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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

16 STEPHEN LARA,
17 Movant,
18 v.

Case No.

19 U.S. DRUG ENFORCEMENT
ADMINISTRATION; UNITED STATES OF
AMERICA; ANNE MILGRAM,
20 Administrator, U.S. Drug Enforcement
Administration, sued in her official capacity;
21 Agent Shane Murray, U.S. Drug Enforcement
Administration, sued in his official capacity,

**RULE 41(g) MOTION FOR RETURN OF
PROPERTY**

22 Respondents.

RULE 41(g) MOTION FOR RETURN OF PROPERTY

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26 This motion for return of property challenges the U.S. Drug Enforcement Administration’s
27 (“DEA”) ongoing seizure of \$86,900 in U.S. currency belonging to Stephen Lara. *See* Fed. R.
28 Crim. P. 41(g).

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1 The Nevada Highway Patrol (“NHP”) originally seized Lara’s money on February 19, 2021,
2 when Lara was driving from his residence in Lubbock, Texas to visit his daughters in California.
3 Lara was neither arrested nor charged with any crime. Instead, NHP used civil forfeiture laws to
4 seize Lara’s life savings and handed the money to DEA for the seizure to be “adopted” by the
5 federal agency. (*See* Exhibit 5, (Notice of Seizure, dated April 5, 2021).) DEA continues to hold
6 Lara’s money without filing a complaint to forfeit the property or charging Lara with any crime, in
7 violation of the Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”). That law requires the
8 government to return seized property, initiate civil forfeiture proceedings, or initiate criminal
9 proceedings within 90 days of the date on which the seizing agency received the property owner’s
10 demand for federal court proceedings. 18 U.S.C. § 983(a)(3)(A)-(B). In this case, DEA’s deadline
11 expired no later than July 26, 2021, without the government doing any of those things. Because
12 the government missed the 90-day deadline, CAFRA prohibits any further litigation over the
13 property—in civil or criminal proceedings—and both CAFRA and Attorney General regulations
14 require the government to “promptly” return the property. *Id.*; *see also* 28 C.F.R. § 8.13(b). This
15 Court should order that remedy without delay, for the reasons set forth below.

16 This Motion is made based on the Memorandum of Points and Authorities, exhibits,
17 Declaration of Movant Stephen Lara, Fed. R. Crim. P. 41(g), and any oral argument this Court
18 orders.

19 Dated: August 31, 2021

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Stephen Lara hereby moves this Court for an order under Federal Rule of Criminal
3 Procedure 41(g) directing the Respondents U.S. Drug Enforcement Administration, the United
4 States of America, Administrator Anne Milgram, and Agent Shane Murray to return \$86,900 in
5 U.S. currency that was seized from Lara by the Nevada Highway Patrol (“NHP”)—and promptly
6 handed over to U.S. Drug Enforcement Administration (“DEA”)—near Sparks, Nevada, on
7 February 19, 2021. In the alternative, Movant requests an order to the same effect, based on this
8 Court’s equitable powers. Movant also requests all further relief in law or equity to which he may
9 show himself entitled.

10 **I. FACTS AND PRODCEDURAL HISTORY**

11 Movant Stephen Lara is a retired Marine who was honorably discharged after over 16 years
12 of service. (*See* Exhibit 1, Decl. of Stephen Lara in Supp. Of Rule 41(g) Mot. For Return of Prop.)
13 ¶ 3 (hereinafter “Lara Decl.”).) He is the father of two daughters, who at the time of the events at
14 issue lived with his ex-wife in a small town in California near Reno, Nevada. (*Id.* ¶ 4.) In February
15 2021, Lara was living with his parents in Lubbock, Texas, while saving for a house in Lubbock
16 where he hoped his daughters would move. (*Id.* ¶ 5.) Lara made monthly trips from Lubbock to
17 California to spend time with his daughters. (*Id.* ¶ 6.)

