
No. 2009-H20

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2009**

UNITED STATES OF AMERICA,
Petitioner,

v.

**STARTESTS, INC. and the
COLONIAL FOOTBALL LEAGUE,**
Respondents.

*On Writ of Certiorari to the
United States Court of Appeals
for the Fourteenth Circuit*

BRIEF FOR RESPONDENTS

TEAM NO. 14
Attorneys for Respondents

QUESTIONS PRESENTED

- I. Whether a professional sports league has standing to sue on behalf of its players for the return of illegally seized property under Fed. R. Crim. P. 41(g) when the league has a contractual right to represent the players' privacy interests and has paid for the administration and storage of the test results.
- II. Whether the government may rely on the "plain view" exception to the Fourth Amendment warrant requirement in digital searches where searches give investigators free reign to view files that would not be lawfully viewed outside the digital context.
- III. Whether, in the digital evidence context, a federal magistrate may authorize an overly broad search warrant to seize all computer equipment or whether a heightened particularity requirement should be in place as a safeguard to prevent general exploratory searches to discover information not supported by probable cause.

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CONSTITUTIONAL AMENDMENTS:

U.S. Const. amend. IV *passim*

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OPINIONS BELOW

The opinion of the United States District Court for the District of Wythe (No. 2010-W20) is unreported and appears in the record at pages 1–6. The opinion of the United States Circuit Court of Appeals for the Fourteenth Circuit (No. 2010-W23) is likewise unreported and appears in the record at pages 7–19.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment to the United States Constitution. It is included as Appendix “A.” This case also involves Federal Rule of Criminal Procedure 41(g). It is included as Appendix “B.”

STATEMENT OF THE CASE

In 2005, during the steroid controversy troubling other professional sports, the Colonial Football League (CFL) began requiring its franchises to submit players for drug screening tests. (R. at 8.) CFL hired StarTests, Inc. (StarTests), an independent business that specializes in drug testing for professional sports franchises and other organizations. (R. at 2.) StarTests’ job was to administer the drug screening tests, which consisted of either a blood or urine sample, and to store the information in a StarTests facility. (R. at 8.) Both CFL and StarTests represented to the players that all names and tests results would remain confidential and that the tests were being conducted only to determine whether more than five percent of the league’s players were using illegal steroids. (R. at 1.)

The FBI Investigation. In July 2008, the Federal Bureau of Investigation (FBI) began investigating five CFL franchise football players for the illegal distribution and usage of steroids. (R. at 1.) The five players included John Reynolds and John Reeves of the Wythe City

Lightning, and Danny Rodriguez, Michael Fleming, and Ace Hall of the Marshall Phoenixes. (R. at 1.) For several months the FBI gathered evidence for its case. (R. at 1.)

The Warrant. During the investigation, the FBI learned of CFL’s drug screening tests and applied to the United States District Court for the District of Wythe for a warrant to seize material at the StarTests facility in Millersville, Wythe, which it believed would aid it in its case against the athletes. (R. at 1.) Not only did the FBI request to seize the urine samples and the documents, it also requested to receive “all computer records, files, and equipment” relating to the drug-screening test. (R. at 1–2.) The FBI convinced the magistrate judge to issue the warrant based on the potential vast quantity of data at issue as well as the difficulties that could occur while locating, identifying, and retrieving files which may have been “misabeled or deceptively hidden” in various drives. (R. at 8.) The warrant broadly authorized agents to search “computer equipment, storage devices, and—where an on-site search would be impracticable—seizure of either a copy of all data or the computer equipment itself.” (R. at 2.)

The magistrate only imposed a few restrictions. (R. at 2.) Whether a computer needed to be seized in the first place was to be determined by “law enforcement personnel trained in searching and seizing computer data.” (R. at 2.) “Appropriately trained personnel” were then to be used to search any seized computers or other equipment. (R. at 2.) And finally, the search and seizure was limited to information “reasonably related to the investigation into the five named players’ illegal steroid use.” (R. at 2.)

The Seizure. On November 1, 2008, the FBI executed the search warrant on the StarTests Millersville facility. (R. at 2.) During the search, agents learned that the CFL drug test results were spread out over several different databases throughout the computers in the facility as a way to protect players’ confidential information. (R. at 2.) One computer contained the coded

test results, and another contained the players' personal and health information. (R. at 2.) A third computer was the decoder, listing the names and numbers that were given to each player prior to the test date. (R. at 2.) Many files within these computers were encrypted, while other files were hidden in H- or S-drives. (R. at 2.)

Because the FBI believed the on-site search would take too long, the head agent ordered for all the computer equipment to be either seized or copied. (R. at 2.) Documents and specimens were removed as well and were taken to the FBI office in Wythe City. (R. at 2.) The FBI office agents viewed the databases and discovered positive steroid test results for other CFL players who were not under their current investigation. (R. at 2.) Agents also discovered positive test results for illegal substances other than steroids such as marijuana, cocaine, and other hallucinogens. (R. at 2.) Using the databases, computer forensics agents matched the positive test results with the players' numbers. (R. at 2.) As a result of this information they obtained from the database, the FBI agents decided to retain the database and other computer information they seized from StarTests and to expand the investigation of professional football players to include all illegal drug possession and sale. (R. at 2.)

The District Court. StarTests and the CFL subsequently filed a motion in the United States District Court for the District of Wythe for the return of copied records and equipment under Fed. R. Crim. P. 41(g). (R. at 1.) In response, the government asserted that the CFL lacked standing. (R. at 3.) The district court found the CFL had the requisite standing, as it was an association suing on behalf of its members' interests that it was contractually bound to protect. (R. at 3.)

In reviewing the legality of the search and seizure, the district court relied on other circuits' application of the plain view doctrine to digital evidence and concluded the warrant was facially

valid and that the FBI had a lawful right to access the information. (R. at 5.) Additionally, the government's discovery of other positive test results was immediately apparent, rendering the search lawful. (R. at 6.) As a result, the district court denied StarTests' and the CFL's 41(g) motion for the return of the government-seized property while the investigation and trial were still pending. (R. at 4.)

