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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
7

8 JESUS GONZALEZ,

CASE NO. CV F 13-0575 LJO SKO

9 Plaintiff,

**ORDER TO DISMISS ACTION AND
10 JUDGMENT THEREON**
11 (Doc. 11.)

12 vs.

13
14 UNITED STATES DEPARTMENT
15 OF JUSTICE,

16 Defendant.
17 _____/

18 **PRELIMINARY STATEMENT TO THE PARTIES AND COUNSEL**

19 Judges in the Eastern District of California carry the heaviest caseload in the nation,
20 and this Court is unable to devote inordinate time and resources to individual cases and
21 matters. This Court cannot address all arguments, evidence and matters raised by parties and
22 addresses only the arguments, evidence and matters necessary to reach the decision in this
23 order given the shortage of district judges and staff. The parties and counsel are encouraged to
24 contact United States Senators Dianne Feinstein and Barbara Boxer to address this Court's
25 inability to accommodate the parties and this action.

26 **INTRODUCTION**

27 Defendants United States of America ("Government") seeks to dismiss in the absence
28 of this Court's jurisdiction plaintiff Jesus Gonzalez' ("Mr. Gonzalez") action for return of

1 \$154,679 ("funds") held by the Drug Enforcement Administration ("DEA"). The Government
2 contends that Mr. Gonzalez neither responded timely to DEA notices nor submitted a timely
3 claim to render the funds administratively forfeited in DEA's favor and to divest this Court's
4 jurisdiction. Mr. Gonzalez responds that he "properly proceeded with an administrative action
5 and when relief was exhausted," he filed this action. This Court considered the Government's
6 F.R.Civ.P. 12 motion to dismiss on the record without a hearing. *See* Local Rule 230(g). For
7 the reasons discussed below, this Court DISMISSES this action and ENTERS judgment in the
8 Government's favor.

9 **BACKGROUND**

10 **Funds' Seizure**

11 On March 3, 2012, Coalinga Police Department officers executed a search warrant at
12 18752 13th Street, Huron, California ("seizure address") in connection with an investigation
13 into Salvador Gariby Bravo's ("Mr. Bravo's") distribution of methamphetamine. At the seizure
14 address, the officers encountered Mr. Bravo, Mr. Gonzalez, Esperanza Reyes Saucedo ("Ms.
15 Saucedo"), Manuel Ascencio Becerra ("Mr. Becerra"), and Arcadio Lopez Garcoa ("Mr.
16 Garcoa").¹

17 Ms. Saucedo informed the officers that:

- 18 1. She was Mr. Gonzalez' mother and Mr. Bravo's girlfriend;
- 19 2. She lived at the seizure address;
- 20 3. Mr. Bravo had lived at the seizure address for 20 years; and
- 21 4. Mr. Gonzalez stayed at the seizure address from time to time.

22 In his opposition papers, Mr. Gonzalez confirmed that he lived at the seizure address with Ms.
23 Saucedo.

24 The officers found the funds in a safe in a coat closet in the seizure address' living
25 room. Mr. Gonzalez provided the officers the safe's combination and indicated the safe
26 contained \$10,000, later indicated it contained \$50,000, and finally indicated it contained

27
28 ¹ This Court will refer to Mr. Bravo, Mr. Gonzalez, Ms. Saucedo, Mr. Becerra, and Mr. Garcoa collectively as the "potential claimants."

1 \$100,000. The officers located in the safe the funds and a .38 caliber revolver. The officers
2 seized methamphetamine, cocaine, hashish, scales and packaging materials.

3 Mr. Gonzalez claimed the funds were from his La Esperanza Restaurant, 36865 S.
4 Lassen, Huron, CA 93234 ("restaurant"). A trained canine positively alerted the presence of
5 illegal narcotics on the funds.

6 **Initial Forfeiture Of The Funds**

7 On April 4, 2012, the DEA accepted the funds for forfeiture based on violation of 21
8 U.S.C. § 841, et seq., and as furnished in exchange for a controlled substance. The DEA
9 commenced administrative forfeiture of the funds.

10 ***First Round Of Seizure Notices***

11 On April 26, 2012, DEA sent by certified mail, return receipt requested a funds' seizure
12 notice to each potential claimant addressed to the seizure address. The notices for each
13 potential claimant were returned to DEA with the notation "Returned to Sender, No City
14 Delivery, Must Be Addressed to Post Office Box." On April 26, 2012, DEA also sent funds'
15 seizure notices by certified mail, return receipt requested to Mr. Gonzalez and the restaurant
16 addressed to the restaurant's address. The notices were returned to DEA with the same
17 notation as the other returned notices.

