

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 v. )  
 )  
 DEJAY MONSON, )  
 )  
 Defendant. )

CASE NO. 8:08CR388

**MOTION FOR RETURN OF  
SEIZED PROPERTY**

COMES NOW the defendant Dejay Monson, by and through his attorney, Assistant Federal Public Defender Michael F. Maloney, and pursuant to Federal Rule of Criminal Procedure 41(g) moves the court to order the United States and the Burt County Sheriff's Department to return to him previously seized property. The Defendant would show the following in support of said motion:

1. On or about September 16, 2008 Burt County Deputy Sheriff J. Keatts seized and removed from the defendant's residence intimate photographs of the defendant's wife and receipted the same as evidence in this case.
2. On or about September 18, 2008, the Washington County Sheriff's Office seized \$5,000 in cash which had been submitted by Floyd Monson to post the defendant's state bond. Said property was later seized by Burt County Deputy Sheriff J. Keatts pursuant to a seizure warrant issued by the Honorable Thomas Thalken, United States Magistrate Judge on September 23, 2008.
3. That the defendant is aggrieved by the unlawful seizure of the property listed in paragraph one above. Deputy Keatts was not authorized by warrant to

seize such property. Said property is not contraband and has no relevance to this case. The seizure of said property, and its continued possession by strangers, causes the defendant and his wife emotional distress.

3. That the defendant is aggrieved by the seizure of the property listed in paragraph two above as the same was seized without probable cause. Testimony provided by Floyd Monson at the defendant's detention hearing overcomes any initial indication of probable cause provided by a drug detector dog of unknown reliability. Even if the court finds that the initial seizure of the \$5,000 was lawful, Floyd Monson's subsequent and un-rebutted testimony proves that the \$5,000 was not the product of any alleged drug sales. The defendant is aggrieved by the continued deprivation of this property which is necessary for the support and maintenance of his and his father's family.
4. That pursuant to Federal Rule of Criminal Procedure 41(g), the defendant requests an evidentiary hearing to determine whether the items listed in paragraph one were lawfully seized and to determine the reliability of the drug detector dog that allegedly alerted to the presence of narcotics on the property listed in paragraph two above. The defendant would additionally provide evidence showing that even a reliable alert on the \$5,000 cash is insufficient evidence upon which to conclude that the money was drug proceeds.

WHEREFORE, the defendant prays the Court to order the Burt County, Nebraska Sheriff's Department and the United States government to return to the defendant those items listed in paragraphs one and two above.

DATED this 17<sup>th</sup> day of February, 2009.

Respectfully submitted,

DEJAY MONSON, Defendant,

By s/ Michael F. Maloney

**Michael F. Maloney: 19085**

ASSISTANT FEDERAL PUBLIC DEFENDER

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 17, 2009, I electronically filed the foregoing with the Clerk of Court, using the ECM/ECF system, which sent notification of such filing to the following: Kimberly C. Bunjer, Assistant U.S. Attorney.

s/ Michael F. Maloney