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22
23 IN THE UNITED STATES DISTRICT COURT
24 FOR THE CENTRAL DISTRICT OF CALIFORNIA
25 WESTERN DIVISION

26 **PAUL SNITKO, JENNIFER
27 SNITKO, JOSEPH RUIZ, and
28 TYLER GOTHIER,**

Plaintiffs,

v.

**UNITED STATES OF AMERICA,
TRACY L. WILKISON, in her
official capacity as Acting United
States Attorney for the Central
District of California, and KRISTI
KOONS JOHNSON, in her official
capacity as an Assistant Director of
the Federal Bureau of Investigation,**

Defendants.

Case No. 2:21-cv-04405-RGK-MAR

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Date: July 6, 2021
Time: 9:00 A.M.
Courtroom: 850
Judge: Hon. R. Gary Klausner
Trial Date: TBD
Complaint Filed: May 27, 2021

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28

1 **I. INTRODUCTION**

2 This motion seeks to enforce a basic constitutional tenet: When the
3 government deprives a private individual of a property right, the government is
4 required to identify and provide notice of the legal basis for the deprivation. That is
5 an important part of what the Constitution means when it says that “[n]o person
6 shall . . . be deprived of life, liberty, *or property* without due process of law.” U.S.
7 Const. amend. V (emphasis added).

8 The government here has failed to live up to that basic promise. The
9 government seized the property of Plaintiffs Paul and Jennifer Snitko, Joseph Ruiz,
10 and Tyler Gothier on March 22, 2021, as part of a raid on U.S. Private Vaults
11 (“USPV”). Nobody has accused these Plaintiffs of any crime. They are ordinary
12 people who wanted a secure place to hold their property. And, as the FBI requested,
13 they came forward in their own names and filed claims for their property through
14 the FBI’s website. It would be a simple thing for the FBI to have Plaintiffs come
15 down to their offices, produce their key for their box, and recover their property.
16 Yet two months after their property was seized, the government is continuing to
17 hold it. And the government has offered no explanation for its actions, beyond a
18 directive to wait.

19 While the government’s actions with respect to the USPV seizure raise a host
20 of troubling constitutional issues—some of which may be addressed in later stages
21 of this putative class action—this motion is narrowly targeted to this one ongoing
22 violation of Plaintiffs’ constitutional rights. The government owes Plaintiffs an
23 explanation for its continued detention of the property. And, if it cannot provide
24 one, it must give the property back.

25 Moreover, the same is true for all the other individuals who have filed claims
26 through the FBI’s website. The seizure warrant authorized the government to seize
27 the property of USPV—not its customers—and expressly stated that the
28 government would work to return the contents of the boxes to the customers. Some

1 customers have received their property back, but others, like Plaintiffs, have not.
2 Two months after the seizure, the government must provide an explanation for why
3 it is has not returned property to customers who have come forward to file claims.
4 And, if it cannot, it must give the property back without further delay.

5 **II. BACKGROUND**

6 A. Plaintiffs’ Security Deposit Boxes.

7 Plaintiffs in this case are all holders of security deposit boxes at USPV’s
8 facility in Beverly Hills. Paul and Jennifer Snitko held a box containing jewelry,
9 back-up hard drives, legal documents, Paul’s pilot flight log, and other personal
10 effects. P. Snitko Decl. ¶ 5; J. Snitko Decl. ¶ 5. Joseph Ruiz held a box that
11 contained over \$50,000 in cash that Joseph relies on to pay his living and medical
12 expenses. Ruiz Decl. ¶¶ 5, 11–12. And Tyler Gothier held a box that contained
13 silver and other personal property. Gothier Decl. ¶ 5.

14 Plaintiffs decided to open boxes at USPV because it offered a safe and secure
15 place to hold their private property. *See* P. Snitko Decl. ¶ 6; J. Snitko Decl. ¶ 6;
16 Ruiz Decl. ¶ 6; Gothier Decl. ¶ 6. The Snitkos, for instance, chose to use USPV
17 because their bank had a wait list for safety deposit boxes, and given the risk of
18 wildfires at their home it was important to have a safe space to store personal
19 property. P. Snitko Decl. ¶ 6; J. Snitko Decl. ¶ 6. Both Tyler and Joseph chose
20 USPV because its location was convenient. Ruiz Decl. ¶ 6; Gothier Decl. ¶ 6.

21 B. The Government’s Search And Seizure.

22 The government indicted USPV on March 9, 2021. *See United States v. U.S.*
23 *Private Vaults, Inc.*, No. 21-cr-106 (C.D. Cal.). The indictment alleges wrongdoing
24 by USPV officials, but it does not indict those officials. And the indictment does
25 not specifically allege any wrongdoing by USPV’s customers.