18 On May 14, 21 and 29, 2012, funds' seizure notices were published in the *The Wall*
19 *Street Journal*, a newspaper of general circulation in the Eastern District of California. The
20 notices indicated the June 28, 2012 deadline to file a claim for the funds.

21 ***Second Round Of Seizure Notices***

22 On June 21, 2013, after confirming Mr. Gonzalez' current address of 16734 13th Street,
23 Huron, CA 93234, the DEA sent Mr. Gonzalez funds' seizure notices at that address by
24 certified mail, return receipt requested and by first class mail to provide Mr. Gonzalez up to
25 July 26, 2012 to file a claim as to the funds. The notices were returned to DEA with the
26 notation "Returned to Sender, No City Delivery, Must Be Addressed to Post Office Box."

27 In addition, on June 21, 2013, after confirming Ms. Saucedo's current address of 16752
28 13th Street, Huron, CA 93234, the DEA sent Ms. Saucedo funds' seizure notices at that address

1 by certified mail, return receipt requested and by first class mail to provide Ms. Saucedo up to
2 July 26, 2012 to file a claim as to the funds. The notices were returned to DEA with the
3 notation "Returned to Sender, No City Delivery, Must Be Addressed to Post Office Box."

4 Moreover, on June 21, 2013, after confirming the current addresses of Mr. Bravo, Mr.
5 Garcia, and Mr. Becerra, the DEA sent Mr. Bravo, Mr. Garcia, and Mr. Becerra funds' seizure
6 notices at their current addresses by certified mail, return receipt requested and by first class
7 mail to provide Mr. Bravo, Mr. Garcia, and Mr. Becerra up to July 26, 2012 to file a claim as
8 to the funds. The notices were returned to DEA with the notation "Returned to Sender, No
9 City Delivery, Must Be Addressed to Post Office Box."

10 The Government notes that as of June 21, 2012, DEA had mailed five funds' seizure
11 notices to Mr. Gonzalez and no less than three notices to each of the other potential claimants
12 to provide specific, detailed instructions on how to contest forfeiture by filing a claim and/or
13 filing a petition to request remission or mitigation of the forfeiture.

14 On August 9, 2012, in the absence of DEA's receipt of a timely, valid claim, the funds
15 were forfeited to the Government.

16 **Rescission Of Forfeiture**

17 With his August 16, 2012 letter, Rodney R. Rusca ("Mr. Rusca"), counsel for Mr.
18 Gonzalez and Ms. Saucedo, requested DEA "to reopen matters in the interests of justice for a
19 lack of due process" in that Ms. Saucedo had daily checked her post office box but had
20 received no notice as to the funds. Mr. Rusca's August 31, 2012 letter again requested
21 reopening in the absence of Ms. Saucedo's receipt of notice at her post office box.

22 Mr. Rusca claims that in May 2012 he spoke with DEA Agent Tighe, who informed
23 Mr. Rusca that "there was an administrative action and that there was nothing that could be
24 done until a letter was received" from DEA. Mr. Rusca further claims he called Agent Tighe
25 periodically and was told "to wait for the letter and that it would arrive." Mr. Rusca notes that
26 he "was later informed that a letter was sent and the case was closed."

27 On September 21, 2012, the DEA sent a funds' seizure notice to Ms. Saucedo in care of
28 Mr. Rusca at his Fresno office address. Delivery of the notice was accepted. The notice

1 provided Ms. Saucedo up to October 26, 2012 to file a claim as to the seized funds. Mr.
2 Gonzalez' operative complaint ("complaint") in this action states: "We were mailed notice on
3 September 21, 2012."

4 On October 3, 2012, DEA rescinded the funds' forfeiture.

5 On October 22 and 24, 2012, DEA received petitions of remission or mitigation of
6 forfeiture prepared by Mr. Rusca for Mr. Gonzalez and Ms. Saucedo. DEA's November 12,
7 2012 letter to Mr. Rusca acknowledged DEA's receipt of the petitions. Delivery of the letter by
8 certified mail, return receipt requested was accepted.

9 **Second Forfeiture Of Funds**

10 On December 6, 2012, in the absence of DEA's receipt of a timely, valid claim, the
11 funds were forfeited to the Government. Mr. Rusca's December 4, 2012 letter was received by
12 DEA on December 7, 2012 and requested DEA to "hold your administrative determination
13 until we send the additional information." The letter referenced filing documents in an action
14 in this Court entitled *Jesus Gonzalez v. United States Department of Justice*, Case No. CV F
15 12-1751 LJO SAB.

