

1 Benjamin N. Gluck - State Bar No. 203997
 bgluck@birdmarella.com
 2 Nicole R. Van Dyk - State Bar No. 261646
 nvandyk@birdmarella.com
 3 Ashley D. Bowman - State Bar No. 286099
 abowman@birdmarella.com
 4 Naomi S. Solomon - State Bar No. 321357
 nsolomon@birdmarella.com
 5 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
 DROOKS, LINCENBERG & RHOW, P.C.
 6 1875 Century Park East, 23rd Floor
 Los Angeles, California 90067-2561
 7 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

8 Attorneys for Plaintiff Charles Coe

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
 11

13 Charles Coe,
 14 Plaintiff,
 15 vs.
 16 UNITED STATES OF AMERICA;
 TRACY L. WILKISON (OFFICIAL
 17 CAPACITY), KRISTI KOONS
 JOHNSON (OFFICIAL CAPACITY)
 18 Defendants.
 19

CASE NO. 2:21-CV-03019-RGK-MAR
**NOTICE OF MOTION AND
 MOTION FOR RETURN OF
 PROPERTY PURSUANT TO FED.
 R. CRIM. P. 41(g)**

Date: June 1, 2021
 Time: 9:00 a.m.
 Courtroom: 850

*[Filed Concurrently with Declarations
 of Benjamin G. Gluck and Nicole R.
 Van Dyk; and Proposed Order]*

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 1, 2021, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard in the courtroom of the Honorable R. Gary
4 Klausner, United States District Court Judge, located at 350 W. 1st St., Los Angeles,
5 CA 90012, Plaintiff Charles Coe (“Plaintiff”) will and hereby does move the Court
6 for an order for the immediate return of property pursuant to Federal Rule of
7 Criminal Procedure 41(g) and that it be done without requiring Plaintiff to surrender
8 his Fifth Amendment rights.

9 Plaintiff’s counsel initiated a meet-and-confer conference with the
10 Government by letters dated April 20, 2021, and April 27, 2021, and met and
11 conferred telephonically with counsel for the Government on April 28, 2021.

12 This Motion is based on this Notice, the accompanying memorandum of
13 points and authorities, the concurrently filed declarations of Benjamin N. Gluck and
14 Nicole R. Van Dyk, all other pleadings and papers on file in this action, and such
15 other documents, oral evidence, or argument as may be presented before or at the
16 time of the hearing on this Motion or of which the Court may take notice.

17

18 DATED: May 3, 2021

Benjamin N. Gluck
Nicole R. Van Dyk
Ashley D. Bowman
Naomi S. Solomon
Bird, Marella, Boxer, Wolpert, Nessim,
Drooks, Lincenberg & Rhow, P.C.

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By: /s/ Benjamin N. Gluck
Benjamin N. Gluck
Attorneys for Plaintiff

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I.

INTRODUCTION

The following facts are not subject to dispute:

- Plaintiff leased Box No. 904 at U.S. Private Vaults. Plaintiff has the key and the lease receipt to prove this. The box contained cash only, with no papers or other material that would identify its owner.
- On about March 22, 2021, the Government took possession of the contents of Box 904 and has yet to return them.
- Since March 22, 2021, counsel has contacted the FBI, submitted a claim via the FBI’s web page, written the lead AUSA, and filed the above-captioned lawsuit, all in an effort to obtain the return of Plaintiff’s possessions. Counsel received no response.
- The warrant related to USPV makes clear, and the Government’s own statements concede, that the Government does not have any legal basis to continue holding Plaintiff’s property.

Together, these facts indisputably mean that Plaintiff is entitled to the immediate return of his possessions.

Federal Rule of Criminal Procedure 41 permits a party aggrieved by a search or seizure to move for the return of property. Fed. R. Crim. Pro. 41(g). This Rule, and the Court’s inherent equitable authority, also empowers the Court to fashion appropriate relief related to the retention and return of property. This easily includes orders regarding how the property should be returned. Specifically, Plaintiff should not be required to waive any Fifth Amendment rights in order to obtain his property. Indeed, even if the Court determined that Plaintiff needed to disclose further information, Plaintiff has offered to disclose any such information to a filter team, which would avoid any potential encroachment on Plaintiff’s Fifth Amendment rights. But the Government has ignored all of Plaintiff’s overtures and refuses to give any indication that it will ever return the property.

The facts and law are clear: The Government admits it has no legal authority authorizing the continued retention of Plaintiff’s possessions. Plaintiff can present the key and rental receipt. Continuing to retain Plaintiff’s possessions without

1 authority would represent a callous disregard for Plaintiff’s rights and the Court
2 should order them returned.

3 **II.**

4 **FACTUAL BACKGROUND**

5 **A. USPV’s Private Safe Deposit Box Service**

6 Since 2011, U.S Private Vaults has offered private safe deposit boxes for rent
7 at its public facility at 9182 West Olympic Blvd. in Beverly Hills.¹ The business
8 was advertised by prominent signage and an elaborate and detailed website.

9 USPV’s Olympic Blvd. facility housed about 1000 safe deposit boxes, each
10 with its own key. USPV made them available to the public on yearly leases and
11 provided security and insurance for the contents. USPV did not keep a key to any
12 rented boxes, which means that the only person with the ability to open the box was
13 the renter or the renter’s authorized designee.² The company offered biometric
14 access to box-holders, including through retinal scan. According to USPV’s web
15 site, USPV provided several advantages unavailable at bank safe deposit boxes
16 (including insurance, quick access, no “bank holidays,” and a wider selection of box
17 sizes), and its security was handled by ADT.

18 Though the Government has made various accusations about the supposedly
19 nefarious intent of renters at USPV, the Government does not and clearly cannot
20 claim that all renters acted with bad intent. Indeed, over the past two weeks or so,
21 the Government has returned hundreds of thousands of dollars in gold, silver, and
22 cash just to clients of undersigned counsel. (Declaration of Benjamin N. Gluck
23 (“Gluck Decl.”) ¶ 3.) These clients include retirees, small and large business
24 owners, and various and sundry other individuals who used USPV for all kinds of
25

26 ¹ See <https://www.usprivatevaults.com>.

27 ² See <https://www.usprivatevaults.com/uspv-vs-bank-safe-deposit-box>.

1 reasons.³ (*Id.*) Obviously, the Government does not – and cannot – contend that
2 merely using USPV to house cash and valuables creates grounds for seizure.

