

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 12-cr-60049-KMW**

**UNITED STATES OF AMERICA**

**vs.**

**ROGERIO CHAVES SCOTTON,**

**Defendant.**

---

**UNITED STATES' RESPONSE TO MOTIONS FOR RETURN OF PROPERTY**

Rogério Scotton has filed two motions seeking the return of his alleged property pursuant to Fed. R. Crim. P. 41(g) (DE 753, DE 754). Specifically, he seeks the return of certain parcels containing electronic and other items which he tendered for delivery and which were subsequently intercepted by shipping companies and turned over to the FBI because of fraudulent shipping labels. He also seeks, a decade later, certain discovery items such as FBI investigative notes and chain of custody reports (DE 754:3). Scotton is not entitled to any relief because his claim is barred by the statute of limitations. Even if his claim were not time barred, to the extent that he has a proprietary interest in packages, the FBI does not have custody of the 27 referenced packages—they were returned to the shippers from whom they obtained the parcels. *See Declaration Roy Van Brunt, Attachment A.* As for his discovery requests pertaining to these boxes and otherwise, there is no basis for discovery in this closed criminal matter.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

A second superseding indictment charged that, from approximately February 2006 through

February 2012, Scotton devised a scheme to defraud and to obtain money by false and fraudulent pretenses, representations and promises, and knowingly caused to be sent and delivered certain mail matter by a private and commercial interstate carrier, for the purpose of executing the scheme, in violation of 18 U.S.C. § 1341 (Counts 1-27) (DE 94). The scheme's purpose was for Scotton to use false and fictitious information to open shipping accounts with carriers Federal Express Corporation ("FedEx"), DHL Express (USA) Inc. ("DHL"), and United Parcel Service ("UPS"), under names and addresses other than his own, use the fraudulently created accounts to ship thousands of packages, and then not pay the carriers for their shipping services, thereby eliminating the shipping costs associated with his internet businesses and increasing his profit margin (*id.*).

Scotton also was charged with making materially false, fraudulent and fictitious statements and representations to the United States Citizenship and Immigration Services, in violation of 18 U.S.C. §1001(a)(2) (Counts 28 and 29).

Scotton made repeated demands to replace five defense counsel, three of whom the district court had appointed, sequentially, to represent him under the Criminal Justice Act. The court ruled that Scotton would represent himself at trial, appointing Jason Kreiss and-by counsel (DE 64, DE 66, DE 67, DE 70, DE 96, DE 100, DE 101, DE 102, DE 114, DE 138, DE 150, DE 54).

Trial commenced on January 23, 2014, and concluded on February 26, 2014, when a jury found Scotton to be guilty as charged (DE 386). Kreiss was appointed to represent Scotton throughout the sentencing proceedings (DE 401).

On May 12, 2014, Scotton was sentenced on Counts 1-27 to 108 months' incarceration and three years' supervised release, and on Counts 28-29 to 60 months' incarceration and three years'

supervised release, all sentences to run concurrently (DE 413).<sup>1</sup>

Scotton appealed various aspects of his conviction and sentence (DE 414). The Eleventh Circuit affirmed his conviction and sentence. *United States v. Scotton*, 647 F. App'x 947 (11th Cir. 2016). The Eleventh Circuit issued its mandate on September 21, 2016. (*See* USCA 11 Case No. 14-12228, DE 141-2).

On March 21, 2019, Scotton filed a Motion to Vacate pursuant to 28 U.S.C. § 2255 which this Court denied on July 22, 2019 (DE 701, 722). Scotton did not appeal the denial of his Motion to Vacate.

Throughout the years, Scotton has filed a myriad of frivolous motions, mainly to overturn his conviction, none of which are relevant to his latest motion and all of which have been denied by the Court.

## **ARGUMENT**

### **I. SCOTTON MOTION IS BARRED BY THE STATUTE OF LIMITATIONS; MOREOVER, HE IS NOT ENTITLED TO THE RETURN OF PACAKGES WHICH THE UNITED STATES DOES NOT POSSESS.**

Rule 41(g) provides that “[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return” Fed.R.Crim.P. 41(g). However, when an owner invokes Rule 41(g) after a criminal case is closed, the Court treats the motion for return of property as a civil action in equity. *United States v. Howell*. 425 F.3d 971, 974 (11th Cir. 2005). Equitable jurisdiction “must be exercised with caution and restraint” and is appropriate only when necessary to “prevent manifest injustice” in light of the movant’s conduct and the merits of his request. ” *United States v. Martinez*, 241 F.3d 1329, 1331 n. 2 (11th Cir. 2001)

---

<sup>1</sup> According to Bureau of Prison’s inmate locator (BOP.gov), Scotton was no longer in BOP custody as of February 27, 2020. He was subsequently removed from the United States to his native country Brazil.

