

1 Paul V. Avelar (AZ Bar No. 023078)
INSTITUTE FOR JUSTICE
2 3200 N. Central Avenue, Ste. 2160
Phoenix, AZ 85012-1114
3 Phone: (480) 557-8300
4 Fax: (480) 557-8305
pavelar@ij.org

5 Kirby Thomas West* (PA Bar No. 321371)
6 Elizabeth Sanz*(CA Bar No. 340538)
Eliana Fleischer* (IL Bar No. 6349183)
7 INSTITUTE FOR JUSTICE
901 N. Glebe Road, Ste. 900
8 Arlington, VA 22203
Phone: (703) 682-9320
9 Fax: (703) 682-9321
kwest@ij.org; bsanz@ij.org; efleischer@ij.org

10 Katrin Márquez* (FL Bar No. 1024765)
11 INSTITUTE FOR JUSTICE
2 South Biscayne Blvd., Ste 3180
12 Miami, FL 33131
Phone: (305) 721-1600
13 Fax: (305) 721-1601
14 kmarquez@ij.org

15 *Applications for Admission *Pro Hac Vice* forthcoming.
16 *Attorneys for Movants*

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**

19 MARIO AYALA CRUZ and AYALA'S
MINI MARKET LLC,
20 *Movants,*

21 v.

No. _____

22 U.S. DEPARTMENT OF HOMELAND
SECURITY; MARKWAYNE MULLIN in
23 his official capacity as Secretary of the De-
partment of Homeland Security; INTER-
24 NAL REVENUE SERVICE; FRANK
BISIGNANO in his official capacity as
25 Chief Executive Officer of the Internal
Revenue Service; SCOTT BESSENT in his
26 official capacity as Secretary of the Treas-
27 ury; and the UNITED STATES OF
AMERICA,

28 *Respondents.*

**MOTION FOR RETURN OF
PROPERTY UNDER FEDERAL
RULE OF CRIMINAL
PROCEDURE 41(g)**

1 Pursuant to Federal Rule of Criminal Procedure 41(g), Movants Mario Ayala Cruz and
2 Ayala's Mini Market LLC hereby move this Court for the return of U.S. currency, five phones,
3 three computers, and business documents including checks, receipts, and other papers.

4 Movants' property was seized on February 25, 2025, when federal agents from Home-
5 land Security Investigations and the Internal Revenue Service carried out a coordinated raid
6 of 19 small businesses throughout the Phoenix area. Warrants¹ and supporting documents
7 from the raid show that the warrants were issued based on suspicion of a single offense:
8 "Structuring, in violation of Title 31 U.S.C. § 5324[.]" After the hours-long raid, the agents
9 informed the business that it could continue operations as normal, with no apparent concern
10 for possible illegality of the business's operations. The agents also said the business would
11 receive information within thirty days on how to get the seized property back. No information
12 ever came. Over a year and a half later, the Movants have received no information and their
13 property remains seized, even though neither has been charged with any crime.

14 As explained in the accompanying memorandum, return of the seized property is re-
15 quired because the government's continued retention of it violates the Fourth Amendment
16 and federal statutes. A seizure is reasonable only so long as the government's justification for
17 it "holds force," *Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017), and no justification
18 remains here. The government cannot hold the property for forfeiture: it failed to meet the
19 Civil Asset Forfeiture Reform Act of 2000's mandatory notice deadlines, which—once
20 missed—require return of the property, 18 U.S.C. § 983(a)(1)(F), and the IRS is barred from
21 seizing property for forfeiture where structuring is the only suspected offense, 31 U.S.C.
22 § 5317. Nor can the government hold the property as evidence where, as here, there is no
23 evidentiary need to do so. For these reasons, the government's continued seizure evinces a
24 "callous disregard" for Movants' constitutional rights, making relief appropriate under Rule
25 41(g). *Ramsden v. United States*, 2 F.3d 322, 326 (9th Cir. 1993).

26
27 ¹ Movants received only the cover page of the warrant, which was filed under seal, and never
28 received the attachments that should have accompanied it. The case number listed on that
cover page was Case No. 25-5093MB.

For the above reasons, Movants request an order under Federal Rule of Criminal Procedure 41(g) directing Respondents U.S. Department of Homeland Security and Internal Revenue Service to (1) produce the complete warrant, including attachments, (2) produce the application for the warrant and affidavit in support thereof, and (3) return the U.S. currency, checks, phones, computers, and business documents that were seized from Ayala's Mini Market on February 25, 2025. In the alternative, Movants ask that the Court (1) order Respondents to produce the complete warrant, including attachments, and the application for the warrant, including the affidavit in support, and (2) schedule an evidentiary hearing on the motion.

Respectfully submitted this 20th day of October 2026.

Kirby Thomas West* (PA Bar No. 321371)
 Elizabeth Sanz* (CA Bar No. 340538)
 Eliana Fleischer* (IL Bar No. 6349183)
 INSTITUTE FOR JUSTICE
 901 N. Glebe Road, Ste. 900
 Arlington, VA 22203
 Phone: (703) 682-9320
 Fax: (703) 682-9321
 kwest@ij.org; bsanz@ij.org;
 efleischer@ij.org

/s/ Paul V. Avelar

Paul V. Avelar (AZ Bar No. 023078)
 INSTITUTE FOR JUSTICE
 3200 N. Central Avenue, Suite 2160
 Phoenix, AZ 85012-1114
 Phone: (480) 557-8300
 Fax: (480) 557-8305
 pavelar@ij.org

Katrin Márquez* (FL Bar No. 1024765)
 INSTITUTE FOR JUSTICE
 2 South Biscayne Blvd., Ste 3180
 Miami, FL 33131
 Phone: (305) 721-1600
 Fax: (305) 721-1601
 kmarquez@ij.org

*Applications for Admission *Pro Hac Vice*
 forthcoming.

