

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12738
Non-Argument Calendar

KEVIN BAIN,

Plaintiff-Appellant,

versus

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES, (ATF),

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:25-cv-61427-DSL

Before LUCK, LAGOA, and TJOFLAT, Circuit Judges.

PER CURIAM:

On July 15, 2025, Kevin Bain, proceeding pro se, filed a
“Complaint and Request for Injunction” in the U.S. District Court

for the Southern District of Florida against Elizbeth Morales, an agent of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), seeking the return of property Morales had seized pursuant to two search warrants on July 25 and 28, 2020.¹ Bain sought the injunction on the ground that the warrants were invalid under the Fourth Amendment.²

On July 18, 2025, Bain filed a motion for the return of his property pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure.³ The District Court denied that motion on July 31, 2025, with this statement:

Plaintiff has not made any showing that he is entitled to the return of his seized property. “Under Federal Rule of Criminal Procedure 41(g), a person aggrieved by an *unlawful search and seizure* of property or by the deprivation of property may move for the property’s return.” *United States v. Dames*, 697 F. App’x 642 (11th Cir. 2017) (citing *United States v. Potes Ramirez*, 260 F.3d 1310, 1314 n.8 (11th Cir. 2001)) (emphasis

¹ Bain paid the filing fee, \$405 on filing his complaint. Neither Morales nor the ATF has responded to Bain’s complaint. Thus, neither is before the Court in this appeal.

² Bain’s complaint invoked the district court’s federal question jurisdiction. 28 U.S.C. § 1331. We read the complaint as seeking only injunctive relief (it seeks no damages), the invalidation of the search warrants under the Fourth Amendment.

³ In the meantime, on July 26, 2025, Bain moved the Court to recuse pursuant to 28 U.S.C. § 455(b). The Court denied the motion in an order entered on July 31, 2025. That order is not an issue here.

25-12738

Opinion of the Court

3

added). The only evidence before this Court in the numerous filings Plaintiff has made regarding the seizure of his firearms and ammunitions clearly shows that the search and seizure were lawful. *See Bain v. Morales*, No. 0:25-cv-60258-DSL (S.D. Fla. Mar. 14, 2025), Order, ECF No. 7 at 2–5.

The Court cited a warning it had given Bain in *Bain v. Morales*, No. 0:24-cv-61566-DSL, ECF No. 5 at 2 (S.D. Fla. Aug. 27, 2024), about filing multiple cases regarding the seizure of his firearms and other property by agents of the ATF:

Monetary sanctions may be imposed pursuant to 28 U.S.C. § 1927, if the Court finds that Mr. Bain has multiplied these proceedings “unreasonably and vexatiously.” In the Eleventh Circuit, Section 1927 sanctions can be imposed against pro se parties. *See In re Micon Devices, Inc.*, 638 B.R. 649, 654–55 (Bankr. S.D. 2021) *aff’d* 657 B.R. 897 (S.D. Fla. 2024). The Court thus puts Mr. Bain on notice that he must have a good faith basis for making any future filings; he cannot relitigate issues ruled upon, especially not ones ruled upon more than once; and he may not file multiple motions or cases that raise the exact same issues. A violation of this Order may result in the imposition of sanctions if the Court concludes that Mr. Bain failed to follow the Court’s instructions in bad faith. *See Schwartz v. Millon Air, Inc.*, 341 F.3d 1220, 1225 (11th Cir. 2003).

The Court then said this about the instant case:

This is not the first case Plaintiff has filed seeking the return of the seized items. In fact, the undersigned alone has dismissed four such actions in the last year. *See Bain v. Morales*, No. 0:25-cv-60258-DSL (S.D. Fla.) (dismissing case as malicious); *Bain v. Morales*, No. 0:24-cv-61164-DSL (S.D. Fla.) (denying IFP motion and dismissing case for failure to pay the filing fee); *Bain v. Vargas*, No. 0:24-cv-61172-DSL (S.D. Fla.) (denying IFP motion and dismissing case for failure to pay the filing fee); and *Bain v. Morales*, No. 0:24-cv-61566-DSL (S.D. Fla.) (dismissing case as frivolous). The instant Complaint offers no new information setting forth why Plaintiff is entitled to the relief he seeks. [See Compl., ECF No. 1].

Since the instant case was not Bain's first attempt to obtain property Morales seized for the ATF pursuant to a search warrant, the Court stated:

sanctions are warranted against Plaintiff under 28 U.S.C. § 1927 for vexatiously multiplying proceedings as well as pursuant to the Court's inherent powers for Plaintiff's disobedience of a clear directive of this Court. The Court thus ORDERS Plaintiff to SHOW CAUSE in writing no later than Friday, August 15, 2025, as to why he should not be sanctioned for the bad faith conduct described herein.

In the final paragraph of its order the Court stated: "Plaintiff must SHOW CAUSE in writing no later than Friday, August 15, 2025, as to why he should not be sanctioned for violating the Court's August 27, 2025, [sic] which would include the imposition

25-12738

Opinion of the Court

5

of monetary sanctions and dismissal of this case WITH PREJUDICE.”⁴ The Court’s reference to August 27, 2025 (a future date) may have been a reference to its August 27, 2024, order in *Bain v. Morales*, 0:25-cv-61566-DSL (S.D. Fla.).

We treat the District Court’s denial of Bain’s Rule 41(g) motion as an interlocutory order appealable under 28 U.S.C. § 1292(a)(1) (as the denial of a preliminary injunction) and affirm.⁵

AFFIRMED.

⁴ The Court’s previous statement that “this case is DISMISSED” is obviously a scrivener’s error, and we therefore disregard it.

⁵ Our decision affirming the denial of Bain’s Rule 41(g) motion leaves the case pending in the District Court on Bain’s complaint for an injunction.