

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

RAFAEL YWAIN CAUTHEN  
Plaintiff,

v.

UNITED STATES OF AMERICA  
Defendant.

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Civil Action No. DKC-16-3285  
Related Criminal No. DKC-12-0353

**MEMORANDUM OPINION**

Pending is a self-represented motion to return property<sup>1</sup> filed by Rafael Ywain Cauthen.<sup>2</sup> Cauthen claims that “during the course of the investigation into the crimes leading” to his indictment property, including a 2009 Dodge Ram truck, an Apple Macbook Computer, and a Fidelity Investment Account, was seized. ECF No. 1. He seeks the return of this property. The Government has filed a court-ordered answer to the cause of action. No reply has been filed. The court will dismiss the complaint for return of property without prejudice.

**I. Government’s Arguments**

The Government observes that a 2008 Dodge Ram truck and Apple Mac Computer were seized from an address in Cleveland, Ohio and argues that the complaint seeking the return of that property should be brought in the United States District Court for the Northern District of Ohio. The Government further contends that Cauthen has failed to allege that the Fidelity Investment Account in question was seized in Maryland and has further failed to identify the account by account number

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<sup>1</sup> The motion for return of property was instituted as this civil action under 28 U.S.C. § 1331 on September 30, 2016. Cauthen has filed neither the civil filing fee nor moved to proceed *in forma pauperis* as directed by the court. See ECF No. 2.

<sup>2</sup> Cauthen was convicted on one count of a money laundering conspiracy, in violation of 18 U.S.C. § 1956(h). On July 13, 2015, he was sentenced to 40-month term in the U.S. Bureau of Prisons to be followed by three years of supervised release. Cauthen agreed to forfeit \$73,584.23,

to allow the government to “identify where those proceeds were seized.”

Alternatively, the Government argues that the claim for return of property should be denied because it is no longer in possession of the property and/or it obtained legal ownership of the property when it was administratively forfeited. It affirms, through affidavit, that a 2008 Dodge Ram Truck was released to the lienholder in October of 2012, and the Apple Macbook computer was released to the office manager for the lawyer who represented another individual who was also a target of the investigation. ECF No. 5-2. The Government maintains that the contents of the only Fidelity Investment Account that agents could possibly associate with Cauthen, valued at approximately \$9,524.00, were administratively forfeited in January of 2012. The Government therefore argues that because it is no longer in possession of the property sought, thus it cannot be required to return it.

## **II. Analysis**

“A person aggrieved ... by the deprivation of property may move for the property’s return. The motion must be filed in the district where the property was seized.” Fed. R. Crim. P. 41(g). Further, the Fourth Circuit has held that a defendant may file a motion for return of property seized in connection with a criminal investigation in the district of the trial only if the criminal proceeding is pending. *United States v. Ebert*, 39 F. App’x 889, 890-92 (4<sup>th</sup> Cir. 2002) (citing *United States v. Garcia*, 65 F.3d 17 (4th Cir. 1995)). Because the property that Cauthen asserts should be returned to

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representing the proceeds of his offense. Criminal judgment was entered on July 14, 2015. No appeal was filed.

him is located in the Northern District of Ohio<sup>3</sup> or is not sufficiently identified, this court may not rule on such a complaint and thus, it must be dismissed without prejudice.

**III. Conclusion**

The complaint will be dismissed without prejudice. A separate Order follows.

Date: February 2, 2017.

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/s/  
DEBORAH K. CHASANOW  
United States District Judge

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<sup>3</sup> The United States District Court for the Northern District of Ohio is located at the Carl B. Stokes United States Courthouse, 801 West Superior Avenue, Cleveland, Ohio, 44113.