The Court of Appeals. StarTests and the CFL appealed to the Fourteenth Circuit Court of Appeals and claimed that the district court erred by both upholding the search warrant despite its lack of particularity and also by applying the plain view doctrine in a digital evidence search and seizure case. (R. at 7.) The appellate court reversed the district court's judgment and adopted new standards for drafting warrants and the use of the plain view exception in computer search cases. (R. at 7.) In applying these new standards, the appellate court determined that the magistrate's warrant was overly broad and the FBI's subsequent search constituted an unlawful search and seizure in violation of the Fourth Amendment. (R. at 17.) The dissent disagreed with the adoption of the new standards. (R. at 18–19.) This Court subsequently granted certiorari. (R. at 20.)

SUMMARY OF THE ARGUMENT

I.

The court of appeals below correctly found that the Colonial Football League (CFL) has Fourth Amendment standing to seek the return of the property the government seized from the StarTests facility. The CFL not only can assert its own interests as a party aggrieved by an illegal search and seizure, but it can also assert associational standing to bring the case on behalf of its players.

The CFL has direct standing to bring this case as it has a subjectively reasonable expectation of privacy in the test results that is objectively reasonable. While the test results were stored in a third party's (StarTests') facility, the CFL still had a subjectively reasonable expectation that the results would remain confidential—the first prong of the reasonableness test for Fourth Amendment standing. The CFL paid for StarTests to store the database for anonymity purposes. StarTests took precautionary measures to ensure the databases would be secure from outside sources who would be interested in meddling in the personal information of its clients by implementing a practice called “computer hopping.” With this procedure in place, and with the agreement between the CFL and StarTests, the CFL had a subjectively reasonable expectation that its players' personal medical information would remain confidential. Furthermore, the drug tests at issue contain the players' private medical information as well as the results taken from their personal bodily fluids. These inherently private matters are constitutionally and statutorily protected from disclosure. This, coupled with the fact that the CFL had taken measures to ensure the information would remain only in StarTests' hands, gave the CFL the requisite reasonable expectation of privacy.

Additionally, the CFL's expectation of privacy was objectively reasonable, satisfying the second prong of the reasonableness test for Fourth Amendment standing. Society has long recognized an expectation that personal medical information will not be shared without patient consent. Additionally, doctors must follow privacy laws regarding the disclosure of patient information, giving society a heightened expectation of privacy. As this case involves the seizure of personal medical information and drug test results, society would certainly be willing to recognize this expectation as reasonable.

Separate and apart from its own standing, the CFL also has associational standing to bring this suit on behalf of its players. The players in the league could sue the government for the return of their property. Their privacy expectations mirror the CFL's expectations in the test results, as the CFL contractually represents its players' interests. Thus, both share a subjectively reasonable expectation that is objectively reasonable. Additionally, the CFL contractually promised the players their test results would remain confidential and anonymous. As society values contractual agreements, players would have an objectively reasonable expectation that the contract would protect their privacy interests.

As the CFL is contractually bound with the players in the league, the return of the players' drug test results is germane to the league's purpose of protecting their privacy interests. The CFL is merely trying to preserve the integrity of its business by protecting its players. Lastly, this case does not require the players' participation. No individual damages need be proven, and no player has requested any specific relief. The issue is a general question of law as to whether the plain view doctrine applies in digital evidence cases and whether the government should be required to return the evidence. Therefore, the CFL meets the requirements of associational standing to bring this case.

II.

The court of appeals below correctly held that the property should be returned because the government violated the CFL's and StarTests' Fourth Amendment rights. Additionally, in the absence of any binding precedent as to the application of the Fourth Amendment to digital evidence cases, the court of appeals correctly adopted the four recent guidelines set out by the Ninth Circuit in *United States v. Comprehensive Drug Testing*, a case with similar facts to this

case. Because the warrant failed to meet any of those guidelines, the warrant was not facially valid and the search was improper.

First, the FBI agents got involved and did not wait for the seizable and non-seizable evidence to be segregated and redacted by specialized computer personnel. This led to their discovery of information that was intermingled within the database that they would not have had the opportunity to see if this guideline had been followed. Second, the warrant failed to disclose to either party the risks of destruction of property or information. Third, while the warrant was particular in the sense that it named the five players whose test results were to be seized, no protocol laid out the methods by which the government would search for this information. While the government satisfied the last requirement, that the government return or destroy the non-responsive data, the violation of the other three guidelines render the warrant defective.

Not only was the warrant facially invalid, the agents violated the restrictions contained within the warrant, rendering the search and seizure unlawful. The warrant placed restrictions on how the segregation of the data would occur, how the designation of data would be handled, and specifically mentioned the warrant applied only to the information related to the five named players in the warrant. By communicating with the agents in charge of the data segregation, the scope was exceeded and the investigation was ultimately expanded.

The government cannot use the plain view doctrine to justify its invalid search. The government did not meet any of the three requirements. Because the government exceeded the scope of the already overly broad warrant, the FBI agents were not lawfully present in viewing the entire computer database. Additionally, the warrant authorized the agents to seize information pertaining to five specific CFL players. The government did not have lawful access to seize information of players other than those few. Finally, the information's incriminating

nature was not “immediately apparent” to the investigating agents because the information was stored on multiple computers, requiring the agents to take extra steps to find the additional information.

Because the search and seizure of the computers and information were illegal, the government should be required to return the property. The government displayed a callous disregard for the constitutional rights of the CFL and StarTests by seizing personal medical information without probable cause. Both parties have an interest in the property and in protecting their business interests, and the retention of the information jeopardizes the integrity of these businesses and the CFL’s players’ privacy. Additionally, if the property is not returned, the parties will be irreparably injured. The CFL cannot fulfill its contractual obligations to its players, and StarTests will lose business if it cannot maintain confidentiality. Lastly, no other adequate remedy at law protects the parties’ interests. As damages cannot address the harm to the players and to the league if the confidential test results are made public, the only adequate remedy is to order the return of the seized property.

This Court should AFFIRM the court of appeals’ judgment in all respects.

ARGUMENT AND AUTHORITIES

This case involves the appeal of the district court’s denial of a motion for the return of seized property brought under Federal Rule of Criminal Procedure 41(g). In considering the district court’s ruling, this Court reviews the legal conclusions de novo and the factual findings for clear error. *See In re Grand Jury Investigation Concerning Solid State Devices, Inc.*, 130 F.3d 853, 857 (9th Cir. 1997).