Attorneys for Movants

Paul V. Avelar (AZ Bar No. 023078)
INSTITUTE FOR JUSTICE
3200 N. Central Avenue, Ste. 2160
Phoenix, AZ 85012-1114
Phone: (480) 557-8300
Fax: (480) 557-8305
pavelar@ij.org

Kirby Thomas West* (PA Bar No. 321371)
Elizabeth L. Sanz* (CA Bar No. 340538)
Eliana Fleischer* (IL Bar No. 6349183)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Ste. 900
Arlington, VA 22203
Phone: (703) 682-9320
Fax: (703) 682-9321
kwest@ij.org; bsanz@ij.org; efleischer@ij.org

Katrin Márquez* (FL Bar No. 1024765)
INSTITUTE FOR JUSTICE
2 South Biscayne Blvd., Ste. 3180
Miami, FL 33131
Phone: (305) 721-1600
Fax: (305) 721-1601
kmarquez@ij.org

*Applications for Admission *Pro Hac Vice* forthcoming.
Attorneys for Movants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

MARIO AYALA CRUZ and AYALA'S
MINI MARKET LLC;
Movants,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY; MARKWAYNE MULLIN in
his official capacity as Secretary of the De-
partment of Homeland Security; INTER-
NAL REVENUE SERVICE; FRANK
BISIGNANO in his official capacity as
Chief Executive Officer of the Internal
Revenue Service; SCOTT BESSENT in his
official capacity as Secretary of the Treas-
ury; and the UNITED STATES OF
AMERICA,

Respondents.

No. _____

**MEMORANDUM IN SUPPORT OF
MOTION FOR RETURN OF
PROPERTY UNDER FEDERAL
RULE OF CRIMINAL
PROCEDURE 41(g)**

INTRODUCTION

On February 25, 2025, federal agents from Homeland Security Investigations (“HSI”) and the Internal Revenue Service (“IRS”) raided Mario Ayala Cruz’s business, Ayala’s Mini Market, and seized cash, checks, documents, computers, and cell phones from the store. Nearly 20 months later, the government has done nothing. It has given Mario no information about the seizure or how he might get his property back. Neither has it, to Mario’s knowledge, pursued any criminal or forfeiture action related to the seizure. The government simply took Mario’s property and went dark. Continued retention of Mario’s property in these circumstances violates federal statute and Mario’s constitutional rights. Mario consequently moves this Court for an order under Federal Rule of Criminal Procedure 41(g) directing Respondents to return all the property seized from his business.

BACKGROUND

I. Mario Ayala Cruz and Ayala’s Mini Market

Mario Ayala Cruz immigrated to the United States from Mexico in 1991. Declaration of Mario Ayala Cruz in Supp. of Mot. for Return of Property (hereinafter “Ayala Cruz Decl.”) ¶ 3. He hoped the United States would offer an opportunity to create a better life. *Id.* He was right. After 20 years of hard work, Mario eventually saved enough money to open his own business, Ayala’s Mini Market LLC, in 2018. *Id.* ¶ 5. The business is a family enterprise. Mario works there alongside his wife, Maribel, and their children, Mario, Jr., Jonathan, and Jarely. *Id.* ¶ 6.

Ayala’s Mini Market offers convenience store products and shipping supplies and services, as well as check cashing and money transfer services. *Id.* ¶ 8. Until recently, customers could also bring cell phones in for repair services. *Id.* Mario and his family worked hard to make Ayala’s Mini Market a success. For the first few years, Mario worked seven days a week from 8:00 a.m. until 9:00 p.m. at the store. *Id.* ¶ 7. Finally, in 2020, Mario and his family saw their first profitable year in business. *Id.* Business continued to improve from there. By early 2025, Mario was planning to open a second location to have a separate space to offer cell phone repair and shipping services. *Id.* ¶ 50.

1 Though Ayala’s Mini Market offers a variety of goods and services, money services
2 constitute the largest portion of the business. *Id.* ¶ 9. These money services are essential in
3 Mario’s community, which has a large immigrant population. *Id.* ¶¶ 10–13. First, the store
4 offers check-cashing services. *Id.* ¶ 11. Customers cash their paychecks at the store, receiving
5 cash in exchange for their checks, less the store’s small fee. *Id.* Second, the store offers money
6 transfer services. *Id.* ¶ 12. Most often, Mario’s customers are transferring money to family
7 abroad. *Id.* The customer purchases a transfer, which the store initiates via a money
8 transmitting company with which the store has contracted. *Id.* ¶¶ 14–16. The money
9 transmitter sends the money to the transferee, and Mario then owes the transmitter the amount
10 the customer paid for the transfer. *Id.* ¶ 16. At the end of each month the money transmitter
11 pays the store a commission on the value of all that month’s transfer business. *Id.* ¶ 16.

