

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50811  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

APPROXIMATELY 478.91 ACRES  
IN THE WILLIAM C. JONES  
SURVEY, which is part of 531  
acres of land locally known  
as the Cullum Farm and is  
located East of FM 2570 and  
South of FM 3285,

Defendant,

LARRY J. CULLUM,

Claimant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 87-CV-237  
- - - - -

June 29, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Larry J. Cullum's motion to proceed in forma pauperis (IFP)  
on appeal is DENIED. This court may authorize Cullum to proceed  
IFP on appeal if he is economically eligible and the appeal is

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\* Local Rule 47.5 provides: "The publication of opinions  
that have no precedential value and merely decide particular  
cases on the basis of well-settled principles of law imposes  
needless expense on the public and burdens on the legal  
profession." Pursuant to that Rule, the court has determined  
that this opinion should not be published.

not frivolous. Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986).

Pursuant to Fed. Rule Crim. P. 41(e), Cullum is seeking the return of personal property, which he alleges was illegally seized by the Government. Fed. Rule Crim. P. 41(e) provides a procedural vehicle for a property owner to seek return of his property seized by the Government. See Industrias Cardoen, Ltda. v. United States, 983 F.2d 49, 51 (5th Cir. 1993). However, Rule 41(e) is a rule of criminal procedure and is not applicable to civil forfeiture proceedings. See United States v. Hernandez, 911 F.2d 981, 983 (5th Cir. 1990); Fed. R. Crim. P. 54(b)(5). Because Rule 41(e) cannot provide a jurisdictional basis in this civil action, the district court did not err in denying Cullum's motion for return of his property. Id

Further, Cullum is not entitled to seek relief under Rule 41(e) in a separate proceeding because he had an adequate opportunity in the forfeiture proceeding to present his claim to any property that may have been illegally seized. See Industrias Cardoen, 983 F.2d at 51-52.

Cullum's appeal does not present any nonfrivolous issues. Therefore, his appeal is DISMISSED AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. Rule 42.2.