I. THE COLONIAL FOOTBALL LEAGUE HAS STANDING UNDER THE FOURTH AMENDMENT TO BRING A 41(g) MOTION.

Petitioner challenges the Colonial Football League’s (CFL) standing, arguing the league is not a victim of the search. (R. at 3, 10.) Standing is the “threshold question in every federal case, determining the power of the court to entertain the suit.” *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The question is whether the plaintiff has “alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal court jurisdiction and to justify the exercise of the court’s remedial powers on his behalf.” *Id.* at 498–99.

In a Rule 41(g) motion, the moving party must be “one who has been aggrieved by an unlawful search and seizure of property or by the deprivation of property.” Fed. R. Crim. P. 41(g). To qualify as a person aggrieved, the party “must have been a victim of a search or seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else.” *Jones v. United States*, 362 U.S. 257, 261 (1960). The CFL has standing to bring this suit in federal court challenging the constitutionality of the illegal search and seizure of computer data and equipment under two separate theories: direct standing and associational standing. While only one basis of standing is required to bring the suit, the CFL satisfies both.

A. The Colonial Football League Has Direct Standing to Assert the 41(g) Motion.

The Fourth Amendment guarantees “[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and that “no Warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularity describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend.

IV. Therefore, to have standing on a Fourth Amendment claim,¹ the complaining party must have a subjective expectation of privacy that is objectively reasonable. *See Smith v. Maryland*, 442 U.S. 735, 740 (1979) (noting that the inquiry into Fourth Amendment standing embraces two questions: whether the individual has “exhibited an actual (subjective) expectation of privacy” and whether his subjective expectation is “one that society is prepared to recognize as ‘reasonable’”).

1. The CFL had a subjectively reasonable expectation of privacy in the confidential drug test results stored at StarTests’ facility.

Even though the drug test results and medical data were stored in a third party’s facility, as the contracting party owning the data and representing the players within the league, the CFL had a reasonable expectation that the government, or anyone else, would not invade its privacy. The fact that the database was in the possession of a third party does not bar the CFL’s assertion of its Fourth Amendment rights. *See United States v. Salvucci*, 448 U.S. 83 (1980); *Rakas v. Illinois*, 439 U.S. 128 (1978). The CFL need only establish a reasonable expectation of privacy in the drug test database to challenge the search and seizure. *See Katz v. United States*, 389 U.S. 347, 361 (1967). The CFL has an ownership interest in the databases and computer equipment because not only did the CFL pay StarTests to administer drug the tests to its members, but it had StarTests store the results in its computer databases for *anonymity purposes*. (R. at 10) (emphasis added).

¹ This Court distinguishes between general concepts of judicial standing and “standing” in the Fourth Amendment context. *See Minnesota v. Carter*, 525 U.S. 83, 87 (1998); *Rakas v. Illinois*, 439 U.S. 128, 139–40 (1978). The general concept of standing asks whether a person is asserting his own rights, not those of a third person, and whether that person has alleged an injury in fact. *Rakas*, 439 U.S. at 139–40. A Fourth Amendment inquiry is used when determining whether the disputed search and seizure has infringed an interest that the Fourth Amendment was designed to protect. *Id.*

Additionally, StarTests took great lengths to maintain confidentiality by employing a “computer hopping” procedure which would make it difficult for employees or third parties to access private information.² In *Whalen v. Roe*, a case involving the disclosure of prescription information, this Court held that the United States Constitution provides a right to privacy protecting the individual interest in avoiding disclosure of personal matters. 429 U.S. 589, 598–600 (1977). The seized database contains personal information regarding the CFL’s players’ medical history and drug test results taken from either blood or urine samples. (R. at 8.) Because the information contained in the database seized was personal and medical in nature and steps had been taken to ensure confidentiality, the CFL had a reasonable expectation of privacy.

2. The CFL’s reasonable expectation of privacy regarding the results of the drug test database is one which society is willing to accept as reasonable.

Furthermore, the CFL’s expectation of privacy satisfies the second prong of direct standing because the expectation of privacy was objectively reasonable as society would expect personal records and information held at a diagnostic clinic to remain private. *See Katz*, 389 U.S. at 361. Members of society have a reasonable expectation that personal medical information will not be shared outside the testing facility without their consent. *See Ferguson v. Charleston*, 532 U.S. 67, 78 (2001) (explaining that a hospital patient undergoing tests has a “reasonable expectation of privacy” and that test results “will not be shared with nonmedical personnel without her consent”). Additionally, Health Insurance Portability and Accountability Act (HIPAA) privacy rules, which guide doctors’ ability to disclose health related information, give society an

² The “computer hopping” procedure involved storing the data from the drug tests on three separate computers: one with the identification numbers for each player, one with the names and personal health information, and one with the identification number and the actual drug test results. Each file was saved on a different computer with a different name, and no one computer had two databases from the same year. (R. at 3, 8.)

objective expectation of privacy in medical records. Because the databases seized relate to the personal drug test results and past medical history of individual players within the CFL, the league has a reasonable expectation of privacy in the databases.

B. The Colonial Football League Has Associational Standing to Assert the 41(g) Motion.

The CFL also has associational standing. While this Court has held that “the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties,” *Warth*, 422 U.S. at 499, associations have standing to sue based on injury to their members, *see Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am. (UAW) v. Brock*, 477 U.S. 274, 281 (1986). An organization can sue on behalf of its members only if the members themselves could bring suit in federal court, if the interests asserted in the litigation are germane to the purpose of the organization, and if the participation of the individual members in the lawsuit is not necessary. *Pennell v. City of San Jose*, 485 U.S. 1, 7 n.3 (1988); *see also Hunt v. Wash. Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977). Both the appellate court and district court agree the CFL satisfies this test. (R. at 3, 10.)