1 Then, on March 17, 2021, the government obtained a warrant to seize USPV’s
2 property. *See* Ex. A.¹ In keeping with the indictment’s focus on USPV, the warrant
3 authorized the government to seize USPV’s “business equipment,” including the
4 “nests of safety deposit boxes and keys.” *Id.* The warrant specifically stated that the
5 “warrant *does not authorize* a criminal search or seizure of the contents of the
6 safety deposit boxes.” *Id.*

7 Despite that limited scope, the warrant did envision that the government
8 would conduct a limited search of the contents of the security deposit boxes—
9 which the warrant labeled an “inventory” search. *Id.* The usual purpose of an
10 inventory search is to prevent theft and loss, by creating a record of seized property,
11 *see United States v. Johnson*, 889 F.3d 1120, 1128 (9th Cir. 2018), but this was a
12 curious inventory search insofar as it involved opening locked boxes that were
13 otherwise impervious to theft or loss. But, even conceding the premise that this was
14 a proper inventory search, the government represented that it would be limited in
15 scope: The warrant application stated that the government would search the boxes
16 to “look for contact information or something which identifies the owner,” and
17 stated that, under official FBI policies, the inspection “should extend no further
18 than necessary to determine ownership.” Ex. B. In keeping with these statements,
19 the warrant contemplated that, “in accordance with their written policies, agents
20 shall inspect the contents of the boxes in an effort to identify their owners in order
21 to notify them so that they can claim their property.” Ex. A.

22 The government executed the warrant on March 22, 2021. Ex. C. Recently
23 disclosed documents show that, in doing so, the government overstepped the
24 bounds of the inventory search that was proposed in the warrant application. Per
25 USPV procedures, many box holders placed a letter on top of their box with

26
27 ¹ Citations to “Ex.” refer to the exhibits to the declaration of Nilay Vora, filed
28 contemporaneously with this memorandum. *See Rosen Ent. Sys., LP v. Eiger
Vision*, 343 F. Supp. 2d 908, 912 (C.D. Cal. 2004) (explaining that courts have
broad latitude to consider evidence on a motion for preliminary injunction).

1 information on the identity of their beneficiary (should something happen to them)
 2 and with their own personal contact information. *See* P. Snitko Decl. ¶ 8. If the
 3 government had complied with its statement in the warrant application, that its
 4 search would “extend no further than necessary to determine ownership,” then it
 5 would have stopped its inventory search as soon as it found that letter. Ex. B. But
 6 video of the search shows the government did no such thing. *See* Ex. D ¶¶ 6–11.

7 C. The Government’s Continued Retention Of The Property.

8 The government’s warrant application stated that the purpose of its inventory
 9 search was to identify box holders, so that property could be returned. Ex. B. The
 10 warrant thus did not authorize the government to retain property of USPV’s
 11 customers, and, in fact, expressly contemplated that such property would be
 12 returned. Ex. A.

13 After seizing the contents of the USPV boxes, the government placed a notice
 14 on the USPV storefront stating that box holders should file a claim to their property
 15 through an FBI website. Ex. F. Each of the Plaintiffs has filed a claim through that
 16 website. *See* P. Snitko Decl. ¶ 10; J. Snitko Decl. ¶ 9; Ruiz Decl. ¶ 8; Gothier Decl.
 17 ¶ 8. In addition, as noted below, Plaintiffs are seeking relief only on behalf of
 18 individuals who have come forward to file such claims.

19 Nonetheless, two months after the seizure, the government continues to retain
 20 Plaintiffs’ property. *See* J. Snitko Decl. ¶ 11; P. Snitko Decl. ¶ 12; Ruiz Decl. ¶ 10;
 21 Gothier Decl. ¶ 9. Joseph Ruiz filed his claim shortly after the seizure, and he has
 22 received only an email stating that an FBI agent would be in touch at some future
 23 date. Ruiz Decl. ¶ 9–10.² And Paul and Jennifer also filed their claims shortly after
 24 the seizure, and, in their case, received both an email (again, stating that the FBI

25 _____
 26 ² Counsel for Plaintiffs has received second-hand information indicating that
 27 the government may have told attorneys for USPV that it intends to seek forfeiture
 28 of Joseph’s property. *See* Compl. ¶ 80. However, the government has not notified
 Joseph of any such civil forfeiture proceeding. *See id.* ¶¶ 82-83; *see also* Ruiz Decl.
 ¶ 10. Absent notice, Joseph does not know if the government will seek to forfeit his
 property, does not know the basis for any such possible forfeiture proceeding, and
 does not have the ability to file a claim challenging the forfeiture.

