

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

SUR-REPLY IN OPPOSITION TO
GOVERNMENT'S MOTION FOR
RESTRAINING ORDER

In Luis, a majority of the United States Supreme Court held that pre-trial restraint of innocent assets under 21 U.S.C. § 853 is unlawful. The plurality provided extensive statutory analysis of § 853 and clarified that the statute does not allow pre-trial restraint of innocent assets. See Luis v. United States, 136 S. Ct. 1083, 1090-92 (2016) (Section II(B)(1) of plurality opinion). Justice Thomas did not need to conduct statutory analysis because he determined that any pre-trial restraint of innocent assets violates the Sixth Amendment. Id. at 1096-97 (“[T]he Sixth Amendment prevents the Government from freezing untainted assets in order to secure a potential forfeiture[.]”). Thus, this majority of Justices “overlap” in holding that pre-trial restraint of innocent assets under § 853 is unlawful.

Further supporting that the plurality’s statutory analysis of § 853 is binding upon this Court is the fact that it is a narrower holding than Justice Thomas’ constitutional analysis.

“When a fragmented Court decides a case and no single rationale explaining the result enjoys the asset of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” Marks v. United States, 430 U.S. 188, 193 (1977) (internal quotation marks omitted).

Section II(B)(1) of the Luis plurality opinion holds that, under 21 U.S.C. § 853, “untainted [property] . . . belongs to the defendant, pure and simple” and therefore cannot be

retrained pre-trial under that statute. 136 S. Ct. at 1090-92. Based on this statutory analysis, the plurality limited Monsanto's holding that the Government can restrain assets pre-trial to apply only to tainted assets, as opposed to innocent assets. Id. This distinction was necessary to reach the holding in Luis because otherwise Monsanto would have mandated the opposite result.

This statutory analysis rationale is narrower than Justice Thomas' rationale that any pre-trial seizure of innocent assets violates the Sixth Amendment, but either holding would invalidate the Government's request in this case.

Being the narrower of the two positions and necessary to reach the result, the plurality's statutory analysis of § 853 is the law. See Marks, 430 U.S. at 193-194.

This holding that § 853 does not allow pre-trial restraint of innocent assets was not controversial. The Solicitor General even conceded the point in oral argument. Exhibit 1, Luis Oral Argument Transcript, at P. 48 (“[SOLICITOR GENERAL]: [18 U.S.C. § 1345] is different, as Justice Sotomayor pointed out, from the basic forfeiture statute [21 U.S.C. § 853] in permitting pretrial restraint of any assets[.]”); see also id. at P. 45-46 (“[SOLICITOR GENERAL]: So, 853, Justice Sotomayor, does permit forfeiture of substitute property. JUSTICE SOTOMAYOR: Yes, but not pretrial.”).

The Government argues that this holding is not precedential because, after distinguishing Monsanto, the Luis plurality also conducted a constitutional analysis. That additional analysis was only necessary because Luis involved a different statute, 18 U.S.C. § 1345(a)(2)(B), which, unlike § 853, authorizes pre-trial seizure of innocent assets. (Section 1345(a)(2)(B) only applies in cases involving banking or Federal health care law violations). That constitutional analysis does not moot the holding that § 853 does not authorize pre-trial restraint of innocent assets, however, because the statutory holding was itself necessary to the outcome of Luis.

In sum, the Luis plurality and Justice Thomas—a majority of the Supreme Court—have held that pre-trial restraint of innocent assets under § 853 is unlawful. The Solicitor General even conceded the point. Because the Government’s motion seeks to restrain innocent assets pre-trial under § 853, fulfilling its request would violate Luis and § 853 and thus Due Process.

Therefore, the Defendant respectfully requests that the Government’s motion be denied.

Respectfully submitted, this the 27th day of April, 2016.

MANNING LAW FIRM

/s/ Thomas C. Manning
Thomas C. Manning,
N.C. Bar # 7887
Post Office Box 12105
Raleigh, North Carolina 27605
Telephone: (919) 834-3499
Fax: (919) 834-3864

CESHIRE PARKER SCHNEIDER &
BRYAN, PLLC

/s/ Elliot S. Abrams
Elliot S. Abrams
N.C. State Bar # 42639
133 Fayetteville Street, Ste 500
Post Office Box 1029
Raleigh, NC 27602
elliott.abrams@cheshirepark.com

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 27th day of April, 2016.

/s/ Elliot S. Abrams
Elliot S. Abrams