12 These two services fit together. The store uses the cash it receives from money-transfer
13 customers to pay customers who cash checks. *Id.* ¶ 17. And it uses the checks it cashes to pay
14 the transmitters what it owes them. *Id.* ¶ 18. For example, setting aside fees, if one customer
15 gives the store \$500 in cash to send to family in Mexico, the store owes the transmitter \$500.
16 If another customer then cashes a \$500 paycheck, the store pays that customer the \$500 in
17 cash and keeps the check. Mario then scans the check and sends it electronically to the
18 transmitter—essentially assigning the check to the money transmitter—and the transmitter
19 then credits the value of the check (in this case, \$500) against what the store owes. *See id.* ¶¶
20 14–20. Because Mario’s money services business works this way, the store always has both
21 cash and cashed checks on hand. *Id.* Mario typically deposits excess cash at the bank twice a
22 week, and he is the only one who makes bank deposits on behalf of Ayala’s Mini Market. *Id.*
23 ¶ 21.

24 Money services businesses (“MSBs”) operate in a complicated regulatory environment,
25 and Mario is careful to ensure that his business always abides by the rules. *Id.* ¶ 23. Mario hires
26 an independent outside auditor to review his anti-money laundering compliance program. *Id.*
27 ¶ 24. This auditor has completed five reviews of Ayala’s Mini Market and has certified the
28 program as “acceptable” each time. *Id.* An IRS audit likewise identified no violations of the

1 law. *Id.* ¶ 26. Neither Mario nor his business has ever been cited, fined, or charged for any
 2 violation of the laws or regulations governing money services businesses. *Id.* ¶ 27.

3 II. The Seizure

4 In February 2025, Mario traveled to Mexico for an extended visit to his ailing father.
 5 *Id.* ¶ 28. Before leaving, Mario left \$350,000 in cash in the store, leaving a note stating that
 6 amount in the back room. *Id.* ¶ 29. Because he was the only one who took the business's cash
 7 to and from the bank, Mario wanted to ensure that his family would have enough to cash
 8 customers' checks for the 17 days he planned to be away. *Id.* Ten days into Mario's trip, on
 9 February 25, 2025, he called his son, Mario, Jr., to check in and see how everything was going.
 10 *Id.* ¶ 30. When his son did not answer, Mario remotely viewed the security camera footage to
 11 ensure that all was well in the store. *Id.* He could not see anything, as the cameras appeared to
 12 be disconnected. *Id.* Mario repeatedly tried calling both Maribel and Mario, Jr., but neither
 13 answered. *Id.* Finally, later that day, Mario, Jr. and Maribel called Mario to tell him that the
 14 store had been raided by federal law enforcement agents who had seized all the store's money,
 15 checks, documents, computers, and cell phones. *Id.* ¶ 31. Mario was shocked and immediately
 16 made plans to return to the United States the next day, cutting short his visit with his ailing
 17 father. *Id.* ¶¶ 32–34.

18 Federal agents had shown up at Ayala's Mini Market just before noon on February 25,
 19 2025. Declaration of Mario Eduardo Ayala Castaneda in Supp. of Mot. for Return of Property
 20 (hereinafter "Mario, Jr. Decl.") ¶¶ 8–9. Some agents were in plain clothes, some wore vests
 21 marked "HSI," and some wore vests marked "IRS." *Id.* ¶ 11. The agents presented a warrant
 22 signed by a magistrate judge and instructed Mario, Jr. and Maribel to close the store. *Id.* ¶ 9.
 23 After they closed the store, Mario, Jr. and Maribel were instructed to sit on chairs in the store
 24 while the agents began their search. *Id.* ¶ 10. The agents then searched the store for three to
 25 four hours. *Id.* ¶ 14. They opened and searched packages that customers had left for shipping.
 26 *Id.* ¶ 16. They then gathered and seized all of the business's cash, checks, receipts, transaction
 27 reports, binders of compliance documents, information about the business's bank account,
 28 the store's computers, Mario, Jr.'s and Maribel's personal cell phones, one cell phone

1 belonging to the business, and two cell phones belonging to customers that were in the store
2 for repairs. *Id.* ¶ 18. *See also* Mario, Jr. Decl., Ex. B.

3 Before the agents left, they gave Mario, Jr. two one-page documents. Mario, Jr. Decl.
4 ¶ 20. The first was the first page of a search warrant signed by a magistrate judge. *Id.* ¶ 21. *See*
5 *also* Mario, Jr. Decl., Ex. A. This page contains no information about the suspected offense or
6 what property is to be searched or seized. Rather, it references two attachments. Mario, Jr.
7 Decl. ¶ 21. But the agents did not give Mario, Jr. any attachment to the document, nor did
8 they ever show him any. *Id.* The second document the agents gave to Mario, Jr. was an
9 inventory of the property taken. *Id.* ¶ 22; Mario, Jr. Decl., Ex. B. It includes entries for “U.S.
10 Currency” and “Docs/Receipts/Papers,” as well as specific entries for each of the five cell
11 phones and three computers seized. *Id.* After giving these documents to Mario, Jr., the agents
12 told him the store could reopen and carry on with business. Mario, Jr. Decl. ¶ 24. Then, they
13 left. *Id.*

