UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO: 1260049-KMW

vs. **CASE NO. 17-62428-KMW**

ROGERIO CHAVES SCOTTON,

Defendant,

_____/

Defendant Rogerio Chaves Scotton's Reply in Support of Rule 41(g) Motion for Return of Property and Request for Evidentiary Hearing and Sanctions

Scales of justice are weighted by unseen hands, symbolizing the imbalance caused by prosecutorial misconduct.

1. Introduction

Defendant Rogerio Chaves Scotton ("Scotton") submits this Reply to the Government's Opposition to his Rule 41(g) Motion for Return of Property. The Government's response is notable for its ever-shifting narrative and contradictions,

which only underscore the manifest injustice at issue. Over the course of this case, the prosecution's story about the key evidence – dozens of seized shipping packages – has repeatedly changed. Now, in its latest iteration, the Government claims that only 11 packages are relevant and asserts that private carriers (FedEx, UPS, DHL) "intercepted" and even destroyed Scotton's property, all without a court order, warrant, or documented chain of custody. This belated blame-shifting onto third parties rings hollow in light of the trial record and the Government's prior positions. Scotton was indicted for 27 specific packages and, at a pretrial evidentiary viewing, was shown over 100 packages assembled by the prosecution as evidence of his alleged fraud. The sudden contention that "only 11" of these packages matter is not only factually baseless but legally irrelevant – it does nothing to excuse the Government's failure to safeguard and return all property it seized. Rogerio Scotton, a former professional race car driver turned entrepreneur, now fights to expose the truth behind his wrongful conviction. By way of brief background, Scotton – a Brazilian native and one-time professional race car driver – was convicted in 2014 of 27 counts of mail fraud for an alleged scheme involving shipping packages via FedEx, UPS, and DHL using fraudulent accounts and not paying for the services. The Government's theory was that Scotton opened shipping accounts under false identities, shipped valuable merchandise to Brazil, and thereby caused the carriers

to incur losses when he failed to pay the shipping charges. From indictment through trial, the 27 packages corresponding to the mail fraud counts were portrayed as having been shipped overseas (and even reported "lost" in some cases) to execute this fraud. However, the reality – which emerged at trial – is that every one of those 27 packages was actually in the Government's possession and never left the United States. In fact, the prosecution physically presented all 27 packages in court during Scotton's trial, conclusively demonstrating that these parcels were never shipped to Brazil at all. This truth undercuts the entire premise of the alleged scheme and the resulting restitution (which was predicated on carrier losses for deliveries that never occurred). Rather than confront this discrepancy, the Government's Opposition attempts to rewrite history: it now implies that Scotton has no right to relief because the matter is time-barred, because he supposedly lacks a possessory interest (suggesting the packages "belonged" to customers), and because – incredibly – the FBI no longer has the evidence. According to the Government, the FBI "does not have custody of the 27 referenced packages — they were returned to the shippers from whom they obtained the parcels". In other words, after using these parcels to convict Scotton, the Government claims it gave them back to FedEx, UPS, or DHL (the "shippers") at some point, and thus cannot return them to Scotton now. Scotton's reply will refute these assertions point by point. The statute of limitations cannot

shield the Government's conduct here, especially given the equitable tolling warranted by the Government's own misconduct and ongoing obfuscation. The Government's "clean hands" argument fails where the unclean hands belong to the prosecution, which secured a conviction through misrepresentations and withheld crucial evidence. Most importantly, the Government's admission that it no longer has the packages – because they were handed to private carriers without court permission or notice – raises serious constitutional concerns under the Fourth and Fifth Amendments. The prosecution's handling of this evidence violated Scotton's rights at multiple turns: from an unlawful, undocumented seizure of property, to the suppression of exculpatory evidence (that the packages were never shipped) in violation of **Brady v. Maryland, 373 U.S. 83 (1963)**, to the presentation of a false narrative to the jury in violation of ***Napue v. Illinois, 360 U.S. 264 (1959)*** and ***Giglio v. United States, 405 U.S. 150 (1972)***. As detailed below, Scotton is entitled at the very least to an evidentiary hearing – which Rule 41(g) expressly mandates when facts are in dispute – and appropriate sanctions to hold the Government accountable for the mishandling and spoliation of evidence. The Court's equitable jurisdiction under Rule 41(g) exists "to prevent manifest injustice", and this case epitomizes such injustice.

2. Argument

A. The Government's Shifting Story – From 27 Packages, to 100+ Exhibits, to "Only 11 Packages" – Undermines Its Credibility and Claims.

