

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MAX BLUMENTHAL,	)	
	)	
Plaintiff,	)	
	)	Misc. No. 1:26mc16
v.	)	
	)	
MARKWAYNE MULLIN,	)	
Secretary of Homeland Security,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO RETURN PROPERTY

Pursuant to Federal Rule of Criminal Procedure 41(g), and this Court’s order of July 20, 2026, defendant, Markwayne Mullin, in his official capacity as Secretary of Homeland Security, hereby provides the instant memorandum of law in opposition to plaintiff’s motion to return property.

INTRODUCTION

In this miscellaneous action, Plaintiff Max Blumenthal moves, pursuant to Federal Rule of Criminal Procedure 41(g), for the return of certain specifically-identified property from United States Customs and Border Protection (“CBP”); namely, two smart phone cellular devices and any “copies” that may have been made of the electronic information on those devices. CBP seized these two cellular devices as plaintiff traversed the functional border after arriving on an international flight at Washington Dulles International Airport that originated in Iran. Since the filing of his motion, plaintiff correctly informed this Court that CBP has returned the two cellular devices to him. Plaintiff nevertheless maintains that this miscellaneous action is not moot because he still “seeks the return of any information, data, or copies obtained from his phone.”

But, as provided in the attached declaration, federal officials never possessed any of the information contained on plaintiff's cellular devices, and thus, *a fortiori*, have not retained any such information. This is because federal officials were unable to gain access to plaintiff's cellular devices with the technological tools available to them, and thus did not perform any search on those devices. Federal Rule 41(g) provides only a limited remedial function – allowing a court to apply equitable principles to obligate the United States to return property improperly seized. Because federal officials never possessed the “property” that serves as the sole remaining subject of plaintiff's motion, this miscellaneous action is indeed moot, and should be dismissed for a lack of subject-matter jurisdiction.

BACKGROUND

1. In July 2026, plaintiff Max Blumenthal traveled to the Islamic Republic of Iran for six days, during which, he maintains, he communicated with “top political officials” in that country. *Mem.* (Dkt. No. 2), ex.1, ¶¶7-9. Plaintiff returned to the United States via two flights – one from Tehran to Istanbul and a second from Istanbul to Washington Dulles International Airport (“IAD”). *Id.* ¶12. IAD, like other international airports, is a port of entry into the United States and thus operates as a functional international border. *Defendant's Exhibit* (“DEX”) A, ¶2; *see also United States v. Kolsuz*, 890 F.3d 133, 137 (4th Cir. 2018).

Upon his arrival at IAD, plaintiff proceeded to the typical immigration checkpoint administered by United States Customs and Border Protection (“CBP”). *Id.* ¶15. CBP officers directed him to so-called “secondary screening.” *Id.* ¶¶16-17. One of those officers allegedly asked plaintiff a series of questions about his travel to, and his interactions with individuals while in, Iran, as well as whether he intended to return to Iran in the near future. *Id.* ¶¶18-19. Plaintiff maintains that the officers then had him retrieve his luggage, which the officers searched. *Id.* ¶21.

During this process, plaintiff identified that he was carrying two cellular telephones.¹ *Id.*; DEX A, ¶3. Plaintiff maintains that the CBP officers informed him that they wanted to search those two devices “for evidence of criminal activity,” and to that end, asked him to unlock the devices (or to provide them with the passcodes that would allow the officers to unlock the devices themselves), *Mtn.*, ex.1, ¶22, which would have allowed the officers to conduct a “basic search” of the devices, DEX A, ¶¶3-4. Plaintiff declined to do so. *Mtn.*, ex.1, ¶22. As a result, a CBP Assistant Port Director at IAD authorized the officers to detain the two cellular devices to attempt to perform a more advanced search; *i.e.*, one in which officers “connect[] equipment, wired or wireless, to copy and/or analyze the contents of an electronic device.” DEX A, ¶¶4-5; *Mtn.* ex. 1, ¶23 (identifying that the CBP officers explained the process of an “advanced search” to plaintiff at the time that they detained his cellular devices). But because plaintiff was a journalist, the CBP officers took the extra step of asking plaintiff whether the devices contained any privileged information. *Id.* ¶5; *Mtn.*, ex.1, ¶25. Plaintiff declined to answer the question. DEX A, ¶5; *Mtn.*, ex.1, ¶25. Before he departed IAD, plaintiff was provided a receipt for the two cellular devices. DEX A, ¶5; *Mtn.*, ex.1, ¶27.

The CBP officers then referred plaintiff’s two cellular devices for the above-mentioned advanced search. DEX A, ¶6. Despite available technological tools, however, federal officials were unable to gain any access to plaintiff’s cellular devices and thus never conducted any search of those devices; as such, federal officials never possessed any of the information contained on those devices. *Id.* ¶¶6-7. Plaintiff subsequently retrieved his cellular devices on July 17, 2026. *Id.* ¶8.

