

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN THE MATTER OF THE SEARCH §  
OF UDF, 1301 MUNICIPAL WAY, § No. 3:21-mc-00284-B-BT  
GRAPEVINE, TEXAS 76051 §

**TRANSFER ORDER**

Before the Court is Movant United Development Funding’s (UDF’s) Motion for Return of Property Pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure. Mot. (ECF No. 1). As explained below, the Court determines *sua sponte* to TRANSFER this matter to the Fort Worth Division of the Northern District of Texas.

**Background**

UDF purports to represent a “family of funds that finance residential real estate development.” Mot. 6.<sup>1</sup> The entities that comprise the UDF family maintain

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<sup>1</sup> This “family” includes dozens of entities, including: UMTH Land Development LP (“UMTH LD”); United Development Funding LP (“UDF I”); United Development Funding II LP (“UDF II”); United Development Funding III LP (“UDF III”); United Development Funding IV; United Development Funding V; United Mortgage Trust (“UMT”); UMT Services, Inc. (“UMT Services”); UMT Holdings, LP (“UMTH”); UMT Home Finance LP; UMT Home Finance II, LP; UMT Properties LP; UMTH General Services LP (“UMTH GS”); UMTH Funding Services LP; UMTH Lending Company LP; UDF Holdings LP; UDF Services LLC; UDF GenPar LLC; UDF Paramount MOF Investors LLC; UDF Texas Two LP; UDF Mutli-Family Opportunities GenPar LLC; UDFH General Services LP; UDFH Land Development LP; UMTH Loan Servicing LP; United Development Funding, Inc. (“UDF Inc.”); United Development Funding II, Inc. (“UDF II Inc.”); United Development Funding IV Operating Partnership LP; UDF IV Acquisitions Manager LLC; and United Development Funding X. Mot. 1 & n.1. According to a declaration filed in support of UDF’s Motion, UDF Inc. is the general partner of UDF I, and a Director of UDF II Inc., which is the general partner of UDF II.

offices in Grapevine, Texas. *See* Greenlaw Decl. 2, ¶ 4 (ECF No. 1-3). Grapevine is a city in Tarrant County, Texas, which is in the Fort Worth Division of the Northern District of Texas. 28 U.S.C. § 124(a)(2).

On February 18, 2016, the Federal Bureau of Investigation executed a search warrant at UDF's offices and agents seized a significant volume of material—more than 40 terabytes of data—in electronic and physical form. Reply 3 (ECF No. 15). The seized material includes allegedly privileged information and documents.

While UDF has not been indicted in the five years since the search, UDF and various of its owners, officers, and employees have engaged the government in a series of discussions regarding the seized material. *See generally* Mot. 8-13; Gov't's Resp. 3-10 (ECF No. 11-1); *see also In re Search of 1301 Municipal Way*, 3:19-mc-004-B (Rule 41(g) motion filed January 15, 2019, seeking return of seized materials on the basis that UDF needed the materials to conduct ongoing business operations). These talks broke down as the government's criminal investigation progressed and, on August 23, 2021, UDF filed the pending Rule 41(g) Motion in this Division asking the Court to order the return of the originals and all copies of

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Greenlaw Decl. 1-2, ¶ 3 (ECF No. 1-3). UMT Services is the general partner of UMTH. *Id.* UMTH LD and UMTH GS are subsidiaries of UMTH which manage and provide services to other funds in the UDF family. *Id.* UMTH LD is the general partner of UDF III, and UMT Services is the general partner of UMTH LD. *Id.* UDF Land GP, LLC is the general partner of UDF Land GenPar, L.P., which in turn is the general partner of United Development Funding Land Opportunity Fund, L.P. ("UDFLOF LP") and the managing member of United Development Funding Land Opportunity Fund Investors, LLC ("UDFLOF LLC"), and these companies are also managed by UMTH LD. UMTH GS is the advisor to UMT. *Id.*

*all* the materials seized during the 2016 search of UDF's offices. Mot. 23-24; *see also* Fed. R. Crim. P. 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.").

As grounds for its Motion, UDF contends the FBI's 2016 search was "unconstitutionally overbroad" and resulted in the seizure of privileged material, which the government failed to timely review and improperly shared with the prosecution team. Mot. 2. Relying on the Fifth Circuit's recent decision in *Harbor Healthcare Sys., L.P. v. United States*, 5 F.4th 593 (5th Cir. 2021), UDF argues it is entitled to the return of all the seized materials because it has a need to protect the privacy of the privileged materials. Mot. 22.