18 It was one such trip to visit his daughters that gives rise to this case. Lara made the trip with
19 the \$86,900 in cash that is the subject of this motion—his life savings, which he was holding in the
20 hopes of purchasing a house for his daughters. (*Id.* ¶ 8.) Lara has kept his savings in cash for as
21 long as he can remember, although all his income goes through banks before he withdraws it. (*Id.*
22 ¶ 9.) Lara took his savings with him on the trip because there had been several property crimes in
23 his parents’ neighborhood, and his parents planned to be out of town for a portion of the time Lara
24 was away; thus, he did not feel comfortable leaving that much money behind. (*Id.* ¶ 10.) Lara’s
25 father rented him a car for the trip after Lara discovered that one of the wheels on his personal car
26 was broken such that the tire could not hold air. (*Id.* ¶ 11.) Lara took the broken wheel with him
27 to have it fixed at a shop he had used and trusted along the route. (*Id.* ¶ 12.)

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1 Lara’s trip from Texas to California was uneventful until he was approaching Sparks,
2 Nevada. An NHP car began following him for no reason that Lara could discern. (*Id.* ¶ 13.) After
3 Lara safely passed a tanker truck that was moving slowly in the right lane, the patrol car pulled him
4 over. (*Id.* ¶ 14.) The officer who pulled Lara over was friendly, complimenting Lara for driving
5 “great” and thanking him for driving “safely under the speed limit.” (*Id.* ¶ 15.) The officer told
6 Lara that NHP was conducting a public-information campaign to help drivers understand little-
7 known traffic violations. (*Id.*) He told Lara he had made an unsafe lane change too close to a
8 tanker truck. (*Id.*)

9 It was then that the routine traffic stop took a turn. The officer asked Lara to get out of the
10 vehicle and walked Lara to the patrol car, while more officers arrived. (*Id.* ¶¶ 16, 19.) Lara candidly
11 and patiently answered a series of question about his travels, the purpose of his trip, his military
12 service, and other topics. (*Id.* ¶ 17.) Lara volunteered that his life savings was in the rental car.
13 (*Id.* ¶ 18.) Lara gave the officers permission to search his vehicle. (*Id.* ¶ 20.) They found no drugs,
14 weapons, or anything illegal. (*Id.*) The officers were suspicious of the damaged wheel in the trunk,
15 but they carefully inspected it—even using a device like a stud-finder—and confirmed there was
16 nothing concealed inside. (*Id.* ¶ 21.) What they did find, though, was Lara’s money, in the
17 backpack where he told them it would be, in a Ziploc bag, with receipts showing three years’ worth
18 of bank withdrawals. (*Id.* ¶ 22.)

19 Then, a sergeant from NHP arrived. (*Id.* ¶ 23.) He had Lara’s money placed in a nearby
20 field and instructed the officer who pulled Lara over to have his dog search for it. (*Id.* ¶ 24.) The
21 dog found the money and purportedly alerted to the presence of drugs. (*Id.*) The sergeant then
22 ordered that the money be seized. (*Id.* ¶ 25.) At Lara’s urging, the officers inspected his ATM
23 receipts and even took pictures. (*Id.* ¶ 26; *see also* Ex. 2, Lara Receipts.) The money, bundled
24 together using his daughter’s hair ties, was placed in an evidence bag. (*Id.* ¶ 27.) Although no
25 DEA agent was present, Lara was given a receipt telling him to contact a DEA agent. (*Id.* ¶ 28; *see*
26 *also* Ex. 3, NHP Seizure Receipt.) Lara was then told he was free to go. (*Id.* ¶ 29.)

27 Left to complete his trip without any of his life savings, Lara called his brother who wired
28 him money. (*Id.* ¶ 31.) Lara visited the wheel repair shop in Sparks as he had originally planned,

1 to have the damaged wheel fixed. (*Id.* ¶ 32; *see also* Ex. 4, Sierra Wheel Auto Receipt.) Lara then
 2 completed his trip, visited his daughters, and returned to Lubbock. (*Id.* ¶ 33.)

3 Lara called the DEA agent listed on the receipt, Agent Murray, both shortly after the stop
 4 and again when he returned to Lubbock. (*Id.* ¶ 34.) Lara thought the seizure was a
 5 misunderstanding that could be cleared up over the phone. (*Id.*) But the agent treated him like a
 6 criminal, and Lara ended his discussions with the agent and has not spoken to DEA since. (*Id.*
 7 ¶ 35.) Lara later received a formal notice from DEA, styled a Notice of Seizure and Initiation of
 8 Administrative Forfeiture Proceedings, dated April 5, 2021. (*Id.* ¶ 36; *see also* Ex. 5, Notice of
 9 Seizure, dated April 5, 2021.)