3 **B. Plaintiff’s box at USPV**

4 Charles Coe leased Box 904 at USPV. It contained only currency. During
5 the search and seizure at USPV, the Government seized Coe’s possessions from Box
6 904. Since that date, Coe, through undersigned counsel, has contacted the FBI at a
7 telephone number provided by agents during the search, submitted a claim through
8 the FBI-created website for USPV box holders, written directly to Andrew Brown,
9 the lead AUSA on this matter, and filed the instant lawsuit. (Gluck Decl. ¶ 4.) The
10 Government did not respond to these claims or communications.⁴

11 Plaintiff has the key to Box 904, and he also has a copy of the rental receipt
12 substantiating his lease of the box at the time the Government seized its contents.
13 Plaintiff is also prepared to accurately describe the contents of Box 904.

14 **C. The Government’s position(s) with respect to the return of property**

15 In light of the filings in several cases and statements by its spokesman, the
16 Government’s position has become clear.

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20 ³ Counsel has spoken with renters who used USPV because they were referred to it
21 by banks who had no room in their vaults, because it was next door to a sushi
22 restaurant they frequented, because it was on the route of their commute to the
office, and other mundane reasons. (Gluck Decl. ¶ 3.)

23 ⁴ Indeed, the Government did not respond to counsel’s written April 20, 2021,
24 request to meet-and-confer per the Court’s standing order. On April 27, 2021,
25 counsel sent another letter setting out the intended content of this Motion and noting
26 again the Court’s meet-and-confer deadline. In response, Mr. Brown and counsel
27 met and conferred by telephone on April 28. Mr. Brown listened to counsel’s
28 description of this Motion and counsel’s reasoning but did not substantively respond
and did not provide any further information about how or when Mr. Coe could
receive his possessions.

1 (Gluck Decl. ¶ 5, Exh. A. (emphasis added).)

2 The warrant thus expressly declines to grant the government any authority to
3 keep Plaintiff’s possessions. Instead, *at most* the warrant authorizes *only* (a) an
4 “inventory” and (b) an “inspection” to identify the owner. These limitations are also
5 set out in the affidavit in support of the warrant:

6 **T. NOTIFYING USPV CUSTOMERS HOW TO CLAIM THEIR PROPERTY**
7 108. The search and seizure warrants the government seeks list
8 the nests of safety deposit boxes at USPV among the items to be
9 seized. These nests of safety deposit boxes are evidence and
10 instrumentalities of USPV’s criminality. The warrants authorize the
11 seizure of the nests of the boxes themselves, not their contents. By
12 seizing the nests of safety deposit boxes, the government will
13 necessarily end up with custody of what is inside those boxes
14 initially. Agents will follow their written inventory policies to
15 protect their agencies from claims of theft or damage to the contents
16 of the boxes, and to ensure that no hazardous items are unknowingly
17 stored in a dangerous manner. Agents will attempt to notify the
18 lawful owners of the property stored in the boxes how to claim their
19 property, such as by posting that information on the internet or at
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20 USPV itself, or by contacting the owners directly. In order to
21 notify the owners directly, agents will, in accordance with their
22 policies regarding an unknown person’s property, look for contact
23 information or something which identifies the owner.⁴⁰ (USPV
24 recommends that box renters include their or their designees’
25 telephone numbers on a note in the box in the event that USPV removes
26 the contents for nonpayment of rental fees.)

26 _____
27 ⁴⁰ The FBI policy regarding taking custody of an unknown person’s
28 property provides, in part, that agents “inspect the property as
29 necessary to identify the owner and preserve the property for
30 safekeeping.” The inspection “should extend no further than
31 necessary to determine ownership.”
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1 (Gluck Decl. ¶ 6, Exh. B. (emphasis added).)

2 The Government has also asserted to this Court (and supported with sworn
3 declarations) that it completed all of the searches authorized by the warrant no later
4 than March 26, 2021:

5 The government obtained a sealed criminal seizure warrant for,
6 among other things, the nests of safety deposit boxes located at
7 USPV. During the week of March 22 through 26, federal agents
8 executed the seizure warrant and removed the nests of safety deposit
9 boxes, inventorying their contents in the process, as authorized in
10 the seizure warrant and discussed in the affidavit supporting it.
11 (Brown Decl. ¶ 3). The inventory was completed on site. Agents
12 left USPV on March 26, 2021. While the anonymous plaintiff declines
13 to allege which safety deposit boxes are his, all the inventory

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17 searches were completed by March 26, 2021, so his property will not
18 be searched again, absent additional justification, such as a search
19 warrant for a specific box or boxes. (Bailey Dress Decl. ¶ 2). The
20

21 *Doe v. United States*, 21-cv-2803-RGK-MAR (Doc. 15).

22 Between the warrant and the Government’s statements, two points cannot be
23 disputed: (1) the Government was *never* given authorization to *retain* Plaintiff’s
24 property for any investigatory purpose, and (2) any authorized inventory and
25 inspection was completed over a month ago.⁶
26

27 ⁶ Plaintiff reserves all arguments based on the plainly dubious nature of the
28 Government’s scheme here. Put simply, the Government claims that, because it was

1 **2. The Government’s return of property to various claimants**

2 Undersigned counsel represents a number of safe deposit box lessees whose
3 property was taken by the Government. Over the past two to three weeks, the
4 Government has returned property to some of these box holders. (Gluck Decl. ¶ 3.)
5 The Government has *not* required that the lessee present identification or even to be
6 present at the return. (Declaration of Nicole R. Van Dyk (“Van Dyk Decl.”) ¶ 3.)
7 Instead, the Government has relied on counsel’s presentation of the key that works
8 in the lock the Government removed from that lessee’s box. (*Id.*) Some of
9 counsel’s clients have received many hundreds of thousands of dollars in returned
10 cash, gold, or jewelry. (*Id.*)

11 Despite this, the Government has again and again refused to say that it will
12 return Plaintiff’s possessions at all.