1 would be in touch in 30–60 days) as well as a phone call asking them to provide the
 2 number on their box. P. Snitko Decl. ¶ 10–11; J. Snitko Decl. ¶ 9–10. At the time
 3 Plaintiffs first filed this Motion—which was struck because of the manner in which
 4 it was ECF filed, *see* D.E. 25—they had received no other contact from the
 5 government. *See* P. Snitko Decl. ¶ 12; J. Snitko Decl. ¶ 11; Ruiz Decl. ¶ 10; Gothier
 6 Decl. ¶ 9. Shortly after the Motion was first filed, the FBI contacted the Snitkos and
 7 Tyler to say that they would receive a “secondary phone call” about the return of
 8 their property within another two to three weeks. Joseph received no such call. And
 9 now, more than two months after the seizure, the government *still* has not offered
 10 any justification for its continued retention of the property.

11 **III. LEGAL STANDARD**

12 “To obtain a preliminary injunction, a plaintiff must establish that he is likely
 13 to succeed on the merits, that he is likely to suffer irreparable harm in the absence
 14 of preliminary relief, that the balance of equities tips in his favor, and that an
 15 injunction is in the public interest.” *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th
 16 Cir. 2012) (marks and citation omitted). “When the government is a party, the last
 17 two factors (equities and public interest) merge.” *E. Bay Sanctuary Covenant v.*
 18 *Biden*, 993 F.3d 640, 668 (9th Cir. 2021).

19 **IV. ARGUMENT**

20 Plaintiffs have a simple question for the government. Given that the warrant
 21 explicitly stated that it “does not authorize a criminal search or seizure of the
 22 contents of the safety deposit boxes,” and expressly contemplated that the
 23 government would “identify [the boxes’] owners in order to notify them so that
 24 they can claim their property,” Ex. A, why is the government still holding their
 25 property? Plaintiffs understand the government’s stated basis for the initial seizure
 26 (though they dispute that the seizure was proper). But the government must
 27 separately justify the initial seizure and its continued retention of the property. *See*
 28 *Sandoval v. County of Sonoma*, 912 F.3d 509, 516 (9th Cir. 2018); *Brewster v.*

1 *Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017). Given that the warrant contemplated
2 that the contents of the security deposit boxes would be returned, Plaintiffs have
3 filed this motion to demand notice of the government’s asserted legal basis for the
4 ongoing detention of their property. And, if the government cannot provide that
5 explanation, it should have to give the property back.

6 This memorandum proceeds in three parts. Part A explains that Plaintiffs are
7 likely to prevail on the merits of their claim that due process requires the
8 government to state the basis for the ongoing seizure of Plaintiffs’ property—
9 which, again, is separate from the basis for the *initial* seizure—and that if the
10 government cannot state a basis for the continued detention of the property it must
11 give it back. Part B explains that Plaintiffs satisfy the other requirements for the
12 issuance of a preliminary injunction. Finally, Part C explains that the Court can
13 enter this injunctive relief without certifying a class, but also moves, in the
14 alternative, for limited and provisional class certification to the extent the Court
15 deems it necessary to provide relief.

16 **A. Plaintiffs Are Likely To Prevail On Their Claim That The Government**
17 **Must State The Legal Basis For Its Continued Retention Of Their**
18 **Property.**

19 Plaintiffs are likely to prevail on the merits of their claim that the government
20 must notify them of the basis for its continued detention of their property, or, if it
21 cannot, must release the property without further delay.

22 1. Due Process Requires Notice Of The Government’s Basis For The
23 Continued Deprivation Of The Property.

24 The constitutional requirement of notice, as a matter of due process, includes
25 the right to “sufficient notice concerning the factual and legal bases for”
26 deprivations of property rights. *Gete v. INS*, 121 F.3d 1285, 1297 (9th Cir. 1997);
27 *see also Al Haramain Islamic Found., Inc. v. U.S. Dep’t of Treasury*, 686 F.3d 965,
28 987 (9th Cir. 2012); *Ordonez v. Stanley*, 495 F. Supp. 3d 855, 864 (C.D. Cal. 2020).

1 That is what Plaintiffs are seeking. Plaintiffs are asking the government to notify
2 them of the basis for the continuing seizure of their property, notwithstanding the
3 warrant’s contemplation that their property would be returned.