10 Following the instructions on the notice, Lara promptly mailed DEA a claim to his money
 11 on April 21, 2021. (Lara Decl. ¶ 37; *see* Ex. 6, Verified Claim, dated April 21, 2021.) The Postal
 12 Service’s return receipt confirmed that the claim was received on April 26, 2021. (Lara Decl. ¶ 38;
 13 Ex. 7, USPS Return Receipt, dated April 26, 2021.) DEA then sent Lara a letter the following
 14 month, further confirming that the agency had received his claim. (Lara Decl. ¶ 39; Ex. 8, DEA
 15 Letter, dated May 21, 2021.)¹ Since then, Lara has received no further communication from DEA.
 16 (Lara Decl. ¶ 40.) With the assistance of counsel, Lara has searched for filings by the government
 17 seeking to forfeit his money, extend the time to seek forfeiture, or initiate a criminal case. (*Id.*
 18 ¶ 41.) There do not appear to be any such filings in this District, where the seizure occurred. (*Id.*)
 19 This motion followed.

20 **II. ARGUMENT**

21 CAFRA sets a strict 90-day deadline on the government to pursue a forfeiture complaint or
 22 criminal proceedings after receiving a claim to property. *See* 18 U.S.C. § 983(a)(3)(A)–(B). If the
 23 government fails to comply with that deadline, it must promptly return the property and is forbidden
 24 from seeking to forfeit the property in the future. *Id.* § 983(a)(3)(B). The government here blew
 25 through its 90-day deadline—which expired no later than July 26, 2021—and it is thus required to
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27
 28 ¹ Among other things, the letter stated that “correspondence to DEA regarding this matter . . . will be deemed *filed* . . . on the **business** date it is actually received . . .” Ex. 8, DEA Letter, at 175 (emphasis in the original.) April 26—the date on which Lara’s claim was delivered—was a Monday and a business day.

1 return Lara’s money. Longstanding Ninth Circuit precedent makes clear that a motion under Rule
 2 of Criminal Procedure 41(g) is the appropriate mechanism for somebody in Lara’s position to
 3 secure the return of his property after the limitations period has expired for the government to
 4 pursue forfeiture of property it has seized. The Court should grant the motion and order the
 5 government to promptly return Lara’s money to him.

6 **A. The Government Violated The Deadlines Set By CAFRA And Is**
 7 **Therefore Obligated To Return Lara’s Money.**

8 With the Civil Asset Forfeiture Reform Act of 2000, Congress enacted several reforms
 9 intended to prevent abuse of the Nation’s forfeiture laws. Among the most important of these
 10 reforms was establishing strict, mandatory deadlines for the government to initiate forfeiture cases.
 11 *See* 18 U.S.C. § 983(a).

12 Under CAFRA, the government has 90 days after seizing property to send written notice to
 13 interested parties in a case, like this one, where the “property is seized by a State or local law
 14 enforcement agency and turned over to a Federal law enforcement agency for the purpose of
 15 forfeiture under Federal law.” *Id.* § 983(a)(1)(A). Once that formal notice is sent, property owners
 16 have a limited time in which to file a claim identifying the specific property they are claiming and
 17 stating their legal interest in the property. *Id.* § 983(a)(2). The government then has 90 days from
 18 the date the claim is received by the seizing agency in which to return the property, file a civil
 19 forfeiture complaint, or obtain a criminal indictment that includes an allegation that the property is
 20 subject to forfeiture. *Id.* § 983(a)(3)(A)–(B).

21 The 90-day deadline “was considered by the sponsors of CAFRA to be one of its most
 22 important reforms.” Stefan D. Cassella, *ASSET FORFEITURE LAW IN THE UNITED STATES* § 7-4(a)
 23 (2d ed. 2013) (citing H.R. Rep. No. 106-192 (1999)). Congress was crystal clear about the
 24 consequences of missing the deadline: [1] “the Government *shall* promptly release the property
 25 pursuant to regulations promulgated by the Attorney General, and [2] *may not* take any further
 26 action to effect the civil forfeiture of such property in connection with the underlying offense.” 18
 27 U.S.C. § 983(a)(3)(B) (emphases added). Under the first of these provisions, once the 90-day
 28 deadline has elapsed, the Attorney General requires that a seizing agency “shall promptly notify the

