

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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JUAN BOCANEGRA,

Movant,

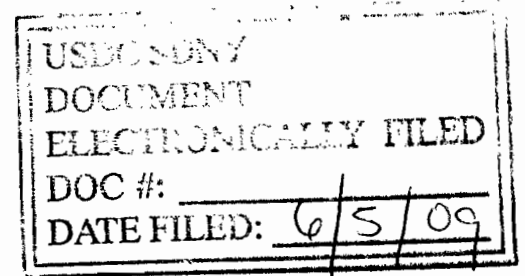
- against -

UNITED STATES OF AMERICA

Respondent.
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**MEMORANDUM
OPINION AND ORDER**

09 Civ. 4195 (SAS)



SHIRA A. SCHEINDLIN, U.S.D.J.:

On April 28, 2009, pro se litigant Juan Bocanegra¹ filed a motion for the return of property under Rule 41(g) of the Federal Rules of Criminal

Procedure. To wit, Bocanegra seeks the return of the following items which he claims were seized by the Drug Enforcement Agency (“DEA”) at the time of his arrest: (1) a Colombian Passport; (2) a black wallet containing various identification and debit/credit cards and a Colombian driver’s license; (3) a pair of Rayban sunglasses; (4) a USB Memory One GB; (5) a Comcal Sim card; and (6) a

¹ In the prior criminal proceedings, Juan Bocanegra went by the name Juan Carlos Bocanegra-Fonseca.

² See Motion for Return of Seized Property Pursuant to Fed.R.Crim.P. 41(g) with Incorporated Memorandum of Law.

digital palm model Tungsten E2.³ In response, the Government states that on May 29, 2009, the United States Attorney's Office for the Southern District of New York forwarded items 1, 4, 5 and 6 to the McRae federal correctional institution, in care of Bocanegra's counselor.⁴ Furthermore, the Government claims that items 2 and 3 were never seized by the DEA.⁵

Assuming, *arguendo*, that items 2 and 3 were, in fact, seized by the DEA and subsequently lost or destroyed, Bocanegra has no recourse against the United States because sovereign immunity bars the award of money damages in a Rule 41(g) motion.⁶

Rule 41(g) itself, "which simply provides for the return of seized property, does not waive the sovereign immunity of

³ *See id.* at 3-4.

⁴ *See* 5/29/09 Letter from AUSA Michelle K. Parikh at 1-2. Bocanegra is currently incarcerated at FCI McRae.

⁵ *See id.* at 2 ("I have been informed by Special Agent Teper that, to the best of his knowledge, the wallet, its contents and the sunglasses were never seized by the DEA.").

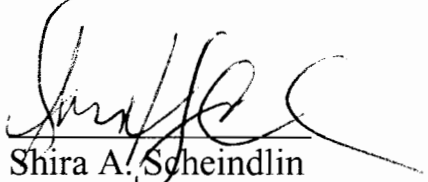
⁶ *Bonilla v. United States*, No. 06-CV-1198, 2008 WL 4104579, at *2 (E.D.N.Y. Sept. 4, 2008) ("Rule 41(g) provides simply for the return of property. It does not speak to damages for property that the government is unable to return."); *Wai Hung v. United States*, No. 02 CV 6795, 2007 WL 1987749, at *2 (E.D.N.Y. July 3, 2007) ("[W]here a petitioner seeks return of property that has become unavailable due to loss or destruction of the property, and the United States had not waived its sovereign immunity against such claims, the claim for return of property must be dismissed.").

the United States with respect to actions for money damages relating to such property.” As to civil equitable actions brought for the return of property after the conclusion of criminal proceedings, “such equitable jurisdiction does not permit courts to order the United States to pay money damages when, for whatever reason, property is not available for Rule 41(g) return.”⁷

In sum, Bocanegra’s Rule 41(g) motion is moot with respect to items 1, 4, 5 and 6.

With regard to items 2 and 3, “any Rule 41(g) claim for the return of tangible property that is no longer at hand . . . [is] jurisdictionally barred by the principle of sovereign immunity.”⁸ The Clerk of the Court is directed to close the instant motion (Document # 2) and this case.

SO ORDERED:


Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
June 5, 2009

⁷ *Diaz v. United States*, 517 F.3d 608, 611 (2d Cir. 2008) (citations omitted, quoting *Adelake v. United States*, 355 F.3d 144, 151 (2d Cir. 2004)).

⁸ *Id.* at 612.

- Appearances -

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