The Court construed UDF's Rule 41(g) Motion as a miscellaneous civil action because there were no criminal proceedings pending against UDF. *See United States v. Approximately Two Hundred Twenty-Two (222) Firearms & Firearm Accessories*, 2021 WL 1851031, at \*3 (N.D. Tex. May 6, 2021) ("Despite being found in the Rules of Criminal Procedure, motions for return of property under Rule 41(g) are considered independent civil actions when an indictment has not been filed . . . .") (citing *United States v. Search of L. Off., Residence, & Storage Unit Alan Brown*, 341 F.3d 404, 409 (5th Cir. 2003)); *see also Harbor Healthcare*, 5 F.4th at 596 (recognizing Rule 41(g) motion filed when "there was not yet any criminal proceeding against [the movant]" was properly filed as its own civil case). UDF and the government briefed their arguments, and the Court held a hearing on the Motion on October 27, 2021. Since then, the interested parties have continued

to negotiate and to supplement the record. *See* ECF Nos. 22, 24, 26 (filed October 28, November 5, and November 10, 2021). On October 29, 2021, the government returned to UDF's counsel approximately four banker's boxes of original documents that UDF's counsel previously claimed were privileged. Gov't Supp. 2 (ECF No. 26).

Shortly before the hearing, on October 15, 2021, a grand jury in the Fort Worth Division returned a ten-count indictment charging four UDF executives—Hollis Greenlaw, Benjamin Wissink, Cara Obert, and Jeffrey Jester—with conspiracy to commit wire fraud, conspiracy to commit securities fraud, and securities fraud. *United States v. Greenlaw, et al.*, 4:-21-cr-289-Y. And since the hearing, the indicted executives have filed several motions in the criminal action pending in Fort Worth challenging the 2016 warrant and seeking suppression of all the evidence seized during the 2016 search, including on grounds that the warrant was overbroad and resulted in the improper seizure of privileged materials. Mots. (ECF Nos. 34, 35, 36). The criminal trial is currently set to begin January 3, 2022. Sched. Order (ECF No. 75).

In view of all the circumstances, the Court considers whether a *sua sponte* transfer to the Fort Worth division is appropriate.

### **Legal Standards**

As noted above, motions for return of property under Rule 41(g) are considered independent civil actions when, as here, no indictment has been filed against the Movant. *See Approximately Two Hundred Twenty-Two (222)*

*Firearms & Firearm Accessories*, 2021 WL 1851031, at \*3 (observing that motions for return of property under Rule 41(g) are considered independent civil actions when an indictment has not been filed). “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). A court may transfer a case under Section 1404(a) *sua sponte*. *Mills v. Beech Aircraft Corp., Inc.*, 886 F.2d 758, 761 (5th Cir. 1989). Indeed, a district court has broad discretion to transfer a case under Section 1404(a). *Jarvis Christian Coll. v. Exxon Corp.*, 845 F.2d 523, 528 (5th Cir. 1988).

Initially, Section 1404(a) requires the court to evaluate whether the suit could have been brought in the district or division to which the court considers transferring it. *In re Horseshoe Entm’t*, 337 F.3d 429, 433 (5th Cir. 2003) (per curiam). If the case could properly have been brought in the proposed forum, a court must then independently consider how much weight to assign a plaintiff’s choice of forum. *Seramur v. Fed. Ins. Co.*, 2019 WL 3253369, at \*2 (N.D. Tex. July 19, 2019); *Davis v. City of Fort Worth*, 2014 WL 2915881, at \*2 (N.D. Tex. June 25, 2014). That amount changes depending on whether a plaintiff has filed suit within his home forum or outside of it. “A plaintiff’s choice is normally entitled to deference, but when she files suit outside her home forum, the weight accorded to the choice is diminished.” *Id.* (internal citations omitted) (quoting *Sivertson v. Clinton*, 2011 WL 4100958, at \*4 (N.D. Tex. Sept. 14, 2011)).

Finally, the court must consider certain private and public interest factors to determine whether, on balance, transferring the case would best serve the interests of justice and be more convenient for the parties and witnesses. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc) (*Volkswagen II*). These “factors apply as much to transfers between divisions of the same district as to transfers from one district to another.” *In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013) (per curiam).

The private interest factors that a Court must consider before transferring a case include: “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.” *Id.* (quoting *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (per curiam) (*Volkswagen I*)). And the public interest factors are: “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.” *Id.* (quoting *Volkswagen I*, 371 F.3d at 203). In addition, a court may not transfer a case where doing so only shifts the venue’s inconvenience from one party to the other. *Evol, Inc. v. Supplement Servs., LLC*, 2010 WL 972250, at \*1 (N.D. Tex. Feb. 28, 2010), *adopted* 2010 WL 982564 (N.D. Tex. Mar. 16, 2010)

(citing *Fowler v. Broussard*, 2001 WL 184237, at \*2 (N.D. Tex. Jan. 22, 2001) (Fitzwater, J.)).