1 person with a right to immediate possession of the property, informing that person to contact the
 2 property custodian within a specified period for release of the property.” 28 C.F.R. § 8.13(b).
 3 Under the second provision, the expiration of the deadline means that “the civil forfeiture of the
 4 property in connection with the particular underlying offense is forever barred.” *United States v.*
 5 *Real Property Located at 475 Martin Lane*, 545 F.3d 1134, 1141 (9th Cir. 2008); *see also United*
 6 *States v. Marolf*, 173 F.3d 1213, 1217 (9th Cir. 1999) (explaining that because “civil forfeiture
 7 statutes . . . impose quasi-criminal penalties without affording property owners all of the procedural
 8 protections afforded criminal defendants,” “forfeitures should be enforced only when within both
 9 letter and spirit of the law” (internal quotation marks and citations omitted)).

10 In this case, the government did not comply with CAFRA’s 90-day deadline. Lara received
 11 a DEA notice of seizure on April 5, 2021. (*See Ex. 5.*) He promptly sent DEA a verified claim to
 12 his money on April 21. (*See Ex. 6.*) This was within the time allotted to Lara to file a claim. *See*
 13 18 U.S.C. § 983(a)(2)(B) (requiring a claim to be filed “not later than the deadline set forth in a
 14 personal notice letter”) (*See also Ex 5 at 167* (Notice of Seizure) (setting 30-day deadline from
 15 April 5).) The Postal Service confirmed that the claim was delivered on April 26. (*See Ex. 7,*
 16 (Return Receipt).) Lara received a letter from DEA further confirming that it had received his
 17 claim. (*See Ex. 8* (DEA Letter).) Given that DEA received Lara’s claim on April 26, its 90-day
 18 deadline to file a forfeiture complaint or return the money expired no later than July 26, 2021.² *See*
 19 18 U.S.C. § 983(a)(3)(A). More than a month later, it still has done neither.

20 Nor did the government do any of the things that CAFRA requires a seizing agency to do
 21 to extend the deadline. It did *not* “obtain a criminal indictment containing an allegation that the
 22 property is subject to forfeiture.” *Id.* § 983(a)(3)(B)(ii)(I). It did *not* “take the steps necessary to
 23 preserve its right to maintain custody of the property as provided in the applicable criminal
 24 forfeiture statute.” *Id.* § 983(a)(3)(B)(ii)(II). It did *not* return the money to Lara “pending the filing
 25 of a complaint.” *Id.* § 983(a)(3)(A). It did *not* obtain an extension by “agreement of the parties.”
 26 *Id.* Nor—to the best of Lara’s knowledge—did the government move this Court to “extend the
 27
 28

² 90 days from April 26 was July 25, a Sunday.

1 period for filing a complaint for good cause shown.” *Id.* Now that the 90-day window has closed,
 2 the government cannot do any of these things. *Id.* § 983(a)(3)(A)–(B).

3 The remedy for the government’s failure to commence federal court proceedings is plainly
 4 spelled out in CAFRA: “[T]he Government shall promptly release the property.” *Id.*
 5 § 983(a)(3)(B). Accordingly, Lara’s motion should be granted without delay.

6 **B. A Motion Under Rule 41(g) Is The Appropriate Means To Compel The**
 7 **Government To Return Lara’s Money.**

8 A motion under Federal Rule of Criminal Procedure 41(g) is the appropriate means for
 9 seeking return of property when the government fails to commence a forfeiture proceeding in a
 10 timely manner. The rule provides that a “person aggrieved by an unlawful search and seizure of
 11 property or by the deprivation of property may move for the property’s return.” Fed. R. Crim. P.
 12 41(g). Such a motion “must be filed in the district where the property was seized.” *Id.* And “[t]he
 13 court must receive evidence on any factual issue necessary to decide the motion.” *Id.*

