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Supreme Court Rules Assets Unrelated to Crimes Cannot Be Frozen

5-3 decision found the right to counsel trumps government's interest in preserving funds for restitution



The Supreme Court ruling Wednesday stemmed from a Miami case, where prosecutors accused a woman of defrauding Medicare of \$45 million. *PHOTO: REUTERS*

By **JESS BRAVIN**

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WASHINGTON—The Supreme Court Wednesday ruled prosecutors can't freeze assets someone needs to hire a lawyer unless the funds are linked to the alleged crime, disabling a tool authorities had used against suspects in bank and health-care fraud cases.

The 5-3 decision found the Constitution's right to counsel trumped the government's interest in preserving funds for restitution and penalties should prosecutors obtain a conviction.

Federal law authorizes courts to freeze assets linked to an alleged crime or “property of an equivalent value.” Writing for a four-justice plurality, Justice Stephen Breyer said, in essence, that was a false equivalence.

“The relevant difference consists of the fact that the property here is untainted, i.e., it belongs to the defendant, pure and simple,” he wrote, joined by Chief Justice John Roberts and Justices Ruth Bader Ginsburg and Sonia Sotomayor. “It is the difference between what is yours and what is mine.”

Justice Clarence Thomas agreed with the result, but wrote separately to say he thinks the right to choose legal counsel shouldn’t be balanced at all against the government’s interest in preserving funds, as the four justices in the plurality had done.

The case came from Miami, where federal prosecutors accused Sila Luis, who ran a business providing care to homebound patients, of defrauding Medicare of \$45 million over a six-year period in a scheme involving kickbacks and bribes of patient recruiters and beneficiaries, as well as false claims for medical procedures.

Ms. Luis has denied the charges.

The government obtained a court order freezing the \$2 million Ms. Luis had at the time she was arrested. She challenged that order, arguing it effectively eliminated her right to hire a lawyer of her choosing.

Justice Breyer’s opinion stressed the importance of a client’s confidence in his or her lawyer, and the court’s many precedents holding sacrosanct the right to counsel.

He cited the court’s 1932 opinion throwing out the convictions of the Scottsboro Boys, black defendants who were denied counsel before they were tried and sentenced to death for raping two white women in Alabama.

A defendant “requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence,” the court said in the 1932 holding.

Wednesday’s decision likely will be of little significance to indigent defendants, who generally are represented by public defenders.

“It probably benefits white-collar criminal defendants more than it does anybody else,” said Rory Little, a professor at Hastings College of the Law in San Francisco. “A lot of the top white-collar lawyers require a retainer account of \$10 million to start.”

Still, Mr. Little said the ruling indicates a growing skepticism on the court over the many laws that freeze or forfeit a suspect’s property, even before conviction.

Justices Anthony Kennedy, Samuel Alito and Elena Kagan dissented.

“The true winners today are sophisticated criminals who know how to make criminal proceeds look untainted,” Justice Kennedy wrote in one of the dissents, which was joined by Justice Alito. He noted wrongdoers can open shell companies, open bank accounts under other people’s names and take other steps “to disguise the origin of their funds.”

A lawyer for Ms. Luis couldn’t be reached. The Justice Department declined to comment.