1. The professional players would have standing to sue for the return of the drug test results.

As stated in the above analysis, to have standing on a Fourth Amendment claim, the complaining party must have a subjective expectation of privacy that is objectively reasonable. *See Smith v. Maryland*, 442 U.S. at 740. The government seized personal medical information of several members of the CFL not mentioned in the original warrant. (R. at 2.) Each of the members would have the right to seek the return of his drug testing records as each had a subjective expectation that the results would remain confidential, and that expectation is one “society [would] be prepared to recognize as reasonable.” *Katz*, 389 U.S. at 361.

The CFL represented to the players that the drug test results were for statistical information only, that the results would remain confidentially stored in the StarTests facility, and that only the percentage of positive test results would be released to the public. (R. at 1.) This gave the players a subjectively reasonable expectation that their private information would not become public information. As society values privacy and contractual agreements, it would be willing to recognize this situation as an objectively reasonable expectation on behalf of the players in the league.

2. The privacy interests the CFL seeks to protect are germane to the league's purpose.

Under *Hunt*, the second element of associational standing requires the interests the CFL seeks to protect to be “germane to the organization’s purpose.” 432 U.S. at 343. The drug test results are central to the CFL’s organizational purpose of protecting its players’ privacy. (R. at 3.) Each player in the league is contractually bound with the CFL to play football. (R. at 3.) Under those contracts, the CFL is responsible for protecting those privacy interests—especially in instances where the players’ privacy is intruded upon under the CFL’s prerogative. (R. at 3.) The CFL mandated its players to take drug tests and hired StarTests to administer and to store the results in a protected database. (R. at 10.) Because these results are based on the players’ bodily fluids, privacy interests are at stake, and the CFL must intervene to protect them.

The CFL need not be a defendant to have standing. In *United States v. Comprehensive Drug Testing, Inc.*, the Major League Baseball Players Association (MLBPA) was not a defendant, yet sued the government on behalf of its baseball players for the return of illegally seized drug test results. *See generally* 579 F.3d 989 (9th Cir. 2009). Similar to the MLBPA, however, the CFL is trying to “preserve the integrity of its business by protecting the privacy and

economic well being of its clients, which could easily be impaired if the government were to release the test results swept up in the dragnet.” *Id.* at 1001.

3. Neither the claim asserted nor the relief requested require the participation of the individual football players in the lawsuit.

The third element of *Hunt* requires that “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” 432 U.S. at 343. In all cases in which this Court has “expressly recognized standing in associations to represent their members,” the relief sought has been a declaration, an injunction, or some other form of prospective relief, which, if granted, “will inure to the benefit of those members of the association actually injured.” *Warth*, 422 U.S. at 515. The CFL can litigate this case without the participation of the individual players because the CFL merely seeks the return of property that has the potential to harm both the players and the league itself. Therefore, “the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable.” *Id.* at 511.

In *Warth*, the association could not seek damages for the profits lost by its members because the injuries were specific to the individual member and each member would have to show individualized proof of the extent of the damages. *Id.* at 515–16; *cf. UAW*, 477 U.S. at 287 (finding that while injuries were in varying amounts requiring individualized proof, “neither the claim nor the relief sought required the court to consider the individual circumstances of any aggrieved UAW member” because the suit raised a pure question of law as to whether the secretary properly interpreted the trade act’s Trade Readjustment Allowance eligibility provisions). Unlike *Warth*, the CFL seeks only the return of the drug testing information that was seized on StarTests’ computers. (R. at 3.) The claim requires a question of law as to how the plain view doctrine applies to digital evidence searches. (R. at 10.) No individual damages need to be proven, nor must any player be present for the CFL to be successful in this claim. As

the district court stated, “for this type of prospective relief, the individual players need not be parties to the action.” (R. at 3.)

II. BECAUSE THE GOVERNMENT VIOLATED STARTESTS’ AND THE CFL’S FOURTH AMENDMENT RIGHTS, THE GOVERNMENT SHOULD BE REQUIRED TO RETURN THE EVIDENCE.

The Fourth Amendment’s Warrants Clause provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. Not only must the warrant be sufficiently particular, the search and seizure conducted under the warrant must conform to the warrant’s specifications, *see Marron v. United States*, 275 U.S. 192, 196–97 (1927), or some “well-recognized exception,” *e.g.*, *Horton v. California*, 496 U.S. 128, 130 (1990) (plain view exception). In the event of an unlawful search and seizure of property or deprivation of property, a party may move for the property’s return. Fed. R. Crim. P. 41(g). If the court 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. *Id.*

A. The Government’s Search Was Improper.

To be reasonable under the Fourth Amendment, a search must be specific. *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). Specificity has two aspects: particularity and breadth. *United States v. Hill*, 459 F.3d 966, 973 (9th Cir. 2006). Breadth is defined as the “requirement that there be probable cause to seize the particular thing named in the warrant.” *In re Grand Jury Subpoenas*, 926 F.2d 847, 857 (9th Cir. 1991). Particularity means the warrant must “clearly state what is sought.” *Hill*, 459 F.3d at 973. It is frequently said the purpose of the particularity requirement is “to prevent a general exploratory rummaging in a person’s belongings.” *United*

States v. Carey, 172 F.3d 1268, 1272 (10th Cir. 1999) (citing *Marron*, 275 U.S. at 196). The level of specificity required varies depending on the circumstances of the case and the type of items involved, *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986), but it is well settled that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions,” *Katz*, 389 U.S. at 357.

As businesses are becoming more likely to store records and important information electronically, enforcement officials may encounter a greater difficulty retrieving information necessary to complete their investigations because of the volume of information and intermingling of data. *Comprehensive Drug Testing*, 579 F.3d at 1003. This difficulty should not enable law enforcement to violate constitutional rights. Even with the obstacles law enforcement may face in digital evidence cases, a number of courts have found that the search and seizure in these types of cases require careful scrutiny of the particularity requirement. See *United States v. Otero*, 563 F.3d 1127, 1132 (10th Cir. 2009) (“[W]arrants for computer searches must affirmatively limit the search to evidence of specific federal crimes.”); *Carey*, 172 F.3d at 1275 n.7 (stating that “the storage capacity of computers requires a special approach” in assessing the particularity requirement); *United States v. Hunter*, 13 F. Supp. 2d 574, 583–84 (D. Vt. 1998) (noting that “computer searches present the same problem as document searches—the intermingling of relevant and irrelevant material—but to a heightened degree,” which requires that each computer search be “independently evaluated for lack of particularity”). Not only did the warrant issued by the magistrate judge in this case lack sufficient particularity, the investigating agents did not even follow the restrictions that were imposed within the warrant.