16 On March 11, 2013, DEA received from Mr. Rusca additional documents to support
17 Mr. Gonzalez' and Ms. Saucedo's petitions for remission or mitigation of forfeiture. DEA's
18 March 13, 2013 letter denied the petitions and informed Mr. Rusca that Mr. Gonzalez and Ms.
19 Saucedo had ten days from receipt of the letter to submit a reconsideration request. Delivery of
20 the letter by certified mail, return receipt requested was accepted. DEA received no
21 reconsideration request.

22 Since denial of the petitions had been issued prior to DEA's consideration of additional
23 documents provided by Mr. Rusca, DEA reviewed the additional documents and reconfirmed
24 denial of the petitions in an April 16, 2013 letter to Mr. Rusca. The letter provided Mr.
25 Gonzalez and Ms. Saucedo ten days from receipt of the letter to submit a reconsideration
26 request. Delivery of the letter by certified mail, return receipt requested was accepted. DEA
27 received no reconsideration request.

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1 **Civil Actions**

2 On October 26, 2012, Mr. Gonzalez and Ms. Saucedo had filed prior actions against the
3 Government in this Court. Mr. Gonzalez' complaint in his prior action is nearly identical to his
4 complaint in this action. Ms. Saucedo's action was dismissed given failure to allege filing of a
5 forfeiture claim to invoke this Court's jurisdiction. Mr. Gonzalez action was dismissed with his
6 request to do so.

7 On April 22, 2013, Mr. Gonzalez filed his complaint to initiate this action to seek the
8 funds "being held as evidence in Salvador Bravo's criminal investigation." The complaint
9 alleges the funds were "generated legally, through hard work at Restaurante La Esperanza,"
10 and personal savings.

11 **DISCUSSION**

12 The Government argues that Mr. Gonzalez' claims to the funds are barred in that the
13 DEA provided him actual and constructive notice. The Government contends that Mr.
14 Gonzalez is not entitled to relief under F.R.Crim.P. 41(g) or 18 U.S.C. § 983(e) to invoke this
15 Court's jurisdiction.

16 **Return Of Property Under F.R.Crim.P. 41(g)**

17 F.R.Crim.P. 41(g) permits a "person aggrieved by an unlawful search and seizure of
18 property or by the deprivation of property" to seek return of the property in the appropriate
19 criminal action. The Government notes that F.R.Crim.P. 41(g) "applies to criminal matters,
20 but not to civil forfeiture cases." F.R.Crim.P. 1(a)(5)(B) identifies "a civil property forfeiture
21 for violating a federal statute" as a proceeding not governed by the Federal Rules of Criminal
22 Procedure.

23 The Government notes that its forfeiture proceedings bar F.R.Crim.P. 41(g) relief for
24 Mr. Gonzalez. After "the administrative process has begun, the district court loses subject
25 matter jurisdiction to adjudicate the matter in a peripheral setting," including a Rule 41(g)
26 motion. *U.S. (Drug Enforcement Agency) v. One 1987 Jeep Wrangler Auto. VIN No.*
27 *2BCCL8132HBS12835*, 972 F.2d 472, 479 (2nd Cir. 1992); *see United States v. United States*
28 *Currency*, \$83,310.78, 851 F.2d 1231, 1235 (9th Cir. 1988) ("[W]hen a civil forfeiture

1 proceeding is pending, there is no need to fashion an equitable remedy to secure justice for the
2 claimant"); *United States v. Elias*, 921 F.2d 870, 873 (9th Cir. 1990). The Government
3 concludes that given DEA's administrative forfeiture, the Capital Asset Forfeiture Reform Act
4 of 2000 ("CAFRA"), 18 U.S.C. § 983 ("section 983") provides Mr. Gonzalez "his only remedy
5 at law to challenge the forfeiture."

6 Mr. Gonzalez acknowledges that an administrative hearing under F.R.Crim.P. 41(g) "is
7 not proper," "we are limited with a civil action remedy and Rule 41(g) has no application." As
8 such, the parties agree that F.R.Crim.P. 41(g) fails to invoke this Court's jurisdiction.

9 **CAFRA Limitations**

10 The Government contends that Mr. Gonzalez' failure to file a timely claim precludes
11 CAFRA relief to invoke this Court's jurisdiction. Mr. Gonzalez notes that he pursued an
12 administrative action but fails to identify it.

