.

2:14-cr-00357-APG-VCF-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Submitted April 17, 2024**

Before: McKEOWN, W. FLETCHER, and BYBEE, Circuit Judges.

This appeal arises out of extended litigation surrounding the seizure of \$40,000 in cash from under Brian Wright's mattress in 2017. After an evidentiary hearing on a prior Rule 41(g) motion brought by Wright for return of the money, the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court found by a preponderance of the evidence that Silverton Casino was the proper owner of the money, and we affirmed. *See United States v. Wright*, 49 F.4th 1221, 1226–27 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 823 (2023). On remand, Federal Insurance Company (“Federal”), Silverton’s subrogee, brought its own Rule 41(g) motion for return of the \$40,000. The district court granted that motion, and Wright again appealed. Because Federal is a proper movant under Rule 41(g) and the district court did not abuse its discretion in exercising equitable jurisdiction over Federal’s motion, we affirm.

Under Rule 41(g), “[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return.” Fed. R. Crim. P. 41(g). Wright argues that Federal, being an entity and not a natural person, is not a “person aggrieved” under the Rule. We review *de novo* this legal issue. *Wright*, 49 F.4th at 1225.

When we interpret the word “person” in the statutory context, we generally conclude that the word’s plain meaning includes entities unless the context of the specific statute or rule indicates otherwise. *See, e.g., Confederated Tribes and Bands of the Yakima Indian Nation v. Alcohol & Tobacco Tax & Trade Bureau*, 843 F.3d 810, 813 (9th Cir. 2016) (“‘When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning.’ . . . Accordingly, relying on the ordinary meaning of the word, the term ‘person’ in [the Internal Revenue

Code] covers entities” (quoting *Smith v. United States*, 508 U.S. 223, 228 (1993)); *see also* 1 U.S.C. § 1 (“[U]nless the context indicates otherwise . . . the words ‘person’ and ‘whoever’ include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”). Thus, we reject Wright’s argument that the “plain meaning” of “person” encompasses only natural persons.

We next turn to the context of Rule 41(g) to determine if “person aggrieved” is intended to include entities like Federal as well as individuals. Rule 41(g) “is concerned with those whose property or privacy interests are impaired by the seizure” of their property for law enforcement purposes. *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1173 (9th Cir. 2010) (en banc) (per curiam), *overruled in part on other grounds as recognized by Demaree v. Pederson*, 887 F.3d 870, 876 (9th Cir. 2018) (per curiam); *see also United States v. Gladding*, 775 F.3d 1149, 1153–54 (9th Cir. 2014) (“[T]he spirit of Rule 41(g) is one of compromise that recognizes that reasonable accommodations might protect both the law enforcement interests of the United States and the property rights of property owners.” (cleaned up)). We have previously held that an entity—even one without an ownership interest in the property at issue—can be “aggrieved” by its deprivation and seek its return through Rule 41(g). *See Comprehensive Drug Testing*, 621 F.3d at 1173–74 (holding that the MLB Players Association was

entitled to bring a Rule 41(g) motion for return of the urine samples of its member players). Because property-owning entities like Federal can be injured by government seizure—just like property-owning individuals—Wright’s reading of Rule 41(g) is incompatible with its context and purpose. Accordingly, Federal was entitled to bring a Rule 41(g) motion for return of its property.

Finally, Wright contends that the district court abused its discretion by exercising equitable jurisdiction over Federal’s motion. The district court held that, because the evidentiary hearing concluded that the \$40,000 recovered from Wright belonged to Federal, Federal “clearly has an interest in and need for the stolen money.” And the district court reasoned that while the government had not disregarded Federal’s constitutional rights, it does not intend to conduct a forfeiture proceeding to determine who gets the money—thus, Federal has no remedy at law for return of its stolen property except for a motion under Rule 41(g).

In *Ramsden v. United States*, we set out four factors that govern whether it is appropriate for a court to exercise its civil equitable jurisdiction when a Rule 41(g) motion is raised in the absence of pending criminal proceedings. *See Ramsden v. United States*, 2 F.3d 322, 324–25 (9th Cir. 1993). They are:

- 1) [W]hether 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 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 grievance.

Id. at 325.