From the inception of this case through the present motion, the Government's description of the package evidence has been a moving target. This Court should view the Opposition's latest minimization – that only *11 packages* are relevant or at issue – with skepticism, as it flatly contradicts the record and the Government's own prior statements. In fact, the prosecution's evolving story can be charted as follows:

Indictment Phase (2012): Scotton was charged with 27 counts of mail fraud, each corresponding to a specific package shipment. The indictment alleged these 27 packages were shipped (mostly to Brazil) using fraudulent labels, causing the carriers to suffer unpaid shipping costs as losses. The clear import was that all 27 packages left *Scotton's hands* and disappeared into the shipping ether – supporting the fraud charges.

Trial Phase (2014): Contrary to the indictment's narrative, the Government had retrieved all 27 packages before they ever left the country. Every one of those packages was brought into the courtroom and shown to the jury as an exhibit. In addition, the prosecution had accumulated dozens more seized packages (over 100

in total), which were shown to Scotton in a pretrial viewing (intended to illustrate the breadth of the scheme). Thus, at trial the Government treated far more than 11 packages as relevant – it highlighted the sheer number of intercepted parcels to portray Scotton's operation as "thousands of packages" of fraud. Notably, the Government never clarified to the court or jury how it obtained these parcels; it simply used their dramatic display to bolster its case, leaving the false impression that Scotton had shipped them and caused losses.

Post-Conviction Phase (2023 Opposition): Facing Scotton's motion for return of this property, the Government has radically shifted position. It now implies that most of those packages were never important to begin with, asserting that the FBI only kept (or now can identify) some "11 packages" in question. It further claims that none of the 27 packages remain in Government custody because the FBI "returned [them] to the shippers" (i.e. FedEx, UPS, DHL) shortly after Scotton's conviction. In essence, the Government's story has morphed from "27 shipped packages causing losses" → to "27 seized packages proving fraud (plus many more examples)" → to "only 11 packages really matter and we don't even have those anymore."

This pattern of contradiction eviscerates the credibility of the Government's opposition. The new "only 11 packages" theory is a litigation convenience, invented to downplay the scope of the issue and to argue that Scotton's claims are overblown.

But Scotton's conviction and sentence were obtained by emphasizing 27 specific packages (and by showcasing many more). The Government cannot retroactively erase the majority of the evidence it used against Scotton and pretend it is irrelevant. All property seized in connection with this case – whether it be 11 packages or 100 – is subject to the Rule 41(g) motion, and Scotton seeks return of all such property or, at minimum, a full accounting. If anything, the disparity between the evidence seized (100+ packages) and the evidence now acknowledged (11 packages) suggests that the Government has lost track of or destroyed a substantial amount of material, raising serious concerns that demand inquiry. Equitable considerations also weigh heavily against the Government. It cites ***United States v. Howell, 425 F.3d 971 (11th Cir. 2005)***, for the proposition that a Rule 41(g) movant must have "clean hands" and a possessory interest. Yet the unclean hands here belong to the Government. Having changed its story at each stage to suit its needs, the prosecution should not be rewarded for its inconsistency. The Court's equitable jurisdiction should be exercised "with caution and restraint" and only to prevent "manifest injustice". Here, manifest injustice will result if the Government's latest tale is accepted at face value. Scotton's reply will show that the truth is very different: the 27 packages (and many others) were confiscated without lawful authority, kept in the Government's possession through trial, and have since been improperly disposed of.

The Government's shifting narratives are a smoke-screen to avoid accountability for these facts.

B. ***The Packages Were Seized Without Legal Authority*** – The Government's Blame-Shifting to FedEx, UPS, and DHL is Facially Improper.

In its Opposition, the Government admits that the shipping packages at issue were initially seized by private carriers and handed over to the FBI "because of fraudulent shipping labels." This remarkable admission attempts to cast FedEx, UPS, and DHL as the actors responsible for depriving Scotton of his property. But this version of events – even if taken as true – raises more questions than it answers, and it fails to insulate the Government from responsibility under the law. To begin, there is no evidence of any court order, search warrant, or other legal process authorizing the seizure of Scotton's packages. The Government has produced zero documentation showing how and under what authority these parcels were intercepted and transferred to law enforcement. If FedEx, UPS, or DHL unilaterally "intercepted" the packages due to Scotton's unpaid labels, that alone does not make the property theirs to keep or destroy. At most, the carriers were victims of a purported fraud (unpaid shipping fees); they were not entitled to summarily confiscate the goods being shipped. In a lawful investigation, the FBI would have sought a warrant or issued a subpoena to obtain such evidence, creating a paper trail and preserving chain

