

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CR-128-H-2

UNITED STATES OF AMERICA

v.

WILLIAM TODD CHAMBERLAIN

RESPONSE IN OPPOSITION TO
GOVERNMENT'S MOTION FOR
RESTRAINING ORDER

The Government has moved for a pretrial restraining order against SFC Chamberlain's and his wife's property under 21 USC §853(e)(1).

The Government concedes the property "does not constitute[] directly forfeitable proceeds" of the crime alleged in the Indictment. DE 148-1 at 7. In other words, the Government is saying the property was not purchased with money from the alleged crime.

Using the language of a Supreme Court decision issued four weeks ago, the property is an "innocent" asset, not a "tainted" one. Luis v. United States, 136 S. Ct. 1083, 1088, 1091 (2016).

The Court stated in Luis that a §853(e)(1) restraining order cannot issue against innocent assets. Id. at 1091. After Luis, such an order can only be entered against tainted assets. Id.

The Government is relying on United States v. Monsanto, 491 U.S. 600 (1989), which has, in the past, been read to allow entry of a pretrial restraining order against innocent assets. [DE 148] at 3.

The Government's position is no longer valid. Luis stated that such a position "ignores the statutory background against which . . . Monsanto w[as] decided." 136 S. Ct. at 1091. Luis added that "whether property is . . . subject to pretrial restraint under Congress' scheme . . . depends on who has the superior interest in the property at issue." Id. And it concluded that, under that scheme, the Government cannot restrain innocent assets pretrial because those assets "belong[] to the defendant, pure and simple." Id. at 1090.

The Government cannot restrain the property it seeks pretrial because it is an innocent asset. After Luis, such assets belong to the Defendant, pure and simple. The defense respectfully requests the Government's motion be denied.

Respectfully submitted, this the 19th day of April, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date shown below, he electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to Assistant United States Attorney Steve West.

This the 19th day of April, 2016.

/s/ Elliot S. Abrams
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