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16 intent on forfeiting USPV’s rack of used metal boxes worth at most several hundred
17 dollars, it “had no choice” but to take custody of, inventory, and inspect, easily more
18 than \$50,000,000 in possessions belonging to some 800 unrelated box holders. This
19 appears to be an enormous tail wagging a vanishingly small dog. Indeed, because
20 the indictment’s forfeiture provisions are actually based on conduct not by USPV
21 but by the separate jewelry business that operated at the same location, the tail
22 seems connected to the wrong dog entirely. *See United States v. U.S. Private*
23 *Vaults*, 21-cr-00106-MCS (Doc. 1) (indictment alleging forfeiture-triggering activity
done by *Gold Business* that shared location with USPV). A reasonable person could
easily conclude that taking and searching the *contents* of the boxes was the true
purpose of the USPV seizure, not just an unintended but unavoidable byproduct as
the Government seeks to portray and justify it.

24 This is further supported by the curious nature of the seizure of the “nests.” As
25 noted, these nests are not inherently valuable, the Government did not seize *all* of
26 USPV’s fixtures, and most curiously, the first thing the Government did when
27 seizing the nests was to destroy their (even limited) value by prying the front frame
28 with all the doors off each nest. Why would the Government seek to seize *only* the
nests and then immediately destroy any value they had? As noted, the seizure of the
nests does not appear to be the Government’s *true* purpose here.

1 **3. The Government’s announcements about its investigatory**
2 **intentions**

3 Though the Government has refused to say when or how it will return
4 Plaintiff’s possessions, it has made pellucid that it wants to leverage the “inventory”
5 and “inspection” seizures by using them for criminal investigatory purposes –
6 despite the warrant’s admonition that no criminal search or seizure of the contents of
7 the safe deposit boxes was authorized. For example, the Government has repeatedly
8 stated to this Court:

9 To be sure, some of the customers of USPV are honest citizens to
10 whom the government wishes to return their property. But the majority
11 of the box holders are criminals who used USPV’s anonymity to hide
12 their ill-gotten wealth. *To distinguish between honest and criminal*
13 *customers, the government must examine the specific facts of each box*
14 *and each claim The Executive Branch is tasked with investigating*
15 *criminal leads. The public interest demands that the government*
16 *pursue these leads vigorously.*

17 *Doe v. United States*, 21-cv-2803-RGK-MAR (Doc. 15) at 10:9-19 (emphasis
18 added); *Does 1-6 v. United States*, 21-cv-3254-RGK-MAR (Doc. 16) at 17:9-18
19 (emphasis added).

20 Despite the impropriety of the Government’s position here, AUSA Brown has
21 been boldly forthright about the Government’s intention from the beginning,
22 explaining to counsel as early as March 24 that “if a deposit box holder identifies
23 himself or herself, the Government will commence a criminal investigation into the
24 holder, including but not limited to determining whether he or she came by the
25 contents in his or her safe deposit box(es) legally.” *Doe v. United States*, 21-cv-
26 2803-RGK-MAR (Doc. 7-2 (Decl. of Ariel Neuman)). Indeed, the official
27 spokesperson for the U.S. Attorney’s Office represented as much to the media,
28 stating that “each box is being considered on a case-by-case basis, and we will
investigate the boxes, or claims made on them, only if there is an indication that the
contents are related to criminal activity.” *Probable Cause or Fishing? US Agents*
Seize Valuables From Safe Deposit, Los Angeles Daily Journal, April 19, 2021.

1 In short, consistent with its assumption that the “majority of box holders are
2 criminals,” the Government freely admits its intent to use any information gleaned
3 in the claims process in order to conduct criminal investigations.

4 III.

5 LEGAL STANDARD

6 A. Standards for motions for return of property

7 Federal Rule of Criminal Procedure 41(g) empowers the Court to order the
8 return of both lawfully and unlawfully seized property. The Rule provides that “[a]
9 person aggrieved by . . . the deprivation of property may move for the property’s
10 return” and “[i]f it grants the motion, the court must return the property to the
11 movant[.]” Fed. R. Crim. P. 41(g). Rule 41(g) offers recourse for *anyone* “whose
12 property or privacy interests are impaired by [a] seizure.” *United States v.*
13 *Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1173 (9th Cir. 2010), *overruled*
14 *in part on other grounds as recognized by Demaree v. Pederson*, 887 F.3d 870, 876
15 (9th Cir. 2018). Even if the original seizure was legal, Rule 41 provides for relief
16 for the continued improper retention of property: “As amended, Rule 41[g] provides
17 that . . . a person whose property has been lawfully seized may seek return of
18 property when aggrieved by the government’s continued possession of it.” Rule 41,
19 1989 Advisory Committee Notes, 124 F.R.D. 397, 427-429.

20 The Court may exercise its equitable jurisdiction to return property seized by
21 the federal government where, as here, there are not criminal proceedings pending
22 against the movant. *United States v. Martinson*, 809 F.2d 1364, 1366-67 (9th Cir.
23 1987). In these circumstances, relief under Rule 41(g) is treated as a civil equitable
24 proceeding, and the Federal Rules of Civil Procedure apply. *See, e.g., United States*
25 *v. Ibrahim*, 522 F.3d 1003, 1008 (9th Cir. 2008).

26 In addition to the power granted by Rule 41, the Court has the inherent
27 equitable power to consider motions for return of property. “This power stems from
28 the court’s disciplinary authority over attorneys appearing before it as officers of the

1 court. This inherent power also extends to federal agents charged with ‘observ[ing]
2 ‘standards for law enforcement’ established by ‘the federal Rules governing
3 searches and seizures.’” *Otonye v. United States*, 903 F. Supp. 357, 360 (E.D.N.Y.
4 1995) (citations omitted).

5 Where no criminal proceeding is pending against a Rule 41(g) movant, the
6 district court considers four factors in deciding whether to exercise jurisdiction
7 under the Rule: whether “(1) the Government displayed a callous disregard for the
8 constitutional rights of the movant; (2) the movant has an individual interest in and
9 need for the property he wants returned; (3) the movant would be irreparably injured
10 by denying return of the property; and (4) the movant has an adequate remedy at law
11 for the redress of his grievance.” *United States v. Kama*, 394 F.3d 1236, 1238 (9th
12 Cir. 2005) (quoting *Ramsden v. United States*, 2 F.3d 322, 324-325 (9th Cir. 1993))
13 (internal citation marks omitted). Not all factors must weigh in the movant’s favor
14 for the district court to exercise jurisdiction; rather, a court engages in a balancing
15 test. *See Ramsden*, 2 F.3d at 326 (exercising jurisdiction and granting Rule 41(g)
16 motion despite finding that the plaintiff had not shown irreparable injury).