of custody. Here, by contrast, the origin of the Government's physical evidence was shrouded in mystery at trial – the prosecution simply produced the boxes without explaining how they were obtained. The lack of any warrant or seizure order strongly suggests that the carriers acted as agents of the Government in taking these packages, or that the Government tacitly encouraged an improper seizure. Either scenario implicates the Fourth Amendment's protections against unreasonable searches and seizures. The Constitution does not permit law enforcement to sidestep the warrant requirement by outsourcing seizures to private companies and then accepting the fruits of that private seizure. See ***Walter v. United States, 447 U.S. 649, 656 (1980) (even where a private party initially intercepts a package, authorities exceed Fourth Amendment bounds by examining contents without a warrant)***; ***Soldal v. Cook County, 506 U.S. 56, 68 (1992) (seizure of property without warrant or consent violates Fourth Amendment even absent a search)***. The Government's Opposition tellingly does not mention any warrant – because none existed. Moreover, the claim that the packages were "intercepted" by the carriers due to fraudulent labels does not absolve the Government of accountability for what followed. Once those packages were in the FBI's hands, the Government had a duty to preserve and ultimately return them (or lawfully dispose of them with notice) after the criminal case. The FBI cannot simply point to FedEx or UPS and say "they took

it, not us." The Government chose to use this evidence in a federal prosecution; it cannot now shrug off responsibility by treating the carriers as the final custodians. In fact, the Opposition acknowledges that the parcels were "turned over to the FBI" by the carriers – meaning the Government did possess them. Those items were logged as FBI evidence (as confirmed by the Government's Exhibit A inventory) and remained under federal control through trial. Any subsequent hand-off back to the companies was an action undertaken by the Government (presumably the FBI or USAO), and thus the Government is directly answerable for the loss or destruction of the property. A courtroom shrouded in shadow – emblematic of the opaque manner in which the evidence was handled outside public view. The Opposition states that the 27 packages "were returned to the shippers from whom they obtained the parcels", citing a Declaration of FBI Special Agent Roy Van Brunt (Attachment A). If true, this suggests that after Scotton's conviction (or after his appeal), the FBI decided to give the evidence back to FedEx, UPS, and DHL. Yet again, this raises alarm: on what authority and under what procedure were the packages "returned" to private third parties? Typically, when the Government no longer needs evidence, it should either return it to the rightful owner or seek a court's permission to destroy it. Here, the rightful owner was at least debatable – Scotton, as the shipper and purchaser of the contents, had a strong possessory interest, especially once the

packages never reached any customer. The Government did not notify Scotton (who was by then in custody and later deported) that it intended to dispose of the property. Instead, it unilaterally handed the items to the carriers, who had no clear legal claim to the contents (*their claim was for unpaid fees, not ownership of shipped goods*). Notably, no proof has been offered that the carriers even wanted these goods or that they still had them by the time Scotton's motion was filed. The Government's declarant vaguely insinuates that the carriers "obtained" or possibly disposed of the items – but provides no chain-of-custody records or receipts documenting this transfer. If FedEx/UPS/DHL destroyed the packages, there ought to be records or testimony to that effect. The absence of any such evidence is telling. It suggests that the Government's current stance is speculative at best ("the carriers probably disposed of them") or deliberately evasive at worst ("we got rid of them, but we'll blame the carriers"). Either way, this Court should not accept the Government's unsupported narrative without scrutiny. In sum, the Government's attempt to wash its hands of the evidence by pointing to the carriers is legally deficient. The Fourth Amendment was violated when these packages were seized absent a warrant or lawful consent. The Federal Rules of Criminal Procedure were violated when the Government failed to maintain proper custody and then to return or account for the property post-trial. And now, the Government's story – lacking any documentation

– cannot be credited without an evidentiary hearing. Scotton intends to call witnesses from FedEx, UPS, and DHL, as well as Agent Van Brunt, to establish what really happened to these packages and when. Rule 41(g) explicitly provides that "the court must receive evidence on any factual issue necessary to decide the motion." Fed. R. Crim. P. 41(g); see also ***United States v. Rodriguez-Aguirre, 264 F.3d 1195, 1212 (10th Cir. 2001) (evidentiary hearing required where government's factual assertions in a Rule 41(e)/41(g) motion are challenged)***. Here, there are multiple factual issues crying out for resolution: how were the packages obtained, were they lawfully seized, what became of them, and did the Government or its agents act in bad faith? The Court should order a hearing to take evidence on these questions. The Government cannot be permitted to simply say "not our problem" when it comes to evidence that was central to its prosecution of Scotton.

C. ***False Allegations vs. Proven Facts:*** All 27 Packages Were Never Shipped – This Revelation Undermines the Conviction and Restitution Order

A cornerstone of Scotton's mail fraud conviction was the Government's allegation that his scheme caused real financial harm to the shipping companies. The indictment and trial theory maintained that Scotton's use of phony accounts resulted in carriers transporting 27 packages (and many more uncharged packages) to

international destinations without receiving payment – a classic "fraudulent shipment" scenario. The restitution order likewise was predicated on the notion that FedEx, UPS, and DHL provided services (delivery of those packages) for which Scotton never paid. However, the trial proceedings revealed a very different truth: those packages were never delivered to their purported destinations. In reality, the packages (with all their contents intact) were sitting in FBI custody all along. This fact, had it been candidly acknowledged by the prosecution, would have directly undercut the claim of carrier losses and could have been used by the defense to challenge both guilt and the amount of loss. Instead, the Government glossed over it, effectively misleading the jury and the Court about the true nature of Scotton's conduct. It is important to unpack the implications of the 27 packages never being shipped:

