BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Berkeley Center for Law, Business and the Economy

University of California, Berkeley
School of Law
2850 Telegraph Ave, Suite 500
Berkeley, CA 94705-7220

Ph: 510.642.0532 – Fax: 510.643.7095
E-mail: BCLBE@law.berkeley.edu
http://www.law.berkeley.edu/bclbe.htm

"Freezing" Untainted Assets Amounts to Sixth Amendment Violation in Recent SCOTUS Decision

By Alex Williamson, J.D. Candidate 2018 | April 18, 2016

The Sixth Amendment guarantees that criminal defendants "have the assistance of counsel," which entails the freedom to choose said counsel, so long as he or she is able to pay for it. However, federal forfeiture laws related to asset "freezing" have served as a clever workaround to this Constitutional right for many years. That was until this March when the Supreme Court ruled in a 5-3 decision against such laws in the case of Luis v. United States.

The prosecution filed a civil asset forfeiture action against Sila Luis, who was indicted for numerous health care related offenses totaling $45 million in possible damages. The action requested that all of Luis' assets be frozen until the case was completed to serve as available funds to cover the damages in the event of a conviction. Since all her assets would be frozen, the action effectively restricted Luis' Sixth Amendment right to hire a lawyer of her choosing. Even though she would be appointed a public defender, the Court held that freezing "innocent" funds that have no connection to the charges against the defendant is a violation of his or her rights. In Justice Breyer's majority opinion, the Court held that a line must be drawn "between a criminal defendant's (1) tainted funds and (2) innocent funds needed to pay for counsel."

This decision does not overturn Kaley v. United, a 2014 opinion by the Supreme Court that held that prosecutors could freeze $500,000 from the defendants' account. The Court reasoned that because there was probable cause that the defendants had committed money laundering, and the $500,000 amount was traceable to the underlying offenses, that the action to freeze that amount was lawful. In contrast, Luis was able to show that $15 million of her assets were "undisputedly legitimate" and therefore should not be subject to the freeze order. This raises the question, how does this tainted/untainted line get drawn, especially during preliminary hearings where the evidentiary standard is lower?

Justice Breyer wrote in his opinion that "the constitutional line we have drawn should prove workable." However, Justice Kennedy raised the concern in a dissenting opinion that the defendants in most of these cases are "sophisticated" criminals adept at making "criminal proceeds look untainted." Consider the case of a corrupt politician or a corporate officer accused of fraud; it may be particularly difficult in these white-collar crime cases to distinguish when employment compensation was related to the misconduct or innocently earned.

Even though this opinion leaves some unanswered administrative questions, it is evident that the Supreme Court is sending a clear signal, with Sixth Amendment rights coming before the need to reserve assets for restitution. This case is about a lot of different issues: constitutional rights, the ethics of certain prosecution techniques, and even to some degree, the legal system's faith in the public defender system. However, since forfeiture laws were traditionally aimed at white-collar criminals with deep pockets, this case has the potential to largely influence how those defendants choose to spend and conceal their money, and how attorneys advise them in that process.