1. The warrant did not follow the Ninth Circuit’s guidelines.

At this time there is no binding precedent concerning the application of the Fourth Amendment to digital evidence searches and seizures. (R. at 10.) Recently, the Ninth Circuit set out four guidelines to help guide magistrates with the issuance and execution of search warrants in digital evidence cases. *Comprehensive Drug Testing*, 579 U.S. at 994. It did so in order to “strike a balance between the government’s legitimate interest in law enforcement and the people’s right to privacy and property in their papers and effects as guaranteed by the Fourth Amendment.” *Id.* This Court should adopt these guidelines, and in doing so, find that they were not satisfied in this case.

The Ninth Circuit stated that when the government seeks to obtain a warrant to examine a computer hard drive or an electronic storage medium to search for incriminating files, or when a search for evidence could result in the seizure of a computer, magistrate judges must be vigilant upon issuing the warrant. *Id.* at 1006. Those guidelines are as follows: (1) segregation and redaction of information from computer documents must be either done by specialized personnel or an independent third party; (2) warrants must disclose the actual risks of destruction of information as well as prior efforts to seize that information in other courts; (3) the search protocol must be designed to uncover only the information for which it has probable cause; and (4) the government must destroy or return non-responsive data. *Id.* As digital evidence cases are still a somewhat new area, the Fourteenth Circuit below correctly adopted the Ninth Circuit guidelines and applied them to the present case. (R. at 14–15.) Under these guidelines, the warrant issued by the magistrate judge in this case was overbroad and therefore the search is rendered invalid on that account.

a. The FBI ignored the requirement that segregation and redaction of information from computer documents be made by specialized personnel or an independent third party.

The rule controlling searches of intermingled documents originated in the Ninth Circuit in *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982). In that case, the court reasoned that “where documents are so intermingled that they cannot feasibly be sorted on sight,” the government should seek approval by a magistrate for a further search so as not to violate any Fourth Amendment rights. *Id.* at 597. This requirement attempts to keep investigating agents from discovering documents outside the scope of the warrant by having a specialized personnel or a third party perform the initial search to segregate seizable from non-seizable data and to prevent “wholesale seizure” of information from occurring. *Id.* at 595.

While the magistrate judge touched on this requirement by requiring the initial decision on whether to seize computers and data to be made by computer personnel and segregation to be made by “appropriately trained personnel,” the agents failed to follow this guideline when they communicated with these specialized personnel. (R. at 14.) In a case very similar to this one, the FBI raided three different facilities in search of evidence of steroid use among major league baseball players. *Comprehensive Drug Testing*, 579 F.3d at 999. Once the property was seized, the warrant required the data to be viewed by computer personnel who would screen the data and segregate seizable from non-seizable data. *Id.* at 996. The court found the government “completely ignored” the segregation requirement when its agents copied an entire directory containing information regarding hundreds of athletes not named in the warrant. *Id.*

In this case, the government ignored the segregation requirement in the same way as it did in *Comprehensive Drug Testing*. The computer personnel who made the decision to seize the computer equipment collaborated with the FBI agents in conducting the actual database search.

(R. at 14.) The segregation restriction on the warrant was essentially disregarded, making the government appear to have been “counting on the search to bring constitutionally protected data into the plain view of the investigating agents.” *Comprehensive Drug Testing*, 579 F.3d at 999. In the course of its investigation, the FBI discovered the CFL’s drug testing program and sought a warrant to retrieve information regarding only the five players’ test results. (R. at 8.) Knowing the database would contain results of all the players, the FBI ignored the directive of the magistrate, got involved in the search, and discovered multiple positive drug test results throughout the league, which resulted in the agents expanding the scope of their investigation. (R. at 14.)

b. The warrant failed to disclose the actual risks of destruction of information as well as prior efforts to seize that information in other courts.

Warrants must disclose the actual risks of destruction of information as well as any prior efforts to seize that information in other courts. *Id.* at 998. In *Comprehensive Drug Testing*, the warrant application presented to the judge discussed “theoretical risks” pertaining to the potential destruction of the data, but never mentioned the fact that the drug testing company agreed to leave the data alone until the situation was resolved. *Id.* (finding that the government failed to meet the requirement of disclosure of the actual degree of risks of concealment and destruction). In the present case, the warrant erroneously omitted the requirement that the FBI was required to give information about the risks of destruction or concealment other than what it volunteered for the affidavit. (R. at 14.) Although there was little chance of destruction in this case, the warrant failed the disclosure requirement.

c. The warrant had no protocol for the government to follow to ensure it uncovered only the information for which it had probable cause.

In order to meet the constitutional requirement of a “narrowly tailored, particular search warrant,” the warrant should describe with particularity the process of “sorting, segregating, decoding and otherwise separating seizable data (as defined by the warrant) from all other data” so that the warrant achieves the intended purpose and that purpose only. *Comprehensive Drug Testing*, 579 U.S. at 999. While computers often contain much more information than would be typically found in a filing cabinet or a paper document search, computers are equipped with the ability to narrowly tailor searches to target specific information. *In re Search of 3817 W.W. End*, 321 F. Supp. 2d 953, 954 (N.D. Ill. 2004). These methods include limiting the search by date range; doing key word searches; limiting the search to text files or graphics files; and focusing on certain software programs. *See Carey*, 172 F.3d at 1276.

