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## Supreme Court rules for Miami defendant in Medicare fraud case

### HIGHLIGHTS

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- Says government was wrong to seize all her assets, leaving her unable to pay attorneys
  - Strange bedfellows: John Roberts joined 3 liberals in one opinion; Clarence Thomas concurred
  - Issue is controversial asset seizure practices of federal government
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The Supreme Court is shorthanded since the death of Antonin Scalia. Merrick Garland, President Barack Obama's choice to replace Scalia, on Wednesday met with Senate Judiciary Committee member Sen. Al Franken, D-Minnesota. Senate Republican leaders have refused to consider Garland's nomination. **J. Scott Applewhite/AP**

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WASHINGTON

Sila Luis can get her money now, or at least her lawyers can.

A divided Supreme Court ruled Wednesday that federal prosecutors had violated the Cuban immigrant's constitutional right to hire an attorney of her choosing by freezing all her assets, without regard to how she had come by them.

Luis, who arrived in Miami from Cuba decades ago, has been under house arrest for three years while the issue of her access to legally obtained funds wound through the courts as part of a broader Medicare fraud case. While she was indicted in October 2012 for paying people kickbacks in exchange for referrals to her business, her trial has not begun, pending the outcome of the assets dispute.

“This is a significant ruling for both citizens accused of a crime and for the criminal defense bar,” Howard Srebnick, a Miami defense lawyer who represents Luis, told McClatchy.

“For accused citizens, it assures her of the ability to use her lawfully possessed assets to retain counsel of her choice in order to defend against the government’s efforts to incarcerate and impoverish her,” Srebnick said. “For the defense bar, it means that we will continue to have the resources available to do our job to the best of our abilities.”

Srebnick and his brother, Scott Srebnick, have defended Luis without payment. The high court ruling clears the way for them to get some money from a portion of \$2 million that prosecutors agree was legally obtained by Luis through her home healthcare business.

Prosecutors contend that Luis, whose business sent nurses to home-bound patients, acquired \$45 million through a kickback scheme and other forms of Medicare fraud. While her lawyers contest that claim, they do not dispute the government’s right to freeze those assets.

But the government also froze other assets and shut down Luis’ businesses, LTC Professional Consultants and Professional Home Care Solutions, after indicting her. Many of her clients were Spanish-speaking immigrants from Cuba and other countries.

**4** The number of opinions written by different Supreme Court justices in the complicated case.

In a 5-3 ruling, the high court said prosecutors had overstepped their bounds when they seized all her assets for possible future use to pay criminal fines and restitution to victims. Justice Stephen Breyer, writing for the majority, said such a broad seizure of assets conflict with her constitutional right to retain an attorney to defend her.

“The government cannot, and does not, deny Luis’ right to be represented by a qualified attorney whom she chooses and can afford,” Breyer wrote. “But the government would undermine the value of that right by taking from Luis the ability to use the funds she needs to pay for her chosen attorney.”

In reaching its conclusion, the majority overturned earlier decisions by U.S. District Judge Paul Huck in Miami and the Atlanta-based 11th Circuit Court of Appeals.

The court has had only eight members since the death of Justice Antonin Scalia in February. Republican senators are refusing to consider President Barack Obama’s March 16 nomination of Merrick Garland to replace him.

Breyer was joined by Chief Justice John Roberts, and by Justices Ruth Bader Ginsburg and Sonia Sotomayor. Justice Clarence Thomas concurred but wrote a separate opinion in which he based his ruling on different constitutional grounds.

John Stinneford, a professor at the University of Florida law school, said the ruling would likely have broad ramifications, especially in white-collar crime cases that often involve much larger sums of money than in the Luis case.

“In many white-collar cases, the defendant has been unable to pay for an attorney because the government has seized all of his assets, whether they were tied to the alleged criminal activity or not,” Stinneford said. “As a result, it becomes very hard to put on a defense. White-collar cases typically are large and complicated, and require a lot of resources to defend oneself.”

Breyer and the other justices ruled that freezing all of Luis’s assets violated the Constitutions Fifth and Sixth amendments. The Fifth Amendment bars government property seizures without due process, while the Sixth Amendment affords a criminal defendant the rights to an attorney, an impartial jury, a speedy trial and other core legal protections.

“The property at issue here . . . is not loot, contraband, or otherwise ‘tainted,’ Breyer wrote. “It belongs to the defendant.”

### **DEFENDANT SILA LUIS HAS BEEN ON HOUSE ARREST FOR THREE YEARS SINCE HER INDICTMENT ON MEDICARE FRAUD.**

In his opinion, Thomas relied on his “originalist” theory of law, under which the meaning of the Constitution’s provisions was fixed at the time it was enacted in 1787.

Thomas said under that theory, the only legal counsel widely available when the Constitution was ratified was paid counsel and that federal courts had not yet recognized a defendant’s right to pro bono, or unpaid, representation.

Justice Anthony Kennedy wrote a dissenting opinion, joined by Justice Samuel Alito, in which he argued that in large criminal enterprises, it is difficult to distinguish proceeds illegally obtained from those legally obtained and that legal assets often are preserved by a defendants’ use of illegally obtained funds.

The five votes in favor of Luis “find in the Sixth Amendment the rule that greater protection is given to the defendant who, by spending, laundering, exporting, or concealing stolen money first, preserves his or her remaining funds for use on an attorney.”

Kennedy pointed to evidence indicating that Luis constantly shifted money among dozens of bank accounts, sent money to numerous relatives and used some proceeds for expensive vacations in the United States and abroad.

“Notwithstanding that the government established probable cause to believe that Luis committed numerous crimes and used the proceeds of those crimes to line her and her family’s pockets, the plurality and Justice Thomas reward Luis’ decision to spend the money she is accused of stealing rather than her own,” Kennedy wrote.

Justice Elena Kagan also dissented, but in a separate opinion.

*JAY WEAVER OF THE MIAMI HERALD CONTRIBUTED*