4 The Ninth Circuit’s decision in *Gete* shows that, as a matter of due process,
5 the government must notify Plaintiffs of the basis for the ongoing seizure of their
6 property. In that case, plaintiffs sued to challenge the notice procedures applied by
7 the INS for seizures of cars and other vehicles. 121 F.3d at 1289. The notice
8 provided by the INS did “not inform the owner which statutory provisions are
9 alleged to have been violated” and also did not “contain any statement of the factual
10 basis” for the seizure. *Id.* at 1290. The Ninth Circuit found that notice insufficient.
11 *Id.* at 1299. In doing so, the Ninth Circuit acknowledged that “owners will
12 frequently have at least a general idea of the factual basis for the seizure,” but the
13 Court nonetheless held that property owners were entitled to notice of “the exact
14 reasons for the seizure, as well as the particular statutory provisions and
15 regulations” at issue. *Id.* at 1297. The Ninth Circuit also stated that requiring that
16 type of reasonably detailed notice “would not be unduly burdensome” for the
17 government, as “[a]ll that it would be required to do is provide . . . information that
18 is already in its possession.” *Id.* at 1298. As a matter of due process, the
19 government could not retain the plaintiffs’ property without stating the basis for its
20 action.

21 The Ninth Circuit’s decision in *Al Haramain* also applies that due process
22 requirement. In that case, the Office of Foreign Assets Control (“OFAC”) froze the
23 plaintiff’s assets, apparently because OFAC believed the plaintiff was funding
24 terrorists. 686 F.3d at 970. The plaintiff had notice that its assets were frozen;
25 among other things, OFAC put out a press release and also sent the plaintiff a letter.
26 *Id.* at 973–74. But the plaintiff nonetheless argued that it had not received sufficient
27 notice, as a matter of due process, because the government had “refused to disclose
28 its reasons for investigating and designating [the plaintiff], leaving [the plaintiff]

1 unable to respond adequately.” *Id.* at 984–85. Notwithstanding the government’s
2 national security interests in the anti-terrorism context, the Ninth Circuit agreed that
3 the plaintiff was entitled to, “at a minimum, a terse and complete statement of
4 reasons.” *Id.* at 986. And, while the government argued in response that the plaintiff
5 could likely guess the reasons for the designation, the Ninth Circuit also stated that
6 “the opportunity to guess at the factual and legal bases for a government action
7 does not substitute for actual notice of the government’s intentions.” *Id.* at 986–87;
8 *see also KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 647 F.
9 Supp. 2d 857, 906 (N.D. Ohio 2009) (likewise concluding that OFAC’s failure to
10 provide notice of the basis for an asset freeze violated due process). If the alleged
11 terrorists in *Al Haramain* were entitled to an explanation from the government,
12 surely the same is true of USPV’s customers.

13 2. If The Government Cannot State A Legal Basis For The Retention Of
14 The Property, The Property Must Be Returned.

15 If the government cannot state a legal basis for its continued seizure of
16 Plaintiffs’ property, then that property must be returned. After all, under the Fourth
17 Amendment, the government must justify *both* the initial seizure of Plaintiffs’
18 property *and* the ongoing seizure of that property today. And if the government
19 cannot offer a justification, then it follows as a matter of course that the seizure
20 must end. The government, moreover, can return the property following precisely
21 the procedure that it has followed when it has returned property to those fortunate
22 few individuals who have already secured return of their property: It can require
23 claimants to produce the key to their box, to confirm their right to possess the
24 contents.

25 In that respect, this case is just like *Sandoval* and *Brewster*, where the Ninth
26 Circuit held that the government was required to return impounded vehicles to their
27 owners once the owners showed up to claim their property. *Sandoval*, 912 F.3d at
28 516–17; *Brewster*, 912 F.3d at 1194–97. Now that Plaintiffs have identified

1 themselves and claimed their property, the government must either “cease the
2 seizure or secure a new justification” for the continued detention of the property.
3 *Brewster*, 859 F.3d at 1197. The government is free to attempt to establish that it
4 has some legal basis for the continued retention of this property, but, if it cannot, it
5 must give the property back without further delay.

6 As in *Sandoval* and *Brewster*, the government cannot meet this burden by
7 pointing to the initial basis for the seizure. In *Brewster*, for instance, the
8 government had validly impounded property under the community caretaking
9 doctrine, but the “exigency that justified the seizure vanished once the [property]
10 arrived in impound and [the owner] showed up” to claim it. 859 F.3d at 1196; *see*
11 *also Sandoval*, 912 F.3d at 516–17. Similarly, here, the government’s only basis for
12 seizing the property was that (as it stated in its warrant application), “[b]y seizing
13 the nests of safety deposit boxes, the government will necessarily end up with what
14 is inside those boxes initially.” Ex. B. But the warrant application was clear that
15 agents would then “attempt to notify the lawful owners of the property stored in the
16 boxes how to claim their property.” *Id.* Whether that initial justification for the
17 seizure was valid or not—and Plaintiffs intend to argue, elsewhere, that it was
18 not—that justification dissipated as soon as property owners came forward to claim
19 their property.