In the case of *In re Search of 3817 W. West End*, involving a warrant issued to search a home computer for evidence of federal income tax fraud, the court determined that neither the particular information the government sought to seize nor the means by which the government planned to search the computer were included on the application for the search warrant. 321 F. Supp. 2d at 955 (denying the government’s request for a warrant and determining the magistrate judge had the authority to require the government to set forth a search protocol that attempts to ensure that the search will not exceed constitutional bounds). While in this case the government specified the five players’ drug test results it sought to discover, the warrant failed to specify the protocol the government intended to use to find the specific data. (R. at 14.) As a result, the government agents combed through the database, which enabled them to seek out all positive drug test results. (R. at 14–15.) The warrant was thus not sufficiently particular in describing a

search method or protocol for the agents to follow resulting in the FBI's discovery of information not contemplated in the warrant and its decision to expand the investigation. (R. at 15); *see Comprehensive Drug Testing*, 579 F.3d at 999 (“[I]f the government is allowed to seize information pertaining to ten names, the search protocol must be designed to discover data pertaining to those names only, not to others, and not those pertaining to other illegality.”). The government's subsequent discovery of drug test results pertaining to any other player than the five mentioned in the warrant was a direct result of the defective warrant.

d. The government is required to destroy or, if the recipient may lawfully possess it, return non-responsive data.

While the government's warrant failed the first three requirements, it satisfied the fourth requirement by requiring the government to return property irrelevant to the search. (R. at 15.) Once the FBI had copied the pertinent information, it returned unneeded computer equipment and hard drives to StarTests. (R. at 9.) Although the warrant met this requirement, the FBI agents didn't follow it, as will be discussed below. The FBI returned the unneeded equipment according to the restrictions in the warrant, but it did not return the rest of the data for those players not mentioned in the original warrant, giving rise to the Rule 41(g) motion at hand. (R. at 9.)

2. Regardless of whether the warrant was valid, the FBI did not follow the restrictions in the warrant, rendering the seizure unconstitutional.

It is well-settled that warrantless searches are “presumptively unreasonable.” *United States v. Jacobsen*, 466 U.S. 109, 114 (1984). Therefore, even if this Court chooses to reject the Ninth Circuit's guidelines and finds the warrant is facially valid, the seizure and retention of the additional information within the database is still unconstitutional, as the agents did not follow the restrictions contained within the warrant. *Horton*, 496 U.S. at 140 (“[I]f the scope of the

search exceeds that permitted by the terms of a validly issued warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is unconstitutional.”).

In digital evidence searches, warrants that lack restrictions “create a serious risk that every warrant for electronic information will become, in effect, a general warrant, rendering the Fourth Amendment irrelevant.” *Comprehensive Drug Testing*, 579 U.S. at 1004. In this case, the magistrate imposed three restrictions on the search warrant issued to the government. First, law enforcement trained in searching and seizing computer data were to determine whether the computer needed to be seized. Second, “appropriately trained personnel” were to review the data, if computers or other equipment were seized, retaining the information authorized by the warrant and designating the remainder for return. Third, the information must be reasonably related to the investigation to the five named players’ “illegal steroid use” in order to be retained. (R. at 2.) Because the government did not follow the restrictions, it exceeded the scope of the warrant, rendering the seizure of the documents unconstitutional.

Like in *Comprehensive Drug Testing*, the warrant issued by the magistrate contained procedures designed to ensure investigating agents would not come across data beyond the scope of the warrant. (R. at 2); *see* 579 U.S. at 996. As discussed above, the government violated the first restriction by allowing the FBI to communicate with the agents responsible for segregating the data, which permitted agents to view the entire database and drug test results pertaining to players not included in the warrant. (R. at 2.) The agents, upon discovery of test results of the other CFL players, were then able to observe results such as cocaine, marijuana, and other illegal drugs, prompting them to expand their investigation. (R. at 2.)

The government also violated the last two restrictions. The evidence was not properly sorted according to the specification of the warrant because the agents viewed the data and

ultimately made the decision themselves to retain the additional information. (R. at 2.) The personnel in charge of segregating the seizable and non-seizable data were thus unable to properly perform their function. Because of this, the third restriction was also violated because the investigating agents accessed the drug test results regarding players other than the five listed in the warrant.

B. The Plain View Doctrine Does Not Save the Invalid Search.

As stated by the circuit court below, the government's reliance on the plain view doctrine is misplaced. (R. at 14.) The search conducted in this case exceeded the scope of the already overly broad warrant and was therefore *per se* unreasonable. *See Katz*, 389 U.S. at 357. The plain view doctrine is often considered an exception to the general rule regarding warrantless searches, as it allows an officer to seize without a warrant, evidence or contraband found in plain view during a lawful observation. *Horton*, 496 U.S. at 133. The application of the plain view doctrine in digital evidence cases is still a relatively new concept and has received a variety of responses among the courts. *See Carey*, 172 F.3d at 1273 (holding that the child pornography were in closed files and thus not in plain view); *United States v. Raney*, 342 F.3d 551, 559 (7th Cir. 2003) (holding that "the plain view doctrine applies" to a child pornography computer search); *United States v. Turner*, 169 F.3d 84, 88 (1st Cir. 1999) (holding that plain view doctrine did not apply when an officer proceeded to search the computer after seeing an incriminating picture on the defendant's desktop). To satisfy the plain view doctrine, the officer must satisfy the following three requirements: (1) the officer must be lawfully in the place where the seized item was in plain view; (2) the officer must have a lawful right of access to the object itself; and (3) the item's incriminating nature must be immediately apparent. *Horton*, 496 U.S. at

136–37. The government failed to satisfy any of the three requirements; therefore, the plain view exception should not apply.

1. The FBI agents were not lawfully present because the scope of the warrant was too broad.

The government is lawfully present when it has a valid search warrant or consent from the owner. *See I.N.S. v. Delgado*, 466 U.S. 210, 217 (1984). In this case, the government was not lawfully present as it lacked both consent and a valid search warrant. As discussed, *supra*, the warrant was unconstitutionally broad, and thus the government was not lawfully present when it accessed the additional information.

When government officials exceed the scope of the warrant or the consent given, they are no longer lawfully present. *See United States v. Dichiarinte*, 445 F.2d 126, 129 (7th Cir. 1971) (finding that the law enforcement officers had exceeded the scope of the defendant’s initial consent to search his home for drugs when they subsequently opened and read the defendant’s personal papers). The court in *Dichiarinte* stated that “[g]overnment agents may not obtain consent to search on the representation that they intend to look only for certain specified items and subsequently use that consent as a license to conduct a general exploratory search.” *Id.* There have been instances in the digital context where the government has discovered additional evidence while lawfully present on the defendant’s premises. *See Raney*, 342 F.3d at 559 (finding agents were properly in Raney’s residence executing a search of the premises when they discovered photos in plain view and thus the plain view doctrine applied). As discussed above, the agents failed to follow the restrictions in the magistrate’s warrant. Therefore, the government agents were outside the scope of the warrant when they viewed the test results of players not listed and were, thus, unlawfully present.