14 Although the agents did not record the amount of currency seized, nor provide copies
15 of the checks and documents, *see* Mario, Jr. Decl., Ex. B., Mario estimates that they took
16 \$462,097.20 worth of currency and cashed-but-unscanned checks. Ayala Cruz Decl. ¶ 41. He
17 arrived at this number by adding the \$350,000 in cash that he left in the store just before his
18 trip to the \$112,097.20 that he paid to the money-transmitter companies after the seizure. *Id.*
19 ¶¶ 40–42. Because Mario had not owed those companies anything prior to leaving for Mexico,
20 he knows that the entirety of the sum he later paid represented money transfer transactions
21 that occurred while he was away *Id.* ¶ 43. And because Mario is the only one who makes
22 deposits to the business’s bank account, the money paid by customers for those transactions
23 would have been in the store at the time of seizure. *Id.*

24 Because the store continuously cashes checks and sells money transfers, the balance
25 between cash and customers’ cashed checks (which are later used to pay the money
26 transmitters) is constantly in flux. *Id.* ¶ 44. Some amount of the \$350,000 that Mario left behind
27 (and any cash paid by customers for money transfers) might have been paid out to customers
28 in check cashing and would instead have been represented by paychecks of equivalent total

value. Because the agents seized all of Mario's business records documenting the transactions that occurred while he was away, Mario does not know how the \$462,097.20 seized was split between cash and customers' checks which Ayala's Mini Market had cashed but which Mario had not yet scanned and conveyed to the money transmitters for payment. *Id.* ¶ 44.

III. The Aftermath

Mario has heard nothing from the government since they raided his business and seized his property. When the agents left, they told Mario, Jr. that the business would receive a letter within thirty days. Mario, Jr. Decl. ¶ 23. But no letter came. *Id.* For 20 months, the government has not told Mario why it took his property or why it refuses to return it. *Id.* Nor has it informed Mario of what he can do to try to get it back. *Id.*

The government also failed to inform Mario what exactly it thinks justified the raid. The warrant the agents gave to Mario, Jr. referenced attachments that should have noted the suspected crime, and those attachments were missing. *See* Mario, Jr. Decl. ¶ 21, Ex. A. Nevertheless, it is fairly clear that the warrant was issued based on suspicion of a single offense: "Structuring, in violation of Title 31 U.S.C. § 5324."¹

Why is it fairly clear? The raid of Mario's business was part of a broader operation involving the simultaneous raid of 19 money services businesses in the Phoenix area on February 25, 2025. Declaration of Kirby Thomas West in Supp. of Mot. for Return of Property (hereinafter "West Decl.") ¶¶ 3–6, Exs. A and B (media reports of the operation). Three other warrants executed that day against three MSBs unrelated to Ayala's Mini Market have been personally reviewed by Movants' counsel. *See* West Decl. ¶¶ 7–8, Ex. C (a redacted warrant executed against one of the other MSBs). The agents executing *those* warrants actually served the attachments, and, by all appearances, the warrants issued against all 19 MSBs were identical

¹ Structuring is a financial reporting crime. Under the federal Bank Secrecy Act, financial institutions (including MSBs) must affirmatively report to the federal Financial Crimes Enforcement Network (a Treasury subagency) any cash transaction of more than \$10,000. *See* 31 U.S.C. § 5313(a); 31 C.F.R. § 1010.311. Structuring is when the transactor deliberately splits up that \$10,000 into smaller amounts and multiple transactions so that the financial institution will not file that report with FinCEN. *See* 31 U.S.C. § 5324.

1 in substance to each other. West Decl. ¶ 12. The three reviewed warrants were all signed by
2 the same magistrate judge who signed Mario's warrant, on the same day, at the same time. *Id.*
3 ¶ 9. They all, like Mario's warrant cover page, cited two attachments: Attachment A (naming
4 the property to be searched) and Attachment B (naming the property to be seized). *Id.* ¶ 10.
5 They all employed the same sequential naming convention for Attachment A—"As further
6 described in Attachment A[#]"—and Mario's warrant likewise reads, "As further described in
7 Attachment A18." *Id.* ¶ 11. And they all include identical substance in the cover page and
8 Attachment B. *Id.* ¶ 12. Given these facts, it seems likely that the missing attachment to the
9 warrant left with Mario, Jr. lists the same suspected offense justifying the raids of the other
10 MSBs: structuring, and structuring alone.

11 The search and seizure of Mario's property upended his business. He had to keep his
12 business closed until March 1, 2025 to replace the seized computers and to figure out how
13 they could keep the business open. Ayala Cruz Decl. ¶ 47. He took \$50,000 of his own money
14 out of the bank so that he could keep cashing customers' checks. *Id.* ¶ 48. When that ran out,
15 the business had to stop cashing checks for a long time, losing customers. *Id.* ¶¶ 48–49. Mario
16 also had to come up with \$112,097.20 to pay the money transmitters to cover the balance that
17 had accrued while he was away. *Id.* ¶¶ 40, 46. Since all the cash and cashed-but-unscanned
18 checks had been seized, Mario needed to pay this money to the transmitters on his own. *Id.*
19 Though he did ultimately pay back all the money transmitters over the following month, the
20 consequences of the raid damaged Mario's business relationship with one of the money
21 transmitters he had formerly worked with, InterMex. *Id.* ¶ 51. Today, the business can no
22 longer offer InterMex as an option for money transfers. *Id.* Ayala's Mini Market is now finally
23 stable, but it is still not doing as well as it was before the raid. *Id.* ¶ 52.

24 Mario has changed the way he runs his business because of the raid. *Id.* ¶ 54. He now
25 scans every customer's cashed check to send it to the money transmitters as soon as it is
26 cashed, rather than collecting them and scanning them together as they previously did. *Id.* He
27 constantly worries that his business will be targeted again.

