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U.S. Supreme Court Affirms Sixth Amendment Right to Defense Counsel of One's Choice

In a widely-awaited decision concerning the Sixth Amendment right to counsel and the government's pretrial seizure of a defendant's assets, the U.S. Supreme Court ruled on March 30, 2016 in the case of *Luis v. United States* (14-419).

In an opinion by Justice Breyer, joined by Chief Justice Roberts and Justices Ginsburg and Sotomayor, the Court found that "the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment." The plurality explained that the Constitutional line they have drawn—distinguishing between tainted funds and innocent funds needed to pay for counsel—should prove workable. "We concede, as Justice Kennedy points out...that money is fungible; and sometimes it will be difficult to say whether a particular bank account contains tainted or untainted funds. But the law has tracing rules that help courts implement the kind of distinction we require in this case." Justice Thomas wrote a concurring opinion agreeing with the plurality that "a pretrial freeze of untainted assets violates a criminal defendant's Sixth Amendment right to counsel of choice[,] but disagreeing with the plurality's "balancing approach."

NACDL President E.G. "Gerry" Morris said: "The importance of this decision cannot be overstated. In oral argument before the Supreme Court, in response to a question by Justice Kennedy, the government acknowledged that its position that untainted assets can be Constitutionally restrained prior to trial could be extended to all types of crimes, supporting Justice Kennedy's concern that this '[would] prevent the private bar from – from practicing law unless it did so on a contingent basis.' The majority of the court recognized the existential threat to the Sixth Amendment the right to counsel of choice posed by the government's position and unequivocally held that the right to counsel must prevail. This decision is a reaffirmation of the importance of the Sixth Amendment guarantee and imposes a significant limitation on the government's expanding efforts to seize the funds of an accused before there has been any determination of guilt."

NACDL filed an amicus curiae brief to the U.S. Supreme Court with the California Attorneys for Criminal Justice and the Florida Association of Criminal Defense Lawyers. Counsel of record was Courtney J. Linn of Orrick, Herrington & Sutcliffe LLP. The team on the brief also included Robert Loeb and Kevin Arlyck of the Orrick firm, Sharon Cohen Levin of Wilmer Cutler Pickering Hale and Dorr LLP, David B. Smith of Smith & Zimmerman PLLC, and Jonathan Hacker of O'Melveny & Myers LLP, co-chair of NACDL's Amicus Curiae Committee.

Petitioner Sila Luis was represented by counsel of record and NACDL Life Member Howard Srebnick, of Black, Srebnick, Kornspan & Stumpf, P.A., in Miami, Florida as well as NACDL Life Member Scott A. Srebnick of Scott A. Srebnick, P.A., in Miami, Florida. Howard Srebnick is also Vice Chair of NACDL's Lawyers' Assistance Strike Force. In addition, petitioner's legal team included Professor Ricardo J. Bascuas of the University of Miami School of Law and Joshua Shore of Black, Srebnick, Kornspan & Stumpf, P.A.