2. The FBI agents did not have lawful access.

The requirement that warrants should particularly describe the things to be seized makes general searches difficult, if not impossible, and “prevents the seizure of one thing under a warrant describing another.” *Stanley v. Georgia*, 394 U.S. 557, 571 (1969) (quoting *Marron*, 275 U.S. at 196). In this case, the government obtained a warrant requesting information pertaining to five football players within the CFL. (R. at 4.) The government concedes that it did not have authorization to retrieve the information regarding all of the CFL’s players and that it did not have probable cause to take and retain that information. (R. at 4.)

Even in the much criticized case of *United States v. Rabinowitz*, the Court emphasized that “exploratory searches . . . cannot be undertaken by officers with or without a warrant.” 399 U.S. 56, 62 (1950). Because the warrant did not allow for the government to generally search for other players’ test results, the government did not have lawful access to any additional information it found. *See Turner*, 169 F.3d at 88 (finding the government could not satisfy lawful access because the consent did not allow law enforcement to search the computer for documentary or photographic evidence); *United States v. Maxwell*, 45 M.J. 406, 422 (U.S. Armed Forces 1996) (finding no lawful access because the view was obtained as a result of improper governmental opening of files and not as a result of what was authorized by the warrant). In the words of this Court, “to condone what happened here is to invite a government official to use a seemingly precise and legal warrant only as a ticket to get into a man’s home, and, once inside, to launch forth upon unconfined searches and indiscriminate seizures as if armed with all the unbridled and illegal power of a general warrant.” *Stanley*, 394 U.S. at 571. While this case involves seizure of files on a business computer and not a “man’s home,” the same privacy principles apply.

3. The incriminating nature of the information was not immediately apparent because the agents had to perform extra steps to access the additional information.

The third condition of the plain view doctrine requires the incriminating nature of the information seized to be “immediately apparent.” *Horton*, 496 U.S. at 136. As the court below stated, this prong fails as a procedural safeguard in the digital evidence context. (R. at 12.) The plain view doctrine may not be used to “extend a general exploratory search from one object to another until something incriminating at last emerges.” *Coolidge v. New Hampshire*, 403 U.S. 443, 466 (1971).

Plain view does not apply when the incriminating nature of the object is not apparent upon surface inspection. *Dichiarinte*, 445 F.2d at 130–31 (holding the discovery of the defendant’s income tax evasion was not immediately apparent because agents opened and read through personal papers). In this case, StarTests used a procedure called “computer-hopping,” which essentially involved storing certain pieces of information on multiple computers to help ensure confidentiality of the test results. (R. at 2.) Had the search been done properly, the government, on a surface inspection, would not have seen players’ names with their test results. The government would have seen the players’ names first, to which it could have learned the identification numbers of the five players involved in the investigation and specifically searched the corresponding test results on the other computer. The incriminating nature of the test results pertaining to those five specific players would have been apparent because the information would have been properly segregated. Instead, the government viewed the entire database, discovering positive drug test results. (R. at 2.) It then looked up the names of the players associated with those results and expanded the investigation to include those players as well. (R. at 2.) An initial surface inspection would not have made the additional information immediately

incriminating because of the “computer hopping” technique involved; therefore, the extra steps taken to view the database thus made the incriminating test results become apparent. *See Arizona v. Hicks*, 480 U.S. 321 (1987).

C. Because the Search of StarTests Computers and the Seizure of Its Databases Were Illegal, StarTests and the CFL Are Entitled to Have the Seized Property Returned Under Rule 41(g).

A party obtains the return of property improperly seized by the government, usually after an indictment has been issued, pursuant to Federal Rule of Criminal Procedure 41(g).³ *Ramsden v. United States*, 2 F.3d 322, 324 (9th Cir. 1993); *Black Hills Inst. v. Dep’t of Justice*, 967 F.2d 1237, 1239 (8th Cir. 1992). When the motion is made by a party against whom no criminal charges have been brought, such a motion is in fact a petition that the district court invoke its civil equitable jurisdiction. *United States v. Martinson*, 809 F.2d 1364, 1366–67 (9th Cir. 1987). The movant must show that the retention of the property by the government is unreasonable. *In re the Search of Kitty’s E.*, 905 F.2d 1367, 1369 (10th Cir. 1990).

The circuit courts have set out four factors that must be considered before a district court can rule on a Rule 41(g) motion which include (1) whether the government displayed a callous disregard for the constitutional rights of the movant; (2) whether the movant has an individual interest in the property; (3) whether the movant would be irreparably injured by denying the return of the property; and (4) whether the movant has an adequate remedy at law for the redress of his grievance. *Ramsden*, 2 F.3d at 324–25 (citing *Richey v. Smith*, 515 F.2d 1239, 1243–44 (5th Cir. 1975)); *see also Kiesel Co. v. Householder*, 879 F.2d 385, 387 (8th Cir. 1989); *Kitty’s*

³ Fed. R. Crim. P. 41 was amended in 2002 “as part of a general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rule.” *See* Fed. R. Crim. P. 41 advisory committee notes. As a result of the 2002 amendments, the previous Fed. R. Crim. P. 41(e) now appears with minor stylistic changes as Rule 41(g). For consistency, we will refer only to Fed. R. Crim. P. 41(g) even though most of the relevant case law refers to the previous rule.

E., 905 F.2d at 1370–71. Because both the CFL and StarTests meet these factors, it is “reasonable under all of the circumstances” for the illegally seized property to be returned. *Ramsden*, 2 F.3d at 326. Therefore, the court below did not err in finding that it is reasonable for the property seized at StarTests’ Millerville facility to be returned. (R. at 16.)

1. The government displayed a callous disregard for the constitutional rights of the CFL and StarTests by seizing computer equipment and potentially damaging drug test information not contained within the search warrant.