1 Mario's family has also struggled. The raid and subsequent seizure were extremely
2 upsetting to Mario, Mario, Jr., Maribel, and their other family members. *Id.* ¶ 53. Maribel
3 continues to deal with severe anxiety from the experience. *Id.* Tragically, the raid also cut short
4 Mario's time with his ailing father. *Id.* ¶ 34. Mario was supposed to stay in Mexico until March
5 4, 2025, but, because of the raid, he went home early on February 26, 2025. *Id.* ¶¶ 28, 34. Then,
6 because he was dealing with the aftermath of the incident, Mario was unable to see his father
7 again before he passed away on April 4, 2025. *Id.* ¶ 34.

8 **ARGUMENT**

9 Nearly 20 months have passed since federal agents raided Mario's business and seized
10 his cash, documents, and other property. In that time, the government has not filed a forfeiture
11 action (or even sent a notice of intended forfeiture). Nor has it, to Mario's knowledge, filed
12 any criminal charges related to the seizure. The government has no lawful reason to retain
13 Mario's property, and this Court should exercise its equitable jurisdiction to order its return.

14 Having heard nothing further from the government for over a year and a half following
15 the seizure, Mario must guess as to its purported rationale for continuing to retain his property.
16 There are two apparent grounds on which the government might attempt to base its continued
17 possession of Mario's property. Neither can justify it.

18 First, the government might argue that it intends to forfeit Mario's property. Having
19 failed to comply with the statutory deadlines enacted by the Civil Asset Forfeiture Reform Act
20 of 2000 ("CAFRA"), however, the government is now legally obligated to return the property.
21 Further, the IRS agents who participated in the seizure are statutorily barred from seizing
22 property for forfeiture where—as seems to be the case here—a violation of 31 U.S.C. § 5324
23 is the *only* suspected offense. They should not be permitted to skirt this clear congressional
24 directive by involving another agency not bound by the statute.

25 Second, the government might assert that it is holding Mario's property not for
26 intended forfeiture, but as evidence in some criminal investigation. This, too, fails to justify
27 the ongoing seizure. There is no evidentiary value in the seized property that can justify its
28 lengthy seizure, and its continued retention therefore violates the Fourth Amendment.

I. The Court should exercise its equitable jurisdiction to order the return of Mario's property.

Federal Rule of Criminal Procedure 41(g) provides that a “person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return.” Fed. R. Crim. P. 41(g). Such a motion “must be filed in the district where the property was seized.” *Id.* And “[t]he court must receive evidence on any factual issue necessary to decide the motion.” *Id.* A Rule 41(g) motion brought outside a criminal proceeding, as here, is “treated as a petition for civil equitable relief.” *Omid v. United States*, 851 F.3d 859, 862–63 (9th Cir. 2017).

Grant of such a petition is generally appropriate where: (1) the government has “displayed a callous disregard for the constitutional rights of the movant;” (2) the movant “has an individual interest in and need for the property he wants returned;” (3) the movant “would be irreparably injured by denying return of the property;” and (4) the movant has no “adequate remedy at law for the redress of his grievance.” *Ramsden v. United States*, 2 F.3d 322, 325 (9th Cir. 1993). Applied to Mario’s case, the *Ramsden* factors support an exercise of this Court’s equitable jurisdiction.

First, the government has here displayed a “callous disregard” for Mario’s constitutional rights. As explained in Part II, *infra*, the government can neither forfeit Mario’s property nor justify holding it as evidence, so its continued retention is unreasonable under the Fourth Amendment. And its nearly 20 months of silence, without any notice or any forum in which to contest the seizure, offends due process.² At every turn, the government has “callous[ly] disregarded” Mario’s constitutional rights.

Turning to the second and third *Ramsden* factors, Mario has a clear “individual interest in and need for” the seized property and will be irreparably injured if it is not returned.

² Mario’s motion focuses on the government’s violation of his Fourth Amendment rights, but the lengthy delay of any hearing in which to seek the return of property also violates his rights under the Fifth Amendment’s Due Process Clause. *See United States v. \$8,850*, 461 U.S. 555 (1983).

1 *Ramsden*, 2 F.3d at 325. The government seized approximately \$460,000 in cash and cashed-
 2 but-unsold checks from Mario’s business, in addition to financial and operating records,
 3 five cell phones, and three computers. Ayala Cruz Decl. ¶ 41, Mario, Jr. Decl. ¶ 18. Mario and
 4 his business are the legal owners—or, in the case of four of the seized cell phones, have a clear
 5 interest in³—all of this property. The money and cashed checks seized were essential to
 6 business operation, and the business has struggled to get back on its feet after such a serious
 7 blow to its operating funds. Ayala Cruz Decl. ¶¶ 48–52. Mario had to deplete his personal
 8 savings to keep the business afloat, and still lost customers when those savings did not stretch
 9 far enough to continue cashing checks. *Id.* ¶¶ 48–49. Customers who came to rely on Ayala’s
 10 Mini Market for check cashing went elsewhere when the business could no longer reliably
 11 provide that service. *Id.* ¶ 49. Because of the financial precarity resulting from the seizure,
 12 Mario and his family also had to delay their plans to open a second location to offer cell phone
 13 repair and shipping services. *Id.* ¶ 50. Because of the seizure Mario lost his business
 14 relationship with a money transmitter, InterMex. *Id.* ¶ 51. His only hope of rebuilding that
 15 relationship is by the vindication that comes from a court order establishing his property was
 16 wrongfully held. The goodwill Mario lost with his customers and business relationships is a
 17 category of harm that is “often not quantifiable and cannot be fully remedied with a financial
 18 award.” *Novedades y Servicios, Inc. v. Fin. Crimes Enft Network*, 181 F.4th 961, 977 (9th Cir. 2026).
 19 Indeed, because the U.S. government has sovereign immunity, Mario cannot recover damages
 20 for the harms that continue to accrue, like the loss of goodwill, the delay in opening a second
 21 location, or the loss of his personal funds to minimize disruption. These are precisely the kinds
 22 of circumstances in which the Ninth Circuit has previously found irreparable harm. *See id.*

