

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Gordon Leroy Hall,

10 Plaintiff,

11 v.

12 United States of America,

13 Defendant.
14

No. CV-18-01738-PHX-SPL (ESW)

ORDER

15
16 This matter is before the Court on its own review. On June 6, 2018, Plaintiff
17 initiated this action by filing a “Motion to Return Property” (Doc. 1). In its August 2018
18 Order (Doc. 8), the Court screened Plaintiff’s filing (Doc. 1) and construed it as a Motion
19 for Return of Property pursuant to Federal Rule of Civil Procedure 41(g). The Court
20 directed service on Defendant United States of America (the “United States”) and ordered
21 the United States to respond. (Doc. 8 at 3-4).

22 If no criminal proceedings are pending, a Rule 41(g) motion is treated as a civil
23 complaint that is governed by the Federal Rules of Civil Procedure. *United States v.*
24 *Ibrahim*, 522 F.3d 1003, 1007 (9th Cir. 2008) (“Because there were no criminal
25 proceedings pending at the time of filing, the district court properly treated the motion as
26 a civil complaint governed by the Federal Rules of Civil Procedure.”); *see also United*
27 *States v. Ritchie*, 342 F.3d 903, 906 (9th Cir. 2003) (“If a Rule 41[g] motion is filed when
28 no criminal proceeding is pending, the motion is treated as a civil complaint seeking

1 equitable relief.”).¹ Here, Plaintiff’s criminal proceedings are no longer pending.
2 Accordingly, Plaintiff’s filing (Doc. 1) is treated as a civil complaint rather than a
3 motion.

4 **IT IS ORDERED** directing the Clerk of Court to remove Plaintiff’s June 6, 2018
5 filing (Doc. 1) from the Court’s pending motions report.

6 **IT IS FURTHER ORDERED** that by **December 10, 2018**, Plaintiff shall show
7 cause why this matter should not be dismissed pursuant to Federal Rule of Civil
8 Procedure 41(b) for failure to prosecute.²

9 Dated this 30th day of November, 2018.

10 
11 _____
Eileen S. Willett
United States Magistrate Judge

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 _____
¹ Federal Rule of Civil Procedure 41(g) was formerly Rule 41(e). *United States v.*
27 *Kaczynski*, 416 F.3d 971, 973 (9th Cir. 2005) (“Rule 41(e) was changed to Rule 41(g) in
2002 and amended for stylistic purposes only.”).

28 ² The docket reflects that service was completed in September 2018 (Docs. 9, 10). The
United States has not filed a responsive brief and Plaintiff has taken no action.