

JAN 26 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

REFUGIO A. ZAVALA,

Defendant - Appellant.

No. 08-30098

D.C. No. 2:04-cr-00442-TSZ-1

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Refugio A. Zavala appeals pro se from the district court's order denying his motion to reconsider the district court's denial of his motion for return of personal property, filed pursuant to Federal Rule of Criminal Procedure 41(g). We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291, and we affirm.

Zavala contends that the district court abused its discretion by declining to construe his Rule 41(g) motion as a civil complaint seeking equitable relief. We conclude that Zavala is not entitled to relief because the record reflects that the currency seized from his person was forfeited by local authorities without direct federal authorization, and the remainder of the property Zavala seeks to recover was never in the possession of the federal government. *See United States v. Huffhines*, 986 F.2d 306, 308 (9th Cir. 1993).

AFFIRMED.