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21 *Attorneys for Plaintiffs*

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

25 **PAUL SNITKO, JENNIFER**
26 **SNITKO, JOSEPH RUIZ, TYLER**
27 **GOTHIER, JENIVERDON-**
28 **PEARSONS, MICHAEL STORC,**
and TRAVIS MAY,

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' REPLY TO
DEFENDANTS' RESPONSE TO
COURT'S JULY 23, 2021 ORDER
TO SHOW CAUSE REGARDING
THE GOVERNMENT'S
CONTINUED SEIZURE OF THE
CONTENTS OF BOX 7622

Judge: Hon. R. Gary Klausner
Complaint Filed: May 27, 2021
Amended Complaint Filed: June 9, 2021

1 On July 23, 2021, this Court ordered the government to either return the
2 property that it seized from Joseph Ruiz or, in the alternative, to “show cause to the
3 Court in writing as to why the Government continues to seize the contents of Box
4 7622.” Doc. 60 at 8. The government in response has filed a three-page affidavit,
5 which is notably unaccompanied by *any* legal argument even attempting to suggest
6 that its showing is sufficient to establish probable cause. That is because the point
7 cannot seriously be argued: The government’s affidavit, bereft of any actual
8 evidence, amounts to nothing more than innuendo and supposition. It is manifestly
9 insufficient to justify the continued detention of Joseph’s property.

10 The government’s affidavit raises three broad points: (1) Joseph has not
11 provided the FBI with documentation to support his claim that he received money
12 through a settlement; (2) based on Joseph’s email address, the government believes
13 that he at one point sold water pipes made out of old liquor bottles; and (3) Joseph
14 had a bank account in February 2021, so he supposedly must have a “readily
15 available avenue to pay for rent, groceries and other expenses.” The first two points
16 fall far short of probable cause, while the third is utterly irrelevant to the issue.

17 *First*, the fact that Joseph did not document his prior settlements to the
18 government does not and cannot establish probable cause of illegality. As the
19 Supreme Court has held, “to get their money back, defendants should not be
20 saddled with any proofburden. Instead . . . they are entitled to be presumed
21 innocent.” *Nelson v. Colorado*, 137 S. Ct. 1249, 1256 (2017). The fact that Joseph
22 did not document his settlements to the government is therefore not affirmative
23 evidence of anything. In any event, Joseph *does have* documentation of those
24 settlements: The exhibits to this filing reflect that Joseph was the beneficiary of a
25 \$100,000 settlement in 2019 and a \$25,000 settlement in 2021. *See* Joseph Ruiz
26 Declaration in Reply to Defendants’ Response to Court’s July 23, 2021 Order to
27 Show Cause (“Ruiz Decl.”), Ex. A at 5; Ex. B at 8.

28

1 But even if Joseph were unable or unwilling to provide that documentation,
2 that would not justify the government's continued retention of his property. As
3 *Nelson* holds, USPV box holders cannot be constitutionally required to prove their
4 innocence to the government in order to recover their property. Indeed, as this
5 Court recently observed, "the Government is not authorized to compel a private
6 citizen whose property the Government has indiscriminately seized to come forth
7 and self-identify so that the Government may investigate that person."
8 Order on Defendants' Motion to Dismiss, *Coe v. United States*, No. 21-cv-3019
9 (July 23, 2021), ECF No. 49, at 6. Just as Joseph is not required to submit to
10 investigation by the FBI, he cannot be required to hand over sensitive financial
11 documents to federal law enforcement officials. The government cannot be allowed
12 to seize property without any suspicion of wrongdoing and then force property
13 owners to prove their own innocence to get that property back.

14 *Second*, the government's speculation based on Joseph's email address is
15 nothing more than innuendo. It asserts without any stated basis that Joseph's email
16 address was associated at some point with an online business "specializing in
17 turning liquor bottles into marijuana smoking devices." Doc. 64-1 at ¶ 2. But
18 notably, the government does not even try to argue either that the \$57,000 seized
19 from Joseph's box was earned by selling hand-crafted water pipes or that it would
20 be subject to forfeiture if it was. Indeed, the government concedes that "[o]n-line
21 businesses do not typically generate cash." *Id.* Instead, the government simply
22 asserts that "this business suggests RUIZ may be involved in the cannabis industry
23 in other ways." *Id.* What "other ways" are those? The government does not say, as
24 it has no real idea. The government is speculating. *See United States v. Howard*,
25 828 F.2d 552, 555 (9th Cir. 1987) (holding that "[m]ere speculation" is insufficient
26 to establish probable cause).

27 *Third*, the government implies that Joseph must not actually need his seized
28 funds, as he had "an active bank account at J.P. Morgan Chase" in February 2021.

1 Doc. 64-1 at ¶ 6. But the fact that Joseph had a bank account does not say anything
2 about *how much money* was (or is) held in that account, and Joseph in fact needs to
3 access the proceeds of his settlements in order to pay for medical care (the purpose
4 of the 2019 settlement) and to improve his living situation (the purpose of the 2021
5 settlement). *See* Ruiz. Decl. ¶ 13. And even if that weren't the case, Joseph is not
6 required to prove that he needs his funds; to the contrary, the government must put
7 forward some reason why they should get to keep it.

8 The government's affidavit is also entirely consistent with Joseph's
9 explanation of the origin of his funds. Joseph has never said that he does not have a
10 bank account or that he initially received his settlement proceeds in cash; Joseph
11 has simply explained that he *kept* those proceeds in cash in his U.S. Private Vaults
12 box. And Joseph's explanation is confirmed by the government's own affidavit,
13 which says that a currency transaction report was filed for Joseph's bank account in
14 February 2021. It is important to note that a currency transaction report would have
15 to be filed for an over-\$10,000 cash *withdrawal* from the account. And in fact,
16 Joseph explains that he withdrew the proceeds of his February 2021 settlement
17 from the bank shortly after receiving the funds, so that he could store the funds in
18 cash in his USPV box—which presumably is exactly the withdrawal that triggered
19 the report that the government mentions in its affidavit. *See* Ruiz Decl. ¶ 10, 11.

20 Conclusion

21 At bottom, the government has presented no actual evidence for why it should
22 get to keep Joseph's money. Instead, it has taken whatever information it could
23 force Joseph to divulge in his efforts to get his property back and then used its
24 investigatory powers to manufacture supposition and innuendo. But supposition and
25 innuendo are not substitutes for affirmative evidence under the Fourth Amendment.
26 Accordingly, the Court should order the government to return Joseph's money
27 without delay.
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1 Dated: August 3, 2021

Respectfully Submitted,

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/s/ Robert Frommer

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