### **Analysis**

I. UDF could have properly filed its Motion in the Fort Worth Division.

A movant must file a Rule 41(g) motion “in the district where the property was seized.” Fed. R. Crim. P. 41(g). The seizure in this case took place at UDF’s offices in Grapevine—a city in Tarrant County, Texas, which is in the Fort Worth Division of the Northern District of Texas. 28 U.S.C. § 124(a)(2). Accordingly, UDF could have properly filed its Motion in the Fort Worth Division.

II. UDF’s forum selection is entitled to less deference because the Fort Worth Division is its home forum.

UDF’s offices are located in Grapevine, within the Fort Worth division. Accordingly, UDF’s home forum is the Fort Worth Division, and its initial forum selection of the Dallas Division is entitled to less deference. *See Davis*, 2014 WL 2915881, at \*2.

III. Private interest factors weigh in favor of transferring the case to the Fort Worth Division.

The Court finds the private interest factors weigh in favor of transferring the case to the Fort Worth Division. As mentioned above, the private interest factors include: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive. *Volkswagen II*, 545 F.3d at 315.

The first private interest factor involves “the relative ease of access to sources of proof.” The Court finds that this factor is neutral. Both the Dallas and Fort Worth Divisions are similarly situated in terms of sources of proof. While the seized materials are being held within the Dallas Division, Hr’g Tr. 77:24-78:3, UDF’s headquarters is within the Fort Worth Division, *id.* at 37:23-38:5, and UDF’s executives are awaiting trial in the Fort Worth Division, Gov’t’s Notice 1 n.1. Moreover, the Dallas and Fort Worth Divisions have roughly equal access to sources of proof because there will not be “any significant inconvenience to the parties if they ha[ve] to transport documents or other evidence” to Fort Worth, as opposed to Dallas. *See Radmax*, 720 F.3d at 288.

The second factor “addresses the availability of compulsory process to secure the attendance of witnesses.” The Court finds that this factor is also neutral. Federal Rule of Civil Procedure 45 provides that “[a] subpoena may command a person to attend a trial, hearing, or deposition only . . . within 100 miles of where the person resides, is employed, or regularly transacts business . . . .” Fed. R. Civ. P. 45(c)(1)(A). Given the relatively small distance between the two divisions, it appears that “[a]ll of the likely witnesses in this case are within the subpoena power of either [division].” *Radmax*, 720 F.3d at 288.

The third factor concerns the cost of attendance for willing witnesses. This factor is neutral as well. As with the first two factors, the short distance between the two courts makes it likely that witnesses would incur similar costs in traveling to either Division.



The fourth private interest factor concerns “the practical problems that make trial of a case easy, expeditious, and inexpensive.” *Pinnacle Label, Inc. v. Spinnaker Coating, LLC*, 2009 WL 3805798, at \*11 (N.D. Tex. Nov. 12, 2009). This factor weighs in favor of transfer. In determining this factor, the Court notes that “the interests of justice will not be served by the maintenance of two suits arising from the same occurrences in two separate district courts.” *Devon Energy Prod. Co., L.P. v. GlobalSantaFe S. Am.*, 2007 WL 1341451, at \*8 (S.D. Tex. May 4, 2007). Generally, then, this factor weighs in favor of deciding cases with substantially similar underlying issues in the same court. *See, e.g., Chase v. Andeavor Logistics, L.P.*, 2019 WL 5847879, at \*7 (W.D. Tex. July 9, 2019); *Hinson v. Dorel Juvenile Group, Inc.*, 2016 WL 3192808, at \*3 (E.D. Tex. June 8, 2016); *Howard Acquisitions LLC v. Giannasca New Orleans LLC*, 2009 WL 10684988, at \*5 (E.D. La. Oct. 7, 2009). This remains true in spite of the fact that transfer always results in some “garden-variety delay.” *Radmax*, 720 F.3d at 289.

