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Supreme Court Rules Against Freezing Assets Not Tied to Crimes

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The Supreme Court's ruling on Wednesday arose from the prosecution of a Florida woman for Medicare fraud that, according to the government, involved \$45 million in charges for unneeded or nonexistent services.

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WASHINGTON — The government may not freeze assets needed to pay criminal defense lawyers if the assets are not linked to a crime, the Supreme Court ruled on Wednesday in a 5-to-3 decision that scrambled the usual alliances.

The case arose from the prosecution of Sila Luis, a Florida woman, for Medicare fraud that, according to the government, involved \$45 million in charges for unneeded or nonexistent services. Almost all of Ms. Luis's profits from the fraud, prosecutors said, had been spent by the time charges were filed.

Prosecutors instead asked a judge to freeze \$2 million of Ms. Luis's funds that were not connected to the suspected fraud, saying the money would be used

to pay fines and provide restitution should she be convicted. Ms. Luis said she needed the money to pay her lawyers.

The judge issued an order freezing her assets. That order, the Supreme Court ruled on Wednesday, violated her Sixth Amendment right to the assistance of counsel.

Justice Stephen G. Breyer, in a plurality opinion also signed by Chief Justice John G. Roberts Jr. and Justices Ruth Bader Ginsburg and Sonia Sotomayor, said the case was simple.

The government can seize, Justice Breyer wrote, “a robber’s loot, a drug seller’s cocaine, a burglar’s tools, or other property associated with the planning, implementing, or concealing of a crime.” But it cannot, he said, freeze money or other assets unconnected to the crime.

“The distinction that we have discussed is thus an important one, not a technicality,” he wrote. “It is the difference between what is yours and what is mine.”

In announcing his opinion from the bench, he added, “It’s pretty basic.”

Justice Breyer said the ruling, in *Luis v. United States*, No. 14-419, did not change the general framework established by *United States v. Monsanto*, a 1989 decision that said freezing assets was permissible, even if it frustrated the defendant’s ability to hire a lawyer, as long as there was probable cause that a crime had been committed and the assets were linked to the offenses described in the indictment.

The crucial point, Justice Breyer wrote, was that the right to counsel is a fundamental constitutional guarantee, while the government’s interest in recovering money is merely important.

“Despite their importance, compared to the right to counsel of choice, these interests would seem to lie somewhat further from the heart of a fair, effective criminal justice system,” he wrote.

Justice Clarence Thomas voted with the plurality but did not adopt what he called its balancing approach. If the right to counsel is a fundamental constitutional guarantee, he said, it cannot be weighed against other interests.

It made no difference, he said, that the case concerned limits on a defendant’s ability to pay to exercise a constitutional right.

“The right to keep and bear arms, for example, ‘implies a corresponding right to obtain the bullets necessary to use them,’” he wrote, quoting an appeals

court decision. And the right to free speech, he added, implies the right to spend money to make sure the speech is heard.

Justice Thomas's concurrence cited a dissent from Justice Antonin Scalia, who died last month, for that second point. He cited Justice Scalia's writings four more times in his concurrence.

In dissent, Justice Anthony M. Kennedy, joined by Justice Samuel A. Alito Jr., wrote that the principle announced by the justices in the majority "rewards criminals who hurry to spend, conceal, or launder stolen property."

"The true winners today," Justice Kennedy wrote, "are sophisticated criminals who know how to make criminal proceeds look untainted."

In a separate dissent, Justice Elena Kagan said she found the court's 1989 Monsanto decision troubling. But she said that decision required ruling against Ms. Luis rather than drawing artificial distinctions.

"The thief who immediately dissipates his ill-gotten gains and thereby preserves his other assets is no more deserving of chosen counsel than the one who spends those two pots of money in reverse order," she wrote. "Yet the plurality would enable only the first defendant, and not the second, to hire the lawyer he wants."

"I cannot believe the Sixth Amendment draws that irrational line, much as I sympathize with the plurality's effort to cabin Monsanto," Justice Kagan wrote.