13 ***Failure To File Claim***

14 "[I]f no one files a claim for the property, the DEA may administratively forfeit it by
15 default, which forfeiture has the same force and effect as a final decree and order of forfeiture
16 in a judicial proceeding." *Malladi Drugs & Pharmaceuticals, Ltd. v. Tandy*, 552 F.3d 885, 889
17 (D.C. Cir. 2009). CAFRA sets forth the exclusive remedy to seek to set aside a declaration of
18 forfeiture under a civil forfeiture statute. *Mesa Valderrama v. United States*, 417 F.3d 1189,
19 1195 (11th Cir.2005); 18 U.S.C. § 983(e)(5). A party seeking to challenge a nonjudicial
20 forfeiture that falls within CAFRA's purview is limited to doing so under section 983(e), which
21 provides:

22 (1) Any person entitled to written notice in any nonjudicial civil forfeiture
23 proceeding under a civil forfeiture statute who does not receive such notice may file a
24 motion to set aside a declaration of forfeiture with respect to that person's interest in the
property, which motion shall be granted if-

25 (A) the Government knew, or reasonably should have known, of the moving
26 party's interest and failed to take reasonable steps to provide such party with notice; and

27 (B) the moving party did not know or have reason to know of the seizure within
28 sufficient time to file a timely claim.

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2 ...

3 (5) A motion filed under this subsection shall be the exclusive remedy for
4 seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

5 Because section 983(e) is the exclusive remedy to set aside a declaration of forfeiture
6 under a civil forfeiture statute, a district court lacks jurisdiction to review the merits of
7 administrative or nonjudicial forfeitures. *U.S. v. Shigemura*, 664 F.3d 310, 312 (2011)
8 ("because Defendant failed to file an administrative claim to contest the forfeiture of the
9 \$44,853.39 in cash, the court lacked jurisdiction to hear his 41(g) motion as it related to this
10 issue"); *Mohammad v. United States*, 169 Fed.Appx. 475, 480 (7th Cir. 2006) ("By initiating
11 administrative forfeiture proceedings . . .-that is, by sending notice of a seizure and proposed
12 forfeiture to parties known to be interested in the property and publishing notice to all others in
13 a newspaper-an agency holding seized property divests the district court of subject matter
14 jurisdiction to review the forfeiture."); *United States of America v. Cobain*, 2008 WL 5397141,
15 at *4 (E.D. Cal. 2008). Instead, a court's review "is limited to determining whether the agency
16 followed the proper procedural safeguards" in forfeited property. *Mesa Valderrama v. United*
17 *States*, 417 F.3d 1189, 1196 (11th Cir. 2005).

18 A completed forfeiture action, that is, a forfeiture action in which the seized funds have
19 been distributed within the federal government, can be set aside only by what would be, in
20 effect, a suit against the United States itself. *Diaz v. United States*, 517 F.3d 608, 611 (2nd
21 Cir. 200). Such a suit would run afoul of the doctrine of sovereign immunity, "which, absent a
22 waiver, shields the federal government and its agencies from suit." *Diaz*, 517 F.3d at 611.
23 Although CAFA provides such a waiver, it is limited solely to notice-based actions under
24 section 983(e)(1). See 18 U.S.C. § 983(e) (5); *McKinney v. U.S. Dep't of Justice Drug*
25 *Enforcement Admin.*, 580 F.Supp.2d 1, 3–4 (D. D.C. 2008). The limitation in section 983(e) is
26 jurisdictional and must be strictly construed. See *S.E.C. v. Credit Bancorp., Ltd.*, 297 F.3d 127,
27 136 (2d Cir.2002). Therefore, because an attack on the merits of a forfeiture determination is
28 not an action brought under section 983(e)(1), a court lacks subject matter jurisdiction over

1 such a claim. *United States v. Pickett*, 2011 WL 3876974, at *2 (E.D.N.Y. 2011).

2 The Government argues that DEA provided Mr. Gonzalez adequate notice and
3 procedural safeguards in that:

4 1. After their seizure, the funds were turned over to DEA, which instituted an
5 administrative forfeiture proceeding on April 4, 2012;

6 2. On April 26, 2012 and June 21, 2012, DEA mailed 17 funds' seizure notices to
7 the potential claimants;

8 3. DEA published funds' seizure notices on May 14, 21 and 29, 2012; and

9 4. DEA rescinded the administrative forfeiture and on September 21, 2012 sent
10 additional funds' seizure notices.

11 The Government notes that Mr. Gonzalez and Ms. Saucedo were present during the funds'
12 seizure and had actual notice and that the complaint acknowledges notice of the funds'
13 administrative forfeiture. The Government points to five seizure notices sent to Mr. Gonzalez.