20 While the government must, of course, be afforded some time to return
21 property to its owners in a safe and orderly fashion, any such period has long
22 passed. The seizure in this case occurred over two months ago—on March 22,
23 2021. *See* Ex. C. The Snitkos, for example, submitted a claim shortly after the
24 seizure, on or about April 9, 2021. *See* J. Snitko Decl. ¶ 9. Since then, the Snitkos
25 have had no contact from the FBI apart from an email telling them to be patient, as
26 well as a phone call asking them for their box number. *See id.* ¶ 10. When the
27 Snitkos asked the FBI when their property would be returned—and what steps they
28 would have to take to get the property back—they were told they would simply

1 have to wait for a phone call. *Id.* If the government was serious about returning this
2 property, it surely could have set up appointments for claimants to produce their
3 keys and retrieve their property within a matter of weeks—and, at the outset, within
4 a month. *See* Ex. E (declaration describing procedure FBI followed to return
5 property to one property owner). Two months after the seizure, the continued
6 detention of Plaintiffs’ property has passed well beyond a mere bureaucratic delay
7 and must be justified under the Fourth Amendment.

8 The government also cannot meet this burden merely by asserting that it
9 needs time to “investigate” box holders, as the warrant did not authorize any such
10 investigation. The warrant expressly stated: “This warrant *does not authorize a*
11 *criminal search or seizure of the contents of the safety deposit boxes.*” Ex. A
12 (emphasis added). And while the warrant did contemplate that the government
13 would inventory the property in the safety deposit boxes, the Ninth Circuit has
14 made clear that an inventory search “must be non-investigative.” *Johnson*, 889 F.3d
15 at 1125. The seizure warrant thus did not authorize the government to hold onto this
16 property to conduct an investigation, and, to the extent the government wants to
17 conduct an investigation, it must articulate some *new* legal basis that would justify
18 holding onto the property pending investigation. The mere fact that the government
19 says it is investigating does not in and of itself justify a seizure; to the contrary, “to
20 argue that the Fourth Amendment does not apply to the investigatory stage is
21 fundamentally to misconceive the purposes of the Fourth Amendment.” *Davis v.*
22 *Mississippi*, 394 U.S. 721, 726 (1969); *see also Florida v. Royer*, 460 U.S. 491, 499
23 (1983) (explaining that “[d]etentions may be ‘investigative’ yet violative of the
24 Fourth Amendment absent probable cause”). The government is of course free to
25 investigate whomever it desires, but the government cannot point to the mere
26 existence of an investigation as a reason to seize and hold property.

27 At a minimum, if the government seeks to hold onto property because it may
28 be connected to a crime, the government must be able to show probable cause. *See*

1 *Soldal v. Cook County*, 506 U.S. 56, 66 (1992) (explaining that, “in the absence of
2 consent or a warrant permitting the seizure of the items in question, [‘plain view’
3 property] seizures can be justified only if they meet the probable-cause standard”).
4 And if the government currently lacks probable cause, the government cannot be
5 allowed to use the property as leverage to ferret out the probable cause that it
6 currently lacks. As the Supreme Court explained in *Boyd v. United States*, 116 U.S.
7 616, 630 (1886), “any forcible and compulsory extortion of a man’s own testimony,
8 or of his private papers to be used as evidence to convict him of crime, or to forfeit
9 his goods, is within the condemnation of” the Fourth and Fifth Amendments, and,
10 “[i]n this regard the fourth and fifth amendments run almost into each other.” *See*
11 *also, e.g., United States v. Oriho*, 969 F.3d 917, 926 (9th Cir. 2020) (order directing
12 defendant to repatriate foreign funds violated Fifth Amendment insofar as it would
13 compel defendant to reveal existence of foreign accounts). This much should be
14 axiomatic: The government cannot hold onto property in violation of the Fourth
15 Amendment in the hopes that by prolonging an unlawful seizure it will obtain
16 greater leverage in a criminal investigation. If the government does not have a valid
17 basis to hold property, then it must return it.

18 To be clear, this motion does not argue that *all* the property held by the
19 government following the USPV seizure must necessarily be returned. The motion
20 is limited to property owners who have filed claims, and, even then, the requested
21 injunction would give the government an opportunity to attempt to articulate a basis
22 to hold property. This motion simply seeks to compel the government to take that
23 first step to articulate the basis for its action. And, if the government cannot take
24 even that first step, then it must give the property back.