17 Once the Court determines its jurisdiction, it determines whether property
18 should be returned to its owner based on “reasonableness under all of the
19 circumstances.” Fed. R. Crim. P. 41(g) Advisory Comm. Notes (1989), 124 F.R.D.
20 397, 427-29; *Ramsden*, 2 F.3d at 326. The standard of proof is preponderance of the
21 evidence. *See Motion to Return Property*, 3A Fed. Prac. & Proc. Crim. § 690 (4th
22 ed.) (citing cases).

23 Importantly, where, as here, the property at issue is not being held as part of a
24 criminal search or seizure, the property owner “is presumed to have a right to [the
25 property’s] return, and the government has the burden of demonstrating that it has a
26 legitimate reason to retain the property.” *United States v. Gladding*, 775 F.3d 1149,
27 1152 (9th Cir. 2014) (citing *United States v. Martinson*, 809 F.2d 1364, 1369 (9th
28 Cir. 1987) (alteration in original). Indeed, a property owner’s Rule 41(g) motion

1 “should presumptively be granted if the government no longer needs the property
 2 for evidence.” *United States v. Kriesel*, 720 F.3d 1137, 1144 (9th Cir. 2013). The
 3 Government can rebut this presumption only with admissible *evidence*, not mere
 4 arguments or assertions by Government attorneys. *See, Gladding*, 775 F.3d at 1153
 5 (“[R]epresentations are not evidence unless adopted by the opponent. The
 6 government failed to submit any evidence [supporting] a ‘legitimate reason’ for
 7 retention of the noncontraband files. For that reason, the government could not have
 8 carried its burden of proof[.]”); *Motion to Return Property*, 3A Fed. Prac. & Proc.
 9 Crim. § 690 (4th ed.) (“If factual issues need to be resolved to decide the motion, the
 10 court must receive evidence on the factual issues.”)

11 **B. Standards for proceeding pseudonymously**

12 The Ninth Circuit has noted that a party may use a pseudonym where
 13 disclosure of the party’s true name would be harmful: “In this circuit, we allow
 14 parties to use pseudonyms in the ‘unusual case’ which nondisclosure of the party’s
 15 identity ‘is necessary . . . to protect a person from harassment, injury, ridicule or
 16 personal embarrassment.’” *Does I-XXII v. Advanced Textile Corp.*, 214 F.3d 1058,
 17 1067-68 (9th Cir. 2000) (discussing with approval cases where courts permitted
 18 parties to proceed anonymously because disclosure would create risk of criminal
 19 prosecution) (citing *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981)).

20 **IV.**

21 **ARGUMENT**

22 **A. The Court should exercise its jurisdiction to decide this motion**

23 Each of the factors the Court considers in determining whether to exercise
 24 jurisdiction over a Rule 41(g) motion is met here. First, the Government’s retention
 25 of Plaintiff’s property – indeed its refusal even to tell Plaintiff that it plans to return
 26 it – despite the Government’s admission that it has no legal authority to retain it is a
 27 callous disregard of Plaintiff’s rights. Second, Plaintiff has an individual interest
 28 and need for his possessions. Put simply, they belong to Plaintiff and they are

1 valuable. Third, Plaintiff will be irreparably harmed if Plaintiff's property is not
2 returned. Again put simply, Plaintiff will be permanently deprived of his
3 possessions unless the Government returns them. And fourth, Plaintiff has no other
4 avenue by which to seek return of his property, which means Rule 41 relief is
5 appropriate. *See, e.g., Cox v. United States*, No. CV 07-1200-PHX-SMM, 2008 WL
6 477877, at *6 (D. Ariz. Feb. 19, 2008).

7 **B. The Court should order the immediate return of Plaintiff's property**

8 The Government does not have a warrant and does not claim to have a
9 warrant that allows it to retain Plaintiff's property. Plaintiff is prepared to present
10 the key to the box in question, prepared to present a copy of the rental receipt for the
11 box, and prepared to describe the box's contents.⁷ In light of the security at USPSV,
12 as the Government has described it, Plaintiff's ability to present these items and
13 information easily demonstrates by a preponderance of the evidence that the
14 contents of Box 904 belong to him.

15 The Government admits it does not have a criminal search or seizure warrant
16 for the contents of Box 904 and did not seize the contents of Box 904 pursuant to a
17 criminal search or seizure warrant. This means that Plaintiff's motion "should
18 presumptively be granted." *Kriesel*, 720 F.3d 1144.

19 Even a temporary delay in returning property has Fourth Amendment
20 ramifications. For example, the Ninth Circuit has found that a "30-day impound is a
21 'meaningful interference with an individual's possessory interests'" under the
22 Fourth Amendment. *Brewster v. Beck*, 859 F.3d 1194, 1196 (9th Cir. 2017)
23 (quoting *Soldal v. Cook County*, 506 U.S. 56, 61 (1992)). This is true even when the
24 original seizure was justified: "The Fourth Amendment doesn't become irrelevant
25 once an initial seizure has run its course. . . . Thereafter, the government must cease
26

27 ⁷ During the search, the Government dismantled USPSV's biometric identification
28 system. Apparently it cannot put it together again. (Gluck Decl. ¶ 7.)

1 the seizure or secure a new justification.” *Brewster*, 850 F.3d at 1197 (citing *United*
2 *States v. Jacobsen*, 466 U.S. 109, 124 & n.25 (1984)).

3 Here, the Government says the inventory and inspection were completed no
4 later than March 26, 2021, when it ended its search of USPV. But the Government
5 has continued the “impound” of Plaintiff’s property for well over 30 days (and
6 counting) since then and the Government still refuses to return it. Because the
7 Government has no Fourth Amendment authority for the continued retention of
8 Plaintiff’s property, that retention violates the Fourth Amendment.

9 **C. The Government’s desire to engage in new investigations does not permit**
10 **it to retain property without legal authority and does not allow it**
11 **condition the return of Plaintiff’s property on the waiver of his Fifth**
12 **Amendment rights**

13 In the face of the rule that Plaintiff’s motion should presumptively be granted,
14 the Government asserts that it first wants to investigate Plaintiff. To be clear, the
15 Government is entitled to investigate whomever it wants. But there are two things it
16 cannot do: first, it cannot take or retain people’s property without legal authority just
17 because it intends to investigate them. And second, it certainly cannot use the threat
18 of unauthorized retention of that property to force people to waive their Fifth
19 Amendment rights by giving the Government leads in its investigation.