23 Finally, Mario lacks an adequate remedy at law for the ongoing deprivation of his
 24 property, satisfying the final *Ramsden* factor. Courts sometimes deny relief under Rule 41(g)
 25 where the movant can challenge the seizure in a pending forfeiture proceeding or criminal

27 ³ Mario has an “individual interest in and need for” the customer phones because he wishes
 28 to return them to his customers, and in Mario, Jr.’s and Maribel’s phones because they use
 them in their roles working for Ayala’s Mini Market.

1 case. *See, e.g., United States v. U.S. Currency* \$83,310.78, 851 F.2d 1231, 1235 (9th Cir. 1988).
 2 Neither is the case here. The government has filed neither a forfeiture nor a criminal case,
 3 meaning Mario has no alternative means by which to seek the return of his property. If Mario
 4 is to have relief, it must issue from this Court.

5 Though the *Ramsden* factors all support an exercise of this Court’s equitable jurisdiction,
 6 under the circumstances here the Court need not even engage in a full application of the
 7 *Ramsden* test. Where the government obtains property “through intentional wrongdoing—
 8 rather than through technical or good faith mistake—[a court] should order return of the
 9 property without the need for balancing that is applicable in the more ordinary case.” *Snitko v.*
 10 *United States*, 90 F.4th 1250, 1259 (9th Cir. 2024). This is precisely the case here. As explained
 11 in Part II.A.2, *infra*, the government’s initial seizure of Mario’s property had the effect of
 12 circumventing clear congressional restrictions barring seizures of this kind. This governmental
 13 wrongdoing is, standing alone, sufficient reason for this Court to exercise its equitable
 14 jurisdiction.

15 **II. Continued seizure of Mario’s property violates the Fourth Amendment, and it**
 16 **should be returned under Rule 41(g).**

17 Rule 41(g) asks whether the government’s continued retention of property is
 18 reasonable “under all of the circumstances.” *Ramsden*, 2 F.3d at 326 (quoting Fed. R. Crim. P.
 19 41(e) advisory committee’s note to 1989 amendment). That inquiry tracks the Fourth
 20 Amendment, under which a seizure “is justified . . . only to the extent that the government’s
 21 justification holds force.” *Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017). Return of
 22 property is appropriate unless the movant “is not entitled to lawful possession of the seized
 23 property, the property is contraband or subject to forfeiture or the government’s need for the
 24 property as evidence continues.” *United States v. Mills*, 991 F.2d 609, 612 (9th Cir. 1993)
 25 (citation omitted). No one can dispute that Mario and his business may lawfully possess cash,
 26 checks, business records, phones, and computers. That leaves forfeiture and evidence as
 27 remaining possible justifications for seizure. Neither justifies keeping Mario’s property.
 28 Continuing to hold it indefinitely without any lawful basis is the kind of “callous disregard”

for Mario's Fourth Amendment rights that makes relief appropriate under Rule 41(g). *Ramsden*, 2 F.3d at 326.

A. If it seized the property for intended forfeiture, the government has violated two federal laws, making the seizure unreasonable.

1. The government has violated CAFRA.

With the Civil Asset Forfeiture Reform Act of 2000, Congress enacted several reforms intended to prevent abuse of the Nation's forfeiture laws. Among the most important of these reforms was establishing strict, mandatory deadlines for the government to provide notice to property owners and to initiate forfeiture cases. *See* 18 U.S.C. § 983(a). These deadlines were essential because CAFRA was enacted in part to rectify the "inequity in imposing strict deadlines and sanctions on property owners contesting civil forfeiture actions, while not imposing similar deadlines and sanctions on the government." *United States v. \$229,850 in U.S. Currency*, 50 F. Supp. 3d 1171, 1176 (D. Ariz. 2014) (quoting Stefan D. Cassella, *The Civil Asset Forfeiture Reform Act of 2000: Expanded Government Forfeiture Authority and Strict Deadlines Imposed on All Parties*, 27 J. Legis. 97, 122–25 (2001)). Through CAFRA, Congress recognized that "if property owners were required to file claims within a fixed period of time, and were made to suffer consequences for failing to do so, the government should face deadlines and suffer consequences as well." *Id.*

First among CAFRA's deadlines is the requirement that the government send written notice to property owners no later than 60 days after the seizure of their property. *See* 18 U.S.C. § 983(a)(1)(A)(i). This notice is crucial because it informs a property owner that the government intends to forfeit his property and triggers his ability to respond by filing a claim or administrative petition.⁴ The consequence of the government's failure to meet the notice deadline is clear: it "shall return the property to [the property owner]." *Id.* § 983(a)(1)(F). Here, the government did no such thing. It has silently withheld Mario's property not for 60 days,

⁴ It is not relevant for CAFRA purposes that Mario had actual notice of the *seizure* of his property because he has never been informed whether the government intends to *forfeit* his property, meaning he cannot follow the usual steps of filing a claim to challenge such forfeiture.