(quotation marks omitted). Rule 41(g) actions are subject to the six-year statute of limitations found in 28 U.S.C. § 2401(a). *United States v. Machado*, 465 F.3d 1301, 1307 (11th Cir. 2006), *abrogated on other grounds by Boweles v. Russell*, 551 U.S. 205 (2007); *Baxter v. United States*, 451 F. App'x 868, 870 (11th Cir. 2012) (unpublished). “Unlike an ordinary statute of limitations, § 2401(a) is a jurisdictional condition attached to the government’s waiver of sovereign immunity and as such must be strictly construed.” *Center For Biological Diversity v. Hamilton*, 453 F.3d 1331, 1334 (11th Cir. 2006) (quotation omitted).

Scotton’s motion for return of the parcels is well outside § 2401(a)’s six-year limitations period. The Eleventh Circuit affirmed his conviction and sentence on April 12, 2016 and issued its mandate on September 21, 2016. (His petition for a writ of certiorari was denied on December 12, 2016. *Scotton v. United States*, 580 U.S. 1036 (2016)). Scotton’s motion should have been filed six years after the mandate issued, by September 20, 2022. This is so because Scotton is seeking the return of items used as evidence in his trial. Once his conviction and sentence were affirmed, the government no longer had any need for the items. This Court therefore lacks jurisdiction to consider his claim.

Moreover, even if Scotton’s motion were timely, Scotton has not established that he is the proprietor of the parcels in question. These parcels were tendered for deliver to customers who purchased the goods from Scotton. Arguably, these parcels belonged to the intended recipients. “To be entitled to relief, the property owner must establish that he had a possessory interest in the property that was seized and that he has “clean hands.” *United States v. Howell*, 425 F.3d 971, 973 (11th Cir. 2005). To the extent it is unclear as to whether Scotton has an ownership interest, it is clear, however, that as the perpetrator of this large-scale fraud, Scotton does not come to this Court with clean hands. Yet a third reason to deny his motion.

Finally, even if this court were to find that Scotton's motion was timely, that he had a proprietary interest in the parcels, and that he has clean hands, the FBI no longer possesses the parcels. Well after the conclusion of the direct appeal and the collateral attack, the FBI requested permission to dispose of the evidence. On or about June 29, 2022, the U.S. Attorney authorized the FBI to dispose of the evidence in accordance with their policies. (*See* Declaration Roy Van Brunt ¶ 4). FBI policy provides that evidence may be returned to the entity from which it was obtained (*id.*, ¶ 5). In this instance, the intercepted parcels, as more fully described in the attachment to SA Roy Van Brunt's declaration, were obtained from FedEx and UPS. On August 3, 2022, the FBI agent then assigned to this case, met with a representative of UPS and returned seven of the parcels (*id.*, ¶ 6). On August 17, 2022, the FBI agent then assigned to this case met with a representative of and returned the remaining ten parcels (*id.*, ¶ 7). The government is not obligated to return property that it no longer possesses. *United States v. Potes-Ramirez*, 260 F.3d 1310, 1314 (11th Cir. 2001).

## **II. SCOTTON IS NOT ENTITLED TO DISCOVERY.**

This criminal case has ended. It was no longer pending as of September 21, 2016, when the Eleventh Circuit issued its mandate. *United States v. Elso*, 571 F.3d 1163, 1166 (11th Cir. 2009). After judgment has been imposed, this Court's "jurisdiction over the criminal proceedings comes to an end except for such remedies as may be provided by the Federal Rules of Criminal Procedure, 28 U.S.C. § 2255 or the all writs section, 28 U.S.C. § 1651." *United States v. Sabatino*, No. 16-20519-Cr-Lenard, 2018 WL 10038800, \* 4 (S.D.Fla. February 12, 2018) (citations omitted).

This case ended long ago. There is no basis for Scotton's Rule 16 discovery requests for FBI investigative notes regarding the 27 boxes referenced above, the chain of custody records for

the 27 boxes, records, shipping documents or tracking logs and “all digital discovery materials (CDs) that were seized and destroyed by ICE during the Defendant’s deportation proceedings” (DE 754:3). Fed. R. Crim P. 16 pertains only to pretrial discovery. *United States v. McLaughlin*, 278 F. Appx. 856 (11th Cir. 2008)(unpublished). This Court lacks jurisdiction to entertain Scotton’s requests.

WHEREFORE, the United States respectfully requests that Scotton’s two motions be denied.