20 The Government has announced that it will use a claimant’s name to
21 commence a criminal investigation of that claimant and the contents of that
22 claimant’s box. *Doe v. United States*, 21-cv-2803-RGK-MAR (Doc. 7-2 (Decl. of
23 Ariel Neuman)). Combined with the Government’s declared belief that “the
24 majority of the box holders are criminals who used USPV’s anonymity to hide their
25 ill-gotten wealth,” *Doe v. United States*, 21-cv-2803-RGK-MAR (Doc. 15) at 10:9-
26 12, this means that Plaintiff is entitled to assert the Fifth Amendment because he has
27 “reasonable cause to apprehend danger from a direct answer,” *see Hoffman v.*
28 *United States*, 341 U.S. 479, 486 (1951).

1 ***This is not to say that Plaintiff is guilty of any crime.*** But “one of the Fifth
2 Amendment’s ‘basic functions . . . is to protect *innocent* men . . . ‘who might
3 otherwise be ensnared by ambiguous circumstances.’” *Ohio v. Reiner*, 532 U.S. 17,
4 21 (2001) (quoting *Grunewald v. United States*, 353 U.S. 391, 421 (1957)
5 (alterations in original)). The Government’s (conclusory and baseless) assumptions
6 about the reasons customers used USPS are certainly enough to mean that these
7 circumstances are ambiguous.

8 It is well-established that in circumstances such as these, the Fifth
9 Amendment applies even to disclosure of Plaintiff’s name. The Government has
10 announced that once it learns Plaintiff’s name it will commence a criminal
11 investigation of him, focused on the source of the possessions he has in Box 904.
12 The Supreme Court has explained:

13 [The Fifth Amendment] privilege not only extends “to answers that
14 would in themselves support a conviction . . . but likewise embraces
15 those which would furnish a link in the chain of evidence needed to
16 prosecute the claimant. [I]t need only be evident from the implications
of the question, in the setting in which it is asked, that a responsive
answer to the question or an explanation of why it cannot be answered
might be dangerous because injurious disclosure could result.”

17 *Reiner*, 532 U.S. at 20-21 (quoting *Hoffman*, 341 U.S., at 486-87) (alterations in
18 original). This means that the Fifth Amendment permits Plaintiff to decline to
19 provide his name. *See e.g., Hiibel v. Sixth Judicial Dist. Ct. of Nev.*, 542 U.S. 177,
20 189 (2004) (declining to hold that self-identification is non-testimonial and holding
21 instead that “[s]tating one’s name may qualify as an assertion of fact” and be
22 “testimonial”).

23 If the Fifth Amendment applies to the Government’s demand for
24 identification and other information from Plaintiff – and it most certainly does –
25 then longstanding authority says that the Government cannot require Plaintiff’s
26 waiver of the Fifth Amendment before returning his property. Almost 140 years
27 ago, the United States Supreme Court rejected a statute that permitted the
28 Government to seize property and then apply a negative inference from the owner’s

1 failure to provide information. In *Boyd v. United States*, the Supreme Court
2 emphatically held that “any forcible and compulsory extortion of a man’s own
3 testimony . . . to be used as evidence . . . to forfeit his goods” is unconstitutional and
4 noted that “[i]n this regard the fourth and fifth amendments run almost into each
5 other.” 116 U.S. 616, 630 (1886) (overruled on other grounds by *Warden, Md.*
6 *Penitentiary v. Hayden*, 387 U.S. 294, 309 (1967) (citing *Entick v. Carrington and*
7 *Three Other King’s Messengers*, 19 How. St. Tr. 1029 (1765)). The *Boyd* Court
8 stated that “any compulsory discovery by extorting the party’s oath [in a
9 proceeding] to forfeit his property, is contrary to the principles of a free government.
10 It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an
11 American. It may suit the purposes of despotic power, but it cannot abide the pure
12 atmosphere of political liberty and personal freedom.” *Boyd*, 116 U.S. at 631–32.

13 This principle, that a citizen is entitled to enjoy *both* his Fourth *and* Fifth
14 Amendment rights, has been repeatedly recognized in the well-established rule that
15 a defendant who chooses to provide testimony in support of a suppression motion
16 cannot have that testimony used against him at trial:

17 Thus, in this case [defendant] was obliged either to give up what he
18 believed, with advice of counsel, to be a valid Fourth Amendment
19 claim or, in legal effect, to waive his Fifth Amendment privilege
20 against self-incrimination. In these circumstances, **we find it
21 intolerable that one constitutional right should have to be
22 surrendered in order to assert another.**

23 *Simmons v. United States*, 390 U.S. 377, 394 (1968) (emphasis added). This rule is
24 part of the larger rule that the Government cannot force an individual to surrender
25 one constitutional right in order to assert another. *See, e.g., Lefkowitz v.*
26 *Cunningham*, 431 U.S. 801, 807-08 (1977) (invalidating New York law that
27 prohibited party invoking Fifth Amendment from holding public office); *Bittaker v.*
28 *Woodford*, 331 F.3d 715, 724 n.7 (9th Cir. 2003) (defendant’s right to assert
ineffective assistance of counsel could not be conditioned on waiving attorney-client
privilege in subsequent prosecution).

1 Further, even where the Fifth Amendment is balanced against a (mere)
2 economic interest, rather than a fundamental right, the Government *still may not* use
3 the threat against that economic interest to compel self-incrimination. *See, e.g.,*
4 *Lefkowitz v. Turley*, 414 U.S. 70, 82–83 (1973) (“A waiver [of Fifth Amendment
5 rights] secured under threat of substantial economic sanction cannot be termed
6 voluntary.”); *United States v. Ailemen*, 893 F. Supp. 888, 900 (N.D. Cal. 1995)
7 (noting that property owner “felt constrained to choose between his right to claim
8 his property and his right not to incriminate himself” and finding that “decision
9 made under such constraint is not fairly considered ‘voluntary.’”).

10 Taken together, this means that the Government cannot hold Plaintiff’s
11 property hostage in an effort to compel his testimony. Plaintiff is entitled to enjoy
12 *both* his right to his property *and* his right to assert the Fifth Amendment.