1 but for over 600 days, without providing any notice of intended forfeiture (or any other
2 information of any kind). *See* Ayala Cruz Decl. ¶ 37. This delay violates CAFRA and the
3 government must return the seized property. *See* 18 U.S.C. § 983(a)(1)(F). Because CAFRA
4 itself requires return, the government cannot invoke forfeiture as a reason to keep the
5 property.

6 In limited circumstances, the government may seek extensions (one 30-day extension
7 approved by a supervisory official within the seizing agency, followed by 60-day extensions
8 granted by a court) to CAFRA’s 60-day notice deadline. 18 U.S.C. § 983(a)(1)(B)–(D). Mario
9 is unaware of the government seeking any such extension here, but—even if extensions have
10 been sought—grant of those requests would have been inappropriate under CAFRA’s strict
11 standards for extensions. Under CAFRA, extensions are appropriate “only if there is reason
12 to believe that notice may have an adverse result.” *Id.* § 983(a)(1)(D). And an “adverse result”
13 is a high bar. There are five statutory examples of such circumstances, none of which apply to
14 the government’s seizure here. Extensions are appropriate where notice may “endanger[] the
15 life or physical safety of an individual” or lead to serious interference with a criminal
16 prosecution, including a “flight from prosecution,” “destruction of or tampering with
17 evidence,” “intimidation of potential witnesses,” or “otherwise seriously jeopardizing an
18 investigation or unduly delaying a trial.” *Id.*

19 Here, nearly 20 months after the government seized Mario’s property, he has had no
20 indication that he (or anyone else for that matter) is the subject of any criminal investigation
21 or potential prosecution. There is no prosecution to flee, no witness to intimidate, nor—to
22 Mario’s knowledge—any criminal investigation to jeopardize. In any event, it is hard to see
23 how provision of a CAFRA notice could have had such an effect even if the government is
24 actively investigating some alleged criminal activity related to Mario’s property. Mario is
25 painfully aware that the government has seized his property and has been since the day it was
26 seized. Providing Mario with a CAFRA notice within the statutory deadline would have served
27 only to give him some much-needed clarity as to *why* his property was seized, and indication
28 of the steps he might take to get it back.

1 ***2. The government has violated the Clyde-Hirsch-Sowers Act.***

2 If the government argues that it can retain the property because it intends to take it
3 through forfeiture, it not only violated the requirements of CAFRA, but the seizure was also
4 unlawful the moment it occurred. The search and seizure of Mario's property was carried out
5 by agents from HSI and the IRS. Mario, Jr. Decl. ¶ 11. But federal law prohibits the IRS from
6 seizing property for forfeiture where, as here, structuring is the only suspected offense.

7 Under the Clyde-Hirsch-Sowers RESPECT Act, the IRS cannot seize property for
8 intended forfeiture on suspicion of structuring alone. *See* 31 U.S.C. § 5317. Rather, the IRS
9 may only seize property for forfeiture for "a claimed violation of section 5324 if the property
10 . . . was derived from an illegal source or the funds were structured for the purpose of
11 concealing the violation of a criminal law or regulation other than section 5324." *Id.* In other
12 words, structuring is not enough. For the IRS to legally seize property based on a structuring
13 offense, it must also have an added suspicion of some other criminal act. Yet the IRS seized
14 Mario's property, apparently on the sole suspicion of a structuring violation. By participating
15 in a seizure of property on that sole suspected offense, the IRS agents violated the Clyde-
16 Hirsch-Sowers Act, making their seizure of Mario's property unlawful. Property the IRS could
17 not lawfully seize for forfeiture cannot be held on the theory that it is subject to forfeiture.

18 **B. The government cannot retain the property as evidence because any**
19 **legitimate interests could be satisfied by returning it.**

20 Nor can the government justify keeping Mario's property as evidence. Even a seizure
21 legitimate at its outset becomes unreasonable once the government's justification no longer
22 "holds force." *Bremster*, 859 F.3d at 1197. Under Rule 41(g), that happens when the
23 government's "legitimate interests can be satisfied even if the property is returned." *Ramsden*,
24 2 F.3d at 326. Even if the government's initial seizure was justified, nothing supports
25 continued seizure at this late stage. Mario's property has either no evidentiary value at all, or
26 none that could not equally be served by copies of the seized documents and electronic
27 information. Continued seizure is therefore unreasonable under Rule 41(g) and the Fourth
28 Amendment, and the property must be returned.

1 ***1. The seized cash, checks, and business documents have no inde-***
 2 ***pendent evidentiary value.***

3 Most of the property that the government seized from Mario falls into two categories:
 4 cash and business documents (including checks). The existence of a criminal investigation
 5 cannot support continued seizure of either category of property. First, the government cannot
 6 claim that it is holding the cash as evidence of the suspected structuring offense, because the
 7 government—in the usual course⁵—does not continue to hold the physical cash it seizes but
 8 rather promptly deposits it. *See, e.g., Shaw v. DHS*, 2022 WL 1289228, at *6 (N.D. Ohio Apr.
 9 29, 2022) (explaining how HSI immediately deposits seized funds into “HSI’s Treasury
 10 account”). These electronic funds serve no evidentiary purpose relevant to any possible
 11 criminal investigation. They are not physical evidence, but mere numbers in a bank account.

