UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JALAL SHEHADEH, *Plaintiff,* v. MARKWAYNE MULLIN, *in his official capacity as Secretary of the Department of Homeland Security* *Defendant.*	**CASE NO.**

MEMORANDUM OF LAW IN SUPPORT OF JALAL SHEHADEH'S TIME-SENSITIVE MOTION FOR RETURN OF PROPERTY PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 41(g), AND REQUEST FOR EXPEDITED HEARING

INTRODUCTION

Pursuant to Rule 41(g)[1] of the Federal Rules of Criminal Procedure, Plaintiff Jalal Shehadeh ("Plaintiff" or "Mr. Shehadeh") respectfully submits this Memorandum in Support of his Time-Sensitive Motion for Return of Property. On September 17, 2026, United States Customs

[1] Rule 41(g) provides:

> 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) (2005).

and Border Protection ("CBP") officers seized Mr. Shehadeh's personal cellular telephone at Newark Liberty International Airport as he returned to the United States from Palestine. CBP continues to retain the device.

Mr. Shehadeh is a United States citizen and practicing attorney. As Mr. Shehadeh informed CBP when refusing to consent to a search, his personal smartphone contains extensive attorney-client privileged and confidential communications concerning active cases. CBP nevertheless retained the phone and informed Mr. Shehadeh that officers would search it in accordance with a determination from CBP's Office of Chief Counsel.

Defendant had no lawful basis to seize and search Mr. Shehadeh's phone, in which he possesses extraordinary privacy interests. *See Riley v. California*, 573 U.S. 373, 396-97 (2014) ("a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is"). And while the seizure and threatened search would violate Mr. Shehadeh's constitutional rights regardless of his profession, the ongoing deprivation is particularly egregious because Mr. Shehadeh uses the phone to conduct his legal practice and it serves as a repository of confidential and attorney-client privileged information belonging not only to him, but also to his clients. This seizure, therefore, exposes Mr. Shehadeh to a search far more exhaustive than a search of his home and his law office. The Government's continued possession of the phone creates ongoing professional, privacy, and privilege concerns that cannot adequately be remedied after the Government has reviewed or extracted its contents.

Accordingly, Mr. Shehadeh respectfully requests that the Court exercise its equitable authority under Rule 41(g), order the immediate return of his cellular telephone, and grant such additional relief as necessary to prevent the review, use, retention, or dissemination of privileged or confidential information obtained from the device. Given the continuing nature of these harms, Mr. Shehadeh further requests expedited consideration and, if the Court determines that factual development or oral argument would assist its resolution of the Motion, an expedited hearing at the Court's earliest practicable availability.

FACTUAL BACKGROUND

Mr. Shehadeh is a United States citizen and practicing attorney. *See* Declaration of Jalal Shehadeh, Exhibit B, ¶ 1. He serves on the boards of the Florida Muslim Bar Association and the Palestinian American Bar Association, and represents clients in civil rights and constitutional matters, including litigation involving Palestinian and pro-Palestinian advocacy. *Id* ¶ 3-4. He uses the seized cellular telephone to conduct his legal practice, and it therefore contains attorney-client privileged and confidential communications concerning active client matters. *Id* ¶ 5.

On September 17, 2026, Mr. Shehadeh returned to the United States through Newark Liberty International Airport after traveling to Palestine. *Id* ¶ 8. He was scheduled to continue onward to Miami, where he lives. *Id*. Upon landing at Newark at approximately 3:30 p.m., Mr. Shehadeh was referred to secondary inspection, where he remained until approximately 7:30 p.m. *Id* ¶ 9, 33.

During this time, CBP officers informed Mr. Shehadeh that he had been selected for a "random customs check." *Id* ¶ 12. During the secondary inspection, officers questioned him about the purpose of his travel and various family members. *Id* ¶ 13. In the course of answering the officers' questions, Mr. Shehadeh informed the officers that he is a practicing attorney. *Id*.

CBP officers subsequently sought to search Mr. Shehadeh's luggage and cellular telephone. *Id* ¶ 14. Mr. Shehadeh did not consent to a search of his phone, informing the officers that the device contained attorney-client privileged communications. *Id* ¶ 15-16.

CBP conducted a cursory search of Mr. Shehadeh's luggage. *Id* ¶ 18. Although Mr. Shehadeh was initially permitted to use his electronic devices, namely his laptop and his cellular phone for work purposes while he was waiting and adjusting his travel plans as he realized his detention would result in him missing his connecting flight, a CBP officer subsequently took possession of his cellular telephone, which Mr. Shehadeh did not unlock. *Id* ¶ 20-21.

A CBP supervisor then proposed reviewing the phone's contents with Mr. Shehadeh so that Mr. Shehadeh could identify applications containing privileged information. *Id* ¶ 23. Mr. Shehadeh explained that such a procedure would not adequately protect privileged material because his personal and attorney-client communications were intermingled throughout applications, text messages, and other portions of the device. *Id* ¶ 24.

Mr. Shehadeh objected to the proposed search and stated that CBP lacked reasonable suspicion or probable cause to search the contents of his phone. *Id* ¶ 26. CBP officers then informed Mr. Shehadeh that they would seize the device and that CBP's Office of Chief Counsel would review the matter and determine how to address the privileged material. *Id* ¶ 27. CBP permitted Mr. Shehadeh to leave the airport without his phone. *Id* ¶ 33. Officers never provided any reason for subjecting Mr. Shehadeh to this treatment or seizing his phones. *Id* ¶ 19, 26, 44.

The September 17 encounter was unusual for Mr. Shehadeh. Although he has traveled internationally—including to Palestine in 2023 and 2025—he has not previously been subjected to secondary screening of this nature. *Id* ¶ 7.

CBP continues to retain Mr. Shehadeh's cellular telephone. *Id* ¶ 42, 25. As of the filing of this Motion, CBP has not informed Mr. Shehadeh whether it has searched, imaged, extracted, copied, or otherwise accessed the contents of the device. *Id* ¶ 43. Nor has CBP identified to Mr. Shehadeh any warrant, criminal investigation, or other judicial process authorizing the continued retention or search of his phone. *Id* ¶ 44.

ARGUMENT

I. PLAINTIFF IS ENTITLED TO EQUITABLE RELIEF AND THE IMMEDIATE RETURN OF HIS PROPERTY UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND FEDERAL RULE OF CRIMINAL PROCEDURE 41(G).

A. The Fourth Amendment Prohibits Both the Original and Ongoing Seizure of Mr. Shehadeh's Phone, and any Search Conducted as a Result of that Unlawful Seizure

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures[.]" U.S. Const. amend IV. Twelve years ago, in *Riley v. California*, the Supreme Court unanimously held—in the case of a search of the contents of a smartphone conducted incident to arrest— that law enforcement may not search cell phones without a warrant, recognizing that such devices implicate privacy interests of an entirely different magnitude from ordinary physical containers "in both a quantitative and a qualitative sense." 573 U.S. 373, 393 (2014). Indeed, Chief Justice Roberts memorably wrote that cell phones are "such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy." *Id.* at 385. Their immense storage capacity permits access to extensive records of an individual's communications, associations, photographs, movements, financial information, and professional activities—the "privacies of life." *Id.* at 403 (citation omitted).

Just this year, in *Chatrie v. United States*, 146 S. Ct. 2193 (2026), the Supreme Court again affirmed the significant privacy interests in modern cell phones and their data. Today, as the Court recognized, at least 91% of Americans are smartphone users—up from 56% at the time of *Riley*—and have apps regularly collecting timestamped location data for navigation, ride-sharing, weather conditions, takeout proximity, and exercise purposes. *Id.* at 2220. The Court recognized the futility of an "app-by-app, feature-by-feature method of granting Fourth Amendment protection" because it "misapprehends the nature of modern cell-phone use, where nearly everything requires some kind of 'affirmative act' beyond 'powering up' a given app or service." *Id.* at 2198. The Court additionally rejected the government's contention that "accessing only a short amount of cell-phone location information does not count as a Fourth Amendment search." *Id.* at 2197.

The circuit courts of appeals—wrestling with *Riley* in the context of relaxed Fourth Amendment protections at points of entry into the United States—have developed disparate rules regarding the government's authority to search and seize Americans' cell phones and other electronic devices at border crossings. *See, e.g.*, *United States v. Cano*, 934 F.3d 1002, 1018, 1020 (9th Cir. 2019) ("Were we to give the government unfettered access to cell phones [by permitting limitless such searches at the border] we would enable the government to evade the protections laid out in *Riley* 'on the mere basis that [the searches] occurred at the border.'" (quoting *United States v. Soto-Soto*, 598 F.2d 545, 549 (9th Cir. 1979)); and "We agree with much of the Fourth Circuit's discussion of foundational principles, but we respectfully disagree with the final step" as the only permissible such search must be grounded in reasonable suspicion that a phone contains evidence of contraband); *United States v. Aigbekaen*, 943 F.3d 713, 721 (4th Cir. 2019) (requiring that a forensic search of a cell phone seized at the border be based on reasonable suspicion and "bear[] some nexus to the border search exception's purposes[.]"); *United States v. Touset*, 890

F.3d 1227, 1233 (11th Cir. 2018) (rejecting Fourth Circuit's rule that any kind of individualized suspicion is needed to conduct any kind of search, regardless of how invasive, of phones at the border).

Generally speaking, the government possesses broad authority to inspect persons and property entering the country. Routine border searches of luggage ordinarily may be conducted without a warrant, probable cause, or reasonable suspicion. *See United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985); *United States v. Ezeiruaku*, 936 F.2d 136, 142–43 (3d Cir. 1991) (holding that a "routine search at the border needs no articulable suspicion to justify it; a non-routine search triggers the requirement of reasonable suspicion."). This exception arose due to the sovereign's interest in preventing the entrance of unwanted persons or contraband into the country. *See Montoya de Hernandez*, 473 U.S. at 537-38. But the type of contraband that may be found on a smartphone is different in kind from that which led this Court to carve out the border-search exception long ago. *See Riley*, 573 U.S. at 393-97 (explaining that cell phones differ "in both a quantitative and qualitative sense" from physical objects in large part because they contain an unparalleled quantity of personal information.). In contrast to contraband sealed in a person's luggage or on a traveler's person, electronic data is not brought into the country in a meaningful sense. The same information may exist simultaneously on remote servers, may already be accessible within the United States, and may be transmitted across borders without the physical movement of the device. Further, phones are unlikely to pose an immediate, serious threat the way that explosives, firearms, criminals, or large quantities of illicit drugs can. *See United States v. Chadwick*, 433 U.S. 1, 15 n.9 (1977) ("if officers have reason to believe that luggage contains some immediately dangerous instrumentality, such as explosives, it would be foolhardy to transport it to the station house without opening the luggage and disarming the weapon.").

In fact, a petitioner in a case from the Fifth Circuit, which along with the Eleventh puts no limitations on government searches of cellular and other electronic devices seized at the border, is seeking certiorari in the Supreme Court. *See Anibowei v. Blanche*, No. 26-208. Ten (10) amicus briefs from organizations across the political spectrum were recently submitted in support of granting certiorari, all arguing that the issue is of great significance and must be resolved by the nation's highest court, and also that none of the circuits are adequately protective of Americans' privacy and liberty interests in their phones. *Anibowei v. Blanche*, No. 26-208 (U.S. docketed Aug. 19, 2026).

Moreover, outside of the smartphone context, the Third Circuit recognizes that the Fourth Amendment does not permit unconstrained, warrantless searches simply because a person or vehicle is entering the country. In *United States v. Whitted*, 541 F.3d 480, 488 (3d Cir. 2008), it held that the search of a private cabin on a cruise ship (the functional equivalent of the border) was a non-routine border search requiring "reasonable suspicion of criminal conduct." The Court thus gave "special protection to an individual's dwelling place." *Id*. Further, the Third Circuit has held that the reasonableness of a warrantless search depends on "the degree to which [the search] intrudes upon an individual's privacy and … the degree to which [the search] is needed for the promotion of legitimate governmental interests." *United States v. Sczubelek*, 402 F.3d 175, 182 (3d Cir. 2005) (quoting *United States v. Knights*, 534 U.S. 112, 119 (2001)).

Here, CBP did far more than conduct a brief inspection of an ordinary physical object while Mr. Shehadeh waited. After informing Mr. Shehadeh that he had been selected for a "random customs check" that entailed the search of his phone, to which he objected for privacy reasons, including that the device contained privileged client communications, officers seized Plaintiff's locked device, detained him for hours causing him to miss his flight, and continues to hold it 9 days later. They provided no explanation identifying any sort of reasonable or individualized suspicion let alone probable cause to believe that Mr. Shehadeh had committed a criminal offense or there was any other justifiable basis for taking his phones. And this was all after Mr. Shehadeh explained that he was an attorney and his phone contained both personal and attorney-client privileged information. CBP officers apparently did not understand the import of attorney-client privilege, even implying that it would be permissible for any attorney to view privilege materials, and were unlikely to weight the interests of Plaintiffs and his clients against the government interest that they believe the "border rules" further.

The Court need not determine in this proceeding that every search of a cell phone at the border requires a warrant or at the very least reasonable suspicion, although Mr. Shehadeh maintains that it does. *See* U.S. Const. amend IV; *see also Riley* at 381-82 ("the ultimate touchstone of the Fourth Amendment is 'reasonableness'" and "in the absence of a warrant, a search is reasonable only if it falls within a specific exception of the warrant requirement."). The narrower question is whether the Government may continue to retain this particular device for further examination, despite Plaintiff's privacy and liberty interests, without identifying a sufficient present justification for doing so. *See United States v. Premises Known as 608 Taylor Avenue*, 584 F.2d 1297, 1302-04 (3d Cir. 1978) (explaining that even property initially obtained lawfully may not be retained indefinitely merely because the Government once possessed authority to seize it; the continued retention must remain reasonably related to an actual governmental interest).

B. Federal Rule of Criminal Procedure 41(g) Requires the Return of Mr. Shehadeh's Phone and Any Data Extracted From It

In determining whether to exercise that jurisdiction, courts in this District consider: "(1) whether the Government displayed a callous disregard for the constitutional rights of the movant;

(2) whether the movant has an individual interest in and need for the property he 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." *Chaim v. United States*, No. 09-5426, 2010 WL 2245576, at *__ (D.N.J. June 2, 2010) (collecting cases); *see also Johnson v. United States*, 971 F. Supp. 862, 865–66 (D.N.J. 1997).

The Government has displayed a callous disregard for Mr. Shehadeh's constitutional rights. Mr. Shehadeh has already suffered an irreparable injury as a result of the violation of his Fourth Amendment rights. The government's continued confiscation of his phone constitutes an ongoing constitutional injury, and he therefore seeks relief under Rule 41(g), which permits a person to move for the return of property unlawfully seized and searched. A motion under Rule 41(g) filed before the initiation of criminal proceedings invokes the district court's civil equitable jurisdiction. *See United States v. Chambers*, 192 F.3d 374, 376 (3d Cir. 1999); *United States v. McGlory*, 202 F.3d 664, 670 (3d Cir. 2000) (en banc).

In applying Rule 41(g) to Mr. Shehadeh's motion, other Third Circuit precedent is also applicable. Courts in this jurisdiction have long recognized that the Government's lawful acquisition of property does not give it an unlimited right to retain that property indefinitely. In *608 Taylor Avenue*, the court considered the Government's continued confiscation of property before the commencement of criminal proceedings and held that retention must be "reasonable" under all of the circumstances. *Id.* at 1302. That inquiry requires a court to balance the Government's interest in retaining the property against the owner's right to its use, including the reason for the seizure and the timeliness of Government action. *Id.* at 1302–04. If continued retention is unreasonable under the circumstances, the district court should order the property returned. *Id.* at 1304.

Further, when there is no criminal proceeding at issue whatsoever, return of the property is effectively mandated. *See Chaim v. United States*, No. 09-5426 (MF), 2010 WL 2245576, at *__ (D.N.J. June 2, 2010). *Chaim* explained that *608 Taylor Avenue* addresses the precise question that arises when no criminal or forfeiture proceeding exists: how long the Government may continue to hold a person's property without commencing an action against either the person or the property. Thus, when the Government asserts that it no longer possesses seized property or otherwise contests its return, the district court must determine what happened to the property rather than simply accepting the Government's representations. *Id.* at 377–78. The Third Circuit has subsequently reiterated that Rule 41(g) requires the district court to resolve factual disputes material to the disposition of seized property and, where necessary, conduct an evidentiary hearing. *United States v. Albinson*, 356 F.3d 278, 281–82 (3d Cir. 2004).

Applied here, that analysis requires the government to immediately return Mr. Shehadeh's phone, any data extracted from it, and to account for what was done to the phone during the time it was unlawfully in the government's position. As discussed, the Government had no authority to search and seize Plaintiff's smartphone in the first place. *See Riley* at 381-82. But that aside, Plaintiff is the lawful owner of the cellular telephone CBP seized from him on September 17, 2026, a device in which he has constitutionally protected privacy interests, and that contains personal and attorney-client privileged data. To Plaintiff's knowledge, he has not been charged with any crime, no warrant has issued authorizing a search or continued seizure of the device, and the Government has not identified any criminal proceeding, forfeiture proceeding, or continuing evidentiary need requiring possession of his phone.

Nor is the phone contraband. It is Plaintiff's personal property and an instrument of his legal practice. The Government's continued possession therefore deprives Plaintiff of property to which he has an immediate possessory interest while placing confidential and attorney-client privileged information concerning his clients within Government custody.

II. The ATTORNEY-CLIENT PRIVELEGED AND CONFIDENTIAL MATERIAL ON PLAINTIFF'S PHONE HEIGHTENS THE NEED FOR IMMEDIATE EQUITABLE RELIEF.

The attorney-client privilege encourages the "full and frank communication between attorneys and their clients" necessary to the proper administration of justice. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981); *see also Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 108 (2009); *See Swidler & Berlin v. United States*, 524 U.S. 399, 409 (1998) (holding that application of the privilege should not turn on "[b]alancing ex post the importance of the information against client interests"); *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 348 (1985) (explaining that the attorney-client privilege exists to ensure that clients may seek legal advice without fear that their disclosures will later be revealed to others). Government searches of an attorney's electronic devices threaten every attorney's ethical obligation to safeguard client information and preserve the attorney-client privilege, as well as their own personal privacy interests. *See, e.g., Chatrie*, 146 S. Ct. at 2199-2200. The privilege extends beyond the attorney who happens to possess the device: it safeguards the confidentiality upon which clients depend in their communications with counsel. Courts recognize that confidential client information related to representation—particularly communications for the purpose of obtaining or providing legal advice--receives heightened protection. *See Fisher v. United States*, 425 U.S. 391, 403 (1976); Restatement (Third) of the Law Governing Lawyers § 68 (2000).

Those interests are directly implicated here, as Mr. Shehadeh informed CBP when they initially tried to search and then seized his phones.. *See* Declaration of Jalal Shehadeh, Exhibit B, ¶ 16-17, 24-28.

The breadth of attorney-client privileged information potentially accessible through a modern smartphone magnifies the concern. As Plaintiff explained to CBP officers, unlike a discrete paper file that can be separated and withheld from review, his privileged and nonprivileged communications were intermingled throughout applications, text messages, and other portions of his personal phone. A search of the device therefore creates a substantial risk of encountering privileged information even if the Government's ultimate investigative objective concerns something else.

The Court should therefore order the phone's immediate return, and require the Government to disclose whether any search, imaging, extraction, copying, review, retention, or dissemination of information from Plaintiff's phone has occurred and what privilege-protection procedures have been employed.

To the extent the Government has copied, extracted, or retained information from the phone, the Court should impose appropriate conditions under Rule 41(g) to protect privileged and confidential information pending determination of the Government's authority, if any, to retain that information.

III. EXPEDITED CONSIDERATION IS WARRANTED BECAUES PLAINTIFF'S DEPRIVATION AND THE RISKS TO PRIVELEGED INFORMATION ARE ONGOING.

Expedited consideration is warranted because the injury is continuing. CBP has retained Plaintiff's personal cellular telephone since September 17, 2026. The device contains confidential and attorney-client privileged communications and personal data in which he has a constitutionally protected privacy interests, and Plaintiff expressly asserted those interests before CBP retained it.

Each additional day of Government possession prolongs Plaintiff's deprivation of his property and his inability to access a device used in connection with his legal practice. Continued delay also creates an ongoing risk that confidential client information may be searched, copied, extracted, retained, or disseminated before this Court determines whether the Government possesses a lawful basis for continued retention and examination. The concern is particularly acute here because the information at issue includes attorney-client communications.

Rule 41(g) expressly directs the Court to "receive evidence on any factual issue necessary to decide the motion." Fed. R. Crim. P. 41(g). If the Government disputes Plaintiff's account, asserts an investigative or evidentiary need for continued retention, or contends that particular procedures adequately protect privileged information, those issues can be resolved promptly through declarations or, if necessary, an evidentiary hearing.

Plaintiff therefore respectfully requests expedited consideration of this Motion and, if the Court determines that factual development or oral argument would assist its resolution, an expedited hearing at the Court's earliest practicable availability.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant his Motion, order the immediate return of his cellular telephone, require the Government to disclose whether it has searched, imaged, extracted, copied, retained, or disseminated information obtained from the device, order appropriate relief necessary to protect attorney-client privileged and confidential information, and grant such other and further relief as the Court deems just and proper.

Dated: September 26, 2026

Respectfully submitted,

/s/Christina John
Christina John,* NJ Bar No. 379242021
Jenin Younes (*pro hac vice pending*)
AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE
910 17th Street NW
Washington, DC 20006
christina@adc.org
*Designated Counsel for Service

Attorneys for Plaintiff