13 **D. Plaintiff is willing to disclose his identity to a special master or to a filter**
14 **team**

15 The Government has claimed during various discussions with counsel that it
16 needs Plaintiff’s identity in order to confirm his ownership of the contents of Box
17 904. Because Box 904 contains no documents or anything containing anyone’s
18 name, it is entirely unclear how Plaintiff’s name could help confirm his ownership.
19 Nevertheless, counsel already has offered the Government the option of having
20 Plaintiff identify himself to a special master or, even easier, to a member of a filter
21 team that could use it to confirm his ownership, to the extent that is helpful in any
22 way.⁸

23 _____
24 ⁸ Another solution would be to immunize Plaintiff’s statements in support of his
25 effort to obtain his property and prove his ownership. This would be consistent with
26 the line cases regarding compelled testimony for public employees. *See, e.g.,*
27 *Gardner v. Broderick*, 392 U.S. 273 (1968) (state may compel testimony from
28 police officers only if such testimony is subject to immunity protections). Plaintiff
has no objection to this procedure either, though a special master or filter team
seems a less drastic solution.

1 American. It may suit the purposes of despotic power, but it cannot abide the pure
2 atmosphere of political liberty and personal freedom.” *Boyd*, 116 U.S. at 631–32.
3 The Government’s scheme to continue holding the property unless Plaintiff provides
4 “leads” violates the Fourth and Fifth Amendments and must be rejected.

5 The Court should order the contents of Box 904 returned to Plaintiff upon
6 presentation of the key and the rental receipt for that Box, along with a description
7 of the contents. To the extent there is *any* need for further information to confirm
8 ownership, the Court should order that Plaintiff may disclose that information to a
9 special master or to a filter team.

10 DATED: May 3, 2021

Respectfully submitted,

11 Benjamin N. Gluck
12 Nicole R. Van Dyk
13 Ashley D. Bowman
14 Naomi S. Solomon
15 Bird, Marella, Boxer, Wolpert, Nessim,
16 Dooks, Lincenberg & Rhow, P.C.

17 By: /s/ Benjamin N. Gluck
18 Benjamin N. Gluck
19 Attorneys for Plaintiff

1 Benjamin N. Gluck - State Bar No. 203997
 bgluck@birdmarella.com
 2 Nicole R. Van Dyk - State Bar No. 261646
 nvandyk@birdmarella.com
 3 Ashley D. Bowman - State Bar No. 286099
 abowman@birdmarella.com
 4 Naomi S. Solomon - State Bar No. 321357
 nsolomon@birdmarella.com
 5 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
 DROOKS, LINCENBERG & RHOW, P.C.
 6 1875 Century Park East, 23rd Floor
 Los Angeles, California 90067-2561
 7 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

8 Attorneys for Plaintiff Charles Coe

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 CHARLES COE,

14 Plaintiff,

15 vs.

16 UNITED STATES OF AMERICA;
 TRACY L. WILKISON (OFFICIAL
 17 CAPACITY), KRISTI KOONS
 JOHNSON (OFFICIAL CAPACITY),

18 Defendants.

CASE NO. 2:21-cv-03019-RGK (MAR)

**DECLARATION OF BENJAMIN N.
 GLUCK IN SUPPORT OF
 PLAINTIFF’S MOTION FOR RELIEF
 UNDER FED. R. CRIM. PRO. 41**

Date: June 1, 2021

Time: 9:00 a.m.

Courtroom: 850

*[Filed Concurrently with Plaintiff’s Motion
 for Relief Under Fed. R. Crim. Pro. 41
 Declaration of Nicole R. Van Dyk; and
 Proposed Order]*

Assigned to Hon. R. Gary Klausner

Complaint Filed: April 7, 2021

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DECLARATION OF BENJAMIN N. GLUCK

I, Benjamin N. Gluck, declare as follows:

1. I am an active member of the Bar of the State of California and a Principal with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, A Professional Corporation, attorneys of record for Plaintiff Charles Coe in this action. I make this declaration in support of Plaintiff’s Motion for Return of Property Pursuant to Fed. R. Crim. P. 41(g). Except for those matters stated on information and belief, I make this declaration based upon personal knowledge and, if called upon to do so, I could and would so testify.

2. I initiated a meet-and-confer conference with the Government by letters dated April 20, 2021, and April 27, 2021, and met and conferred telephonically with counsel for the Government on April 28, 2021.

3. Over the past two to three weeks, the Government has returned hundreds of thousands of dollars in gold, silver, and cash just to clients of undersigned counsel. These clients include retirees, small and large business owners, and various other individuals who used USPV for all kinds of reasons. I have spoken with renters who said they used USPV because they were referred to it by banks who had no room in their vaults, because it was next door to a sushi restaurant they frequented, because it was on the route of their commute to the office, and several other mundane reasons.

4. Since March 22, 2021, Coe, through me as his counsel, has contacted the FBI at a telephone number provided by agents during the search, submitted a claim through the FBI-created website for USPV box holders, written directly to Andrew Brown, the lead AUSA on this matter, and filed the instant lawsuit. The Government did not respond to any of these claims or communications.

5. Attached hereto as Exhibit A is a true and correct copy of a seizure warrant for USPV, which AUSA Brown emailed me.

6. Attached hereto as Exhibit B is a true and correct copy of a portion of the affidavit in support of the seizure warrant for USPV, which AUSA Brown emailed me.

1 7. AUSA Andrew Brown told me on multiple occasions that the Government
2 dismantled the biometric identification system at USPV during the search and that it has
3 been unable to make it work again.

4 I declare under penalty of perjury under the laws of the United States of America
5 that the foregoing is true and correct, and that I executed this declaration on May 3, 2021,
6 at Los Angeles, California.

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/s/ Benjamin N. Gluck
Benjamin N. Gluck

EXHIBIT A

United States District Court

CENTRAL DISTRICT OF CALIFORNIA

In the Matter of the Seizure of

(Address or Brief description of property or premises to be seized)

SEIZURE WARRANT

Certain business equipment located at
U.S. Private Vaults, Inc.,
9182 West Olympic Blvd.,
Beverly Hills, CA 90212

CASE NUMBER: 2:21-MJ-01307

TO: any Authorized Officer of the United States, Affidavit(s) having been made before me by Special Agent Lynne Zellhart who has reason to believe that in the Central District of California there is now certain property which is subject to forfeiture to the United States, namely, the business equipment described in the attachment,

which are subject to seizure and forfeiture pursuant to 18 U.S.C. § 982(b), 21 U.S.C. § 853(f) and 31 U.S.C. § 5317(c).

concerning violations of 18 U.S.C. § 1956, 21 U.S.C. § 841, and 31 U.S.C. § 5324, and conspiracy to commit the same.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the property so described is subject to seizure and that grounds exist for the issuance of this seizure warrant.

