In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1715

JOSÉ TROCONIS-ESCOVAR,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:21-cv-01989 — **Franklin U. Valderrama**, *Judge*.

ARGUED DECEMBER 8, 2022 — DECIDED FEBRUARY 1, 2023

Before RIPPLE, ROVNER, and WOOD, *Circuit Judges*.

WOOD, *Circuit Judge*. Suspecting that José Troconis-Escovar was involved somehow in the illegal drug business, the U.S. Drug Enforcement Agency (DEA) decided to search his vehicle. There they found $146,000 in cash—funds that they believed represented proceeds from that business. The agency accordingly notified Troconis-Escovar that it intended to effect an administrative forfeiture of the funds (*i.e.*, to declare them to be government property). In response to that

notification, Troconis-Escovar's attorney tried to contest the forfeiture, but he filed the wrong piece of paper with the agency—a "petition for remission" rather than a "claim." Only a claim may be used to challenge a proposed forfeiture, and with no claim filed, Troconis-Escovar eventually lost his money. He is trying to get it back through this lawsuit. The district court, however, found that it lacked jurisdiction to set aside the declaration of forfeiture, and so it dismissed the case. Dismissal was correct, but not because jurisdiction was lacking. Instead, the case fails on the merits, and so we affirm but modify the judgment to show that it is with prejudice.

I

The DEA seized the money on April 9, 2020. Illegal drug proceeds are eligible for civil forfeiture under 21 U.S.C. § 881(a)(6), subject to the procedural safeguards of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), codified in relevant part at 18 U.S.C. § 983. On August 3, 2020, the DEA sent a notice to Troconis-Escovar stating its intent to forfeit the seized money administratively. The notice offered him two ways to challenge the seizure: (A) file a "claim" with the DEA to contest the forfeiture, or (B) file a "petition for remission or mitigation." A claim requires the seizing agency to initiate judicial proceedings and prove the legality of the intended forfeiture by a preponderance of the evidence. See § 983(a)(3)(A)–(B). A petition for remission or mitigation, in contrast, asks only that the government exercise its discretion to reduce the amount seized in whole or in part. See 28 C.F.R. §§ 9.3, 9.5. The DEA's notice included a prominent warning, in bolded, capitalized, and italicized text, about the consequence of failing to file a claim:

> **TO CONTEST THE FORFEITURE OF THIS PROPERTY IN UNITED STATES DISTRICT COURT YOU MUST FILE A CLAIM.** *If you do not file a claim, you will waive your right to contest the forfeiture of the asset. Additionally, if no other claims are filed, you may not be able to contest the forfeiture of this asset in any other proceeding, criminal or civil.*

The notice also detailed how to file a claim or petition and where to find further information.

On August 27, 2020, Troconis-Escovar's lawyer filed a petition for remission on his behalf. A few days later, the DEA sent a letter confirming receipt of the "petition for remission." Several months later, having received no claim contesting the forfeiture of the $146,000, the DEA issued a declaration of forfeiture on February 22, 2021.

That same day, the DEA received a letter from Troconis-Escovar stating that his submission of a petition for remission had been a mistake; he had intended to file a claim. But as of the date the DEA received that letter, the claim deadline—September 7, 2020—had long since expired. The agency therefore declined on timeliness grounds to accept the claim or to set aside the forfeiture declaration, but it gave Troconis-Escovar an extra 30 days to supplement his petition for remission with additional information.

Troconis-Escovar let that opportunity go by the wayside. He chose instead to file a Motion for Return of Property under Federal Rule of Criminal Procedure 41(g) in the U.S. District Court for the Northern District of Illinois. He argued that (1) the district court should exercise its equitable powers to

excuse his mistake, (2) the DEA's notice of intent to forfeit was untimely in violation of CAFRA, and (3) the forfeiture violated the Eighth Amendment.

The district court dismissed the case for lack of jurisdiction. It held that Rule 41(g) does not apply to property that already has been administratively forfeited. It therefore construed Troconis-Escovar's filing as a motion to set aside a declaration of forfeiture under 18 U.S.C. § 983(e). But the court concluded that, so understood, the motion could not succeed. It reasoned that section 983(e) divested it of jurisdiction to hear any challenge to a completed administrative forfeiture except for challenges to the sufficiency of the government's notice to interested parties. Troconis-Escovar's only complaint about the notice was that it was (he asserted) untimely. The notice was indeed filed after the normal deadline, but as the government explained, Chief Judge Rebecca Pallmeyer of the Northern District of Illinois had issued an order extending the government's deadline to issue civil forfeiture notices by 60 days at the time in question because of the COVID-19 pandemic. The district court found that Troconis-Escovar had abandoned this argument by failing to respond to this explanation, and it dismissed the suit for lack of jurisdiction. This appeal followed.