12 The evidentiary value of the currency—in either physical or electronic form—is
 13 particularly absent in cases of structuring, the alleged offense the government seems to have
 14 been investigating here. The warrants authorizing other searches in the same operation that
 15 targeted Mario’s business were based solely on a suspicion of “Structuring, in violation of Title
 16 31 U.S.C. § 5324.” West Decl. ¶ 15. Such violations are proven by showing that a defendant
 17 “1) split into smaller increments a transaction that would have been for more than \$10,000,
 18 and 2) fragmented the transaction *for the purpose* of avoiding the federal reporting requirement.”
 19 *See United States v. Bird*, 79 F.4th 1344, 1349 (11th Cir. 2023) (emphasis in original). In other
 20 words, to prove the suspected offense here, the government would present evidence
 21 documenting the amounts and frequency of transactions and evidence that the defendant
 22 intentionally evaded reporting requirements. No fact the government must prove to establish
 23 a structuring offense becomes more or less provable by the government’s continued
 24 possession of Mario’s money. Because returning the money would not impair any legitimate
 25 government interest, keeping it is unreasonable. *See Ramsden*, 2 F.3d at 326.

26 ⁵ The government may hold the seized physical cash in certain circumstances unlikely to be
 27 relevant here (where the suspected offense was structuring), such as where it may contain
 28 fingerprints or drug residue relevant to a criminal investigation. *Cannon v. United States*, 2026
 WL 2869312 at *5 n.7 (9th Cir. Sep. 23, 2026).

Unlike the seized cash, the checks and business documents that the government seized from Mario may at first have had some evidentiary value to the alleged offense likely noted in the attachment to the warrant. But it was nonetheless unreasonable for the government to retain those checks and documents for nearly 20 months. The government may, of course, retain property (within a reasonable timeframe) where its seizure is authorized by a warrant and where its retention is necessary for a criminal investigation or prosecution. But where copies will serve the government's needs, the originals must be returned. *See Ramsden*, 2 F.3d at 327; *see also J.B. Manning Corp. v. United States*, 86 F.3d 926, 928 (9th Cir. 1996) ("If the government's investigatory and prosecutorial interests can be served by retaining copies of the documents, it is unreasonable for the government to refuse to return original documents to the owner."). Any criminal investigation into the alleged structuring offense here could proceed equally smoothly with copies of the seized checks and business records, rather than the originals. It is therefore unreasonable for the government not to return Mario's documents.

2. The seized phones and other electronic equipment have no independent evidentiary value.

In addition to cash, checks, and business documents, the agents also seized five cell phones and three computers. Ayala Cruz Decl. ¶ 31, Mario, Jr. Decl. ¶ 18, Ex. B. Continued retention of this property likewise lacks evidentiary necessity. First, two of the seized phones were wholly unrelated to any conceivable structuring offense. They belonged not to Mario, his family members, or his business, but to customers who had brought them in for repair. *Id.* There is no way in which these phones could be relevant to an investigation of a suspected structuring offense. They therefore lack any evidentiary value and should be returned.

Nor is there any evidentiary value in continued retention of the business computers and three other seized phones, which belong to Mario's business and his family members. If the warrant, like the other warrants issued for raids conducted of similar businesses on the same day, authorized seizure of "[r]ecords and information found within the digital contents of any electronic storage media," the government has had ample time to extract and copy that information. Just as with the checks and business records, it is unreasonable for the

government not to simply copy any necessary data from the phones and computers and return the property. *See Ramsden*, 2 F.3d at 327.

CONCLUSION

For the above reasons, Movants Mario Ayala Cruz and Ayala's Mini Market LLC, request an order under Federal Rule of Criminal Procedure 41(g) directing Respondents U.S. Department of Homeland Security and Internal Revenue Service to (1) produce the complete warrant, including attachments, (2) produce the application for the warrant and affidavit in support thereof, and (3) return the U.S. currency, checks, phones, computers, and business documents that were seized from Ayala's Mini Market on February 25, 2025. In the alternative, Movants ask that the Court (1) order Respondents to produce the complete warrant, including attachments, and the application for the warrant, including the affidavit in support, and (2) schedule an evidentiary hearing on the motion.

Respectfully submitted this 20th day of October 2026.

Kirby Thomas West* (PA Bar No. 321371)
Elizabeth Sanz* (CA Bar No. 340538)
Eliana Fleischer* (IL Bar No. 6349183)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Ste. 900
Arlington, VA 22203
Phone: (703) 682-9320
Fax: (703) 682-9321
kwest@ij.org; bsanz@ij.org;
efleischer@ij.org

Katrin Márquez* (FL Bar No. 1024765)
INSTITUTE FOR JUSTICE
2 South Biscayne Blvd., Ste. 3180
Miami, FL 33131
Phone: (305) 721-1600
Fax: (305) 721-1601
kmarquez@ij.org

/s/ Paul V. Avelar

Paul V. Avelar (AZ Bar No. 023078)
INSTITUTE FOR JUSTICE
3200 N. Central Avenue, Suite 2160
Phoenix, AZ 85012-1114
Phone: (480) 557-8300
Fax: (480) 557-8305
pavelar@ij.org

*Applications for Admission
Pro Hac Vice forthcoming.

Attorneys for Movants