



Untainted-Asset Freeze Creates Atty Conflict, Justices Told

By Michael Macagnone

Law360, Washington (November 9, 2015, 1:41 PM ET) -- Allowing the government to freeze untainted assets would put defense attorneys “under its thumb,” a woman accused of a \$45 million Medicare fraud told the U.S. Supreme Court in a bid to free her assets so she can pay her attorneys.

In a reply brief Oct. 29, Sila Luis blasted the government’s arguments in favor of freezing assets unconnected to the alleged fraud, saying it would violate her Sixth Amendment rights to hire counsel of her choosing. Attorneys representing clients in lengthy, expensive cases would face an outsized incentive to settle for a plea that could include unfreezing enough assets for them to be paid, the brief said.

“Feeling the pinch of the restraint, how could an attorney discharge his duty to provide conflict-free advice about whether the client should proceed to trial or waive her rights and cop a plea, when his own financial interests are at stake?” the brief states. “In a country that lauds the virtues of an adversarial system of justice, the image of once-fearless defense attorneys ‘negotiat[ing] [plea deals] with the government in order to receive payment for their services,’... is, to say the least, unsettling.”

Ahead of oral arguments slated for Tuesday, the brief also took issue with with the government’s other arguments in favor of an asset freeze, saying it misread prior Supreme Court precedents, including *United States v. Monsanto*. Just because the government’s claim on tainted assets in the *Monsanto* case was not final until a judicial determination does not mean the government has equal claim to untainted assets in the instant case, the brief said.

“The government reasons that, by approving the restraint of tainted assets in *Monsanto*, the court necessarily approved the restraint of untainted assets as well,” the brief said. “The government’s argument gets it wrong, both by understating the property interest it has in tainted assets, like those at issue in *Monsanto*, and by ignoring the significance of petitioner’s own ‘good title’ in her untainted assets, which defendant in *Monsanto* did not have.”

The “relation back” principle, which allows the government to claim tainted assets dating from the time of an offense, exists for precisely that reason, the brief said. Allowing the government to broaden its claims on a criminal defendant’s property before trial would go beyond the scope of prior Supreme Court rulings, the brief argued.

“The court has never indicated that the government has such a property right in a defendant’s untainted assets, and for good reason. The relation back principle gives the government no property right in petitioner’s untainted assets at this stage; its claim is superior to no one’s and will never relate back to any date,” the brief states. “For her part, petitioner’s current right, title and interest in her untainted property is superior to everyone’s.”

The high court granted certiorari in June, following the Eleventh Circuit’s affirmation of a district court decision to allow prosecutors to freeze Luis’ assets to the tune of \$45 million — the amount they claimed her companies earned in the scheme — so that the government can recoup the full amount should she be found guilty.

Luis’ attorneys have said that she does not have access to that amount of money and that to make up for it, the government is digging into millions of dollars she earned from private insurers.

Luis’ criminal trial has been put on hold pending the outcome of the Supreme Court appeal. She’s accused of Medicare fraud and Anti-Kickback Statute violations by paying patients who used her two at-home health companies so that she could bill the government for unnecessary or unprovided-for services.

The Supreme Court took on Luis' case a year after ruling in *Kaley v. U.S.* that the government could prevent defendants from accessing funds that were allegedly obtained in the process of a crime while their criminal suits are ongoing. Luis' attorney Howard M. Srebnick of Black Srebnick Kornspan & Stumpf PA was also lead defense counsel in the *Kaley* case.

Representatives for Luis and the government could not be immediately reached for comment Monday.

Luis is represented by Howard M. Srebnick of Black Srebnick Kornspan & Stumpf PA.

The government is represented by Donald B. Verrilli Jr. of the U.S. Office of the Solicitor General.

The case is *Luis v. U.S.*, case number 14-419, in the Supreme Court of the United States.

--Additional reporting by Bryan Koenig. Editing by Mark Lebetkin.