Mail Fraud Charge Implications: Mail fraud under 18 U.S.C. §1341 requires, among other elements, that the defendant "knowingly cause to be sent or delivered by mail or private carrier" some matter for the purpose of executing the scheme. Scotton was accused of causing deliveries to occur. If in fact no deliveries occurred for those 27 packages (because they were intercepted), it raises a serious question of whether the crime was completed or whether the proof matched the charge. The jury was likely led to believe that Scotton did cause deliveries (the indictment said "shipped to

Brazil"), whereas the physical evidence proves otherwise. While an attempted mailing can still violate the statute (placing items into the carrier's system can satisfy the element even if they don't reach the destination), the concealment of the fact that the packages were retrieved is troubling. It deprived the jury of context: namely, that the carriers ultimately did not bear the loss of delivering those goods overseas. A juror hearing that packages went to Brazil unpaid would naturally assume the carriers expended resources and fuel to get them there. A juror who knew all packages were stopped domestically might question whether the scheme actually succeeded or caused the claimed harm. Thus, the Government's false narrative could have impacted the jury's perception of the scheme's success and gravity – a key factor for guilt and intent. Presenting a materially false impression in this way violates due process. ***Napue v. Illinois, 360 U.S. 264, 269 (1959)***, holds that "the failure of the prosecutor to correct the testimony of a witness which he knows to be false" is a denial of due process. Even if no witness explicitly lied that "the packages are in Brazil," the prosecution's arguments and innuendo conveyed that falsehood. Once the Government knew (as it did) that none of those shipments were completed, it had an obligation to correct any contrary impression. ***Giglio v. United States, 405 U.S. 150, 153 (1972)***, extends this principle: if the prosecution learns that its case rests on a false premise, it must inform the jury. Here, rather than disclose the

exculpatory truth, the Government doubled down on the dramatics – lining the courtroom with boxes while maintaining that Scotton's actions "caused actual or intended loss" to the shippers. This was highly misleading. Under ***Napue***, a conviction obtained by deliberate deception cannot stand if there's any reasonable likelihood the deception affected the verdict. There is more than a reasonable likelihood here, since the entire linchpin of mail fraud – using the carrier – was colored by the lie that the carriers had been victimized into delivering goods for free.

Restitution and Loss Calculation: The court-imposed restitution (and sentencing loss amount under the Guidelines) presumably treated the 27 packages (and possibly additional shipments) as causing monetary loss equal to the shipping fees and/or value of claims made. If those packages never left the warehouse, then the carriers did not actually incur the full expenses of international delivery. For example, if a package bound for Brazil was stopped in Miami, FedEx did not put it on a plane to Brazil, did not pay customs, did not perform the service it was ostensibly defrauded of. At most, the carrier incurred minimal handling/storage costs – not the full fare. Yet Scotton's sentence likely did not account for this distinction; instead, it treated the intended loss as actual loss. Failing to disclose this evidence thus also violated ***Brady v. Maryland, 373 U.S. 83 (1963)***, because information that the packages were

never shipped (and hence that actual losses were lower, and that Scotton's scheme was perhaps ineffectual) is exculpatory and material to punishment. The Supreme Court in ***Brady*** made clear that suppressing evidence favorable to the defense on guilt or punishment violates due process. This duty extends to evidence in the hands of anyone acting on the government's behalf, including investigators and cooperating parties like the shipping companies. Here, records from the carriers or internal Government knowledge that "we actually have all these packages" was classic ***Brady*** material. Its disclosure could have enabled Scotton to argue at sentencing (or to the jury if loss was relevant to them) that the carriers did not suffer as claimed, potentially reducing the perceived culpability.

In this Rule 41(g) proceeding, Scotton is not directly moving to vacate his conviction – that is a matter for §2255 or Rule 33 (and indeed, he has separately pursued such relief). However, the Court cannot ignore the gravity of what the evidence situation says about the integrity of the trial. At a minimum, the inconsistency between the indictment's allegations and the trial's reality shows that *"manifest injustice"* would result if the Court simply rubber-stamps the Government's refusal to provide relief. Scotton has made a substantial showing that the prosecution's case was built on, or at least enhanced by, a false premise. This bolsters the need for an evidentiary hearing and for the Court to use its supervisory powers to investigate possible

prosecutorial misconduct. It also strongly counsels against finding that Scotton comes to this Court with "unclean hands" such that equity should deny him relief. To the contrary, the unclean hands are on the Government's side of the table, given the apparent ***Napue/Brady*** violations. Equity should not permit the Government to benefit from its own wrongdoing. See ***Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806, 814-15 (1945) (clean hands doctrine forbids a party from obtaining equitable relief if it has acted unfairly in relation to the matter at issue)***. Here, the matter at issue is the return (or accounting) of property that the Government procured through dubious means and used in a misleading way. Equity and fundamental fairness demand that Scotton be heard and that the truth be uncovered.