25 **B. The Remaining Factors Favor Grant Of A Preliminary Injunction.**

26 The previous section explains that Plaintiffs are likely to prevail on their claim
27 that the government must state the basis for its continued detention of their
28

1 property, or, if it cannot, must release the property. Now, this section explains that
2 Plaintiffs meet the remaining requirements for a preliminary injunction.

3 1. A Preliminary Injunction Is Necessary To Prevent Irreparable Harm.

4 A preliminary injunction is necessary to prevent irreparable harm because, as
5 explained above, the government is violating due process by holding property
6 without providing notice of the basis for the ongoing seizure. “[T]he deprivation of
7 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres*,
8 695 F.3d at 1002 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Moreover,
9 this constitutional harm is compounded further by the real-world harms that
10 individuals are suffering as they are deprived of their property. Joseph Ruiz, for
11 instance, badly needs his property back in order to pay for basic living expenses and
12 necessary medical care, and Joseph has been forced to resort to eating stockpiled
13 canned food while he waits for the property’s return. *See* Ruiz Decl. ¶¶ 11–13. This
14 ongoing deprivation of property gives rise to a separate constitutional violation, will
15 cause real concrete injury, and confirms the need to grant immediate relief.

16 2. The Balance Of Equities Favors Injunctive Relief, And An Injunction
17 Would Be In The Public Interest.

18 An injunction would be in the public interest, as “it is always in the public
19 interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695
20 F.3d at 1002. An injunction also would ensure the government’s compliance with
21 the narrow scope of the warrant issued to authorize the seizure and would thus
22 ensure respect for the judiciary’s role under the Fourth Amendment. An injunction
23 also would cause no possible harm to the government: If the government has a valid
24 justification to retain property, the government would simply have to say what that
25 justification is.
26
27
28

1 **C. To The Extent Necessary To Provide The Requested Injunctive Relief,**
2 **The Court Should Certify A Provisional Class.**

3 The Court can grant the requested injunctive relief without certifying a class,
4 as the relief that is sought in this motion would be “no broader than the
5 constitutional violation.” *Clement v. Cal. Dep’t of Corr.*, 364 F.3d 1148, 1152 (9th
6 Cir. 2004); *see also Davis v. Astrue*, 874 F. Supp. 2d 856, 868 (N.D. Cal. 2012). In
7 *Clement*, for example, the Ninth Circuit upheld a statewide injunction enjoining
8 enforcement of a particular prison policy, reasoning that, although the plaintiff in
9 that case was an inmate at only one prison, “it would be inefficient and unnecessary
10 for prisoners in each California state prison to separately challenge the same
11 [prison] policy.” 364 F.3d at 1153. In doing so, the Ninth Circuit also emphasized
12 the flexibility of the remedy, as the injunction prohibited only the challenged policy
13 and would not prohibit *other* restrictions adopted for a “legitimate penological or
14 security reason.” *Id.* The preliminary injunction requested here is both broad and
15 flexible in the same way: The injunction would require the government to state a
16 basis for its ongoing seizure of property from *all* USPV customers who have filed
17 claims and, in doing so, would be “no broader than the constitutional violation,” *id.*
18 at 1152, but, as in *Clement*, the injunction would allow the government to attempt
19 to articulate some alternate basis for its conduct. The court in *Clement* was able to
20 provide that type of relief without certifying a class, and the same should be true
21 here.

22 However, if the Court deems it necessary to provide the requested injunctive
23 relief, the Court also can and should certify the following provisional class, which
24 is a subclass of the broader putative class proposed by the Complaint:

25 **All renters of U.S. Private Vaults safe deposit boxes who (a) had property**
26 **within their safe-deposit box seized by the federal government on or**
27 **around March 22, 2021; (b) have identified themselves to the FBI since**
28 **the seizure; (c) have not been notified that their safe deposit boxes are the**

1 **subject of a currently ongoing administrative or judicial forfeiture**
2 **proceeding; and (d) whose property is still in the possession of the federal**
3 **government.**