YOU ARE HEREBY COMMANDED to seize within **14** days the property specified, serving this warrant and making the seizure in the daytime - 6:00 A.M. to 10:00 P.M., leaving a copy of this warrant and receipt for the property seized, and prepare a written inventory of the property seized and promptly return this warrant and inventory to the United States Magistrate on duty at the time of the return through a filing with the Clerk's Office.

Date and Time Issued

at Los Angeles, California

Honorable Steve Kim, U.S. Magistrate Judge

Name and Title of Judicial Officer

Signature of Judicial Officer

RETURN

DATE WARRANT RECEIVED 3/17/2021	DATE AND TIME WARRANT EXECUTED 3/22/2021 - 7:59 AM	COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH AT THE BUSINESS
------------------------------------	---	--

INVENTORY MADE IN THE PRESENCE OF SA Lynne K. Zellhart

INVENTORY OF PROPERTY SEIZED PURSUANT TO THE WARRANT

1. Asus Zen pad Model P023
2. Dell Inspiration
3. Dell Vostro P/N 40.3GA01.021
4. USPS Database Exports from Cloud
5. Money Counter - Cummins/Allison w/power cord
6. Money Counter - Bill Counter + power cord
7. Iris ID icam 700 (1)
8. Iris ID icam 700 (2)
9. Schlage Biometric Hand Key CR (1)
10. Schlage Biometric Hand Key CR (2)
11. Nest of Safe Deposit boxes, including shelving, boxes, hardware and bond tins.
12. Box of Keys
13. Loose Keys

CERTIFICATION

I declare under penalty of perjury that I am an officer who executed this warrant and that this inventory is correct and was returned along with the original warrant to the designated judge through a filing with the Clerk's Office.

Date: 4/9/2021


Executing officer's signature

SA Lynne K. Zellhart
Printed name and title

ATTACHMENT—USPV SEIZURE WARRANT

ITEMS TO BE SEIZED

The items to be seized are the following pieces of business equipment located at U.S. PRIVATE VAULTS, INC., 9182 WEST OLYMPIC BLVD., BEVERLY HILLS, CA 90212:

- a. The business computers;
- b. The money counters;
- c. The nests of safety deposit boxes and keys. This warrant does not authorize a criminal search or seizure of the contents of the safety deposit boxes. In seizing the nests of safety deposit boxes, agents shall follow their written inventory policies to protect their agencies and the contents of the boxes. Also in accordance with their written policies, agents shall inspect the contents of the boxes in an effort to identify their owners in order to notify them so that they can claim their property;
- d. The digital and video surveillance and security equipment; and
- e. The biometric scanners.

EXHIBIT B

1 [REDACTED] [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED] [REDACTED]
 7 [REDACTED] [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

T. NOTIFYING USPV CUSTOMERS HOW TO CLAIM THEIR PROPERTY

11
 12 108. The search and seizure warrants the government seeks list
 13 the nests of safety deposit boxes at USPV among the items to be
 14 seized. These nests of safety deposit boxes are evidence and
 15 instrumentalities of USPV's criminality. The warrants authorize the
 16 seizure of the nests of the boxes themselves, not their contents. By
 17 seizing the nests of safety deposit boxes, the government will
 18 necessarily end up with custody of what is inside those boxes
 19 initially. Agents will follow their written inventory policies to
 20 protect their agencies from claims of theft or damage to the contents
 21 of the boxes, and to ensure that no hazardous items are unknowingly
 22 stored in a dangerous manner. Agents will attempt to notify the
 23 lawful owners of the property stored in the boxes how to claim their
 24 property, such as by posting that information on the internet or at

25
 26 ³⁹ [REDACTED]
 27 [REDACTED] [REDACTED]
 28 [REDACTED]

1 USPV itself, or by contacting the owners directly. In order to
2 notify the owners directly, agents will, in accordance with their
3 policies regarding an unknown person's property, look for contact
4 information or something which identifies the owner.⁴⁰ (USPV
5 recommends that box renters include their or their designees'
6 telephone numbers on a note in the box in the event that USPV removes
7 the contents for nonpayment of rental fees.)

8 U. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
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19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
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25 [REDACTED]

26 ⁴⁰ The FBI policy regarding taking custody of an unknown person's
27 property provides, in part, that agents "inspect the property as
28 necessary to identify the owner and preserve the property for
safekeeping." The inspection "should extend no further than
necessary to determine ownership."

1 Benjamin N. Gluck - State Bar No. 203997
 bgluck@birdmarella.com
 2 Nicole R. Van Dyk - State Bar No. 261646
 nvandyk@birdmarella.com
 3 Ashley D. Bowman - State Bar No. 286099
 abowman@birdmarella.com
 4 Naomi S. Solomon - State Bar No. 321357
 nsolomon@birdmarella.com
 5 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
 DROOKS, LINCENBERG & RHOW, P.C.
 6 1875 Century Park East, 23rd Floor
 Los Angeles, California 90067-2561
 7 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

8 Attorneys for Plaintiff Charles Coe

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 CHARLES COE,

14 Plaintiff,

15 vs.

16 UNITED STATES OF AMERICA;
 TRACY L. WILKISON (OFFICIAL
 17 CAPACITY), KRISTI KOONS
 JOHNSON (OFFICIAL CAPACITY),

18 Defendants.

CASE NO. 2:21-cv-03019-RGK (MAR)

**DECLARATION OF NICOLE R. VAN
 DYK IN SUPPORT OF PLAINTIFF'S
 MOTION FOR RELIEF UNDER FED.
 R. CRIM. PRO. 41**

*[Filed Concurrently with Plaintiff's Motion
 for Relief Under Fed. R. Crim. Pro. 41,
 Declaration of Benjamin N. Gluck and
 Proposed Order]*

Assigned to Hon. R. Gary Klausner

Complaint Filed: April 7, 2021

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DECLARATION OF NICOLE R. VAN DYK

I, Nicole R. Van Dyk, declare as follows:

1. I am an active member of the Bar of the State of California and a Principal with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, A Professional Corporation, attorneys of record for Plaintiff Charles Coe in this action. I make this declaration in support of Plaintiff’s Motion for Return of Property Pursuant to Fed. R. Crim. P. 41(g). Except for those matters stated on information and belief, I make this declaration based upon personal knowledge and, if called upon to do so, I could and would so testify.