Respectfully submitted,

HAYDEN P. O’BYRNE  
UNITED STATES ATTORNEY

*s/ Bertha Mitrani*

Bertha R. Mitrani  
Assistant United States Attorney  
Florida Bar No. 88171  
500 East Broward Blvd. Suite #700  
Fort Lauderdale, FL 33394  
954-660-5691 Telephone  
954-356-7336 Fax

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2025, the undersigned electronically filed the foregoing document with the Clerk of the Court using CM/ECF, mailed this motion to Rogerio Chaves Scotton, 160 W. Camino Real, Ste 102, Boca Raton, FL 33432 and emailed it to rs@scottonracing.com.

*s/ Bertha Mitrani*

Bertha R. Mitrani  
Assistant United States Attorney

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 12-cr-60049-KMW**

**UNITED STATES OF AMERICA**

**vs.**

**ROGERIO CHAVES SCOTTON,**

**Defendant.**

\_\_\_\_\_ /

**DECLARATION OF SPECIAL AGENT ROY VAN BRUNT**

I, Roy Van Brunt, declare upon information and belief that:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been so employed since 2003. I was the case agent assigned to the captioned matter, *United States v. Rogerio Chaves Scotton*, 12-cr-60049-KMW. I was the case agent during the investigation and trial of this matter.
2. During the preparation of this Declaration, I have consulted with the Supervisory Special Agent who now supervises the respective “white collar” squad and reviewed the official electronic FBI case file, including the section which tracks collected evidence.
3. Over the course of the investigation the FedEx and UPS were able to intercept approximately 17 packages which Scotton shipped using fraudulent accounts which he opened. (In preparation of this declaration I prepared the attached document with details related to these 17 items. *See Exhibit A Spreadsheet with 1B items identified 1B-1 to 1B-17*).
4. In response to the FBI’s request to dispose of the evidence in this matter, on or about June 29, 2022, the FBI received approval from the U.S. Attorney’s Office to dispose of the evidence in accordance with the FBI’s policies and procedures. At this point, both Scotton’s direct appeal and collateral attack pursuant to 18 U.S.C. § 2255 were over, both having been denied.



5. FBI policy provides that evidence may be returned to the entity from which it was obtained.

In this instance, the intercepted parcels were obtained from FedEx and UPS.

6. On August 3, 2022, the FBI agent then assigned to this case, met with a representative of UPS and returned items 1B-1 through 1B-7.

7. On August 17, 2022, the FBI agent then assigned to this case met with a representative of Fed Ex and returned items 1B-8 through 1B-17.

Date 05/19/2025

RUBA  
Roy Van Brunt  
Special Agent, FBI

| <b>Evidence Report for Case:</b> |         | 318A-MM-111489  |   |                  |
|----------------------------------|---------|---|---|------------------|
|                                  |         |   |   |                  |
|                                  |         |   |   |                  |
| Item #                           | Type    | Collected From  | Description   | Disposition Date |
| 1B17                             | General | (U//FOUO) FEDEX (SAM CORY-FRAUD INVESTIGATOR), 2700 NW 25 ST, POMPANO BEACH, FL | (U//FOUO) ONE FEDEX PACKAGE (SAM CORY-FRAUD INVESTIGATOR) WITH "EVENT/EVIDENCE #" EV 284346 DATED 08/16/2011 CONTAINING ONE HYDRAULIC PUMP CONTAINING TWO QUARTS OF HYDRAULIC OIL (EMPTY BOTTLES) | 8/17/2022 14:45  |
| 1B16                             | General | (U//FOUO) FEDEX (SAM CORY-FRAUD INVESTIGATOR), 2700 NW 25 ST, POMPANO BEACH, FL | (U//FOUO) ONE FEDEX PACKAGE WITH "EVENT/EVIDENCE #" EV 284360 DATED 08/16/2011 CONTAINING T-SHIRTS, SHOES, AND CLOTHING ITEMS   | 8/17/2022 14:45  |
| 1B15                             | General | (U//FOUO) FEDEX (SAM CORY), 2700 NW 25TH ST, POMPANO BEACH, FL                  | (U//FOUO) ONE (1) BOX IDENTIFIED BY #7943 3382 9986 SHIPPED TO GERALDO SANTOS (BMW BUMPER)  | 8/17/2022 14:45  |
| 1B14                             | General | (U//FOUO) FEDEX (SAM CORY), 2700 NW 25TH ST, POMPANO BEACH, FL                  | (U//FOUO) ONE (1) BOX IDENTIFIED BY #7943 1102 8538 SHIPPED TO PRISCILLA LUISA (BASINET)  | 8/17/2022 14:45  |
| 1B13                             | General | (U//FOUO) FEDEX (SAM CORY), 2700 NW 25TH ST, POMPANO BEACH, FL                  | (U//FOUO) ONE (1) BOX IDENTIFIED BY #7699 6172 3200. SHIPPED TO LEANDRO DOMINQUES (WHEEL)   | 8/17/2022 14:45  |
| 1B12                             | General | (U//FOUO) FEDEX, 1101 CLINT MOORE RD, BOCA RATON, FL, 33487                     | (U//FOUO) ONE BOX CONTAINING AN XBOX 360 WITH 60 GB HARD DRIVE  | 8/17/2022 14:45  |
| 1B11                             | General | (U//FOUO) FEDEX, 1101 CLINT MOORE RD, BOCA RATON, FL, 33487                     | (U//FOUO) ONE BOX CONTAINING A SHARP AR-SP6 N SINGLE PASS FEEDER FOR COPYING MACHINE  | 8/17/2022 14:45  |
| 1B10                             | General | (U//FOUO) FEDEX, 1101 CLINT MOORE RD, BOCA RATON, FL, 33487                     | (U//FOUO) ONE BOX CONTAINING A SHARP AR-202NT PRINTER/TONER CARTRIDGE   | 8/17/2022 14:45  |

