

THE BLOG

Key Ruling to Bludgeon Government's Core Pre-Trial Strategy

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The Federal Government touts a conviction rate of more than 90%, largely represented by guilty pleas, not trial wins. The government specializes in producing statistics that invite the inference they want, so there should be no surprises here.

But how does the Government manage to win so convincingly? Rather than entertain the notion that presumably innocent people get paraded around in the “cuff and stuff walk of shame” or stuffed away in a cell for a few months awaiting trial, let’s look at the hamstringing that goes on behind the scenes of public scrutiny. It starts with the calculated removal of the defendant’s ability to hire the best defense attorneys by restraining their assets before the first juror is sworn in. Of course, the official reason will be a flight risk argument or a claim that the accused’s funds were products of ill-gotten gain. When the accused - who are Constitutionally presumptively innocent - are prematurely stripped of their ability to wage a meaningful defense, they are, in essence, forced into handing the Government another layup conviction in our assembly line system of justice.

Finally, a pleasant and long overdue overhaul to the Government’s “Seize now - Prove Later” tactic is being changed, thanks to arguably one of the best criminal defense attorneys in the nation, Howard Srebnick of Miami, who has delivered a major win for our Sixth Amendment right while dealing a decisive blow to the Government.

On March 30th, in a five-member majority, the Supreme Court ruled the Government cannot freeze untainted assets if that restraint prevents the defendant from hiring a lawyer. This is a critical ruling that will help level the playing field when battling U.S. Attorneys who are not limited by financial or human resources.

The defendant can now meaningfully challenge the Government's case instead of being held hostage to the fixed fee court appointed attorney or woefully under-staffed Public Defender's office whose strategy is universally reduced to emphasizing the enhanced trial penalty and inducing a plea.

Sila Luis was indicted for allegedly running a multi-million dollar Medicare fraud. Sentencing in white-collar cases is primarily driven by the amount of economic loss - and the \$45 million dollar loss claimed by the Government exposes Mrs. Silas to decades in prison. Naturally, the Government sought to freeze the remainder of her accounts with the rationale that funds should be reserved for statutory penalties and so forth - already assuming a victory. The odds and history would certainly be against Luis if she were forced to take a number at the Public Defender's office. Now she will be able to comprehensively challenge the Government's allegations.

But perhaps the greatest irony to flow from this decision was Luis's decision to hire Mr. Srebnick - a choice that Government argued to remove but now benefits the people. Seize that.