As the appellate court correctly stated, “the record is replete with enough information to conclude the government displayed a ‘callous disregard’ for StarTests’ and the CFL’s constitutional rights.” (R. at 16.) The government shows a “callous disregard” when it seizes information for which it lacks probable cause that could bring about “dire personal and professional consequences from disclosure.” *Comprehensive Drug Testing*, 579 U.S. at 995. In this case, the government seized all the computer equipment from StarTests, essentially shutting down the facility without regard to the fact that StarTests is an innocent third party. (R. at 16.) The government exceeded the scope of the warrant by taking information regarding all of the CFL’s players and not just the five players specified in its application. (R. at 3.) Not only did the government concede it did not have authorization to take that information, it conceded it did not have probable cause for the retrieval and current retention of that information. (R. at 4, 16.) This seizure completely disregarded any privacy rights that the players had in their test results. The CFL contractually promised confidentiality when it mandated the tests, and the players reasonably relied on those promises when they consented. (R. at 1.) By seizing unauthorized personal medical information, the government committed a blatant intrusion on the privacy of these individuals without any regard to their personal lives or their contractual relationships with the CFL. When information of this nature leaks to the public, these players will suffer

tremendously in both their personal lives and professional careers and may never gain back the private lives they once had before.

Additionally, because the search exceeded the scope of the warrant, resulting in the seizure of private test results, the government displayed a callous disregard for the rights of the football players that the CFL represents. *See Ramsden*, 2 F.3d at 325 (upholding the district court's determination that the government callously disregarded Ramsden's constitutional rights). In *Ramsden*, the government admitted that the search and seizure violated Ramsden's Fourth Amendment rights because there was no warrant obtained and no exception to the warrant was applicable involving the search. *Id.* The government "simply chose not to comply with its obligations under the Fourth Amendment." *Id.* In this case, the government exceeded the scope of the warrant by taking information regarding all of the CFL's players and not just the five players specified in the warrant application. (R. at 3.) In other words, like *Ramsden*, the government did not comply with its Fourth Amendment obligations; yet in this case, the government actively seeks to keep the data to later be used to prosecute the players. (R. at 16.) When the government seizes evidence by "circumventing or willfully disregarding limitations in a search warrant, it must not be allowed to benefit from its own wrongdoing or any fruits thereof." *Comprehensive Drug Testing*, 579 U.S. at 1002.

2. StarTests and the CFL have individual interests in and a need for the computer equipment and database information to be returned.

While neither StarTests nor the CFL are criminal defendants in this case, both parties have individual interests for the return of their property. Similar to the league in *Comprehensive Drug Testing*, the CFL is attempting to protect the players in the league and StarTests is attempting to preserve the integrity of its business. 579 F.3d at 1001. Both would "easily be impaired if the government were to release the test results [to be] swept up in the dragnet." *Id.*

StarTests is an independent business specializing in administering drug testing programs for corporations, sports organizations, school districts, etc. (R. at 1.) As a company handling private information, it has an interest in the return of the copied documents and other electronic media because it has a business reputation to uphold. The seizure of its information to use against its clients severely undermines that interest. (R. at 16.) In *Ramsden*, an individual interest in the need for the documents retained by the government was found as the documents were necessary to run his business. 2 F.3d at 325. Although the government is retaining copies of the database, there is a need for the return of these copies because StarTests' clients' personal information is still at large and not being kept confidential within its own facility.

The CFL is being injured in the same way the players association in *Comprehensive Drug Testing* was injured by the seizure and the removal of the specimens and documents. 579 U.S. at 1002. As mentioned above in why the CFL has standing, the CFL is contractually bound to protect its players' privacy interests. (R. at 1.) The CFL's members possess strong privacy interests in both their drug test results. *See Roe v. Sherry*, 91 F.3d 1270, 1274 (9th Cir. 1996) (recognizing an individual's "strong interest in protecting the confidentiality of [one's] HIV status"). Additionally, the retention of the drug test information causes an indefinite breach in these negotiated agreements between the franchises and the players for confidentiality and it interferes with the operation of the CFL's business.

3. StarTests and the CFL will be irreparably injured if denied the return of its property.

The damage caused to both StarTests and the CFL's business is irreparable if the computer equipment and database information are not returned. StarTests' primary source of business is administering drug testing programs for corporations, sports organizations, school districts, etc. (R. at 1.) StarTests is unable to operate without its computer equipment and with a compromised

system. (R. at 16.) Additionally, StarTests will likely lose business once the public is aware that it is unable to maintain confidentiality. As for the CFL, the release of the illegally seized information robs the league of its ability to fulfill its contractual agreements with its players. As a result, serious litigation against the league could occur as well as the potential removal of the players from the playing field. This case isn't just about the players losing their careers as professional athletes. It is about them losing the means by which they earn their livelihood, and it is about the inevitable loss of reputation based on an illegal intrusion into their personal lives. While some districts have found that the threat of future prosecution does not constitute irreparable harm, *see Ramsden*, 2 F.3d at 325, the Fifth Circuit is correct in its analysis, stating, "a wrongful indictment is no laughing matter; often it works a grievous, irreparable injury to the person indicted. The stigma cannot be easily erased," *Richey*, 515 F.2d at 1243 n.10.

4. StarTests and the CFL have no adequate remedy at law for the redress of this grievance.

Neither StarTests nor the CFL have any other adequate remedy at law if the property is not returned. As the appellate court correctly noted, the only other available remedies besides returning the equipment and all copies made would be damages and receiving back the equipment while the government retains copies. (R. at 16.) Damages would not provide adequate compensation for StarTests' loss of business reputation and clients. If the government is allowed to retain copies of the drug test database, then it has the ability to continue to view the database forever, indefinitely breaching the confidentiality agreement made between the CFL and its franchises and players. (R. at 16.)

CONCLUSION

This Court should AFFIRM the judgment of the United States Court of Appeals for the Fourteenth Circuit in all respects.

Respectfully submitted,

ATTORNEYS FOR RESPONDENTS

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APPENDIX “A”

CONSTITUTIONAL PROVISION

U.S. Const. amend. IV

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

APPENDIX “B”

FEDERAL RULE

Fed. R. Crim. P. 41(g). Motion to Return Property.

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 motion must be filed in the district where the property was seized. 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.