4 See Compl. ¶ 105 (seeking certification of this subclass).³

5 Provisional class certification allows a district court to certify a class for the
6 narrow and limited purpose of issuing preliminary injunctive relief. *See, e.g., Meyer*
7 *v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012); *see also*
8 *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 682 (C.D. Cal. 2020) (explaining that
9 “[c]ourts in the Ninth Circuit routinely grant provisional class certification for
10 purposes of entering injunctive relief.” (marks omitted)). The type of flexible
11 preliminary relief that Plaintiffs seek here is precisely the type of relief that courts
12 have awarded through the provisional class certification mechanism: For instance,
13 in *Fraihat v. ICE*, 445 F. Supp. 3d 709, 751 (C.D. Cal. 2020), the court certified a
14 provisional class of detained persons with certain medical conditions and then
15 ordered the government to establish a process to “make timely custody
16 determinations for detainees.” The court subsequently clarified that “[b]lanket or
17 cursory” procedures would not suffice to satisfy its injunction, but also made clear
18 that its injunction “does not opine on the lawfulness of conditions faced by any
19 individual detainee” and therefore would not “preclude emergency habeas petitions
20 on either an individual or a group basis.” *Fraihat v. ICE*, No. 19-cv-1546, 2020 WL
21 6541994, at *12, *13 (C.D. Cal. Oct. 7, 2020); *see also Torres v. Milusnic*, 472 F.
22 Supp. 3d 713, 746–47 (C.D. Cal. 2020); *Scholl v. Mnuchin*, 489 F. Supp. 3d 1008,
23 1047 (N.D. Cal. 2020). The preliminary relief requested here would likewise
24 redress an ongoing violation by affording procedural relief to the class, while

25
26 ³ Notwithstanding the government’s apparent suggestion in communications
27 to USPV that Joseph might be the target of forfeiture proceedings, Joseph falls
28 within the proposed class because nobody from the government has provided
 Joseph (as opposed to USPV) with any kind of notice of any such forfeiture
 proceeding. *See supra* n.2.

1 nonetheless preserving the government’s flexibility to act within those procedures
2 as well as the ability of class members to seek more individualized relief. Such
3 provisional relief, moreover, is appropriate because this is a straightforward case for
4 certification under Rule 23(b)(2).

5 1. This Is An Appropriate Case For Class-Wide Injunctive Relief Under
6 Rule 23(b)(2).

7 This is an appropriate case for certification under Rule 23(b)(2) because the
8 government “has acted or refused to act on grounds that apply generally to the
9 class, so that final injunctive relief or corresponding declaratory relief is appropriate
10 respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). The proposed class is
11 defined to include USPV box holders who have come forward in their own names
12 to file claims with the FBI in order to retrieve their property, who have not been
13 notified that their property is the subject of a civil or administrative forfeiture
14 proceeding, and yet who have not received their property back. And the proposed
15 preliminary injunctive relief would provide a remedy to that entire class, by forcing
16 the government to either provide notice of the legal basis for the ongoing detention
17 or else give the property back.

18 In this respect, it is of critical importance that this motion does not actually
19 seek an order compelling the return of *any* particular property; the government only
20 needs to return property if it cannot meet its obligation to state a valid basis for the
21 ongoing seizure. The government will presumably argue that this claim cannot be
22 adjudicated on a class-wide basis because, for some property owners, it may have
23 individualized reasons why it believes it cannot give the property back. But the
24 class claims do not seek to adjudicate any such issues, and, instead, seek only to
25 redress constitutional violations that are common to the class. *See* Compl. ¶¶ 113-
26 58. The particular claims at issue in this motion, for instance, seek only to uphold
27 class members’ right to notice of the asserted basis for the seizure, as well as the
28 right to return of the property where the government cannot meet that basic

1 requirement. *Id.* ¶¶ 132-49. That overarching procedural right is common to the
2 class as a whole, although the individual circumstances of class members’ cases
3 may differ in other respects. “Plaintiffs do not seek any individualized
4 determination by this Court of whether they are entitled to release, and do not
5 request a different injunction for each class member” and instead “ask the Court to
6 determine whether [the government’s] systematic actions, or failures to act, . . .
7 amount to violations of the class members’ constitutional or statutory rights.”
8 *Fraihat*, 445 F. Supp. 3d at 741. This is therefore a paradigmatic 23(b)(2) class.

9 In this respect, this putative class is akin to any class action that seeks to
10 redress a systemic violation without necessarily determining the outcome of
11 individual cases subject to that violation. *See, e.g., Rodriguez v. Hayes*, 591 F.3d
12 1105, 1126 (9th Cir. 2010) (finding class appropriate for certification under Rule
13 23(b)(2) where all class members sought the same procedure, even though the
14 outcome of proceedings might differ); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772
15 (9th Cir. 2014) (determining that class members are all entitled to certain
16 procedures, although outcome of those procedures might differ case-to-case). As in
17 any such case, this putative class action seeks to remedy systemic violations in the
18 government’s conduct, without seeking to adjudicate more individualized issues
19 that may arise with respect to particular individuals. If, notwithstanding this
20 systemic relief, the government still retains property of particular individuals, then
21 those individuals will be able to file separate individual actions under Rule 41(g)
22 for the return of their personal property.⁴ But systemic relief is appropriate to
23 address the government’s systemic failure to act promptly to either provide notice
24 for the basis of the ongoing seizure or, if it cannot, to give the property back.