14 The Government argues that this court lacks jurisdiction to review the merits of a
15 completed administrative forfeiture such as the case here where "no valid claim was made and
16 the asset at issue was administratively forfeited." The Government contends that Mr. Gonzalez
17 is unable to satisfy lack of knowledge "of the seizure within sufficient time to file a timely
18 claim" (section 983(e)(1)(B)) in that his complaint acknowledges "[w]e were mailed notice on
19 September 21, 2012." The Government concludes that given such acknowledgement, "the
20 notice requirements have been satisfied, and the court lacks jurisdiction." The Government
21 further points to the absence of Mr. Gonzalez' claim after completion of publication of the
22 seizure notices.

23 Mr. Gonzalez offers no meaningful, specific points or evidence to oppose the
24 Government. Mr. Gonzalez offers conclusory statements that "notice was never received," an
25 "administrative claim was submitted timely under proper notice," "an administrative hearing
26 was pursued," and "we have already had [sic] been through the administrative hearing
27 process." Mr. Gonzalez appears to claim administrative exhaustion but fails to provide
28 specifics. Administrative exhaustion is inapplicable in that this Court's review is limited to

1 evaluation of procedural safeguards. Mr. Gonzalez fails to demonstrate lack of notice of the
2 funds' seizure, especially given the multiple funds' seizure notices sent to him and Mr. Rusca
3 and his presence at the seizure address when the funds were originally seized.

4 ***Denial Of Petition For Remission Or Mitigation***

5 The Government continues that this Court lacks jurisdiction to the extent the complaint
6 alleges that DEA erred to deny Mr. Gonzalez' petition for remission or mitigation.

7 As an alternative to filing a claim, a claimant may "petition the administrative agency
8 for remission and/or mitigation." *U.S. (Drug Enforcement Agency) v. One 1987 Jeep Wrangler*
9 *Auto. VIN No. 2BCCL8132HBS12835*, 972 F.2d 472, 479 (2nd Cir. 1992). Under the
10 alternatives, a "claimant is afforded the opportunity to test the legality of the seizure in the
11 forfeiture proceeding. . . . Consequently, once the administrative process has begun, the district
12 court loses subject matter jurisdiction to adjudicate the matter in a peripheral setting . . ." *One*
13 *1987 Jeep Wrangler*, 972 F.2d at 479. As such, the general rule is "that courts do not have the
14 power to review a denial of a petition for remission of forfeiture." *See Marshall Leasing, Inc.*
15 *v. United States*, 893 F.2d 1096, 1101 (9th Cir. 1990); *United States v. One 1973 Buick Riviera*
16 *Automobile*, 560 F.2d 897, 900 (8th Cir. 1977) (denial of petition for remission filed with DEA
17 is not subject to judicial review on merits).

18 The Government notes that the funds' seizure notices advised Mr. Gonzalez of his
19 options to "request the remission (pardon) or mitigation of the forfeiture" by filing "a petition
20 for remission or mitigation" with DEA, or contesting the forfeiture by filing "a claim" with
21 DEA. The Government points out that DEA considered Mr. Gonzalez' petition for remission
22 and additional documents and confirmed denial of the petition. The Government further notes
23 that Mr. Gonzalez had forgone reconsideration. The Government concludes that this Court
24 lacks jurisdiction given Mr. Gonzalez' exercise to pursue a petition for remission.

25 Mr. Gonzalez offers nothing to invoke this Court's jurisdiction based on his petitions of
26 remission or mitigation. The record reveals that DEA reviewed them and additional materials
27 submitted by Mr. Rusca. Mr. Gonzalez was granted and exercised an opportunity to test the
28 legality of the funds' seizure. Mr. Gonzalez is unclear whether he considers his petitions for

1 remission or mitigation as administrative claims. Despite the absence of clarity, the result is
2 the same. Mr. Gonzalez fails to invoke this Court's jurisdiction.

3 **CONCLUSION, ORDER AND JUDGMENT**

4 For the reasons discussed above, this Court:

5 1. DISMSSES with prejudice this action in the absence of subject matter
6 jurisdiction;

7 2. ENTERS judgment in favor of defendant United States and against plaintiff
8 Jesus Gonzalez; and

9 3. DIRECTS the clerk to close this action.

10 This JUDGMENT is subject to F.R.App.4(a)'s time limitations to file an appeal of this
11 JUDGMENT.

12
13 IT IS SO ORDERED.

14 Dated: October 21, 2013

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE