

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-20519-CIV-LENARD**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES SABATINO,

Defendant.

**ORDER DENYING AMENDED EMERGENCY MOTION FOR ORDER TO
RETURN PROPERTY AND FOR AN EVIDENTIARY HEARING**

THIS CAUSE is before the Court on the Defendant James Sabatino's ("Sabatino") Amended Emergency Motion for Order to Return Property and for an Evidentiary Hearing ("Motion") (D.E. 702) filed on March 11, 2025. In his Motion, Sabatino, who is currently imprisoned in ADX Florence in Colorado, alleges that two hard drives were illegally seized by the Bureau of Prisons ("BOP"), and that this seizure was a violation of Sabatino's Fourth, Fifth, and Sixth Amendment rights.¹ D.E. 702 at 2. Sabatino requests an evidentiary hearing to present testimonial and other evidence to support his claims.² *Id.* at 11.

On March 20, 2025, the United States of America ("Government") filed its Response in Opposition ("Response") (D.E. 710), claiming that the Southern District of Florida is not the proper venue for the Motion. D.E. 710 at 1-2. The Response states that

¹ As this Order pertains to questions of venue and jurisdiction, the Court will not assess the parties' other arguments on their merits.

² According to Sabatino's Motion (D.E. 702), the hard drives contain materials for the defense of three pending state cases. D.E. 702 at 5 and 9.

Federal Rule of Criminal Procedure 41(g) provides that a movant seeking the return of their property in a criminal case must file a motion in the district where the property was seized. Fed. R. Crim. P. 41(g). Since Sabatino is imprisoned in Colorado and the hard drives were seized in Colorado, the Government argues the proper venue for the Motion is the District of Colorado. *Id.* at 2.


Sabatino filed his Reply (“Reply”) (D.E. 711) on March 21, 2025. In it, Sabatino argues that the Court may exercise ancillary jurisdiction in this matter, and cites *United States v. Giovanelli*, to support this proposition. *United States v. Giovanelli*, 998 F.2d 116 (2nd Cir. 1993). *Giovanelli* holds, in relevant part that the district where a defendant was tried has “jurisdiction to hear the Rule 41(e) motion for return of property despite its being brought on after the conclusion of criminal proceedings in a different district than that in which the property was seized.” *Id.* at 118. Sabatino argues that the Court “clearly has jurisdiction to entertain and decide this motion.” D.E. 711 at 5.

The Court, however, is unconvinced by Sabatino’s argument. The Eleventh Circuit, in *Pegg v. United States*, reviewed a district court’s denial of a Rule 41(g) motion for return of property and cited the text of Rule 41(g) for the proposition that a motion under that title must be brought in the district where the property was seized. *Pegg v. United States*, 147 F. App’x 886 (11th Cir. 2005). *See also ZANE BALSAM, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, Defendant-Appellee.*, No. 22-10662, 2025 WL 841640 at *5 (11th Cir. Mar. 18, 2025); *Sutton v. United States*, No. 110-CV-1978-RWS, 2010 WL 3036006, at *1 (N.D. Ga. July 30, 2010); *Petlochkov v. United States*, No. 1:22-CV-03200-JPB, 2022

WL 17407973, at *2 (N.D. Ga. Dec. 2, 2022). Following the guidance of the Eleventh Circuit, the Court finds that the correct forum for the Motion is the District of Colorado, not the Southern District of Florida. Accordingly, it is

ORDERED AND ADJUDGED that the Amended Emergency Motion for Order to Return Property and for an Evidentiary Hearing (D.E. 702) is **DENIED** for lack of jurisdiction.

DONE AND ORDERED in Chambers at Miami, Florida this 24th day of March 2025.

A handwritten signature in cursive script that reads "Joan A. Lenard". The signature is written in black ink and has a long, sweeping horizontal line extending to the right from the end of the name.

JOAN A. LENARD

UNITED STATES DISTRICT JUDGE