Finally, Scotton notes that he has obtained independent evidence from Brazilian customs (Receita Federal) and from the carriers' own tracking data confirming that many of the so-called "shipped" packages never left the U.S. For example, official export records for the dates and tracking numbers in question show no corresponding export entries into Brazil, which would be impossible if the packages had actually been delivered there. Internal FedEx/UPS logs (which Scotton seeks to introduce) likewise show statuses like "intercepted" or "shipment flagged – not delivered." These facts, once verified in an evidentiary hearing, will provide further proof that

the Government knew its portrayal of events was false. The Court should not countenance a conviction or a restitution order predicated on factual fiction, nor allow the Government to hide behind that fiction to avoid returning property. An official document from Receita Federal (Brazilian Customs) confirms no record of export for key tracking numbers – evidence that the packages never truly shipped.

D. ***The Government's Failure to Produce Critical Evidence*** – and its Use of Fabricated Records and Unlawfully Seized Data – Violated Scotton's Rights

Throughout this case, Scotton has been fighting blindfolded because the prosecution withheld crucial discovery and relied on dubious "evidence" of its own making. In opposing the Rule 41(g) motion, the Government summarily dismisses Scotton's requests for documents (calling them a belated "discovery" request in a closed case). But this argument ignores that Scotton is seeking documents that should have been produced long ago or that should exist as part of a lawful chain of custody. The absence of these materials suggests that either they never existed (because procedures weren't followed) or they were deliberately withheld. Rule 41(g) is an equitable remedy, and a court in equity can compel the production of information necessary to do justice. Scotton therefore reiterates his demand that the Government produce the following items, each of which bears directly on the integrity of the evidence and the return-of-property issue:

Air Waybills / Shipping Labels for All 27 Packages: Each shipment would have a FedEx/UPS/DHL airbill or tracking label documenting its destination, sender, and status. These labels (or electronic tracking records) would show whether the package was actually delivered, in transit, or intercepted. None of these were provided to the defense at trial. Having them now would definitively establish that the packages were halted and not delivered (information favorable to Scotton). Their absence is a ***Brady*** problem. The Court should order the Government to produce any and all such shipping documents, or, if the Government truly does not have them, explain why not and whether they were ever obtained. If the prosecution failed to preserve this basic evidence, it indicates gross negligence or worse. If it did have them and withheld them, it's a ***Brady*** violation. Either way, Scotton is entitled to this information to pursue further relief.

Commercial Invoices / Contents Declarations: International shipments require commercial invoices describing the contents and value, usually attached to the outside of the package. These would show what goods were in each box (important for identifying rightful ownership and value of property to be returned). The Government obviously knew the contents (since it opened or presented them in court), but Scotton was never given copies of any invoices or descriptions. Producing these now will help verify ownership (rebutting the Government's claim that Scotton

isn't the owner). For instance, if an invoice shows Scotton or his business as the sender and a customer in Brazil as recipient, and the sale was never completed due to seizure, the goods arguably still belong to Scotton (or to the customer who may have been refunded). At a minimum, they are not the carriers' property.

Any Court Orders or Warrants Related to Seizure of Packages: As discussed in Section B, it appears none exist. If that is the case, the Government should simply admit it on the record. If some administrative subpoena or other legal process was used, that should be disclosed. The lack of any such documentation underscores the illegality of the seizure. Scotton specifically requests an order compelling the Government to affirmatively certify whether it ever obtained a warrant or court order for any of the package seizures or transfers. A truthful negative answer will bolster Scotton's Fourth Amendment claim.

Chain-of-Custody Logs and Evidence Receipts: Standard FBI procedure is to log evidence items (with "1B" numbers, etc.), note when they are signed out or moved, and issue receipts when evidence is transferred or disposed. From the fragmentary Exhibit A provided (Agent Van Brunt's declaration attachment), we see references to item numbers and dates in August 2022, presumably when the evidence was signed out to FedEx/UPS. The full chain-of-custody for each package from the moment of seizure (circa 2012) to final disposition (2022) should be produced. This

will show who had possession at each stage. If gaps or irregularities exist, that is evidence of spoliation. Scotton also requests production of any correspondence or receipts provided to FedEx/UPS upon return – if none were given, that itself is highly irregular and suggests an ad hoc disposal.

