IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:06-CR-41-1FL
NO. 5:06-CR-41-2FL
NO. 5:06-CR-41-3FL

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
AVEDIS DJEREDJIAN a/k/a Mike	)
CARMEN BADRIAN,	)
ROOBIK OHANIANSAKI	)
	)
Defendants.	)

GOVERNMENT'S APPLICATION FOR ORDER REGARDING
CRIMINAL FORFEITURE OF PROPERTY IN GOVERNMENT CUSTODY
18 U.S.C. § 983(a)(3)(B)(ii)(II)

The United States of America, through its counsel, hereby moves for an order allowing the Government to maintain custody of property already in the Government's possession pending the resolution of a criminal forfeiture matter. In support of its motion, the Government says the following:

1. On December 2, 2005, based on the Affidavit of Senior Special Agent Michael Fanelly with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the United States filed an Amended Verified Complaint for Forfeiture in Rem against the following property:

a. $19,985.90 in U.S. Currency
seized from Bank of America
Account #0006 9213 7242
Name on Account: Five Star Wholesale, Inc.

b. $808.95 in U.S. Currency
Bank of America
Account #0006 8406 9412
Name on Account: MASIS GERAGOSIAN

c. 3,706 Cartons of Miscellaneous Cigarettes

d. 256 Packs of Asssorted Packs of Cigarettes

e. $133,860.00 in U.S. Currency
seized from MASIS GERAGOSIAN

f. Bank of America Account #223114454,
Name on Account: ALLEN NAZARIAN/Discount Outlet

g. Bank of Nevada Account #110003951
Name on Account: Silver State Distribution, Inc.

h. Antelope Valley Bank Account #32-090051-16,
Name on Account: MIKE CAPOCCI d/b/a Modern Cigarettes

i. Antelope Valley Bank Account #32-560036-19
Name on Account: MIKE CAPOCCI d/b/a/ Modern Video

j. Wells Fargo Bank Account #101-1033584
Name on Account: Star Tobacco, Inc.

k. 1356 Doverwood Drive
Glendale, CA 91207

l. 1633 Greenbrier Road
Glendale, CA 91207

m. 2004 INFINITI - VIN: JNRAS08U54X110853

n. 2004 BMW - VIN: 5UXFA13594LU29466

o. 2001 GMC - VIN: 1GKEK63U31J235669

p. 2003 HUMMER - VIN: 5GRGN23U73H116326

2. The United States requested that a warrant of arrest in rem issue for the arrest of the defendant properties, both real and personal.

3. On December 6, 2005, the Court determined that probable cause existed for the seizure of the defendant properties, both real and personal and bank accounts, for forfeiture pursuant to 18 U.S.C. § 981(a)(1)(A) and (C). Pursuant to said finding, a Warrant of Arrest and Notice in Rem was issued on December 8, 2005. No claimant has ever challenged the probable cause finding of this court.

4. The Government seized the defendant property not already in its possession, and filed lis pendens against the defendant real property pursuant to 18 U.S.C. § 985.

5. On March 1, 2006, the Government obtained an Indictment against Avedis Djeredjian a/k/a Mike (Case No. 5:06-CR-41-1FL), containing a forfeiture allegation concerning the seized assets.

6. On August 18, 2006, Claimants Avedis Djeredjian and Carmen Badrian filed a motion to release assets to pay for counsel fees. The motion was captioned under both the civil forfeiture in rem action and the criminal action against Avedis Djeredjian, but only filed in the civil case.

7. On October 25, 2006, the above-referenced Indictment was superceded adding Carmen Badrian and Roobik Ohaniansaki as defendants. The Superceding Indictment is now pending in this Court.

8. On January 16, 2007, a hearing on the motion to release seized assets to pay for counsel fees was held before Magistrate Judge William Webb. By Order entered February 20, 2007, by Magistrate Judge Webb, the Claimants' motion was denied.

9. 18 U.S.C. § 983 (a)(3)(D) provides:

> "In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

18 U.S.C. 982(b)(1) provides that the criminal forfeiture of property including seizure and disposition of property and any related judicial or administrative proceedings shall be governed by 21 U.S.C. § 853.

10. One of the theories of forfeiture for the property identified in the Indictment, which is also named in the civil forfeiture action and was seized pursuant to a finding of probable cause that the property is forfeitable, is that the property may be used to satisfy a criminal forfeiture money judgment as substitute property. The civil forfeiture action against the property is still pending and is currently stayed. The Defendants/Claimants have not requested a lifting of the stay of the civil forfeiture action for any purpose.

11. Substitute assets are not available in a civil forfeiture proceeding, but may be seized pre-trial to satisfy a

potential criminal forfeiture money judgment. See U.S. v. Woods, No. 5:05CR131 (May 26, 2006)(Flanagan, C.J.)(citing In re Billman, 915 F.2d 916 (4th Cir. 2006). Here, in the Order entered February 20, 2007, regarding the motion to release assets to pay for counsel fees, Magistrate Judge Webb found that the Government had established probable cause for criminal forfeiture of approximately $4,000,000.00 in the form of a money judgment.

12. The Government believes it is unnecessary to request that property already in its custody be re-restrained or re-seized under a different authority when a theory for forfeiture of property changes. See e.g. In Re: 2000 White Mercedes ML320, 220 F. Supp.2d 1332 (M.D. Fla. 2001)(holding if property is already in Government custody, no § 853(f) seizure warrant can be issued, as an order under § 853(e) would be sufficient to preserve the property, and the law should not be interpreted to require the courts to do useless and unnecessary things), aff'g 174 F. Supp.2d 1268 (M.D. Fla. 2001)(Magistrate Judge's Report and Recommendation). Nevertheless, out of an abundance of caution, the Government requests, pursuant to 18 U.S.C. § 983(a)(3)(B)(ii)(II), that this Court enter an Order stating that the United States and its agencies, including ATF and/or the United States Marshals Service, may continue to maintain custody of the seized assets until the criminal case is concluded.

WHEREFORE, pursuant to Section 853(e)(1), the United

States respectfully moves this court to issue an order directing that the United States may maintain custody of the seized assets through the conclusion of the pending criminal case, and stating that such order satisfies the requirements of 18 U.S.C. § 983(a)(3)(B)(ii)(II).

Respectfully submitted this 26th day of February, 2007.

GEORGE E.B. HOLDING
United States Attorney

BY: /s/ Felice McConnell Corpening
FELICE McCONNELL CORPENING
Assistant United States Attorney
Criminal Division

CERTIFICATE OF SERVICE

I do hereby certify that I have this 26th day of February, 2007, served a copy of the foregoing upon the below-listed party electronically and/or by placing a copy of the same in the U.S. Mails, addressed as follows:

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