14 Courts—including the Ninth Circuit—have held that Rule 41(g) gives property owners an
 15 equitable remedy when the government fails to initiate civil forfeiture proceedings. *See, e.g., Omid*
 16 *v. United States*, 851 F.3d 859, 862–63 (9th Cir. 2017) (explaining that Rule 41(g) is an appropriate
 17 vehicle to seek return of property when no criminal case has been filed); *United States v. Ibrahim*,
 18 522 F.3d 1003, 1007 (9th Cir. 2008) (explaining a Rule 41(g) motion is a proper vehicle to challenge
 19 an invalid forfeiture); *Marolf*, 173 F.3d at 1215–16 (adjudicating case under Rule 41(e) where the
 20 statute of limitations for judicial forfeiture had expired);³ *see also United States v. Sims*, 376 F.3d
 21 705, 708 (7th Cir. 2004) (“The proper office of a Rule 41(g) motion is, before any forfeiture
 22 proceedings have been initiated, or before any criminal charges have been filed, to seek the return
 23 of property . . . held an unreasonable length of time without the institution of proceedings that
 24 would justify the seizure and retention of the property.”); Cassella, ASSET FORFEITURE LAW IN THE
 25 UNITED STATES § 3-11(c) (collecting cases holding that “Rule 41(g) is the appropriate vehicle for
 26 seeking the return of property never forfeited”).

27
 28 ³ What was then Rule 41(e) “was changed to Rule 41(g) in 2002”; the two versions are
 substantively identical, and the rule was “amended for stylistic purposes only.” *United States v.*
Kaczynski, 416 F.3d 971, 973 n.3 (9th Cir. 2005).

1 In Rule 41(g) cases brought outside a criminal proceeding, such as here, the motion is
2 “treated . . . as a civil complaint governed by the Federal Rules of Civil Procedure.” *Ibrahim*, 522
3 F.3d at 1007. “[T]he motion is treated as a petition for civil equitable relief.” *Omidi*, 851 F.3d at
4 863 (citing *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1172–74 (9th Cir.
5 2010) (en banc) (per curiam)); accord *United States v. Martinson*, 809 F.2d 1364, 1366–67 (9th
6 Cir. 1987).

7 In this case, the limitations period has expired, and therefore the government cannot initiate
8 forfeiture proceedings. As a result, Lara has no means of seeking the return of his property other
9 than Rule 41(g)—he cannot win his money back in forfeiture proceedings that will never
10 commence. This motion is therefore the most appropriate vehicle to receive judicial relief for the
11 government’s continued seizure of Lara’s property past the expiration of the CAFRA limitations
12 period.

13 **C. The Court Should Order DEA To Return Lara’s Life Savings Without**
14 **Conditions.**

15 Finally, Rule 41(g) provides that “[i]f it grants the motion, the court must return the property
16 to the movant, but may impose reasonable conditions to protect access to the property and its use
17 in later proceedings.” Fed. R. Crim. P. 41(g). This provision applies in cases where the movant is
18 asking for the return of seized property that may be relevant to ongoing proceedings—for example,
19 if that property may be used as evidence or subject to forfeiture. In such cases, a court may place
20 conditions on the return of the property, such as requiring the movant retain possession of it, to
21 ensure that that the property is available should it become needed in the later proceedings.

22 In this case, however, there will be no “later proceedings.” As explained, the government
23 “may not take any further action to effect the civil forfeiture of [Lara’s money] in connection with
24 the underlying offense.” 18 U.S.C. § 983(a)(3)(B). Accordingly, there are no “reasonable
25 conditions” that the Court could impose. The only reason for attaching conditions on the return of
26 Lara’s money would be to protect the government from later prejudice, by preserving “access to
27 the property and its use in later proceedings.” Fed. R. Crim. P. 41(g). But where, as here, the
28 government is time-barred from any “later proceedings,” there is no legitimate basis for giving the

1 government “access” to or “use” of Lara’s money. Just the opposite: By its own actions, the
2 government has forfeited any legal entitlement that it may ever have had to Lara’s money.⁴ Indeed,
3 the law affirmatively requires DEA to return Lara’s money promptly now that the 90-day deadline
4 has elapsed.

5 Accordingly, the Court should order the return of the money without any conditions.

6 **III. CONCLUSION**

7 The Court should grant Lara’s motion and order the government to return all \$86,900 in
8 United States currency, with interest.

9 DATED this 31st day of August 2021.

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⁴ In fact, the government never had any legitimate entitlement to the money, as the Nevada Highway Patrol agents unreasonably seized the money without probable cause.