The district court need only “balance” the *Ramsden* factors, not determine that all factors point toward the movant. *Comprehensive Drug Testing*, 621 F.3d at 1173. The district court found that the government did not show callous disregard for Federal’s constitutional rights. And while an economic injury like Federal’s generally “does not support a finding of irreparable harm,” that is because, typically, such an injury can be remedied by other means, such as a damage award. *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991). Here, the only other adequate remedy at law available to Federal is a forfeiture proceeding, and the government has indicated it will not—indeed, it believes it cannot—initiate such a proceeding. Accordingly, Federal had no other adequate remedy at law for return of its property, and the district court did not abuse its discretion when it exercised equitable jurisdiction over Federal’s motion.

AFFIRMED.

APPENDIX B

ORDER GRANTING FEDERAL INSURANCE COMPANY'S
MOTION FOR RETURN OF PROPERTY

MARCH 7, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN WRIGHT,

Defendant.

Case No. 2:14-cr-00357-APG-NJK

**ORDER GRANTING FEDERAL
INSURANCE COMPANY'S MOTION
FOR RETURN OF PROPERTY**

[ECF No. 509]

When Brian Wright was arrested on February 10, 2017, officers seized \$40,000 in cash that had been stuffed into a mattress box spring. Authorities believed the cash was stolen during a robbery of the Silverton Race and Sports Book, although Wright was never charged with that crime.

Wright later moved for return of the money under Federal Rule of Criminal Procedure 41(g). The Government opposed and Magistrate Judge Ferenbach conducted an evidentiary hearing. ECF No. 473. At the hearing, Wright was represented by counsel, testified, and challenged the Government's evidence. *Id.* Judge Ferenbach eventually found that the Government had

proven by a preponderance of the evidence that the \$40,000 belongs to the Silverton Sportsbook (sic) and not to Wright. The government represented at the hearing that the \$40,000 would be returned to the Silverton's insurance company if the Court determines that Wright is not the owner of the property. The government's evidence that the \$40,000 is proceeds from the Silverton robbery is reasonable under all the circumstances and the government has proven a legitimate reason for retaining the \$40,000 as contraband.

ECF No. 478 at 7-8. I accepted Judge Ferenbach's findings, conclusions, and recommendations (ECF No. 485), and the Ninth Circuit affirmed (ECF No. 503).

1 The owner of the Silverton Race and Sports Book assigned the right to recover the
2 robbery proceeds to its insurer, Federal Insurance Company. Federal now moves for return of
3 the cash under Rule 41(g). ECF No. 509. The Government does not oppose Federal's motion
4 (ECF No. 510) but Wright does (ECF No. 511).

5 "[D]istrict courts have the power to entertain motions to return property seized by the
6 government when there are no criminal proceedings pending against the movant. . . . These
7 motions are treated as civil equitable proceedings and, therefore, a district court must exercise
8 caution and restraint before assuming jurisdiction." *Ramsden v. United States*, 2 F.3d 322, 324
9 (9th Cir. 1993) (simplified). The *Ramsden* court identified four factors district courts should
10 consider in addressing a Rule 41(g) motion where the movant has not been indicted:

11 1) whether the Government displayed a callous disregard for the constitutional rights of
12 the movant;

13 2) whether the movant has an individual interest in and need for the property he wants
14 returned;

15 3) whether the movant would be irreparably injured by denying return of the property;
16 and

17 4) whether the movant has an adequate remedy at law for the redress of his grievance.

18 *Id.* at 325. These factors favor assuming jurisdiction and returning the money to Federal.

19 As Magistrate Judge Ferenbach concluded, the \$40,000 belongs to the Silverton Race and
20 Sports Book and not to Wright. ECF No. 478 at 7. I see no reason (and Wright offers none) to
21 disregard the results of that evidentiary hearing. Federal clearly has an interest in and need for
22 the stolen money.

1 The Government has not disregarded Federal's constitutional rights, but the Government
2 does not intend to conduct—and believes it cannot now conduct—a forfeiture proceeding to
3 resolve who gets the money. *See* ECF No. 509-4 at 2. Thus, Federal has no effective, efficient,
4 or adequate remedy at law to recover the stolen funds other than to move under Rule 41(g). And
5 if it is not able to recover the funds in this fashion, it will be irreparably injured. Thus, the
6 *Ramsden* factors favor returning the funds to Federal.

7 I THEREFORE ORDER that Federal Insurance Company's motion for return of property
8 **(ECF No. 509) is granted.** I order the United States to transfer to Federal Insurance Company
9 the \$40,000 in cash that was seized in connection with the arrest of Brian Wright on February 10,
10 2017. The United States will file a notice or receipt showing the funds have been transferred to
11 Federal.

12 Dated this 7th day of March, 2023.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE