

U.S. Supreme Court ponders pre-trial asset freezes in criminal cases

WASHINGTON, Oct 16 (Reuters) - The U.S. Supreme Court appeared closely divided on Wednesday on whether criminal defendants can challenge a court's decision to freeze their assets before trial.

The question before the nine justices, seemingly split along non-ideological lines, is whether defendants can be prevented from using assets frozen by a pretrial order for their legal defense without a court hearing on the matter.

The federal government opposes such hearings, which take place in New York and some other parts of the country. The Supreme Court has never definitively ruled on whether they are required.

The Justice Department says that it is harder to seek restitution for victims, such as investors harmed by white-collar crime, after a defendant has used frozen assets to pay for legal expenses.

During an hour of oral arguments, Chief Justice John Roberts was the most outspoken critic of the government's position.

He questioned the Justice Department's assertion that requiring a hearing on pre-trial asset freezes would effectively force a trial court judge to second-guess the grand jury that issued the indictment.

That is because grand juries already have found that probable cause to seize the assets if the defendant is convicted.

"I don't see what this case, frankly, has to do with the grand jury," Roberts said. He described the pretrial hearing as "an entirely separate proceeding" that would only focus on the frozen assets and not on the merits of the indictment.

By contrast, Justice Samuel Alito, like Roberts an appointee of President George W. Bush, appeared to have more sympathy for the government's position.

He noted that defense lawyers often use preliminary hearings like the one proposed to try to eke out an advantage by finding out details about the government's case ahead of trial.

"That's what this is all about," he said.

The liberal justices on the court seemed as conflicted as their conservative colleagues, with Justice Ruth Bader Ginsburg signaling support for the government and Justice Sonia Sotomayor appearing to back the defendants.

The case before the court concerns Kerri Kaley, a sales representative for a subsidiary of Johnson & Johnson Inc, who, along with her husband, Brian, was indicted by federal prosecutors in Florida for reselling medical devices, including sutures, that she obtained from hospitals to which she had previously sold the same products.

The Kaleys were indicted in February 2007 on charges of money laundering and other offenses. Federal prosecutors sought a pre-trial order to freeze their assets, including a home and certificate of deposit worth more than \$500,000 that the Kaleys were hoping to use to pay for their lawyers.

The couple says in part that the limit on their right to choose a lawyer violated their right to counsel under the Sixth Amendment of the U.S. Constitution.

A decision is due by the end of June.

The case is *Kaley v. United States*, U.S. Supreme Court, No. 12-464. (Reporting by Lawrence Hurley; Editing by Howard Goller and Paul Simao)