Video or Photo Evidence of the Pretrial Viewing of Packages: On information and belief, when Scotton (pro se at the time) was invited to view the evidence before trial, this viewing took place in a courthouse room and may have been monitored by cameras or at least by agents. If any video recording or photographs exist from that session (for security or other reasons), Scotton asks that they be preserved and disclosed. Such media could corroborate the quantity and condition of packages the Government had assembled (i.e. confirming that far more than 11 were present). It would also lock in the fact that all 27 charged packages were there. Even if no video exists, testimony from those present (e.g. case agents) will be elicited at a hearing to establish these facts.

FBI Investigative Notes and Spreadsheets: The Government, in its Opposition, brushes off Scotton's request for "investigative notes," saying there's no basis for discovery in a closed case. But here the investigative files may contain ***Brady*** material that was never turned over. For instance, if FBI notes or internal emails show discussions with FedEx about intercepting packages, or spreadsheets tracking

Scotton's shipments, those are relevant both to the return of property (identifying all items seized) and to the misconduct claims. Scotton has alleged that the prosecution introduced unverified summary spreadsheets at trial – likely purporting to summarize thousands of shipments and unpaid invoices. These spreadsheets were compiled by an FBI agent and presented to the jury, but the underlying data was never produced for cross-examination. If the spreadsheets exaggerated or listed shipments that never actually occurred, that is false evidence. The defense was entitled to the raw data (for example, the carrier records) to challenge any summary under Fed. R. Evid. 1006. The agent's spreadsheet appears to have been accepted at face value by the jury, despite being rife with hearsay and assumptions. This is a ***Giglio*** problem: the agent's testimony about the spreadsheet's accuracy (if any) and the document itself could be impeached by the real records which the Government suppressed. We ask the Court to compel the Government to produce any such summaries and all underlying data now. It may not change the trial result here in this motion, but it further demonstrates the prosecution's lack of candor and the prejudice to Scotton's defense.

Scotton's Company Laptop and Digital Evidence: Scotton also asserts that an FBI agent obtained a laptop from Scotton's business without a warrant or consent, and that this laptop's contents were used to gather evidence (likely including the above-

mentioned spreadsheets or shipping records). If true, this was a blatant Fourth Amendment violation, as a person's business computer is entitled to full search and seizure protections (see, e.g., ***Riley v. California, 573 U.S. 373 (2014)***, recognizing the privacy and property interests in digital devices). The Government never disclosed a search warrant for any computer, nor did it return the laptop. If the laptop (or clone of its hard drive) is still in the Government's possession, Scotton moves for its immediate return as part of this motion. If it was disposed of, that is yet another piece of property gone missing. Furthermore, any evidence derived from that unlawful seizure should have been excluded at trial; discovering this now underscores how the Government's case was built on constitutional shortcuts. We urge the Court to sanction the Government for this conduct and to take it into account when evaluating Scotton's equitable entitlement to relief. A party that obtained evidence unlawfully and kept it out of the defense's reach should not be heard to say Scotton waited too long or isn't entitled to an accounting.

Symbolizing government misconduct: evidence hidden and files "redacted" or kept in shadow – an apt metaphor for the prosecution's handling of key materials in Scotton's case. In short, the Government's opposition fails to address these glaring evidentiary issues. It treats Scotton's requests as a nuisance, arguing that he's not entitled to discovery because his case is over. But Rule 41(g) gives the Court broad

latitude to fashion equitable relief, and the return of property inherently can encompass records and information related to that property's seizure and status. Scotton respectfully submits that the Court should compel the Government to produce the above-enumerated items. Doing so will either validate Scotton's claims or allow for a clearer record. If the Government stonewalls or claims these documents don't exist, that itself is evidence of potential bad faith and spoliation. The Supreme Court has long held that "suppression by the prosecution of evidence favorable to an accused… violates due process where the evidence is material". That principle does not evaporate post-conviction; indeed, it becomes even more pressing when a defendant alleges he was convicted and punished on false pretenses. The Government's duty of candor and fairness continues in Rule 41(g) proceedings. Having failed to turn over material evidence before, the prosecution cannot in good conscience oppose a narrowly focused inquiry now. This Court has the inherent authority to demand answers. It can, for example, order the Government to show cause why it should not be sanctioned for the apparent ***Brady*** violations, and require it to produce the documents in camera for the Court's review if necessary. Scotton has made a prima facie showing of prosecutorial misconduct (through the discrepancies outlined and the Government's own admissions); thus, an evidentiary hearing and further disclosure are warranted.

E. Evidentiary Hearing and Sanctions Are Warranted to Address the Government's Misconduct and to Protect the Integrity of the Judicial Process.

