

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

UNITED STATES OF AMERICA       )  
  ) MISC. NO. 1:08MC5  
VS.   )  
  ) O R D E R  
515 CONCORD AVE., ANDERSON,    )  
SC; ROBERT B. CLARKSON             )  
  )

**THIS MATTER** is before the Court on a motion by Defendant Robert B. Clarkson for return of property seized pursuant to a search warrant on May 3, 2007. **Second Motion for Return of Property (Rule 41(g)), filed January 22, 2008.** By Order filed January 29, 2008, this Court directed the Government to produce evidence pertaining to its continuing need for Clarkson's property in an investigation or prosecution.

The Government responded to the Court's Order by filing an itemized list of items belonging to Clarkson that remained in the Government's possession. **Exhibit A, attached to Government's Response in Opposition to Motion for Return of Seized Property, filed February 11, 2008 (hereinafter, "Exhibit A").** The Government also caused to be filed, under seal, the original affidavit to the search warrant of May 3, 2007.

Additionally, Defendant Clarkson filed a response, in which he reiterated his requests under Fed. R. Crim. P. 41(g). **Return to Judge's Order, filed February 8, 2008.**

As the Court noted in its January 29, 2008, Order, Rule 41(g) provides:

*A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. . . . The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.*

**Fed. R. Crim. P. 41(g).** The Advisory Committee Notes to Rule 41(g) state:

*[R]easonableness under all of the circumstances must be the test when a person seeks to obtain the return of property. If the United States has a need for the property in an investigation or prosecution, its retention of the property generally is reasonable. But, if the United States' legitimate interests can be satisfied even if the property is returned, continued retention of the property would become unreasonable.*

**Fed. R. Crim. P. 41(g) advisory committee's note to 1989 Amendments (discussing Rule 41(g)'s predecessor, Rule 41(e)).** A ruling on a request for the return of property pursuant to Rule 41(g) is within the Court's discretion. ***United States v. Hurley*, 105 F. App'x 452, 454 (4<sup>th</sup> Cir. 2004).**

Having carefully examined the pleadings filed by the Government and Clarkson, as well as the sealed affidavit detailing the Government's investigations, the undersigned concludes that the Government has a legitimate need for the property listed in Exhibit A, and therefore, the retention of Clarkson's property is reasonable under the circumstances.

**IT IS, THEREFORE, ORDERED** that Clarkson's motion for return of property pursuant to Rule 41(g) is hereby **DENIED**.

**IT IS FURTHER ORDERED** that the affidavit filed under seal on February 13, 2008, shall remain **SEALED** until further order of the Court.

Signed: February 25, 2008