II

We consider *de novo* issues of law underpinning a district court's dismissal of a complaint for lack of subject-matter jurisdiction. *Ill. Ins. Guar. Fund v. Becerra*, 33 F.4th 916, 922 (7th Cir. 2022). If the existence of subject-matter jurisdiction turns on factual findings, we review those for clear error. *Id.*

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." This rule is properly invoked to request the return of seized property *before* forfeiture proceedings have been initiated. *United States v. Sims*, 376 F.3d 705, 708 (7th Cir. 2004); see also *United States v. Flournoy*, 714 F. App'x 592, 594 (7th Cir. 2018) ("The rule applies to property that the government has seized, but not to property forfeited to it."). A party might properly bring a Rule 41(g) motion, for example, to recover property seized without probable cause or property no longer needed as evidence after the conclusion of criminal proceedings. *Sims*, 376 F.3d at 708. But Rule 41(g) is not the proper vehicle for challenging an administrative forfeiture.

Nevertheless, we have encouraged district courts to construe mislabeled Rule 41(g) motions based on their substance. See *Flournoy*, 714 F. App'x at 595 (collecting cases). Following this guidance, the district court analyzed Troconis-Escovar's claims as if they had been presented in a motion to set aside a declaration of forfeiture under 18 U.S.C. § 983(e).

Under CAFRA, a claimant has the right to obligate the government to initiate court proceedings and prove by a preponderance of the evidence that the asset is subject to forfeiture. See §§ 983(a)(2)(A), 983(c). To exercise this right, the claimant must first file a claim with the seizing agency before the deadline specified in the notice. See § 983(a)(2)(B). If no claims are filed, the seizing agency may declare the property to be administratively forfeited without any judicial process. The agency's declaration of forfeiture has "the same force and effect as a final decree and order of forfeiture in a federal judicial forfeiture proceeding." 19 U.S.C. § 1609(b).

Once an administrative forfeiture is complete, the scope of judicial review is extremely limited. Pursuant to section 983(e), a claimant may file a motion to set aside a declaration of forfeiture only if she alleges that she never received sufficient notice of the government's intent to forfeit her property and therefore "did not know or have reason to know of the seizure within sufficient time to file a timely claim." § 983(e)(1)(B). Apart from this narrow provision, Congress has authorized no other means for challenging a declaration of forfeiture. Section 983(e) is "the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute." § 983(e)(5).

The condition that a claimant must first file a claim with the seizing agency in order to contest a pending forfeiture functions as a kind of administrative exhaustion requirement. So long as a claimant was afforded adequate notice of the pending forfeiture, she may not seek relief in federal court in a manner that bypasses the statutorily prescribed process for contesting the forfeiture.

Courts disagree about the proper characterization of the CAFRA process: does it strip courts of jurisdiction to hear challenges that fall outside of section 983(e)'s ambit, or does it establish a mandatory claims-processing rule? The Eleventh Circuit has held that "it lacks jurisdiction to review the merits of administrative or nonjudicial forfeiture determinations," and maintains jurisdiction only to "determin[e] whether the agency followed the proper procedural safeguards." *Mesa Valderrama v. United States*, 417 F.3d 1189, 1196 (11th Cir. 2005). The Ninth Circuit, in contrast, has held that section 983(e) is a claims-processing rule, because the statute "does not state that it is jurisdictional, nor is there any evidence in CAFRA's

legislative history … that it should be treated as such." *Okafor v. United States*, 846 F.3d 337, 340 (9th Cir. 2017).

The issue whether section 983(e) is a jurisdiction-stripping statute raises the antecedent question of what statute grants jurisdiction to the district court in the first place. Neither party addressed this, but we have an independent obligation to examine subject-matter jurisdiction. *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 281 (7th Cir. 2020). Momentarily setting aside any potential restrictive effect of section 983(e), we conclude that the district court had subject-matter jurisdiction over Troconis-Escovar's challenge to the declaration of forfeiture under 28 U.S.C. § 1355, which grants district courts exclusive and original jurisdiction over "any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress … ." See *Linarez v. U.S. Dep't of Just.*, 2 F.3d 208, 211 (7th Cir. 1993) ("The clear and unambiguous language of 28 U.S.C. § 1356, provides that jurisdiction over challenges to the legality of the seizure of property under the authority of [21 U.S.C.] § 881 initially vests in the district courts. And the equally pellucid language of 28 U.S.C. § 1355, provides that the district courts initially have jurisdiction over the subsequent civil forfeiture proceedings as well.").

Before CAFRA, we described the administrative forfeiture process established by 19 U.S.C. § 1602–1618 as "divest[ing] the district court of its jurisdiction over the forfeiture proceedings" unless a claim with the appropriate agency was filed. *Linarez*, 2 F.3d at 211; accord *Garcia v. Meza*, 235 F.3d 287, 290 (7th Cir. 2000). We maintained an exception, however, for suits challenging whether "the notice given in the administrative forfeiture proceeding afforded the claimant

constitutional due process." *Garcia*, 235 F.3d at 290. When CAFRA was passed in 2000, it codified this system by including in section 983(e) the right to raise a notice-based challenge—and *only* a notice-based challenge—to a completed administrative forfeiture in federal court. After CAFRA, we continued to refer to the limitations now found in section 983(e) as jurisdictional. See, *e.g.*, *United States v. Turner*, 494 F. App'x 647, 649 (7th Cir. 2012); *Mohammad v. United States*, 169 F. App'x 475, 480 (7th Cir. 2006); *Chairez v. United States*, 355 F.3d 1099, 1101 (7th Cir. 2004).