This Court's intervention is required to address what has become a troubling tableau of government mismanagement and potential misconduct. Scotton recognizes that Rule 41(g) motions after a case is closed are treated as civil equitable proceedings, and that courts are cautioned to grant relief only to prevent injustice. Here, the injustice is palpable. The Government's opposition does not merely contest Scotton's legal entitlement to the property – it effectively confesses that the property is gone (or out of reach) due to the Government's own actions. In such circumstances, courts have not hesitated to convene evidentiary hearings to find the facts and, if appropriate, sanction the responsible parties. Federal Rule of Criminal Procedure 41(g) explicitly states that "the court must receive evidence on any factual issue necessary to decide the motion." This mandate applies with full force here, where multiple factual issues are in dispute: the timing and lawfulness of the seizures, the handling and disposition of the packages, the existence of records, and the knowledge and intent of the prosecutors/agents involved. Scotton has provided detailed allegations supported by portions of the record and newly obtained evidence. The Government, by contrast, has provided a terse declaration (Agent Van Brunt's) that raises as many questions as it answers. A hearing will allow Scotton to

cross-examine this declarant and any others (such as representatives of FedEx, UPS, DHL) to test the veracity of the Government's claims. It will also allow Scotton to introduce documentary evidence (e.g. customs records, tracking data) that the Court can consider in evaluating whether the Government's narrative holds water. Only through such a hearing can the Court determine whether the Government fulfilled its obligations or whether it engaged in bad faith destruction/concealment of evidence. Notably, if the Court finds that the Government deliberately disposed of or withheld evidence to frustrate Scotton's rights, the appropriate remedy could extend beyond just returning property – it could justify sanctions and even a reopening of Scotton's criminal case under the rubric of fraud on the court. While that larger issue may be beyond the immediate scope of Rule 41(g), it looms in the background and reinforces why a thorough inquiry is needed. As for sanctions, Scotton urges the Court to use its inherent supervisory powers to send a clear message. Possible sanctions this Court might consider include: (1) holding the Government to an adverse inference that the missing evidence (the 27 packages) would have been favorable to Scotton (i.e. that their contents or condition would undermine the prosecution's case), which could form a basis for post-conviction relief; (2) ordering the Government to reimburse Scotton for the value of the property if it cannot be returned (essentially a monetary judgment for conversion – while Rule

41(g) typically doesn't award damages, the equitable power of the court might permit compensation as a substitute for return when the Government's wrongdoing caused the loss); (3) initiating a referral for disciplinary investigation of the prosecutors or agents involved if the evidence shows intentional misconduct (e.g., if the prosecution knowingly allowed false testimony or deliberately hid exculpatory evidence, this violates the Rules of Professional Conduct and DOJ's own policies under ***Brady/Giglio***); and/or (4) as a last resort, considering whether the circumstances merit vacating the conviction or sentence under an independent motion (Scotton has a Rule 60(b) motion raising these issues, which could be consolidated or coordinated with this proceeding). The Court certainly has the authority to convene a hearing and then determine the appropriate consequences if egregious conduct is proven. In ***Chambers v. NASCO, Inc., 501 U.S. 32 (1991),*** the Supreme Court recognized courts' inherent power to fashion sanctions for bad-faith conduct in litigation, including fraud on the court. Presenting false evidence and failing to correct it is a paradigmatic example of fraud on the court. Likewise, spoliation of evidence can warrant severe sanctions, especially when done by the Government in a criminal case (which undermines the very foundation of justice). Scotton does not lightly accuse the Government of misconduct. But the record and new revelations leave no doubt that something went very wrong in the handling of

his case. The Constitution and established precedent (***Brady***, ***Napue***, ***Kyles***, ***Giglio***, etc.) set a clear standard for prosecutors: seek truth, disclose favorable evidence, and never permit a conviction obtained by falsehood. Scotton's case appears to be a study in the opposite behavior – a prosecution that was perhaps overzealous to secure a conviction of a pro se defendant, even at the cost of fairness. Now, in the Rule 41(g) context, the prosecution continues to be evasive, focusing on procedural bars rather than addressing the heart of the matter. Justice requires that this Court look beyond the Government's procedural arguments and confront the substantive issues. The statute of limitations should not be a bar where the Government's own concealment of information prevented Scotton from earlier realizing the full extent of the problem. And "clean hands" doctrine cannot be invoked by a party that itself perpetrated a fraud on the court. A dramatic representation of wrongful conviction – a lone figure behind bars beneath a gavel – emphasizing what is at stake when evidence is hidden or mishandled. In conclusion, Scotton respectfully submits that granting an evidentiary hearing and appropriate relief is not only warranted, but necessary to preserve public confidence in the justice system. The Court should reject the Government's attempt to trivialize the disappearance of evidence as someone else's problem. The Constitution demands accountability, and Rule 41(g) provides this Court the mechanism to enforce it in the context of property and

evidence. Scotton has waited many years for the truth to come to light; this Court should not allow the truth to be buried along with the missing packages. Conclusion For the foregoing reasons, Scotton respectfully requests that the Court grant his Rule 41(g) Motion and order the following relief:

Immediate Return of Property or Accounting: The Government should be ordered to return all property seized in connection with Scotton's case that remains in its custody or control. For any of the 27 packages (or other seized items) that the Government contends are no longer in its possession, the Government must provide a detailed accounting: identifying each item, stating when and how it was disposed of or transferred, and to whom. If the property was transferred to a third party (e.g. a carrier or other entity), that entity's contact information should be provided so Scotton may pursue recovery or further legal action. If any items were destroyed, the Government should produce documentation of who authorized and carried out the destruction, and when.

