

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07-cr-20124-01-CM
	)	
CARRIE NEIGHBORS,	)	
	)	
Defendant.	)	

MOTION TO RELEASE *LIS PENDENS*

COMES NOW Defendant Carrie Neighbors, by counsel, and moves the Court for its Order requiring the Government to release and/or withdraw the Notice of *Lis Pendens* filed against the real estate commonly known as 1104 Andover, Lawrence, KS, for the reasons that:

1. On August 27, 2007, the Government caused to be filed with the Douglas County Register of Deeds at Book 1028, Page 3948, a certain notice of *Lis Pendens* with respect to property located at 1104 Andover, Lawrence, KS, legally described as “Somerset Heights No. 3, a Replat of Somerset Heights No. 2, Lot 24.”

2. The Government justified the filing of this notice by virtue of this criminal action in which it seeks a money judgment against the Defendant and a criminal forfeiture pursuant to 18 U.S.C. 982 and 21 U.S.C. 853. The Government does not allege in the Complaint, nor did the Grand Jury find in the Indictment,

that the property in question was obtained by the proceeds of the criminal activity alleged in the Indictment. Rather, the property in question is listed in the Indictment as “substitute assets” that the Government wishes to be able to liquidate in order to satisfy a money judgment that it hopes to obtain if it someday obtains a conviction of the defendants in this action.

3. The day after the Government filed the notice of *lis pendens* against Defendant’s real estate, the U.S. Court of Appeals for the Tenth Circuit held that a *lis pendens* cannot be filed when the Government does not yet have a conviction, a money judgment, and/or an order of forfeiture against a defendant. *United States v. Jarvis*, 499 F.3d 1196 (10<sup>th</sup> Cir. 2007). “[T]he United States does not have a ripened interest in §853(p) substitute property until (1) after the defendant’s conviction and (2) the court determines the defendant’s §853(a) forfeitable property is out of the government’s reach . . . .” *U.S. v. Jarvis*, 499 F.3d at 1204.

WHEREFORE, Defendant moves the Court for its Order requiring the Government to immediately release the *lis pendens* filed against the subject property.

/s/ Phillip R. Gibson  
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*Counsel for Defendant*

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

/s/ Phillip R. Gibson  
*Counsel for Defendant*