25
26 _____
27 ⁴ There should be no concern that proceedings in the class action would
28 somehow preclude subsequent, individualized Rule 41(g) actions. *See, e.g.,* 18A
Wright & Miller, Federal Practice & Procedure § 4455.2; *see also Cooper v. Fed.*
Rsrv. Bank of Richmond, 467 U.S. 867 (1984); *Hiser v. Franklin*, 94 F.3d 1287,
1291 (9th Cir. 1996).

1 2. This Case Satisfies The Prerequisites For Certification Under Rule 23(a).

2 In addition to all the foregoing, this case also satisfies the necessary
3 prerequisites for class certification under Rule 23(a).

4 *a. Numerosity:* “In general, courts find the numerosity requirement satisfied
5 when a class includes at least 40 members,” and the Ninth Circuit has found the
6 requirement satisfied for a class with just 20 members. *Rannis v. Recchia*, 380 F.
7 App’x 646, 651 (9th Cir. 2010). In this case, the government knows the exact
8 number of individuals who have come forward to file claims and can readily
9 provide that information in its response or through expedited discovery. The USPV
10 facility held hundreds of boxes, however, and there is no reason to think the
11 proposed class is not numerous.⁵

12 *b. Commonality:* The requirement of commonality is also satisfied because
13 “the constitutional issue at the heart of each class member’s claim for relief is
14 common.” *Rodriguez*, 591 F.3d at 1123. The class claims argue that the government
15 is required to provide notice of the basis for the ongoing detention in every case;
16 and, if the government cannot articulate a basis to hold onto the property, apart
17 from the basis for the initial seizure, then the government must give the property
18 back. And, as explained above, the motion properly does not seek to adjudicate any
19 individualized issues beyond those common constitutional claims. “Each class
20 member claims entitlement to a minimally adequate” procedure to secure return of
21 their property, and, as a result, any “factual differences [within the class] are not of
22 the sort that likely affect entitlement to relief.” *Fraihat*, 445 F. Supp. 3d at 738.

23 *c. Typicality:* The typicality requirement “requires only that the
24 representative’s claims are reasonably co-extensive with those of absent class
25 members; they need not be substantially identical.” *Rodriguez*, 591 F.3d at 1124

26 _____
27 ⁵ In the unlikely event that the proposed class contains fewer than 40—or 20—
28 class members, then that would just confirm the propriety of providing broad
injunctive relief without necessarily certifying a class, as proposed at the outset of
this section.

1 (marks omitted). Notwithstanding individual differences between members of a
2 proposed class, that requirement is satisfied where, as here, the class representatives
3 and other members of the class all raise “similar constitutionally-based arguments
4 and are alleged victims of the same practice of prolonged detention.” *Id.* The
5 proposed class representatives all had their property seized by the government; all
6 filed claims with the government to recover their property; and are all still waiting
7 for their property to be returned. As a result, they “have the same claims and face
8 the same or similar harms arising from the same course of conduct” as the other
9 members of the proposed class. *Fraihat*, 445 F. Supp. 3d at 738–39.

10 *d. Adequacy:* Finally, to determine adequacy of representation, “the Court asks
11 whether the proposed class representatives and their counsel have any conflicts of
12 interest with any class members and whether the proposed class representatives and
13 their counsel will prosecute the action vigorously on behalf of the class.” *Fraihat*,
14 445 F. Supp. 3d at 739. There is no conflict here: The proposed class
15 representatives here seek the exact same relief that they are requesting on behalf of
16 the class as a whole—namely, an order that the government state the basis for its
17 continued detention of their property or, failing that, give the property back. And
18 the proposed class counsel have extensive experience litigating class actions,
19 including a major class action involving the adequacy of government procedures
20 following property seizures. *See Decl. of Robert Frommer in Support of Motion for*
21 *Preliminary Injunction and Provisional Class Certification.* The requirement of
22 adequacy is therefore satisfied.

23 **V. CONCLUSION**

24 For the foregoing reasons, the Court should issue a preliminary injunction
25 directing the government to provide notice to all individuals who have come
26 forward in their own names to file claims for the contents of their USPV boxes for
27 the basis for the ongoing seizure of their property and should direct the government
28

1 to release the property to the extent that it is unable to satisfy the requirement to
2 articulate such a basis.

3 Dated: June 3, 2021

Respectfully Submitted,

4
5 /s/ Nilay U. Vora

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