Moreover, pending cases involving the same issue—in this case, the pending criminal trial—are given “paramount consideration” when determining judicial economy. *Cont’l Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960); *Jarvis*, 845 F.2d at 528. “To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent.” *Cont’l Grain*, 364 U.S. at 26. Indeed, the existence of related litigation in a transferee court is a factor that weighs strongly in favor of transfer. *See, e.g., Front*

*Row Techs., LLC v. MLB Advanced Media, L.P.*, 2012 WL 12044383, at \*2 (N.D. Tex. Dec. 17, 2012) (Kinkeade, J.) (“The existence of related litigation in a transferee court is a factor that strongly supports transfer.”) (internal citation omitted); *Ashton v. Knight Transp., Inc.*, 2009 WL 2407829, at \*5 (N.D. Tex. Aug. 6, 2009) (Boyle, J.) (“In order to maximize efficiency, courts may transfer cases for the purposes of consolidating simultaneously pending actions that are based on the same issues.”) (internal citations omitted); *Moto Photo, Inc. v. K.J. Broadhurst Enters., Inc.*, 2003 WL 298799, at \*5 (N.D. Tex. Feb. 10, 2003) (Kaplan, J.) (“A transfer in the interest of justice is appropriate where related cases involving the same issues are pending in another court.”) (internal quotation marks and citation omitted).

This factor thus weighs heavily in favor of transferring the miscellaneous civil case to the Fort Worth Division. As discussed above, UDF’s executives have been indicted and are awaiting trial in the Fort Worth Division. Issues regarding the legality of the 2016 search warrant will bear heavily on that litigation. Indeed, at the hearing regarding UDF’s Motion, the government noted that granting UDF’s Motion in this case would be “tantamount to suppression” in the related criminal case. Hr’g Tr. 80:6-10. In essence, if the Court in this case orders the government to return all of the items seized to UDF, that will greatly affect the government’s ability to prosecute its case against the UDF executives in the Fort Worth Division.

In addition, the landscape of this case, the related criminal case, and the materials at issue are constantly changing. Indeed, in the days after the Court held

the hearing on this Motion, the parties engaged in a new dispute about a particular subset of the seized materials, an allegedly privileged 125 boxes of documents that UDF claims the government must return. *See generally* Movant’s Second Supplement (ECF No. 24). In its Supplement informing the Court of this development, UDF makes the argument that the Court “must order immediate return of all materials . . . so that UDF, *and its now-indicted executives*, may continue to timely assert . . . their Constitutional rights.” *Id.* at 1-2 (emphasis added). This statement only further clarifies the relatedness of the two cases, the risk of inconsistent rulings, and the fact that a single court overseeing the issues in this case “would avoid wasteful duplication of effort by two courts on essentially the same issues.” *Affinity Labs of Tex. v. Elecs. Co., Ltd.*, 968 F. Supp 2d 852, 860 (E.D. Tex. 2013).

IV. Public interest factors also weigh in favor of transferring the case to the Fort Worth Division.

The Court now considers the public interest factors, which it finds also weigh in favor of transferring the case to the Fort Worth Division. The public interest factors include: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *Volkswagen II*, 545 F.3d at 315.

The first factor requires the Court to consider the administrative difficulties associated with court congestion in both divisions. The Court finds that this factor is neutral. Administrative difficulties associated with court congestion are present to a similar degree in both divisions.

The second factor considers the lawsuit's local interest. This factor weighs heavily in favor of transfer. UDF is headquartered in Grapevine, a City within the Fort Worth Division. Additionally, the conduct at the root of this dispute—the search of UDF's headquarters—occurred entirely within the Fort Worth division. Indeed, UDF's officers have been indicted and are facing trial in the Fort Worth Division. The citizens of that Division thus have a much greater interest in the outcome of this case than do citizens of the Dallas Division. *See Thomas v. City of Fort Worth, Tex.*, 2008 WL 4225556, at \*2 (N.D. Tex. Sept. 15, 2008) (“The citizens of Dallas County or the Dallas Division have little or no interest in resolving disputes involving a citizen of the City of Granbury and the City of Fort Worth.”).

The third and fourth factors involve the familiarity of the forum with the law governing the case and the avoidance of conflict of laws problems or the application of foreign law. Because both the Fort Worth Division and the Dallas Division are in the Northern District of Texas, the Court finds that either forum would be familiar with the law that will govern the case and that transfer would not create a conflict of laws problem. Thus, these factors are both neutral.

In total, then, six of the relevant factors are neutral, two favor transfer, and none favor adjudication within the Dallas Division. The Court's consideration of

these factors, combined with the fact that UDF's forum choice is entitled to less deference, therefore indicate that, for the convenience of the parties and witnesses, and so the interest of justice might be served, the case should be transferred to the Fort Worth Division.

**Conclusion**

For the foregoing reasons, the Court TRANSFERS this case to the Fort Worth Division of the Northern District of Texas.

**SO ORDERED.**

November 15, 2021.



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REBECCA RUTHERFORD  
UNITED STATES MAGISTRATE JUDGE