We are doubtful, however, whether that characterization comports with the Supreme Court's decisions emphasizing the distinction between statutes that limit subject-matter jurisdiction and statutes that create claims-processing rules.[1] See, *e.g.*, *Fort Bend County v. Davis*, 139 S. Ct. 1843, 1846 (2019) ("Prerequisites to suit like Title VII's charge-filing instruction are not of [jurisdictional] character; they are properly ranked among the array of claims-processing rules that must be timely raised to come into play."); *Gonzalez v. Thaler*, 565 U.S. 134, 137 (2012) (holding that the statutory requirement that a habeas corpus petitioner obtain a certificate of appealability is not jurisdictional); *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 157 (2010) (holding that the Copyright Act's requirement that copyright holders register their works before suing for infringement "is a precondition to filing a claim that does not

[1] Indeed, we have flagged our concern about this in the past. See, *e.g.*, *Frey v. EPA*, 270 F.3d 1129, 1135 (7th Cir. 2001) (questioning whether *Garcia*'s description of the claim-filing requirement as jurisdictional was "technically correct"); *Martov v. United States*, 926 F.3d 906, 909 (7th Cir. 2019) (noting that a future case may require us to consider the jurisdictional limits of an administrative forfeiture challenge).

restrict a federal court's subject-matter jurisdiction"). As the Court has stressed repeatedly, "[a] statutory condition that requires a party to take some action before filing a lawsuit is not automatically 'a *jurisdictional* prerequisite to suit.'" *Reed Elsevier, Inc.*, 559 U.S. at 166 (quoting *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982)).

We need not decide this unbriefed question now. The difference between a jurisdictional bar and a mandatory claims-processing rule can be critical to a case's outcome. But it is largely inconsequential where, as here, the government has not waived its enforcement of the precondition.

To his credit, Troconis-Escovar concedes that the government has properly invoked its right to enforce the rule requiring the filing of a claim with the DEA. He requests instead some form of equitable relief from that rule. But he does not cite to (and we are not aware of) any post-CAFRA case in which a federal appeals court has endorsed that approach under similar circumstances. To the contrary, the circuits that have considered whether to override the claim-filing requirement have rejected such arguments. See *Conservation Force v. Salazar*, 646 F.3d 1240, 1243 (9th Cir. 2011) (holding that a claimant who filed a petition for remission rather than a claim could not later challenge a declaration of forfeiture in court on grounds unrelated to notice); *Malladi Drugs & Pharms., Ltd. v. Tandy*, 552 F.3d 885, 890 (D.C. Cir. 2009) (same); but see *Okafor*, 846 F.3d at 340 (considering whether to toll the claim deadline equitably for a claim that was filed one day late).

Moreover, we note that Troconis-Escovar's predicament was not the result of some extraordinary circumstance or government misconduct. His attorney just made a mistake and did not recognize his error until months after the deadline

had passed. Careless mistakes of this type are not reason for courts to exercise their equitable powers to override statutory requirements. *Cf. Lombardo v. United States*, 860 F.3d 547, 552 (7th Cir. 2017) (explaining, in context of an attorney who miscalculated the expiration of the statute of limitations for his client's habeas corpus petition, that "as we, the Supreme Court, and other courts have consistently held, mistakes or miscalculations of that sort by a party's attorney do not satisfy the extraordinary circumstances element for equitable tolling"). We therefore decline to consider Troconis-Escovar's request for equitable relief from the administrative forfeiture.

The only possible argument Troconis-Escovar can offer would relate to notice, but that goes nowhere. He challenges the sufficiency of the notice he received solely by arguing that it failed to comply with the CAFRA requirement to provide notice within 60–90 days of the seizure. See §§ 983(a)(1)(A)(i), 983(a)(1)(B). That is enough to bring the claim into the ambit of section 983(e), even if it were a jurisdictional bar. But he acknowledges that Chief Judge Pallmeyer issued an order extending the notice deadlines in civil asset forfeiture cases in the Northern District of Illinois during the relevant period. See § 983(a)(1)(C) (enumerating circumstances in which "a court may extend the period for sending notice"). Troconis-Escovar offers no explanation for why the DEA's notice was not timely under that order, nor does he challenge the lawfulness of the order itself. Because he has not plausibly alleged that the notice he received was inadequate, he is not entitled to relief under section 983(e).

III

In sum, Troconis-Escovar "does not explain why he should be able to obtain relief outside § 983 when Congress has expressly conditioned relief from civil forfeiture on circumstances that do not apply to him." *Paret-Ruiz v. United States*, 827 F.3d 167, 175 (1st Cir. 2016). Because his argument about the untimeliness of the DEA's notice is best understood as a challenge to the sufficiency of that notice, we amend the district court's dismissal for lack of subject-matter jurisdiction to be a dismissal with prejudice. We AFFIRM the judgment as amended.