¹Although plaintiff also was carrying a laptop computer, the CBP Officers neither asked plaintiff for permission to conduct a basic search of it nor directed its detention to attempt an advanced search. *Mtn.*, ex.1, ¶¶21; 26.

2. Plaintiff commenced this miscellaneous action, consisting solely of a motion for return of property pursuant to Federal Rule of Criminal Procedure 41(g), on July 16, 2026 (Dkt. No. 1). That motion specifically sought the return of the “two smart phones that [CBP] seized” at IAD, including “any and all information and data copied, reproduced, or retained,” based on plaintiff’s contention that the seizure ran afoul of the Fourth Amendment and federal statute. *Mtn.*, at 1-2.

On July 20, 2026, plaintiff filed a “Notice of Subsequent Development,” in which plaintiff dutifully reported that CBP had, as identified above, returned his two cellular devices (Dkt. No. 11). But plaintiff also maintained that the miscellaneous action was not moot for a single reason – his request for a return of any information that federal officials obtained from his cellular devices:

The Motion is not moot, however, as Petitioner seeks the return of any information, data, or copies obtained from his phone. Petitioner continues to seek relief with respect to this component of his motion.

Notice (Dkt. No. 11), at 1. In an order issued that same day, this Court required the Secretary to file any opposition to the motion on or before July 27, 2026 (Dkt. No. 12).

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ARGUMENT

This is not a civil action seeking wide-ranging relief. Far to the contrary, this is a miscellaneous action brought exclusively pursuant to Federal Rule of Criminal Procedure 41(g), which offers a claimant – such as plaintiff here – only the prospect of “relief limited to the return of property the Government is wrongfully possessing.” *United States v. Bala*, 948 F.3d 948, 950 (8th Cir. 2020); *see also United States v. Stevens*, 500 F.3d 625, 628 (7th Cir. 2007); *London Fin. Grp., Ltd. v. IRS*, 2016 WL 10907056, at *6 (C.D. Cal. Aug. 1, 2016).² And to this end, plaintiff has appropriately conceded that because CBP has already returned his cellular devices to him, the only thing that prevents this miscellaneous action from being moot – and keeps even the prospect of this Court’s jurisdiction over the action alive – is the potential return of any copies or other reproductions that federal officials made of the information contained on those cellular devices (Dkt. No. 11).

As demonstrated by the attached sworn declaration, however, federal officials were unable to perform any search of plaintiff’s cellular devices, and thus were not able to extract any information from those devices; as such, *a fortiori*, federal officials never possessed that information in the first instance, let alone made any copies or reproductions of the same. Courts have recognized that “Rule 41(g) provides no relief if the property is not in the federal government’s possession.” *Summers-Grace v. United States*, 2020 WL 7707045, at *2 (D. Md.

²The text of the rule itself confirms the limited nature of its reach:

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).

Dec. 28, 2020); *see also Renteria v. United States*, 2020 WL 5260478, at *1 (C.D. Cal. June 26, 2020) (“Rule 41(g) presupposes that the property at issue is in the possession and control of the Government and that the Government is empowered to return the property.”); *Robinson v. United States*, 2013 WL 682894, at *2 (E.D. Va. Feb. 22, 2013) (“Appropriate circumstances exist for a Rule 41(g) motion only if the United States possesses the property.”). And thus, if “the United States never possessed the property described in [a] Rule 41(g) motion, the Court lacks subject matter jurisdiction over the property, and the appropriate disposition is dismissal.” *Robinson*, 2013 WL 682894, at *3 n.8; *see also United States v. Davis*, 789 Fed. Appx. 105 (11th Cir. 2019) (per curiam) (affirming dismissal of Federal Rule 41(g) motion because “the property at issue never came into the possession” of the United States).³

Because the United States never possessed the sole remaining property that is the subject of plaintiff’s motion, this Court lacks jurisdiction over this miscellaneous action, and it should dismiss the same.

CONCLUSION

For the foregoing reasons, this Court should dismiss the instant miscellaneous action for a lack of subject-matter jurisdiction.

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³To be sure, the United States “cannot defeat a properly filed motion for return of property merely by stating that it has destroyed the property or given the property to third parties”; in such circumstances, a district court may continue to exercise equitable jurisdiction “to control the disposition of evidence.” *United States v. Chambers*, 192 F.3d 374, 377 (3d Cir. 1999) (quoting *United States v. Frank*, 763 F.2d 551, 553 (3d Cir. 1985)). But that is far afield from the situation here – the United States neither destroyed nor transferred custody over electronic information obtained from plaintiff’s cellular devices to third-parties, because it never had that electronic information (or any copies of the same) in the first instance.

Dated: July 27, 2026

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will transmit a Notice of Electronic Filing (“NEF”) to the following:

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Date: July 27, 2026

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