Production of Documents/Evidence: The Court should compel the Government to produce the specific documents and materials listed in Section **D** above (airbills, invoices, warrants, chain-of-custody logs, videos, agent notes, spreadsheets, laptop data, etc.), or, if any such item no longer exists, to certify under oath the reason for its absence. This production should occur in advance of the evidentiary hearing so

that Scotton has the opportunity to review the materials and incorporate them into his presentation.

Evidentiary Hearing: The Court should set an evidentiary hearing at the earliest convenient date. At the hearing, Scotton intends to call witnesses including Agent Roy Van Brunt (or any knowledgeable FBI representative) and representatives from FedEx, UPS, and DHL who can testify about the handling of Scotton's packages. Scotton also will present documentary evidence (such as customs records and tracking data) obtained independently. The Court should require that any persons involved in the chain of custody (e.g., evidence custodians) be made available to testify. Pursuant to Rule 41(g) and the Court's inherent powers, the scope of the hearing should encompass not only the location of the property, but also the Government's compliance with its legal duties in relation to that property.

Sanctions/Relief as Justice Requires: After the hearing, if the Court finds that the Government (including its agents or the prosecution team) violated Scotton's rights or acted in bad faith, the Court should impose appropriate sanctions. These may include, but are not limited to: (a) an order precluding the Government from opposing a forthcoming motion to vacate Scotton's conviction (in effect, a default or confession of error due to fraud on the court); (b) an award of monetary compensation to Scotton for the value of any property that cannot be returned (to the

extent sovereign immunity is waived for equitable claims in this context, see ***Hines v. United States, 951 F.2d 843 (7th Cir. 1992)***); and/or (c) referral of the matter to the Office of the Inspector General or the Court's grievance committee for investigation of misconduct. At minimum, the Court should draw an adverse inference that the destruction/loss of the packages signifies that their contents or other evidence would have been favorable to Scotton's defense. Such an inference would support granting a new trial or vacating the mail fraud counts upon a proper post-hearing motion – relief that Scotton explicitly reserves the right to seek.

Lady Justice, blindfolded and bearing sanctions – a powerful image underscoring the principle that no one, not even the Government, is above accountability in a court of law.

WHEREFORE, Scotton prays that the Court grants his motion, direct the immediate return of all property (or full disclosures regarding its fate), set this matter for an evidentiary hearing, and impose any further relief that is just and proper, including sanctions for the Government's violations of Scotton's constitutional and statutory rights. Such action is necessary to prevent manifest injustice and to uphold the integrity of the judicial process. The Constitutional guarantees of due process (Fifth Amendment) and freedom from unreasonable searches and seizures (Fourth

Amendment) mean little if the Government can seize property without authority, hide or destroy it at will, and then avoid accountability by running out the clock. This Court should not permit that outcome. By granting the requested relief, the Court will affirm that truth and justice are paramount and that the rule of law applies equally to the Government in its treatment of evidence and defendants. Scotton stands ready to further demonstrate the merits of his claims at the ordered hearing, and he trusts that the Court will take all measures necessary to finally bring the facts of this case to light and to remedy the wrongs that have occurred.

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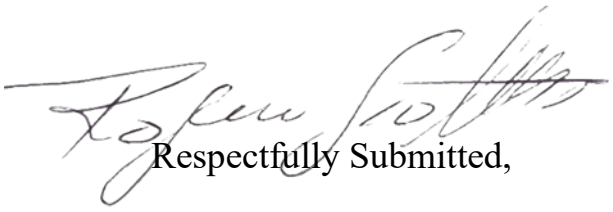

Respectfully Submitted,

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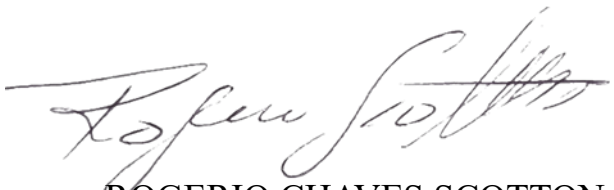
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion Defendant Rogerio Chaves Scotton's Reply in Support of Rule 41(g) Motion for Return of Property and Request for Evidentiary Hearing and Sanctions was served on government, at his e-mail bertha.mitrani@usdoj.gov, on this 20 day of May of 2025.



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