2. My firm represents several individuals who leased safe deposit boxes from U.S. Private Vaults (“USPV”). Over the past two to three weeks, I have met with the FBI on behalf of some of those clients to receive property that was seized from the boxes they leased at USPV.

3. In returning property to those clients, the Government has *not* required that the lessee present identification or even be present when their property is returned. Instead, the Government has relied on counsel’s presentation of the key that works in the lock the Government removed from that lessee’s box. Some of our clients have received many hundreds of thousands of dollars in returned cash, gold, or jewelry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I executed this declaration on May 3, 2021, at Los Angeles, California.

/s/ Nicole R. Van Dyk
Nicole R. Van Dyk

1 Benjamin N. Gluck - State Bar No. 203997
 bgluck@birdmarella.com
 2 Nicole R. Van Dyk - State Bar No. 261646
 nvandyk@birdmarella.com
 3 Ashley D. Bowman - State Bar No. 286099
 abowman@birdmarella.com
 4 Naomi S. Solomon - State Bar No. 321357
 nsolomon@birdmarella.com
 5 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
 DROOKS, LINCENBERG & RHOW, P.C.
 6 1875 Century Park East, 23rd Floor
 Los Angeles, California 90067-2561
 7 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

8 Attorneys for Plaintiff Charles Coe

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 CHARLES COE,
 14 Plaintiff,
 15 vs.
 16 UNITED STATES OF AMERICA;
 TRACY L. WILKISON (OFFICIAL
 17 CAPACITY), KRISTI KOONS
 JOHNSON (OFFICIAL CAPACITY),
 18 Defendants.

CASE NO. 2:21-cv-03019-RGK (MAR)
**[PROPOSED] ORDER GRANTING
 PLAINTIFF'S MOTION FOR
 RELIEF UNDER FED. R. CRIM.
 PRO. 41**

Assigned to Hon. R. Gary Klausner

Complaint Filed: April 7, 2021

1 This matter came before the Court on Plaintiff Charles Coe’s (“Plaintiff”)
2 Motion For Relief Under Fed. R. Crim. Pro. 41 (“Motion”). Having considered the
3 parties’ moving, opposition, and reply papers, all supporting documents and
4 pleadings of record, and oral argument of counsel, Plaintiff’s Motion is hereby
5 **GRANTED.**

6 In light of the explicit limitations set out in the seizure warrant regarding the
7 contents of the nests of safety deposit boxes at U.S. Private Vaults (Case No. 21-
8 MJ-1307) and in light of the Government’s representations about customers’ usage
9 of those boxes and about its intention to investigate them, the Court hereby finds:

- 10 (a) The Government is without legal authority to continue holding the
11 contents of Box 904 and must return said contents to the owner, *United*
12 *States v. Gladding*, 775 F.3d 1149, 1152 (9th Cir. 2014); and
13 (b) Plaintiff is entitled to assert his Fifth Amendment rights and decline to
14 provide identifying information in connection with the return of his
15 property, *Ohio v. Reiner*, 532 U.S. 17 (2001).

16 **GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED:**

- 17 (a) The Government shall make arrangements for Plaintiff (or his counsel)
18 to present his key, present his receipt, and present a description of the
19 contents of Box 904 within five business days of the date of this order.
20 To the extent the key, receipt, and description accurately match Box
21 904, the Government shall return the contents of that box to Plaintiff
22 (or his counsel) forthwith; and
23 (b) To the extent the Government requires any further information to
24 substantiate Plaintiff’s ownership of the contents of the box he claims,
25 Plaintiff (or his counsel) shall be entitled to provide that information to
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a Government filter team that shall comply with the FBI’s written protocols regarding returning property as referenced in the affidavit.¹

IT IS SO ORDERED.

Dated: _____, 2021

The Honorable R. Gary Klausner
United States District Judge

¹ The filter team shall have no previous or future involvement in the investigation of this matter. At no time will the filter team advise the investigative team of the substance of any information communicated to the filter team by Plaintiff or Plaintiff’s counsel.

Applications/Ex Parte Applications/Motions/Petitions/Requests

[2:21-cv-03019-RGK-MAR Charles Coe v. United States of America et al](#)

ACCO,(MARx),DISCOVERY,MANADR,RELATED-G

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered by Gluck, Benjamin on 5/3/2021 at 4:54 PM PDT and filed on 5/3/2021

Case Name: Charles Coe v. United States of America et al

Case Number: [2:21-cv-03019-RGK-MAR](#)

Filer: Charles Coe

Document Number: [21](#)

Docket Text:

NOTICE OF MOTION AND MOTION for Return of Property Pursuant to Fed. R. Crim. P. 41(g) filed by Plaintiff Charles Coe. Motion set for hearing on 6/1/2021 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # (1) Declaration of Benjamin N. Gluck, # (2) Declaration of Nicole R. Van Dyk, # (3) Proposed Order) (Gluck, Benjamin)

2:21-cv-03019-RGK-MAR Notice has been electronically mailed to:

Ashley D Bowman abowman@birdmarella.com, dlb@birdmarella.com, docket@birdmarella.com

Benjamin N Gluck bng@birdmarella.com, ale@birdmarella.com, bgluck@birdmarella.com, docket@birdmarella.com

Maxwell K Coll maxwell.coll@usdoj.gov, caseview.ecf@usdoj.gov, usacac.criminal@usdoj.gov

Naomi S Solomon nsolomon@birdmarella.com, rflores@birdmarella.com

Nicole R Van Dyk nvandyk@birdmarella.com, ale@birdmarella.com, dlt@birdmarella.com, docket@birdmarella.com, nrv@birdmarella.com

2:21-cv-03019-RGK-MAR Notice has been delivered by First Class U. S. Mail or by other means **BY THE FILER** to :

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Document description:Main Document

Original filename:C:\fakepath\Rule 41 Motion.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=5/3/2021] [FileNumber=31874411-0]
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Document description:Declaration of Benjamin N. Gluck

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Document description:Declaration of Nicole R. Van Dyk

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Document description:Proposed Order

Original filename:C:\fakepath\[Proposed] Order Grant Plaintiff's FRCP 41 Motion for Relief.pdf

Electronic document Stamp:

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