

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,
v.

CASE NO: 6:17-cr-148-Orl-40TBS

ANDRES FERNANDO CABEZAS

Defendant.

ORDER

Pending before the Court is Defendant Andres Fernando Cabezas' Motion to Return Property Under 41(g) (Doc. 115). Specifically, Defendant seeks the return of the photographs stored on his cell phone that were not evidence in this case (Id.). The government has filed a response in opposition to the motion (Doc. 121).

Defendant pled guilty to receiving child pornography (Doc.73). In his plea agreement he agreed to forfeit all of his property that was subject to forfeiture, including an iPhone used in the commission of the crime (Doc. 67, ¶ 9). The Court accepted Defendant's plea, adjudicated him guilty, and sentenced him to, among other things, 151 months in prison (Docs. 77, 101). Defendant is currently appealing his judgment and sentence (Doc. 103). The Court entered a separate Final Judgment of Forfeiture vesting title to the iPhone in the government (Doc. 114).

Defendant's motion for the return of photographs on his iPhone is **DENIED** for the following reasons. First, Defendant is represented by a lawyer who has not signed or otherwise joined in the motion. Second, this case is on appeal to the Eleventh Circuit Court of Appeal which currently has jurisdiction over this matter. Third, the Court has

already decreed that the iPhone belongs to the government. Defendant has not sought reconsideration of this decision and his remedy now is in the Eleventh Circuit.

DONE and **ORDERED** in Orlando, Florida on September 17, 2018.



THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Andres Fernando Cabezas