|     |         |   |   |                 |
|-----|---------|---|---|-----------------|
| 1B9 | General | (U//FOUO) FEDEX, 1101 CLINT MOORE RD, BOCA RATON, FL, 33487                     | (U//FOUO) ONE FEDEX PACKAGE CONTAINING FOUR SONY PLAY STATION VIDEO GAMES                                     | 8/17/2022 14:45 |
| 1B8 | General | (U//FOUO) FEDEX, 1101 CLINT MOORE RD, BOCA RATON, FL, 33487                     | (U) ONE FOLDER OF DOCUMENTS BELONGING TO BRUNO D. EVARISTO  | 8/17/2022 14:45 |
| 1B7 | General | (U//FOUO) UNITED PARCEL SERVICE, 1332 NW 3RD ST, DEERFIELD BEACH, FL, 33442, US | (U) 1 EPSON ULTRA HI-DEFINITION RX680 ALL IN ONE PRINTER IDENTIFIED BY UPS TRACKING # 1Z 716 R9Y 04 9896 0084 | 8/3/2022 17:00  |
| 1B6 | General | (U//FOUO) UNITED PARCEL SERVICE, 1332 NW 3RD ST, DEERFIELD BEACH, FL, 33442, US | (U//FOUO) 1 X- BOX 360 PREMIUM IDENTIFIED BY UPS TRACKING # 1Z 716 R9Y 04 9896 1056                           | 8/3/2022 17:00  |
| 1B5 | General | (U//FOUO) UNITED PARCEL SERVICE, 1332 NW 3RD ST, DEERFIELD BEACH, FL, 33442, US | (U//FOUO) 1 X BOX 360 PREMIUM IDENTIFIED BY UPS TRACKING # 1Z 716 R9Y 04 9774 5872                            | 8/3/2022 17:00  |
| 1B4 | General | (U//FOUO) UNITED PARCEL SERVICE, 1332 NW 3RD ST, DEERFIELD BEACH, FL, 33442, US | (U//FOUO) 1 HP PHOTOSMART C4280 PRINTER IDENTIFIED BY UPS TRACKING # 1Z 716 R9Y 04 9348 2092                  | 8/3/2022 17:00  |
| 1B3 | General | (U//FOUO) UNITED PARCEL SERVICE, 1332 NW 3RD ST, DEERFIELD BEACH, FL, 33442, US | (U//FOUO) 1 SONY PLAYSTATION IDENTIFIED BY UPS TRACKING # 1Z 716 R9Y 04 9128 5479                             | 8/3/2022 17:00  |
| 1B2 | General | (U//FOUO) UNITED PARCEL SERVICE, 1332 NW 3RD ST, DEERFIELD BEACH, FL, 33442, US | (U//FOUO) 1 X-BOX 360 PREMIUM IDENTIFIED BY UPS TRACKING # 1Z 716 R9Y 04 9814 0862                            | 8/3/2022 17:00  |
| 1B1 | General | (U//FOUO) UNITED PARCEL SERVICE, 1332 NW 3RD ST, DEERFIELD BEACH, FL, 33442, US | (U//FOUO) I PACKAGE OF HP DVD-R DISKS WITH UPS TRACKING # 1Z 716 R9Y 04 9770 2444                             | 8/3/2022 17:00  |
|     |         |   |   |                 |
|     |         |   |   |                 |
|     |         |   |   |                 |